

PRIVATE TAXPAYER RULING LR01-007

December 20, 2001

The following private taxpayer ruling is provided in response to your letters dated January 10 and March 8, 2001, concerning whether the Arizona transaction privilege tax imposed under the telecommunications classification applies to your company's income derived from "presubscribed line charges".

Statement of Facts:

... is an interexchange carrier that engages in providing both intrastate and interstate telecommunications services in Arizona. ... is subject to the imposition of the Arizona transaction privilege tax on the gross proceeds of sales or gross income derived from the business of providing intrastate telecommunications services.

Beginning in 1997, the Federal Communications Commission authorized local exchange telecommunications service providers to charge long distance service companies (interexchange carriers) a "presubscribed interexchange carrier charge" (PICC), for each residential or business line that has presubscribed to the long distance provider's service. Pursuant to 47 Code of Federal Regulations Section 69.153, the local exchange carrier charges the interexchange carrier a flat rate PICC per residential or business line. This helps the local telephone companies to recover the costs of providing the local wiring, telephone poles, and other structures and facilities that enable each telephone customer to reach the telephone network.

The long distance companies (interexchange carriers) are allowed to recoup this business expense from their customers. They may increase their intrastate and interstate long distance rates to recover this business expense, but many long distance carriers choose to include a single line item charge for each customer's phone line that is presubscribed to the long distance carrier. This latter approach allocates the cost to each customer in the same manner as the PICC is assessed by the local telephone company.

... bills its customers a "Presubscribed Line Charge" in order to recover ... 's expense of paying the PICC to local exchange carriers.

Applicable Statutory Provisions and Legal References:

Arizona Revised Statutes (A.R.S.) § 42-5064 *Telecommunications classification*, imposes the

transaction privilege tax on the gross proceeds of sales or gross income derived from the business of providing intrastate telecommunications services. As defined by A.R.S. § 42-5064 (C), this business activity comprises the transmittal of signs, signals, writings, images, sounds, messages, data or other information of any nature by wire, radio waves, light waves or other electromagnetic means if the information transmitted originates and terminates in this state.

A.R.S. § 42-5064(B) establishes the tax base for the telecommunications classification as the "gross proceeds of sales or gross income derived from the business". This subsection provides specific deductions for the following federal communications commission charges:

2. End user common line charges established by federal communications commission regulations (47 Code of Federal Regulations section 69.104(a)).
3. Carrier access charges established by federal communications commission regulations (47 Code of Federal Regulations sections 69.105(a) through 69.118).

A.R.S. § 42-5001 *Definitions*, provides the meanings for the terms "gross income", "gross proceeds of sales", and "gross receipts" for all transaction privilege tax classifications, and indicates that these gross amounts include all of a taxpayer's business income from all sources. Other than what is statutorily allowed to be excluded or deducted, no other subtractions from these gross amounts are allowed.

Discussion:

Arizona's *transaction privilege ("sales") tax* is a tax on the privilege of conducting business in the State of Arizona. It is a tax on the seller and not on the purchaser. The seller may pass the burden of the tax on to the purchaser; however, the seller is ultimately liable to Arizona for the tax. The Arizona transaction privilege tax is imposed under 17 separate business classifications, including *retail* sales of tangible personal property, and the business of providing intrastate *telecommunications* services.

As an interexchange carrier, ... is engaged in business under the telecommunications classification, and is liable for the transaction privilege tax on the gross proceeds of sales or gross income derived from the business of providing intrastate telecommunications services. Income derived from providing interstate telecommunications services is not subject to the transaction privilege tax. However, the income derived by ... from the line item charge that offsets the expense of paying the PICC to the local telephone company, is not attributable to interstate telecommunications services provided. Therefore, it may not be excluded from taxable receipts on this basis.

A.R.S. § 42-5064(B) provides specific deductions for certain "end user common line charges" and "carrier access charges" authorized by the Federal Communications Commission. These

charges are indexed to the specific Code of Federal Regulations (C.F.R.) sections that authorize or establish the charges. As the PICC is authorized by a C.F.R. section that is not encompassed by either of the statutory subsections contained in A.R.S. § 42-5064(B), it may not be excluded from taxable receipts on this basis. In addition, the income received by the interexchange carrier from its customer is not the PICC authorized by 47 C.F.R. 69.153; this charge has or will be paid to the local telephone company. None of the statutory deductions allowed by A.R.S. § 42-5064(B) pertain to the category of income at issue that is received by

Conclusion:

The following ruling is given based on the facts presented:

The department rules that ... 's gross income derived from separate charges that aid in recovering ... 's expense of paying the Presubscribed Interexchange Carrier Charge to local exchange carriers, is subject to the transaction privilege tax under the telecommunications classification.

The conclusion in this private taxpayer ruling does not extend beyond the facts as presented in the request for a private taxpayer ruling dated January 10, 2001 and supplemented by your letter dated March 8, 2001.

This response is a private taxpayer ruling and the determinations herein are based solely on the facts provided in your request. The determinations are subject to change should the facts prove to be different on audit. If it is determined that undisclosed facts were substantial or material to the department's making of an accurate determination, this taxpayer ruling shall be null and void. Further, the determination is subject to future change depending on changes in statutes, administrative rules, case law or notification of a different department position.

The determinations in this private taxpayer ruling are only applicable to the taxpayer requesting the ruling and may not be relied upon, cited nor introduced into evidence in any proceeding by a taxpayer other than the taxpayer that has received the private taxpayer ruling.