TAXATION: LOCAL TAXES — REVIEW OF LOCAL TAXES – CORRECTION OF
ASSESSMENTS, REMEDIES AND REFUNDS.

COUNTIES, CITIES AND TOWNS: BUDGETS, AUDITS AND REPORTS.

Authority of board of supervisors to expend funds appropriated in county budget only for
activities supported by statute does not include authority to refund surplus real property
taxes that have not been certified by commissioner of revenue as having been erroneously
assessed.

The Honorable Paul Clinton Harris Sr.
Member, House of Delegates
July 12, 2000

You ask whether the Albemarle County board of supervisors has authority to refund to the
citizens of the county surplus revenues from its fiscal year 1999-2000 budget, which were
generated by an increase in real estate taxes collected from the county’s taxpayers for calendar
year 2000.

You report that on April 12, 2000, the county board of supervisors voted to increase the local real
estate tax rate for calendar year 2000 from 72 to 76 cents per $100 of assessed value. You
advise that the board assumed incorrectly that the tax increase would become effective during
the 2000-2001 fiscal year beginning on July 1, 2000. You advise further that, since the county
operates on a biannual billing cycle (spring and fall), the tax increase became effective
immediately upon adoption by the board. Consequently, you advise that the increase in the
county’s real estate tax rate has resulted in an unanticipated revenue surplus of $1.2 million to
the 1999-2000 budget for Albemarle County.

Section 58.1-3001 provides that “[t]he governing body of each county shall, at its regular meeting
in the month of January in each year, or as soon thereafter as practicable not later than a regular
or called meeting in June, fix the amount of the county and district taxes for the current year.” A
1973 opinion of the Attorney General concludes that the purpose of this provision is to require a
county to set a tax rate early in the tax year.¹

In the counties of the Commonwealth, boards of supervisors exercise fiscal control through two
distinct processes, budgeting and appropriations. Budgeting is a planning process, required by
the General Assembly, to anticipate revenue needs and to make decisions about the priority of
programs and level of services to be provided.² Budgets adopted by local governing bodies are,
therefore, for planning and informative purposes³ and are statutorily distinguished from
appropriations.⁴ The appropriations process is the mechanism by which funds are made available
for spending on those programs and operations the governing body has decided to support. The
local governing body may disburse money only pursuant to an appropriation for a contemplated
expenditure.⁵ Thus, adoption of a budget that contemplates certain expenditures does not
automatically result in the expenditure of money for that purpose.

The General Assembly limits the board’s discretionary control over county spending. The board
may not spend county funds for activities that are not directly authorized or reasonably implied by
law. Virginia follows the Dillon Rule of strict construction concerning the powers of local governing
bodies, limiting such powers to those conferred expressly by law or by necessary implication from
such conferred powers.⁶ As a consequence, each expenditure planned in the budget must be
supported by statutory authority.
A 1987 opinion of the Attorney General concludes that a “board [of supervisors] has no independent authority to compromise claims for legally assessed taxes.” Another 1987 opinion concludes that a city council lacks authority to refund a personal property tax payment that the commissioner of the revenue has not certified as an erroneous tax assessment. I am aware of no statutory enactment following these opinions that would authorize a board of supervisors to refund the real property taxes in question, in the absence of the local commissioner of the revenue’s certification of an erroneous tax assessment.

Absent further legislative action by the General Assembly, §§ 58.1-3981 and 58.1-3990 are the only statutes that permit the refund of such taxes. The provisions of § 58.1-3981(A)-(B) require the commissioner of the revenue, or other official performing the duties of a commissioner, to correct assessments when he is satisfied that he has erroneously assessed the applicant-taxpayer or that such assessment is the result of a factual error made by others conducting general assessments. Section 58.1-3990 authorizes localities to provide by ordinance for the refund of taxes erroneously paid. Under such an ordinance, the tax collecting officer has authority to refund local taxes that are certified by the commissioner as having been erroneously assessed by him. Section 58.1-3990 also permits a local governing body to refund any local tax that a court of competent jurisdiction declares unconstitutional.


See §§ 15.2-2500 to 15.2-2508.

3 See §§ 15.2-2503, 15.2-2506.


5 Section 15.2-2506.


8 1986-1987 Op. Va. Att’y Gen. 315, 316 (conclusion assumes court has not declared such tax unconstitutional); see id. at 317, 318 (authority of county board of supervisors to settle and compromise claims does not extend to authority of board to compromise claims or suits relating to legally assessed taxes, absent specific statutory authority).

9 Section 58.1-3990; see also § 58.1-3981(E).