

PA Supreme Court holds nonrecurring charges subject to gross receipts tax

Overview

The Supreme Court of Pennsylvania recently held in [Verizon Pennsylvania, Inc. v. Commonwealth of Pennsylvania](#) that charges for the installation of private phone lines, charges for directory assistance services, and certain nonrecurring charges were all subject to the state's gross receipt tax.¹ This is a partial reversal of a 2013 Commonwealth Court of Pennsylvania decision, which had ruled that while the gross receipts from the installation of private phone lines and the provision of directory assistance were subject to the gross receipts tax, the nonrecurring charges in question were not.² As a motion for reconsideration has not been filed with the Supreme Court of Pennsylvania, and the period for such filing has expired, the case is now final.

This Tax Alert summarizes the Supreme Court of Pennsylvania's decision and its potential effect on telephone and communication providers.

Summary of the gross receipts tax and the Verizon decision

Pennsylvania generally imposes tax on the gross receipts of telephone messages transmitted wholly within the state and telephone messages transmitted in interstate commerce where such messages originate or terminate in Pennsylvania and the charges for such messages are billed to a service address in the state.³ In a 2013 decision involving Verizon Telephone Company of Pennsylvania (Verizon), the Commonwealth Court held that the gross receipts tax applies to Verizon's installation of private phone lines because the sole purpose of private lines is to transmit messages.⁴ Similarly, the court held that directory assistance is subject to the gross receipts tax because it makes the transmission of messages more effective.⁵ However, the court did not find Verizon's nonrecurring charges subject to the gross receipts tax, as no telephone messages are transmitted when Verizon performs nonrecurring services.⁶ The nonrecurring charges at issue included those for installation of telephone lines; moves of, and changes to, telephone lines and services; and repairs of telephone lines.⁷

On appeal, the Supreme Court of Pennsylvania affirmed the taxability of private line installation and directory services but reversed the Commonwealth Court's decision on nonrecurring charges.⁸ Thus, the Supreme Court of Pennsylvania ruled that the nonrecurring charges are subject to the tax.⁹ In reaching its decision, the court relied on a 70-year-old case that broadly interpreted the term "telephone messages transmitted" to include "any item of equipment and any service which 'render the transmission of [telephone messages] more effective,' or make 'telephone communication more satisfactory.'"¹⁰ Applying this definition to Verizon, the Court found that all of the services, including those related to the nonrecurring charges, in some way made transmission more effective or communication more satisfactory even though such services did not involve actual transmission.¹¹

Considerations

In light of the Supreme Court of Pennsylvania's decision in *Verizon*, both monthly recurring charges (MRCs) and nonrecurring charges (NRCs) will be subject to Pennsylvania gross receipts tax. While imposition of the tax is not new as applied to most MRCs, such as service and line fees, the *Verizon* decision makes clear that seemingly tangential NRCs, including repair and installation fees, are also subject to the gross receipts tax when such charges may be characterized as amounts paid for services or equipment that make transmission more effective or

¹ *Verizon Pa., Inc. v. Commonwealth*, Nos. 70 & 74 MAP 2013, slip op. at 2 (Pa. Nov. 18, 2015).

² *Verizon Pa., Inc. v. Commonwealth*, 72 A.3d 799, 805 (Pa. Commw. Ct. 2013), *aff'd in part, rev'd in part*, Nos. 70 & 74 MAP 2013 (Pa. Nov. 18, 2015).

³ 72 Pa. Cons. Stat. § 8101.

⁴ *Verizon*, 72 A.3d at 805.

⁵ *Id.* at 806.

⁶ *Id.*

⁷ *Id.*

⁸ *Verizon Pa., Inc. v. Commonwealth*, Nos. 70 & 74 MAP 2013, slip op. at 2, 35 (Pa. Nov. 18, 2015).

⁹ *Id.*

¹⁰ *Id.* at 22, quoting *Commonwealth v. Bell Tel. Co.*, 34 A.2d 531, 533 (Pa. 1943). See also, *Verizon Pa., Inc. v. Commonwealth*, Nos. 70 & 74 MAP 2013, slip op. at 27, quoting *Commonwealth v. Bell Tel. Co.*, 34 A.2d at 533 ("[A]ll equipment sold by a telephone company which 'renders the transmission of [telephone messages] more effective,' or makes 'telephone communication more satisfactory,' is included within the meaning of the phrase 'telephone messages transmitted' as used in the gross receipts taxing statute.").

¹¹ *Verizon Pa., Inc. v. Commonwealth*, Nos. 70 & 74 MAP 2013, slip op. at 29-35.

communication more satisfactory. The court's interpretation of "telephone messages transmitted" would thus appear to potentially significantly broaden the application of the tax.

Contacts

If you have questions regarding the *Verizon* decision or other telecommunication tax matters, please contact any of the following Deloitte Tax professionals:

[Jim Nason](#)

Partner
Deloitte Tax LLP, Parsippany
+1 973 602 6529

[Kathy Saxton](#)

Director
Deloitte Tax LLP, Atlanta
+1 404 220 1878

[Rick Heller](#)

Director
Deloitte Tax LLP, Parsippany
+1 973 602 4088

[Steve Thompson](#)

Director
Deloitte Tax LLP, Philadelphia
+1 215 246 2463

[Joe Carr](#)

Director
Deloitte Tax LLP, McLean
+1 703 251 1532

[Robyn Staros](#)

Senior Manager
Deloitte Tax LLP, Chicago
+1 312 486 2951

For further information, visit our website at www.deloitte.com

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