



COMMONWEALTH of VIRGINIA

Office of the Attorney General

Kenneth T. Cuccinelli, II
Attorney General

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900 East Main Street
Richmond, Virginia 23219
804-786-2071
FAX 804-786-1991
Virginia Relay Services
800-828-1120
7-1-1

The Honorable Deborah F. Williams
Spotsylvania County Commissioner of the Revenue
P.O. Box 175
Spotsylvania, Virginia 22553

Dear Ms. Williams:

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

Issues Presented

You inquire regarding three issues relating to the issuance of refunds of local taxes to taxpayers who already have paid assessments that local tax officials later reduce through administrative procedures. Specifically, you ask what § 58.1-3981(A) requires a local commissioner of the revenue to tender to the board of supervisors in order to “certify” the commissioner’s determination that a local tax assessment was erroneous. You also seek guidance as to the role of a county attorney in providing his “consent” to the commissioner of the revenue’s determination, as required by that subsection. You further ask to what extent the commissioner of the revenue lawfully may provide an affected taxpayer’s local tax filings, with attached business and financial records to the county attorney. Finally, you ask whether a county attorney’s review of and consent to a downward adjustment of a local real estate tax assessment by the county’s board of equalization is a necessary predicate to the county’s issuance of a refund of excess taxes that a taxpayer initially paid.

Response

It is my opinion that a county commissioner of the revenue’s “certification” of a correction of a local tax assessment for purposes of § 58.1-3981(A) means that the commissioner should provide written verification that he has determined that the original local tax assessment paid by the affected taxpayer was erroneous. Further, it is my opinion that § 58.1-3(A)(2) authorizes a county commissioner of the revenue to supply to the attorney for his county any information that is necessary to enable the attorney to make an informed decision as to whether to consent to the commissioner of the revenue’s determination. Finally, I am of the opinion that a county attorney’s consent to a reduction of a real estate tax assessment by a county board of equalization is not a prerequisite to the county’s issuance of a refund of excess taxes.

Background

You report that in situations where you have determined that a local tax assessment issued by your office was erroneous, the attorney for your county has requested information concerning the affected taxpayer's tax filings. This request has included any business or financial records attached to those filings. You also state that the county attorney has directed you to prepare a "certification" of an order issued by your county's board of equalization that will reduce the value of a real estate tax assessment, ostensibly to enable your county's officials to process and approve a refund of taxes resulting from the board of equalization's adjustment to the assessment.

Applicable Law and Discussion

Section 58.1-3981 establishes the procedures a locality's officials and governing body must follow where the locality's commissioner of the revenue determines that a local tax assessment he previously issued is erroneous. Subsection (A) of that statute states, in relevant part:

If the commissioner of the revenue . . . is satisfied that he has erroneously assessed [a taxpayer who applies to the commissioner of the revenue for correction of a local tax assessment, pursuant to § 58.1-3980] with any such tax, he shall correct such assessment. If the assessment exceeds the proper amount, he shall exonerate the applicant from the payment of so much as is erroneously charged if not paid into the treasury of the county or city. If the assessment has been paid, the governing body of the county or city shall, *upon the certificate of the commissioner with the consent of the town, city or county attorney, or if none, the attorney for the Commonwealth, that such assessment was erroneous*, direct the treasurer of the county, city or town to refund the excess to the taxpayer.¹

Interpreting this statutory language, a circuit court concluded that a county board of supervisors lacks the statutory authority to correct local tax assessments made by the county's commissioner of the revenue, and, as a result, "a refund can only be authorized and directed to be paid by the [t]reasurer after the [c]ommissioner corrects the assessment and certifies the fact of the erroneous assessment to the governing body of the county."²

With regard to the General Assembly's intended meaning of the word "certificate" in § 58.1-3981(A), a prior opinion of the Attorney General construed the use of the term "certified" in § 58.1-3981(E) according to the ordinary meaning of the word "certify," which is "to authenticate or verify in writing."³ Because subsections (A) and (E) of § 58.1-3981 deal with essentially the same subject, *i.e.*, confirmation of the correction of a local tax assessment by a local commissioner of the revenue or equivalent assessing official, their uses of the terms "certificate" and "certified," respectively, should be construed *in pari materia*, so as to harmonize the general tenor of the statute as a whole.⁴ Applying this maxim to the court's interpretation of § 58.1-3981(A), I conclude that a county commissioner of the

¹ VA. CODE ANN. § 58.1-3981(A) (2009) (emphasis added).

² *ITT Teves Am. Automotive v. Bd. of Supervisors*, 45 Va. Cir. 39, 44 (Culpeper County 1997).

³ 2006 Op. Va. Att'y Gen. 200, 202 (citing *McKeon v. Commonwealth*, 211 Va. 24, 27, 175 S.E.2d 282, 284 (1970) and *BLACK'S LAW DICTIONARY* 241 (8th ed. 2004)).

⁴ See *Alston v. Commonwealth*, 274 Va. 759, 769, 652 S.E.2d 456, 462 (2007) (citing *Prillaman v. Commonwealth*, 199 Va. 401, 405-06, 100 S.E.2d 4, 7 (1957)).

revenue's "certificate" under that subsection entails his written verification to the board of supervisors that he has determined an assessment to be erroneous.

In addition to requiring a local commissioner of the revenue to certify that an assessment is erroneous, § 58.1-3981(A) further provides that the consent of the attorney for the locality is necessary before the governing body authorizes the local treasurer to refund the excess taxes. As a result, the Code imposes a duty on the attorney for a locality that is complementary to the duties of the locality's commissioner of the revenue and governing body. Section 58.1-3(A)(2) permits disclosure of otherwise confidential taxpayer information "in the line of duty under the law."⁵ The commissioner of the revenue, therefore, lawfully may disclose taxpayer information acquired in the performance of his tax-related duties to personnel of the locality who have a legal responsibility concerning the administration of local taxes. Prior opinions of the Attorney General indicate that a commissioner of the revenue may disclose taxpayer information to local officials charged with tax-related duties under the "line of duty" exception to § 58.1-3 to the extent that such information is "necessary for the performance of the officers' or employees' duties."⁶ Moreover, because § 58.1-3981(A) places upon the attorney for a locality a duty either to consent to or to disagree with a commissioner of the revenue's determination that a local tax assessment was erroneous, I conclude that a county commissioner of the revenue lawfully may provide the county attorney with such information as is necessary for the county attorney to make an informed decision whether or not to consent to the commissioner's determination.

In contrast to the two-step procedure outlined above, the statutory process for adjusting local real estate tax assessments by local boards of equalization does not require a second layer of approval by the county attorney. Instead, when a board of equalization determines that an assessment of the value of taxable real estate should be decreased, it has the duty to enter into the board's minutes an order giving effect to that determination.⁷ The board of equalization's order decreasing an assessment entitles the owner of the affected real estate to a refund of monies paid in excess of the reduced assessment and no further action by the commissioner of the revenue is necessary.⁸ Therefore, I conclude that a commissioner of the revenue has no power or duty to certify an adjustment to a real estate tax assessment ordered by the board of equalization, and consequently, there is no certification by the commissioner to which the attorney for the locality must consent before the treasurer may issue a refund of excess taxes paid by the affected taxpayer.

Conclusion

Accordingly, it is my opinion that a county commissioner of the revenue's "certification" of a correction of a local tax assessment for purposes of § 58.1-3981(A) entails the commissioner's written verification that he has determined that the original local tax assessment paid by the affected taxpayer was erroneous. Further, it is my opinion that § 58.1-3(A)(2) authorizes a county commissioner of the revenue to supply to the attorney for his county any information that is necessary to enable the attorney to make an

⁵ See 2005 Op. Va. Att'y Gen. 147, 149 (citing 1999 Op. Va. Att'y Gen. 185, 186; 1974-1975 Op. Va. Att'y Gen. 523, 524).

⁶ *Id.* (citing 1999 Op. Va. Att'y Gen. 185, 186).

⁷ See §§ 58.1-3381 & -3384 (2009).

⁸ See § 58.1-3385 (2009) ("In case of a decrease in valuation, the order of the board shall entitle the taxpayer to an exoneration from so much of the assessment as exceeds the proper amount, if the taxes have not been paid by him and, in case the taxes have been paid, to a refund of so much thereof as is erroneous").

informed decision as to whether to consent to the commissioner of the revenue's determination, pursuant to § 58.1-3981(A). Finally, I am of the opinion that a county attorney's consent to a reduction of a real estate tax assessment by a county board of equalization is not a prerequisite to the county's issuance of a refund of excess taxes.

With kindest regards, I am

Very truly yours,

A handwritten signature in blue ink that reads "Ken C II". The signature is stylized, with "Ken" written in a cursive-like font and "C II" written in a more blocky, capital style.

Kenneth T. Cuccinelli, II
Attorney General