

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

TSB-A-10(10)C
Corporation Tax
August 19, 2010

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. C100409B

The petition asks whether Petitioner is subject to corporate franchise taxation imposed by section 184 of the Tax Law. We conclude that it is not.

Facts

Petitioner is a provider of one-way and two-way paging using its nationwide radio networks, independent from the Public Switched Telephone Network (PSTN). Petitioner's customers use one-way numeric display and both one-way and two-way paging devices with text display. Two-way devices feature full keypads. The services can be used to receive messages and two-way devices are capable of initiating text messages. The two-way service is often used within organizations (such as medical, business or government entities), and allows direct, near real-time, two-way text communications among users within that organization. This aspect of the service is provided entirely over Petitioner's Commercial Mobile Radio Service (CMRS) network, and does not use the PSTN. The service can also be used to receive inbound pages from persons outside the organization. The inbound pages are received from users of the internet and the PSTN at one of Petitioner's paging terminals. All of Petitioner's PSTN interconnection arrangements with its paging terminals support inbound call termination only; the paging terminal is incapable of initiating any outbound calls. Once a message is received by the paging terminal, the PSTN user's call is terminated, and, a DATA transmission is initiated between the paging terminal and the recipient's paging device over Petitioner's CMRS network. The paging devices do not allow voice communications and do not allow the user to call a phone number associated with the PSTN. Petitioner's paging devices are not capable of dialing a phone number, including 911.

Petitioner's paging services are licensed and regulated by the Federal Communications Commission on an almost exclusively interstate basis. The FCC licenses governing these paging services are predominantly nationwide, regional or for a major economic area. Petitioner describes these "MEAs" as roughly equivalent in size to a county-wide license. According to Petitioner, none of the FCC service area channels are confined within any one local access and transport area ("LATA"). Petitioner also submits that an operational review of average traffic patterns of Petitioner's customers who have billing addresses in New York State concludes that less than seven percent of Petitioner's paging traffic originates and terminates within New York State.

Analysis

As relevant here, section 184.1 of the Tax Law provides that a corporation is subject to the franchise tax under Section 184 for the privilege of exercising its corporate franchise, doing business, employing capital, owning or leasing property in a corporate or organized capacity or maintaining an office, in New York State, if it is formed for or principally engaged in local telephone business. A corporation is "principally engaged" in the activity from which more than 50 percent of its receipts are derived. *See, e.g., Marken Properties, Inc.*, TSB-A-97(37)S. The term "local telephone business" means the provision or furnishing of telecommunication services for hire where the service furnished by the provider consists of carrier access service or the service originates and terminates within the same LATA.

The term "telecommunication services" has the same meaning for purposes of section 184 as for section 186-e of the Tax Law. Section 186-e.1(g) of the Tax Law defines "telecommunication services" as "telephony or telegraphy, or telephone or telegraph service, including, but not limited to, any transmission of voice, image, data, information and paging, through the use of wire, cable, fiber-optic, laser, microwave, radio wave, satellite or similar media or any combination thereof and shall include services that are ancillary to the provision of telephone service ... and also include any equipment and services provided therewith."

LATAs are the local geographical areas in the U.S. within which a local telephone company may offer telecommunications services of local telephone service networks. LATAs were established pursuant to the Modification of Final Judgment in *U.S. v. Western Electric Co.* (552 F.Supp. 131 (DDC 1982)) for the purpose of regulating wire line telecommunications service providers. The LATA boundaries determine which phone companies can provide local and toll service for each area.

The paging service Petitioner provides is a telecommunication service. However, it is not carrier access service. Carrier access service generally is service provided to long distance carriers to connect to the local networks at each end of a long distance transmission to complete a call. Petitioner's service does not provide other carriers with access to its network, nor is it used by the other carriers to complete a transmission to the other carrier's customers.

The remaining issue here is whether Petitioner is principally engaged in paging services that originate and terminate within the same LATA. The FCC licenses governing these paging services are predominantly nationwide, regional or for a major economic area. Petitioner describes these "MEAs" as roughly equivalent in size to a county-wide license. According to Petitioner, none of the FCC service area channels are confined within any one LATA. Less than seven percent of Petitioner's paging traffic originates and terminates within New York State. Even if a portion of the paging services is intra-LATA, Petitioner is not "principally engaged" in intra-LATA paging activities because less than 50 percent of its receipts is derived from these activities.

Petitioner is not principally engaged in local telephone business, because Petitioner is not principally engaged in carrier access service and/or intra-LATA service. Accordingly, Petitioner is not subject to tax imposed by Tax Law section 184.

DATED: August 19, 2010

/S/

Jonathan Pessen
Director of Advisory Opinions
Office of Counsel

NOTE: An Advisory Opinion is issued at the request of a person or entity. It is limited to the facts set forth therein and is binding on the Department only with respect to the person or entity to whom it is issued and only if the person or entity fully and accurately describes all relevant facts. An Advisory Opinion is based on the law, regulations, and Department policies in effect as of the date the Opinion is issued or for the specific time period at issue in the Opinion.