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Patricia L. Rush

West Virginia University College of Law

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LAKEVIEW INN AND COUNTRY CLUB, INC. v. ROSE, 338 S.E.2d 166 (W. Va. 1985).

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Lakeview provided banquet facilities for the public. A customer's bill for these services included the total cost of the banquet, a sales tax, and a fifteen percent gratuity. The gratuity was distributed equally among the employees who worked at the banquet, and Lakeview credited the charge toward its federal minimum wage obligation. Lakeview asserted that the fifteen percent gratuity was not mandatory and that the customer could pay less or refuse to pay any gratuity at all. The State Tax Commissioner considered the fifteen percent charge to be an involuntary service fee that was subject either to sales tax or business and occupation tax.

On appeal, the West Virginia Supreme Court of Appeals addressed the following issues: (1) Whether a gratuity added to the customer's bill and collected by the employer is an involuntary service charge subject to sales tax; and (2) whether a gratuity added to the customer's bill and collected by the employer is a portion of the employer's gross income that is subject to the business and occupation tax.

The court held that: (1) The gratuity is not an involuntary service charge when the customer is not legally bound to pay the gratuity or may alter the amount of the gratuity, and the gratuity is not subject to a sales tax; (2) while the gratuity was collected as a portion of the "gross receipts" of the banquets, it was not derived from Lakeview's business. West Virginia Code section 11-13-1 defines "business" as "all activities engaged in or caused to be engaged in with the object of gain or economic benefit, either direct or indirect." Finding that Lakeview did not collect the gratuities for any economic benefit, the court held that the gratuities were not subject to the business and occupation tax.

STATE ex rel. AYERS v. CLINE, 342 S.E.2d 89 (W. Va. 1985).

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The taxpayer owned fee and mineral estates totalling 7,374 acres. The property was appraised at \$3,000 per acre in 1984 and 1985 and was valued at somewhat less in 1983. The appraisals were timely contested by the owners for those years. Evidence showed that comparable property in the area was appraised at \$60 per acre, but the tax commission affirmed the \$3,000 appraisal. The taxes were not paid pending appeal to the circuit court, and the circuit court enjoined the sheriff's sale. The court reduced the appraisals to the 1975 appraised value of \$360, but the final order was not entered until several months later. The owners delivered a check for the amount calculated under this appraisal, but it was to be held in escrow pending entry of the final order. The court enjoined the sheriff's second

attempt to sell the property for nonpayment of 1983 and 1984 taxes on the condition that the owners post bond. The final order appraising the property at \$360 per acre was entered after the petitioners had filed for a writ of prohibition to prevent the court from enjoining the sale.

The West Virginia Supreme Court of Appeals addressed the following issues: (1) Whether a circuit court may enjoin the sale of real property by a sheriff for the nonpayment of taxes pending the court's ruling on an appeal by the owner claiming that the property has been overvalued; (2) whether the request for a writ of prohibition was rendered moot by the circuit court's entry of judgment modifying the tax appraisal; and (3) whether the circuit court's attempt to enjoin the sheriff's sale warranted a writ of prohibition.

The court held: (1) The circuit court may not enjoin the sheriff's sale since there is an adequate remedy at law under West Virginia Code chapters 11 and 11A, which provide that a taxpayer whose property has been assessed too high may receive a refund of any excess tax that has been paid or may withhold payment of the tax until the appropriate tax is determined up to the date of the sheriff's sale but not beyond the date of the sale. Local governments depend on property taxes for school purposes and other governmental functions, and allowing taxpayers to withhold taxes beyond the time period provided in the Code would impair these governmental functions. (2) The request for the writ of prohibition was not moot because there was a possibility that a circuit court would try to enjoin a sheriff's sale under similar circumstances in the future. (3) By enjoining the sheriff's sale, the circuit court exceeded its legitimate powers. The writ of prohibition is warranted in this situation.

Patricia L. Rush