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Collector of Winchester v. Charter Communications, Inc.

Missouri Court of Appeals, Eastern District - December 13, 2022 - S.W.3d - 2022 WL 17587187

City brought putative class action against providers of voice over internet protocol (VoIP) telephone services through their broadband cable networks seeking declaratory judgment that proposed class members' municipal or county ordinances imposing business license tax on telephone service providers were applicable to providers' gross receipts generated by their telephone business in each jurisdiction, injunctive relief, and an accounting.

Following certification of five subclasses and bench trial, the Circuit Court entered final judgment in favor of class and ordered providers to pay $39,048,386 in damages consisting of unpaid taxes, pre-judgment interest, post-judgment interest, attorney fees, and legal expenses. Providers appealed.

The Court of Appeals held that:

- Telecommunications Act did not preempt ordinances;
- Cable Communications Policy Act did not preempt ordinances;
- Provider was "telephone company" providing "telephone service" subject to ordinances;
- Cities and county were entitled to back taxes based on all revenue generated by providers' VoIP telephone services in each jurisdiction;
- Providers were not entitled to any exemptions when calculating back taxes owed;
- Circuit Court had jurisdiction over city's class action; and
- County's ordinance was not retroactively repealed by constitutional amendment that resulted in county no longer being first-class county, as used in tax-enabling statute.

Telecommunications Act did not preempt municipal and county ordinances imposing business license tax on telephone service providers, as applied to voice over internet protocol (VoIP) telephone services provided through broadband cable network, even if VoIP was "information service" rather than "telecommunications service" within meaning of Telecommunications Act, since there was no express preemption in Act for information services, and Act's tax-savings clause rendered inapplicable any implied preemptive effect resulting from definitional distinctions between "telecommunication services" and "informational services."

Business license taxes imposed by municipal and county ordinances on telephone service providers, as applied to providers of voice over internet protocol (VoIP) telephone services through a broadband cable network, were taxes of "general applicability," within meaning of provision of Cable Communications Policy Act creating safe harbor for state or local taxes of general applicability from the Act's preemption provision; ordinances imposed business license taxes on any entity providing telephone service to customers in each jurisdiction, and did not single out providers of VoIP services or unduly discriminate against providers based on their status as cable operators.

Provider of voice over internet protocol (VoIP) telephone services through a broadband cable network was "telephone company" providing "telephone service" subject to municipal and county

ordinances imposing business license taxes on telephone service providers, although relevant license-tax-enabling statutes and ordinances did not define terms “telephone company,” “telephone,” or “telephone service” to specifically include VoIP-enabled telephone service; ordinances were intended to cover all telephone services, regardless of type of technology used, and provider stated in advertisements that its service was “regular telephone service” that happened to be “provided using a different technology” and was “functionally equivalent” to traditional wire-line service.

Cities and county were entitled to back taxes, pursuant to municipal and county ordinances imposing business license tax on telephone service providers, based on all revenue generated by providers’ voice over internet protocol (VoIP) telephone services in each jurisdiction, where ordinances did not expressly exclude any category of call, such as intrastate, interstate, local, or long distance.

Providers of voice over internet protocol (VoIP) telephone services were not entitled to any exemptions from business license tax imposed by municipal and county ordinances on telephone service providers, precluding reduction in providers’ tax base when calculating back taxes owed, where providers did not identify any discrepancy in amount owed, or include any documentation evidencing amounts they claimed should have been excluded from their tax base.

Circuit Court had jurisdiction over city’s class action seeking declaratory judgment that municipal or county ordinances imposing business license tax on telephone service providers were applicable to gross receipts generated by providers’ voice over internet protocol (VoIP) telephone services in each jurisdiction, even though action pertained to municipal tax ordinance violations, since Circuit Court was court of general jurisdiction, and a municipal corporation was “person” under Declaratory Judgment Act.

Constitutional amendment that resulted in county no longer being first-class county did not retroactively repeal county’s ordinance imposing business license tax on telephone service providers that was enacted pursuant to tax-enabling statute granting first-class counties power to tax telephone service; county was first-class county at time it enacted ordinance, intent of constitutional amendment was that there would be no direct fiscal impact, and amendment was designed to maintain existing laws.

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