

## OHIO DEPARTMENT OF TAXATION ISSUES GUIDANCE ON TAXABILITY OF INSTALLED DATA CABLING

JANUARY 13, 2020



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The Ohio Department of Taxation issued a revised Information Release ST 1999-01 on December 18, 2019 discussing their new interpretation of the sale and installation of data cabling. The release states that the *Nationwide Mutual Insurance Company v. McClain* (October 22, 2019), BTA Case No(s) 2018-313, 2018, 315-318 decision changes the Department's position effective October 22, 2019.

The release states that the sale and installation of data cabling is real property unless the data cabling is for "specialized networks to meet a technical requirement." What "specialized networks to meet a technical requirement" refers to is not explained.

The release adds that for audit purposes, the interpretation will be applied to future transactions except for the situation where the contractor neither paid tax (sales or use) on its purchase of the data cabling nor collected tax on its sale of the installed data cabling. One could interpret that language to say the Department will not be auditing contractors for this issue for the past unless the contractor didn't pay tax on its purchase or collect tax on its sale.

The release adds that if a contractor that sold and installed data cabling or the contractor's customer seeks a refund of the sales tax paid on the installation transaction, the contractor is expected to accrue use tax as a construction contractor. The chances that a contractor will know that its customer has filed for a refund so the contractor can accrue use tax are very

unlikely. While it is “expected” the contractor will accrue use tax, the release doesn’t address what the Audit Division will do if the contractor doesn’t accrue use tax. Further, it is unclear what the Department’s Refund Unit will do if a contractor files for a refund on behalf of its customer. Will the Department net the refund because the contractor owes use tax on the cost of the cabling?

Because we successfully litigated the *Nationwide* case, ZHF is especially well-equipped to assist taxpayers in understanding the potential benefits (i.e., refunds for landowners) or potential exposures (for contractors) that may accrue due to this decision.

Please contact John Trippier, Richard Farrin or one of our other ZHF professionals to discuss the application of *Nationwide* to your facts and circumstances.

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