

FINAL DRAFT PRIVATE LETTER RULING

REQUEST LETTER

08-007

May 22, 2008

Utah State Tax Commission
210 North 1950 West
Salt Lake City UT 84134

Re: Private Letter Ruling Request

We are requesting a private letter ruling on behalf of a client. The client is in the telecommunications business, and will be selling telecommunications time through various means, including through prepaid cards. The client needs to know whether to collect tax on its various products.

Utah code section 59-12-103(1)(b) and (m) impose sales tax on “telephone service...that originates and terminates within the boundaries of this state,” and on “amounts paid or charged for prepaid telephone calling cards.”

Tax Commission rule R865-19S-90(A)(2) in turn provides that “[p]repaid telephone services or service contracts are presumed to be used for intrastate telephone services *unless the service contact is sold exclusively for use in interstate communications.*” (Emphasis added.)

Under these provisions, (1) a prepaid calling card sold in Utah for \$20.00 that authorizes 1000 telephone minutes (interstate or intrastate) would presumably be subject to Utah sales tax, and (2) a service contract that is sold in Utah exclusively for use in interstate communications would presumably not be subject to sales tax. The issues our client would like clarity on are follows:

1. If the client sells a \$20 prepaid calling card in Utah that technologically and legally only allows interstate calls to be made, is the \$20 charge for such a card subject to Utah sales tax?
2. If the client sells a prepaid calling card in Utah that allows both interstate and intrastate calls to be made, then sells \$30 worth of minutes on that card that technologically and legally can be used for interstate calls, is that \$30 charge subject to Utah sales tax? (The purchase of the card itself, the purchase of dual interstate and intrastate minutes, and the purchase of intrastate-only minutes would presumably be sales taxable.)

If the answer to either question is yes, please explain what distinguishes a non-taxable interstate prepaid “service contract” from a taxable interstate prepaid calling card, or taxable interstate prepaid minutes on a calling card.

The seeming intent of Rule 90, which makes logical sense, is that any prepaid telecommunications contract, card, minutes, or other medium that is sold exclusively for use in interstate communications is not subject to Utah sales tax.

NAME

RESPONSE LETTER

August 28, 2008

NAME
ADDRESS

Re: Private Letter Ruling Request 08-007—Prepaid Telephone Calling Cards

Gentlemen:

You have asked whether your client's company is required under Utah law to collect sales tax on certain activities. You have described your client as a telecommunication business that will be selling telephone services through various means, including prepaid telephone calling cards. The prepaid telephone calling cards may be composed of interstate-only minutes, a combination of interstate-only and intrastate-only minutes, or dual interstate-or-intrastate minutes.

You specifically cite Utah Admin. Code R865-19S-90 ("Rule 90"), as the basis for your conclusion, citing the provision "that '[p]repaid telephone services or service contracts are presumed to be used for intrastate telephone services *unless the service contact is sold exclusively for use in interstate communications.*' (Emphasis added.)"

Before beginning our analysis, we point out that your reference to Rule 90 must be considered within the context of the history of the rule. Implicit in your statement is the assumption that calling cards are functionally equivalent to prepaid telephone services or service contracts. Prior to 1998, however, the rule specifically included prepaid calling cards along with the separate term of "service contracts" within in the definition of "Intrastate," which is the specific section you cited in your request. In 1998 the State Legislature passed SB 211, which introduced the current language, now found under Utah Code Ann. § 59-12-103(1)(m). It is that statute which imposes a tax on calling cards. As a result of this legislation, the Tax Commission removed the corresponding language from the rule. Accordingly, the cite from our rule, which you referenced, is not relevant to your request or analysis.

With this clarification, we will address your concerns in more detail.

Issues

The two issues you identified for purposes of this private letter ruling are:

1. Whether the sale in Utah of a prepaid telephone calling card that technologically and legally only allows interstate calls would be subject to Utah sales tax.

2. Whether Utah sales tax would be imposed on the full purchase price of the prepaid telephone calling card itself or imposed on the purchase price of the calling card's minutes based on their interstate and/or intrastate character. That is, whether the intrastate allotment of the minutes would be subject to tax, while the interstate portion would not.

You have also asked us, in the event the answer to either question is “no,” to identify the distinction between an interstate prepaid “service contract” and a taxable interstate prepaid calling card.

Analysis

Under Utah Code Ann. § 59-12-103(1)(m), “prepaid telephone calling cards” are taxable. This statute imposes a tax on “(m) amounts paid or charged for prepaid telephone calling cards.” The specific use of the term “cards” strongly suggests that the cards themselves, rather than the underlying telephone services, are subject to the Utah sales tax. Likewise, the title for § 59-12-103 identifies the “Sales and Use Tax Base,” which also suggests that the card itself is separate and distinct from telephone service as part of the tax base. The tax obligation is incurred when the card is purchased. At this time, the purchase price for a taxable transaction identified in the tax base is known and the tax can easily be computed.

Section 59-12-103(1)(m) is silent as to interstate versus intrastate minutes; the Utah Legislature did not apply to prepaid telephone calling cards any distinction between intrastate and interstate minutes. On the other hand, the Utah Legislature did consider such distinction when it drafted § 59-12-103 because it made a similar distinction in Utah Code Ann. § 59-12-103(1)(b), which states:

A tax is imposed on the purchaser as provided in this part for amounts paid or charged for the following transactions:

. . .

(b) amounts paid: (i) to a: (A) telephone service provider regardless of whether the telephone service provider is municipally or privately owned . . . (ii) for: (A) telephone service . . . **that originates and terminates within the boundaries of this state** . . . (Emphasis added.)

Comparing this with the language of § 59-12-103(1)(m), it appears that the Utah legislature considered this distinction for telephone service, but chose not to apply a similar distinction to prepaid telephone calling cards.

Furthermore, we believe the two subsections would conflict if both applied to prepaid telephone calling cards. If the cards were taxed on their purchase and on the telephone services later provided, the cards' purchasers could potentially be subject to double taxation. Accordingly, we look to the more specific statute of § 59-12-103(1)(m).

Utah Code Ann. § 59-12-104(43) supports this position by exempting from sales tax “sales of telephone service charged to a prepaid telephone calling card . . .” This section

exempts from taxation the telephone services relating to prepaid telephone calling cards. We find this exclusion to be consistent with the specific tax imposition under § 59-12-103(1)(m) on the purchase price of the cards, without specifying the nature of the underlying telephone services. Simply put, the more specific prepaid telephone calling cards are statutorily distinct from the more general telephone services.

With respect to Rule 90, for reasons cited previously, we find that it is not applicable to prepaid telephone calling cards; it only provides guidance on telephone services. The very title of Rule 90 specifically identifies “Telephone Service,” showing the intent to interpret telephone service as the term is used in § 59-12-103. Because “telephone service” does not affect the taxability of prepaid telephone calling cards under §§ 59-12-103(1)(m) and 59-12-104(43), the guidance provided in Rule 90, on which telephone services are taxable, is irrelevant for the cards.

We do recognize that the terms “prepaid telephone services or service contracts” under Rule 90 might be still confused with calling cards. However, the interpretation you seek is statutorily impermissible. The Legislature has carved out prepaid calling cards from other telephone services. Thus, while Rule 90 clarifies interstate and intrastate transmissions and relates this distinction to prepaid services and contracts, we cannot extend the definition of prepaid services and contracts provided in the rule beyond the clear statutory meaning of prepaid telephone calling cards.

Conclusion

After analyzing the text and history of §§ 59-12-103 and 59-12-104 and Administrative Rule R865-19S-90, we conclude that the sale in Utah of a prepaid telephone calling card that technologically and legally only allows interstate calls would be subject to Utah sales tax on the full purchase price of the card itself, regardless of the character or nature of interstate and/or intrastate calls. We add, that although your request letter did not question whether federal preemption applies, we are not aware of any federal legislation that would preempt Utah from taxing the cards’ full purchase prices.

Our conclusions are based on the facts as described. Should the facts be different, a different conclusion may be warranted. If you feel we have misunderstood the facts as you have presented them, if you have additional facts that may be relevant, or if you have any other questions, please contact us.

For the Commission,

Marc B. Johnson
Commissioner

MBJ/aln
08-007