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Governor

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Director

PRIVATE TAXPAYER RULING LR04-001

May 19, 2004

This private taxpayer ruling responds to your letter of September 12, 2003, as supplemented by your letter dated December 5, 2003. In your letters, you ask the Department to rule on the Arizona transaction privilege tax liability of . . . ("Company") from services Company provides to Arizona customers.

The following are facts as presented in your September 12 letter:

We provide an answering service to our customers ("Customers"). To facilitate the service, we assign to each Customer a separate 800 number and each Customer in turn provides either the 800 number, or more typically, its general business telephone number to their customers ("Callers") for their use in contacting or leaving messages with the Customer. The 800 numbers are allocated to us through . . . our telecommunications service provider, who we pay for monthly usage thereon. Customers and Callers are located in Arizona, as well as in other states. We are located in Virginia, where we operate a call center at which we answer calls to Customers and from which we forward messages to our Customers. We have several methods of relaying the messages that we have taken for our Customers. These include delivering the messages to our Customer's alpha-numeric pager via the transmission network of a third-party paging carrier with whom we have contracted, sending the messages via fax or E-mail, sending the messages to our Customer's cell phone, or contacting our Customer on the phone and verbally relaying the messages. Several years ago, the majority of our Customers received their messages via an alpha-numeric pager that they rented or purchased from us; however, as technology has changed fewer Customers are relying on alpha-numeric pagers. Instead more Customers are opting to activate the text messaging option provided by their cell phone provide [sic] or to have their messages delivered via E-mail.

To provide the answering service, our employee (referred to as a receptionist) answers telephone calls that Callers make to either the 800 number or to the Customer's general business number (which is call-forwarded to the 800 number). The receptionist explains that Customer is unavailable and asks Caller whether he or she would like to leave a message for Customer. Caller then explains the reason for the call. The receptionist does not transcribe the message provided by Caller verbatim. Rather, the receptionist distills the information into a relatively short, condensed message and enters the message into a computer. After confirming that the message conveys Caller's intent and entering Caller's name and telephone number, the receptionist transmits the message via one of the means described above.

We can also relay Customer-specific information to a Caller. In some instances, a Caller may ask questions regarding Customer's hours of operation or when Customer will be available or will call back. Sometimes the receptionist will simply explain that caller is speaking with Customer's answering service and that Customer will be contacted immediately and will respond as quickly as possible. In other cases, the receptionist may provide general information such as office hours or may direct the message to a specific individual other than the person originally requested by Caller. In many cases the receptionist may refer to a computer information screen that prompts questions intended to solicit the specific information which Customer may need in order to respond appropriately to

PRIVATE TAXPAYER RULING LR04-001

May 19, 2004

Page 2

Caller. In certain emergency situations, the receptionist or other employees may contact the Customer directly by telephone or may transmit the message to more than one individual until receipt of the message is acknowledged. In non-emergency situations we may fax or E-mail messages taken from Callers once a day. Customer may also retrieve messages by calling in to speak with a receptionist or by requesting written details.

Some of our Customers elect to pay for an enhancement to our basic service; it provides their Callers an option to reach them by voice mail. When the Caller dials the Customer's phone number they will be given two options: the first option is to leave a voice mail for the Customer; the second option will transfer the Caller to a receptionist in the call center and the receptionist will take a message and transmit the message as described above. If a voice mail is left for the Customer, the Customer will receive a message that they have a voice mail message waiting to be retrieved.

We typically invoice our Customers using one of two methods. Under the first method of invoicing, our Customer is contracted at a monthly flat rate (i.e. a single aggregate charge for a specified monthly allowance of calls answered) and a supplemental charge for each call we answer beyond the monthly call allowance. The billable call volume is based upon the number of calls answered for a Customer, rather than on the number of messages transmitted or the distances of each incoming or outgoing call. All calls, other than those that are clearly dialed to a wrong number, are logged and counted. As a result, the billable call count includes instances in which the Caller does not leave a message. Under the second method of invoicing, our Customer is contracted at a small monthly flat rate and a supplemental charge is assessed at invoicing for the time that we have incurred answering the calls beyond the monthly time allowance. Under both methods, our invoices do not reflect the separate components of the answering service, the use of the 800 number or the transmission of messages, unless the messages are sent via an alpha-numeric pager: instead the invoices reflect the flat rate for the contracted plan and the excess calls or time over the plan. If the Customer's messages are sent to an alpha-numeric pager, the customer is assessed a monthly airtime charge of \$16.95. The purpose of this charge, which is separately stated on the invoice, is to recoup the charges assessed to us by the third-party paging carrier for transmission of the messages over their network.

The majority of our revenue is derived from providing the answering service component of our business. The charges for fax transmissions are well under 1% of our revenues and the airtime charges assessed our customers using alpha numeric pagers are less than 5% of our revenues.

You provided further details in a separate communication with this office on December 5, 2003:

Regarding a \$16.95 monthly airtime charge for messages sent to a customer's alpha-numeric pager, the airtime charge is exclusive of any rental or sales charge for the pager. That is, if the customer purchased or rented a pager from [Company], [Company] would bill a separate charge for the purchase or rental of the pager and a separate charge for the airtime fee.

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Regarding sales or rentals of alpha-numeric pagers, [Company] has no sales agents conducting business within the State of Arizona. An Arizona customer who wishes to purchase or lease a pager must contact a regional sales office. The closest sales office to Arizona is [in] CA. More than likely this sales office would handle the sale; however it could be one of our other sales offices in IL, NY, NJ, MD, PA, or MA. The sales office sends a

PRIVATE TAXPAYER RULING LR04-001

May 19, 2004

Page 3

sales contract to the customer for completion. Pagers are delivered to the customer from [Company]'s Virginia headquarters or from the stock of a sales office.

Your Position

Your position is that none of Company's service charges or, alternately, only the portion related to airtime is subject to transaction privilege tax.

Conclusion and Ruling

The Department rules that:

1. Company's answering and transmission services are not intrastate telecommunications services, and thus gross income derived from sales of such services are not subject to Arizona transaction privilege tax under the telecommunications classification.
2. Company's gross receipts derived from leases of the pagers used to provide Company's answering and transmission services to lessees are subject to transaction privilege tax under the personal property rental classification because the pagers are shipped or delivered by Company into Arizona for use by Company's Arizona customers within the state.
3. Based on the presence of Company's leased pagers within the state and their role in establishing and maintaining a market in Arizona for Company's business activities, Company's gross proceeds of sales of alphanumeric pagers are subject to transaction privilege tax under the retail classification. See *Tyler Pipe Indus. v. Wash. State Dep't of Revenue*, 483 U.S. 232, 250 (1987); *Ariz. Dep't of Revenue v. Care Computer Sys., Inc.*, 4 P.3d 469, 472-73 (Ariz. Ct. App. 2000).

The conclusion of this private taxpayer ruling does not extend beyond the facts presented in your letters dated September 12, 2003 and December 5, 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.