



# COMMONWEALTH of VIRGINIA

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May 31, 2006

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The Honorable Judy S. Crook  
Commissioner of the Revenue for Franklin County  
275 South Main Street  
Rocky Mount, Virginia 24151

Dear Ms. Crook:

I am responding to your request for an official advisory opinion in accordance with § 2.2-505 of the *Code of Virginia*.

## Issues Presented

You ask whether electronic entries containing corrected information necessary to abate erroneous real estate and personal property assessments transmitted by a commissioner of the revenue to a treasurer for viewing satisfies the requirement in § 58.1-3981(E) for certification of such corrections to the treasurer. You also ask whether the transmittal of such electronic entries to the treasurer constitutes sufficient notification that a land use roll-back tax should be billed and collected pursuant to § 58.1-3237.

## Response

It is my opinion that the transmittal to the treasurer of electronic entries of the information necessary to abate erroneous assessments for both real estate and personal property does not satisfy the requirement of § 58.1-3981(E) that a copy of such correction be certified to the treasurer. It is my opinion, however, that the transmittal of such electronic entries to the treasurer constitutes sufficient notice under § 58.1-3237.

## Background

You advise that you utilize a computer program to enter the information necessary to abate erroneous assessments for both real estate and personal property tax. You state that the program contains all the information necessary for the treasurer to make adjustments to the tax records. When the information is keyed into the program by personnel in your office, you advise that the treasurer has instant access to view and print copies of the corrected assessments. You also advise that your office prints copies of the abatement, and you retain a paper copy of the abatement in your files. Finally, you relate that the software program is maintained by the Franklin County Information Technology Department and is not transmitted through use of the Internet.

You advise further that your office calculates the roll-back tax statement and transmits it to the Treasurer in the same manner. The computer console screen contains all of the information required to bill for the roll-back tax, including the interest that has accrued.

### Applicable Law and Discussion

The Commonwealth follows the Dillon Rule<sup>1</sup> of strict construction of statutory provisions and its corollary that “[t]he powers of county boards of supervisors are fixed by statute and are limited to those powers conferred expressly or by necessary implication.”<sup>2</sup> The Dillon Rule of strict construction is applicable to constitutional officers.<sup>3</sup>

The commissioner of the revenue is a constitutional officer whose duties “shall be prescribed by general law or special act” of the General Assembly.<sup>4</sup> The duties of commissioners are set out specifically in Article 1, Chapter 31 of Title 58.1, §§ 58.1-3100 through 58.1-3122.2, as well as generally in Titles 15.2 and 58.1.<sup>5</sup>

Section 58.1-3981(E) provides, in part, that “[a] copy of any correction made under this section shall be certified by the commissioner or such other official to the treasurer of his county, city or town.” The primary goal of statutory interpretation is to ascertain and give effect to the intent of the legislature.<sup>6</sup> Furthermore, under well-accepted principles of statutory construction, when a statute creates a specific grant of authority, the authority exists only to the extent specifically granted in the statute.<sup>7</sup> The General Assembly, however, does not define the term “certified” as it is used in § 58.1-3981(E). Generally, when a particular word in a statute is not defined therein, the word must be given its ordinary meaning.<sup>8</sup> The term “certify” generally means “to authenticate or verify in writing.”<sup>9</sup> Under the doctrine of *noscitur a sociis*,<sup>10</sup> I am required to construe the term “certify” with reference to the words with which it is used in

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<sup>1</sup>City of Richmond v. Bd. of Supvrs., 199 Va. 679, 684-85, 101 S.E.2d 641, 644-45 (1958) (noting Dillon’s Rule that municipal corporations have only those powers expressly granted, those necessarily or fairly implied therefrom, and those that are essential and indispensable).

<sup>2</sup>County Bd. v. Brown, 229 Va. 341, 344, 329 S.E.2d 468, 470 (1985).

<sup>3</sup>1984-1985 Op. Va. Att’y Gen. 284, 284.

<sup>4</sup>VA. CONST. art. VII, § 4.

<sup>5</sup>See Op. Va. Att’y Gen.: 2005 at 157, 158 (forthcoming May 2006); 2000 at 204, 205.

<sup>6</sup>See Turner v. Commonwealth, 226 Va. 456, 459, 309 S.E.2d 337, 338 (1983).

<sup>7</sup>See 2A NORMAN J. SINGER, SUTHERLAND STATUTORY CONSTRUCTION § 47.23 (6th ed. 2000); Op. Va. Att’y Gen.: 1992 at 145, 146; 1989 at 252, 253; 1980-1981 at 209, 209-10.

<sup>8</sup>See McKeon v. Commonwealth, 211 Va. 24, 27, 175 S.E.2d 282, 284 (1970).

<sup>9</sup>BLACK’S LAW DICTIONARY 241 (8th ed. 2004) (certified is the adjective of the verb “certify”).

<sup>10</sup>“The meaning of a word ... takes color and expression from the purport of the entire phrase of which it is a part, and it must be construed so as to harmonize with the context as a whole.” Kohlberg v. Va. Real Estate Comm’n, 212 Va. 237, 239, 183 S.E.2d 170, 172 (1971). “[I]t is known by its associates.” BLACK’S LAW DICTIONARY, *supra* note 9, at 1087 (noting Latin derivation of *noscitur a sociis*); see also Va. Beach v. Bd. of Supvrs., 246 Va. 233, 236-37, 435 S.E.2d 382, 384 (1993) (noting that words in statute are construed according to context in which they are used and by considering language used in statute and in other statutes dealing with closely related subjects).

§ 58.1-3981(E). The General Assembly requires that a “copy” of the correction be “certified” to the treasurer. A “copy” is “an imitation or reproduction of an original.”<sup>11</sup>

I am not aware of any statutory provision which authorizes a commissioner to transmit by electronic means without written verification or authentication the information necessary to abate erroneous assessments for both real estate and personal property. I must, therefore, conclude that the ability of the treasurer to view the information necessary to abate erroneous assessments for both real estate and personal property does not comply with § 58.1-3981(E), which requires that a copy of such correction be certified to the treasurer.

Article 4, Chapter 32 of Title 58.1, §§ 58.1-3229 through 58.1-3244, provides for the special assessment of real property for land preservation. In general, to qualify for land use assessment and taxation: (1) agricultural or horticultural property must consist of a minimum of five acres; (2) forest property must consist of a minimum of twenty acres; and (3) open-space property must consist “of a minimum of five acres or such greater minimum acreage as may be prescribed” by the locality.<sup>12</sup> Section 58.1-3233(2) provides that “[t]he minimum acreage requirements for special classifications of real estate shall be determined by adding together the total area of contiguous real estate excluding recorded subdivision lots recorded after July 1, 1983, titled in the same ownership.”

Section 58.1-3237(A) provides that when the use by which property qualified for special assessment changes to a nonqualifying use or the zoning of the real estate is changed to a more intensive use at the request of the owner or his agent, the property becomes subject to roll-back taxes.<sup>13</sup> Section 58.1-3237(D) requires the commissioner to “forthwith determine and assess the roll-back tax” that “shall be paid to the treasurer within thirty days of the assessment.” The General Assembly does not specify the manner in which the treasurer is to be notified by the commissioner when a land use roll-back tax should be billed and collected.

In determining legislative intent, the rule is clear that where a power is conferred and the mode of its execution is specified, no other method may be selected; any other means would be contrary to legislative intent and, therefore, unreasonable.<sup>14</sup> A necessary corollary is that where a grant of power is silent upon its mode of execution, a method of exercise clearly contrary to legislative intent, or inappropriate to the ends sought to be accomplished by the grant, also would be unreasonable.<sup>15</sup>

“Consistent with the necessity to uphold legislative intent, the doctrine of implied powers should never be applied to create a power that does not exist or to expand an existing power beyond rational

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<sup>11</sup>BLACK’S LAW DICTIONARY, *supra* note 9, at 360 (defining “certified copy” to be duplicate of original, usually official, document).

<sup>12</sup>VA. CODE ANN. § 58.1-3233(2) (2004).

<sup>13</sup>Basically, the roll-back taxes are equal to the difference between the tax levied during the past five years under the land use assessment statutes and the tax that would have been levied had the property not been subject to the special assessment. *See* § 58.1-3237(B) (2004). The roll-back taxes are considered deferred real estate taxes. *See* § 58.1-3243 (2004).

<sup>14</sup>*See* Page v. Belvin, 88 Va. 985, 990, 14 S.E. 843, 845 (1892).

<sup>15</sup>*See* Groner v. City of Portsmouth, 77 Va. 488, 490 (1883); Kirkham v. Russell, 76 Va. 956, 966-67 (1882).

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limits.”<sup>16</sup> Always, the test in application of the doctrine is reasonableness, in which concern for what is necessary to promote the public interest is a key element.<sup>17</sup>

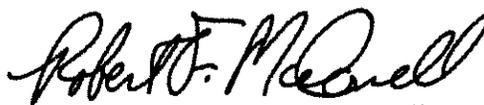
Because the General Assembly does not clearly specify the manner in which the treasurer is to be notified when a land use roll-back tax should be billed and collected, application of the doctrine of implied powers dictates the conclusion that transmittal to and access by the treasurer of the computer screen containing all the information required for billing the roll-back tax, including the interest that has accrued, is a reasonable method for communicating the roll-back tax billing. The test of reasonableness leads me to conclude that the public interest clearly is promoted by such a process of notification. Therefore, it is my opinion that transmittal to and access by the treasurer of the computer screen is sufficient notice for notification to collect the roll-back tax.

### Conclusion

Accordingly, it is my opinion that the transmittal to the treasurer of electronic entries of the information necessary to abate erroneous assessments for both real estate and personal property does not satisfy the requirement of § 58.1-3981(E) that a copy of such correction be certified to the treasurer. It is my opinion, however, that the transmittal of such electronic entries to the treasurer constitutes sufficient notice under § 58.1-3237.

Thank you for letting me be of service to you.

Sincerely,



Robert F. McDonnell

2:213; 1:941/06-029

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<sup>16</sup>Commonwealth v. County Bd., 217 Va. 558, 577, 232 S.E.2d 30, 42 (1977).

<sup>17</sup>See Nat'l Linen Serv. Corp. v. City of Norfolk, 196 Va. 277, 280-81, 83 S.E.2d 401, 404 (1954).