



STATE OF LOUISIANA
DEPARTMENT OF REVENUE

M. J. "MIKE" FOSTER, JR.
Governor

CYNTHIA BRIDGES
Secretary

Private Letter Ruling 02-002
Redacted Version
Taxability of High-Speed Downloading/Sales Tax
April 1, 2002

A Private Letter Ruling based upon the following scenarios was requested:

Scenario One

An out-of-state corporation with Louisiana nexus provides high-speed satellite downloading. The downloading takes place after the customer sends a request for data through the customer's Internet service provider (ISP) and the data has been routed via landlines to the out-of-state corporation's satellite uplink facility in another state. From this site, the data is transmitted by satellite to the customer's computer in Louisiana. The out-of-state corporation maintains Internet Protocol at all times while the data and images are routed through the high-speed downloading channel.

Scenario Two

Two services are being provided to the out-of-state corporation's customers. First, the out-of-state corporation provides Internet access to its customers after purchasing Internet access from a large ISP and reselling the service to the out-of-state corporation's customers in Louisiana. This third-party Internet access service is then bundled with the out-of-state corporation's high-speed satellite downloading service. The high-speed satellite downloading service is the same as described in scenario one. Bundling these two services provides the customer efficiency in billing and reduced cost for the services.

Scenario Three

The out-of-state corporation is providing satellite-only Internet access and downloading service. The satellite-only service is a two-way transmission between the out-of-state corporation's uplink facility and the consumer. No landlines are used in providing this service.

Scenario Four

The out-of-state corporation purchases two different telecommunication services from a non-Louisiana provider and this provider sources the sale to the out-of-state corporation's domicile state.

The first telecommunication service involves the out-of-state corporation's purchase of dedicated lines that connect the out-of-state corporation's uplink facility to the Internet. In scenarios one and two, the customer's requests are transmitted through the Internet by the ISP. Once the data and information have been retrieved, it is routed through the dedicated lines purchased by the out-of-state corporation to its out-of-state uplink facility for satellite transmission to the customer.

The second telecommunication service purchased by the out-of-state corporation involves the out-of-state corporation's purchasing of Internet access from an ISP. The out-of-state corporation then sells this Internet access to the end consumer.

Analysis / Discussion:

Louisiana Revised Statutes Title 47, Section 301(14)(b) provides:

(14) 'Sales of services' means and includes the following:

* * *

(i) (i) The furnishing of telecommunication services for compensation.

(ii) ...the term "telecommunications services" means:

* * *

(cc)(I) Interstate telecommunication services; however, only the amounts paid for interstate telecommunication services which either originate or terminate in this state and which are charged to a service address in this state, regardless of where such amounts are billed or paid, shall be subject to the tax imposed by this Chapter.

* * *

(iii) The term "telecommunication services" shall not include:

(dd) The furnishing of any telecommunication services for resale....

(ff) Information and data services, including storage of data or information for subsequent retrieval, the retrieval of data or information, or the processing, or reception and processing, of data or information intended to change its form or content.

Scenario One

In the first scenario, the service being sold by the out-of-state corporation is the providing of the high-speed satellite downloading. This service is a type of "telecommunication service" because it involves the transmission or conveyance, or routing of information or signals to a point, or between or among points, through a satellite. However, because the service involves the retrieval of data or information, it meets the definition of "information and data services," which is specifically excluded from the term "telecommunication service." In contrast to the general rule that all transfers of tangible personal property for a consideration are subject to the state sales or use tax, only the sales of those services specifically enumerated in La. R.S. 47:301(14) are taxable. Because this downloading service does not fit within the statutory definitions of taxable sales of services, these charges are not subject to the Louisiana sales and use tax.

Scenario Two

In the second scenario, two services are being provided to the out-of-state corporation's customers. The first is Internet access and the second is the high-speed satellite downloading service.

Taxing the service of providing customers access to the Internet is subject to the limitations imposed under federal legislation, the Internet Tax Freedom Act, Pub. L. No. 105-277, which prohibits states from taxing charges affiliated with services that enable users to access content, information, electronic mail, or other services offered over the Internet. Therefore, federal law prohibits the State of Louisiana from taxing the charges made to the out-of-state corporation's customers that are related to Internet access. The Louisiana Legislature confirmed its intent to follow this federal moratorium in Section 12 of 2000 La. Acts 22, which first enacted taxes on interstate telecommunication services in La. R.S. 47: 301(14)(i)(ii)(cc)(I), by stating that "nothing in this Act shall be construed as imposing any tax, or authorizing the imposition of any tax, on any ... service, if the imposition of such tax would be prohibited by the Internet Tax Freedom Act."

The second service of providing high-speed downloading service is, as discussed in scenario one, an information service that is specifically excluded from the definition of telecommunication services.

Scenario Three

In the third scenario, the out-of-state corporation is providing satellite-only Internet access and downloading service. As provided in scenario two, the service of providing Internet access is an activity protected from state taxation under the provisions of the Internet Tax Freedom Act (ITFA). And, as discussed in scenario one, the downloading service is an information service that is not a taxable service under Louisiana law.

Scenario Four

The first telecommunication service involves the out-of-state corporation's purchases of dedicated lines that connect the out-of-state corporation's uplink facility to the Internet. While the "furnishing of any telecommunication services for resale" is excluded from the definition of "telecommunications services," this is only true to the extent that the party purchasing the telecommunication is not using or consuming the service in providing its own service. The dedicated lines are used to provide the high-speed satellite downloading referenced in scenarios one and two are used by the out-of-state corporation in providing its service to the end consumer. Thus, the purchasing of these dedicated lines is not a purchase of telecommunication service for resale. However, according to the facts provided, the purchases are sourced outside of the state of Louisiana. Therefore, according to the provisions of La. R.S. 47:301(14)(i)(ii)(cc)(I), these amounts are not charged to a service address in this state, and Louisiana sales tax cannot be imposed on this service.

The second telecommunication service purchased by the out-of-state corporation involves the out-of-state corporation's purchasing of Internet access from an ISP. The out-of-state corporation then sells this Internet access to the end consumer, a nontaxable transaction under ITFA. The out-of-state corporation is not consuming these purchases of Internet access, but instead, offers its customers this service as bundled package with its satellite downloads. These purchases are telecommunication services for resale and are excluded from the definition of telecommunication services.

Conclusion:

The services described as being provided or purchased by the out-of-state corporation are not subject to the Louisiana sales or use tax for the reasons expressed in the above analysis. The high-speed satellite downloading is excluded from the definition of telecommunications service because it is an information service. The charges for Internet access that the out-of-state corporation provides to its clients are exempt from state tax under the federal Internet Tax Freedom Act. The out-of-state corporation's satellite-only Internet access is also exempt under this federal legislation. The out-of-state corporation's purchase of dedicated lines satisfies the definition of telecommunications services, but because the purchases are sourced outside the state, Louisiana sales tax cannot be imposed on the sale. Finally, The out-of-state corporation's purchases of Internet access from an ISP are not being consumed by the out-of-state corporation in providing its services and are for resale to the customer. Thus, they are purchases of telecommunications for resale, an exclusion from the general definition of telecommunications services.

If you should have any questions or need additional information, please contact the Policy Services Division at (225) 219-2780.

Sincerely,

Cynthia Bridges
Secretary

By: _____
Christina L. Fletcher
Attorney
Policy Services Division

A Private Letter Ruling (PLR) is issued under the authority of LAC 61:III.101(C). A PLR provides guidance to a specific taxpayer at the taxpayer's request. It is a written statement issued to apply principles of law to a specific set of facts or a particular tax situation and is limited to the matters specifically addressed. A PLR does not have the force and effect of law and may not be used or cited as precedent. A PLR is binding on the Department only as to the taxpayer making the request and only if the facts provided with the request were truthful and complete and the transaction was carried out as proposed. The Department's position concerning the particular tax situation addressed remains in effect for the requesting taxpayer until a subsequent declaratory ruling, rule, court case, or statute supersedes it.