



COMMONWEALTH of VIRGINIA

Office of the Attorney General

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July 19, 2013

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The Honorable Deborah F. Williams
Commissioner of the Revenue
County of Spotsylvania
Post Office Box 175
Spotsylvania, Virginia 22583

Dear Commissioner Williams:

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 inquire whether a corporation claiming to be a subsidiary of a Class I railroad that operates a transloading facility qualifies for the local business license tax exemption provided by § 58.1-3703(C)(1). You further ask whether the corporation is eligible for the real and tangible personal property tax rate provided by § 58.1-2607.

Response

It is my opinion that the exemption afforded under § 58.1-3703(C)(1) does not apply to the subsidiary of a Class I railroad that operates a transloading facility unless it was certified by the Interstate Commerce Commission (ICC) during that agency's existence or is registered with the Surface Transportation Board (STB) for insurance purposes. It is further my opinion that the application of § 58.1-2607 depends on who owns the real and tangible property being taxed.¹

Background

You relate that there is a corporation with a terminal in your county operating a rail-to-track transloading network that includes off-loading, storing and re-loading products for other commercial customers between railcars, containers and trucks. According to the corporation's website, the corporation is a subsidiary of a Class I railroad, but the subsidiary is a separate and distinct company. The same website offers the corporation's transloading services for businesses that do not have direct rail connections. The State Corporation Commission lists the subsidiary corporation as a separate entity in its records, which indicate that it is a Delaware corporation.

¹ My response provides an analysis of the law; however, whether an exemption applies in any specific circumstance is a factual determination to be made by the Commissioner of the Revenue. See 1984-85 Op. Va. Att'y Gen. 334.

Applicable Law and Discussion

Section 58.1-3703(C)(1) expressly prohibits localities from imposing a license fee or levying any license tax

On any public service corporation or any motor carrier, common carrier, or other carrier of passengers or property formerly certified by the Interstate Commerce Commission or presently registered for insurance purposes with the Surface Transportation Board of the United States Department of Transportation, Federal Highway Administration, except as provided in § 58.1-3731^[2] or as permitted by other provisions of law.^[3]

Thus, whether the corporation is exempt from local license taxation depends on whether it falls within any of the enumerated categories in § 58.1-3703(C)(1).

The corporation qualifies for the exemption if it can be deemed a “public service corporation.” “Public service corporation” is not defined within Title 58.1; however, reliance on the definition of “public service corporation” in § 56-1 is appropriate, because Title 56 establishes the regulatory powers and duties of the State Corporation Commission for public service companies and corporations.⁴ Section 56-1 provides that “[t]he words ‘public service corporation’ or ‘public service company’ shall include ... all persons authorized to transport passengers or property as a common carrier.”⁵ “‘Person’ includes individuals, partnerships, limited liability companies and corporations.”⁶ Based upon the facts that you provide, it does not appear that a corporation operating a rail-to-track transloading network that includes off-loading, storing and re-loading products for other commercial customers between railcars, containers and trucks would fall within the definition of public service corporation. However, § 58.1-3703(C)(1) also provides an exemption for the corporation if it was certified by the ICC or is presently registered for insurance purposes with the STB. That information is not before me and I offer no opinion on whether the exemption would apply based on an existing ICC Certificate or current registration with the STB for insurance purposes.

You also ask whether the real and business tangible property tax provisions of § 58.1-2607 of the *Code of Virginia* apply to the corporation. Section 58.1-2607 provides:

A. Notwithstanding the provisions of §§ 58.1-2604 and 58.1-2606, and beginning with assessments initially effective January 1, 1980, all assessments of real estate and tangible personal property of railroads shall be made by application of the local assessment ratio prevailing in such taxing district for other real estate as determined or published by the Department [of Taxation] except that land and noncarrier property shall be assessed as provided in § 58.1-2609.

² Section 58.1-3731 concerns certain public service companies, including telephone and telegraph companies, water companies, and heat, light and power companies, but does not relate to railroads or transloading companies.

³ I find no other applicable provisions of law that may be relevant to the response to your inquiries.

⁴ 2003 Op. Va. Att’y Gen. 164, 165.

⁵ A common carrier is one that “‘undertakes for hire to transport persons or commodities from place to place, offering his services to all . . . [who] choose to employ him and pay his charges.” *Bregel v. Busch Entertainment Corp.*, 248 Va. 175, 177, 444 S.E.2d 718, 719 (1994) (quoting *Carlton v. Boudar*, 118 Va. 521, 526, 88 S.E. 174, 176 (1916) (quoting *Black’s Law Dictionary*) and *Riggsby v. Tritton*, 143 Va. 903, 906, 129 S.E. 493 (1925)). Based upon the information you provide, and that gleaned from the corporation’s website, it does not appear that the corporation would meet this traditional definition of a common carrier.

⁶ VA. CODE ANN. § 56-1 (2012).

B. The real estate and tangible personal property (other than the rolling stock) of every railway company, but not its franchise, shall be assessed on the valuation fixed by the Department and shall be taxed by a county, city, town, and magisterial district at the real estate tax rate applicable in such respective locality.

Whether a particular piece of real or tangible personal property is property of a railroad or railway company necessarily must be determined on a property-by-property basis. In order for real and tangible personal property to be assessed and taxed pursuant to § 58.1-2607, such property must be owned by a railroad or a railway company.⁷ The facts presented in your request do not discuss specific property or identify its ownership. I am therefore unable to opine on the application of § 58.1-2607 on any particular piece of real or tangible personal property.⁸

Conclusion

Accordingly, it is my opinion that the exemption afforded under § 58.1-3703(C)(1) does not apply to the subsidiary of a Class I railroad that operates a transloading facility unless it was certified by the ICC during that agency's existence or is registered with the STB for insurance purposes. It is further my opinion that the application of § 58.1-2607 depends on who owns the real and tangible property being taxed.

With kindest regards, I am

Very truly yours,

A handwritten signature in black ink, appearing to read "Ken C II". The signature is written in a cursive style with a horizontal line under the "II".

Kenneth T. Cuccinelli, II
Attorney General

⁷ It cannot be assumed that the property on which the subsidiary operates its terminal is owned by the subsidiary. Additionally, your request is unclear as to what particular real and personal property is at issue.

⁸ The Attorney General "refrain[s] from commenting on matters that would require additional facts[.]" 2010 Op. Va. Att'y Gen. 56, 58.