



# **COMMONWEALTH of VIRGINIA**

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August 5, 2008

The Honorable Deborah F. Williams  
Commissioner of the Revenue for Spotsylvania County  
P.O. Box 178  
Spotsylvania, Virginia 22553

Dear Commissioner Williams:

I am responding to your request for an official advisory opinion in accordance with § 2.2-505 of the *Code of Virginia*.

### **Issues Presented**

You ask whether a parcel must be removed from the land use taxation program and assessed roll-back taxes when the parcel is rezoned at the owner's request to industrial use, and the owner fails to report a change in the actual use to the commissioner of the revenue. You also ask whether agricultural real property that was rezoned to a more intensive use, but which has been returned to use as a commercial farm for a period of three years, must be rezoned to a less intensive use before it is eligible for use taxation and assessment. Finally, you ask whether real property with intensive zoning may qualify for land use taxation and assessment if its zoning has not changed, but is being commercially farmed or used as forest and has never received land use taxation.

### **Response**

It is my opinion that real property must be removed from the land use program and roll-back taxes assessed when such property is rezoned to a more intensive use at the owner's request. I also am of the opinion that agricultural real property, which has been (1) rezoned at the owner's request to a more intensive use, (2) removed from the land use program, and (3) assessed roll-back taxes subsequently must be rezoned to a less intensive use before it can be eligible to receive land use taxation again. Finally, it is my opinion that real property with intensive zoning may qualify for land use assessment and taxation if the local assessing official determines that it meets the criteria set forth in § 58.1-3230.

### **Background**

You advise that an owner has requested that his commercial farm in Spotsylvania County be rezoned to permit industrial use. You advise further that the property owner has a mining contract and currently is mining the majority of the property for sand and gravel. You note that the owner eventually intends to mine the entire parcel. Finally, you state that the owner has not reported the rezoning or the change in use to the Spotsylvania County Commissioner of the Revenue.

### Applicable Law and Discussion

In accord with the rule of statutory construction, *in pari materia*,<sup>1</sup> statutory provisions are not to be considered as isolated fragments of law.<sup>2</sup> Such provisions are to be considered as a whole, or as parts of a greater connected, homogeneous system of laws, or a single and complete statutory compilation.<sup>3</sup> Statutes *in pari materia* are considered as if they constituted but one act, so that sections of one act may be considered as though they were parts of the other act.<sup>4</sup>

“[A]s a general rule, where legislation dealing with a particular subject consists of a system of related general provisions indicative of a settled policy, new enactments of a fragmentary nature on that subject are to be taken as intended to fit into the existing system and to be carried into effect conformably to it, and they should be so construed as to harmonize the general tenor or purport of the system and make the scheme consistent in all its parts and uniform in its operation, unless a different purpose is shown plainly or with irresistible clearness. It will be assumed or presumed, in the absence of words specifically indicating the contrary, that the legislature did not intend to innovate on, unsettle, disregard, alter or violate a general statute or system of statutory provisions the entire subject matter of which is not directly or necessarily involved in the act.”<sup>[5]</sup>

Section 58.1-3237(A) provides that real property qualifying for land use assessment and taxation becomes subject to roll-back taxes when the use qualifying the property “changes to a nonqualifying use” or the zoning changes “to a more intensive use at the request of the owner or his agent.” Liability for roll-back taxes attaches either at the time such change in use or rezoning occurs.<sup>6</sup> Because liability for the roll-back tax attaches at the time of a change to a nonqualifying use or a change in zoning, the failure by an owner to report such change does not impact his liability for the roll-back tax. Section 58.1-3238 clearly and unambiguously provides that failure to report a change in use relating to property for which an application for use value taxation was filed does not relieve such person from the liability for the roll-back taxes. In fact, such person is liable for the roll-back taxes and any penalties and interest that may be due.<sup>7</sup> Section 58.1-3237(D) imposes a notice requirement that serves to facilitate the assessment of roll-back taxes.<sup>8</sup> Therefore, a property owner becomes liable for roll-back taxes when the property is rezoned

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<sup>1</sup>“*In pari materia*” is the Latin phrase meaning “[o]n the same subject; relating to the same matter.” BLACK’S LAW DICTIONARY 807 (8th ed. 2004).

<sup>2</sup>See *Moreno v. Moreno*, 24 Va. App. 190, 198, 480 S.E.2d 792, 796 (1997).

<sup>3</sup>*Id.*

<sup>4</sup>*Id.* at 197-98, 480 S.E.2d at 796.

<sup>5</sup>*Prillaman v. Commonwealth*, 199 Va. 401, 405-06, 100 S.E.2d 4, 7 (1957) (quoting 50 AM. JUR., *Statutes*, § 349, at 345-47, *quoted in* *Washington v. Commonwealth*, 46 Va. App. 276, 298, 616 S.E.2d 774, 785 (2005) (Benton, J. & Fitzpatrick, C.J., dissenting)); *see also* *Smith v. Kelley*, 162 Va. 645, 651, 174 S.E. 842, 845 (1934) (noting that in absence of words to contrary, legislature did not intend to alter or repeal general statute or system).

<sup>6</sup>See VA. CODE ANN. § 58.1-3237(D) (2004); *Chesterfield County v. Stigall*, 262 Va. 697, 702-03, 554 S.E.2d 59, 52 (2001).

<sup>7</sup>Section 58.1-3238 (2004). Section 58.1-3238 imposes a further penalty when a material misstatement regarding taxes is made with the intent to defraud a locality.

<sup>8</sup>See 1980-1981 Op. Va. Att’y Gen. 355, 357 (interpreting § 58-769.10, predecessor to § 58.1-3237).

to a more intensive use at his or his agent's request, or the use of the property changes from a qualifying to a nonqualifying use.<sup>9</sup>

Section 58.1-3237(E) addresses the future eligibility for land use taxation and assessment of real property and provides that property rezoned to a more intensive use at the request of an owner or his agent is not eligible for land use taxation and assessment. An exception occurs when the rezoning to a more intensive use is required to establish, continue, or expand a qualifying use.<sup>10</sup> Real property does not become eligible for reconsideration for land use taxation and assessment unless and until the property is rezoned to agricultural, horticultural, or open space use and three years have passed since the subsequent rezoning was effective.<sup>11</sup>

Participation in the land use taxation and assessment program begins when a property owner submits an application to the local assessing officer.<sup>12</sup> Before the local assessing officer assesses real property under a land use taxation and assessment program adopted pursuant to § 58.1-3231, he must first determine whether such property satisfies the criteria specified in § 58.1-3230.<sup>13</sup> Furthermore, § 58.1-3233(1) authorizes the local assessing officer to seek an opinion regarding such determination from the Director of the Department of Conservation and Recreation, the State Forester, or the Commissioner of Agriculture and Consumer Services. Whether the parcel in question meets § 58.1-3230 criteria is a factual determination to be made by the local assessing officer.<sup>14</sup> Should a commissioner of the revenue make a factual determination that the parcel in question meets the criteria set forth in § 58.1-3230, it is my opinion that such parcel may qualify for use taxation and assessment.

### **Conclusion**

Accordingly, it is my opinion that real property must be removed from the land use program and roll-back taxes assessed when such property is rezoned to a more intensive use at the owner's request. I also am of the opinion that agricultural real property, which has been (1) rezoned at the owner's request to a more intensive use, (2) removed from the land use program, and (3) assessed roll-back taxes subsequently must be rezoned to a less intensive use before it can be eligible to receive land use taxation again. Finally, it is my opinion that real property with intensive zoning may qualify for land use assessment and taxation if the local assessing official determines that it meets the criteria set forth in § 58.1-3230.

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<sup>9</sup> Continued participation in the land use taxation and assessment program depends "on continuance of the real estate in a qualifying use, continued payment of taxes as referred to in § 58.1-3235, and compliance with the other requirements of [Article 4, Chapter 32 of Title 58.1] and the ordinance." Section 58.1-3234 (2004).

<sup>10</sup> See § 58.1-3237(E).

<sup>11</sup> *Id.*

<sup>12</sup> See § 58.1-3234.

<sup>13</sup> See § 58.1-3233(1) (2004).

<sup>14</sup> Attorneys General historically have declined to render official opinions when the request involves a question of fact rather than one of law. See, e.g., Op. Va. Att'y Gen.: 1997 at 195, 196; 1996 at 207, 208.

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Thank you for letting me be of service to you.

Sincerely,

A handwritten signature in black ink, reading "Robert F. McDonnell". The signature is fluid and cursive, with the first name "Robert" being the most prominent.

Robert F. McDonnell