



COLORADO

Department of Revenue

Taxation Division

Office of Tax Policy
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PLR-16-014

August 1, 2016

XXXXXXXXXXXXXXXXXXXX
Attn:XXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX

Re: Web Collaboration Services

Dear XXXXXXXXXXXXXXX,

You submitted on behalf of XXXXXXXXXXXXXXX ("Company") a request for a private letter ruling to the Colorado Department of Revenue ("Department") pursuant to Department Rule 24-35-103.5. This letter is the Department's private letter ruling. This ruling cannot be relied upon by any taxpayer other than the taxpayer to whom the ruling is made.

Issue

Are Company's (1) web collaboration services or (2) XXXXXXXXX services subject to sales or use tax?

Conclusion

1. Charges for Company's web collaboration services provided to consumers in Colorado by means of servers located outside Colorado are not subject to Colorado sales tax because it is an interstate service.
2. Company's XXXXXXXXX service is not subject to Colorado sales tax because it is an interstate service.

Background

Company offers a number of web collaboration services through Company's cloud located on servers outside of Colorado. No tangible personal property is provided to the customer as part of the services. Customers utilize their own hardware, software and internet connectivity to utilize Company's services. However, if a mobile phone is being used to access Company's service, the customer must download an application electronically at no charge.

This web collaboration service is a cloud-based web conferencing application that permits desktop sharing through a web browser with audio and video capabilities. The web collaboration service operates through a participant's computer or mobile device. Audio functionality is either through a computer, mobile device, or telephone. Customers may not purchase audio services on a stand-alone basis. The customer must purchase a video

capable plan, but is not required to use the video function to join a meeting. The customer may use the audio and video function or just the audio function of the video capable plan to join a meeting. Video functionality operates through a webcam or a mobile device camera. As noted above, all participants provide their own hardware and internet or telephone connection, and no hardware or software is provided by Company. Each customer is responsible for the telephone service necessary to connect to the web collaboration service, unless the customer utilizes the XXXXXXXX plan.

For an additional monthly fee, a customer can subscribe to a XXXXXXXX plan in order to utilize the web collaboration services. The XXXXXXXX service will call a number stored by an attendee at the time of the meeting, which allows the customer to receive a call without having to maintain a call-in number and meeting ID. Alternatively, an attendee can call a toll free number provided by the subscriber to participate in the meeting. When a customer utilizes the XXXXXXXX plan, the customer does not pay a telephone service charge to their own service provider when they connect to the web collaboration services.

Structure of Analysis

The taxability of a web collaboration and XXXXXXXX services utilize the analysis outlined below. A web collaboration service is taxable if it meets the statutory conditions in 1)a)i) and ii). If it does not meet the statutory conditions in 1)a)i) and ii), it is likely not subject to tax.

1. Is the item taxable under § 39-26-104(1), C.R.S.?
 - a. Is the item intrastate telephone or telegraph service under § 39-26-104(1)(c), C.R.S.?
 - i. Is the item telephone or telegraph service?
 - ii. Is the item intrastate?
2. Does the telecommunication originate and terminate within Colorado?

Discussion

1. Web Collaboration Services

a. Web collaboration as telephone and telegraph service

Colorado imposes sales tax on the sale of intrastate telephone and telegraph services.¹ Specifically, this tax is levied on "telephone and telegraph services, whether furnished by public or private corporations or enterprises for all intrastate telephone ... services." The terms telephone and telegraph are not limited to the technology that existed in 1935, but includes replacement or substitute technologies.² Department Regulation 1 CCR 201-4, (39)26-104.1(c)(l)(a) defines telephone and telegraph services to include, but not be limited to:

...all telephone and telegraph services except those services defined as mobile telecommunications services under 4 United States Code section 124(7) [that] are intrastate telephone and telegraph service are subject to the tax imposed by C.R.S. 39-26-106, whether furnished by public, private, mutual, cooperative, or governmental corporations or agencies. The term

¹ 39-26-104(c)(l), C.R.S.

² *AT&T Communications of the Mountain States, INC, v Alan Charnes* 778 P2d 677 (1989) states "the longstanding principle of statutory construction which provides that a statute written in general terms applies to subjects or activities which come into existence after adoption of the statute, including those which could not have been anticipated when the statute was enacted."

"service" includes but is not limited to additional listings, joint-user service, non-talking circuits, leased circuits and facilities, local exchange service (whether on a flat or measured basis), information charges, service connection charges, and any other charges assessed or passed on to the consumer with the exception of charges for installation or repair which are taxed according to the Special Regulation on Contractors. Telephone service is taxable whether either local or toll calls are made or telegrams are sent from telephone pay stations.

Company asserts in its request that its web collaboration services are teleconferencing services. We agree. Neither Colorado revised statutes nor Department regulations specifically address teleconferencing. Telephone service began as the transmission of two-way communication through the use of transmission lines and switching facilities that route calls. However, we do not interpret the statute imposing sales tax on telephone services to limit the application of sales tax to telephone services in which there are only two callers.³ According to the facts stated in Company's request, Company's web collaboration services involve connecting two or more participants in an audio or video conference during which participants can see, hear, share information / data and communicate with each other. Had Company's service routed one caller to another, we would have no difficulty finding that this service provides a telephone service between the callers. We do not believe that providing a routing or conferencing service that includes a third caller (or more) in the same telephone call fundamentally alters this telephone service. Therefore, we conclude that the provisioning of a teleconferencing service is a telephone service.⁴ We note that our research of other states indicates that most states implicitly or explicitly characterize teleconferencing services to be a telephone service.⁵

Company argues that its service is not telephone service because it is only part of the communication infrastructure. We do not believe it matters that Company does not provide all necessary connections to reach the teleconferencing service. Telephone service is comprised of at least two elements: circuitry and teleconferencing. For example, if a customer leases intrastate transmission from company A and purchases central office switching, PBX service or some other routing-type services⁶ (e.g., teleconferencing services) from company B, customer has purchased intrastate telephone service. Therefore, Company provides a telephone service.

³ Colorado Department of Revenue Private Letter Ruling No. PLR-13-006 states "Broadly speaking, switches that control the routing and handling of telephone calls are a necessary part of intrastate telephone service."

⁴ The Department has previously given guidance in its FYI Sales 80 ("Telephone and Telecommunications") that teleconferencing is not telephone service subject to tax. On further review, we believe, for the reasons set forth in this ruling, this guidance is incorrect.

⁵ Florida Technical Assistance Advisement No. 11A19-001 states, "Since a conference bridging service involves the transmission or routing of signals between and among the participants at the bridge, it is a communications service...", Massachusetts Letter Ruling No. 12-1 states, "Taxable telecommunications services include teleconferencing services, including a conferencing bridging service that links two or more participants of an audio or video conference call that may include the provision of a telephone number," Texas Comptroller's Decision No. 43, 983 states, "The agency considers teleconferencing services to be taxable telecommunications services..."

⁶ Switching is traditionally performed at a central office exchange but can be performed by a private branch exchange (PBX). In both cases, calls are routed and rerouted to make or complete a call. Call conferencing is another variation of this same service.

b. *Web collaboration as "intrastate" telephone service.*

Sales tax applies to a telephone service only if the telephone service is "intrastate".⁷ Although "intrastate" is not defined in statute, we begin by noting that the foundational rule is that intrastate service originates and terminates within the state.

More specifically, a call originating in Colorado and terminating in Colorado is an intrastate telephone call, regardless of how the provider routes the call. A telephone provider generally cannot avoid sales tax on intrastate telephone service by disaggregating its various costs and charging sales tax only on those costs incurred by equipment located in Colorado. In a somewhat analogous circumstance, we generally do not allow a retailer of goods to disaggregate its costs and exclude from the calculation of sales tax the costs of, for example, labor and transportation services needed to bring the goods to market.

In *AT&T v. Department of Revenue*, 778 P.2d 677 (Colo. 1989), the Colorado Supreme Court addressed whether an interstate telephone carrier was required to pay sales tax on a charge by an intrastate telephone carrier for access to intrastate facilities to complete an interstate call. The interstate carrier argued that the service as a whole was interstate because the origination and termination of the call determined whether the call was an inter or intrastate telephone service, and the calls in question all had either origination points or termination points outside the state. The Court, however, noted that individual components of the call could be separately analyzed to determine their intra- or interstate character because AT&T was paying the LEC to carry the call for the "last mile", within the area controlled by the LEC (which was entirely within the state). The Court held that the interstate carrier was using and paying for a portion of the intrastate telephone infrastructure and, therefore, the sales tax applied to the separately billed service that occurred intrastate.

AT&T does not address the services provided by Company, and the logic of *AT&T* should not be extended beyond the facts of that case. Specifically, *AT&T* dealt with a transmission service, not routing and conferencing services. A transmission service is necessarily tied to a geographic location. That is, the transmission of a call from one point to another point is defined by where the two points are located. Routing and conferencing services, on the other hand, are not tied to a geographic location. As made clear in the facts before us, the router may be in the same building as the call participants, but the router can also be located in another state, another country, or even in space. The technology to accomplish this remote routing was not widely used, if at all, in 1988 when *AT&T* was decided and, in any event, most certainly was not at issue in that case.

Company argues that the service is performed out-of-state because the server is out-of-state. We would have no difficulty ruling that a telephone service provider is providing intrastate telephone service if the originating and terminating call points were in this state, even though the provider elects to route the call through routing points outside Colorado. We previously provided guidance on this issue in the context of VoIP telephone service in which calls originating in Colorado are most likely routed through of a variety of routers and transmission paths outside of Colorado before being routed back to the terminating caller located in Colorado.⁸

⁷ § 39-26-104(1)(c)(I), C.R.S.

⁸ Department General Information Letter GIL-09-030.

The question here is whether our analysis is different if Company is not the provider of the transmission service⁹ but is only the provider of a routing service (call bridging service) that is provided either through the public switched telephone network and/or the Internet. To facilitate customers' calls to Company's out-of-state servers, Company represents that it is not classified as, nor regulated by, the federal government as an interstate telecommunications provider. Customers are also responsible for acquiring the necessary telecommunications, hardware, and/or Internet data service needed to participate. On balance, we are persuaded that Company's service is a service performed with respect to interstate, rather than intrastate, calls.

In this case, participants in a call may be calling in from any number of locations. In some circumstances, there may be multiple callers from Colorado, all communicating with each other. It is also true, however, that each participant procures (and pays for) their own transmission service from their point of origin, including from within Colorado, to the location of the server outside of Colorado. Company's service only begins once each participant separately procures his or her own communication (transmission) service that allows him or her to reach Company's server. Because the transmission service is a separate transaction from Company's web collaboration service, we view this situation to be a series of single participant calls from their point of origin to the server located out of state.¹⁰ Under this view, all calls from Colorado are interstate.

Moreover, sales tax, unlike income tax, is often determined by the form of the transaction. In this case, each participant is separately purchasing transmission services to an out-of-state location and the customer is separately purchasing call bridging services from an out-of-state location.

We conclude that, under these facts¹¹, each transaction between a participant and his or her telecommunications provider is a separate transaction, as is the transaction of purchasing the conference bridging service by customer from Company. Therefore, we conclude that the out-of-state call bridging service is not subject to tax because each call is an interstate call.¹²

2. XXXXXXXX Service

When Company sells the XXXXXXXX service to its customers, Company is providing each customer with the service of connecting the customer and the people with whom the customer wants to collaborate in a teleconferencing service. We assume that Company's fee for the XXXXXXXX service includes the cost for telephone service that Company

⁹ Company does assert that it provides transmission service to and from the point-of-presence (POP) to its data servers.

¹⁰ Although we do not think it correct, another view is that this situation is a series of separate two-way communication services between each two participants, all of which are connected together. These could result in a number of intrastate call and a number of interstate calls.

¹¹ We find persuasive the fact that each participant is independent of each other participant, and each participant separately procures his or her own communication service from their location to the server. We also find persuasive the fact that Company's customer procures Company's bridging services independently of the purchase of the individual transmission services. We do note that the XXXXXXXX services offered by Company undermines these facts. Under the circumstances as presented to us, the XXXXXXXX services are minor and offered as a convenience; thus, we do not find that these services change our conclusion.

¹² These facts do not give rise to a step transaction in which it would be appropriate to view to totality of all the steps to determine whether a taxable sale has occurred.

purchases from telephone carriers to connect the Colorado consumer to Company's out-of-state server. We also assume that sales tax for the intrastate portion of that call is collected by the carrier and that Company is not claiming a purchase for resale exemption [for that intrastate charge]. For the reasons discussed in section 1 of this ruling ("Web Collaboration Services"), we rule that the XXXXXXXXX service is interstate service and is not subject to Colorado sales tax.

Miscellaneous

This ruling applies only to sales and use taxes administered by the Department. Please note that the Department administers state and state-collected city and county sales taxes and special district sales and use taxes, but does not administer sales and use taxes for self-collected home rule cities and counties. You may wish to consult with local governments which administer their own sales or use taxes about the applicability of those taxes. Visit our web site at www.colorado.gov/tax for more information about state and local sales taxes.

This ruling is premised on the assumption that Company has completely and accurately disclosed all material facts. The Department reserves the right, among others, to independently evaluate Company's representations. The ruling is null and void if any such representation is incorrect and has a material bearing on the conclusions reached in this ruling and is subject to modification or revocation in accordance to Department Rule 24-35-103.5.

This ruling is binding on the Department to the extent set forth in Department Rule 24-35-103.5. It cannot be relied upon by any taxpayer other than the taxpayer to whom the ruling is made.

Sincerely,

Office of Tax Policy
Colorado Department of Revenue

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