

01-017

TAXATION: PERSONAL PROPERTY TAX RELIEF ACT OF 1998.

Amendments proposed in 2001 Appropriation Act satisfy conditions regarding general fund revenues required to implement additional phase of personal property tax reduction. Requirement that tax bills reflect 70% tax reduction on their face must be followed by all localities. Procedures for levying or reimbursing taxes should legislature change reimbursement percentage amount for any tax year after locality has printed its tangible personal property tax bills.

Mr. Richard D. Holcomb
Commissioner, Department of Motor Vehicles
February 9, 2001

You inquire regarding the statutory responsibilities of the Department of Motor Vehicles under the Personal Property Tax Relief Act of 1998, §§ 58.1-3523 through 58.1-3536 of the *Code of Virginia*, for tax years beginning in calendar year 2001.

You relate that the Personal Property Tax Relief Act assigns a certification responsibility to the Commissioner of the Department of Motor Vehicles.¹ The Act directs that the Department promulgate guidelines for the reconciliation of local reimbursements.² The Commissioner must certify annually the sum necessary to fund the payments to taxpayers and local treasurers.³

You advise that some localities must mail tangible personal property tax bills⁴ prior to adjournment of the 2001 Session of the General Assembly.⁵ Section 58.1-3426(B) requires the local treasurer to include "on the face of tangible personal property tax bills" the amount paid by the Commonwealth as a deduction for qualifying vehicles.⁶ You note that § 58.1-3524(B)(4) sets reimbursement to taxpayers at "70 percent of the reimbursable amount^[7] for each qualifying vehicle" "[f]or any tax year beginning in calendar year 2001." Therefore, you ask whether the amendments to the 2000 Appropriation Act,⁸ allocating 70% tax relief for any tax year beginning in calendar year 2001, as proposed by the Governor on December 20, 2000,⁹ meet the requirements of § 58.1-3524.

The Personal Property Tax Relief Act contemplates phasing out local personal property tax obligations for personal use vehicles owned by natural persons over a period of five years beginning in calendar year 1998.¹⁰ Section 58.1-3524(B) sets forth the reimbursement percentage levels for the five-year period. Section 58.1-3524(C) provides that the

percentage levels set forth in § 58.1-3524(B) "shall not be increased at the beginning of any calendar year above the percentage level ... in the preceding tax year" when any of the following conditions exist:

1. Actual general fund revenues for a fiscal year, including transfers, are less than the projected general fund revenues, as reported in the general appropriation act in effect at that time, by one-half of one percent or more of the amount of actual general fund revenues for such fiscal year;
2. The general fund revenue forecast provided by the Governor in December pursuant to § 2.1-393^[11] indicates that general fund revenues, excluding transfers, for any fiscal year will be less than five percent greater than general fund revenues for the immediately preceding fiscal year; or
3. The general fund revenue forecast provided by the Governor in December pursuant to § 2.1-393 indicates that total general fund revenues available for appropriation, including transfers, for either of the fiscal years covered by the general appropriation act in effect at that time will be less than the general fund appropriations for such fiscal year or years.

The first of the three conditions required to implement an additional phase of the tax reduction is that the actual general fund revenues for fiscal year 2000, including transfers, must, at a minimum, come within one-half of one percent of official projections. In a presentation to the Senate and House Finance Committees and the House Appropriations Committee, the Secretary of Finance reported that general fund revenues, including transfers, for fiscal year 2000 *exceed* the official forecast by a total of \$24.1 million or two-tenths of one percent.¹² Thus, the first condition is met. The second condition is that the official general fund revenue forecast for fiscal year 2001 must be at least five percent more than general fund revenues for 2000. The general fund revenue forecast, as reported by the Governor in his annual budget address, estimates an increase of 5.7% for fiscal year 2001 and 7% for fiscal year 2002.¹³ Thus, the second condition is met. The final condition is that the official general fund revenue forecast, including transfers, for the fiscal year must meet or exceed the amount of funds in the current budget. The official forecast for total general fund revenues, including transfers, in the Governor's proposed budget exceed current appropriations by \$97.5 million.¹⁴ Thus, the third condition is met, and all the conditions set forth in § 58.1-3524(C) to implement an additional phase of the tax reduction are satisfied.

It is, therefore, my opinion that the amendments proposed in the 2001 Appropriation Act satisfy the requirements of § 58.1-3524.

You next ask whether localities that issue personal property tax bills prior to adjournment of the 2001 Session of the General Assembly must include on the face of such bills a 70% tax reduction to be paid by the Commonwealth for qualifying vehicles.

Section 58.1-3912(E) requires that each tangible personal property tax bill contain the following information on its face:

- (i) whether the vehicle is a qualifying vehicle as defined in § 58.1-3523;^[15]
- (ii) a deduction for the amount to be paid by the Commonwealth as determined by § 58.1-3524;
- (iii) the vehicle's registration number pursuant to § 46.2-604;
- (iv) the amount of tangible personal property tax levied on the vehicle; and
- (v) if the locality prorates personal property tax pursuant to § 58.1-3516, the number of months for which a bill is being sent.

The 2001 Session of the General Assembly continues to consider this matter. Furthermore, any action taken by the General Assembly in this matter is subject to gubernatorial review. In addition, any action taken by the Governor following his review is again subject to General Assembly action, which may, in turn, again be reviewed by the Governor.¹⁶

Accordingly, it is unknown at this time whether, or when, a change to the 70% reduction rate might be adopted. A statute speaks as of the time it takes effect and not as of the time it is passed.¹⁷ Consequently, any acts purporting to have been done under a statute before it takes effect are null and void.¹⁸ Therefore, the requirement in § 58.1-3524(B)(4) that tax bills reflect a 70% tax reduction must be followed by all localities in the Commonwealth.

If the General Assembly changes the reimbursement percentage for qualifying vehicles for a tax year in which a locality has already printed its tangible personal property tax bills, then the locality must follow the procedures described in § 58.1-3524(E)(1). The Supreme Court of Virginia has stated that "the plain, obvious, and rational meaning of a statute is always to be preferred to any curious, narrow, or strained construction."¹⁹ If the General Assembly decreases the percentage of reimbursement, the locality may (1) levy an additional amount reflecting the difference in the percentage shown on the original tax bill and the modified percentage, or (2) carry forward and include the additional amount due on a subsequent tax bill.²⁰ When a statute creates a specific grant of authority, the authority exists only to the extent specifically granted in the statute.²¹ Therefore, a locality must follow the procedures

set forth in § 58.1-3524(E)(1), should the General Assembly modify the reimbursement percentage amount for any tax year in which the locality has already printed its tangible personal property tax bills.

Your final inquiry is whether the Personal Property Tax Relief Act permits localities to recover any resulting underestimations in revenue, should the 2001 General Assembly decide not to fund the amount of reimbursement to taxpayers at 70% of the reimbursable amount for each qualifying vehicle.

The Supreme Court of Virginia has stated that, "[i]f the language used [in a statute] is plain and unambiguous, and its meaning clear and definite, effect must be given to it."²² In such cases, courts must find the meaning within the statute itself.²³ Section 58.1-3524(E)(1) notes that, when a locality has printed its tangible personal property tax bills prior to the decision of the General Assembly not to fund the full amount of the tax relief, the locality may either levy an additional tax bill for the amount of any underestimation or carry forward the additional amount and include it in the next regular tax assessment owed by the taxpayer. Section 58.1-3524(E)(2) states that, when a locality has not printed its tangible personal property tax bills prior to such an enactment by the General Assembly, the locality may adjust its tax bills to reflect the change in the reimbursement percentage enacted by the General Assembly.

In short, it is my opinion that, as a matter of law, the conditions required to implement the next phase of car tax reduction have been met. Unless the General Assembly changes existing law, taxpayers are legally entitled to the 70% relief established by § 58.1-3524(B)(4), and tax bills issued by localities must reflect that 70% reduction. If the legislature changes the law so as to provide less tax relief, localities will have to bill their taxpayers for an additional amount to make up the difference.

¹Within thirty days of receipt of certifications from local treasurers and after review of such certifications, the Commissioner must certify the amount to be reimbursed to each taxpayer and make a written request to the Comptroller for payment. Va. Code Ann. § 58.1-3525(B)(3)(b) (LEXIS Repl. Vol. 2000).

²Va. Code Ann. §§ 58.1-3532, 58.1-3527 (LEXIS Repl. Vol. 2000).

³Va. Code Ann. § 58.1-3533(B) (LEXIS Repl. Vol. 2000).

⁴Section 58.1-3912(A) requires city and county treasurers to mail a bill for the payment of taxes, "not later than fourteen days prior to the due date of the taxes."

⁵A regular session of the General Assembly convened in an odd-numbered year shall not continue longer than 30 days. Va. Const. art. IV, § 6. The 2001 Regular Session of the General Assembly, however, has been extended beyond the 30-

day limit provided in § 6 and shall adjourn by Saturday, February 24, 2001. 2001 H.J. Res. 507, R. 16, at 3 (agreed to by both houses, Jan. 10, 2001).

⁶See also Va. Code Ann. §§ 58.1-3912(E)(ii), 58.1-3524(B)(4)-(5) (LEXIS Repl. Vol. 2000).

⁷"*Reimbursable amount*' means the value of a qualifying vehicle, up to the first \$20,000 of value, multiplied by the effective tax rate in effect in the locality on July 1, 1997, or August 1, 1997, whichever is greater." Va. Code Ann. § 58.1-3523 (LEXIS Repl. Vol. 2000).

⁸See 2001 Appropriation Act, H. Doc. No. 1, Item 2, § 3 at 1-2 (amending 2000 Acts ch. 1073, Item 1, § 3 at 3220, 3220).

⁹See Scott D. Pattison, Dep't Plan. & Budget, Governor Gilmore's Proposed Amendments to the 2000-02 Biennial Budget, at 1, 8-9 (Dec. 20, 2000) (briefing for Senate and House Finance Committees and House Appropriations Committee).

¹⁰See Va. Code Ann. § 58.1-3524(B) (LEXIS Repl. Vol. 2000).

¹¹Section 2.1-393 requires the Governor, every year by December 15, to prepare and submit to the General Assembly "an estimate of anticipated general fund revenue, and estimates of anticipated revenues for each of the major nongeneral funds, for a prospective period of six years."

¹²See Ronald L. Tillett, Sec'y Fin., Actual Fiscal Year 2000 Revenues and the State of the Virginia Economy (Aug. 21, 2000).

¹³See Ronald L. Tillett, Sec'y Fin., Governor Gilmore's Proposed Amendments to the 2000-2002 Budget: Fiscal Policy, Economic Assumptions, and Revenue Estimates, at 7 (Dec. 20, 2000); Commonwealth of Virginia 2000-02 Biennial Budget: 2001 Amendments, at A-24 (stating that Governor proposes to sell Virginia's Tobacco Master Settlement Agreement allocation for future years, which will increase total revenue collections, excluding transfers); see also Va. Code Ann. § 32.1-360 (Michie Supp. 2000) (creating Virginia Tobacco Settlement Fund); Va. Code Ann. § 3.1-336.2(A)(2) (Michie Supp. 2000) (setting forth amounts to be placed in Fund after July 1, 1999, through year 2007 and each year thereafter).

¹⁴See 2001 H. Doc. No. 1, Item 2, § 3, at 2 (setting forth Official Revenue Estimates, Transfers).

¹⁵"*Qualifying vehicle*' means any passenger car, motorcycle, and pickup or panel truck, as those terms are defined in § 46.2-100, that is determined by the commissioner of the revenue of the county or city in which the vehicle has situs as provided by § 58.1-3511 to be (i) privately owned or (ii) leased pursuant to a contract requiring the lessee to pay the tangible personal property tax on such vehicle." Va. Code Ann. § 58.1-3523 (LEXIS Repl. Vol. 2000).

¹⁶Va. Const. art. V, § 6 (authorizing Governor to amend and return legislation passed by Senate and House of Delegates and to sign or veto reconsidered bill).

¹⁷School Board v. Town of Herndon, 194 Va. 810, 75 S.E.2d 474 (1953).

¹⁸Burks v. Commonwealth, 126 Va. 763, 101 S.E. 230 (1919).

¹⁹Turner v. Commonwealth, 226 Va. 456, 459, 309 S.E.2d 337, 338 (1983).

²⁰Va. Code Ann. § 58.1-3524(E)(1)(a) (LEXIS Repl. Vol. 2000).

²¹See 2A Norman J. Singer, Sutherland Statutory Construction § 47:23 (West 6th ed. 2000) ("*Expressio unius est exclusio alterius*").

²²Fairbanks, etc., Co. v. Cape Charles, 144 Va. 56, 63, 131 S.E. 437, 439 (1926); see also Town of South Hill v. Allen, 177 Va. 154, 165, 12 S.E.2d 770, 774 (1941); Hammer v. Commonwealth, 169 Va. 355, 364-65, 193 S.E. 496, 499-500 (1937); Woodward v. Staunton, 161 Va. 671, 674, 171 S.E. 590, 591 (1933).

²³See Town of South Hill v. Allen, 177 Va. at 164-65, 12 S.E.2d at 774; Hammer v. Commonwealth, 169 Va. at 364-65, 193 S.E. at 499-500; Woodward v. Staunton, 161 Va. at 674, 171 S.E. at 591; Fairbanks, etc., Co. v. Cape Charles, 144 Va. at 63, 131 S.E. at 439.

[Back to February 2001 Index](#)