

01-125

**TAXATION: REVIEW OF LOCAL TAXES.**

**Statute of limitations for collection of all local taxes, including food and beverage taxes, begins to run on December 31 of year to which tax is attributable, i.e., year for which tax was assessed.**

The Honorable James L. Williams  
Treasurer for the City of Portsmouth  
March 26, 2002

**Issue Presented**

You inquire regarding the statute of limitations related to the collection of delinquent food and beverage taxes.

**Response**

I respond by stating it is my opinion that a five-year statute of limitations for the collection of all local taxes under § 58.1-3940(A), including food and beverage taxes, begins to run on December 31 of the year to which the tax is attributable.

**Facts**

You advise that food and beverage taxes are collected at the time of sale to the consumer as part of the sales tax imposed by city ordinance. Furthermore, you advise that the monies collected are held "in trust" on behalf of the city, and are to be transmitted to the city on the twentieth day of the month following the month of sale. Consequently, these taxes are local taxes.

**Applicable Authorities and Discussion**

It is well-settled that "[i]f the language of a statute is plain and unambiguous, and its meaning perfectly clear and definite, effect must be given to it."<sup>1</sup> It is equally well-settled that "[a statute] which is plain needs no interpretation."<sup>2</sup>

Section 58.1-3940(A) of the *Code of Virginia* provides expressly that the statute of limitations for the collection of local taxes begins to run on "December 31 of the year *for which* such taxes were assessed." (Emphasis added.) The plain meaning of the statutory language indicates that a five-year statute of limitations begins to

run on December 31 of each year for which back taxes are assessed.

This interpretation of § 58.1-3940(A) is confirmed by the fact that, when the General Assembly revised Title 58 in 1984, it changed the applicable language in predecessor § 58-967 from "the year *in* which such taxes ... were assessed" to "the year *for* which such taxes were assessed."<sup>3</sup> In its report to the General Assembly on the revision of Title 58 in the form of a new Title 58.1, the Virginia Code Commission commented regarding § 58.1-3940:

This section is an attempt to make sense out of the ambiguous and conflicting limitations found in §§ 58-967, 58-1019 and 58-1021, which have been repealed. Section 58-967 imposed a 15-year statute of limitations for collection by local officers, § 58-1021 imposed a 5-year limit for personal property taxes, and § 58-1019 provided that liens were not affected by any limitations. Section 58.1-3940 is intended to cut off all collection efforts, except enforcement of the real property tax lien and judgment liens, after 5 years. The tax lien on real estate is 20 years under § 58.1-3341.<sup>4]</sup>

## **Conclusion**

It is my opinion, therefore, that the five-year statute of limitations for the collection of all local taxes under § 58.1-3940(A), including food and beverage taxes, begins to run on December 31 of the year to which the tax is attributable, i.e., the year for which the tax was assessed.

<sup>1</sup>Temple v. City of Petersburg, 182 Va. 418, 423, 29 S.E.2d 357, 358 (1944).

<sup>2</sup>Winston v. City of Richmond, 196 Va. 403, 408, 83 S.E.2d 728, 731 (1954); see also 1993 Op. Va. Att'y Gen. 256, 257, and opinions cited therein.

<sup>3</sup>Compare 1984 Va. Acts ch. 675, at 1178, 1454, with Va. Code Ann. § 58-967 (Michie Repl. Vol. 1974) (emphasis added).

<sup>42</sup> H. & S. Docs., *Report of the Virginia Code Commission on the Revision of Title 58 of the Code of Virginia*, H. Doc. No. 16, at 462 (1984).

[Back to March 2002 Index](#)