



# COMMONWEALTH of VIRGINIA

Office of the Attorney General

Robert F. McDonnell  
Attorney General

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900 East Main Street  
Richmond, Virginia 23219  
804-786-2071  
FAX 804-786-1991  
Virginia Relay Services  
800-828-1120  
7-1-1

The Honorable Robert S. Wertz, Jr.  
Commissioner of the Revenue for Loudoun County  
P.O. Box 8000  
Leesburg, Virginia 20177-0263

Dear Mr. Wertz:

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 seek clarification regarding the eligibility of persons seeking an exemption or deferral of taxes on real property pursuant to § 58.1-3210. Further, you inquire concerning the meaning of the phrase "owned by" used in § 58.1-3210(A).

## Response

It is my opinion that § 58.1-3210(A) authorizes a county, city, or town to provide tax exemptions or deferrals only for real estate and manufactured homes owned by and occupied as the sole dwelling of a person who is at least sixty-five years of age<sup>1</sup> or a person found to be permanently and totally disabled as defined in § 58.1-3217.<sup>2</sup> It further is my opinion that the phrase "owned by" refers to those persons to whom tax relief may be granted, which must be determined on a case-by-case basis.<sup>3</sup>

## Background

You indicate that elderly and disabled people in your county sometimes own real estate with their children, siblings, or friends. You also indicate that the variety of ways to hold title to property is increasingly elaborate, making it difficult to determine ownership. Therefore, you seek clarification of the exemption authorized by § 58.1-3210.

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<sup>1</sup>For purposes of § 58.1-3210(A), in order to qualify for the exemption, all of the property owners must be at least sixty-five years old or permanently and totally disabled, unless such property is a dwelling jointly held by a husband and wife. In such cases, the exemption applies if either spouse is sixty-five years or over or permanently and totally disabled. *See* VA. CODE ANN. § 58.1-3210(A) (2004).

<sup>2</sup>Section 58.1-3217 provides that "[f]or purposes of [Article 1, Chapter 32 of Title 58.1], the term '*permanently and totally disabled*' shall mean unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment or deformity which can be expected to result in death or can be expected to last for the duration of such person's life."

<sup>3</sup>Any determination must be strictly construed. In doubtful cases, the analysis must be resolved against qualification for the tax exemption. *See infra* note 11 and accompanying text.

### Applicable Law and Discussion

Article X, § 1 of the Constitution of Virginia provides that “[a]ll property, except as hereinafter provided, shall be taxed.” Article X, § 6 exempts certain property from taxation, and § 6(b) specifically authorizes the General Assembly to allow certain other exemptions:

The General Assembly may by general law authorize the governing body of any county, city, town, or regional government to provide for the exemption from local property taxation, or a portion thereof, within such restrictions and upon such conditions as may be prescribed, of real estate and personal property designed for continuous habitation owned by, and occupied as the sole dwelling of, persons not less than sixty-five years of age or persons permanently and totally disabled as established by general law who are deemed by the General Assembly to be bearing an extraordinary tax burden on said property in relation to their income and financial worth.

Article X, §6(f) mandates that “[e]xemptions of property from taxation as established or authorized hereby shall be strictly construed.”

It is a basic requirement of statutory construction that all parts of a statute dealing with a particular subject must be read as a whole.<sup>4</sup> Moreover, the Supreme Court of Virginia has held that “[a] statute should be construed so as to give effect to its component parts. Its meaning should not be derived from single words isolated from the true purpose of the Act.”<sup>5</sup>

Section 58.1-3210 provides that:

A. The governing body of any county, city or town may, by ordinance, provide for the exemption from, deferral of, or a combination program of exemptions from and deferrals of taxation of real estate and manufactured homes as defined in § 36-85.3, or any portion thereof, and upon such conditions and in such amount as the ordinance may prescribe. Such real estate shall be owned by, and be occupied as the sole dwelling of anyone at least sixty-five years of age or if provided in the ordinance, anyone found to be permanently and totally disabled as defined in § 58.1-3217. Such ordinance may provide for the exemption from or deferral of that portion of the tax which represents the increase in tax liability since the year such taxpayer reached the age of sixty-five or became disabled, or the year such ordinance became effective, whichever is later. *A dwelling jointly held by a husband and wife may qualify if either spouse is sixty-five or over or is permanently and totally disabled.*

B. For purposes of this article, any reference to real estate shall include manufactured homes. [Emphasis added.]

Section 58.1-3210 cannot be interpreted to allow tax relief when a qualifying individual<sup>6</sup> jointly owns real property with persons who do not qualify or who are not the spouse of the qualifying individual. Such an interpretation would render superfluous the last sentence in subsection A. Superfluous sentences are

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<sup>4</sup>1986-1987 Op. Va. Att’y Gen. 154, 155.

<sup>5</sup>Commonwealth v. Jones, 194 Va. 727, 731, 74 S.E.2d 817, 820 (1953).

<sup>6</sup>For purposes of this opinion, a “qualifying individual” means a person who is at least sixty-five years of age or a person found to be permanently and totally disabled as defined in § 58.1-3217.

disfavored by the rules of statutory construction.<sup>7</sup> Therefore, when read as a whole, § 58.1-3210(A) requires that in order for real estate to qualify for this tax relief, the following requirements must be met: (1) the locality must, by ordinance, provide for such tax relief; (2) all owners of the real estate must be either at least sixty-five years of age or permanently and totally disabled;<sup>8</sup> and (3) the real estate must be occupied as the sole dwelling of the qualifying individual.

You also inquire concerning the meaning of the phrase “owned by” as used in § 58.1-3210(A).<sup>9</sup> This phrase is not subject to an exact definition. Section 58.1-3210 uses the phrase “owned by” to describe those to whom tax relief may be granted.<sup>10</sup> Each request for an exemption must be analyzed to determine if the real estate involved actually is owned by a qualifying individual or individuals. Exemptions under this statute must be strictly construed and, in doubtful cases, resolved against authorizing the exemption.<sup>11</sup> The Virginia Supreme Court has held that:

The Constitution of Virginia, as revised in 1971, provides that “[e]xemptions of property from taxation ... shall be strictly construed.” This rule of strict construction stems from the Commonwealth’s announced policy “to distribute the tax burden uniformly and upon all property.” Therefore, statutes granting tax exemptions are construed strictly against the taxpayer, and “[w]hen a tax statute is susceptible of two constructions, one granting an exemption and the other not granting it, courts adopt the construction which denies the exemption.” Indeed, “where there is any doubt, the doubt is resolved against the one claiming exemption,” and “to doubt an exemption is to deny it.”<sup>12</sup>

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<sup>7</sup>“Words in a statute should be interpreted, if possible, to avoid rendering words superfluous.” *Cook v. Commonwealth*, 268 Va. 111, 114, 597 S.E.2d 84, 86 (2004).

<sup>8</sup>However, when a dwelling is jointly owned by a husband and wife, the real estate may qualify if either spouse is a qualifying individual. *See* § 58.1-3210(A),

<sup>9</sup>The meaning of the phrase “or any portion thereof” located in the first sentence of § 58.1-3210(A), which provides that “[t]he governing body of any county, city or town may, by ordinance, provide for the exemption from, deferral of, or a combination program of exemptions from and deferrals of *taxation* of real estate and manufactured homes..., or any portion thereof, and upon such conditions and in such amount as the ordinance may prescribe,” apparently has caused confusion. (Emphasis added.) It is a “fundamental canon of statutory construction that a qualifying phrase refers solely to its immediate antecedent.” *Nat’l Coalition for Students v. Allen*, 152 F.3d 283, 288 n.6 (1998). Therefore, the phrase “or any portion of” modifies the term “taxation” and does not modify the words “owned by” located in the second sentence of § 58.1-3210(A). The phrase “or any portion thereof” should not be interpreted to authorize tax relief for any qualifying individual who owns only a portion of the real estate for which an exemption is sought, because “portion” as it is used in § 58.1-3210(A) relates to the tax and not to the real estate or ownership of the title to the real estate. Additionally, the Virginia Supreme Court has stated that where there is any doubt, it must be resolved against the person claiming a tax exemption. *See infra* note 11 and accompanying text; *see also infra* note 13 and accompanying text (discussing maxim of *expressio unius est exclusio alterius*).

<sup>10</sup>*See* 1971-1972 Op. Va. Att’y Gen. 428, 428 (noting that § 58-760.1, predecessor to § 58.1-3210, used words “owned by,” “owners,” and “owning title or partial title” to describe those to whom tax relief could be granted).

<sup>11</sup>*See* Op. Va. Att’y Gen.: 1999 at 205, 206 (concluding that exemptions must be strictly construed and real estate cooperative association was owner of certain real estate, not the proprietary lessees); 1998 at 127, 127; 1994 at 117, 119 (noting that exemptions pursuant to § 58.1-3210 “must be strictly construed”); 1982-1983 at 532, 533 (noting that exemptions under § 58-760.1, predecessor to § 58.1-3210, are to be narrowly construed).

<sup>12</sup>*Commonwealth v. Wellmore Coal Corp.*, 228 Va. 149, 153-54, 320 S.E.2d 509, 511 (1984) (alteration in original) (citations omitted).

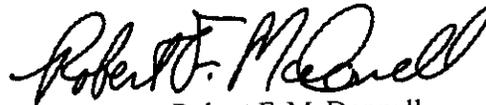
You also ask whether the tax relief under § 58.1-3210(A) is available when the children, siblings, or friends of a qualifying individual jointly own real estate with the qualifying individual. If the exemption has been intended to apply to situations where real property is jointly owned by multiple owners when only one owner is a qualifying individual, the General Assembly would have so provided as it did for joint ownership by husbands and wives. The statutory maxim of *expressio unius est exclusio alterius* "provides that mention of a specific item in a statute implies that omitted terms were not intended to be included within the scope of the statute."<sup>13</sup> Therefore, the relief pursuant to § 58.1-3210(A) is available only when all the joint owners are also qualifying individuals.<sup>14</sup>

### Conclusion

Accordingly, it is my opinion that § 58.1-3210 authorizes a county, city, or town to provide tax exemptions or deferrals only for real estate or manufactured homes owned by and occupied as the sole dwelling of a person who is at least sixty-five years of age<sup>15</sup> or a person found to be permanently and totally disabled as defined in § 58.1-3217.<sup>16</sup> It further is my opinion that the phrase "owned by" refers to those persons to whom tax relief may be granted, which must be determined on a case-by-case basis.<sup>17</sup>

Thank you for letting me be of service to you.

Sincerely,



Robert F. McDonnell

1:1180; 1:941/06-097

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<sup>13</sup>Turner v. Wexler, 244 Va. 124, 127, 418 S.E.2d 886, 887 (1992).

<sup>14</sup>But see *supra* note 8.

<sup>15</sup>See *supra* note 1.

<sup>16</sup>See *supra* note 2.

<sup>17</sup>See *supra* note 3.