

New York State Department of Taxation and Finance
Office of Counsel
Advisory Opinion Unit

TSB-A-08(56)S
Sales Tax
September 17, 2008

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S070713A

A petition dated July 9, 2007 requests an advisory opinion about whether Corporation X's purchase of frame relay service is subject to New York State and local sales taxes. We conclude that the frame relay services described in the petition are interstate telecommunication services that are not subject to New York State and local sales tax.

Corporation X purchases frame relay services from a telecommunications carrier. Frame relay service is packet-switched data transmission service that simulates a dedicated high-speed connection between two points. In Corporation X's case, the carrier provides multiple dedicated connections, each of which links one of Corporation X's New York offices to Corporation X's New Jersey data center. Corporation X is a financial services company, and its data center provides off-site storage for financial transaction records. Data can be transmitted over each of the circuits in either direction. The frame relay service does not allow communication between or among Corporation X's multiple New York offices. Data cannot be transmitted from one New York office to another by routing it through the New Jersey data center.

The frame relay circuit includes three main components. The first component is a local loop between one of Corporation X's office locations to the carrier's point of presence (POP) in New York. The second component is a permanent virtual circuit (PVC) between the carrier's POP in New York and its POP in New Jersey. A PVC is a fixed path between two sites that is specifically defined in frame relay routing logic; transmissions between these sites always follow the same path to ensure that the frames will arrive in sequence. The final component is a local loop between the carrier's POP in New Jersey and Corporation X's New Jersey database. All three components are necessary to complete a transmission between Corporation X's office location and its New Jersey database.

The carrier bills separately for each of Corporation X's New York locations and separately states the charges for each component of the frame relay service. The carrier charges a fixed monthly fee for the local loop components. The carrier offers a choice between metered or fixed charges for the PVC component. The carrier collects New York State and local sales tax on the first component of the frame relay service (i.e., the charge for the connection between Company X's location and the carrier's POP in New York).

The frame relay service described in the petition is "telephony and telegraphy . . . of whatever nature" for purposes of sales tax. As relevant here, Tax Law section 1105(b)(1)(B) imposes sales tax on 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 telephone service. "The words 'of whatever nature' indicate a broad construction is to be given to the terms describing the items taxed." Sales and Use Tax Regulation §527.2(a)(2). Tax Law section 1105(b) imposes tax on receipts from "intrastate communication by means of devices employing the principles of telephony and telegraphy." Sales and Use Tax Regulation §527.2(d)(1). The terms "telephony and telegraphy" include the "use or operation of any apparatus for transmission of sound, sound reproduction or coded or other signals." Sales and Use Tax Regulation §527.2(d)(2). Frame relay service is "telephony and

telegraphy” for purposes of sales tax because it enables the transmission of data between two points. The use of packet switching or other digital routing protocols for all or part of the transmission does not change this result.

Nevertheless, the service described in the petition is interstate telecommunication service and is therefore not subject to New York State and local sales tax. In determining whether a service is intrastate or interstate, we consider the origination and termination points of the transmission. See Western Union Telegraph Co., TSB-H-83(57)S. The fact that a segment of the transmission may occur within the state does not render the entire transmission intrastate in nature. See Matter of Southern Pacific Communications Co., (Tax Appeals Tribunal, May 15, 1991). In Corporation X’s case, transmissions either originate at one of its New York offices and terminate at its New Jersey data center, or the reverse. The frame relay service provided to Corporation X does not allow transmission to occur between New York locations. Thus we conclude that the frame relay services described in the petition are interstate in nature. Moreover, sales tax is a transaction tax. The transaction at issue here is Corporation X’s purchase of frame relay service between each of its New York offices and its New Jersey data center. Although the carrier separately states the various segments of the service, one of which occurs between points in New York, the segments are not separately available, and no one segment is useful in isolation. Rather, the frame relay service here is properly viewed as an integrated transaction that enables interstate data transmission. See Matter of Penfold v. State Tax Comm’n, 114 AD2d 696 (3d Dep’t 1985). The separate statement of segments of the transmission by the carrier is merely a breakdown of its cost components to provide the overall service. Accordingly, the frame relay service described in the petition is not subject to New York State and local sales taxes. We caution that the result would be different if the frame relay service enabled transmission between two or more locations in New York, or if transmissions between two New York locations could be routed through the New Jersey data center.

DATED: September 17, 2008

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