

01-043

**TAXATION: GENERAL PROVISIONS OF TITLE 58.1 (SECRECY OF INFORMATION) — MISCELLANEOUS TAXES – FOOD AND BEVERAGE TAX — LOCAL OFFICERS – COMMISSIONERS OF THE REVENUE – TREASURERS.**

**CONSTITUTION OF VIRGINIA: LOCAL GOVERNMENT (COUNTY AND CITY OFFICERS).**

**Commissioner of revenue may disseminate to treasurer or his employees confidential meals tax information that is necessary for treasurer to fulfill his duty to collect meals taxes. Bank designated by treasurer as depository to receive payments due county has authority to receive meals tax payments; its knowledge of proprietary information related to treasurer's collection is not tantamount to violation of secrecy of information provisions.**

The Honorable Geraldine M. Whiting  
Commissioner of the Revenue for Arlington County  
August 24, 2001

You request guidance regarding the applicability of the confidentiality provisions of § 58.1-3 of the *Code of Virginia* to information contained on the master computer file maintained by a commissioner of the revenue.

You relate that the commissioner of the revenue for Arlington County maintains a master computer file which contains business information about taxpayers who pay meals taxes. You also relate that the treasurer has gained access to the master file so that he may mail such taxpayers forms and instructions concerning the payment of county meals taxes at a bank with which the treasurer has contracted. You inquire whether (1) the treasurer's access and use of information from the commissioner's meals tax computer file, or (2) the bank's use of information related to acceptance of meals tax payments violates the confidentiality provisions of § 58.1-3.

Section 58.1-3833 authorizes counties to impose meals taxes. With respect to such taxes, the Attorney General concludes that, because no statute directs local governments to maintain any particular type of system in connection with the administration of local meals taxes, the adoption of reasonable recordkeeping procedures is a matter for determination by the governing body and local tax officials.<sup>1</sup> Additionally, this Office has noted that the duty to administer these taxes is not a statutory duty of a

constitutional officer,<sup>2</sup> but a constitutional officer may voluntarily assume such duty.<sup>3</sup>

Section 58.1-3(A) provides, in part:

Except in accordance with a proper judicial order or as otherwise provided by law, the ... commissioner of the revenue, treasurer, or any other state or local tax or revenue officer or employee ... shall not divulge any information acquired by him in the performance of his duties with respect to the transactions, property, including personal property, income or business of any person, firm or corporation.

The section further provides that the prohibition does not apply to "[a]cts performed or words spoken or published in the line of duty under the law."<sup>4</sup>

A prior opinion of the Attorney General concludes that, in general, § 58.1-3 establishes the confidentiality of master computer file records of a commissioner of the revenue and prohibits the unauthorized dissemination of, or access to, such confidential information.<sup>5</sup> Thus, unless the records are deemed nonconfidential or are excepted from the provisions of § 58.1-3, information on the master computer file is protected.

The Attorney General previously has noted that, with regard to the meals tax, disclosure of the amount of tax owed for a particular time necessarily reveals the volume of business conducted by the individual or business during that time period.<sup>6</sup> Accordingly, the opinion concludes that such information is business information coming within the purview of § 58.1-3.<sup>7</sup> Therefore, the amount of meals taxes owed by an individual or business and recorded in the master computer file, as well as other information which would indicate proprietary business information, is protected from disclosure.

Provided that the information on the master computer file is protected information, it must next be determined whether an exception to § 58.1-3 allows for dissemination of this information.

Under § 58.1-3(A)(2), the prohibition against disclosure of protected taxpayer information does not apply to "[a]cts performed or words spoken or published in the line of duty." The Attorney General previously has concluded that this line of duty exception allows tax officials to disclose information to other such officers and employees.<sup>8</sup> In general, the duties of

a commissioner of the revenue concern the assessment of taxes whereas the duties of a treasurer concern the collection of taxes.<sup>9</sup> Accordingly, with respect to the first part of your inquiry, it is my opinion that, to the extent such information is necessary for the treasurer to fulfill his duty to collect meals taxes, the dissemination to him or his employees of otherwise confidential taxpayer information is allowable under § 58.1-3.

Regarding the second part of your inquiry, § 58.1-3 generally does not authorize the disclosure of protected taxpayer information to third parties.<sup>10</sup> Section 58.1-3149, however, specifically provides:

All money received by a treasurer for the account of either the Commonwealth or the treasurer's county ... shall be deposited intact by the treasurer as promptly as practical after its receipt in a bank or savings institution authorized to act as depository therefor. All deposits made pursuant to this provision shall be made in the name of the treasurer's county .... The treasurer may designate any bank or savings and loan association authorized to act as a depository to receive any payments due to the county ... directly, either through a processing facility or through a branch office.

In analyzing § 58.1-3149 with the confidentiality provisions of § 58.1-3, several rules of statutory construction apply. First, a statute should not be construed to frustrate its purpose.<sup>11</sup> Secondly, statutes related to the same subject should be considered *in pari materia*.<sup>12</sup> Finally, statutes dealing with the same subject matter should be construed to achieve a harmonious result.<sup>13</sup>

The plain language of § 58.1-3149 clearly authorizes a local treasurer to select a bank as a depository for the funds he collects and further authorizes him to designate such bank to receive payments due the county.<sup>14</sup> Reading this statute in harmony with § 58.1-3, it would be illogical to apply § 58.1-3 to prohibit a bank duly designated by a treasurer to receive local meals tax payments. I assume from the facts presented that the bank in issue has been duly selected by the county treasurer to receive meals tax payments. Accordingly, it is my opinion that the bank is authorized to receive such payments, and its knowledge of proprietary information related thereto, if any, is not tantamount to a violation of § 58.1-3.<sup>15</sup>

<sup>1</sup>See 1997 Op. Va. Att'y Gen. 186.

<sup>2</sup>See Va. Const. art. VII, § 4 (providing for election of local treasurers, sheriffs, Commonwealth's attorneys, clerks of court, and commissioners of revenue).

<sup>3</sup>2000 Op. Va. Att'y Gen. 204.

<sup>4</sup> Va. Code Ann. § 58.1-3(A)(2) (Michie Supp. 2001).

<sup>5</sup>See 1987-1988 Op. Va. Att'y Gen. 506, 507.

<sup>6</sup>See 1992 Op. Va. Att'y Gen. 157, 160.

<sup>7</sup>*Id.*

<sup>8</sup>See 1999 Op. Va. Att'y Gen. 211, 212 (citing 1984-1985 Op. Va. Att'y Gen. 397, 398).

<sup>9</sup>*Compare* Va. Code Ann. tit. 58.1, ch. 31, art. 1, §§ 58.1-3100 to 58.1-3122.2 (Michie Repl. Vol. 2000), *and* tit. 58.1, ch. 31, art. 2, §§ 58.1-3123 to 58.1-3172.1 (Michie Repl. Vol. 2000 & Supp. 2001) (governing commissioners of revenue and treasurers, respectively).

<sup>10</sup>See 1999 Op. Va. Att'y Gen., *supra* note 8, at 212-13.

<sup>11</sup>See Op. Va. Att'y Gen.: 1999 at 59, 60; 1982-1983 at 309, 311.

<sup>12</sup>See *Prillaman v. Commonwealth*, 199 Va. 401, 405-06, 100 S.E.2d 4, 7 (1957); 1996 Op. Va. Att'y Gen. 134, 135. Statutes *in pari materia* are those "[o]n the same subject; relating to the same matter." Black's Law Dictionary 794 (7<sup>th</sup> ed. 1999). Such statutes "may be construed together, so that inconsistencies in one statute may be resolved by looking at another statute on the same subject." *Id.*

<sup>13</sup>See *Prillaman*, 199 Va. at 405, 100 S.E.2d at 7; 1990 Op. Va. Att'y Gen. 126, 128.

<sup>14</sup>*Compare* *Yeatts v. Murray*, 249 Va. 285, 288, 455 S.E.2d 18, 20 (1995) (noting that clear and unambiguous language of § 8.01-660 permits habeas court to consider affidavits of witnesses taken by either party as substantive evidence), *cert. denied*, *Yeatts v. Angelone*, 526 U.S. 1095 (1999). See 1996 Op. Va. Att'y Gen. 113, 113 (noting that plain language of statute should be given its clear and unambiguous meaning).

<sup>15</sup>You also inquire whether actions of a treasurer or bank regarding the information contained on the commissioner's master computer file violates the Virginia Computer Crimes Act, §§ 18.2-152.1 to 18.2-152.15. This Office traditionally has declined to render official opinions when the request involves a question of fact rather than one of law. See 1991 Op. Va. Att'y Gen. 122, 124. Additionally, the application of various elements of a criminal offense to a specific set of facts is a function properly reserved to the Commonwealth's attorney, the grand jury, and the trier of fact and is not an appropriate issue on which to render an opinion. See *id.* I must, therefore, decline to render an opinion on this inquiry.

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