

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

TSB-A-87 (32) C
Corporation Tax
December 15, 1987

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. C870728A

On July 28, 1987, a Petition for Advisory Opinion was received from Fulmont Communications, Inc., 71 Guy Park Avenue, Amsterdam, New York 12010.

The issue raised is whether the gross receipts tax under section 186-a of Article 9 of the Tax Law is imposed on a radio paging service in which telephone service establishes the radio service from a caller to the customer of the radio paging service.

Petitioner owns and operates a radio paging service used primarily by physicians and contractors. In order for a caller to reach Petitioner's subscriber, the caller dials a telephone number assigned to the subscriber. The telephone line is tied into the radio system so that what is spoken into the telephone automatically goes by radio to the subscriber.

Petitioner contends that it is not subject to the gross receipts tax because the service it provides is a radio paging service and that the telephone link-up is only incidental to such service. Prior to the time when the above automatic link-up was installed, callers telephoned a human operator employed by Petitioner who thereupon passed on the message by the radio service.

Petitioner contends further that if it is subject to the gross receipts tax, such tax should be applicable only to that portion of Petitioner's service carried out by telephone, and should not be applicable to the radio portion.

Section 186-a of the Tax Law imposes a tax on the furnishing of utility services. The tax is equal to three percent of the gross income of every utility doing business in New York State which is subject to the supervision of the New York State Department of Public Service and which has an annual gross income in excess of \$500, with certain exceptions not pertinent herein. It also imposes a tax equal to three percent of the gross operating income of every other utility doing business in New York State which has annual gross operating income in excess of \$500.

A utility includes every person (whether or not subject to the supervision of the Department of Public Service) who sells gas, electricity, steam, water, refrigeration, telephony or telegraphy, delivered through mains, pipes or wires, or furnishes gas, electric, steam, water, refrigeration, telephone or telegraph service, by means of mains, pipes, or wires, regardless of whether such activities are the main business of such person or are only incidental thereto.

Radio common carriers utilize radio frequencies assigned to them by the Federal Communications Commission and typically provide two types of message service to the public:

1. Two-way mobile radio service which permits a complete two-way conversation between the mobile subscriber and a party using a telephone or other mobile radio.
2. One-way paging service in which the subscriber carries a pocket size receiver which is activated by a radio wave which may emit a beep (tone only), a beep plus a brief oral message (tone and voice) or a beep followed by a ten-digit number which can be stored in the receiver (digital).

Service is provided to subscribers through the use of transmitters which emit radio waves which are controlled from a terminal facility. Each subscriber is assigned a seven-digit telephone number which, when dialed, activates the subscriber's unit through the wireline telephone network and the radio common carrier's terminal and transmitters.

It is apparent from Petitioner's description of activities, that it is a radio common carrier. Accordingly, Petitioner is subject to the tax imposed by section 186-a of the Tax Law. The amount of tax imposed should be computed upon the gross income of Petitioner derived from service income (air time) only. However, all income attributable to service sold for resale should be excluded from gross income.

DATED: December 15, 1987

s/FRANK J. PUCCIA
Director
Technical Services Bureau

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