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## Out-of-State Wireless Telecommunications Providers May Incur Sizable Increase in Taxable Assets in Massachusetts

*Bell Atlantic Mobile of Massachusetts Corp., Ltd. v. Commissioner of Revenue 884 N.E.2d 978, (Mass. 2008)*

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On April 28, 2008, the Massachusetts Supreme Judicial Court held in *Bell Atlantic Mobile of Massachusetts Corp., Ltd. v. Commissioner of Revenue* that wireless telecommunications providers, specifically Bell Atlantic Mobile (“Verizon Wireless”), do not qualify as telephone companies for purposes of certain favorable tax treatment. Wireless telecommunications providers are no longer eligible for out-of-state corporate utility property tax exemptions under G.L. c. 59, § 5, Sixteenth, and for central valuation of personal property under G.L. c. 59, § 39.

This decision will have a substantial effect on the taxable property of many wireless telecommunications providers. Prior to this decision, out-of-state wireless telecommunications providers were taxed only on electrical or power-generating equipment. Now, they will be taxed on antennas, transmitters, receivers, amplifiers, and switching equipment, because they are no longer eligible for corporate utility exemptions. This will likely lead to a significant increase in the taxable assets of many out-of-state wireless telecommunications providers. For example, Verizon Wireless’ taxable assets leaped from \$4,116,200 in fiscal year 2007 to \$492,751,000 in fiscal year 2008 as a result of taxation on property that was once exempt.

Additionally, wireless telecommunications providers are no longer eligible for central valuation of their property by the Massachusetts Commissioner of Revenue. Prior to the *Bell Atlantic* decision, the Commissioner of Revenue determined the valuation used by local assessors for property taxes. Now, local assessors will value the property individually, forcing wireless telecommunications providers to battle potentially differing valuations, and increasing their administrative burden in the context of property tax appeals.

The end of corporate utility exemptions and central valuation of personal property for wireless telecommunications providers derives from the Supreme Judicial Court’s determination that wireless telecommunications providers are not telephone

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companies. In *Bell Atlantic*, the Court found that, unlike land-line telephone companies, wireless telecommunications providers do not have an “extensive, physically interconnected distribution infrastructure.” Additionally, the Court noted that the rationale behind central valuation - consistency in the taxation of physically interconnected distribution infrastructures - does not apply to wireless telecommunications providers, who do not have interconnected infrastructures.

Likewise, the Court suggested that the rationale behind the corporate utility exemption would be inapplicable to wireless telecommunications providers, as well. Unlike corporate utilities, which are natural monopolies and subject to rate-of-return regulation, wireless telecommunications services are not natural monopolies; thus, tax exemptions to wireless telecommunications providers would not be recoverable through rate-of-return regulation.

The Court distinguished this case from *RCN-BecoCom, LLC v. Commissioner of Revenue*, 820 N.E.2d 208 (2005), suggesting that wireless telecommunications providers are still eligible for corporate utility exemptions and central valuation if they provide land-line telephone services constituting a “sufficiently substantial portion of [their] over-all business.” It is unclear what percentage of overall business must be provided by land-line telephone services to be eligible; however, the RCN Court suggested that as little as 20% would be sufficient. For wireless telecommunications providers without land-line telephone services, the Bell Atlantic Court has made it clear that the only recourse would be to seek statutory change from the Legislature.

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