

99-117

TAXATION: TAX EXEMPT PROPERTY.

CONSTITUTION OF VIRGINIA: TAXATION AND FINANCE (EXEMPT PROPERTY).

Determination whether property of Christian Aid Mission may be classified as tax exempt rests within judgment of commissioner of revenue, after careful consideration of attendant facts. Unused and undeveloped parcels are subject to real estate taxation while they remain as such. Any portion of such land used by other entities may be exempt if activities of using entities are charitable, religious or educational. Rent paid by using entity considered source of revenue or profit to Mission is taxable.

Mr. Larry W. Davis
County Attorney for Albemarle County
January 4, 2002

You ask whether certain property owned by an incorporated religious organization is eligible for exemption from property taxation under § 58.1-3617 or § 58.1-3606(A)(5) of the *Code of Virginia*.

You advise that the Christian Aid Mission is an incorporated religious organization that provides financial support for foreign missionaries. You also advise that it owns two parcels of property,¹ which were acquired after July 1, 1971. You relate that a portion of one parcel is undeveloped and used by local schools (one secular and two nonsecular) for soccer and other outdoor activities;² the other parcel consists of buildings and wooded acreage that is used by staff and visitors for exercise and retreat (quiet time) purposes.

Article X, § 6(a)(6) of the Constitution of Virginia authorizes the General Assembly to provide a tax exemption for "[p]roperty used by its owner for religious, charitable, patriotic, historical, benevolent, cultural, or public park and playground purposes." Section 6(a)(6) authorizes the General Assembly to establish the tax exemption either by classification³ or by designation.⁴ Property is exempt by classification if it fits within a class of property which the law establishes as exempt.⁵ Property is exempt by designation when the law designates the property of a named organization as exempt.⁶ The statutory provision establishing the exemption also may prescribe restrictions and conditions on the exemption.⁷ In addition, Article X, § 6(f) provides that exemptions from taxation established or authorized by Article X, § 6 are to be strictly construed; however, all property exempt from taxation on July 1, 1971,⁸ shall continue to be exempt.

The classification statutes at issue are §§ 58.1-3606(A)(5),⁹ 58.1-3609 and 58.1-3617.¹⁰ Section 58.1-3606(A)(5) exempts from taxation the following classes of property:

Property belonging to and actually and exclusively occupied and used by the Young Men's Christian Associations and similar religious associations, including religious mission boards and

associations, orphan or other asylums, reformatories, hospitals and nunneries, conducted not for profit but exclusively as charities (which shall include hospitals operated by nonstock corporations not organized or conducted for profit but which may charge persons able to pay in whole or in part for their care and treatment).

The Virginia Code does not define the term "associations" as used in § 58.1-3606(A)(5). While "association" usually refers to something other than a corporation, the General Assembly has used the term to include "corporations" for certain purposes.¹¹ In several instances, the General Assembly has used the term "unincorporated association" to qualify the term.¹² If the General Assembly had meant for "association" to always mean an unincorporated entity, there would be no need for such a qualification. More importantly, § 58.1-3606(A)(5) specifically refers to Young Men's Christian Associations, which "regularly operate in corporate form."¹³ It is characteristic of many of the other examples of "similar religious associations, including religious mission boards and associations, ... asylums, [and] hospitals,"¹⁴ to be incorporated. It is clear from § 58.1-3606(A)(5) that religious associations necessarily include religious corporations.

The Supreme Court of Virginia has not ruled specifically on your question, but the Court's understanding of § 58.1-3606 may be discerned from the manner in which the Court has applied the section. In *City of Richmond v. Virginia United Methodist Homes, Inc.*, the Court applies § 58.1-3606 to a religious corporation, taking into consideration only whether the exemptions classified in the statute should be strictly or liberally construed.¹⁵ In *Westminster-Canterbury v. City of Virginia Beach*, the Supreme Court disagrees with the religious corporation's argument that it meets the requirements of § 58.1-3606, but not because of its corporate status.¹⁶ While neither of these cases directly considers whether the term "religious associations" includes religious corporations, the Court necessarily must have answered this question affirmatively before resolving the issue whether other attributes of the religious corporations qualified them for tax exemption by classification. In these cases, therefore, the Supreme Court has consistently applied § 58.1-3606 to religious corporations.¹⁷

Sections 58.1-3609 and 58.1-3617 expressly exempt from taxation certain classes of real and personal property on and after July 1, 1971. The provisions of these two statutes concerning religious associations are broader than those of § 58.1-3606. The first sentence in § 58.1-3609(A) states:

The real and personal property of an organization classified in §§ 58.1-3610 through 58.1-3621 and used by such organization for a religious, charitable, patriotic, historical, benevolent, cultural, or public park and playground purpose as set forth in Article X, Section 6 (a) (6) of the Constitution of Virginia, the particular purpose for which such organization is classified being specifically set forth within each section, shall be exempt from taxation, so long as such organization is operated not for profit and the property so exempt is used in accordance with the purpose for which the organization is classified.

Section 58.1-3617, one of the classification statutes referenced above, provides, in part:

Any church, religious association or religious denomination operated exclusively on a nonprofit basis for charitable, religious or educational purposes is hereby classified as a religious and charitable organization. Notwithstanding § 58.1-3609, only property of such association or denomination used exclusively for charitable, religious or educational purposes shall be so exempt from taxation.

Reading these two statutes together does not convey that the term "religious association," as used in § 58.1-3617, represents a different meaning of that term, as used in § 58.1-3606, to exclude otherwise qualified "religious corporations." Further, pursuant to generally accepted principles of statutory construction, sections of a comprehensive statute on a particular subject should not be read in isolation, but must be construed as parts of a coordinated whole.¹⁸ Since §§ 58.1-3617 and 58.1-3606 are within Chapter 36 of Title 58.1, governing "Tax Exempt Property," the term must be applied uniformly to both sections in the absence of a definitional distinction.

The legislative history of §§ 58.1-3617 and 58.1-3606 is also relevant. Originally, the provisions that became § 58.1-3617 were part of a prior statutory scheme, a portion of which became § 58.1-3606.¹⁹ In repealing Title 58 in 1984,²⁰ the General Assembly recodified several subsections of § 58-12 as § 58.1-3606.²¹ As previously discussed, the General Assembly did not intend religious associations to exclude corporations in a statute that offers the Young Men's Christian Association as its prime example of religious associations. Professor J. Rodney Johnson, a University of Richmond law professor, explains the effect of recasting language removed in § 58-12(5) and reenacting it as § 58-12.24, which subsequently became § 58.1-3617:

It cannot be credibly maintained that the General Assembly, by merely moving the language in question, *mutatis mutandis*, from section 58-12(2) [sic]^[22] to section 58-12.24 in 1974 was thereby evidencing any intent to change the meaning of this language or any portion thereof. Instead, the purpose of the General Assembly was simply to validate language that the Attorney General had earlier determined to be unconstitutional because it had not been enacted by the requisite three-fourth's majority of the General Assembly.^[23]

Therefore, the legislative history indicates that the General Assembly intended the phrase "religious association" as used in §§ 58.1-3606 and 58.1-3617 to have the same meaning. Since there is no reason to believe that the phrase in § 58.1-3617 should be interpreted any differently than in § 58.1-3606(A)(5), there is no indication that the phrase excludes corporations in § 58.1-3617. Therefore, the term "religious association" in § 58.1-3617 includes "corporations."

Prior opinions of the Attorney General construe § 58.1-3617 as consistent with this statutory history and conclude that religious corporations qualify under this religious association exemption.²⁴ The Virginia Supreme Court's application of § 58.1-3617 is in accord with these opinions. In *Westminster-Canterbury*, the Court ruled not only whether the corporation could be classified as a tax-exempt religious association under § 58.1-3606, but also whether it could be classified as a tax-exempt association pursuant to §§ 58.1-3609 and 58.1-3617.²⁵ The Court would not have considered the corporation's qualification for tax exemption under

these classification statutes if the term "religious association" excluded corporations.

There exist, however, at least three contrary opinions,²⁶ which rely on the advice and reasoning given by the Attorney General in a 1982 opinion.²⁷ In determining whether property of a religious corporation is exempt from local real property taxation under § 58-12.24, the 1982 opinion states:

The General Assembly is obviously aware of the distinction between a corporation and other non-incorporated entities. In several subsections of § 58-12, the General Assembly provided for exemptions to corporations. Its omission of corporations from § 58-12.24 evidences its intent not to provide exceptions for corporations seeking to come within the protection afforded by that section. Rather, giving the phrase "church, religious association ..." its natural meaning, it is clear that the Assembly intended to exempt a relatively narrow range of entities which may be defined, in other terms, as a body of communicants or group gathered in common membership for religious purposes.^[28]

The 1982 opinion assumes, therefore, that, because the term "corporation" was not mentioned specifically in the statute, corporations are not exempt entities. The opinion does not, however, analyze the term "religious association" in the statute to determine whether a corporation is to be considered as a type of association. The General Assembly is presumed to acquiesce in the Attorney General's published interpretations of a statute where no corrective amendment is legislatively made.²⁹ While the General Assembly has not amended § 58.1-3617 since the 1982 opinion, the legislative history, an opinion of the Attorney General, and a Virginia Supreme Court decision issued after the 1982 opinion and those opinions following it indicate that the term "association" does include corporations. Therefore, to the extent that the 1982 opinion and those following it deny property tax exemptions because of an organization's corporate status, they are overruled.

Although the Christian Aid Mission is a "religious association" for the purposes of both §§ 58.1-3606(A)(5) and 58.1-3617, the question remains whether the property of the Mission qualifies for an exemption under the conditions articulated in either statute. Whether such property qualifies for the § 58.1-3606(A)(5) exemption ultimately is a factual determination to be made by the commissioner of the revenue.³⁰ "The general rule is that an exemption from taxation is the exception and provisions exempting property from taxation must be strictly construed."³¹ If there is any doubt concerning the exemption, the doubt must be resolved against the party claiming the exemption.³²

To come within the exemption allowed by § 58.1-3606(A)(5), the Mission has the burden of showing that the property belongs to it and is "actually and exclusively occupied and used by' the [Mission]."³³ Additionally, the property must meet the "dominant purpose test" of "whether the property in question promotes the purpose of the institution seeking the tax exemption."³⁴ The property is entitled to tax exemption "if the property has 'direct reference to the purposes for which the [institution was created,] and tends immediately and directly to promote those purposes."³⁵

Pursuant to § 58.1-3617, property is exempt if it is used by the qualifying entity "exclusively ... for charitable, religious or educational purposes." This restriction

allows property to be used by another organization as long as the purpose of such use is charitable, religious or educational.³⁶

While you have not provided enough facts for me to render a definitive opinion on whether the property in question meets the conditions set forth in either § 58.1-3606(A)(5) or § 58.1-3617 for exemption from taxation, I must note that, generally, under § 58.1-3606(A)(5), undeveloped and unused parcels of land are not exempt from real estate taxation as long as they remain undeveloped and unused.³⁷ Yet, under § 58.1-3617, the portion of such parcel used by other entities may be exempt if the activities of the using entities are charitable, religious or educational in nature. Note, however, that if the other entities pay rent for use of the land, and their payments are large enough to be considered a source of revenue or profit to the Mission, that portion of the property used would be taxable under § 58.1-3603.³⁸

You mention that the Mission's staff and visitors use the other parcel in question for exercise and retreat purposes. Again, whether this parcel is "actually and exclusively occupied and used" pursuant to § 58.1-3606(A)(5) by the Mission in light of its purpose, or whether it is used for "charitable, religious or educational purposes" under § 58.1-3617, rests within the judgment of the commissioner of the revenue, after careful consideration of all the attendant facts.

¹I assume that there is no dispute regarding whether the property in question belongs to the Mission.

²I assume that there is no revenue derived from such use.

³See Va. Code Ann. § 58.1-3606 (Michie Repl. Vol. 2000).

⁴See *id.* § 58.1-3607 (Michie Repl. Vol. 2000).

⁵See *id.* tit. 58.1, ch. 36, arts. 2-3, §§ 58.1-3606 to 58.1-3621 (Michie Repl. Vol. 2000).

⁶See tit. 58.1, ch. 36, art. 4, § 58.1-3650 (Michie Repl. Vol. 2000), §§ 58.1-3650.1 to 58.1-3650.840 (not set out in Code); §§ 58.1-3607, 58.1-3608 (Michie Repl. Vol. 2000).

⁷Va. Const. art. X, § 6(a)(6). See, e.g., §§ 58.1-3609(A), 58.1-3650(A) (Michie Repl. Vol. 2000) (restricting tax exemptions to real and personal property of organizations that, in first statute, are classified in §§ 58.1-3610 to 58.1-3621 or, in second statute, are specifically designated in §§ 58.1-3650.1 to 58.1-3650.904 (not set out in Code)).

⁸July 1, 1971, is the effective date of the 1971 Constitution. See 1970 Va. Acts chs. 763, 786, at 1595, 1698, respectively.

⁹Section 58.1-3606(A)(5) exempts YMCAs and "similar religious associations, including religious mission boards and associations."

¹⁰Sections 58.1-3609 and 58.1-3617 exempt churches, religious associations, and religious denominations.

¹¹See Va. Code Ann. § 55-210.2 (Michie Supp. 2001) (defining "business association"); see also § 55-368(1) (Michie Supp. 2001) (providing that time-share associations may be formed as nonstock corporations); § 55-458 (Michie Repl. Vol. 1995) (providing that cooperative association shall be organized as stock or nonstock corporation); Va. Code Ann. § 6.1-194.2 (Michie Repl. Vol. 1999) (providing that "savings and loan association" would include incorporated "savings bank").

¹²Compare Va. Code Ann. §§ 8.01-15, 8.01-305 (Michie Repl. Vol. 2000) (governing suits by and against, and process against, unincorporated associations), and § 6.1-125.1 (Michie Repl. Vol. 1999) (defining "multiple party account" as not including account controlled by authorized agent or trustee for "unincorporated association") with § 59.1-501.2 (Michie Repl. Vol. 2001) (defining "person," as term is used in Uniform Computer Information Transactions Act, as meaning "association").

¹³J. Rodney Johnson, *Virginia Tax Laws Affecting Churches*, 18 U. Rich. L. Rev. 301, 323 & n.119 (1984).

¹⁴Section 58.1-3606(A)(5).

¹⁵257 Va. 146, 154, 509 S.E.2d 504, 507 (1999).

¹⁶238 Va. 493, 385 S.E.2d 561 (1989) (demonstrating that religious corporation must meet stricter terms of classification statutes when it is unclear whether corporation is conducted exclusively as charity or for charitable purposes).

¹⁷*Accord* 1991 Op. Va. Att'y Gen. 303 (declaring Northern Virginia Jewish Community Center, Inc. religious association similar to Young Men's Christian Association for purposes of tax exemption).

¹⁸*See* Prillaman v. Commonwealth, 199 Va. 401, 405-06, 100 S.E.2d 4, 7-8 (1957); Op. Va. Att'y Gen.: 1993 at 177 187; 1992 at 108, 112.

¹⁹*Compare* 1974 Va. Acts ch. 469, at 907, 907-10 (amending and reenacting § 58-12 and adding § 58-12.24), and 1978 Va. Acts ch. 216, at 351 (adding section exempting from personal property taxation vehicles owned by churches), with 1984 Va. Acts ch. 675, at 1178, 1406-09 (repealing Title 58 and adding Title 58.1, consisting of §§ 58.1-3606, 58.1-3617).

²⁰*See supra* note 19.

²¹*Compare* 1974 Va. Acts, *supra*, at 907-10, with 1984 Va. Acts, *supra*, at 1406-07.

²²The language was moved from § 58-12(5) rather than § 58-12(2).

²³Johnson, *supra* note 13, at 324; *see* 1974 Va. Acts, *supra*, at 910 (adding § 58-12.24); Johnson, *supra*, at 314 n.67 (explaining historical background of statute).

²⁴*See* Op. Va. Att'y Gen.: 1989 at 342, 344 (concluding that § 58.1-3617 exempts from taxation property of Massanetta Springs, Inc., a religious corporation, used exclusively for religious purposes); 1977-1978 at 414, 415 (concluding that § 58-12.24 exempts from personal property taxation vehicles owned and used by Potomac Conference of Seventh-Day Adventists used on nonprofit basis for charitable purposes); 1973-1974 at 391 (concluding that § 58-12.24 exempts property of Salvation Army used exclusively for charitable, educational or religious purposes). *Accord* Johnson, *supra* note 13, at 324-25 (clarifying corporate status of religious associations mentioned in latter two opinions).

²⁵238 Va. at 498-500, 385 S.E.2d at 564-65.

²⁶*See* Op. Va. Att'y Gen.: 1984-1985 at 320; 1983-1984 at 352; 1982-1983 at 577.

²⁷1981-1982 Op. Va. Att'y Gen. 373.

²⁸*Id.* at 375.

²⁹*See* Lee Gardens v. Arlington County Board, 250 Va. 534, 540, 463 S.E.2d 646, 649 (1995); 1996 Op. Va. Att'y Gen. 123, 124 n.4.

³⁰*See* 1989 Op. Va. Att'y Gen. 338, 339 (property owned by affiliate of Ruritan National, Incorporated).

³¹*Smyth County Comm. Hospital v. Town of Marion*, 259 Va. 328, 333, 527 S.E.2d 401, 403 (2000); *see* art. X, § 6(f).

³²*See Westminster-Canterbury v. City of Virginia Beach*, 238 Va. at 501, 385 S.E.2d at 565.

³³*Smyth County Comm. Hospital v. Town of Marion*, 259 Va. at 333, 527 S.E.2d at 403 (quoting *Hospital Association v. Wise County*, 203 Va. 303, 307, 124 S.E.2d 216, 219 (1962)).

³⁴*Id.* at 334, 527 S.E.2d at 404.

³⁵*Id.* at 334-35, 527 S.E.2d at 404. (quoting *Com'th v. Lynchburg Y.M.C.A.*, 115 Va. 745, 752, 80 S.E. 589, 591 (1914)).

³⁶See *Mariner's Museum v. City of Newport News*, 255 Va. 40, 495 S.E.2d 251 (1998).

³⁷1987-1988 Op. Va. Att'y Gen. 599, 600. Note that where property is exempt from taxation, the use of the property by other organizations does not necessarily destroy the tax-exempt status of the property. See *City of Richmond v. United Givers Fund*, 205 Va. 432, 137 S.E.2d 876 (1964).

³⁸See *Mariner's Museum v. City of Newport News*, 255 Va. at 45, 495 S.E.2d at 253-54.

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