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B-123206, Jun. 30, 1955

Number: B-123206

Date: 1955-06-30

B-123206, JUN. 30, 1955

TO MR. H. N. WEIRAUCH, AUTHORIZED CERTIFYING OFFICER, WEATHER BUREAU:

WE REFER TO YOUR LETTER OF MARCH 4, 1955, REQUESTING A DECISION AS TO THE PROPRIETY OF CERTIFYING FOR PAYMENT A CERTIFIED BILL FROM THE MOUNTAIN STATES TELEPHONE AND TELEGRAPH COMPANY, FOR LOCAL TELEPHONE AND TOLL SERVICES AT THE WEATHER BUREAU AIRPORT STATION, PRESCOTT, ARIZONA, FROM NOVEMBER 16 TO DECEMBER 16, 1954. YOU INQUIRE WHETHER THE ARIZONA SALES TAX CHARGED INCLUDED IN THE BILL MAY BE PAID BY THE GOVERNMENT.

CHAPTER 136, 1954 SESSION LAWS, STATE OF ARIZONA, AMENDING VARIOUS SECTIONS OF THE ARIZONA CODE, IN PERTINENT PART PROVIDES:

"73-1303, IMPOSITION OF TAX. FROM AND AFTER THE EFFECTIVE DATE OF THIS ACT, THERE IS HEREBY LEVIED AND SHALL BE COLLECTED BY THE TAX COMMISSION FOR THE PURPOSE OF RAISING PUBLIC MONEY TO BE USED IN LIQUIDATING THE OUTSTANDING OBLIGATIONS OF THE STATE AND COUNTRY GOVERNMENTS, TO AID IN DEFRAYING THE NECESSARY AND ORDINARY EXPENSES OF THE STATE AND THE COUNTRIES, TO REDUCE OR ELIMINATE THE ANNUAL TAX LEVY ON PROPERTY FOR STATE AND COUNTRY PURPOSES, AND TO REDUCE THE LEVY ON PROPERTY FOR PUBLIC SCHOOL EDUCATION TO THE EXTENT HEREINAFTER PROVIDED, ANNUAL PRIVILEGE TAXES MEASURED BY THE AMOUNT OR VOLUME OF BUSINESS DONE BY THE PERSONS ON ACCOUNT OF THEIR BUSINESS ACTIVITIES AND IN THE AMOUNTS TO BE DETERMINED BY THE APPLICATION OF RATES AGAINST VALUES, GROSS PROCEEDS OF SALES, OR GROSS INCOME, AS THE CASE MAY BE, IN ACCORDANCE WITH THE FOLLOWING SCHEDULE:

"/B) AT AN AMOUNT EQUAL TO ONE PERCENT OF THE GROSS PROCEEDS OF SALES OR GROSS INCOME FROM THE BUSINESS UPON EVERY PERSON ENGAGING OR CONTINUING WITHIN THIS STATE IN THE FOLLOWING BUSINESSES:

"3. TRANSMITTING LOCAL OR LONG DISTANCE MESSAGES OR CONVERSATIONS BY TELEPHONE OR MESSAGE BY TELEGRAPH FROM ONE POINT TO ANOTHER POINT IN THE STATE, INCLUDING GROSS INCOME DERIVED FROM TOLLS, SUBSCRIPTIONS AND SERVICES ON BEHALF OF SUBSCRIBERS OR BY THE PUBLICATION OF ANY DIRECTOR OF THE NAMES OF SUBSCRIBERS; "

IN VIEW OF THESE PROVISIONS, IT IS CLEAR THAT THE TAX HERE INVOLVED IS IMPOSED UPON THE SELLER, AS THE ARIZONA STATE TAX COMMISSION INFORMED YOU. WHERE THE INCIDENCE OF A STATE TAX IS UPON THE SELLER OF GOODS TO THE GOVERNMENT, THE CONSTITUTIONAL PRINCIPLE UNDER WHICH THE FEDERAL GOVERNMENT IS IMMUNE TO STATE TAXATION IS NOT INVOLVED. 33 COMP. GEN. 453; 32 ID. 424; 24 ID. 150. THUS, IN THE ABSENCE OF A CONTRACTUAL PROVISION REQUIRING THE GOVERNMENT TO REIMBURSE THE SELLER OR CONTRACTOR, IT IS THE RESPONSIBILITY OF THE SELLER OR CONTRACTOR TO

PAY SUCH TAXES, AND THE GOVERNMENT IS IN NO WAY LIABLE. 31 COMP. GEN. 1. WHERE, HOWEVER, THE GOVERNMENT HAS BY CONTRACT AGREED TO REIMBURSE THE SELLER FOR TAXES PAID TO A STATE OR LOCAL GOVERNMENT, OUR DECISIONS HAVE CONSISTENTLY HELD THAT SUCH PAYMENTS ARE PROPER. SEE 33 COMP. GEN. 453; 32 ID. 423; 28 ID. 706; 27 ID. 179; ID. 767; 24 ID. 150.

MOREOVER, IN 32 COMP. GEN. 577, ON THE BASIS OF THE WELL ESTABLISHED RULE THAT RATES FIXED BY A CONTRACT BETWEEN A PUBLIC UTILITY AND A PATRON ARE NEVERTHELESS SUBJECT TO LEGISLATIVE REGULATION AND ARE SUPERSEDED BY A SCHEDULE OF RATES PRESCRIBED BY THE LEGISLATURE OR A COMMISSION TO WHICH IT HAS DELEGATED ITS REGULATORY AUTHORITY, WE HELD THAT A CITY FRANCHISE TAX WHICH SUCH A COMMISSION HAD DETERMINED TO BE A PROPER OPERATING EXPENSE COULD BE INCLUDED IN UTILITY CHARGES PAID BY THE GOVERNMENT.

ARTICLE II OF THE INSTANT CONTRACT PROVIDES:

"TYPE OF SERVICE AND COMPENSATION - THE SERVICES SUPPLIED HEREUNDER AND THE CHARGES THEREFOR SHALL BE AS SET FORTH IN THE TARIFFS OF THE CONTRACTOR FROM TIME TO TIME LAWFULLY IN FORCE AND EFFECT. THE CONTRACTOR WILL KEEP THE GOVERNMENT INFORMED OF THE RATES AND CHARGES CURRENTLY, AND FROM TIME TO TIME APPLICABLE TO THE SERVICES TAKEN HEREUNDER.'

PARAGRAPH U, SECTION 20, GENERAL REGULATIONS, MOUNTAIN STATES TELEPHONE AND TELEGRAPH COMPANY GENERAL EXCHANGE TARIFF-ARIZONA, FIRST REVISED SHEET 7, ISSUED NOVEMBER 16, 1954, UNDER AUTHORITY OF ARIZONA CORPORATION COMMISSION DECISION NO. 28540, DATED NOVEMBER 16, 1954, AND EFFECTIVE NOVEMBER 19, 1954, AND BILLING DATES THEREAFTER, PROVIDES:

"U. TAXES - FEDERAL, STATE, MUNICIPAL, AND OTHER SALES, FRANCHISE, OCCUPATION, ETC.

"IN SO FAR AS PRACTICABLE, ANY SALES, EXCISE, FRANCHISE OR OCCUPATION TAX, COSTS OF FURNISHING SERVICE WITHOUT CHARGE OR SIMILAR TAXES OR IMPOSITIONS THAT MAY HEREAFTER BE LEVIED BY THE FEDERAL GOVERNMENT, STATE OF ARIZONA OR ANY POLITICAL SUBDIVISIONS OR TAXING AUTHORITY THEREOF AND THE STATE EXCISE REVENUE (SALES) TAX PRESENTLY IN EFFECT MAY BE BILLED BY THE COMPANY TO ITS EXCHANGE CUSTOMERS ON A PRO RATA BASIS IN THE AREAS WHEREIN SUCH TAXES, IMPOSITIONS OR OTHER CHARGES SHALL BE LEVIED AGAINST THE TELEPHONE COMPANY. TAXES, IMPOSITIONS OR OTHER CHARGES PRESENTLY LEVIED AGAINST THE COMPANY AND NOT BEING BILLED TO ITS CUSTOMERS, WILL NOT BE BILLED TO SUBSCRIBERS WITHOUT PRIOR REVIEW BY THE ARIZONA CORPORATION COMMISSION, SINCE THEY WERE INCLUDED IN THE COSTS OF THE OPERATIONS REFLECTED BY THE COMPANY'S SHOWINGS USED IN DETERMINING THE COMPANY'S EARNINGS REQUIREMENTS.'

IN VIEW OF THE FACT THAT THE INSTANT TAX CHARGE IS BASED ON A LAWFULLY-IN -EFFECT TARIFF AND IS THEREFORE PAYABLE UNDER THE TERMS OF THE CONTRACT, AND INASMUCH AS THE ADDITION OF A CHARGE TO COVER THE TAX HAS BEEN APPROVED BY THE ARIZONA CORPORATION COMMISSION, THE BILL, IF OTHERWISE CORRECT, MAY BE CERTIFIED FOR PAYMENT.

THE BILL AND SCHEDULE ARE RETURNED, AND A COPY OF THIS DECISION SHOULD BE ATTACHED.