
Opinion of the Tax Commissioner

Date Issued: August 11, 1992

Opinion No: 92-0003

Tax: Sales/Use

XXXX
XXXX
XXXX

Subject: Rebilled Costs

This request for an opinion of the Tax Commissioner was received on February 3, 1992. Specifically, it concerns the application of the sales and use tax to the charges for interstate telecommunication in conjunction with taxable data processing services.

XXXX has alleged the following factual circumstances:

- (1) The taxpayer is engaged in the business of providing a service of on-line access to database information.
- (2) The database information is obtained by customer via electronic display, hardcopy print-outs or downloaded onto the customer's computer disk.
- (3) The customer is responsible for all lineage necessary to obtain access to XXXX's computer.
- (4) The database information can be assessed through public carriers obtained by customer or private network provided by XXXX.
- (5) XXXX rebills these private network communication charges to their customer.

QUESTION FOR WHICH OPINION IS REQUESTED

What is the proper treatment of sales and use tax regarding separately stated interstate communication charges invoiced in conjunction with taxable data processing charges?

ANSWER The relevant sales and use tax provision can be found in R.C. 5739.01(H)(1), which defines sale price as: "the aggregate value in money of anything paid or delivered, in the complete performance of a retail sale, § without any deduction on account of the cost of the property sold, cost of material used, labor or service cost, interest or discount paid or allowed after the sale is consummated, or any other expense."

XXXX provides data processing services to its customers coupled with, in some instances, telecommunication charges on the transaction. According to rule 5703-9-46 of the Ohio Admin. Code, the charge for providing a nontaxable service in a mixed transaction will be exempt from sales or use tax if it is separately stated. However, this is not a case of a mixed transaction. XXXX does not provide telecommunication services to its customers; rather, it rebills its customers for charges billed by its long distance carrier. The mere fact that XXXX itemizes these communication charges does not alter the fact that these charges are part of the expense of the data processing services. Consequently, these telecommunication charges are part of the data processing services provided by XXXX and the entire transaction is subject to Ohio sales or use tax.

In arguing the telephone charges are exempt from sales and use tax, XXXX cited First Federal Saving & Loan Association v. Limbach, B.T.A. Case No. 88-F-175 (August 16, 1991). In First Federal, the Board ruled that the communications services provided by a telephone company were exempted from sales and use tax pursuant to R.C. 5739.02(B)(7). Subsequent to the audit period covered by that decision, the legislature, in 1987, amended R.C. 5727.01(E) (2) specifically excluding long distance telephone carriers from the definition of "telephone company." Due to this statutory change, the Commissioner did not appeal First Federal. However, the Commissioner does not believe First Federal is controlling under current law.

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.

Roger W. Tracy
Tax Commissioner