

## TAXATION: REAL PROPERTY TAX - EXEMPTIONS FOR ELDERLY AND HANDICAPPED.

**Property tax exemption granted to qualifying individual is not nullified until sale of real property has occurred. Mere placement of property for sale is not change in circumstances that triggers possible nullification of exemption or deferral granted to qualifying individual. Whether factors other than change in income, financial worth, or property ownership result in change in circumstances that would nullify exemption is factual determination to be made on case-by-case basis by local commissioner of revenue.**

The Honorable Mar Vita L.A. Flint

Commissioner of the Revenue for the City of Buena Vista

September 17, 1998

You ask whether the exemption from real property taxation for the elderly or handicapped provided pursuant to § 58.1-3210 of the *Code of Virginia* is nullified when a qualifying individual<sup>1</sup> places his or her property for sale. You also ask for an interpretation of the phrase "other factors" as used in § 58.1-3215.

Section 58.1-3210 authorizes the governing body of a locality to provide, by ordinance, for the exemption or deferral of taxes on property of certain elderly and handicapped persons. While this statute permits a locality to exempt this property from taxation, such exemptions must be strictly construed.<sup>2</sup> Section 58.1-3211 requires that any program enacted to implement the § 58.1-3210 exemption have restrictions based on income and net worth.<sup>3</sup> Section 58.1-3215(A) describes the effective period for the tax exemption and also provides, in part:

Changes in income, financial worth, ownership of property or other factors occurring during the taxable year ... and having the effect of exceeding or violating the limitations and conditions provided herein or by county, city or town ordinance shall nullify any exemption or deferral for the remainder of the current taxable year and the taxable year immediately following.

The purpose of the exemption authorized by § 58.1-3210 is to provide relief to elderly or disabled individuals who bear a tax burden on their real estate that is extraordinary in relation to their income.<sup>4</sup> When the circumstances of an individual eligible for tax relief change so that the individual is no longer subject to this disparity, § 58.1-3215 provides the procedure for nullification of the exemption.

Numerous prior opinions of the Attorney General address such changes in circumstances, including increased income,<sup>5</sup> increased net worth,<sup>6</sup> and changes in ownership of property.<sup>7</sup> Additionally, § 58.1-3215 permits a locality to prorate an exemption or deferral when qualifying individuals have had a change of circumstances during the tax year.<sup>8</sup>

The sale of a dwelling by a qualifying individual is a change in circumstances contemplated by § 58.1-3215. "The *proceeds of the sale* ... shall not be included in the computation of net worth or income" of the individual.<sup>9</sup> In lieu thereof, § 58.1-3215(B) provides a formula for determining the prorated portion for the taxable year in which the sale of property occurs. Additionally, § 58.1-3216 assures that the accumulated amount of any taxes that may have been deferred on such property "shall be paid to the county, city or town concerned by the vendor *upon the sale* of the dwelling." (Emphasis added.) The plain language of these statutes<sup>10</sup> clearly contemplates that the sale of the property has, in fact, occurred.<sup>11</sup> Accordingly, a tax exemption granted pursuant to

§ 58.1-3210 is not nullified until the property has been sold. I am, therefore, of the opinion that the mere placement of the property for sale is not a change in circumstances under § 58.1-3215, which triggers a possible nullification of an exemption or deferral granted to a qualifying individual.

With respect to your inquiry concerning the meaning of the phrase "other factors" used in § 58.1-3215(A), the prior opinions discussed herein address changes in circumstances arising from changes in income, financial worth, or ownership. Any other factors resulting in a change in circumstances falling within the purview of this section require a factual determination to be made on a case-by-case basis by the local commissioner of the revenue.<sup>12</sup>

<sup>1</sup>A "qualifying individual" means anyone who is at least 65 years old or is "permanently and totally disabled" as defined in § 58.1-3217. Section 58.1-3210(A).

<sup>2</sup>See Va. Const. art. X, § 6(f) (1971) (providing that "[e]xemptions of property from taxation ... shall be strictly construed"); 1994 Op. Va. Att'y Gen. 117, 119.

<sup>3</sup>See 1989 Op. Va. Att'y Gen. 323, 324.

<sup>4</sup>1992 Op. Va. Att'y Gen. 175, 176.

<sup>5</sup>See Op. Va. Att'y Gen.: 1992 at 175; 1987-1988 at 527; 1985-1986 at 304; 1984-1985 at 335; 1982-1983 at 579; 1976-1977 at 293, 294.

<sup>6</sup>See Op. Va. Att'y Gen.: 1981-1982 at 354; 1975-1976 at 346; *id.* at 397; 1973-1974 at 401.

<sup>7</sup>See Op. Va. Att'y Gen.: 1976-1977 at 293; 1971-1972 at 427; *id.* at 428.

<sup>8</sup>See 1989 Op. Va. Att'y Gen., *supra* note 3, at 324.

<sup>9</sup>Section 58.1-3215(B) (emphasis added).

<sup>10</sup>See 1996 Op. Va. Att'y Gen. 113, 113 (noting that language of statute that is plain should be given its clear and unambiguous meaning).

<sup>11</sup>See 1993 Op. Va. Att'y Gen. 248, 249 (concluding that jurisdiction has personal claim against seller or seller's estate for accumulated deferred taxes owed on property at time property was sold).

<sup>12</sup>See Op. Va. Att'y Gen.: 1994 at 99, 104; 1989 at 338, 339.