

TELEVISION DISTRICTS - Tax exemption for recipients of CATV signal;
MONTANA CODE ANNOTATED - Sections 7-13-2528, 7-13-2529.

HELD: The exemption from television district taxes for CATV subscribers provided in section 7-13-2529, MCA, benefits subscribers to CATV systems which receive signals from a television district translator.

10 May 1983

Willis M. McKeon
Phillips County Attorney
Phillips County Courthouse
Malta MT 59538

Dear Mr. McKeon:

You have requested my opinion on the following question:

Does the exemption from television district taxes provided for in section 7-13-2529, MCA, for persons receiving signal "through the medium of a community antenna system on which they are a subscriber in good standing" benefit subscribers to a cable television system which receives its signals from a tax-supported television translator?

Title 7, chapter 13, part 25, MCA, authorizes creation of television districts for the purpose of providing television translators with the capacity to bring television signals to remote parts of the state. Section 7-13-2528, MCA, authorizes television district commissioners to levy a special tax for that purpose against persons residing within the district. Section 7-13-2529, MCA, exempts from the tax persons who do not

benefit therefrom, including persons who "receive service through the medium of a community antenna system" (hereinafter abbreviated "CATV"). Your letter informs me that a television district was created in Phillips County providing three stations to residents of the district. In 1980, a CATV system opened for business, providing its subscribers with seven new stations and also furnishing the three old stations through a signal acquired from the television district translator. You inquire whether the CATV subscribers may benefit from the tax exemption provided in section 7-13-2529, MCA, even though they receive the benefits of the television district translator indirectly through the CATV service.

As a general rule, tax exemption statutes should be narrowly construed to promote equity in tax policy. III Sutherland Statutes and Statutory Construction § 66.09 (4th ed. 1974); but see Butte Country Club v. Department of Revenue, 37 St. Rptr. 479, 482, 608 P.2d 111, 115 (1980). In furtherance of this policy, at least one court has stated that "[t]he claimant for an exemption must show that his demand is within the letter as well as the spirit of the law." Jones v. Iowa State Tax Commission, 247 Iowa 530, 74 N.W.2d 563, 565 (1956). Application of the rule of construction would seem to require a holding denying exemption to CATV subscribers who benefit from the tax-supported translator from which their CATV provider receives its signal. I am unable to reach such a conclusion here, however, for two reasons. First, although the policy behind the statute may be clear, the statutory language is equally clear. It provides a tax exemption for subscribers receiving service from CATV, without qualification:

The taxpayers in the television district who do not receive the signal of the television translator station or who receive direct reception from the television station from which the television translator repeats a signal or receive service through the medium of a community antenna system on which they are a subscriber in good standing will be exempt from the payment of the tax for the support of the television services of the television district.... [Emphasis added.]

§ 7-13-2529(1), MCA. Since rules of statutory construction cannot be applied to add or delete words from a statute, Reese v. Reese, 38 St. Rptr. 2157, 2159, 637 P.2d 1183, 1185 (1981), I am unable to rely on the rules cited above to amend the statute to qualify the tax exemption there granted. See also Butte Country Club, 608 P.2d at 114. Second, my conclusion is bolstered by the actions of the 1983 Legislature in rejecting HB 527, which would have amended section 7-13-2529, MCA, to withdraw the tax exemption from CATV subscribers who indirectly benefit from a television district translator. The Legislature had the opportunity to clarify the statute and explicitly qualify the tax exemption. Their refusal to do so suggests a legislative intent that the exemption extend to all CATV subscribers.

There is an element of unfairness in this result, since it allows CATV subscribers to receive the benefits of a television district translator without paying a share of the tax, while at the same time requiring those persons within the district who do not receive CATV service to shoulder an inordinate share of the tax burden. However, the power to remedy the situation rests with the Legislature, and I am not empowered to achieve through an Attorney General's Opinion a result which the Legislature has expressly rejected. See Murray Hospital v. Angrove, 92 Mont. 101, 116, 10 P.2d 577, 583 (1932).

THEREFORE, IT IS MY OPINION:

The exemption from television district taxes for CATV subscribers provided in section 7-13-2529, MCA, benefits subscribers to CATV systems which receive signals from a television district translator.

Very truly yours,

MIKE GREELY
Attorney General