

01-029

TAXATION: MISCELLANEOUS TAXES — REVIEW OF LOCAL TAXES – CORRECTION OF ASSESSMENTS, REMEDIES AND REFUNDS.

Restaurant is not entitled to refund of local meals taxes erroneously collected from customers and remitted to county.

The Honorable Brenda B. Rickman
Commissioner of the Revenue for the City of Franklin
August 31, 2001

You ask for guidance relating to the refund of local meals taxes.¹ You relate that a restaurant charged its customers local meals taxes on certain nonfood items. You also relate that the monies collected from those taxes have been remitted to the locality. You further relate that the restaurant, upon discovering that it erroneously charged its customers such taxes, seeks a refund of such monies. Lastly, you state that there are no records indicating which customers were overcharged by the restaurant.

The Supreme Court of Virginia has stated that there is no common law remedy to address the erroneous collection of taxes.² Accordingly, the Court notes that the authority to refund taxes must be derived from a statutory remedy.³ In the matter for which you seek guidance, the General Assembly has provided no statutory remedy for the refund of the tax you describe.⁴ Therefore, the restaurant is not entitled to a refund of the local meals tax which it erroneously collected from its customers.

¹See Va. Code Ann. § 58.1-3840 (Michie Repl. Vol. 2000) (authorizing cities to impose meals taxes).

²See *Commonwealth v. Shell Oil Co.*, 210 Va. 163, 164, 169 S.E.2d 434, 436 (1969) (stating that "there is no common law remedy by which to obtain a refund of taxes"); see also 18 M.J. *Taxation* § 65, at 271 (1996); Op. Va. Att'y Gen.: 1997 at 203, 206; 1986-1987 at 319, 320.

³See *Commonwealth v. Cross*, 196 Va. 375, 378, 83 S.E.2d 722, 725 (1954); see also *Washington County v. Sullins College*, 211 Va. 591, 596, 179 S.E.2d 630, 634 (1971); 1982-1983 Op. Va. Att'y Gen. 525, 527.

⁴*Compare* Va. Code Ann. § 58.1-3981 (authorizing local commissioner of revenue to correct certain assessments made by him) and § 58.1-3990 (Michie Repl. Vol. 2000) (authorizing local governing body to provide for refund of local taxes erroneously assessed by local commissioner of the revenue).