STATE OF MINNESOTA TAX COURT

COUNTY OF RAMSEY REGULAR DIVISION

AT & T Corporation,

Appellant,

vs.

Commissioner of Revenue,

Appellee.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER FOR JUDGMENT

Docket No. 7472

Dated: January 7, 2004

The Honorable Sheryl A. Ramstad, Judge of the Minnesota Tax Court, heard this matter, on October 15, 2003, at the Minnesota Tax Court courtroom, Minnesota Judicial Center, 25 Rev. Dr. Martin Luther King Jr. Boulevard, St. Paul, Minnesota.

Marianne D. Short, Attorney at Law, of the firm Dorsey & Whitney LLP, represented the Appellant.

Barry Greller, Assistant Attorney General, represented the Appellee, Commissioner of Revenue ("Commissioner").

Both parties submitted briefs and a Stipulation of Facts. The matter was submitted to the Court for decision on October 24, 2003.

The Court, having heard and considered the evidence adduced at the hearing, and based upon the parties' Stipulation of Facts and all of the files, records and proceedings herein, now makes the following:

FINDINGS OF FACT

1. AT&T Corporation ("AT&T") is a corporation organized and existing under the laws of the State of Delaware with its principal place of business in Basking Ridge, New Jersey. During the periods from January 1, 1990, through January 31, 1996 ("Tax Periods"), AT&T held a Minnesota sales and use tax permit and generally timely filed sales and use tax returns with the Commissioner.

2. AT&T was organized internally during the Tax Periods into four global business groups: Communications Services, Global Information Solutions, Multimedia Products and Network Systems.

3. The Network Systems Group of AT&T ("Network Systems") manufactured and marketed network equipment, including switching, transmission, cable and wireless products and software and system integration capabilities. As a part of AT&T's own worldwide network, customers of Network Systems included telephone companies in the United States and abroad, private networks, cable television providers and wireless service providers.

4. During the Tax Periods, AT&T sold Network Systems equipment, including distribution frames, switching equipment, transmission interface equipment, cable and wireless products and other equipment used in the central offices of telephone companies. A "central office" is the building that houses the switches and related equipment that access the local telephone network. One of AT&T's customers was US WEST Communications, Inc., now known as Qwest

Corporation ("US WEST"), a telephone company that conducted business in 14 midwestern and western states, including Minnesota.

5. At various times during the Tax Periods, AT&T collected and remitted Minnesota sales or use tax on its sales of equipment to US WEST if the equipment was shipped to US WEST at Minnesota destinations.

6. On June 10, 1998, AT&T and the Commissioner entered into an agreement that extended to September 30, 1998, the period within which sales and use tax refunds or deficiencies for the periods January 1, 1990, through February 28, 1995, could be claimed by or assessed against AT&T. US WEST did not enter into an extension agreement with the Commissioner with respect to the periods January 1, 1990, through February 28, 1995.

7. On February 1, 1996, Network Systems was transferred by AT&T to Lucent Technologies, Inc. ("Lucent").

8. By letter to Oliver Struble, Assistant Tax Director of Lucent ("Struble"), dated June 19, 1998, US WEST requested that Lucent file refund claims on its behalf with the Commissioner pursuant to the holding in Minnesota RSA 10 Limited Partnership v. Commissioner of Revenue, Docket No. 6481 (Minn. Tax Ct. July 18, 1997). The letter between US WEST and Lucent was not provided to the Commissioner prior to the commencement of this litigation.

9. On September 2, 1998, AT&T granted Struble a power of attorney to represent AT&T in connection with the filing of Minnesota sales tax refund claims for the Tax Periods with respect to the divisions of AT&T so transferred.

10. By letter dated September 29, 1998, Struble requested refunds from the Commissioner in the amounts of $998,275.00 and $9,927,417.00 on behalf of Network Systems for “Minnesota use tax collected and remitted in error on out of state sales” (“Refund Claim”).

11. In a Notice of Change in Sales and Use Tax dated February 16, 1999, the Commissioner advised AT&T that its Refund Claim was denied. The claim, in the amount of $998,275.99, was denied on the ground that sales tax was not collected in error. The Capital Equipment exemption claim, in the amount of $9,927,417.00, was denied on the ground that “the refund must be applied for by the purchaser [not the seller of equipment, which AT&T was].”

12. In his Order of February 20, 2002 (“the Order”), from which this appeal is taken, the Commissioner denied the Refund Claim in full. AT&T filed a timely appeal from the Order with this Court on May 21, 2002.

13. The only powers of attorney received by the Commissioner that authorized the Commissioner to communicate with John D. Olson, a consultant retained by US WEST (“the Consultant”), in relation to the Refund Claim are the powers granted by US WEST dated May 23, 1996, and July 11, 2000. In reliance upon these powers, David R. Jorgensen, the Commissioner’s Revenue Tax Specialist, and Karen L. Barrett, the Commissioner’s Appeals Officer, communicated with the Consultant. The Commissioner did not request that US WEST provide any other power of attorney in relation to the Refund Claim.

14. The only power of attorney granted by AT&T that was received by the Commissioner in relation to the Refund Claim, is the power of attorney dated September 2, 1998, granted to Struble.

15. The Commissioner did not receive any power of attorney granted by Lucent in relation to the Refund Claim.

16. The Commissioner did not request that AT&T or Lucent provide a power of attorney authorizing the Commissioner to communicate with US WEST, John D. Olson, or any other person in relation to the Refund Claim.

17. During calendar year 1998, US WEST was registered to collect and remit Minnesota sales and use taxes.

18. During the periods from January 1, 1990, through December 31, 1992 ("CE Tax Periods"), US WEST was a wholly owned subsidiary of US WEST, Inc., and was the principal entity of what was known as the US WEST Communications Group of US WEST, Inc., a diversified communications company providing a variety of services to residential and business customers, including telecommunications and related services, wireless services, high-speed data and Internet services and directory services.

19. During the CE Tax Periods, US WEST provided residential and business customer-subscribers in Minnesota with telephone services including (i) local exchange telephone services, (ii) exchange access services (which connect customers to facilities of carriers, including long-distance providers and wireless operators), (iii) long-distance network services within local access and transport areas in the region, and (iv) high-speed data services. The basic local exchange

services included optional features such as Caller ID, Call Waiting, Call Return and 3-Way Calling. US WEST also provided other services, such as voice mail. The principal type of telecommunications service offered by the Communications Group consisted of local exchange access, which enables customers to be connected to all other subscribers of the local area network.

20. During the CE Tax Periods, US WEST purchased all of the equipment used to expand, modernize, and maintain the telephone network that serves the telecommunications system of the Communications Group.

21. US WEST believes that it spent approximately $150 million during the CE Tax periods on purchases of this equipment from AT&T for use in Minnesota.

22. Minnesota customers of US WEST were taxed during the CE Tax Periods under former Minn. Stat. ch. 297A, on their payments to US WEST.

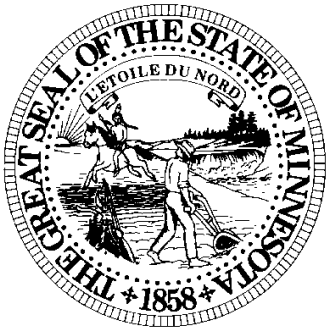
CONCLUSIONS OF LAW

1. The Capital Equipment Claim was not properly filed by the purchaser of the equipment, US WEST, as required by Minn. Stat. § 297A.15 (1998).

2. The Commissioner's Order issued February 20, 2002, is hereby affirmed.

LET JUDGMENT BE ENTERED ACCORDINGLY. THIS IS A FINAL ORDER. A STAY OF FIFTEEN DAYS IS HEREBY ORDERED.

BY THE COURT,



Sheryl A. Ramstad, Judge
MINNESOTA TAX COURT

DATED: January 7, 2004

Memorandum

Background

AT&T, through its Networks Systems Group ("Network Systems"), was engaged in the manufacture and marketing of telecommunications network equipment prior to February 1996. During the Tax Periods, AT&T sold Network Systems equipment to US WEST Communications, Inc., now known as Qwest Corporation, a telephone company conducting business in Minnesota. For equipment shipped to US WEST in Minnesota, AT&T collected and remitted Minnesota sales or use tax during the Tax Periods. In February 1996, AT&T transferred Networks System to Lucent Technologies, Inc. ("Lucent"). By letter dated September 29, 1998, Lucent filed a claim for refund of Minnesota tax collected and remitted by AT&T on equipment shipped to US WEST warehouses in Minnesota for temporary storage during 1990-1992 and thereafter used by US WEST outside Minnesota ("Temporary Storage Claim") and equipment used in Minnesota ("Capital Equipment Claim").

In a Notice of Change in Sales and Use Tax dated February 16, 1999 ("the Notice"), the Commissioner denied both the Temporary Storage Claim and the Capital Equipment Claim. By letter dated May 19, 1999, Lucent filed an administrative appeal from the Notice. On February 20, 2002, the Commissioner issued a Notice of Determination on Appeal ("the Order") denying both claims. AT&T now appeals from the Order insofar as it relates to the Capital Equipment Claim. The parties have agreed to settle the Temporary Storage Claim.

The issues before this Court are whether the Capital Equipment Claim submitted by Struble satisfies the procedure set forth in Minn. Stat. § 297A.15 (1998) for claiming the sales and use tax exemption and, if so, whether the telecommunications equipment in issue qualifies as capital equipment under the applicable law. The parties have agreed to defer the identification of specific items of exempt equipment until the Court has determined whether the capital equipment exemption generally applies to US WEST's purchases of telecommunications equipment in 1990-92. The capital equipment exemption claim at issue here relates only to machinery and equipment purchased by US WEST from AT&T on which AT&T claims to have collected Minnesota use tax from US WEST and remitted the tax to the Commissioner.

Capital Equipment Exemption

In 1984, the Minnesota legislature enacted a reduced sales and use tax rate for the purchase of "capital equipment.'' Minn. Stat. § 297A.01, subd. 16 (1984); Minn. Stat. § 297A.02 (1984). The legislature expanded the rate

reduction to a full exemption in 1989. Minn. Stat. § 297A.25, subd. 42.[1] To take advantage of the exemption, the taxpayer must first pay the tax and then apply to the Commissioner for a refund. Minn. Stat. § 297A.15, subd. 5 (1998). Unlike most claims for the refund of sales and use tax, the **purchaser** rather than the **vendor** who remitted the tax to the Commissioner, must apply for refund. Minn. Stat. § 297A.15, subd.5 (1998) expressly provides:

> Upon application by the purchaser, on forms prescribed by the commissioner, a refund equal to the reduction in the tax due as a result of the application of the exemption under section 297A.25, subdivision 42 . . . shall be paid to the purchaser.

Minn. Stat. § 297A.15, subd.5 (1998)

This requirement has existed in the law since 1984 and has been maintained in the recodified version of the sales and use tax statute exemption for capital equipment, Minn. Stat. § 297A.75, subds. 1(1), 2(1)(2002).

To obtain the capital equipment exemption, the applicant must demonstrate that "the purchases qualified as capital equipment," which means they were purchased for use in Minnesota and are used for a qualifying purpose, such as "manufacturing, fabricating, mining, or refinancing." Minn. Stat. §§ 297A.15, subd. 5, 297A.01, subd. 16(a), 297A.25, subd. 42 (1998). Since information as to the location and qualifying use of equipment is uniquely within the knowledge of the purchaser, it is logical that the statute requires the refund be claimed by the **purchaser**. It is undisputed that the equipment at issue in this

[1]The exemption is now found in Minn. Stat. § 297A.68, subd.5.

case was purchased by US WEST to expand, modernize, and maintain its telephone network in Minnesota.[2]

The refund claim in question here took the form of a letter to the Commissioner from Lucent Assistant Tax Director Oliver Struble in a letter dated September 29, 1998 ("Refund Claim"), which reads in pertinent part:

> Re: AT&T Corp.
> Network Systems Division
> Claim for Refund of Use Tax Remitted on Sales
>
> Dear Commissioner of Revenue
>
> Network Systems Division of AT&T Corp. hereby request[sic] the refund of Minnesota use tax collected and remitted in error on out of state sales. Use tax on sales was remitted under Minnesota taxpayer ID # of[sic] 8665401. The statute of limitations for the periods concerning the claim have been extended by waiver with the Department of Revenue….[3]
>
> Network Systems collected and remitted Minnesota use tax on sales of central office equipment to US West during the period of 1990 through 1992. Title transferred on these sales to US West outside the state of Minnesota, therefore the incidence of the tax is use tax on the purchaser.
>
> …US West is seeking the refund of use tax based on the allowance of capital equipment exemption which the Minnesota Tax Court

[2] US WEST believes that it spent approximately $150 million in 1990-92 on purchases of equipment from AT&T for this purpose. The equipment is used by US WEST in its central offices, its cables and trunks that connect the central offices to one another, its terminal facilities for the connection of cables, and its local distribution cable or loop that connects multiple subscribers into a single cable. The parties have agreed to defer the identification of specific items of exempt equipment until this Court has determined whether the capital equipment exemption generally applies to US WEST's purchases of telecommunications equipment in 1990-92.

[3] On June 10, 1998, AT&T and the Commissioner agreed to extend to September 30, 1998, the period within which sales and use tax refunds or assessments could be claimed by or assessed against AT&T for the periods from January 1, 1990, through February 28, 1995. On June 19, 1998, Paul Fortney, US WEST's Director of State & Local Tax Audits, sent a letter of Oliver Struble, Assistant Tax Director of Lucent, "request[ing]" Lucent to file a claim for refund "on [US WEST's] behalf" for Minnesota tax charged by AT&T on certain equipment purchased by US WEST.

> allowed a cellular company in their [sic] decision Minnesota RSA 10 Limited Partnership, decision no 6481. The amount of Minnesota use tax requesting [sic] to be refunded is $9,927,417.00.

Stipulation of Facts, Ex.D.

The first substantive portion of the Refund Claim, the Temporary Storage Claim, is a traditional vendor claim for the alleged overpayment of use tax and does not suggest that it is being made "on behalf of" US WEST. The second part of the Refund Claim, the Capital Equipment Claim, also fails to expressly indicate it is made on behalf of US WEST, but does state that "US West is seeking the refund of use tax based on the allowance of capital equipment which the Minnesota Tax Court allowed a cellular company in their decision Minnesota RSA 10 Limited Partnership, decision no 6481."

Both the Notice and the Order denying the Capital Equipment Claim did so on the ground that it had not been filed by the **purchaser** of the equipment, as required by Minn. Stat. § 297A.15, subd. 5. In this case, it is undisputed that AT&T, utilizing AT&T's tax identification number under which the tax had been remitted, filed the Capital Equipment Claim. It is also undisputed that AT&T was the **vendor** of, while US WEST **purchased,** the equipment for which Lucent filed the Capital Equipment Claim. Because the Capital Equipment Claim on its face is a refund claimed by AT&T, using AT&T's Minnesota tax identification number, with respect to the sale of equipment to US WEST, the Commissioner argues that it was properly denied for failing to comply with Minn. Stat. § 197A.15, subd. 5.

AT&T contends, however, that the Commissioner, AT&T, and the Consultant all acted as if US WEST had filed the Capital Equipment Claim and understood it to be one belonging to the **purchaser** as required by statute. In support of its position, AT&T points out that the Commissioner's representatives dealt throughout the administrative process with the Consultant retained by US WEST who held powers of attorney granted only by US WEST. AT&T acknowledges that "the claim was signed by Mr. Struble, an employee of Lucent," but contends that it was filed by US WEST because "it states upon its face that 'US West is seeking the refund of use tax based on the allowance of [the] capital equipment exemption' [and] Mr. Struble acted in behalf of US WEST in preparing and forwarding the claim to the Commissioner." Appellant's Brief p. 20, quoting Stipulation Exhibit D (p. 2).

Analysis

We are asked to interpret whether the parties' conduct can expand the statutory requirement that the capital equipment exemption refund claim must be made "by the **purchaser**" so as to deem a claim in this case made by AT&T, the **vendor**, to have been properly filed. We conclude that it cannot and, therefore, affirm the Commissioner's Order denying the refund. Because we hold that the proper party did not apply for the refund, it is unnecessary to address the timeliness of the claim or whether the equipment in question falls within the exemption.

Although the parties devoted most of their briefs and oral arguments to discussing the conduct and communications taking place prior to and during the pendency of AT&T's Refund Claim, we must first consider the plain meaning of the statute to see whether, on its face, it is clear or ambiguous. "Under the basic canons of construction, as codified in Minn. Stat. § 645.16, laws should be construed according to their ordinary meaning." ILHC of Eagan, LLC, d/b/a The Commons on Marice v. County of Dakota, File Nos. C0-01-7361, CX-02-7460 (Minn. Tax Ct. May 1, 2003). Where the statutory language is unambiguous, the parties' conduct cannot alter it. See Grimm v. Commissioner of Public Safety, 469 N.W.2d 749 (Minn. 1991). We will not tinker with statutory language in construing a tax statute and "supply that which the legislature purposefully omits or inadvertently overlooks." Green Giant Co. v. Commissioner of Revenue, 534 N.W.2d 710, 712 (Minn. 1995). As the United States Supreme Court has stated, "[t]here is, of course, no more persuasive evidence of purpose of a statute than the words by which the legislature undertook to give expression to its wishes." United States v. Trucking Ass'n, Inc., 310 U.S. 534, 543, 60 S.Ct. 1059, 1063 (1940). Thus, we will not supply terms that a party believes should be read into the law. Dahlberg Heating Sys. v. Commissioner of Revenue, 546 N.W.2d 739, 743 (Minn. 1996).

Minn. Stat. § 297A.15 (1998) is at issue. Specifically, this case requires us to examine the phrase "[u]pon application by the purchaser" to determine whether the Refund Claim satisfies the statutory requirement. Here, it is undisputed that the Capital Equipment Claim was submitted in a Sept. 29, 1998

letter from Oliver Struble on Lucent letterhead specifying AT&T's Minnesota tax identification number under which the tax had been remitted. Although the letter makes reference to "US West seeking the refund of use tax based on the allowance of capital equipment exemption," no tax identification number of US WEST or indicia of AT&T's acting on behalf of US WEST appears in the letter. Furthermore, the inside reference identifies the claimant as "AT&T Corp. Network Systems Division." Nowhere does the letter indicate that US WEST is the party filing the claim or that AT&T is filing a claim at the behest of or on behalf of US WEST. At most, the reference to US WEST is a secondary one. On its face, the letter is a refund claimed by AT&T, the **vendor** of the equipment.

AT&T argues, however, that the Commissioner, AT&T, and the Consultant retained by US WEST to handle the Refund Claim all regarded the claim as one filed by US WEST. Based upon the parties' conduct in processing and disposing of the claim, AT&T contends the statutory requirement for the claim to be made by the **purchaser** has been met. In essence, AT&T urges us to find that the parties understood the purchaser to be US WEST and dealt with each other accordingly, and thus, the statute was satisfied. In support of its position, AT&T asserts that the Commissioner relied upon a power of attorney dated May 23, 1996, granted to the Consultant by US WEST in dealing with the Consultant about the Refund Claim. As further evidence of the parties' meeting of the minds as to the claim having been filed by US WEST, AT&T points out that on June 15, 2000, the Commissioner requested that the Consultant submit a power of attorney on the Department of Revenue's printed form, REV-184, authorizing the

Consultant to represent US WEST before the Commissioner. In neither instance is AT&T or Lucent referred to in either power of attorney, and the Commissioner never requested AT&T or Lucent to provide one. Finally, AT&T argues that the Commissioner acknowledged that US WEST was the refund claimant in a letter to Struble dated February 19, 1999, in which the Commissioner states that "[w]e are also holding an appeal for a refund requested by US West Communications for a claim denial notice that was dated February 19, 1999." Stip., Ex. N.

On the other hand, the Commissioner argues that the only substantive communications between him and the Consultant or Struble concerned the Temporary Storage Claim, not the Capital Equipment Claim now at issue. He further maintains that such contact is not inconsistent with its position that the Refund Claim was improperly filed by AT&T instead of US WEST, the purchaser of the equipment. The Commissioner contends that it is frequently necessary for the customer to provide information necessary to establish that the transaction is not subject to tax. Since only the customer would normally have information about how the property was used, and that use can determine the taxability of the transaction, the Commissioner contends it needed to seek information from US WEST to verify AT&T's Temporary Storage Claim. Moreover, the Commissioner argues that his conduct was consistent from the outset and did not contradict the position he takes that AT&T, not US WEST, filed the Capital Equipment Claim. The Commissioner points to the initial action on the claim, denying the capital equipment refund "[s]ince you are the seller of the equipment and not the purchaser…." Stip., Ex. E at p. 3. Further, the Commissioner argues

that even on administrative appeal, Struble does not dispute the Commissioner's denial on the basis that the claim was really filed by US WEST but, rather, states that dismissal of the claim would be "a form over substance argument" that would harm US WEST "only because of an error in the type of paperwork submitted." Stip., Ex. E-1. Nowhere does Struble suggest that the refund claim was actually filed by US WEST. Additionally, the Commissioner cites a letter in response to AT&T's administrative appeal in which the Commissioner informs Struble that "No refund can be granted for the capital equipment refund claimed for equipment sold to US WEST" because, by statute, the refund must be claimed upon "application by the *purchaser*," and "shall be paid to the *purchaser*." Stip., Ex. E-2 (emphasis in original). Hence, the Commissioner argues that nothing between the parties indicates the Commissioner considered US WEST had filed the Refund Claim.

The facts upon which the parties rely are not in dispute. Nobody disputes that AT&T was the **vendor**, and US WEST was the **purchaser** of the equipment in question. The threshold question, therefore, is whether the Capital Equipment Claim satisfies the procedure set forth in Minn. Stat. § 297A.15(1998) for properly claiming the capital equipment exemption. In short, we must decide whether Struble's letter dated September 29, 1998, complies with the statutory requirement that the request for the exemption be made "[u]pon application of the purchaser."

Minnesota Statute Section 297A.15 unambiguously describes the procedure by which the exemption for capital equipment is to be claimed. That

procedure specifies the claim is to be made "[u]pon application by the **purchaser**". The application in this case was made by letter specifying AT&T as the claimant and on Lucent letterhead referring to AT&T's taxpayer identification number. A secondary reference to US WEST buried in the body of the Refund Claim does not change the fact that the letter specifies that AT&T is the claimant. Indeed, there is no indication in the letter application that AT&T or Lucent is acting on behalf of US WEST. Further, nothing in the correspondence between the parties indicates the Commissioner considered that US WEST had filed the Capital Equipment Claim.

We reach our decision based upon the language in Minn. Stat. § 297A.15, subd. 5, which refers to an "application" by the purchaser. AT&T's attempts to distinguish between Struble having "signed" the Refund Claim and US WEST having "filed" it are not persuasive. The application here was made by AT&T, the **vendor**. Because the Refund Claim cannot reasonably be construed as a capital equipment claim made "[u]pon application of the purchaser," it fails to comply with Minn. Stat. § 297A.15, subd. 5 and was properly denied by the Commissioner. We, therefore, affirm the Order.

S.A.R.