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Taxation of Comsat
36 APR 83 2683

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To: Raymond Halperin, State Tax Assessor
From: Joseph E. Brennan, Attorney General
Re: Taxation of COMSAT

This responds to your request for advice on the applicability of the telephone and telegraph tax to COMSAT facilities.

BACKGROUND:

Comsat

The Communications Satellite Corporation (hereinafter cited as Comsat), a District of Columbia corporation incorporated pursuant to federal statute, 47 U.S.C. § 701, et seq., participates in a worldwide satellite communications network. Comsat owns, in common with other communications carriers, earth stations located in the United States. One of these earth stations is located in Andover, Maine. Comsat owns a 50% interest in the Andover station as well as a 50% interest in all other earth stations situated in the United States.^{1/} The various owners of the Andover station share capital costs, operating costs and maintenance.

The Andover earth station receives communications signals originating in the United States and destined for another country. These signals arrive at Andover through the facilities, such as telephone wires or microwave relay stations, owned by other carriers. The Andover station relays the signals to an orbiting satellite, and the satellite then transmits the signal to an earth station in a foreign country. The system also works in reverse,

^{1/} The other corporations with an ownership interest in the Andover earth station are American Telephone and Telegraph Co., ITT World Communications Inc., RCA Global Communications Inc., and Western Union International Inc.

Much of the factual information contained in the Background Section was contained in a letter from the Assistant General Counsel of Comsat.

with the Andover station receiving signals from orbiting satellites.

The Andover earth station relays all forms of telecommunications, including telephone, telegraph, television and data transmission. Eighty-one percent of all communications traffic traveling through the Andover station consists of telephone traffic.

Comsat does not directly serve the public. Rather, Comsat derives most of its revenue from providing two-way communications links to United States communications carriers.

Maine Telephone and Telegraph Tax

The Maine telephone and telegraph tax, 36 M.R.S.A. § 2683, et seq., is imposed on all businesses operating a telephone or telegraph line within the State.

"Sec. 2683. Companies taxable. Every corporation, association or person operating in whole or in part a telephone or telegraph line within the State for tolls or other compensation shall pay to the State Tax Assessor, for the use of the State, an annual excise tax for the privilege of conducting such business within the State."

The amount of the tax is based on a percentage of the taxpayer's gross operating revenues from its operations in Maine. The excise tax is in lieu of property taxation upon all the taxpayer's property incidental to its business, except land and buildings. The Bureau of Taxation does not presently assess the telephone excise tax against Comsat.^{2/}

QUESTION:

Does Comsat qualify under the telephone and telegraph tax, 36 M.R.S.A. § 2683 et seq.?

ANSWER:

Comsat qualifies under the telephone and telegraph tax.

REASONING:

The telephone and telegraph tax is imposed upon "[e]very corporation, association or person operating in whole or in part a telephone or telegraph line within the State. . . ." The

^{2/} The Bureau of Taxation previously has taken the position that Comsat is not subject to the telephone excise tax.

critical issue raised by this opinion request, is whether Comsat's activities at its Andover facility constitute the operation of a telephone line within the meaning of the statute. This issue, however, is not easily answered for a number of reasons. First, satellite communication, or any other type of wireless communication, was not in existence when the excise tax was first enacted in 1883.^{3/} Second, the excise tax does not contain a definition of the phrase "telephone line." Third, minimal evidence of legislative intent exists concerning the purpose of the statute. In order to resolve the question of whether Comsat operates a telephone line we must determine the purpose of the telephone and telegraph tax, as well as the meaning of the phrase "telephone line."

I. Purpose of Telephone and Telegraph Tax

Although legislative history concerning the telephone and telegraph tax is extremely limited, the purpose of the law can be derived from judicial interpretation and historical data. In Portland v. N.E.T. & T. Co., 103 Me. 240, 249 (1907), the Supreme Judicial Court concluded with regard to the telephone tax, that

"it seems to have been the manifest purpose of the Legislature to impose upon telephone companies an excise tax for the privilege of doing business in this State, and to exempt all personal property used in its business, leaving only its real estate. . . for local taxation."

The Court thus assigned a broad purpose to the telephone tax: to impose a business privilege tax on telephone companies.

The Supreme Judicial Court's statement of the purpose of the tax is supported by historical data from the years surrounding the original passage of the telephone tax. In the Governor's message to the Legislature delivered on January 4, 1883, (the year in which the telephone tax was first enacted), the Governor "recommend[ed] that a proper tax be levied on telephone companies doing business in the State" to the end "that all kinds of property. . . [could] be reached [by taxation], so that, in a just way, public burdens may be equalized. . . ." Governor's annual message, 1883, p. 33. A similar expression of a desire to impose a general excise tax on telephone companies may be found in the Governor's annual message for 1875, at pp. 15-16. See Governor's annual message, 1880, p. 9 (speaking of a tax on telegraph companies in the year in which that tax was first enacted). The statement contained in the annual messages of 1875, 1880 and 1883 indicate that the executive branch desired a business tax on all telephone businesses within the State.

^{3/} Marconi did not invent the wireless telegraph until 1895.

Telephone excise taxes in other states have been designed to avoid the inequity caused by local taxation of the property of telephone companies. Telephone companies own property, notably poles and wires, located in many municipalities. Because of the vagaries in local assessing practices, identical property, such as poles, may be valued at different levels in different municipalities. See Report of the Connecticut Temporary Commission to Study the Tax Laws of the State, 1934, pp. 363-64. However, neither legislative history nor statutory language suggests that the Maine telephone excise tax was enacted for the purpose of redressing inequities in local assessing practices.^{4/} Moreover, if the purpose of the telephone tax was to avoid problems in local assessment of telephone property, that purpose would not exclude taxing telephone businesses which operate wireless communication systems. Wireless communication equipment, such as microwave relay towers, are situated in many municipalities, and thus are subject to the same assessing problems as are poles and wires. In addition, the complex and expensive equipment at the Ardover earth station, although situated in only one municipality, presents serious problems of valuation for assessors lacking advanced training in the valuation of industrial property.

II. Definition of Telephone Line

Two alternative definitions of the phrase "telephone line," as that phrase is used in the telephone tax, are supportable. First, telephone line can be defined as the entire transmission system used in the operation of a telephone business. Second, the phrase can be defined as the system of wires and poles used in the operation of a telephone business. Although both definitions are plausible, after examining a number of factors, it is concluded that the first definition should control.

A. Legislative History

The original version of the telephone tax, enacted in 1883, imposed a tax

"on the value of a telephone line owned by [a telephone] corporation, company or person, within the limits of this state, including all poles, wires, insulators, transmitters, telephones, batteries, instruments, telephonic apparatus, office furniture, and any circumstances or conditions which affect the value of the property." Laws of Maine, 1888, c. 213, § 1.

^{4/} The fact that the original version of the tax did not provide for the return of revenues to municipalities, indicates that the Legislature was not interested in providing a complete substitute for local property taxation. In latter versions of the telephone tax, a portion of the proceeds were returned to the municipalities. See Laws of 1901, c. 201, § 2.

The Legislature did not limit the type of property included as a telephone line to poles and wires. Rather, the Legislature described a telephone line as including all property necessary to the operation of a telephone company or, in other words, the transmission system. Although subsequent versions of the telephone tax list the property exempt from property taxation separately from any mention of telephone line, the first version of the tax strongly suggests a legislative intent to define telephone line broadly.

B. Changing Technology

The telephone tax was enacted before wireless communication was invented. Thus, the Legislature in 1883 likely did not contemplate that the telephone tax might be applied to satellite communication. However, the fact that the telephone tax was first enacted before invention of wireless communication does not foreclose the application of the tax to wireless communication. Rather, an examination of both case law and the purpose of the telephone tax suggest a definition of a telephone line which is capable of encompassing technological advancements in telephone communication.

In Portland v. N.E.T. & T. Co., *supra*, the Supreme Judicial Court suggested that the language of the telephone tax should be interpreted so as to expand with changing technology. In the above-mentioned case, the City of Portland assessed a real property tax against the value of underground conduits owned by N.E.T. The conduits contained telephone wires. Pursuant to statute, the telephone tax was in lieu of all taxes upon the taxpayer's

"property used in the conduct of its telephone or telegraph business, including polls, wires, insulators, office furniture, batteries, instruments, telegraphic and telephonic apparatus, telephones and transmitters. . . ." 103 Me. 240, at 244.

The city argued that conduits were taxable since they were not mentioned in the list of exempt property contained in the statute. The court held that the omission of conduits from the list of exempt property did not operate to exclude conduits from the reach of the statute for two reasons. First, the purpose of the statute was to impose an excise tax on telephone businesses while exempting from personal property taxation all property owned by such businesses. 103 Me. 240, at 249. The list of exempt property was, therefore, not meant to be exclusive. Second, broad statutory language, such as the reference to property used in the conduct of a telephone business, usually is extended to encompass conditions not known by the Legislature at the time of enactment. 103 Me. 240, at 249. As the court noted, conduits could not have been mentioned in the original statute, because that "method of conveying wires. . . had not [yet] been adopted by telephone companies."

The Supreme Judicial Court in Portland v. N.E.T. & T. Co. did not reach the specific issue raised in this opinion. However, the court did accept an approach to statutory construction that permits the meaning of language to extend "'to new things which were not known and could not have been contemplated by the legislature.'" 103 Me. 240, at 249. See Comm. v. Maxwell, 114 A. 825, 829 (Pa., 1921).

In City of Waterville v. Bartell Telephone TV Systems, 233 A.2d 711 (Me., 1967), the Supreme Judicial Court again dealt with the meaning of language in the communications field. The plaintiff City of Waterville sought to enjoin New England Telephone and Telegraph Co. (hereinafter cited as NET) from transmitting television signals on its cables to the customers of Bartell Telephone TV Systems, 233 A.2d 711, at 712. Pursuant to legislative franchise, NET has the authority to operate telephone lines and "'such telegraphic appliances as may be necessary or convenient for the dispatch of their business.'" 233 A.2d 711, at 712. The City argued that the service offered by NET to Bartell did not fall within the scope of NET's franchise. The court, however, interpreted NET's franchise broadly and concluded that NET's transmission of television signals did not exceed its legislative grant of authority. In supporting this conclusion, the court discussed several decisions by courts and regulatory bodies. In one regulatory decision relied on by the court, Re New York Tel. Co., the New York Public Service Commission concluded that telephone service is actually the "'transmission of intelligence via electrical impulse,'" and thus that the transmission of television signals qualified as telephone service. 233 A.2d 711, at 717. The Supreme Judicial Court commented that the reasoning of the Commission was persuasive. Although the decision in City of Waterville concerned regulatory, rather than tax, issues, the decision suggests that the Supreme Judicial Court will broadly interpret statutory language in the communications field so as to expand with changing technology.

An examination of the purpose of the telephone excise tax is instrumental in determining whether the meaning of the phrase "telephone line" should expand with changing technology. See Hart & Sacks, The Legal Process (Tent. ed. 1958) 1214. Statutory language should be interpreted consistently with the purpose of the statute involved. See Town of Ashland v. Wright, 139 Me. 283, 285 (1943). The purpose of the telephone tax, as discussed earlier, is to impose an excise tax on the operation of telephone businesses. This broad purpose would be defeated if the phrase "telephone line" were interpreted so as to encompass telephone businesses only as those businesses existed in 1883. Pursuant to such a restrictive interpretation, a telephone company which only operated long distance microwave relay stations would not be subject to tax, while another company providing long distance service over wires would be taxable.

Such a result would not only lead to inconsistent treatment of similar businesses, but would also contravene the purpose of the telephone tax: to tax all telephone businesses. If the phrase "telephone line" is to be interpreted consistently with the purpose of the excise tax, then the phrase must be defined to include wireless telephone communication.

C. Case Law

Only one reported case has been located which addresses the question posed by this opinion. In Wilson Communication Inc. v. Calvert, 450 SW2d 842 (Tex. 1970), the State argued that a two way radio telephone service qualified under the Texas gross receipts tax.^{5/} The gross receipts tax was imposed on all corporations operating or owning "any telephone line or lines or any telephones." The lower court, in holding that the corporation was subject to the tax, concluded that

"The 'lines' used in this type of operation are radio waves, just as microwaves transmit telephone conversations, in lieu of wires, in operations conducted by general telephone companies." 443 SW2d 419, 423 (Ct. of Civ. App. Tex. 1969)

The Texas Supreme Court reversed the lower court, concluding that the coverage of the tax statute was limited to "the usual and historical description of telephone systems." 450 SW2d 842, at 844. The court, thus, explicitly refuted the State's argument that the meaning of telephone line should expand with expanding technology. The court's reasoning should have little force in Maine, because the Maine Supreme Judicial Court in Portland v. N.E.T. & T. Co., supra adopted an approach to construction of the telephone tax which allows the meaning of language to expand with changing technology.

Although Wilson appears to be the sole tax case concerning the application of the phrase "telephone line" to wireless voice communication, a number of courts have addressed this issue in the context of public utilities regulation. In many of these cases the applicable statute was broader in scope than the Maine telephone tax.^{6/} However,

^{5/} The court noted that it had not found any controlling case law. 450 SW2d 842, at 844.

^{6/} For example, in Commercial Communications v. Public Utilities Com'n, 327 P2d 513, 518 (Cal. 1958), the public utilities commission was granted jurisdiction over corporations owning a telephone line. Telephone line was defined by statute as all property used to facilitate telephone communication, "whether such communication is had with or without the use of transmission wires."

in several cases in which courts have considered whether public utilities commissions have jurisdiction over radio telephone businesses, the relevant jurisdictional statutes have defined telephone lines in only slightly broader terms than used in the Maine statute.^{7/} These cases are of limited aid in resolving the problem raised in this opinion for two reasons. First, the courts have split on their resolution of the legal issue and second the differences between regulatory and tax statutes make comparison between the two types of statutes difficult.

D. Conclusion

Given the broad purpose of the telephone tax, the explanation of telephone line contained in the original version of the tax and the


^{7/} In Radio Telephone Commun. Inc. v. Southeastern Tel. Co., 170 SO2d 577 (Fla. 1964) the Florida Supreme Court interpreted the jurisdictional statute restrictively. The relevant statute defined telephone line as encompassing all equipment which facilitates telephone communication. The court concluded that since the Legislature enacted the regulatory statute at a time when radio communications were in their initial stage of development, that the Legislature could not have intended to include radio communication within the confines of the definition of telephone line. 170 SO2d 577, at 580-81. Moreover, the court rejected the State's contention that the subsequent enactment of the regulatory statutes evidenced a legislative intent to cover radio communication. The court argued that historically the Legislature had enacted separate regulatory provisions to cover different public services, and that, therefore, regulation of radio communication should not be implied.

In a series of New York cases dealing with a definition of telephone line similar to the Florida definition, several New York courts have held that radio telephone companies operated telephone lines. Radio Common Carriers of New York Inc. v. N.Y. State Public Service Commission, 368 NYS2d 341 (Sup. Ct. app. div. 1975) (Mem. decision); Capital Telephone Co. Inc. v. Kahn, 366 NYS2d 538 (Sup. Ct. 1975), Digital Paging Systems, Inc. v. Public Service Commission, 360 NYS2d 931 (Sup. Ct. 1974). See Application of Radio-Fone, Inc., 193 NW2d 442 (Neb. 1972).

approach to statutory construction adopted by the Supreme Judicial Court in Portland v. N.E.T. & T. Co., a definition of telephone line as meaning a transmission system appears to be required.^{8/} Although a more restrictive definition is supported by dictionary definitions, such a definition would result in a frustration of the purpose of the telephone tax.^{9/}

III. Application of Telephone Tax to Comsat

Comsat qualifies for the telephone tax only if it operates a telephone line for compensation. Although Comsat receives and transmits various types of communications signals through the Andover station, over four-fifths of the communications traffic consists of telephone communication. Comsat, therefore, engages in the telephone business. Moreover, in light of the conclusion reached in the preceding section of this opinion - that the phrase "telephone line" encompasses wireless communication - Comsat's activities constitute the operation of a telephone line. Telephone line, as used in telephone excise tax, refers to the transmission system of a telephone business. Telephone businesses which operate microwave relay stations, two-way radio systems or satellite networks all operate telephone lines for purposes of the excise tax. Finally, Comsat clearly operates its telephone lines for compensation.


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^{8/} The Supreme Judicial Court has stated that ambiguous tax statutes should be interpreted to the advantage of the taxpayer. Hanbro, Inc. v. Johnson, 158 Me. 180, 184 (1962). However, it is not possible to generalize whether subjection to the telephone excise tax will be advantageous to taxpayers. The relative burden of the excise tax as compared with property tax will depend upon both the value of the taxpayer's personal property (which is exempt if the taxpayer is subject to the excise tax) and the applicable property tax rate. Since some taxpayers will benefit financially by subjection to the excise tax while others will suffer, the rule of statutory construction noted above should not apply to the telephone excise tax.

^{9/} Dictionary definitions do not require that statutory language bear a particular meaning. Rather, dictionaries only suggest possible definitions of words. See H. Hart & H. Sachs, The Legal Process, p. 1220 (Tent. ed 1958).

It should be noted that in the statutes governing the Maine Public Utilities Commission, telephone line is defined to include all property used "to facilitate communication by telephone, whether such communication is had with or without the use of transmission wires." 35 MRSA § 15 (20) (1965). The definition contained in § 15 (20) is the only definition of telephone line appearing in the Maine statutes.