

2011 Legal Update:

Virginia Legal Developments

of Interest to Assessors

By Andrew H. Herrick

Senior Assistant County Attorney

Albemarle County

Presented to VAAO Education Seminar

July 13, 2011

2011 Legal Update:
Virginia Legal Developments of Interest to Assessors

By Andrew H. Herrick,
Senior Assistant County Attorney
Albemarle County

Presented to VAAO Education Seminar
July 13, 2011

Introductory Note: For more information about any bill before the General Assembly or to access the *Code of Virginia*, see the General Assembly's Legislative Information System website at <http://leg1.state.va.us>. The following list of legislation was largely derived from the Cumulative Index at <http://lis.virginia.gov/111/idx/noframes/help/toc.html>.

I. Featured Legislation

A. Burden of Proof

1. **Summary:** Specifies that the burden of proof is on a taxpayer, when he appeals the assessment of real property to a board of equalization or to a circuit court, to show by a preponderance of the evidence that the property in question is valued at more than fair-market value or the assessment is not uniform in its application. The bill includes requirements on assessors to provide certain notice and to furnish certain information in appeals of assessments. The bill is applicable to tax years beginning on or after January 1, 2012. HB 1588 ([Chapter 232](#)); SB 1350 ([Chapter 184](#))
2. Background – Evolution of Bills (<http://lis.virginia.gov/cgi-bin/legp604.exe?111+ful+HB1588+hil>)
3. Important Issues
 - a. Disclosure/Notice
 - i. Existing requirements of *Virginia Code* § 58.1-3331 (<http://lis.virginia.gov/cgi-bin/legp604.exe?000+cod+58.1-3331>)
 - ii. New requirements – When in doubt, give notice
 - b. Board of Equalization Proceedings -- *Virginia Code* § 58.1-3379 (<http://lis.virginia.gov/cgi-bin/legp604.exe?000+cod+58.1-3379>)
 - i. Change of presumption
 - ii. Possible reversal of presentation
 - c. Circuit Court Proceedings -- *Virginia Code* § 58.1-3984 (<http://lis.virginia.gov/cgi-bin/legp604.exe?000+cod+58.1-3984>)
 - i. Change of presumption
 - ii. Possible reversal of presentation
4. What hasn't changed?
 - a. Burden of proof is still on the taxpayer, though by just “preponderance of evidence.”
 - b. Presumption of Correctness
 - c. “Applicable Virginia law relating to valuation of property” – including manifest error?

B. Relief for Elderly and Permanently and Totally Disabled

1. **Summary:** Authorizes local governments to establish annual income or financial worth limitations as a condition of eligibility for real property tax relief for the elderly and permanently and totally disabled. The bill implements the amendment to Article X, Section 6 (b) of the Constitution of Virginia that limits the General Assembly's ability to establish the limitations and allows the General Assembly to authorize local governments to establish the limitations. The bill contains an emergency clause. HB 2278 ([Chapter 496](#)); SB 1073 ([Chapter 438](#))
2. Background – Result of state Constitutional amendment, approved by referendum in November 2010 – See Virginia Constitution, Article X, § 6(b) (<http://legis.state.va.us/Laws/search/Constitution.htm>)
3. Review your local ordinance for compliance with new *Virginia Code* § 58.1-3212
 - a. The net worth of owner's relatives living in the dwelling is now *excluded*.
 - b. The income of non-relative residents is now *included*.

C. Exemption for Disabled Veterans

1. **Summary:** Codifies the constitutional amendment adopted by voters in November, 2010, that provides for a property tax exemption for veterans who have a 100 percent, service-related disability. The exemption would apply to the principal residence and the land, not exceeding one acre, upon which it is situated. However, if the locality exempts more than one acre under its tax relief program for the elderly, then the real estate tax exemption for the disabled veteran would apply to the principal residence and the same number of acres as are exempt under the tax relief program for the elderly. The constitutional amendment requires the General Assembly to enact the exemption in general law. HB 1645 ([Chapter 769](#)); SB 987 ([Chapter 840](#))
2. Issues
 - a. The effective date of this legislation is 1/1/2011.
 - b. There are several questions concerning implementation of this legislation which have been forwarded to the Attorney General for answers:
 - i. Does the phrase "100 percent" affix only to the phrase "service connected" or to "permanent" and "total disability" as well?
 - ii. Should the permanent disability evaluation be used or the combined overall rating as the basis for making a determination of eligibility?
 - iii. Does the legislative intent suggest that the General Assembly intended to extend the exemption provisions of § 58.1-3210 of the Code of Virginia as mandatory at a level of 100% with regard to veterans with a permanent and total service connected disability?
 - c. Must a disabled veteran's surviving spouse remain in the same dwelling after the veteran's death to continue qualifying for a property tax exemption?
 - d. Is a local ordinance necessary, or is this exemption self-executing?
 - e. In the meantime, there are probably a number of ways it is being implemented for this year: some are treating like tax relief, others like exemptions. It is probably wise to make sure that those administering the program are checking with counsel.

D. Alternates to Boards of Equalization -- Permits appointment of alternate members to boards of equalization to serve if a member is absent or abstains. HB 1470 ([Chapter 10](#))

- E. Information Regarding Income and Expenses of Income-Producing Property** -- Provides that information regarding the income and expenses of income-producing real property may be used in a complaint to a board of equalization, even though such information was not timely presented to the assessor, provided that the income and expense information is provided to the board of equalization no later than the appeal filing deadline of the board. HB 1526 ([Chapter 200](#))
- F. Defective Chinese Drywall** -- Requires licensees engaged by sellers and buyers, and landlords who have actual knowledge of defective Chinese drywall in a dwelling unit, to disclose that information to the prospective tenant or buyer. If a tenant is not provided disclosure within 60 days of discovery of defective drywall he may terminate the lease. The bill also provides, upon confirmation by a building official that defective Chinese drywall is present, that the commissioner or other assessing official shall reassess the property accordingly. Local governments may also designate the property as a rehabilitation district for purposes of granting the owner a partial real estate tax exemption. This bill is a recommendation of the Housing Commission. HB 1610 ([Chapter 34](#)); SB 942 ([Chapter 46](#))
- G. Partial Exemption for Certain Improvements** -- Clarifies that the partial exemption from the assessed value of real property subject to real property tax for improvements to rehabilitated, renovated, or replacement residential structures or for improvements in rehabilitation districts or redevelopment or conservation areas runs with the land and shall not be reduced during the period of exemption, unless the locality notifies the taxpayer at the time the exemption is approved that the amount may be reduced. The bill contains technical amendments. HB 1899 ([Chapter 460](#)); SB 785 ([Chapter 423](#))
 - 1. Emergency clause -- This act is in force from its passage.

II. Other Passed Legislation

- A. Assessments of real property; affordable housing.** Requires owners of four or fewer rental units of real property to furnish to a real estate assessor, board, or department statements of income and expenses attributable to the property to determine that it is affordable rental housing. This bill is recommended by the Virginia Housing Commission. Amending § 58.1-3295. ([SB 784 Chapter 137](#))
- B. Judicial sale of real estate.** Authorizes a locality to institute proceedings to sell real property that is located within or abutting a community development authority and upon which special taxes or assessments have been imposed when the special tax or assessment is delinquent on the first anniversary of the date on which the tax or assessment became due. Under the bill, a locality is not allowed to institute proceedings to sell property that is (i) a single-family residence if the owner of the property is the resident on such first anniversary or (ii) an individual residential unit in a multi-unit structure or building if the owner of the unit is the resident of the unit on such first anniversary. Adding § 58.1-3965.2. ([SB 1478 Chapter 324](#))
- C. City of Poquoson real estate tax rates.** Authorizes the City of Poquoson to impose a tax rate on improvements to real property at a tax rate that is different than the City's tax rate on the land upon which the improvements are located. Amending § 58.1-3221.1. ([SB 957 Chapter 146](#))
- D. Real property tax; classification of certain historical buildings.** Creates a separate class of property for real property tax rate purposes, consisting of buildings that are on

the Virginia Landmarks Register that are maintained in proper condition, permitting localities to impose a lower tax rate than that imposed on other types of real property. Adding § 58.1-3221.5. ([HB 1851 \(Chapter 571\)](#); [SB 860 \(Chapter 581\)](#))

- E. Local tax administration; special commissioner to execute title to real estate.** Lowers the threshold percentage of taxes and liens together on property from 50 percent to 35 percent of the assessed value of the parcel and, if only taxes, from 25 percent to 15 percent of the assessed value of the parcel in order to allow more properties to be conveyed to the cities of Hopewell, Newport News, Norfolk, Petersburg, and Richmond in lieu of a public sale at auction. Amending § 58.1-3970.1. ([HB 1532 \(Chapter 688\)](#))

III. Failed Legislation

- A. Land Use Taxation.** Would have required a locality that has adopted land use value assessment and taxation on three classifications to adopt land use value assessment and taxation on all four classifications of land. Amending § 58.1-3231. ([HB 777](#))
- B. Real property tax assessment; notice.** Would have required that notice be published in a newspaper 30 to 45 days prior to the beginning of a reassessment cycle of real property advising taxpayers that they have (i) the right to have the assessor examine their property on site and (ii) the right to be present during such examination. Amending § 58.1-3330. ([HB 2371](#))

IV. Attorney General's Opinions – Available online at

<http://www.oag.state.va.us/OPINIONS/index.html>

1. **No. 11-017**, 2011 Va. AG LEXIS 16, March 2, 2011
(<http://www.oag.state.va.us/Opinions%20and%20Legal%20Resources/OPINIONS/2010opns/11-017-Mugler.pdf>)
 - a. Were it to become law [which it later did], the real estate tax exemption for veterans proposed by HB 1645 and SB 987 would not apply to payments due for the tax year that began on July 1, 2010, including payments due for the second half of the tax year.
2. **No. 10-094**, 2010 Va. AG LEXIS 86, December 22, 2010
(<http://www.oag.state.va.us/Opinions%20and%20Legal%20Resources/OPINIONS/2010opns/10-094-Williams.pdf>)
 - a. A county commissioner of the revenue's "certification" of a correction of a local tax assessment for purposes of § 58.1-3981(A) means that the commissioner should provide written verification that he has determined that the original local tax assessment paid by the affected taxpayer was erroneous.
 - b. Further, § 58.1-3(A)(2) authorizes a county commissioner of the revenue to supply to the attorney for his county any information that is necessary to enable the attorney to make an informed decision as to whether to consent to the commissioner of the revenue's determination.
 - c. Finally, a county attorney's consent to a reduction of a real estate tax assessment by a county board of equalization is not a prerequisite to the county's issuance of a refund of excess taxes.

3. **No. 10-042**, 2010 Va. AG LEXIS 90, December 17, 2010
http://www.oag.state.va.us/Opinions%20and%20Legal%20Resources/OPINIONS/2010opns/10-042_Hazelwood.pdf
 - a. In the City of Suffolk, the devolution of the Commissioner of the Revenue's duties with respect to the assessment of real estate to a city real estate assessor transfers to the assessor the Commissioner's responsibility under § 58.1-3984(B) to the extent § 58.1-3984(B) applies to assessments of real property.
4. **No. 10-038**, 2010 Va. AG LEXIS 48, August 24, 2010
http://www.oag.state.va.us/Opinions%20and%20Legal%20Resources/OPINIONS/2010opns/10-038_Massie.pdf
 - a. Liability for payment of BPOL taxes always lies with the persons engaged in businesses, professions, or occupations upon which localities levy such taxes, and not with their customers.
 - b. Additionally, absent an express statutory authorization such as that applying to motor vehicle dealers, no business may pass through to its customers by way of a surcharge the BPOL taxes attributable to the gross receipts generated by sales to those customers without the surcharge also being included in the gross receipts of the business and subjected to the BPOL tax.
5. **No. 10-040**, 2010 Va. AG LEXIS 33, July 8, 2010
http://www.oag.state.va.us/Opinions%20and%20Legal%20Resources/OPINIONS/2010opns/10-040_Carraway.pdf
 - a. Police officers do not have the civil authority to distrain property for the collection of delinquent City accounts.

V. Cases Recently Decided by the Supreme Court of Virginia – These cases recently decided by the Supreme Court of Virginia may be of interest to local assessing officers.

1. ***TB Venture, LLC v. Arlington County***, 280 Va. 558; 701 S.E.2d 791 (2010) -- <http://www.courts.state.va.us/opinions/opnscvwp/1091621.pdf> -- In a taxpayer's petition to correct erroneous tax assessments, the taxpayer failed to carry its burden to present evidence establishing the fair market value of individual condominium units, when its expert opined as to the fair market value of the group of units as a whole and then allocated a value to each unit based on its pro rata share of the income generated by all of the units. The judgment of the circuit court striking the taxpayer's evidence is affirmed.
2. ***FFW Enterprises v. Fairfax County, et al. and FFW Enterprises v. Fairfax County Economic Development Authority, et al.***, 280 Va. 583; 701 S.E.2d 795 (2010) -- <http://www.courts.state.va.us/opinions/opnscvwp/1091883.pdf> -- In proceedings involving a challenge to *Code* §§ 58.1-3221.3 and 33.1-435 under the Constitution of Virginia, the plaintiff failed to meet its burden to prove that no reasonable basis for the tax classifications in these provisions can be conceived. The fact that untaxed others will benefit to some extent from the improvements funded by the taxes does not prove that there is no rational basis for the tax classifications approved by the General Assembly. The judgments of the circuit court are affirmed.
3. ***Richard R. Nageotte, et al. v. Board of Supervisors of Stafford County, et al.*** (090543) -- http://valocalitylaw.com/files/2010/12/Nageotte_v_Stafford.pdf --

Property owners challenged the validity of a local ordinance creating a service district that imposed a tax on commercial and industrial property, but exempted residential property. In an unpublished opinion, the Supreme Court upheld the local ordinance and service district as both enabled under *Virginia Code* § 15.2-2400 and Constitutional, for the same reasons outlined in the *FFW Enterprises* case.

4. ***County of Albemarle v. Keswick Club, L.P.***, 280 Va. 381, 699 S.E.2d 491 (2010) -- <http://www.courts.state.va.us/opinions/opnscvwp/1091590.pdf> -- On remand from a prior appeal, the circuit court's reduction of an assessment for a private recreational club for two tax years was not reversible error. The circuit court's ruling as to the proper value for the taxpayer's property is not erroneous because it is not plainly wrong or without evidence to support it and, pursuant to *Code* § 58.1-3987, a circuit court may fix the assessment in accordance with the evidence. Any error in admission of certain contested evidence was harmless. The judgment is affirmed.
5. ***Ford Motor Credit Co. v. Chesterfield County***, 281 Va. 321, 707 S.E.2d 311 (2011) -- <http://www.courts.state.va.us/opinions/opnscvwp/1092158.pdf> -- In ruling on a taxpayer's application for refund of business, professional and occupational license taxes paid to a county, the circuit court erred in holding that all the taxed gross receipts from a car manufacturer's credit and financing subsidiary's local branch were attributed to the exercise of a privilege subject to licensure at the branch within the county under *Code* § 58.1-3703.1(A). The circuit also erred in concluding that it was not "impractical or impossible to determine to which definite place of business gross receipts should be attributed" under the requirement of *Code* § 58.1-3703.1(A)(3)(a)(4) and (b) that the gross receipts from the performance of services shall be attributed to the definite place of business at which the services are performed. The judgment is reversed and on remand the entitlement to a deduction must be determined under *Code* § 58.1-3732(B)(2).
6. ***Riverside v. City of Richmond***, 2011 Va. LEXIS 136 (June 9, 2011) -- <http://www.courts.state.va.us/opinions/opnscvwp/1100347.pdf> -- In a taxpayers' action for relief from allegedly erroneous assessment of taxes on real property under *Code* § 58.1-3984, seeking a refund of overpayments, and recovery of attorney's fees, the city's use of an internal "policy" to calculate the amount of a partial exemption was inconsistent with provisions of the governing local ordinance, which requires that a property's first assessed value after rehabilitation be used to determine the amount of a partial exemption. The taxpayers were not given a partial exemption that was greater than the increase in assessed value resulting from rehabilitation, because the first assessed value after rehabilitation did not include market appreciation. Any error in admitting expert testimony about real estate appraisal and the underlying rehabilitation program was harmless because it did not address issues decided by the trial court and could not have affected the result. There was no error in including retail space in the final order under these pleadings and this evidence. Nor was there error in denying attorney's fee recovery since this action was brought under the tax Code and not the parties' agreement where the purported fee recovery right is found. The judgment of the circuit court is affirmed.