

INTERNAL REVENUE SERVICE
NATIONAL OFFICE TECHNICAL ADVICE MEMORANDUM

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January 3, 2003

Taxpayer Name:
Taxpayer Address:

Taxpayer Identification No.:
Quarters Involved:
Date of Conference:

LEGEND:

Taxpayer =

ISSUES:

(1) Are the amounts paid to Taxpayer with respect to services provided by Taxpayer subject to the tax on communications services under § 4251 of the Internal Revenue Code?

(2) If so, is Taxpayer responsible for collecting the tax and paying it over to the government?

CONCLUSIONS:

(1) The amounts paid to Taxpayer with respect to services provided by Taxpayer are subject to the tax on communications services under § 4251.

(2) Taxpayer is responsible for collecting the tax and paying it over to the government.

FACTS:

Taxpayer's customers acquire communications services described in § 4251 by means of prepaid telephone cards sold by Taxpayer. The customers pay Taxpayer in advance to obtain a fixed amount of communications services by means of a personal

identification number (PIN). The customers may then make telephone calls using the PINs purchased from Taxpayer.

The director determined that Taxpayer is selling prepaid telephone cards to users for their use in obtaining taxable communications services from Taxpayer.

LAW AND ANALYSIS:

Section 4251(a)(1) imposes a tax on amounts paid for taxable communications services. The term communications services means local telephone service, toll telephone service, and teletypewriter exchange service.

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 within 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 elapsed 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 this service is located.

Section 4251(d)(1) provides that, in the case of communications services acquired by means of a prepaid telephone card, the face amount of the card is treated as the amount paid for the communications services and that amount is treated as paid when the card is transferred by any telecommunications carrier to any person that is not a carrier. Section 4251(d)(3) provides that prepaid telephone card means any card or any other similar arrangement that permits its holder to obtain communications services and pay for the services in advance.

Section 4253(e) provides that only one payment of tax under § 4251 is required with respect to the tax on any service, notwithstanding the lines or stations of one or more persons are used in furnishing that service.

Section 49.4251-4(b) of the Facilities and Services Excise Tax Regulations provides that prepaid telephone card (PTC) means a card or similar arrangement that permits its holder to obtain a fixed amount of communications services by means of a code (such as a personal identification number (PIN)) or other access device provided

by the carrier and to pay for those services in advance.

Under § 49.4251-4(d)(1), the tax imposed on the transfer of a PTC by a carrier to a transferee is to be collected by the carrier transferring the PTC to the transferee.

Rev. Rul. 74-570, 1974-2 C.B. 363, holds that the tax imposed by § 4251 does not apply to amounts paid by one communications company to a second communications company for services provided to the subscriber of the first company and billed by the first company to the subscriber. The subscriber is the person paying for the services and the tax imposed by § 4251 applies to the amounts paid by the subscriber. Further, since the first company is the person receiving payment for the services from the payor (the subscriber) within the meaning of § 4291, that company is responsible for collecting the tax and paying it over to the government.

The § 4251 tax is imposed on amounts paid to Taxpayer with respect to taxable communications services it provides. Amounts paid to service providers by Taxpayer for communications services are subject to the tax imposed by § 4251. However, under § 4253(e) and Rev. Rul. 74-570, the tax does not apply to amounts paid by one communications company to a second communications company for services provided to the subscriber of the first company and billed by the first company to the subscriber. Thus, Taxpayer is responsible for collecting the tax on amounts paid by its subscribers to Taxpayer for services provided by the second company. There is no reduction in the tax imposed on amounts paid to Taxpayer.

Taxpayer argues that its services should not be taxable because it uses the internet to connect its customer's telephone call to the telephone of the recipient of the call. Taxpayer also argues that because its customers purchase the prepaid communications services using the internet amounts paid for these services should not be taxable.

In response, the director contends that the use of the internet to provide communications services is not relevant; Taxpayer is furnishing communications services to its customers using telephones, regardless of the other equipment used in the process. The fact that the prepaid services are purchased over the internet also is irrelevant. Otherwise taxable products sold via the internet remain subject to excise tax despite their being purchased through the internet.

We agree with the director as to both matters. Because Taxpayer is providing communications services to its customers, the amounts paid for the services are subject to the tax imposed by § 4251. Thus, Taxpayer is responsible for collecting the tax and paying it over to the government.

CAVEATS:

A copy of this technical advice memorandum is to be given to the taxpayer. Section 6110(k)(3) provides that it shall not be used or cited as precedent. In accordance with § 6110(c), names, addresses, and other identifying numbers have been deleted.