TAX - MAINE

State Tax Assessor v. TracFone Wireless, Inc.

Supreme Judicial Court of Maine - June 23, 2022 - A.3d - 2022 WL 2252165 - 2022 ME 36

Tax Assessor and taxpayer, a provider of telecommunications services, both petitioned for review of decision of Board of Tax Appeals as to assessment of prepaid wireless fee and service-provider tax.

The Business and Consumer Court denied taxpayer's motion to compel release of information in discovery and granted summary judgment to Assessor. Taxpayer appealed.

The Supreme Judicial Court held that:

- Particular service offered by provider was not "paid for in advance" and thus was not a prepaid wireless telecommunications service that would be subject to prepaid wireless fee;
- Process by which provider operated such service was a "sale" that would trigger telecommunications service-provider tax; and
- Statute requiring Tax Assessor to publish notice of significant change in bureau policy or practice within 60 days of such change provides neither any defense for those who have been affected by the Assessor's actions, or lack thereof, nor any consequence for the Assessor should it fail to comply.

Service operated by telecommunications provider pursuant to Federal Communications Commission (FCC) program, through which low-income consumers received set number of telephone minutes each month for an amount which did not exceed subsidy received by provider from government, was not "paid for in advance" and thus was not a prepaid wireless telecommunications service that would be subject to prepaid wireless fee, even though service did not have monthly billing relationship with consumers, where there was no consistent practice of payment by government to provider in advance of provider's rendering the service.

Process by which telecommunications provider operated service under which low-income consumers received set number of telephone minutes per month was a "sale" that would trigger telecommunications service-provider tax, even if consumers themselves did not pay provider; process amounted to a consumer signing up for service and receiving minutes from provider, following which provider received payment from government.

Statute requiring Tax Assessor to publish notice of significant change in bureau policy or practice within 60 days of such change provides neither any defense for those who have been affected by the Assessor's actions, or lack thereof, nor any consequence for the Assessor should it fail to comply.

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