



COMMONWEALTH of VIRGINIA

Office of the Attorney General

Mark R. Herring
Attorney General

202 North Ninth Street
Richmond, Virginia 23219
804-786-2071
Fax 804-786-1991
Virginia Relay Services
800-828-1120
7-1-1

September 1, 2016

The Honorable Ross A. Mugler
City of Hampton Commissioner of the Revenue
Post Office Box 636
Hampton, Virginia 23669-0636

The Honorable Graham P. Wilson
City of Poquoson Commissioner of the Revenue
500 City Hall Avenue
Poquoson, Virginia 23662

Dear Mr. Mugler and Mr. Wilson:

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

Issues Presented

You inquire regarding the application of a recently-enacted personal property tax exemption for certain motor vehicles (the “new tax exemption law”), which became effective July 1 of this year, and how it should be applied in localities that pro rate personal property taxes. You ask first whether the exemption applies for any portion of this year to qualifying vehicles that were sited within the locality as of January 1 of this year; second, whether it applies for any portion of this year to qualifying vehicles that acquired a situs within the locality on a date after January 1 of this year; and third, if the constitutional requirement of uniform taxation would be violated if the exemption applies this year to some vehicles but not to others, based solely on the date the vehicle first came to be sited within the locality.

As requested, the analysis and conclusions of this opinion pertain to application of the exemption this year in localities that pro rate taxes.

Background

Virginia Code § 58.1-3524 provides certain personal property tax relief for “qualifying vehicles.” A “qualifying vehicle” under the *Code* includes “any . . . pickup or panel truck . . . as those terms are

defined in § 46.2-100,” subject to certain additional restrictions.¹ The new tax exemption law amended the definition of “pickup or panel truck” in § 46.2-100 so that it now includes “every motor vehicle registered for personal use, designed to transport property on its own structure independent of any other vehicle, and having a registered gross weight in excess of 7,500 pounds but not in excess of 10,000 pounds.”² That class of vehicle was not previously included in the statutory definition and thus did not previously qualify for personal property tax relief. In short, beginning on July 1, 2016, the new tax exemption law provides certain personal property tax relief for pickup or panel trucks within certain weight limits.

Applicable Law and Analysis

I. Qualifying vehicles sited within the taxing jurisdiction as of January 1, 2016

Virginia Code § 58.1-3515 addresses your question of whether the new tax exemption law applies to qualifying vehicles that were sited within a pro rata taxation locality as of January 1, 2016. In relevant part, it provides:

Except as provided under § 58.1-3010, and except as provided by ordinance or special act in localities authorized to tax certain property on a proportional monthly or quarterly basis, tangible personal property, machinery and tools and merchants’ capital shall be returned for taxation *as of January 1 of each year, which date shall be known as the effective date of assessment or the tax day. The status of all persons, firms, corporations and other taxpayers liable for taxation on any of such property shall be fixed as of the date aforesaid in each year and the value of all such property shall be taken as of such date* [. . . .]^[3]

This long-established statute fixes the status of all taxpayers liable for taxation as of January 1 of each year. It makes that date “tax day.” Because the new tax exemption law does not amend it, the “tax day” statute remains in effect, and thus the new statute does not allow vehicles that were made taxable for the entire year as of this past January 1 to become tax exempt beginning July 1, 2016.⁴

I therefore conclude that the new tax exemption law does not apply for any portion of 2016 to qualifying vehicles that were taxable in the locality as of January 1, 2016. Those vehicles remain fully taxable for the entire remainder of calendar year 2016 during which they remain sited in the locality.⁵

II. Qualifying vehicles not sited within the taxing jurisdiction until some date after January 1, 2016

Your next question is whether the new exemption law applies to a qualifying vehicle that acquires a situs within the locality some date after January 1, 2016.

¹ VA. CODE ANN. § 58.1-3523 (Supp. 2016).

² 2015 Va. Acts ch. 764 (amending § 46.2-100).

³ Emphasis added.

⁴ Because the vehicles in question became fully taxable for the entire year on January 1, interpreting the new statute so as to have these vehicles become tax exempt beginning July 1 would effectively grant a retroactive tax exemption. “Retroactive laws are not favored, and a statute is always construed to operate prospectively, unless a contrary legislative intent is manifest.” *Berner v. Mills*, 265 Va. 408, 413 (2003).

⁵ See generally § 58.1-3516 (2013) (prescribing procedures for the pro rating of personal property taxes).

Authority to pro rate taxes is provided by § 58.1-3516. That statute allows localities “to provide by ordinance for the levy and collection of personal property tax on motor vehicles . . . which have acquired a situs within such locality after the tax day for the balance of the tax year. *Such tax shall be prorated on a monthly basis.*”⁶ The use of the word “shall” in a statute generally indicates that the procedures are mandatory, rather than permissive.⁷

Because your second question involves qualifying vehicles that acquire a situs within the locality after January 1, the “tax day” statute does not apply. Rather, a locality that pro rates personal property taxes is required by the mandatory language of § 58.1-3516 to determine such a vehicle’s tax status on a pro rata basis, starting with the month the vehicle acquired a situs there. Thus, qualifying vehicles acquiring a situs within the locality after January 1, 2016 are entitled to the new tax exemption, beginning on July 1, 2016, the date the exemption became effective.

III. The Constitutional requirement of equal taxation

As discussed above, the new tax exemption law does not apply for any portion of 2016 to qualifying vehicles that were sited within the locality as of January 1, 2016, but it does apply, effective July 1, 2016, to qualifying vehicles that acquired a situs within the locality after that date. Your final question is whether this result violates the constitutional requirement of equal taxation.

The equal taxation requirement is contained in Article 10, Section 1 of the Constitution of Virginia:

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
The General Assembly may define and classify taxable subjects.

This requirement was discussed by the Supreme Court of Virginia in *Alderson v. County of Alleghany*.⁸ That case involved an independent city that had reverted to town status. During the transitional year, an Act of Assembly provided that city residents would have two “short tax years”—for the first half of the year, they would pay personal property taxes to the city; for the second half of the year, they would pay personal property taxes to the county and also to the town. County residents who were not within the new town would continue to have a single tax year, with taxes payable only to the county. Certain town residents asserted that this Act of Assembly was an unconstitutional imposition of unequal taxation.

In upholding the transitional taxation scheme, the Court cited an earlier decision for the proposition that “[t]he dominant purpose of [this constitutional provision] is to distribute the burden of taxation, so far as is practical, evenly and equitably.”⁹ The standard applied by the Court was not rigid, absolute equality of taxation, but even and equitable distribution of tax burdens “so far as is practical.”¹⁰ The Court in *Alderson* also noted, “It is clear that the determination of situs and ‘tax day’ is within the

⁶ Emphasis added.

⁷ *Andrews v. Shepard*, 201 Va. 412, 414 (1959).

⁸ 266 Va. 333, 341 (2003).

⁹ *Id.* at 339.

¹⁰ *Id.*

power of the General Assembly.”¹¹ Here, the General Assembly has determined that ‘tax day’ for determining tax status is January 1.

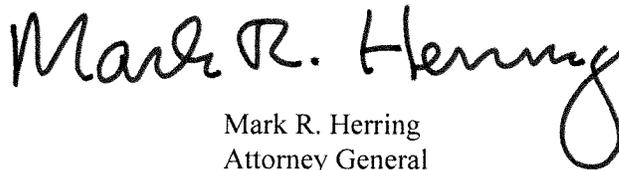
The conclusion I have reached for vehicles sited in a locality as of January 1 is mandated by § 58.1-3515. The different conclusion I have reached for vehicles acquiring a situs in a locality after that date is mandated by § 58.1-3516. All statutes enacted by the General Assembly are presumed to be constitutional.¹² Because the standard for uniformity of taxation is not rigid or absolute, but must be applied only “so far as is practical,” I conclude that the different outcomes imposed by these two different statutes do not violate the constitutional requirement of uniformity of taxation.

Conclusion

Accordingly, it is my opinion that the new tax exemption law does not apply for any portion of 2016 to qualifying vehicles that were taxable in the locality as of January 1, 2016. Those vehicles remain fully taxable for the entire portion of this year during which they remain within the locality. However, the exemption applies beginning July 1, 2016 to any qualifying vehicle that acquired a situs within the locality on some date after January 1, 2016. Applying the new exemption law in this manner does not violate the constitutional requirement of equal taxation.

With kindest regards, I am

Very truly yours,



Mark R. Herring
Attorney General

¹¹ *Id.* at 340. *See also* R. Cross, Inc. v. City of Newport News, 217 Va. 202 (1976) (holding that it was not unconstitutional unequal taxation for a locality to assess car rental businesses at a different and higher effective tax rate than other tangible personal property).

¹² Marshall v. Northern Virginia Transportation Authority, 275 Va. 419, 427 (2008).