

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

TSB-A-96 (6) C  
Corporation Tax  
February 28, 1996

STATE OF NEW YORK  
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. C950913A

On September 13, 1995, a Petition for Advisory Opinion was received from EMI Communication Corp., 5015 Campuswood Drive, E. Syracuse, New York 13057.

The issue raised by Petitioner, EMI Communication Corp., is whether Petitioner's services which are sold to cable television operators and public television stations are excluded from the excise tax imposed under section 186-e of the Tax Law.

Petitioner is a transmission company that sells voice, data and video transmission services to customers in both the public and private sectors. Petitioner owns and operates microwave facilities to perform these services and supplements this with the use of networks and other leased capacity (e.g. satellite capacity).

Among the services sold by Petitioner is the satellite distribution of distant television signals to cable television operators in the northeastern United States and Canada, including cable television operators in New York. The cable television operators, in turn, transmit the television signals to their customers. The cable television operators pay monthly fees to Petitioner for this service based on the number of their customers.

Petitioner also provided, in the past, services to the New York statewide public television network, and may provide similar services again in the future. These services have included the transmission of regularly scheduled public television programs on a daily basis to New York public television stations so the programming could be broadcast publicly. This service by the Petitioner for the public television stations was done primarily by microwave transmission. The public television stations paid fixed monthly fees for this service.

Section 186-e.2(a) of the Tax Law imposes an excise tax "on the sale of telecommunication services by any person which is a provider of telecommunication services .... "

Section 186-e.1(e) of the Tax Law defines "provider of telecommunication services" as "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."

Section 186-e.1(g) of the Tax Law defines "telecommunication services as "telephony 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 .... "

Section 186-e.2(b)(1) and (2) of the Tax Law provides an exemption from the tax imposed under section 186-e of the Tax Law for "sale for resale" and "cable television service" as follows:

(1) Sale for resale exclusion. There shall be excluded from the tax imposed by this section the sale of telecommunication services to a provider of telecommunication services which is an interexchange carrier or a local carrier where such services are purchased by such provider for resale as telecommunication services to its purchasers. For any other sale of telecommunication services resold as such, the credit allowed in [section 186-e.4(a)(1)] shall be allowed.

(2) Cable television service exclusion. The sale of cable television service shall in no event constitute a telecommunications service, and the receipts from the sale of such service are without the scope of the tax imposed by this section. The provision of such service shall mean the transmitting to subscribers of programs broadcast by one or more television or radio stations or any other programs originated by any person by means of wire, cable, microwave or any other means.

The exclusion for cable television service was created to reinforce the New York case and administrative law classification of cable television as a service not included within the classification of telephony or telegraphy. Letter of Commissioner of Taxation and Finance, June 7, 1995, Governor's Bill Jacket, L 1995, ch 2. In New York State Cable Television Association v State Tax Comm (59 AD2d 81, affg 88 Misc 2d 601), the Court analyzed the cable television business for sales tax purposes. The Court concluded that the nature of cable television service was entertainment, not telephony or telegraphy which was characterized as an incidental aspect of the service provided. Cable television was described as:

a system of transmitting the television broadcast signal. The classic cable television system consists of a tall master antenna, trunk lines, feeder lines and drop lines. The antenna receives various broadcast signals which are then processed and prepared for transmission by processing equipment located in a control station at the foot of the tower. At the control station, headend, the signal is brought up to maximum strength and clarity. The processed signal is then transmitted through large coaxial cables (trunk lines) connected to the headend. Branching off the trunk lines are smaller cables known as feeder lines and even smaller cables called drop lines. The processed signal is transmitted through the trunk, feeder and drop lines to the individual subscriber's television set. Subscribers pay an installation charge to have their set hooked to the system, and thereafter pay a monthly service charge. In addition to receiving and transmitting the broadcast signal of another, some cable television companies are originating television programs on their own.

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In the Matter of Capitol Cablevision Systems, Inc., Dec Tax App Trib, June 9, 1988, TSB-D-88(3)C, the Tribunal, relying on the cable television classification analysis contained in New York State Cable Television, supra, concluded that Capital Cablevision's business "is selling television entertainment to its subscribers by packaging television signals which in its judgment represent the best blend of channels and subject matter to achieve its goal of attracting and keeping subscribers. [Capitol Cablevision] originates programming towards this same goal. Transmission is merely the means by which [Capitol Cablevision] conveys its product to its customers, it is not the [capitol Cablevision's] business."

Petitioner is a transmission company that is selling voice, data and video transmission services to its customers which are cable television operators and public television stations. Petitioner owns and operates microwave facilities to perform these services and supplements this with the use of networks and other leased capacity (e.g. satellite capacity.) Accordingly, the services provided by Petitioner constitute telecommunication services as described in section 186-e.1(g) of the Tax Law and Petitioner is a provider of telecommunication services as described in section 186-e.1(e) of the Tax Law.

Based on the analysis in New York State Cable Television, supra, and Capitol Cablevision, supra, Petitioner's activities do not constitute the transmitting of programs to subscribers and Petitioner is not providing television entertainment to its customers. Therefore, Petitioner is not providing cable television service as contemplated in section 186-e.2(b)(2) of the Tax Law. Accordingly, Petitioner's sale of telecommunication services to cable television operators and public television stations is not exempt, as "cable television service" from the excise tax imposed under section 186-e of the Tax Law.

Further, Petitioner's sale of telecommunication services to cable television operators and public television stations is not exempt as a "sale for resale" as contemplated in section 186-e.2(b)(1) of the Tax Law because Petitioner's customers are providing cable television service, not telecommunication services, and, as such, Petitioner's customers are not reselling telecommunication services as required by section 186-e.2(b) (1) of the Tax Law.

DATED: February 28, 1996

s/DORIS S. BAUMAN  
Director  
Technical Services Bureau

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