

Telecommunication Services Sales and Use Tax Revenue Ruling 01-07-2

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This letter and attached Revenue Ruling 01-07-02 is part of our continuing effort to inform you of the sales and use tax issues that may affect your business. The Revenue Ruling addresses the taxability of those charges for any work performed on the service provider's side of the demarcation point (D-Marc). The following examples and flowchart help explain the effects of this ruling. Also see [Sales and Use Tax Regulation 1-065](#).

Examples:

- Charges to **any** service provider of **any telecommunication service** when **any** of the following services are performed on the service provider's side of the D-Marc are **taxable as retail sales**:
Installation, construction, repair, replacement, upgrade, or removal of any property used to provide any telecommunication services.
- Charges to service providers of **telephone or mobile communication service** when **any** of the following services are performed on the customer's side of the D-Marc are **taxable as retail sales**:
Installation, construction, repair, replacement, upgrade, or removal of any property used to provide any telephone or mobile telecommunication services.
- Charges to service providers of **community antenna television services** when **any** of the following services are performed on the customer's side of the D-Marc:
Installation, construction, repair, replacement, upgrade, or removal of any property used to provide community antenna television service;
 - Are taxable** when performed by a contractor operating under Contractor Option 1. The **total** amount charged, including labor charges, is **taxable**;
 - Are not taxable** when performed by a contractor operating under Contractor Option 2 or 3.

The enclosed Revenue Ruling 01-07-2 is limited to an explanation of Example 1 involving the service provider's side of the D-Marc. The Department of Revenue will provide a Revenue Ruling addressing Examples 2 and 3 involving the customer's side of the D-Marc in the near future.

Resale Issues:

A general contractor who is hired to perform any of the work described above can subcontract the work to another person. The general contractor is not required to pay any tax on the labor charge, provided the general contractor issues a Nebraska Resale or Exempt Sale Certificate, Form 13, to the person performing the work. The general contractor is required to collect sales tax on the total amount billed to the service provider.

Taxability of Materials:

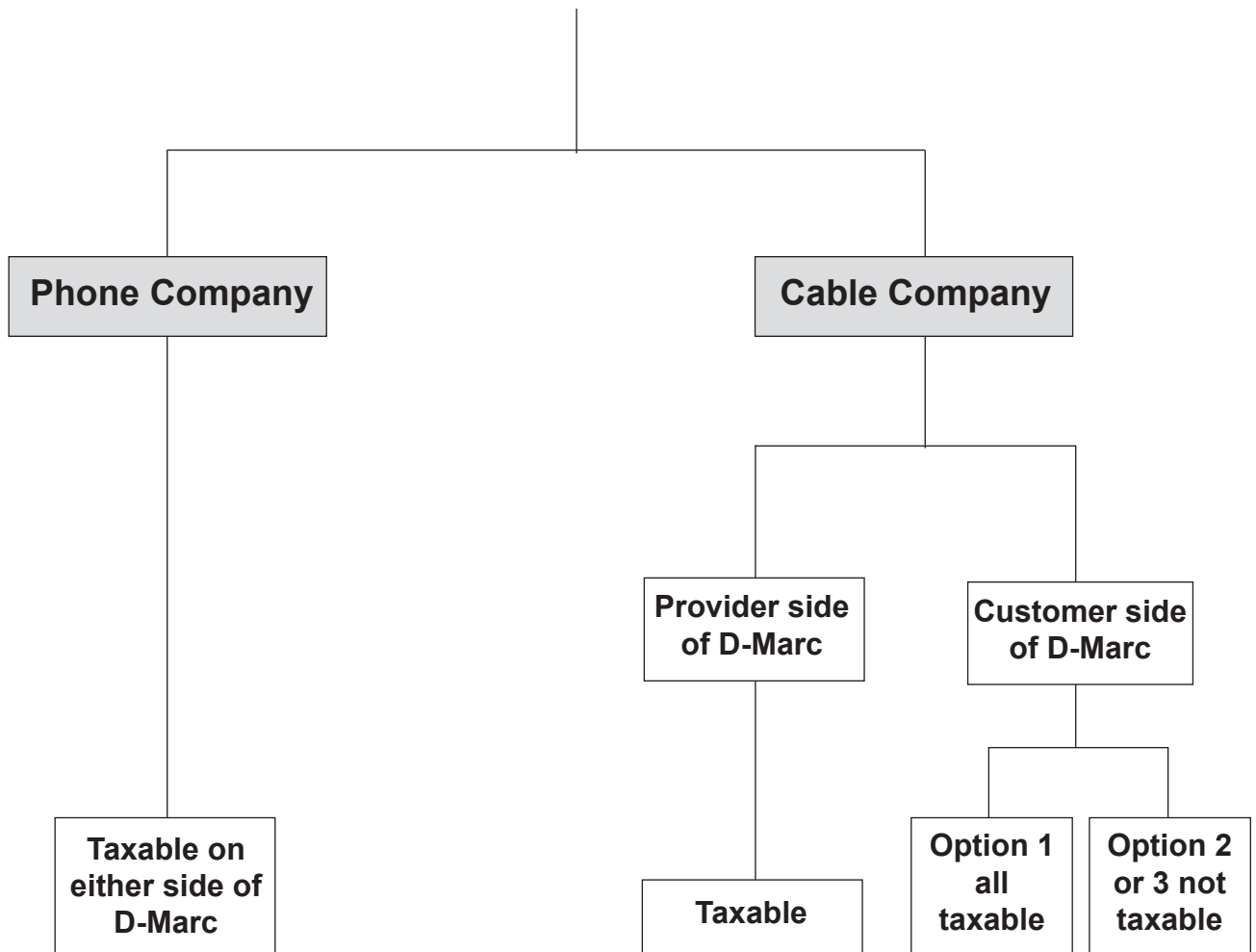
The service provider is required to pay sales tax on its purchase of materials that will become part of the general distribution system. Materials and equipment purchased by contractors are taxed according to their option.

Vendor

Providing the following services

installation, construction, repair, replacement,
upgrade, or removal of any property used to
provide telecommunication services

to the telecommunication service providers below:



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.

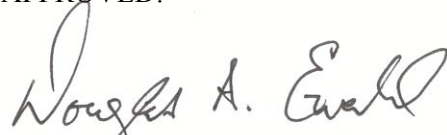
Analysis:

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

December 14, 2007