

CABLE TELEVISION COMPANIES ARE NOT EXEMPT FROM THE
AD VALOREM TAX ASSESSMENT OF INTANGIBLE PROPERTY

In *Falcon Cable Media LP v. Arkansas Public Service Commission*,¹ the Arkansas Supreme Court affirmed the Pulaski County Circuit Court’s decision upholding the order of the Arkansas Public Service Commission (that upheld the ad valorem tax assessment of intangible property of cable television companies) by looking at the legislative intent of Act 129 of 1927, specifically sections 12(b) and 17(b) and the amended 12(b) in the passage of Act 175 of 1975.² In seeking review of the Public Service Commission’s (Commission) order affirming assessments of ad valorem tax on their companies intangible person property for the years 2006-2009, Falcon Cable Media, LP, Falcon Telecable LP, and Interlink Communications Partners LLC, d/b/a Charter Communications (“Charter”) stated first, that cable companies are exempt from having their intangible personal property included in the valuation in the assessment, and secondly, use of intangible property in their assessment is an illegal change of policy because intangible property (such as “franchise agreements, customer relationships, and good will”³) had never been assessed before, and therefore, the Tax Division lacked the statutory authority to conduct such an assessment.⁴ The Tax Division responded by stating that the assessment was not a change of policy, but instead a failure by Charter to provide the necessary information requested by the Tax Division.⁵

The Commission appointed a preceding officer over the proceeding, who opted out of the customary pre-file prepared testimony and exhibits and instead determined briefing of the issue was sufficient as the issue was primarily one of law.⁶ In its briefing, Charter stated that the Tax Division’s authority in assessing cable television companies came from Title 26, Chapter 26, Subchapter 18 (§ 26-26-1801-1803) its authority pertaining to the assessment businesses could be found in Title 26, Chapter 36, and Subchapter 16 including, § 26-26-1606(b), which allows the Tax Division to “ascertain the value of all property tangible and intangible.”⁷ Furthermore, as Charter argued, because Subchapter 18 did not afford the Tax Division an opportunity to assess intangible person property, cable-television companies were exempt from such taxation under A.C.A. § 26-3-302.⁸

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1. 2012 Ark. 463, __ S.W.3d__.
 2. 2012 Ark. 463, __ S.W.3d__.
 3. *Id* at 2, __ S.W.3d__.
 4. *Id* at 1, __ S.W.3d__.
 5. *Id* at 3, __ S.W.3d__.
 6. *Id* at 3, __ S.W.3d__.
 7. *Id* at 3–4, __ S.W.3d__.
 8. *Falcon Cable Media LP*, 2012 Ark. 463 at 4, __ S.W.3d__.

In its response, the Tax Division relied on *In re Comcast Cable Corporation of Little Rock, Inc.*, Docket No. 06-097-TD (Order No. 13) in which the Commission rejected the notion that § 26-26-1606(b) did not apply to cable-television companies.⁹ The Tax Division also emphasized that although the codified version of § 26-26-1606(b) limits the Tax Division to the businesses within Subchapter 16, the language of the General Assembly uses the word “act,” which would allow the Tax Division the opportunity to assess intangible personal property for all companies it is required to assess.¹⁰ Furthermore, the Tax Division stated Charter’s assertion that it is exempt under A.C.A. § 26-3-302 opposes the decision in *Ozark Gas Pipeline Corp v. Arkansas Public Service Commission*, 342 Ark. 591, 29, S.W.3d 730 (2000).¹¹ The preceding officer ordered in favor of the Tax Division in every aspect, and the Commission approved without modifying the order.¹² After Charter appealed, the Pulaski County Circuit Court also affirmed the Commissions order and Charter appealed once more.¹³

In a reply brief to the Arkansas Supreme Court, Charter requested that the Court take judicial notice of Order No. 13 in the *Comcast* proceeding. The Commission filed a motion to strike Charter’s request.¹⁴ Because both parties had mentioned Order No. 13 and the Commission relied on the order when stating that Charter’s reasoning was lacking, the Arkansas Supreme Court denied the motion to strike.¹⁵

The court stated that it does not have the job of assessing property, but instead, to review the assessments made.¹⁶ In determining whether the intangible personal property of a cable-television company is subject to ad-valorem taxes¹⁷, the court stated it must look at the statutory construction and interpret the intention of Act 129 of 1927, which had 38 sections identifying businesses that would be subject to the Tax Division.¹⁸ The General Assembly amended 12(b) with Act 175 of 1975 to include cable-television companies and only gives the Commission jurisdiction over cable-television companies in regards to making original assessments only in § 26-26-1803.¹⁹ However, the problem came in determining if § 26-26-1606, which allowed the Tax Division to ascertain the value of both tangible and intangible property, applied to the cable-television companies since cable-

9. *Id.* at 4, __ S.W.3d__.

10. *Id.* at 4, __ S.W.3d__.

11. *Id.* at 5, __ S.W.3d__.

12. *Id.* at 5, __ S.W.3d__.

13. *Id.* at 5, __ S.W.3d__.

14. *Falcon Cable Media LP*, 2012 Ark. 463 at 5, __ S.W.3d__.

15. *Id.* at 5, __ S.W.3d__.

16. *Id.* at 7, __ S.W.3d__.

17. *Id.* at 6, __ S.W.3d__.

18. *Id.* at 7, __ S.W.3d__.

19. *Id.* at 8, __ S.W.3d__.

television companies are listed in neither a “subchapter,” which does not expressly provide for assessment of intangibles nor in the entities defined by § 26-26-1601.²⁰ In response to this question, the Commission argued that the Arkansas Code Revision Commission wrongly inserted the word “subchapter” because section 17 of Act 129 stated “act” to extend the entities assessed, including cable-television companies, under § 26-24-103.²¹ The court agreed.²²

The court determined that Act 129 of 1927 was intended to establish a “centralized ad valorem tax assessment” for businesses in section 12(b) and was only amended under Act 175 of 1975 to include cable-television companies.²³ The court determined that when cable-television companies were included in Act 175 of 1975, the original intent of the act did not change but instead, only required the cable-television companies to become subject to all provisions of the act, including section 17 in 26-26-1606, thus, allowing them to assess both tangible and intangible property.²⁴ The court also stated that, because the Arkansas Code Revision Commission cannot change the substance or meaning of any provision of the Code or act of the General Assembly, no significance should be placed on the word change and the language of the original act remains the law.²⁵

In sum, the intent of the General Assembly in enacting Act 175 was to make sure § 26-26-1606(b) applied to cable-television companies so that their intangible personal property can also be assessed. Because of this, the court reasoned that the exemption from taxation of intangible personal property in § 24-3-302 does not apply to cable-television companies.²⁶

Charter stilled asserted that the Tax Division violated law by not adopting rules for the taxation of cable-television companies or follow the rule-making process established in the Commission’s Rules of Practice and Procedure.²⁷ However, the court dismissed this argument because it was not raised in the initial hearing, therefore could not be heard on the appeal. As a result, the decision by the Pulaski County Circuit Court allowing the assessment of the intangible personal property of cable-television companies was affirmed.²⁸

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20. *Falcon Cable Media LP*, 2012 Ark. 463, at 8–9 __ S.W.3d__.

21. *Id.* at 9 __ S.W.3d__.

22. *Id.* at 9, __ S.W.3d__.

23. *Id.* at 9, __ S.W.3d__.

24. *Id.* at 10, __ S.W.3d__.

25. *Id.* at 11, __ S.W.3d__.

26. *Falcon Cable Media LP*, 2012 Ark. 463, at 11 __ S.W.3d__.

27. *Id.* at 12, __ S.W.3d__.

28. *Id.* at 12, __ S.W.3d__.

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