

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

TSB-A-91 (71)S
Sales Tax
November 12, 1991

STATE OF NEW YORK

COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S890519B

On May 19, 1989 a Petition for Advisory Opinion was received from MCI Telecommunications Corp., MCI International Telecommunications Corp., RCA Global Communications, Inc., and Western Union International, Inc., 1133 19th Street, N.W., Washington, D.C. 20036.

The issue raised by Petitioners, MCI Telecommunications Corp., MCI International Telecommunications Corp., RCA Global Communications, Inc., and Western Union International, Inc., (hereinafter together referred to as MCI), is which of the telecommunications assets enumerated below are exempt from New York State and Local Sales and Use Tax pursuant to the provisions of Section 1115(a)(12) of the Tax Law when purchased by MCI Telecommunications Corporation (MCIT), MCI International Telecommunications Corp. (MCIIT), RCA Global Communications, Inc. (RCA) or Western Union International, Inc. (WUIC):

- Antenna Systems
- Multiplex Equipment
- Termination Equipment
- Switch Equipment
- Radio Equipment
- Fiber Optic Electronics Equipment
- Satellite Equipment
- Digital Cross Connect Equipment
- Power Equipment
- Fault Alarm Equipment
- Customer Premise Equipment

MCIT, MCIIT, RCA and WUIC are corporations subject to the New York State and local sales and compensating use tax on their purchases of tangible personal property and taxable services imposed by sections 1105 and 1110 of the Tax Law.

MCIT is a specialized common carrier engaged in the business of providing long distance intrastate telecommunication services in New York State. Additionally, MCIT provides interstate and international telecommunication services to its customers in New York State. These services are provided through the use of microwave transmission, fiber optic cable, undersea cables, earth stations and satellite equipment. MCIT is subject to the regulation of the Federal Communications Commission (the "FCC"), the Public Service Commission of New York State and various other public service commissions of other states.

MCIIT provides international voice and data transmission between the United States and foreign destinations.

RCA and WUIC are federally licensed and regulated common carriers engaged in furnishing telex and other voice and data communication services to their customers located in New York State and elsewhere.

In the course of doing business, Petitioners purchase telecommunications property which is subject to New York State sales or compensating use tax except in those instances where the purchases are eligible for the sales and use tax exemption provided under Section 1115(a)(12) of the Tax Law.

Petitioners purchase certain telecommunication assets consisting of the following:

Antenna Systems which are devices used for transmitting and/or receiving electromagnetic waves used to transmit and/or receive microwave radio signals between originating and terminating terminals via repeater and junction sites.

Antennas which are used to propagate or receive radio signals and may be located at terminals, junctions or other sites (including customer locations) and may be mounted on towers or other supports.

Multiplex Equipment which serves the function of combining a number of individual channels for transmission over a common path.

Termination Equipment which is circuit distribution equipment that provides the interface between the MCI equipment and the facilities of the local telephone company.

Switch Equipment which is electronic equipment used to route incoming circuits (calls) to their desired destination on an outgoing circuit without interruption of the incoming and outgoing calls. Equipment which opens or closes circuits, changes operating parameters, or selects paths or circuits, either on a space or time division basis is included in the switch equipment category. Switch equipment routes the incoming circuits and electrical signals to the multiplex equipment.

Radio Equipment which consists of an electronic device which radiates electromagnetic waves through space. Each radio has both a receiver and transmitter side which corresponds to the receiving and transmitting antennas.

Fiber Optic Electronics Equipment which is computer based equipment which is integrated with the switching of telephone communications when a fiber optic transmission medium is involved.

Satellite Equipment which consists of earth stations which contain telemetry receiving equipment and antenna monitoring control systems, satellite radio equipment such as baseband distribution bays which demodulate the signal and patch data between systems and synchronization, encryption, monitoring and power equipment.

Digital Cross Connect Equipment which is computer based equipment that rearranges or groups through cross connection different high and low speed channels. Experts describe it as functioning as a slow switch or as a multiplex with characteristics common to both switch and multiplex.

Power Equipment which includes both primary and auxiliary power generators and associated equipment is used to provide the normal uninterrupted power source to operate the electronic central office and station apparatus equipment, including batteries (with associated battery chargers), used to provide a primary and/or backup power source for the transmission sites. Power equipment is directly related to and necessary for the uninterrupted operation of switching, operator system, central office transmission and radio and circuit equipment.

Fault Alarm Equipment which is electronic equipment that continuously monitors the computer switching and other electronic equipment signals for circuit and/or system problems that cause failure or disruption of the communication transmission network.

Customer Premise Equipment which is located at the business location of the customer and can include switch, multiplex, fiber optic electronic, power or antenna systems or station apparatus depending upon the characteristics of the service provided and the needs of the customer.

Petitioners' equipment has been installed at central terminal sites, junction sites and at repeater sites. The equipment installed at Petitioners' central terminal sites performs the same functions as equipment found at a traditional telephone central office. Likewise, equipment installed at Petitioners' junction sites also performs in a like manner in that such equipment perform a switching, initiating or receiving at destination function. The equipment installed at Petitioners' repeater sites merely functions as a conduit for the purpose of receiving incoming signals and transmitting them on to another site without performing the functions of switching, initiating or receiving at destination.

Section 1105 of the Tax Law states, in part:

Imposition of sales tax.--. . .there is hereby imposed and there shall be paid a tax. . .upon:

(a) The receipts from every retail sale of tangible personal property, except as otherwise provided in this article.

Section 1110 of the Tax Law states, in part:

Imposition of compensating use tax.--Except to the extent that property or services have already been or will be subject to the sales tax under this article, there is hereby imposed on every person a use tax for the use within this state. . .except as otherwise exempted under this article, (A) of any tangible personal property purchased at retail. . . .

Section 1115 of the Tax Law states, in relevant part:

(a) Receipts from the following shall be exempt from the tax on retail sales imposed under subdivision (a) of section eleven hundred five and the compensating use tax imposed under section eleven hundred ten:

(12). . . telephone central office equipment or station apparatus or comparable telegraph equipment for use directly and predominantly in receiving at destination or initiating and switching telephone or telegraph communication, but not including parts with a useful life of one year or less or tools or supplies used in connection with such machinery, equipment or apparatus. . . .

Section 528.13 of the Sales and Use Tax Regulations states, in relevant part:

(a) Exemption.

(1) An exemption is allowed from the tax imposed under section 1105(a) of the Tax Law, and from the compensating use tax imposed under section 1110 of the Tax Law, for receipts from sales of:

* * *

(ii) telephone central office equipment or station apparatus or comparable telegraph equipment for use directly and predominantly in receiving at destination or initiating and switching telephone or telegraph communication.

* * *

(f) Telephone and telegraph equipment.

(1) Telephone and telegraph central office equipment and station apparatus, used directly and predominantly in receiving at destination, initiating or switching telephone and telegraph communication is exempt, when such equipment and apparatus is purchased or leased by the vendor of such service for sale.

* * *

Example 1: A telephone company purchases switchboards and handsets for installation at a subscriber's premises. Such purchases are exempt.

* * *

(3) The exemption does not apply to other equipment used in conjunction with telephone and telegraph communication, such as testing equipment.

Example 3: A telephone company purchases devices which are installed on relay racks and are used to test two-way trunk transmission level. These devices are not exempt as they neither initiate, receive or switch communication.

In order for the purchases of telephone communication assets to qualify for the tax exemption provided under Section 1115(a)(12) of the Tax Law and Section 528.13 of the Sales and Use Tax Regulations such assets must meet the statutory tests of being classified as either central office equipment or station apparatus and of being used both directly and predominantly in performing the function of receiving telephone communication at its destination, of initiating telephone communication or of switching telephone communication.

The functions of initiating telephone communication and receiving telephone communication at its destination is generally performed by certain station apparatus.

The function of switching telephone communication is generally performed by central office equipment.

The equipment installed at Petitioners' junction sites which directly and predominantly (more than 50%) performs a switching, initiating or receiving at destination function is considered to perform a central office function and falls within the sales tax exemption provided under Section 1115(a)(12) of the Tax Law. However, as the equipment installed at the repeater sites does not perform a central office function, such equipment does not qualify for the exemption provided under Section 1115(a)(12).

Accordingly, under the provisions of Section 1115(a)(12) of the Tax Law and Section 528.13 of the Sales and Use Tax Regulations, Petitioners' purchases of the following telecommunications assets which Petitioner has stated are used directly and predominantly to perform a switching, initiating or receiving at destination function are exempt from all sales and use taxes provided such assets are installed at a central terminal site, at a junction site or on a customers' premises.

- Antenna System
- Multiplex Equipment
- Termination Equipment
- Switch Equipment
- Radio Equipment
- Digital Cross Connect Equipment
- Customer Premises Equipment
- Satellite Equipment
- Fiber Optic Electronics Equipment
- Fault Alarm Equipment (if hard wired to exempt central terminal site equipment or to exempt junction site equipment which performs central site functions and if used predominantly for testing equipment.)
- Test Equipment (frame mounted and hard-wired to exempt central terminal site equipment)

Test Tools (Hand held - used on exempt central terminal site equipment)

Whereas the following assets do not directly and predominantly perform any of the functions of switching, initiating or receiving at destination, purchases of such assets will not qualify for the exemption provided under Section 1115(a)(12) of the Tax Law but will be subject to the applicable state and local sales tax regardless of where installed:

- Power Equipment
- Portable Test Equipment
- Test Tools (Hand-held - used on equipment other than exempt Central Terminal Site Equipment)
- Furniture/Fixtures/Office Equipment
- Service Quality Equipment and Applicable Backup Equipment (including Fault Alarm Equipment where predominant use is to monitor the quality of the telephone service being provided as opposed to the monitoring of equipment to insure that such equipment is functioning properly)
- Main Billing System Machinery and Equipment and applicable Back Up System or any other machinery or equipment for use in recording information for billing purposes such as identifying telephone from where call originates, destination of call, length of call and applicable charges therefor.

It is noted that purchases of those assets which are exempt from all sales and use taxes by virtue of being installed at a central terminal site, at a junction site or on a customer's premises and used to perform a switching function or a receiving at destination or initiation function, respectively, will not qualify for the exemption provided under Section 1115(a)(12) when installed at a repeater site.

It is also noted that in any instance where Petitioner purchases an asset which will perform both taxable and exempt functions, the predominant (more than 50%) use of such asset will determine the sales tax status of such purchase.

When Petitioner purchases telecommunication assets which qualify for the tax exemption provided under Section 1115(a)(12) of the Tax Law and Section 528.13 of the Regulations, Petitioner may make such purchases tax exempt provided Petitioner furnishes the supplier a properly completed Form ST-121, Exempt Use Certificate.

DATED: November 12, 1991

s/PAUL B. COBURN
Deputy Director
Taxpayer Services Division

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