



# COMMONWEALTH of VIRGINIA

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The Honorable Wyatt L. Overton  
Commissioner of the Revenue for Prince Edward County  
P.O. Box 446  
Farmville, Virginia 23901

Dear Mr. Overton:

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

## Issue Presented

You ask whether a commissioner of the revenue may tax cars at the personal property tax rate rather than the capital merchants' tax rate when a car dealer moves the cars off the dealership site to avoid merchants' tax and relocates the cars titled to the dealership to private property.

## Response

It is my opinion that vehicles titled to a car dealership and available for sale constitute inventory stock on hand and must be taxed as merchants' capital.

## Background

You relate that you have encountered some difficulty with a car dealership's filing of the merchants' capital inventory. You indicate that prior to January 1st of each year, vehicles were moved off the dealership's lot and onto private property either in your county or in a different county. You state that as far as you know, the dealership has not paid taxes on such inventory to any county.

## Applicable Law and Discussion

The Supreme Court of Virginia consistently has ruled that "[t]axes can be imposed only in the manner prescribed by express statutory authority."<sup>1</sup> Thus, in order to determine whether vehicles may be taxed as personal property, the statutes which permit the taxation of tangible personal property and merchants' capital must be examined.

For local taxation purposes, merchants' capital and tangible personal property are two separate classes of property in Virginia. Merchants' capital, as defined in § 58.1-3510, specifically is excluded from the definition of tangible personal property appearing in § 58.1-3500. Section 58.1-3510 defines

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<sup>1</sup>Shelor Motor Co. v. Miller, 261 Va. 473, 478, 544 S.E.2d 345, 348 (2001); accord Hampton Nissan Ltd. P'ship v. City of Hampton, 251 Va. 100, 104, 466 S.E.2d 95, 97 (1996) (quoting Commonwealth v. P. Lorillard Co., 129 Va. 74, 82, 105 S.E. 683, 685 (1921)).

merchants' capital to include inventory of stock on hand and all other taxable personal property except tangible personal property not offered for sale as merchandise. There is no definition of "inventory of stock on hand" as used in § 58.1-3510.

In the absence of a statutory definition, the plain and ordinary meaning of the term is controlling.<sup>2</sup> It is well-settled that, "[i]f the language of a statute is plain and unambiguous, and its meaning perfectly clear and definite, effect must be given to it."<sup>3</sup> The term "inventory" means "an itemized list of current assets ... a list of goods on hand ... the quantity of goods or materials on hand: STOCK."<sup>4</sup> Further, the term "stock" means "the equipment, materials, or supplies of an establishment ... the inventory of goods of a merchant or manufacturer."<sup>5</sup> As such, the plain meaning of inventory of stock on hand would be goods and materials kept on hand by a commercial establishment for sale.

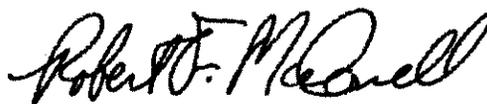
Prior opinions of the Attorney General have opined on the meaning of inventory of stock on hand.<sup>6</sup> Those opinions support the above plain meaning.<sup>7</sup> A 1984 opinion of the Attorney General evaluated whether demonstrator cars owned by a new car dealer and driven by the employees between their homes and work while in the course of their employment should be considered tangible personal property or merchants' capital.<sup>8</sup> The Attorney General concluded that since the vehicles continued to be merchandise offered for sale during their use by employees and as demonstrators, they are merchants' capital and are taxable as such.<sup>9</sup> Thus, vehicles that are merchandise and available for sale, regardless of where they are located, generally are considered merchants' capital and should be taxed under § 58.1-3510.

### Conclusion

Accordingly, it is my opinion that vehicles titled to a car dealership and available for sale constitute inventory stock on hand and must be taxed as merchants' capital.

Thank you for letting me be of service to you.

Sincerely,



Robert F. McDonnell

1:1260; 1:941/06-036

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<sup>2</sup>See *Sansom v. Bd. of Supvrs.*, 257 Va. 589, 594-95, 514 S.E.2d 345, 349 (1999); *Commonwealth v. Orange-Madison Coop.*, 220 Va. 655, 658, 261 S.E.2d 532, 533-34 (1980); 1999 Op. Va. Att'y Gen. 10, 11.

<sup>3</sup>*Temple v. City of Petersburg*, 182 Va. 418, 423, 29 S.E.2d 357, 358 (1944), *quoted in* 2002 Op. Va. Att'y 320, 320.

<sup>4</sup>MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY 615 (10th ed. 2001).

<sup>5</sup>*Id.* at 1153

<sup>6</sup>1984-1985 Op. Va. Att'y Gen. 369; 1977-1978 Op. Va. Att'y Gen. 429.

<sup>7</sup>*Id.*

<sup>8</sup>1984-1985 Op. Va. Att'y Gen., *supra* note 6, at 369.

<sup>9</sup>*Id.*; *but see* 1977-1978 Op. Va. Att'y Gen., *supra* note 6, at 429-30 (concluding that dealership vehicle kept in possession of full-time student who is away from home nine months out of year is not inventory stock on hand; vehicle is so far removed from retail setting for such period of time and is not realistically available for sale).