

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

TSB-A-99(35)S
Sales Tax
TSB-A-99(20)C
Corporation Tax
July 14, 1999

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. Z980319A

On March 19, 1998, a Petition for Advisory Opinion was received from MCI Communications Corporation ("MCI") and MCI Telecommunications Corporation ("MCIT"), 1133 19th Street, NW, Washington, D.C. 20036.

The issues raised by Petitioners are the applicability of sales tax and gross receipts tax to MCIT's bridging services. The specific questions are:

(1) Whether MCIT's charges for bridging services provided for audio conferences are subject to New York sales tax where a telecommunications company other than MCIT provides the transmission.

(2) If MCIT's bridging services are determined to be taxable telephone services under New York's sales tax, under what circumstances are these services taxable?

(3) Whether MCIT's charges for bridging services provided for audio conferences are subject to New York State's gross receipts taxes under sections 186-e and 186-a of the Tax Law on utilities and telecommunication service providers where a telecommunications company other than MCIT provides the transmission.

Petitioners submit the following facts as the basis for this Advisory Opinion.

MCI is a corporation organized under the laws of Delaware, with its principal officers located in Washington, D.C. MCIT is a wholly owned operating subsidiary of MCI.

MCIT provides audio conferencing services that allow numerous callers to participate in the same telephone conversation from different geographic locations. In order to receive audio conferencing services, a customer (conference leader) calls MCIT to reserve a specified date, time and duration for an audio conference. MCIT provides the conference leader with a telephone number and a call-specific numeric passcode for participants to use in order to take part in an audio conference.

In some instances, MCIT provides participants with both the underlying transmission and bridging services. In other instances, MCIT provides only bridging services. This advisory opinion is limited to the instances when MCIT provides only bridging services. When MCIT provides only

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bridging services, the participants use a telecommunications company other than MCIT (e.g., Bell Atlantic, AT&T, Sprint) for the transmission service to participate in an audio conference and the conference leader is only paying MCIT for "bridging services".

Bridging services include much more than merely using MCIT's bridges to link participants together on the same audio conference. There are many elements of the service that are provided by MCIT employees such as:

- (1) reserving a bridge for a conference leader for a scheduled time, duration and number of participants;
- (2) providing the conference leader with a telephone number in order to reach an MCIT bridge and a conference-specific passcode;
- (3) programming the appropriate bridge to verify each participant's passcode at the proper date and time;
- (4) providing assistance if a participant enters an incorrect passcode or calls in at a time other than the scheduled time.

When a participant dials the MCIT-provided telephone number, the person is connected with MCIT's bridge and prompted for the conference's passcode. The bridge verifies the passcode entered by the participant and links the person together with all other participants on the audio conference. A participant that enters an incorrect passcode or calls in to a conference other than at the scheduled time is connected with an MCIT employee for assistance. Once the participant enters the proper passcode, other participants that are already on the audio conference hear a tone notifying them that a new participant has entered the conference.

MCIT has bridges in several states. One of the bridges is located in New York State. Audio conference participants situated in New York may be linked together at an MCIT bridge located in New York or some other state. Bridges do not change the form, content or composition of the communications.

MCIT's charges for bridging services are a per minute charge based on the number of minutes that participants are connected together on an audio conference. For example, three participants engage in an audio conference; two participants are linked to the audio conference for 10 minutes and one is linked for five minutes. The total bridging service charges billed to the conference leader would be the per minute charge times 25 minutes (2 participants x 10 minutes + 1 participant x 5 minutes).

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In the event that an audio conference is scheduled, and the conference leader fails to cancel the conference within 30 minutes of the scheduled start time, the conference leader will be charged a cancellation fee.

Each audio conference participant is responsible for paying his or her own telecommunication service charges (transmission charges) to a company other than MCIT, including all applicable taxes.

Applicable Law & 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.

Section 186-a of the Tax Law imposes a tax on the furnishing of utility services that is equal to three and one-quarter percent, from October 1, 1998 through December 31, 1999, of the gross income of a utility that is subject to the supervision of the PSC or the gross operating income of every other utility doing business in New York State. For purposes of section 186-a, a "utility" includes a person subject to the supervision of the PSC and every person (whether or not such person is subject to such supervision) who sells or furnishes gas, electricity, steam, water or refrigeration, by means of mains, pipes, or wires, regardless of whether such activities are the main business of such person or are only incidental thereto. The receipts from the provision of telecommunication services that are subject to tax under section 186-e of the Tax Law are not subject to tax under

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section 186-a of the Tax Law. However, a utility subject to the supervision of the PSC is subject to the tax imposed under section 186-a on its other gross income, which includes "receipts received in or by reason of any sale ... made or service rendered for ultimate consumption or use by the purchaser in this state...."

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. Provided, the definition of telecommunication services shall not apply to separately stated charges for any service which alters the substantive content of the message received by the recipient from that sent."

Section 186-e.2(a) of the Tax Law imposes an excise tax "on the sale of telecommunication services by any person which is a provider of telecommunication services" from any intrastate telecommunication services and any interstate and international telecommunication services (other than interstate and international private telecommunication services) which originate or terminate in New York State and which telecommunication services are charged to a service address in New York State regardless of where the amounts charged for the services are billed or ultimately paid.

Section 186-e.1(e) of the Tax Law defines "provider of telecommunication services" as "any person who furnishes or sells telecommunications services regardless of whether such activities are the main business of such person or are only incidental thereto."

Opinion

MCIT'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. MCIT 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, MCIT is not required to collect sales tax on the sale of this service.

In addition, MCIT's audio conferencing service does not constitute a telecommunication service for purposes of section 186-e.1(g) of the Tax Law. Accordingly, MCIT is not subject to the excise tax imposed under section 186-e on the receipts from the provision of this service. If MCIT is not subject to the supervision of the PSC, it would not be subject to tax under section 186-a. If

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MCIT is subject to supervision of the PSC, the receipts from this activity for ultimate consumption or use by the purchaser in this state would be included in MCIT's gross income subject to tax under section 186-a of the Tax Law.

DATED: July 14, 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.