NEW YORK CITY TAX APPEALS TRIBUNAL

In the Matter of	
	DECISION
U.S. SPRINT COMMUNICATIONS COMPANY, LP	TAT (E) 14-12 (UT) TAT (E) 14-13 (UT)
Petitioner.	

The Commissioner of Finance of the City of New York (Respondent) filed an Exception to an Amended Determination of an Administrative Law Judge (ALJ) dated December 29, 2016 (ALJ Determination), which modified in part and cancelled in part two Notices of Determination issued to U.S. Sprint Communications Company, LP (Sprint or Petitioner) by the New York City Department of Finance (Department) asserting deficiencies of New York City Utility Tax (UT) (Notices). The first Notice, dated March 20, 2013, covered the period January 1, 2001 to June 30, 2003 (First Audit Period) and the second Notice, dated May 28, 2013 covered the period July 1, 2003 to December 31, 2005 (Second Audit Period) (together, the Audit Periods).

Respondent appeared by Martin Nussbaum, Esq., Senior Counsel of the New York City Law Department. Petitioner appeared by Marc A. Simonetti, Esq., and Nicole D. Boutros, Esq., of Eversheds Sutherland (US) LLP. Oral argument was held on October 3, 2017.

Sprint is a limited partnership formed under Delaware law, with headquarters located in Kansas.[1] Jim Appleby, the Regulatory Policy Manager for Sprint, testified that

[1] Tribunal exhibit I. Except as otherwise noted, the ALJ's Findings of Fact, although paraphrased and summarized herein, generally are adopted for purposes of this Decision. Certain Findings of Fact not necessary to this Decision have not been restated and can be found in the ALJ Determination.

it was his understanding that, during the Audit Periods, Sprint was primarily a long distance telecommunications service provider providing both local and long distance telephone service in New York City (City).[2] Throughout the Audit Periods, Sprint filed its UT returns as a vendor of utility services, calculating UT on its gross operating income.[3]

Following the breakup of AT&T and the Bell system in 1984, telephone service customers purchased their local telephone service and their long distance telephone service from separate, independent companies.[4] Local service was purchased from a local exchange carrier (LEC) and long distance service was purchased from an interexchange carrier (IXC).[5] A LEC provided local service within a local exchange area.[6] An IXC offered telephone service outside of the local exchange area, including interstate and international service.[7] That strict separation of local and long distance service changed with the Telecommunications Act of 1996, under which IXCs were permitted to compete with LECs in providing local service, and LECs were permitted to compete with IXCs in providing long distance service.[8]

The entire geographic area of the City comprises one local exchange area.[9] The City LEC owns the facilities to transmit calls within the City.[10] The City LEC's facilities consist of the local loop (the local transmission lines and equipment), the local switch and other equipment.[11] A local call travels over the City LEC's local loop to a local switch, which recognizes the digits dialed by the caller and transmits that call to the designated destination within the City.[12]

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[2] Tr. 259.
[3] City's exhibits 3, 7, 10.
[4] Tr. 252.
[5] *Id.*
[6] *Id.*
[7] *Id.*
[8] Tr. 252-53, 272-73.
[9] Tr. 270.
[10] Tr. 353.
[11] Tr. 259, 261.
[12] Tr. 251-52, 261.

Sprint had no facilities of its own to provide local telephone service within the City; it entered the competitive market for local telephone service within the City by purchasing local telephone service from the City LEC at a discount and reselling it to its local customers.[13] Although Sprint owned no local equipment within the City, as an IXC, Sprint was required to maintain a "point of presence" within the City by means of a long distance switch.[14] Sprint's long distance switch was Sprint's property,[15] was separate from the local loop and local switch of the City LEC, and was necessary for Sprint to provide its City customers with long distance service.[16]

Sprint used the LEC's local loop and local switch to connect its City customers to its long distance switch in providing long distance service. If a Sprint customer in the City made a long distance call, the call would be transmitted along the City LEC's local loop to the City LEC's local switch, which would recognize that the call was a long distance call from the digits dialed, and would transmit that call along the local loop to Sprint's long distance switch in the City.[17] The long distance call would then be transmitted to Sprint's long distance switch in the local exchange area where the call was to be completed, then travel over the local loop to the LEC's switch in that local exchange area, which would recognize the digits dialed, and send the call over the local loop in that local exchange area to that LEC's customer.[18]

Similarly, on an inbound long distance call to a Sprint customer in the City, the LEC in the local exchange area where the call originated would transmit the call along its own local loop to its local switch and then to Sprint's long distance switch in that local exchange area. The call would be transmitted over Sprint's network to Sprint's point of presence in the City at which point it would be transferred to the City LEC, which would transmit it to the City customer.[19] Regardless of whether Sprint sold long distance

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[13] Tr. 259. The facts generally are described as they existed during the Audit Periods.
[14] Tr. 366, 385-86.
[15] Tr. 366.
[16] Tr. 386.
[17] Tr. 268, 386.
[18] Tr. 268.
[19] Tr. 269.

service in conjunction with its local service within the City, or sold only long distance service, Sprint needed to use the City LEC's infrastructure – the local loop and local switch – to complete a long distance call to or from a local customer.

Thus, the City LEC's transmission of an outgoing long distance call from a City customer of Sprint originates with the customer in the City and terminates at Sprint's point of presence within the City. However, the call is not completed until it is received by the intended recipient. Although the various segments of a long distance call handled by Sprint, the City LEC and the recipient's LEC may originate and terminate within a single local exchange area, the entire call from dialing to completion clearly does not.

A long distance call cannot be completed, therefore, unless both the customer initiating the call and the customer receiving the call have access[20] to the local loop and local switch at their respective ends of the call. Customers are permitted to choose a long distance carrier by presubscribing to that carrier. The process by which Sprint's City customers gain access to Sprint's long distance service through the use of the City LEC's local loop and local switch is termed "switch access."[21] Sprint paid access charges to the City LEC to transmit long distance calls to and from its presubscribed City long distance service customers over the City LEC's local network.[22]

The City LEC also charged its local customers a fixed charge to recover the costs of the local loop.[23] In the early period following the breakup of the Bell system, LECs charged local customers a fixed subscriber line charge of $3.50 per month.[24] LEC charges to a long distance carrier for the use of the local loop were not fixed charges at that time, but were charged to the long distance carrier on a minute-of-use basis.[25]

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[20] Petitioner's exhibit S at 00440 (defining access).
[21] Tr. 261-62, 269; Petitioner's exhibit S at 00440-41.
[22] Tr. 260, 269; Petitioner's exhibit S at 00440. If a local customer did not presubscribe to a long distance carrier the customer did not have switch access, and the customer's only means to place a long distance call was through casually dialed long distance service for which the customer was charged separately for each call at very expensive rates. Tr. 387.
[23] Tr. 149, 311-12.
[24] Tr. 311-12.
[25] Tr. 312.

As the volume of long distance calls increased over time, the Federal Communications Commission (FCC) found that the minute-of-use charges to the long distance carriers, which were high, allowed the LECs to over-recover their local loop cost from the long distance carriers. In 1998, the minute-of-use charge was reduced and long distance carriers paid an additional new fixed charge for use of the local loop called a "presubscribed interexchange carrier charge" (PICC).

Although Sprint paid the PICC to the City LEC,[26] Mr. Appleby testified that Sprint charged that cost back to its long distance customers.[27] Sprint did not identify the charge to its customer as a PICC but as a "presubscribed line charge", which Mr. Appleby testified was the same charge.[28] The City LEC charged Sprint the PICC every month for each long distance customer, even if the customer made no long distance calls that month.[29] Sprint, in turn, would charge its long distance customers the presubscribed line charge on a monthly basis.[30] Sprint's presubscribed line charge was not for specific long distance calls, but for the availability of long distance service, the ability to make a long distance call.[31]

Sprint also charged its long distance customers non-usage access charges, a category of non-traffic sensitive access charges separate from the presubscribed line charge.[32] Mr. Appleby testified that non-usage access charges were similar to the PICC.[33] All of the non-usage access charges are for the local access needed to use Sprint's long distance service.[34]

By separately stating the fixed components of its local access costs on its long distance customers' bills, Sprint was able to advertise competitively lower per-minute

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[26] Tr. 353.
[27] Tr. 315.
[28] Tr. 316.
[29] Tr. 378.
[30] *Id.*
[31] Tr. 379.
[32] Tr. 324-25; Petitioner's exhibit Q.
[33] Tr. 324.
[34] Tr. 326.

charges for its long distance service, in line with the national market.[35] The separately stated access charges represented the fixed dollar amount portion of the local access component of Sprint's long distance service, and were as much a part of the charge for long distance service as the per-minute local access charges collected by the LECs that were replaced in part by the PICC in 1998 as described above.[36]

The Department issued the Notice for the First Audit Period asserting a UT deficiency in the principal amount of $1,115,169.85, plus penalties and interest. The Department issued the Notice for the Second Audit Period asserting a UT deficiency in the principal amount of $1,110,177.34, plus penalties and interest.

The Department increased the amount of the gross operating income Sprint reported on its UT returns by adding several categories of revenue accounts which Sprint had excluded. Among these charges was one captioned "Long Distance PICC Non Reg.", which during the First Audit Period totaled $23,741,268.58, and another captioned "Access Charges – Non Usage", which during the First Audit Period totaled $6,908,984.58. The Department determined the amount of the revenue addition for the Second Audit Period by using an error ratio based on the amounts added for the First Audit Period.

Respondent takes exception only to the ALJ's exemption from UT of the PICC charge and the non-usage access charges.[37] Respondent asserts that the PICC and non-usage access charges are both imposed at a flat rate, are not usage sensitive, are charged to a long distance customer regardless of whether that customer made any long distance calls and, therefore, do not relate to any specific long distance call or transaction.[38] Respondent argues that to be exempt, the charge must relate to a "transaction" within the meaning of General City Law (GCL) §20-b, a telephone "call". Respondent argues that

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[35] Tr. 312-14, 320-22, 390-92.
[36] Tr. 312-14, 324, 326, 390-92. The per-minute usage local access charges are described on Petitioner's exhibit Q as "Access Charges Interstate (orig local)."
[37] Respondent confirmed during oral argument that his exception was limited to the two local access charges and also in Respondent's statement of the issue in his brief: Respondent's Brief in Support of Exception at 5.
[38] Respondent's Brief in Support of Exception at 5, 19-20.

charges for local access to a long distance carrier are not exempt from UT because they are not for specific transactions but for "the mere ability to enter into transactions," a service that both originates and terminates in the City.[39]

Respondent also asserts that, by separately stating its costs of local access in its bills to long distance customers, Sprint is, in effect, deducting those expenses from its gross operating income, which is prohibited by §11-1101.5 of the Administrative Code of the City of New York (Administrative Code).[40]

Sprint argues that the PICC and non-usage access charges are exempt from UT as charges for long distance service because they are "integral to transactions that originate or consummate outside New York City."[41]

For the reasons stated below, we affirm that portion of the ALJ Determination to which Respondent takes exception.

GCL §20-b authorized the City to enact, by local law, "a tax such as was imposed by section one hundred eighty-six-a of the tax law, in effect on January first, nineteen hundred fifty-nine. . . ." GCL §20-b also requires that:

> "A tax imposed pursuant to this section shall have application only within the territorial limits of any such city. . . . *This section shall not authorize the imposition of a tax on any transaction originating or consummated outside of the territorial limits of any such city, notwithstanding that some act be necessarily performed with respect to such transaction within such limits.*" (Emphasis added.)

Administrative Code §11-1102.a imposes UT on the gross income of a utility, defined as a "person subject to the supervision of the department of public service",[42] and on the gross operating income of a vendor of utility services, which includes a person not

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[39] *Id.* at 6-7, 9-10, 19-20, 24-28
[40] *Id.* at 14-18.
[41] Petitioner's Brief in Opposition to Respondent's Notice of Exception at 18.
[42] Administrative Code §11-1101.6.

subject to such supervision.[43] The Parties do not dispute that Sprint is a vendor of utility services.[44] Administrative Code §11-1101.5 provides that "Gross operating income":

> "Includes receipts received in or by reason of any sale made or service rendered, of the property and services specified in subdivision seven of this section in the city, including cash, credits and property of any kind or nature (whether or not such sale is made or such service is rendered for profit) *without any deduction therefrom on account of the cost of the property sold, the cost of materials used, labor or other services, delivery costs or any other costs whatsoever.*" (Emphasis added.)

The taxable services specified in Administrative Code §11-1101.7 include "telecommunications services," defined in Administrative Code §11-1101.9 to include "Telephony or telegraphy, or telephone or telegraph service. . . ."

Administrative Code §11-1102.c further provides that:

> "For the purpose of proper administration of this chapter and to prevent evasion of the tax hereby imposed, it shall be presumed that the gross income or gross operating income of any person taxable hereunder is taxable and is derived from business conducted wholly within the territorial limits of the city until the contrary is established, and the burden of proving that any part of its gross income or gross operating income is not so derived shall be upon such person."

This presumption must be read in conjunction with the general principle of construction of tax statutes, which states that:

> "'[a] statute which levies a tax is to be construed most strongly against the government and in favor of the citizen. The government takes nothing except what is given by the clear import of the words used, and a well-founded doubt as to the meaning of the act defeats the tax'. . . . The principle is, however, applicable only in determining whether property, income, a transaction or event is subject to taxation.

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[43] Administrative Code §11-1101.7.

[44] *See Sprint Communications Co., L.P. v City of N.Y. Dept. of Fin.*, 152 AD3d 184 (1st Dept 2017).

[Citations omitted.]" *Matter of Grace v NY Tax Commn.*, 37 NY2d 193, 196 (1975).

GCL §20-b is clearly an imposition statute. We believe that the prohibition in that section against imposing a tax on any transaction originating or consummated outside the City is more appropriately viewed as prohibiting the City from taxing long distance telephone service because that service by definition comprises only transactions, or calls, that begin or end outside the City rather than as allowing the City to impose a tax on long distance telephone service and only exempting receipts from the sale of individual long distance calls.

Under the structure of the long distance telephone service provided by Sprint, no long distance service could be provided if local access to Sprint's long distance switch in the City was not provided by the City LEC for which the FCC authorized the City LEC to charge the PICC. The long distance telephone service sold by Sprint gave its customers solely the ability to make calls beginning or ending outside the City. Thus, regardless of whether a long distance customer of Sprint ever made a call, once it is established that the access charge is a necessary component of transactions originating or consummating outside the City, the presumption under Administrative Code §11-1102.c. is rebutted.

Respondent argues that, because both local access charges at issue in this case are imposed regardless of whether the customer makes a long distance call, they are not charges for a specific transaction but for the mere ability to enter into a transaction, i.e., to make a call.[45] Respondent argues that the City LEC's provision of access to Sprint's long distance switch in the City is a local transaction that originates and consummates in the City separable from the long distance call itself.

We disagree. A long distance call begins when a customer picks up the telephone receiver to dial someone outside of that customer's local exchange area and ends only when a person answers the call. Respondent acknowledges that a call represents a

[45] Respondent's Brief in Support of Exception at 6, 9.

transaction.[46] It is impossible for a City customer of Sprint to make a long distance call unless that customer has access to Sprint's point of presence in the City, which is provided by the City LEC for which it charges Sprint.

By separating the local access needed to make a long distance call from the call itself, Respondent is, in effect, defining the transaction comprising a long distance call as beginning at Sprint's point of presence in the City, not when the customer picks up the receiver to dial the call. By the same logic, the call would end, not when the call is answered, but at the point at which the call is routed to the LEC at the destination location. What Respondent describes is not a "call" under any reasonable conception of that term.

Respondent cites *Matter of Hotel Waldorf-Astoria Corp.*, 1994 WL 76618 (NYC Tax Appeals Tribunal, 1994), *aff'd sub nom. Matter of Hilton Hotels Corp. v Commr. of Fin. of the City of N.Y.*, 219 AD2d 470 (1st Dept 1995) (*Waldorf-Astoria)* in support of his position. Respondent argues that *Waldorf-Astoria* requires an examination of whether a particular charge is an "inseparable" part of long distance telephone service, in which case the charge is not subject to UT.[47] We agree with the ALJ that *Waldorf-Astoria* does not support Respondent's position in the present case, although for different reasons than cited by the ALJ.

On appeal to the Appellate Division, First Department, the court in *Waldorf-Astoria* held that in determining the treatment of a hotel's supplemental charge to its guests for long distance service, the City could properly look to the treatment of those supplemental charges by New York State because GCL §20-b requires the UT to conform to Tax Law §186-a as it was in effect when GCL §20-b was enacted. The court then concluded that:

> "While petitioner did not bill its guests for access or for certain services, this does not negate the fact that there existed a surcharge between the actual cost of the service and the

[46] *Id.* at 6.
[47] *Id.* at 25.

> charge to the guest, upon which surcharge the tax was imposed. Thus, inasmuch as the surcharge was not inseparable from the long-distance telephone call, the geographical limitation on the City's Utility Tax did not bar imposition of such tax." 219 AD2d 470, 476 (1st Dept 1995).

In determining whether the access charges are inseparable from the charges for a long distance call, we do not believe it is simply a matter of whether the charge is, or can be, separately stated on the customer's bill. In *Waldorf-Astoria*, the charges were separable from the charge for the long distance service because the service provided by the hotel in exchange for the charges was not essential to completing the call, and was not provided by the long distance telephone service provider.[48] Moreover, while the access charges paid by Sprint to the City LEC and recouped from its customers are charges mandated by the FCC, the surcharge at issue in *Waldorf-Astoria* was imposed by the hotel unrelated to any fee structure of the telephone service provider.

We agree with the ALJ that if the separately-stated access charges involved here were for local telephone service, Sprint would not be able to exclude them from its gross operating income simply by breaking out those charges on its customers' bills.[49] The charges would be taxable as inseparable parts of the local service. Similarly, the fact that the PICC and non-usage access charges were itemized on the bills does not cause the charges to be separable from the long distance telephone service. The billing practice of Sprint was a function of the marketplace in which Sprint endeavored to offer long distance service at competitive rates by separating the access charges from the charge for the service itself.[50] Thus, we find that, consistent with the principle articulated by the court in *Waldorf-Astoria*, the separately-billed PICC and non-usage access charges are inseparable parts of Sprint's charge for long distance service.

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[48] We also find our decision in *Matter of Associated Bus. Tel. Sys. Corp.*, 2007 WL 1202527 (NYC Tax Appeals Tribunal, April 12, 2007), also relied on by Respondent, to be of no relevance given that our decision addressed solely the question of whether the taxpayer was a vendor of utility services and whether taxpayer's receipts were excluded from gross operating income as sales for resale. Charges for long distance telephone service were not at issue before the Tribunal Commissioners in that case.

[49] ALJ Determination at 23-24.

[50] Tr. at 271-73.

The gross operating income of a vendor of utility services includes "receipts received in or by reason of any sales made or service rendered, of the . . . services specified" in Administrative Code §11-1101.7, which includes telecommunications services. GCL §20-b prohibits the City from imposing a tax *on any transaction originating or consummated outside* the City. Because no long distance call to or from a Sprint customer in the City can be completed without access provided by the City LEC to Sprint's long distance switch, a tax on receipts for charges for such access would be a tax on such transactions and, therefore, is prohibited by GCL §20-b. Although the access itself is provided in the City, the prohibition under GCL §20-b applies "notwithstanding that some act be necessarily performed with respect to such transaction within" the City, such as the City LEC's provision of local access to Sprint's long distance switch in the City.

Respondent's assertion that by treating the PICC and non-usage access charges paid to the City LEC and passed through to Sprint's customers as exempt from UT, Sprint was deducting those charges from its gross operating income in contravention of Administrative Code §11-1101.5 also is erroneous. For the reasons explained above, we concluded that Sprint was properly excluding those receipts from its gross operating income under GCL §20-b, not deducting them as expenses from its gross operating income.

For the following reasons, we find the other authorities most heavily relied on by each of the Parties not persuasive in support of their respective arguments.

Petitioner cites a private letter ruling issued by the Department in 1996, FLR-954650-011 (February 28, 1996), in support of its position. That ruling was issued to a taxpayer subject to the supervision of the Public Service Commission and, therefore, a utility rather than a vendor of utility services for UT purposes. Administrative Code §11-1101.6. The ruling addressed the taxation of access charges described in the ruling as received by the taxpayer from long distance telephone service providers and other customers for services originating or consummating outside the City. The ruling

concluded that receipts for access charges received from long distance service providers were not includible in the taxpayer's "gross income" because they were receipts from sales for resale. That same argument is not applicable to Sprint.

The ruling further concluded that the taxpayer's receipts from its other customers for access to long distance service providers were not taxable because that access was "an integral part" of the long distance service originating or ending outside the City. Private letter rulings are binding on the Department only with regard to the taxpayer to whom they are issued and may not be cited as authority by other taxpayers. 19 RCNY §16-05(a). Nevertheless, this aspect of the conclusion in the ruling is consistent with our analysis in this case.

Respondent cites two advisory opinions of the New York State Department of Taxation and Finance (DTF), TSB-A-88(1)S, (December 9, 1987) and TSB-A-88(8)S (January 5, 1988). Both opinions involve the treatment of "End-User Common Line charges ('EUCL')" collected by a LEC from its local customers for New York State Sales and Use Tax (Sales Tax) purposes. The EUCL was a flat fee collected under the FCC's system allowing the LECs to recoup their costs of providing customers with interstate telephone service through access to IXCs. Tax Law §1105(b) imposes the Sales Tax on all receipts from sales of "telephony . . . and telephone service of whatever nature except interstate and international telephony . . . and telephone . . . service." In both opinions, the DTF concluded that the EUCL, while separately stated on the customers' bills, was "part and parcel of basic telephone service" because it could not be separately purchased. Respondent argues that because these advisory opinions conclude that the access charges received by the LEC were an integral part of local service, Sprint's receipt of access charges from its long distance customers was a local transaction.[51] We find that these advisory opinions do not support Respondent's position. They address the tax treatment of a flat rate access charge received by the LEC from its local service customers, not the access charges received by a long distance service provider from its long distance

[51] Respondent's Brief in Support of Exception at 28-29.

customers to recoup its cost of purchasing access from the LEC. To the extent that the opinions find that long distance access could not be purchased separately, even if the EUCL was separately stated on the bill, they lend support to our conclusion in this case.

Respondent also relies on *Matter of Helio, LLC*, 2015 WL 4192425 NY St Div of Tax Appeals DTA No. 825010 (July 2, 2015). Because that case involved the Sales Tax treatment of charges for wireless telecommunications services governed by statutory provisions that differ substantially from those at issue in the present case, we find that case to be of no relevance.

Finally, we find that the New York State Tax Appeals Tribunal decision in *Matter of S. Pac. Communications Co.*, 1991 WL 99468 NY St Div of Tax Appeals TSB-D-91-41(S) (May 14, 1991) (*Southern Pacific)* relied on by Petitioner, and, to a lesser extent by the ALJ, to be distinguishable from the present case. Although the charges at issue in that case are similar to those at issue before us, that case involved the application of the Sales Tax, which, as noted above, excludes from tax sales of "interstate and international telephony . . . and telephone . . . service." The Sales Tax is not governed by a statute similar to GCL §20-b, but applies to sales of telephone service unless the service is interstate telephone service. The New York State Tax Appeals Tribunal looked to commerce clause jurisprudence, not applicable to GCL §20-b, which refers only to transactions originating or consummating outside the City. Moreover, in reaching their decision, the New York State Tax Appeals Tribunal Commissioners relied heavily on the fact that the DTF had stipulated that the taxpayer was authorized by the FCC only to offer long distance interstate service, thereby precluding any inquiry as to whether the service sold by the taxpayer was "interstate in nature".[52] Having once conceded that the taxpayer was authorized to offer only interstate telephone service, the DTF left itself virtually no room to argue that the services it sought to tax were not part of that interstate telephone service.

[52] *Southern Pacific* at 9.

We also find *Matter of Moran Towing and Transp. Co. v New York State Tax Commn.*, 72 NY2d 166 (1988) (*Moran Towing*) cited by Petitioner, and relied on by the State Tax Appeals Tribunal in *Southern Pacific,* to have no application to the case before us. The exclusion from UT under GCL §20-b depends on a determination of whether the receipts at issue are for transactions originating or consummated outside the City, not whether those transactions, including inseparable components of such transactions, are part of interstate commerce. The standard in GCL §20-b is far narrower than that applicable in commerce clause cases. Therefore commerce clause jurisprudence is irrelevant to the application of GCL §20-b.[53]

For the reasons stated above, we affirm that portion of the ALJ Determination to which Respondent takes exception.[54] Commissioner Frances J. Henn did not participate in this Decision.

Dated: April 3, 2018
New York, New York

Ellen E. Hoffman
President and Commissioner

Robert J. Firestone
Commissioner

[53] The New York State Tax Appeals Tribunal in *Southern Pacific,* relying on *Moran Towing,* took the position that once it is determined that "the activities of a taxpayer operating exclusively in New York State cannot be examined for sales tax purposes apart from their interstate context, it follows that the activities of a taxpayer in interstate commerce cannot be segmented into State components and isolated from their interstate commerce context. (Citations omitted.)" *Southern Pacific* at 10.

[54] We have considered all of the other arguments of the Parties and find them unpersuasive.