AT&T COMMUNICATIONS OF MARYLAND, INC.	*	IN THE
	*	
vs.		MARYLAND TAX COURT
	*	
COMPTROLLER OF THE TREASURY COMPLIANCE DIVISION	*	No. 01-**SU**-OO-0509
	*	

MEMORANDUM OF GROUNDS FOR DECISION

Section 11-101(k)(5) of the Maryland Annotated Code Tax-General controls the resolution of this appeal. Under the heading of taxable services, it provides that "900, 976, 915 and other 900-type communications services are taxable services."

The following uncontested definition seems most appropriate to the Court concerning what a 900 call is: "When consumers place calls on their telephones, receive some information in response to those calls and pay for these transactions through their phone bills, it is a 900 call." The Court believes that using this definition, it is clear that the Legislature intended to tax the above described telephone service. This is the taxable event that shows up on the individual's phone bill. As support, the Court looks to two documents: The first is Comptroller's Exhibit No. 5, a memo dated 2/22/96, which concerns the transaction described above as a taxable event that requires sales tax to be collected in Maryland. The second, AT&T's Exhibit No. 12, is a document from AT&T's tax policy group which, on page 5, lists Maryland among those states wherein these transactions to the consumer are subject to sales tax.

There is no dispute as to how much of this activity occurred during the audit period; $5,160,899.45 is the amount of sales tax that was due on 900 calls in the audit period or in the time period in question.

It is helpful to consider AT&T's connections and activities related to the transactions. AT&T contacted an information provider and entered into an agreement with that provider assigning a 900 telephone number. AT&T reviewed advertisements prior to their placement by the information provider, letting the public know that a service was available. In compliance with the Federal Government's required preambles to the 900 messages, AT&T reviewed the preambles that the consumer received over the phone. It then reviewed the content of the message, at least in part, to categorize. Those functions were in response to federal statutes and regulations, in response to requirements by LECs, and in response to AT&T's own policies. AT&T, additionally, provided transport of the message over part of its network.

AT&T provided billing for a majority of the information providers. The percentage varied over time and captured information as to the length of the call, merging input from the information provider as to what it charged. The information necessary to create the bill was sent to a LEC, a third party biller, or to AT&T. A bill is then sent to the consumer. AT&T also provided dispute resolution services.

Some of these activities were part of AT&T's own policies, or part of the requirements of federal statutes or regulations.

Lastly, AT&T received some of the total revenue produced by the operation, which included funds for transport and dispute resolution services that were required. If AT&T provided collection, it received funds for providing that service.

The funds received for transport were based on the volume of messages, including the length of time and the number of messages. In addition, there was a fixed element of those funds for the number of lines that were set up. As for collection services, AT&T received a percentage of the money that was involved. It was not based on the amount of time on the network but rather on the number of dollars. (One example, brought out in testimony, specified a 15 percent collection fee.)

All parties were aware of a prior decision by the Tax Court, Bell Atlantic-Maryland v. Comptroller, MTC No. 98-**SU**-OO-0900, which involved similar facts. The Court found that Bell-Atlantic was obligated to collect and remit the tax to the State – involving 976 calls, not the subject 900 calls. In Bell Atlantic, the company collected the sales tax from the consumers whereas in this case, AT&T did not. The fact that in one instance the tax was collected and not in the other has no impact on the obligation, if any, to remit the tax to the State. Failure to collect the sales tax, if one is due, only shifts the burden to pay to AT&T.

The remaining issue is whether AT&T had an obligation to collect and remit the tax.

AT&T has ties to Maryland. There is no dispute that nexus requirements are met to allow Maryland to collect a sales tax from AT&T.

The Comptroller asks this Court to affirm based on the fact that AT&T is a vendor (Section 11-107) or, alternatively, as an agent (Section 11-101(m)(2)).

The Petitioner's position is that it is not a vendor or an agent, but merely a regulated provider of telecommunication services to the content providers. In effect, a common carrier like UPS. This position is not supported by the evidence.

AT&T is involved in almost every step in the entire process. It did not actually write the content but reviewed the content of the message. AT&T also reviewed the advertisements to the public regarding the 900 service as well as the content of the required preambles. It also provided the transport of the message. The transport function is the only one most like that of a common carrier. AT&T often provided billing and collection activities. It also had a marketing staff to contact potential content providers with the intention of adding to the volume of the 900 services. It should be noted that within AT&T these services generated "Fat Sticky Minutes." The "Fat" part referring to the higher rate that AT&T charged for 900 minutes.

AT&T also advanced constitutional claims to the imposition of the tax: 1) Commerce Clause exception for a common carrier; 2) lack of nexus between Maryland and AT&T and 3) due process violations for vagueness.

The exception for a common carrier, if it exists, would apply if AT&T was acting solely as a common carrier. However, in this case, its function greatly exceeded that of a common carrier and, in fact, acted with the content providers in every step of the transaction. The nexus argument cannot stand because AT&T has many connections, including payroll and property, with the State.

The argument that the statute is too vague has little merit. One can look at the wording of the statute itself to find clarity: "900 services . . . and other 900 type

telecommunication services are to be taxable services." To accept the argument by AT&T that the Legislature intended that the "telecommunication services" is to include only the transportation of the sound over their network, is to try to put an unnatural and technical definition ahead of the plain meaning of the statute. It is clear that the intent of the Legislature was to tax the entire service provided to the consumer in Maryland. The statute is not vague and the Court can find no constitutional bar to its enforcement.

This Court finds that the Legislature intended the 900 calls that are at issue to be subject to sales tax, and that this tax should have been collected, and that the entity (AT&T) that collected the fees for the 900 service should have remitted the tax to the State.

We shall pass an Order affirming the decision of the Comptroller.