

OP. NO. 05-038

CONSTITUTION OF VIRGINIA: TAXATION AND FINANCE (UNIFORMITY OF TAXATION) (ASSESSMENTS).

**TAXATION: REAL PROPERTY TAX – BOARDS OF EQUALIZATION —
REVIEW OF LOCAL TAXES – CORRECTION OF ASSESSMENTS,
REMEDIES AND REFUNDS.**

Fact that lands of one or few taxpayers are assessed at differing percentages of fair market value is not, *per se*, violation of legal requirements; redress may be had at locality's board of equalization or by judicial appeal. Material, systematic, and intentional discrimination against individual taxpayers or group of taxpayers may violate Virginia and federal constitutional requirements.

The Honorable Vincent F. Callahan, Jr.
Member, House of Delegates
August 19, 2005

Issue Presented

You inquire concerning apparent inconsistent percentages of real property assessments in Fairfax County. You ask whether these assessments meet the applicable legal requirements, particularly the requirement in Article X, § 2 of the Constitution of Virginia that all assessments of real estate be at full fair market value.

Response

It is my opinion that the fact that the lands of one or a few taxpayers are assessed at differing percentages of fair market value is not, *per se*, a violation of the legal requirements. In such cases, redress may be had at the locality's board of equalization,¹ by bringing the situation to the attention of the local commissioner of the revenue, or by judicial appeal. Where it is shown that a material, systematic, and intentional discrimination has been made against individual taxpayers or a group of taxpayers, it is my opinion that such action may violate Virginia and federal constitutional requirements.

Background

You relate that a comparison of seventy-five current Fairfax County residential real estate² assessments, which are within the same postal zip code,³ with their respective 2004 sales prices reveals that the assessments range from 21.19% to 120.5% of their sales prices.

You also provide specific examples: (1) one such property that sold for \$1,750,000 on June 11, 2004, currently is assessed at 45.31% of its sales price; and (2) another property that sold for \$616,000 on May 3, 2004, currently is assessed at 75.12% of its sale price.

Applicable Law and Discussion

In Virginia, the local real property tax is the result of applying the locality's tax rate to the assessment⁴ or valuation of the property parcel in question. This valuation is based upon the *appraisal* of the property's fair market value multiplied by the percentage of such fair market value that the locality subjects to its tax rate.⁵ This percentage is known as the "assessment ratio."⁶ "A system in which assessments are increased in some managerial districts based on reappraisals of those districts in a year when other districts are not reappraised is invalid"⁷ under the uniformity requirement of the Constitution of Virginia.

Successive Virginia constitutions have contained provisions requiring "uniformity" in property taxation.⁸ The Virginia Constitution currently requires uniformity of taxation in Article X, § 1, which provides, in pertinent part, that:

All property, except as hereinafter provided, shall be taxed. All taxes shall be levied and collected under general laws and *shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax, except that the General Assembly may provide for differences in the rate of taxation* to be imposed upon real estate by a city or town within all or parts of areas added to its territorial limits, or by a new unit of general government, within its area, created by or encompassing two or more, or parts of two or more, existing units of general government. [Emphasis added.]

The Supreme Court of Virginia has held that §§ 1 and 2 of Article X relating to property assessments must be construed together.⁹ These sections constitute the twin principles of property taxation in the Commonwealth.¹⁰ In pertinent part, § 2 provides that:

All assessments of real estate and tangible personal property shall be at their fair market value, to be ascertained as prescribed by law. The General Assembly may define and classify real estate devoted to agricultural, horticultural, forest, or open space uses, and may by general law authorize any county, city, town, or regional government to allow deferral of, or relief from, portions of taxes otherwise payable on such real estate if it were not so classified, provided the General Assembly shall first determine that classification of such real estate for such purpose is in the public interest for the preservation or conservation of real estate for such uses.

The net result of "these provisions is to distribute the burden of taxation, so far as is practical, evenly and equitably."¹¹

The Virginia Supreme Court has also held that "where it is impossible to secure both the standard of the true value and the uniformity and equality required by law, the latter requirement is to be preferred as the just and ultimate purpose of the law."¹² Thus, uniformity is viewed as the paramount objective of the taxation of property.

It is important to note that there are specific exemptions from the provisions contained in §§ 1 and 2 of Article X and in other parts of the Virginia Constitution.

For example, § 1 permits the General Assembly to provide for disparate tax rate treatment for certain lands annexed by cities or towns.¹³ Section 2 permits the General Assembly to provide tax relief for "real estate devoted to agricultural, horticultural, forest, or open space uses."¹⁴ Moreover, Article X, § 6(b) authorizes the General Assembly to provide for relief from property taxation for certain elderly and disabled individuals.¹⁵

There is no constitutional or statutory provision that permits localities to afford general real property tax relief to residential real estate owners by arbitrary and disproportionate differences in the percentages of assessment thereon.¹⁶ Indeed, the plain language of § 58.1-3201 requires that the assessment of real estate subject to annual local taxation "shall be made at 100 percent fair market value."¹⁷ This would be consistent with the constitutional requirement of uniformity of taxation on real property and the Virginia Supreme Court's interpretations of that requirement. It has been said that this is "[b]ecause property can be valued by a relatively accurate and objective means, *ad valorem taxes on it can be levied in terms of a uniform rate which may impose a uniform burden* to the extent that there is a sound standard for appraisal and the appraisal is accurate."¹⁸

Notwithstanding this, courts have wrestled with the concept of valuation, which is, by their own admission, "not an exact science."¹⁹ As a result,

[t]he courts, in trying to resolve this problem, while recognizing the general custom of undervaluing property and the difficulty of enforcing the standard of true value, have sought to enforce equality in the burden of taxation by *insisting upon uniformity in the mode of assessment and in the rate of taxation*.^[20]

Achieving this goal is not an easy process, particularly in a dynamic real estate market. The Virginia Supreme Court has recognized that:

[T]he statute does not require that, for purposes of making *appraisals* upon which annual *assessments* are made, all parcels within the city or county be visually inspected once each year. As the General Assembly was aware, physically and fiscally, such a requirement would impose an unreasonable, if not impossible, burden upon both the taxing authority and the taxpayer.

Nor is the uniformity mandate of the Constitution, as we have construed it, so broad as to require such annual visual inspection. We recognized in our opinion that 'absolute and constant uniformity may be an unobtainable idea'. The constitutional mandate requires that, in the ascertainment of fair market values and the imposition of assessments upon those values, the taxing authority must implement and administer the annual assessment and equalization system in a manner which avoids all disuniformity reasonably avoidable.^[21]

This inexactitude occurs because "[t]here are many factors to be considered in arriving at the fair market value of property,"²² and no general rule can be prescribed for valuation.²³ These factors are numerous and diverse:

While size and cost of the property may be factors to be given weight, there are many other factors which tend to increase or diminish such value; for instance, the design, style, location, appearance, availability of use, and the economic situation prevailing in its area, as well as other circumstances.^[24]

To that end, local tax assessors may employ a number of techniques, which, in lieu of visual or individual inspection, are designed to approximate fair market value. Property owners are "entitled to have the same yardstick which measured the market value of the other properties applied to their property."²⁵

Integral to this "yardstick" is the percentage of the property parcel's fair market value that is subject to the locality's tax rate. With respect to land assessments, the locality's board of equalization²⁶ is given "the especial duty of increasing as well as decreasing assessments, whether specific complaint be laid or not, if in its judgment, the same be necessary to equalize and accomplish the end that the burden of taxation shall rest equally upon all citizens of such county or city."²⁷ This specifically includes the authority to determine "that the assessment is not uniform in its application."²⁸ The primary remedy for the taxpayers about whom you inquire may rest with the applicable local board of equalization. It is also possible to seek administrative correction by bringing the situation to the attention of the local commissioner of the revenue, or judicially by application to the courts.²⁹

On the other hand, if these situations are symptomatic of a broader, more prevalent situation in the locality, it may be violative of the uniformity requirements of the Virginia Constitution, as well as the Equal Protection Clause of the federal Constitution:

[T]he fact that the lands of one or a few taxpayers are assessed at fifty per cent of its market value, or at any other assessment below its market value, can furnish no reason for reducing the assessment of other lands to a similar valuation; yet, where it is shown that a material, systematic and intentional discrimination has been made against an applicant for relief, whereby his property has been assessed at 100 per cent of its market value, while other property of a like kind has been assessed at only fifty per cent of its market value, and especially where (as in the instant case) this has been done under the authority and by the direction of the State board having control over such assessments, this is, as stated, in violation of the fourteen amendment of the Constitution of the United States.^[30]

Accordingly, if the situation you illustrate applies to only a few or a small group of the locality's residential real estate taxpayers, then the remedy would seem to be through redress at the locality's board of equalization. Where it may be shown that a material, systematic, and intentional discrimination is made against individual taxpayers, or a group of taxpayers, such action may violate Virginia and federal constitutional requirements.³¹

Conclusion

Accordingly, it is my opinion that the fact that the lands of one or a few taxpayers are assessed at differing percentages of fair market value is not, *per se*, a

violation of the legal requirements. In such cases, redress may be had at the locality's board of equalization,³² by bringing the situation to the attention of the local commissioner of the revenue, or by judicial appeal. Where it is shown that a material, systematic, and intentional discrimination has been made against individual taxpayers or a group of taxpayers, it is my opinion that such action may violate Virginia and federal constitutional requirements.

¹I note that the Tax Commissioner shall "[u]pon request by any local governing body, local board of equalization or any ten citizens and taxpayers of the locality, render advisory aid and assistance to such board in the matter of equalizing the assessments of real estate ... among property owners of the locality." Va. Code Ann. § 58.1-202(10) (LexisNexis Supp. 2005).

²For purposes of this opinion, I assume that the residential real properties in question are the single-unit primary residences of individuals. I further assume that such properties do not include residential real property that may be subject to, and eligible for, a specific constitutional exemption. See, e.g., Va. Const. art. X, §§ 1, 2, 6(b).

³You do not indicate whether this zip code is completely contained within one of the county's magisterial districts. For purposes of this opinion, I assume that is the case.

⁴There are a number of meanings of the word, "assessment" in Virginia tax law. For example, it can mean the amount of money that a taxpayer is required to pay, or the written notice sent by the taxing authority. See *Knopp Bros., Inc. v. Dep't of Taxation*, 234 Va. 383, 386, 362 S.E.2d 897, 899 (1987) (interpreting "assessment" as used in §§ 58.1-1820(2), 58.1-1825). In the context of real property taxation, assessment may be confused between *appraisal* of the fair market value of the land versus the value actually subjected to the locality's rate of taxation after application of the "assessment ratio." See *infra* text accompanying note 6. See *Perkins v. County of Albemarle*, 214 Va. 240, 244, 198 S.E.2d 626, 629, *modified*, 214 Va. 416, 418, 200 S.E.2d 566, 568 (1973); see also 1975-1976 Op. Va. Att'y Gen. 375, 377.

⁵See *Fray v. County of Culpepper*, 212 Va. 148, 149, 183 S.E.2d 175, 176 (1971).

⁶See, e.g., *id.*

⁷18 Michie's Jur. *Taxation* § 16, at 174 (2005).

⁸See 2 A.E. Dick Howard, *Commentaries on the Constitution of Virginia*, 1037-40 (1974).

⁹See, e.g., *Bd. of Supvrs. v. Leasco Realty, Inc.*, 221 Va. 158, 166, 267 S.E.2d 608, 613 (1980) (noting that Article X, §§ 1 and 2 must be read and construed together); *R. Cross, Inc. v. City of Newport News*, 217 Va. 202, 207, 228 S.E.2d 113, 117 (1976) (quoting *Skyline Swannanoa, Inc. v. Nelson County*, 186 Va. 878, 881, 44 S.E.2d 437, 439 (1947)) (noting that first two sections of Article X must be construed together); *Smith v. City of Covington*, 205 Va. 104, 108, 135 S.E.2d 220, 222 (1964) (quoting *Skyline Swannanoa*, 186 Va. at 881,

44 S.E.2d at 439) (construing Article XIII, §§ 168 and 169 of 1902 Virginia Constitution, predecessors to Article X, §§ 1 and 2 of 1971 Virginia Constitution); see also *Tuckahoe Women's Club v. City of Richmond*, 199 Va. 734, 738, 101 S.E.2d 571, 574 (1958) (construing Article XIII, §§ 168 and 169); *Lehigh Portland Cement Co. v. Commonwealth*, 146 Va. 146, 152, 135 S.E. 669, 671 (1926) (construing Article XIII, §§ 168 and 169).

¹⁰ See *R. Cross*, 217 Va. at 207, 228 S.E.2d at 117 (noting that principles of taxation required by Virginia Constitution are fair market value and uniformity clauses of Article X).

¹¹ See *Skyline Swannanoa*, 186 Va. at 881, 44 S.E.2d at 439 (construing Article XIII, §§ 168 and 169); see also *S. Ry. Co. v. Commonwealth*, 211 Va. 210, 214, 176 S.E.2d 578, 581 (1970).

¹² See, e.g., *Women's Club*, 199 Va. at 738, 101 S.E.2d at 574.

¹³ See Va. Code Ann. § 15.2-3534 (LexisNexis Repl. Vol. 2003) (authorizing different tax rates in certain areas consolidated into county or city).

¹⁴ See §§ 58.1-3229 (not set out in Code) through 58.1-3244 (LexisNexis Repl. Vol. 2004) (governing special assessments for land preservation).

¹⁵ See §§ 58.1-3210 to 58.1-3218 (LexisNexis Repl. Vol. 2004 & Supp. 2005) (governing exemptions for elderly and handicapped).

¹⁶ See *Perkins*, 214 Va. at 418, 200 S.E.2d at 568. Cf. 1990 Op. Va. Att'y Gen. 239 (concluding that board of supervisors may not adopt ordinance classifying all private residences in designated area as real estate devoted to agricultural use in order to make property eligible for use value assessment).

¹⁷ Section 58.1-3201 provides that "[a]ll real estate, except that exempted by law, shall be subject to ... annual taxation" and be assessed at "100 percent fair market value." "The taxing authority must assess in a manner that avoids 'all disuniformity reasonably avoidable.'" 1990 Op. Va. Att'y Gen., *supra* note 16, at 240 (quoting *Perkins*, 214 Va. at 418, 200 S.E.2d at 568).

¹⁸ Howard, *supra* note 8, at 1041 (emphasis added).

¹⁹ *Southern Railway*, 211 Va. at 214, 176 S.E.2d at 580.

²⁰ *Id.* (emphasis added).

²¹ *Perkins*, 214 Va. at 418, 200 S.E.2d at 568 (emphases in original) (interpreting § 58-769.2, predecessor to §§ 58.1-3253, 58.1-3270, relating to reassessments).

²² See *Smith*, 205 Va. at 108, 135 S.E.2d at 223.

²³ See *Southern Railway*, 211 Va. at 214, 176 S.E.2d at 581.

²⁴ *Smith*, 205 Va. at 108-09, 135 S.E.2d at 223.

²⁵ *Id.* at 109, 135 S.E.2d at 223.

²⁶ See §§ 58.1-3370, 58.1-3371, 58.1-3373 (LexisNexis Repl. Vol. 2004).

²⁷ Section 58.1-3379(A) (LexisNexis Repl. Vol. 2004).

²⁸ Section 58.1-3379(C).

²⁹ An application to correct an erroneous real estate assessment "if the error ... was made by the commissioner of the revenue ... or is due to a factual error" may be filed with the commissioner. See § 58.1-3980(A) (LexisNexis Repl. Vol. 2004). An application for the correction of an erroneous assessment may be filed with the circuit court, and the application may allege that "the assessment is not uniform in its application." Section 58.1-3984(A) (LexisNexis Repl. Vol. 2004). Additionally, should the commissioner of revenue be unable to correct an obvious error under § 58.1-3981, he "shall apply to the appropriate court," and "may include a petition for relief for any of several taxpayers." Section 58.1-3984(B). As previously noted, the Tax Commissioner shall "[u]pon request by any local governing body, local board of equalization or any ten citizens and taxpayers of the locality, render advisory aid and assistance to such board in the matter of equalizing the assessments of real estate ... among property owners of the locality." Section 58.1-202(10).

³⁰ *Lehigh Portland*, 146 Va. at 156, 135 S.E. at 672.

³¹ *Smith*, 205 Va. at 108, 135 S.E.2d at 223 (quoting *Women's Club*, 199 Va. at 738, 101 S.E.2d at 574) (noting that "a taxpayer whose property is assessed at its true market value has a right to have the assessment reduced to the percentage of that value at which others are taxed so as to meet the uniformity required by § 168 of the Virginia Constitution as well as by the Equal Protection Clause of the Fourteenth Amendment").

³² See *supra* note 1.

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