

Refunds of Federal Telecommunications Taxes Available Based on Recent Court Decisions

The scope of the Federal Communications Excise Tax has been drastically reduced by recent appellate court decisions. The U.S. Court of Appeals for the Third Circuit recently held that the federal excise tax does not apply to long-distance telephone services that are charged based on a fixed per-minute rate or per-month rate. ([Reese Brothers Inc. v. United States](#), No. 05-2135 (3d Cir. May 9, 2006)). The Third Circuit is now the fifth federal appeals court to firmly rule against the IRS on this issue, joining the Second, Sixth, Eleventh and D.C. Circuits.

The Federal Communications Excise Tax is a 3 percent tax imposed on certain local and long-distance telephone charges. The IRS has for years taken the position that the federal excise tax applied to all long-distance charges, regardless of how the charges are billed. But in these recent appellate cases, the courts have unequivocally held that the language of the enabling statute only authorizes the tax on a very narrow subset of long-distance charges.

These decisions are especially important for large consumers of telecommunications services such as internet service providers, call centers, professional services firms or any organization with large volumes of outgoing telephone calls. These decisions will likely enable such companies to avoid payment of the tax going forward and obtain refunds of excise taxes paid over the past three years. Large telecommunications consumers should immediately analyze their telecommunications accounts to determine whether their long-distance plans are subject to the federal excise tax, as well as state and local telecommunications taxes. If not subject to the tax, appropriate refund petitions should be prepared and filed with the IRS.

If you have questions about the Federal Communications Excise Tax and how it applies to you, please contact Mike Gruin or your Stevens & Lee attorney. Stevens & Lee has significant experience in telecommunications tax issues and can assist you in petitioning for refunds of the federal excise tax. In many cases we can structure a success-based fee for review of this and other tax issues.

For more information about Stevens & Lee's State and Local Tax Practice, please visit our website at www.stevenslee.com/practice/salt.htm. Tom Bowen and Mike Gruin together have over 25 years of state and local tax experience. Contact them directly at:

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