

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

TSB-A-99(30)S
Sales Tax
May 21, 1999

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S980325A

On March 25, 1998, the Department of Taxation and Finance received a Petition for Advisory Opinion from Frontier Confer Tech, Inc., 12110 N. Pecos Street, Westminister, Colorado 80234.

The issue raised by Petitioner, Frontier Confer Tech Inc., is whether its receipts from the service of audio conferencing is subject to sales tax.

Petitioner submits the following facts as the basis for this Advisory Opinion.

Petitioner provides conferencing management services to customers engaging in simple or complex audio conferencing. In simple audio conferencing, as few as three geographically dispersed individuals participate in a conference call, and in complex conferences there may be thousands of participants. When required by law, the customers of Petitioner are charged sales taxes by the telephone companies for transmitting local and long distance telephone calls. Petitioner does not supply transmission services and is not subject to the supervision of the Public Service Commission of New York. Rather, Petitioner furnishes conference management services.

Conference calls can be placed directly without the services of a company like Petitioner. For example, two people in one office can participate in a conference call on a speaker phone with a third person at a different location. Similarly, instead of two people, ten people at one location can use a sophisticated speaker phone to speak with another person at a different location. Finally, a person with two telephone lines can call one person, place that person on hold, call a third person on the second line and press one or more buttons on the initiator's telephone. In the last example, the person initiating the conference spends time in setting up the conference. In the second example, the sophisticated speaker phone controls audio quality ensuring that the volume is effectively regulated. Petitioner's services represent a more elaborate type of management and quality control than described in those two examples. Petitioner supplies voice quality monitoring services to be sure that all participants can be heard at the same volume level and that echo and background noise are eliminated. This function is similar to that performed by the sophisticated speaker phone in the second example. Petitioner will also set up and manage the conference as more fully described below, much like the initiator of the conference in the last example.

Petitioner's resources consist of its reservation and conference administration personnel and its hardware and software. The reservation staff receive the customer's requests for the date, time and anticipated duration of a conference, and the number of participants. Generally the conference

TSB-A-99(30)S
Sales Tax
May 21, 1999

administration personnel receive the calls of each participant, obtain their names and the identification number of the particular conference, place the participants on hold until the conference, and if requested, will take a roll call of the participants. The conference administrator will also attempt to add on additional participants if requested to do so during the call. Petitioner's hardware consists of bridge equipment and computers. Bridge equipment performs the function of the sophisticated speaker phone, controlling the quality and volume of the call, and is used when there is a substantial number of participants. Bridge equipment does not change the form, content or composition of the communication. Large companies with a significant volume of audio conferencing often purchase their own bridge equipment. The computers and software developed by Petitioner provide the guidance and control input for the operation of the bridge equipment.

Petitioner's customers buy the one service of audio conference management and pay a fee that is based on the management and bridge time reserved by the customer. The charge is calculated on the number of minutes reserved multiplied by the number of participants and this charge is billed even if the audio conference is canceled. The conference management fee is charged on a cancellation since Petitioner's resources (personnel and bridge time) have been committed. There is also an increase in those charges for requesting Petitioner's administrators to add extra persons to the scheduled audio conference.

Applicable Law and Regulations

Section 1105(b) of the Tax Law imposes a tax upon:

The receipts from every sale, other than for resale, of gas, electricity, refrigeration and steam, and gas, electric, refrigeration and steam service of whatever nature, and from every sale, other than for resale, of telephony and telegraphy and telephone and telegraph service of whatever nature except interstate and international telephony and telegraphy and telephone and telegraph service and from every sale, other than sales for resale, of a telephone answering service.

Section 527.2(d) of the Sales and Use Tax Regulations provides, in part:

Telephone and telegraphy; and telephone and telegraph service. (1) The provisions of section 1105(b) of the Tax Law with respect to telephony and telegraphy and telephone and telegraph service impose a tax on receipts from intrastate communication by means of devices employing the principles of telephony and telegraphy.

(2) The term *telephony and telegraphy* includes use or operation of any apparatus for transmission of sound, sound reproduction or coded or other signals.

TSB-A-99(30)S
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Opinion

Petitioner's audio conferencing service is not a telephone or telegraph service for purposes of Section 1105(b) of the Tax Law and Section 527.2(d) of the Sales and Use Tax Regulations. Petitioner is providing a conference management service that is not one of the enumerated services subject to tax under Section 1105 of the Tax Law. Accordingly, Petitioner is not required to collect sales tax on the sale of this service.

DATED: May 21, 1999

/s/
John W. Bartlett
Deputy Director
Technical Services Bureau

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