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A Look Ahead – Forecasting Trends in State Tax Litigation for Communications Companies

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Agenda

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- Title II Implications
- States Taxing Internet Access
- The Expanding Definition of “Telecommunications”
- Sales and Use Tax
- Inclusive Billing
- FCA/Qui Tam Litigation
- Income Tax
- Property Tax

TITLE II IMPLICATIONS

Title II Implications

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FCC, Protecting and Promoting the Open Internet, GN Docket No. 14-28 (Released March 12, 2015) ("OIO").

- Reclassifies broadband Internet Access service as a "telecommunications service" while "simultaneously foregoing utility-style, burdensome regulation that would harm investment." OIO at 315 (Statement of Chairman Wheeler).
  - FCC forbears from Title II sections "that pose a meaningful threat to network investment." *Id*.
- FCC Spokesperson Kim Hart: The OIO "does not raise taxes or fees. Period."

Sen. Ron Wyden has assured that the OIO will not impose taxes or fees on Internet Access.

- "The bottom line: The [ITFA] will protect the Internet from taxes regardless of how the FCC defines Internet access." Wyden, "Protecting Net Neutrality Will Not Invalidate Internet Tax Freedom Act" (Dec. 18, 2014).

FCC Chairman Wheeler has echoed these assurances:

- "Myth: This will increase consumers' broadband bills an/or raise taxes. Fact: The Order doesn't impose new taxes or fees or otherwise increase prices. Nothing in the Order imposes or authorizes new taxes or fees." Wheeler, "FCC Open Internet Order – Separating Fact From Fiction" (March 12, 2015).

Title II Implications

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These guarantees that the OIO will not impose new taxes and fees on internet access are not universally accepted.

- "The FCC how has a statutory obligation to make sure that all Internet service providers (and in the end, their customers) contribute to the [USF]." Dissenting Statement of Comm'r Pai, at 325.
- How long will FCC's "forbearance" last?

Potential Tax and Fee Implications.

- VT has stated it will require state USF contributions from IA providers
- The Progressive Policy Institute estimates that IA subscriber bills could increase by $11B (down from original $15B estimate made prior to ITFA extension)
  - Study assumes state/local governments will apply most telecom taxes and fees to IA
  - Free Press advocacy group estimates total increase to be $4B
- American Consumer Institute Center for Citizen Research:
  - Treating Internet access as a public utility allows state/local governments to tax the company's assets at much higher rates – net neutrality become a de facto tax on the Internet. Pociask, "Net Neutrality Is Setting the Stage for Internet Taxes," Forbes.com, Mar. 13, 2015.

Title II Implications

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- The NCTA, US Telecom Association, CTIA and other industry trade groups and stakeholders have filed lawsuits against the FCC seeking to enjoin enforcement of the OIO.
  - "[The OIO] is a disaster because the [FCC] is fundamentally, if not violently, rewriting the national policy of the United States without congressional direction." – Michael Powell, CEO of the NCTA.
- The suits do not focus on the OIO's bright-line rules prohibiting throttling and blocking but on the effects of regulating Internet access as a utility
  - Central assessment of IA providers' assets for property tax purposes?
  - Application of local license taxes/fees imposed on telecommunications service?

STATES ATTEMPTS TO IMPOSE TAXES AND FEES ON INTERNET ACCESS

Taxes and Fees on Internet Access

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City of Eugene v. Comcast of Oregon II, Inc., 263 Or. App. 116, 127 333 P. 3d 1051 (Or. Ct. App. 2014).

- City imposed a 2% registration fee and 7% license fee on gross revenues derived from telecommunications service
- The Court of Appeals held that 7% license fee, measured by gross revenues, was not a "tax" under ITFA as it was to compensate the city for use of its right-of-way
  - The 7% fee "is imposed for a specific benefit and therefore not a 'tax' for purposes of ITFA."
- But the Court found the 2% registration fee to be a "tax" barred by ITFA.
  - The City failed to show that it had "interpreted and applied" its registration fee to IA prior to 1998.
  - Pointing to a broadly-worded statute is insufficient to show that a provider was on notice as to the applicability of registration fee to IA
- Comcast's Petition For Review by the Oregon Supreme Court is pending.

Taxes and Fees on Internet Access

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Even cities within the same state have applied their respective sales and use taxes to internet access differently.

- *Mile Hi Cable Partners, L.P. v. City and Cnty. of Denver*, No. 08CV6208 (Colo. Dist. Ct., Denver Cnty. 2009).
  - Colorado's Second Judicial District ruled that Internet access was not subject to sales and use tax because it did fall within Denver's statutory definition of "telecommunication services"

- *Comcast Colorado IX, LLC v. City of Golden*, No. 13CV31253 (Colo. Dist. Ct., Jefferson Cnty. 2014).
  - The First Judicial District ruled that Internet access is included within Golden's definition of "telecommunications service"

Taxes and Fees on Internet Access

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j2 Global Commc'n, Inc. v. City of Los Angeles, 159 Cal.Rptr. 3d 742 (Cal. Ct. App. 2013).

- Taxpayer provides eFax, virtual phone systems, hosted email, email marketing, and online backup services
  - Taxpayer's eFax service required it to purchase Direct Inward Dials (DIDs) from a 3P telecommunications provider and assign the DIDs to its customers (enabling email/access to faxes via internet)
- Taxpayer agued that eFax service (1) enables consumers to access the internet; and (2) the connection is used to access content/ information
- Court of Appeals opined that Taxpayer's construction would exempt "virtually all business conducted over the Internet" and render ITFA's definition of Internet access "meaningless"

Taxes and Fees on Internet Access

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Community Telecable of Seattle, Inc. v. City of Seattle, Dept. of Exec. Admin., 164 Wash.2d 35 (Wash. 2008) (en banc).

- City of Seattle assessed a telephone utility tax against Comcast on its sale of high-speed internet service – despite state law prohibiting new taxes on internet service providers and ITFA.
- Seattle argued that Comcast's internet service included a transmission component and falls within Seattle's definition of "telephone business."
  - Seattle's definition, unlike Washington's, did not exclude internet services.
- Court held that WA law prohibits the taxation of Internet service providers as network telephone providers
  - "It is appropriate that our statute, consistent with federal and other state laws, disfavors the kind of artificial division of Internet service components [Seattle] advocates."

Taxes and Fees on Internet Access

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Performance Marketing Assoc., Inc. v. Hamer, 998 N.E. 2d 54 (Ill. 2013).

- Illinois Supreme Court held that ITFA preempted the state's "Amazon law"
- IL law singled out out-of-state internet retailers and imposed collection and remittance requirements that were not applicable to traditional out-of-state businesses
- The Court held that the imposition of use tax on internet retailers and not brick and mortar retailors was a discriminatory tax on electronic commerce barred by ITFA

Taxes and Fees on Internet Access

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In the Matter of Helio, LLC, No. 825010 (N.Y. Div. Tax Appeals 2014).

- Matter deals with many of the substantive issues underlying the Sprint's FCA litigation with NY
- One of the Department's adjustments on audit included assessing tax on bundled charges for internet access and mobile telecommunications service
  - Department's assessment also included tax on overage fees associated with a customer's internet usage outside of plan
- Taxpayer offered customers All-In Plans (with internet access) and A La Carte plans (without)
- The Division of Tax Appeals held that Taxpayer was able to sufficiently identify the component of the monthly charges attributable to data services and that tax on such charges barred by ITFA

THE EXPANDING DEFINITION OF "TELECOMMUNICATIONS"

The Expanding Definition of "Telecommunications"

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- *State ex rel. Collector of Winchester, MO v. Jamison*, No. SC91631 (MO 2012)(Charter Communications).
  - City of Winchester, on behalf of itself and similarly situated MO municipalities, files suit against Charter Communications to recover unpaid license taxes– on sales from ***interstate telephone service***
    - MO statute imposes tax on gross receipts derived from "exchange access, interexchange access, interconnection facilities…intrastate telephone service and other sources."
    - Circuit court strikes and dismisses class action claims
  - Supreme Court of MO issues a permanent writ of mandamus directing the trial court to vacate order
    - MO statute disallowing cities to bring class actions is unconstitutional because it purported to amend procedural rule of the court without expressly stating intent to do so

The Expanding Definition of "Telecommunications"

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Colo. Gen. Inf. Letter No. GIL-15-003 (Jan. 27, 2015).

- Taxpayer is an Application Service Provider that uses either (1) the customer's Wi-Fi network; or (2) a cell phone data plan to enable customers to transmit pictures from a camera to taxpayer's servers (the cloud).
- Colorado subjects intrastate telephone service to sales tax
- The Department "would likely view charges for data plans by mobile telecommunications providers as a telephone service."
  - Whether Taxpayer is subject to sales tax on purchase or must collect/remit on resale undetermined
- Wi-Fi plan is not telephone service because customer's own Wi-Fi network providing data transmission

The Expanding Definition of "Telecommunications"

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Compare - Colo. Dept. of Rev. PLR-15-001 (released April 5, 2015). Colo. Dept. of Rev. PLR-15-003 (Feb. 4, 2015, released April 5, 2015).

- Integrated Desktop Messaging (electronic fax)
  - Not telephone service: one-way closed communication
- Electronic Data Interchange VAN service
  - Not taxable – true object of transaction is data conversion
- Broadcast Fax
  - Not telephone service: does not allow receiving part to respond instantly
- Notifications Email – Taxation preempted by ITFA
- Production Email – Taxation preempted by ITFA

The Expanding Definition of "Telecommunications"

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Tenn. Dept. of Revenue, Letter Ruling # 14-05 (Aug. 25, 2014).

- TN determined that sales and use tax applies to Taxpayer's cloud collaboration service
- The service eliminates need for customer to maintain software and hardware necessary to monitor and manage internal network – voice, video, messaging, and conferencing managed by cloud-based applications
- Taxpayer's services are telecommunications services because taxpayer "routes" voice, data, and video
  - Messaging and conferencing = taxable ancillary service

States are not uniform in their treatment of cloud-based communications management software

- Taxable = VA, KS, MO
- Not Taxable = FL, UT, OH, NM, GA, IL

TRANSACTION TAXES

Sales Tax

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Normand v. Cox Commc'ns Louisiana, Inc., 2014 WL 7338496 (La. Ct. App. 2014).

- LA Court of Appeals held that VOD and PPV programming services are not TPP and therefore not subject to sales tax
  - VOD and PPV is not computer software
  - Digital data stream required the provider's constant involvement and has to be interpreted by software
- VOD and PPV are either nontaxable services or exempt cable television services
  - VOD and PPV are included within the definition of cable television service
- Trial Note: Court held it was not abuse of discretion for trial court to admit testimony of tax law professor regarding tax policy and tax law of other state
  - Professor did not opine on Louisiana tax law

Kentucky's Telecommunications Tax

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Netflix, Inc. v. Commonwealth of Kentucky, No. K13-R-31 (Ky. Bd. Tax Appeals, 2014).

- Kentucky imposes three taxes on multichannel video service providers:
  - Gross Revenues Tax
  - Excise Tax
  - Local Utility Tax (School District Tax)
- Netflix is the first of several Over-the-Top (OTT) providers assessed
  - KY argues that streaming video over the internet constitutes a taxable multichannel video programming service
    - Legislature intended for statute to evolve with emerging technology
    - Definition includes programming that is "generally considered comparable" broadcast television programming
  - Other cases are held in abeyance pending Netflix disposition

Kentucky: Challenges to Tax Reform

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City of Florence v. Flanery, No. 2013-CA-001112-MR (Ky. Ct. App. 2014) (unpublished).

- Kentucky's taxes on Multichannel video programming and communications services (Telecom Tax) was challenged by Kentucky Cities
- The Kentucky Finance and Administration Cabinet collects the Telecom Tax and distributes the revenue to Kentucky cities
- Because the Cities receive these distributions, the Telecom Tax prohibits them from levying local franchise fees or taxes on cable and communication services
- The KY Constitution permits Cities to grant franchises; but is silent as to right to impose taxes/fees – Cities argue they have an **implied constitutional right** to impose their own franchise taxes/fees
- Court of Appeals held that the Telecom Tax is "unconstitutionally void"
  - The KY Constitution "delegated to local government the right to grant utility franchises and necessarily the concomitant right to collect franchise fees."
- The case is currently pending before the KY Supreme Court

Alabama's Rental Tax

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AL DOR's Proposed Amendments to Ala. Code § 810-6-5-.09

- Alabama imposes a 4% tax on rentals of tangible personal property
- Proposed amendments changes definition of TPP to include:
  - Digital transmissions – includes On Demand movies, TV programs, streaming video/audio
    - No distinction between charges for subscription service or on demand
    - No distinction between streaming, downloads, or caching
- Cable TV providers, on-line movie and digital music providers, and other "similar providers of digital transmissions are engaged in the business of leasing [TPP] and shall be subject to the rental tax
- Set Top Boxes
  - Used solely to access basic cable – Not taxable
  - Multi-purpose STB that provides DVR and other functionality - Taxable

Florida's Communication Services Tax

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- Fla. TAA No. 10A-031, June 28, 2010
  - Sale of on demand streaming videos over the Internet to prepaid customers is subject to CST
- Fla. TAA No. 14A19-005, Dec. 18, 2014
  - Taxpayer provides digital content that may be streamed or downloaded. A customer may either rent or purchase the movie/TV show.
  - Rental of digital video is a "video service" and subject to CST; Purchase of digital video is sale of an "information service" not subject to CST
- Fla. TAA No. 14A19-006, Dec. 19, 2014
  - Streaming or downloading of digital video and music on a subscription basis is subject to CST
- Florida Letter of Technical Assistance, May 1, 2015
  - Taxpayer's charge for premium subscription service is not subject to CST where charge is for capability to download and store music; streaming music is part of free service

Florida CST Summary

Service Characteristic	Fla. TAA 10A-31	Fla. TAA 14A19-005 - Rentals	Fla. TAA 14A19-005 - Purchase	Fla. TAA 14A19-006	Recent Florida LTA
Monthly Subscription	Yes	No	No	No	Yes
Free Streaming	No	No	No	No	**Yes**
Streaming Only	Yes	No	No	No	No – may cache audio files
Download/ Storage Capability	No	Yes – rental & purchase	Yes	Yes	Yes
Temporary Storage	No	Yes - rental	No	No	Yes – customer may remove file from device
Indefinite Storage	No	Yes - purchase	Yes	Yes	Yes – for as long is active with membership
Rental of Digital File	No	Yes	No	No	No
Purchase of Digital File	No	No	Yes	No	No
Benefit for which Fee is paid	Streaming video	Temporary rental of digital file	Purchase of digital file; indefinite storage	Streaming video – provider subsequently added download capability	Cache/storage of audio files for offline music listening – indefinite storage of audio files
Taxable under CST?	YES	YES	**NO**	YES	**NO**

Standing for Refund Claims

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New Cingular Wireless PCS, LLC v. Director, Div. of Taxation, No. 000003-2012, 2014 WL 714769 (N.J. Tax Ct. Feb. 21, 2014).

- The New Jersey Tax Court held that a mobile telecommunications service provider was not required to reimburse its customers before seeking a $32 million refund of erroneously collected sales tax because New Jersey law requires only that a provider reimburse its customers before any refund is paid.
  - *See also Sipple v. City of Hayward*, No. B242893, 225 Cal. App.4th 349 (Cal. App. 2014) (ISP has standing to file suit for refund on behalf of its customers).

AT&T Mobility II, LLC v. Alabama Dept. of Revenue, Nos. 13-414, 13-415 (Ala. Tax Trib., May 6, 2015).

- In 2014, Alabama's Tax Tribunal held that AT&T and class members filed proper refund claims with the DOR
- DOR now argued that it may hold refunds to offset any <u>future potential liability</u> of AT&T's customers
- Tax Tribunal rejected this argument -- such an order would allow DOR to hold viable refund claims indefinitely; ordered nearly $10M refund to customers

Sales and Use Tax – Primary Use

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MetroPCS Pennsylvania, LLC v. Commonwealth of Pennsylvania, No. 88 F.R. 2012, (settled 2013).

- PA provides an exclusion from sales tax equipment used in the operations of processing
  - "Processing" includes producing CMRS
- PA uses a 50% predominant use test in determining applicability of use-based exclusions
- PA Bd. of Appeals denied refund claim arguing that data services are not telecommunications; Taxpayer cannot verify equipment purchased met 50% test for voice service rather than data service
  - PA DOR asserted that Taxpayer had to prove predominant use of equipment on a line item basis – over 10,000 items
- Favorable settlement reached where Taxpayer could show that revenue and network utilization heavily favored voice services

Sales and Use Tax – Primary Use

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Va. Tax Comm'r Rul., No. 13-139 (July 28, 2013).

- Taxpayer provides cable, IA, VoIP services
- VA exempts purchases of equipment used in the provision of cable TV and internet service – digital phone service is taxable
- VA prorates tax when equipment is used in both taxable and exempt activities
- Proration methods:
  - Department: (1) by Subscribers; or (2) by Revenue
  - Taxpayer: By bandwidth usage
- The Commissioner, sua sponte, proposes an alternative methodology based on the percentage of time equipment in providing a particular service
  - Allows Taxpayer to use percentage-of-time method if it produces a result more favorable than Department's methods
- Other Taxpayer's are also litigating this issue in VA

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INCLUSIVE BILLING

Inclusive Billing

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- Many companies are considering the impact of taxes and fees on customer pricing.
  - *See e.g.*, Cricket Wireless' homepage: "And taxes and fees are included in your monthly bill, so you can easily plan and budget your phone expenses."
- Many state require the amount and/or type of taxes to be separately stated on customer invoices.
  - In some cases the penalty for failing to separately state the amount of tax is a criminal offense.
  - Taxpayers may also face class action risk associated with less than clear billing.
- Taxpayers in an effort to attract new customers or to deal with system limitations have been creative in how they comply with these requirements.
- Several state have issued rulings agreeing to non-traditional presentments. *E.g.*, AL, PA, DC, FL, IL MO, WA

Inclusive Billing

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Recent litigation provides an example of the risk associated with bill presentment

- *Ferrie v. DIRECTV, LLC*, Class Action Complaint (D.C. Conn. Filed March 19, 2015).
  - Class alleges that DirectTV did not include various pass-through taxes and fees in its advertised price
  - Brings claim for unfair and deceptive trade practices
  - Alleges that DirectTV, "rather than absorb this tax as one of the many costs of doing business," elected to impose the cost on [CT] customers as a surcharge in an unfair and deceptive manner."
  - Complaint further alleges that:
    - (1) the "surcharges" were not included in customer quotes
    - (2) Monthly billing statements itemized surcharge as "Taxes" under the item "Sales Tax" to induce customers to believe that surcharge was imposed directly on consumers by State

Inclusive Billing

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- *Peck v. AT&T Mobility d/b/a Cingular Wireless*, 174 Wash.2d 333 (Wash. 2012).
  - Supreme Court of Washington:
    - Cingular could not pass WA B&O tax through to customers as a separately stated fee despite prior disclosure
      - A seller may include B&O tax in the sales price as overhead; may even disclose during negotiation that sales price includes the B&O tax
      - However, a seller may not add on the B&O tax to the agreed upon sales price—despite prior disclosure
    - B&O a "levy for operating a business in WA" & must be treated as business operating expense and not a 2nd sales tax
    - Court relies on deposition of Cingular's senior tax manager:
      - B&O surcharge "very much like a transactional tax, which you would think was a sales tax."

QUI TAM/CLASS ACTION LITIGATION

Qui Tam/Class Action Litigation

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State of New York v. Sprint-Nextel Corp., et al., No. 103917/11 (N.Y. App. Div. 1st Dep't June 12, 2014).

- NY's False Claims Act (FCA) was revised in 2010 to permit "whistleblowers" claims – NY's FCA is the only one of its kind that expressly covers "tax fraud."
- *Sprint-Nextel* was the first NY FCA claim filed by the NY AG - alleged underpayment of $130M in tax; the FCA lawsuit seeks to require Sprint pay three times this amount plus other penalties.
- Alleged underpayment based on taxability of bundled wireless interstate communication charges.
- Sprint argues: 1) it was already under audit, 2) there was no FCA violation, and 3) that the FCA does not apply to periods prior to amendment (2010).
- The New York Court of Appeals (NY's highest Ct) agreed to review the Appellate Division's denial of Sprint's motion to dismiss

Class Action Litigation

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Brandewie, et al., v. Wal-Mart Stores, Inc., No. 1:14-CV-965 (N.D. Ohio 2014).

- Class action breach of contract claim brought by customers that returned merchandise to Wal-Mart and received refunds less than the amount paid
- Complaint: Wal-Mart "shortchanges" customers that return items to a store located in a jurisdiction with a lower sales tax rate than the store from which the item was originally purchased (refund includes, in part, sales tax at the rate of jurisdiction in which store customer returns an item is located)
- On Jan. 26, 2015, Plaintiff's filed motion seeking class certification

Wong v. Whole Foods Market Group, Inc., No. 1:15-cv-00848 (N.D. Ill. 2015).

- Class action suit alleges overcharging of sales tax on items purchased with coupon (for which Whole Foods is not reimbursed – hence no consideration) but sales tax applied to the pre-coupon sales price
  - Plaintiff paid $7.39; tendered $15 coupon, but paid 9.25% sales tax on $22.39, not $7.39.

Wong v. Target Corp., No. 1:15-cv-0985 (N.D. Ill. 2015).

- Same Plaintiff brings nearly identical class action against Target for calculating sales tax prior to Starbucks coupon being applied to coffee purchase in Target

Class Action Litigation

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- *Schojan v. Papa John's International, Inc.*, No. 8:14-cv-1218-T33MAP (M.D. Fla. 2014)
  - Three Florida men filed a class action lawsuit against Papa John's claiming it charges sales tax on delivery fees in violation of Florida law
  - Papa John's removed the case to the U.S. District Court on May 22, 2014
  - The U.S. District Court denied Papa John's motion to dismiss
  - Plaintiffs' motion for class certification granted in Dec. 2014
- *Tucker v. Papa John's International, Inc.*, No. 3:14-cv-00618-NJR-PMF (S.D. Ill. 2014)
  - Individual filed a class action lawsuit against Papa John's claiming that it charged unlawful sales taxes on delivery orders
  - Papa John's removed the case to the U.S. District Court on May 16, 2014
  - On July 11, 2014, Papa John's filed a motion to dismiss

INCOME TAX

Alternative Apportionment

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Vodafone Americas Holdings, Inc. v. Roberts, No. M2013-00947-COA-R3-CV (Tenn. Ct. App. 2014).

- Vodafone (based in California) held a 45% interest in a partnership (Cellco) that operated Verizon Wireless
- Vodafone calculated its apportionment formula by using a pay-per-use or primary-place of use methodology
  - Filed a refund claim and argued that it was not subject to Tennessee franchise tax
  - Amended complaint argued that a COP analysis should be used instead – resulted in 89% reduction in tax liability
- Court of Appeals determined the Commissioner properly required Vodafone to apportion sales using market-based sourcing instead of the statutory cost of performance method
- The Tennessee Supreme Court granted cert. on Nov. 20, 2014
- Oral argument scheduled for June 2

Cost of Performance Cases

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- *AT&T Corp. v. Comm'r of Revenue*, Mass. ATB 2011-524 (June 8, 2011), *aff'd,* No. 11-P-1462 (Mass. App. Ct. 2012)
  - MA decided *in favor* of AT&T regarding whether receipts from its interstate and international telecommunication services should be included in the MA sales factor numerator
  - Adopted operational approach – income producing activity includes entire business of providing national telecom network
- *AT&T Corp. v. Dep't of Revenue*, Oregon Tax Court, TC 4814 (June 28, 2011)
  - Decision *against* AT&T on same issue
  - Adopted transactional approach – income producing activity consists of each individual telephone call transaction, and evidence of costs for each call must be demonstrated
- *Dish DBS Corp. v. S.C. Dept. of Revenue* (S.C. Admin. Law Ct. Feb. 10, 2015).
  - Department argues SC is not a "strict" COP state but sources according to Taxpayer's "place of activity"

PROPERTY TAX

Property Tax

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VA Converter Litigation (Kellam (Virginia Beach) v. Verizon Online)

- Primary issue is the taxability of set-top boxes;
  - cable property is nontaxable, but there is an exception for “machines and tools”
  - question is whether set-top boxes are machines and therefore taxable personal property; closing arguments were heard in December 2014
- Identical cases in Prince William County, Henrico County (trial slated for October 2015), and Chesterfield County (county filed MSJ, hearing slated for August)
- Some smaller counties have conceded the issue, consistent with the Commissioner’s determinations, and have issued refunds

Property Tax

Kay-Decker v. Iowa State Bd. of Tax Review, No. 13-0925, 2014 WL 7202763 (Iowa Dec. 19, 2014).

- Iowa Supreme Court holds that cable company selling VoIP service is a telephone company and can be centrally assessed
  - The Iowa DOR assesses the property of owners and operators of "telephone lines"
  - Cable property historically assessed at the local level
  - Court held that the meaning of "telephone line" can change with evolving technology
  - Iowa's property tax law did not provide for a primary use test – irrelevant that taxpayer's primary use of its hybrid-coaxial cable network was for providing cable service

Property Tax

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***Comcast Corp. v. Dept. of Revenue, Oregon*, 356 Or. 282 (Or. 2014)(en banc).**

- Oregon amended statute in 1973 to centrally assess property used in providing "communications," which includes "data transmission services by whatever means provided."
  - But Oregon did not attempt to centrally assess Comcast for cable/internet access service until 2009
- Oregon Supreme Court held that Comcast property used in provision of cable television and internet access service are communication services subject to central assessment
- The case is back at Tax Court; Comcast recently prevailed before the Tax Court regarding the scope of issues on remand. TC 4909, Ore. Tax Court (Apr. 21, 2015).

***Cable One, Inc. v. New Mexico Tax. & Rev. Dept.*, No. D-101-CV-2014-00059 (N.M. 1st Jud. Dist., 2014).**

- Trial court granted summary judgment in favor of Cable One determining that it does not operate a communications system; cable service is not "two way communication
- A 2008 change to central assessment policy to keep up with "evolving technology advancements" not justified when cable service has existed since 1985
- The New Mexico TRD has appealed

Questions?

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