

New York State Department of Taxation and Finance
Taxpayer Services Division
Technical Services Bureau

TSB-A-91 (77)S
Sales Tax
December 19, 1991

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S910823A

On August 23, 1991 a Petition for Advisory Opinion was received from Local Area Telecommunications, Inc., 17 Battery Place, Rm. 1200, New York City, New York 10004.

The issues raised by Petitioner, Local Area Communications, Inc., are:

1. Whether Petitioner is liable for collecting sales tax on charges to customers for sales of local telecommunication services.
2. Whether Petitioner is liable for collecting sales tax on charges to customers for sales of interstate telecommunication services.
3. Whether Petitioner incurs a sales tax liability on purchases of telecommunication transmission equipment which petitioner used to provide telecommunication service for sale.

Petitioner is a microwave telecommunications common carrier, licensed by the Federal Communications Commission, that provides both intrastate and interstate voice and data telecommunications services to customers via microwave transmission equipment.

Petitioner purchases transmission equipment from several telecommunications equipment vendors. Petitioner installs the transmission equipment on communication towers or roof tops for the purpose of providing telecommunication service to customers. Petitioner bills the customers on a monthly basis.

Petitioner owns, operates and repairs all of the telecommunication equipment. Petitioner's sales of services are both intrastate and interstate.

Section 1105(b) of the Tax Law imposes sales tax upon:

(b) The receipts from every sale, . . . other than sales for resale, of telephony or telegraphy and telephone and telegraph service of whatever nature except interstate and international telephony and telegraphy and telephone and telegraph service.

Section 1115 of the Tax Law states, in relevant part:

(a) Receipts from the following shall be exempt from the tax on retail sales imposed under subdivision (a) of section eleven hundred five and the compensating use tax imposed under section eleven hundred ten:

(12). . . telephone central office equipment or station apparatus or comparable telegraph equipment for use directly and predominantly in receiving at destination or initiating and switching telephone or telegraph communication, but not including

parts with a useful life of one year or less or tools or supplies used in connection with such machinery, equipment or apparatus. . . .

Section 527.2 of the New York State Sales and Use Tax Regulations states, in part:

Sale of utility and similar services. (Tax Law, §1105(b)) (a) Imposition.

(1) Section 1105(b) of the Tax Law imposes a tax on the receipts from every sale, except a sale for resale. . . of

(ii) telephony and telegraphy and telephone and telegraph service of whatever nature except interstate and international telephony and telegraphy and telephone and telegraph service.

(2) Although this tax is generally known as the "consumer's utility tax", the intention of the statute is to tax the enumerated sales and services whether or not rendered by a company subject to regulation as a utility company. The words "of whatever nature" indicate that a broad construction is to be given the terms describing the items taxed. . . .

(d) Telephony or telegraphy; telephone and telegraph service. (1) The provisions of section 1105(b) of the Tax Law with respect to telephony and telegraphy and telephone and telegraph service impose a tax on receipts from intrastate communication by means of devices employing the principles of telephony and telegraphy.

(2) The term telephony and telegraphy includes use or operation of any apparatus for transmission of sound, sound reproduction or coded or other signals.

Section 528.13 of the Sales and Use Tax Regulations states, in relevant part:

(a) Exemption.

(1) An exemption is allowed from the tax imposed under section 1105(a) of the Tax Law, and from the compensating use tax imposed under section 1110 of the Tax Law, for receipts from sales of:

* * *

(ii) telephone central office equipment or station apparatus or comparable telegraph equipment for use directly and predominantly in receiving at destination or initiating and switching telephone or telegraph communication.

* * *

(f) Telephone and telegraph equipment.

(1) Telephone and telegraph central office equipment and station apparatus, used directly and predominantly in receiving at destination, initiating or switching telephone and telegraph communication is exempt, when such equipment and apparatus is purchased or leased by the vendor of such service for sale.

* * *

Example 1: A telephone company purchases switchboards and handsets for installation at a subscriber's premises. Such purchases are exempt.

* * *

(3) The exemption does not apply to other equipment used in conjunction with telephone and telegraph communication, such as testing equipment.

Example 3: A telephone company purchases devices which are installed on relay racks and are used to test two-way trunk transmission level. These devices are not exempt as they neither initiate, receive or switch communication.

Under the provisions of Section 1105(b) of the Tax Law and Section 527.2(a) of the Sales and Use Tax Regulations, Petitioner is liable for collecting sales tax on charges to customers for sales of local (intrastate) telecommunication services. However, Petitioner's charges to customers for sales of interstate telecommunication services are not subject to state or local sales tax.

In order for the purchases of telephone communication assets to qualify for the tax exemption provided under Section 1115(a)(12) of the Tax Law and Section 528.13 of the Sales and Use Tax Regulations such assets must meet the statutory tests of being classified as either central office equipment or station apparatus and of being used both directly and predominantly in performing the function of receiving telephone communication at its destination, of initiating telephone communication or of switching telephone communication.

The functions of initiating telephone communication and receiving telephone communication at its destination is generally performed by certain station apparatus.

The function of switching telephone communication is generally performed by central office equipment. Re MCI Telecommunications Corp, MCI International Telecommunications Corp, RCA Global Communications, Inc. and Western Union International, Inc. Advisory Op Comm of T & F, November 12, 1991, TSB-A-91(71)S.

Because Petitioner is providing telecommunication services for sale to customers, Petitioner's purchases of telecommunication transmission equipment which Petitioner uses to provide

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telecommunication services for sale will not be subject to the tax imposed under Section 1105(a) of the Tax Law but will fall within the exemption provided under Section 1115(a)(12) of the Tax Law and Section 528.13 of the Sales and Use Tax Regulations when such equipment is used to perform the functions of directly and predominantly receiving at destination or initiating and switching telephone communications.

DATED: December 19, 1991

s/PAUL B. COBURN
Deputy Director
Taxpayer Services Division

NOTE: The opinions expressed in Advisory Opinions
are limited to the facts set forth therein.