

**TAXATION: LOCAL TAXES - LOCAL OFFICERS - COMMISSIONERS OF THE REVENUE - REVIEW OF LOCAL TAXES - COLLECTION BY TREASURERS, ETC. - CORRECTION OF ASSESSMENTS, REMEDIES AND REFUNDS.**

**Board of supervisors may reduce annual tax rate on personal property at any time during calendar year until July 1, 1996, effective date of amendment providing for change in tangible personal property tax rate to be made before date commissioner of revenue delivers personal property and land books to treasurer; lacks authority to make taxpayer refunds resulting from personal property tax reduction, absent specific statutory authority.**

The Honorable John H. Tate Jr.

Member, House of Delegates

April 29, 1996

You ask whether the Smythe County Board of Supervisors may reduce the tax rate on personal property after the date established for payment of such taxes, and if so, what would be the proper method for payment of refunds.

You relate that Smythe County observes a calendar year for all purposes, and that during 1995, the county levy on personal property was \$2 per \$100 value. County taxes are due and payable on December 5 of each year. In late December 1995, the Smythe County Board of Supervisors reduced the 1995 rate to \$1.50 per \$100. At that time, approximately 70% of taxpayers in the county had paid their 1995 personal property taxes.

Section 58.13001 of the *Code of Virginia* provides that "[t]he governing body of each county shall, at its regular meeting in the month of January in each year, or as soon thereafter as practicable not later than a regular or called meeting in June, fix the amount of the county and district taxes for the current year." A prior opinion of the Attorney General concludes that the purpose of this provision is to require the county to set a tax rate early in the tax year.<sup>1</sup>

There are several statutory provisions that must be considered in responding to your inquiry. A rule of statutory construction requires that statutes dealing with the same subject be read together to give effect to the legislative intent. Such statutes should not be considered in isolation, but must be construed to produce a harmonious result, giving effect to all provisions if possible.<sup>2</sup>

Section 58.13118 requires each commissioner of the revenue to prepare personal property books and to deliver copies as provided by statute by September 1 of each year, or within ninety days from the date the personal property tax rate has been determined, whichever date is later.<sup>3</sup> The commissioner is subject to penalties if he or she fails to deliver the books on time.<sup>4</sup> Section 58.1-3119 provides that "[a]fter the commissioner of the revenue has delivered a copy of his personal property book to the county or city treasurer, no alteration *shall* be made therein which affects the taxes or levies of that year." (Emphasis added.) Section 58.13913 provides that "[e]ach treasurer *shall* commence to receive local levies as soon as he receives copies of the commissioner's books and continue to receive the same without penalty up to and including December 5 of each year, or such other date set by the governing body" in compliance with the provisions of § 58.1-3916.<sup>5</sup> (Emphasis added.) This is mandatory language.<sup>6</sup>

Section 58.13012, however, begins with the phrase "[n]otwithstanding any other provision of law, special or general, to the contrary," and provides that the governing body of any locality "which levies taxes on ... tangible personal property ... on a calendar-year basis is authorized and

empowered to change the rate of its tax . . . during any calendar year." The General Assembly has not provided any guidance for the dates of any such changes.<sup>7</sup>

Section 58.13119 provides that personal property books may not be altered after delivery by the commissioner, and § 58.13118 requires that such books be delivered not later than September 1 of each year, or within ninety days from the date the personal property tax rate has been determined, whichever date occurs last. Section 58.13012, however, was enacted subsequent to §§ 58.13913, 58.13118 and 58.13119.<sup>8</sup> The General Assembly is presumed to know what statutes previously have been enacted.<sup>9</sup> When a statute begins "notwithstanding any provision of law, special of general, to the contrary," it is presumed that the intention was to override any potential conflicts with earlier legislation. Even if the later enacted statute is read to be conflicting with the earlier statutes, it is axiomatic that, when there is a conflict, the earlier statutes must yield to the subsequently passed statute.<sup>10</sup>

Accordingly, it is my opinion that the Smythe County Board of Supervisors may, consistent with the intent of the General Assembly, reduce the annual tax rate on personal property at any time "during any calendar year,"<sup>11</sup> and, specifically, after the date established for payment of such taxes, until July 1, 1996, when the amendment to § 58.13012 becomes effective.

You next inquire as to the proper method for making taxpayer refunds that may result from any reduction of the annual tax rate on personal property. A 1987 opinion of the Attorney General concludes that a "board has no *independent* authority to compromise claims for legally assessed taxes."<sup>12</sup> Another 1987 opinion concludes that, "[a]ssuming that no court has declared the tax at issue unconstitutional, . . . I am of the opinion that a city council lacks the authority to refund personal property tax payments in the absence of a certification of an erroneous tax assessment by the commissioner [of the revenue]."<sup>13</sup> I am not aware of any statutory enactment subsequent to the 1987 opinions that would authorize a board of supervisors to refund the personal property taxes in question, in the absence of a certification of an erroneous tax assessment by the local commissioner of the revenue.

Accordingly, the only statutes permitting the refund of such taxes are §§ 58.13981 and 58.13990. Section 58.13981 requires the commissioner of the revenue to correct assessments when he is satisfied that he has erroneously assessed the applicant-taxpayer. Upon certification by the commissioner and concurrence by the attorney for the jurisdiction that an assessment exceeds the proper amount, the local governing body shall direct its treasurer to refund taxes already paid.<sup>14</sup> Section 58.13990 similarly authorizes localities to provide by ordinance for the refund of taxes erroneously paid. Under such an ordinance, the tax-collecting officer is authorized to refund local taxes upon certification by the commissioner of the revenue that he has erroneously assessed such taxes.<sup>15</sup> Section 58.13990 also permits a local governing body to grant refunds of any local tax that is declared unconstitutional by a court of competent jurisdiction.

<sup>1</sup>1973-1974 Op. Va. Att'y Gen. 376, 377.

<sup>2</sup>*Prillaman v. Commonwealth*, 199 Va. 401, 40506, 100 S.E.2d 4, 78 (1957); Op. Va. Att'y Gen.: 1993 at 135, 137; 1992 at 97, 99; *id.* at 108, 112.

<sup>3</sup>The first paragraph of § 58.13118 provides, in part: "Each commissioner of the revenue shall retain in his office the original personal property book. Each commissioner of the revenue shall deliver one certified copy of the personal property book to the treasurer of his county or city and to the Department of Taxation. . . . For failure to deliver the copies in the manner herein provided by the first day of September of each year, or within ninety days from the date the rate of tax on personal property has been determined, whichever date shall occur last, the commissioner of the

revenue shall be fined not less than \$50 nor more than \$200 and he shall not be paid any compensation which he may be due, payable out of the state treasury, for making out such books."

<sup>4</sup>See § 58.1-3118*id.*

<sup>5</sup>Section 58.13916 permits localities by ordinance to provide the dates for filing annual tangible personal property tax returns and setting penalties, interest, etc.

<sup>6</sup>See 1986-1987 Op. Va. Att'y Gen. 300, 300, and opinions cited therein (use of word "shall" in statute generally indicates its procedures are intended to be mandatory).

<sup>7</sup>During the 1996 Session, however, the General Assembly amended § 58.13012 to authorize any local governing body to change the tangible personal property tax rate, "provided such change is made prior to the date on which the personal property and land books are delivered to the treasurer of the applicable county, city or town." Ch. 354, 1996 Va. Acts Reg. Sess. \_\_\_\_.

<sup>8</sup>Section 58.13012 (formerly § 58851.8) was enacted by the 1974 Session of the General Assembly. See Ch. 293, 1974 Va. Acts 443.

<sup>9</sup>See Op. Va. Att'y Gen.: 1987-1988 at 1, 2; 1985-1986 at 65, 67.

<sup>10</sup>See Op. Va. Att'y Gen.: 1987-1988, *supra*; 1985-1986 at 246, 246.

<sup>11</sup>Section 58.13012.

<sup>12</sup>1986-1987 Op. Va. Att'y Gen. 317, 318.

<sup>13</sup>1986-1987 Op. Va. Att'y Gen. 315, 316; see *id.* at 317, 318 (authority of county board of supervisors to settle and compromise claims does not extend to authority to compromise claims or suits relating to legally assessed taxes, absent specific statutory authority).

<sup>14</sup>Section 58.13981.

<sup>15</sup>Section 58.13990.