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2022 – OTA – 303
Nonprecedential

OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

In the Matter of the Appeal of:	) OTA Case No. 18083554
TOTAL PCS SOLUTIONS, INC., dba Wireless Proz	) CDTFA Case IDs 569684, 859789

OPINION

Representing the Parties:

For Appellant: Mitchell Stradford, Representative
James Dumler, Representative

For Respondent: Amanda Jacobs, Tax Counsel III
Scott Claremon, Tax Counsel IV
Jason Parker, Chief of Headquarters Ops.

For the Office of Tax Appeals: Corin Saxton, Tax Counsel IV

M. GEARY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) sections 6901 and 6561, and California Code of Regulations, title 18 (Regulation), section 30103(b), Total PCS Solutions, Inc. (appellant), appeals from a June 10, 2016 Decision and Recommendation (Decision) issued by the California Department of Tax and Fee Administration (respondent)[1] denying appellant's protective claim for refund[2] and denying, in part, appellant's petition for redetermination of a Notice of Determination (NOD) of $446,494.24 in tax (after crediting an October 1, 2008 payment of $208.12) plus applicable interest, a negligence penalty of $13,802.34, and a 40 percent penalty of $123,273.88 for failing to remit

[1] Prior to July 1, 2017, sales and use taxes (and other business taxes and fees) were administered by respondent's predecessor, the Board of Equalization (BOE). When this Opinion refers to events that occurred before July 1, 2017, "respondent" refers to BOE.

[2] On January 30, 2015, and on March 31, 2015, appellant made $5,000 payments toward the liability, on each occasion making concurrent claims for refund.

collected sales tax reimbursement, for the period April 1, 2007, through June 30, 2010 (liability period).[3]

Office of Tax Appeals Administrative Law Judges Michael F. Geary, Andrew J. Kwee, and Josh Aldrich held an oral hearing for this matter in Sacramento, California, on April 20, 2022.[4] At the conclusion of the hearing, the parties submitted the matter for decision, and OTA closed the record.

ISSUE

Should some of appellant's gross receipts be excluded from the taxable measure on the grounds that they were commissions paid to appellant for its sales of MetroPCS prepaid cellular telephone services and not part of the sales of MetroPCS cellular telephones?[5]

FACTUAL FINDINGS

1. At all times relevant to this appeal, MetroPCS was a cellular telephone service provider that offered a prepaid cellular telephone service and options, including call-waiting, call forwarding, navigation, etc., (MetroPCS service) to its customers (subscribers) with no required service commitment beyond one month.[6]
2. Appellant, an authorized MetroPCS dealer (dealer), operated multiple MetroPCS retail locations in California through which it sold tangible personal property (TPP) consisting primarily of MetroPCS cellular telephones (or handsets) and accessories.[7] Appellant also

[3] As explained below, respondent has since adjusted these amounts.

[4] As agreed by the parties, OTA linked this appeal for purposes of oral hearing only with the appeal of 1 Stop Communications, LLC, another MetroPCS dealer, with the understanding that OTA would issue a separate Opinion in each appeal.

[5] The Prehearing Conference Minutes and Orders identified the issue as follows: Should amounts paid to appellants by wireless service provider MetroPCS be excluded from their respective taxable measures? On further consideration, and considering the arguments and evidence, OTA concludes that the issue is more accurately stated above.

[6] As long as the subscriber continued to make timely payments, service continued. A failure to make a timely payment resulted in termination of service.

[7] Without modification, the MetroPCS handsets could only be used with the MetroPCS service.

activated MetroPCS service on handsets.[8] Appellant was not authorized to activate any other cellular telephone service (e.g., AT&T, Verizon, etc.) on handsets.

3. Prior to January 1, 2010, appellant derived its revenue from TPP sales and received no compensation for selling MetroPCS service or for activating or reactivating MetroPCS service. During that same period, MetroPCS gave new subscribers the first month of service free of charge as an inducement to get the customers to buy a MetroPCS handset from its dealers and thereby increase the likelihood that the customer would remain a subscriber.
4. On January 1, 2010, MetroPCS began a new marketing program, which changed the way its subscribers paid for MetroPCS handsets. As relevant to this appeal, the changes included lower handset pricing and the elimination of the practice of giving new subscribers the first month of service free of charge.
5. The new program also changed the way MetroPCS compensated its dealers, including appellant. When a dealer sold a handset to a new subscriber, the dealer received the discounted price of the handset and an amount equal to the first monthly recurring charge (MRC), which was the amount the customer agreed to pay for one month of MetroPCS service.[9] For a handset upgrade (i.e., the sale of a new handset to a current subscriber) the dealer received the discounted price of the handset, a $10 upgrade fee, and $30.
6. MetroPCS also compensated dealers for transactions that did not involve the sale of a handset. It paid $13 to dealers for reactivating a MetroPCS handset on an existing account; $19 for activating another service provider’s handset (i.e., one that previously had been active on another service provider’s network) on an existing MetroPCS account, which required appellant to modify the handset to work on the MetroPCS network;[10] and the equivalent of the customer’s first MRC plus $10 for activating another service provider’s handset on a new MetroPCS account.
7. Respondent planned to audit appellant for the liability period. However, the business

[8] As explained below, appellant activated MetroPCS service on the MetroPCS handsets that appellant sold to its customers and on handsets (not only MetroPCS handsets) that appellant did not sell to its customers, at least not at the time of activation.

[9] Subscribers typically paid $40 to $60 for MetroPCS service (excluding taxes and optional insurance).

[10] The evidence indicates that the modifications were accomplished electronically.

records provided for audit were inadequate to enable respondent to determine the correct liability using its customary audit methodologies, and respondent's efforts to obtain adequate records, including issuance of a subpoena, were unsuccessful. Consequently, respondent determined the liability using the limited information that was available to it, as explained in more detail below, to establish an aggregate deficiency measure of $5,658,839, consisting of the following items: (1) unreported taxable sales measured by $1,229,130 for the second quarter of 2007 (2Q07) through 4Q07 (for which no records were provided) based on the projection of an error factor calculated from the other periods; (2) unremitted sales tax reimbursement measured by $3,872,325; (3) a credit measured by $45,182 for differences between recorded and reported sales for 2Q10; and (4) unreported sales "commissions" measured by $602,566.[11] The FBO also included interest and a negligence penalty of $13,802.34, and it recommended a 40 percent penalty of $123,273.88 for failure to remit sales tax reimbursement collected from customers.

8. Regarding item 4, identified above, respondent's investigation indicated that: (1) under MetroPCS's new marketing program, dealers were required to sell MetroPCS handsets for dramatically reduced selling prices when the purchaser also agreed to purchase a MetroPCS subscription, which reduced or eliminated the dealers' handset profit margins; (2) dealers would have had little incentive to sell MetroPCS handsets if those sales were not profitable; (3) MetroPCS wanted to encourage the sale of its handsets to attract new subscribers and to fulfill the desires of its current subscribers for new MetroPCS handsets, and to do that, it paid additional compensation to dealers (referred to in Factual Findings 5 and 6, above); and (4) the additional compensation to dealers functioned as additional incentives to sell MetroPCS handsets and compensated the dealers for what they lost on handset margins.

9. On the bases just described, respondent concluded that the additional incentives, the commissions at issue here, should be included in the taxable measure from the sale of MetroPCS handsets. However, because appellant failed to provide records regarding its receipt of these commissions, respondent first determined that appellant purchased 15,857 MetroPCS handsets during 1Q10 and 2Q10. It reviewed available sales records

[11] This Opinion uses the term "commission" to describe the gross receipts at issue because that is the term used by the parties.

and estimated that appellant sold 80 percent of the MetroPCS handsets to new subscribers, earning a $40 commission in connection with each such sale, and it sold 20 percent to existing subscribers purchasing upgrades, earning a $30 commission in connection with each such sale. Using those factors, respondent calculated a weighted average commission of $38, which it multiplied by the number of MetroPCS handsets purchased to compute the $602,566 measure at issue in this appeal.

10. On April 7, 2011, respondent issued the NOD to appellant.[12] Appellant filed a timely petition for redetermination, which began respondent's internal appeals process. On March 22, 2013, and March 9, 2015, respondent issued adjusted FBO's to correct computational errors. The latter of these FBOs also deleted the 40 percent penalty for unremitted sales tax and increased the negligence penalty by $26,946.96 (from $13,802.34 to $40,749.30) pursuant to an agreement between the parties,[13] and adjusted three of the four audit items (not the one that remains at issue in this appeal) which reduced the aggregate deficiency measure by $531,500 (from $5,658,839 to $5,127,339).
11. Appellant made payments towards the liability, filed claims for refund of some of these payments, and requested relief of interest.
12. The parties participated in an appeals conference as part of respondent's internal appeals procedures, and on June 10, 2016, respondent issued its Decision, which adopted the adjustments recommended in the March 9, 2015 FBO, and otherwise denied the petition for redetermination and related claims for refund. This timely appeal followed.
13. Respondent agrees to relieve interest for the periods July 1, 2011, through April 30, 2013; August 1, 2013, through April 30, 2015; and June 1, 2017, through April 30, 2018.
14. Appellant concedes the negligence penalty and confirms that the only item remaining at issue in this appeal is the $602,566 measure of unreported sales commissions.

DISCUSSION

California imposes sales tax on a retailer's retail sales in this state of TPP, measured by the retailer's gross receipts, unless the sale is specifically exempt or excluded from taxation by

[12] The NOD was timely issued because appellant signed a series of statute of limitations waivers.

[13] The parties agreed to apply the 10 percent negligence penalty in lieu of the 40 percent penalty under R&TC section 6597.

statute. (R&TC, § 6051.) All of a retailer's gross receipts are presumed subject to tax unless the retailer can prove otherwise. (R&TC, § 6091.) Gross receipts are the total amount of the sale price and include: any services that are part of the sale; all receipts, cash, credits, and property of any kind; and any amount for which credit is allowed by the seller to the purchaser. (R&TC, § 6012(b)(1)-(3).)

Regulation section 1671.1 is entitled "Discounts, Coupons, Rebates, and Other Incentives." Subdivision (c)(1)(A) of that regulation defines "discount" as a reduction in the consideration a purchaser is required to provide in order to purchase the TPP from a retailer as a result of third-party consideration promised to or received by the retailer. Subdivision (c)(3)(A) of that regulation generally provides that when, pursuant to an agreement with a third party, the retailer reduces the selling price of specified products in exchange for a certain payment of a "like amount" by the third party, such payments received by the retailer are part of the taxable gross receipts. The same subdivision goes on to state that it is rebuttably presumed that *any consideration* received by retailers from third parties related to promotions for sales of specified products is subject to tax.

Regulation section 1585 discusses the application of tax to the sale of wireless communication devices, including cellular telephones sold in bundled and unbundled transactions. Regulation section 1585(a)(3) defines a bundled transaction, and states that a bundled transaction contractually requires the retailer's customer to activate or contract with a wireless telecommunications service provider for utility service for a period greater than one month as a condition of that sale. Generally, for the type of transactions at issue here, which are by definition unbundled transactions, tax applies to the gross receipts from the retail sale of the handset measured by the actual gross receipts received by the retailer from the end-use customer from the sale of that device. (Cal. Code Regs., tit. 18, § 1585(b)(2).)

If respondent is not satisfied with the amount of tax reported by the taxpayer, respondent may determine the amount required to be paid on the basis of any information which is in its possession or may come into its possession. (R&TC, § 6481.) It is the taxpayer's responsibility to maintain and make available for examination on request all records necessary to determine the correct tax liability, including bills, receipts, invoices, or other documents of original entry supporting the entries in the books of account. (R&TC, §§ 7053, 7054; Cal. Code Regs., tit. 18, § 1698(b)(1).)

When a taxpayer appeals a deficiency determination based on underreported taxable sales, respondent has a minimal, initial burden of showing that its determination was reasonable and rational. (*Appeal of Talavera*, 2020-OTA-022P.) Once respondent has met that burden, the burden of proof shifts to the taxpayer to establish that a result differing from respondent's determination is warranted. (*Ibid*.) The applicable burden of proof is by a preponderance of the evidence. (Cal. Code Regs., tit. 18, § 30219(c); *Appeal of Estate of Gillespie*, 2018-OTA-052P.) That is, the taxpayer must establish by documentation or other evidence that the circumstances it asserts are more likely than not to be correct. (*Concrete Pipe and Products of California, Inc. v. Construction Laborers Pension Trust for Southern California* (1993) 508 U.S. 602, 622.) Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof. (*Appeal of Talavera*, supra.)

The sole dispute here is whether respondent incorrectly included the commissions in the taxable measure. Appellant argues that MetroPCS's marketing plan that began in January 2010 paid dealers to sign up customers for the MetroPCS service by allowing the dealer to keep an amount equal to the customer's first MRC as a commission on the sale of the service. It asserts that these commissions were not earned by selling TPP (the handset); they were earned by selling wireless service in a separate, optional transaction. Appellant agrees with respondent's conclusion (in its June 10, 2016 Decision) that the issue is not governed by Regulation section 1671.1, at least in part because appellant was not required to reduce the price of the handset in order to qualify for the commission in a like amount. Appellant alleges that the reference to "lower price" in the evidence describing the MetroPCS marketing plan is merely a reference to the fact that the cost of service had previously been included in the handset price paid to appellant. Appellant asserts that the commission was not payable unless service was activated, even if the dealer sold a handset, and it was payable when service was activated but the dealer did not sell a handset, such as when it activated handsets that had previously been active on another service provider's network. Finally, appellant contends that respondent has agreed that such commissions are not includable in the taxable measure in audits of at least two other MetroPCS dealers. On these bases, appellant argues that its sales of the wireless service are not subject to tax; and, consequently, the commissions earned on those sales should not be included in the taxable measure.

To support its arguments, appellant provided six exhibits: two pages from a January 2010

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document that purports to describe parts of MetroPCS's new marketing program that went into effect that month; various reports and customer invoices from February 5, 2017, and May 1, 2017 (seven years after the liability period at issue); and a Report of Discussion of Audit Findings from an audit of an unidentified and unrelated MetroPCS dealer for the period 2009 through 2011, and some audit work papers for an audit of a second unidentified and unrelated taxpayer for the period 2012 through 2014, in both of which auditors opine that MetroPCS commissions similar to those at issue here were not includable in the dealers' taxable gross receipts.[14] Appellant offered no testimony at the hearing.

The first question is whether respondent's determination to include the commissions in appellant's taxable measure was reasonable and rational. Prior to January 1, 2010, before MetroPCS's new marketing program, appellant generated revenue by selling MetroPCS handsets and accessories. About the time that MetroPCS began its new marketing program in January 2010, MetroPCS informed its dealers that, while they would continue to receive the handset margin on their sales, that margin would be much lower than it had been prior to January 2010 because the handset pricing would be "dramatically lower;" however, with activation, the dealers would receive additional compensation consisting primarily of an amount at least approximately equal to the customers' first MRC. Based on the evidence, OTA finds that respondent's conclusion that the commissions were compensation to appellant for its sale of MetroPCS handsets, and at least in part to make up for the loss of handset margins that resulted from MetroPCS's dramatically reduced handset pricing, was both reasonable and rational. Consequently, the burden of proving that the commissions should not have been included in the taxable measure rests with appellant.

There is no evidence that appellant's business activities changed as a result of the MetroPCS marketing plan that went into effect in January 2010. Appellant was always engaged primarily in the sale of MetroPCS handsets. Furthermore, the evidence does not show that the new MetroPCS marketing plan had any appreciable impact on appellant's gross receipts.

[14] In the earlier of these audits, one of respondent's District Principal Auditors stated that, pursuant to Regulation section 1671.1(c)(3)(A), the commission was not includable in taxable gross receipts because the taxpayer was not required to reduce the selling price of the handset in exchange for keeping the first MRC as a commission. In the later audit, the auditor opines that the commission was not includable in the taxable gross because the dealer was allowed to keep the first MRC when it sold a handset with a new MetroPCS activation and when it reactivated service but did not sell a handset.

Appellant's customers continued to pay for MetroPCS handsets and services. The only thing that appears to have changed is how MetroPCS chose to characterize the compensation paid to its dealers for selling MetroPCS handsets.[15]

Appellant's argument that the commissions were compensation for selling MetroPCS service plans or activating handsets for customers, at least after January 1, 2010, is not supported by the evidence. Appellant performed those services for customers (and for MetroPCS) free of charge before and after January 2010.[16] If the commissions were paid to compensate the dealers for selling a MetroPCS subscription or activating a handset, one would expect the commission to be payable to dealers who activated but did not sell a new MetroPCS handset, such as a customer who purchased a handset from a different MetroPCS dealer and simply brought the handset into one of appellant's stores for activation and to shop for plans and options. There is no evidence that MetroPCS compensated anyone for these services, other than the MetroPCS dealer who sold the handset.

The fact that MetroPCS paid commissions to dealers who activated handsets they did not sell does not prove that the commissions at issue were paid in connection with the sales of MetroPCS service and not in connection with the sale of MetroPCS handsets. MetroPCS was in the business of providing MetroPCS service to its subscribers. To fulfil its need for subscribers, MetroPCS needed its dealers to activate as many subscribers as possible. It is, therefore, entirely reasonable that MetroPCS would want to compensate dealers for activation and reactivation of handsets not supplied by the dealer that activates them (at least not supplied at the time of activation). However, the fact that MetroPCS paid its dealers to activate those handsets is not inconsistent with respondent's determination to include the subject commissions in the taxable measure. As discussed in more detail below, in those instances, the dealers were being compensated for performing a service for MetroPCS (and its subscribers) that was unrelated to the dealers' sales of TPP, and respondent correctly did not include those commissions in the taxable measure.

MetroPCS paid its dealers only $13 for reactivations of MetroPCS handsets on existing

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[15] The evidence shows little about the relationship between MetroPCS and its dealers or how MetroPCS compensated its dealers before January 2010.

[16] The 2017 invoices also show no charge for those services.

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accounts. That relatively little compensation was reasonable given the dealer did not have to spend time selling a handset, did not have to remove a handset from its inventory or sell it at a deep discount, and the customer was already a MetroPCS subscriber. It was a payment commensurate with the dealer's minimal service to MetroPCS and its subscriber and caused no loss to the dealer. For all the same reasons, it was reasonable that the dealer received just $6 more for activating another service provider's handset for use on an existing MetroPCS account because the dealer was required to take the time to modify the handset.[17] Finally, it was reasonable that MetroPCS would pay the equivalent of the subscriber's first MRC plus $10 when the dealer activated another service provider's handset on a new MetroPCS account because new accounts were MetroPCS's primary goal. In all of these instances, the dealer was performing a service for MetroPCS and its subscribers but generating no income from the sale of a handset. On the foregoing bases, OTA finds that respondent correctly included the subject commissions in the taxable measure.

Although the above finding is dispositive, there is another, separate basis for including these commissions in the taxable measure. Contrary to appellant's contention, and contrary to respondent's conclusion in its June 10, 2016 Decision, the Sales and Use Tax Law does not require that a discount to the sales price of TPP exactly equal the consideration received by the retailer from the third party in order to include such consideration in taxable gross receipts. Regulation section 1671.1(c)(1)(A) defines "discount" as a reduction in the consideration a purchaser is required to provide in order to purchase the TPP from a retailer as a result of third-party consideration promised to or received by the retailer. The commissions fit within that definition. Although Regulation section 1671.1(c)(3)(A) requires that the reduction in the retailer's selling price be in exchange for a certain payment of a "like amount" from the third party, the words "like amount" cannot be interpreted to mean "equal to," as argued by appellant and as stated in respondent's Decision, if that subdivision is also viewed as a description of the only circumstances that warrant inclusion of the third party's payment in the

[17] Pursuant to Regulation section 1585(b)(4), charges for at least some physical and electronic modifications to handsets, including those required to enable the device to function within a service provider's network, are considered charges for fabrication labor and are therefore includable in the taxable measure.

retailer's gross receipts.[18] Such an interpretation is inconsistent with the sentence that immediately follows, which reiterates the general presumption that "*any consideration* received by retailers from third parties related to promotions for sales of specified products is subject to tax until the contrary is established." (Cal. Code Regs., tit. 18, § 1671.1(c)(3)(A); emphasis added.) There is no valid reason why the discount and the third-party consideration would have to be equal. On the contrary, appellant's interpretation would lead to an absurd result when, for example, the retailer and the third party structure the discounts and payments to be slightly different in an attempt to shield revenue from sales tax.[19] The correct interpretation of Regulation section 1672.1(c)(3)(A) is that it describes circumstances where the "certain payment of a like amount" will be included in the retailer's gross receipts, but it also states the general rule that "any consideration" from third parties received by the retailer in connection with its sales of TPP will be rebuttably presumed subject to tax. These commissions are correctly presumed to be subject to tax and appellant has not rebutted that presumption.

Appellant's assertion that MetroPCS merely recommended a handset price reduction and that there is no evidence that a price reduction was required is not supported by the evidence. While the record does not contain sufficient evidence to fully understand the contractual relationship between MetroPCS and its dealers, appellant's Exhibit 1 and respondent's Exhibit H show that MetroPCS dictated the price reduction to its dealers, and that the dealers had little or no control over the plan. Appellant provided no evidence to support its contention that the lower handset prices referred to in the evidence were simply the result of the price of MetroPCS service no longer being included in the handset price. Also, that contention is inconsistent with the MetroPCS clear statement that the first month of service had previously been included with the activation free of charge.

Although the outcome of this appeal is not based on whether appellant's activations of

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[18] Regulation section 1671.1(c)(3)(A) states, in pertinent part: "Operative October 1, 2007, when a retailer enters into an oral or written contract with a manufacturer or other third party that requires, on a transaction-by-transaction basis, a specific reduction in the retailer's selling price of specified products in exchange for a certain payment of a like amount from the contracting party (e.g., a payment that is not contingent upon selling a particular amount of the specified products), such payments received by the retailer are part of the taxable gross receipts or sales price of the sales. For purposes of this subdivision, it is rebuttably presumed that any consideration received by retailers from third parties related to promotions for sales of specified products is subject to tax until the contrary is established."

[19] The example provided in the parenthetical statement, in the above-quoted subdivision, and the examples provided later in the same regulation do not indicate that the discount and the payment must be equal.

new handsets are viewed as optional or mandatory, it is clear that, as a practical matter, the MetroPCS handsets would have had little if any value to the vast majority of purchasers if the handset could not be used on the MetroPCS network. There may have been exceptions if, to use appellant's example, the MetroPCS handsets were purchased by persons intending to activate them overseas. However, the evidence does not show that this ever occurred; and even if someone occasionally purchased a handset intending to never activate it on the MetroPCS network, such outliers would not persuade us to conclude the commissions were not compensation for the sale of TPP.

It is also worth noting that the few invoices provided by appellant to show handset sales without activation are from well after the liability period. The marketing program appears to have been different then, as evidenced by the deeply discounted handset prices (as high as 72.73 percent), even without immediate activation, and no first MRC being paid by the customers. In addition, the invoices show that there was no activation charge, so it is possible that there was simply an entry error by the person who made the sale. Finally, the evidence shows that appellant was then measuring sales tax by the undiscounted price of the handset, which is consistent with bundled pricing pursuant to Regulation section 1585(b)(3). Thus, even if the commissions were compensation for activating new MetroPCS handsets on the MetroPCS network, such service was part of the sale of the MetroPCS handsets, and the commissions were part of appellant's gross receipts from the retail sales of those handsets pursuant to R&TC section 6012.[20]

Finally, appellant's reliance on documents from audits of other taxpayers is misplaced. OTA is responsible for the final administrative adjudication of the contested tax liability. While appellant may be able to make an equitable argument to a court, asserting the allegedly disparate treatment of taxpayers as grounds for relief, OTA does not have the equitable jurisdiction granted to courts.

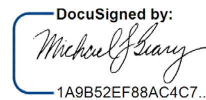
[20] The inclusion of the commissions in the taxable measure also appears to be consistent with Regulation section 1585(b)(2), which states that tax applies to the gross receipts from the retail sale of the handset measured by the actual gross receipts received by the retailer from the end-use customer from the sale of that device. The evidence establishes that the commissions that were paid to appellant were paid by end users, though perhaps not always directly. Therefore, those amounts were properly included in the taxable measure under Regulation section 1585(b)(2). It is immaterial that the end users may not have known about the commissions paid to the dealers.

HOLDING

The commissions paid to appellant by wireless service provider MetroPCS should not be excluded from the taxable measure.

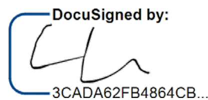
DISPOSITION

The agreed-upon deletion of the 40 percent penalty for unremitted sales tax and $26,946.96 increase of the negligence penalty from $13,802.34 to $40,749.30 are sustained, as is respondent's $531,500.00 reduction of the aggregate deficiency measure from $5,658,839.00 to $5,127,339.00 pursuant to its March 9, 2015 FBO, and its denial of the petitions for redetermination and claims for refund in all other respects. Pursuant to its agreement in this appeal, respondent shall relieve interest for the periods July 1, 2011, through April 30, 2013; August 1, 2013, through April 30, 2015; and June 1, 2017, through April 30, 2018.

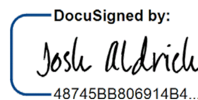


Michael F. Geary
Administrative Law Judge

We concur:



Andrew J. Kwee
Administrative Law Judge



Josh Aldrich
Administrative Law Judge

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