



# ***COMMONWEALTH of VIRGINIA***

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January 26, 2009

The Honorable Ingrid H. Morroy  
Arlington County Commissioner of Revenue  
2100 Clarendon Boulevard, Suite 200  
Arlington, Virginia 22201

Dear Ms. Morroy:

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

## **Issue Presented**

You ask whether the alternative situs provision of § 58.1-3511(A)(ii) is mandatory or creates a voluntary taxpayer election.

## **Response**

It is my opinion that the alternative situs provision of § 58.1-3511(A)(ii) is mandatory.

## **Background**

You advise that § 58.1-3511(A)(ii), absent the phrase in the last sentence beginning with “provided,” clearly establishes the situs for vehicles with a weight of 10,000 pounds or less and used in a business. Such situs is the locality from which it is “directed or controlled and in which the owner’s business has a definite place of business.” However, you note that the final phrase of the last sentence appears to place a duty on the owner to show that he paid property taxes in such business locality. You observe that this phrase implies that the owner could choose not to file in the business locality and keep the situs of the vehicle in the jurisdiction where the vehicle normally is garaged.

You advise that at least one neighboring locality, Arlington County, interprets the situs provision to be mandatory. You state Arlington taxes vehicles garaged at the business location over the objections of the owners. Consequently, you ask for guidance.

### Applicable Law and Discussion

Section 58.1-3511(A)(ii) provides that

if the owner of a business files a return pursuant to § 58.1-3518<sup>[1]</sup> for any vehicle with a weight of 10,000 pounds or less registered in Virginia and used in the business with the locality from which the use of such vehicle is directed or controlled and in which the owner's business has a definite place of business, as defined in § 58.1-3700.1,<sup>[2]</sup> *the situs for such vehicles shall be such locality*, provided such owner has sufficient evidence that he has paid the personal property tax on the business vehicles to such locality. [Emphasis added.]

Under basic rules of statutory construction, the General Assembly's intent is determined from the plain and natural meaning of the words used.<sup>3</sup> When the language of a statute is unambiguous, the plain meaning of that language is controlling.<sup>4</sup> Thus, when the General Assembly has used words of a plain and definite import, I may not assign to them a construction that would amount to holding that the General Assembly meant something other than that which it actually expressed.<sup>5</sup>

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<sup>1</sup>Section 58.1-3518 requires:

"Every taxpayer owning any of the property subject to taxation under [Chapter 35 (Tangible Personal Property)] on January 1 of any year shall file a return thereof with the commissioner of the revenue for his county or city on the appropriate forms; however, the commissioner of the revenue may elect not to require such a return from any taxpayer who owns such property which does not have sufficient value to generate a tax assessment. Every person who leases any of such property from the owner thereof on such date shall file a return with the commissioner of the revenue of the county or city wherein such property is located giving the name and address of the owner, except any person leasing a motor vehicle which is subject to the tax imposed under § 58.1-2402. Such returns shall be filed on or before May 1 of each year, except as otherwise provided by ordinance authorized by § 58.1-3916.

"Every fiduciary shall file the returns mentioned in [Chapter 35] with the commissioner of revenue having jurisdiction. Every taxpayer owning machinery and tools or business personal property, if requested by the commissioner of the revenue, shall include on his annual return of such property information as to the total of original cost by year of purchase. The cost should be the original capitalized cost or the cost that would have been capitalized if the expense deduction in lieu of depreciation was elected under § 179 of the Internal Revenue Code."

<sup>2</sup>Pursuant to § 58.1-3700.1, a "*definite place of business*" means "an office or a location at which occurs a regular and continuous course of dealing for thirty consecutive days or more. A definite place of business for a person engaged in business may include a location leased or otherwise obtained from another person on a temporary or seasonal basis and real property leased to another. A person's residence shall be deemed to be a definite place of business if there is no definite place of business maintained elsewhere and the person is not subject to licensure as a peddler or itinerant merchant."

<sup>3</sup>*Britt Constr., Inc. v. Magazzino Clean, LLC*, 271 Va. 58, 62, 623 S.E.2d 886, 888 (2006); *W. Lewinsville Heights Citizens Ass'n v. Bd. of Supvrs.*, 270 Va. 259, 265, 618 S.E.2d 311, 314 (2005); *Mozley v. Prestwoud Bd. of Dirs.*, 264 Va. 549, 554, 570 S.E.2d 817, 820 (2002).

<sup>4</sup>*Williams v. Commonwealth*, 265 Va. 268, 271, 576 S.E.2d 468, 470 (2003); *Woods v. Mendez*, 265 Va. 68, 74-75, 574 S.E.2d 263, 266 (2003); *Industrial Dev. Auth. v. Bd. of Supvrs.*, 263 Va. 349, 353, 559 S.E.2d 621, 623 (2002).

<sup>5</sup>*Britt Construction*, 271 Va. at 62-63, 623 S.E.2d at 888; *Alliance to Save the Mattaponi v. Commonwealth*, 270 Va. 423, 439, 621 S.E.2d 78, 87 (2005); *Williams*, 265 Va. at 271, 576 S.E.2d at 470.

The statutory language at issue is clear and unambiguous. For purposes of the local tangible personal property tax, all vehicles are assessed by the jurisdiction in which the vehicles normally are garaged, docked, or parked, whether they are personal vehicles or vehicles belonging to a business.<sup>6</sup> However, in some cases, a vehicle owned by and used for business may be kept by employees or owners in their own garages. These garages may be located in another jurisdiction having no nexus with the business. Section 58.1-3511(A)(ii) ensures that vehicles which are the property of a business are taxed by the jurisdiction in which the business is located and not where the employee or owner garages the vehicle. The statutory language mandates that the situs for business vehicles with a weight of 10,000 pounds or less registered in Virginia and used in a business shall be the jurisdiction in which the owner of such business: (1) is required to file a tangible personal property tax return for any vehicle used in the business, and (2) has a definite place of business from which the use of the business vehicle is directed or controlled.<sup>7</sup> In addition, the owner must have sufficient evidence that he has paid the personal property tax to such jurisdiction. The use of the word "shall" in statutes generally indicates that the procedures are intended to be mandatory.<sup>8</sup>

### Conclusion

Accordingly, it is my opinion that the alternative situs provision of § 58.1-3511(A)(ii) is mandatory.

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 letters of the first and last names being capitalized and prominent.

Robert F. McDonnell

1:213; 1:941/08-086

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<sup>6</sup> See VA. CODE ANN. § 58.1-3511(A) (2004).

<sup>7</sup> *Id.*

<sup>8</sup> See *Andrews v. Shepherd*, 201 Va. 412, 414, 111 S.E.2d 279, 281-82 (1959); *Op. Va. Att'y Gen.*: 2004 at 168, 169; 1994 at 64, 68.