

**OP. NO. 05-028**

**CONSTITUTION OF VIRGINIA: TAXATION AND FINANCE (UNIFORMITY OF TAXATION) (ASSESSMENTS).**

**Violation of uniformity of taxation provision of Constitution of Virginia for locality to impose progressive tax rate on residential real estate based upon assessed value.**

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August 1, 2005

**Issue Presented**

You ask whether the imposition of progressive tax rates on residential real estate<sup>1</sup> by a locality, based upon assessed value is proper under the "uniformity" provisions contained in Article X, § 1 of the Constitution of Virginia.

**Response**

It is my opinion that the progressive tax rates on residential real estate that you describe violate the Virginia Constitution.

**Applicable Law and Discussion**

You relate that the city of Norfolk is considering adoption of an ordinance imposing progressive real estate tax<sup>2</sup> rates on residential real estate in Norfolk. At issue is whether a progressive tax scheme provides uniformity in property taxation as required by the Virginia Constitution.

Successive Virginia constitutions have contained provisions requiring "uniformity" in property taxation.<sup>3</sup> The Virginia Constitution currently requires uniformity of taxation in Article X, § 1, which provides, in pertinent part, that:

All property, except as hereinafter provided, shall be taxed. All taxes shall be levied and collected under general laws and *shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax, except that the General Assembly may provide for differences in the rate of taxation* to be imposed upon real estate by a city or town within all or parts of areas added to its territorial limits, or by a new unit of general government, within its area, created by or encompassing two or more, or parts of two or more, existing units of general government. [Emphasis added.]

The Supreme Court of Virginia has held that §§ 1 and 2 of Article X relating to property assessments must be construed together.<sup>4</sup> These sections constitute the twin principles of property taxation in the Commonwealth.<sup>5</sup> In pertinent part, § 2 provides that:

All assessments of real estate and tangible personal property shall be at their fair market value, to be ascertained as prescribed by law. The General Assembly may define and classify real estate devoted to agricultural, horticultural, forest, or open space uses, and may by general law authorize any county, city, town, or regional government to allow deferral of, or relief from, portions of taxes otherwise payable on such real estate if it were not so classified, provided the General Assembly shall first determine that classification of such real estate for such purpose is in the public interest for the preservation or conservation of real estate for such uses.

The net result of "these provisions is to distribute the burden of taxation, so far as is practical, evenly and equitably."<sup>6</sup>

The Virginia Supreme Court has also held that "where it is impossible to secure both the standard of the true value and the uniformity and equality required by law, the latter requirement is to be preferred as the just and ultimate purpose of the law."<sup>7</sup> Thus, uniformity is viewed as the paramount objective of the taxation of property.

It is important to note that there are specific exemptions from the provisions contained in §§ 1 and 2 of Article X and in other parts of the Virginia Constitution. For example, § 1 permits the General Assembly to provide for disparate tax rate treatment for certain lands annexed by cities or towns.<sup>8</sup> Section 2 permits the General Assembly to provide tax relief for "real estate devoted to agricultural, horticultural, forest, or open space uses."<sup>9</sup> Moreover, Article X, § 6(b) authorizes the General Assembly to provide for relief from property taxation for certain elderly and disabled individuals.<sup>10</sup>

There is no constitutional or statutory provision permitting localities to afford general real property tax relief to residential real estate owners by graduating their rates of taxation or otherwise. Indeed, § 58.1-3321, the section of Title 58.1 addressing the levy of the local real property tax, generally speaks in terms of only one rate for the locality. This would be consistent with the constitutional requirement of uniformity of taxation on real property and the Virginia Supreme Court's interpretations of that requirement. It has been said that this is "[b]ecause property can be valued by a relatively accurate and objective means, *ad valorem taxes on it can be levied in terms of a uniform rate which may impose a uniform burden* to the extent that there is a sound standard for appraisal and the appraisal is accurate."<sup>11</sup>

Notwithstanding this, courts have wrestled with the concept of valuation, which is, by their own admission, "not an exact science."<sup>12</sup> As a result,

[t]he courts, in trying to resolve this problem, while recognizing the general custom of undervaluing property and the difficulty of enforcing the standard of true value, have sought to enforce equality in the burden of taxation by *insisting upon uniformity in the mode of assessment and in the rate of taxation*.<sup>[13]</sup>

This principle of *one* uniform rate for real estate taxation within a locality has been further confirmed in a case involving the annexation of county lands by a city, where pursuant to the authorizing statute, the city maintained the various

different tax rates on the separate parcels annexed for a period of five years.<sup>14</sup> The Virginia Supreme Court upheld these rate differentials, noting that:

If this [uniformity] section [168] of the Constitution alone could be relied on, the city of Roanoke would have had to levy a tax of \$2.50 on all of the land in the annexed areas *because that was the rate that was levied on all the real estate included in the corporate limits of the city of Roanoke prior to and after the annexation* of the area herein concerned. But the Constitution, Art. VIII, § 126, provides for the extension of corporate limits, and Art. XIII, § 169, *specifically permits a reduced rate of taxation* on the lands annexed for a period of time to be fixed by the legislature.<sup>[15]</sup>

*Article XIII, § 169 of the Constitution provides for a permissible discrimination and permits lack of uniformity of taxation in those cases where lands are annexed to a new taxing jurisdiction. This provision was intended as a temporary measure to facilitate the transition of the annexation and is for the benefit of the annexed land. The Constitution and statute restrict or limit no further than prohibiting an increase in the tax rate on any given area of land.*<sup>[16]</sup>

Thus, the predecessor section of the current Virginia Constitution, requiring uniformity in property taxation, which virtually was identical,<sup>17</sup> required one, uniform tax rate on all the real property within a jurisdiction, but for the limited constitutional exemption provided for lands annexed by a city or town. Therefore, because there is no constitutional exemption from the uniformity of taxation for a locality to impose a progressive tax rate,<sup>18</sup> a locality must impose a single uniform rate of taxation on residential property within its borders.

### **Conclusion**

Accordingly, it is my opinion that the progressive tax rates on residential real estate that you describe violate the Virginia Constitution.

<sup>1</sup>For purposes of this opinion, I assume that the residential real property in question means all of such property generally in the city of Norfolk. I also assume that such property does not include residential real property that may be subject to, and eligible for, a specific exemption for special treatment. See, e.g., Va. Const. art. X, §§ 1, 2, 6(b).

<sup>2</sup>You indicate that the tax rates would be progressive based on property value.

<sup>3</sup>See 2 A.E. Dick Howard, Commentaries on the Constitution of Virginia, 1037-40 (1974).

<sup>4</sup>See, e.g., Bd. of Supvrs. v. Leasco Realty, Inc., 221 Va. 158, 166, 267 S.E.2d 608, 613 (1980) (noting that Article X, §§ 1 and 2 must be read and construed together); R. Cross, Inc. v. City of Newport News, 217 Va. 202, 207, 228 S.E.2d 113, 117 (1976) (quoting Skyline Swannanoa, Inc. v. Nelson County, 186 Va. 878, 881, 44 S.E.2d 437, 439 (1947)) (noting that first two sections of Article X

must be construed together); *Smith v. City of Covington*, 205 Va. 104, 108, 135 S.E.2d 220, 222 (1964) (quoting *Skyline Swannanoa*, 186 Va. at 881, 44 S.E.2d at 439) (construing Article XIII, §§ 168 and 169 of 1902 Virginia Constitution, predecessors to Article X, §§ 1 and 2 of 1971 Virginia Constitution); see also *Tuckahoe Women's Club v. City of Richmond*, 199 Va. 734, 738, 101 S.E.2d 571, 574 (1958) (construing Article XIII, §§ 168 and 169); *Lehigh Portland Cement Co. v. Commonwealth*, 146 Va. 146, 152, 135 S.E. 669, 671 (1926) (construing Article XIII, §§ 168 and 169).

<sup>5</sup>See *R. Cross*, 217 Va. at 207, 228 S.E.2d at 117 (noting that principles of taxation required by Virginia Constitution are fair market value and uniformity clauses of Article X).

<sup>6</sup>See *Skyline Swannanoa*, 186 Va. at 881, 44 S.E.2d at 439 (construing Article XIII, §§ 168 and 169); see also *S. Ry. Co. v. Commonwealth*, 211 Va. 210, 214, 176 S.E.2d 578, 581 (1970).

<sup>7</sup>See, e.g., *Women's Club*, 199 Va. at 738, 101 S.E.2d at 574.

<sup>8</sup>See Va. Code Ann. § 15.2-3534 (LexisNexis Repl. Vol. 2003) (authorizing different tax rates in certain areas consolidated into county or city).

<sup>9</sup>See Va. Code Ann. §§ 58.1-3229 (not set out in Code) through 58.1-3244 (LexisNexis Repl. Vol. 2004) (governing special assessments for land preservation).

<sup>10</sup>See §§ 58.1-3210 to 58.1-3218 (LexisNexis Repl. Vol. 2004) (governing exemptions for elderly and handicapped).

<sup>11</sup>Howard, *supra* note 3, at 1041 (emphasis added).

<sup>12</sup>*Southern Railway*, 211 Va. at 214, 176 S.E.2d at 580.

<sup>13</sup>*Id.* (emphasis added).

<sup>14</sup>*City of Roanoke v. Hill*, 193 Va. 643, 70 S.E.2d 270 (1952).

<sup>15</sup>*Id.* at 648-49, 70 S.E.2d at 273 (emphases added).

<sup>16</sup>*Id.* at 650, 70 S.E.2d at 274 (emphasis added).

<sup>17</sup>Section 168 of the 1902 Constitution read, "[a]ll property, except as hereinafter provided, shall be taxed; all taxes, whether state, local, or municipal, shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax."

<sup>18</sup>This conclusion has been confirmed by the Commonwealth's highest court. See *supra* notes 6-7, 14 and accompanying text.

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