



COMMONWEALTH of VIRGINIA

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March 5, 2007

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The Honorable Kristen J. Amundson
Member, House of Delegates
P.O. Box 143
Mount Vernon, Virginia 22121

Dear Delegate Amundson:

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 inquire whether it is constitutional to assess real property at the time of sale at its fair market value and include the sale price as evidence of the fair market value of the property during the regular annual assessment cycle.

Response

It is my opinion that the sale of real property after January 1 does not impact real property assessments for the current tax year. It further is my opinion that the sale price of such property may be incorporated into a determination of the fair market value for the property during the annual assessment that follows the year of such sale.

Background

You relate that Fairfax County assesses real property annually. You also state that Fairfax County assesses new home sales on an annual basis regardless of the date of sale. You note that a jurisdiction would enhance its tax revenue if it makes real property assessment adjustments at the time of new home sales.

Applicable Law and Discussion

Article X, § 2 of the Constitution of Virginia governs the assessment of property and provides that “[a]ll assessments of real estate and tangible personal property shall be at their fair market value, to be ascertained as prescribed by law.” A 1993 opinion of the Attorney General (“1993 Opinion”) has discussed the timing of the assessment process and explains that “[b]ecause the property tax is a tax on value, it must be levied by reference to a specific date on which that value is ascertained; for the tax to be uniform, the date must be the same for everyone in the locality.”¹

¹ 1993 Op. Va. Att’y Gen. 243, 245.

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Section 58.1-3281 provides that the beginning of the tax year for the assessment of real estate taxes is January 1. Further, the owner of the real estate on January 1 is assessed for the taxes for the year that begins that day.²

Additionally, the 1993 Opinion notes that since the status of real property is determined as of January 1, "a change in ownership or value after that date is not recognized until the following tax day, for the following tax year."³ Therefore, a new property owner is not assessed at the time of purchase because the property was assessed on January 1 for that tax year. As the 1993 Opinion explains, "[i]t is for this reason that contracts for sale of real estate usually require the taxes to be prorated between the buyer and the seller, based on the proportion of the tax year that each owns the property."⁴ Although the selling price of real property is indicative of fair market value, it does not impact the current year's annual reassessment cycle because the assessment for that tax year occurred on January 1. Any change in fair market value evidenced by an actual sale of property may be incorporated into the annual reassessment on "the following tax day, for the following tax year."⁵

Conclusion

Accordingly, it is my opinion that the sale of real property after January 1 does not impact real property assessments for the current tax year. It further is my opinion that the sale price of such property may be incorporated into a determination of the fair market value for the property during the annual assessment that follows the year of such sale.

Thank you for letting me be of service to you.

Sincerely,



Robert F. McDonnell

1:1160; 1:941/06-095

²See Va. Code Ann. § 58.1-3281 (2004); see also § 58.1-3253(B) (2004) (providing that when locality enacts ordinance authorizing annual assessment of real estate, "all real estate shall thereafter be assessed as of January 1 of each year, except as provided in Chapter 30 of [Subtitle III ("Local Taxes") of Title 58.1]").

³See 1993 Op. Va. Att'y Gen. *supra* note 1, at 246.

⁴*Id.*

⁵*Id.*