

May 18, 2000

*Invoice par fax et par  
courrier 5 juin 2000.  
Gene P.*

Mr. Greg Packman, Manager  
Saskatchewan Finance  
Revenue Division  
2350 Albert Street  
Regina (Saskatchewan) S4P 4A6

**Subject: Request for Confirmation of Tax Application**

Dear Sir:

During recent telephone conversations with Mr. Dwain Ooms and Mr. Kelly Beach from your department, we discussed the Ministry of Saskatchewan (the "Department") assessing position related to transactions that include both the sale of products and services. Further to that conversation, we have now been mandated by the Canadian Wireless Telecommunications Association (the "CWTA"), to obtain the Department's written confirmation as to the application of The Education and Health Tax Act (the "Act") with respect to transactions similar to those previously discussed.

#### FACTS

- The CWTA is an association of members (the "Members") operating in the wireless telecommunications industry.
- The Members supply both taxable telecommunications services, namely airtime and long distance services and taxable tangible personal property, including wireless handsets (such as cellular phones, pagers, etc.).
- The Members provide telecommunications services and wireless handsets to individuals and businesses.
- While the telecommunications services are provided and billed directly by the Members, the handsets may be sold to the customers by the Member or by a dealer/retailer who signs on the customers for the Members.



- While the telecommunications services are provided and billed directly by the Members, the handsets may be sold to the customers by the Member or by a dealer/retailer who signs on the customers for the Members.
- For purposes of this request, we shall assume that the Members purchase the wireless handsets at a cost of \$200 each.
- Revenues are derived principally from taxable telecommunications services. In order to lower the up front cost to the customer and reduce the barrier to entry, the Members or the distribution partners (the dealers/retailers) make the wireless handsets available to the customers at say a price of \$100.
- When the wireless handsets are sold to the distribution partners, the Members may sell the handsets to them either at a price below \$100 or at a price of up to \$200 and pay a commission to the dealers/retailers in order for them to make a profit.
- In the wireless industry, the customer churn or turnover is generally low. The industry trend indicates that on average, a customer remains with the same Member over a period of five years.
- Also, due to differences in technologies used, wireless handsets are not generally transportable from one carrier to another.

There are two types of transactions for which the supply of handsets are invoiced:

#### Transaction 1

A customer purchases a wireless handset and subscribes to telecommunications services but with no commitment to a specific term or frequency of usage of the telecommunications services.

#### Transaction 2

A customer purchases a wireless handset and signs on for a predetermined term over which telecommunications services will be provided. Typically, such arrangements would be for a given number of months, for example, twelve or twenty four months.



## Question

- Will any section of the Act concerning promotional distribution apply to any of the above transactions?

## Our Interpretation

In keeping with our telephone conversation, it is our understanding that if the total asking price for the telecommunications services and the wireless handset allows the Member to recuperate from the customer the full value of the handset through the sales of the telecommunications services, the Province of Saskatchewan would not seek to assess the Members under the notion of promotional distribution for the sale of the handset. The Province of Saskatchewan does not consider such a transaction as promotional distribution.


As mentioned before, in the wireless industry, the customer churn or turnover is low. In other words, once a customer has chosen one Member, he has good financial reasons to retain the same carrier. While the wireless handsets may be provided at a low cost to the customer initially, on average, the total cost is recovered through the value of the telecommunications services provided.

The Members would not be selling the handsets below their cost if they did not fully expect to recover the cost of the handsets plus a reasonable profit on the combination of the handset and the telecommunications services.

In our view, no provision of the Act would apply to impose any additional sales tax. Please confirm our understanding.

Should you require more information, please contact the undersigned at (514) 393-4763.

Yours truly,



Line Arseneau, B.A.A., LL.B., M.Fisc.