

Policy Letter; Cable & Telecommunications Services; September 1, 2016

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Sent via email

September 1, 2016

Lori Anderson
Muscatine Power & Water
lmccorm@mpw.org

Re: Cable & Telecommunication Services

Dear Ms. Anderson:

The Iowa Department of Revenue (“Department”) has received your emails. Muscatine Power & Water (“MP&W”) offers cable and telecommunication services, and you asked about the taxability of cable and telecommunication installation and telecommunication services.

Cable Television

Iowa imposes sales tax on “pay television service.” Iowa Code § 423.2(2) (2016). Therefore, cable television service is subject to sales tax. *See id.* Charges for other services that are required to receive cable television service, such as removal of blocking devices, are also subject to sales tax. *See id.* Additionally, electrical and electronic repair and installation is subject to sales tax. *Id.* § 423.2(6)(a). Electrical and electronic installation includes “affixing electrical wiring, fixtures or switches to real property, affixing any article of personal property powered by electric current to any other article of personal property, or making any article of personal property powered by electric current operative with respect to its intended functional purpose.” 701 IAC 26.16 (2015).

However, cable installation is exempt from sales tax. 701 IAC 26.56 (2016). A service is exempt “cable installation” if it involves installing new components in real property, such as the ground or a building. *Policy Letter; Taxation of Services Provided by a Cable Television Company; Your Letter, 4/28/93, available at* <http://itrl.idr.iowa.gov/Browse/OpenFile/4927--Any->. Exempt cable installation requires more than simply connecting, adjusting, or repairing existing cable components. *See id.* Exempt cable installation also requires that the new components become part of the real property. *See id.* For example, burying new cable in the ground outside a building is exempt cable installation, but burying replacement cable in the ground to repair or replace existing cable is taxable. Also, installing a new cable outlet in a building is exempt cable installation, but relocating an existing cable outlet in a building is taxable. To be exempt, the cable installation must be separately invoiced from the taxable services. Iowa Code § 423.2(8). If exempt cable installation is sold with taxable services for one nonitemized price, the entire sales price is subject to sales tax. *See id.*

Determining whether a service is exempt cable installation requires a fact-intensive examination of the specific service and the way it is billed, which the Department cannot perform for this letter. Accordingly, this letter provides no opinion on whether any specific service qualifies as exempt cable installation.

Telecommunication Services

MP&W offers the following telecommunication services:

- Internet service
- VLAN – This is a fiber-based data connection that connects two entities, such as buildings.
- MDC – This is a fiber-based data connection that connects specific point to specific point within your network.
- MME – This is a fiber-based data connection that connects specific point to specific point within your network and connects to the Internet.

“The gross receipts from the sale of all telecommunication service and ancillary service are subject to the sales or use tax.” 701 IAC 224.1; *see also* Iowa Code § 423.2(2) (imposing tax on “communication service”). “Telecommunication service” is “the electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points.” 701 IAC 224.2. A telecommunication service is taxable only if the service is provided “in this state.” *Id.*; *see also* *AOL LLC v. Iowa Dep’t of Revenue*, 771 N.W.2d 404 (Iowa 2009). A telecommunication service is provided “in this state” only if both the points of origination and termination of the communication are within the borders of Iowa. 701 IAC 224.2.

Internet service is typically not provided in this state, and therefore it is typically not subject to Iowa sales tax. *See also* *AOL LLC*, 771 N.W.2d 404. According to the facts you provided, VLAN, MDC, and MME all involve the electronic transmission of data between points. *See id.* Therefore, these three services are taxable if they are provided in this state. *See* 701 IAC 224.2. The services are provided in this state if they originate and terminate within Iowa. *See id.*; *see also* *AOL LLC*, 771 N.W.2d 404. The Department does not have enough information to determine if any of these services are provided in this state.

If a telecommunication service is taxable, other services that are required to receive the telecommunication service are also taxable. *See* 701 IAC 224.2. If a telecommunication service is not taxable, other services that are required to receive the telecommunication service are also not taxable. *See id.* Additionally, electrical and electronic repair and installation is taxable, even if the service is related to nontaxable telecommunication service. *Id.* § 423.2(6)(a).

As with cable installation, telecommunication installation is exempt. *Policy Letter; Taxation of Services Provided by a Cable Television Company; Your Letter, 4/28/93*. Exempt telecommunication installation requires more than simply connecting, adjusting, or repairing existing telecommunication components. *See id.* Exempt telecommunication installation also requires that the new components become part of the real property. *See id.* To be exempt, the telecommunication installation must be separately invoiced from the taxable services. *See* Iowa Code §423.2(8). If exempt telecommunication installation is sold with taxable services for one nonitemized price, the entire sales price is subject to sales tax. *See id.*

Determining whether a service is exempt telecommunication installation requires a fact-intensive examination of the specific service and the way it is billed, which the Department cannot perform for this letter. Accordingly, this letter provides no opinion on whether any specific service qualifies as exempt telecommunication installation.

I hope this information is helpful to you. Remember, tax exemption statutes are strictly construed with all doubts resolved in favor of taxation. *Iowa Ag Constr. Co. v. Iowa State Bd. of Tax Review*, 723 N.W.2d 167, 174 (Iowa 2006). The party claiming an exemption bears the burden of proving entitlement to the exemption. *Id.*

Please be advised that this letter is an informal opinion and is only based on the facts you provided and the current law at the time of issuance. Because of this, the Department could, in the future, take a position contrary to that stated in the letter. Any written advice or opinion rendered to members of the public by Department personnel that is not pursuant to a Petition for Declaratory Order under 701 IAC 7.24 is not binding upon the Department. If you have any additional questions regarding this matter, please do not hesitate to contact me.

Sincerely,

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