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South Carolina - Special license tax statute is "ambiguous" and must be construed in the taxpayer's favor

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In brief

The South Carolina Supreme Court found that the state's special license tax was ambiguous because it did not provide a definition of a "telephone company," which is one of the specified entities subject to the tax. Because of the statutory ambiguity, application of the statute was resolved in favor of the cellular service provider taxpayers who were determined not to be telephone companies subject to the heightened special license tax.

In light of this ruling, the special license tax could potentially be ambiguous as applied to other entities that are indicated as subject to tax but not defined under the law. Furthermore, the court's rationale could have broad application to other tax areas. [*Alltel Communications, Inc. v. South Carolina Department of Revenue*, S.C. Supreme Ct., Opinion No. 27156,8/8/12].

In detail

Alltel Communications, and its affiliated entities (collectively, "Alltel") were engaged in the business of providing wireless communication services, or cell phone services, via radio waves within South Carolina. For the tax years ending December 31, 1999,



through December 31, 2003 ("tax years at issue"), Alltel calculated their corporate license fees in accordance with the license fee generally applicable to corporations.

In 2004, the South Carolina Department of Revenue ("DOR") conducted an audit of the tax years at issue and determined that Alltel was a "telephone company" and was therefore required to pay a "heightened" license fee imposed by S.C. Code Ann. Sec. 12-20-100, on utilities and electric cooperatives, including telephone companies. A "telephone company" is not a defined term under the special license tax.

Following proceedings before the administrative law court and the court of appeals, the South Carolina Supreme Court ("Court") found that the statute was ambiguous and should be construed in favor of the taxpayers.

Tax Statute Is Ambiguous

At issue in this case is whether a cellular service provider is considered a "telephone company" for purposes of imposing a heightened license fee under Sec. 12-20-100. The Court acknowledged that "while it is arguable that the heightened license fee does not translate to wireless communication service companies...the absence of a statutory definition for 'telephone company' leaves the matter in doubt."

The Court found that an ambiguity in a tax statute must be construed in the taxpayers' favor, noting that "where the language relied upon to bring a particular person within a tax law is ambiguous or is reasonably susceptible of an interpretation that will exclude such person, then the person will be excluded, any substantial doubt being resolved in his favor."

Accordingly, the Court held that "the existence of an ambiguity in section 12-20-100 raises substantial doubt regarding the section's application" to Alltel and resolved the doubt in favor of Alltel.

Actions to think about

The heightened license fee applies to several specified entities, including express companies, street railway companies, navigation companies, power companies, light companies, and gas companies. Taxpayers filing as one of these entities, or disputing such characterization on audit, should review whether the entity's definition (or lack thereof) results in an ambiguous application of the statute consistent with the *Alltel* decision.

Additionally, the court's reasoning in this case may potentially apply to other areas of taxation in which ambiguities exist. The Department of Revenue is aware of such implications and is currently in the process of determining if there are appropriate next steps. As a result, this decision may be used to achieve more equitable results from a South Carolina tax assessment.

Let's talk

If you have any questions regarding the *Alltel* decision, please feel free to contact either of the following individuals:

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