KPMG

# This Week in State Tax (TWIST)

February 10, 2025

## Pennsylvania: Commonwealth Court Denies Refund on Private Line Services

The Pennsylvania Commonwealth Court upheld a determination of the Board of Finance and Revenue to deny a taxpayer's appeal for a refund on gross receipts tax (GRT) paid on certain private line services. The taxpayer provided customers with various private line services that offered a dedicated, uninterrupted communication channel for secure and continuous transport of voice, video, and data packets between fixed points, at speeds often exceeding 1Gbps. Pennsylvania law mandates that telephone and telegraph companies, as well as providers of mobile telecommunications services, pay tax on receipts from "telegraph or telephone messages transmitted wholly within Pennsylvania and in interstate commerce," if the message originates or terminates in the Commonwealth and is billed to an address in the state, with limited exceptions not at issue here. The imposition includes equipment and services that enhance the transmission of telephone messages or improve telephone communication.

The taxpayer argued that its services were not subject to GRT because they did not serve a "voice purpose" and were not related to telephone services. The taxpayer's expert distinguished the services from those at issue in *Verizon*, in which the Pennsylvania Supreme Court held that certain contested telephone services and equipment were subject to GRT. The expert noted that the services in *Verizon* were part of telephone messaging offerings, while those involved in this matter were not designed, sold, or used as telephone messaging services, nor were they ancillary to such services. The taxpayer claimed its high data rate services were unsuitable for telephone messaging, despite potentially carrying incidental telephone traffic, asserting that the services were unrelated to telephone message services and thus not subject to GRT.

Conversely, the state's expert argued that the GRT statute did not specify technology types, volume, bandwidth, protocols, or other attributes of taxable messages. The expert contended that the use of packet-based transmission technology did not warrant a different taxation regime than that which applied in *Verizon*. The state maintained that both packet-based and continuous connection-based transmissions involved message transmission or facilities that support or enhance voice, data, and video message transmission. It argued there was no technological distinction between the telecommunications services found subject to GRT and the taxpayer's contested services.

In *Verizon*, the Pennsylvania Supreme Court interpreted the GRT law for telecommunications companies to determine if services like directory assistance and private line installation were taxable. In *Verizon*, the private line services were stipulated to provide a continuous, exclusive connection between two points that could be used for voice, video or data communication. The court emphasized that telephone messages included any equipment

or service that enhanced message transmission or communication satisfaction. It further refused to supplant its judgement for the broad approach taken by the General Assembly, noting that the Assembly specifically exempted other services and equipment from tax, thus underscoring its intent not to exclude the services and equipment in question. Based on *Verizon*, the Commonwealth Court here found that technological distinctions offered by the taxpayer did not align with statutory language or case law, as the services were used for message transmission. It determined no statutory exception existed for non-voice, private line services. The court ruled that because the contested services enhanced message transmission, the associated receipts were taxable. For more information *on Level 3 Communications LLC v. Commonwealth*, contact Mark J. Achord or Audra Mitchell.