SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION, THIRD DEPARTMENT

Easylink Services International, Inc. v. New York State Tax Appeals Tribunal

101 A.D.3d 1180 (3d Dep't 2012) · No. 6031566 · Decided December 6, 2012

SUMMARY

The New York Appellate Division reviewed a determination that Easylink's electronic messaging, fax, email, and EDI services constituted taxable telegraphy under Tax Law § 1105 (b) (1) (B). The court held that the services involved the transmission of coded or other signals within the meaning of the governing regulation and that the Tribunal's determination had a rational basis and was supported by substantial evidence. The court confirmed the determination and dismissed the petition.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Third Department
WRITING FOR THE COURT	Stein, J.; Mercure, J.P.; Malone Jr., J.; Kavanagh, J.; Garry, J.
JURISDICTION	New York
DECIDED	December 6, 2012
DOCKET	6031566
DISPOSITION	dismissed
PROCEDURAL POSTURE	Petitioner commenced a CPLR article 78 proceeding under Tax Law § 2016 seeking review of the New York State Tax Appeals Tribunal's final determination imposing sales tax on its electronic messaging services.
STANDARD OF REVIEW	The court applied deferential review to the agency's specific application of a broad statutory term: the determination must be annulled if unsupported by substantial evidence or clearly erroneous as to law or fact, but confirmed if supported by facts or reasonable inferences and having a rational basis in law.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Easylink Services International, Inc. v. New York State Tax Appeals Tribunal

TOPICS

sales and use tax | judicial review of agency action | statutory interpretation | standard of review | appellate procedure

PRACTICE AREAS

state and local taxation | administrative law | appellate procedure

QUESTIONS PRESENTED

1. Whether Easylink's electronic messaging services constituted taxable telegraphy under Tax Law § 1105 (b) (1) (B) and 20 NYCRR 527.2 (d) (2).
2. Whether the Tax Appeals Tribunal's interpretation and application of the sales-tax statute and regulation was supported by a rational basis and substantial evidence.
3. Whether the court should apply extrinsic legislative information or a mere-conduit test to determine whether Easylink's services were taxable.

HOLDINGS

1. Easylink's electronic messaging services were taxable telegraphy because they used apparatus and transmission processes involving coded or other signals, and the services fell within the statutory and regulatory descriptions of taxable telegraph services.
2. The Tribunal's determination was supported by a rational basis in the law and by facts or reasonable inferences in the record, and therefore had to be confirmed.
3. The court rejected petitioner's request to determine the meaning of telegraphy through extrinsic legislative information or the mere-conduit test.

KEY QUOTATIONS

> *"If the agency's determination is not supported by substantial evidence or it constitutes a clearly erroneous interpretation of the law or the facts, it will be annulled, but if it is supported by facts or reasonable inferences that can be drawn from the record and has a rational basis in the law, it must be confirmed"* (101 A.D.3d at 1181-82)

> *"The applicable regulations define telegraphy as "use or operation of any apparatus for transmission of . . . coded or other signals""* (101 A.D.3d at 1182)

FACTUAL BACKGROUND

The Department assessed $560,095.35 in sales taxes on Easylink's intrastate fax, telex, email, and EDI services for the relevant audit period, with $297,358.71 remaining in dispute after the parties agreed that 47 percent of the assessment was owed. Easylink converted and transmitted customer text or data in various formats, including text messages to fax, and provided secure email, tracking, authentication, and related features. During the relevant period, Easylink used SMTP to route data over the Internet and its own network.

PROCEDURAL HISTORY

Following an audit, the Department of Taxation and Finance assessed taxes on petitioner's intrastate fax, telex, email, and EDI services for the period March 1, 2001, through May 31, 2004. An Administrative Law Judge determined that the services were not taxable under Tax Law § 1105 (b) (1) (B), but the Tax Appeals Tribunal reversed and concluded that the services constituted taxable telegraphy. The Appellate Division confirmed the Tribunal's determination and dismissed the petition.

DISPOSITION

dismissed

CASES CITED

- Matter of American Tel. & Tel. Co. v. State Tax Comm'n, 61 N.Y.2d 393 (1984)
- New York State Cable Tel. Ass'n v. State Tax Comm'n, 59 A.D.2d 81, 83 (3d Dep't 1977)
- Debevoise & Plimpton v. New York State Department of Taxation & Finance, 80 N.Y.2d 657, 661 (1993)
- Rosner v. Metropolitan Property & Liability Insurance Co., 96 N.Y.2d 475, 479 (2001)
- Majewski v. Broadalbin-Perth Central School District, 91 N.Y.2d 577, 583 (1998)
- Quotron Systems v. Gallman, 39 N.Y.2d 428, 431 (1976)