TAXATION: REAL PROPERTY TAX – SPECIAL ASSESSMENT FOR LAND PRESERVATION.

Splitting off of smaller parcels from large tract does not make such tract ineligible for land use assessment and taxation. Question whether taxpayer made material misstatement of facts in revalidation application or that material change in facts has occurred is decision to be made by commissioner of revenue based on all relevant facts. Use of statutory procedures to correct erroneous assessments. No authority for local governing body to determine if property qualifies for special land use assessment and taxation in individual case.

The Honorable Judy S. Crook  
Commissioner of the Revenue for Franklin County  
February 15, 2002

You inquire regarding the revalidation procedure of certain land for special assessment.

You relate that a taxpayer timely applied for and participates in a locality’s land use assessment program. You also relate that, in 1999, the taxpayer timely filed the locality’s annual revalidation application for continued participation in the program. After filing the application but before the January 1, 2000, assessment date, the taxpayer conveyed two parcels of the qualifying property to his son, which you later discovered. You note that the son has paid rollback taxes on the two parcels.

You first inquire whether, pursuant to § 58.1-3234 of the Code of Virginia, a commissioner of the revenue may void the taxpayer’s revalidation form for land use assessment as to the remaining property. For the purposes of this opinion, I shall assume that the remaining property meets the acreage necessary to qualify for the special use assessment. I further assume that the use of such property has not changed and that the separation of the parcels in question does not constitute a subdivision of the property under a local ordinance.

Article 4, Chapter 32 of Title 58.1, §§ 58.1-3229 through 58.1-3244, sets forth the provisions for the special assessment of real property for land preservation. The manifest purpose of these statutes is to create a financial incentive to encourage the preservation and proper use of real estate devoted to agricultural, horticultural,
forest, and open-space uses.\(^1\) Thus, Article 4 provides for favorable
tax treatment of property devoted to such uses so long as such
property satisfies the applicable use and acreage requirements, as
established in §§ 58.1-3230 and 58.1-3233(2).\(^2\)

Section 58.1-3241 addresses the consequences of separating,
splitting off, or subdividing lots from real estate which is being
valued, assessed, and taxed under a land use assessment
program. Section 58.1-3241(A) states that such actions "shall not
impair the right of each subdivided parcel … to qualify for [special
use] valuation, assessment and taxation …, provided it meets the
minimum acreage requirements and such other conditions … as
may be applicable." Importantly, § 58.1-3241(A) adds that such
separation "shall not impair the right of the remaining real estate to
[retain] such valuation, assessment and taxation." Accordingly, this
Office previously has concluded that § 58.1-3241 makes it clear
that the split-off of a small parcel does not, in and of itself, cause an
otherwise qualifying larger tract to lose its eligibility for valuation,
assessment, and taxation under a land use ordinance during the
year in which the split-off occurred.\(^3\) In the instant case, therefore,
the mere splitting off of the smaller parcels from the large tract does
not make such tract ineligible for land use assessment and
taxation.

In order for a property owner to qualify for land use value
assessment, § 58.1-3234 requires him to first "submit an
application for taxation on the basis of a use assessment to the
local assessing officer." You indicate that the taxpayer in issue has
properly done so. Section 58.1-3234(3) permits a locality, by
ordinance, to require the owner to "revalidate annually with such
locality, on or before the date on which the last installment of
property tax prior to the effective date of the assessment is due, on
forms prepared by the locality, any applications previously
approved." You provide that the taxpayer also has complied with
this requirement.\(^4\) Lastly, § 58.1-3234(3) provides:

In the event of a material misstatement of facts in the
application or a material change in such facts prior to
the date of assessment, such application for taxation
based on use assessment granted thereunder shall
be void and the tax for such year extended on the
basis of [fair market] value.\(^5\)

The facts presented do not suggest that the taxpayer has made a
material misstatement of facts in the revalidation application or that
a material change in facts has occurred;\(^6\) however, this
determination is ultimately one to be made by the commissioner of the revenue based on all the relevant facts.  

You next ask whether a taxpayer may file a petition under § 58.1-3984 to correct an erroneous assessment for removal of a parcel from land use designation. Section 58.1-3243 provides that the provisions of Title 58.1 "shall be applicable to assessments and taxation" under the special use provisions, including "the correction of erroneous assessments."

Finally, you inquire whether a local governing body has the authority to determine whether a particular parcel qualifies for land use assessment and taxation. I am unaware of any statute that authorizes the local governing body to determine if property qualifies for special land use assessment and taxation in an individual case.


6 See also § 58.1-3238 (Michie Repl. Vol. 2000) (providing that misstatement of number and identities of known property owners, actual use of property, or intentional misrepresentation of acreage on application shall be considered material misstatement of fact).


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