

OP. NO. 03-018

TAXATION: ELECTRIC UTILITY CONSUMPTION TAX

Pamunkey and Mattaponi tribal members are not subject to state or local tax for activities occurring on Indian reservations; consumption tax on electricity may not be collected from such tribal members living on respective Indian reservations for electricity consumed on those reservations.

The Honorable Hullahen Williams Moore
Chairman, State Corporation Commission
May 13, 2003

Issue Presented

You inquire whether the state and local electric utility consumption tax imposed by § 58.1-2900 may be collected from members of the Pamunkey and Mattaponi Indian tribes living on their respective reservations.

Response

The activities of the Pamunkey and Mattaponi tribal members that take place on the Indian reservations are not subject to state and local tax. Therefore, it is my opinion that the consumption tax on electricity may not be collected from Pamunkey and Mattaponi tribal members who live on the respective Indian reservations for electricity consumed on those reservations.

Applicable Law and Discussion

Section 58.1-2900 imposes a state, local and special regulatory tax on consumers of electricity in the Commonwealth. The electric utility consumption tax is applicable for tax years beginning January 1, 2001.¹ Your inquiry concerns whether the tax may be collected from members of the Pamunkey and Mattaponi Indians. This Office consistently has concluded that members of the Pamunkey and Mattaponi Indian tribes are not subject to tax for those otherwise taxable activities occurring on the Indian reservations.² A 1957 opinion of this Office relied on a 1919 circuit court case, which held that "an Indian residing on the reservation of the Mattaponi Tribe [is] not subject to taxation either by the County of King William or the Commonwealth of Virginia, but that the personal property owned by an Indian off the reservation [is] liable to taxation."³

This Office previously determined that Indians are subject to certain taxes and licenses for off-reservation property or activity.⁴ Prior opinions of this Office also have determined that any change to the tax status of the activities of Indians lies within the purview of the General Assembly.⁵ The General Assembly is presumed to have knowledge of the Attorney General's interpretation of the law, and its "failure to make corrective amendments evinces legislative acquiescence in the Attorney General's interpretation."⁶ I am not aware of any action by the General Assembly to change the long-standing tax treatment for members of Pamunkey

and Mattaponi Indians tribes for those activities engaged in or on the Indian reservations.⁷

Conclusion

The activities of the Pamunkey and Mattaponi tribal members that take place on the Indian reservations are not subject to state and local tax. Therefore, it is my opinion that the consumption tax on electricity may not be collected from Pamunkey and Mattaponi tribal members who live on the respective Indian reservations for electricity consumed on those reservations.

¹1999 Va. Acts ch. 971, cl. 3, at 2547, 2560 (providing that Chapter 29 of Title 58.1, §§ 58.1-2900 to 58.1-2903, "shall be effective for tax years, beginning on and after January 1, 2001").

²Op. Va. Att'y Gen.: 1969-1970 at 277; 1956-1957 at 183; 1917 at 160.

³1956-1957 Op. Va. Att'y Gen., *supra* note 2 at 184.

⁴Op. Va. Att'y Gen.: 1969-1970, *supra* note 2, at 277 (concluding that real estate and personal property located off reservation are subject to probate tax); 1960-1961 at 141 (concluding that hunting license is required to hunt off reservation property). *But see* text *infra* note 7.

⁵Op. Va. Att'y Gen.: 1960-1961, *supra* note 4, at 142; 1956-1957, *supra* note 2, at 185.

⁶City of Winchester v. American Woodmark Corp., 250 Va. 451, 458, 464 S.E.2d 148, 153 (1995).

⁷I note that the General Assembly has enacted legislation providing that "[n]o license to hunt, trap or fish shall be required of any Indian who habitually resides on an Indian reservation or of a member of the Virginia recognized tribes who resides in the Commonwealth." Va. Code Ann. § 29.1-301(l) (LexisNexis Supp. 2002). The General Assembly also has provided that "any member of the Mattaponi, Pamunkey, or Chickahominy Indian tribes or any other recognized Indian tribe of the Commonwealth living on the tribal reservation" is exempt from the sales and use tax on motor vehicles. Va. Code Ann. § 58.1-2403(4) (LexisNexis Supp. 2002). In these instances, the General Assembly expanded the general tax exemption afforded to members of these tribes to certain off-reservation activities.

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