

TAXATION: REVIEW OF LOCAL TAXES - ENFORCEMENT BY THE COMMISSIONER OF REVENUE.

Association that manages qualifying marina is "person" for purposes of filing with appropriate commissioner of revenue, upon request, name and address of owner and operator, and name and number, of each boat normally kept at marina.

The Honorable Stanley R. Lewis

Commissioner of the Revenue for Middlesex County

October 20, 1998

You ask whether § 58.1-3902 of the *Code of Virginia* is applicable to "Condominium Pier Yacht Club Associations, Inc."

You provide limited facts regarding the nature of such an association. Therefore, I shall assume for the purposes of this opinion that such association manages a facility in which at least four owners have individual ownership and use of distinct units of slip space for the docking of boats along with ownership in undivided common interests in the common elements of the facility. Specifically, you inquire whether this association qualifies as a "person" within the meaning of § 58.1-3902, and whether the facility managed by it is within the purview of the statute.

Section 58.1-3902 provides:

Every person operating in this Commonwealth a marina or boat storage place which accommodates more than four boats shall, on or before February 1 of each year, upon the request of the commissioner of the revenue of the county or city in which such marina or boat storage place is located, file with such commissioner of the revenue a list giving the name and address of the owner and operator, if such is available, and the name and number of each boat physically located and normally kept at his marina or boat storage place as of the preceding January 1. Violators of this section shall be guilty of a Class 4 misdemeanor.^[1]

Pursuant to § 58.1-3902, operators of marina and boat storage places that accommodate more than four boats are required to file, upon the request of the appropriate commissioner of the revenue, the name and address of the owner and operator, if available, of each boat located at such marina or boat storage place and the name and number of the boats. The purpose of this filing is to assist the commissioner in enforcing personal property tax laws.²

Section 58.1-3902 does not, by its terms, impose personal tax liability, but rather requires every "person" who operates a qualifying marina or boat storage place to obtain and file with the commissioner of the revenue, upon his request, certain information. The word "person," when used in the Virginia Code, shall be extended and applied to bodies corporate as well as to individuals, unless the context requires otherwise.³ Thus, the term has been extended to

corporations⁴ and may similarly be extended to the incorporated association about which you inquire.

With respect to whether the facility is a marina, a "marina" is generally defined as "a dock or basin providing secure moorings for pleasure boats and often offering supply, repair, and other facilities."⁵ The facility referred to and owned as a "condominium" is one in which owners have individual ownership and use of distinct units along with ownership in undivided common interests in the common elements of the facility.⁶ In a 1983 opinion concerning the legal implications of such ownership for purposes of certain permits issued by the Virginia Marine Resources Commission, this type of ownership in slip space is referred to as the "dockominium" concept.⁷ The opinion, however, recognizes such a facility as a marina.⁸ Similarly, the facility about which you inquire is a marina, regardless of how it is owned, thus coming within the purview of § 58.1-3902.

Consequently, it is my opinion that § 58.1-3902 is applicable to an incorporated association that manages marina condominiums.

¹The authorized punishment for conviction of a Class 4 misdemeanor is "a fine of not more than \$250." Section 18.2-11.

²*Compare* 1987-1988 Op. Va. Att'y Gen. 14, 15 (concluding that purpose of § 58.1-3901, which requires persons owning or operating apartment, office building, shopping center, trailer camp or court, or marina to file with commissioner of revenue, upon his request, names and addresses of each tenant or person renting space in marina, is to assist commissioner in enforcing personal property taxes).

³See §§ 1-13.19, 1-13; *see also* 1986-1987 Op. Va. Att'y Gen. 49, 49.

⁴See Op. Va. Att'y Gen.: 1979-1980 at 234, 234 (extending term "persons" to resident stock corporation); 1976-1977 at 218, 219 (extending term "person" to public service corporation). *But see* 1967-1968 Op. Va. Att'y Gen. 261, 262 (term "person" does not mean Commonwealth of Virginia).

⁵Merriam Webster's Collegiate Dictionary 711 (10th ed. 1996).

⁶See tit. 55, ch. 4.2, §§ 55-79.39 to 55-79.103 (setting forth Condominium Act).

⁷See 1983-1984 Op. Va. Att'y Gen. 450, 451 (discussing "dockominium" concept of collective form of ownership in slip spaces and common elements of slips).

⁸*Id.* (referring to "marina condominiums").

