

THIS DECISION WAS SIGNED BY JUDGE CARL N. BYERS ON OCTOBER 11, 2000, AND FILE STAMPED ON OCTOBER 12, 2000. THIS IS A NONPUBLISHED DECISION.

IN THE OREGON TAX COURT
REGULAR DIVISION
Emergency Communications Excise Tax

BEAVER CREEK COOPERATIVE)	
TELEPHONE COMPANY,)	
)	Case No. 4475
Plaintiff,)	
)	ORDER DENYING PLAINTIFF'S
v.)	MOTION FOR PARTIAL SUMMARY
)	JUDGMENT
DEPARTMENT OF REVENUE,)	
State of Oregon,)	
)	
Defendant.)	

Plaintiff appeals from a magistrate Decision denying its claim for refund of emergency communications excise taxes. Plaintiff's claim raises only legal issues, and the matter has been submitted to the court on Plaintiff's Motion for Partial Summary Judgment. The court has received and considered the parties' written memoranda and oral arguments.

FACTS

Plaintiff is a telephone cooperative providing telephone services to subscribers. As a cooperative, it returns patronage credits to its members or subscribers in lieu of making a profit. Oregon Laws 1981, chapter 533, section 10,

compiled as a note after ORS 401.790, imposes an emergency communications excise tax on telephone service subscribers. The utility is required to collect the tax. The tax is used to fund 911 emergency services throughout Oregon. If a utility overpays the tax, it may seek a refund from the Department of Revenue (the department). Or Laws 1981, ch 533, § 14.

Prior to 1995, the emergency communications excise tax was imposed as a percentage of the amount charged for telephone exchange access services. The 1993 legislature amended the law and changed the measure of the tax to a flat amount of 75 cents per subscriber per month. Wireless instruments such as cellular phones are charged 75 cents per instrument per month. Under the prior percentage imposed tax, Plaintiff applied for and received refunds from the department for excess taxes paid, depending upon the amount that Plaintiff had returned to its patrons as credits. Even though the tax rate was changed to a flat amount per subscriber, Plaintiff nevertheless filed requests for refunds for the fourth quarter of 1995 and all of the years 1996, 1997, and 1998. The department denied Plaintiff's request and Plaintiff then appealed to the Magistrate Division of this court. The magistrate Decision upheld the department's action and

Plaintiff then appealed to the Regular Division.

ISSUE

Is Plaintiff entitled to a refund of emergency communications excise taxes?

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ANALYSIS

As indicated, there is no dispute of fact. Plaintiff concedes that it collected the correct amount (75 cents per subscriber per month) and remitted the same to the department. However, Plaintiff contends that the refund provisions of the law were not amended, and therefore it seeks a refund on the same basis as in the past. That is, since its revenues for 1995, 1996, 1997, and 1998 exceeded its expenses, Plaintiff believes that the portion of its revenue returned to patrons as patronage credits includes excise taxes that should be refunded. However, Plaintiff errs in that position.

When the excise tax was changed to a flat amount, it became revenue neutral as to Plaintiff. Plaintiff collects 75 cents per subscriber and pays 75 cents per subscriber to the department. The amount of tax that should be collected and remitted is not affected by whether Plaintiff's gross revenues

exceed its expenses.

Section 14(1) of the Act provides:

"If the amount paid by the utility to the Department of Revenue under section 13, chapter 533 Oregon Laws 1981, exceeds the amount of tax payable, the department shall refund the amount of the excess with interest thereon at the rate established under ORS 305.220 for each month or fraction of a month from the date of payment of the excess until the date of the refund. No refund shall be made to a utility who fails to claim the refund within two years after the due date for filing of the return with respect to which the claim for refund relates." Or Laws 1993, ch 808, § 3.

As the department points out, that refund provision does not mention gross revenues or in any way relate to Plaintiff's operating experience. A simple question to be asked under this section of the law is whether Plaintiff paid more than 75 cents per subscriber per month to the department. Plaintiff does not contend it did and therefore has no basis for making a claim for a refund. Now, therefore,

IT IS ORDERED that Plaintiff's Motion for Partial Summary Judgment is denied. Costs to neither party.

Dated this ____ day of October, 2000.

Carl N. Byers
Judge