



# State of Alabama Department of Revenue

Montgomery, Alabama 36132

H. E. "GENE" MONROE, JR.  
Commissioner

ALABAMA DEPARTMENT OF REVENUE  
REVENUE RULING 96-003

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TO:

FROM: Commissioner of Revenue  
Alabama Department of Revenue

DATE: November 22, 1996

RE: Revenue Ruling 96-003

## ISSUES AND FACTS

Taxpayer is a provider of various Internet services and also makes related sales of tangible personal property such as software, modems and textbooks. A request for a ruling has been made concerning whether Taxpayer's providing of Internet services and related sales would be subject to the Alabama Utility Gross Receipts Tax or any other tax administered by the Alabama Department of Revenue and imposed on consumers or providers of such services. Guidance has also been requested concerning whether the location of the customer (i.e., an out-of-state customer) impacts the tax result.

The types of services and sales engaged in include "flat rate monthly charges" which are billed to "dial-up" customers and "dedicated-line" customers for unlimited access to the Internet. The "dial-up" customers use local access and long-distance telephone numbers to connect to Taxpayer. The "dedicated-line" customers have a direct line to Taxpayer. Some marketing packages will include an hourly usage component whereby a customer will pay a monthly charge plus an additional charge each hour of use in excess of eight hours. A one-time installation or connection fee will also be charged to each customer.

Taxpayer will also provide "world wide web services" to those customers who wish to maintain a database that can be accessed by other Internet users. A set up charge and a per megabit of storage charge will be billed to each customer that contracts with Taxpayer for use of a database for its "world wide web page."

Taxpayer anticipates that it will sell software, modems and textbooks to its customers. Taxpayer also anticipates that many of its customers will hire Taxpayer to train its employees in the use

of the Internet for a fee or hire Taxpayer to provide consulting services on the usefulness of the Internet.

Taxpayer will not be engaged in reselling or providing telephone service for use of a telephone line to its customers. Any long distance charges incurred by the customer to connect with Taxpayer will be billed directly to the customer by the customer's long-distance carrier or its local telephone exchange company.

### LAW AND ANALYSIS

Code of Alabama, 1975 §40-21-80 et seq., imposes a tax upon the providing of utility services by a utility regularly engaged in providing such services. Section 40-21-80(a)(9) defines "utility services" as including, in part, the providing of "telephone services." Section §40-21-80(a)(11) defines "telephone services" as follows:

**Telephone Services.** Local telephone service and intrastate toll telephone service, private communications service, teletypewriter, and computer exchange service. The term "*telephone services*" includes transmission by or through any media such as wires, cables, microwaves, light waves, or any combination of those or similar media. It includes, but is not limited to, telephone services sold by motels and hotels to their customers or to others, telephone services sold by colleges and universities to their students or to others, and telephone services sold by hospitals to their patients or to others. The term "*telephone services*" shall not include:

- (i) Telephone services provided through any pay telephone;
- (ii) Any excise, franchise, or similar tax or like fee or assessment levied by the United States, by the State of Alabama, or by any political subdivision, upon the purchase, sale, use, or consumption of any telephone services, which tax, fee, or assessment is collected by the seller from the purchaser;
- (iii) The furnishing of any telephone services for resale, including access charges paid by an interexchange carrier, provided that any utility making a sale of telephone services for resale shall obtain a certificate from the purchaser of such services certifying that such services are purchased for the purpose of resale, the form of the certification to be determined by rules and regulations to be promulgated by the department;
- (iv) Charges for customer premises equipment, including such equipment that is leased or rented by the customer from any source;
- (v) Cable television service, paging services, specialized mobile radio, or cellular mobile service; or
- (vi) Services which are ancillary to the provision of telephone service but are not directly related to the transmission of voice, data, or information such as directory advertising and installation and repair of equipment and inside wiring.

The term "*local telephone service*" means the access to a local telephone system,

and the privilege of telephonic-quality communication with substantially all persons having telephone stations constituting a part of such local telephone system.

The term "***toll telephone service***" means (A) a telephonic-quality communication for which there is a toll charge which varies in amount according to the distance and elapsed transmission time of each individual communication, or (B) a service that entitles the subscriber or user, upon the payment of a periodic charge that is determined as a flat amount or upon some basis of total elapsed transmission time, or upon some combination thereof, to the privilege of an unlimited number of telephonic communications to or from all or a substantial portion of the persons having telephone or radio telephone stations in a specified area which is outside the local telephone system area in which the station provided with this service is located. The term "***toll telephone service***" includes wide-area telephone service charges.

The term "***private communications service***" means a communication service that entitles the subscriber or user to exclusive or priority use of a communication channel or group of channels, regardless of whether such channel or group of channels may be connected through switching with a service described in this subparagraph.

The terms "***teletypewriter***" and "***computer exchange service***" mean the access from a teletypewriter, telephone, computer, or other data station of which such station is a part, and the privilege of intercommunication by such station with substantially all persons having teletypewriter, telephone, computer, or other data stations constituting a part of the same teletypewriter or computer exchange system. The terms "***teletypewriter***" and "***computer exchange service***" do not include the storage of data or information for subsequent retrieval, the retrieval of data or information, or the processing, or reception and processing, of data or information intended to change its form or content.

The term "***intrastate,***" as applied to telephone services, includes only those services originating and terminating wholly in this state.

The definition of "***telephone services***" specially includes private communications services, teletypewriter, and computer exchange services. The terms "***teletypewriter***" and "***computer exchange service***" specially describe the use of a teletypewriter, a telephone or a computer to communicate with other similar devices. The service provided by Taxpayer whereby customers are provided access to the internet through their use of a teletypewriter, a telephone or a computer and equipment maintained by Taxpayer is in essence a "***computer exchange service***" which is specifically taxable as a utility service. Therefore, the "flat rate monthly charge" and the "hourly charge" plan would be subject to the utility gross receipts tax from all customers within the State of Alabama.

However, the "world wide web services" and the training or consulting services are not subject to the utility gross receipts tax. The storage of data is specially excluded from the definition of a "*computer exchange service*." The training and consulting services are not included within the definition of taxable "utility services" and, as services which do not involve the sale of tangible personal property, they are not subject to sales tax. The "one-time installation or connection charge" is also exempt from the utility gross receipts tax in accordance with *State Dep't of Revenue v. Mobile Gas Serv. Corp.*, 621 So. 2d 1333 (Ala. Civ. App. 1993).

Although the sale of textbooks and modems would not be subject to the utility gross receipts tax, they are subject to the sales and use tax statutes which impose a tax on the retail sale of tangible personal property. In addition, based on the recent decision of the Alabama Supreme Court in *Wal-mart Stores, Inc. v. City of Mobile and County of Mobile*, decided September 13, 1996, canned or ready-to-use off the shelf software is now considered to be tangible personal property and, therefore, subject to sales and use tax. However, since the Alabama Department of Revenue currently has a regulation which defines all software as intangible personal property, software will remain exempt from sales and use tax until the regulation can be amended. A proposed regulation has been published and, if approved, will become effective approximately February 1, 1997. The proposed regulation will establish that "canned" software is subject to sales and use tax as tangible personal property, including "canned" software sold to the retail purchaser and downloaded to the purchaser over the Internet.

#### RULING

Taxpayer, in providing access to the Internet to customers located within the State of Alabama, is engaged in operating or providing a computer exchange service that is subject to the utility gross receipts tax. The flat rate monthly charge and the hourly usage fee would be subject to the tax in accordance with the schedule found at §40-21-82. The charge for the use of a database, provided by Taxpayer to its customer as part of its world wide web services, is not subject the utility gross receipts tax nor sales and use tax. Installation or connection fees, training fees and consulting also are not taxable. The sale of tangible personal property, such as textbooks, modems and "canned" software is subject to sales and use tax. Charges for telephone usage, billed directly to a telephone line user by a long distance carrier or a local exchange, are subject to the utility gross receipts tax and are the responsibilities of the telephone company to collect and remit.

H. E. Monroe, Jr.  
Commissioner of Revenue

HEM:JWH:jwh