TAXATION: REAL PROPERTY TAX – REASSESSMENT/ASSESSMENT (VALUATION) PROCEDURE AND PRACTICE – PUBLIC TAKING OF PRIVATE REAL ESTATE – BOARDS OF EQUALIZATION.

Parcel of real estate remaining after division of property, resulting in two or more different owners, does not have to be reassessed immediately during first year of biennial real estate assessment cycle; must be reassessed as of January 1 of second year of biennial assessment cycle, taking into consideration value of land as divided. Authority for board of equalization to hear and consider taxpayer complaints in second year of biennial assessment.

The Honorable Gene R. Ergenbright
Commissioner of the Revenue for the City of Saunton
December 11, 2002

Issues Presented

You ask two questions related to a tax assessment of real estate that has been affected by eminent domain proceedings. First, you ask whether, as a result of the Commonwealth acquiring a portion of real estate through eminent domain proceedings in the first year of a locality’s biennial real estate assessment cycle, the remaining parcel of real estate must be reassessed during that year. You ask next whether a permanent board of equalization may adjust an assessment in the second year of a biennial assessment.

Response

It is my opinion that the parcel of real estate remaining after division of the property, resulting in two or more different owners, does not have to be reassessed immediately during the first year of the biennial real estate assessment cycle. Section 58.1-3290, however, requires that the remaining parcel be reassessed as of January 1 of the second year of the biennial assessment cycle, taking into consideration the value of the land as divided. Further, it is my opinion that, absent a local ordinance prohibiting such a determination, the board of equalization may hear and consider taxpayer complaints in the second year of a biennial assessment program.

Facts
As a result of an eminent domain proceeding in December 2001, a taxpayer in the City of Staunton transferred to the Department of Transportation title to certain property. The local real estate assessor prorated the taxpayer’s 2001 tax assessment, which was carried forward to the 2002 tax assessment. The adjustment reflected only the land transferred and did not address whether there was a change in the per acre value of the land as a result of the transfer.

The City of Staunton has created a permanent board of equalization pursuant to § 58.1-3373. The city performs a general reassessment of real estate on a biennial basis. The last general reassessment was January 1, 2001. The assessor has indicated that the only change in assessment that should occur prior to January 1, 2003, is the pro-rata adjustment that has already taken place.

**Applicable Law**

The following three statutes, relating to assessments and the authority of a board of equalization, are pertinent to the questions you pose. Specifically, § 58.1-3360 provides, in part:

> Any taxpayer whose lands, or any portion thereof, are in any year acquired or taken in any manner by the United States, the Commonwealth, a political subdivision, or a church or religious body, which is exempt from taxation by Article X, Section 6 of the Constitution of Virginia, shall be relieved from the payment of taxes and levies from the date of divestment of such land for that portion of the year in which the property was taken or acquired.

Next, § 58.1-3290 provides, in part:

> When a tract or lot becomes the property of different owners in two or more parcels, subsequent to any general reassessment of real estate in the city or county in which such tract or lot is situated each of the two or more parcels shall be assessed and shown separately upon the land books, as required by law. The commissioner of the revenue, in assessing each lot or parcel, shall assess the same at its fair market value as of January 1 of the year next succeeding the year in which the tract or lot of land becomes the property of several owners, without regard to the
value at which such tract of land was assessed as a whole, but with regard to other assessments of lots, pieces or parcels of land in the city or county. [Emphasis added.]

Finally, § 58.1-3378 provides that "[e]ach board of equalization shall sit at and for such time or times as may be necessary to discharge the duties imposed and to exercise the powers conferred by [Chapter 32 of Title 58.1]."¹

Discussion

You first ask whether a pro-rata adjustment made to an assessment, due to acquisition of the taxpayer’s property by the state during the first year of a biennial assessment, may be carried forward to the second year when such assessment does not reflect the per acre change in value, if any, of the divided parcel. Section 58.1-3360 requires an abatement of real estate taxes when taxed property is acquired or taken by the state, other governmental entities or certain tax-exempt entities. The abatement is applied on a pro-rata basis for the portion of the year in which the property is acquired and belongs to the state or tax-exempt entity.² In addition, § 58.1-3290 requires that, whenever a tract of land becomes the property of different owners in two or more parcels,³ each parcel must be reassessed and shown separately on the land books.⁴ The new assessment must be made, without regard to the value of the original tract as a whole, as of January 1 of the year following the year of the property’s division.⁵ The statute, therefore, requires a reassessment of the remaining parcel of real estate. That reassessment is not required in the first year of the biennial reassessment cycle; however, § 58.1-3290 does require the remaining parcel to be reassessed as of January 1 of the second year of the biennial assessment cycle, taking into consideration the value of the land as divided.

You next ask whether a permanent board of equalization may adjust an assessment in the second year of a biennial assessment. The City of Staunton has a permanent board of equalization. Section 58.1-3378 provides that "[e]ach board of equalization shall sit at and for such time or times as may be necessary to discharge the duties imposed and to exercise the powers conferred." Absent ambiguity, the plain meaning of a statute must prevail.⁶ The plain language of § 58.1-3378 confers upon the city’s board of equalization the power to meet as necessary to discharge its duties and powers. Section 58.1-3290 imposes a duty to reassess, during a certain time period, a parcel that has been divided, resulting in
two or more owners. Moreover, there is no statutory language prohibiting the board of equalization from meeting in the second year of a biennial cycle. A 1988 opinion of this Office concludes that a board of equalization may not meet in the second year of the biennial cycle, because the local ordinance prohibited a meeting in the second year of a biennial assessment.Absent prohibitive language in a local ordinance, the city's board of equalization may meet in the second year of a biennial assessment cycle as authorized by § 58.1-3378.

Conclusion

Accordingly, it is my opinion that the parcel of real estate remaining after division of the property, resulting in two or more different owners, does not have to be reassessed immediately during the first year of the biennial real estate assessment cycle. Section 58.1-3290, however, requires that the remaining parcel be reassessed as of January 1 of the second year of the biennial assessment cycle, taking into consideration the value of the land as divided. Further, it is my opinion that, absent a local ordinance prohibiting such a determination, the board of equalization may hear and consider taxpayer complaints in the second year of a biennial assessment program.

1Chapter 32 of Title 58.1 pertains to real property taxation and encompasses §§ 58.1-3360, 58.1-3290 and 58.1-3378.


3Following the condemnation, the parcel is divided into two or more parcels, resulting in two different owners—the state and the original landowner.


5Id.


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