

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

TSB-A-88 (47)S
Sales Tax
September 13, 1988

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION PETITION NO. S880225C

On February 25, 1988, a petition for Advisory Opinion was received from Peat Marwick Main & Co., 345 Park Avenue, New York, NY 10154.

Petitioner asks the sales tax implications to the following situation:

XYZ Corporation is a California based provider of data transmission services. The company uses dedicated telephone lines and sideband radio waves to transmit data. An individual uses the transmission service by transmitting data to the host computer, located in California, via dedicated telephone lines (800 number). The host computer transmits the data via dedicated telephone lines to radio station towers that contain telecommunications equipment owned by XYZ Corporation. The radio station tower transmits the data over FM radio airwaves to receivers located throughout the country. Petitioner does not provide a data base or perform any service other than that of data transmission.

XYZ Corporation offers its data transmission services to customers located within and without California. XYZ Corporation leases the sideband of the FM radio wave in various radio stations.

XYZ Corporation uses its own sales force to sell both the data transmission service and receivers. Sales of the receivers are also made through B Corporation. The receiver can consist of a stand alone unit containing a computer board or just a computer board that is placed into the customer's own personal computer. XYZ Corporation is also involved in installing computer equipment and antennas at various locations and could be involved in third-party leasing agreements.

XYZ Corporation will initially be providing services to customers located in the following cities: San Francisco, San Jose, San Mateo, Los Angeles, Boston, Dallas, New York, Chicago, St. Louis, Cleveland, Atlanta, Houston, Washington and Philadelphia. XYZ Corporation will own telecommunications equipment in each of these cities.

Data Transmission Services

Section 1105(b) of the Tax Law imposes a tax upon "[T]he receipts from every sale,...of telephony and telegraphy and telephone and telegraph service of whatever nature except interstate and international telephony and telegraphy and telephone and telegraph service." The sales and use

tax regulations define telephony and telegraphy as follows:

(d) Telephony 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 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.

Example 1: Dispatch services, commonly used by taxicab companies, trucking firms and similar operations, which provide two-way voice communication between a base location and mobile units or between mobile units are considered telephony even though the base and mobile units are not interconnected with a telephone system.

Example 2: Paging service which is a one-way transmission of communication by signal or voice or both signal and voice from a base unit to a mobile unit is considered telephony.

Example 3: Message switching services, transmitted to a computer over lines leased from a communication carrier are telegraph services subject to the tax imposed under section 1105(b) of the Tax Law.

Example 4: Facsimile transmission services are telegraph services subject to the tax imposed under section 1105(b) of the Tax Law.

Example 5: The use of a teletypewriter is a telegraph service subject to tax imposed under section 1105(b) of the Tax Law.

Petitioner's transmission services falls within the definition of telephony or telegraphy as stated above. As such, the transmission services are subject to tax under §1105(b) of the Tax Law. Of course, interstate and international telephony and telegraphy are exempt from the tax imposed under section 1105(b) of the Tax Law.

Sale of Transmission Receivers

Section 1105(a) of the Tax Law imposes a tax upon the receipts from every retail sale of tangible personal property..."

Section 526.10(a)(3) of the sales tax regulations defines vendor as "a person who solicits business either by or through employees, independent contractors, agents or other representatives and by distribution of catalogs or other advertising matter and by reason thereof makes sales to persons within the State of tangible personal property.

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Section 1105(c)(3) imposes a tax upon "Installing tangible personal property,...or maintaining, servicing or repairing tangible personal property...".

Section 526.6(c) excludes a sale for resale from the imposition of the sales tax provided the seller obtains a properly completed resale certificate from his customer.

Based upon the above, "XYZ Corp" is a vendor who is required to collect the sales tax on the sale and installation of its equipment except where it makes sales for resale to "B Corp." in which case "B Corp." is required to collect the tax.

DATED: September 13, 1988

s/FRANK J. PUCCIA
Director
Technical Services Bureau

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