

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:B8

PLR-157266-04

Date:

April 29, 2005

In Re:

Legend

X =

Dear :

This responds to a letter ruling request submitted on behalf of X by your authorized representative. X owns coin-operated and coinless pay telephones. X will provide a variety of services in connection with these telephones. This request relates to the excise tax imposed on communications by § 4251 of the Internal Revenue Code.

X will provide local telephone service by leasing public access lines that will be connected to X's public pay telephones. A caller may make a local call by inserting a maximum of 50 cents into these telephones and dialing a local number or by dialing "0" and a local number.

X will provide long distance telephone service by contracting with one or more long distance carriers. A caller has several long distance calling options. X requested rulings related to three of these options. The first long distance option is to use coins to pay for a long distance call. X will collect the coins, deduct its commission, and pay the balance to the long distance carrier with whom X has contracted for service.

The second long distance calling option is coinless. A caller may dial "0" and use X's prescribed carrier or dial the access code of the caller's selected carrier. If a caller uses X's prescribed carrier, X receives a commission. If a caller uses its own selected carrier, X is compensated.

The third long distance calling option is a collect call. The caller will dial "0", the area code, the number, and give X's local operator service provider the caller's name. X's local operator service provider will pay X a commission.

X will provide inmate phone service at correctional institutions by providing coinless pay telephones and contracting with a local operator service provider to carry those calls. An inmate may only use the coinless payphone to make a collect call. The local operator service provider will pay X a commission.

Section 4251(a)(1) imposes a tax on amounts paid for taxable communications services. The term communications services means local telephone service, toll telephone service, and teletypewriter exchange service.

Section 4252(a) defines local telephone service as: (1) the access to a local telephone system, and the privilege of telephonic quality communication with substantially all persons having telephone or radio telephone stations constituting a part of such local telephone system, and (2) any facility or service provided in connection with a service described in (1). The term local telephone service does not include any service which is a toll telephone or a private communication service.

Section 4252(b) defines toll telephone service as: (1) a telephonic quality communication for which (A) there is a toll charge which varies in amount with the distance and elapsed transmission time of each individual communication and (B) the charge is paid within the United States, and (2) a service which entitles the subscriber upon payment of a periodic charge (determined as a flat amount or upon the basis of total elapsed transmission time), to the privilege of an unlimited number of telephonic communications to or from all or a substantial portion of the persons having telephone or radio telephone stations in a specified area which is outside the local telephone system area in which the station provided with this service is located.

Section 4253(a) provides that service paid for by inserting coins in coin-operated telephones available to the public shall not be subject to the tax imposed by § 4251 with respect to local telephone service, or with respect to toll telephone service if the charge for such toll telephone service is less than 25 cents.

Section 4253(e) provides that only one payment of tax under § 4251 is required with respect to the tax on any service, notwithstanding the lines or stations of one or more persons are used in furnishing that service.

Section 4291 provides (with one exception not relevant here) that every person receiving any payment for facilities or services on which a tax is imposed upon the payor thereof shall collect the amount of the tax from the person making such payment.

Section 49.4252-4(a) of the Facilities and Services Excise Tax Regulations provides, in part, that the tax is payable by the person paying the transmission charge and is to be collected by the person receiving the payment.

Section 49.4253-1(a) provides that (with an exception not applicable here) the tax imposed on amounts paid for general telephone service (now referred to as local telephone service) is not applicable to a single telephone conversation paid for by inserting coins in a public coin-operated telephone. The tax imposed on amounts paid for toll telephone service or telegraph service is not applicable to a single telephone conversation for which a toll charge is made, or to a telegraph message, if the charge for such toll telephone service (including any additional charge for overtime) or telegraph service is less than 25 cents and is paid for by inserting coins in a public coin-operated telephone.

Rev. Rul. 74-570, 1974-2 C.B. 363, holds that the tax imposed by § 4251 does not apply to amounts paid by one communications company to a second communications company for services provided to the subscriber of the first company and billed by the first company to the subscriber. The subscriber is the person paying for the service and the tax imposed by § 4251 applies to the amounts paid by the subscriber. Further, since the first company is the person receiving payment for the services from the payor (the subscriber) with the meaning of § 4291, that company is responsible for collecting the tax and paying it over to the government.

Although X owns the telephones that customers use to make telephone calls, X does not provide the communications services defined in § 4251(b)(1). X contracts with third parties to provide those services. X, however, does receive payment for communications services when callers use the coin payment option.

Accordingly, based on X's representations, we conclude as follows:

1. X's payments for the lease of public access lines that enable the general public to use X's telephones for local calls are not subject to the tax imposed by § 4251.
2. Communications services paid for by inserting coins in coin operated telephones available to the public shall not be subject to the tax imposed by § 4251 on local telephone service, or on toll telephone service if the charge for the toll telephone service is less than 25 cents.
3. If the charge for toll telephone service is 25 cents or more and the caller pays this charge by inserting coins in a coin operated telephone, X is responsible for collecting and paying over to the government the § 4251 tax imposed on amounts paid for taxable communications service (the amount deposited into the telephone).
4. The tax imposed by § 4251 does not apply to commissions X receives from a long distance carrier.
5. X is not responsible for collecting the tax imposed by § 4251 on collect calls made by inmates on X's coinless pay phones.

This letter ruling is directed only to the taxpayer that requested it. Section 6110(k)(3) provides that it shall not be used or cited as precedent.

Sincerely,

Barbara B. Franklin
Senior Technician Reviewer
(Passthroughs and Special Industries)

Enclosures (2):

Copy of this letter

Copy for § 6110 purposes

cc: