

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

TSB-A-88(1)S
Sales Tax
December 9, 1987

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S860911A

On September 11, 1986, a Petition for Advisory Opinion was received from Rochester Telephone Corporation, 100 Midtown Plaza, Rochester, New York 14646.

The issue raised is whether the flat rate End-User Common Line charges ("EUCL") Rochester Telephone Corporation assesses its customers in partial recovery of its costs of providing telephone service in New York are subject to the sales tax imposed by section 1105(b) of the Tax Law.

Petitioner is a local exchange company which provides telecommunication services to all or parts of six counties in Western Central New York State. Petitioner furnishes each of its subscribers with an access line, directly connecting each subscriber's premises with Petitioner's central office. Through this access line, passes all of a subscriber's local and intrastate and interstate toll messages. Petitioner provides local exchange telephone service and limited toll service within its franchised service territory.

As part of the basic telephone service, Petitioner provides to all of its subscribers a dial tone which gives such subscribers the ability to originate and receive local telephone calls and toll calls across the state and across the nation. When, for instance, a subscriber makes a long-distance intrastate call, the transmission passes over the subscriber's access line, through Petitioner's central office facilities, to the point of interconnection in New York with an interexchange carrier. The interexchange carrier would transmit the call to the appropriate local exchange telephone company, whereupon such local exchange company would route the call over its facilities to the access line of the called party. In the case of a long distance interstate call, the transmission is accomplished in the same manner except that a different interexchange or local carrier is involved in completing the call.

Like a subscriber's individual access line, Petitioner's central office facilities are used in the provision of local and intrastate and interstate toll calling. Interstate investment devoted to interstate calling is determined through an accounting procedure termed "Separations". 47 C.F.R. 67. Separations is "The process by which telephone property, costs, revenues, expenses, taxes and other revenues are apportioned among operations." 47 C.F.R. 67.701.

Petitioner stated that the FCC has fashioned a system of "Access Charges" to compensate local exchange companies for their participation in the origination and termination of interstate toll calling. The FCC has mandated that local exchange companies, such as Petitioner, recover some of its costs in providing interstate access service through charges levied on both its end-user subscribers, as well as on interexchange carriers which use Petitioner's facilities for the origination and/or termination of interstate calls made by the customers of such interexchange carriers.

Pursuant to the FCC's Access Charge plan, local exchange telephone companies have submitted tariffs for filing with the FCC designed to recover from their subscribers some of the accounting separated costs of providing service with respect to interstate calling. A portion of Petitioner's separated costs are assessed on a per minute of use basis against interexchange carriers which incorporate these charges into their tariffed rates for interstate service. The balance of Petitioner's separated costs are recovered by assessing all of their subscribers a flat fee, the EUCL charge. Thus, this accounting separated cost is born by the local subscriber and paid as part of the monthly charges for basic telephone service.

An example of the accounting nature of cost separation is shown by the following federal regulation with respect to a purely local activity.

(a) If end user common line charges for intrastate toll access are assessed in a particular state, one-half of the end user common line access charge billing expense shall be apportioned to the interstate operations. If no end user common line charge is assessed for intrastate toll access, all of the end user common line access charge billing expense shall be assigned to interstate operations. (47 C.F.R. 67.385)

The EUCL charges are billed to each subscriber whether or not the subscriber makes or receives any long-distance interstate telephone calls and regardless of how many such calls may be made. Thus, the charge is not transactionally based. Furthermore, the service of providing its subscribers with the ability to access petitioner's central office in New York and there connect with an interstate carrier is local in that the Petitioner and the subscriber are both located in the Rochester area.

Section 1105(b) of the Tax Law imposes a tax on "the receipts from every sale . . . 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 1101(b)(3) defines receipt as "the amount of the sale price of any property and the charge for any service taxable under this article . . . without any deductions for expenses . . .".

The effect of §1101(b)(3) of the Tax Law is to treat as a single sale any sale in which any of the components cannot be singly purchased. Thus, even though the components of a particular sale can be separately stated, calculated or estimated, if they cannot be separately purchased, the combination of the items listed must be considered as one. Penfold v. State Tax Commission, 114 AD 2d 696 (1985). Because Petitioner's subscribers simply cannot purchase local service without also receiving the ability to access long-distance services, it must be concluded that EUCL charges are nothing more than an adjunct or component of the charges for local service. This access service is part and parcel of basic telephone service supplied by petitioner to its customers.

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Moreover, it is also clear that section 1101(b)(3) does not permit Petitioner to subtract out its costs of providing services when calculating taxable receipts from the provision of basic telephone service.

The EUCL charges are billed to each subscriber without regard to the actual long-distance interstate calls, if any, made by each subscriber. Although charged pursuant to an FCC tariff, the EUCL charges are nothing more than an accounting procedure used in an attempt to segregate and calculate from its basic charge, an item of expense incurred by Petitioner in providing each of its subscribers with access to an interstate long-distance carrier. The EUCL charges do not necessarily represent actual expenses incurred by Petitioner to provide interstate access to a particular subscriber nor is the activity represented by such charges any more interstate than any other component of the charges for basic telephone service.

Accordingly, it must be concluded that the access charge is a part of the basic service and thus subject to the sales tax imposed under §1105(b) of the Tax Law.

DATED: December 9, 1987

s/FRANK J. PUCCIA
Director
Technical Services Bureau

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