

DONALD W. ALLEE
COUNTY ATTORNEY



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OFFICE OF THE COUNTY ATTORNEY
KENDALL COUNTY, TEXAS

RQ 0894-GA

OPINION COMMITTEE 201 E. San Antonio Street, Suite 306, Boerne, Texas 78006-2050
Telephone (830) 249-9343 • Facsimile (830) 249-4176

June 7, 2010

The Honorable Gregg Abbott
Attorney General of the State of Texas
P. O. Box 12548
Austin, Texas 78711-2548

FILE # ML-46481-10
L.S. # 46481

Re: Request for Attorney General Opinion

Dear General Abbott:

Earlier this year, members of the Kendall County Commissioners Court began receiving complaints from citizens of Kendall County concerning sales taxes being charged by Guadalupe Valley Telephone Cooperative, Inc. (GVTC) for provision of internet service. In addition to the State and County sales taxes, Kendall County customers of GVTC were also being billed for sales taxes for a Library District, an Emergency Service District EMS, and an Emergency Service District Fire. There are no such districts in Kendall County.

This office contacted GVTC and learned that the taxes were for districts located in Comal County. In response to Kendall County's inquiry concerning Comal County taxes being imposed on residents of Kendall County, representatives of GVTC contacted the office of the Texas Comptroller of Public Accounts. The Comptroller's office advised GVTC that collection of the sales taxes in question was in accordance with applicable law. This office then contacted the Comptroller's office and was similarly advised.

The Kendall County Commissioners Court requested that this office seek your opinion concerning the correctness of the determination by the Texas Comptroller of Public Accounts that sales taxes for a Library District and two Emergency Service Districts located in Comal County and serving only Comal County citizens can be imposed on Kendall County residents.

Enclosed with this letter is a brief stating the factual background in more detail, applicable law, and the conclusion of this office that the Comptroller's office is misinterpreting the Texas Tax Code concerning internet access service resulting with an improper imposition of Comal County taxes on Kendall County residents. This office has been assisted by attorney Elizabeth R. Martin in the preparation of the brief.

Your opinion concerning this matter is respectfully requested.


Donald W. Allee

cc:

Mr. John Huffman
Texas Comptroller of Public Accounts
Tax Policy Division
P.O. Box 13528
Austin, Texas 78711-3528

Ms. Hake
GVTC Communications
36101 FM 3159
New Braunfels, TX 78132

BRIEF IN SUPPORT OF REQUEST
REGARDING TEXAS STATE COMPTROLLER'S ASSESSMENT OF
INTERNET ACCESS SERVICE SALES AND USE TAX

REQUESTING OPINION:

DON ALLEE, COUNTY ATTORNEY
ON BEHALF OF
KENDALL COUNTY, TEXAS

FACTUAL BACKGROUND

Guadalupe Valley Telephone Cooperative, Inc. (GVTC) is a non-profit entity, providing communications and consumer products throughout the Hill Country, this region includes Kendall County, Texas. GVTC has three stores to service their customers.¹ They are as follows;

Smithson Valley Store
36101 FM 3159
New Braunfels, TX 78132

Boerne Store
1221 South Main Street
Boerne, TX 78006

Cost Store
P.O. Box 186
Cost, TX 78614

As GVTC sells products to customers, its sales are subject to sales tax imposed by the state, county and local districts. Of issue to Kendall County are the taxes paid by Kendall County residents.

¹ <http://www.gvtc.com/contactus/index.php>.

GVTC provides telecommunications, internet access service and other services to many residents in Kendall County.² This internet access service is provided via coaxial or fiber optic cables to the GVTC customers.³ These residents must pay sales tax on internet access service provided by GVTC. While their telephone service is subject to sales tax of Kendall County jurisdictions, their GVTC internet access service is taxed by Comal County jurisdictions. In the GVTC bills attached⁴, under the taxes and surcharges for "GVTC Other Services", items 19 Library District Sales Tax, 20 Emergency Service District EMS and 21 Emergency Service District Fire are collected for Comal County special districts with taxing authority. Also, item 18 on the bills show collection of Comal County Sales Tax.⁵ Kendall County through the County Attorney's office contacted GVTC and questioned the legality of GVTC collecting Comal County taxes from Kendall County residents. GVTC contacted the Comptroller's Office for explanation of the sales tax assessment and the agency provided its' initial interpretation.⁶ Upon communications with a GVTC representative on the Comptroller's response, Kendall County still had some additional questions and directly contacted the agency.⁷

In response to the inquiry by Kendall County, the Comptroller provided its' initial email to GVTC which stated that the taxes were collected for Comal County special

² Find service description and billing at <http://www.gvtc.com/uploads/notices/GVTC%20cable%20bill%20Stuffer.pdf>.

³ Id.; (verified with GVTC Account Supervisor Jeanine Hake).

⁴ Exh. A (personal information redacted); (The bills included shows the items as instated in this Brief for the months January 2010 through April 2010. The billing format changed in May 2010 and all of the sales tax amounts are now reported on one line.).

⁵ Per information from Jeanine Hake, GVTC accounting supervisor, as the bills do not specify which districts or county tax is being collected.

⁶ Exh. D.

⁷ Exh. B.

districts because the internet service provider (ISP) is located in Comal County.⁸ The Comptroller's office then emailed a response to Kendall County stating that in consideration of the legislature's amendment of Tex. Tax Code §321.203, the local sales tax due on internet access service prior to June 19, 2009 was "the place of business from which the service was delivered" or the ISP.⁹ The agency further found that after June 19, 2009, "if the order was placed in person at a GVTC place of business" the sales tax due was at that location.¹⁰ It is the position of Kendall County that the Comptroller's office is incorrectly interpreting the statutes and as a result the determination of tax location, hence imposed tax, is incorrectly assessed for Comal County jurisdictions. It is Kendall County's position that the controlling statute provides that the customer's point of delivery is the correct location of sale. Furthermore, Kendall County asserts that the legislature passed laws allowing for local sales tax with clear provisions providing that local taxing entities were to be created by citizens affected by the districts and that the citizens subjected to any local taxes would have a voice, i.e. vote, in the implementation and any change to the taxes. Imposition of local taxes on citizens not afforded representation rights is outside the scope of the statutes creating the entities granted tax powers. Kendall County poses the following questions to the Texas Attorney General.

QUESTION

1. Is the Texas Comptroller of Public Accounts correct in determining the location of sale and, correspondingly, the taxing jurisdictions that may impose sales tax for internet access service?

⁸ Exh. D. para. 3, 10.

⁹ Exh. C, pg. 3, 3rd para. from the bottom.

¹⁰ Exh. C, pg. 3, 3rd para. from the bottom.

2. If the Texas Comptroller is correct in determining the location of sale, is the imposition of Comal County taxes on Kendall County residents constitutional?

LOCAL JURISDICTIONS EMPOWERED TO TAX CITIZENS

Pertinent to the discussion is consideration of the legislation creating the jurisdictions authorized to collect the sales tax. Kendall County would ask that the Attorney General consider the statutory framework enacted by the legislature that provides for the creation of the underlying governmental authorities imposing the taxes and whether the purposes of the legislature are undermined by the Comptroller's interpretation of the statutes and the resulting implementation of local taxes on citizens outside the jurisdictional boundaries of the county and the local taxing jurisdictions.

COMAL COUNTY

The first entity to which Kendall County residents are paying sales tax is Comal County. County governments are created under the LOCAL GOV'T. CODE, CHAP 71. These county governments are subsequently authorized under TEX. TAX CODE, CHAP. 323 to enact a sales and use tax.¹¹ In order to adopt sales and use tax under this chapter, the county holds an election in which the qualified voters of the county may approve the adoption of the tax if the majority votes in favor of adoption.¹² The other local entities levying a sales tax on Kendall County residents are similarly created by the voters within the jurisdictional boundaries of the districts.

BULVERDE LIBRARY DISTRICT

Another governmental entity to which Kendall County residents are paying sales tax is the Bulverde Library District. Library districts, such as this one, are specifically

¹¹ TEX. TAX CODE §323.101.

¹² Id.

created under LOCAL GOV'T. CODE, CHAP. 326. The library districts are governed by TEX. TAX CODE CHAP. 323 in imposing, computing, administering and governing tax authorized for library districts.¹³ The Library District is allowed to levy sales and use tax if the citizens approve of the creation of the district and the tax. In consideration of the tax burden imposed by the internet access service sales and use tax, it is important to understand the originating requirements in creating these districts.

In providing for the existence of library districts, the legislature intended the majority of citizens, burdened and served by a library district, agree with the creation as well as the implementation of sales and use tax assessed for a library district. The enabling statute requires petition, hearing and a majority of the citizens to vote in favor of the creation of the district.¹⁴ Further requiring impacted citizen agreement, the legislature enacted additional law requiring any sales and use tax imposed by a library district to be approved by a majority of the voters within the district.¹⁵ The legislature intended for citizens to determine if a district should be created and if a tax could be imposed by the district as shown by the steps put in place by these statutes giving citizens the power to approve or disapprove of the library district and the sales and use tax. Furthermore, library districts are governed by a board of trustees who are elected by citizens within the district.¹⁶ Thus the voters have direct control of the representatives operating the library district which taxes and serves them. This statutory framework is directly contradicted

¹³ TEX. LOC. GOV'T. CODE, § 326.092.

¹⁴ TEX. LOCAL GOV'T. CODE, §§326.021-326.029 (setting forth the requirements for the creation of a library district).

¹⁵ TEX. HEALTH & SAFETY CODE, §775.0752; §776.0751 (providing for approval of sales and use tax in compliance with TEX. TAX CODE §323.101, et. seq.)

¹⁶ Tex. Local Gov't. Code, §§326.041, 326.043 (stating the trustees shall be elected annually and serve two year terms.)

by the Comptroller's position that citizens without a vote on either issue, in this case Kendall County residents, are intended to be taxed by entities which have no accountability to the taxpayers.

COMAL COUNTY EMERGENCY SERVICE DISTRICTS

Emergency service districts are created in the same manner. The Comal County Emergency Service Districts were created under TEX. HEALTH & SAFETY CODE, CHAP. 775, 776. These chapters provide that the TEX. TAX CODE CHAP. 323 applies in imposing, computing, administering and governing tax for emergency services districts.¹⁷ Again the statutory framework creating these entities provides steps to allow citizens within the districts to have a voice in the district's creation and operation.

As seen in the creation of the library districts, the legislature intended the majority of citizens, effected by emergency services district, agree with the creation as well as the implementation of sales and use tax assessed for emergency service districts. Here again, the statute requires petition, hearing and a majority of the citizens to vote in favor of the creation of the district.¹⁸ As seen in the library district situation, the legislature enacted additional law requiring any sales and use tax imposed by an emergency service district to be approved by a majority of the voters within the district.¹⁹ The same argument applies to these districts that the legislature intended for citizens to determine if a district should be created and if a tax could be imposed by the district as shown by the steps put in place giving citizens the power to approve the emergency service districts and the

¹⁷ TEX. HEALTH & SAFETY CODE, §775.0751; §776.0751.

¹⁸ TEX. HEALTH & SAFETY CODE, §§775.001-775.019; §§776.011-776.021.

¹⁹ TEX. HEALTH & SAFETY CODE, §775.0752; §776.0751(providing for approval of sales and use tax in compliance with TEX. TAX CODE §323.101, et. seq.)

power to approve or disapprove of any sales and use tax to be imposed by the emergency service district. Again the Comptroller's position that citizens without a vote on either issue are intended to be taxed by the entities under the legislature's authorization contradicts the underlying statutory framework which created the districts.

TEXAS COMPTROLLER'S POSITION

"Internet access service, including such service provided via landlines or by a telecommunications company, is not the same thing as telecommunications services for Texas sales and use tax purposes."²⁰ This is the Comptroller's statement which the agency supports by reference to Tax Code §151.00394 and 151.0103.²¹ Upon citation to those two sections and with reference to "one rule of statutory construction"²², the agency determines that Chapter 151 is the controlling statute for internet access service and telecommunications service definitions. The agency further assumes that since the definitions set forth are different, the computation and assessment of the tax owed on internet access service cannot be similar to the computation and assessment of the tax on telecommunications. Even if it is conceded that the two are defined differently, there is no authority cited or found to support the Comptroller's legal finding. Differently defined items can be taxed the same way. Definitions do not determine how an item is taxed, just how it is defined. Kendall County argues that internet access-service may be taxed in the same manner as telecommunications service if supported within the TEX. TAX CODE. The Comptroller's office has used the wrong interpretative template to arrive

²⁰ Exhibit C – Comptroller's response to Kendall County, 3rd para.

²¹ Exhibit C – 7th-9th para.

²² Exh. C – 4th par.

at the conclusion that internet access service cannot be taxed in a similar manner as telecommunications service because the definitions are mutually exclusive.

LIMITED SALES, EXCISE, AND USE TAX ACT

To begin analysis of the Comptroller's finding, we look at TEX. TAX CODE, CHAP. 151, the Limited Sales, Excise, and Use Tax Act, which is the basis of the agency's logic. This act provides unique tax treatment for some assets subject to sales and use tax. There is a specific need within this chapter of the Tax Code to differentiate between "internet access service" and "telecommunications services" as well as "data processing service" and "information service" because this chapter provides for different exemptions. For example, there is an exemption from some level of taxation for internet access service as seen in §151.325.²³ Similarly, §151.323 allows for exemption for some telecommunication services.²⁴ Under this act, twenty percent (20%) of data processing service value and information service is exempt from taxes.²⁵ The definitions are specifically exclusionary in this chapter due to the application of exemptions; but nowhere within this chapter is there an indication that the definitions control determination of where a sale occurs; and therefore what jurisdictions are authorized to levy sales and use tax. The Comptroller is right in finding a distinction between telecommunications services and internet services under this chapter, but Kendall County

²³ Tex. Tax Code §151.325 (exempting the first twenty-five (\$25) of internet access service from sales and use tax.)

²⁴ Tex. Tax Code §151.323 (exempting long distance telecommunications not originating or direct to a Texas billing address and some F.C.C. regulated broadcasts from sales and use tax.)

²⁵ Tex. Tax Code §151.351.

asserts that the agencies inference that the definitions are conclusively determinative of location of sale is wrong.

As further support for Kendall County's position, §151.002 sets forth the applicability of definitions in the chapter.²⁶ "The definitions and other provisions of this chapter relating to the collection, administration, and enforcement of the taxes imposed by this chapter, including the requirements for sales tax permits, apply to the parties to a sale of a taxable item that is exempted from the taxes imposed by this chapter but that is subject to the taxes imposed by a city under Chapter 321 of this code."²⁷ This clearly provides a limitation on the applicability of the definitions in chapter 151. These definitions in light of the exemptions applicable to the different services are directly relevant, however, the Comptroller's extrapolation of these definitions to find that the sales location for application of sales and use tax cannot be the same for telecommunications and internet access service is not supported by a reading of the plain language of this chapter of the Tax Code. Kendall County asserts that internet access services can be subjected to sales and use tax in the same manner as telecommunications services if supported by the tax laws. Considering other assertions by the Comptroller, Kendall County finds other statements that it considers incorrect.

COUNTY SALES AND USE TAX ACT

The Comptroller states that the guidelines for the taxes at issue here are found in Chapter 321 of the Tax Code.²⁸ However, the cited chapter is the Municipal Sales and Use Tax Act. The appropriate chapter for this matter is Chapter 323, the County Sales

²⁶ Tex. Tax Code §151.002.

²⁷ Tex. Tax Code §151.002 (emphasis added).

²⁸ Exh. C, para. 8.

and Use Tax Act. As set out in the previous parts of this brief, the local taxes questioned by Kendall County are taxing jurisdictions regulated by the County Sales and Use Act. The agency citation, Section 321.203(b)-(e) of the Municipal Sales and Use Tax Act, has a corresponding section in the County Sales and Use Tax Act at Section 323.203. Assuming the Comptroller would make the same “consummation of sale” assertions under the County Sales and Use Tax Act, the following discussion will analyze the agency’s arguments within the context of the appropriate corresponding County Sales and Use Tax Act section.

The Comptroller finds that §321.203 (f)-(n), comparatively §323.203 (f)-(m), provides “specific directions concerning where the sale of certain services” are “consummated”. However, as the Comptroller is looking at the Municipal Sales and Use Tax Act instead of the controlling County Sales and Use Tax Act, the agency overlooks the provision within the act which applies in this case. As stated in the Factual Background, the internet access services is provided by either a coaxial or fiber optic cable system. Under the statute applicable to counties, consummation of sale of services delivered through a cable system is at the point of delivery to the consumer.²⁹ The plain language of the statute conforms with the legislature’s intent that citizens subjected to a tax have a vote in the county or district imposing a tax upon them. Anticipating an argument that the term “cable system” means only “cable television system”, Kendall County analyzed the history of the statute and found the following. House Bill 2424 in the 78th Legislative Session, amended Section 58 as follows:³⁰

²⁹ TEX. TAX CODE, § 323.203 (j)(stating “sale of services delivered through a cable system is consummated at the point of delivery to the consumer”).

³⁰ Acts 2003, 78th Leg., ch. 209, Sec. 58, eff. Oct. 1, 2003.

SECTION 58. Section 323.203(j), Tax Code, is amended to read as follows: (j) The sale of ~~[cable television]~~ services delivered through a cable system is consummated at the point of delivery to the consumer.³¹

The amendment expanded the section to apply not only to cable television but to all services delivered through a cable system. Thus considering that argument, the internet access service for Kendall County residents is provided by a cable system and, in accordance with the TEX. TAX CODE CHAP. 323, the location for the sale of services is the customer's location.³² Therefore, Kendall County residents should pay sales and use taxes for internet access services to Kendall County and local districts encompassing the customer's locations. Additionally, the internet access service is delivered from the provider, GVTC, to the customer at the customer's location.

GVTC DELIVERS IAS FROM MODEM AT CUSTOMER'S LOCATION

While Kendall County argues that the internet access service is controlled as set forth in the preceding section, it also argues against the Comptroller's determination that GVTC's ISP is the location from which service is delivered. Unique to this matter is that there is no tangible item being passed from a retailer to a customer. As a result, the Comptroller has difficulty recognizing that the retailer is delivering the service from GVTC's location at the customer residence or business. GVTC is providing a customer the ability to access its internet system and to deliver the service, GVTC provides a modem at the customer's location.

In this matter considering internet access service provided by GVTC, the following facts appear to be guiding the Comptroller's interpretation. GVTC has more

³¹ Acts 2003, 78th Leg., ch. 209, Sec. 58, eff. Oct. 1, 2003.

³² TEX. LOC. GOV'T. CODE, § 326.091.

than one place of business in Texas; therefore TEX. TAX CODE 323.203(b) does not apply. TEX. TAX CODE 323.203(c) applies according to the Comptroller if a customer walks into the GVTC store in Boerne, Texas, located in Kendall County, and orders internet access service.³³ In that case, the Kendall County taxing districts are owed the sales and use tax revenue. But if the customer calls the Boerne store by telephone and places an order for internet access service, the Comptroller finds that Tex. Tax Code 323.203(c-1)(1) applies and the Comal County taxing districts are owed the sales and use tax revenue.³⁴ Thus according to the Comptroller, imposition of the Comal County tax on Kendall County residents hinges on the customer's decision to physically order the service at the GVTC Boerne location, or use the convenience of a telephone to order the service. Such a determination is not logical. Accordingly, the Comptroller's office is incorrect in finding that the ISP is the location from which GVTC delivers the internet access service.

Within the context of internet access service, the Comptroller finds that GVTC is shipping the item from the ISP to the purchaser. Therefore, the ISP location is the point of sale and the location where the sales tax should be assessed.³⁵ However, the Comptroller has not considered that GVTC's internet access service is delivered from a modem owned by GVTC at each customer's location. When accessing GVTC internet access service, the customer is provided with a modem by GVTC, the modem connects to GVTC's cable system and is located at the customer's location. GVTC delivers the internet access service to the customer from the GVTC modem when the customer plugs the computer cable into the GVTC modem and logs onto the system. When a customer

³³Exh. C, pg. 3.

³⁴ Exh. C, pg. 3; Exh. D pg. 3.

³⁵ Exh. C, pg. 3, para.7.

terminates internet access service with GVTC, GVTC receives the modem back but its cable system remains at the customer's location if a reconnection is ever required. Thus the retailer is actually delivering service from the modem located at the customer's location and the sale is therefore consummated at that location. When using the correct determination of delivery location, the "consummation of sale" provision³⁶ in the Tex. Tax Code harmonizes with the legislature's intent in creating taxing districts and/or entities accountable to voters within those districts.

CONCLUSION

The Comptroller's office is misinterpreting the Tex. Tax Code with regards to internet access service and the implementation of the sales and use tax. The definitions provided in the code do not provide that services cannot be similarly taxed if the same manner of taxation is provided for in the TEX. TAX CODE. The TEX. TAX CODE, § 323.203 (j) provides that consummation of sale of services delivered through a cable system is at the point of delivery to the consumer. Therefore customers in Kendall County should be subject only to Kendall County taxes and the sales tax collected should be rendered to Kendall County. In the alternative, as GVTC delivers the internet access service to its' customers through a modem at their location, the Kendall County residents should pay only Kendall County taxes. Thus under either interpretation, the sales taxes are to be collected for and rendered to Kendall County. Furthermore, the enabling statutes creating the entities with the power to tax, favor interpretation of the statutes to accomplish the purpose of the legislature to empower citizens with voting rights to hold the entities accountable.

³⁶ TEX. TAX CODE, § 323.203.

EXHIBIT A



GVTC LOCAL BASIC SERVICES

01/01 - 01/31

LOCAL SERVICE

Description	Qty	Unit Rate	Amt.
1 Local Access W/EAS	1	7.75	7.75
2 FCC Access Charge	1	6.50	6.50
3 E911 Kendall County	1	.50	.50
4 GVTC Texas Universal Serv			.30
5 Touch Tone Dialing	1	1.25	1.25
6 No 3rd# Calls Accepted	1		.00
Subtotal			16.30

TAXES AND SURCHARGES

	Base Amt.	Amt.
7 Fed Excise Tax	16.72	.50
8 State Sales Tax	16.72	1.04
9 County Sales Tax	16.72	.09
10 Fed Univ Service Charge	6.50	.92
Subtotal		2.55

GVTC Local Basic Services * 18.85

* Residential customer's failure to pay Local Basic Charges
 WILL result in disconnection of local telephone service.
 Business customers must pay all charges to avoid disconnection.

GVTC OTHER SERVICES

Description	Qty	Unit Rate	Amt.
11 Internet Addl E-Mail	1		.00
12 Broadband Nontax	1	25.00	25.00
13 DSL Basic Taxable	1	19.95	19.95
14 Smart Start Non Tax	1	1.99	1.99
15 Smart Start Web Host	1	7.96	7.96
16 DSL Fed Universal Srv Chg	1	1.64	1.64
Subtotal			56.54

TAXES AND SURCHARGES

	Base Amt.	Amt.
17 State Sales Tax	29.55	1.85
18 County Sales Tax	29.55	.15
19 Library Dist Sales Tax	29.55	.15
20 Emergency Svc Dist EMS	29.55	.11
21 Emergency Svc Dist Fire	29.55	.18
Subtotal		2.44



GVTC LOCAL BASIC SERVICES

02/01 - 02/28
 LOCAL SERVICE

Description	Qty	Unit Rate	Amt.
1 Local Access W/EAS	1	9.00	9.00
2 FCC Access Charge	1	6.50	6.50
3 E911 Kendall County	1	.50	.50
4 GVTC Texas Universal Serv			.35
5 Touch Tone Dialing	1	1.25	1.25
6 No 3rd# Calls Accepted	1		.00
<u>Subtotal</u>			17.60

TAXES AND SURCHARGES

	Base Amt.	Amt.
7 Fed Excise Tax	18.02	.54
8 State Sales Tax	18.02	1.12
9 County Sales Tax	18.02	.10
10 Fed Univ Service Charge	6.50	.92
<u>Subtotal</u>		2.68

GVTC Local Basic Services * 20.28

* Residential customer's failure to pay Local Basic Charges
 WILL result in disconnection of local telephone service.
 Business customers must pay all charges to avoid disconnection.

GVTC OTHER SERVICES

Description	Qty	Unit Rate	Amt.
11 Internet Addl E-Mail	1		.00
12 Broadband Nontax	1	25.00	25.00
13 DSL Basic Taxable	1	19.95	19.95
14 Smart Start Non Tax	1	1.99	1.99
15 Smart Start Web Host	1	7.96	7.96
16 DSL Fed Universal Srv Chg	1	1.64	1.64
<u>Subtotal</u>			56.54

TAXES AND SURCHARGES

	Base Amt.	Amt.
17 State Sales Tax	29.55	1.85
18 County Sales Tax	29.55	.15
19 Library Dist Sales Tax	29.55	.15
20 Emergency Svc Dist EMS	29.55	.11
21 Emergency Svc Dist Fire	29.55	.18
<u>Subtotal</u>		2.44



36101 FM 3159
 New Braunfels, TX 78132
 www.gvtc.com

MEMBER NUMBER
 TELEPHONE NUMBER
 STATEMENT NUMBER
 STATEMENT DATE
 R0568705687YX

March 01, 2010

GVTC LOCAL BASIC SERVICES

03/01 - 03/31

LOCAL SERVICE

Description	Qty	Unit Rate	Amt.
1 Local Access W/EAS	1	9.00	9.00
2 FCC Access Charge	1	6.50	6.50
3 E911 Kendall County	1	.50	.50
4 GVTC Texas Universal Serv			.35
5 Touch Tone Dialing	1	1.25	1.25
6 No 3rd# Calls Accepted	1		.00
Subtotal			17.60

TAXES AND SURCHARGES

	Base Amt.	Amt.
7 Fed Excise Tax	18.02	.54
8 State Sales Tax	18.02	1.12
9 County Sales Tax	18.02	.10
10 Fed Univ Service Charge	6.50	.92
Subtotal		2.68

GVTC Local Basic Services * 20.28

* Residential customer's failure to pay Local Basic Charges
 WILL result in disconnection of local telephone service.
 Business customers must pay all charges to avoid disconnection.

GVTC OTHER SERVICES

Description	Qty	Unit Rate	Amt.
11 Internet Addl E-Mail	1		.00
12 Broadband Nontax	1	25.00	25.00
13 DSL Basic Taxable	1	19.95	19.95
14 Smart Start Non Tax	1	1.99	1.99
15 Smart Start Web Host	1	7.96	7.96
16 DSL Fed Universal Srv Chg	1	1.64	1.64
Subtotal			56.54

TAXES AND SURCHARGES

	Base Amt.	Amt.
17 State Sales Tax	29.55	1.85
18 County Sales Tax	29.55	.15
19 Library Dist Sales Tax	29.55	.15
20 Emergency Svc Dist EMS	29.55	.11
21 Emergency Svc Dist Fire	29.55	.18
Subtotal		2.44



36101 FM 3159
 New Braunfels, TX 7813
 www.gvtc.com

MEMBER NUMBER
 TELEPHONE NUMBER
 STATEMENT NUMBER
 STATEMENT DATE
 R0568705687YX

██████████
 ██████████
 ██████████
 April 01, 2010

TAXES AND SURCHARGES

	Base Amt.	Amt.
1 State Sales Tax	29.76	1.86
2 County Sales Tax	29.76	.15
3 Library Dist Sales Tax	29.76	.15
4 Emergency Svc Dist Fire	29.76	.18
	<u>Subtotal</u>	2.34
GVTC Other Services **		59.09

Guadalupe Valley Long Distance ██████████

Direct Dialed

Calls billed to
 830 336-2443

Day	Date	Time	Called place	Called number	Pd.	Min.	Amt.	
5	TUE MAR 16	4:11pm	HOUSTON TX	██████████	DAY	1.0 g	.15	
							<u>Subtotal</u>	.15

FEES AND DISCOUNTS

6	Guarantee Talk	.95
		<u>Subtotal</u>
		.95

TAXES AND SURCHARGES

	Base Amt.	Amt.
7	Fed Excise Tax	1.00
8	State Sales Tax	1.16
9	County Sales Tax	1.16
10	GVLDTexas Universal Serv	.15
11	GVLDTexas Universal Serv	.95
12	GVLDTexas Fed End User Assesmt	.95
		<u>Subtotal</u>
		.17

Guadalupe Valley Long Distance ** **1.27**

** Residential customer's failure to pay these charges will not result in disconnection of local telephone service. Business customers must pay all charges to avoid disconnection.

TOTAL	80.72
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GVTC

36101 FM 3159
New Braunfels, TX 78132
www.gvtc.com

MEMBER NUMBER
TELEPHONE NUMBER
STATEMENT NUMBER
STATEMENT DATE
I0000000000YX

[REDACTED]
[REDACTED]
April 01, 2010

GVCS CABLE SERVICES

04/01 - 04/30

Description	Qty	Unit Rate	Amt.
1 Cable Addl Outlet Surchrg	1	.99	.99
2 Add Digital Terminal	1	7.45	7.45
3 HBO Service	1	14.95	14.95
4 DVR Subscription	1	9.95	9.95
5 FCC Regulatory Fee	1	.07	.07
6 Free HD -	1		.00
7 HDTV	1	7.00	7.00
8 Digital Variety Works	1	73.95	73.95
Subtotal			114.36

TAXES AND SURCHARGES

	Base Amt.	Amt.
9 State Sales Tax	120.08	7.51
10 County Sales Tax	120.08	.60
11 Franchise Fees	114.36	5.72
12 City Sales Tax	120.08	1.81
Subtotal		15.64

GVCS Cable Services

130.00

GVCS HI-SPEED INTERNET SERVICES

04/01 - 04/30

Description	Qty	Unit Rate	Amt.
13 Broadband 5MB Nontaxable	1	25.00	25.00
14 Broadband 5MB Res	1	14.95	14.95
15 Broadband 5MB Bndl W/1 YR	1	5.00CR	5.00CR
Subtotal			34.95

TAXES AND SURCHARGES

	Base Amt.	Amt.
16 State Sales Tax	9.95	.62
17 County Sales Tax	9.95	.04
18 Library Dist Sales Tax	9.95	.04
19 Emergency Svc Dist Fire	9.95	.06
Subtotal		.76

GVCS Hi-Speed Internet Services

35.71





GVTC 36101 FM 3159, NEW BRAUNFELS, TX 78132
COMMUNICATIONS www.gvtc.com

GVTC Telephone**SERVICE RECURRING**

Description	Qty	Unit Rate	Amt.
Local Access W/EAS	1	9.00	9.00
Touch Tone Dialing	1	1.25	1.25
No 3rd# Calls Accepted	1	0.00	0.00
Subtotal			10.25

TAXES AND SURCHARGES

Description	Qty	Unit Rate	Amt.
E911 Kendall County	1	0.50	0.50
FCC Access Charge	1	6.50	6.50
Fed Univ Service Charge			0.99
GVTC Texas Universal Serv			0.35
Fed Excise Tax			0.54
Sales Tax			1.23
Subtotal			10.11

TELEPHONE SERVICE 20.36

Residential customer's failure to pay Local Basic Charges WILL result in disconnection of local telephone service. Business customers must pay all charges to avoid disconnection.

Local Service Provider:

Guadalupe Valley Telephone Cooperative 1-800-367-4882

InterLata Long Distance Provider:

Guadalupe Valley Long Distance 1-800-367-4882

IntraLata Long Distance Provider:

Guadalupe Valley Long Distance 1-800-367-4882

Guadalupe Valley Long Distance**SERVICE RECURRING**

Description	Qty	Unit Rate	Amt.
Guarantee Talk	1		0.95
Subtotal			0.95

TAXES AND SURCHARGES

Description	Qty	Unit Rate	Amt.
GVLG Fed End User Assesmt			0.04
GVLG Texas Universal Serv			0.01
Fed Excise Tax			0.03
Sales Tax			0.07
Subtotal			0.15

Guadalupe Valley Long Distance 1.10

GVTC Internet**SERVICE RECURRING**

Description	Qty	Unit Rate	Amt.
DSL Basic Taxable	1	19.95	19.95
Broadband Nontax	1	25.00	25.00
Internet Addl E-Mail	1	0.00	0.00
Subtotal			44.95

GVTC Internet**SERVICE RECURRING**

Description	Qty	Unit Rate	Amt.
Smart Start Web Host	1	7.96	7.96
Smart Start Non Tax	1	1.99	1.99
Subtotal			9.95

TAXES AND SURCHARGES

Description	Qty	Unit Rate	Amt.
DSL Fed Universal Srv Chg	1	1.82	1.82
Sales Tax			2.34
Subtotal			4.16

GVTC Internet 59.06

TOTAL AMOUNT DUE 80.52

Outstanding balances as of May 18, 2010 will be paid with the 2009 Capital Credit distribution. A check for the remainder of the distribution for active accounts will be available at the Annual Meeting on June 23, 2010. If you are unable to attend the Annual Meeting, your check will be mailed to you in the first week of July.



GVTC COMMUNICATIONS 36101 FM 3159, NEW BRAUNFELS, TX 78132
www.gvtc.com

GVCS Internet

SERVICE RECURRING

Description	Qty	Unit Rate	Amt.
Broadband 5MB Bndl W/1 YR	1	34.95	34.95
Subtotal			34.95

TAXES AND SURCHARGES

	Qty	Unit Rate	Amt.
Sales Tax			0.76
Subtotal			0.76

GVCS Internet 35.71

CABLE TELEVISION

SERVICE RECURRING

Description	Qty	Unit Rate	Amt.
Digital Variety Works	1	73.95	73.95
Free HD	1	0.00	0.00
DVR Subscription	1	9.95	9.95
HDTV	1	7.00	7.00
HBO Service	1	14.95	14.95
Add Digital Terminal	1	7.45	7.45
Subtotal			113.30

TAXES AND SURCHARGES

	Qty	Unit Rate	Amt.
FCC Regulatory Fee	1	0.07	0.07
Cable Addl Outlet Surchrg	1	0.99	0.99
Franchise Fees			5.72
Sales Tax			9.92
Subtotal			16.70

CABLE TELEVISION 130.00

TOTAL AMOUNT DUE 165.71

The Guadalupe Valley Communications Systems contact information for the receipt and handling of IMMEDIATE closed captioning should be addressed to (Tel) 800-367-4882, (Fax) 830-885-8310 or e-mail issue to scsupport@gvtc.net.

The Guadalupe Valley Communications Systems contact information for the receipt and handling of WRITTEN closed captioning should be addressed to George O'Neal-Vice-Pres Of Network Services, 36101 FM 3159, New Braunfels, TX 78132, (Fax) 830-885-7171 or e-mail to george.oneal@gvtc.net.

GVTC Cable TV customers with a digital cable box will have free access to HBO during June 25th-June 28th. Access to On Demand will not be available in all areas. Parental control mechanisms, where applicable, will remain in effect.

EXHIBIT B

For Internet Services and Security Services
February, 2009

I have been in touch with the State Comptroller's office, John Huffman, to get clarification on applying state sales and use taxes. We are applying the sales and use taxes correctly.

Texas Administrative Code (rule 3.366) addresses internet access services. We are to charge sales tax from the location that we actually provide the service. Even though we have several offices, the service is only provided from one location that also "sells" the service. Therefore, we are required to apply the state, Comal County, and the Bulverde Library Tax which equals 6.75%. Then depending where the customer is located, we may have to apply local "use" tax, up to a maximum sales and use tax of 8.25% which is the maximum allowed by the State of Texas.

"Use" tax is city, county, special purpose districts, and transit tax. The use tax is looked at in this order. We, as the seller, cannot collect more than a total of 2 percent combined local sales and use taxes. "If an applicable type of local use tax cannot be collected at its full rate without going over the 2 percent maximum, even if the use tax is technically due, the seller cannot collect it." (Bulletin 94-105)

In the case of Boerne customers, if we add the 2% city tax, the total tax is more than the 8.25% maximum. Therefore, no city tax is charged or collected. The state code also states that you cannot charge more than one county tax. Therefore we do not apply Kendall County taxes. At this time there are no special purpose districts or transit taxes in Boerne or Kendall County.

From: bob.eason@co.kendall.tx.us [mailto:bob.eason@co.kendall.tx.us]
Sent: Friday, January 22, 2010 11:08 AM
To: John Huffman
Cc: gene.miertschin@co.kendall.tx.us
Subject: Re: 09040826 Local tax Internet Access Service

Dear Mr. Huffman:

My name is Bob Eason and I am an Assistant County Attorney in Kendall County. Recently, some of our County Commissioners have been receiving queries from County residents concerning taxes on their internet services provided by GVTC. The taxes are for local special purpose districts located in Comal County. I believe they are for the Bulverde Library District and an emergency services district. I have been given a copy of an email, concerning this subject, you sent to Jeanie Hake, GVTC Accounting Supervisor, on March 20, 2009. In your email you cite Tax Publication 94-105. I have a copy of that and on page 12 it is stated that Landline Communications Services should be taxed based on the location of the telephone or other device from which the call or other transmission originates. Because the transmissions originate in Kendall County, and since GVTC Internet Services are provided via landlines, and are not wireless, it would seem that Kendall County residents, using GVTC Internet Services, are being wrongfully taxed by Special Purpose Districts located in Comal County which is not where the transmission originated.

I would appreciate your thoughts on this matter so that I may advise our Commissioners.

Very truly yours,

Bob Eason

2/22/2010

EXHIBIT C

Bob Eason

From: John Huffman [John.Huffman@cpa.state.tx.us]
Sent: Monday, February 22, 2010 10:58 AM
To: bob.eason@co.kendall.tx.us; gene.miertschin@co.kendall.tx.us
Subject: Re: 10025816 Local Sales Tax Sourcing for Internet Service Providers

02/22/2009

Bob Eason
bob.eason@co.kendall.tx.us

Re: 10025816 Local Sales Tax Sourcing for Internet Service Providers

Dear Mr. Eason:

Thank you for contacting the Texas Comptroller of Public Accounts regarding the proper assessment of local sales tax on Internet access service. You state that recently some of your County Commissioners have received queries from county residents concerning taxes on their Internet services provided by GVTC. The taxes are for local special purpose districts located in Comal County which you believe are for the Bulverde Library District and an emergency services district. You were given a copy of an email, concerning this subject, which I sent to Jeanie Hake, GVTC Accounting Supervisor, on March 20, 2009 stating that the local sales and use tax due on charges for Internet access are based on the place of business of GVTC. In that email I cite Tax Publication 94-105.

You reviewed that publication and found that it states that Landline Communications Services should be taxed based on the location of the telephone or other device from which the call or other transmission originates. You state that it is your belief that because the transmissions originate in Kendall County, and since GVTC Internet Services are provided via landlines, and are not wireless, it would seem that Kendall County residents, using GVTC Internet Services, are being wrongfully taxed by Special Purpose Districts located in Comal County which is not where the transmission originated.

Response:

Internet access service, including such service provided via landlines or by a telecommunications company, is not the same thing as telecommunications services for Texas sales and use tax purposes.

One rule of statutory construction is that when two sections of an act apply to a subject, one general and one specific, the specific provision controls over the general one. 82 A.L.R. 3rd 1, *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.-Hou. 1975, writ ref. n.r.e., 536 S.W.2d 559); *Farmland Industries, Inc. v. Moore*, 596 S.W.2d 939 (Tex. Civ. App.-Waco, 1980); *City of West Lake Hills v. Westwood Legal Defense Fund*, 598 S.W.2d 681 (Tex. Civ. App.-Waco 1980).

Internet access service is specifically defined in Tax Code §151.00394 as “a 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 of services offered to consumers. *The term does not include telecommunications services.* [emphasis mine]” See

2/22/2010

also Comptroller Rule 3.366, "Internet Access Services".

Tax Code §151.0103 defines "telecommunications services" to mean "the electronic or electrical transmission, conveyance, routing, or reception of sounds, signals, data, or information utilizing wires, cable, radio waves, microwaves, satellites, fiber optics, or any other method now in existence or that may be devised, including but not limited to long-distance telephone service. *The term does not include..... (3) Internet access service*[emphasis mine]" See also Comptroller Rule 3.344, "Telecommunication Services".

Therefore, while Internet access services provided via landlines are similar to telecommunications services, under the specific definitions found in Chapter 151 the two services must be considered and treated individually.

The same principal of statutory construction applies to the collection of local sales and use tax. All local sales and use taxes, including special purpose district taxes, are administered in accordance with the guidelines found in Chapter 321 of the Tax Code, unless specifically identified and treated differently under chapters of the Tax Code.

Generally a sale is consummated, and local sales tax is due, based on the location of the retailer's place of business in this state from which a taxable item is shipped or delivered. See §321.203 (b) – (e). Tax Code §151.010 defines a taxable item as "tangible personal property and taxable services." Therefore, unless another provision in the Tax Code directs that a sale of a specific taxable item (i.e. telecommunications services) is consummated elsewhere, local sales tax is due based on the seller's location.

The local tax due is determined by the specific type of service performed, as defined under Chapter 151 of the Tax Code. §321.203 (f) – (n) provide specific directions concerning where the sale of certain services is consummated as follows:

- **Amusement Services** – Local sales tax due based on where the performance or event occurs. §321.203 (h)
- **Cable TV** – Local taxes due based on where the customer receives the service. §321.203 (j)
- **Landline Telecommunications Services** - Local taxes on landline telecommunications services sold on a call-by-call basis are based on the location of the telephone or other device from which the call or other transmission originates. If the seller cannot determine where the communication originates, collect local tax based on the address to which the service is billed. §321.203 (g-1) – (g-3).
- **Mobile Telecommunications Services** - Local taxes on mobile telecommunications services (e.g., cell phones) are based on the place of primary use. §321.203 (g) and §151.061.
- **Natural Gas and Electricity** - Local taxes based on where the customer receives the gas or electricity. §321.203 (f)
- **Nonresidential Real Property Repair and Remodeling** - Local taxes for labor and materials are based on the location of the job site. §321.203 (n)

- **Waste Collection Services** - Local taxes based on where the waste is collected.
§321.203 (k)

As you can see, Internet access service is not one of the services identified in §321.203, the sale of which are considered consummated at a location other than the seller's place of business. Services not specifically identified in §321.203 (f) – (n) should be sourced in accordance with §321.203 (b) – (e).

A sale of Internet access service by a Texas service provider is therefore consummated at the location of the seller's place of business, not the customer's location where the transmission originates.

In most cases, the local tax due will be based on the location of the seller's place of business from which the service is delivered. In some instances however, the local tax due may be based on the location of the seller's place of business in this state where the order for service is received.

Senate Bill (SB) 636 passed by the 81st Legislature in the 2009 Regular Session amended Tax Code §321.203, modifying where a sale is consummated when made by a retailer who operate multiple places of business in Texas.

Senate Bill 636 amends Tax Code Sections 321.203 to specify that each sale of a taxable item is now consummated at the retailer's place of business in this state where the retailer first accepts the order, provided that the order is placed in person by the purchaser or lessee of the taxable item. Now, when a purchaser places an order in person, retailers should collect local sales tax based on the location of the place of business where the order is received rather than the place of business from which the item is delivered.

Prior to the passage of SB 636, the local tax due on sales of tangible personal property or most taxable services, including Internet access service, was based on the place of business from which goods and services were delivered (if a seller operated multiple locations). Effective June 19, 2009, however, local tax is due based on the location of the seller's place of business where an order is received, if the order is placed in person.

For a service like Internet access that is billed monthly and where there usually isn't a contract, orders placed on or after June 19, 2009, the local sales tax collected is determined by the location of the place of business where the order was received, if the order for new service was placed in person. However, for service orders received by a business with multiple locations prior to the effective date of SB 636, or new orders received after June 19, 2009 that were not placed in person, the sale is still consummated at the place of business of the retailer from which the service is shipped or delivered.

In summary, Internet access service is sourced to the seller's place of business under Texas Tax Code 321.203 for local sales tax. GVTC (the seller) has multiple places of business; therefore, the local sales tax due on Internet access service provided by GVTC was based on the place of business from which the service was delivered before June 19, 2009 on all sales. After June 19, 2009, *if* the order for Internet access was/is placed *in person* at a GVTC place of business in this state, the local sales tax due is based on the place of business where the order was/is received.

I hope you find this information helpful.

Complete Texas sales tax information, including rules, statutes, publications, and frequently asked questions can be found on the Sales and Use Tax Web page at: <http://window.state.tx.us/taxinfo/sales/>. Local sales tax information, including tax jurisdiction rates and codes, is available on our web page at:

<http://window.state.tx.us/taxinfo/local/>

You may click on "Statutes" and "Rules" to find the information noted above.

This opinion is based on the information presented. Other information, though similar, may yield different results.

If you have any questions or need additional information, you can reply to this email, call me at 1-800-531-5441 ext. 3-5719, or write to Tax Policy Division, P. O. Box 13528, Austin, Texas 78711-3528.

Sign up for e-mail updates on the Comptroller topics of your choice at <http://www.window.state.tx.us/subscribe>.

Our goal is to provide you with prompt, professional service. Please take a moment to complete our on-line survey at:

<http://aixtcp.cpa.state.tx.us/surveys/tpsurv2/index.html>

Regards,

John Huffman
Sales Tax Policy
Texas Comptroller of Public Accounts

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[GVTC letter]
03/20/2009

Re: 09040826 Local tax Internet Access Service and Security Service

Dear Ms. Hake:

Thank you for your e-mail requesting guidance about the state and local sales tax application for Internet access service and security service. Per your e-mail, Web site and our follow-up telephone conversations, here is our understanding of the facts presented.

GVTC Communications provides various Internet, cable television, telephone and security services to customers in the "Hill Country" of Texas. You have sales offices located in various "Hill Country" cities. Customers can purchase Internet access, cable television, telecommunication and security monitoring services.

The Internet access service is sold through all locations, but the Internet service provider (ISP) is at one location that also sells the service. This location is in an unincorporated area of Comal County which includes the Bulverde Library District local sales tax jurisdiction.

2/22/2010

EXHIBIT D

<http://window.state.tx.us/taxinfo/local/>

You may click on "Statutes" and "Rules" to find the information noted above.

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John Huffman
Sales Tax Policy
Texas Comptroller of Public Accounts

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The Internet access service is sold through all locations, but the Internet service provider (ISP) is at one location that also sells the service. This location is in an unincorporated area of Comal County which includes the Bulverde Library District local sales tax jurisdiction.

2/22/2010

You ask for clarification of the state and local tax collection requirement for the Internet access service provided from the location where the service is actually provided. Additionally, you ask for insight regarding the state and local tax requirements for the security monitoring service.

Response:

Internet Access

In the case of multiple locations that sell Internet access, if an order for Internet access service is taken at one location but the service is provided from another location from which customers may also order service, the place of business from which the service is provided will determine to which local taxing entity the tax is allocated.

The application of local sales tax is based on the rate in effect at the place of business of the Internet service provider (ISP) where the service is provided. Additionally, the purchaser owes local "use" tax for their local jurisdiction (unless the 2% maximum cap for local taxes would be exceeded). The seller is required to collect local use taxes for taxing jurisdictions only if they are engaged in business in those jurisdictions. See Texas Administrative Code Rule 3.366, subsection (g), concerning the application of local taxes to Internet Access Service.

There are four general rules to remember about a seller's or service provider's collection of local sales and use taxes.

" First, sales tax takes precedence over use tax. This means that a seller must collect the applicable local sales taxes before collecting local use taxes.

" Second, a seller can collect no more than 2 percent in total local sales and use tax for all applicable jurisdictions.

" Third, if a seller collects a sales tax for a city, county, special purpose district or transit authority, the seller cannot collect a use tax for another local taxing jurisdiction of the same type. A seller may, however, collect more than one transit or special purpose district sales tax or multiple transit or special purpose district use taxes in relation to the same sales transaction.

" Fourth, if the seller cannot collect the total tax rate percentage of a local jurisdiction's use tax without exceeding the 2 percent cap, then the seller should not collect any of it.

The above guidelines apply to the sale of all taxable goods, and most taxable services, but there are exceptions. Local tax collection for some services is based on where the service is provided or received by the customer. This following list of exceptions explains where the tax rate is based for those types of sales:

- " Amusement Services -performance location of the amusement;
- " Cable TV - location where the customer receives the service;
- " Contractors with Separated Contracts for New Construction and for Residential Repair and Remodeling Projects - tax rate for materials based on job site;
- " Florists -where the floral order is received;
- " Landline Telecommunications -where the call originates;
- " Mobile Telecommunications -location of primary use, usually residence or business address;
- " Natural Gas and Electricity - location where natural gas or electricity is received;
- " Nonresidential Real Property Repair and Remodeling -tax rate on the total charges (i.e. material and labor) based on construction job site;
- " Waste Collection - where the waste is collected.

For information on these exceptions and more information on local sales and use tax collection, see tax Publication 94-105, "Guidelines for Collecting Local Sales and Use Tax."

Based on the information provided, the ISP is located in the unincorporated area of Comal County but within the Bulverde Library District (local special purpose district). The Internet access is provided to a customer in Boerne, Texas. Following the guidelines noted above, the local sales tax jurisdictions are collected first: Comal County (.05 percent), Bulverde Library District (.05 percent) and the state tax rate 6.25 percent. The ISP's combined state and local sales tax is 7.25 percent.

The combined sales tax rate is less than 8.25 percent; therefore local use tax may apply. The customer is located inside the city limits of Boerne. The Boerne local use tax jurisdictions include: Boerne City (1.5 percent) and Kendall County (.05 percent). If we combine the sales and use tax rates for all local taxing jurisdictions we would violate the abovementioned and statutory defined guidelines. Therefore, only 7.25 percent would be collected on this Internet access order.

Also, note that the first \$25 of a monthly charge for Internet access is exempt from sales tax. "This exemption applies to the total sales price the service provider charges a purchaser for Internet access, without regard to whether the service provider charges one lump-sum amount or separately bills the purchaser for each user. For example: Company A buys Internet access for 25 employees at several locations. The first \$25 of the total charge to Company A is exempt and not the first \$25 of each user's apportioned cost. Because a purchaser is a single entity and the \$25 exemption is provided per purchaser, not user, account, or site, separate billings for employees or for different locations will not reduce the taxable amount. This exemption applies without regard to whether the Internet access service is bundled with another service, including any other taxable service."

Security Service

Security services are addressed in Tex. Admin. Code Rule Section 3.333, subsection (a), which states:

"(a) What a security service is. Security service means any service for which a license is required under the Texas Civil Statutes, Article 4413(29bb), Private Investigators and Private Security Agencies Act, §13, and includes any service provided within the scope of the required license as an investigations company, guard company, alarm systems company, armored car company, courier company, guard dog company, security services contractor, private security officer, detective service, or private investigator."

However, security services are specifically defined and taxed in Texas Tax Code Sections 151.0075 and 151.0101 (a) (14), respectively. The language of Sec.151.0075 follows:

"§ 151.0075. "SECURITY SERVICE". "Security service" means service for which a license is required under Section 1702.101 or 1702.102, Occupations Code."

With respect to home security monitoring services, charges for monitoring burglar alarm systems are subject to sales tax. However, separately stated charges for monitoring fire alarm systems are not subject to sales tax.

The exclusion for fire alarm system installation and monitoring is found in Occupations Code Section 1702.329.

"§ 1702.329. FIRE ALARM AND DETECTION SALES AND INSTALLATION. This chapter does not apply to:

(1) a person whose activities are regulated under Article 5.43-2, Insurance Code, except to the extent those activities are specifically regulated under this chapter."

Taxable security service providers must collect state and all applicable local taxes on the total amount billed for the services provided unless they receive a properly completed resale or exemption certificate from the purchaser.

Again, local sales taxes on security services are first due based on the seller's place of business (i.e. where the order is received). In addition to collecting local sales taxes based on its place of business, a seller might be required to collect local use taxes for other local taxing jurisdictions. Sales tax collections are usually based on the location of the seller's place of business; use tax collections are based on the customer's location without exceeding the 8.25 percent combined state and local tax rate.

I hope you find this information helpful. Complete Texas sales tax information, including rules, statutes, publications, and frequently asked questions can be found on the Sales and Use Tax Web page at: <http://window.state.tx.us/taxinfo/sales/>. You may click on "Statutes" and "Rules" to find the information noted above.

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Regards,

John Huffman
Sales Tax Policy
Texas Comptroller of Public Accounts

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GVTC
Sales and Use Tax Application

2/22/2010