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**Assessment/Collection**

Due to the significant autonomy of its counties, cities, and towns, Virginia has a somewhat baffling set of real property tax assessment procedures. In this article, Shane Smith of Williams Mullen summarizes both the general rules that can be gleaned from state statutes and the potential pitfalls the statutes create for the unwary due to assessment procedure options available to some (but not necessarily all) localities.

# Virginia Real Property Tax Assessment Procedure: Mandates, Options, and the Legal Landscape in Between

BY SHANE L. SMITH

Article X of the Constitution of Virginia requires all property in Virginia—real and personal, tangible and intangible—to be taxed at its fair market value unless the property is exempt from taxation as provided in the Constitution or by general law.[1] The Constitution further requires that all taxes levied and collected be uniform upon the same class of subjects within the territorial limits of the authority levying the tax.[2] Taxation, of course, does not happen without tax assessments, and tax assessments in the colorful history of these United States frequently cause taxpayer angst. Virginia's property tax assessment (and appeal) procedures are, however, comprehensive and not easily decipherable, due largely to the significant autonomy Virginia grants to its counties, cities,[3] and towns in the development of their particular property tax schemes. A series of articles will therefore be necessary to complete a general survey of Virginia's real and personal property tax assessment and appeal procedures. This article focuses on real property tax assessment procedure;[4] future articles will address real property tax appeals, personal property tax assessments, and personal property tax appeals.

Although we leave for a future article the topic of real property appeal procedure, it is important to keep in mind, when addressing real property assessment procedures, that differences among the localities' appeal procedures carry pitfalls for taxpayers who assume such procedures are uniform statewide. For example, not every board of equalization or reviewing court must afford the assessments a presumption of correctness. In

[1] Art X., §§1, 2, 6 of the Const. of Va.
[2] Art X., §1 of the Const. of Va.

*As a Senior Associate at Williams Mullen, which serves clients across North Carolina, Virginia, and Washington, D.C., Mr. Smith specializes in Virginia real and personal property tax appeals. He can be reached at www.williamsmullen.com or at 757-622-3366.*

[3] One of Virginia's unique characteristics is its establishment of ''independent cities,'' that is, cities independent of any county's government. Of the 41 independent cities currently in the United States, 38 are in Virginia. In addition to these 38 independent cities, Virginia currently boasts 95 counties and 191 incorporated towns.

[4] This article is not intended to be a comprehensive summary of the numerous localities' varying procedures but should give you a summary of procedures that *are* applicable statewide and of optional procedures that Virginia allows its localities to adopt. To complicate matters though, Virginia's courts have decided very few cases involving the interpretation of tax assessment statutes. *See generally* Va. Code Ann. §§58.1-3200 *et seq*.

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counties that decide to adopt a county manager plan of government, a taxpayer must simply prove that the property ''is valued at more than its fair market value, or that the assessment is not uniform in its application, or that the assessment is otherwise invalid or illegal.''[5] To date, only Arlington County has adopted the county manager plan of government—meaning taxpayers in Arlington County face a different (and significantly lower) hurdle to prevail in an assessment challenge than in any other locality in Virginia. Taxpayers in all other localities—at least at present—must rebut a presumption that their assessment is correct in order to prevail in an assessment challenge,[6] and rebutting the presumption will, in almost all instances, require a showing of manifest error or total disregard of controlling evidence in the assessing officer's assessment methodology.[7] A thorough understanding of assessment procedure—including state statutes (not all of which are in the Tax Section of the Virginia Code) and local ordinances—is therefore critical and will aid in identifying such manifest error or evidentiary disregard.

## Exemptions, Classifications And Special Service Districts

Unless exempted by law, all real property in Virginia is subject to annual *ad valorem* taxation by the county, city, or town in which the parcel is located[8] and, with minimal exception, cannot be taxed by the state.[9] Some properties are exempt from taxation in all localities by state statute.[10] Some types of properties, however, are taxable in some localities but exempt in others.

**Exemptions.** Virginia allows its counties, cities, and towns the option to exempt from taxation, totally or partially, real property owned and occupied as the sole dwelling of a person who is at least 65 years of age or who is permanently and totally disabled.[11] In localities that decide to enact such an ordinance, state law ''authorizes'' (but does not require) the establishment of ''net financial worth or annual income limitations as a condition of eligibility.''[12] While localities have sole authority to decide whether to enact such ordinances, state law imposes numerous guidelines and restrictions on what such ordinances may or cannot allow.[13]

Similarly, Virginia's counties, cities, and towns ''may, by ordinance,'' provide for partial exemption from taxation for certain rehabilitated, renovated, or replacement residential structures, hotel or motel structures, and commercial or industrial structures but, again, state law imposes numerous guidelines and restrictions on what these ordinances may or may not allow.[14] State law exempts from taxation certified pollution control facilities, solar energy facilities, recycling facilities and energy conversion facilities.[15]

**Classifications.** Virginia does not provide a base rule for creating classifications, just a multitude of rules that create classifications.[16] Statutes that mandate classifications of certain land and improvements for tax purposes create an interesting blend of state requirements and local options, including statutes that allow some localities to tax certain properties in ways and at rates that other localities cannot.

In the cities of Fairfax, Poquoson, and Roanoke, for example, ''improvements to real property are declared [by state statute] to be a separate class of property and shall constitute a separate classification for local taxation.''[17] Although these cities have the option to levy a tax on improvements at a different rate than on the land itself,[18] the rates they are allowed to impose differ. The cities of Fairfax and Roanoke must set their tax rate on improvements at something other than ''zero'' but *not* exceeding the rate of tax on the land on which the improvements are located, while the City of Poquoson

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[5] Va. Code Ann. §15.2-717. In all likelihood, this is sloppy draftsmanship as Virginia Code §58.1-3984(B) seems intended to apply to all counties by its reference, *without exception*, to ''circuit court proceedings'' and requires ''[i]n circuit court proceedings to seek relief from real property taxes, there shall be a presumption that the valuation determined by the assessor or as adjusted by the board of equalization is correct.'' Va. Code Ann. §58.1-3984(B).

Thus, a taxpayer bringing an assessment challenge in Arlington County should be prepared to argue that the county's assessment is not entitled to a presumption of correctness, but should also be prepared to rebut such a presumption (noting an objection to such a ruling by the court, of course, to preserve the possible error for appeal to the Supreme Court of Virginia). For purposes of this article, and in the interest of taxpayers' exercise of prudence, we will assume that the courts in all localities will afford assessments a presumption of correctness.

[6] Va. Code Ann. §§58.1-3379(B), -3984(B).

[7] There are no bright-line rules to distinguish what is manifest error from what is not, or what constitutes a total disregard of controlling evidence, although Virginia case law does identify some absolutes (*e.g.*, an assessing officer's math error, or an assessing officer's failure to consider and/or properly reject the use of the three most common valuation methods in appropriate cases). In the final analysis, however, the degree of error that makes an error a manifest one, and what makes specific evidence controlling, appears to be left to the trial court's sound discretion. *See, e.g., Keswick Club, L.P., v. County of Albemarle*, 273 Va. 128, 137-38, 639 S.E.2d 243, 247-48 (2007); *Shoosmith Bros. Inc. v. County of Chesterfield*, 268 Va. 241, 245, 601 S.E.2d 641, 643 (2004); *Fairfax County v. HCA Health Servs. of Va. Inc.*, 260 Va. 317, 329-30, 535 S.E.2d 163, 169-70 (2000); *Tidewater Psychiatric Inst. Inc. v. City of Virginia Beach*, 256 Va. 136, 140-41, 501 S.E.2d 761, 763 (1998).

[8] Art. X, §1 of the Const. of Va.; *see also* Va. Code Ann. §§58.1-3000, -3201.

[9] Certain real properties must be assessed by the State Corporation Commission or the Department of Taxation rather than by the locality. *See* Va. Code Ann. §58.1-3200; *see also* Art. X, §2 of the Const. of Va. For example, the Department of Taxation annually assesses for local taxation the value of real property of each railroad, ''including real property used for common carrier purposes . . . upon the best and most reliable information that can be procured, and to this end shall be authorized and empowered to send for persons and papers.'' Va. Code Ann. §58.1-2655(A).

[10] Va. Code Ann. §10.1-1011(A).

[11] Va. Code Ann. §§58.1-3210, -3211.1.

[12] Va. Code Ann. §58.1-3212.

[13] Va. Code Ann. §§58.1-3214, -3215.

[14] Va. Code Ann. §§58.1-3220, -3320.1, -3221.

[15] *See* Va. Code Ann. §§58.1-3606, -3607, -3609, -3650, -3651, -3660, -3661, and -3662.

[16] *See* Va. Code Ann. §§58.1-3221.1 *et seq*.

[17] Va. Code Ann. §58.1-3221.1.

[18] Va. Code Ann. §58.1-3221.1.

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must set its rate at something other than ''zero'' but *can* exceed the rate of tax on the land on which the improvements are located.[19]

In like fashion, Virginia has ''declared'' that ''[e]nergy-efficient buildings, not including the real estate or land on which they are located,'' are ''a separate class of property and shall constitute a classification for local taxation separate from other classifications of real property.''[20] Despite this declaration, counties, cities, and towns have the option to levy a tax on the value of such buildings at a different rate than that levied on other real property, so long as the tax rate imposed on such buildings does not exceed that applicable to ''the general class of real property.''[21]

**Special Service Districts.** By statute, Virginia has ''declared'' that, beginning Jan. 1, 2008, ''all real property used for or zoned to permit commercial or industrial uses'' is ''a separate class of property for local taxation,'' excepting all property used for single- or multifamily residential uses.[22] The statutory declaration of this property classification does not, however, mean that such property will be taxed at rates different from every other property in the locality, as the affected localities retain the option of imposing a higher rate of tax on the specially classified properties.[23] Further, the statute, at present, applies to only two geographic areas: (1) localities ''embraced'' by the Northern Virginia Transportation Authority (the ''NVTA''); and (2) localities ''wholly embraced'' by the Hampton Roads Metropolitan Planning Area (the ''HR MPA'').[24] These localities may, by ordinance, implement either—but not both—of two options, subject to differing conditions. They may: (1) annually impose an amount of tax on all the specially classified property in the locality; or (2) create within their boundaries one or more special regional transportation tax districts and thereafter impose an amount of tax on the specially classified property within such districts.[25] The additional tax these localities may impose on such specially classified property is limited to no more than $0.125 per $100 of assessed value in localities ''embraced'' by the NVTA, and to no more than $0.10 per $100 of assessed value in localities ''wholly embraced'' by the HR MPA.[26]

Virginia has also given its localities the option of creating special service districts ''to provide additional, more complete or more timely services of government than are desired in the locality or localities as a whole.'' Upon creation of such a service district, the governing body has the power to ''levy and collect an annual tax upon any property in such service district subject to local taxation to pay, either in whole or in part, the expenses and charges for providing [such services] and for constructing, maintaining, and operating such facilities and equipment as may be necessary and desirable in connection therewith.''[27] These taxes are often not insignificant. For example, the additional tax imposed currently by the City of Norfolk on taxable properties located within its Downtown Service District is 14 percent higher than the rate imposed on properties located outside the district ($1.31 per $100 vs. $1.15 per $100).[28]

## Fair Market Value (or Not)

Like Virginia's exemption and classification schemes, statutes governing valuation procedures feature exceptions and uncertainty. ''All general reassessments or annual assessments in those localities *which have annual assessments* of real estate . . . shall be made at 100 percent [of] fair market value.''[29] This begs the question whether localities that have biennial or longer reassessment cycles must assess real property at 100 percent of fair market value (they must, of course, according to the Constitution). Properties owned by public service corporations must be assessed ''on the basis of the assessment ratio as most recently determined and published by the [State] Department of Taxation.''[30] And the ''[n]onoperating (noncarrier)

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[19] Va. Code Ann. §58.1-3221.1.

[20] Va. Code Ann. §58.1-3221.2.

[21] Va. Code Ann. §58.1-3221.2.

[22] Va. Code Ann. §58.1-3221.3(A).

[23] Va. Code Ann. §58.1-3221.3(B), (D).

[24] Va. Code Ann. §58.1-3221.3(A)-(D). The statute provides no guidance for the distinction between ''embraced'' and ''wholly embraced.'' Taken at face value, the first would seem to apply to localities that are partially but not completely within the NVTA's boundaries, while the latter would seem to apply only to localities that are completely within the HR MPA's boundaries. In actuality, the nine counties and cities that are members of the NVTA are wholly embraced by the NVTA, *see* N. Va. Transp. Auth., Mission, *at* http://www.thenovaauthority.org/mission.html (last accessed Nov. 26, 2013), while the HR MPA includes all of nine cities, three counties, and ''a portion of'' a fourth county, *see* Hampton Roads Transp. Planning Org., *Member Locations*, *at* http://www.hrtpo.org/page/member-locations (last accessed Nov. 26, 2013). ''When interpreting and applying a statute,'' Virginia courts ''assume that the General Assembly chose, with care, the words it used in enacting the statute;'' therefore, ''when the General Assembly has used specific language in one instance, but omits that language or uses different language when addressing a similar subject elsewhere in the Code, we must presume that the difference in the choice of language was intentional.'' *Va. Broad. Corp. v. Commonwealth*, No. 122013, 286 Va. ___, ___ S.E.2d ___ (Oct. 31, 2013) (citations and internal brackets and quotation marks omitted). Under these principles, the use of the word ''wholly'' in connection with the localities embraced by the HR MPA would seem to preclude the fourth county, that is, Gloucester County, from enacting an ordinance otherwise allowable under the statute.

[25] Va. Code Ann. §58.1-3221.3(B), (D).

[26] Va. Code Ann. §58.1-3221.3(B), (D). For additional classifications of property that Virginia allows localities to assess as separate classes of property, *see* Virginia Code §§58.1-2609, -3221.4, and -3221.5.

[27] Va. Code Ann. §§15.2-2400, -2403(6).

[28] Norfolk, Virginia, Code of Ordinances §24-212.4.

[29] Va. Code Ann. §58.1-3201 (emphasis added).

[30] Va. Code Ann. §§58.1-3201, -2604. When the ''land and noncarrier and nonutility improvements of public service corporations and other persons with property assessed pursuant to [Chapter 26 of the Tax Code] are appraised for local taxation by comparison to the appraised values placed by local assessors on similar properties in the taxing district, they shall be assessed by application of the local stated ratio of assessments to appraisals.'' Va. Code Ann. §58.1-2609. The Virginia Department of Taxation conducts an annual comparison of each county and city's assessed values and sales prices from bona fide real property sales to establish an assessment/sales ratio. The total fair market value (as assessed) of a locality's real property, divided by its assessment/sales ratio, produces an estimate of the true fair market value of the locality's real property. It is this assessment/sales ratio for a locality that is used to assess public service corporation property in that locality. *See* Va. Dept. of Taxation, *The 2011 Virginia Assessment*/

property of railroads shall be valued for assessment by the city or county in which it is located uniformly with similarly situated real estate in the same jurisdiction upon the best and most reliable information that can be procured,'' with the Department of Taxation to determine which property is part of the operating unit of the railroads and which is nonoperating (noncarrier) property.[31]

**''Use Value'' Assessments.** In a complete departure from the Virginia Constitution's fair market valuation mandate,[32] Virginia allows counties, cities, or towns that have adopted a land-use plan the option of adopting ordinances to provide for ''use value assessment and taxation.''[33] This special ''use value'' assessment scheme applies only to the ''portion'' of a parcel designated and devoted to agricultural, horticultural, forest or open-space use,[34] and then only if the taxpayer submits a timely application to have his property assessed on the basis of a use assessment.[35] All four use value assessment classifications and the highly-detailed procedural statutes governing them[36] are seedbeds for disagreement between taxing authorities and taxpayers and are, therefore, a potential source for finding manifest error or total disregard of controlling evidence by a local assessing officer as to these classes of property. For example, in assessing the portions of parcels that fall within these special assessment classifications:

> [T]he . . . assessor shall consider only those indicia of value which such real estate has for agricultural, horticultural, forest or open space use, and real estate taxes for such jurisdiction shall be extended upon the value so determined. *In addition to use of his personal knowledge, judgment and experience* as to the value of real estate in agricultural, horticultural, forest or open space use, *he shall, in arriving at the value of such land, consider available evidence of agricultural, horticultural, forest or open space capability, and the recommendations of value of such real estate as made by the State Land Evaluation Advisory Council*.[37]

To complicate the issue of ''use value,'' the portions of parcels that the assessing officer concludes are not eligible for a use value assessment must be ''valued, assessed and taxed by the same standards, methods and procedures as other taxable structures and other real estate in the locality,'' and even the portions of the parcels that qualify for a use value assessment must still be ''evaluated on the basis of fair market as applied to other real estate in the taxing jurisdiction''[38] Finally, Virginia has chosen to allow six of its 95 counties (and none of its cities or towns) the option of including ''additional provisions in any ordinance enacted under the authority of this article,'' relating to certain ''land lying in planned development, industrial or commercial zoning districts'' and parcels rezoned to allow more intensive nonagricultural use (with the concomitant possibility of roll-back taxes).[39] Taxpayers with property qualifying for a use value assessment in any of the six counties afforded this extra autonomy should be careful to review the locality's ordinances to determine what additional, if any, provisions apply.

## Uniformity

The Virginia Constitution mandates ''uniformity in the assessment of 'properties having like characteristics and qualities, located in the same area.' ''[40] This mandate appears to have originated from ''a general sense of justice in the equal distribution of the public burden'' and from ''the principle that those who are similarly situated should be treated in a like manner by the law.''[41] Stated simply, it is a mandate of ''uniform operation of law,'' not ''uniformity of results.''[42]

Uniformity and fair market value principles are interrelated and must be ''construed together,'' but ''if it is impractical or impossible to enforce both the standard of true value and the standard of uniformity, the latter provision is to be preferred as the just and ultimate end to be attained''[43]—with the caveat that ''the preference for uniformity must stop short of assessment at greater than fair market value.''[44]

''Uniformity considerations are usually involved when multiple or different methods were used by the taxing jurisdiction to determine the fair market value of various properties within a class of properties.''[45] Practically speaking, to achieve uniformity, the assessing officer must employ ''lawful,'' ''evenhanded'' assessment processes, techniques, and methodology to similar properties throughout the locality.[46] If ''it does not appear, using evenhanded, lawful techniques, that the subject assessment is unreasonably or arbitrarily disproportionate to assessed valuation of similar proper-

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*Sales Ratio Study*, at 2, *available at* http://www.tax.virginia.gov/site.cfm?alias=SalesRatioStudies (last accessed Sept. 30, 2013).

[31] Va. Code Ann. §58.1-3201.

[32] Art. X, §2 of the Const. of Va.

[33] Va. Code Ann. §58.1-3231. Just a few sentences after providing localities the *option* to adopt such an ordinance, the statute provides, ''Land used in agricultural and forestal production within an agricultural district, a forestal district or an agricultural and forestal district that has been established under [Virginia Code §15.2-4300 *et seq.*, shall be eligible for the use value assessment and taxation *whether or not a local land-use plan or local ordinance pursuant to this section has been adopted*.'' (emphasis added).

[34] Va. Code Ann. §58.1-3230.

[35] Va. Code Ann. §58.1-3234.

[36] *See, e.g.*, Va. Code Ann. §§58.1-3230, -3231, -3233, -3234, -3236, -3237.

[37] Va. Code Ann. §58.1-3236(A) (emphasis added).

[38] Va. Code Ann. §58.1-3236(C)-(D).

[39] Va. Code Ann. §58.1-3237.1(A). In addition to the special provisions allowed to the six counties named in Code §58.1-3237.1(A), Virginia allows one additional county the option to include the same additional provisions in its ordinances, but only for parcels ''in service districts created after July 1, 2013.'' Va. Code Ann. §58.1-3237.1(B).

[40] *Orchard Glen East Inc. v. Bd. of Supervisors*, 254 Va. 307, 313, 492 S.E.2d 150, 154 (1997) (citation omitted).

[41] *Bd. of Supervisors v. Leasco Realty Inc.*, 221 Va. 158, 166, 267 S.E.2d 608, 613 (1980) (quoting 2 A. Howard, Commentaries on the Constitution of Virginia 1037 (1974)) (other citation omitted).

[42] *Leasco Realty*, 221 Va. at 167, 267 S.E.2d at 613.

[43] *Leasco Realty*, 221 Va. at 166, 267 S.E.2d at 613.

[44] *Bd. of Supervisors v. Donatelli & Klein Inc.*, 228 Va. 620, 629, 325 S.E.2d 342, 346 (1985).

[45] *Russell v. Commonwealth Transp. Comm'r*, 261 Va. 617, 620, 544 S.E. 2d 311, 313 (2001) (citations omitted).

[46] *Leasco Realty*, 221 Va. at 166-67, 267 S.E.2d at 613 (citations omitted).

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ties throughout the county,'' an assessment will not likely be found to violate the uniformity mandate.[47]

## Assessment/Reassessment Cycles

Virginia law allows a dizzying array of assessment or reassessment cycle options, and as a result, the interplay between statutes tends to generate more questions than answers. A brief look at the statutes applicable only to counties illustrates the importance of careful analysis of the assessment procedures employed by the county, city, or town in which a property is located.[48]

Virginia requires *all* its counties to conduct a general reassessment every four years.[49] Despite the ''every four years'' mandate, the statute provides ''any county'' the option of ''us[ing] the annual or biennial assessment method as authorized by law.''[50] Similarly, counties with a total population of 50,000 or less have the option to conduct general reassessments ''at either five-year or six-year intervals.''[51] And despite this 50,000-or-less limitation, Augusta County (est. population of 73,658 as of 2012, per the U.S. Census Bureau) is allowed the option to conduct general reassessments at five- or six-year intervals—an option not allowed to eight other counties with populations currently greater than 50,000 but less than the population of Augusta County.[52]

State law also provides *any* county, regardless of population, that has ''at least one full-time real estate appraiser or assessor qualified by the Tax Commissioner'' the option to assess and equalize assessments biennially ''in lieu of the reassessments required under this chapter.''[53] Alternatively, counties that have (A) adopted the county manager plan of government, and (B) exercised their option to establish ''a department of real estate assessments and provide for annual assessment and reassessment and equalization of assessments of real estate . . . shall not be required to undertake general reassessments of real estate every four years as otherwise provided in this article.''[54]

Finally, Virginia law gives counties, ''[i]n lieu of the method now prescribed by law [with no direction as to the ''law'' the statute references],'' the option to provide for annual or biennial assessments on the condition that ''all real estate shall thereafter [presumably after adoption of an appropriate local ordinance] be assessed as of January 1 of each year, except as provided in Chapter 30 of this subtitle [presumably in reference to Virginia Code §§58.1-3010 and -3011, which allow counties to levy and impose taxes on the basis of a July 1 to June 30 fiscal year and/or to use July 1 as the effective date of their assessments].''[55] And notwithstanding the foregoing, Virginia allows *every* county the option to conduct a general reassessment ''in any year.''[56] If such a general reassessment is conducted, ''further general reassessments shall be required only every fourth year thereafter.''[57]

While these statutes may not be easily or quickly digested, they make two points crystal clear: (A) the procedures governing the assessment of any property can only be understood with patient, diligent analysis; and (B) a taxpayer should not assume that local assessing officers have interpreted or implemented the governing statutes and/or ordinances in complete compliance with these authorities. As an example to illustrate these points, Virginia Code §§58.1-3260 and -3261 provide, in part, specific assessment procedures (and appeal procedures as well) for:

(A) cities of more than 175,000;

(B) cities of not less than 125,000 nor more than 190,000;

(C) cities of not less than 40,000 nor more than 50,000;

(D) cities having a population of not less than 30,000 nor more than 31,000;

(E) any city or county adjoining a county that has a population density of more than 1,000 persons per square mile;

(F) any county adjoining a city of more than 190,000;

(G) any county with an area of less than 70 square miles of highland;

(H) any county having an area of more than 135 square miles but less than 152 square miles, and a population of more than 4,000 but less than 8,000;

(I) counties of not more than 30,000 adjoining cities of not less than 100,000 and not more than 150,000;

(J) cities of not less than 70,000 and not more than 125,000, but not in cities of not less than 90,000 and not more than 100,000;

(K) any county having a population of more than 99,000 and adjoining three or more cities lying entirely within Virginia;

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[47] *Leasco Realty*, 221 Va. at 167, 267 S.E.2d at 613 (citations omitted).

[48] For assessment or reassessment cycle options applicable to cities, *see* Va. Code Ann. §58.1-3250, -3251, -3253, -3254, -3010, and -3011. For assessment or reassessment cycle options available to *incorporated* towns, *see* Va. Code Ann. §58.1-3256.

[49] Va. Code Ann. §58.1-3252.

[50] Va. Code Ann. §58.1-3252.

[51] Va. Code Ann. §58.1-3252.

[52] Va. Code Ann. §58.1-3252. *See* Annual Estimates of the Resident Population: April 1, 2010 to July 1, 2012, *at* http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=bkmk (last accessed Sept. 8, 2013).

[53] Va. Code Ann. §58.1-3253(A).

[54] Va. Code Ann. §58.1-3255; *see also* Va. Code Ann. §§15.2-700, -716. Counties have the option to choose among the county board form of government, the county executive form of government, the county manager form of government, the county manager plan of government (if the county has a population density of at least 500 per square mile), or the urban county executive form of government (if the county has a population of at least 90,000) – or may choose none of these optional forms and operate under a traditional or default form. As of 2010, 83 of Virginia's 95 counties have not adopted an optional form of government and continue to operate under their traditional or default forms. To further complicate the interpretation of assessment procedures in counties that have adopted the county manager plan of government, Virginia Code §15.2-716 (in apparent discord with Virginia Code §58.1-3255) provides that such counties ''shall not be required to undertake general reassessments of real estate every *six years* . . . .'' (emphasis added). Virginia Code §15.2-716 further provides that ''the governing body of such a county may, but shall not be required to, request the circuit court of such county to order a general reassessment at such times as the governing body deems proper,'' and ''[s]uch court shall then enter an order directing a reassessment of real estate in the manner provided by law.''

[55] Va. Code Ann. §58.1-3253(B); *see also* Va. Code Ann. §§58.1-3010, -3011.

[56] Va. Code Ann. §58.1-3254.

[57] Va. Code Ann. §58.1-3254.

(L) any county having a population of more than 22,000 but less than 23,000;

(M) any city having a population of more than 25,000 and less than 34,000;

(N) any county having a population of more than 20,000 but less than 50,000 and adjoining a county having a population of more than 200,000;

(O) any city having a population of more than 92,000 and less than 110,000; and

(P) any county adjoining two cities of the first class and in which a military fort is located.[58]

The task of analyzing the applicable, original enactments, as amended and carried forward in the current Virginia Code, many solely by reference, can only begin after sifting through these statutes to determine which, if any, apply to the assessment (and possibly appeal procedures) for the taxpayer's particular parcel.

The best way to start this analysis should be an interview of the local assessing officer but, again, the taxpayer should not assume, without independent analysis, that the assessing officer has located and interpreted these enactments accurately.

## Assessment/Reassessment (Valuation) Procedure

Virginia mandates specific valuation rules for a wide variety of property classifications,[59] including special rules for the assessment or reassessment of:

(A) airspace owned separately from the subjacent land surface (airspace and surface assessed separately to their respective owners);[60]

(B) standing timber owned separately from the land surface (relative value of each determined and assessed separately to their respective owners);[61]

(C) property in a planned development which contains open or common space with a right by easement, covenant, deed or other interest to the use of the open or common space (assessed value to include the proportional share of the value of the open or common space, with some exceptions);[62]

(D) residential property containing defective drywall (only upon owner request and confirmation of the defective drywall by the local building official);[63]

(E) parcels that are partially wetlands (assessing officer must ''consider'' separately assessing the wetlands upon owner request);[64]

(F) ''any other type of lands'' (localities have the option to specially and separately assess the fair market value of any type of land, even if not requested by the owner);[65]

(G) parcels when subdivided or rezoned;[66]

(H) mineral lands and the improvements thereon (assessed specially and separately from the portion of the land not under development *unless* the county or city opts instead to impose a severance tax on the coal and gases extracted from the land);[67]

(I) minerals under the surface owned separately from the land surface (minerals and land surface assessed separately to their respective owners);[68]

(J) new buildings and/or repairs or additions that increase the value of existing buildings or enclosures by $500 or more (assessed at ''actual value at the time of assessment'' whether finished entirely or not);[69] and

(K) new buildings substantially completed (assessment rules depend on whether a county, city, or town has adopted an ordinance providing for new buildings to be assessed when substantially completed or fit for use and occupancy).[70]

Regardless of the special statutory rules for these property classifications, Virginia law is clear that all properties—excepting affordable rental housing prop-

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[58] Va. Code Ann. §§58.1-3260, -3261. The reference to ''cities of the first class'' in Va. Code Ann. §58.1-3261(7) requires digging outside the Code for understanding. In 1871, Virginia's independent cities were classified by the General Assembly as cities of the first class and cities of the second class. The Virginia Constitution of 1902 defined first-class cities as those having a population of 10,000 or more based upon the last census, and second-class cities as those having a population fewer than 10,000. Cities that had been granted a charter prior to enactment of the Constitution, but that did not have the requisite population at the time of enactment, had their status grandfathered in. *See* Virginia Dept. of Housing, *at* http://www.dhcd.virginia.gov/CommissiononLocalGovernment/PDFs/second.class.cities.pdf

[59] As a backdrop to these specific rules, assessors must ''make a physical examination'' of a parcel and its improvements, if any, ''if required by the taxpayer.'' Va. Code Ann. §58.1-3280. If a taxpayer insists on a physical inspection of its property and the assessor refuses or fails to comply, the taxpayer may be equipped with a sufficient argument to rebut the presumption of correctness of an assessment based on the assessor's disregard of what could be controlling evidence.

[60] Va. Code Ann. §58.1-3283.

[61] Va. Code Ann. §58.1-3284(B).

[62] Va. Code Ann. §58.1-3284.1.

[63] Va. Code Ann. §58.1-3284.2. The locality also has the option, by statute, to designate such a residential property as a rehabilitation district for purposes of granting the owner a partial tax exemption. *Id*.

[64] Va. Code Ann. §58.1-3284.3. Further, ''the actual physical use of the property shall be the only determining factor of its land use value.'' The General Assembly did not define ''land use value,'' so taxpayers should be aware of an attempt by assessors to assess wetlands at their value in use rather than at fair market value. This statute also provides some assessment appeal procedures for wetlands. If the assessor disagrees with the property owner as to the presence of wetlands, the assessor must ''consider the National Wetlands Inventory Map prepared by the U.S. Fish and Wildlife Services in making his determination, and such map also *shall be considered* in any administrative or judicial appeal.'' *Id.* (emphasis added). Accordingly, an assessor's or Board of Equalization's failure or refusal to consider such map should constitute manifest error and deprive the assessment of a presumption of correctness.

[65] Va. Code Ann. §58.1-3284.3(C).

[66] Va. Code Ann.§58.1-3285.

[67] Va. Code Ann. §§58.1-3286, -3287. This statute provides a special exception for Buchanan County to reassess, subject to the approval of the county's Board of Supervisors, gas wells and related improvements on an annual basis provided that the gas wells and related improvements are also included in the county's next general reassessment. *Id.* Interestingly, the statute provides that ''a settlement agreement between [Buchanan] County and a taxpayer may provide a methodology for determining fair market value.'' *Id.* Under Virginia's principles of statutory construction, a reviewing court could conclude that the omission to include such a provision anywhere else in the Code means that this is the *only* context in which a locality and a taxpayer can include such a provision in settling an assessment challenge.

[68] Va. Code Ann. §58.1-3286.

[69] Va. Code Ann. §58.1-3291.

[70] Va. Code Ann. §§58.1-3292, -3292.1.

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erties and properties eligible for use value assessment under a land use plan[71]—should be assessed using the three common appraisal methodologies, that is, the cost approach, the sales approach, and the income approach.

**Valuation Methodologies Generally.** As a general rule, real property assessments in Virginia must be ''arrived at in accordance with generally accepted appraisal practices, procedures, rules, and standards as prescribed by nationally recognized professional appraisal organizations *such as* the International Association of Assessing Officers (IAAO) and applicable Virginia law relating to valuation of property.''[72] ''Mistakes of fact, including computation, that affect the assessment shall be deemed not to be in accordance with generally accepted appraisal practice.''[73]

The Virginia Supreme Court has held that assessments should, ''if possible,'' be derived from all three of the common valuation methodologies ''in order to maximize the likelihood that the valuation accurately reflects the property's fair market value.''[74] ''However, with respect to any given property, a taxing authority may determine that the use of one or more of these approaches is not feasible.''[75] In cases where the local assessing officer bases an assessment ''solely on one approach in determining the fair market value of the property,'' the local assessing officer must consider and properly reject the other valuation methods.[76] This ''considers and properly rejects standard'' requires the local assessing officer, at a minimum, ''to acquire the data necessary to perform appraisals based on the other approaches.''[77] In short, the local assessing officer should use all three valuation methodologies whenever possible and reject the use of any methodology only after determining, in good faith, that use of a particular methodology is not relevant or appropriate.

**Special-Purpose Properties.** Special-purpose properties are those devoted to or available for use for a special purpose and which cannot be converted to other uses absent a large capital investment.[78] Examples of special-purpose properties include church buildings, public museums, public schools, hospitals, theatres, breweries, packing plants, golf courses, and the like.[79] Virginia courts have provided very little guidance regarding acceptable valuation methodologies for special-purpose properties other than to instruct that in estimating such a property's fair market value, ''all the capabilities of the property and all the uses to which it may be applied or for which it is adapted, are to be considered, but it is not a question of the value of the property to the owner.'' Accordingly, local assessing officials should consider use of any or all of the three common valuation methodologies, and only reject the use of any of these methodologies if proper to do so.[80]

**Income-Producing Properties.** Assessment procedures for certain income-producing properties may be the most frequent source of headaches for taxpayers. Counties or cities (not towns) *may* require owners of some, but not all, income-producing properties to furnish the assessing officer with income and expense statements for specified timeframes by a specified deadline.[81] Such income and expense statements must be certified as accurate by the owner or the owner's agent; therefore, audited financial statements should not be required (although assessing officers would certainly prefer them).[82]

Assessing officers will likely rely solely on the income method to value income-producing properties. In doing so, ''as a general rule, economic rent [*i.e.*, market rent] is the measure to be used in capitalizing income for fair-market-value determination; however, contract rent is relevant as evidence of economic rent.''[83] Stated differently, assessing officers must factor contract rent into the formula for determining economic rent; con-

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[71] Va. Code Ann. §§58.1-3295, -3230, -3231.

[72] Va. Code Ann. §58.1-3984(B) (emphasis added). Some localities assert that assessors are not governed by the Uniform Standards of Professional Appraisal Practice (''USPAP'') unless the assessor is a licensed appraiser. In other words, if the assessor is not a licensed appraiser, the assessor does not need to adhere to USPAP. The absurdity of such a contention becomes patent by reference to the IAAO's published standards. By way of example, without limitation, the IAAO's current Standard on Mass Appraisal of Real Property (approved April 2013), states on its cover page, ''The IAAO's standards are advisory in nature and the use of, or compliance with, such standards is purely voluntary. If any portion of these standards is found to be in conflict with the Uniform Standards of Professional Appraisal Practice (USPAP) or state laws, USPAP and state laws shall govern.'' IAAO, *Standard on Mass Appraisal of Real Property*, *at* www.iaao.org/uploads/standardonmassappraisal.pdf (last accessed Nov. 26, 2013). It would seem to follow that assessments in Virginia should be arrived at in accordance with USPAP.

[73] Va. Code Ann. §58.1-3984(B).

[74] *Keswick Club, L.P. v. County of Albemarle*, 273 Va. 128, 137, 639 S.E.2d 243, 248 (2007) (citing, *inter alia*, *Arlington County Bd. v. Ginsberg*, 228 Va. 633, 641, 325 S.E.2d 348, 353 (1985) (''Everything which affects market value must be considered . . . .'').

[75] *Keswick Club*, 273 Va. at 137, 639 S.E.2d at 248.

[76] *Keswick Club*, 273 Va. at 137, 639 S.E.2d at 248 (quoting *Bd. of Supervisors v. HCA Health Servs. of Va. Inc.*, 260 Va. 317, 329-30, 535 S.E.2d 163, 169-70 (2000); *Tidewater Psychiatric Inst. Inc. v. City of Va. Beach*, 256 Va. 136, 140-41, 501 S.E.2d 761, 763 (1998)).

[77] *Keswick Club*, 273 Va. at 137, 639 S.E.2d at 248 (quoting *HCA Health Servs.*, 260 Va. at 330, 535 S.E.2d at 170). A local assessing officer's failure to make such an effort is a manifest error that will deprive the resulting assessment of a presumption of correctness. *Id.*

[78] J.D. Eaton, *Real Estate Valuation in Litigation*, at 162 (Am. Inst. of Real Estate Appraisers, 2d prtg. 1989).

[79] J.D. Eaton, *Real Estate Valuation in Litigation*, at 162 (Am. Inst. of Real Estate Appraisers, 2d prtg. 1989).

[80] *Keswick Club*, 273 Va. at 137, 639 S.E.2d at 248 (citations omitted).

[81] Va. Code Ann. §58.1-3294. An owner of a property that produces income solely from the rental of no more than four dwelling units cannot be required to furnish income and expense information, and neither can the owner of a property that is used exclusively as an owner-occupied property (but not as a hotel, motel, office building of greater than 12,000 square feet, or retail or wholesale business displaying merchandise for sale). *Id.* Different rules apply in counties that have adopted the county manager plan of government. *See* Va. Code Ann. §15.2-716 (including, in part, a penalty for a ''willful failure to furnish statements of income and expenses in a timely manner . . . .'').

[82] Va. Code Ann. §58.1-3294.

[83] *Tysons Int'l Ltd. P'ship v. Bd. of Supervisors*, 241 Va. 5, 11, 400 S.E.2d 151, 154 (1991) (quoting *Fairfax County v. Nassif*, 223 Va. 400, 405, 290 S.E.2d 822, 825 (1982)).

tract rent cannot be ignored or ''given only token consideration.''[84]

**Affordable Rental Housing.** Assessment procedures for properties operated in whole or in part as affordable rental housing in accordance with applicable federal statutory and regulatory provisions, applicable state law, or local ordinance have become an area of conflict between locality and taxpayer.

In determining the fair market value of such properties—and against a backdrop of clear case law mandating the consideration of contract rents and actual operating expenses in valuing all income producing properties—the Virginia General Assembly enacted a statute directed specifically to the assessment of affordable housing properties. That statute, Va. Code Ann. §58.1-3295(A), provides that assessing officers ''shall consider,'' in part:

1. The ''contract rent and the impact of applicable rent restrictions;''

2. The ''actual operating expenses and expenditures and the impact of any such additional expenses or expenditures;'' and

3. ''Restrictions on the transfer of title or other restraints on alienation of the real property.'' [85]

Against this backdrop of what an authorized real estate assessor ''shall consider,'' the General Assembly made amendments to the statute for assessments made on or after Jan. 1, 2011, to require that assessments of such properties be made ''using the income approach *based on*: the property's current use, income restrictions, provisions of any arm's-length contract including but not limited to restrictions on the transfer of title or other restraints on alienation of the real property,'' and ''evidence presented by the property owner of other restrictions imposed by law that impact the variables'' set forth in the statute, including, without limitation, a requirement *not* to consider federal or state income tax credits as income.[86] Many assessing officers treat the new amendments as merely a repetition of the statute's original assessment criteria.

It appears no Virginia court has interpreted Virginia Code §58.1-3295, or what it means to use the income approach ''based on'' the above-listed criteria. However, Virginia Supreme Court decisions in general require a meaningful consideration of any income-producing property's contract rents and actual operating expenses, suggesting that the General Assembly intended affordable rental housing properties to be assessed using contract rents and actual operating expenses with little (or significantly reduced) emphasis on economic rents or comparison of the taxpayer's operating expenses with those of other multi-family residential properties, whether conventional or affordable.[87]

The statute certainly must mean that affordable rental housing properties are valued with a heightened focus on a taxpayer's contract rents and actual operating expenses, or the statute would be largely duplicative of well-settled Virginia case law. In any event, and until a Virginia court interprets the statute's nuances, it is clear that a local assessing officer who uses any valuation methodology other than the income approach in assessing affordable rental housing properties for tax years beginning on or after Jan. 1, 2011—or who cannot otherwise demonstrate that he assessed the property based on the property's contract rent and actual operating expenses—may be found to have committed manifest error, thereby depriving the assessment of a presumption of correctness.

Finally, Virginia Code §58.1-3295(B) provides, ''[t]he owner of real property that is operated in whole or in part as affordable rental housing in accordance with *the definition of affordable rental housing established by ordinance or resolution of the locality in which the real property is located* may make an application to the locality to have the real property assessed pursuant to this section.''[88] Such an application ''shall be granted by the locality if (i) the owner charges rents at levels that meet the locality's definition of affordable housing and (ii) the real property does not have any pending building code violations at the time of the application.''[89]

Comparing subsection B with subsection A of §58.1-3295 leads arguably to a conclusion that properties operated in accordance with federal codes or regulations, state regulations, or local ordinances need *not* make application to have their property assessed using the special rules set forth in this statute and, instead, properties that are merely operated in accordance with the locality's definition of affordable housing must make such an application. In other words, subsection B appears intended to allow as many rental housing properties as possible to qualify for assessment using these special procedures, in keeping with Virginia's interest in encouraging property owners to invest in and develop affordable housing properties. Taxpayers should, nevertheless, be prepared to deal with localities that insist all affordable rental housing properties must apply to have their properties assessed pursuant to this statute and, therefore, should apply for assessment pursuant to these special rules regardless of whether the provisions of subsection B truly apply to their particular property.[90]

## Notices of Change in Assessment

Whenever a reassessment of a parcel results in a change in assessed value, the locality is required to give notice of the change ''directly to'' the owner of record of the property, as shown on the locality's land book, by ''postpaid mail at least fifteen days prior to the date of

[84] *Tysons Int'l*, 241 Va. at 8, 400 S.E.2d at 152; *see also Smith v. Bd. of Supervisors*, 234 Va. 250, 258, 361 S.E.2d 351, 355 (1987).

[85] Va. Code Ann. §58.1-3295(A). A special, additional provision for pro rata apportionment of expenses and expenditures is available in limited circumstances. *Id.*

[86] Va. Code Ann. §58.1-3295(E).

[87] *See generally Tysons Int'l Ltd. P'ship v. Bd. of Supervisors*, 241 Va. 5, 400 S.E.2d 151 (1991); *see also Smith v. Bd. of Supervisors*, 234 Va. 50, 361 S.E.2d 351 (1987); *Nassif v. Bd. of Supervisors*, 231 Va. 472, 345 S.E.2d 520 (1986); *Bd. of Supervisors v. Donatelli & Klein Inc.*, 228 Va. 620, 325 S.E.2d 342 (1985); *Fairfax County v. Nassif*, 223 Va. 400, 290 S.E.2d 822 (1982).

[88] Va. Code Ann. §58.1-3295(B) (emphasis added).

[89] Va. Code Ann. §58.1-3295(B).

[90] The Virginia Department of Taxation's 2011 Legislative Summary appears to subscribe to the view that all owners of property operated as affordable rental housing must apply to the locality to have their property assessed using these special assessment rules. *See* Craig M. Burns, Tax Comm'r, Va. Dept. of Taxation, 2011 Legislative Summary, at 57.

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a hearing to protest the change.''[91] Every notice ''shall'' contain a lengthy list of details, including, without limitation, ''the amount of the new and immediately prior appraised value of land, the new and immediately prior appraised value of improvements, and the new and immediately prior assessed value of each if different from the appraised value,'' as well as ''the time and place at which persons may appear . . . and present objections thereto.''[92]

In addition to these notice requirements, ''any notice of change in assessment other than one in which the change arises solely from the construction or addition of new improvements to the real estate'' must include additional details depending on whether a new tax rate has been established:[93]

> If the tax rate that will apply to the new assessed value has been established, then the notice shall set out such rate, the total amount of the new tax levy, and the percentage change in the new tax levy from the immediately prior one. If the tax rate that will apply to the new assessed value has not been established, then the notice shall set out the time and place of the next meeting of the local governing body at which public testimony will be accepted on any real estate tax rate changes. If this meeting will be more than 60 days from the date of the reassessment notice, then instead of the date of the meeting, the notice shall include information on when the date of the meeting will be set and where it will be publicized.[94]

## Conclusion

Only a few general rules can be drawn from Virginia's real property tax assessment procedures because of the significant autonomy granted to its counties, cities, and towns in the development of their property tax regimes. These rules are: (A) unless exempted by law, all real property in Virginia is subject to annual *ad valorem* taxation; (B) constitutional mandates of fair market value and uniformity establish the framework within which every assessment must be performed; and (C) assessments should be derived from all three of the common valuation methodologies, if at all possible.

Beyond these few basic principles, mastering Virginia's real property tax assessment procedures involves navigating a complex maze of state laws, local ordinances, and case law. The taxpayer's diligence in understanding the law and vigilance in monitoring the local assessing officer's implementation of the law, from the beginning to the end of the assessment process, will be critical in the taxpayer's efforts to identify manifest error or disregard of controlling evidence that will likely be necessary to prevail in an assessment challenge. In the next article, we will analyze the procedures taxpayers must follow to avail themselves of the remedies Virginia makes available to taxpayers aggrieved by real property assessments.

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[91] Va. Code Ann. §58.1-3330(A). If you receive another property owner's notice of change of assessment in your mailbox, you should mail it—not hand deliver it, fax it, or scan and email it—to him. You will be ''liable to such owner in an action at law for liquidated damages in the amount of twenty-five dollars, in the event of a failure to so transmit the notice.'' Va. Code Ann. §58.1-3330(C).

[92] Va. Code Ann. §58.1-3330(B).

[93] Va. Code Ann. §58.1-3330(B) (emphasis added)

[94] Va. Code Ann. §58.1-3330(B) (emphasis added).