

99-074

TAXATION: REAL PROPERTY TAX.

County-wide rezoning resulting in portion of property being rezoned to more intensive use not requested by owner does not affect continued qualification of property under land-use ordinance. Property once eligible that becomes ineligible for land-use value assessment and taxation is to be assessed at fair market value. Roll-back taxes equal difference between tax levied when land qualified for special assessment and tax that would have been levied had property been subject to fair market value assessment rather than special assessment. County's inclusion in its determination of roll-back taxes value of rezoned portion of property is consistent with statutes governing roll-back taxes.

The Honorable William K. Barlow
Member, House of Delegates
October 29, 1999

You ask for guidance regarding the calculation of roll-back taxes pursuant to § 58.1-3237 of the *Code of Virginia*.

You relate that certain property in Prince George County has been farmed for many decades and has thus qualified for a special assessment for land preservation ordinance pursuant to Article 4, Chapter 32 of Title 58.1, §§ 58.1-3229 through 58.1-3244. You also relate that, in the 1960s, 2.5 acres of this property was zoned for commercial use by the county, but not at the request of the property owner. You advise that, prior to 1996, the entire tract of land was used for agricultural purposes, and was, therefore, taxed at land-use value. You also advise that notices sent by the county to the property owner reflected two total assessed values of the property—fair market and land use. You state that, in 1996, a portion of the property, which included the commercially zoned 2.5 acres, was sold. You further state that, upon such conveyance, the county included in its determination of roll-back taxes on such property the value of the 2.5 acres as commercially zoned. You inquire whether the determination should have been made by dividing the total assessed value of the property by the total number of acres to arrive at a per-acre value.

Section 58.1-3231 authorizes localities to adopt ordinances providing for the "use value assessment" of real property. To qualify for the special assessment, the land must be devoted to agricultural, horticultural, forest or open-space uses, as specified in § 58.1-3230. The purpose of Article 4 is to create a financial incentive to encourage the preservation and proper use of real estate classified for such uses.¹ The imposition of roll-back tax liability furthers this goal by encouraging the property owner to continue preserving the land for one of the classifications established and defined in § 58.1-3230.² Discontinuing the favorable tax treatment when the land no longer satisfies the use or acreage requirements of Article 4 is consistent with this stated purpose.³

Generally, a property owner is subject to roll-back tax liability when a change in use or size of the property results from action by the property owner.⁴ A 1983 opinion of the Attorney General concludes that action by an owner to rezone his land to a more intensive use, thereby making it eligible for development, will render it ineligible for land-use valuation,⁵ whereas a county-wide rezoning, which is not requested by the owner and which results in a change in zoning to a more intensive use, does not disqualify the land from land-use valuation, assessment and taxation until the use of the land changes.⁶

Accordingly, in the instant case, the county-wide rezoning occurring in the 1960s, which resulted in a portion of the property being rezoned to a more intensive use not requested by the owner, did not affect the continued qualification of the property under the land-use ordinance.

Section 58.1-3241(A), however, provides:

Separation or split-off of lots, pieces or parcels of land from the real estate which is being valued, assessed and taxed under an ordinance adopted pursuant to this article, either by conveyance or other action of the owner of such real estate, shall subject the real estate so separated to liability for the roll-back taxes applicable thereto

Under this provision, it is the action of the owner selling the property that triggers roll-back tax liability. Thus, although the fact that the owner did not request the zoning change is a consideration when determining whether the property continues to qualify for land-use assessment, this fact is immaterial to property that does not qualify for such assessment.

"[R]oll-back taxes [are] considered to be deferred real estate taxes."⁷ Accordingly, § 58.1-3237 provides that such "deferred tax for each [applicable] year shall be equal to the difference between the tax levied and the tax that would have been levied based on the fair market value assessment of the real estate for that year."⁸ Therefore, roll-back taxes are equal to the difference between the tax levied under the land-use assessment statutes and the tax that would have been levied pursuant to the assessed fair market value of the property had it not been subject to the special assessment.⁹

Accordingly, once property that had been eligible for land-use value assessment and taxation is made ineligible for land-use assessment and taxation, such property is to be assessed at fair market value.¹⁰ The Supreme Court of Virginia has construed "fair market value" generally as "the price [a property] will bring when it is offered for sale by one who desires, but is not obliged, to sell it, and is bought by one who is under no necessity of having it."¹¹ In determining fair market value, "all the capabilities of the property and all the uses to which it may be applied or for which it is adapted, are to be considered,"¹² with the assessment based on the highest and best use of the property.¹³

Ultimately, fair market value is a factual question to be determined by the commissioner of the revenue upon a consideration of the factors affecting the property's value.¹⁴ It is my opinion, however, that, under the facts presented, the determination made by Prince George County appears to be consistent with the statutes governing roll-back taxes.

¹See 1984 Va. Acts ch. 675, at 1178, 1373 (citing § 58.1-3229, not set out in Virginia Code); 1997 Op. Va. Att'y Gen. 195, 195.

²1997 Op. Va. Att'y Gen. 193, 194.

³*Id.*

⁴See § 58.1-3237(A), (D), (E); 1997 Op. Va. Att'y Gen., *supra* note 2, at 194.

⁵1983-1984 Op. Va. Att'y Gen. 369, 370.

⁶*Id.* at 370 n.1 (citing 1975-1976 Op. Va. Att'y Gen. 357).

⁷Section 58.1-3243; see *also* 1982-1983 Op. Va. Att'y Gen. 541, 544.

⁸Section 58.1-3237(B), (C).

⁹See *id.*; 1997 Op. Va. Att'y Gen., *supra* note 2, at 194 n.2.

¹⁰1987-1988 Op. Va. Att'y Gen. 540, 541.

¹¹Woman's Club v. City of Richmond, 199 Va. 734, 737, 101 S.E.2d 571, 574 (1958) (citation omitted); see also 1997 Op. Va. Att'y Gen. 196, 197.

¹²Woman's Club, 199 Va. at 738, 101 S.E.2d at 574; see also 1997 Op. Va. Att'y Gen., *supra*, at 197.

¹³See County Bd. of Arlington v. Commonwealth, 240 Va. 108, 393 S.E.2d 194 (1990); Waynesboro v. Keiser, 213 Va. 229, 232-33, 191 S.E.2d 196, 198-99 (1972) (although two adjacent parcels are used for residential purposes, fact that one parcel is zoned for industrial use materially affects its market value); 1997 Op. Va. Att'y Gen., *supra*.

¹⁴Op. Va. Att'y Gen.: 1997, *supra* note 11, at 197; 1987-1988 at 534, 536.