



SB 492 Facts

The bill

SB 492, as amended by the Senate, would extend the property tax exemption for wooden poles and conduits owned by telecommunications companies until 2012 and establish a legislative committee to study the exemption. Telecommunications companies have paid no tax on these poles and conduits since 1990.

If SB 492 is not passed, the exemption will expire on July 1, 2010.

History

Until 1990, the state assessed a *personal* property tax on telecommunications poles and conduits. The tax was paid to the state. During the same period, and continuing to the present, poles and conduits owned by *electric* utilities have been taxed as *real* property; they pay property taxes to the municipalities in which the poles and conduits are located. *See* RSA 72:8.

In 1990, the state repealed the personal property tax on telecommunications poles and conduits and enacted RSA 82-A, the communications services tax (CST), a tax (now 7 percent) on the gross charges for telecommunications services. This is a tax *on the customer*, not on the company.

After the repeal of the personal property tax on telecommunications poles and conduits, some municipalities began trying to tax the poles and conduits as real property. In 1996, the New Hampshire Supreme Court ruled that they could not do this, because the poles and conduits were personal property, not real property.

In 1998, the legislature enacted RSA 72:8-a, stating that “all structures, poles, towers, and conduits employed in the transmission of telecommunication, cable or commercial mobile radio services shall be taxed as real estate” (thus effectively overruling the 1996 Supreme Court decision). However, at the same time, the legislature enacted RSA 72:8-b, which gave a temporary exemption to “any conduit that is not part of a building and any whole or partial interest in wooden poles, employed in the transmission of communications that are subject to the [CST].” That exemption was to last as long as the rate of the CST remained above 4.5 percent, but was to expire, in any event, on July 1, 1999.

The “temporary” exemption under RSA 72:8-b was extended in 1999, 2001, 2003, 2004, and 2005. In 2003 the reference to the rate of the CST was eliminated, so the exemption remains in place as long as the legislature continues to extend it, regardless of the CST rate.

The current law

Under the current law in New Hampshire, poles and conduits owned by *electric* utilities are fully taxable as real estate in the municipality in which they are located. That has been the law at least since 1905. Identical poles and conduits owned by *telephone* companies are exempt from any taxation. If a pole is jointly owned by an electric company and a telephone company, the electric company’s share is taxed, and the telephone company’s share is exempt.

Taxation of telephone poles in other states

According to a survey done by the legislature in 2003, ***48 states tax telephone poles as either real or personal property***. In some of those states the tax is imposed at the state level, but in many of those cases, the state shares the revenue with municipalities. *Only two states—New Hampshire and Pennsylvania—do not tax the poles at all.*

Pole ownership and use

According to a legislative committee report issued in 2004, at that time Verizon used 505,000 poles in New Hampshire. Of those, 434,000 were owned jointly by Verizon and electric utilities; 15,000 were owned solely by Verizon; and 56,000 were owned solely by electric utilities (with Verizon's equipment attached to them). We understand that these numbers have not changed significantly since then, except that FairPoint bought Verizon's interest in the poles.

Telephone and electric companies routinely enter into agreements with other users, including electric, cable, and wireless telephone companies, to place attachments on the poles. They charge pole attachment fees to these users, and are able to recover a portion of the cost of maintaining the poles through these fees. According to the 2004 committee report, ***Verizon was earning \$1.85 million dollar a year in attachment fees.***

The tax impact of eliminating the exemption

No one knows how much the telecommunications companies would pay in additional property taxes if the exemption is eliminated. The only "objective" estimate appears in the 2004 study committee report. That report, based on a number of assumptions, suggested that Verizon would pay approximately \$3 million more in property taxes. It is impossible to know how close that is to the actual figure, but it seems fair to conclude that the number would be in the millions of dollars, but not in the tens or hundreds of millions. Of course, other telephone and cable companies would pay some additional amount as well.

If telecommunication companies begin paying property taxes on their poles and conduits, other taxpayers' bills would be reduced accordingly. However, if the total amount statewide is only a few million dollars, the effect on an individual tax bill would be minimal—probably a few dollars a year. Similarly, the effect on landline, wireless, and cable bills (assuming the phone and cable companies pass the cost on to their customers) would be minimal. However, the numbers are not what matters; what matters is the principle that the telecommunications industry should not be immune from a tax that everyone else pays.

Arguments for continuing the exemption

No one disputes that the poles and conduits owned by telecommunications companies are identical to those owned by electric companies. No one claims there is any principled reason to exempt this class of property from taxation. All of the arguments for continuing the exemption are based on a desire to accommodate the telecommunications industry and its customers.

The cost to telephone customers. The most common argument for continuing the exemption is that if landline telephone companies are required to pay taxes on their poles, they will pass the cost on to their customers, and this will disproportionately harm customers who do not have the option to switch entirely to wireless phone service. In fact, FairPoint has claimed that the entire cost would be borne by its customers, and it therefore would constitute a tax on "the elderly and low-income."

That is simply false. Everyone in the industry knows the landline companies will pass much of the cost on to the cable, electric, and wireless companies by raising the fees they charge those companies

to attach equipment to the poles. Those companies, in turn, will pass the cost on to *their* customers. Thus, the cost will be spread among landline, wireless, cable, and electric customers.

Even if all of the cost were borne by landline customers, it is unclear why there would be anything wrong with that. Property taxes are, for every other industry, a cost of doing business. Those costs are borne by customers. That is how business works. When one industry is exempt from property taxes, that burden is shifted to other taxpayers (including other businesses). It makes no sense to require *taxpayers* to bear one industry's costs of doing business.

The level playing field. A related argument is that landline phone companies need the exemption to maintain a "level playing field" with wireless companies, because wireless companies operate without poles and conduits, and therefore would escape the tax.

Although wireless companies do not own wooden poles, they do own towers, and those towers are subject to property taxes. The wooden poles owned by landline companies are exempt. How anyone could consider the current situation a "level playing field" is a mystery.

In any event, this issue does *not* pit landline companies against wireless companies. Representatives of the major wireless companies (as well as the cable companies) have been lobbying *for* the continued exemption. Presumably this is because they recognize that they will bear part of the cost if the landline companies are taxed on the poles. Instead, this issue pits the entire telecommunications industry—all of which benefits from the exemption—against municipalities and taxpayers.

The "double tax." Another argument is that phone companies are already burdened by the CST, and the pole tax exemption is necessary to avoid a "double tax." This is nonsense. The CST is paid by customers, not by the phone company. The company merely collects the tax for the state. In this respect, it is identical to the meals and rooms tax, the tobacco tax, the gasoline tax, and—most notably—the electricity consumption tax under RSA 83-E, which is *collected* by the electric utility, but *paid* by the customer. Yet no one suggests that restaurants, hotels, convenience stores, gas stations, or electricity poles should be exempt from property taxes.

Franchise fees and the Rochester case. A similar claim is that telecommunications companies are already paying taxes in the form of franchise fees or other charges. Phone companies do not pay franchise fees. The only "fee" they pay to municipalities is a *one-time* license fee of *ten dollars* to install poles in a public right-of-way. The fee is not ten dollars *per pole*—it is ten dollars for a license to install whatever number of poles the company needs.

In 2004 the New Hampshire Supreme Court, in *Verizon v. City of Rochester*, held that the city had the right to tax Verizon on the value of its use of the city's rights-of-way. When a municipality makes an agreement allowing a private party to use or occupy municipal property, RSA 72:23, I(b) requires that party to pay taxes on the value of the property interest. When phone, cable, gas, or electric companies are permitted to put their equipment in a municipal right-of-way, they have a property interest that is subject to taxation. However, as the court made clear in a subsequent (2007) decision in the same case, that is different from taxing the equipment itself. If a town enters into a 99-year ground lease allowing a business to place its building on municipally owned land, RSA 72:23, I(b) would require the business to pay property tax on the value of the lease; but it would still have to pay property taxes on the building itself. Similarly, a phone company's payment of taxes on its use of municipal property is not a justification for exempting it from taxation of its poles.

Cable companies do typically pay franchise fees to compensate municipalities for their use of the public right-of-way. These are negotiated with the municipality; again, this has nothing to do with whether the poles and conduits should be taxed.

“Same pants, different pocket.” A frequently heard comment is “What difference does it make? We pay for it in our taxes or in our phone bill. It’s all the same.” Following that logic, there is no reason for *any* business to pay property taxes—we could just let residential taxpayers support them. No doubt this would lead to lower prices for groceries, gasoline, and movie tickets, as well as lower phone bills—but dramatically higher property taxes. That certainly is one approach, but one that has never been used in this country.

“This is not the time.” A number of legislators and lobbyists have stated that “this is not the time” for “a new tax on business.” Of course, the expiration of this exemption does not create a new tax. It merely ends an arbitrary, single-industry exemption from a tax that everyone else pays.

Further, telephone companies obviously are not the only entities experiencing difficult economic times. The implication of this argument—that telephone companies are struggling while municipalities and property taxpayers are doing fine—is troubling. Eliminating the exemption would provide property tax relief to homeowners and businesses that are currently carrying more than their fair share of the burden.

In written testimony before the Local and Regulated Revenues Committee, Comcast stated proudly that it had invested \$55 million in its New Hampshire operations in 2009. Yet it seeks immunity from property taxes, even as homeowners struggle to pay theirs, and as municipalities struggle with higher costs and falling revenue.

Remember that ***these poles are income-producing property***, generating millions of dollars a year in attachment fees. *In what other industry can a company use property to produce business income, receive rental income from the property at the same time, and pay no tax on the property?*

The pole tax exemption has been extended repeatedly, in good times and bad. Two years from now, presumably the economy will be doing better and FairPoint will be out of bankruptcy. Does anyone seriously believe the industry will then concede that “it’s time” to end the exemption?

“No one knows how to assess the poles.” This is ridiculous. Towns have been assessing the value of the electric company’s interest in the poles for decades. If they know what half of the pole is worth, how hard is it to figure out what the other half is worth?

“We need to study the issue.” Telecommunications companies have known for ***five years*** that the exemption has a 2010 expiration date. *They* are the ones trying to change the law. They possess all the information they need to demonstrate the effects of letting the exemption expire. They could have studied the issue and presented their conclusions to the legislature this year. Instead, all they can offer are slogans about level playing fields and new taxes.

The only way to know the impact of ending the exemption is to end the exemption. We have lived with the exemption for 12 years. Let’s try living without it for a few years.