



Comptroller General
of the United States

Washington, D.C. 20548

Shimamura

146429

Decision

Matter of: 9-1-1 Emergency Telephone Service Fee--
Commonwealth of Kentucky

File: B-246517

Date: April 17, 1992

DIGEST

The federal government is constitutionally immune from paying the 9-1-1 emergency telephone service fee imposed by the Commonwealth of Kentucky because the fee is a tax, the legal burden of which falls directly on the federal government as a telephone service consumer.

DECISION

An authorized certifying officer of the Department of Agriculture National Finance Center has requested an advance decision under 31 U.S.C. § 3529 on the propriety of paying a 9-1-1 emergency telephone service fee assessed against federal agencies by Wolfe County, Commonwealth of Kentucky. For reasons set forth below, we conclude that the fee is a tax, the legal burden of which falls directly on the federal government as the telephone service consumer, and that the government therefore is constitutionally immune from paying it.

The Kentucky Revised Statutes (KRS) authorizes local governments to establish 9-1-1 emergency telephone service and to pay for the establishment and operation of the service by levying and collecting fees from local telephone exchange subscribers on an individual exchange line basis. KRS §§ 65.760(1)(3).

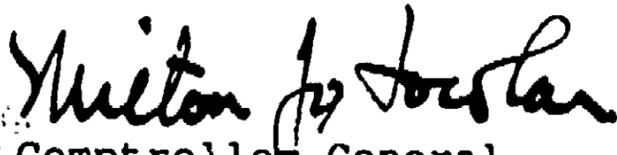
Wolfe County Fiscal Court, the governing body of Wolfe County, passed an ordinance which levies a 9-1-1 fee for each exchange telephone subscriber payable on an individual exchange line basis. The ordinance authorizes Mountain Rural Telephone, the phone company providing local phone service in Wolfe County, to collect the 9-1-1 fee from telephone subscribers and to remit the fee to the Wolfe County government.

The United States and its instrumentalities are constitutionally immune from direct taxation. McCulloch v. Maryland, 17 U.S. (4 Wheat.) 316 (1819). Direct taxation occurs where the legal incidence of the tax falls directly on the United States as the buyer of goods, Kern-Limerick,

Inc. v. Scurlock, 347 U.S. 110 (1954), or as the consumer of services, 53 Comp. Gen. 410 (1973), or as the owner of property, United States v. County of Allegheny, 322 U.S. 174 (1944). These direct taxes, known as "vendee" taxes, are not payable by the federal government unless expressly authorized by Congress. 64 Comp. Gen. 655, 656-57 (1985).

We examined 9-1-1 service charges levied in Florida, 66 Comp. Gen. 385 (1987); Maryland, 65 Comp. Gen. 879 (1986); Texas, 64 Comp. Gen. 655 (1985); and Tennessee, B-230691, May 12, 1988. We disapproved of the charges in all four cases, holding that the 9-1-1 service charges at issue were vendee taxes not payable by the federal government. Under those states' statutes, the telephone companies were merely collection agents, i.e., required to collect the tax from their customers and then remit the amount collected to the state taxing authorities. The Kentucky statute, and the Wolfe County ordinance in particular, are not materially different from the statutes of the four states.

Under the Kentucky 9-1-1 statute, the telephone company acts as a collection agent for the local taxing authority; it collects fees from the general public and the federal government as telephone users and remits the fees to Wolfe County. The Kentucky 9-1-1 fee therefore is a vendee tax, the legal incidence of which falls directly on the federal government as a user of telephone service. Consequently, the United States is constitutionally immune and the tax is not payable by the federal government.



Acting Comptroller General
of the United States