

ST 1999-04 - On-line Services and Internet Access - January, 1999; Updated December, 2015

This Information Release is intended to enunciate the application of Ohio sales and use tax to the provision of Internet Access and On-line Services. The update is not a result of any change in Ohio sales and use tax law nor does it reflect any change in the application of the law by this Department. Rather, it is being issued to review the existing state of sales and use tax law in this area and to provide examples of application of this statute. It also updates instructions for obtaining applicable licenses.

Section 5739.01(B)(3)(e) of the Ohio Revised Code provides:

"(B) 'Sale' and 'selling' include all of the following transactions for a consideration in any manner, whether absolutely or conditionally, whether for a price or rental, in money or by exchange, and by any means whatsoever:

* * *

(3) All transactions by which:

* * *

(e) Automatic data processing, computer services, or electronic information services are or are to be provided for use in business when the true object of the transaction is the receipt by the consumer of automatic data processing, computer services, or electronic information services rather than the receipt of personal or professional services to which automatic data processing, computer services, or electronic information services are incidental or supplemental. Notwithstanding any other provision of this chapter, such transactions that occur between members of an affiliated group are not sales. An affiliated group means two or more persons related in such a way that one person owns or controls the business operation of another member of the group. In the case of corporations with stock, one corporation owns or controls another if it owns more than fifty per cent of the other corporation's common stock with voting rights." (*Emphasis added.*)

Section 5739.01(F) of the Revised Code defines "business" broadly to include "any activity engaged in by any person with the object of gain, benefit, or advantage, either direct or indirect." "Business" does not include the activity of a person in managing and investing the person's own funds."

Section 5739.01(Y)(1)(c) of the Revised Code provides:

"Electronic information services' means providing access to computer equipment by means of telecommunications equipment for the purpose of either of the following:

- (i) Examining or acquiring data stored in or accessible to the computer equipment;
- (ii) Placing data into the computer equipment to be retrieved by designated recipients with access to the computer equipment."

Internet Access Providers and On-line Service Providers – In General

Internet Access Providers (IAPs) provide customers with access, by use of telecommunications equipment, to their computer equipment in order to be connected to the Internet. On-line Service Providers (OSPs) provide Internet access as well as access to certain proprietary services provided by the OSP. In each case, the IAPs and OSPs grant customers access to computer equipment, by means of telecommunications equipment, so the customers can examine or acquire (download) information that is either stored in the provider's computer equipment or made available through the provider's computer equipment over the Internet. Therefore, to the extent that an IAP or OSP is providing its service to a consumer for the consumer's use in business, the IAP or OSP is providing an electronic information service that is subject to Ohio sales and use tax.

Examples¹

Subscription Services

Many types of subscription services that are available for use in business over the Internet are considered taxable electronic information services. The following are examples of services that the Department has determined meet the definition of electronic information services.

[Investment Information Company].com²

An investment company sells subscriptions to information contained on their website. Additionally, the information provided is not generated by the investment company itself, but rather third-party sources. The information cannot be manipulated by the subscribers of this service. The investment company is granting its subscribers access to its computer equipment to examine or acquire information stored in or accessible to the computer equipment. If any of those subscribers are using this service for business purposes, the service would be a taxable electronic information service.

[History of an Item].com

A car dealership can obtain a history of an automobile such as initial purchase date, number of owners, when the vehicle has been serviced, and if the vehicle has ever been in an accident. The car dealership purchases access to or a subscription from [History of an Item].com for the ability to access [History of an Item].com's databases in order to perform these types of

¹ Many of these identified examples are specific audits where the Department has identified electronic information services. In *Marc Glassman, Inc. v. Levin*, 119 Ohio St.3d 254, 2008-Ohio-2819, Glassman contracted with two companies to determine whether customers' prescription purchases were covered by insurance. In response to the inquiries, Glassman received a yes or no. The companies did not give Glassman access to the computer equipment to examine or acquire the insurance company's data. Although it was found in *Marc Glassman, Inc.* that the service at issue was not electronic information services, the Court stated:

"It is easy to imagine a different set of facts under which the Tax Commissioner could appropriately assess the tax. For example, if the pharmacy's inquiry led to a list of names of insured persons appearing on the screen so that the pharmacy could determine whether the customer's name was on the list – that would involve accessing the database."

The following are examples of "electronic information services".

² http://www.tax.ohio.gov/portals/0/legal/05st_opinion050005_www.pdf

searches by Vehicle Identification Number. This access is considered to be a taxable electronic information service.

[Resume Search Service].com

A company may register with and pay an OSP monthly for access to a resume search service. The purpose of this service is to find an individual to fill an available position. Through the interface, the company has access to search, retrieve, view, copy or print resumes. This service meets the definition of a taxable electronic information service. Additionally, if the company only has access to post and remove the available position, this also meets the definition of a taxable electronic information service.

[Value of My Item].com

A wholesaler may need to obtain the value of an item that will be accepted as a trade-in. The wholesaler may purchase from an OSP the ability to access computer equipment to obtain a range of values. Part of the subscription allows for the wholesaler to log into an account and obtain a value by entering certain parameters. The access to the data and equipment meets the definition of an electronic information service.

Inventory Advertising

A vendor may advertise its inventory on the Internet. If a vendor has the access to control the advertisement, the Department has determined this service meets the definition of an electronic information service.

[Inventory Specific Company].com

Company A desires to advertise its inventory. [Inventory Specific Company].com has a platform where Company A can display the inventory on [Inventory Specific Company].com's website. Potential purchasers then have the ability to search the website to find a specific item. Additionally, Company A is able to access the computer equipment of [Inventory Specific Company].com by logging into their on-line account and perform the following functions that are viewed by potential purchasers: maintain contact information such as address or hours of operation; upload pictures and videos; attach descriptions; add taglines and slogans; and manipulate Company A's inventory to show accurate real-time inventory. This service meets the definition of an electronic information service.

On-line Chat Features

Often an OSP, in connection with another electronic information service, will also allow its client (Company A) to connect to an individual purchaser by offering an instant chat feature for an additional monthly charge. If a potential customer locates a desired inventory item via [Inventory Specific Company].com and expresses interest, Company A has access to connect with that potential purchaser via an instant on-line chat. The access to the platform is considered an electronic information service.

Mass E-mails

A company may desire to send out mass e-mails as a way to advertise products or services offered. In addition, a company may send satisfaction surveys through the same medium. An OSP that offers a platform to assist in the company sending out mass e-mails to their customers or potential customers is seen as offering a taxable electronic information service if the company has access to the OSP's database of e-mail templates or the ability to store and access the company's customer list.

Credit Reports (not provided by a consumer credit reporting agency for purposes of the Fair Credit Reporting Act)

A vendor may obtain a credit report to discern the creditworthiness of a potential customer looking to purchase their inventory. The use of a third-party service which provides access to the results of credit rating companies is considered a taxable electronic information service.

True Object

Electronic information services do not include personal or professional services. Electronic information services has its own definition of personal and professional services found in section 5739.01(Y)(2) of the Revised Code.

Additionally, Ohio Admin. Code 5703-9-46(B) states:

For purposes of Chapter 5739. and 5741. of the Revised Code:

(1) The provision of automatic data processing services, computer services, or electronic information services in this state for a consideration for use in business by the consumer is a sale that is subject to the sales tax.

(2) The receipt of the benefit of these services in this state for use in business by the consumer constitutes a use subject to the use tax.

(3) When a transaction includes the provision of automatic data processing, computer services, or electronic information services:

(a) The true object of the transaction is the receipt of automatic data processing, computer services, or electronic information services if such services render a significant benefit to the consumer;

(b) The true object of the transaction is the receipt of personal or professional services to which the automatic data processing, computer services, or electronic information services are merely incidental or supplemental if:

(i) The automatic data processing, computer services, or electronic information services are merely utilized by the provider in the performance or delivery of such personal or professional services;

(ii) The benefit sought to be received by the consumer is the personal or professional service; or

(iii) The automatic data processing, computer services, or electronic information services themselves provide no significant benefit to the consumer.

The Department must evaluate if the electronic information services renders a significant benefit or is incidental to the personal or professional services. In all of these examples, electronic information services are a significant benefit to the business customer.

Mixed Transactions

Note of caution: If an OSP combines many services together for a single fee and utilizes vague description on its invoices or in its contract, the Department may see these services to be a mixed transaction. Without a breakdown of what makes up the charge, the entire amount would be subject to sales and use tax. See Ohio Admin. Code 5703-9-46(B)(4).

Licensing

Ohio-based providers of electronic information services should be licensed as vendors. Out-of-state providers should obtain a seller's use tax account.

A vendor's license may be obtained immediately through the Ohio Business Gateway ([OBG](#)). Note: A business must first establish an account with OBG before using it to request a vendor's license. A business may also apply for a vendor's license at their county auditor's office.

The application for a seller's use tax account ([Form UT 1000](#)) is available on the Department of Taxation's website.

An electronic information service provider may apply for a consumer's use tax account or a direct pay permit. See the Department of Taxation's website at tax.ohio.gov for more information.

Applicable Rate and Sourcing

Generally, the tax rate that should be charged is the rate in effect in the county where the benefit of the service is received. See section 5739.033(C) of the Revised Code. The address of the consumer can often adequately establish the location where the service is received.

It can be difficult for an IAP or OSP to determine whether a particular customer intends to use the electronic information service for business purposes or personal purposes. IAPs and OSPs should ask customers whether the service is being purchased for business use or personal use at the time the customer signs up for the service. Unless it is unreasonable on its face, the service provider may rely on the representation of the consumer in determining whether the account is taxable or exempt.

Partial Refund for Providers of Electronic Information Services

Pursuant to section 5739.071(A) of the Revised Code, providers of electronic information services may seek a refund of twenty-five percent of any Ohio sales or use tax paid to a vendor for purchases of:

“. . . computers, computer peripherals, software, telecommunications equipment and similar tangible personal property, primarily used to acquire, process or store information for use by business customers or to transmit or disseminate such information to such customers, the services of installing or repairing such property, and agreements to repair and maintain such property."

A refund may be requested utilizing the application for sales tax refund ([STAR](#)).

Pursuant to section 5739.071(B) of the Revised Code, if the electronic information service provider is the holder of a direct payment permit, tax may be accrued and paid on seventy-five percent of the price of qualified equipment or services. In the case where a provider of electronic information services has purchased tangible personal property which qualifies for the twenty-five percent refund in section 5739.071 of the Revised Code and no Ohio tax was collected by the vendor, the provider should accrue and pay use tax on seventy-five percent of the purchase price of the tangible personal property on a consumer's use tax account.

Federal Internet Tax Freedom Act

Federal legislation known as the Internet Tax Freedom Act, effective October 21, 1998 and most recently extended until October 1, 2016, imposes a moratorium on State and local taxes on Internet access and on-line services. Specifically excluded from the moratorium are taxes that were in effect prior to the effective date of the Federal statute and generally enforced. Ohio's inclusion of electronic information services in the definition of a sale was enacted in 1993, and the same services would have been considered automatic data processing under the law that existed prior to that date. The application of sales and use taxes to these services has been generally enforced. Therefore, Ohio's tax on Internet access and on-line services is not subject to the Federal moratorium.

If you have any questions regarding this release, you may call us at 1-888-405-4039 or e-mail us through our website at tax.ohio.gov.

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