
Opinion of the Tax Commissioner

Date Issued: November 27, 1990

Opinion No: 90-0008

Tax: Sales

XXXX
XXXX
XXXX

Subject: 900 Service

This request for an opinion of the Tax Commissioner was received on August 20, 1990. Specifically, it concerns the applicability of sales tax to "900 Service."

FACTUAL BACKGROUND

XXXX (hereinafter, Taxpayer) has submitted evidence outlining the following factual circumstances:

- 1.) 900 service permits simultaneous calling by a large number of callers to a single 900 telephone number assigned by the Taxpayer to a sponsor. By dialing the sponsor's 900 number callers can vote, receive live or recorded information or other products from the sponsor.
- 2.) The Federal Communications Commission (FCC) has approved tariff rates for each call to a 900 number. In addition the sponsor may charge a fee to the caller for the service or information accessed by dialing the 900 service number. The sponsor fee is set solely by the sponsor. The Taxpayer bills and collects the sponsor fee from the long distance customer. From the amount collected from the long distance customer, the Taxpayer deducts its tariff charge for the call to the 900 number as well as a charge for the service of collecting the sponsor fee.

REQUEST FOR OPINION

The Taxpayer requests an opinion of the Tax Commissioner making the five following determinations. The Tax Commissioner's response follows each requested determination.

- 1.) 900 service is non-interactive one-way communication and outside the definition of telecommunications service found at R.C. 5739.01(B) (3) (f).

RESPONSE: The Revised Code sets forth at 5739.01(AA) as follows:

"Telecommunications service means the transmission of any interactive, two-way electromagnetic communications, including voice, image, data, and

information, through the use of any medium such as wires, cables, microwaves, cellular radio, radio waves, light waves, or any combination of those or similar media. Telecommunications service includes message toll service even though the vendor provides the message toll service by means of wide area transmission type service or private communications service purchased from another telecommunications service provider, but does not include any of the following: (1) Sales of incoming or outgoing wide area transmission or wide area type transmission type service, including eight hundred or eight hundred type service, to the person contracting for the receipt of that service...”

Clearly, 900 service is a form of telecommunications service. The 900 service technology allows a caller to converse with a person or to interact with various combinations of computers and recordings. The act of a telephone customer calling a 900 service number to vote, receive live or recorded information or other products from a sponsor is by its nature both interactive and two-way.

2.) 900 service is similar to 800 service and, therefore, excepted from taxation by R.C. 5739.01 (AA) (1).

RESPONSE: 900 service is dissimilar to 800 service in that the telephone customer is charged for the call to a 900 service number and no charge is made to a telephone customer for a call to an 800 service number. 900 service is not excepted from taxation by R.C. 5739.01(AA) (1).

3.) The charge made by the 900 service sponsor to the telephone customer is not a charge for telecommunications service and is not subject to sales tax.

RESPONSE: The charge which appears on a telephone customer’s statement for a call to a 900 service number is properly subject to sales tax. The amount which appears on a telephone customer’s statement represents a charge by the Taxpayer as a telecommunications service vendor for telecommunications service.

4.) The 900 service sponsor is solely responsible for any sales tax applicable to the sponsor charge.

RESPONSE: The Taxpayer is responsible for collection of sales tax on charges for calls to 900 service numbers appearing on telephone customer’s monthly statements. The Taxpayer is responsible for sales tax on telecommunication service charges appearing on telephone customer’s statements.

5.) The charge made by the Taxpayer for collecting the sponsor fee from the telephone customer is not subject to sales tax.

RESPONSE: The charge made by the Taxpayer to the 900 service sponsor for collecting the sponsor fee is not subject to sales tax. However, the entire amount charged to a telephone customer for calls to 900 service numbers is properly subject to sales tax.

The Tax Commissioner finds that in the interest of fairness the policy embodied in this opinion should receive prospective application only. Therefore, the Taxpayer will not be subject to audit for sales tax liability on telephone customer's calls to 900 service numbers which occurred prior to the issue date of this opinion.

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 the Taxpayer to be aware of such changes.

Joanne Limbach
Tax Commissioner