



Charges for Audio Conferencing Services

LR: 2010-1-SUT – Issued November 4, 2010

Tax: Sales and Use Tax

Company requested a Letter Ruling regarding the application of the New Jersey Sales and Use Tax Act to charges for audio conferencing services.

Facts

Service 1

Service 1 is sold as a stand-alone service offering to corporate and enterprise clients. It offers dial-in audio conferencing over standard telephones. It is differentiated based on a number of integrated web controls for call control, recording, account administration, and invoice record keeping. The service is billed monthly on a per-minute usage basis and on a negotiated flat-rate basis. The per-minute prices are negotiated from a standard rate card.

The technical infrastructure that runs this service is based on Company-developed software running on servers located at the Company's datacenter in New Jersey. The 1-800-number circuits used to provide this Audio Service are provisioned by the Company and terminate at the datacenter in New Jersey. The local phone numbers that are used to access the Audio Service are provided by a third party and terminate at the datacenter in New Jersey.

The Company does not sell or license software or other tangible personal property to its customers as a part of Service 1.

Service 2

Service 2 is sold over the Internet to small companies and consumers. It offers dial-in audio conferencing over standard telephones as well as wideband (high definition) voice conferencing for people calling from their computers using soft phones such as Skype. This service provides a number of web-based functions such as web controls, recording, billing, and invoicing.

The service is sold on a subscription basis based on the number of participants the customer wants to have in the room as well as how many 1-800-number minutes they would like for that month. If the customers exceed their 1-800-number minute allocation, they are then billed on a per-minute basis for the overage.

The technical infrastructure that runs this service is based on Company-developed software running on Dell servers located at the Company's datacenter in New Jersey. The 1-800-number circuits used to provide this Audio Service are provisioned by the Company and terminate at the datacenter in New Jersey. The local phone numbers that are used to access the Web Service are provided by a third party and terminate at the datacenter in New Jersey. The computer-based voice traffic travels over the Internet and terminates at the New Jersey datacenter as well. The Company does not sell or license software or other tangible personal property to its customers as a part of Service 2.

The Company acquires access to the 1-800-number circuits and local phone numbers used to provide both Service 1 and Service 2 from various telecommunications providers. The Company pays for the cost of these telephone numbers directly and does not pass-through any of the costs of the numbers to its clients. The Company accounts for the costs of these numbers as a direct expense necessary to provide Service 1 and Service 2 to its clients.

Each Audio Service client provides a billing address to the Company, and the client is then billed at the address provided. The client's billing address is not required to coincide with or represent the actual location of the participants in the audio conference. It is possible for multiple parties located in multiple states to participate in a single audio conference.

To initiate an audio conference, the conference chair (who is not necessarily located in the billing jurisdiction) calls a telephone number provided by the Company. The remaining conference participants then call the provided number and join the audio conference. Additional participants can join the audio conference at any time as long as the conference is ongoing.

In general, the Company has no mechanism to determine the physical location of the participants in a particular audio conference. The Company bills each customer prior to use (i.e., prepaid minutes) and does not have a system to trace the origin of each call.

Issues

1) Are the Company's Audio Services subject to New Jersey Sales Tax when the Company bills a customer address located in New Jersey?

2) Are the Company's Audio Services subject to New Jersey Sales Tax when the Company bills a customer address located outside the State of New Jersey?

Discussion

The Sales and Use Tax Act imposes tax on "receipts from every sale, except for resale, of intrastate, interstate, or international telecommunications services and ancillary services sourced to this State in accordance with Section 29 of P.L.2005, c. 126 (N.J.S.A. 54:32B-3.4)." N.J.S.A. 54:322B-3(f) (1). "Telecommunications service" means the electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points. "Telecommunications service" shall include such transmission, conveyance, or routing in which computer processing applications are used to act on the form, code, or protocol of the content for purposes of transmission, conveyance, or routing without regard to whether such service is referred to as voice over Internet protocol services or is classified by the Federal Communications Commission as enhanced or value added. N.J.S.A. 54:32B-2(cc). A "conference bridging service" is defined as "an ancillary service that links two or more participants of an audio or video conference call and may include the provision of a telephone number. Conference bridging service does not include the telecommunications services used to reach the conference bridge." N.J.S.A. 54:32B-2(cc).

A sale of an ancillary service is sourced to the customer's place of primary use. N.J.S.A. 54:32B-3.4(c) (5). "Place of primary use" means the street address representative of where the customer's use of the telecommunications service primarily occurs, which shall be the residential street address or the primary business street address of the customer. N.J.S.A. 54:32B-3.4(d).

Conclusion

Conference bridging services sourced to a customer's place of primary use in New Jersey as described above are subject to New Jersey Sales and Use Tax. Conference bridging services sourced to a customer's place of primary use outside of New Jersey as described above are not subject to New Jersey sales or Use Tax.

A Letter Ruling is limited to the facts set forth therein and is binding on the Division of Taxation only with respect to the person or entity to whom it is issued and only if the person or entity fully and accurately describes all relevant facts. A Letter Ruling is based on the law, regulations, and Division policies in effect as of the date the Letter Ruling is issued or for the specific time period at issue in the Letter Ruling.