

01-054

TAXATION: TAX EXEMPT PROPERTY.

Commissioner of revenue is proper official to determine whether rental property owned by town is exempt from real estate taxation.

The Honorable Terry G. Kilgore
Member, House of Delegates
June 29, 2001

You ask whether certain property owned by the Town of Clintwood is exempt from real estate taxation.

You relate that the town mayor recently received tax statements on property owned by, and located within the corporate limits of, the town. You understand that the property was either donated to or purchased by the town, or purchased with specific funds. One of the parcels is wooded land that is proposed to be used as a nature trail, and another parcel is a parking lot. The town receives rental income from a portion of the property it owns. The rental income, however, is not enough to offset the maintenance of the property and the assessed taxes. Finally, you relate that this is the first year the town has received a tax statement on any town-owned property.

Section 58.1-3606(A)(1) of the *Code of Virginia* exempts from taxation "property owned directly or indirectly by the Commonwealth, or any political subdivision thereof." A tax exemption granted by classification of the General Assembly under § 58.1-3606 is limited by § 58.1-3603(A), which states:

Whenever any building or land, or part thereof, exempt from taxation pursuant to [§ 58.1-3606] and not belonging to the Commonwealth is a source of revenue or profit, whether by lease or otherwise, all of such buildings and land shall be liable to taxation as other land and buildings in the same county, city or town. When a part but not all of any such building or land, however, is a source of revenue or profit, and the remainder of such building or land is used by any organization exempted from taxation pursuant to [§ 58.1-3606] for its purposes, only such portion as is a source of profit or revenue shall be liable for taxation.

Leasing by the tax exempt owner does not automatically subject the otherwise tax exempt property to taxation. The Supreme Court of Virginia has construed the terms "revenue" and "profit" to mean "substantial net profit."¹ As a result, the property loses its tax exempt status only if the owner derives a substantial net profit from a lease after deducting all expenses.² Whether an owner has derived a substantial net profit is a question of fact for the commissioner of the revenue to determine.³ I must, therefore, defer to the commissioner of the revenue for a response as to whether the property owned by the Town of Clintwood is exempt from real estate taxation.

¹Norfolk v. Nansemond Supervisors, 168 Va. 606, 620, 192 S.E. 588, 593-94 (1937); Newport News v. Warwick County, 159 Va. 571, 593-98, 166 S.E. 570, 578-79 (1933).

²Op. Va. Att'y Gen.: 1987-1988 at 601; 1975-1976 at 339, 340; 1973-1974 at 399.

³See 1987-1988 Op. Va. Att'y Gen., *supra*, at 602-03.

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