

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

TSB-A-15(1)C
Corporation Tax
March 23, 2015

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. C121210A

The Department of Taxation and Finance received a Petition for Advisory Opinion from [REDACTED] “Petitioner”. Petitioner asks whether it is subject to franchise tax under Tax Law § 184 when it sells Internet access service alone or bundled with voice transmission.

We conclude that Petitioner is not subject to the § 184 tax because Petitioner’s primary revenue source for its services is not from the operation of a local telephone business.

Facts

Petitioner provides internet access to customers located in the United States. The Internet access is delivered to customers through various types of lines, including T1, DSL, ADSL, and MPILS. Petitioner provides Internet access service to end users, who are the final consumers of the service, and to other Internet access service providers who resell the Internet access to end users. Petitioner occasionally sells Internet access together with standard Voice over Internet Protocol (VoIP) service for a single bundled charge. Petitioner estimates that over 80% of the bundled charge is for Internet access. Petitioner also provides in New York a non-VoIP telephone service that is a local telephone service. Approximately 30% of Petitioner’s receipts come from this local telephone service.

Analysis

Tax Law § 184.1 provides that a corporation subject to tax under Tax Law § 183 is subject to the additional franchise tax under § 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 the conduct of a local telephone business. The term “local telephone business” means the provision or furnishing of telecommunication services for hire wherein the service furnished by the provider thereof consists of carrier access service or the service originates and terminates within the same local access and transport area (“LATA”). A LATA is that geographic area as established and approved, and as so set and in existence on July first, nineteen hundred ninety-four, pursuant to the modification of final judgment in *United States v. Western Electric Company* (civil action no. 82-0192) in the United States district court for the District of Columbia or within the LATA-like Rochester non-associated independent area. *See* Tax Law § 184.1.

The provision of Internet access service does not constitute the carrying on of a telephone, local telephone, telegraph, or transmission business for purposes of the taxes imposed under Article 9 of the Tax Law, including the § 184 tax. Tax Law § 179, which was enacted in 1998, codified The Tax Department's policy that Internet access service does not constitute the carrying on of a telephone, local telephone, telegraph, or transmission business for purposes of the taxes imposed under Article 9. *See* TSB-M-97(1)C. Therefore, Petitioner's sales of Internet access service to end users or resellers of services are not telephone, telegraph, or transmission service for purposes of § 184.

While Petitioner's bundled service of Internet access and voice has a transmission component, the VoIP component of the service is only 20% of the total service. A corporation is deemed to be principally engaged in the activity from which more than 50% of its receipts are derived. *See*, TSB-A-97(37)C. Because Petitioner's Internet access service is Petitioner's principal business activity, Petitioner is not subject to the § 184 tax.

DATED: March 23, 2015

/S/

DEBORAH R. LIEBMAN
Deputy 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. The information provided in this document does not cover every situation and is not intended to replace the law or change its meaning.