

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

TSB-H-81 (118) S
Sales Tax
June 12, 1981

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S800617A

On June 17, 1980 a Petition for Advisory Opinion was received from ITT Communications Equipment and Systems Division, a division of International Telephone and Telegraph Corporation, 320 Park Avenue, New York, New York 10022.

The issues raised are whether Petitioner's sales of certain telephone equipment constitute sales of telephone central office equipment, whether such sales are exempt from the sales and use taxes imposed under Article 28 of the Tax Law pursuant to Section 1115(a) (12) thereof, and whether maintenance and service contracts relating to the equipment sold by Petitioner are exempt from sales and use tax.

Petitioner states that it sells PBX (Private Branch Exchange) telephone central office communications and related equipment to private companies, located within New York State, for use in internal communications. Petitioner states that the PBX equipment "involves telephone interoffice communications equipment which directly interconnects with American Telephone and Telegraph telephone lines and equipment. As such, such PBX equipment is certainly comparable to telephone equipment used directly in receiving, initiating and switching telephone communications." Petitioner provides, separate and apart from the sale of the telecommunications equipment, separate service and maintenance contracts relating to such equipment.

Section 1105(a) of the Tax Law imposes a tax on the receipts from "...every retail sale of tangible personal property, except as otherwise provided in this article." Section 1115(a) (12) provides for an exemption from such imposition of tax with respect to "...telephone central office equipment or station apparatus or comparable telegraph equipment for use directly and predominantly in receiving at destination or initiating and switching telephone or telegraph communication...." This exemption is applicable to both State and local sales and use taxes, with the exception of New York City's sales and use taxes, imposed under section 1107 of the Tax Law.

The meaning and intent of section 1115(a) (12) of the Tax Law, quoted above, are elucidated in the Sales and Use Tax Regulations, as follows:

"(f) Telephone and telegraph equipment. (1) Telephone and telegraph central office equipment and station apparatus, used directly and predominantly in receiving at destination, initiating or switching telephone and telegraph communication is exempt, when such equipment and apparatus is purchased or leased by the vendor of such service for sale.

(2) The purchase or lease of equipment by a person subscribing to a telephone or telegraph service, which is comparable to telephone or telegraph central office equipment or station apparatus is not eligible for the exemption.

Example 1: A telephone company purchases switchboards and hand sets for installation at a subscriber's premises. Such purchases are exempt.

JAMES H. TULLY, JR., COMMISSIONER LOUIS M. JACOBSON, DEPUTY COMMISSIONER
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Example 2: An airline company purchases consoles which initiate, receive and switch telephone calls which are sent over telephone company lines. The consoles are not exempt, as they were not purchased by a telephone company in connection with a telephone service for sale." 20 NYCRR 528.13.

In accordance with the foregoing, the equipment at issue herein, while physically identical with "telephone central office equipment or station apparatus," is not itself "telephone central office equipment or station apparatus" within the meaning of section 1115(a)(12) of the Tax Law because such equipment or apparatus was not "purchased or leased by the vendor of. ..[telephone and telegraph] service for sales." 20 NYCRR 528.13(f)(1), quoted supra. Accordingly, the receipts from Petitioner's sales are not and were not exempt from the tax imposed under section 1105(a) of the Tax Law by reason of the provisions of section 1115(a)(12) of the Tax Law.

Petitioner inquires as to the taxability of the receipts from the sale of maintenance and service contracts relating to the equipment in question. Section 1105(c) of the Tax Law imposes a tax on the receipts from the sale of certain services, including the following:

"(3) Installing tangible personal property, or maintaining, servicing or repairing tangible personal property not held for sale in the regular course of business....

...

(5) Maintaining, servicing or repairing real property, property or land...."

The applicability of these provisions to receipts from the sale of maintenance and service contracts is rendered explicit in the Sales and Use Tax Regulations, where it is provided that the "...purchase of a maintenance or service contract is a taxable transaction." 20 NYCRR 527.5(c)(1). Although this cited regulation is contained in a section relating to tangible personal property it is equally applicable to contracts (not otherwise exempt) for the maintenance and repair of real property, property or land. Accordingly, receipts from the sale of the subject maintenance and service contracts are and were subject to tax, under either section 1105(c)(3) or (5) of the Tax Law.

DATED: May 28, 1981

s/LOUIS ETLINGER
Deputy Director
Technical Services Bureau