

STATE OF NEW YORK

TAX APPEALS TRIBUNAL

In the Matter of the Petition	:	
of	:	
EASYLINK SERVICES INTERNATIONAL, INC.	:	ORDER & OPINION
		DTA NO. 821440
for Revision of a Determination or for Refund of Sales	:	
and Use Taxes under Articles 28 and 29 of the Tax Law	:	
for the Period March 1, 2001 through May 31, 2004.	:	

The Tax Appeals Tribunal issued its decision in this matter on July 27, 2009, finding in favor of the Division of Taxation, that petitioner's services are subject to sales tax pursuant to Tax Law § 1105(b)(1)(B). However, the Tax Appeals Tribunal remanded this matter to the Administrative Law Judge for a determination as to whether the Division of Taxation properly allocated receipts subject to tax between intrastate and interstate sales.

Upon remand, the Administrative Law Judge issued a Determination on Remand, dated October 14, 2010, which determined that the Division of Taxation properly allocated receipts subject to tax between intrastate and interstate sales. The Administrative Law Judge further determined that petitioner's failure to collect and pay tax on the fax and telex services was due to reasonable cause and not willful neglect, and thus cancelled the penalty imposed.

Petitioner filed an exception to the Determination on Remand of the Administrative Law Judge on November 12, 2010. Petitioner appeared by Hodgson Russ LLP (Timothy P. Noonan, Esq., of counsel). The Division of Taxation appeared by Daniel Smirlock, Esq. (James Della Porta, Esq., of counsel). Petitioner filed a brief in support of its exception. The Division of Taxation filed a brief in opposition.

On April 11, 2011, the parties filed a Stipulation of Discontinuance with respect to the issues on remand. The Stipulation of Discontinuance was entered into without prejudice to petitioner's ability to petition for judicial review of the taxability of its services under Tax Law § 1105(b) in the manner provided by Article 78 of the Civil Practice Law and Rules. As such, this Order and Opinion serves as the final decision pursuant to Tax Law § 2016.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The exception of the Division of Taxation is granted to the extent that petitioner's services are subject to sales tax pursuant to Tax Law § 1105(b)(1)(B) for the period March 1, 2001 through May 30, 2004;
2. The determination of the Administrative Law Judge dated June 26, 2008 is reversed;
3. The petition of EasyLink Services International, Inc. is granted to the extent that penalty is cancelled, but is in all other respects denied; and
4. The Notices of Determination, dated March 28, 2005, are modified, to the extent that the penalty is cancelled, but are in all other respects sustained.

DATED: Troy, New York
April 21, 2011

/s/ James H. Tully, Jr.
James H. Tully, Jr.
President

/s/ Carroll R. Jenkins
Carroll R. Jenkins
Commissioner

/s/ Charles H. Nesbitt
Charles H. Nesbitt
Commissioner