

INTERNAL REVENUE SERVICE
NATIONAL OFFICE TECHNICAL ADVICE MEMORANDUM

10-23-98

Index Number: 4251.00-00
Control Number: TAM-115431-98
Number: **199908001**
Release Date: 2/26/1999

District Director

Taxpayer's Name:
Taxpayer's Address:

Taxpayer Identification Number:
Quarters Involved:
Date of Conference:

ISSUE:

Whether additional charges for failure to pay a bill on time (late charges) paid by customers of cellular telephone companies are subject to the excise tax on communications services under § 4251(a)(1) of the Internal Revenue Code.

CONCLUSION:

Late charges paid by customers of cellular telephone companies are subject to the excise tax on communications services under § 4251(a)(1).

FACTS:

Taxpayer is a provider of cellular telephone service, which is a "communications service" subject to excise tax under § 4251. Taxpayer collects the tax every month on amounts that it bills its customers for the telephone service it provides during the month. Taxpayer accrues and remits the tax regardless of when it actually receives payment.

When customers fail to pay their bill by the identified due date, a late charge is imposed equal to a fixed percentage of the customers' outstanding balance from previous months. Taxpayer states that the purpose of the late charge is to compensate Taxpayer for the lost time value of money and to offset separate administrative expenses that arise as a result of Taxpayer's efforts to collect past due amounts. Taxpayer has not collected or paid excise tax on these late charges.

LAW AND ANALYSIS:

Section 4251(a)(1) imposes a tax on amounts paid for taxable communications services. Pursuant to § 4251(a)(2), the tax shall be paid by the person paying for the services. Under § 4291, the

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telephone company furnishing the services is responsible for collecting the tax and paying it over to the United States.

Section 4252(a)(2) defines "local telephone service" as 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 any facility or service provided in connection therewith.

Section 49.4252-1(b)(1) of the Facilities and Services Excise Tax Regulations states that where the charge for telephone service includes an additional charge for not making payment within a specified time, the total amount paid including the additional charge is the basis for computing the amount of tax due. The regulation does not define the term "local telephone service." However, prior to 1965, the term "general telephone service" included local telephone service. Thus, the regulation, which does define "general telephone service," applies equally to local telephone service. The term "general telephone service" was ultimately replaced in §§ 4251 and 4252 with the term "local telephone service" by the Excise Tax Reduction Act of 1965 (ETRA), 1965-2 C.B. 568.

The legislative history of ETRA states, in part, that the term "local telephone service" was adopted in place of "general telephone service" in order to make it clear that it is the service as such which is being taxed and not merely the equipment being supplied. Thus, in the case of local telephone service, it is the right of access to a local telephone system and the privilege of telephonic quality communication which is taxed together with facilities or services provided with this service. H.R. Rep. No. 433, 89th Cong., 1st Sess. 30 (1965), 1965-2 C.B. 643, 665; S. Rep. No. 324, 89th Cong., 1st Sess. 35 (1965), 1965-2 C.B. 676, 704.

When §§ 4251 and 4252 were amended in 1965, late charges were not specifically excluded from the tax base, even though the regulations clearly included these amounts in the tax base. If Congress had wanted a different result, it would have insured it by changing the law.

Accordingly, late charges paid by customers are subject to the tax imposed by § 4251 as amounts paid for local telephone service.

CAVEATS:

A copy of this technical advice memorandum is to be given to the taxpayer. Section 6110(k)(3) provides that it may not be used or cited as precedent. Under § 6110(c), names, addresses, and identifying numbers have been deleted.