

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

TSB-A-93 (26)S
Sales Tax
April 12, 1993

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S921123A

On November 23, 1992 a Petition for Advisory Opinion was received from Dunkirk and Fredonia Telephone Company, 40 Temple Street, P.O. Box 209, Fredonia, New York 14063-0209.

The issue raised by Petitioner, Dunkirk and Fredonia Telephone Company, is whether its receipts from the sale of private line circuits are subject to sales tax under Section 1105(b) of the Tax Law as the sale of an intrastate telephone service or are they excluded from sales tax as an interstate telephone service.

Petitioner is a telephone company which provides telephone service to its customers. Among the types of services which Petitioner offers to its customers is the furnishing of private line circuits.

A private line circuit is a specific circuit dedicated to the sole use of a particular customer. Private line circuits are sometimes referred to as "tie-lines" and may be established between the separate office locations of a single customer. Banks are among Petitioner's customers which use private line circuits to communicate between branch locations. In addition, a private line circuit maybe set up between and automated teller machine (ATM) and the office of a bank.

Each time a customer requests the establishment of a private line circuit that will run, in part, in or through the Dunkirk and Fredonia, New York area, Petitioner receives an Access Service Request (ASR) form from its customer or another telephone carrier. On the ASR, the customer or the other telephone carrier indicates whether the private line circuit requested is for intrastate or interstate use. If the customer or other telephone carrier indicates that the private line circuit is for interstate use, it must also indicate the percentage of interstate use of the private line circuit.

Petitioner establishes and charges a customer for the portion of the customer's private line circuit in the Dunkirk and Fredonia, New York area. An intrastate private line circuit begins and ends within New York State, but may be continued by one or more other telephone companies from the Dunkirk and Fredonia area to another location in the State. An interstate private line circuit will be continued by one or more other telephone companies from the Dunkirk and Fredonia area to a location outside of New York State. If the ASR given to Petitioner indicates that the private line circuit requested is for interstate use, the private line circuit will run through the Dunkirk and Fredonia area and then on to a location outside of New York State.

If a private line circuit is designated as an intrastate circuit, Petitioner is required to charge the customer at the intrastate tariff rate approved by the New York State Public Service Commission. If a private line circuit is designated as an interstate circuit, Petitioner is required to charge the

customer at the interstate tariff rate approved by the Federal Communications Commission.

Section 1105(b) of the Tax Law imposes sales tax upon "The receipts ... from every sale, other than sales 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."

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

Telephone and telegraphy; 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 telephone 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.

* * *

(5) The tax on utility services applies to every charge for any telephone and telegraph service. Among these charges are monthly message rate and intrastate toll charges and charges for special services, such as installation, change of location, conference connections, tie-lines, WATS line and the furnishing of equipment. (Emphasis supplied)

Example 7: A telephone company installs station apparatus, owned by it, on the premises of a customer. The installation is a service taxable under section 1105(b) of the Tax Law.

(6) Where a customer has telephones at a single location connected to exchanges in different localities, and a tie-line to a locality in which he is not located, the tax applicable for each service is the tax rate in effect in the locality to which the exchange is assigned.

Example 8: A business located in Nassau County has two telephone numbers, one with a Nassau exchange and one with a Queens exchange. This enables his Queens customers to phone him toll free. Service on the Queens exchange is considered to be purchased in Queens County even though the telephone is physically located in Nassau County.

(e) Sales for resale. Purchases of utility services by a utility for resale as such may be made without payment of the sales tax. The purchaser must furnish the supplier of the utility to be resold with a resale certificate (Form ST-120). When the utility services are resold by the purchaser he must collect the sales tax on the receipts from his sales as imposed under section 1105(b) of the Tax Law. A purchase

of a utility service which is not resold is subject to tax as a purchase at retail.

Example: A utility company purchases excess power from an industrial organization or through a power pool for resale to its customers. Such purchase may be made without payment of tax upon the presentation of a properly completed resale certificate.

Sales tax on telephone service is imposed upon all telephone service except interstate service and sales for resale in accordance with section 1105(b) of the Tax Law and Section 527.2(d) of the Sales and Use Regulations. Thus, where Petitioner's sales, including sales of private line circuits, occur totally within New York State, they are subject to sales tax unless they are purchased for resale. If Petitioner purchases telephone service from another interstate carrier and couples that service with its own, and then sells the service to its client, such service would be considered interstate and exempt. However, if Petitioner provides a private line circuit totally within New York State in conjunction with an out of state carrier but bills the retail purchaser directly for Petitioner's share of the service, such service is considered as two separate sales and since Petitioner's service is totally within New York State it is subject to tax.

In those cases where the private line circuit used for clearing and sorting ATM transactions originates at an ATM located in New York State and terminates at a bank's central processing center located in New York State or vice versa, then the transmission will be considered to be an intrastate transaction subject to sales tax.

On the other hand, in those cases where the private line circuit used for clearing and sorting ATM transactions originates at an ATM located in New York State and terminates at a bank's central processing center located outside New York State or vice versa, then the transmission will be considered to be an interstate transaction that is not subject to sales tax.

DATED: April 12, 1993

/s/
PAUL B. COBURN
Deputy Director
Taxpayer Services Division

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