

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

Office of the General Counsel

B-248363

April 17, 1992

The Honorable Dan Coats
United States Senate

Dear Senator Coats:

On April 9, 1992, Mr. David Hoppe of your staff asked for our opinion on the propriety of paying the 9-1-1 emergency telephone system fee assessed against the federal government by Vanderburgh County, Indiana. For the reasons set forth below, we conclude that the fee is a vendee tax, the legal burden of which falls directly on the federal government as a user of telephone services, and that the government is therefore constitutionally immune from the tax.

Under section 36-8-16-5 of the Indiana Code, counties and municipalities of the state are authorized to impose a monthly emergency telephone system fee, i.e., a fee for 9-1-1 services, on each "exchange access facility." The fee may not exceed either three or ten percent of the average monthly telephone access line charge, depending on the county involved. Ind. Code. § 36-8-16-6 (1991). Pursuant to this authority, Vanderburgh County adopted an ordinance which imposed a 9-1-1 fee on each telephone line in the county. According to Mr. Hoppe, the telephone company in the county has attempted to collect the 9-1-1 fee from both you and Senator Lugar for the office you share in Evansville, which is located in Vanderburgh County.

It is an unquestioned principle of constitutional law that the United States and its instrumentalities are immune from direct taxation by state and local governments.¹ Direct taxation occurs where the legal incidence of the tax falls

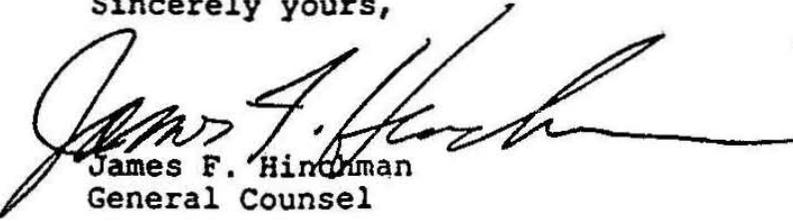
¹Although the Indiana statute labels the 9-1-1 charge a "fee," it is, nonetheless, a tax. In 65 Comp. Gen. 879 881 (1986), we identified the characteristics of 9-1-1 charges which make them taxes. First, 9-1-1 service is provided by a local government or by a quasi-governmental unit. Second, public funding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

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 (1985), 565-57 (1985).

We have examined 9-1-1 charges in Rhode Island, B-239608, Dec. 14, (1990); Florida, 66 Comp. Gen. 385 (1987); Maryland, 65 Comp. Gen. 879 (1986); Texas, 64 Comp. Gen. 655 (1985); and Tennessee, B-230691, May 12, 1988. We held, in these cases, that the 9-1-1 service charges at issue were vendee taxes not payable by the federal government. Under these states' statutes, the telephone companies were merely collection agents, i.e., required to collect the tax from their customers and then remit the amount collected to the state taxing authorities. Cf. B-238410, Sept. 7, 1990. The Texas statute, for example, makes clear that the legal incidence of the taxes falls on the customer by providing that "[e]very billed service user is liable for any fee imposed." 64 Comp. Gen. at 656.

The Indiana statute is not materially different from these state statutes. Under the Indiana 9-1-1 statute, the telephone company acts as a collection agent for the local taxing authority; it collects fees from telephone users and remits the fees to the taxing authorities. The Indiana law provides that "[t]he person who uses an exchange access facility is liable for the monthly . . . fees." Ind. Code. § 36-8-16-11 (1991). The Indiana 9-1-1 fee is therefore a vendee tax, the legal incidence of which falls directly on the federal government as a user of telephone services in the state. Consequently, the United States is constitutionally immune and the tax is not payable by the federal government.

Sincerely yours,


James F. Hindman
General Counsel

APPROPRIATIONS/FINANCIAL MANAGEMENT

Appropriation Availability

Purpose availability

Specific purpose restrictions

Utility services

Use taxes