

SUPREME COURT OF OREGON

DIRECTV, Inc. v. Department of Revenue

360 Or. 21 (2016) · No. SC S061294 · Decided July 14, 2016

SUMMARY

The Oregon Supreme Court held that DIRECTV’s satellite television services constitute “data transmission services” and therefore are communication services subject to central property assessment under Oregon law. The court relied on its prior decision in *Comcast Corp. v. Dept. of Rev.*, which defined data transmission services to include transmitting data whether supplied by the service provider or a third party. The court reversed the Oregon Tax Court’s decision and remanded for further proceedings.

CASE DETAILS

COURT	Supreme Court of Oregon
WRITING FOR THE COURT	Brewer, J.
JURISDICTION	Oregon
DECIDED	July 14, 2016
DOCKET	SC S061294
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The Department of Revenue directly appealed the Oregon Tax Court's summary judgment decision setting aside the Department's central assessment of DIRECTV's property. The Department also moved for entry of a decision and appellate judgment reversing the Tax Court without a remand.
STANDARD OF REVIEW	The Supreme Court reviewed the Tax Court's statutory interpretation and summary judgment determination on direct appeal. The opinion does not expressly state a separate standard-of-review formulation.
PRECEDENTIAL VALUE	Published Oregon Supreme Court en banc decision; precedential
PARTIES	Department of Revenue, State of Oregon v. DIRECTV, Inc.

TOPICS

[property tax](#)[statutory interpretation](#)[tax court procedure](#)[appellate procedure](#)[standard of review](#)

PRACTICE AREAS

property taxation

administrative law

appellate procedure

QUESTIONS PRESENTED

1. Whether DIRECTV's satellite television services constitute data transmission services under ORS 308.505(3).
2. Whether DIRECTV is a communications business whose Oregon property is subject to central assessment under ORS 308.515(1).
3. Whether the case should be remanded for consideration of DIRECTV's remaining arguments after reversal of the Tax Court's general judgment.

HOLDINGS

1. DIRECTV's services are data transmission services because they provide the means to send electronically coded data from one computer or computer-like device to another across a transmission network. It is immaterial that DIRECTV owns or licenses the data or transmits it by satellite rather than cable.
2. Because DIRECTV provides data transmission services, it is a communications business whose Oregon property is subject to central assessment under ORS 308.515(1).
3. Remand was required because reversal of the Tax Court's ruling reopened DIRECTV's remaining arguments for consideration; those arguments had been implicitly treated as moot rather than dismissed with prejudice.

KEY QUOTATIONS

“DIRECTV’s services are “data transmission services,” and therefore qualify as “communication” services subject to central assessment under ORS 308.515(h).” (360 Or. at 22)

“DIRECTV provides “data transmission services” within the meaning of ORS 308.505(3), and therefore it is a “communications” business that is subject to central assessment under ORS 308.515(1).” (360 Or. at 24)

“The reversal of the Tax Court’s general judgment reopens those arguments for further consideration.” (360 Or. at 25 n.1)

FACTUAL BACKGROUND

DIRECTV provides satellite television services by transmitting electronically coded audio and video data obtained under licenses from content providers to subscribers through satellite transmission. The Department of Revenue determined that DIRECTV's property was subject to central assessment because DIRECTV was a communications business providing data transmission services. The Tax Court concluded that DIRECTV was not merely a conduit because it licensed or owned the transmitted content, but the Supreme Court held that those facts did not remove DIRECTV's services from the statutory definition.

PROCEDURAL HISTORY

The Department centrally assessed DIRECTV's Oregon property for the 2009-2010 through 2012-2013 tax years on the ground that DIRECTV provided data transmission services and was therefore a communications business subject to central assessment. The Oregon Tax Court granted summary judgment to DIRECTV, set aside the assessments, and ordered corrected assessments and tax refunds, relying on its earlier interpretation of data transmission services in *Comcast Corp. v. Dept. of Rev.* The Oregon Supreme Court reversed that decision based on its intervening decision in *Comcast* and remanded for consideration of DIRECTV's remaining arguments.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The case is remanded to the Oregon Tax Court for further proceedings, including consideration of DIRECTV's remaining arguments and claims that became nonmoot after reversal.

CASES CITED

- *Comcast Corp. v. Dept. of Rev.*, 356 Or. 282, 337 P.3d 768 (2014)
- *Comcast Corp. v. Dept. of Rev.*, 20 Or. Tax 319 (2011)

OPINION

PER CURIAM.

No. 47 July 14, 2016 21 IN THE SUPREME COURT OF THE STATE OF OREGON DIRECTV, INC., Respondent, v. DEPARTMENT OF REVENUE, State of Oregon, Appellant. (TC 4939 (Control); SC S061294) En Banc On appeal from the Oregon Tax Court,* and on motion for entry of decision and appellate judgment. Henry C. Breithaupt, Judge. Submitted May 17, 2016. Marilyn J. Harbur, Assistant Attorney General, Salem, filed the brief and motion for entry of decision and appellate judgment for appellant.

With her on the brief was Ellen F. Rosenblum, Attorney General. Scott G. Seidman, Portland, filed the response to appellant's motion for respondent. BREWER, J. The decision of the Tax Court is reversed, and the case is remanded to the Tax Court for further proceedings. _____ * 21 Or. Tax 90 (2013). 22 DIRECTV, Inc. v. Dept. of Rev. Case Summary: Before the Tax Court, DIRECTV challenged the Department of Revenue's determination that property used by DIRECTV in its business of providing satellite television services was subject to central assessment.

It argued, among other things, that the department had incorrectly concluded that that DIRECTV's services were "data transmission services" within the meaning of ORS 308.505(3) and, thus, were subject to central assessment under ORS 308.515(h).

The Tax Court agreed. Relying on the meaning it had assigned to the term “data transmission services” in an earlier case, *Comcast Corp. v. Dept. of Rev.*, 20 OTC 319 (2013), the Tax Court granted summary judgment for DIRECTV, set aside the department’s central assessment of DIRECTV’s property, and ordered corrected assessments and tax refunds.

The department appealed and later moved for entry of a decision and appellate judgment in its favor, based on the reversal of the Tax Court’s Comcast decision in *Comcast Corp. v. Dept. of Rev.*, 356 Or 282, 337 P3d 768 (2014) and on the definition of the term “data transmission services” announced in that case: “services that provide the means to send data from one computer or computer-like device to another across a transmission network.” Held: DIRECTV’s services are “data transmission services,” and therefore qualify as “communication” services subject to central assessment under ORS 308.515(h).

The decision of the Tax Court is reversed, and the case is remanded to that court for further proceedings. Cite as 360 Or 21 (2016) 23 BREWER, J. This is a direct appeal from a decision of the Oregon Tax Court setting aside a determination by the Department of Revenue (the department) that taxpayer DIRECTV’s property in Oregon is subject to central assessment under ORS 308.505 to 308.665.

The department argues that, contrary to the Tax Court’s opinion, DIRECTV is a “communications” business whose property is subject to central assessment under ORS 308.515(1). We agree and, therefore, reverse and remand. DIRECTV is a satellite television provider; it transmits video and audio data obtained under licenses from content providers to its subscribers via satellite.

ORS 308.515(1) provides for central assessment of any property in Oregon used in certain kinds of businesses, including “communications.” For purposes of the statute, “communications” includes “data transmission services.” ORS 308.505(3).

The department began to centrally assess DIRECTV’s property in 2009, on the theory that DIRECTV was in the business of providing “data transmission services” and therefore was a “communications” business. DIRECTV contested that decision, arguing, among other things, that it did not provide “data transmission services” as the term is used in ORS 308.505(3).

The Tax Court agreed, primarily based on a decision that it had issued earlier, *Comcast Corp. v. Dept. of Rev.*, 20 Or. Tax 319 (2011). That case involved a cable TV and internet service provider’s challenge to the central assessment of its property under ORS 308.515(1).

The Tax Court held that, for purposes of the definition of “communications” in ORS 308.505(3), “data transmission services” means the transmission, for a fee, of data or content owned by one party to another party, and does not apply when a company sells the data or content—as a commodity—to the customer, in addition to providing the conduit for it. 20 Or. Tax at 328-29.

Applying that definition from its Comcast decision in the present case, the Tax Court held that, because DIRECTV had purchased licenses to transmit the audio and video data at issue to its customers, it was not merely acting as a conduit for data owned by other entities and, 24 DIRECTV, Inc. v. Dept. of Rev. therefore, was not a “communications” business that is subject to central assessment under ORS 308.515(1).

DIRECTV, Inc. v. Dept. of Rev., 21 Or. Tax 90, 92-93 (2013). The Tax Court granted summary judgment to DIRECTV on that issue, set aside the department’s central assessment of DIRECTV’s property for the 2009-2010 through 2012-2013 tax years, and ordered corrected assessments and tax refunds. At the time of the Tax Court’s decision in this case, the department’s direct appeal of the Comcast decision was pending before this court.

Since then, we have issued a decision in the case. In Comcast Corp. v. Dept. of Rev., 356 Or 282, 337 P3d 768 (2014), we rejected the definition of “data transmission services” that the Tax Court announced in that case.

We held that, for purposes of ORS 308.505(3), “data transmission services” means “services that provide the means to send data from one computer or computer-like device to another across a transmission network.” Id. at 315.

We further held that that meaning applies “whether the data that the customer receives is data directed to it by the service provider itself or by some third party.” Id. at 332. Applying that definition to the taxpayer’s claims in that case, we held that the internet and cable transmission services that the taxpayer provided were, indeed, “data transmission services,” and that the taxpayer therefore was a “communications” business whose property was subject to central assessment under ORS 308.515(1).

Id. at 284. Our decision in Comcast controls the present case. Like the taxpayer in Comcast, DIRECTV undisputedly is in the business of transmitting electronically coded data between computer-like devices, including set top boxes. See id. at 323 (“([i]n effect, a set top box is a computer or computer-like device with a microchip in it that gives it its functionality”).

It is of no consequence that DIRECTV licenses or owns the data it transmits; neither is it important that DIRECTV transmits data via satellite rather than via cable. Id. at 314-15. DIRECTV provides “data transmission services” within the meaning of ORS 308.505(3), and therefore it is a “communications” business that is subject to central assessment under ORS 308.515(1).

The Tax Court was mistaken in concluding otherwise and in granting summary judgment to DIRECTV on that ground. Cite as 360 Or 21 (2016) 25 Anticipating a decision in its favor, the department has moved for entry of a decision and appellate judgment that reverse the Tax Court’s decision without remanding to the Tax Court for further proceedings.

We deny that motion.¹ The decision of the Tax Court is reversed, and the case is remanded to the Tax Court for further proceedings. ¹ The department argues that remand is not warranted because DIRECTV has no arguments or claims that remain for consideration on remand. It argues that, to the extent that DIRECTV raised claims and arguments before the Tax Court other than the one expressly addressed in the Tax Court’s general judgment, the effect of the judgment was to dismiss those claims with prejudice.

The department relies on ORS 18.082(3), which provides: “Upon entry of a general judgment, any request for relief in the action that is not decided by the general judgment * * * is dismissed with prejudice unless the judgment provides that the dismissal is without prejudice.” The department misunderstands how the cited statute operates in circumstances like these.

When the Tax Court decided the threshold summary judgment issue regarding the applicability of ORS 308.515(1) in DIRECTV’s favor and entered a general judgment based on that decision, it implicitly determined that DIRECTV’s remaining arguments were moot.

The reversal of the Tax Court’s general judgment reopens those arguments for further consideration. Our decision in Comcast to remand for consideration of the taxpayer’s Measure 50 argument, after reversing the general judgment for the taxpayer based on the meaning of “data transmission services,” is a case in point. 356 Or at 334 (“That argument presents an issue that was moot under the Tax Court’s resolution of the case, but is not moot under ours.”)