

OP. NO. 04-063

**TAXATION: MISCELLANEOUS TAXES – TRANSIENT OCCUPANCY TAX —
RETAIL SALES AND USE TAX.**

County has no authority to levy lodging tax on amount hotel charges transients for rental of banquet facilities to accommodate events of limited duration.

The Honorable John C. Watkins
Member, Senate of Virginia
September 7, 2004

Issue Presented

You inquire concerning the proper interpretation and application of the transient occupancy tax imposed pursuant to § 58.1-3819. Section 58.1-3819(A) authorizes a county to impose a transient occupancy tax on hotels, motels, boarding houses, travel campgrounds, and other facilities offering guest rooms rented out for a certain period of time. You ask whether § 58.1-3819 prohibits a county from imposing a lodging tax on the amount charged to transients for the rental of hotel banquet facilities to accommodate specific events of limited duration.

Response

I am of the opinion that § 58.1-3819 does not authorize a county to levy a lodging tax on the amount a hotel charges transients for the rental of banquet facilities to accommodate events of limited duration.¹

Background

You relate that Chesterfield County has adopted an ordinance that imposes a lodging tax pursuant to § 58.1-3819. The ordinance requires collection of an eight percent lodging tax on the total amount paid by transients to hotels "for room or space rental."² The hotel you describe owns a building in Chesterfield County and maintains both banquet facilities and guest rooms. The hotel rents its banquet facilities for customary purposes, i.e., social and business functions involving large groups of people who meet in the hotel's banquet room during the course of the specific event. Historically, the hotel has collected the eight percent lodging tax when it rents rooms to overnight guests, but has never collected the lodging tax from individuals or groups who rent the banquet facilities to host events.

Applicable Law and Discussion

The ordinance in question is a local transient occupancy tax ordinance³ administered by local taxing officials pursuant to §§ 58.1-3819 through 58.1-3823. Section 58.1-3819(A) authorizes

[a]ny county, by duly adopted ordinance, [to] levy a transient occupancy tax on hotels, motels, boarding houses, travel campgrounds, and other facilities offering guest rooms rented out for continuous occupancy for fewer than 30 consecutive days. Such tax shall be in such amount and on such terms as the governing body may, by ordinance, prescribe.

It is well-settled that laws imposing taxes are to be strictly construed, and when uncertainty arises as to the scope or meaning of such laws, "they are construed more strongly against the government and in favor of the citizen."⁴ Furthermore, statutes that impose taxes "are not to be interpreted to include within the subjects taxed anything which is not clearly intended by the legislature to be so included."⁵

A strict construction of § 58.1-3819 requires the conclusion that the statute does not include within the subjects taxed meeting rooms and banquet facilities rented within hotels, motels, boarding houses, travel campgrounds and other facilities. Section 58.1-3819(A) authorizes counties to adopt ordinances imposing a transient occupancy tax on certain "facilities offering *guest rooms rented* out for continuous occupancy for fewer than 30 consecutive days." (Emphasis added). The Chesterfield County transient occupancy tax ordinance imposes a lodging tax on the amounts paid "for *room or space rental*."⁶ Section 58.1-3819 is silent as to any other type of room rented except guest rooms. Other statutes employing similar language provide valuable guidance as to the significance of the statute's failure to include other types of rooms.⁷ Section 58.1-603, which uses language similar to that in § 58.1-3819, noticeably includes other types of rooms within the definition of "retail sale"⁸ for purposes of the Virginia Retail Sales and Use Tax Act. The term "retail sale" specifically includes

the sale or charges for any room or rooms, lodgings, or accommodations furnished to transients for less than ninety continuous days by any hotel, motel, inn, tourist camp, tourist cabin, camping grounds, club, or any other place in which rooms, lodging, space, or accommodations are regularly furnished to transients for a consideration.⁹

The term "accommodations" includes "banquet facilities and meeting rooms."¹⁰ Accordingly, a different result is reached under the Virginia Retail Sales and Use Tax Act, because banquet facilities and meeting rooms rented in hotels are included within the term "accommodations," which are subject to sales tax under § 58.1-603(4). The absence of language regarding other types of rooms in § 58.1-3819 does not evince a legislative intent to include meeting rooms and banquet facilities within the scope of the transient occupancy tax.¹¹ Had the General Assembly intended meeting rooms and banquet facilities rented within hotels, motels, boarding houses, travel campgrounds, and other facilities to be subject to the transient occupancy tax, § 58.1-3819 would have so stated.¹² Therefore, banquet facilities and meeting rooms rented within hotels are not subject to the transient occupancy tax under § 58.1-3819.

Conclusion

Accordingly, I am of the opinion that § 58.1-3819 does not authorize a county to levy a lodging tax on the amount a hotel charges transients for the rental of banquet facilities to accommodate events of limited duration.

¹For purposes of this opinion, I assume that your inquiry is limited solely to the local transient occupancy tax and does not involve application of the Virginia Retail Sales and Use Tax Act. See Tax Comm'r Priv. Ltr. Rul. P.D. 93-167 (July 29, 1993) (concerning application of retail sales and use tax to hotel accommodations for federal contractor), *available at* <http://policylibrary.tax.state.va.us/OTP/Policy.nsf>.

²Chesterfield County, Va., Code ch. 9, art. XI, § 9-152 (2004) ("Transient Occupancy Tax"), *available at* http://library9.municode.com/gateway.dll/VA/virginia/2853?f=templates&fn=default.htm&nusername=10531&npassword=MCC&nac_credentialspresent=true&vid=default [hereinafter Chesterfield County Code].

³See Chesterfield County Code, *supra* note 2. It is the policy of this Office not to render opinions interpreting local ordinances. See 1995 Op. Va. Att'y Gen. 260, 261.

⁴*Brown v. Commonwealth*, 98 Va. 366, 370, 36 S.E. 485, 487 (1900), *quoted in Commonwealth v. Va. Elec. & Power Co.*, 159 Va. 655, 665, 167 S.E. 440, 443 (1932).

⁵*Bott v. Commonwealth*, 187 Va. 745, 751, 48 S.E.2d 235, 238 (1948).

⁶Chesterfield County Code, *supra* note 2.

⁷See *King v. Commonwealth*, 2 Va. App. 708, 710, 347 S.E.2d 530, 531 (1986) (noting validity of using other Code sections as interpretive guides).

⁸Va. Code Ann. § 58.1-603(4) (LexisNexis Repl. Vol. 2004).

⁹Section 58.1-602 (LexisNexis Repl. Vol. 2004).

¹⁰Tax Comm'r Priv. Ltr. Rul. P.D. 97-38, (Feb. 4, 1997), *available at* <http://policylibrary.tax.state.va.us/OTP/Policy.nsf>.

¹¹See 1995 Op. Va. Att'y Gen., *supra* note 3, at 262.

¹²*Accord* 2002 Op. Va. Att'y Gen. 18, 20 (noting that had General Assembly intended to impose \$10 fee on every deed admitted to record, it could have done so).

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