

LEGAL AND REGULATORY NOTES, NOV. 2014

Utility Easements and Rights-of-Way Are Not Subject to Municipal Property Taxes

In the case of *Vermont Transco LLC v. Town of Vernon*, 2014 VT 93A, the Vermont Supreme Court ruled in September that utility easements are not subject to Vermont's municipal property tax. This decision provides further guidance to listers regarding the tax assessment of property held by electric companies and located within a municipality.

The Court based its decision on the reasoning found in the 1985 case of *Village of Lyndonville v. Town of Burke*, 146 Vt. 435. In the *Lyndonville* case, the Court had ruled that utility easements held by a municipal utility are not "land" that may be separately taxed pursuant to 32 V.S.A. § 3659. That statute provides in part that "land and buildings of a municipal corporation, whether acquired by purchase or condemnation and situated outside its territorial limits shall be taxed by the municipality in which such land is situated." The Court's decision in *Lyndonville* was based in part on the practical difficulties of identifying and taxing every interest in a piece of property, rather than making one assessment against the titleholder of the property. "It appears unreasonable to conclude that the Legislature intended to cast upon the listers the burden of determining the nature of the titles of various owners of different interests in a piece of real estate." *Lyndonville* at 438.

The *Vermont Transco* case extends the *Lyndonville* ruling such that utility easements are now clearly exempt from taxation even when they are held by private entities. Although distribution and transmission lines remain taxable as "business personal property" pursuant to 32 V.S.A. § 3618, it is clear now that the easements and rights-of-way underlying these lines should be "exclude[d] from the grand list of properties subject to tax." *Id* at ¶23.

The decision is archived at <http://info.libraries.vermont.gov/supct/current/op2013-243A.html>

Sarah Jarvis, Staff Attorney II
Municipal Assistance Center