

99-063

TAXATION: REVIEW OF LOCAL TAXES — GENERAL PROVISIONS OF TITLE 58.1 – IN GENERAL (SECRECY OF INFORMATION).

ADMINISTRATION OF GOVERNMENT GENERALLY: VIRGINIA FREEDOM OF INFORMATION ACT.

Distress warrant related to taxes is public record subject to disclosure. Information appearing on warrant pertaining to transactions, property, income or business of taxpayer is confidential tax information not subject to disclosure, unless information is entered on public assessment book or published in line of duty. Line of duty exception allows disclosure of amount of tax delinquency only to other tax officers and employees. Whether distress warrant related to taxes would be deemed confidential depends on particular facts.

The Honorable Ross A. Mugler
Commissioner of the Revenue for the City of Hampton
November 22, 1999

You ask whether the information on a distress warrant issued by a local tax collector pursuant to § 58.1-3941 of the *Code of Virginia*¹ must be disclosed in response to a request under The Virginia Freedom of Information Act² ("Act") or whether the information is protected from disclosure under § 58.1-3.³ You state that the distress warrant contains the delinquent taxpayer's name and address, the type of tax, and the amount of the delinquency.

Section 2.1-342(A) of the Act provides that "[e]xcept as otherwise specifically provided by law, all public records shall be open to inspection and copying by any citizens of the Commonwealth." A distress warrant is clearly a public record encompassed within the Act⁴ and must be disclosed unless an exception applies. Section 2.1-342.01(A)(2) excepts from the Act "confidential tax records held pursuant to § 58.1-3." Section 58.1-3(A) provides:

Except in accordance with a proper judicial order or as otherwise provided by law, the ... commissioner of the revenue, treasurer, or any other state or local tax or revenue officer or employee ... shall not divulge any information acquired by him in the performance of his duties with respect to the transactions, property, including personal property, income or business of any person, firm or corporation.

The prohibition does not apply to "[m]atters required by law to be entered on any public assessment roll or book"⁵ or "[a]cts performed or words spoken or published in the line of duty under the law."⁶ A violation of the confidentiality provisions of § 58.1-3 constitutes a Class 2 misdemeanor.⁷

In accordance with the language of § 58.1-3(A), the information on a distress warrant would be deemed confidential to the extent the information would reveal, either directly or indirectly, "the transactions, property, ... income or business of any person, firm or corporation" and to the extent the information is neither "required by law"⁸ to be entered on a public assessment book nor "published in the line of duty under the law."⁹

Prior opinions of the Attorney General conclude that, while the fact of delinquency in the payment of taxes is not confidential tax information under § 58.1-3,¹⁰ the amount of the delinquency is confidential when the tax is based on gross receipts because its disclosure would reveal the

amount of business done.¹¹ Thus, the amount of the delinquency may not be disclosed in response to a request under the Act unless one of the exceptions in § 58.1-3 applies. The exception for matters required to be entered on a public assessment roll or book does not apply to gross receipts taxes. Moreover, while a tax collector is authorized to issue a distress warrant, I do not view the amount of a tax delinquency stated on the distress warrant as constituting "words ... published in the line of duty under the law."¹² The line of duty exception allows tax officials to disclose information to other such officers and employees.¹³ It does not authorize the disclosure of the information to third parties.¹⁴ Whether a distress warrant related to taxes other than gross receipts taxes would be deemed confidential will depend on the particular facts, including the information that is on the warrant, the extent to which the information constitutes confidential taxpayer information, and whether the information fits within any of the exceptions set out in § 58.1-3.¹⁵

¹The first sentence of § 58.1-3941 provides that "[a]ny good or chattels, money and bank notes in the county, city or town belonging to the person or estate assessed with taxes, levies or other charges collected by the treasurer may be distrained therefor by the treasurer, sheriff, constable or collector." As stated in prior opinions, §§ 58.1-3941 and 58.1-3919 authorize a local treasurer to issue a distress warrant or letter without the necessity of a judicial proceeding. See Op. Va. Att'y Gen.: 1997 at 203, 204; 1990 at 249, 250; 1953-1954 at 204 (citing predecessor statutes to §§ 58.1-3919, 58.1-3941).

²Sections 2.1-340 to 2.1-346.1.

³Section 2.1-118 permits the Attorney General to issue opinions to a commissioner of the revenue only when the question is directly related to the duties of the commissioner. Although distress warrants are issued by the treasurer or other collector, I assume for purposes of this opinion that the distress warrants are in your possession and are connected with the performance of your duties as commissioner of the revenue.

⁴Section 2.1-341 defines "public records" to include "all writings ... prepared or owned by, or in the possession of a public body or its officers, employees or agents in the transaction of public business."

⁵Section 58.1-3(A)(1).

⁶Section 58.1-3(A)(2). Section 58.1-3 includes numerous other instances in which taxpayer information may be provided. See § 58.1-3(A)(3)-(5), (B)-(E).

⁷Section 58.1-3(A).

⁸Section 58.1-3(A)(1).

⁹Section 58.1-3(A)(2); see 1993 Op. Va. Att'y Gen. 217, 219 (information prohibited from disclosure under § 58.1-3 is not to be disclosed under Act).

¹⁰Section 58.1-3(B) states: "Nothing contained in this section shall be construed to prohibit ... the publication of delinquent lists showing the names of taxpayers who are currently delinquent, together with any relevant information which in the opinion of the Department [of Taxation] may assist in the collection of such delinquent taxes."

¹¹See Op. Va. Att'y Gen.: 1993, *supra*, at 220 (local tax official may reveal identity of taxpayer delinquent in payment of business license tax but may not reveal amount of delinquency); 1992 at 157, 160 (local tax officials may not disclose amount of delinquent meals tax because such

disclosure would reveal volume of business done for time period); see *also* 1989 Op. Va. Att'y Gen. 304, 305 (commissioner of revenue may not disclose amount of tax paid by coal companies subject to gross receipts tax under § 58.1-3712 because it would reveal amount of coal produced).

¹²Section 58.1-3(A)(2).

¹³See 1984-1985 Op. Va. Att'y Gen. 397, 398, and opinions cited therein.

¹⁴Because the purpose of § 58.1-3 is to protect the taxpayer from the disclosure of confidential tax information to third parties, the fact that the distress warrant has been served on the delinquent taxpayer would not operate to authorize disclosure to third parties. See 1984-1985 Op. Va. Att'y Gen., *supra*, at 398 (commissioner of revenue may describe taxpayer's property on tax bill sent to taxpayer but should not describe on personal property tax book available to public except to extent necessary to satisfy statute); see *also* op. to Hon. Marsha Compton Fielder, Roanoke Comm'r Rev. (Jan. 20, 1999) (information regarding make, model and assessed value of vehicle may not be disclosed unless line of duty exception applies).

¹⁵A prior opinion concludes that if a local tax official receives a request pursuant to the Act for an existing record containing the names of delinquent taxpayers and the amount of the delinquency, the official should delete the amount of the delinquency before disclosing the document. See 1992 Op. Va. Att'y Gen., *supra* note 11, at 160 n.1; see *also* § 2.1-342(A)(3) (public body may "delete or excise" only portion of public record to which exemption applies and shall disclose remainder of record).