

AUDIT OF PERSONS FURNISHING COCOT SERVICES

I. BACKGROUND

Section 11-1102 of the New York City Administrative Code (“Code”) imposes a Utility Tax on every Vendor of Utility Tax Services (“Vendor”) in the City. This tax is imposed on the “Gross Operating Income” of the Vendor. “Utility Services” include, in pertinent part, the furnishing or sale of telephone or telegraph services. A person furnishing or selling such telecommunication services is within the definition of a Vendor and is subject to the Utility Tax.

The Department of Finance issued a Letter Ruling in 1986 concluding that a person furnishing Customer Owned Currency Operated Telephone (“COCOT”) services is a Vendor subject to the Utility Tax. In 1994, the ALJ Division of the New York City Tax Appeals Tribunal issued five separate determinations concerning this issue. The determinations by the ALJ Division held that corporations providing COCOT services were subject to Utility Tax as vendors of utility services. In addition, the ALJ Division upheld the imposition of penalties since the taxpayers had no reasonable basis for concluding that they were not subject to tax. Two of these five determinations were appealed to the Tax Appeals Tribunal. The Tribunal upheld the ALJ determinations in both cases. No further appeals of the Tribunal’s decisions were made.

Accordingly, persons furnishing COCOT services are subject to the Utility Tax as Vendors. Although the Utility Tax liability of COCOT service providers has been clearly established, some COCOT providers have not complied with this tax. In order to ensure greater compliance with the Utility Tax law, COCOT service providers who have not been previously contacted by the Finance Department and who now voluntarily come forward to satisfy their tax liabilities, will be afforded the opportunity to settle their Utility Tax liabilities using an accelerated audit procedure.

II. SCOPE

This Statement of Audit Procedure provides guidance to Utility Tax auditors in auditing and resolving the Utility Tax liability for tax periods beginning prior to January 1, 2000 (“Outstanding Liabilities”) of persons who have been furnishing COCOT services and who now have voluntarily come forward to settle their Utility Tax liabilities. These persons will be allowed to use an Accelerated Audit Procedure (“AAP”). The AAP will be available for all such audits initiated on or before September 1, 2000 and concluded by November 30, 2000

III. ACCELERATED AUDIT PROCEDURE

As an alternative to existing audit procedures, persons with Outstanding Liabilities who have now come forward voluntarily, will be given the option of requesting an Accelerated Audit. A person requests an Accelerated Audit by consenting to an Accelerated Audit. The Accelerated Audit consent form is attached as Exhibit A

A. Accelerated Audit

Under the AAP, taxpayers that have not filed returns and who have now come forward voluntarily, will be required to compute the correct tax liability under a self-audit procedure for all periods ending within the prior six years. The auditor will prepare a self-assessment audit plan for the taxpayer to follow. The audit plan may include a sample worksheet to guide the taxpayer in the computation of its correct Utility Tax liability as well as an information document request outlining any additional information that the taxpayer is expected to supply. The taxpayer will be given a fixed period of time in which to complete the audit.

Once the auditor receives the completed self-audit, the auditor will review it for accuracy and completeness and submit the audit for review by his or her supervisor. Any issues concerning the audit should be resolved through correspondence or field visits. If the self-assessment audit is not completed within the time limits due to the taxpayer's failure to fulfill its responsibilities under the audit plan, the taxpayer will no longer be eligible for this expedited process.

B. Conclusion of the Audit

The Accelerated Audit is concluded by an Accelerated Audit Closing Agreement ("AACA") under which the taxpayer agrees to a final liability for the Audit Period ("Proposed Final Liability") and the Finance Department agrees to accept the Proposed Final Liability as final payment for all the Outstanding Liabilities. The AACA form is attached as Exhibit B. If the taxpayer does not agree with the terms of the AACA, the Accelerated Audit will be discontinued and the auditor will audit all open periods and conclude the audit as a traditional audit.