

Cite as 11 WTD 207 (1991).

BEFORE THE INTERPRETATION AND APPEALS DIVISION  
DEPARTMENT OF REVENUE  
STATE OF WASHINGTON

In the Matter of the Petition )	<u>D E T E R M I N A T I O N</u>
For the Prior Determination )	
of Tax Liability of )	No. 91-168
)	
. . . )	Unregistered
)	
)	
)	

[1] RULE 245 -- RETAIL SALES TAX -- TELEPHONE BILLING.  
Telephone companies operating in Washington are responsible to account for, collect and remit retail sales taxes collected from consumers.

Headnotes are provided as a convenience for the reader and are not in any way a part of the decision or in any way to be used in construing or interpreting this Determination.

TAXPAYER REPRESENTED BY: . . .

NATURE OF ACTION:

The taxpayer petitions for the prior determination of tax liability.

FACTS AND ISSUES:

Pree, A.L.J. -- The taxpayer states that it provides centralized billing service for small independent telephone companies. Primarily, the service is rendered in respect to credit card charges. The taxpayer conducts the billing from its out-of-state office. It maintains no office in Washington.

For instance, the taxpayer explains, a person will use a credit card for one of the small phone companies whose billing is serviced by the taxpayer. The company submits the billing records to the taxpayer without regard to what state the call originated from or where the company does business.

The taxpayer states that it does not function in any capacity other than that of a clearing house. It derives its income from processing bills. Its income is not predicated on whether or not it actually collects the billings. It considers the money collected to be that of its customers, the telephone companies.

The taxpayer contends that since it is not located in Washington, it should not be required to register. It contends that the phone companies function in Washington, not the taxpayer.

The phone companies add in sales tax which is collected and often sent to the taxpayer. The taxpayer contends that the taxes are not its obligation, but the liability of its customers, the telephone companies. The taxpayer proposes sending the sales taxes collected back to the phone companies, and the phone companies should send the money to the state.

The Taxpayer Information and Education Section advised the taxpayer based on the taxpayer's representation of the facts outlined above that it was not required to register because its service was performed entirely outside of Washington. It advised the taxpayer to return the sales taxes to the phone companies who should remit them to the state.

The taxpayer then replied that the phone companies sent little documentation after collecting the taxes. It was impossible for the taxpayer to decipher what taxes should be paid to the state. It included copies of reports from several different phone companies as well as a contract with one of the companies.

The taxpayer advises the state to intervene and advise phone companies of their tax reporting responsibilities. After reviewing the contract, it appears that the taxpayer performs services more extensive than the clearing house function outlined above.

From our reading of the terms of the sample contract between the taxpayer and telephone companies, it appears that the taxpayer is providing interchange telecommunications service while the phone companies are providing exchange access services with billing and collection. In order for the taxpayer to bill its customers, it purchases the billing and collection services from the phone company.

It appears to us that the taxpayer issues credit calling cards to its customers. If a customer calls long distance on a credit card, the taxpayer processes the information and forwards it to the phone company which adds the charges to the customer's bill. The company collects the money with the taxes and sends it to the taxpayer. It appears that the taxpayer has made a sale of its interchange service to the customer.

This raises a new issue regarding whether the interchange service provides a basis for nexus and tax liability on the part of the taxpayer.

#### DISCUSSION:

WAC 458-20-245 (Rule 245, . . . ) discusses the taxability of telephone service. It provides that persons engaged in the "telephone business" or rendering "telephone service" must collect and account retail sales tax from consumers, subject to certain exemptions.

The phone companies are making retail sales to consumers and are "sellers" under RCW 82.08.010(2). As "sellers" they hold the taxes collected in trust and are required to pay them to the department. RCW 82.08.050.

Rule 245 provides that "telephone service" includes network telephone service which is defined as:

. . . the providing by any person of access to a local telephone network, switching service, toll service, or coin telephone services, or the providing of telephonic, video, data, or similar communication or transmission for hire, over a local telephone network, toll line or channel, cable, microwave, or similar communication or transmission system. "Network telephone service" includes interstate service, including toll service, originating from or received on telecommunications equipment or apparatus in this state if the charge for the service is billed to a person in this state.

The retail sales tax applies to all sales of network telephone service provided to business (nonresidential) customers. It also applies to toll service for residential customers. If the taxpayer is providing network telephone services to customers in Washington, it is required to register, and collect retail sales taxes for the state. The fact that the

billing for the telephone service is contracted by the taxpayer to a telephone company does not relieve the taxpayer from reporting the tax to the state.

DECISION AND DISPOSITION:

We find that in cases where the taxpayer merely provides a "clearing house function" for phone companies which issue calling cards to their customers, the taxpayer has no tax obligations to this state. Retail sales tax should be collected, accounted for, and remitted to the state by the phone companies.

However, in cases where the taxpayer issues calling cards in its name to customers, it is providing a network telephone service. Retail sales taxes should be collected and remitted to the state by the taxpayer.

The taxpayer should note that WAC 458-20-245 (Rule 245) may be amended in the near future. Any changes in that Rule could affect the future liability of the taxpayer.

DATED this 25th day of June 1991.