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Honorable Upendra J. Chivukula
888 Easton Avenue
Somerset, New Jersey 08873

Dear Assemblyman Chivukula:

You requested through your letter of September 3, 2008, that we answer several questions that you have about the New Jersey business personal property tax (BPPT) imposed on certain property used in the business of incumbent telephone companies, also known as Incumbent Local Exchange Carriers (ILECs).

You have posed several specific and detailed questions on this subject in your questions numbered 1.a., b. and c. Initially, you inquire whether your understanding of the law is correct that an ILEC will no longer be required to remit BPPT *once an ILEC no longer* provides "dial tone" and "access" to 51% of a "local telephone exchange." Our review of the relevant statute does not lead us to reach a similar understanding of the law. Therefore, the several detailed questions that you ask about how those terms are to be determined and actually administered in those circumstances, in Questions No.1.a through 1.c., seem to present hypothetical questions on which we have no knowledge or information from which we believe can be provided any meaningful responses.

Your understanding of the law seems to assert that under the current statute, certain municipalities may lose their entire collections from this tax if the ILEC paying the tax determines that its local exchange business shrinks in that municipality to below 51% of all local exchange telephone business throughout the municipality. This assertion seems to rely on a long-standing "definition" of local exchange company that is used in the statute section imposing the business personal property tax. This definition provided for the identity of the limited class of taxpayers that were basically frozen in place in 1997 as the sole continuing class of business personal property taxpayers, based upon characteristics of their business at a point in time when they paid the then-scheduled-to-be-repealed telecommunications franchise and gross receipts tax (P.L.1940, c.4). Under your understanding of the statute the definition would serve as a continuing, annual test that could be employed to determine whether the business that was identified in 1997 under a major State telecommunications provider tax reform measure, as a local exchange company that used to pay the franchise and gross receipts tax, would lose that identity and no longer be a local business personal property taxpayer.

The relevant statute, R.S.54:4-1, provides in part:

> "Personal property taxable under this chapter shall include, however, only the machinery, apparatus or equipment . . . used in business of local exchange telephone, . . . companies, . . . that were subject to tax as of April 1, 1997 under P.L.1940, c.4 (C.54:30A-16 et seq.) as amended, ... As used in this section, "local exchange telephone company" means a telecommunications carrier providing dial tone and access to 51% of a local telephone exchange."

We find no support for that understanding of the law in the available legislative history to the 1998 statutory changes. We are not aware whether that understanding of the law has been asserted in any local taxing district and we do not believe that the Division of Taxation has taken a position or made an interpretation in such a case.

Our understanding of the above language and the legislative intent in 1998 was to describe only the then existing ILECs and to grandfather their business personal property into the local property tax base. Any change in their dial tone and access/ local exchange business after the 1997 grandfathering was not meant to change whether their property was in or not in the local tax base. An interpretation that the language was meant as an ongoing, annual and currently necessary precondition to taxation likely would have been so stated in the full first clause. In addition, such an ongoing annual test presumably would have had to provide some statutory authority to allow a local tax assessor to measure and audit the dial tone and access business of all carriers within the local taxing district. Otherwise, the law would allow a taxpayer in a taxing district to unilaterally decide that they were no longer a taxpayer because of their annual loss of competitive business or a competitors' relative gain of business, the records for which might be proprietary to their and their competitors businesses.

You have also asked whether your understanding of the method by which the value of an ILEC's business personal property is determined for purposes of assessing the BPPT is correct. You provide in your question No.2 that a municipality collects the BPPT on the net book value of the ILEC's business personal property within the municipality's borders and that this value is defined as the value report to the federal Internal Revenue Service for federal tax purposes, regardless of the revenue generated by the equipment. This would appear to be the correct starting point for the assessments of this kind of personal property recorded on the tax records of each local taxing district. N.J.S.A.54:4-2.45 is the relevant statute and it provides that personal property used in business (or business personal property) is assessable at the local level by the local assessor at the general tax rate of the taxing district in which the property is located. The taxable value of such property is calculated according to its "true" value, and becomes part of the ratables of the respective municipality.

N.J.S.A.54:4-2.45 provides that "[t]he true value of taxable tangible personal property used in business owned by a taxpayer shall be presumed to be the original cost of such property less depreciation as of the assessment date, as shown by the books and records of the person assessed, provided that the true value of depreciable property shall, so long as such property remains in use or is held for use, be presumed to be not less than 20% of its original cost."

The true value of personal property is the original cost of the property less depreciation; however, the true value of depreciable property may not be reported at less than 20 percent of its original cost so long as it remains in use. The original cost less depreciation as of the assessment date may be shown by the books and records of the taxpayer. Thus the term "Total Net Value" is used on the tax return form PT-10, "Return of Tangible Personal Property Used in Business By Local Exchange Telephone Companies." Instructions to the Taxpayer on this tax return form permit the taxpayer to effectively use what you may be describing as "net book value." Where it is impracticable with respect to items of like property, held by the taxpayer in more than one taxing district, to maintain cost records which account separately for each such item of such depreciable property or to assess each item separately, the taxpayer may maintain its costs, value and depreciation records relative to such property by averaging in group or composite accounts. Because there is a large amount of similar business personal property located in most municipalities, the individual items of property, from telephone poles to electronic and mechanical telecommunication switches, are not individually assessed by local municipal property tax assessor, but are taken as given in the taxpayers group or composite accounting reports of property value by municipality. Permission for group or composite accounting of the net book value of large segments of similar property in multiple municipalities may be requested from the Director of the Division of Taxation and may be routinely granted. No revenue generation by the equipment (presumably for the owner) is mentioned in the assessment statute or the tax return or its instructions.

To aid in understanding of total Statewide book value of property over a period of time, which you report as having dropped from over $3 billion 10 years ago to $1.8 billion in 2005, we note for you the apparent shift in Statewide book value of property of one taxpayer that occurred under a change in use of depreciation methods for that property. In 1999, Bell Atlantic (predecessor to New Jersey Bell) made a decision to utilize a different method of depreciation in calculating the book value of its taxable property that it recorded in large group or composite accounts. (Individual items of property, very numerous and of many types, were not separately valued.) Bell Atlantic chose to switch from a Federal Communications Commission (FCC) depreciation schedule to another acceptable method of depreciation utilized for Internal Revenue

Service (IRS) purposes beginning with Tax Year 2000. The IRS schedule effectively shortened the life span of Bell Atlantic's taxable property, thus lowering its local tax value liability in most cases. The projected loss of revenue to municipalities was estimated at approximately $30 million Statewide beginning with the first applicable tax year.

The taxable value of the personal property of used in the business of local exchange telephone companies are compiled on a town-by-town basis in the annual Abstract of Ratables compiled by the Local Property Tax Branch of the Division of Taxation. While you have inquired about net book value reported by these companies, we have access to taxable value but not net book value. Also, because of the aggregate and combined manner in which total taxable value is reported, we do have not information about what specific type of lines and equipment has been placed in service in these businesses and has been included in their reported taxable value.

We have used the Abstract of Ratables to determine the amount of total Statewide taxable value and total Statewide business personal property taxes assessed for the years you identified:

Year	Taxable Value	Taxes Statewide
1995	$3,269,254,214	$103,452,829
1996	$3,146,551,710	$101,919,416
1997	$3,005,952,705	$98,319,641
2005	$1,811,265,748	$59,848,618
2006	$1,679,109,379	$54,336,202
2007	$1,669,154,254	$51,012,695

Town-by town information for Taxable Value and that value multiplied by the local general tax rate for each municipality for those years is provided in attachments to this letter, one attachment for years 1995, 1996 and 1997 and one attachment for years 2005, 2006 and 2007. We have no information on an exchange-by-exchange basis. We are not aware that this information is reported for purposes of administering this local personal property tax.

I hope this background review has been helpful and addresses your concerns. If you have any further questions on this matter please do not hesitate to contact me.

Sincerely,

Howard Rotblat

Howard K. Rotblat
Principal Staff Counsel

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Enclosures (2)