TAXATION: MISCELLANEOUS TAXES – FOOD AND BEVERAGE TAX.

Authority of localities to impose food and beverage or meals tax remains unchanged. Inclusion of federal definition of "food" as amendment to §§ 58.1-3833 and 58.1-3840 is not intended to effectuate change, repeal, or modification of current local food and beverage or meals tax imposed on hot and cold foods ready for immediate consumption.

The Honorable Harry B. Blevins
Member, House of Delegates
January 17, 2000

You ask for guidance regarding the effect of recent legislative enactments to §§ 58.1-3833 and 58.1-3840 of the Code of Virginia upon a locality’s authority to impose a food and beverage or meals tax.\(^1\)

Section 58.1-3833(A) authorizes “[a]ny county … to levy a tax on food and beverages sold, for human consumption, by a restaurant.” Section 58.1-3840 authorizes “any city or town” to impose an excise tax on “meals.” The primary goal of statutory construction is to discern and give effect to legislative intent, with the reading of a statute as a whole influencing the proper construction of ambiguous individual provisions.\(^2\) Both these statutes contemplate the imposition of a local tax on food sold in the context as a meal served by an entity operating as a restaurant as opposed to a retail sales tax on food sold as groceries.\(^3\)

The 1999 Session of the General Assembly enacted the Food Tax Reduction Program, § 58.1-611.1,\(^4\) which gradually decreases the state sales tax on food from January 1, 2000, through April 1, 2003.\(^5\) Under this program, the local sales tax on food remains intact.\(^6\) The definition of the term "food" for purposes of § 58.1-611.1 has the same meaning as "food" defined in § 2012 of the Food Stamp Act of 1977 and the federal regulations adopted pursuant to that Act: \(^7\) “any food or food product for home consumption except … hot foods or hot food products ready for immediate consumption.”\(^8\) This definition is consistent with the premise that food stamps may be used to purchase groceries rather than to purchase food prepared for immediate consumption by a restaurant.

The 1999 Session of the General Assembly added to §§ 58.1-3833 and 58.1-3840 a paragraph providing that, “[n]otwithstanding any other provision of this section, no locality\(^9\) shall levy any tax under this section upon food purchased for human consumption as ‘food’ is defined in the Food Stamp Act of 1977, 7 U.S.C. § 2012, as amended, and federal regulations adopted pursuant to that act.”\(^10\) You ask whether this language has restricted the food and beverage tax and the meals tax throughout the Commonwealth so that only hot foods ready for immediate consumption are subject to such taxes.

It is axiomatic that "[r]epeal of a statute by implication is not favored."\(^11\) Had the General Assembly intended to repeal the food and beverage tax and meals tax on all foods except hot foods ready for immediate consumption it could have done so expressly.\(^12\) It did not, however. Furthermore, statutes should be interpreted to avoid an illogical result.\(^13\) To interpret the inclusion of this language as permitting the tax only on hot foods prepared for immediate consumption
would result in restaurants having to distinguish between hot and cold foods and calculate the tax accordingly, a result which, in my opinion, is illogical.

Furthermore, with respect to grocery stores and convenience stores selling both groceries and prepared foods, § 58.1-3833(A) specifically provides:

Grocery stores and convenience stores selling prepared foods ready for human consumption at a delicatessen counter shall be subject to the [food and beverage] tax, for that portion of the grocery store or convenience store selling such items. The food and beverage tax on meals sold by grocery store delicatessens and convenience stores shall be limited to prepared sandwiches and single-meal platters.

This section of the statute has remained unchanged and specifically permits a local food and beverage tax on prepared sandwiches and single-meal platters regardless of their temperature. Keeping in mind the rule of statutory construction that a specific statute supersedes a general statute, the tax is thus still in effect on these items whether they are hot or cold.

Accordingly, it is my opinion that the inclusion of the federal definition of "food" as an amendment to §§ 58.1-3833 and 58.1-3840 was not intended by the General Assembly to effectuate any change, repeal, or modification of the current local food and beverage or meals tax. Therefore, as before, a locality still has the authority to impose tax on both hot foods and cold foods that are ready for immediate consumption.


3 Compare § 35.1-1(9)(a) (defining "restaurant" as "[a]ny place where food is prepared for service to the public" and excluding "places manufacturing … foods which are distributed to grocery stores or other similar food retailers for sale to the public" (emphasis added)).

4 See 1999 Va. Acts chs. 366, 466, at 416, 664, respectively.

5 Section 58.1-611.1(A).

6 See § 58.1-611.1(B) (stating that program shall not affect imposition of tax on food purchased for human consumption pursuant to §§ 58.1-605, 58.1-606).

7 Section 58.1-611.1(C).

9 The amendment replaces the term "locality" in § 58.1-3833(E) with the phrase "city or town" in § 58.1-3840. 1999 Va. Acts ch. 366, supra note 1, at 418.

10 Id.


12 Id.


16 See 1999 Va. Acts ch. 953, at 2491 (amending § 58.1-3840 to provide language similar to that of § 58.1-3833(A) regarding grocery and convenience stores and to provide that amendments shall become effective on July 1, 2000, if reenacted by 2000 General Assembly Session).