In The

Supreme Court of Virginia

RECORD NO. 151956

JOSEPH A. HORBAL,
Commissioner of the Revenue for Chesterfield County,

***Appellant*,**

v.

VERIZON ONLINE, LLC,

Appellee.

BRIEF OF APPELLEE

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SCV: Submitted on 08-12-2016 13:46:26 EDT for filing on 08-12-2016

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I. Statement of the Case

This case concerns whether the Chesterfield Circuit Court (the "Circuit Court") properly affirmed the Virginia Tax Commissioner's ruling that Verizon Online LLC's ("Verizon") cable television converters[1] are not taxable under Va. Code § 58.1-1101(A)(2a). For the reasons set forth below the Circuit Court's decision should be upheld.

Va. Code § 58.1-1101(A)(2a) (the "Statute") excludes property used in the cable television business from local taxation. The Statute provides a limited exception to this general rule for "*machines and tools*, motor vehicles, delivery equipment, trunk and feeder cables, studio equipment, antennae and office furniture." (Emphasis supplied).

The prior version of the Statute[2] listed cable "converters" as one of the exceptions to the general rule that property used in the cable television business is excluded from local property tax. (Joint Appendix "J.A." at 807). However, in 1984 the legislature changed the law and deleted converters from the exception language to the general rule. Shortly after this change in law, both the Virginia Tax Commissioner and the Arlington

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[1] The terms "cable television converters," "set top boxes" and "set top box converters" refer to the same property at issue in this case, which are Verizon's cable television converters.

[2] The predecessor version of the Statute which was amended in 1984 was listed as Va. Code § 58.1-1101(A)(2).

Circuit Court ruled that cable converters were not subject to local property tax.

For the next 20 plus years, the Commissioner of the Revenue for Chesterfield County, Joseph A. Horbal (hereinafter "Horbal"),[3] excluded cable converters from tax.[4] In fact, for years Horbal advised taxpayers that cable converters were excluded from tax.[5] Then, in 2008, with no change in law, Horbal reversed his own longstanding position and began claiming that converters were "machines" and, as such, were excluded from the general rule that cable property is not subject to tax.

The Virginia Tax Commissioner disagreed with Horbal, ruling in this case and on eight other separate occasions that cable converters are not subject to local property tax. The Chesterfield Circuit Court and the Henrico Circuit Court joined the Arlington Circuit Court, each ruling that cable converters were not subject to local property tax.

Horbal brings this appeal arguing that each of these courts and the Virginia Tax Commissioner are wrong. He claims that, even though the legislature specifically deleted converters from the list of property that remained taxable, cable converters are unambiguously taxable as

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[3] For simplicity sake, "Horbal" in this brief refers to both Joseph A. Horbal and his predecessors in office.
[4] (J.A. at 24 (Stipulation 19)).
[5] (J.A. at 161).

"machines." He is wrong. The legislature was explicit when it removed converters from the Statute. All of the evidence surrounding the legislature's actions in 1984 indicates that the intent of the legislature was to exclude cable converters from local property tax. This evidence includes a 1984 Tax Bulletin issued by the Virginia Tax Commission, a 1984 memorandum by the author of the legislation, and two legislative impact statements describing the fiscal impact of the 1984 law change. All of these documents explicitly state that the purpose of the 1984 law change was to exclude cable converters from local property tax. The Circuit Court in this case considered all of these factors and found on multiple grounds that cable converters are not subject to local property tax.

This Court reviews legal conclusions of the lower court *de novo*. *Campbell County v. Royal*, 283 Va. 4, 14-15 (2012). The Circuit Court's findings of fact must be upheld by this Court unless they are plainly wrong or without evidence. *See Austin v. City of Alexandria*, 265 Va. 89, 95 (2003) (citing *Ohio Casualty Ins. v. State Farm Fire & Casualty*, 262 Va. 238, 240-241 (2001)).

As set forth below, all of the relevant facts as well as the relevant precedent prove that the Circuit Court, as well as the Virginia Tax

Commissioner, are correct and the Circuit Court's decision in this case should be affirmed.

II. Procedural History

Verizon erroneously paid local property tax on the value of its cable converters used in providing cable television service for the tax years 2008-2010. On December 28, 2010, Verizon sent a letter to Horbal appealing its 2008-2010 personal property tax assessments based on the grounds that its converters are intangible personal property used in a cable television business and sought a refund of the tax assessed on the converters. (J.A. at 367). Verizon's appeal indicated that additional information relating to its appeal would be forthcoming. Consistent with its December 28, 2010 letter, Verizon sent additional information to Horbal in a letter dated June 22, 2011, with several attachments supporting that converters were not subject to personal property tax. (J.A. at 367). Horbal denied Verizon's refund claims for property taxes paid on converters for the periods 2008-2010 and issued a Final Local Determination on July 14, 2011. (J.A. at 367).

On August 26, 2011, Verizon appealed Horbal's Final Local Determination to the Virginia Tax Commissioner under Va. Code §§ 58.1-3983.1(D) and 58.1-3984. (J.A. at 368). The Virginia Tax Commissioner

ruled that Verizon's converters are excluded from local taxation under the Statute and as a result, Verizon was entitled to refunds of the local property tax it paid for the 2008-2010 tax years. (J.A. at 368). The Virginia Tax Commissioner determined that "the converter boxes are intangible personal property not subject to local taxation under Va. Code § 58.1-1101(A)(2a)." (J.A. 481). This determination was consistent with the Virginia Tax Commissioner's rulings for over a period of thirty years holding that converters are not machines and not subject to local property tax.

Horbal filed an Application for Judicial Review on January 10, 2013, to the Circuit Court, claiming that Verizon's cable converters were not excluded from local property tax. Following discovery, the parties stipulated to the material facts at issue in this case and filed cross-motions for summary judgment. After extensive briefing and oral argument, Judge T.J. Hauler of the Circuit Court granted Verizon's motion for summary judgment and denied Horbal's motion for summary judgment, ruling that Verizon's converters were not subject to local property tax in a final order dated September 25, 2015.[6]

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[6] Horbal argues in his Opening Brief "Verizon's appeal to Horbal as to tax years 2008 and 2009 was also invalid because it was untimely and incomplete." Opening Brief of Appellant, 3 fn. 2. The insertion of this statement is not related to the issue before this Court in this matter. Verizon's appeal of the portion of the Circuit Court's order denying its tax

The Circuit Court held that Va. Code § 58.1-1101(A)(2a) was ambiguous and required the court to consider extrinsic evidence. The Circuit Court also determined that it was the intent of the legislature to exclude converters and tuners from the phrase "machines and tools." (J.A. at 807). The Circuit Court found *Arlington Cable Partners v. County of Arlington*, No. 26719 (Cir. Ct. March 20, 1987) to be persuasive, related to the very issue in this case, and supportive of Verizon's position that cable converters are not subject to local taxation. The Circuit Court also found that its prior ruling in *Comcast of Chesterfield County, Inc., v. Board of Supervisors for Chesterfield County*, No. CL07-1003 (February 15, 2008) was not a final ruling and thus not binding on the court because no final order was issued for the case. (J.A. at 808).

III. Statement of Facts

Verizon's converters are used to deliver a cable television service called FiOS. (J.A. at 367). The parties stipulated that a "converter" meets some commonly accepted definitions of the word "machine," but does not meet other commonly accepted definitions of the word "machine." *Id.* The parties did not stipulate to a definition of the phrase "machines and tools" and neither party has presented a definition of this phrase to the Court.

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refunds for the periods 2008 and 2009 is currently pending before this Court as a separate matter.

The parties also stipulated to *an example* of two relevant definitions of the word "machine." (J.A. at 24-25). One definition of "machine" is "an assemblage of parts that transmits forces, motion and energy one to another in a predetermined fashion." *Id.* A converter does not meet this definition. A second definition is "a mechanically, electrically or electronically operated device for performing a task." *Id.* A converter meets this definition.

Horbal's claim that there is only one stipulated definition of a machine (Opening Brief of Appellant, 1) or that Verizon's preferred stipulated definition applies only to "trenches and backhoes" is false. (Opening Brief of Appellant, 14). The stipulations very plainly indicate the parties' agreement as to multiple definitions of a machine and the recitation of two *examples* of definitions that could apply in the context of the statute. No more and no less.

Prior to 1984, the term "converter" was expressly included in Va. Code § 58-405(A)(2)[7] as an exception to the general rule that property used in a cable television business was excluded from local property tax. In 1984, the statute was amended by House Bill 827, removing the words "tuners" and "converters" from the list of property excluded from the general

[7] Va. Code § 58-405(A)(2) is the predecessor to Va. Code § 1101(A)(2).

rule that cable property was not subject to tax. (*See* J.A. at 767 (House Bill 827 (February 11, 1984)); 1984 Va. Act 150 (showing the law prior to the amendments at issue)).

The statutory amendment deleting "converters" was accompanied by two legislative impact statements prepared by the Virginia Department of Taxation in 1984 in connection with House Bill 827. The first legislative impact statement stated that "the bill also redefines tuners and converters in cable television businesses as intangible personal property." (J.A. at 370 (H.B. 827, Legislative Impact Statement (Feb. 23, 1984)). The second legislative impact statement states that the bill "redefines tuners and converters used in cable television business as intangible personal property." (J.A. at 371 (H.B. 827, 1984 Legislative Impact Statement (Mar. 8, 1984)).

In June, 1984, the Virginia Tax Commissioner issued Tax Bulletin 84-7 entitled "1984 Legislative Changes Regarding Intangible Personal Property." (J.A. at 370). In the section entitled "Cable Television Businesses," Tax Bulletin 84-7 specifically addresses the changes that House Bill 827 made to the prior law:

> H.B. 827, enacted by the 1984 Session of the General Assembly separately states and redefines the personal property, tangible in fact, of cable television businesses which constitute intangible personal property …

> The new definition removes any property of cable television businesses from the "machinery and tools" category of local taxation. Tuners and converters used in the cable television business, previously subject to local taxation, have been defined as intangible personal property by this amendment. The effective date of this bill is July 1, 1984.

(J.A. at 370).

HB 827 became the Statute. For the next 20 plus years, Horbal did not attempt to tax cable television converters. In fact, he expressly instructed cable television providers that cable converters were excluded from local property tax. (J.A. at 161). Then, with no change in the law, Horbal began attempting to tax cable converters including those at issue in this case. The Virginia Tax Commissioner disagreed with Horbal as did the Circuit Court.

IV. Standard of Review

Va. Code § 58.1-3983.1(G) provides that when a court is reviewing a determination of the State Tax Commissioner, the party challenging the determination shall have the burden of proof to show that the determination was erroneous. The Virginia Tax Commissioner's determination is presumed valid. *City of Richmond v. Va. Elec. & Power Co.*, 2016 Va. LEXIS at *4-5 (2016). This Court reviews the trial court's decision regarding legal determinations *de novo*. *Campbell County v. Royal*, 283 Va. 4, 14-15 (2012).

When the facts are stipulated to by all parties, as they are in this case, this Court "will not reverse the trial court's judgment on appeal unless it is plainly wrong or without evidence to support it." *Austin v. City of Alexandria*, 265 Va. 89, 95 (2003) (citing *Ohio Casualty Ins. v. State Farm Fire & Casualty*, 262 Va. 238, 240-241 (2001)).

V. Argument

The Circuit Court correctly held that cable converters are excluded from local tax for several reasons.

A. The Circuit Court Correctly Ruled That the Language of Va. Code § 58.1-1101(A)(2a) Is Ambiguous. (Response to Assignment of Error I)

The Circuit Court correctly determined that the language of the Statute is ambiguous for multiple reasons. *First*, the legislature specifically removed converters from the Statute in 1984. The change in the Statute illustrates the legislature's intent to exclude converters from the types of property that were subject to local tax. *Second*, the word "machines," as used in the Statute, and as stipulated to by the parties, is open to various interpretations and lacks clarity. In the context of the Statute, the word "machines" is capable of being understood in more ways than one and has multiple, relevant definitions some of which would render cable converters taxable and some of which would exclude cable converters from tax. *Third*,

the Statute does not use the word "machines" in isolation. Instead it uses the phrase "machines and tools" which has no ordinary meaning and is undefined. *Fourth*, multiple courts and the Virginia Tax Commissioner have ruled that cable converters are not subject to tax. These divergent interpretations of the statute prove that the statute is ambiguous. *Fifth*, Horbal's proposed reading of the Statute would render the general rule excluding cable television property from local property tax meaningless.

1. The Standard for Determining Ambiguity Under Virginia Law.

"To determine whether language is ambiguous, we must consider whether 'the text can be understood in more than one way or refers to two or more things simultaneously [or] whe[ther] the language is difficult to comprehend, is of doubtful import, or lacks clearness or definiteness.'" *Blake*, 288 Va. at 381 (*citing Boynton v. Kilgore*, 271 Va. 220, 227 (2006)). A statute is ambiguous "when its language is capable of more senses than one, difficult to comprehend or distinguish, of doubtful import or uncertain nature, of doubtful purport, open to various interpretations, or wanting clearness of definiteness." *Newberry Station Homeowners Ass'n, Inc. v. Bd. of Supervisors*, 285 Va. 604, 614 (citing *Ayres v. Harleysville Mut. Cas. Co.*, 172 Va. 383, 393 (1939)) (finding "business or financial interest" to be ambiguous because the term could be interpreted in two different ways);

Virginia Broad. Corp. v. Commonwealth, 286 Va. 239, 249 (2013); *see Blake v. Commonwealth*, 288 Va. 375, 382 (2014) (holding statute ambiguous because "send" could be interpreted in two ways, affecting meaning of statute).

This Court's recent decision in *Blake* reaffirmed this longstanding test. *Blake* involved a statute that required parents to "send" their children to school but was being applied against a parent whose child was tardy. This Court found the statutory language ambiguous because the word "send"[8] was susceptible to one or more different meanings in the dictionary – one meaning that would result in the statute encompassing tardiness and one meaning that would not:

> The word "send" has a variety of different definitions, but to determine whether it is ambiguous, we must consider the term in context…
>
> **As the text can, indeed, "be understood in more than one way,"** *Boynton*, 271 Va. at 227 n. 8 (citation omitted), **we conclude that the term "send" as used in the statute is indeed ambiguous and proceed to further analysis.**

Blake v. Commonwealth, 288 Va. at 382 (2014) (emphasis added). *See also, e.g., Gillespie v. Commonwealth*, 272 Va. 753, 758 (2006) (finding

[8] As is the case here, "send" was not defined in the statute and the Court looked to dictionary meanings of "send" in conducting its ambiguity analysis.

"record of conviction" could have more than one meaning and adopting narrower one); *Miller v. Commonwealth*, 172 Va. 639, 649 (1939) (finding statute ambiguous because "deemed" had multiple definitions, which would affect statute's meaning).[9]

Divergent interpretations of statutory language also prove that it has more than one sense and is ambiguous by definition. *See, e.g. Virginia Dep't of Labor and Ind. v. Westmoreland Coal Co.*, 233 Va. 97, 101-02 (1987) (finding divergent interpretations of statutory language from attorney general opinions, a West Virginia court, and federal agencies to be evidence that language is ambiguous); *Virginia-Am. Water Co. v. Prince William Cnty. Serv. Auth.*, 246 Va. 509, 514; *Gillespie v. Commonwealth*, 272 Va.753, 758 (finding ambiguity exists as to meaning of "record of conviction" as illustrated by the positions of the parties as to the term's meaning).

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[9] Virginia's standard for determining ambiguity is consistent with well-settled law throughout the United States. *See e.g., Nat'l R.R. Passenger Corp. v. Boston and Maine Corp.*, 503 U.S. 407 (1992) (the word "required" was ambiguous because it had multiple meanings that could fit in the context of the statute). *See also United States v. Deaton*, 332 F.3d 698, 710 (4th Cir. 2003) (regulation ambiguous because of "existence of alternative dictionary definitions of the word 'tributary', each making some sense under the regulation").

2. Horbal Applies the Wrong Standard for Ambiguity.

Horbal attempts in his Opening Brief, for the first time in this litigation, to narrow this Court's standard for determining when a statute is ambiguous by arguing a statute is ambiguous only if it is capable of more than one mutually exclusive "sense." He then goes on to argue that "sense" should be limited to the meaning provided in the Explanatory Notes of Webster's Ninth New Collegiate Dictionary (1988). (Opening Brief of Appellant, 11-13). Horbal failed to raise this argument at the administrative or trial court level, so he did not properly preserve it for appeal. He even attached a page from Webster's that was not admitted into evidence before the Circuit Court. Moreover, by not raising the issue and preserving it properly, Horbal denied Verizon the opportunity to properly respond with evidence of its own. As such, the court should not address this argument and treat it as a procedural default. Rule 5:25, Rules of the Supreme Court of Virginia.

However, even if this Court were to consider Horbal's argument, it fails for the following reasons: (1) Horbal misconstrues the holding and analysis of *Blake* and (2) Horbal's arguments contradict his stipulations

before this Court, including the stipulation that the word machine is capable of multiple definitions.

a. Horbal Misconstrues the Holding and Analysis of *Blake*.

Horbal unduly limits the standard for ambiguity. His argument is creative but lacks any legal support or principled logic. He points out that Webster's dictionary is broken out into three categories of "senses" and claims that the definitions that he and Verizon each dispute fall under sub-senses of the same "sense" category, concluding that the word "machines" is unambiguous because ambiguity requires dueling definitions from different "sense" categories. (Opening Brief of Appellant, 11). However, Horbal's analysis is wrong for a number of reasons. There is no evidence cited or introduced in this case that Webster's classification system is a proper standard for determining ambiguity or that a word is unambiguous if it falls within two sub-senses. There is also no reason to require, as Horbal urges, that two definitions be mutually exclusive in order for a word to be ambiguous.

In conducting its ambiguity analysis in *Blake*,[10] this Court conducted none of the sense / sub-sense analysis that Horbal invents. That case

[10] *Blake v. Commonwealth*, 288 Va. 375 (2014).

simply found there were two logical understandings of the word "send." One understanding would have resulted in a parent breaking the law; the other wouldn't. Moreover, this Court did not look at Webster's dictionary exclusively, it also looked at Black's Law dictionary. Black's Law does not even break down its definitions into "senses" or "sub-senses." Horbal may claim that the definitions from Black's Law track those that Webster classifies into senses. However, there is no principled reason why this would be important.

"To determine whether language is ambiguous, we must consider whether 'the text can be understood in more than one way or refers to two or more things simultaneously [or] whe[ther] the language is difficult to comprehend, is of doubtful import, or lacks clearness or definiteness.'" *Blake*, 288 Va. at 381 (*citing Boynton v. Kilgore*, 271 Va. 220, 227 (2006)). This Court has determined that if a word is subject to more than one relevant meaning and the outcome of a controversy could hinge on what definition is used, then the statute is ambiguous. It is of no import how a definition is classified by various dictionaries under this Court's straight-forward test for ambiguity.

Horbal's argument that the test for ambiguity is limited to and requires two mutually exclusive senses of a word is unfounded in Virginia

law and Horbal cites to no precedent supporting such a novel view of the law. (Opening Brief of Appellant, 17). Horbal cites to *dicta* in *Blake*, stating that "two different senses of the word ["send"] changed the meaning of a statute and yielded two inconsistent readings" and that this created ambiguity but he conveniently omits the rest of the test and avoids discussing other ways in which this court reviews whether a statute is ambiguous. (Opening Brief of Appellant, 17 (*citing Blake*, 288 Va. at 383)).

In this case, Horbal uses his own, new test for determining ambiguity, and leaps to the conclusion that the Statute is not ambiguous because "there are no two mutually exclusive senses of the word 'machines.'" (Opening Brief of Appellant, 17). However, two inconsistent readings of a statute do not necessarily require mutually exclusive meanings of a word.

In *Blake*, the meanings of the word "send" were not mutually exclusive. Rather, one was broader in scope than the other. "To cause to go" (i.e., attend) must necessarily require that one "direct, order, or request to go" (i.e., enroll). However, as the Court held, "to direct, order or request to go" did not necessarily require one "to cause to go." *Blake*, 288 Va. at 383. Thus, the Court determined that the word "send" could be understood in more than one way and determined that the word "send" was indeed ambiguous. *Id.*

In the case at bar, the parties offered to the Circuit Court a number of dictionary definitions, not just Webster's. (J.A. at 207, 228, 243). They show that there are at least two competing, relevant definitions of the word "machine". The Circuit Court properly considered all of them before declaring the statute "clear as mud" and finding the Statute ambiguous.

b. Horbal Distorts the Parties' Stipulations.

Horbal's argument also disregards, and in fact distorts, the stipulations made by the parties in this case. Horbal stipulated that a converter "meets some, but not other commonly accepted definitions of the word 'machine.'" (J.A. at 24, Stip. 20). The parties agreed that some relevant definitions applied to converters and some did not. *Id.* (Stip. 21). At the Circuit Court, Horbal argued for his interpretation of the Statute to be accepted, but he also acknowledged that "machine" had multiple meanings, some of which could apply in the context of the Statute and some of which could not. (J.A. at 336). Horbal's new argument backtracks from the parties' stipulations and his previous argument. Of note, Horbal omitted any mention of this relevant stipulation from his brief. Horbal's novel, unsupported theory of ambiguity should be rejected by this Court.

3. Multiple Definitions of the term "Machines" Could Apply in the Context of this Case, Rendering the Language of Va. Code § 58.1-1101(A)(2a) Ambiguous.

The Statute provides that property used in a cable television business is excluded from tax. "Machines and tools" are excluded from this general rule. Horbal argues that, in this context, the word "machine" must be separated from the phrase "machines and tools," and that it unambiguously applies to converters.

Putting aside for a moment that Horbal himself admits that he interpreted the Statute as excluding converters and advised taxpayers to this effect for over 20 years and that other localities do not tax cable converters,[11] Horbal admits the term "machine" is statutorily undefined. (J.A. at 369). Horbal also admits that the word "machine" has multiple definitions which could apply in the context of the statute. (*Id.*). Examples of two of these definitions are set forth in the parties' stipulations. However, the parties were clear that the examples used in the parties' stipulations were just that, two of several examples of definitions that could apply in the context of the statute. Some of these definitions include a cable converter and others do not. (*Id.* ("*For example*, one definition of

[11] (J.A. at 161, 175).

‘machine’ … [a]nother definition of ‘machine’…) (Emphasis added)). This is a textbook example of ambiguity under the test set forth by this Court in *Blake*.

Just like the multiple meanings of the word “send” in *Blake*, the dictionary definitions for the word “machines” range in scope. A machine that is “an assemblage of parts that transmit forces, motion and energy one to another in a predetermined manner” (which Horbal refers to as “Entry 1.e” in the dictionary) would likely also be a “mechanically, electrically, or electronically operated device for performing a task” (which Horbal refers to as “Entry 1.f”). However, not all machines that fall within the definition of Entry 1.f fall within the definition of Entry 1.e. Converters are such a device that may fall within one meaning but not the other. The application of Entry 1.e and Entry 1.f would result in two distinct interpretations of the Statute – one that would encompass converters and one that would not. These multiple meanings render the Statute ambiguous and, of import, is consistent with the analysis in *Blake*.

Horbal also incorrectly states that Verizon’s position in this case is that there are not different senses of the word machine. This is not correct. Horbal references Stipulation 21 in support of his argument, but it is specifically delineated as an “example” of two of the definitions of a

machine that would apply in the context of the statute. Horbal's attempt to argue that this stipulation limits the many definitions of a machine that could apply in the context of the Statute is inappropriate, is inconsistent with Stipulation 20,[12] and mischaracterizes the stipulations in this case.

Horbal next attempts to argue, without any evidence, that the legislature adopted a "more evolved" and "more historically relevant" meaning of the term machine. This argument also fails for numerous reasons. First, the dissent in *Blake* raised a similar argument, but only after determining that the term "send" was indeed ambiguous. This argument was never adopted by the majority in *Blake*. Second, in 1984, there were numerous dictionaries that defined the term "machine" and there is no evidence in the record as to which dictionary the legislature may have consulted prior to amending the Statute. Third, there is no evidence the legislature intended for the most modern definition of the term "machine" to be applied to the Statute.[13] Simply because one definition is more modern

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[12] Stipulation 20 reads, "A set top box meets some, but not other commonly accepted definitions of the word 'machines.'" (J.A. at 24).

[13] In his Opening Brief, Horbal argues that in 1984 when the legislature amended the Statute to mandate that "machines" should be taxed locally, Webster's definition for "machine" was the same as the 1986 and 1988 definitions which the parties stipulated were applicable to set top boxes. (Opening Brief of Appellant, 13-14.) The fact that one definition may or may not be the same cannot be used to infer the intent of the legislature.

than another, one cannot conclude that the legislature intended that definition, from that specific dictionary, to apply.

4. The Legislature's Use of the Phrase "Machines and Tools" Renders Va. Code § 58.1-1101(A)(2a) Ambiguous.

As noted above, the relevant language in the Statute is not the word "machine" but the phrase "machines and tools." Horbal asks this Court to disregard the legislature's explicit use of this phrase. Instead, he asks this Court to focus on the dictionary definitions of the word "machines" in isolation. Horbal's approach to interpreting the Statute is wrong for several reasons.

First, basic tenants of statutory construction adopted by Virginia courts indicate a legislative intent to treat "machines and tools" as related in a mechanical sense. *City of Winchester v. Am. Woodmark Corp.*, 250 Va. 451, 457 (1995). The legislature drafted the phrase "machines and tools" without commas. This indicates that the words of the phrase should be read together. *See also* Section C below. The use of the *phrase* "machines and tools" stands in stark contrast to the rest of the Statute where the legislature used commas to identify other types of property that were excluded from the general rule that cable television property is not subject to local tax. (The Statute excepts "machines and tools, motor

vehicles, delivery equipment, trunk and feeder cables, studio equipment, antennae and office furniture.")

Second, this Court has read and interpreted similar language and arrived at a different conclusion from the one Horbal argues for in this case. In *Am. Woodmark*, and *The Daily Press, Inc. v. City of Newport News*, 265 Va. 304 (2003), this Court interpreted Va. Code § 58.1-1101(A)(2) and its exclusion of "machinery and tools" from the definition of intangible personal property. Throughout the decisions for both cases, the Court repeatedly considers the phrase "machinery and tools" as a single term, not as distinct and separate categories of exempt property. *Am. Woodmark Corp*., 250 Va. 451, 458-9 (1995) ("[W]e hold that American Woodmark's furniture, fixtures, office equipment, and computer equipment are not 'machinery and tools' within the meaning of Code § 58.1–1101(A)(2)."); *The Daily Press, Inc.*, 265 Va. at 309 (2003) ("the definition of the term 'machinery and tools' is at the core of the present controversy").

Horbal attempts to rely on *Am. Woodmark Corp*. for the position that the term "machines and tools" is unambiguous and should apply to converters.[14] However, his argument is internally inconsistent. First, Horbal argues that "'machines' and 'machinery'" are synonymous words

[14] Opening Brief of Appellant, 19.

which this Court has used interchangeably. (Opening Brief of Appellant, 20). Second, citing *The Daily Press, Inc.*, he argues that "electronic machines" are covered by the new term "machinery and tools." (Opening Brief of Appellant, 20). Obviously, he can't have it both ways: "machines" cannot be both a synonym of "machinery" and a "new term." The fact is that the legislature used the terms "machinery" and "machines" in the same statute and therefore they must mean something different from each other, and this renders the statute ambiguous.

Even if this Court's interpretation of machinery applied to the converters at issue in this case, Horbal would still be wrong. In *The Daily Press, Inc.*, the Court **explicitly excludes** the "electronic machines" listed by Horbal from the term "machinery and tools." *The Daily Press, Inc*., 265 Va. at 312. Similar to *Am. Woodmark Corp*., *The Daily Press*, *Inc.* limits the scope of the term "machinery and tools" to equipment that is used in the process of manufacturing. *Id.* at 310 (stating that the definition of "machinery and tools" has "two components: (1) machinery that is used in the actual process of manufacturing; or (2) machinery that is 'necessary in the particular manufacturing business and which [is] used in connection with the operation of machinery which is actually and directly used in the manufacturing process.")

Horbal misrepresents the holding of *The Daily Press, Inc.*, in which "electronic machines" were explicitly excluded from the term "machines and tools" rather than included. (J.A. at 20-21). Further, neither party here claims that the converters are machinery that can be used to manufacture anything. Thus, if the term "machines and tools" is to have the same meaning as "machinery and tools" as the Court used that term in *Am. Woodmark Corp*. and *The Daily Press, Inc.*, then this Court must determine that converters are not devices used in manufacturing and thus are not captured by the exception in the Statute for machines and tools.

5. Divergent Interpretations Prove That The Statutory Language Is Ambiguous.

Divergent interpretations also prove that the statutory language has more than one sense and is ambiguous by definition. *See, e.g. Virginia Dep't of Labor and Ind. v. Westmoreland Coal Co.*, 233 Va. 97, 101-02 (1987) (finding divergent interpretations of statutory language from attorney general opinions, a West Virginia court, and federal agencies to be evidence that language is ambiguous); *Virginia-Am. Water Co. v. Prince William Cnty. Serv. Auth.*, 246 Va. 509. Three Circuit Court judges and Virginia's Tax Commissioner[15] have interpreted Va. Code § 58.1-

[15] It is also important to note that the legislature has acquiesced to the Department of Taxation's 1984 interpretation of Virginia Code § 58.1-

1101(A)(2a) and held that the Statute does not tax cable converters. *Arlington Cable Partners v. County of Arlington*, No. 26719 (Va. Cir. March 20, 1987)*; Joseph A. Horbal, Comm'r of Revenue for Chesterfield County v. Verizon Online LLC*, No. CL 13-78 (Va. Cir. Sept. 9, 2015); and *Eugene H. Walter, Dir. Of Finance for Henrico Cnty. v. Verizon Online, LLC,* No. CL13-3050 (Va. Cir. April 7, 2016).[16] The Circuit Court considered one of these cases.[17] The fact that three circuit court judges and Virginia's Tax Commissioner do not read the statute in the same manner as Horbal is empirical proof that the Statute is ambiguous. *See, e.g. Westmoreland,* 233 Va. at 101-02; *Virginia-Am. Water*, 246 Va. at 514; *Gillespie*, 272 Va. at 758.

1101(A)(2a). In the thirty years since House Bill 827 became effective, Virginia Code § 58.1-1101 has been amended four times (1993, 1996, 1999 and 2000) but the language of § 58.1-1101(A)(2a) has not been changed in any way. *See, e.g.*, *Peyton v. Williams*, 206 Va. 595, 600-01 (1965) (construction by officials charged with administration and enforcement entitled to weight and when construction has continued without legislative change, legislature is presumed to have acquiesced); *Rountree Corp. v. City of Richmond*, 188 Va. 701, 712 (1949); *Bott*, 187 Va. at 751 (after forty years legislative acquiescence in construction of statute by tax authorities); *see also Am. Woodmark*, 250 Va. at 458 (failure to make corrective amendments evinces legislative acquiescence to Attorney General's interpretation of statute).

[16] *But see Comcast of Chesterfield Cnty., Inc. v. Bd. of Supervisors for Chesterfield Cnty*., No. CL07-1003 (Va. Cir. Ct. Jan. 11, 2008) (this earlier Chesterfield case is not a final order, unlike the others in this list).

[17] *Walter* had not yet been decided prior to the Circuit Court's determination in this matter.

Perhaps the most glaring evidence of divergent interpretations of the phrase "machines and tools" is found within Horbal's own office. (*See* J.A. at 161, 170-179). From the time the Statute was amended in 1984, through at least May 2006, the County Commissioner of the Revenue took the position that converters were not "machines" and therefore were not locally taxable. (J.A. at 24). In December 2006, however, Horbal mysteriously changed his position and began taxing converters, taking the position for the first time that they were taxable as "machines" under the Statute. (J.A. at 166). If the term "machines" or the phrase "machines and tools" is plain and unambiguous, as Horbal now contends, one wonders what caused him and his office to maintain the exact opposite interpretation for decades.

Indeed, the Statute is, at a minimum, ambiguous and requires further investigation as to its meaning. The Circuit Court properly determined that the Statute is ambiguous and that converters are excluded from the term "machines and tools." (J.A. at 808).

B. The Circuit Court Properly Reviewed All of the Evidence to Interpret the Statute. (Response to Assignment of Error III)

The evidence reviewed by the Circuit Court is not solely extrinsic. The Statute itself is predicated on a general exclusion from tax for property

used in a cable television business. Converters were at one time part of this general exclusion, but since 1984 they have not been. In this context, the Circuit Court was correct in ruling that the Statute does not apply to cable converters. However, a review of the additional evidence provided to the Circuit Court further proves the legislature's intent.

1. Tax Statutes Are Construed in Favor of the Taxpayer.

In interpreting the Statute, it is important to remember that any just doubts relating to tax statutes are to be construed in favor of the taxpayer and against the taxing authority. *Commonwealth Natural Res., Inc.,* 219 Va. at 537-38; *Daily Press,* 265 Va. 304; *Am. Woodmark*, 250 Va. at 455-57; *Bott*, 187 Va. at 751. Indeed, this Court has recognized taxing authorities would have incentive to resolve doubts in favor of taxability and revenue generation as Horbal has done here and have guarded against it by holding tax statutes should be construed in favor of the taxpayer.[18]

2. The Circuit Court Properly Referred to Extrinsic Evidence to Interpret the Statute.

This Court has repeatedly emphasized that determining legislative intent is the paramount objective of statutory construction.

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[18] Courts have construed tax statutes in favor of taxpayers even without specific findings of ambiguity. *See e.g., Daily Press*, 265 Va. 304 (2003); *Am. Woodmark*, 250 Va. at 455-57 (1995).

Vollin v. Arlington Cnty. Electoral Bd., 216 Va. 674, 678-79 (1976). Where, as here, statutory language is ambiguous, this Court has stated that courts "must resort to extrinsic evidence and the rules of construction to determine legislative intent." *Va. Dep't of Labor and Indus. v. Westmoreland Coal Co.*, 233 Va. 97, 101-02 n.3 (1987); *Doss v. Jamco, Inc.*, 254 Va. 362, 371 (1997). This Court has recognized that "[w]here the mind labours to discover the design of the legislature, it seizes everything from which aid can be derived." *Newberry Station Homeowners Assn., Inc. v. Bd. of Supervisors*, 285 Va. 604, 617 n.6 (2013) (quoting *Consumer Prod. Safety Comm'n v. GTE Sylvania, Inc.*, 447 U.S. 102, 118 n.13 (1980)). Horbal's attempts to shield this Court from information that can shed light on what the legislature intended when enacting Va. Code § 58.1-1101(A)(2a) are at odds with the above directives from this Court. This Court should reject such attempts.

3. The Evidence Demonstrates That Converters Are Not "Machines and Tools."

Even though Horbal acknowledges the legislature specifically removed "converters" and "tuners" from the types of property that remained subject to local taxation, he nonetheless argues that the legislative intent was that they continue to be subject to local taxation. The Circuit Court's decision acknowledges the weakness in Horbal's argument.

Prior to 1984, the local tax exclusion for property used in the cable television business was in Va. Code § 58-405(A)(2), the predecessor to the modern Va. Code § 58.1-1101(A)(2a). *See e.g.*, 1984 Va. Acts 150 (showing the law prior to the amendments at issue). At that time, cable companies were included along with other industries that are currently listed in Va. Code § 58.1-1101(2). The law allowed localities to tax "machinery and tools" and "tuners" and "converters." Logically, "converters" was not a subset of "machinery and tools" in the mind of the legislature. Otherwise, it would not have been set out separately. Based on this language, converters were locally taxable at that time.

On April 9, 1984, the legislature changed the law. Among other things, it separated cable companies from the other industries referenced in paragraph (A)(2) of Va. Code § 58.1-1101 and adopted a separate provision, subparagraph, (A)(2a), which controls the taxation of property used in the cable television business. In so doing, the legislature deleted all cable company-specific items from (A)(2) -- "cable television . . . and the trunk and feeder cables, studio equipment, tuners, converters, antennae and office furniture and equipment of cable television businesses" -- and added that language back in the new (A)(2a) with only two exceptions. It did not add back the words "tuners" or "converters." The legislature left in

paragraph (A)(2) the term “machinery and tools,” because that was the only remaining phrase in the statute that applied to both cable companies and the other industries listed in the statute. In the new paragraph (A)(2a) for property used by cable television businesses, the legislature left out the words “tuners” or “converters” and replaced the term “machinery and tools” with the term “machines and tools.” 1984 Va. Acts 692.

Horbal argues that, in the 1984 amendments, the legislature removed the word “converters” from the statute and added “a new category of property” that was to be locally taxed. (Opening Brief of Appellant, 23). Horbal emphasizes that attention should not be paid to “what language was removed from the statute,” but rather the Court should only consider the addition of the term “machines and tools” as a category of property subject to local taxation. (*Id.*). Horbal claims as a basis for his position that the General Assembly knows how to exclude items when it intends to and that it will do so expressly in such cases. (*Id.*).

Excluding “converters” from the Statute, and thus exempting them from taxation, was exactly what the legislature intended to do in this case. This Court recognized the principle that such an omission indicates the intent of the legislature. *See, e.g.*, *Commonwealth v. Bruhn*, 264 Va. 597, 602 (2002) (holding deletion of language indicates intent to prohibit what

was previously permitted); *AAA Disposal Servs., Inc. v. Eckert*, 267 Va. 442, 446 (2004) (finding change in statute purposeful and that removal of "amount sued for" meant that was no longer qualifying language). If "machines and tools" was a "new" category, it could not have logically included converters, which was removed from the "old category" of "machinery and tools."[19] The fact that the legislature removed the specific term "converters" from the statute indicates that it intended to remove such property from local taxation. Otherwise, the legislature could have left the word "converters" in the statute along with other items that arguably qualify as "machines" under Horbal's definition, such as "studio equipment." The Circuit Court properly understood the statutory construction implication of striking "converters" from the statute.

Horbal's argument is also flawed because it illogically construes the general language in Tax Bulletin 84-8 and the 1984 Legislative Digest issued by the Virginia Department of Taxation to place them in direct contradiction to the specific guidance provided by Tax Bulletin 84-7. (J.A. at 372.) To determine statutory intent, the Court should look to the clear language of Tax Bulletin 84-7, which undeniably states that "tuners and converters used in the cable television business, previously subject to local

[19] Horbal himself refers to "machinery" and "machines" as synonyms. (Opening Brief of Appellant, 20).

taxation, have been defined as intangible personal property." There is no conflict between this statement and the excerpts provided by Horbal; this Court should not reach to find one. Rather, the Court should give Tax Bulletin 84-7 its due consideration, particularly since it was issued contemporaneously with the statute as guidance when it was amended in 1984 and provides a clear and direct answer to the question before the Court.[20]

C. The Circuit Court Correctly Ruled That the Phrase "Machines and Tools" is The Relevant Term Applicable to the Legal Analysis. (Response to Assignment of Error II)

The Circuit Court correctly considered the entire Statute, including the phrase "machines and tools," in its legal analysis. In interpreting the meaning of a statute this Court is required to review and give meaning to the entire statute. As set forth above, the Statute links the words "machines" and "tools" together as a phrase "machines and tools," rather than separating the two words by a comma as the legislature does with other exceptions enumerated in the Statute. This terminology indicates a legislative intent to treat machines and tools as related in a mechanical sense, rather than in a broad sense to include electronic or electrical

[20] As discussed *infra* the Virginia Tax Commissioner agrees with this interpretation.

devices such as converters. To the extent there is any doubt about the scope of "machines and tools," as compared to simply "machines," the law is clear that such doubts are to be resolved in favor of the taxpayer, not the taxing authority. The Circuit Court correctly acknowledged this construction and applied the appropriate burden.

The Circuit Court's interpretation also gave regard to separately identified exceptions listed in the statute. Virginia courts are directed to avoid interpretations that render statutory language superfluous. See *Cnty. of Albemarle v. Camirand*, 285 Va. 420, 425 (2013); *Cook v. Commonwealth*, 268 Va. 111, 114 (2004). The broad construction of "machines" urged by Horbal would bring within the ambit of "machines and tools" items that are already separately identified in the statute as exceptions – specifically, studio equipment, trunk and feeder cables, and antennae -- as these items are electrical or electronic devices for performing tasks. (J.A. at 24-25). Horbal's interpretation of the term machines would render each of these terms superfluous.

In addition, if the court were to adopt Horbal's proposed meaning of the term "machine," the exception would literally swallow the rule. Horbal's proposed definition of a machine would apply to virtually all property used in the cable television business and render the Statute virtually

meaningless. In this case, a plain reading of the Statute reveals that the legislature intended to exclude property used in a cable television business from local tax. Accordingly, the Circuit Court properly ruled that it was the legislature's intent to exclude converters and tuners from the definition of "machines and tools". (J.A. at 808).

D. The Circuit Court Properly Applied *Arlington Cable Partners v. County of Arlington.* (Response to Assignment of Error IV)

The Circuit Court properly applied *Arlington Cable Partners v. County of Arlington*, No. 26719 (Arlington Cir. Ct. March 20, 1987). Up until the Circuit Court ruled in this case, *Arlington* was the only opinion resulting in a final determination that addressed the same issue, statute, and facts. Of import, *Arlington* was decided less than three years after the Statute was enacted. The *Arlington* ruling is consistent with the rules of statutory interpretation and is supported by Tax Bulletin 84-7 and other extrinsic evidence.

Horbal's brief appears fixated on the Circuit Court judge's statement that the "reasoning" of *Arlington* was persuasive and argues that *Arlington* was a summary order with no "reasoning." A judge can use persuasive authority as he sees fit. This discretion should not be overturned unless it is abused. Here, there was no such abuse. Judge Hauler was persuaded

by the reasoning of the Virginia Tax Commissioner and the other extrinsic evidence, including the opinion by another circuit court that converters are not subject to local taxation. The Circuit Court properly relied on *Arlington* because it is "persuasive, relates to the very issue in this case, and supports [Verizon's] position" that its converters are not subject to local taxation. (J.A. at 808). Horbal clearly wanted the Circuit Court to follow an earlier interim order in *Comcast* because the decision is more favorable to his position. However, *Comcast* was not a final order and the court never explained the reasons for its holding.

E. The Circuit Court Properly Adopted the Virginia Tax Commissioner's Reasoning Set Forth in the Virginia Tax Commissioner's October 16, 2012 and January 8, 2015 Rulings. (Response to Assignment of Error V)

The Circuit Court properly found the Virginia Tax Commissioner's reasoning as set forth in the Tax Commissioner's October 16, 2012 and January 8, 2015 rulings to be compelling and, accordingly, adopted its reasoning. (J.A. at 808). The Circuit Court's order does not indicate how much weight it gave to the Virginia Tax Commissioner's reasoning. However, when a "statute is obscure or its meaning doubtful, a court will give great weight to and sometimes follow the interpretation which those whose duty it has been to administer it have placed upon it."

See Nielsen Co. (US), LLC v. Cnty. Bd. of Arlington County, 289 Va. 79, 88 (2015) (internal quotations omitted). In this case, the Circuit Court properly adopted the Tax Commissioner's reasoning, no more, no less.

Horbal quotes select phrases from *Nielsen* in an attempt to suggest that no deference should ever be given to the Tax Commissioner's rulings. However, this is not the holding of *Nielsen*. It also mischaracterizes the reasoning in the Circuit Court's order. *Nielsen* states unequivocally that while courts do not defer to rulings of the Virginia Tax Commissioner, they are required to consider these rulings and may afford them great weight where the statute is ambiguous. *See Nielsen*, 289 Va. at 88. Simply because the Virginia Tax Commissioner's policy is not expressed in a regulation does not mean the Circuit Court should ignore it. Indeed, in some cases, the Circuit Court would be correct to give these rulings great weight. *See Nielsen*, 289 Va. at 88.

In this case, the Circuit Court found the Virginia Tax Commissioner's ruling to be persuasive and adopted its reasoning. The Circuit Court did not have to do this and never said it was bound to do so. However, where a Circuit Court finds relevant authority to be persuasive, this is a proper exercise of judicial discretion and should not be disturbed on appeal. For

these reasons, the Circuit Court properly adopted the Virginia Tax Commissioner's ruling and thus, the Circuit Court's order should be upheld.

Furthermore, Horbal relies on an obviously outdated administrative regulation that cites verbatim to the version of Virginia Code § 58.1-1101 *before* the legislature amended the statute in 1984. He argues that because the Department of Taxation's own administrative regulations that interpret Virginia Code § 58.1-1101 were not amended at the time Va. Code § 58.1-1101 was amended, converters remained subject to local taxation. *See* 23 Va. Admin. Code § 10-340-20. However, this is simply not true. A subsequent ruling issued by the Tax Commissioner himself specifically indicates that the regulation is not applicable to the statute as amended. The introduction to the ruling states "[t]hese regulations do not reflect any statutory changes effective on and after January 1, 1984." Public Document (P.D.) 84-176 (1/1/1984). The issue of whether this regulation relates to the current statute was brought before the Circuit Court during the hearing in this case. It was noted that the regulation related to the predecessor statute and not the amended statute at issue. Horbal became aware and Judge Hauler took note that the regulation did not pertain to the statute as amended. (J.A. at 298-299, 328). Therefore,

the regulation simply does not reflect the legislative changes that took place in 1984, removing the term “converters” and “tuners” from the statute.

F. Even if the Statute is Capable of a Plain Meaning, Cable Converters Are Still Not Subject to Tax.

For the reasons stated in this Brief, the Statute is ambiguous. However, even if the Court finds that it is unambiguous, Verizon’s cable converters are still exempt from local taxation. A plain meaning of the phrase “machines and tools” would not include cable converters. Of import, this Court has only interpreted the phrase “machinery and tools” in the context of manufacturing. *Am. Woodmark Corp*., 250 Va. 451, 457 (1995); *The Daily Press, Inc.*, 265 Va. 304 (2003). Not even Horbal has argued that Verizon’s converters are involved in a manufacturing process. Thus, applying a plain meaning to the Statute, Verizon’s converters are exempt from local taxation.

Additionally, as discussed *supra*, the broad construction of “machines” urged by Horbal would bring within the ambit of “machines and tools” items that are already separately identified in the Statute as exceptions – specifically, studio equipment, trunk and feeder cables and antennae. These items are electrical or electronic devices for performing tasks and, therefore, within the meaning of “machine” Horbal supports.

(J.A. 24). Thus, the meaning of "machines" that Horbal contends applies renders the statutory language identifying them specifically superfluous, something that Virginia courts are directed to avoid doing whenever possible. *See Cnty. of Albemarle v. Camirand*, 285 Va. 420, 425, 738 S.E.2d 904, 906-07 (2013); *Cook v. Commonwealth*, 268 Va. 111, 114, 597 S.E.2d 84, 86 (2004).[21] Simply put, the broad meaning Horbal relies upon

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[21] There are a number of other reasons why the meaning of "machine" that Horbal relies on is not the plain meaning:

- A meaning of machine that Horbal has conceded a set top box does not fall within has been recognized by the Virginia Court of Appeals as the ordinary meaning of machine. *See Diggs v. Commonwealth*, 6 Va. App. 300, 302 (1988); (J.A. at 24, Stip. No. 21).
- If Horbal's broad interpretation were to carry the day, it would effectively make all property used in the cable television business subject to local taxation, thereby negating the entire first sentence to the statute that "[p]ersonal property, tangible in fact, used in cable television businesses" is deemed intangible personal property not subject to local taxation, absent a few exceptions. Horbal's approach would render the exclusion from tax meaningless, an outcome to be avoided under statutory construction principles. *Idoux v. Estate of Helou*, 279 Va. 548, 554 (2010); *Riverside Owner, LLC v. City of Richmond*, 282 Va. 62, 69 (2011) (a sensible construction must give reasonable effect to every word used).
- The narrower meaning Verizon urges does not result in the taxation of nontaxable software.
- Even relying on dictionaries alone, an approach, which should not be used in the context of a case such as the one at issue with so much evidence evincing the true intent of the legislature, leads to the conclusion that set top boxes are not subject to tax. For example, the order in the dictionary of the meanings of "machine" in multiple dictionaries supports a finding that the more common and ordinary meaning of machine is not the broad meaning Horbal relies

is not the plain meaning of machine. To the extent anyone could argue that the plain meaning could be read in two ways, the law requires an adoption of the plain meaning that is favorable to the taxpayer.

VI. Conclusion

In 1984, the legislature specifically removed converters from local property tax. For over 20 years, Horbal acknowledged the exclusion from tax and advised taxpayers cable converters were not taxable. The Virginia Tax Commissioner and three circuit courts all agree that cable converters are not subject to local property tax and all of the evidence supports their conclusions.

For these reasons and those discussed above, Verizon respectfully requests this Court uphold the Circuit Court's determination that (1) the Statute is ambiguous, (2) it was the legislature's intent to exclude converters from the definition of "machines and tools," (3) the term "machines" does not apply to converters, and (4) Verizon's refund position with regard to tax years 2008-2010 should be upheld.

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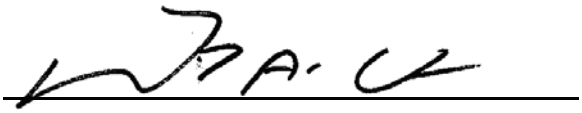
upon (i.e., the meaning of machine Horbal concedes a set top box does not meet is listed first, or at least prior to Horbal's proposed definition, in most dictionaries and the broad meaning Horbal relies upon does not appear in some). *See* Webster's New Collegiate Dictionary, American Heritage Dictionary of the English Language, Fourth Edition, and Revised Updated Illustrated Oxford Dictionary.

Date: August 12, 2016

Respectfully submitted,



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VII. Certificate

I certify the following:

1. The name of the appellee is **Verizon Online LLC**. Counsel for Verizon Online LLC is:

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Eric S. Tresh has been admitted pro hac vice in the Circuit Court of Chesterfield.

2. The name of the appellant is **Joseph A. Horbal**, Commissioner of Revenue for Chesterfield County. Counsel for Joseph A. Horbal is:

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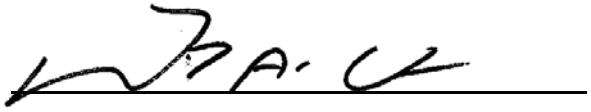
3. On this 12th day of August, 2016, ten copies of this Brief of Appellee have been hand-filed with the Clerk of this Court and

an electronic copy of the same has been e-filed, via VACES. On this same day, an electronic copy was served, via e-mail, to all opposing counsel.

4. There are 9,132 words in this Brief of Appellee.

Date: August 12, 2016

Respectfully submitted,



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