

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

TX 2007-000266

01/15/2010

HONORABLE DEAN M. FINK

CLERK OF THE COURT
S. Brown
Deputy

SPRINT SPECTRUM L P

BARBARA J DAWSON

v.

ARIZONA STATE DEPARTMENT OF
REVENUE

AMY SPARROW

MINUTE ENTRY

Following oral argument on January 11, 2010, the Court took under advisement Plaintiff's Motion for Summary Judgment filed August 7, 2009 and Defendant's Cross-Motion for Summary Judgment filed September 11, 2009. Upon further consideration, the Court finds and rules as follows.

The Court has considered the parties' rival motions for summary judgment. As this case appears to turn solely on questions of law, resolution by summary judgment is appropriate.

The Court's analysis must of course begin with A.R.S. § 42-5064(B), which reads in relevant part, "The tax base for the telecommunications classification is the gross proceeds of sales or gross income derived from the business, including the gross income derived from tolls, subscriptions and services on behalf of subscribers." In light of this statutory language, the question becomes whether the assessment of a fee for late payment of a subscriber's telephone bill is part of the provision of the telecommunications service or a service not deriving from the telecommunications business.

Sprint's interpretation of the late fee as a charge distinct from the charge for telephone service is unpersuasive. There is no real or virtual "Sprint Finance Company" that, upon a subscriber's election to pay after the due date, fronts the base fee to the telecommunications business, terminating the subscriber's indebtedness to it (at least until the next month's bill), and

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treats the entire base fee-plus-late fee as its receivable. Rather, the telecommunications business simply does without that tiny piece of its own receivables until the subscriber pays the base fee-plus-late fee. In effect, Sprint offers its subscribers a choice: either pay the base fee upon the due date or pay a higher fee after the due date. In either case, the money flows directly to Sprint exclusively from the subscribers. In theory, Sprint could refuse to offer the late-fee option and simply enforce its right to the base fee by cutting off service and filing a lawsuit to recover any arrearage; no doubt at some point it does precisely that. But its election to provide its subscribers with flexibility in timing their payments – at a price – does not establish the distinct character of the fee it charges for that flexibility or place it outside the category of “gross proceeds of sales or gross income derived from the business.”

Sprint slightly mischaracterizes the statutes as excluding “*certain types*” (italics in original) of revenue; rather, it excludes certain *sources* of revenue, i.e., revenue not deriving from tolls, subscriptions, and services in the context of the provision of telecommunications services to subscribers. It is not necessary to view the billing options as an explicit two-tier toll, one for payment on date x and the other for payment on date $x+1$. Even if the late fee is conceptually distinguishable from the subscription fee, the late fee revenue is still gross income derived from the telecommunications business from services on behalf of subscribers. If Sprint exercised its option to cut off service on date $x+1$, there would no longer be a subscriber. By allowing payment on date $x+1$, Sprint is providing a service to a subscriber precisely to continue the business relationship. The revenue generated by this falls within the statutory sweep.

Further, A.A.C. R-15-5-106 is inapplicable, because Sprint’s service is not being sold on credit or under an installment contract. Whether the late fee is collected to compensate Sprint for the costs of enforcing its rights or to increase its profit or some combination of both does not transform the late fee into a cost of extending credit. Even if the late fee would be excluded were Sprint engaged in retail sales, the absence of a similar exclusion for telecommunications services, in conjunction with the broad statutory language that must underlie any regulation, indicates that they should not be excluded. A.R.S. § 42-6004(A)(5), by its terms, does not apply to the state itself, only to its political subdivisions. Had the legislature wished to include the state in the statute’s prohibition, it could have done so by the addition of a single word; its failure to do so again indicates that it did not so intend.

The argument that the late fee is an “equitably apportioned amount that is not determined on a transactional basis” excluded from the tax base by 4 U.S.C. § 116(b)(2) also fails, because the fee is explicitly based on the exchange of money for services – or, to be precise, the subscriber’s decision to postpone exchanging money for services. It is not “apportioned” to subscribers who pay on time, and the “apportionment” falls more heavily upon those who owe the most and delay payment the longest. The late fee is merely a market transaction, not “equitable apportionment.”

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Obviously, the ruling of the Indiana Department of State Revenue, interpreting that state's Utility Receipts Tax (evidently an income tax, though based on gross receipts), has no binding authority in Arizona. While this is no fault of Sprint, the Supplemental Letter of Findings 09-2224 lacks any legal analysis by which the applicable law can be compared to ours, or even a summary of the "sufficient information" submitted by that telephone company to show that its late fee did not constitute "consideration for the retail sales of utility services." Its persuasive force, then, is minimal.

The preceding analysis presupposes that the telecommunications service underlying the late fee is taxable. Late fees derived from the provision of non-taxable services are logically themselves exempt. The parties briefly mentioned one such service, the "third party motorist assist;" while neither party detailed just how the charge for that service is collected or what happens if payment is not made in a timely manner, it strikes the Court that late payment of it, with a consequent fee, is at least possible. If there are other non-taxable sources of base revenue on which late fees are collected, the parties, if they cannot work out the details themselves, may bring them to the Court's attention.

With the preceding caveat, then, Plaintiff's Motion for Summary Judgment is denied. Defendant's Cross-Motion for Summary Judgment is granted.