



# COMMONWEALTH of VIRGINIA

## *Department of Taxation*

### MEMORANDUM

**TO:** Larry Durbin  
Office of Customer Relations, Customer Services

Ron Holt  
Richard Dotson  
Audit Supervisors  
Office of Customer Relations, Compliance

**FROM:** Mike Melson <sup>MM</sup>  
Appeals and Rulings

**DATE:** December 20, 2001

**SUBJECT:** Virginia Department of Taxation v. Chesapeake Hospital Authority

This is to inform you that the Virginia Supreme Court recently issued an opinion in the above case in favor of the taxpayer. Because the taxpayer operated as a nonprofit hospital and a government authority, the exemptions from the retail sales and use tax for nonprofit hospitals and government entities provided in Code of Virginia §§ 58.1-609.7(4) and 58.1-609.1(4) were at issue in this case.

#### Hospital and Government Exemptions

The Court ruled that food purchased by the nonprofit hospital for consumption by medical staff, hospital meeting participants and volunteers qualifies as use and consumption by the hospital and is exempt from the sales and use tax. The ruling applies when the nonprofit hospital purchases raw food products for preparation by its dietary department. The ruling does not apply to catered meals purchased by a nonprofit hospital from an outside vendor.

The department argued that the food does not qualify as exempt purchases for use and consumption by the nonprofit hospital because the food was not consumed in connection with the provision of medical services (i.e., the food was not fed to patients).

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The Court disagreed and ruled that as long as a nonprofit hospital exercises a degree of control or ownership over the property it purchases, the exemption applies.

In addition, the Court's decision implies that TAX's rulings carry no weight unless they are incorporated into a regulation. The Attorney General's Office has filed a petition for rehearing in an effort to have the Court review its discussion of this issue. We do not anticipate that a rehearing (if granted) will result in a reversal of the Court's ruling that the hospital's provision of food to medical staff, hospital meeting participants and volunteers constitutes an exempt use. However, we hope the Court will reconsider its position on the weight accorded TAX's rulings.

The Court's decision overturns longstanding department policy, which may generate refund requests. Customer Services is asked to hold all refund requests until the Court rules on the pending petition for rehearing. At that time, we will issue a follow-up memo that will set out guidelines for processing the refund claims. Compliance, we ask that you evaluate new and recurring audit candidates to determine if any would qualify for a refund as a result of the Chesapeake decision. Your efforts will assist in the tracking of the fiscal impact of the Court's decision.

Interest

Lastly, the Court upheld the department's method of applying interest to refunds. The taxpayer argued that the interest on its refund should be compounded daily as provided in Internal Revenue Code (IRC) § 6622. The Court concluded that the interest statute (§ 58.1-15) cites IRC § 6621 for setting the rate of interest. Because IRC § 6622 ("Interest compounded daily") is not cited in the § 58.1-15, the department is not required to compound interest daily pursuant to the federal statute. Accordingly, the Court validated the department's current method of computing interest on refunds.

A copy of the Court's opinion is attached for your information. If anyone has questions regarding the Court's decision or related refund information, please contact Valerie Marks at 367-0964.

Attachment

c: Danny Payne  
Janie Bowen  
Appeals and Rulings Staff  
Policy Development Staff