

**OP. NO. 03-113**

**TAXATION: REVIEW OF LOCAL TAXES.**

**Determination of 'date of assessment' for purposes of tangible personal property taxation. Authority for taxpayer to seek judicial correction of tax assessment within 1 year of final determination by commissioner of revenue. Duty of commissioner to initiate judicial correction of tax assessment determined to be improper or obvious error.**

The Honorable Ross A. Mugler  
Commissioner of the Revenue for the City of Hampton  
February 4, 2004

**Issues Presented**

You ask for clarification of the term "date of the assessment," for purposes of § 58.1-3980, in a situation where a taxpayer is assessed and billed in November 1999 for 1998 taxes, which are reduced in November 2002 and subsequently paid in March 2003. You further ask what remedy is available to the commissioner of the revenue to refund amounts erroneously collected from a taxpayer.

**Response**

I am of the opinion that, for purposes of § 58.1-3980, the "date of the assessment" under the circumstances you describe is November 1999. Section 58.1-3984(A) authorizes the taxpayer to seek judicial correction of the 1998 tax assessment until March 2004, i.e., one year after the March 20, 2003, final determination letter. It is further my opinion that a commissioner of the revenue has a duty to initiate judicial correction pursuant to § 58.1-3984(B) when the commissioner has determined that a tax assessment is improper or is an obvious error and should be corrected in order to serve the ends of justice.

**Background**

You describe a situation in which a taxpayer is assessed and billed for tangible personal property taxes in November 1999 for docking his boat in the City of Hampton during tax year 1998. You note that the taxpayer appealed the assessment, and in November 2002, the 1998 taxes were partially reduced. In March 2003, the taxpayer paid the 1998 taxes after receiving a determination by the local commissioner of the revenue on March 20, 2003, as to taxes, penalty and interest due on the boat for tax year 1998. In June 2003, the taxpayer requested full exoneration and refund of the 1998 taxes based on information that the 1998 taxes were erroneously assessed.

**Applicable Law and Discussion**

**A. "Date of the Assessment"**

The remedies available to a taxpayer aggrieved by a local assessment are limited by §§ 58.1-3980 and 58.1-3984. Sections 58.1-3980 and 58.1-3984 have as their object the setting of a time limitation for correction of local tax assessments. Erroneous local tax assessments may be appealed administratively to the commissioner of the revenue, pursuant to § 58.1-3980, or to the circuit court for the county or city in which the assessment is made, pursuant to § 58.1-3984. Section 58.1-3980(A) authorizes a taxpayer aggrieved by an assessment of taxes on tangible personal property to apply to the commissioner of the revenue for relief "within three years from the last day of the tax year for which such assessment is made, or within one year from the date of the assessment"; § 58.1-3984(A) provides the same remedies with respect to application for correction to the appropriate circuit court and further authorizes an applicant to apply "within one year from the date of the final determination under § 58.1-3981."<sup>1</sup>

In the situation you describe, "the last day of the tax year for which such assessment is made"<sup>2</sup> is clear. The taxpayer was assessed tangible personal property taxes in 1998 for docking his boat in the City of Hampton during that year. Therefore, the last day of tax year 1998 is the date for which the assessment was made. Pursuant to § 58.1-3980(A), the taxpayer could have applied to you, in your capacity as the city's commissioner of the revenue, for correction of the assessment at any time within three years of the last day of tax year 1998. There appears to be no contention as to that date for purposes of your inquiry.

The "date of the assessment," about which you inquire, is less clear, but its determination may be decisive as to whether a taxpayer may file an application for correction with a local taxing official. Section 58.1-3980(A) provides that a taxpayer

aggrieved by any such assessment, may, within three years from the last day of the tax year for which such assessment is made, or within one year from the date of the assessment, *whichever is later*, apply to the commissioner of the revenue or such other official who made the assessment for a correction thereof.  
[Emphasis added.]

Therefore, a taxpayer's right to initiate a local administrative appeal is available until the end of the time period which is the later to occur. It should be noted that § 58.1-3980 does not provide a time limit within which a refund of erroneous taxes may be paid pursuant to a timely filed application for correction, but only when such application may be filed.<sup>3</sup>

Generally, for tax purposes, "date of the assessment" means the "tax day" and is a specific date.<sup>4</sup> The Supreme Court of Virginia, however, recognizes that the term "assessment" has two distinct meanings in Virginia tax law.<sup>5</sup> The Court noted that the first sentence of the predecessor statute to § 58.1-3984(A) authorized "[a]ny person assessed ... [to] apply for relief to the circuit court ... wherein such assessment was made," and that the second sentence placed on the taxpayer the burden of proving "that the assessment is ... invalid or illegal."<sup>6</sup> Thus, the Court held that,

in the first sentence, "assessment" means the amount of the tax imposed and, in the second sentence, the evaluation of the property, and that the General Assembly intended that "the

remedy provided by [the predecessor statute] shall be available to a landowner to attack an assessment in whichever of its two meanings the word is employed."<sup>7</sup>

In an earlier case, the Court was required

to decide whether the [predecessor statutory] time limitation began to run on the date the landowner's property was assessed (evaluated) for taxation or the date on which the tax was assessed (levied). *We decided that the period of limitation began to run when the assessment process was completed, that is, when the tax was levied.*<sup>8</sup>

Therefore, to determine the commencement of the time limitation for appeal under §§ 58.1-3980, 58.1-3981,<sup>9</sup> and 58.1-3984, it is essential to know "when the assessment process was completed, that is, when the tax was levied."<sup>10</sup> The test for determining the completion of that process may be found by analyzing the definitions of the term "assessment" in other local tax statutes. For instance, Chapter 37 of Title 58.1, which governs local license taxes,<sup>11</sup> defines "assessment" as

a determination as to the proper rate of tax, the measure to which the tax is applied, and ultimately the amount of tax, including additional or omitted tax, that is due. An assessment shall include a written assessment made pursuant to notice by the assessing official or a self-assessment made by a taxpayer upon the filing of a return or otherwise not pursuant to notice. *Assessments shall be deemed made by an assessing official when a written notice of assessment is delivered to the taxpayer by the assessing official or an employee of the assessing official, or mailed to the taxpayer at his last known address.*<sup>12</sup>

Based on your inquiry, it appears that a notice qualifying as an "assessment" was mailed on or about November 2, 1999. No dispute has been mentioned as to whether this written notice was sent to the taxpayer's last known address. Therefore, for purposes of this opinion, I assume that there was compliance with this requirement. Accordingly, in the circumstances presented, it appears that the "date of the assessment" is November 1999.

## **B. Other Applicable Statutes**

You relate that the taxpayer filed an application for correction of the 1998 assessment.<sup>13</sup> Specifically, you concluded in a letter dated November 4, 2002, that the boat was subject to tax by the city for the time period it was docked in the City of Hampton, and you prorated the original tax to reflect the time period the boat was docked in the city rather than located elsewhere. I assume for purposes of this opinion that the letter is intended to constitute a final determination<sup>14</sup> by your office of the taxpayer's ongoing application to correct the 1998 taxes under § 58.1-3980. It also recites reasons for the denial.<sup>15</sup> Moreover, from the wording itself, it appears that you remained receptive to receiving additional documentation until March 31, 2003, after which time you would advise the local treasurer's office that your review was complete and collection efforts may be initiated or resumed.<sup>16</sup> It is apparent that collection efforts had been stayed prior to this time, which indicates the ongoing pendency of an administrative appeal

under § 58.1-3980.<sup>17</sup> Your decision to institute or resume collection efforts is further evidence that your March 20, 2003, letter was intended to be your final determination.

Unless you now have reason to conclude that the 1998 assessment is erroneous, your office no longer may correct the 1998 assessment, as a *final* determination under § 58.1-3981 has been made that the taxes are due and owing, and you have authorized the local treasurer to collect the taxes due the city.<sup>18</sup> The 1998 taxes have been paid. Accordingly, if you are of the opinion that the assessment is not erroneous, the statutory procedure prescribed now requires that redress, if any, is through the courts. The question may not be returned to the local assessing official once a final determination has been made.<sup>19</sup>

Moreover, if your March 2003 letter was not intended to constitute a final determination, as commissioner of the revenue, you no longer are able to correct the assessment under § 58.1-3981, even if you believe the assessment to have been erroneous. While you may have had a duty to correct an assessment you believe to have been erroneous,<sup>20</sup> prior opinions of the Attorney General conclude that § 58.1-3980(A) places a time limitation on the ability of a commissioner of the revenue, or other official performing the duties of a commissioner, to correct erroneous assessments.<sup>21</sup> The time limitation in § 58.1-3980(A), within which an aggrieved taxpayer may file an application for correction, runs from the last day of the tax year or the date of assessment, whichever is later.

Notwithstanding these limitations, there are two remedies available in the situation you describe. First, the taxpayer may be able to apply for relief to the Circuit Court of the City of Hampton.<sup>22</sup> Section 58.1-3984(A) specifies the time during which such application may be made to the court:

Any person assessed with local taxes, aggrieved by any such assessment, may, unless otherwise specifically provided by law ... (a) within three years from the last day of the tax year for which any such assessment is made, (b) within one year from the date of the assessment, ... or (d) *within one year from the date of the final determination under § 58.1-3981, whichever is later*, apply for relief to the circuit court of the county or city wherein such assessment was made. [Emphasis added.]

Accordingly, the taxpayer has until March 2004 to file his action in that court.<sup>23</sup>

Section 58.1-3984(B) provides that when a commissioner of the revenue is unable to correct an erroneous tax assessment pursuant to § 58.1-3981, the commissioner "shall apply to the appropriate court ... for relief of the taxpayer."<sup>24</sup> Thus, § 58.1-3984(B) requires you, as commissioner of the revenue, to apply to the Circuit Court of the City of Hampton on behalf of the taxpayer for exoneration or relief, if it comes to your attention or you believe that the 1998 tax assessment "is improper or is based on obvious error and should be corrected in order that the ends of justice may be served."<sup>25</sup> Such is a question of fact for resolution by the commissioner of the revenue.<sup>26</sup>

## Conclusion

Accordingly, I am of the opinion that, for purposes of § 58.1-3980, the "date of the assessment" under the circumstances you describe is November 1999. Section 58.1-3984(A) authorizes the taxpayer to seek judicial correction of the 1998 tax assessment until March 2004, i.e., one year after the March 20, 2003, final determination letter. It is further my opinion that a commissioner of the revenue has a duty to initiate judicial correction pursuant to § 58.1-3984(B) when the commissioner has determined that the tax assessment is improper or is an obvious error and should be corrected in order to serve the ends of justice.

<sup>1</sup>Section 58.1-3981 pertains to correction of an erroneous local tax assessment by the commissioner of the revenue or other tax official performing the commissioner's duties.

<sup>2</sup>Va. Code Ann. § 58.1-3980(A) (Michie Repl. Vol. 2000); § 58.1-3984(A)(a) (LexisNexis Supp. 2003).

<sup>3</sup>See, e.g., 1986-1987 Op. Va. Att'y Gen. 319, 321 (noting that erroneous tax assessment may not be corrected after expiration of three-year period prescribed in § 58.1-3980). The General Assembly has recognized that final resolution of timely filed applications for correction of local tax assessments may take a lengthy period of time. See Va. Code Ann. § 58.1-3703.1(A)(5)(g) (LexisNexis Supp. 2003) (authorizing taxpayer to appeal application for correction to Tax Commissioner).

<sup>4</sup>"'Tax day' or 'date of assessment,' except as otherwise specifically provided, is January 1 of each year." Section 58.1-1 (Michie Repl. Vol. 2000).

<sup>5</sup>See *City of Alexandria v. Richmond, Fredericksburg & Potomac R.R. Co.*, 223 Va. 293, 297, 288 S.E.2d 457, 459-60 (1982) [hereinafter *R.R. Co.*]; *Hoffman v. County of Augusta*, 206 Va. 799, 802, 146 S.E.2d 249, 251 (1966) (interpreting § 58-1145, predecessor to § 58.1-3984).

<sup>6</sup>*R.R. Co.*, 223 Va. at 297, 288 S.E.2d at 459-60. The language quoted from the second sentence of former § 58-1145 is recodified in the third sentence of § 58.1-3984(A).

<sup>7</sup>*Id.* at 297, 288 S.E.2d at 460 (quoting *Hoffman*, 206 Va. at 802, 145 S.E.2d at 251).

<sup>8</sup>*Id.* at 298, 288 S.E.2d at 460 (emphasis added) (interpreting *Hoffman*, 206 Va. at 799, 146 S.E.2d at 249).

<sup>9</sup>The time limitation in § 58.1-3980(A) is applicable also to § 58.1-3981. *Accord* 1985-1986 Op. Va. Att'y Gen. 256, 257; see also 1984-1985 Op. Va. Att'y Gen. 316.

<sup>10</sup>*R.R. Co.*, 223 Va. at 298, 288 S.E.2d at 460.

<sup>11</sup>Sections 58.1-3700 to 58.1-3735 (Michie Repl. Vol. 2000 & LexisNexis Supp. 2003).

<sup>12</sup>Section 58.1-3700.1 (Michie Repl. Vol. 2000) (emphasis added).

<sup>13</sup>There is no mention of any dispute as to the taxpayer's timely filing of his application for correction of the 1998 tax assessment. For purposes of this opinion, I assume that the taxpayer's application was timely filed.

<sup>14</sup>Pursuant to § 58.1-3701, the Department of Taxation has issued *Guidelines for the Business, Professional, and Occupational License Tax* [hereinafter 2000 BPOL Guidelines], which define the term "Final Local Determination" as "a writing setting out the local assessing officer's final determination on a taxpayer's Application for Review, including facts and legal authority in support of the local assessing officer's position on each issue raised by the taxpayer." 2000 BPOL Guidelines § 7.4 (Jan. 1, 2000), available at [http://www.tax.state.va.us/Web\\_PDFs/2000bpol-sect1.pdf](http://www.tax.state.va.us/Web_PDFs/2000bpol-sect1.pdf).

<sup>15</sup>The taxpayer could have requested that the commissioner state in writing the facts and law supporting the action taken on the application for correction under § 58.1-3980. See § 58.1-3981(F) (Michie Repl. Vol. 2000).

<sup>16</sup>Because you were receptive to receiving additional information until March 31, 2003, it reasonably may be argued that March 31, 2003, was the date of your final determination.

<sup>17</sup>See § 58.1-3916 (Michie Repl. Vol. 2000) ("No tax assessment ... shall be deemed delinquent and subject to the collection procedures prescribed [in § 58.1-3916] during the pendency of any administrative appeal under § 58.1-3980 ...."); cf. 2000 BPOL Guidelines, *supra* note 14, § 7.6 ("Suspension and Commencement/Resumption of Collection Activity").

<sup>18</sup>The city itself could not voluntarily decide to refund the paid 1998 taxes. Section 58.1-3990 does not permit the locality to refund erroneous taxes paid "when application therefor was made more than three years after the last day of the tax year for which such taxes were assessed." See 1990 Op. Va. Att'y Gen. 251, 252.

<sup>19</sup>See *Smith v. Bd. of Supvrs.*, 234 Va. 250, 255, 361 S.E.2d 351, 353 (1987) ("The procedure for correction of erroneous assessments is entirely statutory. It contains no provision for remand to the executive branch of government. When the statutory procedure is invoked, the determination of the correctness of a challenged assessment, as well as any grant of appropriate relief, become matters exclusively of judicial concern.").

<sup>20</sup>See Op. Va. Att'y Gen.: 2000 at 194, 196; 1984-1985 at 316.

<sup>21</sup>See, e.g., 1985-1986 Op. Va. Att'y Gen., *supra* note 9, at 257 n.1 (noting that legislative impact of statute reenacted as § 58.1-3981 was to provide "the same constraints for the correction of erroneous assessments resulting from clerical or calculation errors as is provided for other erroneous assessments," thereby removing "the indefinite time allowed for the correction of [such] assessments" (citation omitted)); see also 1984-1985 Op. Va. Att'y Gen., *supra* note 20.

<sup>22</sup>Section 58.1-3983 provides that the remedy granted by §§ 58.1-3980 through 58.1-3982 "shall be in addition to the right of any taxpayer to apply within the time

prescribed by law to the proper court ... for the correction of erroneous assessments."

<sup>23</sup>Although there appears to have been some difficulty in obtaining necessary information and documentation, I assume that the taxpayer is not precluded from a judicial remedy "caused by the wilful failure or refusal of the applicant to furnish the tax-assessing authority with the necessary information, as required by law." Section 58.1-3987 (Michie Repl. Vol. 2000).

<sup>24</sup>See 1998 Op. Va. Att'y Gen. 128, 130 & 132 n.11.

<sup>25</sup>Section 58.1-3984(B) provides that an application by a commissioner of the revenue be brought "in the manner herein provided for relief of the taxpayer," i.e., within the time frame provided under subsection A. See 1998 Op. Va. Att'y Gen., *supra* note 24, at 130.

<sup>26</sup>See 1987-1988 Op. Va. Att'y Gen. 601, 602.

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