

Sales Tax Treatment of Telecommunications Services Purchased By an Internet Service Provider

On March 16, 2006, in the matters of the petitions of Concentric Network Corp. (DTA 819533, dated March 16, 2006), Frontline Communications Corp. (DTA 819786, dated March 16, 2006), and Fastnet Corp. (DTA 819632, dated March 16, 2006), the Tax Appeals Tribunal ruled on the taxability for state and local sales tax purposes of telecommunications services purchased by an Internet Service Provider (ISP). As a result of the Tribunal's decisions, for purposes of the state and local sales and use taxes (sales tax) imposed by Article 28 of the Tax Law and pursuant to the authority of Article 29 of the Tax Law, line access services purchased by an ISP and used for transmission between the ISP point of presence and the Internet for the purpose of connecting the ISP's customers to the Internet are purchases of interstate or international telephony and thus are not subject to sales tax.

Line access services purchased by an ISP may be used exclusively for the exempt purpose described above. However, line access services may also be used only in part for this exempt purpose. The information provided below explains how an ISP, whether or not it is a registered sales tax vendor, can make exempt purchases of these services. The ISP continues to owe sales tax on any portion of the line access services that is intrastate telephony.

A telecommunications service provider must collect sales tax on intrastate telephony unless it receives a timely and properly completed exemption document, as described below, from an ISP.

ISPs that are registered sales tax vendors

An ISP that is a registered sales tax vendor and that has a direct payment permit (DPP, Form ST-123, *Direct Payment Permit*) may make exempt purchases of line access services by providing the seller with a copy of its DPP. The ISP then remits the amount of sales tax due with its sales tax return for the portion of the line access charge that was for intrastate telephony and not exempt from tax. Vendors that do not have a DPP may apply for one using Form AU-298, *Application for a Direct Payment Permit*. If the vendor meets the conditions to obtain a DPP, as described in Section 532.5 of the New York Sales and Use Tax Regulations, it will be granted a DPP.

An ISP that is a registered sales tax vendor and does not have a DPP may make exempt purchases of line access services by using Form ST-121, *Exempt Use Certificate*. In this case, the ISP must provide the seller with a timely and properly completed *Exempt Use Certificate*. The ISP must check the *Other* box (currently box U in Part III) and indicate in the space provided: "*telecommunications services used by an ISP to provide Internet access originating with the ISP point of presence (Tax Law section 1105(b)(1)).*" The ISP would then remit the

appropriate amount of sales tax due on its return for the portion of the line access charge for intrastate telephony that was not exempt from tax.

ISPs that are not registered sales tax vendors

An ISP that is not required to be a registered sales tax vendor may voluntarily register. If such an ISP registers, it must fulfill all requirements of being a registered vendor, including filing sales tax returns. As a registered vendor, the ISP may also apply for a Direct Payment Permit (see page 1). For information on registering as a sales tax vendor see Publication 750, *A Guide to Sales Tax in New York State*, and Form DTF-17-P, *Forms and Instructions To Register for a Sales Tax Certificate of Authority*.

An ISP that is not required to be registered and does not want to register may purchase line access services exempt from tax by using Form ST-121, *Exempt Use Certificate*. In this case, the ISP must provide the telecommunications company with a timely and properly completed Form ST-121, *Exempt Use Certificate*. The ISP must check the *Other* box (currently box U in Part III) and indicate in the space provided: “*telecommunications services used by an ISP to provide Internet access originating with the ISP point of presence (Tax Law section 1105(b)(1))*.” The ISP must then remit any tax due using Form ST-130, *Business Purchaser’s Report of Sales and Use Tax*, within 20 days of the taxable use for the portion of the line access charge for intrastate telephony that was not exempt from tax.