

# Rulings of the Tax Commissioner

**Document Number:** 13-21  
**Tax Type:** Machinery Tools Tax  
**Brief Description:** Idle machinery and tools:certified recycling exemption.  
**Topics:** Definitions; Exemptions; Property Subject to Tax; Tangible Personal Property  
**Date Issued:** 02/20/2013

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February 20, 2013

Re: Request for Advisory Opinion  
Machinery and Tools Tax

Dear \*\*\*\*\*:

This is in response to your letter in which the \*\*\*\*\* (the "County") requests an advisory opinion regarding idle machinery and tools and the certified recycling exemption.

The machinery and tools (M&T) tax is imposed and administered by local officials. *Virginia Code* § 58.1-3983.1 J 2 authorizes the Department to issue advisory opinions on local business tax matters. The following opinion has been issued subject to the facts presented to the Department summarized below. Any change in facts or the introduction of new facts may lead to a different result.

The *Code of Virginia* sections cited are available on-line at [www.tax.virginia.gov](http://www.tax.virginia.gov) in the Laws, Rules and Decisions section of the Department's web site.

## FACTS

At the beginning of the tax year, Business A had machinery and tools that qualified as idle under the notification test at facilities located in the County. In April, Business A sold the idled equipment to, and leased the facilities to Business B. In July, Business B returned the idle machinery and tools to service. The equipment purchased by Business B is certified recycling equipment. The County's ordinance partially exempts certified recycling equipment from local taxation.

The County requests an opinion as to whether the idled equipment becomes subject to the M&T tax. If so, is Business A or Business B subject to M&T tax on the machinery and tools returned to use? The County also asks whether Business B can claim a certified recycling exemption from local tax. An opinion is also

requested as to how the County's exemption for certified recycling equipment would be applied under these circumstances.

## OPINION

### Idle Equipment

All tangible personal property, unless declared intangible under the provisions of *Va. Code* § 58.1-1100 *et seq.*, is reserved for local taxation by Article X, § 4 of the *Constitution of Virginia*. Included in the category of tangible property that is declared intangible and subject to state taxation only is "[c]apital which is personal property, tangible in fact, used in manufacturing (including, but not limited to, furniture, fixtures, office equipment and computer equipment used in corporate headquarters)." See *Va. Code* § 58.1-1101 A2.

The machinery and tools, motor vehicles and delivery equipment of a manufacturing business are not defined as intangible personal property. Such property is to be taxed locally as tangible personal property. Virginia has established a separate classification of tangible personal property for machinery and tools used in manufacturing. *Virginia Code* § 58.1-3507 A provides:

Machinery and tools, **except idle machinery and tools** . . . used in a manufacturing . . . business shall be listed and are hereby segregated as a class of tangible personal property separate from all other classes of property and shall be subject to local taxation only. [Emphasis Added.]

*Virginia Code* § 58.1-3507 D provides two tests for determining whether machinery and tools may be classified as idle. Under the statute, machinery and tools will be considered idle if:

- 1 The machinery and tools have been discontinued in use continuously for at least one year, prior to any tax day, such machinery and tools are not in use on the tax day, and no reasonable prospect exists that the machinery and tools will be returned to use during the tax year; or
- 2 On or after January 1, 2007, a taxpayer provides a written statement to the locality, on or before April 1, identifying the machinery and tools that a taxpayer intends to remove from service no later than the next tax day, the machinery and tools are not in use on the tax day, and no reasonable prospect exists that the machinery and tools will be returned to use during the next tax year.

The first test and second tests are referred to as the one-year test and the

notification test respectively. See Public Document (P.D.) 11-84 (6/2/2011) and P.D. 12-177 (11/5/2012). Based on the facts, as stated, it appears that Business A had met the requirements of the notification test for the 2012 tax year.

When idle machinery and tools are returned to use, however, *Va. Code* § 58.1-3507 E provides "such machinery and tools **shall be subject to tax ... in the same manner as if such machinery and tools had been in use on the tax day of the year in which such return to use occurs** [Emphasis added.]" Business B purchased the idled machinery from Business A and placed the previously idled machinery and tools back into service in July. Under these circumstances, idled machinery put back into service is subject to tax as of the tax day of the year that the machinery was put back into service. In addition, the taxpayer that placed the machinery and tools back into service is required to notify the local assessing authority "before the next return date without extension." See *Va. Code* § 58.1-3507 E.

After purchasing the equipment, Business B placed the idle machinery and tools back in service. Such equipment is subject to the M&T tax as of that year's tax day. *Virginia Code* § 58.1-3015 requires that personal property taxes generally should be assessed in the name of the owner of the personal property. It is the Department's opinion that Business B, as the owner of the machinery and tools used in manufacturing, would be liable for the M&T tax for the tax year even though the idled equipment was returned to use in July.

### Recycling Exemption

*Virginia Code* § 58.1-3661 A segregates "certified recycling equipment, facilities, or devices" as a separate class of property. The governing body of any locality may exempt or partially exempt such property from local taxation by ordinance. As permitted pursuant to *Va. Code* § 58.1-3661 D, the County has an ordinance that exempts 50% of the tax imposed on certified recycling equipment. Under the ordinance, the exemption amount may be subtracted from tax due on real property on which the certified recycling equipment, facilities, or devices is attached.

The County asks whether Business A or Business B is entitled to the exemption. Although the Department is authorized to interpret local ordinances, it is not required to do so. See the Guidelines for Appealing Local Business Taxes, issued as P.D. 04-28 (6/25/2004). Even where the Department does offer its opinion with regard to a local ordinance, the interpretation, application and administration of a locality's ordinance remains the responsibility of the local assessing official.

In this scenario, Business B purchased equipment certified by the Department of Waste Management as integral to the recycling process from Business A. Because it owns the recycling equipment, Business B would be entitled to the exemption. Business B does not, however, own the real estate to which the equipment is

attached.

Generally, the owner of real property is liable for real property tax. See *Va. Code* § 58.1-3281. Under *Va. Code* § 58.1-3200, however, a leasehold interest in real estate is subject to real property tax only when the owner is exempt from real property tax.

The County's ordinance allows the exemption to be claimed only against real property tax. The Virginia Supreme Court has consistently ruled that exemptions from taxation are the exception rather than the rule and as such, they must be strictly construed. If there is any doubt as to whether an exemption applies, it must be resolved in favor of the taxing authority, and the burden is upon the taxpayer to show that it comes within the exemption. See *Commonwealth v. Manzer*, 207 Va. 996, 154 S.E.2d 185 (1967).

Business A, the owner of the real property, cannot claim the exemption because it does not own the certified recycling equipment. In addition, Business B would not be able to claim the exemption against its M&T tax assessment. Further, Business B would be able to claim the exemption only if Business A were exempt from real property tax and Business B was subject to the tax on its leasehold interest. The facts provided appear to indicate that Business A is not exempt from real property tax. As such, it would appear that Business B could not claim the exemption.

If you have any questions regarding this opinion, you may contact \*\*\*\*\* in the Office of Tax Policy, Appeals and Rulings, at \*\*\*\*\*.

Sincerely,

Craig M. Burns  
Tax Commissioner

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