



ST 2004-03 - Equipment Used Primarily in Providing Internet Services – Issued December, 2004; Updated September, 2020

This Information Release addresses the application of Ohio sales and use tax to the purchase of equipment used primarily to provide Internet services. This information release is being updated to address the business model changes that have developed since this original issuance of the information release in 2004 – an Internet service provider operating concurrently as an Internet service vendor and a telecommunications service vendor, mobile telecommunications service vendor, or satellite broadcasting service vendor. The applicability of Ohio sales and use tax to the sale of access to the Internet, itself, is discussed separately in the Department’s Information Release titled “On-Line Services and Internet Access” and dated January, 1999; Updated December, 2015; Updated September, 2016 and “Internet Tax Freedom Act” dated June, 2020.

R.C. 5739.02(B)(34) provides a sales tax exemption for sales to certain types of vendors, of property and services that are used directly and primarily in certain activities. The types of vendors that qualify for exemption are a telecommunications service vendor, mobile telecommunications service vendor, or satellite broadcasting service vendor. Other types of vendors do not qualify for the exemption.

The property and services that qualify for exemption are those that are "used directly and primarily in transmitting, receiving, switching, or recording any interactive, one- or two-way electromagnetic communications, including voice, image, data, and information, through the use of any medium, including, but not limited to, poles, wires, cables, switching equipment, computers, and record storage devices and media, and component parts for the tangible personal property." R.C. 5739.02(B)(34).

For purposes of applying the exemption, Internet access constitutes "one- or two-way electromagnetic communications, including . . . image, data, and information." Thus, the use of an item of property or of services directly in transmitting, receiving, switching, or recording images, data, or other information in order to provide Internet access is considered to be a qualified use of such property or services for purposes of R.C. 5739.02(B)(34). Such use, in addition to all other qualified use (such as, e.g., switching voice calls), is counted towards determining whether the overall use is "primarily in transmitting, receiving, switching, or recording any interactive, one- or two-way electromagnetic communications." R.C. 5739.02(B)(34) (emphasis added).

Equipment owned by a telecommunications service vendor, mobile telecommunications service vendor, or satellite broadcasting service vendor and used in conjunction with Internet services may be used to provide multiple types of services. The primary use of equipment determines its taxability. The purchase of a server used primarily by a provider of Internet services that is not a telecommunications service vendor, mobile telecommunications service vendor, or satellite broadcasting service vendor to allow its customers to store and retrieve e-mails would not be exempt pursuant to R.C. 5739.02(B)(34) or (42)(a). However, if a telecommunications service vendor or mobile telecommunications service vendor utilizes the same equipment to store and retrieve emails (i.e., data) the exemption in R.C. 5739.02(B)(34) is available.

Additionally, the provision of Internet services may require providing certain customer premises equipment, such as modems or routers. Customer premises equipment is tangible personal property provided to the customer as part of the provision of the various services. However, different service providers market their services differently. Some providers separately bill their customers a separate charge for such equipment, whether as a one-time fee or a monthly rental. In such a case, the service provider must collect sales/use tax on the equipment charge (unless the customer is exempt from the tax, e.g., sale to a political subdivision of this state) and may claim the resale exception on its purchase of the equipment.

If the service provider does not separate the charge for customer premises equipment, the service provider and corresponding equipment does not meet the requirements of R.C. 5739.02(B)(34), and no other exemption is available, the service provider must pay sales/use tax to its supplier or accrue and remit tax on the purchase of the equipment. However, if no separate charge is made and the facts and circumstances demonstrate that the equipment is the true object of the overall transaction, the Department may characterize the transaction as a fully taxable sale of the tangible personal property.

Please call us at 1-888-405-4039 with any questions regarding this release.

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