



ST 1999-04 - On-line Services and Internet Access - January 1999; Updated December 2015; Updated September 2016; Updated September 2022.

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 prior update is a result of the addition (contained in House Bill (H.B.) 466 of the 131st General Assembly) of "digital advertising services" to the definition of "personal and professional services" for purposes of "automatic data processing", "computer services" and "electronic information services". This provision became effective on December 1, 2016. This most recent update is to acknowledge the impact of the Internet Tax Freedom Act that became permanent effective July 1, 2020.

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. To the extent that an IAP or OSP is providing services that are primarily automatic data processing or electronic information services not performed by an actual person, these transactions are subject to Ohio's sales and use tax. The taxability of these services must also be considered in light of the federal Internet Tax Freedom Act, mentioned below.

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).

Examples

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].com

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 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.

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 send satisfaction surveys. 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

Section 5739.01(Y)(1)(d) of the Revised Code clarifies that electronic information services "...shall not include personal or professional services..." Section 5739.01(Y)(2) catalogues a non-exclusive list of such personal and professional services, which should be considered separate services from taxable electronic information services but not exemptions in and of themselves, as directed by the Supreme Court in *Cincinnati Fed. S. & L. Co. v. McClain*, Slip Opinion No. 2022-Ohio-725. A key consideration when determining if a such a personal or professional exists is if an actual person was involved with the service.

Transactions may contain elements of both taxable electronic information services and exempt personal or professional services. To determine the taxability of such mixed transactions, the "true object" test found in Revised Code section 5739.01(B)(3)(e) controls. Such transactions are taxable only when the consumer's true object in entering the transaction is to obtain the work performed by the computer systems, that is, electronic information services, "rather than to obtain personal and professional services that are coupled with the work that is performed by computer systems." *Id.*

Digital Advertising Services

In H.B. 466 of the 131st General Assembly, "digital advertising services" was added to an enumerated list of what was considered personal or professional services. "Digital advertising services", found in R.C. 5739.01(RRR), means "providing access, by means of telecommunications equipment, to computer equipment that is used to enter, upload, download, review, manipulate, store, add, or delete data for the purpose of electronically displaying, delivering, placing, or transferring promotional advertisements to potential customers about products or services or about industry or business brands." Advertising (digital or otherwise) is not and has not been treated as a taxable service by the Department. However, for many transactions that may contain and combine digital advertising services with electronic information services, the electronic information services may be a significant component. The Department will continue to

hold taxable those components of these transactions that represent electronic information services and deem mixed transactions (described above) to be taxable.

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 ([ST AR](#)).

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, originally effective October 21, 1998 , imposes a moratorium on State and local taxes on Internet access and on-line services. Ohio was previously excluded from the moratorium established under the bill pursuant to a grandfather clause. Separate federal legislation since terminated that clause, making the moratorium effective in Ohio as of July 1, 2020. For information on how the application of the Internet Tax Freedom Act affects the taxability of automatic data processing and electronic information services, please see the following information release: ST2020-01 Internet Tax Freedom Act Summary.

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.