

December 14, 2007

Sales and Use Tax - Taxability of Certain Telecommunications Services

Issue:

Is the amount charged to install, construct, repair, replace, upgrade, or remove telephone, telegraph, mobile telecommunications, or community antenna television property on the service provider's side of the demarcation point taxable after the changes in the law that repealed the tax on contractor labor charges effective October 1, 2007?

Definitions:

Demarcation Point. The demarcation point is the point at which the wires, cables, and equipment that is owned and maintained by the telephone, telegraph, community antenna television company, or mobile telecommunications company is connected to the wiring or equipment dedicated to the customer's use. (See, *Capitol City Telephone, Inc. v. Nebraska Dept. of Revenue*, 264 Neb. 515, 650 N.W. 2d 467 [2002])

General Distribution System. The general distribution system consists of the wires, cables, fiber optic cables, towers, antennas, and any other property or materials on the service provider's side of the demarcation point. (See, *Capitol City Telephone, Inc. v. Nebraska Dept. of Revenue*, 264 Neb. 515, 650 N.W. 2d 467 [2002])

Service Provider. The service provider is the telephone, telegraph, mobile telecommunications, or community antenna television company.

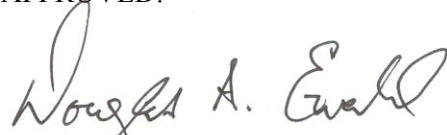
Analysis:

As of October 1, 2007, the statutory provision exempting the first or original construction of a new structure (Neb. Rev. Stat. §77-2704.45) as well as the provision that defined construction services (contractor labor) to include the installation, construction, servicing, and removal of property used in conjunction with the furnishing, installing or connection of telephone, telegraph, mobile telecommunications, or community antenna television services (Neb. Rev. Stat. §77-2704.41) were repealed (see Laws 2007, LB 367). Even though the tax on contractor labor was repealed, Neb. Rev. Stat. §§77-2701.16(8) and 77-2703(1) continue to impose a tax on the gross receipts or gross income of any person (including contractors) who provide, install, construct, repair, replace, upgrade, or remove property used in conjunction with the furnishing, installing, or connecting of telephone, telegraph, mobile telecommunications, or community antenna television services.

Conclusion:

The gross income received by any person, including contractors, from the provision, installation, construction, servicing (repair, replace, upgrade), or removal of property used in conjunction with the furnishing, installing, or connecting of telephone, telegraph, mobile telecommunications, or community antenna television services on the service provider's side of the demarcation point is subject to sales and use tax.

APPROVED:



Douglas A. Ewald
Tax Commissioner

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