



State of Louisiana
Department of Revenue

Private Letter Ruling No. 08-010

Redacted Version

Sales/Use Taxability of Wireless Internet Equipment

August 15, 2008

This private letter ruling involves the sale of wireless internet equipment in conjunction with a service agreement. The Department's response is limited to the facts as presented.

Facts

Company A is a provider of wireless internet services with offices located outside the state of Louisiana in state X. Company A markets and sells its internet services both directly to customers and through third-party agents ("Dealers"). Use of Company A's internet services requires customers to sign a one-year contract and purchase certain equipment. A customer can only purchase the required equipment from a Company A authorized Dealer. Company A purchases components of the equipment outside of state X where it is fabricated. Company A then issues its suppliers a resale certificate, takes ownership and briefly maintains an inventory of equipment in warehouses outside of State X. Equipment is shipped from these warehouses to Dealers both inside and outside of State X.

Scenario A

Company A purchases the equipment from its suppliers for a total cost of \$600. A resale certificate is issued to each supplier. Company A then sells the equipment to an authorized Dealer for \$360. The Dealer then provides Company A with a resale certificate and Company A does not charge Dealer sales and use tax on the purchases.

A Louisiana subscriber signs up for internet access either directly through a Dealer or via Company A, which refers the new subscriber to a Dealer. Dealer sells subscriber equipment for \$360, installs equipment at subscriber location, and bills, collects and remits all applicable Louisiana sales and use taxes for equipment and installation services. Dealer is compensated by Company A via commission. Company A bills subscriber for internet access over the period of the contract.

Scenario B

Company A purchases the equipment from its suppliers for a total cost of \$600 and issues a resale certificate to each supplier. A Louisiana subscriber signs up for internet access services directly from Company A, which sells the subscriber the equipment for \$360. An authorized installer then obtains the equipment (sold from Company A to Dealer) from the Dealer and installs the equipment at the subscriber's location. Company A then submits a credit memo to Dealer for the equipment item originally purchased by Dealer. Company A will bill, collect and remit all applicable Louisiana sales/use tax for equipment and installation services based upon

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the sales price of \$360. Company A bills subscriber for internet access over the period of the contract.

Law/Analysis

In support of its position, the taxpayer cites Revised Statutes 47:301(10)(v) and 47:301(13)(g-h), which address the issue of cellular telephones sold at a discount and the attendant sales and use tax implications. However, those provisions do not govern the sale of wireless internet service and related equipment. Instead, the pertinent statutes are Revised Statutes 47:302(A), 47:321(A), and 47:331(A), which impose a tax on the sale at retail, the use, the consumption, the distribution, and the storage for use or consumption in this state, of each item or article of tangible personal property. Further, Revised Statutes 47:301(13)(a) defines “sales price” as “the total amount for which tangible personal property is sold, less the market value of any article traded in including any services, except services for financing, that are a part of the sale valued in money, whether paid in money or otherwise...”

Scenario A

In Scenario A, Company A sells the equipment below-market price to a Dealer, who in turn sells the equipment to a customer for the same below-market price in conjunction with a service contract. It is the necessity of the service contract which allows Company A to sell the equipment below-market cost and recoup any losses it may have suffered from the below-market sale of the equipment. Thus, in essence, each monthly payment over the duration of a customer’s service contract represents a partial payment for the wireless internet service, a nontaxable transaction, and a partial payment for the cost of the equipment, a taxable transaction. Therefore, Dealer should collect and remit sales tax at the rate of 4 percent of the below-market price of \$360 from customer, leaving Company A liable to pay use tax at the rate of 4 percent on the remaining \$240.

It should be further noted that in all likelihood the Dealer in this scenario would be subject to Revised Statutes 47:306(B), which requires a retail dealer to collect an advance payment of sales tax upon the ultimate sale at retail. Thus, unless the Dealer had obtained a “W” number from the Department to present to Company A on the sale of the equipment, it would not likely be able to obtain a resale certificate from Company A and would be required to remit advance sales tax at the rate of 4 percent on the full \$600. This provision is effective until January 1, 2009.

Scenario B

In Scenario B, Company A purchases the equipment for its full \$600 price and issues each supplier a resale certificate. However, rather than purchase from a Dealer, the customer purchases the equipment directly from Company A for the below-market price. An authorized installer obtains the equipment from the Dealer (sold to Dealer by Company A) for installation purposes. A credit memo is submitted to Dealer for the equipment purchased. Sales/use tax is collected on the below-market price of \$360 from the customer by Company A. Much like Scenario A, Company A is attempting to recoup its losses from the sale of a below-market phone by bundling the sale with a non-taxable service contract. Thus, Company A should collect and remit sales tax from the customer on \$360 at the rate of 4 percent and then pay use tax on the remaining \$240 at the rate of 4 percent.

Conclusion

In both Scenarios A and B, Company A is bundling a taxable transaction, the sale of equipment, with a nontaxable transaction, the sale of wireless internet service. In both transactions, the sale of the equipment at the below-market price is contingent upon a customer signing a service contract. In essence, the contract represents part-payment for the non-taxable wireless internet service and part-payment for the taxable sale of the equipment. Thus, in both scenarios, the entire \$600 should be subject to Louisiana sales/use tax.

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

Sincerely,

Cynthia Bridges
Secretary

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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.