

TracFone Wireless, Inc. v. City of Renton

Takeaways from Renton's Telephone Utility Tax Win for Washington Cities

Presented by Kari Sand in service to the City of Renton

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Key Milestones – Part 1

2019-2021

2007-2017

Audit Period

Audit conducted by Taxpayer Recovery Services (TRS) from January 1, 2007 - October 31, 2017.

2.14.19

Assessment Issued

TracFone paid the tax, interest, and penalties under protest as a condition precedent to appeal.

2020-2021

Discovery

- Depositions
- RFAs, ROGs, & RFPs
- No fact stipulations

3.12.2021

SJ Ruling Issued

- TF Motion for Reconsideration
- April 19, 2021 – HE Ruling Upon Reconsideration

5.27.2021

HRG - Tax, Interest & Penalties Due

The Renton Hearing Examiner conducts a hearing on the amount of tax, penalties & interest due.

Key Milestones – Part 2

2021-2024

7.30.21

Writ of Review

TracFone files a statutory writ of review to KCSC under chapter 7.16 RCW

10.31.22

KCSC HRG

Parties re-litigate legal issues decided by Renton Hearing Examiner

3.10.23

Appeal to COA, Div. I

- Parties exchange briefs
- Oral argument presented on 1.24.2024

4.29.24

COA Decision

- TracFone's Motion for Reconsideration denied on 5.29.24
- TracFone files Petition for Review

12.4.24

Review Denied

- TracFone's Petition for Review denied by WA State Supreme Court on 12.4.24
- Renton's Judgment entered & paid

Authorizing Statutes, Codes & Rules

RCW 35A.82.055 & .060

See also, RMC 5-11-1(A)(1)

State statute (and local code) authorizing code cites to levy and collect a utility tax “for the privilege of conducting a telephone business within the City limits,” which is measured by gross receipts from the business.

- Excludes non-Renton revenues, plus equipment, and data revenues



Authorizing Statutes, Codes & Rules

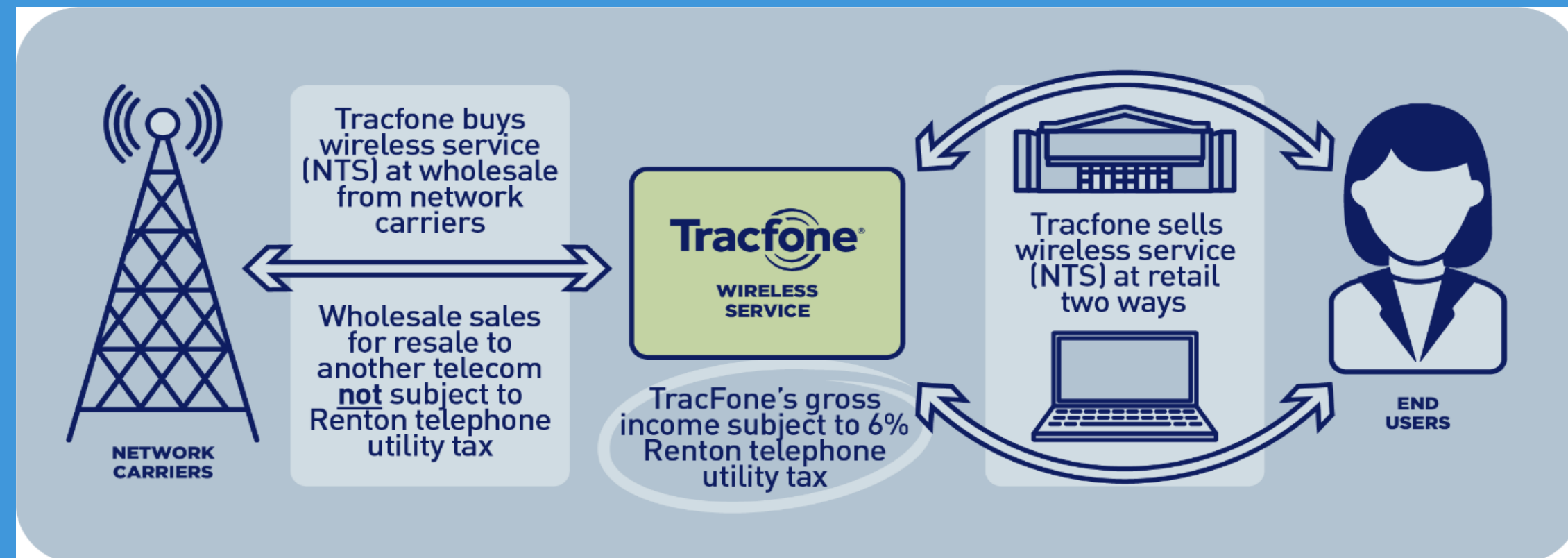
RCW 82.16.010	Definitions [Same as RMC 5-11-1(A)(2)]
(7)(b)(iii)	"Telephone business" means the business of providing network telephone service.
(7)(b)(ii)	"Network telephone service" means the providing by any person of access to a telephone network... or the providing of telephonic, video, data, or similar communication or transmission for hire, via a telephone network, ...

Authorizing Statutes, Codes & Rules

RMC 5-11-1(A)(2)	Definitions.
RMC 5-21-2(C)	City's assessment is <i>prima facie</i> correct.
RMC 5-26-18(B)(5)	<i>"The appellant taxpayer shall have the burden of proving by a preponderance of the evidence that the determination of the Department is erroneous."</i>
RMC 5-26-18(B)	Requires the total tax assessment amount to be paid under protest as a condition precedent to bringing an appeal.

TracFone's Position

- The network carriers (e.g., T-Mobile, Verizon, AT&T) own the facilities and, thus, TracFone does not provide its customers access to telephone services.
- The retailers (e.g., Walmart, Fred Meyer, etc.) resell the telephone services, not TracFone, so revenues from retailers are exempt under the resale proviso.



TracFone's Business Model:

- Similarities to *TracFone v. DOR*, 170 Wn.2d 273 (2010) (E-911 tax case)
- Marketing Materials (brochures, website, etc.)
- Terms & Conditions of service with customers
- Contracts with network carriers: TracFone buys or leases excess airtime and resells it at retail.
- Contracts with retailers: TracFone distributes handsets and airtime cards through numerous retailers, including retailers in Renton, WA.



Administrative Hearing – Key Takeaways

Pure legal question at issue: *Whether TracFone provided its wireless customers access to a telephone network.*

- Parties aimed to educate the Hearing Examiner about utility tax and TracFone's business model
- Evidence outside the assessment file needed
 - Discovery and investigation conducted
 - City relied on an expert witness
- TracFone filed MSJ
- The City filed MPSJ
 - Leaving the amount of tax, interest, and penalties to be decided after ruling on tax liability.

~ INTERMISSION ~

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TracFone's Appeal to King County Superior Court

Relief Sought:

Statutory writ of review, chapter 7.16 RCW

Standard of Review:

Examiner's decision is reviewed *de novo*

Outcome:

The King Country Superior Court **affirmed** the Renton Hearing Examiner's decision, and TracFone appealed to the Washington State Court of Appeals, Division I.

TracFone's Appeal to Washington Court of Appeals, Div. 1

Review Process:

Under the City's ordinance, the hearing examiner's decision is "subject to review by either party under the provision of RCW 7.16.040," i.e., the statutory writ of review process. RMC 5-26-19. Further, the court has consistently held that a writ of review is the proper means to appeal a municipal hearing examiner's determination on tax issues. *Foss Maritime Co. v. City of Seattle*, 107 Wn. App. 669, 672, 27 P.3d 1228 (2001).

Standard of Review:

The Court of Appeals reviewed *de novo* whether summary judgment in Renton's favor was proper. CR 56(c)

Outcome:

In a published opinion, filed on April 29, 2024, the appellate court affirmed the Renton hearing examiner's decision, maintaining TracFone's tax liability to Renton as a telephone business, including its gross revenues from local third-party retailers.

WSAMA's Amicus Curiae Memorandum

- A team from **Foster Garvey**, on behalf of the **WSAMA Amicus Committee**, filed a robust supporting brief, explaining the implications of this case to WA cities.
- The Court of Appeals specifically cited WSAMA's amicus brief in its published opinion:

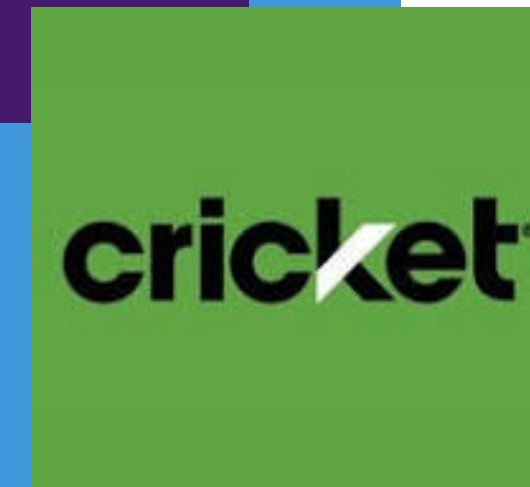
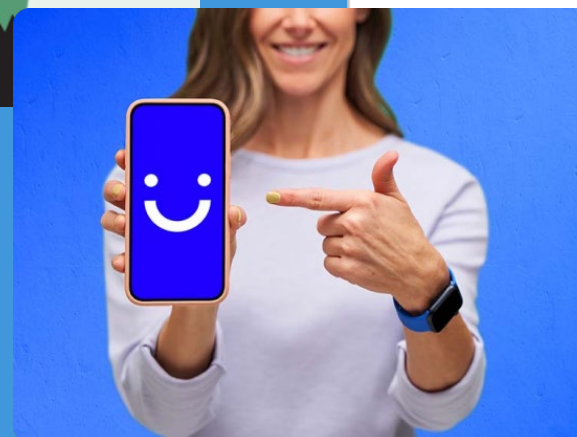
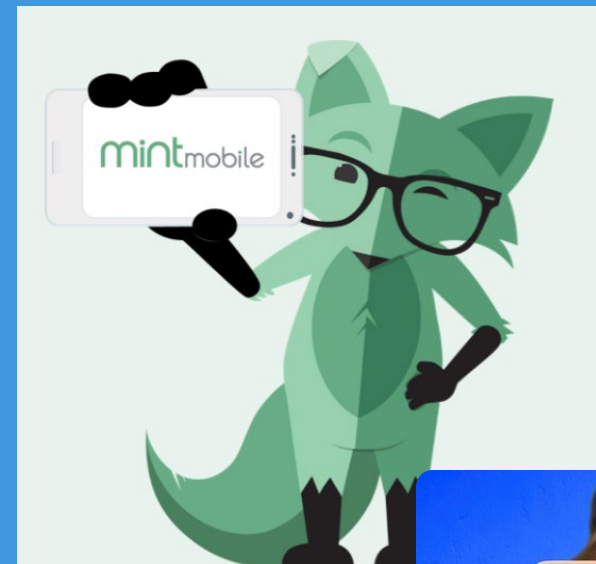
“Additionally, as amicus Washington State Association of Municipal Attorneys argues, the statutory scheme here is analogous to and consistent with other public utility taxes, including those on water or gas services... Similarly, as amicus correctly argues, in the present case, ‘the service is being provided to the customer through TracFone, not the retailers,’ who are the equivalent to a gas distributing company.”

TracFone's Petition for Review

- The City filed an Answer Opposing TracFone's Petition for Review
- **City's Argument:** Division I properly applied the summary judgment standard and properly affirmed the Renton Hearing Examiner's findings that, as a matter of law, TracFone's gross income from its sales through Renton retailers was subject to Renton's telephone utility tax and not exempt under the resale proviso.
- The Washington State Supreme Court denied TracFone's PFR, finalizing Division I's decision, on December 4, 2024.

THE KEY TAKEAWAY

Prepaid wireless providers are “telephone businesses”




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Thank you!

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