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Governor

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Director

PRIVATE TAXPAYER RULING LR03-013

October 23, 2003

This private taxpayer ruling is in response to your letter dated May 1, 2003, as updated on May 21, 2003, in which you requested a private taxpayer ruling relating to the transaction privilege consequences to . . . ("Taxpayer"), which is headquartered in . . . Arizona, for selling programming signals to its Arizona customers.

Statement of Facts:

Your May 1, 2003 and May 21, 2003 letters present the facts relating to Taxpayer's business as follows:

[Taxpayer is] a cable television signal provider (i.e., [Taxpayer] purchase[s] satellite signal(s) from programming companies (HBO, etc.) and resell[s] them to multi resident facilities (apartments, condominiums, etc.) that are under common ownership.

. . .

[Taxpayer] obtains the programming signal from an instate source who obtains it from instate and out of state sources. . . .

[Taxpayer] sells only to the "common [o]wnership multi resident facilities." On occasion [Taxpayer] may sell small equipment, such as a modem. [Taxpayer] understand[s] that any tangible property such as this would be taxable. . . .

[Taxpayer] does the "installation" of the cable service. This is a labor install only, in as much as the infrastructure is already in place and it is a situation of "connecting the wires" (for lack of better terminology).

Issues:

What are the transaction privilege tax consequences of Taxpayer's selling cable programming signals to multi resident facilities that are under common ownership?

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Your Position:

You do not articulate a position in your request but state,

Having reviewed the Arizona Statutes on telecommunications . . . [Taxpayer is] unable to determine the taxability of [its] company.

Conclusion and Ruling:

On the basis of the information provided, Taxpayer does not meet the definition of a cable television system that qualifies for exemption from the telecommunications classification. Accordingly, Taxpayer is subject to transaction privilege tax on subscription fees, access and connection charges, and any another charges for services performed on behalf of its cable subscribers in connection with its providing intrastate telecommunications services. Based on the facts you provided, the programming signals Taxpayer sells originate from both instate and out-of-state sources. Therefore, Taxpayer engages in both intrastate telecommunications services and interstate telecommunications services. Your facts, however, do not indicate whether Taxpayer separates income from these interstate telecommunications services from its intrastate telecommunications services income.

Since Taxpayer is in the business of providing intrastate telecommunications services, unless it separately states these charges on its sales invoices and records, Taxpayer's gross income derived from telecommunications services, regardless of their interstate or intrastate origin, is subject to transaction privilege tax under the telecommunications classification.

Additionally, as you concede in your letter dated May 21, 2003, Taxpayer's sales of equipment to Arizona customers is subject to transaction privilege tax under the retail classification, unless exempt thereunder.

The taxability of Taxpayer's cable service installation work depends upon the nature of the work performed. If Taxpayer contracts with a real property owner to install telecommunications equipment (including adding or improving wiring, outlets, or "plug-ins") and charges an installation, set-up, or repair fee, it is acting as a prime contractor and is taxable under the prime contracting classification. In the event wires and outlets are already in place and Taxpayer's set-up fee covers mere activating or connecting of existing wires, Taxpayer is performing a non-taxable service.

The following private taxpayer ruling is given based on the facts presented in your request.

The Department rules that Taxpayer's sales of cable television signals to multi resident facilities that are under common ownership constitute the business of providing intrastate telecommunications services, which is subject to transaction privilege tax under the telecommunications classification. In order for the Department to distinguish between

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income derived from intrastate telecommunications services and income derived from interstate telecommunications services, Taxpayer should separate on its invoices and records taxable intrastate telecommunications services charges and nontaxable interstate telecommunications services charges. If Taxpayer's charges for intrastate telecommunications services are not separately stated from its charges for interstate telecommunications services, then the gross income from both intrastate and interstate telecommunications services is subject to transaction privilege tax under the telecommunications classification.

The Department further rules that Taxpayer's sales of equipment to its subscribers are subject to transaction privilege tax under the retail classification, and Taxpayer's income from installation work that exceeds nontaxable service is subject to transaction privilege tax under the prime contracting classification.

The conclusions in this private taxpayer ruling do not extend beyond the facts presented in your letters dated May 1, 2003 and May 21, 2003.

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 applicable only 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.