



COMMONWEALTH OF VIRGINIA

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October 20, 2009

The Honorable Anne G. Sayers
Northampton County Commissioner of the Revenue
P.O. Box 65
Eastville, Virginia 23347

Dear Ms. Sayers:

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, when preparing a land book, whether a commissioner of the revenue (“commissioner”) is authorized to divide proportionally a farm that is situated in a county and in a town within the county and enter the farm as two separate line items. Further, when such county has a use value program for which the farm qualifies and the town does not have a use value ordinance, you ask whether the entire farm receives the use assessment or only the portion of the farm situated within the county.

Response

It is my opinion that, when preparing a land book, a commissioner of the revenue must assess the entire farm parcel as being in the county even though a portion of such farm is within an incorporated town. Further, the commissioner should assess that portion of the farm located within the town as a separate line item entry on the land book. It is my opinion that for purposes of the county’s use value program for which such farm qualifies, the entire farm receives the use assessment for purposes of taxation by the county. Finally, when the town within such county does not have a use value ordinance, it is my opinion the portion of the farm that is within the town is subject to taxation by the town.

Background

You relate that Northampton County, which includes within its boundaries five incorporated towns, has an Agricultural Forest District Program.¹ You note that several tracts or parcels of land in the County have small portions that are also within the geographic boundaries of one of these towns. You relate that it has been the practice of Northampton County for purposes of real property taxation to assess separately the portion of such larger tracts of land that lie within an incorporated town.

¹See NORTHAMPTON COUNTY, VA., CODE OF ORDINANCES § 33.010 (2009), Agricultural and Forestal Districts Program, available at [http://www.amlegal.com/nxt/gateway.dll/Virginia/northampton_co_va/titleiiiadministration/chapter33financeandtaxation?f=templates\\$fn=altmain-nf.htm\\$3.0#JD_33.010](http://www.amlegal.com/nxt/gateway.dll/Virginia/northampton_co_va/titleiiiadministration/chapter33financeandtaxation?f=templates$fn=altmain-nf.htm$3.0#JD_33.010).

You question whether the practice of assessing the parcel as two line items on the tax rolls is the correct way to handle these properties. Therefore, you seek guidance concerning whether the assessment of such a parcel as two entries on the tax rolls is appropriate and authorized by statute.

Applicable Law and Discussion

Section 58.1-3301(A) provides that “[t]he Department of Taxation shall prescribe the form of the land book to be used by the commissioner of the revenue” for a county. Under this authority, the Department of Taxation (the “Department”) has prescribed forms that provide for the listing of basic information concerning each parcel of property, including the name and address of the owner, a description of the property, the value of land and improvements, and the amount of tax due.² Further § 58.1-3302 provides that the commissioner shall enter each town lot separately in the land book, and shall set forth, among other things, the name and address of the owner, a description of the property, its value and “the amount of tax at the legal rate.” Section 58.1-3310 requires “[e]ach commissioner of the revenue [to] retain in his office the original land book” and to deliver a copy to the Department and to the treasurer and the clerk of the circuit court for his county.

Statutory language is ambiguous when it may be understood in more than one way.³ An ambiguity also exists when statutory language lacks clarity and precision, or is difficult to comprehend.⁴ “The province of [statutory] construction lies wholly within the domain of ambiguity, and that which is plain needs no interpretation.”⁵ When statutory language is clear and unambiguous, however, the plain meaning and intent of the enactment must be given to it.⁶ It is my opinion that §§ 58.1-3301 and 58.1-3302 are free of any ambiguities. A commissioner is required as a part of his duties to prepare a land book which separately states the town property.⁷

Successive Virginia constitutions have contained provisions requiring “uniformity” in property taxation.⁸ The Constitution of Virginia currently requires uniformity of taxation in Article X, § 1, which provides, in pertinent part, that:

All property, except as hereinafter provided, shall be taxed. All taxes shall be levied and collected under general laws and shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax, except that the General Assembly may provide for differences in the rate of taxation to be imposed upon real estate by a city or town within all or parts of areas added to its territorial limits, or by a new unit of general government, within its area, created by or encompassing two or more, or parts of two or more, existing units of general government. [Emphasis added.]

²1992 Op. Va. Att’y Gen. 173, 174.

³*Supinger v. Stakes*, 255 Va. 198, 205, 495 S.E.2d 813, 817 (1998); *Va.-Am. Water Co. v. Prince William County Serv. Auth.*, 246 Va. 509, 514, 436 S.E.2d 618, 621 (1993); *Va. Dep’t of Labor & Indus. v. Westmoreland Coal Co.*, 233 Va. 97, 101, 353 S.E.2d 758, 762 (1987).

⁴*Supinger*, 255 Va. at 205, 495 S.E.2d at 817; *Lee-Warren v. Sch. Bd.*, 241 Va. 442, 445, 403 S.E.2d 691, 692 (1991).

⁵*Winston v. City of Richmond*, 196 Va. 403, 408, 83 S.E.2d 728, 731 (1954).

⁶*Brown v. Lukhard*, 229 Va. 316, 321, 330 S.E.2d 84, 87 (1985).

⁷1970-1971 Op. Va. Att’y Gen. 62, 62.

⁸*See* 2 A.E. DICK HOWARD, COMMENTARIES ON THE CONSTITUTION OF VIRGINIA, 1037-40 (1974).

The Supreme Court of Virginia has held that §§ 1 and 2 of Article X relating to property assessments must be construed together.⁹ These sections constitute the twin principles of property taxation in the Commonwealth.¹⁰ In pertinent part, § 2 provides that:

All assessments of real estate and tangible personal property shall be at their fair market value, to be ascertained as prescribed by law. The General Assembly may define and classify real estate devoted to agricultural, horticultural, forest, or open space uses, and may by general law authorize any county, city, town, or regional government to allow deferral of, or relief from, portions of taxes otherwise payable on such real estate if it were not so classified, provided the General Assembly shall first determine that classification of such real estate for such purpose is in the public interest for the preservation or conservation of real estate for such uses.

The net result of “these provisions is to distribute the burden of taxation, so far as is practical, evenly and equitably.”¹¹ In addition, the Virginia Supreme Court has held that “where it is impossible to secure both the standard of the true value and the uniformity and equality required by law, the latter requirement is to be preferred as the just and ultimate purpose of the law.”¹² Thus, uniformity is viewed as the paramount objective of the taxation of property.¹³

Pursuant to Article X, § 2 and Article 4, Chapter 32 of Title 58.1, §§ 58.1-3229 through 58.1-3244,¹⁴ localities may adopt an ordinance providing that land devoted to agricultural, horticultural, forest and open-space use be assessed at a lower value, based on its use.¹⁵ The purpose of the land use assessment statutes is to create a financial incentive to encourage the preservation of land for preferred uses.¹⁶

⁹See, e.g., *Bd. of Supvrs. v. Leasco Realty, Inc.*, 221 Va. 158, 166, 267 S.E.2d 608, 613 (1980) (noting that Article X, §§ 1 and 2 must be read and construed together); *R. Cross, Inc. v. Newport News*, 217 Va. 202, 207, 228 S.E.2d 113, 117 (1976) (noting that first two sections of Article X must be construed together); *Smith v. City of Covington*, 205 Va. 104, 108, 135 S.E.2d 220, 222 (1964) (construing Article XIII, §§ 168 and 169 of 1902 Virginia Constitution, predecessors to Article X, §§ 1 and 2 of 1971 Virginia Constitution); *Tuckahoe Women’s Club v. City of Richmond*, 199 Va. 734, 738, 101 S.E.2d 571, 574 (1958) (noting that §§ 168 and 169 must be read together); *Skyline Swannanoa, Inc. v. Nelson County*, 186 Va. 878, 881, 44 S.E.2d 437, 439 (1947) (noting that §§ 168 and 169 must be construed together); *Lehigh Portland Cement Co. v. Commonwealth*, 146 Va. 146, 152, 135 S.E. 669, 671 (1926) (noting that §§ 168 and 169 must be construed together).

¹⁰See *R. Cross*, 217 Va. at 207, 228 S.E.2d at 117 (noting that principles of taxation required by Virginia Constitution are fair market value and uniformity clauses of Article X).

¹¹See *Skyline Swannanoa*, 186 Va. at 881, 44 S.E.2d at 439 (construing Article XIII, §§ 168 and 169); see also *S. Ry. Co. v. Commonwealth*, 211 Va. 210, 214, 176 S.E.2d 578, 581 (1970) (noting that courts in resolving disputes regarding fair market value versus uniformity seek to enforce equality in burden of taxation by insisting upon uniformity in mode of assessment and rate of taxation).

¹²See, e.g., *Women’s Club*, 199 Va. at 738, 101 S.E.2d at 574.

¹³*Id.*

¹⁴Article 4 was enacted under the constitutional authority of Article X, § 2. Article 4 authorizes localities to enact ordinances providing for the use value assessment and taxation of constitutionally permitted classes of property and details the procedures for the assessment and taxation of such property. See 1997 Op. Va. Att’y Gen. 199, 199.

¹⁵*Id.* at 199-00 (stating that General Assembly intended use value to be lower than fair market value).

¹⁶*Id.* at 200.

The settled construction placed upon [Article X, § 1] is that uniform taxation requires uniformity not only in the rate of taxation, and in the mode of assessment upon the taxable valuation, but the uniformity must be co-extensive with the territory to which it applies. If a tax is imposed by the State, it must be uniform over the whole State; if by a county, city, town, or other subordinate district, the tax must be uniform throughout the territory to which it is applicable.^[17]

As noted in a 1970 opinion of the Attorney General, the constitutional requirement of uniformity of taxation “forbids exemption from county taxes of property located in a town.”¹⁸ Property located in an incorporated town within a county is subject to taxation by both the county and town.¹⁹ Consequently, the acreage of the entire farm, which qualifies for the Northampton County Agricultural Forestal District Program, must be listed on the county land book as exempt from county taxation. Although exempt from county taxation by the Program, the portion of that same property situate within the town must be listed as a separate line item entry in the land book and is subject to taxation by the town.

Conclusion

Accordingly, it is my opinion that, when preparing a land book, a commissioner of the revenue must include the entire farm parcel as being in the county even though a portion of such farm is within an incorporated town. Further, the commissioner should proportionally assess the portion of the farm located within the incorporated town for entry as a separate line item on the land book. It is my opinion that for purposes of the county’s use value program for which such farm qualifies, the entire farm receives the use assessment for purposes of taxation by the county. Finally, when the town within such county does not have a use value ordinance, it is my opinion that the portion of the farm within the town is subject to taxation by the town.

Thank you for letting me be of service to you.

Sincerely,

A handwritten signature in black ink, appearing to read "W. C. Mims", with a stylized flourish at the end.

William C. Mims

¹⁷Day v. Roberts, 101 Va. 248, 251, 43 S.E. 362, 363 (1903), *quoted in* Moss v. County of Tazewell, 112 Va. 878, 883, 72 S.E. 945, 946 (1911).

¹⁸1970-1971 Op. Va. Att’y Gen. 386, 386 (interpreting § 168 of 1902 Constitution.)

¹⁹*Id.*