



Telecommunications Property Tax Reform

The telecommunications industry has undergone rapid and radical restructuring over the past few years. Unfortunately, local property tax statutes have not kept pace. As a result, telephone companies benefit from a number of outdated loopholes that shelter an estimated two-thirds of their property from the local property tax, resulting in an estimated \$4.4 billion loss of taxable value. Meanwhile, similar equipment owned by cable television and Internet service providers, many of whom now are now competing in the telecommunications market, is taxed.

Given the fiscal challenges facing cities and towns, it is imperative that the Commonwealth closely examine any and all property tax exemptions. The evolution of the telecommunications industry demands changes in the way local property taxes are computed. The City of Boston has filed legislation that addresses this issue by closing the telephone industry's property tax loopholes.

Background

Not so long ago, telephone service was provided by a single company, AT&T. In the early 1980s, the Federal government intervened and broke up the company to facilitate the introduction of competition. Local and long-distance services were split, and new companies emerged to compete in the long-distance market. Additionally, local service was divided into regional providers. However, each of these regional companies continued to operate as a regulated monopoly providing local phone service within its own market.

The 1990s brought more significant, structural change. Two dominant forces emerged which radically altered the telecommunications landscape: technology and competition. Several technological developments stimulated change in the industry. Chief among them were the introduction of high-capacity fiber optic lines, wireless and cellular service as well as the expansion of the Internet. Further, deregulation has introduced competition into the arena of local phone service and reinvigorated competition in the long-distance industry. The distinctions among a cable company, a phone company and an Internet service provider continue to blur. Consequently, the singular Ma Bell corporation is unrecognizable today. The industry has become an ultra-competitive, loosely regulated, multi-billion-dollar segment of the economy.

The Problem

Despite the significant changes in the telecommunications industry, the property tax structure for these businesses has remained stagnant. This has created a number of concerns:

- Disparate tax burdens produced by the current scheme of taxation create inequities among competitors. For example, there are 18 different conditions that must be

evaluated to determine whether a section of wire is taxable. A wire's tax status is affected by a wide range of factors, including the industry which owns it (e.g., electric, phone, cable TV); whether it's above or below ground; whether it's on private or public property; and whether the owner is a partnership or corporation.

- Outdated tax subsidies established in the early 1900s, when the industry was in its infancy, are now grossly outdated and should be limited or eliminated. For example, in 2004, Verizon claimed a total value of property in service in Massachusetts of \$4.1 billion. Only \$1.6 billion, or 38%, was taxable.
- Confusion exists at the state and local levels—as well as within the industry—as to how each entity fits within the existing local property tax system. This has led to complicated, drawn-out court cases and has created uncertainty for both the industry and municipal government.

Case Study

The property tax treatment of wires provides a vivid example of the complex, nonsensical treatment of telephone property under current law. There are 18 different conditions which must be evaluated to determine whether a section of wire is taxable personal property. The graphic on the following page displays a typical scenario: a utility pole that carries electric, telephone and cable wires over a public street.

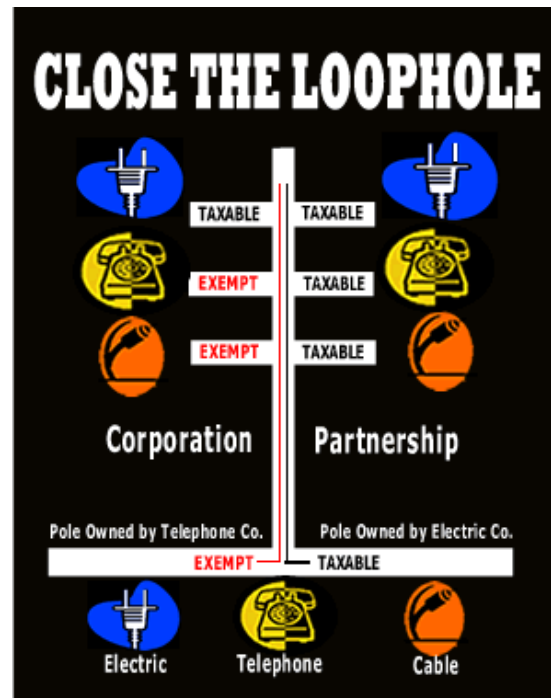
Let's start with the pole itself. Under current law, utility poles owned by electricity providers located on a public street are taxed, while poles owned by a telephone company are exempt. Typically, most utility poles are co-owned by electric and telephone service providers. This results in one-half of the pole being taxed, while the other half is exempt.

An examination of the wires attached to the pole is more complex. First, the easy part: all wires owned by the electric provider are taxed. For phone and cable lines, an additional test is required. If the wire is owned by a corporate entity, the wires are exempt from the local property tax. If that same wire is owned by a telephone or cable business that is organized as a partnership, it is taxed.

By taking the same utility pole and placing it on private property, the pole and all the wires attached to it [regardless of the use (electric, phone or cable) or the corporate structure (corporation or partnership)] are all taxed. Similarly, if all these wires are buried under the ground, they are also all subject to the property tax.

The hodgepodge of dated statutes and case law that govern the tax status of wires deprives cities and towns of millions of dollars annually in personal property tax revenues. The exemptions granted have no apparent public policy justification and provide an unfair competitive advantage to those companies that benefit from them. Companies that generate profit from equipment located in public right-of-ways should not be able to avoid taxation of that equipment through a loophole.

- Poles owned by electricity providers are taxed, while poles owned by telephone companies are exempt. Since most poles are co-owned by these companies, only one-half of the pole is taxed.
- All wires owned by electricity providers are taxed.
- Wires owned by telephone and broadband companies are exempt.



Legislation

The City has filed legislation, An Act Relative to Telecommunications, that addresses these concerns. The bill removes the exemption for machinery (i.e., switching equipment) of telephone companies, placing them in the same property tax status as their competitors. In addition, the bill closes a loophole that exempts poles and wires in public streets for certain telecommunications companies from the property tax. Under this bill, poles and wires in the public way will be treated consistently among telecommunications competitors as well as other utility providers. Finally, the bill clarifies which types of property remain centrally valued by the Department of Revenue, and which will be appraised by local assessors.

The City's proposed legislation would put an estimated \$4.4 billion worth of machinery, poles and wires on local personal property tax rolls, yielding an estimated \$140 million in revenue. In Boston, an estimated \$1.4 billion in value would be added to the tax base, resulting in \$45 million in revenue.

The property tax structure for telephone service providers has evolved through a series of dated legislative acts and obscure court decisions. It provides exemptions that have no apparent public policy basis or justification, inhibits fair competition among industries which deregulation and new technology have brought together, and deprives local government of critical tax revenue. The City of Boston asks the state Legislature to address this important and timely issue by closing the industry's unfair tax loopholes.