



COMMONWEALTH of VIRGINIA

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The Honorable T. Scott Harris
Hanover County Commissioner of the Revenue
Post Office Box 129
Hanover, Virginia 23069

Dear Commissioner Harris:

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 purposes of the valuation of property for the taxation of tangible personal property and the taxation of machinery and tools, whether the terms “original cost” as used in § 58.1-3503(A)(17) and “original total capitalized cost” as used in § 58.1-3507(B) of the *Code of Virginia* mean the cost paid by the original purchaser of the property from the manufacturer, or the current owner’s purchase price.

Response

It is my opinion that the terms “original cost” as used in § 58.1-3503(A)(17) and “original total capitalized cost” as used in § 58.1-3507(B) mean the original cost paid by the original purchaser of the property from the manufacturer or dealer and not the price paid by the current owner.

Background

You advise that, for decades, the Hanover County Commissioner of Revenue has assessed a tax on machinery and tools located within the County by valuing the property at a percentage (10%) of the original cost paid by the original purchaser of the asset being taxed. A local manufacturer purchased machinery and tools, indisputably subject to this tax, in a bankruptcy sale in 2012. The question has arisen whether the “original total capitalized cost” of these assets, used to determine their fair market value for tax purposes, means the purchase price paid by the current owner, which in this case is the amount that the local manufacturer paid when it purchased the assets in a bankruptcy sale, or the price of the tools paid by the original purchaser of the property.

Applicable Law and Discussion

The Constitution of Virginia requires that “all taxes shall be uniform upon the same class of subjects”¹ and all assessments of tangible personal property “shall be at their fair market value, to be

¹ VA. CONST. art. X, § 1.

ascertained as prescribed by law.”² Tangible personal property is segregated for and made 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.”³

In determining the value of tangible personal property, the General Assembly has provided that such property, when used in a trade or business, unless otherwise specified, “shall be valued by means of a percentage or percentages of *original cost*.”⁴ Machinery and tools are further segregated as a separate class of tangible personal property,⁵ and the General Assembly has prescribed that such property “shall be valued by means of depreciated cost or a percentage or percentages of *original total capitalized cost* excluding capitalized interest.”⁶

Although the General Assembly has provided no definition for the terms “original cost” and “original total capitalized cost,” the statutes establishing the method of valuation clearly refer simply to the “original” cost of the property. They do not use any language referencing the purchase price of the taxpayer.

As a 2009 Opinion that similarly addresses the meaning of “original cost” in § 58.1-3503(A)(17) states, “words in a statute are to be construed according to their ordinary meaning, given the context in which they are used.”⁷ That Opinion concluded that the term “original cost” means “the acquisition cost of property from manufacturer or dealer, i.e., original cost paid by original purchaser of such property from manufacturer or dealer.”⁸ Because the General Assembly has not amended this language since this Opinion was issued,⁹ I affirm its conclusion that “original cost” means the “the cost paid by the original, or first, purchaser of such personal property[.]”¹⁰ and not the purchase price paid by a subsequent owner paying the tax.

I similarly must conclude that the plain meaning of “original total capitalized cost” refers to the cost of the product when new. Reading the numerous subsections of § 58.1-3503(A) as a whole further clarifies the proper interpretation of the terms “original cost” and “original total capitalized cost.” There is a notable distinction between the term “original cost,” used in subsections 4, 5, 10, 11, 12, 13, 15, and 17, and the term “original cost *to the taxpayer*,” used in subsection 16.¹¹ Had the General Assembly intended the term “original cost” or “original total capitalized cost” standing alone to mean the cost to the

² VA. CONST. art. X, § 2.

³ VA. CONST. art. X, § 4.

⁴ VA. CODE ANN. § 58.1-3503(A)(17) (2013) (emphasis added).

⁵ Section 58.2-3507(A) (2013).

⁶ Section 58.1-3507(B) (emphasis added).

⁷ *Id.* (quoting *City of Va. Beach v. Bd. of Supvrs.*, 246 Va. 233, 236, 435 S.E.2d 382, 384 (1993)).

⁸ 2009 Op. Va. Att’y Gen. 177, 178.

⁹ “The legislature is presumed to have had knowledge of the Attorney General’s interpretation of the statutes, and its failure to make corrective amendments evinces legislative acquiescence in the Attorney General’s view.” *Beck v. Shelton*, 267 Va. 482, 492, 593 S.E.2d 195, 200 (2004) (quoting *Browning-Ferris, Inc. v. Commonwealth*, 225 Va. 157, 161-62, 300 S.E.2d 603, 605-06 (1983)).

¹⁰ 2009 Op. Va. Att’y Gen. at 178.

¹¹ Section 58.1-3503(A) (emphasis added).

taxpayer/current owner of the assets, there would be no need to make such distinction elsewhere in the Code.¹²

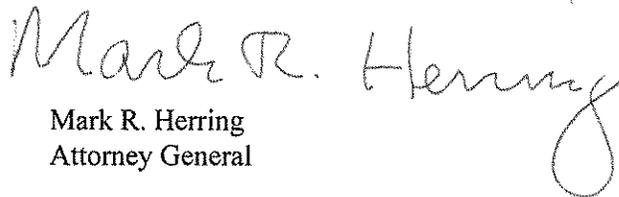
Because “the practical construction given to a statute by public officials charged with its enforcement is entitled to great weight by the courts and in doubtful cases will be regarded as decisive[.]”¹³ it is significant that these conclusions are further supported by rulings of the Commissioner of the Department of Taxation. In a situation analogous to the circumstances leading to your inquiry, in which a company purchased assets at a bankruptcy sale and claimed their purchase price at the bankruptcy sale was the “original cost,” the Tax Commissioner determined that a city’s interpretation of original cost as the cost paid by the owner who first purchased the property was consistent with statutory requirements.¹⁴ In a subsequent opinion, the Tax Commissioner defined the term “original total capitalized cost” as “the purchase price of the owner that first purchased the machinery and tools, not the Taxpayer’s cost.”¹⁵

Conclusion

Accordingly, it is my opinion that the terms “original cost” as used in § 58.1-3503(A)(17) and “original total capitalized cost” as used in § 58.1-3507(B) mean the original cost paid by the original purchaser of the property from the manufacturer or dealer.¹⁶

With kindest regards, I am

Very truly yours,



Mark R. Herring
Attorney General

¹² When the legislature omits language from one statute that it has included in another, courts may not construe the former statute to include that language, as doing so would ignore “an unambiguous manifestation of a contrary intention” of the legislature. *See* *Halifax Corp. v. Wachovia Bank*, 268 Va. 641, 654, 604 S.E.2d 403, 408 (2004).

¹³ *Commonwealth v. Appalachian Electric Power Co.*, 193 Va. 37, 45-46, 68 S.E.2d 122, 127 (1951).

¹⁴ *See* Va. Tax Comm’r Priv. Ltr. Rul., Pub. Doc. 12-27 (Mar. 16, 2012), *available at* <http://www.policylibrary.tax.virginia.gov/OTP/policy.nsf>.

¹⁵ *See* Va. Tax Comm’r Priv. Ltr. Rul., Pub. Doc. 13-20 (Feb. 15, 2013), *available at* <http://www.policylibrary.tax.virginia.gov/OTP/policy.nsf>.

¹⁶ I am mindful that this construction can lead the fair market value of property for purposes of the machinery and tools tax or the personal property tax to be significantly more than what the current owner/taxpayer paid for the property, as is evidenced by the bankruptcy sale at issue in your request. The fair market value of an asset generally might exceed the purchase price paid for that asset at bankruptcy or similar foreclosure sale. *See* *City of Martinsville v. Commonwealth Blvd. Assocs., LLC*, 268 Va. 697, 604 S.E.2d 69 (2004). This does not, however, necessarily lead to taxation based upon more than fair market value in violation of Article X, § 2 of the Constitution of Virginia. As the Supreme Court of Virginia has stated,

The fair market value of property, as that term is here used means the price which it will bring when it is offered for sale by one who desires, but is not obliged, to sell it, and is bought by one who is under no necessity of having it.

American Viscose Corp. v. Roanoke, 205 Va. 192, 194, 135 S.E.2d 795, 797 (1964) (citing § 169 of the 1902 Constitution of Virginia, the predecessor to Art. X, § 2 of the 1971 Constitution). Thus, this construction of §§ 58.1-3503(A) and 58.1-3507(B) is in accord with the constitutional requirements of uniformity and fair market value.