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

In the Matter of the Petition for Ruling of Tax Liability of)		D E T E R M I N A T I O N
	)	No. 87-308
. . .	)	Registration No. . . .

[1] **RULE 241 AND RULE 227:** BROADCASTING -- CABLEVISION -- ADVERTISING. A taxpayer, in using, in part, its own equipment to transmit client advertising on a cablevision network during purchased timeframes, is functioning as a cablecaster. The revenue it receives from its clients for scheduling and transmitting those commercials, under the holding of Community Telecable, is thus "advertising revenue" taxable under the special Broadcasting classification.

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: . . .
. . .

DATE OF HEARING: December 10, 1986

NATURE OF ACTION

Request for written opinion and ruling of tax liability on revenues derived from the scheduling and playback of commercials on cable television systems.

FACTS:

Burroughs, A.L.J. -- The taxpayer has been in the business of producing, selling, scheduling and transmitting television commercials on cable television systems since 1979. In accordance with different contractual agreements with cable television systems, it provides a sales, production, scheduling, billing and

playback and/or distribution service for local, regional and national buyers of advertising.

Basically, the taxpayer, using its own equipment, produces commercials locally for its customers. The taxpayer then schedules and runs them on various television stations. The taxpayer's video playback equipment which plays these commercials is located at the cable television system, and the video/audio signal carrying the commercial message is transmitted by wire to the modulation system of the cable system. Radio and television signals picked up by satellite, off-air or by dedicated line, also arrive at the modulation system. All of these signals are then transmitted throughout the cable television system.

The activities related to commercial production and actual advertising time is priced in accordance with standard radio/TV pricing procedures in that the size and quality of the viewing audience determines what it can charge. Thus, the commercial time and costs associated with this type of broadcasting are similar to the radio and television firms which are permitted to file under WAC 458-20-241 (Rule 241).

TAXPAYER'S POSITION:

The taxpayer submits that in installing, maintaining and servicing the commercial sales and playback needs of cable systems its gross revenues for advertising sales should be classified under Rule 241's Radio and Broadcasting classification. The taxpayer has historically filed under the Service classification of the Business and Occupation tax. It has now, however, filed amended returns reclassifying its gross receipts (except those derived from video production services, video tape retailing and all other sources other than advertising sales) to the Radio and Broadcasting classification. The taxpayer requests an advisory opinion under section 18 of WAC 458-20-100 (Rule 100) confirming the correctness of this reclassification.

The taxpayer has submitted for our review a representative agreement which it entered into with a television cable company. The cable television company therein basically grants to the taxpayer the right to sell advertising time to be inserted in certain designated local availabilities of satellite received programming carried on its cable system. In exchange for this right, the taxpayer remits to the television cable company a set percentage of its gross advertising receipts.

The taxpayer has also cited, as supportive of its case, a Superior Court Memorandum Opinion, Community Telecable of Bellevue v. Department of Revenue, No. 81-2-01717-4 (1984)

ISSUE:

The sole issue for our review is whether the gross receipts received by the taxpayer for the scheduling and transmission of commercials for its clients on different cablevision systems are taxable under the Broadcasters or Service classification of the business and occupation tax.

DISCUSSION:

Since 1967, RCW 82.04.280(6) has provided a special .0044% business and occupation tax rate on persons engaging in "broadcasting." The pertinent portions of that statute reads as follows:

> Upon every person engaging within this state in the business of:
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> . . .
>
> (6) radio and television broadcasting, excluding network, national and regional advertising computed as a standard deduction based on the national average thereof as annually reported by the Federal Communications Commission, or in lieu thereof by itemization by the individual broadcasting station, and excluding that portion of revenue represented by the out-of-state audience as measured by the 100 micro-volt signal strength and delivery by wire, if any;
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> . . .
>
> as to such persons, the amount of tax on such business shall be equal to the gross income of the business multiplied by the rate of forty-four one hundredths of one percent.

This rate is substantially lower than the 1.50% "catchall" Service classification rate provided by RCW 82.04.290.

Neither the RCW 82.04.290 nor Rule 241, which implements that statute, define the term "broadcaster." Since 1967 until the issuance of Community Telecable, however, the Department had construed the special rate as applicable only to the so-called conventional "radio and television" broadcasters, and applied the higher Service classification rate to cablecasters through the application of WAC 458-20-227 (Rule 227), which concerns "community television antenna" owners.

In Community Telecable the appellant, a cable television company, argued that it should be considered the "functional equivalent" of a "broadcaster" and be afforded the special broadcasting tax rate. It was argued in the alternative that the statute was unconstitutional if the definition "broadcaster" was not extended to include cablecasters.

The court held that, "in the absence of any controlling constitutional considerations," cablecasters were not included within the broadcasters classification as that classification was established by the legislature in 1967. As to the second issue, however, the Court went on to hold that

> ... the advertising revenue of appellants (engaged in similar, if not comparable, program origination as conventional broadcasters) must be taxed under RCW 82.04.280(6) to avoid any grave question as to the constitutionality of the statute.

The Department, in adopting the rationale of the Court, now taxes the advertising revenue of cablecasters under the special broadcasting rate. Revenue received from subscribers, however, is still taxed under the higher Service classification.

RULING:

[1] The taxpayer, in using, in part, its own equipment to transmit client advertising on a cablevision network during purchased timeframes, is functioning as a cablecaster. The revenue it thus receives from its clients for scheduling and transmitting those commercials, under the holding of Community Telecable, is thus "advertising revenue" taxable under the special Broadcasting classification.

This legal opinion may be relied upon for reporting purposes and as support of the reporting method in the event of an audit. This ruling is issued pursuant to WAC 458-20-100(18) and is based upon only the facts that were disclosed by the taxpayer. In this regard, the department has no obligation to ascertain whether the taxpayer has revealed all of the relevant facts or whether the facts disclosed are actually true. This legal opinion shall bind this taxpayer and the Department upon these facts. However, it shall not be binding if there are relevant facts which are in existence but have not been disclosed at the time this opinion was issued; if, subsequently, the disclosed facts are ultimately determined to be false; or if the facts as disclosed subsequently changes and no new opinion has been issued which takes into consideration those changes. This opinion may be rescinded or revoked in the future; however, any such rescission or revocation shall not affect prior liability and shall have a prospective application only.

DATED this 17th day of September 1987.