



Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: 9-1-1 Emergency Telephone Charge - State of Colorado
File: B-247501
Date: May 4, 1992

DIGEST

The federal government is constitutionally immune from paying the 9-1-1 emergency telephone charge imposed by the State of Colorado because the charge is a tax, the legal burden of which falls directly on the federal government as a user of telephone services.

DECISION

An authorized certifying officer of the Department of Agriculture's National Finance Center has requested an advance decision under 31 U.S.C. § 3529 on the propriety of paying the 9-1-1 emergency telephone charge assessed against federal agencies in the State of Colorado. For the reasons set forth below, we conclude that the fee is a vendee tax, the legal burden of which falls directly on the federal government as a user of telephone services, and that the government is therefore constitutionally immune from the tax.

Under section 29-11-102 of the Colorado Revised Statutes, governing bodies of the state are authorized to impose a monthly emergency telephone charge, *i.e.*, a charge for 9-1-1 services, on each "exchange access facility." The charge may not exceed seventy cents per month, unless the governing body obtains approval of a higher charge by the public utilities commission. Colo. Rev. Stat. § 29-11-102(2). The 9-1-1 charges are to be "added to and may be stated separately in the billings to the service user." Colo. Rev. Stat. § 29-11-102(5).

It is an unquestioned principle of constitutional law that the United States and its instrumentalities are immune from direct taxation by state and local governments.¹ Direct

¹Although the Colorado statute labels the 9-1-1 fee as an "emergency telephone charge," it is, nonetheless, a tax. In 65 Comp. Gen. 879, 881 (1986), we identified the characteristics of 9-1-1 charges which make them taxes.

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taxation occurs where the legal incidence of the tax falls directly on the United States as the buyer of goods, Kern-Limerick, Inc. v. Souflok, 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, 565-57 (1985).

We recently examined 9-1-1 charges in Kentucky, B-246517, Apr. 17, 1992, and Indiana, B-248363, Apr. 17, 1992.² We held, in these cases, that the 9-1-1 service charges at issue were vendee taxes not payable by the federal government. Under these 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. Cf. B-238410, Sept. 7, 1990. The Indiana statute, for example, makes clear that the legal incidence of the tax falls on the customer by providing that "[t]he person who uses an exchange access facility is liable for the monthly . . . fees."

The Colorado statute is not materially different from this statute. Under the Colorado 9-1-1 statute, the telephone company acts as a collection agent for the local taxing authority; it collects fees from telephone users and remits the fees to the taxing authorities. Colo. Rev. Stat. § 29-11-103(1). The Colorado law provides that "[e]very billed service user shall be liable for any charge imposed under this article until it has been paid to the service supplier." Colo. Rev. Stat. § 29-11-102(4). It specifically provides no obligation on the telephone company to take legal action to enforce collection of the charge, and states that the telephone company "shall not be held liable for . . . uncollected amount." Colo. Rev. Stat.

¹((....continued))

First, 9-1-1 service is provided by a local government or by a quasi-governmental unit. Second, public funding of the service requires legal authority, e.g., an ordinance or referendum. Third, the service charge is actually based on a flat rate per telephone line and is unrelated to levels of service. The 9-1-1 charge assessed under the Colorado statute satisfies all these criteria.

²See also 66 Comp. Gen. 385 (1987) (Florida); 65 Comp. Gen. 879 (1986) (Maryland); 64 Comp. Gen. 655 (1985) (Texas); B-239608, Dec. 14, 1990 (Rhode Island); B-230691, May 12, 1988 (Tennessee).

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S:29-11-102(6). The Colorado 9-1-1 fee is therefore a vendee tax, the legal incidence of which falls directly on the federal government as a user of telephone services in the state. Consequently, the United States is constitutionally immune and the tax is not payable by the federal government.

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