

STATE SALES TAX REVIEW & UPDATE

**TSTCI 2016 CONFERENCE – AUSTIN
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Presented by:

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INTERNET SERVICES

RULE 3.366 SEPT 12, 2000

- Internet and all services connected with the provision of the service are taxable
 - First \$25 of monthly charge is Exempt from sales tax :
 - Exemption is per purchaser, not user
 - This exemption applies without regard to:
 - Whether the internet service is bundled with another service, including a taxable service
 - The billing period used by the ISP
 - Example - An internet service provided for a set fee of \$300 per year would qualify in its entirety for exemption from sales tax

CABLE TELEVISION SERVICE AND BUNDLED CABLE SERVICE

RULE 3.313 AMENDED FEB 16, 2014

- Cable television and all services connected with the provision of the service are taxable
 - Taxable charges include:
 - Service connection/installation fees
 - Video programming services
 - Charges for DVRs, remote controls, set top boxes, surge protectors, and all items transferred to the care, custody, and control of the purchaser as an integral part of the services provided
 - Repairs and maintenance
 - Municipal franchise fees

TELECOMMUNICATIONS SERVICES

RULE 3.334 AMENDED JAN 10, 2016

■ Taxable Telecommunications Services:

- Basic local access and VoIP
- Enhanced services
- Intrastate toll
- Interstate toll both originating in Texas and billed to a Texas number
- Special access to end user
- Interstate end user charges: SLC and ARC
- Other separately stated federal, state and local taxes and fees imposed on LEC's (TUSF, FUSF)

TELECOMMUNICATIONS SERVICES

RULE 3.334 AMENDED JAN 10, 2016

■ Taxable Telecommunications Services:

- Mobile telecommunications services for which the place of primary use is located in Texas
- Prepaid wireless services when purchased in person at a Texas business or purchased by phone or internet and the purchaser's primary address is in Texas
- Private communications services
- Installation of telecommunications services, including service connection fees

TELECOMMUNICATIONS SERVICES

RULE 3.334 AMENDED JAN 10, 2016

- Taxable Telecommunications Services:
 - Lease, rental, sale, or other charges for telecommunications equipment if included on the same bill, receipt, or invoice as the sale of a telecommunications service (even if it is identified as a separate line item)
 - Inside wire monthly maintenance contract on non-residential customers
 - Separately stated charges for labor to install wiring in existing nonresidential real property

TELECOMMUNICATIONS SERVICES

RULE 3.334 AMENDED JAN 10, 2016

- Nontaxable Telecommunications Services:
 - Interstate toll not originating in Texas
 - Interstate toll originating in Texas but not billed to a Texas number or address
 - Telecommunications services purchased for resale or by exempt entity (Obtain certificates in lieu of tax)
 - Mobile telecommunications services for which the place of primary use is located outside of Texas

TELECOMMUNICATIONS SERVICES

RULE 3.334 AMENDED JAN 10, 2016

■ Nontaxable Telecommunications Services:

- Charges for federal, state, and local taxes or fees that are imposed on the purchaser rather than on the seller of the telecommunications service

- Telecommunications services exclusively used for the navigation of machinery and equipment on a farm or ranch in the building or maintaining of roads or water facilities or in the production of:
 - Food for human consumption
 - Grass
 - Feed for animal life
 - Other agricultural products to be sold in the regular course of business
 - Effective for services after September 1, 2015 and an agricultural exemption certificate and number must be provided by the purchaser

SOURCING OF LOCAL SALES TAX

RULE 3.334 AMENDED JAN 5, 2016

- **General Rule:**
 - In-Store Sales - Based on seller's place of business
 - Phone, Internet or Kiosk Sales - Based on seller's place of business where order is fulfilled
 - Internet Services - Fall under general rule and local tax is based on the seller's place of business
 - Local Use Tax Exception - If the ISP's place of business is outside the boundaries of a local taxing jurisdiction, the ISP will be required to collect local use tax if the customer is within a local taxing jurisdiction that the ISP has representation in

SOURCING OF LOCAL SALES TAX

RULE 3.334 AMENDED JAN 5, 2016

- **Exceptions to General Rule:**
 - Cable and Satellite TV Services:
 - **Satellite service (direct-to-home)** – Exempt from local tax under the Federal Telecommunications Act of 1996
 - **Cable and Bundled Cable Television Services** – Based on where the customer receives the service
 - No fixed physical connection:
 - Based on the customers place of primary use if the service is delivered by a mobile telecommunications service provider
 - Based on the customers mailing address if the service is delivered by any provider other than a mobile telecommunications provider
 - Address associated with payment instrument may be used only if mailing address is not known

SOURCING OF LOCAL SALES TAX

RULE 3.334 AMENDED JAN 5, 2016

- Exceptions to General Rule:
 - Telecommunications Services:
 - State and local sales tax is due on Texas intrastate calls, while only state sales tax is due on interstate calls.
 - Not all local taxing jurisdictions impose sales tax on telecommunications services. For a list of jurisdictions that do impose the tax, see:
 - Publication 96-339 – “Jurisdictions That Impose Local Sales Tax on Telecommunications Services”
 - Located on the Comptroller’s website @ comptroller.texas.gov/taxinfo/taxpubs/tx96_339.html

SOURCING OF LOCAL SALES TAX

RULE 3.334 AMENDED JAN 5, 2016

- Exceptions to General Rule – Telecommunications Services:
 - Landline Telecommunications – Based on the *location where the call originates*. If undeterminable, based on *address billed*
 - Mobile Telecommunications - Based on the *customer's place of primary use*
 - If the customer's primary place of use is outside the state, no tax is due.
 - The primary use rule does not apply if the customer is traveling in a foreign country and the call both originates and terminates in the foreign country

SOURCING OF LOCAL SALES TAX

RULE 3.334 AMENDED JAN 5, 2016

- Exceptions to General Rule – Telecommunications Services:
 - Prepaid Wireless Telecommunications:
 - In-Store Sales - Based on seller's place of business
 - Phone or Internet Sales – Based on primary address of customer
 - Address associated with payment instrument may be used if primary address of customer is not known

Local Sales and Use Tax Publication 94-105 issued June 2016

comptroller.texas.gov/taxinfo/taxpubs/tx94_105.pdf

TAXABLE SERVICES YOU SHOULD BE PAYING TAX ON

- Janitorial services
- Lawn care services & landscaping
- Pest control and extermination services
- Security services
- Debt collection services
- Software support or maintenance when provided by the vendor that sold the software

TAXABLE SERVICES YOU SHOULD BE PAYING TAX ON

- **Repair, remodel & maintenance of non-residential real property**
 - Contract services for repairs to damaged cable/fiber
 - Contract services for repairs to a tower
 - Contract services for repairs to office building
- **Repair, remodel & maintenance of tangible personal property**
 - Contract services for repairs to equipment on the tower
 - Contract services for repairs to office equipment
 - Contract services for repairs to other work equipment
 - Contract service for repairs or maintenance to hardware

TAXABLE SERVICES YOU SHOULD BE PAYING TAX ON

- Information services (20% exemption applies)
 - Newsletters, databases, global positioning system information
- Data Processing (20% exemption applies)
 - Data storage, offsite backup of electronic files, web hosting, website creation and maintenance, network interface services

NON-TAXABLE SERVICES YOU SHOULD NOT BE PAYING TAX ON

- Contract services for labor relative to new construction are not taxable
 - Labor to install *new* cable/fiber
 - Labor to construct *new* building or tower
- Contract services for labor to install equipment (tpp) are not taxable if the contractor is not the seller of the equipment being installed
- Lump-sum construction contracts for new construction where the labor and materials are combined as one amount

SERVICES FOR WHICH YOU SHOULD ISSUE A RESALE CERTIFICATE

- Services transferred as an integral part of the taxable cable, telecommunications, or internet service being provided may be purchased tax free
- Examples might include:
 - Data storage, gps service, news, music, virus protection, broadband services, telecommunications service, switching services
- Tax continues to be due on taxable services that are not transferred to customers as an integral part of the services being sold, but are instead used by the seller in providing the service being offered for sale

TPP FOR WHICH YOU SHOULD ISSUE A RESALE CERTIFICATE

- Tangible personal property (TPP) transferred to the customer as a part of the taxable service being provided may be purchased tax free if care, custody, and control is transferred to the customer
 - Wireless phones
 - Modems, routers
 - Set top boxes, DVRs, remote controls
 - Antennas, cables, wiring, and equipment located on the customer's premise
- Clearview Cable Case: Subscribers contractually bound to care for the equipment

INTERCOMPANY TRANSACTIONS

- An exemption from tax is provided, for all affiliated entities who file consolidated federal income tax returns, on all intercorporate services with the exception of the following taxable activities:
 - Telecommunication services
 - Cable television services
 - Repair or maintenance of tangible personal property
 - Rental of equipment
- Vehicle leases in excess of 180 days are not taxable
- The lease of real property, even if TPP is included, is not taxable

SALES TAX REFUND FOR PROVIDERS OF CABLE TV, INTERNET ACCESS & TELECOMMUNICATIONS SERVICES

HOUSE BILL 1133 EFFECTIVE SEPT 1, 2013

RULE 3.345

- Applies to state tax only (6.25%)
- A “qualifying purchase” is the total sales price of tangible personal property :
 - Purchased, leased or rented by a provider or its subsidiary on which Texas state sales tax was paid or accrued in the calendar year immediately preceding the calendar year in which the request for refund is submitted
 - Directly used or consumed in or during the provision, distribution, transmission, conveyance, routing, or reception of the service

SALES TAX REFUND FOR PROVIDERS OF CABLE TV, INTERNET ACCESS & TELECOMMUNICATIONS SERVICES

- Examples of Qualifying Purchases:
 - Circuit equipment
 - Batteries, power supply
 - Switching equipment
 - Software used in the provision of the service
 - Fiber, cable
 - Splice kits
 - Ethernet ONT
 - Cisco Router
 - Tower antennas
 - Related delivery and installation charges

SALES TAX REFUND FOR PROVIDERS OF CABLE TV, INTERNET ACCESS & TELECOMMUNICATIONS SERVICES

- Refund is limited to \$50 Million per year
- A pro rata method will be used if qualifying claims exceed \$50 Million
- Refund requests are due no later than March 31st each year

TELEPHONE COOPERATIVE ISSUES

- Exempt from Sales Tax – No “purpose” test is required to be met.
- Exempt from Hotel Occupancy Tax
- Exempt from Texas Motor Vehicle Tax
- Exempt from Gasoline and Diesel Fuels Tax

TELEPHONE COOPERATIVE ISSUES

- Lump-sum contractors may not use telephone cooperative's exemption certificate to purchase materials they use in completing a contract for a cooperative.
- Lump-sum contractors are the consumers of all materials and must pay tax on them.
- Consider requesting separated contracts

TRANSFER OF COMPLETED WORK ORDER FROM COOP TO SUBSIDIARY

January 20, 2005

To: Sandra Hilliard, Auditor

From: Al Van Allen, Tax Policy

Subject: [REDACTED] Telephone Cooperative
Sale of Fiber Optic Network to a For-profit Subsidiary

Facts:

[REDACTED] Telephone Cooperative, a telephone cooperative formed under the Telephone Cooperative Act (Utilities Code, Chapter 162) is exempt from paying sales tax based on the language in Utilities Code Sec. 162.062.

[REDACTED] Telephone Cooperative created a wholly owned for-profit subsidiary, [REDACTED] Communications Ltd ([REDACTED]) that is not exempt from payment of sales tax. [REDACTED] Telephone Cooperative built a buried fiber optic network and sold a portion of the completed network to the for-profit subsidiary. The fiber network is an improvement to realty when completed.

You examined work orders provided by [REDACTED] Telephone Cooperative that show separate amounts for:

Material
Supply Expense
Total Material & Supply
Labor
Benefits
Other Charges
Total Labor & Other
AFUDC
Cumulative Total

TRANSFER OF COMPLETED WORK ORDER FROM COOP TO SUBSIDIARY

Based on internal calculation, the costs were allocated (by percentage) to ■■■ and Co-op; when the W/O was closed. You believe the Co-op is, in essence, acting like a general contractor presenting separated billings and ask if the Coop is responsible to collect sales tax on its itemized charges for materials.

Question: Is the Coop required to collect sales tax from ■■■ on any part of the charge for the fiber network?

Response: I understand that no contract or other agreement exists that shows that the Coop built the network under contract with ■■■. The Coop sold a completed improvement to realty rather than tangible personal property and so is not required to collect tax on any part of the transaction. The Coop was within its statutory authority to buy the incorporated materials tax-free and so does not incur a sales or use tax liability on those purchases.

THANK YOU!



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