Internal Revenue Service

Department of the Treasury

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Index No.: 4251.00-00

Person to Contact:

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Refer Reply to:

CC:DOM:PSI:8-PLR-115991-98

Date:

OCT 9 1998

In re:

Legend: Taxpayer =

Dear

This responds to your request for a ruling on behalf of Taxpayer that amounts paid to Taxpayer by a foreign wireless telephone service provider for roaming services as described below are not subject to the communications excise tax imposed by §4251 of the Internal Revenue Code.

Taxpayer provides domestic wireless telephone service. Taxpayer has entered into a roaming agreement with a foreign wireless telephone service provider (FSP). FSP operates exclusively outside of the United States. The roaming agreement allows FSP's customers to initiate calls while they are located in Taxpayer's domestic service area using Taxpayer's network (roaming services). Taxpayer charges FSP for the roaming services based upon the duration and location of each call; Taxpayer provides FSP with the call detail necessary for FSP to charges its customers for the calls. FSP's customers pay the charges for the calls directly to FSP; Taxpayer has no service contract or contact in any way with FSP's customers.

Applicable Law

Section 4251(a)(1) imposes a tax on amounts paid for three communications services, "local telephone service" as defined in §4252(a), "toll telephone service" as defined in §4252(b), and "teletypewriter exchange service" as defined in §4252(c).

Section 4251(a)(2) provides that the communications tax shall be paid by the person paying for the service.

Section 4291 provides, in part, that every person receiving any payment for facilities and services on which tax is imposed upon the payor thereof shall collect the amount of the tax from the person making such payment.

Rev. Rul. 74-570, 1974-2 C.B. 363, holds that the tax imposed by §4251 does not apply to amounts paid by one communications company to a second communications company for services provided to the subscriber of the first company and billed by the first company to the subscriber. Since the subscriber is billed for such services, the subscriber is the person paying for the services. Accordingly, the tax imposed by §4251 applies to the amounts paid by the subscriber. Further, since the first company is the person receiving payments for the services from the payor (the subscriber) within the meaning of §4291, that company is liable for collecting, and remitting the tax.

Ordinarily the communications tax applies to amounts paid by the user of the service (the ultimate consumer) to its service provider. Thus, as provided by Rev. Rul. 74-570, in a situation where communications services are sold by one communications company to a second communications company and then resold to a subscriber, it is subscriber that is the person paying for the communications services. Accordingly, it is the payment made by the ultimate subscribers, here FSP's customers, to which the tax on communications services applies, and amounts paid to Taxpayer by FSP for roaming services as described above are not subject to the communications excise tax imposed by §4251.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Sincerely,

Assistant Chief Counsel
(Passthroughs & Special Industries)

By: Richard A. Kocak

Richard A. Kocak
Chief, Branch 8