TAXATION: MISCELLANEOUS TAXES – CONSUMER UTILITY TAXES.

Town has authority to impose consumer utility tax on its residents. County in which town is located may not impose its consumer utility tax on residents of town if town also imposes tax and provides police or fire protection and water or sewer services, or formerly provided latter services now furnished by county per county/town agreement.

Ms. Nita K. Stanley
Town Attorney for the Town of Ridgeway
September 28, 1999

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 consumers of local telecommunication service. Assuming it may do so, you then inquire whether the county in which the town is located also may impose its consumer utility tax on the residents of the town. You relate that the town provides police protection in addition to the general county-wide police protection by the county in which it is located. You also relate that although the town provided water service to its residents in the past, water service currently is provided by the county public service authority pursuant to an agreement between the county and town.¹

Section 58.1-3812(A) authorizes "[a]ny county, city or town" to impose a tax on consumers of telecommunication service "if the consumer's service address² is located in such county, city or town." This statute also prescribes the applicable fee structure for such tax. Section 58.1-3812(C) provides:

Any county tax imposed [under § 58.1-3812] shall not apply within the limits of any incorporated town located within such county which town imposes a town tax authorized by this section, provided that such town (i) provides police or fire protection, and water or sewer services, provided that any such town .. which formerly provided water and sewer services and is now served by the county in which it is located pursuant to an agreement between the town and the county shall be deemed to be providing such water or sewer services itself …. [Emphasis added.]

A prior opinion of the Attorney General concludes that § 58.1-3812(A) grants the authority for counties, cities, and towns to impose a tax upon local telephone service.³ Accordingly, all towns may impose the § 58.1-3812 tax whether or not they provide any police, fire, water, or sewer services.⁴ The answer to your first inquiry, therefore, is that a town has the authority to impose the § 58.1-3812 consumer utility tax on its residents.

With respect to your second inquiry, a county consumer utility tax applies within a town that also imposes such tax unless the town comes within the purview of § 58.1-3812(C).⁵ If a town meets the criteria contained therein, its residents cannot be subject to the utility tax imposed by the county.⁶ Otherwise, both taxes are applicable to town consumers.⁷

Section 58.1-3812(C) generally excepts town consumers from county consumer utility tax if such town provides police protection and water, or police protection and sewer, or fire protection and water, or fire protection and sewer.⁸ Under the facts you present, the town in issue currently provides police protection only. Thus, the town does not fall within this initial proviso.
Section 58.1-3812(C)(i) deems a town a provider of water or sewer services if such town formerly provided water and sewer services but no longer does so because the town is served by the county pursuant to an agreement between the two localities. The town in issue formerly provided water, but not sewer, services.

Statutes granting the power of taxation to localities are to be strictly construed, with any reasonable doubt to be resolved against the taxation.9 Indeed, the authority of a locality to impose a tax must be clear.10 Although it may be argued that statutes granting exemptions from tax must be strictly construed and thus the town must have formerly provided water and sewer services in order for the town to come within the condition set forth in § 58.1-3812(C)(i),11 the exception provided in clause (i) is not deemed to be an exemption from the consumer utility tax, but, instead, is a limitation on the county’s authority to impose a tax on town residents who already are paying the tax.12

It is my opinion, therefore, that a town that provides police protection and which formerly provided water services to its residents who are now served by the county for such services pursuant to an agreement between the town and county meets the relevant conditions set forth in § 58.1-3812(C)(i), notwithstanding the use of the words “and” as well as “or” throughout the statute.13

My conclusion is supported by § 58.1-3814(C), a comparable statute to § 58.1-3812(C). Section 58.1-3814(A) authorizes any county, city or town to impose consumer utility taxes on the consumers of services provided by "any water or heat, light and power company." Section 58.1-3814(C), however, provides that any such county tax imposed on consumers shall not apply within the limits of any incorporated town located within such county which town imposes a town tax on consumers of utility service or services [under § 58.1-3814 (A)], provided that such town (i) provides police or fire protection, and water or sewer services, provided that any such town … served by the county in which the town is located when such service or services are provided pursuant to an agreement between the town and county shall be deemed to be providing such water and sewer services itself …. [Emphasis added.]

As with § 58.1-3812(C), "and" and "or" appear throughout the statute and do not appear to evidence a particular intent to define the provision of water/sewer services in one manner over another. Reading § 58.1-3812(C) and § 58.1-3814(C) together so that one may be harmonized with the other,14 it is my opinion that the exceptions provided in those statutes are applicable to a town which currently provides police or fire protection and which formerly provided either water or sewer services which are now provided by the county pursuant to an agreement between the town and county.

Accordingly, under the facts you present, a county may not impose the § 58.1-3812 consumer utility tax on residents of an incorporated town located within the county, if the town also imposes the § 58.1-3812 consumer utility tax.

1Because you do not provide any information on the provision of fire protection and sewer service by the town, I assume that neither is provided to the town residents by the town.

2“Service address” is “the location of the telecommunication equipment from which the telecommunication is originated or at which the telecommunication is received by a consumer.” Section 58.1-3812(J).

4Id.


8Id. at 453.


10Id.


13Compare 1997 Op. Va. Att'y Gen. 99, 100 & 101 n.9 (noting that, under strict construction of statute, use of conjunctive "and" generally indicates connection between words whereas use of disjunctive "or" indicates two separate instances).