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BellSouth DSL settlement OK'd

Customers to get sales tax back

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If you lived in Kentucky and used high-speed Internet service from BellSouth between 1999 and 2006, you have some money coming.

Following state officials' guidance, BellSouth had been collecting 6 percent sales tax on its DSL service, which it sells as FastAccess. But the state later reversed its opinion, and yesterday a federal judge approved an \$8.2 million settlement that includes full tax refunds, plus about 8 percent interest.

Current customers will receive the refund as a credit on their accounts, while former customers will get a check.

Officials with AT&T, which merged with BellSouth last fall, are working to "get the right credits and right refunds to customers as soon as possible," company spokeswoman Nancy Jarett said yesterday. The process should be completed in the next couple of months, she said.

Similar high-speed Internet access from AT&T is now being offered in the Louisville area at a rate of \$19.95 to \$42.95 a month for residential customers, and up to \$109.95 a month for small businesses.

BellSouth raised concerns about the sales tax as early as 2002. State officials initially said the Internet service was tax exempt, but in a January 2003 letter, Dana Mayton, then-Secretary of the Kentucky Revenue Cabinet, instructed the company to charge its customers the 6 percent tax.

Jill Midkiff, a spokeswoman for the state agency, said yesterday that officials couldn't comment on the case.

U.S. District Court Judge John G. Heyburn II ordered the settlement money, minus legal fees and other costs, to be split among 153,718 residential customers and 23,279 businesses. An average award has not been determined, Jarett said, and it's still unclear exactly how much each customer will receive.

For Louisville resident Michael Clark, the conclusion of the case this week was especially sweet. The 67-year-old singer and songwriter was one of two plaintiffs in a November 2004 lawsuit filed against BellSouth challenging the sales tax.

"I didn't know what would come of it," Clark said yesterday of the three-year legal battle. "But it's pretty exciting. I'm glad I was able to help some other folks out along the way."

The other plaintiff was a business on Chamberlain Lane called Kentucky Air Tool. Its owner, Jim Denes of Prospect, said he joined the suit mostly out of principle and didn't know how much of a refund his company stood to collect.

The law firm of Stoll Keenon Ogden will get about \$1.25 million in fees for its work representing the plaintiffs. D. Randall Gibson, a partner with the firm's Louisville office, said the settlement was a "great victory" for BellSouth customers.

Stoll Keenon Ogden initially requested \$2.7 million for its work, or more than five times its hourly rate for the case. In the settlement signed Tuesday, Heyburn wrote that the smaller amount was still generous given the firm did "relatively little work" on the bulk of the case in exchange for a "spectacularly successful settlement."

After the initial suit was filed in Jefferson Circuit Court, the case was moved to federal court, where it was put on hold in November 2005 awaiting an opinion from the state Department of Revenue.

The agency again denied BellSouth's effort to reverse the tax, and the company appealed to the Kentucky Board of Tax Appeals.

Several months later the revenue department reversed its position.

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