

OP. NO. 03-043

TAXATION: REAL PROPERTY TAX.

CONSTITUTION OF VIRGINIA: TAXATION AND FINANCE (EXEMPT PROPERTY).

TRADE AND COMMERCE: ENTERPRISE ZONE ACT.

Partial tax exemption for rehabilitation permitted where historic structure is demolished, provided person receiving exemption is not property owner responsible for demolition.

Mr. John A. Rupp
City Attorney for the City of Richmond
August 5, 2003

Issue Presented

You ask whether § 58.1-3221(E) permits the partial exemption from real estate taxation of certain rehabilitated structures under the hypothetical scenario presented below.

Response

It is my opinion that, under the hypothetical scenario presented, § 58.1-3221(E) permits a partial exemption from real estate taxation for rehabilitated property where a registered historic structure has been demolished, provided that the person receiving the partial exemption is not the property owner responsible for the demolition.

Background

You relate a hypothetical situation involving two adjoining parcels of land ("parcels A and B"). Each parcel features a structure determined by the Department of Historic Resources to contribute to the significance of a registered historic district ("historic structure"). During the first year, owners *A* and *B* own parcels A and B, respectively. Owner *A* obtains the necessary local permits and demolishes the historic structure on parcel A. During the second year, owner *B* files an application with the city assessor for a partial exemption for parcels A and B. The city assessor informs owner *B* that the application cannot be approved, because parcel A has no structures for the owner to rehabilitate.¹ Owner *B* then purchases parcel A and records a deed of consolidation, thus combining the two parcels into one. Owner *B* resubmits his application for partial exemption, which includes a rehabilitated structure that, prior to combining the two parcels, existed on parcel B and extended onto parcel A.

Applicable Law and Discussion

Sections 58.1-3220 and 58.1-3221 allow localities, by ordinance, to provide for the partial exemption from real estate taxation of certain structures or improvements that have been rehabilitated.² Sections 58.1-3220(A) and 58.1-3221(A) provide, respectively, that such structures or improvements must be at least fifteen years old for residential property, and either at least twenty years old for commercial or industrial property or fifteen years old for commercial or industrial property located in an enterprise zone. The availability of the real estate tax exemption is limited further by §§ 58.1-3220(E) and 58.1-3221(E):

Where rehabilitation is achieved through demolition and replacement of an existing structure, the exemption provided in subsection A⁽³⁾ shall not apply when any structure demolished is a registered Virginia landmark or is determined by the Department of Historic Resources to contribute to the significance of a registered historic landmark.⁽⁴⁾

You ask whether the limitation set forth above means that only the owner demolishing the historic structure is prohibited from receiving the partial tax exemption or if subsequent owners of the property also are prohibited from receiving the partial tax exemption. A primary rule of statutory construction is that one must look first to the language of a statute, and if it is clear and unambiguous, the statute should be given its plain meaning, without resort to the rules of statutory interpretation.⁵ In this case, it is unclear whether the language in §§ 58.1-3220(E) and 58.1-3221(E), "[w]here rehabilitation is achieved through demolition and replacement of an existing structure," forever prohibits property owners who are not responsible for the demolition of a structure from receiving a partial tax exemption, or if the language is intended to forever bar the availability of a partial tax exemption to the property.

"[T]he primary objective of statutory construction is to ascertain and give effect to legislative intent."⁶ Legislative intent requires an appraisal of the subject matter, purposes, objects and effects of a statute, as well as its express terms.⁷ The purpose of §§ 58.1-3220 and 58.1-3221 is to encourage the redevelopment of property falling into disrepair by offering tax relief to improve the property. For example, § 58.1-3221(A) authorizes a locality, by ordinance, to "provide for the partial exemption from taxation of real estate on which any structure or other improvement [is] no less than twenty years of age, or fifteen years of age if the structure is located in an area designated as an enterprise zone by the Commonwealth." The purpose of the Enterprise Zone Act⁸ is "to stimulate business and industrial growth in such areas which would result in neighborhood, *commercial and economic* revitalization of such areas of the Commonwealth by means of regulatory flexibility and tax incentives."⁹ The preferential tax treatment for structures located within an enterprise zone encourages private investment to revitalize commercial and industrial real estate through rehabilitation. Similarly, § 58.1-3220 provides the same tax relief for residential areas as § 58.1-3221 provides for commercial or industrial structures, thus evidencing the intent of the General Assembly to encourage revitalization of residential real estate through rehabilitation.

In the hypothetical situation you present, owner *B* is not responsible for the destruction of the structure on parcel *A*. Instead, owner *B* acquired parcel *A* after the structure on it was demolished by owner *A*. After purchasing parcel *A*, *B* files a deed of consolidation thereby joining the two parcels into one. The rehabilitation of the structure on parcel *B* will extend onto the original parcel *A*. When owner *B* resubmits his application requesting the partial tax exemption, he

is not the owner that demolished the historic structure. Statutes should not be interpreted so as to produce absurd results or irrational consequences.¹⁰ The provision in §§ 58.1-3220(E) and 58.1-3221(E), stating that the partial tax exemption will not apply to rehabilitation where a historic structure is demolished, encourages a current owner to retain the historic structure as part of the plan of rehabilitation. To deny the partial tax exemption to any *subsequent* owner who is not responsible for the initial demolition, however, frustrates the purpose of §§ 58.1-3220 and 58.1-3221, by permanently eliminating the incentive to rehabilitate or revitalize the property. Such an interpretation would lead to an absurd result.

In this case, owner *B* is rehabilitating a historic structure on parcel B that extends onto the original parcel A. By conducting the rehabilitation of a historic structure on parcel B, owner *B* is engaging in the type of activity §§ 58.1-3220 and 58.1-3221 intend to promote. To forever foreclose owner *B* from receiving the partial tax exemption for the newly consolidated parcel frustrates the purpose of §§ 58.1-3220 and 58.1-3221, and the language contained in those statutes does not warrant such an interpretation.

Conclusion

Accordingly, it is my opinion that, under the hypothetical scenario presented, § 58.1-3221(E) permits a partial exemption from real estate taxation for rehabilitated property where a registered historic structure has been demolished, provided that the person receiving the partial exemption is not the property owner responsible for the demolition.

¹Although you relate that owner *B* is the applicant in the situation presented, the partial exemption runs with the land and the owner of the land; therefore, owner *B* has no standing to make such application. See Richmond, Va., Code § 27-83 (2002). Accordingly, the actual reasons stated for the assessor's denial are irrelevant.

²See Va. Const. art. X, § 6(h) (authorizing General Assembly to enact general law allowing localities to provide partial tax exemptions "of real estate whose improvements, by virtue of age and use, have undergone substantial renovation, rehabilitation or replacement").

³Section 58.1-3221(A) provides that "[t]he governing body of any county, city or town may, by ordinance, provide for the partial exemption from taxation of real estate on which any structure or other improvement no less than twenty years of age, or fifteen years of age if the structure is located in an area designated as an enterprise zone by the Commonwealth, has undergone substantial rehabilitation, renovation or replacement for commercial or industrial use, subject to such conditions as the ordinance may prescribe. The ordinance may, in addition to any other restrictions hereinafter provided, restrict such exemptions to real property located within described zones or districts whose boundaries shall be determined by the governing body. The governing body of a county, city or town may establish criteria for determining whether real estate qualifies for the partial exemption authorized by this provision and may require the structure to be older than twenty years of age, or fifteen years of age if the structure is located in an area designated as an enterprise zone by the Commonwealth, or place such other restrictions and conditions on such property as may be prescribed by ordinance. Such ordinance may also provide for the partial exemption from

taxation of real estate which has been substantially rehabilitated by complete replacement for commercial and industrial use."

⁴The limitation in § 58.1-3220(E) is applicable to residential structures.

⁵Loudoun County Dep't of Soc. Servs. v. Etzold, 245 Va. 80, 425 S.E.2d 800 (1993); Brown v. Lukhard, 229 Va. 316, 330 S.E.2d 84 (1985); Last v. Va. State Bd. of Med., 14 Va. App. 906, 421 S.E.2d 201 (1992); 2002 Op. Va. Att'y Gen. 217, 219 (copy enclosed).

⁶Turner v. Commonwealth, 226 Va. 456, 459, 309 S.E.2d 337, 338 (1983), *cited in* 2002 Op. Va. Att'y Gen. 233, 236 (copy enclosed).

⁷Vollin v. Arlington County Electoral Bd., 216 Va. 674, 222 S.E.2d 793 (1976), *cited in* 2002 Op. Va. Att'y Gen., *supra* note 6, at 236.

⁸Va. Code Ann. §§ 59.1-270 to 59.1-284.01 (Michie Repl. Vol. 2001).

⁹1992 Va. Acts ch. 467, at 601, 602 (amending and reenacting § 59.1-272, not set out in Virginia Code).

¹⁰McFadden v. McNorton, 193 Va. 455, 461, 69 S.E.2d 445, 449 (1952); 2003 Op. Va. Att'y Gen. Op. nNo. 03-003 to Paul S. Tribble Jr., Pres., Christopher Newport College (Jan. 9, 2003), *available at* <http://www.vaag.com/media%20center/Opinions/2003opns/03-003.htm>.

[Back to August 2003 Index](#)