

TAXATION: REAL PROPERTY TAX - REVIEW OF LOCAL TAXES.

Commissioner of revenue shall assess and list separately on land book each portion of subdivision lot determined by commissioner from best available information to have two owners. Recordation in circuit court clerk's office of change in acreage figures shown on plat is not mandatory for commissioner to change real estate assessment determined to be erroneous, but commissioner may require recordation before correcting tax records. If commissioner is satisfied that on January 1, 1995, landowner chargeable with taxes owned less land than indicated on land book, commissioner may adjust tax assessment on proper application of taxpayer for correction of erroneous assessment made by commissioner.

The Honorable Ann H. Thomas

Commissioner of the Revenue for York County

April 5, 1996

You ask two questions regarding the assessment of real estate taxes. You first inquire as to the proper person to assess with taxes when the land book lists more than one owner of the property.¹

Section 58.13281 of the *Code of Virginia* requires each commissioner of the revenue, annually, beginning on January 1, "to ascertain all the real estate in his county or city ... and the person to whom the same is chargeable with taxes on that day."² Section 58.13281 further provides that the owner of real estate on January 1 "shall be assessed for the taxes for the year beginning on that date."

You provided a plat that was properly recorded indicating that there are two owners of separate portions of a subdivision lot.³ Section 58.13290 provides that when a lot becomes the property of different owners in two or more parcels, subsequent to a general reassessment, each parcel is to be assessed and shown separately on the land book.⁴ The commissioner of the revenue must assess each parcel at its fair market value as of January 1 of the year after the lot was divided.⁵

Determining the ownership of property for tax purposes involves the exercise of discretion by the commissioner of the revenue.⁶ A commissioner should make this determination on the basis of the best information available.⁷ It is my opinion that, if you, as commissioner of the revenue, determine on the basis of the best information available that two persons own separate portions of the same lot shown on a subdivision plat, you should follow the procedure in § 58.13290 for assessing each portion separately.⁸

Your next question consists of two parts and involves correcting errors in the acreage figures shown in the commissioner's land book. You state that in March 1994, a taxpayer received ownership of a .5-acre lot that was assessed to the previous owner, as reflected in an earlier recorded deed. A plat prepared by surveyors in August 1994, however, indicates that the land consists of a .2211-acre lot.

You ask whether the plat must be recorded before the commissioner may change the assessment. Prior opinions of the Attorney General conclude that recordation of a plat is not mandatory for a commissioner of the revenue to change an assessment determined to be erroneous.⁹ A 1985 opinion notes, however, that, as a matter of policy, when a taxpayer seeks to change information reflected in the deeds and plats recorded in the circuit court clerk's office that

is incorrect, the commissioner of the revenue may require recordation before correcting the tax records.¹⁰

You next ask what the effective date is for a change in assessment if a commissioner of the revenue determines that the earlier assessment was erroneous. The status of the taxpayer and of the property is determined on January 1 of the tax year.¹¹ While § 58.13313 requires the commissioner of the revenue to correct any mistake entered in the land book,¹² prior opinions of the Attorney General conclude that corrections of erroneous land assessments after January 1 are denied retroactive recordation in the land book for that year.¹³

If, however, the information in the land book is incorrect and results in an erroneous assessment¹⁴ of taxes, § 58.13980(A) authorizes the taxpayer to apply to the commissioner for correction of the assessment, and § 58.13981 authorizes such correction.¹⁵ Prior opinions of the Attorney General conclude that if a locality's real estate assessor values a tract of land on a per-acre basis, and it subsequently develops that the tract contained less acreage than indicated in the deed, a commissioner's assessment of taxes on the basis of the incorrect amount of acreage is erroneous.¹⁶ These opinions indicate that under such circumstances, upon application of the taxpayer, the commissioner may exonerate the taxpayer from the payment of the portion of land erroneously assessed and, in preparing subsequent land books, may extend the taxes on the basis of the per-acre value ascertained in the general reassessment, multiplied by the number of acres indicated on the recorded plat. Accordingly, if you determine that on January 1, 1995, the landowner chargeable with the taxes owned less land than the land book indicates, you may adjust the assessment in accordance with § 58.13981, upon proper application pursuant to § 58.13980(A).¹⁷

¹Section 58.13015 of the *Code of Virginia* provides that property generally is taxed to its owner.

²The first paragraph of § 58.13281 provides: "Each commissioner of the revenue shall commence, annually, on January 1, and proceed without delay to ascertain all the real estate in his county or city, as the case may be, and the person to whom the same is chargeable with taxes on that day. The beginning of the tax year for the assessment of taxes on real estate shall be January 1 and the owner of real estate on that day shall be assessed for the taxes for the year beginning on that day."

³I assume that, in the most recent general reassessment, the parcel was listed on the land book as a one-owner lot.

⁴Section 58.13290 provides: "When a tract or lot becomes the property of different owners in two or more parcels, subsequent to any general reassessment of real estate in the city or county in which such tract or lot is situated each of the two or more parcels shall be assessed and shown separately upon the land books, as required by law. . . . Failure of the owner or person dividing and selling the land to record a plat thereof shall not relieve the commissioner of the revenue of the responsibility for assessing or reassessing any such tract of land when divided as provided for in this section." See 1978-1979 Op. Va. Att'y Gen. 262, 263 (commissioner of revenue has authority to change valuation of land between general reassessments to value tract or lot that becomes property of different owners in two or more parcels).

⁵Section 58.13290 further states that "[t]he commissioner of the revenue, in assessing each lot or parcel, shall assess the same at its fair market value as of January 1 of the year next succeeding the year in which the tract or lot of land becomes the property of several owners, without regard to the value at which such tract of land was assessed as a whole, but with regard to other assessments of lots, pieces or parcels of land in the city or county. Such assessment shall stand until the next general reassessment of real estate in the city or county." See Op. Va. Att'y Gen.: 1974-1975 at 89, 90 (general legislative mandate that separate parcels of real property be

separately assessed; § 58773 [recodified as § 58.13290] requires separate assessment of each lot which becomes property of different owners in two or more parcels); *id.* at 488, 489 (new assessment required under former § 58773 to value property at its fair market value as of January 1 of year after that in which property was divided).

⁶See 1974-1975 Op. Va. Att'y Gen. 506, 507.

⁷See 1990 Op. Va. Att'y Gen. 245, 24647 (upon receiving information that land book acreage figures are incorrect, commissioner should correct figures to reflect best information available).

⁸It is not your responsibility, of course, to resolve a title dispute between individuals regarding ownership of a tract or lot. Moreover, you should base your decision on evidence presented in the land records or other reliable documents and not on the request of two persons, each of whom will be taxed on a portion of the property.

⁹See Op. Va. Att'y Gen.: 1990, *supra*, at 24647 (when A transfers portion of parcel to B and B records plat of survey, remaining acreage held by A should be corrected even if A records no plat; commissioner must correct acreage figures shown in land book upon receiving information that existing land book figures are incorrect); 1985-1986 at 298, 298 (no law requires that plat be recorded showing lot size different from what appears on commissioner's real estate record for commissioner to change records and land book description); 1977-1978 at 406 (no property tax consequences flow from act of recording plat; status that is taxed is ownership of plat on first day of January). *Compare* Op. Va. Att'y Gen.: 1972-1973 at 85, 86 (commissioner must be satisfied that acreage is incorrect; cannot correct assessment on basis of unrecorded plat) *and* 1965-1966 at 44 (commissioner may not correct land book on basis of unrecorded plat).

¹⁰1985-1986 Op. Va. Att'y Gen., *supra*, at 298.

¹¹See § 58.13281.

¹²Section 58.13313 provides: "Every commissioner, in making out his land book, shall correct any mistake made in any entry therein. But land which has been correctly charged to one person shall not afterwards be charged to another without evidence of record that such charge is proper."

¹³See Op. Va. Att'y Gen.: 1987-1988 at 534, 535; 1977-1978, *supra* note 9, at 407.

¹⁴The term "assessment" is used in the tax statutes to mean both the valuation of property by a real estate assessor and the levying of taxes by the commissioner of the revenue on the basis of that valuation. See 1977-1978 Op. Va. Att'y Gen. 71, 71. Other than in the instances provided in the tax statutes for the commissioner to reassess property on the basis of changed circumstances, a commissioner of the revenue has no authority to reassess the value of real property. See 1984-1985 Op. Va. Att'y Gen. 305, 305.

¹⁵Section 58.13980(A) provides: "Any person ... assessed by a commissioner of the revenue ... with local taxes on [real estate] aggrieved by any such assessment, may, within three years from the last day of the tax year for which such assessment is made, or within one year from the date of the assessment, whichever is later, apply to the commissioner of the revenue ... who made the assessment for a correction thereof." Section 58.13980 further provides that, for such correction to apply, "the error sought to be corrected [must have been] made by the commissioner of the revenue ... to whom the application is made."

The first sentence of § 58.13981 states that "[i]f such commissioner of the revenue . . . is satisfied that he has erroneously assessed such applicant with any such tax he shall correct such assessment."

¹⁶ See 1972-1973 Op. Va. Att'y Gen., *supra* note 9, at 86; see also 1982-1983 Op. Va. Att'y Gen. at 105, 106. Section 58.13980(A) authorizes the commissioner of the revenue to correct errors in real estate assessments that were made by the commissioner. See 1975-1976 Op. Va. Att'y Gen. 378.

¹⁷ Section 58.13984(A) permits a taxpayer to apply to the appropriate circuit court for relief from an assessment that is alleged to be at more than the property's fair market value or that is not uniform in application. Section 58.13984(B) requires the local commissioner of the revenue to apply to the appropriate circuit court for correction of an assessment "based on obvious error" if the commissioner is unable to correct the assessment under § 58.13981. Thus, a court order to correct an assessment of taxes based on obvious error is not necessary, unless for some reason the commissioner is unable to correct the error under the procedure provided in § 58.13981.