

### **Taxability of Audio-conferencing Services**

The issues are:

1. Whether charges for audio-conferencing or bridging services sold on a stand-alone basis are subject to sales tax.
2. Whether for dial-in services as described below are subject to sales tax.
3. Whether charges for dial-out services as described below are subject to sales tax.
4. Whether any of these charges are subject to the New York State gross receipts tax imposed pursuant to section 186-e of the Tax Law.
5. Whether the taxability of the aforementioned charges would be affected if the service provider's bridging equipment were located within New York State.

Company X provides audio-conferencing services to its customers on a nationwide basis. Audio conferencing allows three or more callers from different geographic locations to be connected to the same telephone call.

Customers are provided with a telephone number and a numeric pass code for all participants to use when a conference call is scheduled to begin. Customers may choose to use the same telephone number and pass code for multiple calls or customers may choose to reserve a date, time and duration for a conference call on a one-time basis.

The provision of audio-conferencing services is primarily made up of two components - toll service and bridging service. In short, audio-conference participants make telephone calls into a conference bridge; the bridge permits callers to be connected together in a conference call. The conference bridge contains electronics for amplifying and balancing the conference call so participants can hear each other speak, and the conference call's progress is monitored through the bridge in order to produce a high-quality voice conference.

Company X owns and operates conference bridging equipment at its network operations centers located outside of New York State. Company X does not own or lease any conference bridging equipment within New York State. All conference calls originating within New York State connect at Company X's conference bridging equipment outside of New York State.

Company X allows its customers to choose the type of service used to call into its conference bridging equipment.

The first of the three options customers may choose from is a dial-in service. When customers choose this service, participants are provided a toll-free 800 number to call when the conference call is set to begin. In this instance, customers are billed on a per-minute, per-participant basis for the audio conference. This per-minute, per-participant charge combines Company X's costs for the use of the bridging equipment and the cost of telephone service Company X consumes in connecting the participants into a single "lump sum price" that is applied to the number of participants and the duration of the call.

The second type of service that customers may choose is a stand-alone bridging service. In this scenario, participants pay their own charges to call into the conference bridge by dialing the "bridge" telephone number from their telephones. When customers choose this option, the customer is billed for bridging services on a per-minute, per-participant basis. The customer is responsible for paying its own telecommunications provider the charges for the telephone service needed to speak to the other participants.

The third option that customers have when purchasing a conference call service is dial-out service. In this instance, Company X's operator, from Company X's facilities outside New York State, calls all participants at the time the conference call is set to begin using Company X's chosen telecommunications provider to make the calls. Customers are charged on a per-minute, per-participant basis. As with the dial-in service, the per-minute, per-participant charge combines Company X's costs for the use of the bridging equipment and the telephone services it consumes in connecting the participants into a single "lump sum price" that is applied to the number of participants and the duration of the call.

### **Applicable law and regulations**

Section 1105(b)(1) of the Tax Law imposes sales tax upon:

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

Section 525.2(a)(4) of the New York State Sales and Use Tax Regulations provides, in part:

The sales tax is generally a "consumer tax." That is, the person required to collect tax must collect the tax from the customer (i.e., the consumer) when collecting the taxable receipt, rent or amusement charge to which the tax applies. The customer cannot shift the liability for payment of the tax to another person nor otherwise be relieved of such liability. The vendor, or other person required to collect the tax, collects the tax as trustee for and on account of the State and is also personally liable for the tax required to be collected.

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

(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

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(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. . . .

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(d) Telephony and 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.

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(5) The tax on utility services applies to every charge for any telephone and telegraph service. Among these charges are *monthly message rate and intrastate toll charges* and charges for special services, such as installation, change of location, *conference connections*, tie-lines, WATS lines and the furnishing of equipment. (Emphasis added)

Section 186-e of the Tax Law is an excise tax imposed on telecommunication services and provides, in part:

1. Definitions. As used in this section, where not otherwise specifically defined and unless a different meaning is clearly required:

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(e) "Provider of telecommunication services" means any person who furnishes or sells telecommunications services regardless of whether such activities are the main business of such person or are only incidental thereto. Where a reference is made to a "utility" in this chapter in regard to the tax imposed by this section or by this section and section one hundred eighty-six-a of this article, such reference to "utility" shall be deemed to include a reference to a provider of telecommunication services.

(f) "Service address" means the location of the telecommunication equipment from which the telecommunication is originated or at which the telecommunication is received from the provider of telecommunication services. The foregoing rule is amplified, but not limited, by the following special provisions, which are listed in order of priority of application so that only the first applicable special provision will apply, if more than one potentially applies: (i) if the telecommunication originates or terminates in this state and the service is charged to telecommunication equipment which is not associated with the origination or termination of the telecommunication (for example, by the use of a calling card or third party billing) and the location of such equipment is in this state, the service address of the telecommunication will be deemed to be in this state; (ii) if the service is obtained through the use of a credit or payment mechanism such as a bank, travel, credit or debit card or if the service is obtained by charging telecommunication equipment which is not associated with the origination or termination of the telecommunication (for example, by the use of a calling card or third party billing) and the equipment is not located in the state of origination or termination, then the service address is deemed to be the location of the origination of the telecommunication; and (iii) if the service address is not a defined location, as in the case of mobile telephones, paging systems, maritime systems, air-to-ground systems and the like, service address shall mean the location of the subscriber's primary use of the telecommunication equipment as defined by telephone number, authorization code, or location in this state where bills are sent, provided, however, the location of the mobile telephone switching office or similar facility in this state that receives and transmits the signals of the telecommunication will be deemed the service address where the mobile telephone switching office or similar facility is outside the subscriber's assigned service area.

(g) "Telecommunication services" means telephone or telegraphy, or telephone or telegraph service, including, but not limited to, any transmission of voice, image, data, information and paging, through the use of wire, cable, fiber-optic, laser, microwave, radio wave, satellite or similar media or any combination thereof and shall include services that are ancillary to the provision of telephone service . . . and also include any equipment and services provided therewith. Provided, the definition of telecommunication services shall not apply to separately stated charges for any service which alters the substantive content of the message received by the recipient from that sent.

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2. Imposition. (a) There is hereby imposed an excise tax on the sale of telecommunication services by any person which is a provider of telecommunication services, to be paid by such person, at the rate of . . . two and one-half percent on or after January first, two thousand of gross receipt from: (1) any intrastate telecommunication services . . . (2) an interstate and international telecommunication services (other than interstate and international private telecommunication services . . .) which originate or terminate in this state and which telecommunication services are charged to a service address in this state, regardless of where the amounts charged for such services are billed or ultimately paid; (3) interstate and international private telecommunication services, the gross receipt to which the tax shall apply shall be determined as prescribed in subdivision three of this section, . . .

### **Opinion**

Company X provides nationwide audio-conferencing services. Audio conferencing allows three or more callers from different geographic locations to be connected to the same telephone call. The provision of audio-conferencing services primarily consists of two components, the telephone service that allows the participants to communicate with each other and the bridging equipment that connects three or more participants into the same call. Company X allows its customers to choose the type of service used to connect into its conference bridging equipment. Company X does not appear to sell telecommunication services without selling audio-conferencing services.

Company X's customers may choose to merely purchase bridging service, whereby each participant is individually responsible for the telephone service necessary to connect to the "bridged" conversation (stand-alone bridging service). With stand-alone bridging service, participants pay their own telephone service provider the charges for telephone service to call into the conference bridge and Company X only bills the customer for bridging services on a per-minute, per-participant basis.

Customers may also choose to have Company X not only provide the bridging service but also connect the customer and its participants in a bridged conversation through either Company X's dial-in or dial-out service. While the method of connecting the customer and its participants is slightly different between the dial-in service and dial-out service, for these two options participants pay no telephone service charges to their own service providers when they connect to the conference call, as all charges for the audio conference are billed by Company X to its customer. With the dial-in service and the dial-out service, customers are charged on a per-minute, per-participant basis to cover both components of the audio-conferencing service (i.e., the telephone service and the bridging service) provided by Company X in connecting the customer and its participants in the conference call.

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The taxability of bridging services was addressed by *MCI Communications Corporation and MCI Telecommunications Corporation*, Adv Op Comm T&F, July 14, 1999, TSB-A-99(35)S and (20)C, for corporation and sales tax purposes. MCI Communications Corporation and MCI Telecommunications Corporation (MCIT) provided audio-conferencing services that allowed numerous callers from different locations to participate in the same telephone conversation. When MCIT provided only bridging services, the participants used a telecommunications company other than MCIT for the transmission service to participate in the audio conference and the conference leader paid MCIT only for bridging services. MCIT's charges for bridging services were per-minute charges based on the number of minutes that participants were connected to the audio conference. Each participant was responsible for paying his or her own telecommunication service charges, including all applicable taxes, to a company other than MCIT. The opinion held that MCIT's bridging service did not constitute a telecommunication or telephone service for purposes of sections 186-e.1(g) and was not subject to sales or use tax because it was not an enumerated service under section 1105 of the Tax Law.

Accordingly, Company X's charges to New York customers for bridging services sold on a stand-alone basis where the participants purchase their own telephone services from providers of their own choice are not subject to sales tax regardless of the location of the bridge.

Section 1105(b) of the Tax Law imposes sales tax on sales of telephony and telegraphy and telephone and telegraph service of whatever nature except interstate and international telephony and telegraphy and telephone and telegraph service. Also see section 527.2(a) of the Sales and Use Tax Regulations. In general, the purchaser of tangible personal property or services is liable for sales tax and the tax is required to be collected by the vendor of the property or service. (Section 525.2(a)(4) of the Sales and Use Tax Regulations.) When selling dial-in service or dial-out service to its customers, Company X is providing each customer with the service of connecting the customer and the people the customer wants to talk to in an audio-conference call. Under the provisions of section 1105(b) of the Tax Law and section 527.2(a) of the Sales and Use Tax Regulations, the charges to the customers are subject to sales tax if the charge is for the dial-in service or the dial-out service, and if the service is for intrastate telecommunications.

The location of Company X's bridging equipment, whether such location is within or outside of New York State, does not affect the interstate or intrastate status of the service for sales tax purposes. The charges to customers for dial-in service or dial-out service are considered to be charges for intrastate telephone service when all of the conference call participants are in New York (i.e., all of the dial-in calls originate in New York or all of the dial-out calls terminate in New York.) The calls being connected in such cases all are intrastate telecommunications, irrespective of whether the bridge connecting the calls to the audio conference is within or outside New York. See *Western Union Telegraph Company*, Dec St Tx Comm, February 4, 1983, TSB-H-83(57)S.

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When Company X's per-minute and per-participant charges for dial-in service or dial-out service are for intrastate telephone conferences, the entire charge to the customer for such service is subject to the sales tax imposed under section 1105(b) of the Tax Law. Whether the toll service and bridging service components of these audio-conferencing services are billed on a lump sum basis or the charges for such components are separately stated, the total charges for these audio-conferencing services are subject to sales tax. Although bridging services sold on a stand-alone basis are not taxable, when such services are provided by Company X in connection with dial-in service or dial-out service, the bridging services are a necessary and integral component of the telephone service purchased by the customer. See *Penfold v State Tax Commission*, 114 AD2d 696.

Interstate and international telephone services are not subject to tax under section 1105(b) of the Tax Law. Therefore, charges to customers for interstate telecommunication audio-conferencing services (i.e., some but not all of the conference call participants are located within New York) are not subject to State or local sales tax. Of course, if none of the conference call participants are located in New York, the charges are not subject to New York State or local sales tax.

The tax imposed by section 186-e of the Tax Law is an excise tax on telecommunication services that is imposed on the provider of the service. See section 186-e.2(a) of the Tax Law. The tax is on certain gross receipts from telecommunication services. Following *MCI, supra*, bridging services provided on a stand-alone basis do not constitute telecommunication services for purposes of section 186-e.1(g) of the Tax Law. Accordingly, receipts from bridging services alone (i.e., where toll charges are paid by participants to their own telecommunications providers) are not taxable under section 186-e of the Tax Law, regardless of the location of the bridge.

When Company X provides dial-in services or dial-out services, Company X is a provider of telecommunication services as described under section 186-e.1(g) of the Tax Law. Therefore, Company X is subject to the tax imposed under section 186-e.2(a) of the Tax Law. Section 186-e.1(g) of the Tax Law defines *telecommunication services* to "include any equipment and services provided therewith." Under section 186-e.1(g), the bridging services provided in connection with the dial-in services or dial-out services are included in the definition of telecommunication services. Thus, Company X's total charge for dial-in services or dial-out services constitutes a gross receipt for telecommunication services. This is true whether or not Company X separately states the charges for bridging services.

When selling dial-in service or dial-out service to its customers, Company X is providing each customer with the service of connecting the customer and the people the customer wants to talk to in an audio conference. Thus, the location of the bridging equipment, whether such location is within or outside of New York State, does not affect the intrastate or interstate status

of the telecommunication service for excise tax purposes. Company X's charges to customers for dial-in service or dial-out service are considered to be charges for intrastate telecommunication services when all of the dial-in calls originate in New York or when all of the dial-out calls terminate in New York. The calls being connected in such cases are all intrastate telecommunications, whether the bridge is within or outside New York.

Where Company X's per-minute and per-participant charges for dial-in service and dial-out service are for intrastate telecommunication services, the entire charge to the customer for such audio-conferencing service is subject to the tax imposed under section 186-e.2(a)(1) of the Tax Law.

Interstate telephone service that originates or terminates within New York is subject to the tax imposed under section 186-e of the Tax Law if the service is charged to a service address in New York. See section 186-e.2(a)(2) of the Tax Law. *Service address* generally means the location of the equipment from which the telecommunication is originated or at which the telecommunication is received from the provider of the telecommunication services. See section 186-e.1(f) of the Tax Law. If some but not all of the participants are in New York, when providing dial-in service the telecommunication originates in New York. Therefore, when providing dial-in service, if some but not all of the participants are in New York, and if the service address of Company X's customer (i.e., the conference leader) is located in New York, then the entire charge to the customer is subject to the tax imposed by section 186-e.2(a)(2). If some but not all of the participants are in New York when providing dial-out service, the telecommunication terminates in New York. Therefore, when providing dial-out service, if some but not all of the participants are in New York, and if the service address of the customer (i.e., the conference leader) is located in New York, then the entire charge to the customer is subject to the tax imposed by section 186-e.2(a)(2).

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