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## Opinion of the Tax Commissioner

Date Issued: August 17, 2007

Opinion No: 06-0013

Tax: Sales/Use

XXXX

Subject: Billing and Collection Services

Attn. XXXX

Tax Accountant

XXXX

XXXX

XXXX (“Taxpayer”) has requested an Opinion of the Tax Commissioner (“Opinion”) pursuant to Ohio Revised Code (“R.C.”) section 5703.53.

### FACTS

- Taxpayer is a telecommunications provider based in XXXX with no business locations in Ohio.
- Taxpayer’s primary revenue source is derived from collect long distance calls.
- These long distance calls are billed by the LECs (AAAA, BBBB, CCCC, DDDD, and EEEE) on behalf of Taxpayer to the LECs customers as an addendum to the monthly bill for local service.
- The billing by the LECs is for the call revenue and for any applicable taxes and fees.
- The LECs collect payments on behalf of Taxpayer and turns the money over to Taxpayer on a monthly basis.
- The LEC charges Taxpayer a fee for billing and collection.
- Ohio Revised Code Section 5739.01(AA)(1)(e) specifically states that “Billing and collection services provided to third parties” are not taxable as telecommunications.
- Ohio Revised Code Section 5739.01(Y)(2)(j) also states that “Providing debt collection services by any oral, graphic, or electronic means” is an exempt personal or professional service.

Further, by letter dated April 16, 2007, Taxpayer was asked to provide additional facts regarding the services it renders. The following facts were provided in its letter dated April 26, 2007.

Taxpayer provides collect telephone service to inmates incarcerated at various correctional facilities. Taxpayer owns the equipment at the facility and provides the telecommunications service. Taxpayer accumulates this call activity and delivers it to the appropriate Local Exchange Carrier (“LECs”) or through third-party billing services for small volume LECs. Taxpayer bills the majority of its collect call revenue through direct billing arrangements with the LECs. The LECs buy the call traffic, bill the customer, handle collections, and determine when to charge it off to bad debt. For these services, the LECs charge billing and collection fees.

## **QUESTION**

Taxpayer asks for an Opinion on whether the billing and collection charges by the LECs are subject to tax?

## **DISCUSSION**

Pursuant to R.C. 5739.02(A), the Ohio sales tax applies to all retail sales in this state. R.C. 5739.01(B) defines “sale” for Ohio sales tax purposes to include any transfer of title, possession, or a right to use tangible personal property in this state or the provision of a designated taxable service in this state for a consideration.

Although there is a presumption of taxability involving sales of tangible personal property, R.C. 5739.02(C), no such presumption applies to services, for as previously stated, services are not taxable unless specifically designated as such in the Ohio Revised Code.

After review of the evidence, it is the opinion of the Tax Commissioner that the billing and collection charges from the local exchange carriers to Taxpayer, as a whole, constitute nontaxable personal services. The services being performed principally involve the collection of money due from Taxpayer’s customers. This includes making sure that the money, once collected, is properly deposited and credited to the appropriate accounts.

## **OPINION**

In summary, it is the opinion of the Tax Commissioner that the billing and collection services performed by the LECs and invoiced to Taxpayer are personal services not subject to sales tax in Ohio.

This Opinion is limited to the legal issue addressed in this Opinion. This Opinion applies only to Taxpayer and may not be transferred or assigned. In addition, the tax consequences stated in this Opinion may be subject to change for any of the reasons stated in R.C. 5703.53(C). It is the duty of Taxpayer to be aware of such changes. See R.C. 5703.53(E).

Sincerely,

Richard A. Levin  
Tax Commissioner