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ETA 3205-2017

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Taxability of Telecommunications Support Payments

Purpose

This Excise Tax Advisory (ETA) addresses the taxability of various telecommunications support payments and miscellaneous fees received by certain telecommunications service providers. While this is an area that may evolve depending on federal and state regulatory requirements, the ETA provides a framework for understanding how such income is taxable for business and occupation (B&O) and retail sales tax purposes. This ETA does not address the taxability of support payments for internet access and services under [RCW 82.04.297](#).

Taxability of telecommunications support payments

Service and Other Activities B&O Tax

Support payments received by carriers that are not directly tied to a sale of telecommunications services are generally subject to the service and other activities B&O tax. Example programs that generate this type of income are:

- State Universal Service Fund (State USF)
- High Cost Loop (“HCL” is part of the federal USF)

These universal service programs provide support payments to certain qualifying telephone companies that serve high-cost areas, thereby ensuring that the residents of these regions have access to reasonably comparable service at rates reasonably comparable to urban areas. These programs provide support payments to carriers in exchange for the carrier’s fulfillment of all of the requirements of an Eligible Telecommunications Carrier (ETC).

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The state of Washington or the Universal Service Administrative Company (USAC)¹ provide these support payments to carriers without respect to any particular sale or selling activity. Once the eligible support amounts are determined (e.g., based on the carrier's costs), the money is distributed without regard to a particular sales transaction. The payments are intended to defray costs of doing business that might otherwise impact the amounts that carriers charge for retail and wholesale services. Because of the indirect relationship between the support payments received and the amounts a carrier may charge for services, the payments do not constitute "gross proceeds" actually proceeding and accruing from the sale of telecommunications services. *See* RCW 82.04.070.

Instead, State USF and HCL payments are subject to tax under the service and other activities B&O classification because these payments represent income from business activities that are not otherwise taxable under a different classification.

Wholesaling B&O Tax

Local exchange carriers may receive payments from revenue pools in exchange for originating or terminating calls within the local loop (e.g., the last mile). The activity engaged in for which compensation is received is selling or providing telecommunications services to other carriers at wholesale. Wholesaling B&O tax applies to these types of support payments. *See* RCW 82.04.270.

Access Fees

An example of such a support payment is access fees paid by the Washington Exchange Carrier Association (WECA) to local exchange carriers.² These support payments are paid by interexchange carriers into a pool directly in exchange for the local exchange carrier's provision of origination or termination services. The interexchange carrier pays access charges as compensation for the use of the local exchange (i.e., intrastate) carrier's network and for switching the calls in the local provider's facility. WECA distributes revenue from the access fees to pool members.

These access fee payments received by the local exchange carriers are directly tied to the provision of telecommunication services (i.e., a sale) to the interexchange carrier, which in turn sells services to its own customers (i.e., consumers). This represents a wholesale transaction and the receipts from such are considered gross proceeds of a sale. Accordingly, access fee income received by local exchange carriers under these facts is subject to tax under the wholesaling B&O classification.

Retailing B&O and Retail Sales Tax

¹ USAC is an independent, not-for-profit corporation created by the FCC in 1997 to administer the universal service programs.

² It should be noted that the WECA pooling process has ended for intrastate access traffic carried after June 30, 2014. The process for both WECA and the National Exchange Carrier Association (NECA) is that the revenues that are collected from the respective intrastate and interstate tariffed rates for the access services provided to toll providers are distributed to the local exchange carriers that participate in the access pools.

Retailing B&O and retail sales tax may apply to funds received by carriers as direct support payments for credits or discounts provided to subscribers on their telephone bills. For example, a telecommunications company may provide a credit to a low income subscriber and then later receive a payment for the credit from a fund or program. The activity engaged in for which compensation is received is the sale of telecommunications services to a consumer. Accordingly, the support payments received by the carriers are receipts paid in exchange for the sale of telecommunications services. These types of support payments are subject to retailing B&O and retail sales tax if the telecommunications service is provided to the end consumer.

*Federal Lifeline Program*³

An example of this is the Federal Lifeline program administered by USAC. Lifeline allows eligible consumers to receive a reduced rate on either their mobile or home phone bill. ETCs providing Lifeline program-supported service may seek reimbursement from USAC. As a part of the Lifeline program, carriers provide telecommunications services directly to consumers in exchange for payment from consumers and reimbursements from USAC. This service provided to eligible low-income consumers includes a discount to the consumer. The remainder of the sales price represented by the discount is paid by USAC. Accordingly, the money paid by USAC to carriers participating in the Lifeline program is part of the gross proceeds from a retail sale of telecommunications services and therefore subject to retailing B&O and retail sales tax.

³ On March 31, 2016, the Commission adopted the [Lifeline Modernization Order](#). In the order, the Commission included broadband as a support service in the Lifeline program. The guidance provided in this ETA only applies to support payments for non-broadband, which in most cases will end by December 1, 2021.