

00-066

TAXATION: LICENSE TAXES.

Deduction for long distance telephone call charges from gross receipts of mobile telephone company for local business license tax purposes is not applicable to carrier costs incurred by company.

The Honorable Ross A. Mugler
Commissioner of the Revenue for the City of Hampton
March 30, 2001

You ask whether § 58.1-3731 of the *Code of Virginia*, which excludes charges for long distance telephone calls from the gross receipts of telephone companies for local business license tax purposes, is applicable to certain "costs" incurred by a mobile telephone service provider.

You relate that a mobile telephone service provider offers free statewide calling. You further relate that such company allows a subscriber to the service to place a telephone call from anywhere in Virginia to anywhere else in Virginia without incurring any charges specifically for long distance telephone calls. You state that the company does, however, incur additional carrier costs once a call is placed to or from an area outside of its local access area. With respect to such calls, there are times when the company incurs long distance costs, but the subscriber incurs, and the company receives, no related long distance charges. You inquire whether these carrier costs are tantamount to long distance charges subject to the § 58.1-3731 exclusion from the company's gross receipts.

Section 58.1-3731 authorizes localities to impose a license tax on telephone and telegraph companies at a certain percentage of the company's gross receipts accruing from sales to consumers. "[I]n the case of telephone companies," however, § 58.1-3731 provides that "charges for long distance telephone calls shall not be included in gross receipts for purposes of license taxation."

A primary goal of statutory construction is to interpret statutes in accordance with the legislature's intent.¹ Additionally, although tax statutes generally are strictly construed, with any reasonable doubt concerning a locality's power to tax resolved against the taxation,² exemptions from taxation are construed strictly against the taxpayer.³ The term "gross receipts," for the purposes of license taxation, "means the whole, entire, total receipts, without deduction."⁴ Thus, there are no deductions or exclusions from taxation "except as provided by law."⁵ Thus, expenses or costs incurred by a retailer generally are not deducted or excluded unless specifically authorized by statute.⁶

Section 58.1-3731 unambiguously mandates that "charges for long distance telephone calls shall not be included in [the] gross receipts [of telephone calls] for purposes of license taxation." The Supreme Court of Virginia has stated that "[t]he manifest intention of the legislature, clearly disclosed by its language, must be applied."⁷ "Take the words as written" ... and give them their plain meaning."⁸ Implicit in the language "charges for long distance" in § 58.1-3731 is the premise that such charges are charged to and paid by the consumer.⁹ In the situation you present, there are no such charges to the consumer. Rather, the charges in issue are paid by the retailer and represent a cost to the retailer. I am unaware of any statute allowing the deduction of such charges by the retailer in computing its gross receipts for local business license tax purposes.

Accordingly, it is my opinion that the § 58.1-3731 deduction for long distance telephone call charges from the gross receipts of a mobile telephone company is not applicable to the carrier costs incurred by such company.

¹See *Turner v. Commonwealth*, 226 Va. 456, 459, 309 S.E.2d 337, 338 (1983).

²See *Commonwealth v. General Electric Company*, 236 Va. 54, 372 S.E.2d 599 (1988); 1997 Op. Va. Att'y Gen. 186, 187, and opinions cited at 188 n.4.

³See *Commonwealth v. Wellmore Coal*, 228 Va. 149, 320 S.E.2d 509 (1984).

⁴Va. Code Ann. § 58.1-3700.1 (Michie Repl. Vol. 2000).

⁵Dep't Tax'n, Guidelines for Bus., Prof'l & Occupational License Tax § 1, at 5 (1997) (defining "gross receipts").

⁶See 1990 Op. Va. Att'y Gen. 224, 225 (concluding that, except for exclusion from gross receipts of amount of trade-in allowance as is stipulated by statute, motor vehicle dealer may not deduct expenses for labor or materials used to recondition trade-in vehicle for resale when computing gross receipts).

⁷*Barr v. Town & Country Properties*, 240 Va. 292, 295, 396 S.E.2d 672, 674 (1990) (quoting *Anderson v. Commonwealth*, 182 Va. 560, 566, 29 S.E.2d 838, 841 (1944)).

⁸See *Adkins v. Com.*, 27 Va. App. 166, 169, 497 S.E.2d 896, 897 (1998) (quoting *Birdsong Peanut Co. v. Cowling*, 8 Va. App. 274, 277, 381 S.E.2d 24, 26 (1989) (quoting *Brown v. Lukhard*, 229 Va. 316, 321, 330 S.E.2d 84, 87 (1985))).

⁹*Compare* 1990 Op. Va. Att'y Gen. 229 (discussing fee charged to consumers to reimburse local telephone comp