

New Massachusetts Modem Tax Proposed (For Real)

Channel 1 BBS in Cambridge is having the unpleasant experience of being targeted for an "experiment" in revenue collection by the Massachusetts Department of Revenue.

The DOR threatened Channel 1 with a bill for back taxes plus usurious interest and penalties on fees paid for information access and retrieval. While telecommunications transmission services (such as telephone, satellite, etc) have been taxed by state statute since September 1990, information access and message services are explicitly excluded in the state tax code (see refs).

This is the first time that the state has ever tried to collect a tax on online information access in Massachusetts (the "transmission" is taxed in your phone bill).

After considerable negotiation and \$20,000 worth of legal and accounting assistance, the DOR has put Channel 1's case on shelf until the end of the year. However, it has become clear that the DOR is continuing to advance their justification for an information tax through several tactics, including "creative" interpretation and a legislative re-write of the telecommunications sections of the tax code.

Under the revision to either the code or its interpretation, all charges for online access and data retrieval would be subject to 5% Massachusetts sales tax. Consumers of online services, database access, email, legal and scientific or commercial research data, pay bbs's, and Internet access services would be among those affected.

It is possible that feedback from those concerned might influence policy decisions apparently scheduled for completion by the end of 1993. The "proposed new regulations" are being revised now. The public (and the legislature) will never be less-informed about the tax and its implications. Unless consumers speak up now, new taxes will just get buried in new telecomm code revisions.

A little effort now may save you alot of money later.
Call, write or FAX these numbers, make your feelings
and opinions known, and pass this information on.
NO TAX ON INFORMATION!

Governor Weld
Suite 360 The State House
Boston, MA 02133 Telephone: 727-9133 Fax: 523-7984

Mitchell Adams Commissioner of Revenue
100 Cambridge Street Room 706 N
Boston, MA 02204 Telephone: 727-4201 Fax: 727-0379

AAAAAAAA AAAAAAAAA
(phone numbers corrected 8.5.93)

Edward J Markey
2133 Rayburn House Office Building
Washington, DC 20515 Tel: 202 225-2836 Fax: 202 225-1716

Boston Globe
135 Morrissey Boulevard
Boston MA 02125 Tel: 617-929-2000 Email: voxbox@globe.com

For more information:
Channel 1
617-864-0100 info 617-354-5776 modem
AAA AAA AAAA

J MASSMODEMTAX at the menu (free access conference).

Massachusetts General Law References

Massachusetts Sales and Use Tax Regulation

Chapter 64H section 1 (Definitions)

"Telecommunications services," any TRANSMISSION of messages or information by electronic or similar means, between or among points by wire, cable, fiberoptics, laser, microwave, radio or similar facilities but not including cable television."

Chapter 64H section 1.3 Computer Industry Services and Products (12) Transmission of Programming or Reports. Charges for transmitting computer software or reports of anytype by telephone lines, microwaves, or other electronic modes of transmission are not taxable, unless the vendor transfers an otherwise taxable storage medium imprinted with the programs or reports as part of the same transaction. (13) Access to Database Services (a) Exemption for database services. Charges for access by telephone or other means to databases stored in computer equipment not on the premises of the customer are generally not taxable.

Related Letter Ruling 81-41 - Chapter 64 Section 1 (13)(c) provides that "sales" subject to tax do not include professional or personal service transactions which involve no sale or which involve sales as inconsequential elements for which no separate charges are made. Based on the foregoing charges to information providers for the right to place information in the (Brand X) computer will not be subject to Massachusetts sales or use taxes.

Related Letter Ruling 85-61 - "You request a ruling regarding the application of the Massachusetts sales tax to monthly access charges for the use of _____ ("System"). "Transaction whereby a person secures

access, by means of telephon or other lines, to equipment not on his premises, is not subject to tax if the person or his employees do not operate the equipment or direct or control it's operation while on the premises where the equipment is located."

[Everything following is the 1990 revisions]

Chapter 64H.1.6: Telecommunications Services...applies to sales of telecommunications services on or after September 1, 1990. Section (2) - Telecommunications services, any TRANSMISSION of messages or information by electronic or similar means, between or among points by wire, cable, fiber-optics, laser, microwave, radio, sattelite, or similar facilities but not including cable television. (ADDING the following) In general, telecommunications include telephone and other transmissions between or among specific parties or specific location, but do not include public broadcasts.

Section (5) Residential Telephone Service Exemption and services not eligible for Residential exemption.

Section (6) Deals with Sales for Resale of Telecommunications Services

Section (7) Services Sold in Conjunction with Telecommunications Services. (b) The tax on the sale or use of telecommunications services under MGL c64H. 64I. is a tax on the "TRANSMISSION" of messages or information by various electronic or similar means. Generally, it is not a tax on the sale or use of information itself. In some transactions, such as telephone calls to "900 numbers" or to certain database services that are not otherwise excluded from the definition of a taxable sale under MGL c64H s.1(12)(f), a purchaser may purchase a telecommunication service (i.e. the telephone call or other transmission) and the information or data being transmitted simultaneously. Under such circumstances, the entire sales price of the transaction is taxable as the sale or use of telecommunications services, unless the sales price of the taxable tranmission and the sales price of information or data transmitted, are separately stated on any evidence of the sale issued or used by the vendor...If the two amounts are separately stated, the tax is assessed only on the sales price of the taxable transmission service.

Message services excepting only beeper services which are to be taxed under the telecommunications transmission tax - were officially "re-exempted" under SIC 7389 (when the broader based sales tax was rejected by the DOR in March 1991 - ed.) .

END of LEGALESE

Footnote

No BBS (defined here as online service that does NOT resell telephone services) in Massachusetts collects the telecommunications tax from its customers for obvious reasons. ONE Massachusetts BBS was audited in early 1991 (after the telecommunications tax went into effect) and was NOT assessed or told to assess sales tax on its access fees.

Most (but not all) online services in Massachusetts that DO PROVIDE telephone services do NOT collect or pay the sales tax -- CompuServe (which has several offices in the state as well as many telephone installations) and Prodigy for example, also UUNET and PSI. Though there are some telephone services PROVIDERS (Mead Data, Westlaw) which do collect the tax on the telephone portion of their services.

July 26 1993
Channel 1(R) BBS