



**FINANCE  
NEW • YORK**  
THE CITY OF NEW YORK  
DEPARTMENT OF FINANCE

# NYC DEPARTMENT OF FINANCE

07-1      January 04, 2007

## FINANCE MEMORANDUM

### **Internet Access Charges – Bundled Services and VoIP Under Utility Tax**

In 1999, the Department of Finance (the “Department”) issued Finance Memorandum 99-5 expressing the Department’s policy not to tax receipts from Internet access service for Utility Tax purposes. This Finance Memorandum provides further specific guidance to taxpayers and tax professionals and will apply to all open periods.

#### **I. Background - Treatment of Internet Access Charges**

The New York City Utility Tax (Title 11, Ch. 11 of the Administrative Code of the City of New York) applies to receipts from furnishing or selling telecommunications service. Telecommunications service does not include Internet access.

“Internet access” is the service that enables users to access content, information, electronic mail, or other services offered over the Internet, and may also include access to proprietary content, information, and other services as part of a package offered to users. The term “Internet access” does not include telecommunications services, except to the extent such services are purchased, used or sold by a provider of Internet access to provide Internet access.

As discussed more fully below, telephone services provided by means of Voice Over Internet Protocol (VoIP) are not considered Internet access services.

#### **II. Treatment of Bundled Services**

An Internet Service Provider (ISP) often provides both Internet access and taxable telecommunications services (including VoIP telephone service).

- If the ISP separates the charges for Internet access and taxable services on its bills, the amount charged for Internet access may be excluded from Utility Tax.
- If the charge for Internet access is bundled with charges for taxable telecommunications services, the ISP may use its books and records to determine or reasonably approximate its taxable and non-taxable receipts.
- The breakdown of receipts between taxable and non-taxable must be reasonable in light of the market conditions concerning such services, including the relative costs to the ISP for the services it provides.

- In the absence of a reasonable breakdown of the charges for bundled services, the Department will presume that all charges are receipts for telecommunications services subject to the Utility Tax.

### **III. Hotels as Internet Service Providers**

The treatment outlined in section II of this Finance Memorandum applies to any person or entity that provides Internet access to customers, including a hotel. Accordingly, any sums that a hotel receives from its guests for Internet access are not subject to Utility Tax. Bundled services provided by hotels are treated in the same way as those provided by any business that provides Internet access as described above.

### **IV. Providers of VoIP Telephone Service**

- VoIP is the Internet protocol that makes it possible to provide telephone service by turning telephone conversations into digital data packets that can be transmitted over the Internet.
- The Department considers VoIP telephone service to be telecommunications services. To the extent VoIP telephone service involves telephone calls that originate and terminate within the City, receipts from VoIP telephone service are subject to the Utility Tax. VoIP services were specifically exempted by the federal Internet Tax Freedom Act from the moratorium imposed by that Act on the imposition of state and local taxes on charges for Internet access.
- If the charge for taxable local calls (i.e. calls originating and terminating within the City) is bundled with non-taxable, non-local calls, or with Internet access charges, providers of VoIP telephone service may use books and records to determine or reasonably approximate its taxable and non-taxable receipts.
- The breakdown of receipts between taxable and non-taxable must be reasonable in light of the market conditions concerning VoIP telephone services, including the relative costs to the VoIP service provider for the telephone services it provides.
- For bundled charges, in the absence of reasonable breakdown between taxable VoIP calls originating and terminating within the City and non-taxable, non-local calls and/or Internet access charges, the Department will presume that all charges are receipts for telecommunications services subject to the Utility Tax.

**NOTE:** *Finance Memoranda are advisory and explanatory in nature. Finance Memoranda are not declaratory rulings or Rules of the Department of Finance and do not have legal force or effect, do not set precedent and are not binding on taxpayers.*