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1981 Legislation

Allocation of Gross Earnings by Telephone and Telegraph Corporations Subject to Tax Under Section 184 of the Tax Law

Chapter 486 of the Laws of 1981 provides that the gross earnings of telephone and telegraph corporations shall be allocated within and without New York State. The provisions of Chapter 486 of the Laws of 1981 are effective for all taxable periods beginning on or after January 1, 1981. This memorandum explains the allocation of gross earnings of telephone and telegraph corporations from transmission services. Non-operating revenues of telephone and telegraph corporations are treated separately.

Gross Earnings. For purposes of section 184 of the Tax Law, gross earnings of telephone or telegraph corporations from transmission services means gross operating revenues from New York State intrastate transmission services and the portion of its gross operating revenues from interstate and/or foreign transmission services attributable to New York State. For example, under section 184, gross operating revenues of telephone corporations from transmission services that are taken into account for the formulation of the section 184 base include all operating revenues, such as Local Service Revenues (including subscribers' station revenues, public telephone revenues, service station, local private line services, and other local service revenues), Toll Service Revenues (including message tolls, wide area toll services, toll private line services and other toll service revenues) and Miscellaneous Revenues (such as telegraph commissions, directory advertising and sales, rent revenues, revenues from general services and licenses and other operating revenues not provided for elsewhere).

Gross Operating Revenue from Interastate Transmission Services. All gross operating revenues which are derived from intrastate transmission services shall be included in the tax base under section 184 of the Tax Law; 100% of all gross operating revenues from activities wholly within New York State are included in the tax base. The amount reported for this item of New York State activities will therefore normally conform to the amounts reported to the New York State Public Service Commission as that portion of gross operating revenues derived by the telephone and telegraph corporation from activities wholly within New York State.

Gross Operating Revenue from Interstate and Foreign Transmission Services. This paragraph sets forth the nonelective rules in arriving at the New York portion of gross operating revenues from activities with respect to interstate and foreign (other than wholly New York) transmission services. Such nonelective rules which apply to the allocation to New York of total gross operating revenues from such activity are (1) "the Allocation by Accounting Rule" and (2) "Allocation by Property Rule". If, with respect to the total operating revenues of the taxpayer from interstate and foreign transmission services, the books of the taxpayer, kept in accordance with regulatory requirements, reflect the amount of such total attributable to New York, the taxpayer must allocate such total revenues to New York in accordance the allocation used for regulatory purposes--Allocation by Accounting must be used. In those instances where such books of a taxpayer, with respect to a particular item or items of gross operating revenues from interstate and foreign transmission services, do not reflect the New York State allocation, such item or items shall then be allocated separately by the allocation by property rule.

Allocation by Accounting. Where the taxpayer employs a Uniform System of Accounts, as prescribed for Federal or State regulatory purposes, and, pursuant thereto, separation may be determined of the portion of its gross operating revenues attributable to the State of New York with respect to interstate and/or foreign transmission services, such taxpayer must report as gross operating revenues from interstate and foreign transmission services, all gross operating revenues from such services attributable to New York as reflected in all such required accounts (and prescribed documentation relating thereto). In regard to those telephone and telegraph corporations which are subject to the jurisdiction of the New York State Public Service Commission, the section 184 tax base shall include the total of the amounts of gross operating revenues reported to the New York State Public Service Commission as gross operating revenues derived from interstate and/or foreign transmission activities and attributable to New York State.

Allocation by Property. A telephone or telegraph corporation which is required to allocate items of gross operating revenues from interstate and foreign transmission services by the Allocation by Property rule shall total, worldwide, all items of gross operating revenues from interstate and foreign transmission services to which the allocation by accounting rule can not feasibly be applied and multiply such worldwide total by a fraction, the numerator of which is the average value of the taxpayer's real property, tangible personal property and intangible assets within New York State and the denominator of which is the average value of such property and assets within and without New York State. Provided, however, only that property or those assets of the taxpayer used in connection with interstate and/or foreign transmission services, as the case may be, shall be taken into account in calculating the above fraction.

(a) For the purposes of the Allocation by Property Rule, value shall mean the cost of such property or assets without allowance for depreciation or amortization. Real property and tangible personal property shall include real property and tangible personal property owned by the taxpayer and real property and tangible personal property rented to the taxpayer. The average value of real property and tangible personal property rented to the taxpayer is determined by multiplying rent payable during the period covered by the report, by eight. The average value of intangible assets will be computed and included in the allocation formula at cost. Intangible assets included in the allocation formula would include such assets as patents, franchises and copyrights.

(b) Real property and tangible personal property shall be deemed to be within or without New York State on the basis of the location of the real property and tangible personal property owned or rented. Intangible assets shall be deemed to be within or without New York State by allocating such intangible assets to the commercial domicile of the taxpayer.

(c) After determining the cost of real property and tangible personal property and the cost of intangible assets, the average value of such property and assets will be computed on a quarterly basis, or at the option of the taxpayer, on a more frequent basis such as monthly, weekly or daily.

Gross Earnings Other Than Gross Operating Revenues. Gross earnings of telephone & telegraph corporations other than gross operating revenues from transmission services, such as dividend income and interest income, shall be allocated to New York State in accordance with the rules and guidelines set forth by the State Tax Commission in The Matter of American Telephone and Telegraph Co.
(11/13/81); The Matter of RCA Global Communications Inc.,
(11/13/81); and The Matter of ITT World Communications, Inc.,
(11/13/81).