Taxing
Businesses
on
Federal Facilities

WILL NOT ADDRESS

TAXATION OF PROPERTIES,

REAL OR TANGIBLE

Article X, § 1 of the Constitution of Virginia (1971)

“[a]ll property, except as hereinafter provided, shall be taxed.”

Local taxing powers are those powers which have been delegated by the state to a locality

Therefore, the locality acts under the legal authority of the state

AUTHORITY

Code of Virginia Title 58.1:

Section 3107

- **Obtain Returns from Taxpayers**
  - ***Shall obtain full and complete tax returns from every taxpayer within his jurisdiction who is liable under the law to file such return with him for all taxes assessed by his office***

AUTHORITY

Code of Virginia Title 58.1:

Section 3109(6)

- **Duties as to personal property, income and licenses**
  - **Require taxpayers to furnish information relating to:**
    - **Tangible or intangible personal property,**
    - **Income or**
    - **License taxes**
    - **Furnish access to books of account to verify taxpayer tax returns and procure the information necessary to make a complete assessment**

AUTHORITY

Code of Virginia Title 58.1:

Section 3110

- **Power to Summon Taxpayers and Other Persons**
  - **For the purpose of assessing all taxes assessable by his office**
    - **Summon the taxpayer or *any other person* to appear before him at his office, to answer, under oath, questions touching the tax liability of any and all specifically identified taxpayers**

AUTHORITY

Code of Virginia Title 58.1:

Section 3111

- **Penalties**
  - **Any person who refuses to,…, (ii) furnish information to the commissioner of the revenue relating to the assessment of taxes, (iii) answer under oath questions touching any person's tax liability, or (iv) exhibit to the commissioner of the revenue any subject of taxation liable to assessment by the commissioner of the revenue**
    - **Shall be deemed guilty of a Class 3 misdemeanor. Each day's refusal to furnish such access or information shall constitute a separate offense.**

The U.S. Supreme Court held that a state cannot be prevented from exercising its powers over a federal enclave that is within its borders provided it <u>does not interfere with federal jurisdiction</u>

Howard v. Commissioners of Louisville, 344 U.S. 624 (1953)

GENERAL COMMENTS

- Most facilities have either or both of two types of jurisdiction
  - Exclusive
  - Concurrent
- Exclusive jurisdiction may prevent access for security reasons
  - Even so, under the BUCK ACT, they are to provide you with the information needed to do your legislatively imposed job

EXCLUSIVE

Exclusive jurisdiction in and over any land so acquired by the United States shall be, and the same is hereby, ceded to the United States for all purposes except the service upon such sites of all civil and criminal process of the courts of this State; but the jurisdiction so ceded shall continue no longer than the said United States shall own such lands.

The United States government and the various states *may* make *mutually* satisfactory arrangements as to the respective jurisdiction over territory within their borders

Collins v. Yosemite Park C. Co., 304 U.S. 518 (1938)

Jurisdiction acquired from a state by the United States by cession *may be qualified* in accordance with agreements reached by the respective governments

Waltrip v. Commonwealth, 189 Va. 365,
53 S.E.2d 14 (1949)

CONCURRENT

The 1940 Va. Acts [ch. 422, § 19-c-(6), at 761, 762] between the Commonwealth and the federal government allows the exercise of concurrent jurisdiction over federally owned properties

Specifically - crimes and offenses of the state committed on federal lands

1940 Va. Acts

- **Created certain reversionary provisions to Virginia for conduct of private industry or business on lands acquired by United States for purposes of national defense**

- **Reasserted the State's right to tax properties leased to private entities**

For many years, the United States exercised exclusive jurisdiction over large portions of the Norfolk Naval Base

This included portions which included housing for military servicepersons and their dependents

However, the federal courts were ill-equipped to handle juvenile and domestic relations matters

AND, access to State courts was barred because the jurisdiction of the federal courts was exclusive

In order to resolve this problem, the United States and the Commonwealth of Virginia entered into an agreement

The United States retroceded its right to exercise exclusive jurisdiction over certain portions of the Naval Base

And accepted the <u>concurrent right</u> of the Commonwealth to exercise jurisdiction over those same areas

Norfolk's Retrocession of Jurisdiction Agreement

Executed on behalf of Navy
under the authority of 10 U.S.C. § 2683
authorizing the Navy to
"relinquish . . . *all or part* of the legislative jurisdiction of the United States . . . ."

- **Relinquishment of jurisdiction does not reserve to the United States the right to restrict access to the naval base by the commissioner of the revenue to carry out his <u>legislatively</u> imposed duties**
  - **Apart from the right of the United States to exercise concurrent legislative jurisdiction**

What is the Exercise of Concurrent Legislative Jurisdiction?

NOT ALL INCLUSIVE

-Cooperative
-Federal courts may assume jurisdiction on legal issues and impose state regulations and penalties
-Localities permitted to serve legal documents:
WARRENTS AND SUMMONS

Title 4 USC Chapter 4 §110(e): THE STATES

“Federal area” means: lands or premises held or acquired by or for the use of the United States or her agencies that are located within the exterior boundaries of any State shall be a Federal area located within such State

Under the **"Buck Act"** 4 U.S.C.S. §§ 105-110, the federal government has created a **"Federal area"** within the boundaries of all the states

This area is similar to any territory the federal government acquires through purchase, conquest, or by gift as in a will, thereby imposing federal territorial law upon those in this "Federal area"

Jurisdiction acquired from a State by the United States, by purchase or cession, may be qualified in accordance with agreements reached by the respective governments.

Where national interests are involved, the taking may be as absolute as seems desirable.

Locality can not impose terms where maneuver grounds are taken over by the military.

Constitution of the United States, Article 1, Sec. 8, Subsection 17, provision for the Erection of Forts, etc.

The Constitution does not command that every vestige of the laws of the former sovereignty must vanish. On the contrary, its language has long been interpreted so as to permit the continuance of the rules existing at the time of the surrender of sovereignty which govern the rights of the occupants of the territory transferred.

State laws may linger over and are sometimes invoked and applied in the protection of private rights. Whenever the annexed territory is without a developed Federal legal system affording complete relief, resort may be had to State laws in effect at the time of cession.

“This assures that no area however small will be left without a developed legal system for private rights.”

James Stewart & Co. v. Sadrakula, 309 U.S. 94, 60 S. Ct. 431, 84 L. Ed. 596, decided January 29, 1940

When a State gifts land to the United States, it may attach conditions to the gift as it deems necessary and proper.

The United States may accept such lands with the attached conditions or reject the gift.

The United States of America is authorized to acquire land by deed or conveyance…

and exclusive jurisdiction shall be and the same is hereby ceded to the United States of America…

And the State of Virginia has the right to serve civil or criminal process, impose fuel tax, tax persons and corporations, their franchises and properties,…

HOW DOES IT OCCUR?

Acts of the General Assembly

and

Approval of the U.S. Congress

40 USC § 3112
Federal Jurisdiction

(c) Presumption.— It is conclusively presumed that jurisdiction has not been accepted until the Government accepts jurisdiction over land as provided in this section.

The reservation by the Commonwealth of Virginia of concurrent jurisdiction over the Camp Peary area, under section 19 of the Code, and the operation and enforcement of the Virginia game laws, do not in any way deprive the United States of the enjoyment of the property for the purposes for which it was acquired.

Waltrip v. Commonwealth, 189 Va. 365, 53 S.E.2d 14 (1949)

“Exclusive jurisdiction” does not in all circumstances mean <u>all jurisdiction</u>.

4 U.S.C. §§ 105-110
Buck Act

A purpose of the Act, which granted recession of limited taxation to state and local taxing authorities, was to correct certain inequities in taxation as the result of federal enclaves in those taxing authorities.

Hiker v. City of Philadelphia, 346 PA 624, 31A.2d 289 (1943)

4 U.S.C. §§ 105-110
Buck Act

Section 106 of this Act reads as follows:

“(a) No person shall be relieved from liability for any income tax levied by any State, or by any duly constituted taxing authority therein, having jurisdiction to levy such a tax, by reason of his residing within a Federal area or receiving income from transactions occurring or services performed in such area; and such State or taxing authority shall have full jurisdiction and power to levy and collect such tax in any Federal area within such State to the same extent and with the same effect as though such area was not a Federal area.

4 U.S.C. §§ 105-110
Buck Act

Section 110 (c) defines "income tax" as follows:

"The term 'income tax' means <u>any tax</u> levied on, with respect to, or measured by, net income, gross income, or gross receipts."

Howard v. Commissioners, 344 U.S. 624 (1953)

The City of Portsmouth is authorized by charter and Code to levy and collect a license tax upon contractors who engage in business in the city.

City of Portsmouth v. Gardner, 215 Va. 491, 211 S.E.2d 259 (1975)

Federal Congress has authorized license tax, measured by gross receipts, on a general contractor who constructed improvements on the Norfolk Naval Shipyard under contract with the Federal Government.

(a location with complete exclusive jurisdiction)

City of Portsmouth v. Gardner, 215 Va. 491, 211 S.E.2d 259 (1975)

WHAT DID NORFOLK DO?

SEEK COOPERATION

Executive Summary

As the elected officer for the XXX, it is my duty to discover and tax all properties and business entities under the jurisdiction imposed upon me by the Commonwealth of Virginia and the XXX. Due to the required safety and access restrictions concerning military facilities, I request your assistance in helping me comply with the oath of my office.

Issues:

On xxxx 20xx, in an effort to abide with the statutory regulations of the Commonwealth of Virginia and the XXX, the Commissioner of the Revenue's office made an information request of the Department of the Navy's Moral, Welfare and Recreation Department (MWR). The request was for a listing identifying those personally-owned boats, owners' name and mailing address which are docked or stored at the marina located near XXX Blvd on Naval Station XXX. Our request was refused in a xxxx 00, 20xx, letter issued by the Office of the General Counsel, based on the grounds of sovereign immunity.

Issues:

On xxx 00, 19xx, subsequent to the Deed of Jurisdiction between the Department of the Navy and the Commonwealth of Virginia, a letter of understanding was received from Rear Admiral XXX, U.S. Navy, and addressed to the City Manager and the Commissioner of the Revenue. The Admiral agreed that the Commander of Naval Base would provide this office with a quarterly listing of contractors that worked on the military facility in order for the Commissioner to determine the appropriate application of local business license and personal property taxation. This office has not received the listings since 19xx.

Issues:

On xxx 00, 19xx, it was also agreed that upon receipt of approval from the Commander, the Commissioner of the Revenue's constitutional officers would be permitted to deliver court approved notices of summon to those business entities suspected of Virginia and local business taxation regulations as provided by the Supreme Court.

Requested Solutions:

In accordance with the Deed of Jurisdiction, dated xxx 00, 19xx, the marina property is in a designated, concurrent jurisdiction whereby the United States, the Commonwealth of Virginia, and the XXX may enjoy joint responsibilities. Additionally, privately-owned property, stored on a military facility for non-military purposes and with the potential for avoidance of local taxation, may be considered grounds for probable cause.

Requested Solutions:

Privately-operated businesses, functioning on the military facilities, should be subject to the same regulations those taxpayers operating in free enterprises outside of the Naval Base boundaries.

Requested Solutions:

Due to the concerns for security and the safeguarding of the military facilities, as the Commissioner of the Revenue, I desire a workable solution that would permit the delivery of court-approved summons; and in limited situations, pre-approved visitations to contractor work locations.

The City and the Commissioner provide assurance that our deputized, trained constitutional officers will be present to conduct activities for business purposes only.

Recommended Action

- Check with your police and fire departments as to existing cooperative agreements and methods of serving civil and criminal documents
- Use the internet:
  - FedSpending.gov
  - FBO.gov
  - Google
- FOIA the base's records of visitation maintained at the military access point
- Identify businesses contracting repeatedly on or with the facility
- Send letters to businesses asking about the services and products being provided
- Request a listing of subcontractors
- Check your licensure files

Recommended Action

- **Examine all local records: Real Estate, Clerk's Office of the Circuit Court, and City Clerk maintained**
- **Research the methods of annexation employed**
- **Discover if the state or the locality has jurisdiction**
- **Verify annexation acceptance by the U.S. Congress**
- **Did the State agree to annexation (any specific reservations?)**

Recommended Action

- Obtain and study copies of any pertinent deeds, deeds of cession, agreements, etc.
- Write a letter of inquiry asking for assistance and to open discussions

READ AWARDED CONTRACTS

- **Nearly every contract award to government contractors by the DOD contains the requirement that the business must be and must maintain compliance with both State and Local regulations**
  - **Tax regulations counts as a regulation**
  - **Confirm DPOR licensure (if required)**

OTHER FACTS

- If an identified business is working at/on the facility and they have not responded to your requests for information
  - Send a letter to the Base Commanding Officer notifying them of the business' violations and request service of a court summons
    - This may help in opening discussions

JUST BECAUSE

- The locality does not have jurisdiction does not prevent you from imposing the rights of locality as granted through the BUCK ACT
- But most of all, be polite but firm in your requests
- Employ your resources wisely and with tack