



# COMMONWEALTH of VIRGINIA

Office of the Attorney General

Kenneth T. Cuccinelli, II  
Attorney General

July 12, 2013

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 Terry L. Yowell  
Commissioner of the Revenue  
Culpeper County  
151 North Main Street, Suite 201  
Post Office Box 1807  
Culpeper, Virginia 22701

Dear Ms. Yowell:

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 for guidance regarding the taxation of short-term rental property in a locality that does not have a local ordinance establishing either a merchant's capital tax or a tax on short-term rental property.

## Response

It is my opinion that short-term rental property is to be classified as a distinct category of merchants' capital and may be taxed by a locality as merchants' capital or as short-term rental property, but may not be classified or taxed as personal tangible property. It further is my opinion that a locality lawfully may decline to impose a tax on merchant's capital, including short-term rental property. Finally, it is my opinion that the absence of a local ordinance imposing a tax on merchant's capital or short-term rental property represents a choice by the locality's governing body not to impose a tax on such property.

## Background

As you relate, in 2010, the Virginia General Assembly amended § 58.1-3510.6(E) of the *Code of Virginia*, Short-Term Rental Property Tax, to exclude short-term rental property from being classified and taxed as tangible personal property.<sup>1</sup> The Code now provides that short-term rental property may be taxed as merchants' capital, or a locality may adopt a local ordinance authorizing a short-term rental

---

<sup>1</sup> 2010 Va. Acts chs. 225, 295.

property tax.<sup>2</sup> You state that the locality you serve has adopted neither a merchant's capital tax nor a short-term rental property tax.<sup>3</sup>

### Applicable Law and Discussion

Article X, § 1 of the Constitution of Virginia prescribes that “[a]ll property, except hereinafter provided, shall be taxed[,]” and further provides that “[t]he General Assembly may define and classify taxable subjects.” The Constitution also establishes that “[t]angible personal property is subject to local taxation only, to be assessed for local taxation in such manner and at such times as the General Assembly may prescribe by law.”<sup>4</sup> Additionally, the General Assembly is authorized to allow a local governing body “the option to exempt or partially exempt from taxation any business, occupational or professional license or any merchant's capital, or both.”<sup>5</sup>

The General Assembly, pursuant to this constitutional authority, has provided that tangible personal property shall consist of all personal property not otherwise classified as intangible personal property, as merchants' capital, or as short-term rental property.<sup>6</sup> The General Assembly further has declared that “[s]hort-term rental property shall constitute a classification of merchants' capital . . . .”<sup>7</sup> While the Code is clear that localities may tax such property as short-term rental property under § 58.1-3509, or may apply the merchants' capital tax authorized under § 58.1-3510.6, but not both,<sup>8</sup> the General Assembly also expressly has provided that “no county, city or town shall be required to impose a tax on [merchants'] capital.”<sup>9</sup>

Thus, although the General Assembly has enabled localities to tax short-term rental property, whether as merchant's capital or, in its own name as a distinct classification thereof, Virginia law does not require localities to do so. Based upon these facts, I necessarily must conclude that the absence of a local ordinance imposing a tax on either merchant's capital or short-term rental property represents a choice by the locality's governing body to decline to tax such property.

### Conclusion

Accordingly, it is my opinion that short-term rental property is to be classified as a distinct category of merchants' capital and may be taxed by a locality as merchants' capital or as short-term rental property, but may not be classified or taxed as personal tangible property. It further is my opinion that a locality lawfully may decline to impose a tax on merchant's capital, including short-term rental property.

---

<sup>2</sup> VA. CODE ANN. § 58.1-3510.4 (Supp. 2012)

<sup>3</sup> See § 58.1-3509 (2009) (providing, in relevant part, “The capital of merchants is segregated for local taxation only; however, no county, city or town shall be required to impose a tax on such capital[.]”) See also VA. CONST. art. X, § 6(j).

<sup>4</sup> VA. CONST. art. X, § 4.

<sup>5</sup> VA. CONST. art. X, § 6(j).

<sup>6</sup> VA. CODE ANN. § 58.1-3500 (Supp. 2012).

<sup>7</sup> Section 58.1-3510.4(A). “Merchants' capital” is broadly defined as “[i]nventory of stock on hand; daily rental vehicles as defined in § 58.1-1735; and *all other taxable personal property of any kind whatsoever*, except money on hand and on deposit and except tangible personal property not offered for sale as merchandise . . . .” Section 58.1-3510 (Supp. 2012) (emphasis added).

<sup>8</sup> Section 58.1-3510.4(A).

<sup>9</sup> Section 58.1-3509.

Honorable Terry L. Yowell

July 12, 2013

Page 3

Finally, it is my opinion that the absence of a local ordinance imposing a tax on merchant's capital or short-term rental property represents a choice by the locality's governing body not to impose a tax on such property.

With kindest regards, I am

Very truly yours,

A handwritten signature in black ink, appearing to read "Ken C II". The signature is stylized and written in a cursive-like font.

Kenneth T. Cuccinelli, II  
Attorney General