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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

VERIZON SERVICES CORP., Plaintiff and Appellant, v. CALIFORNIA DEPARTMENT OF TAX AND FEE ADMINISTRATION, Defendant and Respondent.	B282170 (Los Angeles County Super. Ct. No. BC602156)

APPEAL from a judgment of the Superior Court of Los Angeles County. Deirdre H. Hill, Judge. Affirmed.

Eversheds Sutherland, Carley A. Roberts, Eric J. Coffill, Douglas Mo, Eric S. Tresh and Suzanne Palms, for Plaintiff and Appellant.

Xavier Becerra, Attorney General, Diane S. Shaw, Senior Assistant Attorney General, Lisa W. Chao and Ronald N. Ito, Deputy Attorneys General, for Defendant and Respondent.

Plaintiff and appellant Verizon Services Corp. (Verizon) seeks a refund of California sales and use taxes it paid in connection with its purchase and resale of telephone cables, conduit, and poles for the tax years of 2008 through 2011. Verizon claims the purchase and resale of such items were expressly excluded from the definition of "tangible personal property" under Revenue and Taxation Code[1] section 6016.5, and thus not subject to taxation. The trial court disagreed, granting defendant and respondent the California Department of Tax and Fee Administration's[2] motion for judgment on the pleadings. The court concluded section 6016.5 excluded from the definition of "tangible personal property" only completed and permanently installed electrical, telephone, and telegraph lines, but not the components used in the construction or repair of the lines, such as the telephone cables, conduit, and poles purchased and resold by Verizon. We agree and affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Verizon is a procurement and service company in California. It primarily serves its local exchange carrier affiliates, some of which provide telecommunications services and

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[1] All further statutory references are to the Revenue and Taxation Code unless otherwise stated.

[2] Verizon originally named the California State Board of Equalization as the defendant in the underlying lawsuit. Effective July 1, 2017, the California Department of Tax and Fee Administration became the successor to the California State Board of Equalization. (Gov. Code, § 15570.22.) On August 29, 2017, we granted the California State Board of Equalization's motion to substitute the California Department of Tax and Fee Administration for itself as a party. For convenience, we will refer to respondent as the "Department."

products in California (LEC affiliates). Between April 1, 2008 through December 31, 2011, Verizon purchased various telephone cables, conduit,[3] and poles from third party vendors, and resold the majority of its purchases to its LEC affiliates.

Verizon did not assemble the telephone cables, but purchased completed cables. The LEC affiliates who purchased the completed cables either installed the cable themselves or subcontracted the installation to third parties. The LEC affiliates also purchased poles used to support aerially installed telephone cables above the ground, and conduit used with respect to burial installation to contain telephone cables underground.

During the relevant periods at issue, Verizon paid California sales and use taxes on the telephone cables, conduit, and poles. On February 20, 2012 and July 26, 2013, Verizon filed a claim for a refund for overpaid tax amounts with the Department. It contended that the telephone cables, conduit, and poles it purchased and resold were excluded from the definition of "tangible personal property" under section 6016.5, and thus not subject to taxation. After filing its claims, Verizon never received a notice of action from the Department, and therefore considered its claims for a refund disallowed.

On November 23, 2015, Verizon filed a verified complaint against the Department alleging a sole cause of action for "Refund of Sales and Use Taxes" under section 6934.[4]

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[3] A conduit is a round sheath generally made of PVC plastics.

[4] Section 6934 provides: "If the board fails to mail notice of action on a claim within six months after the claim is filed, the claimant may, prior to the mailing of notice by the board of its

After answering the complaint, the Department filed a motion for judgment on the pleadings, arguing the complaint failed as a matter of law because Verizon's purchase and resale of the telephone cables, conduit, and poles fell within the definition of "tangible personal property." The Department also requested the court take judicial notice of several documents related to its interpretation of section 6015.6, and the legislative history of the statute.

Verizon opposed the motion and filed objections to the Department's request for judicial notice. It also filed its own request for the court to judicially notice the appellate briefs in *Chula Vista Electric Co. v. State Bd. of Equalization* (1975) 53 Cal.App.3d 445 (*Chula Vista*), and a document entitled, "Comments of the Edison Electric Institute on Tax Reform Issues," maintained on the website of the U.S. Senate Finance Committee.

The trial court granted the Department's motion. It ruled the plain language of section 6016.5 was ambiguous given its brevity, age, and lack of instruction on how the statute was to be applied. Based on the historical precedent of the statute, and the resolution of ambiguities as to tax exemption against the taxpayer, the court further concluded the definition of "tangible personal property" under section 6016.5 only excluded completed and permanently installed electrical, telephone, and telegraph lines from taxation, but not the components used in the construction or repair of the lines, such as the telephone cables,

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action on the claim, consider the claim disallowed and bring an action against the board on the grounds set forth in the claim for the recovery of the whole or any part of the amount claimed as an overpayment."

conduit, and poles purchased and resold by Verizon. The court also granted both parties' request for judicial notice.

Verizon filed a timely notice of appeal.

DISCUSSION

A. Applicable Legal Principles

We review the trial court's decision to grant or deny a motion for judgment on the pleadings de novo. (*McCutchen v. City of Montclair* (1999) 73 Cal.App.4th 1138, 1144.) "[W]e exercise our independent judgment about whether, assuming the truth of the pleadings, the complaint states a cause of action." (*Ibid.*) In reviewing a motion for judgment on the pleadings, "[w]e treat the pleadings as admitting all of the material facts properly pleaded, but not any contentions, deductions or conclusions of fact or law contained therein. We may also consider matters subject to judicial notice." (*Dunn v. County of Santa Barbara* (2006) 135 Cal.App.4th 1281, 1298.)

The interpretation of a statute is also a question of law that we review de novo. (*Reilly v. City and County of San Francisco* (2006) 142 Cal.App.4th 480, 487.) In interpreting a statute, our primary duty "is to give effect to the intent of the Legislature, so as to effectuate the purpose of the law. [Citation.] To determine intent, courts turn first to the words themselves, giving them their ordinary and generally accepted meaning. [Citation.] If the language permits more than one reasonable interpretation, the court then looks to extrinsic aids, such as the object to be achieved and the evil to be remedied by the statute, the legislative history, public policy, and the statutory scheme of which the statute is a part. [Citation.] . . . Ultimately, the court must select the construction that comports most closely with the apparent intent of the Legislature, with a view to promoting

rather than defeating the general purpose of the statute, and it must avoid an interpretation leading to absurd consequences. [Citation.]" (*In re Luke W.* (2001) 88 Cal.App.4th 650, 655.)

In addition, as to tax statutes, "exemptions from taxation are to be strictly construed against the taxpayer, any doubt being resolved against the right to exemption." (*Framingham Acceptance Corp. v. State Bd. of Equalization* (1987) 191 Cal.App.3d 461, 463 (*Framingham*).)[5]

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[5] Verizon challenges the classification of section 6016.5 as a "tax exemption" statute, arguing it is a "tax exclusion" statute because it is not found in the exemption statutes set forth in Part I, Division 2, Chapter 4 of the California Revenue and Taxation Code (§ 6351 et seq.). As a "tax exclusion" statute, Verizon argues the statute's construction should favor the taxpayer. We are not persuaded. California law does not make such a distinction. For example, in *Framingham*, we held section 6006, which excluded certain leases from taxation, should be construed against the taxpayer, even though that statute is not set forth under § 6351 et seq. (*Framingham*, *supra*, 191 Cal.App.3d at p. 463; see also *Beeline Fashions, Inc. v. State Bd. of Equalization* (1976) 56 Cal.App.3d 389, 395 ["Section 6011 in the instant context is a tax exemption statute. We are accordingly bound by the rule that ' "exemptions from taxation are to be strictly construed against the taxpayer" ' "]; *Walker v. State of California* (1957) 154 Cal.App.2d 838, 840–841 [former section 9603, which excluded " 'any person transporting his own property in a motor vehicle owned or operated by him' " from taxation, was strictly construed against the taxpayer].) Accordingly, we find the established rules of statutory construction relevant to tax exemption statutes apply to section 6016.5. (*Framingham*, *supra*, 191 Cal.App.3d at p. 463.)

B. The Trial Court Properly Granted the Department's Motion for Judgment on the Pleadings

Verizon contends the telephone cables, conduit, and poles purchased and resold by Verizon are not subject to sales and use taxes under section 6016.5. We disagree.

Under California law, a retailer who sells "tangible personal property" is required to pay sales tax measured by the gross receipts received. (§§ 6051, 6051.1; *Loeffler v. Target Corp.* (2014) 58 Cal.4th 1081, 1104 (*Loeffler*) ["The sales tax is imposed on retailers '[f]or the privilege of selling tangible personal property at retail.' (§ 6051.)"].) California also imposes on a purchaser a use tax upon the "storage, use, or other consumption" of "tangible personal property." (§ 6201; *Loeffler*, *supra*, at p. 1104, fn. 5 ["By contrast, the use tax falls on the purchaser, although the retailer may collect the tax as an agent"].) " 'Tangible personal property' " is defined as "personal property which may be seen, weighed, measured, felt, or touched, or which is in any other manner perceptible to the senses." (§ 6016.)

Section 6016.5, which excludes from the definition of "tangible personal property" certain telephone and telegraph lines, provides as follows: "Notwithstanding any other provision of law, 'tangible personal property,' for purposes of this part, does not include telephone and telegraph lines, electrical transmission and distribution lines, and the poles, towers, or conduit by which they are supported or in which they are contained." (§ 6016.5.)

Verizon contends the plain language of the statute applies to the telephone cables, conduit, and poles it purchased and

resold. It argues the word "line"[6] in the text of the statute is synonymous with the word "cable," and the references to "poles, towers, or conduit" in the statute are "separate items which are also excluded from the definition of tangible personal property." According to Verizon, the statute "cannot reasonably be read any other way without ignoring the grammatical structure and the purposefully placed commas in the statute." We are not persuaded.

Verizon's word-for-word interpretation of the statute is disingenuous. "The meaning of a statute may not be determined from a single word or sentence; the words must be construed in context, and provisions relating to the same subject matter must be harmonized to the extent possible." (*Lungren v. Deukmejian* (1988) 45 Cal.3d 727, 735.) Here, it is clear from the text of the statute that the word "line" was not meant to be separated from the words "telephone," "telegraph," 'transmission," and "distribution." Grammatically, there are no commas separating the words. Thus, section 6016.5, by its plain language, excludes from taxation "telephone and telegraph lines, electrical

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[6] Verizon contends the Oxford English Dictionary defined "line" as a "wire or cable for telegraph or telephone." We note the Oxford English Dictionary also defined "line" as "a telegraph route, a telegraphic system connecting two or more stations." (IV Oxford English Dict. (1933) p. 306.) As discussed in this opinion, the plain language of section 6016.5 makes clear that the word "line" is not to be interpreted in isolation, but refers to a telecommunications structure as a whole, specifically, "telephone and telegraph lines, electrical transmission and distribution lines." (§ 6016.5.) Thus, we find the ordinary and usual usage of the word "line" in the context of section 6016.5 refers to the "telegraphic route" or "telegraphic system," and not just a "wire" or "cable."

transmission and distribution lines" that are presently part of a telecommunications structure as a whole.

We also reject Verizon's assertion that section 6016.5's reference to "poles, towers, or conduit" evidences "an intent to create a list of items" excluded from taxation. Rather, the text of the statute makes clear that "poles, towers, or conduit" are excluded from taxation *only if* they are "supported" or "contained" by the aforementioned lines, meaning such items must already be part of the completed telecommunications structure. As the Department points out, if the Legislature meant to exclude the component parts of telephone and telegraph lines, it could have done so, but chose not to.[7] Thus, our interpretation of the statute is the only reading that conforms with the legal principle that exemptions from taxation must be strictly construed against the taxpayer. (*Framingham*, *supra*, 191 Cal.App.3d at p. 463; see also *Fischbach & Moore, Inc v. State Bd. of Equalization* (1981) 117 Cal.App.3d 627, 631 [plaintiff contractor required to pay taxes on materials used to construct electrical transmission lines].)

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[7] The Department cites to various statutes under the Revenue and Taxation Code that exclude from taxation both the completed product and the component parts used to make the completed product. (§ 6366, subds. (a)(1), (a)(3) [aircraft and "a component part of any aircraft"]; § 6366.1, subds. (a), (b) [aircraft for leasing and "tangible personal property sold to an aircraft manufacturer and incorporated into aircraft to be leased"]; § 6368, subd. (a) [watercraft and "tangible personal property becoming a component part of that watercraft"]; § 6368.1, subd. (a) [same re leased watercraft].)

Our interpretation of section 6016.5 is also supported by our Division 1 colleagues' decision in *Chula Vista*, *supra*, 53 Cal.App.3d at page 453, and the Department's interpretation of the statute. In *Chula Vista*, one of the issues before the Court of Appeal was whether the purchase of 1,200 feet of new electrical cable by a contractor to be placed in an existing underground conduit was subject to sales or use tax under section 6016.5. (*Chula Vista*, *supra*, at pp. 451–453.) Plaintiff taxpayer, the electrical contractor, argued the cable was an " "electrical transmission line' " within the meaning of section 6016.5 and thus excluded from taxation. (*Chula Vista,* at p. 451.) The Court of Appeal disagreed, concluding section 6016.5 excluded "from the definition of tangible personal property only completed electrical, telephone, and telegraph lines" and not the "components used in the construction or repair of the lines." (*Chula Vista,* at p. 453.)

In so ruling, the Court of Appeal observed the "atmosphere" in which section 6016.5 was enacted and noted that in "none of the litigation which found its way into a reported decision did the taxpayer assert that the sales and use tax was inapplicable to the cost of component tangible materials used in the construction of the transmission lines." (*Chula Vista, supra,* 53 Cal.App.3d at p. 452; see also *King v. State Bd. of Equalization* (1972) 22 Cal.App.3d 1006, 1010 (*King*) [taxpayer required to pay taxes on tangible materials (electrical conductors, insulators, hardware), but not labor costs for erecting and fastening the lines on the towers].) Thus, because the electrical cable purchased by plaintiff taxpayer was merely a component of the electrical transmission line, the court ruled it was properly subject to taxation. (*Chula Vista*, *supra*, at p. 453.)

Verizon contends the *Chula Vista* opinion offers no support in the present case because it is "materially distinct." According to Verizon, the *Chula Vista* decision concerned a contractor who purchased electrical cables to be installed on moveable property; while this case involves Verizon, a non-contractor, that purchased telephone cables to be installed on permanent property. We find the distinctions emphasized by Verizon unavailing. The key issue in the *Chula Vista* case was whether the materials used to construct or repair a line were subject to taxation, regardless of who constructed the line or what type of line was being constructed. (*Chula Vista*, *supra*, 53 Cal.App.3d at p. 451; *King*, *supra*, 22 Cal.App.3d at p. 1011, fn. omitted [the "definition of tangible personal property deals with tangibility, not with distinctions between personalty and realty"].) Accordingly, Verizon has advanced no persuasive contention compelling us to depart from our colleagues' conclusion in *Chula Vista*. (*People v. Hallner* (1954) 43 Cal.2d 715, 719 ["Where a statute has been construed by judicial decision, and that construction is not altered by subsequent legislation, it must be presumed that the Legislature is aware of the judicial construction and approves of it"].)

We also find no reason to ignore the Department's interpretation of section 6016.5. "The taxability question lies at the center of the [Department's] function and authority." (*Loeffler*, *supra*, 58 Cal.4th at p. 1127.) Here, the Department's annotation 190.1047, published on April 4, 1975 – approximately eight months prior to the *Chula Vista* decision – states, "Section 6016.5 of the Revenue and Taxation Code provides that telephone lines and the poles, towers, or conduit by which they are supported, are not tangible personal property within the meaning

of the Sales and Use Tax Law. However, the components are regarded as tangible personal property before they are incorporated into the telephone lines. Accordingly, the sale of the components to the installing contractor is subject to tax." (Annot. No. 190.1047 (April 4, 1975) 2 Business Taxes Law Guide (Rev. 2018) Sales and Use Tax, Construction Contractors, Regs. 1521 http://www.boe.ca.gov/lawguides/business/current/btlg/vol2/suta/190-1047.html#190-1047 (July 13, 2018).) It is clear the Department has consistently held that component parts are not tangible personal property before they are made into the completed line. Although the Department's interpretation of section 6016.5 is not controlling, we find it is entitled to some weight, especially since it reflects a longstanding viewpoint that has remained the same for decades. (*Yamaha Corp. of America v. State Bd. of Equalization* (1998) 19 Cal.4th 1, 15 [" 'The interpretation represented in [the] annotations is certainly entitled to some consideration by the Court' "]; *Engs Motor Truck Co. v. State Bd. of Equalization* (1987) 189 Cal.App.3d 1458, 1471 ["Particular respect is due . . . because the [Department's] interpretation is of long standing and has remained uniform"].)

Accordingly, based upon the plain meaning of section 6016.5 and consistent with established authority, we conclude Verizon's purchase and resale of telephone cables, conduit, and poles, which are simply component parts of a telecommunications structure, are not excluded from the definition of "tangible personal property" under section 6016.5, and thus are taxable.[8]

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[8] Because we conclude the statutory language of section 6016.5 is clear and unambiguous, we need not consider the legislative history of the statute. (*Mutual Life Ins. Co. v. City of Los Angeles* (1990) 50 Cal.3d 402, 413 [" '[w]hen statutory

It follows that the trial court properly granted the Department's motion for judgment on the pleadings.

DISPOSITION

The judgment is affirmed. The Department shall recover its costs on appeal.

BIGELOW, P.J.

We concur:

GRIMES, J.

ROGAN, J.*

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language is . . . clear and unambiguous there is no need for construction and *courts should not indulge in it*' "].)

* Judge of the Orange Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.