



# This Week in State Tax (TWIST)

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## **New York: Fiber-optic cables and conduits are subject to property tax**

The New York Supreme Court, Appellate Division recently concluded that an Internet, telephone, and cable television service provider had not established that it was entitled to a real property tax exclusion for equipment used to provide cable television services. Under New York's Real Property Tax Law, equipment such as the taxpayer's conduits and fiber optic cables, is considered local public utility mass real property subject to real property taxes. There is an exclusion from the tax for equipment used in the transmission of news or entertainment radio, television, or cable television. However, this exception has been judicially interpreted to apply only when the fiber optic cables are primarily or exclusively used for one of the excluded purposes. The taxpayer asserted that its primary use of the fiber-optic cables was to provide cable television services, despite its provision of Internet and telephone services. As support for this assertion, the taxpayer relied largely on testimony and affidavits of its chief operating officer. However, the court found that none of the proffered evidence addressed the extent to which the fiber-optic cables were used for the transmitting cable television signals compared to their other uses. There was also a lack of evidence concerning the allegedly ancillary nature of the Internet and telephone signals transmitted by the taxpayer. The court concluded that although it was clear the taxpayer used the equipment to transmit cable television signals, it had not established the level of proof required under the real property tax law to claim the exclusion. Please contact Russ Levitt with questions on *Matter of SLIC Network Solutions, Inc. v. New York State Dep't of Taxation*.

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