

New York State Department of Taxation and Finance
Office of Tax Policy Analysis
Technical Services Division

TSB-A-00(10)C
Corporation Tax
April 21, 2000

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. C000228A

On February 28, 2000, a Petition for Advisory Opinion was received from Metromedia Fiber Network, Inc., c/o Metromedia Company, One Meadowlands Plaza, East Rutherford, New Jersey 07073.

The issue raised by Petitioner, Metromedia Fiber Network, Inc., is how to allocate its receipts from leasing “dark” strands of fiber optic cable for purposes of computing the numerator of the receipts factor of the business allocation percentage under section 210.3(a)(2) of Article 9-A of the Tax Law.

Petitioner submits the following facts as the basis for this Advisory Opinion.

Petitioner is, through its subsidiaries, a facilities-based provider of technologically advanced, high-bandwidth fiber optic communications infrastructure to carrier and corporate/government customers in the United States and Europe.

Petitioner, through its subsidiaries, has installed local intracity networks that as of December 31, 1998, consisted of approximately 160,000 fiber miles (the number of strands of fiber in a length of fiber optic cable multiplied by the length of cable in linear or route miles) covering approximately 400 route miles (the number of linear miles spanned by fiber optic cable calculated without counting more than once physically overlapping segments of cable) in four major metropolitan areas. These four metropolitan areas, New York, Philadelphia, Washington D.C. and Chicago, constitute key telecommunications markets among the 15 largest cities in the United States based on population. Construction is currently underway to expand the existing local intracity networks in these metropolitan areas to bring the total infrastructure in these markets to approximately 357,000 fiber miles covering approximately 846 route or linear miles. Petitioner has also begun constructing networks in the San Francisco and Boston areas.

Within the next two years, Petitioner plans to complete an expansion into five additional markets: Los Angeles, Seattle, Dallas, Houston and Atlanta. It is anticipated that when completed, the total intracity network infrastructure will encompass approximately 810,000 fiber miles covering approximately 1,896 route or linear miles. Also, Petitioner will be able to offer its customers seamless broadband connectivity between its New York and other U.S. networks and London and an expanded presence in Europe featuring a 1,350 route or linear mile fiber optic telecommunications network in Germany.

TSB-A-00(10)C
Corporation Tax
April 21, 2000

Petitioner's customers are generally communications carriers and major corporations who lease "dark" or unlit fiber optic cable strands in order to develop their own communications networks or for secure voice, data or video transmission. Petitioner enters into a contract with each of its customers, and generally charges a flat fee for the use of fiber optic cable strands, without regard to their usage by the customer. In fact, customers who lease fiber strands generally connect their own optronic transmission equipment to the leased fiber and "light" the fiber optic cable strands when needed to meet their needs. Petitioner receives revenue for the leasing of "dark" fiber optic cable strands on both an intrastate and interstate point to point basis. Petitioner does not have any involvement with, or control over, its customers' transmissions. Petitioner does not record or "meter" its customers' usage of the fiber optic cable strands leased, and currently does not have the ability to monitor the origination or destination of its customers' voice, data or video transmissions.

Discussion

Section 210.3(a)(2) of the Tax Law provides that the receipts factor of the business allocation percentage is determined by ascertaining the percentage which the receipts of the taxpayer, arising during such period from sales of its tangible personal property where shipments are made to points within New York State, services performed within New York State, rentals from property situated, and royalties from the use of patents or copyrights, within New York State, receipts from the sales of rights for closed-circuit and cable television transmissions of an event taking place within New York State as a result of the rendition of services by employees of the corporation, as athletes, entertainers or performing artists, and all other business receipts earned within New York State, bear to the total amount of the taxpayer's receipts, arising during such period from all sales of its tangible personal property, services, rentals, royalties, receipts from the sales of rights for closed-circuit and cable television transmissions and all other business transactions, whether within or without New York State.

Section 4-4.4(a) of the Business Corporation Franchise Tax Regulations ("Article 9-A Regulations") provides that "[r]eceipts by the taxpayer from rentals of real and tangible personal property situated in New York State are allocated to New York State. Receipts of rentals by the taxpayer include all amounts received by the taxpayer for the use of or occupation of property"

In this case, Petitioner enters into a contract with each of its customers that lease the use of Petitioner owned "strands" of fiber optic cable for a flat fee for a specific period of time without regard to the customer's use of the strands. The contracts are generally for the use of "dark" or unlit fiber optic cable strands, and it is left to the customer to provide the necessary optronic equipment to transmit voice, data or video over the strands. Petitioner does not have any involvement with, or control over, its customers' transmissions. Petitioner's receipts from such contracts constitute receipts from the rental of tangible personal property.

TSB-A-00(10)C
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April 21, 2000

Pursuant to section 210.3(a)(2) of the Tax Law and section 4-4.4(a) of the Article 9-A Regulations, Petitioner's rental receipts from contracts for the lease of "dark" strands of fiber optic cable are allocated to New York State to the extent that the strands are situated in New York State. Petitioner states that it can determine the location of the strands of fiber optic cable by computing "fiber miles". Fiber miles are the number of strands of fiber in a length of fiber optic cable multiplied by the length of cable in linear or route miles. Route miles are the number of linear miles spanned by fiber optic cable calculated without counting more than once physically overlapping segments of cable. Accordingly, the fiber miles within New York State would be computed by multiplying the number of strands leased pursuant to a contract by the route miles located in New York State. Therefore, the portion of such rental receipts from each contract that is included in the numerator of the receipts factor is determined by multiplying the total rental receipts from the contract by a fraction the numerator of which is the fiber miles within New York State and the denominator of which is the total fiber miles covered in the contract. The denominator of the receipts factor would include the total rental receipts from the contract.

DATED: April 21, 2000

/s/
John W. Bartlett
Deputy Director
Technical Services Division

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