

STATEMENT OF THE LEGAL ISSUES¹

1. WHETHER THE TELECOMMUNICATIONS GROSS RECEIPTS TAX, SDCL CH. 10-33A, IS PREEMPTED BY 47 U.S.C. § 332(c)(3)(A)?

The circuit court entered judgment holding that the telecommunications gross receipts tax was not preempted by federal law.

2. WHETHER THE TELECOMMUNICATIONS GROSS RECEIPTS TAX, SDCL CH. 10-33A, IS PREEMPTED BY 47 U.S.C. § 253?

The circuit court entered judgment holding that the telecommunications gross receipts tax was not preempted by federal law.

3. WHETHER TELECOMMUNICATIONS GROSS RECEIPTS TAX, SDCL CH. 10-33A, IS PREEMPTED BY FEDERAL LAW UNDER THE DOCTRINE OF FIELD PREEMPTION?

The circuit court entered judgment holding that the telecommunications gross receipts tax was not preempted by federal law.

4. WHETHER THE ENACTMENT OF THE TELECOMMUNICATIONS GROSS RECEIPTS TAX, 2003 HOUSE BILL 1104, BY THE 2003 SOUTH DAKOTA LEGISLATURE WAS IN VIOLATION OF SOUTH DAKOTA CONSTITUTION ARTICLE III, § 21?

The circuit court entered judgment holding that the enactment of the telecommunications gross receipts tax did not violate South Dakota Constitution Article III, § 21.

5. WHETHER A DECLARATORY JUDGMENT ACTION AGAINST THE APPELLEE CHALLENGING THE TELECOMMUNICATIONS GROSS RECEIPTS TAX IS PERMITTED BY SOUTH DAKOTA LAW?

The circuit court entered judgment holding that a declaratory judgment action was not permitted to challenge the telecommunications gross receipts tax.