

**CITY OF PALM SPRINGS UTILITY USERS' TAX
ADMINISTRATIVE RULING AND INTERPRETATION (3.0)**

Authority. Pursuant to Section (b) of the City of Palm Springs Utility Users' Tax Ordinance, the Tax Administrator hereby adopts the following administrative ruling and administrative interpretation:

A. Administrative Ruling (Bundling of Taxable and Non-taxable Telecommunication Services, including Internet Access).

1. If a service supplier offers broadband service that includes internet access (as defined by the federal Permanent Internet Tax Freedom Act or PITFA), and the service user's bill or invoice does not include voice or video programming (e.g., VoIP, IP-TV or cable) or any other taxable service, then the entire charge shall be deemed exempt pursuant to PITFA.
2. If a service supplier offers broadband service with internet access (as defined by the federal Permanent Internet Tax Freedom Act or PITFA), in combination with voice or video programming (e.g., VoIP, IP-TV or cable) or any other taxable service, then the entire charge shall be subject to the UUT, unless all of the various taxable and non-taxable services are separately charged, or unless the values for each of the various taxable and non-taxable services are reasonably based on the books and records and generally accepted accounting principles, and the tax is assessed only on such values of the taxable services.
3. The service supplier has the burden of proving the reasonable valuation and apportionment of all of the taxable and non-taxable charges. Valuation and apportionment shall be based on the market value of the separate taxable or non-taxable services (rather than the relative usage of network bandwidth).
4. If the service provider offers internet access bundled with VoIP and/or video programming, the service provider shall allocate a reasonable value for the broadband network that is used for delivering the taxable services (e.g., VoIP and/or video programming). There is a rebuttable presumption of reasonableness if 50% or more of the broadband network value is assigned to voice and/or video programming.

Example: The service provider offers DSL or cable broadband service, which includes internet access and VoIP. There are three values involved: a. internet access service, b. voice services, and c. broadband network service. The Internet access service is non-taxable per PITFA, the voice services are taxable, and the broadband network used for voice is taxable, while the remaining portion of the broadband network for internet access is not taxed. There is a rebuttable presumption of reasonableness per this administrative ruling if 50% or more of the broadband network value is assigned to voice and/or video programming.

Example: The service provider offers a "triple play" of internet, VoIP and video/CATV for \$120. Assume that the separate market values for internet access is \$40, VoIP is \$20, and video programming for \$60, and assume that the UUT ordinance applies to both voice and video. For this triple play offering, unless the charges for all of the various

taxable and non-taxable services are each separately stated or based on "books and records", the entire \$120 is subject to the UUT under the ordinance bundling rule and the PITFA bundling rule.

However, if the service provider "unbundles" the triple play offering based on books and records, then a reasonable allocation based on market value would be: \$80 is taxable for VoIP and video/CATV, and \$20 of the \$40 of broadband network services would be a reasonable allocation of the taxable portion of the broadband network used for providing VoIP and video. Therefore, a total of \$100 of the triple play would be subject to the UUT.

5. If a service supplier provides "private communication services" including T-1 or higher bandwidth, and such service is bundled with internet access, the value allocation of the taxable and non-taxable services combined in the "private communication services" should be based on the proportional market values of the taxable and non-taxable services.

Example: If T-1 service without internet access costs \$500 a month, and with internet service cost \$550, then the value of the taxable T-1 service shall be \$500 in both cases.

6. A service supplier may submit its proposed value allocations for tax purposes to the Tax Administrator for prior review for "reasonableness".

Limitation. This Ruling and Interpretation is intended to give general guidance and should not be viewed as providing a definite answer to all factual situations, as the exact application of the tax will depend on the nature of the service, the manner in which it is billed (e.g., bundled or unbundled), and other factors that could bear on whether the communications tax is applied or not applied.

Effective and Expiration Dates. This Ruling and Interpretation shall automatically expire on January 1, 2020, so that the conditions then existing may be reviewed, and the Administrative Ruling and Interpretation may be thereafter revised, as appropriate, and then re-adopted. Nothing herein, however, shall preclude the Tax Administrator from revising or rescinding this Administrative Ruling and Interpretation at any time.

City of Palm Springs Finance Director and UUT Tax Administrator



Geoffrey S. Kiehl

Date: April 1, 2016