



United States  
General Accounting Office  
Washington, D.C. 20548

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Office of the General Counsel

B-265776

November 29, 1995

Jim Kranjc  
Sales/Use Tax Manager  
Ameritech  
30 South Wacker Drive  
Chicago, Illinois 60606

Dear Mr. Kranjc:

By letter dated August 15, 1995, you asked whether federal agencies in the state of Illinois are immune from paying the 9-1-1 emergency telephone surcharge imposed by the state. Apparently, there is a disagreement on this issue between the Illinois Commerce Commission, which contends that the federal government is immune from paying the 9-1-1 surcharge, and the city of Chicago which argues that federal agencies in the state are required to pay the surcharge. Under 31 U.S.C. § 3529, certain federal officials are entitled to receive an "advance decision" from the Comptroller General concerning an agency's authority to make a particular payment, *e.g.*, a payment for a 9-1-1 surcharge imposed by a state. Although you are not entitled to a Comptroller General decision under this statutory provision, we have summarized our prior decisions on this issue below. We trust this information will be useful to you.

In prior decisions on 9-1-1 emergency telephone charges, we have repeatedly stated the unquestioned principle of constitutional law that the United States and its instrumentalities are immune from direct taxation by state and local governments. Direct taxation occurs where the legal incidence of the tax falls directly on the United States as the buyer of goods, *Kern-Limerick, Inc. v. Scurlock*, 347 U.S. 110 (1954), or as the consumer of services, 53 Comp. Gen. 410 (1973), or as the owner

of property, United States v. County of Allegheny, 322 U.S. 174 (1944). These direct taxes, known as "vendee" taxes, are not payable by the federal government unless expressly authorized by Congress. 64 Comp. Gen. 655, 656-57 (1985).<sup>1</sup>

Our most recent decisions on the immunity of the federal government from state emergency telephone surcharges involved 9-1-1 surcharges in Wyoming and North Carolina. B-254712, Feb. 14, 1994; B-254712, Feb. 14, 1994. In both of the cases the 9-1-1 surcharges at issue were vendee taxes not payable by the federal government. Under the state statutes at issue in these decisions, the telephone companies were merely collection agents, *i.e.*, required to collect the 9-1-1 surcharges from their customers and then remit the amount collected to the state taxing authorities. *Cf.* B-238410, Sept. 7, 1990.

Illinois 9-1-1 statute is not materially different from the Wyoming and North Carolina statutes. Under the Illinois statute, the telephone companies operating in the state act as collection agents for the state authorities; the telephone companies collect the monthly 9-1-1 surcharge<sup>2</sup> from network subscribers "as a separately stated item on the subscriber's bill." Ill. Ann. Stat. ch. 50, para. 750/15.3(f). The telephone companies must hold the amount of the surcharge collected in a trust fund until it is paid over to the state. *Id.* at para. 750/15.3(k). The amount of the surcharge that is collected must "be paid to the [appropriate state authority] not later than 30 days after the surcharge is collected." *Id.* at para. 750/15.3(g). The telephone company is allowed to retain 3% of the gross surcharge collected "for the expense of accounting and collecting the surcharge." *Id.* at para. 750/15.3(k).

The Illinois 9-1-1 surcharge appears to share the attributes of other state statutes that we have viewed as vendee taxes, the legal incidence of which falls directly on the federal government as a user of telephone services in the state. As you know,

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<sup>1</sup>Although the Illinois statute labels the 9-1-1 emergency telephone charge as a "surcharge," it is, nonetheless, a tax. In 65 Comp. Gen. 879, 881 (1986), we identified the characteristics of telephone charges which make them taxes. First, the telephone service is provided by a local government or by a quasi-governmental unit. Second, public funding of the service requires legal authority, *e.g.*, an ordinance or referendum. Third, the service charges charge is actually based on flat rate per telephone line and is unrelated to levels of service. The 9-1-1 surcharge assessed under the Illinois statute satisfies all these criteria.

<sup>2</sup>Under the Illinois statute, the monthly 9-1-1 surcharge is "impose[d] . . . on billed subscribers" of telephone services. Ill. Ann. Stat. ch. 50, para. 750/15.3(a). The surcharge is imposed "at a rate per network connection" and, in a municipality with a population over 500,000, "may not be in excess of \$1.25 per network connection." Ill. Ann. Stat. *Id.*, ch. 50, para. 750/15.3(h).

our decisions have repeatedly held that the federal government is constitutionally immune from paying such surcharges. I understand that Andrea Levine of my staff has already sent you copies of our decisions in this area. Nonetheless, if you would like to discuss this further, or need any additional information, please call Ms. Levine or me at (202) 512-5644.

Sincerely yours,

Gary L. Keplinger  
Associate General Counsel

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**DIGEST**

The 9-1-1 emergency telephone surcharge imposed by the state of Illinois is a vendee tax, the legal burden of which falls directly on the federal government as a user of telephone services. The federal government is constitutionally immune from paying such surcharges whether styled a tax or a surcharge.

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