



STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE

300A Outlet Pointe Blvd., Columbia, South Carolina 29210
P.O. Box 12265, Columbia, South Carolina 29211

SC PRIVATE LETTER RULING #18-1

SUBJECT: Streaming Subscription and Related Services - Viewing the Playing of Video Games, the Playing of Music, Live eSports Events or Similar Content of Third Party Broadcasters and Chat Services
(Sales and Use Tax)

REFERENCES: S.C. Code Ann. Section 12-36-910 (2014)
S.C. Code Ann. Section 12-36-1310 (2014)
S.C. Code Ann. Section 12-36-60 (2014)
SC Regulation 117-329

AUTHORITY: S.C. Code Ann. Section 12-4-320 (2014)
S.C. Code Ann. Section 1-23-10(4) (2005)
SC Revenue Procedure #09-3

SCOPE: A Private Letter Ruling is an advisory opinion issued to a specific taxpayer by the Department to apply principles of law to a specific set of facts or a particular tax situation. It is the Department's opinion limited to the specific facts set forth, and is binding on agency personnel only with respect to the person to whom it was issued and only until superseded or modified by a change in statute, regulation, court decision, or another Departmental advisory opinion, providing the representations made in the request reflect an accurate statement of the material facts and the transaction was carried out as proposed.

Question:

Are charges by LLM, Inc. for its Subscription One or Subscription Two service, as described in the facts, subject to the sales and use tax?

Conclusion:

Charges by LLM, Inc. for its Subscription One or Subscription Two service, as described in the facts, are subject to the sales and use tax under Code Sections 12-36-910(B)(3) and 12-36-1310(B)(3).

Facts:

LLM, Inc. (“LLM”) provides an Internet-based platform where viewers can watch real-time streaming videos licensed by LLM from third parties on the internet, commonly referred to as “broadcasters.” Specifically, viewers who visit LLM’s website can (1) watch broadcasters playing a variety of different video games and engaging in other activities (e.g., playing music, painting, etc.), (2) playing in live e-sports events, (3) view other streamed content, and (4) comment in the chat tool. In addition to live streaming of video, broadcasters can save their past videos and post them for viewers as videos on demand (“VOD”). Once enabled by broadcasters, VODs are saved by default for 14 days.

LLM video content is available to view free of charge, with viewers receiving a basic free tier of engagement on the LLM website. The following benefits are available to all viewers for free:

- Access to all broadcaster channels;
- Access to all streaming video content;
- Access to all broadcaster VOD content (Broadcasters can save their VOD content for a maximum of 14 days);
- Ability to use the chat function; and
- Access to basic chat colors and emoticons.

Viewers wanting an enhanced experience on the LLM website have the option to purchase a subscription. There are two types of subscriptions available to viewers: subscription one and subscription two (collectively the “Subscriptions”). Neither type of subscription provides subscribers with additional viewing content; however, subscribers receive the following additional benefits:

Subscription One:

- Ad-free viewing for an individual broadcaster’s channel (with limited exceptions);
- An icon that represents that the viewer is a subscriber of the specific broadcaster’s channel;
- A set of emoticons for use during chats;
- Access to a specialized chat mode for subscribers only; and
- The subscriber is not affected by chat slow mode (meaning that there is no delay between a subscriber typing messages and the messages appearing in chat).

Subscription Two:

- Ad-free viewing across the entire LLM site (with limited exceptions);
- A customized set of emoticons that can be used by the subscriber during chats;
- An icon that represents that the subscriber is a “Subscription Two” subscriber;
- Additional chat colors, which provide subscribers the ability to utilize additional colors during chats;
- Priority customer support; and

- Access to VOD content for 60 days (Broadcasters can save their VOD content for 60 days instead of 14 days).

Unlike other platforms where visitors passively view streaming video, the LLM platform is one designed with the intent of encouraging engagement among the broadcaster and viewer community.

There are multiple avenues for engagement available on LLM broadcaster pages. One of the primary methods of engagement, the chat function, allows viewers to interact directly and in real time with broadcasters.

Broadcaster pages also often contain links and information about how viewers can further engage with and financially support them. This includes links to YouTube pages, buttons to donate via PayPal and other similar services. Donating to broadcasters is so popular that LLM recently implemented a system for all viewers, not just subscribers, to donate to broadcasters through the LLM chat function. Broadcasters frequently provide additional playing opportunities to subscribers and viewers who donate, including the opportunity to play a video game with the broadcaster on a LLM stream; playing with a particular character, item, or other-in-game settings as requested by a viewer; providing feedback; etc. These benefits vary among the broadcaster community.

Additionally, LLM recently rolled out a beta program to allow certain broadcasters to offer different tiers of subscription one subscriptions to their subscribers. While a standard subscription one subscription costs \$X.XX per month, two new tiers have been added at \$X.XX and \$XX.XX. These two new tiers offer the same benefits as the basic subscription one subscription, plus the following additional benefits:

- 1) higher-tier subscribers receive additional emoticons to use in LLM chat which indicate that the subscribers are subscribing to the broadcaster at a higher tier; and
- 2) higher-tier subscribers can send a custom message to the community when first subscribing.

The other benefits of higher tier subscriptions all inure directly to broadcasters; specifically, the broadcasters receive additional revenue from the higher-tier subscriptions and the higher-tier subscriptions count for multiple subscribers for purposes of unlocking additional emoticons (an incentive for broadcasters to build larger and more active communities).

Law and Discussion:

Code Section 12-36-910(A) reads:

A sales tax, equal to [six]¹ percent of the gross proceeds of sales, is imposed upon every person engaged or continuing within this State in the business of selling tangible personal property at retail.

¹ Code Section 12-36-1110 increased the state sales tax rate from 5% to 6% beginning June 2007.

Code Section 12-36-1310(A) reads:

A use tax is imposed on the storage, use, or other consumption in this State of tangible personal property purchased at retail for storage, use, or other consumption in this State, at the rate of [six]² percent of the sales price of the property, regardless of whether the retailer is or is not engaged in business in this State.

Code Section 12-36-60 defines the term “tangible personal property” to mean:

[P]ersonal property which may be seen, weighed, measured, felt, touched, or which is in any other manner perceptible to the senses. It also includes services and intangibles, including communications, laundry and related services, furnishing of accommodations and sales of electricity, the sale or use of which is subject to tax under this chapter and does not include stocks, notes, bonds, mortgages, or other evidences of debt. ... (Emphasis added.)

Therefore, the term “tangible personal property” includes the sale or use of certain intangibles, including communications, which are subject to South Carolina sales or use taxes under Chapter 36 of Title 12.

Communications are subject to sales and use taxes under Chapter 36 of Title 12 pursuant to Code Sections 12-36-910(B)(3) and 12-36-1310(B)(3), each of which imposes the tax on the:

[G]ross proceeds accruing or proceeding from the charges for the ways or means for the transmission of the voice or messages, including the charges for use of equipment furnished by the seller or supplier of the ways or means for the transmission of the voice or messages. ... (Emphasis added.)³

The Department has long held that the charges for the ways or means of communication include charges for access to, or use of, a communications system (the manner, method or instruments for sending or receiving a signal of the voice or of messages), whether the charges are based on a fee per a specific time period or per transmission.

The Department has taxed communication services such as telephone services, paging services, cable television services, satellite programming services (including but not limited to, emergency communication services and television, radio, music or other programming services), fax transmission services, voice mail messaging services, e-mail services, and database access transmission services (on-line information services), such as legal research services, credit

² Code Section 12-36-1110 increased the state use tax rate from 5% to 6% beginning June 2007.

³The Department has long held that “the total amount of money derived, exclusive of deductions, from a commercial venture and accruing or proceeding from charges for the manner, method or instruments for sending a signal of the voice or of messages is subject to the sales and use tax.” See SC Revenue Ruling #17-2 or any successor documents.

reporting/research services and charges to access an individual website.⁴ In addition, SC Regulation 117-329 provides various examples of communication services subject to the sales and use tax.

More recently, the Department held in SC Revenue Ruling #16-5 that “[c]harges paid by a customer for streaming television programs, movies, music, and other similar content are charges for communication services and are therefore subject to South Carolina sales and use tax whether paid for as part of a subscription service, per item, or per event.”

In coming to this conclusion, the Department used the following definitions for “streaming” and “streaming media” as set forth by the Alliance for Telecommunications Industry Solutions (“ATIS”), a professional organization composed of information and communications technology companies that develops technical and operational standards for the industry:

Streaming: A technique for transferring data (usually over the Internet) in a continuous flow to allow large multimedia files to be viewed before the entire file has been downloaded to a client’s computer.

Streaming media: Transmitted video or audio data that are viewed (or listened to) in real time, i.e., as the information is received. Streaming media may be user-controlled (as in on-demand, pay-per-view movies) or server-controlled (as in Webcasting).

Furthermore, the definition of tangible personal property, as defined in Code Section 12-36-60, includes services and intangibles “the sale or use of which is subject to tax under [Chapter 36],” such as “communications.” The Second College Edition of the American Heritage Dictionary defines “communication,” in part, as “[t]he exchange of thoughts, messages or information, as by speech, signals or writing.” “Communications” is further defined as “a means of communicating esp.: a system of sending and receiving messages, such as mail, telephone and television.” The Department has long used the definition found in the Second College Edition of the American Heritage Dictionary for the term “communications.”

Based on the discussion above, LLM is providing the ways or means for the transmission of the voice or messages through a streaming transmission service (viewing the playing of video games, the playing of music, the painting of a picture, live eSport events, etc.). In addition, the subscription services in question provide a different type of content than that available to non-subscribers – ad-free viewing content, instant chat capabilities (chat not affected by slow mode) and messaging through emoticons⁵ only available to subscribers. Finally, higher-tier subscribers can send a custom message to the community when first subscribing.

⁴ See SC Revenue Ruling #17-2 for examples of communication services subject to sales and use tax.

⁵ Dictionary.com defines an “emoticon” as “a digital icon or a sequence of keyboard symbols that serves to represent a facial expression, as :-) for a smiling face. Emoticons are used in a digital message or text to convey the writer’s emotions or clarify intent.”

Accordingly, charges by LLM for its Subscription One or Subscription Two service, as described in the facts, are charges for communication services under Code Sections 12-36-910(B)(3) and 12-36-1310(B)(3) and are therefore subject to the South Carolina sales and use tax.

SOUTH CAROLINA DEPARTMENT OF REVENUE

s/W. Hartley Powell
W. Hartley Powell, Director

April 10 _____, 2018
Columbia, South Carolina

CAVEAT: This advisory opinion is issued to the taxpayer requesting it on the assumption that the taxpayer's facts and circumstances, as stated, are correct. If the facts and circumstances given are not correct, or if they change, then the taxpayer requesting the advisory opinion may not rely on it. If the taxpayer relies on this advisory opinion, and the Department discovers, upon examination, that the facts and circumstances are different in any material respect from the facts and circumstances given in this advisory opinion, then the advisory opinion will not afford the taxpayer any protection. It should be noted that subsequent to the publication of this advisory opinion, changes in a statute, a regulation, or case law could void the advisory opinion.