

99-093

TAXATION: LICENSE TAXES.

COMMISSIONS, BOARDS AND INSTITUTIONS: VIRGINIA CODE COMMISSION.

1985 recodification of taxation title does not repeal 1972 uncodified enactment clause authorizing localities to continue imposing gross receipts tax on public service corporations at greater rate than that in effect January 1, 1972. City that reduces its continued higher tax rate in compliance with prescribed rate has no authority to reinstate rate permitted by uncodified enactment.

The Honorable Gene R. Ergenbright
Commissioner of the Revenue for the City of Staunton
May 12, 2000

You ask whether a city which, prior to 1972, had imposed a license tax on telephone companies at a rate of one percent of the company's gross receipts may reduce the rate of taxation and then reinstate it at the higher level.

You relate that, prior to 1972, and in accordance with former § 58-578 of the *Code of Virginia*, a city imposed a license tax of one percent on the gross receipts of certain telephone companies. You further relate that in 1972, § 58-578 was amended to provide that such tax could not exceed one-half of one percent of such receipts; however, also enacted in 1972 was an uncodified enactment permitting localities which previously had imposed a higher tax rate to continue to do so. You also state that, in accordance with this enactment, the city continued its imposition of the one percent rate. You further state that the recodification of Title 58 in 1985 recodified § 58-578 as § 58.1-3731, but such recodification did not include any language regarding the uncodified enactment. You also relate that in 1996, when the city updated and reenacted its tax code, the license tax rate was reduced to one-half of one percent. You further provide that this reduction in the rate was predicated on the belief that the recodification of Title 58 operated to repeal the uncodified enactment. You inquire whether this interpretation of the effect of the recodification is correct and, if not, whether the city may now reinstate the earlier, higher rate of one percent.

The 1972 amendments¹ to § 58-578 provided that a locality may impose a license tax upon certain telephone companies, "which shall not exceed one half of one per centum of the gross receipts of such business accruing to such corporation from such business in such [locality]." Along with these amendments, the General Assembly provided an enactment clause stating:

All taxes imposed by any city, town or county prior to the effective date of this act are hereby validated. Nothing contained herein shall prohibit any city, town or county from *continuing* to impose any gross receipts tax upon public service corporations at rates no greater than those in effect on January 1, 1972.^[2]

Effective January 1, 1985, Title 58 was recodified as Title 58.1.³ This recodification repealed § 58-578.⁴ The pertinent provisions of the repealed statute are recodified in § 58.1-3731.⁵ No reference is made to the 1972 enactment clause in issue. Section 9-77.11 pertains to recodification of the Virginia Code and provides:

Whenever in a title revision or recodification bill an existing section of a title of the Code of Virginia is repealed and replaced with a renumbered section and that section so repealed was effective with an uncodified enactment, the repeal of that section, alone, shall not affect the uncodified enactment. The title revision or recodification bill shall *expressly repeal* the uncodified enactment in order for the enactment to be repealed.
[Emphasis added.]

The plain language of a statute should be given its clear and unambiguous meaning.⁶ Section 9-77.11 clearly articulates that the recodification of a title alone does not operate to repeal an uncodified enactment that existed prior to the act. This statute is aligned with the general premise that a legislative enactment evinces the legislature's intent to grant therein appropriate statutory authority.⁷ Accordingly, with respect to your first inquiry, the mere recodification of Title 58 to Title 58.1 did not operate to repeal a locality's authority under § 58-578 to impose its one percent rate.⁸

You next inquire whether the city may reinstate its one percent gross receipts tax rate, which it reduced in 1996 to comply with § 58.1-3731 on the belief that the recodified statute repealed the 1972 enactment clause.

As I have stated, an enactment clause reflects the legislature's intent to grant specific statutory authority.⁹ In this case, the General Assembly specifically allowed those localities whose rates on January 1, 1972, were higher than the one-half of one percent rate prescribed in the 1972 amendments to § 58-578 to continue to impose the license tax at the higher rate. Thus, the legislature granted these localities the statutory authority to impose the higher rate. Once the rate is reduced, however, the locality loses this grant of authority to impose the higher rate. Neither § 58.1-3731, former § 58-578, nor the enactment clause contains a definition for the term "continuing." In the absence of a statutory definition, the term "continuing" should be given its common, ordinary and accepted meaning.¹⁰ "Continuing" is defined as "maintain[ing] without interruption a condition, course, or action."¹¹ Because there has been an interruption in the imposition of the tax at the higher rate, the locality no longer is subject to the limited exception to the general applicability of the statute contained in the enactment clause. That is, because the locality has failed to "continu[e] to impose"¹² the tax at the higher rate in effect January 1, 1972, the enactment clause provides no authority for such rate to be the current rate.

Accordingly, with regard to your second inquiry, it is my opinion that the locality does not have the authority to reinstate the rate permitted by the uncodified enactment.

¹*See* 1972 Va. Acts ch. 858, at 1584, 1584.

²*Id.* ch. 858, cl. 3, at 1585 (emphasis added).

³1984 Va. Acts ch. 675, at 1178; *see id.*, cl. 9, at 1462.

⁴*See id.* ch. 675, cl. 8, at 1462.

⁵*Id.* ch. 675, at 1441.

⁶*See* Op. Va. Att'y Gen.: 1998 at 127, 128 n.10; 1996 at 113, 113.

⁷*See* 1998 Op. Va. Att'y Gen. 71, 73.

⁸I assume that the tax is a gross receipts tax imposed on a public service corporation in accordance with the 1972 enactment clause. I further assume that the one percent rate was the rate the city imposed on January 1, 1972.

⁹*See* 1998 Op. Va. Att'y Gen., *supra* note 7, at 73.

¹⁰*See* Commonwealth v. Orange-Madison, Coop., 220 Va. 655, 658, 261 S.E.2d 532, 533-34 (1980); Op. Va. Att'y Gen.: 1999 at 31, 31; 1997 at 57, 59.

¹¹Merriam Webster's Collegiate Dictionary 251 (1996).

¹²1972 Va. Acts ch. 858, cl. 3, *supra* note 1, at 1585.