



COMMONWEALTH of VIRGINIA

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The Honorable Richard H. Black
Member, Senate of Virginia
Post Office Box 3026
Leesburg, Virginia 20177

Dear Senator Black:

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 the dual taxation of business tangible personal property by a county and a town is authorized by law.¹

Response

It is my opinion that a county and a town concurrently may assess tangible personal property taxes on business property located within the boundaries of both governmental entities.

Applicable Law and Discussion

Article X, § 4 of the Constitution of Virginia provides that tangible personal property is subject to local taxation only, and “shall be assessed for local taxation in such manner and at such times as the General Assembly may prescribe by general law.”² The General Assembly, in § 58.1-3511 of the *Code of Virginia*, has provided that “[t]he situs for the assessment and taxation of tangible personal property . . . shall in all cases be the county, district, town or city in which such property may be physically located on the tax day.”³ Accordingly, counties and towns in Virginia implicitly are separately authorized to assess tangible personal property taxes in accord with the situs provisions of § 58.1-3511.

¹ Because I answer this question in the affirmative, there is no need to address your second question regarding which local government otherwise would be authorized to assess the applicable tax.

² See also VA. CODE ANN. § 58.1-3000(A) (2013) (providing generally that all taxable tangible personal property is made subject to local taxation).

³ I note that § 58.1-3511 also contains particularized provisions regarding the situs for the taxation of motor vehicles, travel trailers, boats, and airplanes. These specific provisions are omitted, as they are not directly relevant to your inquiry.

Because a town is not completely independent of its host county,⁴ tangible personal property can be physically located in both a town and the surrounding county at the same time. Although a town possesses its own independent taxing authority,⁵ property there remains subject to the taxing authority of the county in which it is located. It is settled in Virginia that both a county and a town may assess taxes on the same property located within both localities. As the Supreme Court of Virginia has held, “an incorporated town continues to be an integral part of the county, subject to the jurisdiction of . . . county authorities and to taxation for general county purposes.”⁶ The Court further has found that the constitutional requirement of uniformity of taxation “forbids [the] exemption from county taxes of property located in a town.”⁷

Prior opinions of this Office likewise have affirmed that “[p]roperty located in an incorporated town within a county is subject to taxation by both the county and town,”⁸ and “[a] county and an incorporated town therein may each levy a tangible personal property tax on the same personal property located within the town.”⁹ Accordingly, based on the weight of this authority, I conclude that both a county and a town may assess tangible personal property taxes on business property located within both localities.

You question whether the use of the disjunctive “or” in § 58.1-3511 serves to preclude such concurrent taxation. Section 58.1-3511 provides that “[t]he situs for the assessment and taxation of tangible personal property . . . shall in all cases be the county, district, town *or* city in which such property may be physically located on the tax day.”¹⁰ “Generally, phrases separated by a comma and the disjunctive ‘or’ are independent.”¹¹ Nevertheless, “[w]henver it is necessary to effectuate the obvious

⁴ Unlike cities, towns in Virginia do not exist independently of the counties in which they are located. *See* *Cnty. of Brunswick v. Peebles & Purdy Co.*, 138 Va. 348, 358, 122 S.E. 424, 427 (1924) (“A city is entitled, under the provisions of article VI of the Constitution, to a separate government, and when incorporated is no part of the county for governmental purposes. But this is not true of a town. Its people and property are still subject to county government for county purposes.”).

⁵ *See* VA. CODE ANN. § 15.2-1104 (2012) (providing a town general authority to assess taxes on “property, persons, and other subjects of taxation, which are not prohibited by law”).

⁶ *Nexsen v. Bd. of Supvrs.*, 142 Va. 313, 318, 128 S.E. 570, 571 (1925).

⁷ *See* 1970-71 Op. Va. Att’y Gen. 386, 386 (paraphrasing a key holding of *Campbell v. Bryant*, 104 Va. 509, 515-16, 52 S.E. 638, 640 (1905)). With respect to the constitutional requirement of uniformity of taxation, Article X, § 1 of the Virginia Constitution provides generally that all taxes “shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax.”

⁸ 2009 Op. Va. Att’y Gen. 164, 166; *see* 1970-71 Op. Va. Att’y Gen. at 386; 1969-70 Op. Va. Att’y Gen. 276, 276. Although two of these opinions were issued prior to the 1972 amendment adding “town” to § 58.1-3511, the 1972 amendment is not inconsistent with the underlying logic of the opinions. It merely corrected a legislative omission by which the earlier version of the statute could have been interpreted to mean that towns have no taxing authority over personal property.

⁹ 1969-70 Op. Va. Att’y Gen. at 276; *see also* 1970-71 Op. Va. Att’y Gen. at 386 (concluding that residents of the Town of Middletown are subject to personal property taxes assessed by the Town as well as by Frederick County).

¹⁰ Emphasis added.

¹¹ *Lampkins v. Commonwealth*, 44 Va. App. 709, 717, 607 S.E.2d 722, 726 (2005) (citing *Smoot v. Commonwealth*, 37 Va. App. 495, 501, 559 S.E.2d 409, 412 (2002)).

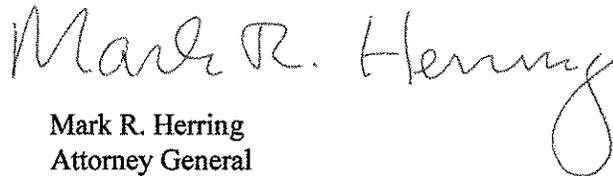
intention of the legislature, disjunctive words may be construed as conjunctive, and *vice versa*.¹² As noted above, our Supreme Court has held that residents of a town remain subject to taxation for general county purposes, and that the constitutional requirement of uniformity of property taxation requires county taxes to be assessed against property located in a town. This precedent predates the addition of “town” to the situs provision of § 58.1-3511.¹³ “The General Assembly is presumed to be aware of the decisions of [the Supreme Court of Virginia] when enacting legislation.”¹⁴ Accordingly, when the legislature included “town” in the list of entities authorized to impose a tax on tangible personal property, it did so knowing that the town constitutionally would not be permitted to be exempted from county taxation of the same property. Accordingly, § 58.1-3511 cannot be read in the disjunctive, but it must be read so as to allow the imposition of tangible personal property taxes by both a county and a town.¹⁵

Conclusion

Accordingly, it is my opinion that a county and town concurrently may assess tangible personal property taxes on business tangible personal property located within their mutual boundaries.

With kindest regards, I am

Very truly yours,


Mark R. Herring
Attorney General

¹² *Indus. Dev. Auth. v. La France Cleaners & Laundry Corp.*, 216 Va. 277, 280, 217 S.E.2d 879, 882 (1975) (alteration in original) (quoting *S. E. Pub. Serv. Corp. v. Commonwealth*, 165 Va. 116, 122, 181 S.E. 448, 450 (1935)).

¹³ *See* 1972 Va. Acts ch. 185 (inserting the word “town” into the list of taxing entities of the disjunctive phrase found in the predecessor statute to § 58.1-3511). The applicable cases were decided in 1905 and 1924, *see supra* notes 6 and 7.

¹⁴ *Waterman v. Halverson*, 261 Va. 203, 207, 540 S.E.2d 867, 869 (2001).

¹⁵ In addition, as a comparison, I note that when the General Assembly has intended to limit the authority of counties and towns simultaneously to assess taxes not subject to the uniformity requirement, it expressly has done so. For example, any county license tax assessed pursuant to § 58.1-3703 does not apply within the limits of a town located within such county if the town imposes a license tax on the same privilege. *See* § 58.1-3711 (2013).