01-095

TAXATION: MISCELLANEOUS TAXES – CONSUMER UTILITY TAXES.

Town that is not separate school district and that imposed tax on town consumers of local cellular telecommunication service after January 1, 2000, has no authority to impose such tax.

The Honorable William C. Mims
Member, Senate of Virginia
December 28, 2001

You ask whether, pursuant to § 58.1-3812 of the *Code of Virginia*, a town has the authority to impose a consumer utility tax on town consumers of local telecommunication service if the county in which the town is located has implemented such a tax.

You relate that the Town of Purcellville has been studying an ordinance to impose a consumer utility tax on cellular telephone consumers, and that such tax has been part of the town's budget process for five years. The town included the tax in its 2001-2002 fiscal year budget. The town held a public hearing on the matter on May 8, 2001, and a public hearing on the actual ordinance to implement a cellular tax on June 12, 2001, and implemented the tax on July 10, 2001. The Town of Purcellville notified Loudoun County on July 16, 2001, of its plan to implement the cellular tax. The Loudoun County board of supervisors adopted the county budget in April 2001. The county board held a public hearing on June 30, 2001, and adopted a consumer utility tax on July 16, 2001, to be levied on the county's cellular telephone consumers. On August 9, 2001, the county board chairman notified the town that the county ordinance and consumer utility tax preempt the town's tax.

Section 58.1-3812(C) provides:

> No county shall impose a tax hereunder within the limits of any incorporated town located within such county when such town constitutes a separate school district and such town imposes a town tax authorized by this section. No county shall impose a tax hereunder within the limits of any incorporated town located within such county when such town has enacted an ordinance on or before January 1, 2000, to impose a tax hereunder and such ordinance remains in effect. Except as provided in this subsection, no town shall impose a tax hereunder if the county within which such town is located imposes a county tax authorized by this section.

"It is well established that ‘[t]he province of [statutory] construction lies wholly within the domain of ambiguity.’"[1] Consequently, "that which is plain needs no interpretation."[2] "‘"The manifest intention of the legislature, clearly disclosed by its language, must be applied."’"[3]

Section 58.1-3812(C) provides that a town may not impose a consumer utility tax on consumers of local telecommunication services when the county within which the town is located imposes such a tax. Section 58.1-3812(C) provides two exceptions to the county’s imposition of such a tax: when an incorporated town "constitutes a separate school district," and when the town imposes a similar town tax under an existing ordinance enacted "on or before January 1, 2000."

You provide no facts indicating that the town is a separate school district, and we understand it is not. You advise, however, that the town held a public hearing on June 12, 2001, concerning the imposition of a utility tax on consumers of local cellular telecommunication service, and implemented the tax on July 10, 2001. Both dates clearly are *after* January 1, 2000. Consequently, the two exceptions allowed under § 58.1-3812(C) are not applicable to the facts you present. I am, therefore, of the opinion that the town may not impose the tax.

[1]Harrison & Bates, Inc. v. Featherstone Assocs., 253 Va. 364, 368, 484 S.E.2d 883, 885 (1997) (quoting Winston v. City of Richmond, 196 Va. 403, 408, 83 S.E.2d 728, 731 (1954)).

[2]*Winston*, 196 Va. at 408, 83 S.E.2d at 731.

[3]Sykes v. Com., 27 Va. App. 77, 80, 497 S.E.2d 511, 512 (1998) (quoting 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))).

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