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Applicability of RCW 82.08.0289 Residential Telephone Service Exemption to Cellular Telephone Service

RCW 82.08.0289 provides an exemption from the retail sales tax for the sale of network telephone service, other than toll service, to residential customers. This excise tax advisory explains that RCW 82.08.0289 does not exempt the sale of cellular telephone service to customers who may use their cellular phone service at their residence or who subscribe to a calling plan marketed or otherwise designated as "residential" in nature.

Background

RCW 82.08.0289 exempts from retail sales tax the sale of "network telephone service, other than toll service, to residential customers." "Network telephone service" is defined (in relevant part) by RCW 82.04.065 as:

the providing by any person of access to a telephone network, telephone network switching service, toll service, or coin telephone services, or the providing of telephonic, video, data, or similar communication or transmission for hire, via a telephone network, toll line or channel, cable, microwave, or similar communication or transmission system.

This definition includes the provision of cellular telephone service. The remaining question is whether a cellular telephone carrier provides service (other than toll service) to residential customers that qualifies for the exemption.

RCW 82.08.0289(2)(b) defines "residential customer" as "an individual subscribing to a residential class of telephone service." This definition was adopted in 1983 (1983 2nd ex.s., c 3, s 30). It reflects the then-customary division of all telephone service into separate "residential" and "business" classifications, as defined by regulatory tariffs filed by the telephone company. These separate classes were mandated by state regulatory approval of telephone rates, and telephone carriers filed separate tariffs with the Washington Utilities and Transportation Commission (WUTC) governing each class of service. When a customer applied for and was provided service, it could be clearly determined that the customer was receiving service under

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one or the other tariff. Land-line telephone carriers continue to file such tariffs with the WUTC to this day.

However, the telecommunications industry has evolved extensively since 1983. In particular, the availability of wireless telephone service has grown tremendously. Some individuals have abandoned land-line telephone service and rely exclusively upon a wireless carrier for telephone service. But unlike traditional land-line service, wireless telephone service is not divided into distinct classifications through the filing of formal tariffs with the WUTC or any other regulatory entity; cellular service lacks the regulatory structure necessary to define "a residential class of telephone service," as required by RCW 82.08.0289.

Moreover, the traditional regulatory distinction of "residential" service was that it was intended to provide telephone service at an individual's residence; a customer could not obtain service under the residential tariff at any location other than a residence. The very nature of cellular service, and one of its chief attractions, is that the user is free to make and receive telephone calls over a wide area; the telephone service is not tied to the user's place of residence. In this sense, cellular telephone service can never be provided on a "residential" basis.

Conclusion

For these reasons, wireless telephone service does not qualify for the exemption from retail sales tax provided by RCW 82.08.0289. All charges for network telephone service provided to a consumer by a mobile telecommunications service provider are subject to retail sales tax.
