



COMMONWEALTH of VIRGINIA

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November 5, 2010

The Honorable Robert S. Wertz, Jr.
Commissioner of the Revenue for Loudoun County
P.O. Box 8000
Leesburg, Virginia 20177-9804

Dear Commissioner Wertz:

I am responding to your request for an official advisory opinion in accordance with § 2.2-505 of the *Code of Virginia*.

Issue Presented

You ask a whether a married person, applying for a real property tax exemption authorized by § 58.1-3210, must include his or her spouse's net worth when calculating net combined financial worth to satisfy the condition set forth in § 58.1-3211(2) if the spouse's name does not appear on the deed to property and such spouse either has separated from or abandoned the applicant.

Response

It is my opinion that a married person applying for a real property tax exemption authorized by § 58.1-3210 must report both the applicant's net worth and his or her spouse's net worth to determine net combined financial worth as required by § 58.1-3211(2) irrespective of whether such spouse has separated from or abandoned the applicant or whether the spouse's name appears on the deed.

Background

You state that a number of your constituents apply for real property tax exemptions under a tax relief program offered by Loudoun County pursuant to § 58.1-3210. You further state that some applicants object to the inclusion of their spouse's financial information in determining net worth when a spouse either has separated from or abandoned the applicant. In some cases of separation or abandonment, the applicants are unable to account for the whereabouts or financial information of their spouses. You further state that some of the parties have separation agreements granting ownership of the property at issue to the spouse applying for the tax exemption. In other cases, the non-applying spouse never was listed on the deed to the property.

Applicable Law and Discussion

Article X, § 6(b) of the *Constitution of Virginia* authorizes the General Assembly to enact laws permitting local governing bodies to provide an exemption for

local property taxation, or a portion thereof, within such restrictions and upon such conditions as may be prescribed, of real estate and personal property designed for continuous habitation owned by, and occupied as the sole dwelling of, persons not less than sixty-five years of age or persons permanently and totally disabled as established by general law who are deemed by the General Assembly to be bearing an extraordinary tax burden on said property in relation to their income and financial worth.^[1]

Pursuant to this authority, the General Assembly enacted § 58.1-3210, which authorizes localities to implement tax-relief programs for those persons who are at least sixty-five years of age or who are permanently and totally disabled.² Such exemptions, however, are not without limitation. Section 58.1-3211 imposes certain restrictions, providing, in pertinent part, that “[t]he net combined financial worth, including the present value of all equitable interests...of the owners, and of the spouse of any owner...shall not exceed \$200,000.”³ Thus, persons seeking an exemption must submit an affidavit or other written statement accounting for the total combined net worth, including that of his or her spouse.⁴

Where, as here, the language of a statute is unambiguous, its plain meaning is to be applied.⁵ An ambiguity exists “when the language is difficult to comprehend, is of doubtful import, or lacks clearness and definiteness.”⁶ Additionally, real estate tax exemptions must be strictly construed against the applicant seeking the exemption.⁷

Section 58.1-3211(2) clearly indicates that an applicant’s “net combined financial worth” includes the “value of all equitable interests . . . of the owners, *and of the spouse of any owner.*” The statute does not require that the spouse of an owner also be an owner or be named on the deed or that the spouses live together. Unlike the income restrictions of § 58.1-3211(1), which considers the income of those persons residing in the dwelling, § 58.1-3211(2) makes no mention of living arrangements. Rather,

¹ VA. CONST. art. X, § 6(b). I note that Virginia voters will consider a ballot question on November 2, 2010, regarding whether this constitutional provision should be amended. If adopted, this amendment would strike the current limitation for this tax exemption to qualifying persons who bear “an extraordinary tax burden” and authorize the General Assembly to permit local governing bodies to determine their own income and/or financial worth limitations for such tax exemptions.

² VA. CODE ANN. § 58.1-3210(A) (2009).

³ Section 58.1-3211(2) (2009). It should also be noted that Loudoun County is permitted to raise the net combined financial worth limit to a maximum of \$540,000. Section 58.1-3211(4) (2009).

⁴ Section 58.1-3213(A) (2009).

⁵ See *Commonwealth v. Gregory*, 193 Va. 721, 726, 71 S.E.2d 80, 83 (1952) (“where a statute is simple and plain and no ambiguity exists courts are bound to follow the law as written.”).

⁶ *Brown v. Lukhard*, 229 Va. 316, 321, 330 S.E.2d 84, 87 (1985) (citing *Ayres v. Harleysville Mut. Cas. Co.*, 172 Va. 383, 393, 2 S.E.2d 303, 307 (1939)).

⁷ VA. CONST. art. X, § 6(f). See *DKM Richmond Assoc., L.P. v. City of Richmond*, 249 Va. 401, 407, 457 S.E.2d 76, 80 (1995) (“the general policy is to tax all property . . . the taxpayer has the burden to establish that it comes within the terms of the exemption”); *Westminster-Canterbury of Hampton Roads, Inc. v. City of Virginia Beach*, 238 Va. 493, 501, 385 S.E.2d 561, 565 (1989) (“exemption from taxation is the exception, and where there is any doubt, the doubt is resolved against the one claiming exemption”). See also 2007 Op. Va. Att’y Gen. 129, 131; 1994 Op. Va. Att’y Gen. 117, 119; 1998 Op. Va. Att’y Gen. 127, 127 (exemptions under § 58.1-3210 must be strictly construed).

applicants are required to report the net combined financial worth “of the owners, and of *the spouse of any owner.*”⁸

Therefore, when a married person seeks to qualify for a tax exemption authorized by § 58.1-3210, so long as the couple remains legally married and notwithstanding legal title to the home and/or a separation of the spouses, the spousal relationship remains, and the finances of the applicant’s spouse must be included in the calculation to determine net combined financial worth under the statute.

Conclusion

Accordingly, it is my opinion that a married person applying for a real property tax exemption authorized by § 58.1-3210 must report both the applicant’s net worth and his or her spouse’s net worth to determine net combined financial worth as required by § 58.1-3211(2) irrespective of whether such spouse has separated from or abandoned the applicant or whether the spouse’s name appears on the deed.

With warmest regards, I am

Very truly yours,



Kenneth T. Cuccinelli, II
Attorney General

⁸ Section 58.1-3211(2) (*italics added*).