

TAXATION: MISCELLANEOUS TAXES - CONSUMER UTILITY TAXES.

PUBLIC SERVICE COMPANIES: PAY TELEPHONE REGISTRATION ACT.

Authority of locality to impose consumer utility tax must be clear. Because provider of pay telephone service is not "consumer" subject to imposition of tax for services provided by telephone company, owner of pay telephones is not subject to tax.

The Honorable Ross A. Mugler
Commissioner of the Revenue for the City of Hampton
June 8, 1999

You ask whether the owners of pay telephones are subject to the consumer utility tax imposed pursuant to § 58.1-3812 of the *Code of Virginia*. For the purposes of this opinion, I shall assume that you are referring to persons falling within the purview of the Pay Telephone Registration Act¹ who provide "payphone service."²

Section 58.1-3812 authorizes the imposition of a local tax upon the consumers of utility services provided by telegraph and telephone companies. Section 58.1-3812(J) defines "consumer" to mean "a person who, individually or through agents, employees, officers, representatives, or permittees, makes a taxable purchase of local telecommunication services." "Taxable purchase" is defined as "the acquisition of telecommunication services for consumption or use."³

A primary goal of statutory construction is to interpret statutes in accordance with the legislature's intent.⁴ Whenever there is doubt, however, as to the meaning or scope of laws imposing a tax, such laws are to be construed against the government and in favor of the citizen.⁵ This rule of construction is consistently applied in interpreting the extent of the consumer utility taxes authorized by § 58.1-3812.⁶

Section 58.1-3812(A) authorizes a locality to tax a telephone company consumer if the consumer's service address is located in such locality. The tax is collected by the service provider of the local telecommunication services to such consumer.⁷ While § 58.1-3812 clearly contemplates the imposition of the tax on resident customers of a local telephone service provider who utilize such service, it is less clear that the statute contemplates imposition of the tax on a provider of pay telephone equipment which subsequently is used by another party for telephone service.⁸

Statutes granting the power of taxation to localities are to be strictly construed, with any reasonable doubt to be resolved against the taxation.⁹ Dillon's rule of strict construction likewise generally limits powers of local governing bodies to those conferred expressly by law or by necessary implication from express grants.¹⁰ Thus, the authority of a locality to impose a tax must be clear.

It is my opinion that a provider of pay telephone service is not a "consumer" as such term is used in § 58.1-3812. Therefore, this statute does not encompass the imposition of the tax on a provider of pay telephone service.¹¹ Applying the rule of strict construction in interpreting the extent of the consumer utility tax authorized by § 58.1-3812, I must, therefore, conclude that the owners of pay telephones are not subject to the tax.

¹ See tit. 56, ch. 16.3, §§ 56-508.15, 56-508.16.

²47 U.S.C.A. § 276(d) (West Supp. 1998) (defining "payphone service" provided by any Bell operating company to general public as "the provision of public or semi-public pay telephones, the provision of inmate telephone service in correctional institutions, and any ancillary services").

³Section 58.1-3812(J).

⁴See *Turner v. Commonwealth*, 226 Va. 456, 459, 309 S.E.2d 337, 338 (1983).

⁵See *County of Henrico v. Mgt. Rec., Inc.*, 221 Va. 1004, 1010, 277 S.E.2d 163, 166 (1981); *City of Richmond v. Valentine*, 203 Va. 642, 646, 125 S.E.2d 854, 858 (1962); 1993 Op. Va. Att'y Gen. 237, 239.

⁶See 1993 Op. Va. Att'y Gen., *supra*, at 240 n.4.

⁷See § 58.1-3812(F).

⁸See, e.g., 1993 Op. Va. Att'y Gen., *supra* note 5, at 239 (concluding that cellular telephone customer of cellular telephone company which does not provide enhanced emergency service of E-911 system is not "consumer" for purposes of § 58.1-3813 special tax on telephone consumers of such service).

⁹See *Commonwealth v. General Electric Company*, 236 Va. 54, 372 S.E.2d 599 (1988); 1997 Op. Va. Att'y Gen. 186, 187.

¹⁰See *Commonwealth v. Arlington County Bd.*, 217 Va. 558, 232 S.E.2d 30 (1977); 1997 Op. Va. Att'y Gen., *supra*, at 187.

¹¹*Compare* 1993 Op. Va. Att'y Gen., *supra* note 5, at 239 (noting that subject matter of § 58.1-3813 does not encompass certain cellular telephone systems).