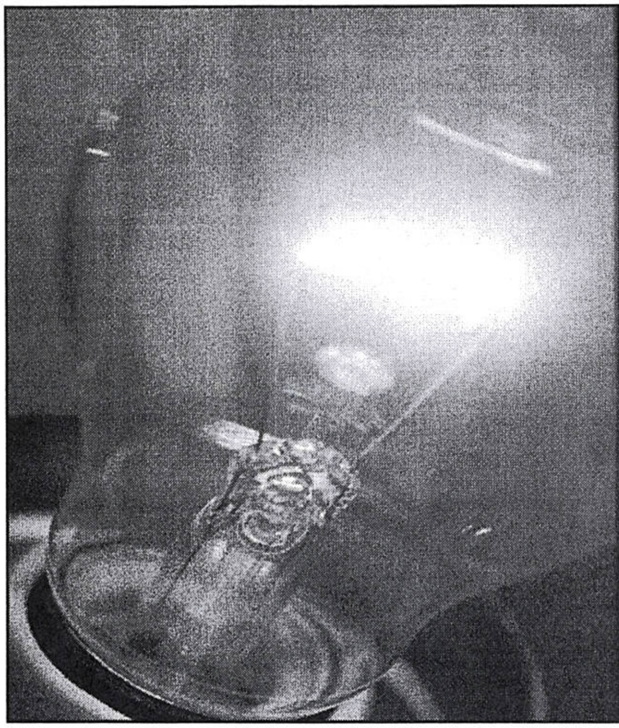

Business Personal Property Assessments

Machinery & Tools

T. Scott Harris
Commissioner of the Revenue
Hanover County

Machinery & Tools

- Code of Virginia Section 58.1-3507

§ 58.1-3507. Certain machinery and tools segregated for local taxation only; notice prior to change in valuation, hearing.

A. Machinery and tools, except idle machinery and tools as defined in subsection D and machinery and equipment used by farm wineries as defined in § 4.1-100, used in a manufacturing, mining, water well drilling, processing or reprocessing, radio or television broadcasting, dairy, dry cleaning or laundry 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. The rate of tax imposed by a county, city or town on such machinery and tools shall not exceed the rate imposed upon the general class of tangible personal property. Idle machinery and tools are taxable as capital under § 58.1-1101.

Machinery & Tools

58.1-3507(B) – How to value machinery & tools

B. Machinery and tools segregated for local taxation pursuant to subsection A, other than energy conservation equipment of manufacturers, shall be valued by means of depreciated cost or a percentage or percentages of original total capitalized cost excluding capitalized interest. In valuing machinery and tools, the commissioner of the revenue shall, upon the written request of the taxpayer, consider any bona fide, independent appraisal presented by the taxpayer.

Machinery & Tools

Assessment methodology for machinery & tools in Hanover County

- 10% of original purchase price with no additional depreciation as long as equipment remains in service

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Hanover County Case Study

- 2011 - Local paper mill files for bankruptcy and places itself up for sale
  - The sale offering includes three plants in Canada and the Hanover County plant
  - A smaller group of the existing owners ultimately purchases the company during the bankruptcy proceedings
  - Bankruptcy court approves sale of the four plants effective December 2012
- 2012 – Filing for tangible personal property shows $188,000,000 as original purchase price for machinery & Tools

Machinery & Tools – Hanover Case Study

- 2013 filing shows machinery & tools original purchase prices as $15,000,000
  - Filing rejected and letter sent to company requesting new listing of assets with reconciling information on equipment removed from service
  - Company responds that machinery & tools purchased for amount shown on filing
  - Letter is sent to company explaining definition of "original purchase price" with a request for new asset listing....no response from company

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- Follow-up letter sent to company explaining that without an explanation of the difference in filings a statutory assessment would be performed and late filing penalty assessed.
- Company responds that the original purchase price for the equipment was $15,000,000 for the new company and that is the value that should be used

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- Attorney for the paper mill contacts Hanover County Attorney regarding issue and provides an appraisal purported to document value used on company filing. Cites 58.1-3507(B)as basis for our accepting the appraisal.
- Appraisal rejected by COR and statutory filing entered with late filing penalty.
- Company initially refuses to pay but ultimately pays under protest after interest tacked onto bill

Machinery & Tools – Hanover Case Study

- 2014
  - Taxpayer files machinery & tools as $17,000,000
  - Letter sent to tax payer requesting asset list to include reconciliation to 2012 filing
  - Taxpayer responds they do not have access to that listing
  - COR provides 2012 list to taxpayer after conferring with County Attorney (58.1-3) and requests asset list reconciliation. No response from taxpayer

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- 2014 cont.
  - COR sends request to Attorney General requesting opinion on assessment method used
  - Attorney General provides formal opinion supporting assessment methods of COR and defines "original purchase price" in conformance with previous AG opinions
  - Statutory assessment and late filing penalty assessed against taxpayer. Paid under protest

Machinery & Tools – Hanover Case Study

- 2015
  - Taxpayer files suit in Hanover County Circuit Court alleging illegal assessments by COR and requesting that the court order County to refund $1.8 million in taxes, interest and late filing penalties

Machinery & Tools – Hanover Case Study

- 2016
  - Hanover Circuit Court rules in favor of Commissioner of the Revenue. Taxpayer ordered to provide complete asset listing
  - Taxpayer is considering whether to appeal or not. Contacted County Attorney requesting we consider a settlement offer in return for their not appealing

Machinery & Tools – AG Opinion

COMMONWEALTH of VIRGINIA

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June 26, 2014

The Honorable T. Scott Harris
Hanover County Commissioner of the Revenue
Post Office Box 129
Hanover, Virginia 23069

Dear Commissioner Harris:

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, for purposes of the valuation of property for the taxation of tangible personal property and the taxation of machinery and tools, whether the terms "original cost" as used in § 58.1-3503(A)(17) and "original total capitalized cost" as used in § 58.1-3507(B) of the *Code of Virginia* mean the cost paid by the original purchaser of the property from the manufacturer, or the current owner's purchase price.

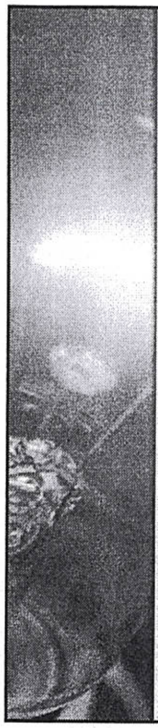
Response

It is my opinion that the terms "original cost" as used in § 58.1-3503(A)(17) and "original total capitalized cost" as used in § 58.1-3507(B) mean the original cost paid by the original purchaser of the property from the manufacturer or dealer and not the price paid by the current owner.

Machinery & Tools – AG Opinion

As a 2009 Opinion that similarly addresses the meaning of "original cost" in § 58.1-3503(A)(17) states, "words in a statute are to be construed according to their ordinary meaning, given the context in which they are used."[7] That Opinion concluded that the term "original cost" means "the acquisition cost of property from manufacturer or dealer, i.e., original cost paid by original purchaser of such property from manufacturer or dealer."[8] Because the General Assembly has not amended this language since this Opinion was issued,[9] I affirm its conclusion that "original cost" means the "the cost paid by the original, or first, purchaser of such personal property[,]"[10] and not the purchase price paid by a subsequent owner paying the tax.

I similarly must conclude that the plain meaning of "original total capitalized cost" refers to the cost of the product when new. Reading the numerous subsections of § 58.1-3503(A) as a whole further clarifies the proper interpretation of the terms "original cost" and "original total capitalized cost." There is a notable distinction between the term "original cost," used in subsections 4, 5, 10, 11, 12, 13, 15, and 17, and the term "original cost *to the taxpayer*," used in subsection 16.[11] Had the General Assembly intended the term "original cost" or "original total capitalized cost" standing alone to mean the cost to the



Machinery & Tools – AG Opinion

taxpayer/current owner of the assets, there would be no need to make such distinction elsewhere in the Code.[12]

Because "the practical construction given to a statute by public officials charged with its enforcement is entitled to great weight by the courts and in doubtful cases will be regarded as decisive[,]"[13] it is significant that these conclusions are further supported by rulings of the Commissioner of the Department of Taxation. In a situation analogous to the circumstances leading to your inquiry, in which a company purchased assets at a bankruptcy sale and claimed their purchase price at the bankruptcy sale was the "original cost," the Tax Commissioner determined that a city's interpretation of original cost as the cost paid by the owner who first purchased the property was consistent with statutory requirements.[14] In a subsequent opinion, the Tax Commissioner defined the term "original total capitalized cost" as "the purchase price of the owner that first purchased the machinery and tools, not the Taxpayer's cost."[15]

Conclusion

Accordingly, it is my opinion that the terms "original cost" as used in § 58.1-3503(A)(17) and "original total capitalized cost" as used in § 58.1-3507(B) mean the original cost paid by the original purchaser of the property from the manufacturer or dealer.[16]