

OP. NO. 05-003

MOTOR VEHICLES: TITLING, REGISTRATION OF MOTOR VEHICLES – STATE AND LOCAL MOTOR VEHICLE REGISTRATION.

Locality eliminating physical decal by entering into agreement with Commissioner of Department of Motor Vehicles where Commissioner refuses to issue or renew vehicle registration of any applicant owing local license fees may carry forward unpaid decal fee and collect it in subsequent years; such collection is subject to limitation of five years from December 31st of tax year for which assessment is made.

The Honorable Barbara O. Carraway, C.P.A.
Treasurer for City of Chesapeake
April 26, 2005

Issues Presented

You inquire concerning the effects of the city of Chesapeake eliminating the requirement of a physical decal to be placed on residents' motor vehicles while continuing to assess the "decal/license fee." First, you ask whether the unpaid decal fee may be carried forward to be collected in a future year. You also inquire concerning the statute of limitations for the collection of such a fee.

Response

It is my opinion that a locality eliminating the physical decal by entering into an agreement with the Commissioner of the Department of Motor Vehicles for collection of the decal fee may carry forward the unpaid decal fee and collect it from the locality's residents in subsequent years. It is further my opinion that such collection is subject to a limitation of five years from December 31st of the tax year for which the assessment is made.

Background

You relate that the city of Chesapeake ("Chesapeake") currently imposes a requirement that residents obtain and display a local decal on the windshields of their motor vehicles, which evidences their payment of the local motor vehicle license tax or fee.¹ You also relate that under the current arrangement, a resident, who did not purchase a decal in 2004, but does purchase one in 2005 for the same vehicle is charged only the fee for the 2005 tax year.²

Additionally, you relate that some Virginia localities have eliminated the physical decal and carry forward unpaid balances for collection in subsequent years. You note that Chesapeake is considering the elimination of the physical decal for motor vehicles and your questions relate to that situation.

Applicable Law and Discussion

Virginia localities are authorized to impose "license fees or taxes"³ on certain motor vehicles owned by their residents pursuant to § 46.2-752(A), which provides that:

Except as provided in § 46.2-755, counties, cities, and towns *may levy and assess taxes and charge license fees on motor vehicles, trailers, and semitrailers....* The amount of the license fee or tax imposed by any county, city, or town on any motor vehicle, trailer, or semitrailer shall not be greater than the amount of the license tax imposed by the Commonwealth on the motor vehicle, trailer, or semitrailer. *The license fees and taxes shall be imposed in such manner, on such basis, for such periods, and subject to proration for fractional periods of years, as the proper local authorities may determine.* [Emphases added.]

Typically, payment of the decal fee is evidenced by the locality's issuance of a physical decal, which is to be affixed to the windshield of the subject motor vehicle.⁴ Subsection G of § 46.2-752 authorizes the locality to prescribe penalties for violations for failure to obtain *and display* the required decal. Section 46.2-752(J) authorizes the treasurer of any locality to "enter into an agreement with the Commissioner [of the Department of Motor Vehicles] whereby the Commissioner will refuse to issue or renew any vehicle registration of any applicant therefor who owes [the locality] any local vehicle license fees [decal fee] or delinquent tangible personal property tax."

This Office previously has concluded that any locality that by ordinance enforces payment of local motor vehicle license fees and taxes pursuant to § 46.2-752(G) must issue some form of license upon payment of the fee.⁵ Further, the locality may prescribe the form of license or decal, which must be displayed on the subject vehicle.⁶ As an alternative to § 46.2-752(G), a locality may enforce payment of vehicle license fees without requiring a decal provided that the locality enters into an agreement with the Commissioner of the Department of Motor Vehicles pursuant to § 46.2-752(J).⁷ Therefore, a locality may in place of an ordinance pursuant to § 46.2-752(G) choose to compel payment of its motor vehicle license fee by agreement with the Commissioner.⁸

Assuming that Chesapeake eliminates the physical license decal, an agreement with the Commissioner of the Department of Motor Vehicles is required to collect the decal fee.⁹ Should Chesapeake elect to eliminate its decal and enter into an agreement with the Commissioner, you ask whether Chesapeake may carry forward unpaid decal fees from previous years.

Section 46.2-752(A) clearly authorizes a locality to impose decal fees "in such manner, on such basis, *for such periods ...* as the proper local authorities may determine."¹⁰ (Emphasis added.) Moreover, in the event that Chesapeake has a collection agreement with the Department of Motor Vehicles pursuant to § 46.2-752(J), it is clear that the Department will refuse to issue a state registration until the single "applicant" "shall first satisfy ... and present[s] evidence ... that all such local vehicle license *fees* [including decal fees] and delinquent taxes or parking citations have been paid in full." (Emphasis added.) The use of the plural term "fees" in relation to the registration of a vehicle by a singular "applicant," § 46.2-752(J) clearly contemplates more than one vehicle license fee or tax.

Although § 46.2-752 does not specifically address your question, the authority of localities to carry forward or cumulate these taxes is found in the laws applicable to the imposition of local taxes, including a privilege or license tax as found in Title 58.1.¹¹ Specifically, § 58.1-3921 provides that "[t]he treasurer, after ascertaining which of *the taxes and levies assessed at any time* in his county or city have not been collected, shall, within 60 days of the end of the fiscal year make out lists [of uncollectible taxes and delinquents]." (Emphasis added.)

The use of the phrase "any time" clearly indicates that the lists to be prepared by the local taxing officials are to include uncollectible taxes previously assessed and still outstanding. In the case of delinquent real estate taxes, this period can be twenty years.¹² Among the itemized lists which the treasurer is to prepare, is a "list of such of the taxes assessed on tangible personal property, machinery and tools and merchants' capital, *and other subjects of local taxation, other than real estate*, as he was unable to collect which are delinquent."¹³ This is language of broad inclusion and appears to include the decal fee.¹⁴ In addition, the statute provides for separate lists of "uncollected taxes" amounting to less than \$20 each.¹⁵ Thus, the statute contemplates uncollected delinquent taxes in relatively small amounts, such as those typically charged for a local vehicle license. Moreover, § 58.1-3933 provides that the local "governing body may require the treasurer to continue to collect [these] delinquent taxes on subjects other than real estate until the expiration of the applicable statute of limitations."

Assuming that the decal fee may be cumulated, you ask what statute of limitations would be applicable to the collection of such fee.¹⁶ The limitation is found in § 58.1-3940(A), which provides that "[e]xcept as otherwise specifically provided, collection of local taxes shall only be enforceable for five years following December 31 of the year for which such taxes were assessed."

There are separate limitations periods that apply to real estate taxes¹⁷ and "taxes or other charges that have been reduced to judgment or a judgment lien."¹⁸ Additionally, § 58.1-3840(d) provides for "tolling" or stopping the running of the statute of limitations provided by § 58.1-3940 in certain situations involving bankruptcy. Thus, unless tolled or subject to the provisions affecting judgments and judgment liens, the general statute of limitations on collection of local taxes is applicable to vehicle license taxes or fees. Chesapeake would, therefore, be able to enforce collection of the local vehicle license taxes for "five years following December 31 of the year for which such taxes were assessed."¹⁹

Conclusion

Accordingly, it is my opinion that a locality eliminating the physical decal by entering into an agreement with the Commissioner of the Department of Motor Vehicles for collection of the decal fee may carry forward the unpaid decal fee and collect it from the locality's residents in subsequent years. It is further my opinion that such collection is subject to a limitation of five years from December 31st of the tax year for which the assessment is made.

¹For purposes of this opinion, I will refer to the local motor vehicle license tax or fee as a "decal fee."

²For purposes of this opinion, I assume that Chesapeake's current ordinances governing the purchase and display of the decal do not carry forward any unpaid license taxes or fees. I do not express any view regarding such an ordinance.

This office historically has declined to render opinions interpreting local ordinances. See, e.g., 1976-1977 Op. Va. Att'y Gen. 17, 17-18.

³See *Town of Ashland v. Bd. of Supvrs.*, 202 Va. 409, 413, 117 S.E.2d 679, 682 (1961) (quoting *Hunton v. Commonwealth*, 166 Va. 229, 244, 183 S.E. 873, 879 (1936)) ("The owner of an automobile in Virginia pays a tax for the privilege of operating his car. In a sense this tax affects the car, but it is universally conceded that this is a license or privilege tax and not a tax on the property concerned, to wit, the automobile."); *Kilgour v. County Bd. of Supvrs.*, 195 Va. 562, 565, 79 S.E.2d 601, 603 (1954) (holding that county board of supervisors had authority to levy "license tax" on motor vehicles under former § 15-10); see also Op. Va. Att'y Gen.: 2002 at 227, 228; 1987-1988 at 431, 433; 1984-1985 at 216, 216. Cf. 1996 Op. Va. Att'y Gen. 186, 189 n.4 (concluding that term "fees," as used in § 16.1-69.48, would not include personal property taxes owed to locality on motor vehicles, because taxes are imposed and collected by locality and not by court).

⁴See 2002 Op. Va. Att'y Gen., *supra* note 3, at 229 (noting that locality has discretion to prescribe form of license, but form must be such that it may be displayed on vehicle).

⁵*Id.* at 227.

⁶*Id.*

⁷*Id.* at 229.

⁸See Va. Code Ann. § 46.2-752(J) (LexisNexis Supp. 2004).

⁹See 2002 Op. Va. Att'y Gen., *supra* note 3, at 229.

¹⁰Section 46.2-752(A) also specifically mentions "proration for fractional *periods of years*." (Emphasis added.) This denotes that localities are authorized to prescribe license fees or taxes for more than one year.

¹¹See 1966-1967 Op. Va. Att'y Gen. 199, 203 (concluding that jurisdiction for any such action is not prescribed in Motor Vehicles Sales and Use Tax Act under consideration, and therefore, is controlled by laws generally applicable for collection of taxes by suit).

¹²See Va. Code Ann. § 58.1-3940(B) (LexisNexis Repl. Vol. 2004).

¹³Section 58.1-3921(3) (LexisNexis Repl. Vol. 2004) (emphasis added).

¹⁴See *Town of Ashland*, 202 Va. at 413, 117 S.E.2d at 682 (noting motor vehicle license tax is "privilege tax" not tax on property).

¹⁵See § 58.1-3921(4)-(5) (LexisNexis Repl. Vol. 2004).

¹⁶This Office previously has concluded that the offense proscribed by an ordinance adopted pursuant to § 46.2-752(G) is not the failure to purchase a decal license, but is the operation of a vehicle without obtaining and displaying such decal on the motor vehicle. See 2002 Op. Va. Att'y Gen., *supra* note 3, at

228, and opinions cited therein. Any collection of taxes for prior years will require proof that a vehicle was operated upon the highway for the period any tax is to be collected.

¹⁷ See § 58.1-3940(B) (imposing twenty-year limitation on collection of real estate taxes).

¹⁸ Section 58.1-3940(C).

¹⁹ Section 58.1-3940(A). A 2002 opinion of the Attorney General concluded that the five-year statute of limitations for collection of all local taxes under § 58.1-3940(A), including food and beverage taxes, begins to run on December 31 of year to which tax is attributable. See 2002 Op. Va. Att'y Gen. 320, 320.

[Back to April 2005 Opinion Index](#)