

Rulings of the Tax Commissioner

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Brief Description: Taxpayer Bill of Rights, City /County tax authorities, tax audits/ tax assessments
Topics: Local Power to Tax; Local Taxes Discussion
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February 10, 2014

Re: Request for Advisory Opinion

Dear *****:

This is in reply to your letter in which you request an advisory opinion regarding the application of the Virginia Taxpayer Bill of Rights to Virginia city and county tax authorities, tax audits and tax assessments. I apologize for the delay in responding to your request.

The Virginia Taxpayer Bill of Rights is found in *Va. Code* § 58.1-1845. As you correctly point out, the Virginia Taxpayer Bill of Rights "was enacted to ensure protection of taxpayers' rights in the tax determination and collection processes administered by the Department of Taxation. See *Taxpayer Bill of Rights*, Rev. 02/12, p.1. You maintain that because the Tax Commissioner administers local taxes and the Taxpayer Bill of Rights is applicable to taxes and processes administered by the Department, it follows that the Taxpayer Bill of Rights is applicable to all Virginia local tax authorities, tax audits and tax assessments.

You cite the general powers granted to the Tax Commissioner under *Va. Code* § 58.1-202 for the proposition that the Tax Commissioner administers local taxes. Specifically, you cite the following powers and duties:

3. Exercise general supervision over all commissioners of the revenue so far as the duties of such officers pertain to state revenues, and confer with, instruct and advise all such officers in the performance of their duties to the extent states.
6. Provide commissioners of the revenue with information and assistance in the assessment of personal property, including the maintenance of a reference library and the conduct of instructional programs.
7. Prescribe the forms of books, schedules and blanks to be used in the

assessment and collection of state taxes and call for and prescribe the forms of such statistical reports, notices and other papers as he may deem necessary to the proper administration of the law, and prescribe and install uniform systems to be used by assessing officials.

Initially, I must respectfully disagree with your premise that the Department of Taxation administers all local taxes. In the case of the real estate tax and tangible personal property taxes, Section 4 of Article X of the Virginia Constitution provides that real estate and tangible personal property are to be taxed by local governments only. It is the local tax official's responsibility to assess and collect the proper amount of tax.

The term "administer" is defined in The American Heritage Dictionary as "to have charge of; manage." Black's Law Dictionary defines the term "administer" to mean "to manage or conduct . . . [t]o discharge the duties of an office." Local tax officials manage the administration of the local property taxes.

Local taxes such as the Business, Professional and Occupational License (BPOL) Tax imposed under *Va. Code* § 58.1-3700 *et al.*, are also administered by local tax officials. The Department's role is limited to conducting an administrative appeals process after the local tax appeals process has been exhausted and issuing advisory opinions.

The Tax Commissioner's powers and duties you cite under *Va. Code* § 58.1-202 do not rise to the level of the conferring the authority to administer local taxes. Subsection 3 specifically refers to the Tax Commissioner's general supervision over commissioners of the revenue duties as their duties pertain to state revenues. The real estate tax, tangible personal property taxes, BPOL taxes and other local taxes produce revenue that is collected and retained by the locality. There are no state revenues involved. Subsection 6 requires the Tax Commissioner to provide information and assistance in the assessment of personal property. This duty does not rise to the level of administering the tax imposed on personal property. Local tax officials use the information and guidance provided by the Department to manage and conduct the assessment and collection processes. Finally, Subsection 7 of *Va. Code* § 58.1-202 requires the Tax Commissioner to prescribe the books, schedules and blanks to be used in the assessment and collection of state taxes. This duty does not impose any responsibility on the Tax Commissioner to administer local taxes.

Finally, the Taxpayer Bill of Rights is included under Chapter 18 of Title 58.1 dealing with the "Enforcement, Collection, Refund, Remedies and Review of State Taxes." Nothing in this chapter or any other section of Title 58.1 indicates the Taxpayer Bill of Rights set forth in *Va. Code* § 58.1-1845 applies to the taxes administered by local tax officials.

Notwithstanding the above, I would note there are local taxes administered by the Department. For example, the local portion of the retail sales and use tax is administered by the Department as part of the retail sales and use tax imposed under Chapter 6 of Title 58.1. In this instance, the Virginia Taxpayer Bill of Rights is applicable to the audit and collections processes for the local portion of the sales and use tax.

This response expresses no opinion regarding a locality's authority to adopt the Virginia Taxpayer Bill of Rights in regard to the taxes it administers and the application of the Dillon Rule to such a scenario.

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

Sincerely,

Craig M. Burns

Tax Commissioner

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