



PRIVATE TAXPAYER RULING LR03-011

Janet Napolitano
Governor

J. Elliott Hibbs
Director

October 23, 2003

This private taxpayer ruling responds to your letter of May 23, 2003, as supplemented by your letter of June 13, 2003. In your letters, you request the Department to rule that telecommunications services provided by your client . . . ("Company") . . . are not subject to Arizona transaction privilege tax.

Statement of Facts:

The following are facts as presented in your letter:

The Company is a service provider headquartered in a state outside of Arizona. The Company does not maintain audio bridging equipment within, Arizona; however, the company does maintain a sales office in Arizona used only for the solicitation of sales.

Services – Generally

The fundamental capabilities of the Company's primary services are to provide conference call bridging services to clients. The services provided include: (1) call reservation, (2) national and international outbound access, (3) national inbound access, and (4) prearranged conference connection. Charges are billed monthly based on rate information. There may be a set-up rate per participant, as well as a per minute charge.

At this point it should be noted that the following terms have meanings specific to the Company:

- (1) *Customer*. The individual or entity to which the invoice is sent. The *customer* may select various features on behalf of the *call leader*, who is often an employee of the customer. However, the *customer* ultimately bears responsibility for the purchase and payment to the Company.
- (2) *Call leader*. The call leader is the individual who manages the call. Note that the customer and call leader may or may not be the same individual. The *customer designates the call leader*.
- (3) *Call participants* or *callers*. The individuals who call into and participate in the conference call. The *call participants* are not considered to be the *customer* in that they do not participate in the purchase of the services and bear no responsibility for the payment of the services.
- (4) *Operator*. The Company employee who assists the *customer* in reserving the call, assists the *call leader* in managing the call, and connects the various *call participants* to the call. The *operator* may also manage the various features (except for word processing). These features will be discussed in greater detail *infra*.

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The Company provides the audio conferencing services through the use of audio teleconferencing equipment referred to as an audio bridge. As provided by Newton's Telecom Dictionary, 16th Edition (2000), the term audio bridge is "a device that mixes multiple audio inputs and feeds back composite audio to each station, minus that station's input. Also known as a mix-minus audio system." Conference participants are joined together by an operator using one of the Company's audio bridges. The Company does not maintain an audio bridge in Arizona.

Services – Description

The Company offers customers two basic types of conference call services: Operator assisted calls and automated calls.

- (1) **Operator assisted calls.** Operator-assisted conference call services account for approximately 85-90% of the Company's revenue. Although operator-assisted services are provided using three methods, each are similar in that an operator coordinates the conference call.
 - (a) **Operator assisted calls with dial-in toll-free "800" access.** Participants call the Company at a pre-arranged time using a toll-free "800" number that the Company provides. A conference administrator then connects the participants to one another through a Company audio bridge. The process of operator-assisted calls that are placed in this manner is as follows. Participants calling the "800" number access their own local exchange carrier ("LEC"). The LEC connects the participants to the Company's interexchange carrier ("IXC"), which in turn connects them to the LEC serving the location of the Company's audio bridge. This LEC then connects the participants to the Company's audio bridge. Consequently, the Company incurs the telephone usage cost for the duration of the call. This type of conference calling service represents a substantial majority of the Company's operator-assisted services.
 - (b) **Operator assisted calls without dial-in toll-free "800" access.** In a second method of providing operator-assisted services, participants call the Company's operator at a prearranged time without the use of an "800" number and are then joined together through the audio bridge. Participants using the service in this manner use their own telephone equipment to access their own LEC, which in turn connects participants to their own IXC, which then connects them to the LEC serving the Company's audio bridge. The Company's LEC then connects the participants to the audio bridge. In this form of operator-assisted conference calling, participants incur their own telephone usage throughout the call.
 - (c) **Operator assisted calls with dial-out service.** The third method of providing operator-assisted services is the "dial-out" service method. Conference administrators call participants at a pre-arranged time and link them to one another through an audio bridge. With this type of conference call, the Company accesses the LEC serving its location, which connects it to its designated IXC, which in turn connects the Company to the LECs serving the participants. The participants' LECs then connect the Company to the participants' phones. The Company incurs the telephone usage cost for the call's duration.
- (2) **Automated calls.** The second type of conference call service that the Company provides is the automated conference call service. For this service, an operator does not assist the participants in connecting to the audio bridge. Rather, the call leader reserves

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an "800" number with the Company and receives a pass code. The participants dial the reserved "800" number, enter the pass code, and are connected to the audio bridge. Participants calling the "800" number access their own LEC. The LEC connects the participants to the Company's IXC, which in turn connects them to the LEC serving the location of the Company's audio bridge. This LEC then connects the participants to Company's audio bridge. Consequently, the Company incurs the telephone usage cost for the duration of the call. This second service type accounts for approximately 10-15% of the Company's revenue.

Your Position:

Your position is that telecommunications services Company provides using its audio bridging equipment are interstate telecommunications services and thus are not subject to Arizona transaction privilege tax under the telecommunications classification found at Arizona Revised Statutes ("A.R.S.") § 42-5064.

Conclusion and Ruling:

The Department rules that the above-mentioned services provided by Company are not "intrastate telecommunications services" as defined in A.R.S. § 42-5064(C)(3). Company's gross proceeds of sales of such services are thus not subject to Arizona transaction privilege tax under the telecommunications classification.

The conclusion of this private taxpayer ruling does not extend beyond the facts presented in your letters of May 23, 2003 and June 13, 2003.

This response is a private taxpayer ruling and the determination herein is 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 who has received the private taxpayer ruling.