

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 Refund of	)	
	)	No. 88-193
	)	
. . .	)	Unregistered
	)	
	)	

[1] **RULE 245:** B&O TAX -- RETAILING -- RESELLING LOCAL NETWORK TELEPHONE SERVICE -- BILLING INVOICE SENT TO TAXPAYER IN ANOTHER STATE. Where taxpayer purchases local network telephone service and resells the service to another person, the proceeds of the resale are subject to Retailing B&O tax. The sales took place in this state. It matters not that the taxpayer or its buyer receives the billing invoice in another state from their respective seller.

[2] **RULE 245:** B&O TAX -- RETAILING -- RETAIL SALES TAX -- EXEMPTION -- INTERSTATE NETWORK TELEPHONE SERVICE -- CHARGE FOR SERVICE BILLED TO INSTATE PERSON -- CHARGE FOR SERVICE BILLED TO ORIGINATING OR RECEIVING EQUIPMENT. Where interstate network telephone service (toll service) is provided and the cost is charged to the originating or receiving (in the nature of a collect call) equipment in Washington, the charge is subject to Retailing B&O tax and retail sales tax regardless of where the bill is sent. If the cost is charged to originating or receiving (collect call) equipment outside Washington, the charge is exempt from Retailing B&O tax and retail sales tax regardless of where the bill is sent.

[3] **RULE 102 AND RULE 245:** RETAIL SALES TAX -- EXEMPTION -- RESALE OF TELEPHONE SERVICE -- RESALE CERTIFICATE. Where taxpayer resells telephone service, it can furnish its seller with a resale certificate and be exempt from retail sales tax charges by its seller.

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.

DATE OF HEARING: March 10, 1988

Krebs, A.L.J. -- . . . (taxpayer) is a . . . corporation based [out of state]. The taxpayer owns about ten "earth stations" in the state of Washington. The "earth stations" are operated electronically to format data and transmit the data to a satellite. The taxpayer owns also the satellite. The satellite is located 22,280 miles above the earth. The data is then transmitted to a hub located in . . . where the data is processed, sent back to the same satellite and transmitted to final receiving terminals in one of the 49 other states or Canada.

The Washington customer is generally a branch store or business of a corporation which has branch locations in a number of states throughout the country. The taxpayer does not bill the branch location but sends the bill to the corporation which is located in metropolitan cities. None of the corporations billed are located in Washington.

The taxpayer is not registered with the Washington Department of Revenue. The taxpayer commenced its telecommunication activities as above-described in January 1987.

The taxpayer petitioned for a ruling that its telecommunication activity is not subject to business and occupation (B&O) tax nor sales tax. The taxpayer also petitioned for the refund of all sales taxes paid by it to . . . and the stopping of . . . 's charging of sales tax on its billing to the taxpayer.

The taxpayer asserts that the "transmission of data does not terminate at the earth station in Washington but travels via satellite to practically any final destination within the United States and Canada." The taxpayer points to WAC 458-20-245 (Rule 245), . . . , as imposing the retail sales tax and B&O tax "on intrastate telephone service and interstate telephone services originating from or received in the state if the charge for service is billed to a person in this state." The taxpayer interprets Rule 245 as not providing for a tax on its interstate telecommunication services because it is not billed in this state by . . . and it does not bill its customers in this state.

The issues in this case are whether tax consequences apply to the taxpayer's telecommunications activities described above, that is:

1. Is the taxpayer subject to the B&O tax?
2. Is the taxpayer subject to retail sales tax on the billings received from . . . ?
3. Are the taxpayer's customers subject to retail sales tax?
4. Is the taxpayer entitled to a refund of all sales taxes paid by it to . . . ?

#### DISCUSSION:

The issues will be discussed in the order presented.

1. Is the taxpayer subject to the B&O tax?

Rule 245 in pertinent part provides:

Persons . . . rendering "telephone service" are taxable under the retailing or wholesaling classification of the business and occupation tax, whichever is applicable, on total gross revenues, as described herein. Such persons who are taxable under retailing must also collect retail sales tax from consumers, subject to certain exemptions explained more fully herein.

#### DEFINITIONS

As used herein: The term "telephone service" includes . . . network telephone service.

. . .

The term "network telephone service" means the providing by any person of access to a local telephone network, switching service . . . or the providing of telephonic, . . . 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 if the charge for the service is billed to a person in this state.

. . .

The term "toll service" means the charge for services outside the local telephone network . . .

. . .

#### BUSINESS AND OCCUPATION TAX

RETAILING AND WHOLESALING. Persons making retail sales of telephone service to consumers are taxable upon the gross proceeds of sales under the retailing classification. Persons making sales of telephone services for resale in the regular course of business are taxable upon the gross proceeds of sales under the wholesaling classification. The tax shall apply to the gross income from all sales of competitive telephone service and network telephone service, as described more fully below.

For purposes of applying the business and occupation tax to telephone service, a sale takes place in Washington when a call originates from or is received on any telephone or other telecommunications equipment, instrument, or apparatus in Washington and the cost for the telephone service is charged to that equipment, instrument, or apparatus, regardless of where the actual billing invoice is sent.

The pertinent facts with respect to the taxpayer's business activities in Washington are:

1. The taxpayer's customer in Washington sends data via . . . 's channel or "data line circuit" to the taxpayer's earth station in Washington. . . bills the taxpayer for its local "network telephone service" and charges sales tax on its billing.
2. The Washington customer's data is then transmitted via the taxpayer's earth station to the taxpayer's satellite in the sky and then to a hub in . . . where the

data is processed, sent back to the same satellite and transmitted to a final receiving terminal in one of the 49 other states or Canada via an earth station and local telephone network where the corporate headquarters of the Washington customer is located.

3. The taxpayer bills the out-of-state corporation for the entire transmission as detailed in numbers 1 and 2 above.

[1] Clearly the taxpayer is reselling the local network telephone service it has purchased from . . . . Thus, the taxpayer is the retailer and . . . is the wholesaler, and the taxpayer is subject to Retailing B&O tax. Rule 245.

Furthermore, the taxpayer provides "network telephone service" (toll service) which "originates from . . . [a] telephone or other telecommunications equipment, instrument, or apparatus in Washington and the cost for the telephone service is charged to that equipment, instrument or apparatus, regardless of where the actual billing invoice is sent." Thus, the "sale takes place in Washington" for purposes of applying the B&O tax to telephone service. Rule 245.

[2] While Rule 245's definition of "network telephone service," speaking of it as including interstate service and toll service "if the charge for the service is billed to a person in this state," appears at odds with Rule 245's application of the B&O tax to telephone service "regardless of where the actual billing invoice is sent," nevertheless, the taxpayer's sale of telephone service takes place in Washington if the "cost for the telephone service is charged" to the originating telecommunications equipment in Washington. In other words, if the sending terminal in Washington is charged for the telephone service but the bill is sent to the out-of-state corporation for payment, then Retailing B&O tax applies to the gross proceeds of sale. But if the out-of-state receiving terminal is charged for the telephone service (in the nature of a collect call), then Retailing B&O tax does not apply.

The taxpayer is not registered with the Washington State Department of Revenue. We conclude that the taxpayer is engaged in rendering "telephone service" in Washington. The taxpayer is required to register pursuant to WAC 458-20-101 (Rule 101), . . . .

Enclosed is the Master Business Application which may be used by the taxpayer to effect registration with the Department of Revenue.

2. Is the taxpayer subject to retail sales tax on the billings received from . . . ?

. . . bills the out-of-state taxpayer for use of the "data line circuit" originating at the taxpayer's customer's terminal in

Washington and terminating at the taxpayer's earth station in Washington. The charge is for local network telephone service. The sales takes place in Washington. Rule 245.

[3] Rule 245 in pertinent part provides:

#### RETAIL SALES TAX

. . . The retail sales tax . . . applies to all sales of network telephone service provided to business . . . customers.

. . .

#### SPECIAL SITUATIONS

Persons making sales of telephone service for resale in the regular course of business must follow the provisions of WAC 458-20-102 concerning resale certificates.

In this case, . . . correctly added sales tax to its billings to the out-of-state taxpayer as a business customer of . . . 's local network telephone service. It was entirely instate service. It matters not where the actual billing invoice was sent. Rule 245.

However, when the taxpayer registers with the Department of Revenue, it can furnish . . . with a resale certificate and thus be exempt from retail sale tax on its purchase of network telephone service which it resells. See WAC 458-20-102 (Rule 102), . . . .

#### 3. Are the taxpayer's customers subject to retail sales tax?

The taxpayer's customers purchase at retail local telephone network service from the taxpayer which the taxpayer resells to them after purchasing it from . . . . This applies with respect to the transmission from the customer's terminal in Washington to the taxpayer's earth station in Washington. It matters not where the actual billing invoice is sent. It was entirely instate service. The taxpayer is required to charge, collect, and remit retail sales tax on the billing for the local network telephone service.

Where the taxpayer provides interstate service, that is, the transmission of the data from the taxpayer's earth station in Washington to the taxpayer's satellite for relay to the taxpayer's hub in . . . for processing and return to the same satellite and transmission to taxpayer's earth station outside Washington for continuing transmission via local telephone network to the receiving terminal outside Washington, the taxpayer is providing interstate network telephone service (toll service). If the sending terminal in Washington is charged for the telephone service but the bill is sent to the out-of-state corporation for payment, then Retailing B&O tax applies to the gross proceeds of the sale

and retail sales tax is to be charged, collected and remitted. But if the out-of-state receiving terminal is charged for the telephone service (in the nature of a collect call), then neither Retailing B&O tax nor retail sales tax are applicable.

The "apportionment guidelines" as set forth in Rule 245 with respect to interstate and intrastate toll service discusses income received from the interstate or intrastate division of revenue pool by members and nonmembers of the pool. The Department holds that the apportionment requirement with respect to interstate toll service in this case is satisfied because the tax applies only to transmissions originating or terminating in Washington where the equipment located in Washington is being charged for the service. By not taxing transmissions where out-of-state equipment is charged for the service, the statutory scheme for apportioning the tax is fulfilled.

4. Is the taxpayer entitled to a refund of all sales taxes paid by it to . . . ?

If the taxpayer were registered with the Department of Revenue per Rule 101, . . . , it could furnish a resale certificate per Rule 102, . . . , to . . . and request of . . . a refund of all sales taxes paid to . . . who in turn, after making such refund, can claim a credit in the same amount against taxes owing to Washington. Under the existing situation, the taxpayer is not entitled to a refund.

It should be noted that the taxpayer is liable to the Department for all sales taxes it should have charged, collected and remitted to the Department per statute, RCW 82.08.050, Upon audit by the Department, the taxpayer will be allowed a credit against its sales tax liability for all sales taxes paid to . . . which were not refunded by . . . .

It should also be noted that the taxpayer is not entitled to Rule 102's "exception as to nonresident buyers" because although the taxpayer is a nonresident it is engaged in business in this state as a retailer of local network telephone service.

Summary on the issues discussed.

1. The taxpayer is subject to Retailing B&O tax. The taxpayer is required to register.
2. The taxpayer is subject to retail sales tax on billings received from . . . until it registers with the Department and furnishes a resale certificate to . . . .
3. The taxpayer's customers are subject to retail sales tax on the local telephone network service provided by the taxpayer and on the interstate telephone network service provided by the taxpayer

except where the out-of-state receiving terminal is charged for the telephone service in the nature of a collect call.

4. Under the present circumstances, the taxpayer is not entitled to a refund of all sales taxes paid by it to . . . .

DECISION AND DISPOSITION:

The taxpayer's petition for refund is denied. This matter is being referred to the Department's Out-of-State Audit Unit for appropriate action in respect to the taxpayer's registration and tax liability.

DATED this 15th day of April 1988.