



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

Decision

Matter of: 9-1-1 Emergency Telephone Charge--State of Washington

File: B-248777

Date: July 6, 1992

DIGEST

The federal government is constitutionally immune from paying the 9-1-1 emergency telephone taxes imposed by the State of Washington because the taxes are vendee taxes, the legal burden of which fall 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 charges assessed against federal agencies in the State of Washington. For the reasons set forth below, we conclude that the state and county 9-1-1 taxes are vendee taxes, the legal burden of which fall directly on the federal government as a user of telephone services, and that the federal government is therefore constitutionally immune from the taxes.

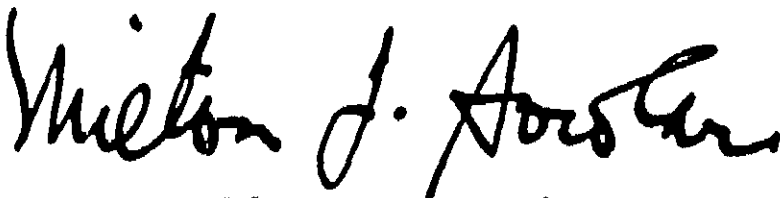
Under section 82.14B.030(1) of the Revised Code of Washington, counties in the state are authorized to impose an "excise tax on the use of switched access lines," defined in the Code generally to mean each telephone service line. The tax may not exceed fifty cents per month for each access line. The tax proceeds are used to operate the county's 9-1-1 emergency communication system. Wash. Rev. Code Ann. §§ 38.52.510, 82.14B.050. Beginning January 1, 1992, the Code also imposes a state 9-1-1 excise tax. Wash. Rev. Code Ann. § 82.14B.030(2). In 1992, the tax is set at the rate of twenty cents per month on each access line. From 1993 until 1998, the tax may not exceed twenty cents per month and thereafter may not exceed ten cents per month on each access line. *Id.* The proceeds of the state tax are deposited in the state treasury to facilitate and assist 9-1-1 implementation state-wide. Wash. Rev. Code Ann. § 38.52.540. The state and county 9-1-1 taxes are to be "collected from the user" of the switched access line by the local exchange company, who is to state the amount of the

taxes "separately on the billing statement which is sent to the user," Wash. Rev. Code Ann. § 82.14B.040.

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. 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 recently examined 9-1-1 charges in Colorado, B-247501, May 4, 1992, and Kentucky, B-246517, Apr. 17, 1992.¹ We held, in these cases, that the 9-1-1 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 Washington statute is not materially different from these state statutes. Under the Washington 9-1-1 statute, the telephone company acts as a collection agent for the state and local taxing authorities. It collects the 9-1-1 taxes from telephone users and remits all the taxes to the state and local governments. Wash. Rev. Code Ann. § 82.14B.060. The local telephone companies are reimbursed for the cost of administering and collecting the tax. Id. Washington's 9-1-1 taxes are therefore vendee taxes, the legal incidence of which fall directly on the federal government as a user of telephone services in the state. Consequently, the United States is constitutionally immune and the taxes are not payable by the federal government.

for 
Comptroller General
of the United States

¹See also 66 Comp. Gen. 385 (1987) (Florida); 65 Comp. Gen. 897 (1986) (Maryland); 64 Comp. Gen. 655 (1985) (Texas); B-248363, Apr. 17, 1992 (Indiana); B-239608, Dec. 14, 1990 (Rhode Island); B-230691, May 12, 1988 (Tennessee).