Rebates and Business Personal Property Assessment

Terry Yowell

Commissioner of the Revenue

Culpeper County

Law

Constitution of Virginia

Article X. Taxation and Finance

Section 1. Taxable property; uniformity; classification and segregation.

All property, except as hereinafter provided, shall be taxed. All taxes shall be levied and collected under general laws and shall be uniform upon the same class of subjects…

The General Assembly may define and classify taxable subjects.

Section 2. Assessments.

All assessments of real estate and tangible personal property shall be at their fair market value, to be ascertained as prescribed by law.

Local Assessing Official

Code of Virginia

§ 58.1-3100. Interpretation of "commissioner."

As used in this chapter, unless the context clearly indicates otherwise, the terms "commissioner" and "commissioner of the revenue" shall be interpreted to include both city and county commissioners of the revenue. The term shall also include the director of finance and any other officer of any county or city if such officer performs any or all of the duties of the commissioner of the revenue described herein.

Objective

§ 58.1-3103. When commissioners begin work; commissioners to make assessments.

Each commissioner shall begin annually, on the first day of January, to discharge the duties prescribed by law. As part of his duties each commissioner of the revenue shall ascertain and assess, at fair market value, all subjects of taxation in his county or city on the first day of January in each year, except as otherwise provided by law.

Directive

Code of Virginia

§ 58.1-3503. General classification of tangible personal property.

A. Tangible personal property is classified for valuation purposes according to the following separate categories which are not to be considered separate classes for rate purposes:

16. Programmable computer equipment and peripherals used in business which shall be valued by means of a percentage or

percentages of original cost to the taxpayer, or by such other method as may reasonably be expected to determine the actual fair market value.

17. Computer equipment and peripherals used in a data center, as defined in subdivision A 43 of § 58.1-3506, which shall be valued by means of a percentage or percentages of original cost, or by such other method as may reasonably be expected to determine the actual fair market value.

18. All tangible personal property employed in a trade or business other than that described in subdivisions 1 through 17, which shall be valued by means of a percentage or percentages of original cost.

B. Methods of valuing property may differ among the separate categories, so long as each method used is uniform within each category, is consistent with requirements of this section and may reasonably be expected to determine actual fair market value as determined by the commissioner of revenue or other assessing official;…

Fair Market Value not Defined by Code

The GA has provided no definition of fair market value in Title 58.1. The legal definition of fair market value is one that has evolved through our court system. It is

"…the price which it will bring when offered for sale by one who desires, but is not obligated, to sell it, and is bought by one who is under no necessity of having it." {City of Norfolk v. L. Snyder, 161 Va 288, (1933); Tochahoe Woman's Club v. City of Richmond, 199 Va. 734 (1958)}

Assessment Methodology

Issue

New Business locates to County

Reports BTPP (effective January 1, 2015)

Itemized list of assets includes subtractions labeled “Rebate”

Asset #	Description	Cost
649878541	Rack DRG,MBC	4,583
649878542	Catalyst 5845F,Cisco	356,894
649878543	Catalyst 5846F,Cisco	25,461
649878544	Catalyst 5847F,Cisco	87,543
649878545	REBATE Q1 FEB 2017	(45,315)
649878546	Rack DRG,MBC	125,784
649878547	CISCO SWITCHES	64,875
649878548	CISCO SWITCHES	3,215
649878549	CISCO SWITCHES	985
649878550	CISCO SWITCHES	74,562
649878551	Rack DRG,MBC	23,256
649878552	Rack DRG,MBC	4,589
649878553	Rack DRG,MBC	41,256
649878554	Rack DRG,MBC	36,529
649878555	REBATE Q1 FEB 2017	(1,256)
649878556	Catalyst 5848F,Cisco	1,423
649878557	REBATE Q1 FEB 2017	(85,647)
649878558	Catalyst 5849F,Cisco	256,841

Taxpayer Position

The total original cost of all taxable assets should be reduced by the total amount of rebates received for the purpose of local assessment and taxation.

Basis –

"YOU ARE THE ONLY LOCALITY IN VIRGINIA NOT ACCCEPTING OUR RETURN AS FILED!"

VALTA (June 2015, sample of responses)

- We use the original purchase cost
- Rebates/Discounts must happen at the time of purchase to be considered
- Rebates or Discounts received after the purchase are not considered when performing the assessment of BPP
- Rebates or Credits accepted <u>only</u> if tied directly to asset <u>and</u> documentation showing the adjustment to the original cost provided <u>and</u> the purchase cost and rebate are both capitalized and both retired when the asset is retired
- We defer to the Attorney General’s opinion regarding original cost
- Rebates to not take away from the original cost

- Sales tax would be paid on the original cost & would not be reduced by a rebate, discount, credit or coupon after the fact
- Sometimes you can have a rebate that takes the entire cost away – doesn’t mean there is no value

Department of Taxation:

Per Nick Morris, Property Tax Manager (via email 6/11/2015)

I am assuming that your question is applicable to those cases where cost less depreciation is the method used to estimate the values. Ultimately, the Commissioner must decide, based on the available data, what the credits represent as a factor in estimating the fair market value of a property, or class of property.

When assessing property, the objective is to value the property at its fair market value, and that the methodology applied be uniform to a class of property. This is firmly established in the Constitution and Code of Virginia. Rebates and credits are to be considered, but are they a factor in estimating fair market value? Were the credits offered as a short term incentive to promote sales for a slow month, to challenge an aggressive competitor, or some other such reason? Or do the credits reflect a real downturn in value due to market conditions?

Cost and value are not necessarily the same thing. If it is concluded that the credits do not represent a change in market conditions that impact fair market value, then I believe it would be appropriate to not apply them in valuation. When evaluating cost, there will likely be some variance from one transaction to another. An individual's negotiating skills and other unquantifiable conditions should not be the basis for an estimate of fair market value for specific properties. The Commissioner is to apply those factors to the assessment process that best achieve fair market value estimates and contribute to the equitable distribution of the tax levy.

Title 58.1 of the Code of Virginia, Chapter 35 in general, and sub-chapters §58.1-3503 and §58.1-3506 more specifically should provide statutory guidance.

Opinion of the Attorney General 08-109, 2009

February 25, 2009

The Honorable Emmett W. Hanger, Jr.
Member, Senate of Virginia
P.O. Box 2
Mt. Solon, Virginia 22842

Dear Senator Hanger:

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 inquire concerning the meaning of the term "original cost" as it is used in § 58.1-3503(A)(17).

Conclusion

Accordingly, it is my opinion that the term "original cost" means the acquisition cost of property from the manufacturer or dealer, *i.e.,* the original cost paid by the original purchaser of such property from the manufacturer or dealer.

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- Thank you for letting me be of service to you.

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  - Sincerely,
  - William C. Mims
    Acting Attorney General

Opinion of the Attorney General 14-018

COMMONWEALTH of VIRGINIA

Office of the Attorney General

Mark R. Herring
Attorney General

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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.

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 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]

With kindest regards, I am

Very truly yours,

Mark R. Herring

Mark R. Herring
Attorney General

Decision (no formal appeal)

Ignore the Rebates

Advise Taxpayer

Taxpayer disagrees but accepts our decision

Returns continue to be filed including subtractions for rebates

December 2017 - Issue Resurfaces

Verbal dispute from Taxpayer (not formal appeal)

Basis – Same business is located in 4 other jurisdictions and ALL 4 are accepting rebates as a subtraction to original cost when assessing BPP

Communication with Taxpayer

- Refused to tell us where property is located in locality
- Cannot identify which assets the rebates apply
- Rebates not given at the time of purchase
- Cannot provide copies of original invoices
- Cannot provide any documentation to support the rebates
- Rebates are given individual asset numbers
- Offered to “force” each rebate into an asset to arrive at “net cost” but would be “guessing”

What’s at stake for Taxpayer (Tax dollars associated with Rebates):

2015 – approx. $23,000

2016 – approx. $62,000

2017 – approx. 115,000

What's at stake for County

3 Year Adjustment Period - Approx. $200,000

Loss of revenue going forward

Responses from 4 Localities: (December 2017-February 2018)

- Most agreed we should not accept rebates as a subtraction to original cost
- One had not received a filing including subtractions for rebates, but would not accept

- Upon researching, two found they had assessed as filed which included subtractions for rebates
- One had audited Taxpayer in the past and advised company not to report rebates
- Upon request by one locality for copies of original invoices to link rebates with assets, Taxpayer “created” their own invoice
- Most localities agreed they needed to review the matter
- One locality shared some very interesting information with me

Most interesting information

THE BUYER (TAXPAYER) AND THE SELLER (REBATE PROVIDER) OF THE ASSETS ARE THE SAME BUSINESS

Other interesting information:

- Location of property/business in Locality (Co Attorney)
- Participant in Technology Zone incentive program ($1M over 3 Year refund period)

Noteworthy Court Case – original cost and the use of a percentage or percentages of original cost to reasonably determine fair market value

Bear Island Paper W.B LLC v. County of Hanover & CoR

Two most important and prevailing issues:

Was the CoR's assessment legal

- Did the CoR comply with assessment requirements in 58.1-3507
- Was the CoR's use of a percentage of original purchase price in determining fair market value a legal interpretation of the appropriate code sections?

Did the CoR's definition of the "original purchase price" conform to the intent of the General Assembly of Virginia as provided for in 58.1-3507 of the Code of Virginia?

Circuit Court rules in favor of Hanover County and the CoR and dismisses the case (2016)

Supreme Court affirms Circuit Court ruling (late November 2017)

Meeting with County Attorney (August 2018)

COUNTY OF CULPEPER
OFFICE OF THE COUNTY ATTORNEY

306 North Main Street, Culpeper, VA 22701
Telephone: (540) 727-3407 – Fax: (540) 727-3462

August 9, 2018

Terry L. Yowell
Commissioner of the Revenue
Culpeper County
Post Office Box 1807
151 N Main St. - Suite 201
Culpeper VA 22701

Re: Inquiry regarding recognizing rebates/refunds as described below

Dear Ms. Yowell,

You recently inquired about my legal opinion regarding assessments involving a company that provided a spreadsheet of the business personal property it maintains and the attendant declared values. I understand that the company reported the values of the individual pieces of property. However, I further understand that the company inserted unsubstantiated requested subtractions from the reported values.

You share with me that upon inquiring about the subtractions, you learned that they are representative of later received/acquired rebate funds that are not particularly tied to the individual pieces of property. It is my legal opinion that your interpretation of the law and determination in making the assessments to disregard the requested subtractions, as presented and orally described by the company is appropriate.

I understand your discussions with the company have been informal, and no appeal has been filed to date. If the issue resurfaces, please do not hesitate to contact my office.

Sincerest regards,

Bobbi Jo Alexis
County Attorney

cc: Philip Sheridan, Economic Development Director

Notified Taxpayer of our decision and County Attorney's concurrence