

**03-005**

**TAXATION: LICENSE TAXES.**

**Telephone company formed as limited liability company is subject to local license taxation.**

The Honorable R. Steven Landes  
Member, House of Delegates  
February 18, 2003

**Issue Presented**

You ask whether a telephone company formed as a limited liability company is subject to taxation under § 58.1-3731, which authorizes a locality to impose a license tax on telephone companies.

**Response**

It is my opinion that a telephone company formed as a limited liability company is subject to taxation under § 58.1-3731.

**Background**

You relate that a telephone company formed as a limited liability company holds a certificate of convenience and necessity from the State Corporation Commission. You also relate there is some confusion as to whether § 58.1-3731 authorizes the imposition of a license tax on a limited liability company since the heading of § 58.1-3731 references "public service corporations."

**Applicable Law and Discussion**

Section 58.1-3731 authorizes a county, city or town to impose a license tax on telephone companies "at a rate not to exceed one-half of one percent of the gross receipts of such company accruing from sales to the ultimate consumer in such county, city or town."<sup>1</sup> The license tax may be imposed "in addition to any tax levied under Chapter 26 [of Title 58.1]."<sup>2</sup>

Prior opinions of this Office, although recognizing that the term "public service corporation" is not defined in Title 58.1, have relied on the definition provided in § 56-1 when addressing local license tax issues related to certain public service corporations.<sup>3</sup> Reliance

on the definition of "public service corporation" in § 56-1 is appropriate, because Title 56 establishes the regulatory powers and duties of the State Corporation Commission for public service companies and corporations.<sup>4</sup> By necessity, Title 56 must describe the term "public service corporation" so the appropriate entities may be properly regulated. Section 56-1 provides that "[t]he words '*public service corporation*' or '*public service company*' shall include ... telephone companies [and] telegraph companies .... '*Public service corporation*' or '*public service company*' shall not include a municipal corporation, other political subdivision or public institution owned or controlled by the Commonwealth."

The only entities excluded from the above-referenced definition are municipal corporations, political subdivisions and public institutions owned or controlled by the Commonwealth. In addition, § 58.1-2600 defines "telephone company," as that term is used in Chapter 26 of Title 58.1, as "a *person* holding a certificate of convenience and necessity granted by the State Corporation Commission." (Emphasis added.) "The word '*person*' shall include any individual, corporation, partnership, association, company, business, trust, joint venture or *other legal entity*."<sup>5</sup> Thus, the term "public service corporation" or "public service company" includes a limited liability company.

Section 58.1-3731 unambiguously mandates that telephone companies are subject to local license tax. "The manifest intention of the legislature, clearly disclosed by its language, must be applied."<sup>6</sup> Therefore, as a legal entity meeting the definition of a "telephone company," a limited liability company "holding a certificate of convenience and necessity granted by the State Corporation Commission,"<sup>7</sup> is subject to the local license tax authorized by § 58.1-3731. Although the headline of § 58.1-3731 references "public service corporations," such reference does not exclude other types of entities. The headlines of statutes in the Virginia Code "are intended as mere catchwords ... and shall not be deemed or taken to be titles of such sections."<sup>8</sup> As such, the reference to "corporation" has no bearing on the types of entities that are subject to taxation under § 58.1-3731. The headline is merely a reference of convenience as opposed to a limiting phrase.<sup>9</sup>

## **Conclusion**

Accordingly, it is my opinion that a telephone company formed as a limited liability company is subject to taxation under § 58.1-3731.

<sup>1</sup>Charges for long distance telephone calls, however, are not included in the gross receipts of telephone companies for purposes of license taxation. Va. Code Ann. § 58.1-3731 (LexisNexis Supp. 2002); *see also* 2001 Op. Va. Att'y Gen. 179, 180.

<sup>2</sup>Section 58.1-3731. Chapter 26 of Title 58.1 provides the statutory tax structure for public service corporations. *See* §§ 58.1-2600 to 58.1-2690 (Michie Repl. Vol. 2000 & LexisNexis Supp. 2002).

<sup>3</sup>*See generally* 1997 Op. Va. Att'y Gen. 183, 183 & 184 n.3 (referencing prior opinions involving motor vehicle carriers regulated by State Corporation Commission).

<sup>4</sup>*Id.* at 183.

<sup>5</sup>Va. Code Ann. § 1-13.19 (LexisNexis Repl. Vol. 2001) (second emphasis added). Prior to July 1, 2002, the shareholders and members of professional corporations and professional limited liability companies were subject to the business, professional and occupational license tax rather than the entity. *See* 2002 Va. Acts ch. 346, at 422, 423 (amending § 58.1-3732(B)(2)). The tax is now imposed directly on the entity.

<sup>6</sup>*Barr v. Town & Country Props.*, 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)), *quoted in* 2001 Op. Va. Att'y Gen., *supra* note 1, at 180.

<sup>7</sup>Section 58.1-2600 (LexisNexis Supp. 2002) (defining "telephone company").

<sup>8</sup>Section 1-13.9 (LexisNexis Repl. Vol. 2001).

<sup>9</sup>*See Jones v. Div. of Child Support Enforc. ex rel. Owens*, 19 Va. App. 184, 189, 450 S.E.2d 172, 175 (1994) (noting that words of statute, not heading, carry force of law); *see also Ritholz v. Commonwealth*, 184 Va. 339, 367, 35 S.E.2d 210, 223 (1945) (noting that "[i]n construing a section ... [the court is] not concerned with the heading of the section, as it is purely a matter of informative convenience and in no sense a part of the provisions of the section" (quoting *Good v. Commonwealth*, 155 Va. 996, 1000, 154 S.E. 477, 478 (1930))).

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