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SUPREME COURT OF ARIZONA

CITY OF PEORIA, a municipal corporation;) Arizona Supreme Court
and CITY OF PHOENIX, a municipal) No. CV-10-0218-PR
corporation,)
) Court of Appeals
Plaintiffs/Defendants/Appellees,) Division One
) No. 1 CA-TX 09-0001
v.)
) Arizona Tax Court Nos.
BRINK'S HOME SECURITY, INC., a) TX2006-000113
Delaware corporation,) TX2006-000116
) TX2006-000228
Defendant/Plaintiff/Appellant.) TX2006-000335
) (Consolidated)
)

**BRIEF OF AMICI CURIAE ARIZONA-NEW MEXICO CABLE
COMMUNICATIONS ASSOCIATION AND
THE BROADBAND TAX INSTITUTE
(FILED WITH CONSENT OF ALL PARTIES)**

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and The Broadband Tax Institute

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INTRODUCTION AND STATEMENT OF INTEREST

This Court should grant the Petition for Review to correct an error by the Court of Appeals that is likely to have far-reaching and unanticipated consequences for the distinction between *intrastate* and *interstate* business activities. If allowed to stand, the Court of Appeals' split decision will create uncertainty and confusion for businesses that rely on broadband and telecommunications technology to deliver services in Arizona. Judge Johnsen, in her dissent, correctly noted that the Majority opinion cannot be reconciled with the plain language of A.R.S. § 42-5064(E)(4). *See* Court of Appeals Opinion, a copy of which is attached to the Petition (“Op.”), ¶¶ 36-49.

The Opinion also calls into question the constitutionality of local taxes on interstate services throughout Arizona. In its opinion, the Court of Appeals misapplied the federal Commerce Clause limitations on unapportioned gross receipts taxes like those imposed by Peoria and Phoenix. Without a credit, the three calls that make up the “loop” described by the majority will be subject to multiple and discriminatory taxation in violation of the Commerce Clause.

Amicus Arizona-New Mexico Cable Communications Association, an Arizona nonprofit corporation (the “**Association**”), is a non-profit trade association formed in 1963. In Arizona, the Association represents 17 licensed cable television operators (listed in Appendix Tab 1) that operate 102 systems

throughout urban and rural Arizona. Most of these systems are located in cities and towns that have adopted Article IV § _-470 (“§ 470”) of the Model City Tax Code (“**Model Tax Code**” or “**Code**”), the basis for the tax levied on Appellant Brink’s Home Security, Inc. (“**Brink’s**”).

The Association’s members offer analog and digital cable television, local and long distance telephone services, high-speed internet access, and commercial voice and data services to nearly 1,000,000 residential and business customers in Arizona. Some members of the Association are also in the monitored security alarm business, or may be in the future. Under A.R.S. § 42-5064, § 470, and other Arizona state and local statutes and ordinances, tax treatment may depend upon whether a service is *intrastate* or *interstate* in nature.

The Broadband Tax Institute (“**BTI**”) is a non-profit corporation formed in 1986 to facilitate communication and cooperation among its members and tax authorities on issues and developments in all areas of tax practice, including property, sales and use, income and other taxes that affect the cable and telecommunications industry. Amicus BTI is composed of approximately 250 industry members and associate consultants, and represents cable and telecommunications businesses throughout the United States.

The Amici have a strong interest in seeing that courts construe the statutes and Model Tax Code provisions at issue in a manner that is consistent with

legislative intent and that provides a clear, workable framework for future application.

Pursuant to ARCAP 16(a), all parties have given written consent to the filing of the brief by Amici.¹

¹ See Appendix Tab 2.

REASONS THE COURT SHOULD GRANT REVIEW

The Court should grant review because this case involves interpreting provisions of the Model Tax Code and Arizona statutes that are of statewide importance. Of particular significance to the Amici, the Majority has interpreted the terms “intrastate telecommunications services” and “interstate telecommunications services” under A.R.S. §§ 42-5064(E)(4) and 42-6004(A)(2) in a manner that is contrary to their previously settled meanings. By expanding the statutory definition of “intrastate telecommunications” to encompass a *series of interstate transmissions* simply because the transmissions from outside Arizona are “dependent upon” an earlier transmission originating in Arizona, Op. ¶ 20, the Majority has adopted a new “loop” test that runs contrary to Arizona statutes, is unpredictable, and is likely to spawn recurring challenges and litigation.

I. Correctly Interpreting the Model Tax Code and the Terms “Interstate” and “Intrastate” Are Issues of Statewide Importance.

This case involves tax disputes arising under the Phoenix and Peoria city tax codes. Both Phoenix and Peoria, along with eighty-nine other municipalities, have adopted the Model Tax Code.² Normally, “[a]ll proposed changes to the code are reviewed by the Unified Audit Committee and approved by the Municipal Tax

² http://www.modelcitytaxcode.org/City_profiles/City_profiles.htm (last visited September 30, 2010). Virtually every Arizona city and town has adopted Model Tax Code § 470, the section at issue in the Phoenix and Peoria audits.

Code Commission.”³ See also A.R.S. § 42-6053(B) (“The commission shall review and comment on language submitted by any city, town or taxpayer for the purpose of describing, defining, deleting, adding or otherwise modifying taxable activities . . .”).⁴ Such review furthers the Code’s goal of providing a “greater degree of uniformity” in the area of local taxation.⁵ In light of (1) the Majority’s creation of a new standard for determining whether activities are taxable under the Code and (2) the Code’s widespread use in Arizona, this case presents an issue of statewide importance.

Furthermore, A.R.S. § 42-5064(E)(4) is the only Arizona statute to define “intrastate telecommunications services.” Accordingly, its interpretation could impact the application of numerous other statutes that use the phrases “interstate” and “intrastate.” For example, A.R.S. § 9-506 gives licensing authorities the power to impose certain taxes and fees on cable television systems, but expressly “does not authorize the imposition of transaction privilege taxes on interstate

³ <http://www.modelcitytaxcode.org/intro/intro.htm>.

⁴ The Court of Appeals decided *Sonitrol v. City of Phoenix*, 181 Ariz. 413, 891 P.2d 880 (App. 1995) before cities and towns were prohibited from levying taxes on “interstate telecommunications services.” If Phoenix and Peoria wished to continue to impose a tax under § 470 on businesses like Brink’s after the Legislature amended A.R.S. § 42-1453 (now § 42-6004) to exempt “interstate telecommunications services” from municipal taxation, 1990 Ariz. Sess. Laws 3rd S.S., Ch. 5, § 1, they could have proposed changes to § 470 under the process established in § 42-6053.

⁵ <http://www.modelcitytaxcode.org/intro/intro.htm>.

telecommunications services.” A.R.S. § 9-506(C)(1).⁶ Similarly, the distinction between *inter-* and *intrastate* telecommunications affects how A.R.S. § 9-581 *et seq.*, applies to other businesses providing interstate services.

II. The Dissent Correctly Interpreted Interstate and Intrastate for Purposes of §§ 42-5064(E)(4) and 42-6004(A)(2).

The Parties, Majority, and Dissent correctly agree that the interpretation of § 42-6004(A)(2) turns on whether a transmission qualifies as an “intrastate telecommunications service[]” as that term is defined in § 42-5064(E)(4). Section 42-5064(E)(4) provides that “‘Intrastate telecommunications services’ means transmitting signs, signals, writings, images, sounds, messages, data or other information of any nature by wire, radio waves, light waves, or other electromagnetic means if the information transmitted originates and terminates in this state.” Accordingly, § 42-5064(E)(4) requires (1) a transmission of information, (2) that the transmission occur via a particular means (wire, radio, light, or other electromagnetic), and (3) that “the information transmitted” by this particular means “originates and terminates in this state.”

The statute’s plain language and structure, therefore, focus on a single transmission of particular information, and where that transmission of information begins and ends. The multiple telephone calls at issue in this case involve separate

⁶ Cable television services are also exempt from this tax pursuant to § 42-5064(A)(1).

conversations and signals. They necessarily involve separate transmissions of *different* “information” as that phrase is used in the statute. Furthermore, nothing in the statute even remotely suggests that multiple transmissions can be aggregated. Nor does the statute in any way suggest that if one transmission results in a second transmission with different information, these distinct transmissions with different information can be aggregated. Rather, the statute’s language indicates that unless the *same* “information transmitted originates and terminates in this state,” the transmission qualifies as interstate. *Id.* The Dissent correctly construed the pertinent statute.

III. The Majority’s Interpretation of § 42-5064(E)(4) Ignores the Statute’s Clear and Unambiguous Language.

The Majority’s conclusion that three individual transmissions – each beginning in one state and terminating in another – can be combined to form a single “loop” of intrastate telecommunications runs counter to § 42-5064(E)(4)’s unambiguous language, and contravenes the fundamental principle that courts should construe tax statutes in favor of the taxpayer. *People’s Choice TV Corp. v. City of Tucson*, 202 Ariz. 401, 403 ¶ 7, 46 P.3d 412, 414 (2002) (emphasizing that “when interpreting tax statutes” courts should “resolve ambiguities in favor of the taxpayer”).

A. The Majority Misconstrued the Phrase “the Information Transmitted” Under § 42-5064(E)(4).

In adopting its loop theory, the Majority misconstrues the plain language of § 42-5064(E)(4) by holding that if a return transmission to Arizona depends on “an originating transmission in Arizona . . . the information transmitted originates and terminates in this state.” Op. ¶¶ 20-21. This conclusion stretches the statutory phrase “the information transmitted” well beyond what the plain language of § 42-5064(E)(4) permits.

The statute makes plain that the term “information” has a particular meaning, and includes, without limitation, the “signs, signals, writings, images, sounds, messages [or] data” that is transmitted “by wire, radio waves, light waves, or other electromagnetic means.” § 42-5064(E)(4). In this context, “information” does not refer to “facts,” “ideas,” or “goals” – information in the colloquial sense – but rather to the specific medium, such as the writing, image or sound, used to convey the underlying content. Accordingly, the distinction between interstate and intrastate telecommunications must turn on the end points of the particular “transmission of information” (e.g., an alert that an alarm has been triggered). Op. ¶ 14.

Indeed, “information” in the colloquial sense used by the Majority has no point of “termination.” A telephone call from an Arizona source to a reporter in New York may convey “information” that becomes a story in the *New York Times*

that ends up back at the source's doorstep the next morning. But that fact has no bearing on the interstate character of the phone call to New York that began this hypothetical information "loop." Likewise, it should be of no legal consequence that (different) information relayed by an alarm system in Arizona, to an operator in Texas, is later conveyed (perhaps in a different form) by a separate transmission back to someone in Arizona. Two (or three) separate interstate transmissions do not a single intrastate transmission make, particularly when they transmit different "information."

The Majority's loop theory is also vague and unworkable. Under the loop theory, a court would need to consider whether multiple transmissions, which are in fact separate and distinct in the physical world, should be considered collectively to determine their interstate or intrastate character. That, apparently, turns on a number of issues, including whether the "information" transmitted concerns the same general topic, and perhaps how close in time the transmissions occur. These inquiries depend on fact-intensive and highly subjective analyses of a kind that undermines the predictability and certainty that are the hallmarks of effective and efficient tax systems. Indeed, the Majority's approach could lead to different tax outcomes for similar businesses, and may even change over time for the same business. Courts should not interpret tax statutes to create such uncertainty.

The problem with the Majority's logic is revealed by Judge Johnsen's "concierge" example, Op. ¶ 43, and there are many others. For example, suppose an out-of-state business contracts with an Arizona company to send a data file over a telephone line and to confirm the data has been received. Under the Majority's "loop" theory, these two interstate transmissions would be combined to form a single intrastate telecommunications service beginning and ending in Arizona. Or, suppose an Arizona customer orders a ringtone for a cellular phone over the internet by sending a message asking for the ringtone. This transmission and the provider's delivery of the ringtone could be "looped" and classified as an intrastate transmission. In the context of construing a tax statute, such an expansive interpretation of § 42-5064 runs contrary to the fundamental principle that courts should construe tax statutes narrowly against the taxing authority. *See Ariz. Dep't of Revenue v. Capitol Castings*, 207 Ariz. 445, 447 ¶ 10, 88 P.3d 159, 161 (2004) ("[i]n the tax field, we liberally construe statutes imposing taxes in favor of taxpayers and against the government").

B. The Majority's Reliance on the Model Tax Code to Defend the Loop Theory Is Misplaced.

The Majority also makes at least three mistakes by relying on the Model Tax Code. *See* Op. ¶ 18. First, it is the language in § 42-5064(E)(4), not the Model Tax Code, that should drive the analysis of the statutory exemption in § 42-6004(A)(2).

Second, the broad definition of “telecommunications service” set forth in § 100 of the Model Tax Code determines whether a service qualifies as a “telecommunications service” – not whether it is interstate or intrastate. Indeed, whether Brink’s is engaged in a “telecommunications service” for purposes of § 100 is not at issue.

Third, the Majority erroneously finds significant that the Model Tax Code defines “telecommunications services” to include transmissions that use any “combination of communications *channels*.” *Id.* According to the Majority, this language demonstrates that even though “a different ‘communication channel’ is utilized for the return transmissions from Texas to Arizona,” such transmissions still fall within the Code’s definition of “telecommunications service.” *Id.* This reasoning, however, confuses (1) the threshold question of whether a service constitutes a “telecommunications service” under the Model Tax Code with (2) whether the services offered qualify as “interstate” under § 42-6004(A)(2). Additionally, it confuses transmissions with communications channels. Simply put, whether a transmission of information uses one or twenty *channels* does not bear on where the transmission begins or ends, or whether separate interstate transmissions may be combined into a single “intrastate” transmission within the meaning of § 42-5064(E)(4).

C. The Majority's Reliance on *People's Choice* Is Misplaced.

As Judge Johnsen correctly noted (¶¶ 40-41), the Majority's reliance on *People's Choice TV Corp., Inc. v. City of Tucson*, 202 Ariz. 401, 46 P.3d 412 (2002) to support its interpretation is also unfounded.

In *People's Choice*, a provider of microwave television services, People's Choice TV ("PCTV"), challenged a city's imposition of a transaction privilege tax on its telecommunications services under Model Tax Code § 470 (albeit under different subsections). 202 Ariz. at 402 ¶ 1, 46 P.3d at 413. In that case, however, there was *no* dispute over whether the underlying transmissions used in PCTV's business were "interstate" telecommunications. Instead, the issue was whether § 42-6004(A)(2) prohibited "the taxation of the 'services *ancillary* to the interstate transmission of signals.'" *Id.* at 403 ¶ 6, 46 P.3d at 414 (emphasis added). In other words, *People's Choice* involved determining whether the gross income Tucson sought to tax qualified as income *derived from* telecommunications services, not whether any transmission or group of transmissions qualified as "interstate" or "intrastate." *See People's Choice v. City of Tucson*, 199 Ariz. 570, 572 ¶ 2, 20 P.3d 1151, 1153 (App. 2001) (identifying the first issue presented as "[w]hether the sums on which the City assessed taxes against PCTV under Code section 19-470 constituted gross income from 'interstate telecommunications services'").

protected from municipal transaction privilege taxation by” § 42-6004(A)(2)),
vacated by People’s Choice, 202 Ariz. at 405 ¶ 12, 46 P.3d at 416.

In answering the question about the *relationship* between gross income and telecommunications services, the Court held that gross income may qualify for the exemption in § 42-6004(A)(2) if it would otherwise qualify for taxation under A.R.S. § 42-5064(B) (now Subsection C) – the provision that defines the “tax base for the telecommunications classification” and a provision that is not at issue in this case. *People’s Choice*, 202 Ariz. at 403-404 ¶ 8, 46 P.3d at 414-415.⁷

Because there was no dispute in that case over whether the underlying services involved interstate transmissions, the Court never reached, nor considered, the issue presented in this case: the meaning of “intrastate telecommunications services” under § 42-5064(E)(4). Indeed, *People’s Choice* nowhere discusses any definition of “intrastate” or “interstate” telecommunications in the sense suggested by the Majority.

Furthermore, what *People’s Choice* said about the scope of § 42-5064(C)(3) supports Judge Johnsen’s view. Specifically, *People’s Choice* noted that the definition of “intrastate telecommunications services,” now found in § 42-5064(E)(4), focuses on particular transmissions, but held that broader categories of income (not just income derived from transmissions) should be exempt from

⁷ For the Court’s convenience, copies of the pertinent statutes, including the 2000 version of A.R.S. § 42-5064, are included in Appendix Tab 3.

taxation due to Subsection B: “Because § 42-5064(C) defines ‘intrastate telecommunications services’ as the ‘transmitting’ of information by electromagnetic means, § 42-5064 appears to impose the tax only on the *transmission of information, not on related services*. But this impression is dispelled by the provisions of § 42-5064 (B).” 202 Ariz. at 403-04 ¶ 8, 46 P.3d at 414-15 (emphasis added). *People’s Choice*, if anything, supports Judge Johnsen’s view.

IV. The City’s Tax, as Interpreted by the Court of Appeals, Likely Violates the Commerce Clause of the United States Constitution.

The Majority’s view of the cities’ tax ordinances also likely violates the Commerce Clause of the United States Constitution because the gross receipts from transactions that cross states lines are subject to multiple and discriminatory taxation.

It is undisputed that at least one of the three transmissions in this case originates from a call center in Texas and terminates in Arizona. Texas imposes its sales tax (which operates in a manner similar to Arizona’s transaction privilege tax) on telecommunications services that originate in Texas and have a Texas service address. Tex. Tax Code Ann. § 151.0101(a)(6); 34 Tex. Admin. Code § 3.344(b). Thus, the transmission from the Texas call center to an Arizona location is subject to Texas sales tax because the call originates in Texas and has a Texas service address (the equipment from which the call originates). Texas

Comptrollers Decision No. 41,383 (May 22, 2009). It is not uncommon for two states (or localities) to impose tax on the same interstate transmission. Normally, however, the imposition of a tax on a telecommunications service that originates out of state is accompanied by the provision of a tax credit for taxes properly paid to another jurisdiction. This is because the failure to provide for such a credit renders the tax unconstitutional. *See Goldberg v. Sweet*, 488 U.S. 252 (1989).

In *Goldberg v. Sweet*, the United States Supreme Court considered whether the Illinois' Telecommunications Excise Tax, violated the Commerce Clause. Similar to the tax at issue in this case, Illinois imposed the tax on the "act or privilege" of "originating" or "receiving" interstate telecommunications in the state. *Id.* at 257. However, the Illinois statute avoided multiple taxation of the same call by providing a credit for taxes paid to another state on the same interstate telecommunications. In analyzing whether the Illinois tax violated the Commerce Clause (external consistency) test to determine if the tax was fairly apportioned, the Court held that the limited possibility of multiple taxation combined with the existence of the credit was sufficient for the Illinois tax to avoid invalidation. *Id.* at 263-64.

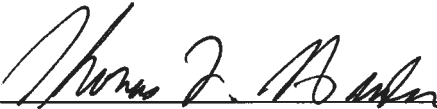
In this case, the cities' taxes do not provide a credit for taxes properly paid to another state (or locality). Therefore, the risk of multiple taxation exists. The Majority's interpretation violates the Commerce Clause.

CONCLUSION

The Court should grant the Petition for Review, vacate the Court of Appeals Opinion, and reverse the Tax Court. Alternatively, the Court should depublish the Opinion.

RESPECTFULLY SUBMITTED this 4th day of October, 2010.

OSBORN MALEDON, P.A.

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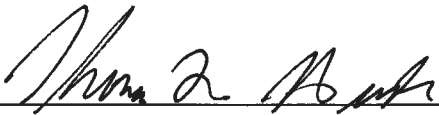
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Attorneys for Amici Curiae Arizona-New
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Association and The Broadband Tax
Institute

CERTIFICATE OF COMPLIANCE

Pursuant to ARCAP 23, I hereby certify that the attached brief uses proportionally spaced type of 14 points or more, is double-spaced using a roman font, and does not exceed 3,500 words.

Dated this 4th day of October, 2010.



Thomas L. Hudson

CERTIFICATE OF SERVICE

The undersigned has filed the original and seven copies of Brief of Amici Curiae Arizona-New Mexico Cable Communications Association and The Broadband Tax Institute this 4th day of October, 2010, with:

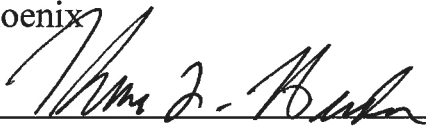
Clerk
Arizona Supreme Court
1501 West Washington
Phoenix, Arizona 85007-3329

The undersigned has mailed two copies of Brief of Amici Curiae Arizona-New Mexico Cable Communications Association and The Broadband Tax Institute this 4th day of October, 2010, to:

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Thomas L. Hudson

APPENDIX

Tab No.	Description
1	Arizona-New Mexico Cable Communications Association licensed cable television operators
2	Parties' consent to the filing of the brief by Amici
3	Pertinent statutes

ACTIVE MEMBERS (as of 1/1/10)

Baja Broadband
Beamspeed
Cable ONE
Comcast Cable
Cox Communications, Inc.
Fort Mohave Television, Inc.
Maricopa Broadband
Mediacom of Arizona
Monroe Cablevision
NPG Cable Inc.
Orbitel Communications, LLC
PVT Networks
San Carlos Apache Telecomm.
South Central Communications
Time Warner Cable
Tohono O'odham Utility Authority
Western Broadband LLC

Hudson, Thomas

From: jim.hays@phoenix.gov
Sent: Thursday, September 30, 2010 11:11 AM
To: Hudson, Thomas
Subject: Re: Brinks's Case - Petition for Review - request for consent to file amicus brief

Ok, we consent.

"Hudson, Thomas" <thudson@omlaw.com>

"steve.kemp@peoriaaz.gov" <steve.kemp@peoriaaz.gov>,
To "cynthia.odom@peoriaaz.gov" <cynthia.odom@peoriaaz.gov>, Jim
Hays/LAW/PHX@PHXENT

09/30/2010 08:35 AM

cc "Nelson, Randy" <rnelson@omlaw.com>, "Hummels, Mark"
<mhummels@omlaw.com>

Subject Brinks's Case - Petition for Review - request for consent to file amicus brief

Steve, Cynthia, and Jim:

We are representing the Arizona-New Mexico Cable Communications Association and the Broadband Tax Institute in connection with an amicus brief that they plan to file in the Peoria/Phoenix v. Brink's Home Security Case currently pending before the Arizona Supreme Court. As you might expect, our clients' amici brief will support the request to grant review, and urge the Court to adopt Judge Johnsen's position.

Will you consent to the filing of our clients' amici brief, or should we go ahead and file a motion for leave?

Please let us know as soon as you can.

Thanks,

Thom

Thomas L. Hudson

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Hudson, Thomas

From: Cynthia Odom [Cynthia.Odom@peoriaaz.gov]
Sent: Thursday, September 30, 2010 11:36 AM
To: Hudson, Thomas
Cc: jim.hays@phoenix.gov
Subject: RE: Brinks's Case - Petition for Review - request for consent to file amicus brief

Thom,

Yes we will.

Cynthia Odom
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From: Hudson, Thomas [mailto:thudson@omlaw.com]
Sent: Thursday, September 30, 2010 8:36 AM
To: Steve Kemp; Cynthia Odom; jim.hays@phoenix.gov
Cc: Nelson, Randy; Hummels, Mark
Subject: Brinks's Case - Petition for Review - request for consent to file amicus brief

Steve, Cynthia, and Jim:

We are representing the Arizona-New Mexico Cable Communications Association and the Broadband Tax Institute in connection with an amicus brief that they plan to file in the Peoria/Phoenix v. Brink's Home Security Case currently pending before the Arizona Supreme Court. As you might expect, our clients' amici brief will support the request to grant review, and urge the Court to adopt Judge Johnsen's position.

Will you consent to the filing of our clients' amici brief, or should we go ahead and file a motion for leave?

Please let us know as soon as you can.

Thanks,

Hudson, Thomas

From: Gibbs, Marty [megibbs@swlaw.com]
Sent: Thursday, September 30, 2010 11:42 AM
To: Hudson, Thomas; Dawson, Barb
Cc: Nelson, Randy; Hummels, Mark
Subject: RE: Phoenix/Peoria v. Brinks - Consent re filing amicus brief

yes, we will.

From: Hudson, Thomas [mailto:thudson@omlaw.com]
Sent: Thursday, September 30, 2010 11:40 AM
To: Dawson, Barb
Cc: Gibbs, Marty; Nelson, Randy; Hummels, Mark
Subject: Phoenix/Peoria v. Brinks - Consent re filing amicus brief

Barb:

The Cities have consented to our filing of the amici brief on behalf of the Arizona-New Mexico Cable Communications Association and the Broadband Tax Institute. Our clients' amici brief will support the request to grant review, and urge the Court to adopt Judge Johnsen's position.

Will your client also consent to the filing of our clients' amici brief?

Please let us know.

Thanks,

Thom

Thomas L. Hudson

thudson@omlaw.com
[biography](#)

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Article I - General Conditions and Definitions

Sec. ___-100. General definitions.

For the purposes of this Chapter, the following definitions apply:

"Assembler" means a person who unites or combines products, wares, or articles of manufacture so as to produce a change in form or substance of such items without changing or altering component parts.

"Broker" means any person engaged or continuing in business who acts for another for a consideration in the conduct of a business activity taxable under this Chapter, and who receives for his principal all or part of the gross income from the taxable activity.

"Business" means all activities or acts, personal or corporate, engaged in and caused to be engaged in with the object of gain, benefit, or advantage, either direct or indirect, but not casual activities or sales.

"Business Day" means any day of the week when the Tax Collector's office is open for the public to conduct the Tax Collector's business.

"Casual Activity or Sale" means a transaction of an isolated nature made by a person who neither represents himself to be nor is engaged in a business subject to a tax imposed by this Chapter. However, no sale, rental, license for use, or lease transaction concerning real property nor any activity entered into by a business taxable by this Chapter shall be treated, or be exempt, as casual. This definition shall include sales of used capital assets, provided that the volume and frequency of such sales do not indicate that the seller regularly engages in selling such property.

"Combined Taxes" means the sum of all applicable Arizona Transaction Privilege and Use Taxes; all applicable transportation taxes imposed upon gross income by this County as authorized by Article III, Chapter 6, Title 42, Arizona Revised Statutes; and all applicable taxes imposed by this Chapter.

"Commercial Property" is any real property, or portion of such property, used for any purpose other than lodging or lodging space, including structures built for lodging but used otherwise, such as model homes, apartments used as offices, etc.

"Communications Channel" means any line, wire, cable, microwave, radio signal, light beam, telephone, telegraph, or any other electromagnetic means of moving a message.

"Construction Contracting" refers to the activity of a construction contractor.

"Construction Contractor" means a person who undertakes to or offers to undertake to, or purports to have the capacity to undertake to, or submits a bid to, or does himself or by or through others, construct, alter, repair, add to, subtract from, improve, move, wreck, or demolish any building, highway, road, railroad, excavation, or other structure, project, development, or improvement to real property, or to do any part thereof. "Construction contractor" includes subcontractors, specialty contractors, prime contractors, and any person receiving consideration for the

"Taxpayer Problem Resolution Officer" means the individual designated by the City to perform the duties identified in Sections ___-515 and ___-516. In cities with a population of 50,000 or more, the Taxpayer Problem Resolution Officer shall be an employee of the City. In cities with a population of less than 50,000, the Taxpayer Problem Resolution Officer need not be an employee of the City. Regardless of whether the Taxpayer Problem Resolution Officer is or is not an employee of the City, the Taxpayer Problem Resolution Officer shall have substantive knowledge of taxation. The identity of and telephone number for the Taxpayer Problem Resolution Officer can be obtained from the Tax Collector.

"Telecommunication Service" means any service or activity connected with the transmission or relay of sound, visual image, data, information, images, or material over a communications channel or any combination of communications channels.

"Transient" means any person who either at the person's own expense or at the expense of another obtains lodging space or the use of lodging space on a daily or weekly basis, or on any other basis for less than thirty (30) consecutive days.

"Utility Service" means the producing, providing, or furnishing of electricity, electric lights, current, power, gas (natural or artificial), or water to consumers or ratepayers.

Web. Rev. Date: 3-3-2008



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Article IV - Privilege Taxes

Sec. ___-470. Telecommunication services.

(a) The tax rate shall be at an amount equal to _____ percent (___%) of the gross income from the business activity upon every person engaging or continuing in the business of providing telecommunication services to consumers within this City.

(1) Telecommunication services shall include:

(A) two-way voice, sound, and/or video communication over a communications channel.

(B) one-way voice, sound, and/or video transmission or relay over a communications channel.

(C) facsimile transmissions.

(D) providing relay or repeater service.

(E) providing computer interface services over a communications channel.

(F) time-sharing activities with a computer accomplished through the use of a communications channel.

(2) Gross income from the business activity of providing telecommunication services to consumers within this City shall include:

(A) all fees for connection to a telecommunication system.

(B) toll charges, charges for transmissions, and charges for other telecommunications services; provided that such charges relate to transmissions originating in the City and terminating in this State.

(C) fees charged for access to or subscription to or membership in a telecommunication system or network.

(D) charges for monitoring services relating to a security or burglar alarm system located within the City where such system transmits

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or receives signals or data over a communications channel.

(E) charges for telephone, fax or Internet access services provided at an additional charge by a hotel business subject to taxation under Section ___-444.

(b) Resale telecommunication services. Gross income from sales of telecommunication services to another provider of telecommunication services for the purpose of providing the purchaser's customers with such service shall be exempt from the tax imposed by this Section; provided, however, that such purchaser is properly licensed by the City to engage in such business.

(c) Interstate transmissions. Charges by a provider of telecommunication services for transmissions originating in the City and terminating outside the State are exempt from the tax imposed by this Section.

******(d) Tax credit offset for franchise fees. There shall be allowed as an offset, up to the amount of tax due, any amounts paid to the City for license fees or franchise fees, but such offset shall not be allowed against taxes imposed by any other Section of this Chapter. Such offset shall not be deemed in conflict with or violation of subsection ___-400 (b).

Model Option #11: (d) (Reserved)**

(e) (Reserved)

++(Local Option #DD:

(e) However, gross income from the providing of telecommunication services by a cable television system, as such system is defined in A.R.S. Section 9-505, shall be exempt from the tax imposed by this Section.)++

(f) Prepaid calling cards. Telecommunications services purchased with a prepaid calling card that are taxable under Section ___-460 are exempt from the tax imposed under this Section.

(g) Internet access services. The gross income subject to tax under this section shall not include sales of internet access services to the person's subscribers and customers. For the purposes of this subsection:

(1) "Internet" means the computer and telecommunications facilities that comprise the interconnected worldwide network of networks that employ the transmission control protocol or internet protocol, or any predecessor or successor protocol, to communicate information of all kinds by wire or radio.

(2) "Internet Access" means a service that enables users to access content, information, electronic mail or other services over the internet. Internet access does not include telecommunication services provided by a

Arizona Revised Statutes Annotated [Currentness](#)

Title 42. Taxation ([Refs & Annos](#))

▣ [Chapter 5](#). Transaction Privilege and Affiliated Excise Taxes ([Refs & Annos](#))

▣ [Article 2](#). Transaction Privilege Classifications ([Refs & Annos](#))

→ [§ 42-5064](#). Telecommunications classification; definitions

A. The telecommunications classification is comprised of the business of providing intrastate telecommunications services. The telecommunications classification does not include:

1. Sales of intrastate telecommunications services by a cable television system as defined in [§ 9-505](#) or by a microwave television transmission system that transmits television programming to multiple subscribers and that is operated pursuant to 47 Code of Federal Regulations parts 21 and 74.

2. Sales of internet access or application services to the person's subscribers and customers. For the purposes of this paragraph:

(a) "Application services" means software applications provided remotely using hypertext transfer protocol or another network protocol and purchased by or for any school district, charter school, community college or state university to assess or test student learning or to promote curriculum design or enhancement.

(b) "Curriculum design or enhancement" means planning, implementing or reporting on courses of study, lessons, assignments or other learning activities.

B. The tax base for the telecommunications classification is the gross proceeds of sales or gross income derived from the business, including the gross income derived from tolls, subscriptions and services on behalf of subscribers or from the publication of a directory of the names of subscribers. However, the gross proceeds of sales or gross income derived from the following shall be deducted from the tax base:

1. Sales of intrastate telecommunications services to:

(a) Other persons engaged in businesses classified under the telecommunications classification for use in such business.

(b) A direct broadcast satellite television or data transmission service that operates pursuant to 47 Code of Federal Regulations part 25 for use in its direct broadcast satellite television or data transmission operation by a facility described in [§ 42-5061, subsection B](#), paragraph 16, subdivision (b).

2. End user common line charges established by federal communications commission regulations ([47 Code of Federal Regulations § 69.104\(a\)](#)).

3. Carrier access charges established by federal communications commission regulations ([47 Code of Federal Regulations §§ 69.105\(a\) through 69.118](#)).

4. Sales of direct broadcast satellite television services pursuant to 47 Code of Federal Regulations part 25 by a direct broadcast satellite television service that operates pursuant to 47 Code of Federal Regulations part 25.

5. Telecommunications services purchased with a prepaid calling card, or a prepaid authorization number for telecommunications services, that is taxable under [§ 42-5061](#).

C. A person that is engaged in a transient lodging business subject to taxation under [§ 42-5070](#) and that provides telephone, fax or internet access services to its customers at an additional charge, which is separately stated on the customer invoice, is considered to be engaged in business subject to taxation under this section for the purposes of taxing the gross proceeds of sales or gross income derived from providing those services.

D. The gross proceeds of sales or gross income derived from a bundled transaction of services that are taxable pursuant to [§ 42-5023](#) are subject to the following:

1. A telecommunications service provider who can reasonably identify the portion of the sales price of the bundled transaction derived from charges for nontaxable services is subject to tax only on the gross proceeds of sales or gross income derived from the taxable services. For the purposes of this section, the telecommunications service provider may elect to reasonably identify the portion of the sales price of the bundled transaction derived from charges for nontaxable services by using allocation percentages derived from the telecommunications service provider's entire service area, including territories outside of this state. On request, the department may require the telecommunications service provider to provide this allocation information. The reasonableness of the allocation is subject to audit by the department.

2. Notwithstanding [§§ 42-1118, 42-1120 and 42-1121](#), the telecommunications service provider shall waive the right to file a claim for a refund of taxes paid on the bundled transaction if the taxes paid are based on the allocation percentage the telecommunications service provider had determined to be reasonable at the beginning of the tax period at issue.

3. The burden of proof is on the telecommunications service provider to establish that the gross proceeds of sales or gross income is derived from charges for nontaxable services.

E. For the purposes of this section:

1. "Bundled transaction" means a sale of multiple services in which both of the following apply:

(a) The sale consists of both taxable and nontaxable services.

(b) The telecommunications service provider charges a customer one sales price for all services that are sold instead of separately charging for each individual service.

2. "Internet" means the computer and telecommunications facilities that comprise the interconnected worldwide network of networks that employ the transmission control protocol or internet protocol, or any predecessor or successor protocol, to communicate information of all kinds by wire or radio.

3. "Internet access" means a service that enables users to access content, information, electronic mail or other services over the internet. Internet access does not include telecommunications services provided by a common carrier.

4. "Intrastate telecommunications services" means transmitting signs, signals, writings, images, sounds, messages, data or other information of any nature by wire, radio waves, light waves or other electromagnetic means if the information transmitted originates and terminates in this state.

CREDIT(S)

Added as § 42-1310.04 by [Laws 1988, Ch. 161, § 4, eff. July 1, 1989](#). Amended by [Laws 1989, Ch. 132, § 19, eff. May 3, 1989](#); [Laws 1992, Ch. 237, § 1](#); [Laws 1993, Ch. 240, § 1, retroactively effective to Jan. 2, 1984](#); [Laws 1994, Ch. 333, § 4](#); [Laws 1996, 6th S.S., Ch. 1, § 2](#). Renumbered as § 42-5064 and amended by [Laws 1997, Ch. 150, §§ 87, 90, eff. Jan. 1, 1999](#); [Laws 1998, Ch. 206, § 2](#); [Laws 1998, Ch. 206, § 4, eff. Jan. 1, 1999](#). Amended by [Laws 1999, Ch. 5, § 17](#); [Laws 2000, Ch. 397, § 6](#); [Laws 2002, Ch. 326, § 15](#); [Laws 2004, Ch. 337, § 1](#); [Laws 2005, Ch. 62, § 2](#); [Laws 2008, Ch. 60, § 8](#); [Laws 2008, Ch. 194, § 2](#).

Title 42. Taxation ([Refs & Annos](#))

[Chapter 6](#). Local Excise Taxes ([Refs & Annos](#))

[Article 1](#). Administration of Local Excise Taxes

→ [§ 42-6004](#). Exemption from municipal tax

A. A city, town or special taxing district shall not levy a transaction privilege, sales, use or other similar tax on:

1. Exhibition events in this state sponsored, conducted or operated by a nonprofit organization that is exempt from taxation under [section 501\(c\)\(3\)](#), [501\(c\)\(4\)](#) or [501\(c\)\(6\) of the internal revenue code](#)^[FN1] if the organization is associated with a major league baseball team or a national touring professional golfing association and no part of the organization's net earnings inures to the benefit of any private shareholder or individual.

2. Interstate telecommunications services, which include that portion of telecommunications services, such as subscriber line service, allocable by federal law to interstate telecommunications service.

3. Sales of warranty or service contracts.

4. Sales of motor vehicles to nonresidents of this state for use outside this state if the vendor ships or delivers the motor vehicle to a destination outside this state.

5. Interest on finance contracts.

6. Dealer documentation fees on the sales of motor vehicles.

7. Sales of food or other items purchased with United States department of agriculture food stamp coupons issued under the food stamp act of 1977 ([P.L. 95-113](#); 91 Stat. 958) or food instruments issued under section 17 of the child nutrition act ([P.L. 95-627](#); 92 Stat. 3603; [P.L. 99-661](#), section 4302; [42 United States Code section 1786](#)) but may impose such a tax on other sales of food. If a city, town or special taxing district exempts sales of food from its tax or imposes a different transaction privilege rate on the gross proceeds of sales or gross income from sales of food and nonfood items, it shall use the definition of food prescribed by rule adopted by the department pursuant to [§ 42-5106](#).

8. Sales of internet access services to the person's subscribers and customers. For the purposes of this paragraph:

(a) "Internet" means the computer and telecommunications facilities that comprise the interconnected worldwide network of networks that employ the transmission control protocol or internet protocol, or any predecessor or successor protocol, to communicate information of all kinds by wire or radio.

(b) "Internet access" means a service that enables users to access content, information, electronic mail or other services over the internet. Internet access does not include telecommunication services provided by a common carrier.

9. The gross proceeds of sales or gross income retained by the Arizona exposition and state fair board from ride ticket sales at the annual Arizona state fair.

10. Through August 31, 2014, sales of Arizona centennial medallions by the historical advisory commission.

11. The gross proceeds of sales or gross income derived from a commercial lease in which a reciprocal insurer or a corporation leases real property to an affiliated corporation. For the purposes of this paragraph:

(a) "Affiliated corporation" means a corporation that meets one of the following conditions:

ARIZONA REVISED STATUTES ANNOTATED
TITLE 42. TAXATION
CHAPTER 5. TRANSACTION PRIVILEGE AND AFFILIATED EXCISE TAXES
ARTICLE 2. TRANSACTION PRIVILEGE CLASSIFICATIONS
2000.

§ 42-5064. Telecommunications classification; definitions

A. The telecommunications classification is comprised of the business of providing intrastate telecommunications services. The telecommunications company classification does not include:

1. Sales of intrastate telecommunications services by a cable television system as defined in § 9-505 or by a microwave television transmission system that transmits television programming to multiple subscribers and that is operated pursuant to 47 Code of Federal Regulations parts 21 and 74.
2. Sales of internet access services to the person's subscribers and customers.

B. The tax base for the telecommunications classification is the gross proceeds of sales or gross income derived from the business, including the gross income derived from tolls, subscriptions and services on behalf of subscribers or from the publication of a directory of the names of subscribers. However, the gross proceeds of sales or gross income derived from the following shall be deducted from the tax base:

1. Sales of intrastate telecommunications services to:

(a) Other persons engaged in businesses classified under the telecommunications classification for use in such business.

(b) A direct broadcast satellite television or data transmission service that operates pursuant to 47 Code of Federal Regulations parts 25 and 100 for use in its direct broadcast satellite television or data transmission operation by a facility described in § 42-5061, subsection B, paragraph 16, subdivision (b).

2. End user common line charges established by federal communications commission regulations ([47 Code of Federal Regulations § 69.104\(a\)](#)).

3. Carrier access charges established by federal communications commission regulations ([47 Code of Federal Regulations §§ 69.105\(a\) through 69.118](#)).

4. Sales of direct broadcast satellite television services pursuant to 47 Code of Federal Regulations parts 25 and 100 by a direct broadcast satellite television service that operates pursuant to 47 Code of Federal Regulations parts 25 and 100.

5. Telecommunications services purchased with a prepaid calling card, or a prepaid authorization number for telecommunications services, that is taxable under § 42-5061.

C. For purposes of this section:

1. "Internet" means the computer and telecommunications facilities that comprise the interconnected worldwide network of networks that employ the transmission control protocol or internet protocol, or any predecessor or successor protocol, to communicate information of all kinds by wire or radio.

2. "Internet access" means a service that enables users to access content, information, electronic mail or other services over the internet. internet access does not include telecommunications services provided by a common carrier.

3. "Intrastate telecommunications services" means transmitting signs, signals, writings, images, sounds, messages, data or other information of any nature by wire, radio waves, light waves or other electromagnetic means if the information transmitted originates and terminates in this state.

ARIZONA REVISED STATUTES ANNOTATED
TITLE 42. TAXATION
CHAPTER 6. LOCAL EXCISE TAXES
ARTICLE 1. ADMINISTRATION OF LOCAL EXCISE TAXES
2000.

§ 42-6004. Exemption from municipal tax

A. A city, town or special taxing district shall not levy a transaction privilege, sales, use or other similar tax on:

1. Exhibition events in this state sponsored, conducted or operated by a nonprofit organization that is exempt from taxation under §§ 501(c)(3), 501(c)(4) or 501(c)(6) of the internal revenue code [FN1] if the organization is associated with a major league baseball team or a national touring professional golfing association and no part of the organization's net earnings inures to the benefit of any private shareholder or individual.
2. Interstate telecommunications services, which include that portion of telecommunications services, such as subscriber line service, allocable by federal law to interstate telecommunications service.
3. Sales of warranty or service contracts.
4. Sales of motor vehicles to nonresidents of this state for use outside this state if the vendor ships or delivers the motor vehicle to a destination outside this state.
5. Interest on finance contracts.
6. Dealer documentation fees on the sales of motor vehicles.
7. The gross proceeds of sales or gross income received from a contract from constructing any lake facility development in a commercial enhancement reuse district established pursuant to § 9-499.08.
8. Sales of food or other items purchased with United States department of agriculture food stamp coupons issued under the food stamp act of 1977 (P.L. 95-113; 91 Stat. 958) or food instruments issued under § 17 of the child nutrition act (P.L. 95-627; 92 Stat. 3603; P.L. 99-661, § 4302; 42 United States Code § 1786) but may impose such a tax on other sales of food. If a city, town or special taxing district exempts sales of food from its tax or imposes a different transaction privilege rate on the gross proceeds of sales or gross income from sales of food and nonfood items, it shall use the definition of food prescribed by rule adopted by the department pursuant to § 42-5106.
9. Sales of motor vehicles that use alternative fuel as defined in § 1-215.
10. Sales of internet access services to the person's subscribers and customers. for the purposes of this paragraph:
 - (a) "Internet" means the computer and telecommunications facilities that comprise the interconnected worldwide network of networks that employ the transmission control protocol or internet protocol, or any predecessor or successor protocol, to communicate information of all kinds by wire or radio.
 - (b) "Internet access" means a service that enables users to access content, information, electronic mail or other services over the internet. internet access does not include telecommunication services provided by a common carrier.

B. A city, town or other taxing jurisdiction shall not levy a transaction privilege, sales, use, franchise or other similar tax or fee, however denominated, on:

1. Natural gas or liquefied petroleum gas used to propel a motor vehicle.
2. Any business activity conducted at or tangible personal property purchased, leased or rented by any qualified theme park, themed amusement park or other nonathletic entertainment facility that is subject to taxation under article 4 of this chapter. [FN2]

C. A city, town or other taxing jurisdiction shall not levy a transaction privilege, sales, gross receipts, use, franchise or other similar tax or fee, however denominated, on gross proceeds of sales or gross income derived from any of the following:

1. A motor carrier's use on the public highways in this state if the motor carrier is subject to a fee prescribed in title 28, chapter 16, article 4.
2. Leasing, renting or licensing a motor vehicle subject to and upon which the fee has been paid under title 28, chapter 16, article 4. [FN3]
3. The sale of a motor vehicle and any repair and replacement parts and tangible personal property becoming a part of such motor vehicle to a motor carrier who is subject to a fee prescribed in title 28, chapter 16, article 4 and who is engaged in the business of leasing, renting or licensing such property.
4. Incarcerating or detaining in a privately operated prison, jail or detention facility prisoners who are under the jurisdiction of the United States, this state or any other state or a political subdivision of this state or of any other state.

5. Transporting for hire persons, freight or property by light motor vehicles subject to a fee under title 28, chapter 15, article 4.

6. Except as provided in § 42-6104, a contract from constructing any lake facility development in a commercial enhancement reuse district established pursuant to § 9-499.08.

D. A city, town or other taxing jurisdiction shall not levy a transaction privilege, sales, use, franchise or other similar tax or fee, however denominated, in excess of one-tenth of one per cent of the value of the entire product mined, smelted, extracted, refined, produced or prepared for sale, profit or commercial use, on persons engaged in the business of mineral processing, except to the extent that the tax is computed on the gross proceeds or gross income from sales at retail.

E. In computing the tax base, any city, town or other taxing jurisdiction shall not include in the gross proceeds of sales or gross income:

1. A manufacturer's cash rebate on the sales price of a motor vehicle if the buyer assigns the buyer's right in the rebate to the retailer.

2. The waste tire disposal fee imposed pursuant to § 44-1302.