Issues Presented

You ask several questions regarding the disclosure of information received by your office. You first ask whether a commissioner of the revenue may distribute, upon request, a list of the names and addresses of businesses licensed within his locality. Second, you ask when a business is considered to be trading under an assumed or fictitious name for purposes of § 58.1-3. Finally, you inquire whether a commissioner of the revenue may disclose the names and addresses of licensed businesses within his locality to be used for solicitation purposes.

Response

It is my opinion that § 58.1-3 does not prohibit a commissioner of the revenue from releasing the names and addresses of businesses licensed within his locality. It is further my opinion that a business is considered to be trading under an assumed or fictitious name for the purposes of § 58.1-3, when an assumed or fictitious name certificate is filed as required by § 59.1-69(A). Finally, it is my opinion that a commissioner of the revenue may release the names and addresses of licensed businesses within his locality to be used for solicitation purposes.

Applicable Law and Discussion

You first ask whether a commissioner of the revenue is prohibited from releasing the names and addresses of businesses licensed...
within his locality. Section 58.1-3(A) requires that tax officials keep confidential certain information received by them:

Except in accordance with a proper judicial order or as otherwise provided by law, the … commissioner of the revenue … shall not divulge any information acquired by him in the performance of his duties with respect to the transactions, property, including personal property, income or business of any person, firm or corporation.

Section 58.1-3(B) permits the release of certain information by a commissioner of the revenue. Section 58.1-3(B) provides, in part, that "[t]his section shall not be construed to prohibit a local tax official from disclosing whether a person, firm or corporation is licensed to do business in that locality and divulging, upon written request, the name and address of any person, firm or corporation transacting business under a fictitious name."

Section 58.1-3(A) protects information related to "transactions, property, including personal property, income or business of any person, firm or corporation." The disclosure prohibition does not extend to whether a person, firm or corporation is licensed to do business. Section 58.1-3(B) provides an explicit exception to the confidentiality requirements of § 58.1-3(A). This Office previously has concluded that a commissioner of the revenue is authorized to release the names, addresses, and telephone numbers of businesses licensed within his locality.

You also ask when a business is considered to be trading under an assumed or fictitious name for the purposes of § 58.1-3(B). An assumed or fictitious name certificate is required when the name under which business is transacted does not fairly disclose true ownership. While § 58.1-3(B) does not prohibit a commissioner of the revenue from releasing the names and addresses of businesses licensed within his locality, it does require a written request before a commissioner may disclose the true ownership of businesses using assumed or fictitious names.

Chapter 5 of Title 59.1, §§ 59.1-69 through 59.1-76, sets forth the requirements for transacting business in the Commonwealth under an assumed or fictitious name. "[T]he object of [Chapter 5] is to protect the public by giving information as to the person with which it deals and to afford it protection against possible fraud and deceit." Section 59.1-69(A) prohibits any "person" from conducting
or transacting business in Virginia under an assumed or fictitious name without filing an assumed or fictitious name certificate. ⑦

The primary purpose of statutory construction is to "ascertain and give effect to legislative intent."⑧ Statutes are to be read as a whole rather than in isolated parts.⑨ Section 58.1-3(B) removes from the protection of privacy the actual identity of a business trading under a fictitious name; requires a written request prior to the release of the true identity of a business; and provides access to such information to the public. The apparent purpose of Chapter 5 of Title 59.1 and the exemption from privacy under § 58.1-3(B) is to protect the public from fraud and deceit by persons trading under assumed and fictitious names. Accordingly, the phrase, "assumed or fictitious name," should have the same meaning in both statutory schemes. Therefore, a business required by § 59.1-69(A) to sign, acknowledge, and file an assumed or fictitious name certificate with the appropriate circuit court is a business considered to be trading under a fictitious name for purposes of § 58.1-3(B).

You also inquire whether the names and addresses of licensed businesses may be disclosed when the proposed use is for solicitation purposes. You believe § 58.1-4 may prohibit you from releasing the names and addresses of licensed businesses when you suspect that the information will be used for solicitation purposes. Section 58.1-4 prohibits, "for the purpose of solicitation," the disclosure of any information gathered by a person, firm or corporation preparing a state tax return required by Title 58.1 or federal income tax or estate tax return for another party.

Section 58.1-4 is a general prohibition against the disclosure of certain tax information by parties who prepare tax returns for other persons. Regardless of a commissioner of the revenue’s involvement in completing or assisting with a Business Professional and Occupation License application or return, once the license is issued, § 58.1-3(B) specifically allows a local tax official to disclose the name and address of a business that is licensed in his locality. Section 58.1-3(B) authorizes the release of this information without regard to the motivations behind the request. The general prohibitions provided in § 58.1-4 may not be interpreted to repeal by implication the disclosure specifically authorized by § 58.1-3.⑩ A commissioner of the revenue, therefore, is not prohibited from releasing nonprotected information that will be used for purposes of solicitation.⑪

As commissioner of the revenue, you may provide the name and address of a business licensed within your locality. You need not do
so, however, absent a request pursuant to The Virginia Freedom of Information Act. Upon such request, a commissioner of the revenue is not required to create a list that does not already exist.

**Conclusion**

Accordingly, it is my opinion that § 58.1-3 does not prohibit a commissioner of the revenue from releasing the names and addresses of businesses licensed within his locality. It is further my opinion that a business is considered to be trading under an assumed or fictitious name, for the purposes of § 58.1-3, when an assumed or fictitious name certificate is filed as required by § 59.1-69(A). Finally, it is my opinion that a commissioner of the revenue may release the names and addresses of licensed businesses within his locality to be used for solicitation purposes.

1 See also 1989 Op. Va. Att'y Gen. 304, 305 (concluding that commissioner of revenue may not release information related to amounts of coal and taxes collected from coal company).


4 I assume that you are seeking guidance as to when a written request is required in connection with the release of information regarding the true ownership of a business.

5 See Tate v. Atlanta Oak Flooring Co., 179 Va. 365, 368-69, 18 S.E.2d 903, 905 (1942).

6 Tate, 179 Va. at 367-68, 18 S.E.2d at 904.

7 "No person, … shall conduct or transact business in this Commonwealth under any assumed or fictitious name unless such person, … shall sign and acknowledge a certificate setting forth the name under which such business is to be conducted or transacted, and the names of each person, … owning the same, with their respective post-office and residence addresses … and file the same in the office of the clerk of the court in which deeds are recorded in the county or city wherein the business is to be conducted." Va. Code Ann. § 59.1-69(A) (Michie Repl. Vol. 2001).


9 See Tilton v. Commonwealth, 196 Va. 774, 784, 85 S.E.2d 368, 374 (1955) (noting principle that "every provision in or part of a statute shall be given effect if possible"), quoted in Gallagher v. Commonwealth, 205 Va. 666, 669, 139 S.E.2d

10 See Supervisors v. Commonwealth, 116 Va. 311, 313, 81 S.E. 112, 112-13 (1914) (noting that law does not favor repeal by implication, unless repugnance is plain, and then only to extent of repugnancy); see also 1996 Op. Va. Att'y Gen. 134, 135.

11 See generally Associated Tax Service v. Fitzpatrick, 236 Va. 181, 186-87, 372 S.E.2d 625, 628-29 (1988) (holding that real estate tax information must be released pursuant to Freedom of Information Act request regardless of purpose or motivation behind request).
