

00-013

**TAXATION: LOCAL TAXES -- REAL PROPERTY TAX.**

**Limitation on authority of calendar-year locality to change real property tax rate during any such year before date of delivery of land books to local treasurer does not apply to fiscal year locality. Fiscal year locality may change its tax rate during such year without limitation.**

Ms. Betty K. Cauley  
County Attorney for Bath County  
May 9, 2000

You ask whether a board of supervisors may change the rate of tax established on real property at any time during the fiscal year or only prior to the date land books are delivered to the treasurer.

You advise that the Bath County Board of Supervisors has levied and imposed real property taxes in the county on a fiscal year basis pursuant to § 58.1-3010 of the *Code of Virginia*. You further advise that the board seeks to change the rate of tax. You inquire whether it may do so at any time during the fiscal year or whether, pursuant to § 58.1-3012, such action is limited to a date prior to the date on which the land books are delivered to the treasurer of the county.

Section 58.1-3012 addresses the levying of taxes on a calendar-year basis and provides:

The governing body of any county ... which levies taxes on real estate ... on a calendar-year basis is authorized and empowered to change the rate of its tax on real estate ... during any calendar year, provided such change is made prior to the date on which the ... land books are delivered to the treasurer of the applicable county[.]

Section 58.1-3010 addresses the levying of taxes on a fiscal year basis and provides:

Notwithstanding any other provision of law, special or general, to the contrary,<sup>[1]</sup> the governing body of any county ... may by ordinance provide that taxes on real estate ... be levied and imposed on a fiscal year basis .... Such locality is authorized and empowered to change the rate of any such levy during any fiscal year.

[A]ll provisions of this Code specifying a date or month relative to the levy, payment or collection of such taxes shall be interpreted to specify the corresponding date or month of the fiscal year[.]

You contend that the language of § 58.1-3010 may be interpreted to infer that the prohibition contained in § 58.1-3012 against changing the tax rate once the land books have been delivered to the treasurer is likewise applicable in a fiscal year locality.<sup>2</sup>

The 1996 Session of the General Assembly amended § 58.1-3012 limiting the time a governing body of a locality in which taxes are levied on a calendar-year basis may change the rate of taxes to the date on which the land books are delivered to the locality's treasurer.<sup>3</sup> Prior to the 1996 amendment, an opinion of the Attorney General addressed the inquiry of whether a county board of supervisors for a county levying taxes on a calendar-year basis may reduce the tax rate on personal property after the date established for payment of such taxes.<sup>4</sup> The opinion discusses § 58.1-3012 as it then existed and notes that "[t]he General Assembly has not provided any guidance for the dates of any [tax rate] changes."<sup>5</sup> Accordingly, the opinion concludes that the county could reduce the personal property tax rate "at any time 'during any calendar year' ... until July 1, 1996, when the amendment to § 58.1-3012 becomes effective."<sup>6</sup>

Section 58.1-3010 authorizes a locality to levy and impose taxes on a fiscal year basis. Unlike § 58.1-3012, however, § 58.1-3010 provides no guidance for the dates of any tax rate changes. The primary goal of statutory interpretation is to ascertain and give effect to the intent of the legislature.<sup>7</sup> Additionally, the General Assembly is presumed to know what statutes previously have been enacted.<sup>8</sup> Given that the legislature amended § 58.1-3012 to place a restriction related to the changing of a tax rate but did not similarly amend § 58.1-3010, it is my opinion that there is no legislative intent to alter the authority of fiscal year localities to change the tax rate at any time during the fiscal year.

In addition, a prior opinion concludes that when one of these statutes reflects a certain treatment of the tax rate, the other statute must be amended to effect the same treatment.<sup>9</sup> In this opinion, it is noted that § 58-851.6 (the predecessor statute to § 58.1-3010) permitted a fiscal year locality to change its rate of levy during the fiscal year, but § 58-851.8 (the predecessor statute to § 58.1-3012) contained no such provision for a calendar-year locality.<sup>10</sup> Accordingly, the opinion concludes that a calendar-year locality did not have the privilege of changing its rates of levy during the year until § 58-851.8 was amended to do so.<sup>11</sup> Similarly, it is my opinion that until § 58.1-3010 is amended to include a date limitation for a tax rate change, a fiscal year locality may change its tax rate during such year without limitation.

Regarding your contention that the language in § 58.1-3010 makes applicable to a fiscal tax year locality other statutory provisions specifying a date or month related to taxes on a corresponding basis, I am not persuaded that such language can be interpreted to infer the date incorporated by reference in § 58.1-3012. "Section 58.1-3010 provides express authority to interpret statutory dates relating to levy, payment or collection of taxes as the *corresponding* dates in a fiscal year" for a fiscal tax year locality.<sup>12</sup> Thus, for example, the dates articulated in § 58.1-3292 related to the assessment of property of new buildings as November and September 1, and December and February 5, are, by virtue of § 58.1-3010, to be interpreted as the corresponding dates of May and April 1, and June and September 5, respectively.<sup>13</sup>

Section 58.1-3012 articulates no specific date but rather incorporates the date "on which the ... land books are delivered to the treasurer of the applicable county." Such date is found in § 58.1-3310 and is described as "September 1 of each year or within ninety days from the date on which the rate of tax on real property has been determined, whichever is later." This statutory date for delivery of the land books to the treasurer applies to either a fiscal or calendar-year locality and needs no interpretation as to a corresponding date. Accordingly, it is my opinion that the language in § 58.1-3010, making applicable to a fiscal tax year locality other statutory provisions specifying a date or month related to taxes on a corresponding basis, does not support reading into § 58.1-3010 a limitation on such locality's authority to change the tax rate during the year up to the date referred to in § 58.1-3012.

<sup>1</sup>This phrase indicates a legislative intent to override any potential conflicts with earlier legislation. *See* Op. Va. Att'y Gen.: 1998 at 19, 21; 1996 at 197, 198; 1987-1988 at 1, 2.

<sup>2</sup>Section 2.1-118 requires that any request by a county attorney for an opinion from the Attorney General "shall itself be in the form of an opinion embodying a precise statement of all facts together with such attorney's legal conclusions."

<sup>3</sup>*See* 1996 Va. Acts ch. 354, at 616.

<sup>4</sup>1996 Op. Va. Att'y Gen. 197.

<sup>5</sup>*Id.* at 198.

<sup>6</sup>*Id.* (quoting § 58.1-3012, prior to 1996 amendment) (footnote omitted).

<sup>7</sup>*See* *Turner v. Commonwealth*, 226 Va. 456, 459, 309 S.E.2d 337, 338 (1983).

<sup>8</sup>*See* Op. Va. Att'y Gen.: 1987-1988, *supra* note 1, at 2; 1985-1986 at 65, 57.

<sup>9</sup>*See* 1973-1974 Op. Va. Att'y Gen. 414.

<sup>10</sup>*See id.*

<sup>11</sup>*Id.* This opinion notes that § 58-851.8 was amended to permit the county to change the tax rate any time during the calendar year effective July 1, 1974. This privilege is, of course, now limited by the 1996 amendment to the successor statute, § 58.1-3012.

<sup>12</sup>1987-1988 Op. Va. Att'y Gen. 530, 531 (emphasis added).

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

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