

OP. NO. 03-022

PROPERTY AND CONVEYANCES: RESIDENTIAL LANDLORD AND TENANT ACT.

TAXATION: LOCAL OFFICERS – COMMISSIONERS OF THE REVENUE — REVIEW OF LOCAL TAXES – ENFORCEMENT BY THE COMMISSIONER OF REVENUE — REAL PROPERTY TAX – TANGIBLE PERSONAL PROPERTY TAX — GENERAL PROVISIONS OF TITLE 58.1 – IN GENERAL (SECRECY OF INFORMATION).

Landlord or managing agent of apartment complex is not prohibited from releasing to commissioner of revenue tenant list and vehicle information. Tenant's prior written consent to release such information is not required. Commissioner is prohibited from divulging tax information acquired in performance of his or her duties with respect to personal property of tenant.

The Honorable Geraldine M. Whiting
Commissioner of the Revenue for Arlington County
October 8, 2003

Issue Presented

You ask whether § 55-248.9:1 prohibits the landlord or managing agent of an apartment complex from releasing to the commissioner of the revenue¹ a list of tenants, including vehicle information, without prior written consent of the tenants.

Response

It is my opinion that § 55-248.9:1 does not prohibit a landlord or managing agent of an apartment complex from releasing to the local commissioner of the revenue a tenant list and vehicle information. A tenant's prior written consent is not required, because the tax statutes analyzed in this opinion authorize the release of such information to commissioners of the revenue. Generally, a commissioner of the revenue is prohibited from divulging any tax information acquired in the performance of his or her duties with respect to the personal property of any tenant.

Applicable Law and Discussion

Section 55-248.9:1 of the Virginia Residential Landlord and Tenant Act provides that "[n]o landlord or managing agent shall release information about a tenant or prospective tenant in the possession of the landlord to a third party unless" the tenant has consented to such release in writing or the information is provided pursuant to one of the exceptions enumerated in the statute.² The purpose of § 55-248.9:1 is to prevent a landlord or managing agent from selling, trading or otherwise distributing information about a tenant to third parties without the prior written consent of the tenant or unless one of the statute's exceptions applies. The release of such information could result in identity theft or unwanted commercial solicitations. Section 55-248.9:1 previously precluded the release of

"financial information about a tenant."³ Section 55-248.9:1 now prohibits the release of *all* information concerning a tenant and enumerates six exceptions to this general prohibition.⁴ A commissioner of the revenue is not listed as an exception in § 55-248.9:1.⁵ You ask whether a landlord or managing agent of an apartment complex may nonetheless provide a tenant list and vehicle information to a commissioner of the revenue for tax assessment purposes.

Article 1, Chapter 31 of Title 58.1, §§ 58.1-3100 through 58.1-3122.2, specifically sets out the duties of city and county commissioners of the revenue. Article 1, Chapter 39 of Title 58.1, §§ 58.1-3900 through 58.1-3909, provides for the enforcement of the local personal property tax laws by commissioners of the revenue.

Section 58.1-3901 provides that the failure of an apartment house owner or operator to file a list of tenant names and addresses, "upon request of the commissioner of the revenue of the county or city in which any such apartment house ... is located," is punishable as a Class 4 misdemeanor.⁶ Section 58.1-3901 clearly provides that a landlord must provide a tenant list to the commissioner of the revenue.⁷

Section 58.1-3109 provides:

Each commissioner of the revenue shall:

....

6. Require taxpayers or their agents or *any person, firm or officer of a company or corporation* to furnish information relating to tangible or intangible personal property, income or license taxes of *any and all taxpayers*; and require such persons to furnish access to books of account or other *papers and records* for the purpose of verifying the tax returns of such taxpayers and *procuring the information necessary to make a complete assessment of any taxpayer's tangible and intangible personal property*, and license taxes for the current tax year and the three preceding tax years[.] [Emphasis added.]

A tenant's vehicle is tangible personal property.⁸ Moreover, the information possessed by a landlord regarding a tenant's vehicle is "information necessary to make a complete assessment of any taxpayer's tangible ... personal property."⁹ Section 58.1-3109(6) requires "any *person*" to furnish the commissioner with the information necessary to properly assess tangible personal property. (Emphasis added.) The word "person" includes "any individual, corporation, partnership, association, company, business, trust, joint venture or other legal entity."¹⁰ Accordingly, a landlord or managing agent is a "person" for the purposes of §§ 58.1-3109(6) and 58.1-3901.

Section 58.1-3110 authorizes the commissioner of the revenue to "summon the taxpayer or *any other person* to appear ..., to answer, under oath, questions touching the tax liability of any and all specifically identified taxpayers." (Emphasis added.) Section 58.1-3110 thus authorizes a commissioner of the revenue to summon the landlord or managing agent, if necessary, to answer questions to clarify the tax liability of a specific tenant, including vehicle information. Tenants who are on a list provided to the commissioner by an

apartment building owner or operator are "specifically identified taxpayers" for the purposes of § 58.1-3110.

It is an accepted principle of statutory construction that statutes relating to the same subject should not be read in isolation.¹¹ To determine legislative intent, statutes dealing with the same subject matter must be construed together to achieve a harmonious result, resolving conflicts to give effect to each statute, to the maximum extent possible.¹² In addition, when it is not clear which of two statutes applies, the more specific statute prevails over the more general.¹³ Moreover, "when one statute speaks to a subject in a general way and another deals with a part of the same subject in a more specific manner, the two should be harmonized, if possible, and where they conflict, the latter prevails."¹⁴

The purpose of the filing required by § 58.1-3901 is to assist the commissioner in enforcing personal property tax laws.¹⁵ The importance of complying with § 58.1-3901 is underscored by the criminal sanction imposed for the failure to comply with its provisions. The purpose of § 58.1-3109(6) is to empower a commissioner with the ability to obtain the information necessary to properly assess tangible personal property. The importance of a commissioner's responsibility to properly assess taxes is further evidenced by § 58.1-3110, which grants a commissioner the ability to summon persons to answer questions regarding "specifically identified taxpayers."

Section 55-248.9:1 does not except a commissioner of the revenue from the confidentiality provision of the statute. As such, it is unclear whether §§ 58.1-3901 and 58.1-3109(6) nonetheless authorize a commissioner to obtain a list of tenants and vehicle information from an apartment building owner or operator.

Section 55-248.9:1 applies generally to all tenant information in the possession of a landlord or managing agent. Section 58.1-3901 specifically requires an apartment building owner or operator to release tenant names and addresses to the local commissioner of the revenue upon request of the commissioner. To the extent there is a conflict between §§ 58.1-3901 and 55-248.9:1 regarding the release of tenant names and addresses, or it is unclear which statute applies, the specific authorization in § 58.1-3901 governs. Consequently, a commissioner of the revenue may require an apartment building owner or operator to release such a list. Moreover, the apartment building owner or operator is not required to obtain the written consent of the tenant prior to releasing such information to the commissioner.

Section 58.1-3109(6) is specific to information relating to a taxpayer's tangible personal property. Section 58.1-3109(6) clearly authorizes a commissioner of the revenue to require information regarding a tenant's tangible personal property for purposes of tax assessment. This section also authorizes a commissioner to require "any person, firm or officer of a company or corporation to furnish information relating to tangible ... personal property ... of *any and all taxpayers*." (Emphasis added.)

Your inquiry concerns whether § 58.1-3109(6) authorizes the release of such information, given the prohibitions against disclosure of tenant information in § 55-248.9:1. Section 55-248.9:1 deals generally with tenant information in possession of a landlord or managing agent. Section 58.1-3109(6) deals specifically with information related to a taxpayer's tangible personal property. To the extent there is a conflict between the authorization in § 58.1-3109(6) and the prohibition in § 55-248.9:1, or it is unclear which statute applies, the specific

authorization in § 58.1-3109(6), concerning the release of information pertaining to tangible personal property, governs. Consequently, a commissioner of the revenue may require an apartment building owner or operator to release information concerning a tenant's tangible personal property for the purpose of assessing taxes.

It is important to note that the purpose of § 55-248.9:1 is not frustrated by this interpretation. The intent of § 55-248.9:1 is to protect tenant information from being released to third parties for such things as commercial solicitations and to prevent identity theft without the tenant's knowledge, with certain exceptions. The release of tenant names, addresses and vehicle information to a local commissioner of the revenue does not undermine the protections provided by § 55-248.9:1. Commissioners of the revenue are required to keep certain taxpayer information confidential. Section 58.1-3(A) protects from public disclosure any information revealed to a commissioner under §§ 58.1-3109(6) and 58.1-3901. Therefore, the protections of § 55-248.9:1 are not lost.

Conclusion

Accordingly, it is my opinion that § 55-248.9:1 does not prohibit a landlord or managing agent of an apartment complex from releasing to the local commissioner of the revenue a tenant list and vehicle information. A tenant's prior written consent is not required, because the tax statutes analyzed in this opinion authorize the release of such information to commissioners of the revenue. Generally, a commissioner of the revenue is prohibited from divulging any tax information acquired in the performance of his or her duties with respect to the personal property of any tenant.

¹For purposes of this opinion, I assume that the commissioner of the revenue is acting in his or her official capacity within the jurisdiction that the commissioner serves.

²Section 55-248.9:1 authorizes the release of confidential tenant records in the following circumstances:

"1. *The tenant or prospective tenant has given prior written consent;*

"2. *The information is a matter of public record as defined in § 2.2-3701;*

"3 *The information is a summary of the tenant's rent payment record, including the amount of the tenant's periodic rent payment;*

"4. *The information is a copy of a material noncompliance notice that has not been remedied or, termination notice given to the tenant under § 55-248.31 and the tenant did not remain in the premises thereafter;*

"5. *The information is requested by a local, state, or federal law-enforcement or public safety official in the performance of his duties; or*

"6. *The information is otherwise provided in the case of an emergency."*

³See 2003 Va. Acts ch. 426, available at <http://leg1.state.va.us/cgi-bin/legp504.exe?031+ful+CHAP0426>.

⁴See *supra* note 2.

⁵See *supra* note 2.

⁶The punishment for conviction of a Class 4 misdemeanor is "a fine of not more than \$250." Va. Code Ann. § 18.2-11(d) (LexisNexis Supp. 2003).

⁷1985-1986 Op. Va. Att'y Gen. 265 (concluding that power of commissioner of revenue to summon is limited to persons within bounds of city or county served by commissioner).

⁸See *generally* Va. Code Ann. §§ 58.1-3503, 58.1-3504 (Michie Repl. Vol. 2000); § 58.1-3506 (LexisNexis Supp. 2003).

⁹Section 58.1-3109(6) (Michie Repl. Vol. 2000).

¹⁰Va. Code Ann. § 1-13.19 (LexisNexis Repl. Vol. 2001).

¹¹2B Norman J. Singer, Sutherland on Statutory Construction § 51.02 (West 6th ed. 2000); see *also* Op. Va. Att'y Gen.: 1999 at 22, 22; 1998 at 19, 21; *id.* at 123, 124; 1996 at 197, 198; 1995 at 146, 147; 1993 at 135, 137; *id.* at 160, 162; 1992 at 108, 112.

¹²Prillaman v. Commonwealth, 199 Va. 401, 405-06, 100 S.E.2d 4, 7-8 (1957); 1991 Op. Va. Att'y Gen. 159, 160.

¹³See Va. Nat'l Bank v. Harris, 220 Va. 336, 257 S.E.2d 867 (1979); City of Roanoke v. Land, 137 Va. 89, 92-93, 119 S.E. 59, 60 (1923); Op. Va. Att'y Gen.: 1990 at 227, 228; 1987-1988 at 276, 277; 1980-1981 at 330, 331.

¹⁴*Harris*, 220 Va. at 340, 257 S.E.2d at 870, *quoted in* Dodson v. Potomac Mack Sales & Serv., Inc., 241 Va. 89, 94-95, 400 S.E.2d 178, 181 (1991); Barr v. Town & Country Props., Inc., 240 Va. 292, 294-95, 396 S.E.2d 672, 674 (1990); Hudler v. Cole, 236 Va. 389, 393, 374 S.E.2d 39, 42 (1988); see *also* 1997 Op. Va. Att'y Gen. 202, 202.

¹⁵See 1987-1988 Op. Va. Att'y Gen. 14, 15.

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