

00-084

**TAXATION: PERSONAL PROPERTY TAX RELIEF ACT OF 1998.**

**Transfer of funds from next biennial budget to current state budget, without approval of General Assembly, to meet reimbursement requirements of Act, provided such action is within legislative intent of Act and 1998 and 1999 Appropriations Acts for 1998-2000 biennium, is authorized by General Assembly.**

The Honorable Phillip A. Hamilton  
Member, House of Delegates  
December 8, 2000

You ask whether funds that are not available in a current state budget may be transferred from the next biennial budget without the approval of the General Assembly. Your inquiry arises from the reported transfer of approximately \$15.9 million from the budget approved by the General Assembly for fiscal year 2001<sup>1</sup> to pay for car tax relief in June 2000. You provide no additional facts concerning this transfer of funds. Therefore, I must analyze the transfer in the context of the Personal Property Tax Relief Act of 1998, the 1998 and 1999 Appropriation Acts for the 1998-2000 biennium, and relevant correspondence between the Auditor of Public Accounts and the Comptroller.

The Personal Property Tax Relief Act of 1998<sup>2</sup> contemplates phasing out local personal property tax obligations for personal use vehicles owned by natural persons.<sup>3</sup> The Personal Property Tax Relief Act further contemplates that the Commonwealth will reimburse localities for the resulting loss in their operating revenues.<sup>4</sup> The Act assigns the reimbursement responsibility to the Comptroller and requires the Comptroller, upon receipt of specified documentation, to effect reimbursement within two business days.<sup>5</sup>

The Personal Property Tax Relief Act contains several controls to ensure, among other things, that the contemplated tax relief, and the resulting reimbursement obligation, extends to all vehicles owned by natural persons for private use.<sup>6</sup> The Act, therefore, directs that the Department of Motor Vehicles promulgate guidelines for the reconciliation of local reimbursements.<sup>7</sup> If reimbursements occur for nonqualifying vehicles, the Comptroller must deduct the amount of such overpayments from future payments that otherwise would be due the particular locality.<sup>8</sup>

The Personal Property Tax Relief Act creates a special nonreverting fund, known as the Personal Property Tax Relief Fund, to receive appropriations from the General Assembly to make the contemplated reimbursements.<sup>9</sup> The Act also requires the Commissioner of the Department of Motor Vehicles to certify, by November 1 of each year, the sum necessary to fully reimburse the localities during the upcoming year.<sup>10</sup> The Act anticipates the possibility that the Commissioner may underestimate the reimbursement amount in any given year.<sup>11</sup> If such underestimation occurs "in the first year of a biennium, the Governor is authorized to transfer moneys from the second year to the first to effect the payment[s]."<sup>12</sup> If such underestimation occurs "in the second year of a biennium," the Governor is directed to submit to the next regularly scheduled session of the General Assembly, "a budget including the sum, if any, required to

restore the [Personal Property Tax Relief] Fund to a level sufficient to make payments [contemplated by the Act]."<sup>13</sup>

The 1998 and 1999 Appropriation Acts<sup>14</sup> provide the mechanism for funding the reimbursements contemplated by the Personal Property Tax Relief Act. The Appropriation Acts also provide more generalized guidance concerning the administration of the Act. For example, Item 554 of both the 1998 and 1999 Appropriation Acts sets limits on the aggregate amounts available for equitable relief under the Personal Property Tax Relief Act.<sup>15</sup>

The correspondence between the Auditor of Public Accounts and the Comptroller discloses that the subject transfer occurred during the last week of fiscal year 2000.<sup>16</sup> The Comptroller maintains that the Act's requirement of reimbursing localities within two business days of the presentation of documentation evidencing taxpayers' payment of their reduced personal property tax liability necessitated payments before the end of the fiscal year.<sup>17</sup> Because many Virginia localities operate on a fiscal year ending on June 30 and have personal property taxes due in June, one may reasonably conclude that the Comptroller could receive a large number of requests for reimbursement under the Personal Property Tax Relief Act during the final days each June. I am advised that, during the last half of June 2000, the Comptroller and Commissioner of the Department of Motor Vehicles first learned that the sum appropriated for relief under the Act in the fiscal year ending June 30, 2000, would not be sufficient to meet the localities' claims for reimbursement under the Act. Under these circumstances, the language of the Personal Property Tax Relief Act of 1998 and the 1999 Appropriation Act supports the conclusion that the transfer to fund the authorized reimbursements was appropriate.

First, the 1999 Appropriation Act directs that, within the aggregate dollar limit of the appropriation, the relief contemplated by the Personal Property Tax Relief Act be provided on an equitable basis.<sup>18</sup> Thus, the Comptroller had two clear directives—to ensure that all qualifying taxpayers are treated the same and to reimburse localities within two business days of the presentation of properly documented personal property tax accounts. Since other taxpayers had already received the benefits contemplated by the Act prior to June 2000, failing to timely reimburse the localities in June would have run afoul of the 1999 Appropriation Act, as well as § 58.1-3526(C) of the *Code of Virginia*, a portion of the Personal Property Tax Relief Act. Moreover, § 58.1-3533(C) does not appear to anticipate what seems to have happened in this case. While that section does address underestimations of the reimbursement amount in the second year of a biennium, it does not provide a restorative funding mechanism until the next legislative session. The delay that would result cannot be reconciled with the 1999 Appropriation Act's mandate to provide relief under the Personal Property Tax Relief Act on an equitable basis within two business days. Thus, assuming the Comptroller and the Commissioner properly report the underestimation of the reimbursement amount "to the presiding officer of each house of the General Assembly"<sup>19</sup> and the Governor submits a budget addressing the transfer, there will have been compliance with the intent of the Act. I note the reports are due on November 1.<sup>20</sup>

Consequently, it is my opinion that the transfer of funds to meet the reimbursement requirements of the Personal Property Tax Relief Act of 1998 was within the overall intent of the Act, and thus, was authorized by the General Assembly.<sup>21</sup>

<sup>1</sup>"The fiscal year shall commence on the first day of July and end on the thirtieth day of June." Va. Code Ann. § 2.1-197.

<sup>2</sup>Sections 58.1-3523 to 58.1-3536.

<sup>3</sup>See § 58.1-3523 (defining "leased" and "privately owned" as those "qualifying vehicle[s]" "leased by a natural person as lessee" or "owned by a natural person and used for nonbusiness purposes").

<sup>4</sup>Section 58.1-3524(C).

<sup>5</sup>Section 58.1-3526(C).

<sup>6</sup>See § 58.1-3523 (defining "qualifying vehicle" as "passenger car, motorcycle, and pickup or panel truck, as those terms are defined in § 46.2-100, that is determined by the commissioner of the revenue of the county or city in which the vehicle has situs as provided by § 58.1-3511 to be (i) privately owned or (ii) leased pursuant to a contract requiring the lessee to pay the tangible personal property tax on such vehicle").

<sup>7</sup>Sections 58.1-3532, 58.1-3527.

<sup>8</sup>Section 58.1-3527.

<sup>9</sup>Section 58.1-3533(A). Section 58.1-3533 creates the Personal Property Tax Relief Fund and provides for restoration of the Fund in the event of underestimates of the reimbursement amounts in first- and second-year bienniums.

<sup>10</sup>Sections 58.1-3529, 58.1-3533(B).

<sup>11</sup>Section 58.1-3533(C).

<sup>12</sup>*Id.*

<sup>13</sup>*Id.*

<sup>14</sup>1998 Va. Acts ch. 464, at 666, *amended by* 1999 Va. Acts ch. 935, at 1796.

<sup>15</sup>1999 Va. Acts, *supra*, at 2294-96; 1998 Va. Acts, *supra*, at 1052-54.

<sup>16</sup>Letter from Walter J. Kucharski, Auditor of Public Accounts, to William E. Landsidle, State Comptroller, at 2 (Sept. 12, 2000); letter from William E. Landsidle to Walter J. Kucharski (Sept. 15, 2000).

<sup>17</sup>Letter from Walter J. Kucharski, *supra*, at 1 (reiterating statements made by Comptroller).

<sup>18</sup>1999 Va. Acts, *supra* note 14, at 2294 (citing Item 554(B)).

<sup>19</sup>Section 58.1-3533(C).

<sup>20</sup>Sections 58.1-3529, 58.1-3533(B).

<sup>21</sup>I have assumed that the necessary approvals within the Executive Branch for transfers in general occurred and that the transfer in question was proper in that respect.