



The Comptroller General  
of the United States

Washington, D.C. 20548

# Decision

Matter of: 9-1-1 Emergency Number Fee

File: B-215735

Date: September 26, 1986

## DIGEST

Maryland 9-1-1 fee may not be paid by Department of Health and Human Services, because the fee amounts to a tax from which the United States is constitutionally immune. 64 Comp. Gen. 665 (1985).

## DECISION

The Director of the Division of Finance of the Social Security Administration of the Department of Health and Human Services (HHS) requested an advance decision under 31 U.S.C. § 3529 (1982) on the question of whether Federal agencies must pay a 9-1-1 fee to the State of Maryland and to Maryland counties. We decided in 64 Comp. Gen. 665 (1985) that, where 9-1-1 service is authorized or required by law to be offered by state or local governments and a service fee assessed to defray 9-1-1 costs, the fee amounts to a tax which the Federal Government may not constitutionally be required to pay. This decision applies to Maryland's 9-1-1 fees.

### CHARACTERISTICS OF THE MARYLAND 9-1-1 SERVICE CHARGE

The provisions for a statewide 9-1-1 emergency telephone system are contained in Md. Ann. Code, art. 41, §§ 204H-1-204H-8 (1983). As of July 1, 1985, all Maryland counties were required to have a 9-1-1 system in operation. (§ 204H-2.) The law created an Emergency Number System Board to supervise the operation of the various county 9-1-1 plans. The State Board is responsible for issuing statewide operational guidance and for reviewing and auditing county plans and systems. (§ 204H-3.)

Maryland law established a state 9-1-1 fee of 10¢ per month to be added to current bills rendered for switched local exchange access in the State. It also empowered counties to adopt, by ordinance, a local 9-1-1 charge of up to 30¢ per month, "to cover the total amount of eligible [9-1-1] operation and maintenance costs of the county." (§ 204H-5.) As

to both charges, the telephone company serves strictly as a collection agent who is charged to remit the 9-1-1 fees to the State Comptroller for deposit in a 9-1-1 Trust Fund, held in the State Treasury. Id. The telephone company is authorized to withhold an administrative fee of 1-1/2 percent in return for its services.

The Trust Fund may disburse to the counties amounts needed to finance all equipment acquisition and maintenance costs. Use of 9-1-1 fees for personnel costs is limited to 50 percent of costs in counties with 100,000 or fewer residents and 30 percent in counties with over 100,000 population. (§ 204H-8.) The Trust Fund is not permitted to advance funds to the counties in anticipation of future receipts, and therefore any shortfalls in funding must presumably be covered by local tax revenues. (§ 204H-7(e).)

#### DISCUSSION

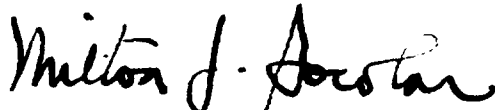
It is an unquestioned constitutional principle that the United States and its instrumentalities are immune from direct taxation by states and their inferior governmental units. McCulloch v. Maryland, 17 U.S. (4 Wheat.) 316 (1819). Direct taxation occurs where the legal incidence of the tax falls directly on the United States as the buyer of goods or the consumer of services. Alabama v. King and Boozer, 314 U.S. 1 (1941); 53 Comp. Gen. 410 (1973). Despite its immunity from taxation, the United States is entitled to the same municipal services that tax payers receive, including police and fire protection. 53 Comp. Gen. 410 (1973); 49 Comp. Gen. 284 (1969); 24 Comp. Gen. 599 (1945). The 9-1-1 service used to expedite contacting these municipal services in an emergency seems to us to be a logical extension of the services themselves, and hence one which must be provided despite Federal entities' tax exempt status.

In 64 Comp. Gen. 665, we identified the additional characteristics of 9-1-1 fees which make them constructive taxes. 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 fee is based on a flat rate per telephone line, and not related to actual levels of service.

#### CONCLUSION

It is our opinion that the Maryland 9-1-1 emergency service fee is a tax, the legal incidence of which falls directly on the United States as the user of telephone services. The telephone company only acts as a collection agent for the

State and county. This decision is in accordance with our previous decision in 64 Comp. Gen. 665 (1985). Accordingly, payment of the Maryland 9-1-1 fee would be improper, and HHS should withhold the 9-1-1 fee from its payments for telephone services in the State.

*for*   
Comptroller General  
of the United States