



COMMONWEALTH of VIRGINIA

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October 19, 2006

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The Honorable Ingrid H. Morroy
Arlington County Commissioner of the Revenue
2100 Clarendon Boulevard, Suite 200
Arlington, Virginia 22201

Dear Ms. Morroy:

I am responding to your request for an official advisory opinion in accordance with § 2.2-505 of the *Code of Virginia*.

Issue Presented

You ask whether distributions, including lump sum and periodic distributions, from IRAs, 401Ks, and similar retirement plans are considered income for purposes of determining eligibility for the exemption or deferral of taxes on property pursuant to Articles 2 and 2.1, Chapter 32 of Title 58.1.

Response

It is my opinion that distributions from IRAs, 401Ks, and similar retirement plans are considered income for purposes of determining eligibility for the exemption or deferral of taxes on property pursuant to Articles 2 and 2.1, Chapter 32 of Title 58.1.

Background

You relate that a person receives distributions from various IRAs, including both traditional and Roth IRAs. You note that should these distributions be considered income under § 58.1-3210, he will not qualify for the exemption or deferral from real estate taxes. You also note that when the distributions are not considered income, he will qualify for tax relief.

Applicable Law and Discussion

Article X, § 6(b) of the Constitution of Virginia authorizes the General Assembly to enact general laws that authorize local governing bodies to provide for the complete or partial exemption of real estate or personal property from local property taxes. The exemption applies to real property that is designed for continuous habitation and is owned by and occupied as the sole dwelling of persons not less than sixty-five years of age or persons who are permanently and totally disabled "who are deemed by the General Assembly to be bearing an extraordinary tax burden on said property in relation to their income and financial worth."¹

The General Assembly has enacted such general laws in Articles 2 and 2.1 of Chapter 32 of Title 58.1, §§ 58.1-3210 through 58.1-3219.3. Specifically, § 58.1-3210(A) authorizes local governing bodies

¹VA. CONST. art. X, § 6(b).

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to adopt ordinances granting exemptions from, deferrals of, or combinations thereof from the taxation of real estate. To qualify for an exemption or deferral, the property must be owned by and occupied as the sole dwelling of a person who is at least sixty-five years of age.² If authorized by the ordinance, a person determined to be permanently and totally disabled with the meaning of § 58.1-3217 is entitled to such exemption or deferral.³ Any such ordinance enacted by a local governing body is subject to the restrictions and exemptions set forth in § 58.1-3211. These restrictions include limitations on the total combined income received from all sources during the preceding calendar year by the owners of the dwelling who use it as their principal residence and the owners' relatives who live in the dwelling.⁴

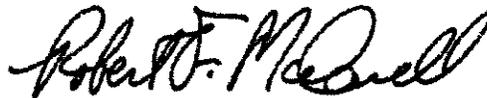
Section 58.1-3211(5) defines income as the "total gross income from all sources, without regard to whether a tax return is actually filed." Additionally, § 58.1-3211(5) exempts life insurance benefits and receipts from borrowing or other debt from income. The statute is silent, however, regarding exemptions for distributions from IRAs, 401Ks, and similar retirement vehicles. A prior opinion of the Attorney General addressed the issue of whether periodic payments from retirement plans should be included as income and concluded that "periodic annuity or retirement payments, made on a regular basis, should be considered part of income."⁵

Conclusion

Accordingly, it is my opinion that distributions from IRAs, 401Ks, and similar retirement plans are considered income for purposes of determining eligibility for the exemption or deferral of taxes on property pursuant to Articles 2 and 2.1, Chapter 32 of Title 58.1.

Thank you for letting me be of service to you.

Sincerely,



Robert F. McDonnell

1:1160;1:1055; 1:941/06-066

²VA. CODE ANN. § 58.1-3210(A) (2004).

³*Id.*

⁴Section 58.1-3211(1)(a) (Supp. 2006).

⁵1973-1974 Op. Va. Att'y Gen. 401, 401 (interpreting § 58-760.1, predecessor to § 58.1-3211). Subsequent opinions of this Office have concluded that retirement payments are included as income for purposes of § 58.1-3211. Op. Va. Att'y Gen.: 1992 at 175, 177; 1987-1988 at 527, 528; 1985-1986 at 304, 304. "[T]he General Assembly is presumed to have knowledge of the Attorney General's interpretation of statutes, and the General Assembly's failure to make corrective amendments evinces legislative acquiescence in the Attorney General's interpretation." *City of Winchester v. Am. Woodmark Corp.*, 250 Va. 451, 458, 464 S.E.2d 148, 153 (1995); *see also* 2005 Op. Va. Att'y Gen. 13, 15. The rationale applied in this opinion to exemptions or deferrals pursuant to § 58.1-3210 is equally applicable to deferrals from real estate taxes enacted by local governing bodies pursuant to § 58.1-3219. I note, however, that the deferral program under § 58.1-3219 is not applicable to real estate that participates in a relief or deferral program for the elderly or permanently or totally disabled pursuant to Article 2, Chapter 32 of Title 58.1. Section 58.1-3219.3(1) (2004).