

INTERNAL REVENUE SERVICE

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MAY 24, 2001

In re:

Legend:

Taxpayer =

Dear

This is in response to a letter ruling request regarding Taxpayer's responsibility for the excise tax imposed by § 4251 of the Internal Revenue Code on amounts paid for communication services. Your authorized representative submitted this request on your behalf. Taxpayer has represented the following.

Taxpayer builds communication networks and sells access to these networks to internet service providers (ISPs). ISPs provide their customers access to the ISPs' services via Taxpayer's communication networks.

To build the networks Taxpayer purchases from local exchange carriers (LECs) two types of line services. Taxpayer purchases local primary rate interface (PRI) line service between the LEC's central office, where ISPs' customers' calls are received, and Taxpayer's modem bank. This PRI line service is a one way line service that permits Taxpayer to receive, but not to initiate, voice and data transmissions. Taxpayer also purchases other line services that connect its modem bank to its data network and ultimately to the ISPs' services (other line services). Taxpayer sells to ISPs access to these line services.

An ISP's customers access the ISP's services by calling via a modem into the LEC's central office. The customer's call is then routed to Taxpayer's modem bank over a PRI line. At the modem bank, the customer's call is routed over other line services to the Taxpayer's data network and ultimately the ISP's services.

Section 4251 imposes a tax on amounts paid for communications services. The term communications services means local telephone service, toll telephone service,

and teletypewriter exchange service. Section 4251(a)(2) provides that the tax is paid by the person paying for the service. Under § 4291, the person receiving the payment for the service is responsible for collecting the tax from the person making the payment.

Section 4252(a) defines local telephone service as: (1) the access to a local telephone system and the privilege of telephonic quality communication with substantially all persons having telephone or radio telephone stations constituting a part of such local telephone system, and (2) any facility or service provided in connection with a service described in (1). The term local telephone service does not include any service which is a toll telephone service or a private communication service.

Section 4252(b) defines toll telephone service as: (1) a telephonic quality communication for which (A) there is a toll charge which varies in amount with the distance and elapsed transmission time of each individual communication and (B) the charge is paid in the United States, and (2) a service which entitles the subscriber, upon payment of a periodic charge (determined as a flat amount or upon the basis of total transmission time), to the privilege of an unlimited number of telephonic communications to or from all or a substantial portion of the persons having telephone or radio telephone stations in a specified area which is outside the local telephone system area in which the station provided with the service is located.

Taxpayer's purchase of the PRI line service and the other line services do not provide Taxpayer with the privilege of telephonic quality communication with substantially all persons having telephone or radio telephone stations constituting a part of a local telephone system. Therefore, Taxpayer's payments to the LECs for its line services are not amounts paid for local telephone service as defined in § 4252(a). Likewise, Taxpayer's sale of access to these line services does not give ISPs the privilege of communication as defined in § 4252(a). Therefore, amounts paid by the ISPs to Taxpayer for access to these line services are not amounts paid for local telephone service as defined in § 4252(a).

Taxpayer's purchase of the PRI line service and the other line services do not provide Taxpayer with telephonic communication for which there is a toll charge for each individual communication or the privilege of an unlimited number of telephonic communications to or from all or a substantial portion of the persons having telephone or radio telephone stations in a specified area that is outside the local telephone system area in which the station provided with the service is located. Therefore, Taxpayer's payments to the LECs for its line services are not amounts paid for toll telephone service as defined in § 4252(b). Likewise, Taxpayer's sale of access to these line services does not give ISPs the privilege of toll telephone service as defined in § 4252(b). Therefore, amounts paid by the ISPs to Taxpayer for access to these line services are not amounts paid for toll telephone service as defined in § 4252(b). Neither the amounts Taxpayer pays to the LECs for line services nor the amounts paid to Taxpayer by the ISPs for access to these line services are for teletypewriter exchange service as described in § 4252(c).

Accordingly, based on Taxpayer's representations:

(1) Amounts paid by Taxpayer to the LECs for the purchase of PRI line service are not subject to the communications excise tax imposed by § 4251.

(2) Amounts paid by Taxpayer to the LECs for the purchase of other line services from its modem bank to ISPs' services are not subject to the communications excise tax imposed by § 4251.

(3) Amounts paid to Taxpayer by ISPs for providing access over the lines described above are not subject to the communications excise tax imposed by § 4251. Consequently, Taxpayer has no collection obligation under § 4291 with respect to these amounts.

This ruling letter is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it shall not be used or cited as precedent.

Sincerely,
Associate Chief Counsel
(Passthroughs and Special Industries)
By: Bernard Weberman
Assistant to the Branch Chief, Branch 8

Enclosures (2):
Copy of this letter
Copy for § 6110 purposes