

Notice

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KANSAS DEPARTMENT OF REVENUE
NOTICE 08-03
Kansas Sales Tax and Internet Service Providers
Office of Policy & Research --- June 26, 2008

In 1998, Congress enacted the Internet Tax Freedom Act which placed a moratorium on state taxation of Internet access charges. In 2007, Congress enacted the Internet Tax Freedom Act Amendments Act of 2007 (Amendments Act) which extended the moratorium to November 1, 2014. *Public Law 110-108*. The Amendments Act also changed the definition of "Internet access service" for purposes of the extended moratorium. This notice explains how Kansas sales and use taxes apply to Internet service providers (ISP's) under the extended moratorium.

The Amendments Act defines "Internet access service" to mean a service that enables users to connect to the Internet to access content, information, and other available services. The definition also lists certain services that are exempted under the moratorium, and others that are not exempted. Under the definition, exempt Internet access services include:

- (a) the purchase, use, or sale of telecommunication services by an ISP to the extent that the telecommunication services are purchased, used, or sold:
 - (1) to provide Internet access; or
 - (2) to otherwise enable the Internet user to access content, information, or other services over the Internet. This includes Digital Subscriber Line (DSL) service that an ISP bills a customer for and uses to provide Internet access to the customer; and
- (b) services, such as home page, electronic mail and instant messaging (including voice- and video-capable electronic mail), video clips, and personal electronic storage capacity whether packaged with Internet access service or sold separately by a third-party that is not providing Internet access to its customer.

To document exempt sales of telecommunication services to an ISP, a telecommunication company is required to secure an exemption certificate from the ISP that: (i) contains the name and address of the ISP; (ii) states that the ISP is buying telecommunications service to provide Internet access to its customers; (iii) identifies the particular telecommunication services and accounts being used to provide Internet access; and (iv) is signed by the ISP, either manually or electronically.

The definition of "Internet access service" specifically excludes:

charges for audio programming, video programming, voice, or other digitized products or services that utilize Internet protocol for which there is a charge, regardless of whether the charge is separately stated or bundled with the charge for Internet access.

These exclusions allow States to tax ISP charges for radio programming, television programming, Voice over Internet Protocol (VoIP), and certain other digitized products and services. Kansas currently taxes: (i) subscriber charges to access radio or television programming (*K.S.A. 2007 Supp. 79-3603(k)*); (ii) VoIP as defined at *K.S.A. 2007 Supp. 79-3602(aaa)*; and (iii) canned software whether delivered electronically or on a tangible medium. *K.S.A. 2007 Supp. 79-*

3603(s). An ISP is required to collect sales tax on customer charges for these products and services, whether the charges are separately stated or bundled with nontaxable changes.

Kansas does not tax charges for electronically-delivered computer downloads of digitized products other than canned software, since an electronic download is not tangible personal property. Nontaxable electronic downloads include movies, music, photographs, newspapers, and other similar products. However, when a digitized product is delivered to a customer both electronically *and* on a tangible medium such as a back-up CD or DVD, the total amount that the ISP bills to the customer is taxable. An electronic download of canned computer software is taxable since "tangible personal property," by definition, includes "prewritten computer software." *K.S.A. 2007 Supp. 79-3602(pp)*. Kansas also does not tax a database provider's charges that allow an Internet user to electronically access information on the provider's remote database to answer queries or extract information.

Services that remain subject to Kansas sales tax under the extended moratorium include:

1. Telecommunication services, including telephone services, cellular services, paging services, and facsimile services. These service are taxable when sold to an ISP for use other than providing Internet access. *K.S.A. 2007 Supp. 79-3603(b)*.
2. Ancillary services which include, but not limited to, detailed telecommunications billing, directory assistance, vertical services, voice mail, and conference bridging services. *K.S.A. 2007 Supp. 79-3603(b)*; *see K.S.A. 2007 Supp. 79-3602(uu) through K.S.A. 2007 Supp. 79-3602(zz)*.
3. VoIP and similar services that utilize Internet protocol. These services are excluded from Federal definition of "internet access service" and are subject to Kansas sales tax as a telecommunications service. *Public Law 110-108*; *see K.S.A. 2007 Supp. 79-3602(aaa)*.
4. Subscriber charges to access radio or television programming whether provided using cable, Internet protocol, or by some other electronic means. *K.S.A. 2007 Supp. 79-3603(k)*. Charges for prewritten computer software are also taxable. These charges are taxable even when the charge is bundled with exempt charges for Internet access services.
5. Internet access services that an ISP bundles with taxable services, unless the ISP can reasonably identify the charges for Internet access from it books and records kept in the regular course of business. *See K.S.A. 2007 Supp. 79-3686(c)*.

The effective date of the Amendments Act is June 30, 2008.

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