

City of Alexandria, Virginia

MEMORANDUM

DATE: MARCH 22, 2011

TO: COUNCILMAN ROB KRUPICKA
THE HONORABLE MAYOR AND MEMBERS OF CITY COUNCIL

FROM: JAMES K. HARTMANN, CITY MANAGER 

SUBJECT: BUDGET MEMO # 21 : PROPERTY TAX ABATEMENT FOR ENERGY IMPROVEMENTS

Q. Property Tax Abatement for Energy Improvements: This is a longer budget question and may have to roll into next year due to its complexity, but I'd like to start the conversation. As part of our green building initiative, I'd like staff to investigate the opportunity in State Code for Alexandria to provide some form of property tax incentive for property owners that invest in energy saving upgrades in their property based on energy star (HVAC, WATER), LEED or other criteria. In my initial conversations with staff, we may need new State legislation to support this, but this initial budget request is intended to confirm that fact. To complement this effort, I'd also ask that our green building group explore options for regulatory changes so that property owners are not unintentionally discouraged from improving the efficiency of their buildings.

A. In response to the question of providing property tax abatements for energy improvements for energy saving upgrades, the following information is provided:

Relief provided by property tax exemption and/or full tax abatement: In general, in regard to property taxation, the Code of Virginia sets a very specific set of rules as to how property is treated for taxation purposes. In part this is due to Virginia's law construct which sets out key elements of property taxation in the Virginia Constitution, and states that for property tax exemptions that the "except as otherwise provided in this Constitution, the following property and no other shall be exempt from taxation."¹ The Constitution also states that the property tax provisions shall be "strictly construed."²

The Virginia Constitution has since 1976 allowed for a differential taxation of equipment used "for the purpose of transferring or storing solar energy."³ With Constitutional

¹ Virginia Constitution; Article X(6)

² Virginia Constitution; Article X(6)(7)(f)

³ Virginia Constitution; Article X(6)(7)(d)

amendments, there is usually implementing legislation which details how the amendment is to be enacted. In the case of solar energy, State statutes explain that a separate class of solar energy related personal or real property can be created for local taxation separate from other classes of property, and that that property can be exempted or partially exempted. The statute further defines solar energy equipment “as any property including real or personal property, equipment, facilities or devices certified by the local certifying authority to be designed and used primarily for the purposes of providing for the collection and use of incident solar energy for water heating, space heating or cooling that otherwise require a conventional source of energy such as petroleum products, natural gas, of electricity.”⁴ The City since 1978 has authorized the provision of a solar energy real estate tax credit on residential and commercial properties for the value of the taxes on the solar equipment to be deducted from the property owner’s real estate tax bill.⁵ For example, an investment in \$20,000 in solar equipment would result in a somewhat less than \$200 annual credit on one’s real estate tax bill. To staff’s knowledge this provision has only been used once, and that was starting in 2010 for one homeowner.

Relief provided by adopting differential classes of property: While State law is very restrictive on exemptions or partial exemptions from property taxation, State law is more liberal in allowing the creation of different classes of real and personal property towards which a differential real estate tax rate or personal property tax rate can then be applied. In effect since differential rates can be dramatic (i.e., a 1-cent real estate tax rate rather than a 97.8 cent rate), the effect can be similar to a full or partial exemption. The City currently taxes pleasure boats in this manner in order to eliminate the incentive for pleasure boat owners at the City Marina from removing their boats from the Marina during much of the year. The Virginia Constitution, while requiring uniformity in property taxation, does state that the General Assembly “may define and classify taxable subjects” and “may segregate the several classes of property so as to specify and determine upon what subjects State taxes and upon what subjects local taxes may be levied.”⁶ For example, the Code of Virginia allows a locality to establish a differential vehicle personal property tax rate for “clean special fuel vehicles” and “motor vehicles powered solely by electricity” because that classification of vehicle has been designated as a separate class of personal property by the General Assembly.⁷

In another example, in 2007 the General Assembly in creating (by statute and not a Constitutional amendment) the commercial add-on tax to fund transportation purposes created for purposes of taxation two classes of property (i.e., a residential class and a non-residential commercial class) and allowed Northern Virginia and Hampton Roads localities to levy a higher real estate tax on non-residential commercial property.⁸ The Virginia Supreme Court found this classification system acceptable under Virginia law in 2010 as part of a lawsuit filed by a Fairfax County business owner.⁹ As a result, it

⁴ Code of Virginia: 58.1-3661

⁵ Alexandria City Code 3-2-281 to 289

⁶ Virginia Constitution Article X(1)

⁷ Code of Virginia: 58.1-3506(22), 58.1-3506(40)

⁸ Code of Virginia: 58.1-3221.3

⁹ FFW Enterprises vs Fairfax County, et. al.

appears that a class or classes of real property related to energy improvements could be created by the General Assembly by simply amending the State Code to carve out new separate classes of real or personal property. The General Assembly has done this many times. For example, there are 41 separate classes of tangible personal property in one section of the State Code.¹⁰

In 2007, the General Assembly established energy efficient buildings as a separate class of real property (see attached State Code section 58.1-3221.2). Energy efficient buildings were defined in this Code section as buildings that exceed the energy standards of the Virginia Uniform Statewide Building Code by 30%. In 2009, the legislation was amended to include energy efficient buildings that met or exceeded Green Globes, LEEDS, or Energy Star standards. A Virginia locality can choose to enact an ordinance creating this separate class of property and then establish a separate real estate tax rate for this newly defined class of property. To qualify, a building owner would obtain a certification from an architect, professional engineer or licensed contract, or would obtain the certification from the independent organizations who certify under the programs listed above. Apparently the law is retrospective, so it would apply to buildings already in place and the locality does not have an independent role in determining if a building does qualify under the statute. It appears that once the building obtains its energy efficiency certification for local property tax purposes, certification is perpetual rather than time limited. The statewide compendium of local government tax policies by the Weldon-Cooper Center does not list any locality that has adopted this relatively new statute.

Although this law was adopted in 2007, it appears already outdated as Uniform Statewide Building Code (USBC) requirements for energy efficiency have increased substantially with the recently adopted 2009 codes. If the planned new “2012” codes stay intact, an energy savings of 30% over existing codes will occur and become the base level mandatory building requirement. Getting another 30% more efficiency beyond that new “2012” standard would be difficult. We should know whether the 2012 codes stay intact by 2013 or 2014.

It would seem that if the “2012” code is implemented by the State, providing a tax-based incentive for energy efficiency would not be needed for new buildings as such changes would be mandatory. However, tax incenting the retrofitting of existing buildings may have merit.

Staff is currently pursuing (through a federal energy grant consultant) crafting legislative options which would provide a lower tax rate for qualified energy efficient buildings (either new or retrofit depending on the 2012 Code outcome). The Green Building Work Group would look at the existing State statute described in the above paragraphs and potentially bring back amendments for Council to consider for its 2012 General Assembly session legislative package to fix the apparent shortcomings in the current law. Change might include allowing a locality to define the level of LEEDS (i.e., gold or

¹⁰ Code of Virginia: 58.1-3506

silver rather than just certified), applying a tax break to building retrofits only, and generally allowing more local flexibility in crafting an ordinance.

If requested, staff could begin to craft potential legislative code changes in regard to creating a new class or classes of local real and personal property related to energy improvement. Staff would also begin to cost it out so the general fiscal impact can be estimated.

Building Fees: There are two City-controlled policy areas potentially available to financially assist building owners who may wish to invest in energy related investments to their property. The first policy change, which would require Council action amending current fee policies, would be to reduce building permit fees for certain types of energy efficiency related investments. Since the new building Code Administration functions are now 100% fee supported, any change in that policy would need to result in a General Fund subsidy in the amount of the foregone fees. Since building fees are one-time and usually represent a very small percentage of a building project's total costs, it may be that such a fee abatement program would serve more as a reward for planned energy efficiency actions, rather than an incentive for new actions.

Second, Council could consider amending Section 8-200(F)(3) of the zoning ordinance which applies to require compliance with current parking (or SUP approval of a parking reduction) when existing buildings are improved to the extent that the cost of improvements exceeds 1/3 of the fair market value of the building. Council could exempt from the calculation those improvements which result in greater energy efficiency, such as from new windows, insulation and the like. As currently structured, the parking or SUP process provides a disincentive to provide the increased efficiency on older buildings.

Finally, in response to the last part of your question, the City's Green Building Work Group, as part of Phase II of its work, is looking at the issue of City processes related to potential regulatory hurdles that may have the effect of discouraging energy improvements to privately owned buildings.

Attachment: Code of Virginia: 58.1-3221.2

cc: Mark Jinks, Deputy City Manager
Barbara Ross, Deputy Director, Planning & Zoning
John Catlett, Director, Code Administration
Bill Eger, Energy Manager, General Services
Shane Cochran, Division Chief, Office of Housing
William Skrabak, Deputy Director/Environmental Quality, T&ES
Bernard Caton, Legislative Director

CASE NOTES

Applied in DKM Richmond Assocs. v. City of Richmond, 249 Va. 401, 457 S.E.2d 76 (1995).

CIRCUIT COURT OPINIONS

Rehabilitation achieved by demolition. — City was not estopped from denying a tax abatement that it had promised to a grocer to build a store in an area that had been designated as a historic district because subsection E of § 58.1-3221 prohibited the city from offer-

ing exemptions in historically designated areas where rehabilitation of existing structures was achieved by demolition. *Kroger, L.P. I v. City of Richmond*, 69 Va. Cir. 62, 2005 Va. Cir. LEXIS 344 (Richmond 2005).

OPINIONS OF THE ATTORNEY GENERAL

A member of the United States Armed Forces, serving on active duty, whose permanent duty station is located within Virginia, but who dwells in another state, is a "resident" of the Commonwealth for purposes of purchasing a firearm. See opinion of Attorney General to Mr. Leonard G. Cooke, Director, Department of Criminal Justice Services, 03-044 (8/15/03).

Entitlement to exemption. — Subsection E of this section permits a partial exemption from real estate taxation for rehabilitated property where a registered historic structure has been demolished, provided that the person re-

ceiving the partial exemption is not the property owner responsible for the demolition. See opinion of Attorney General to Mr. John A. Rupp, City Attorney for the City of Richmond, 03-043 (8/5/03).

Whether a particular organization is a "private, denominational or parochial school" within the meaning of Virginia's compulsory attendance statute is a factual determination. See opinion of Attorney General to The Honorable Linda T. Puller, Member, Senate of Virginia, 03-048 (10/31/03).

§ 58.1-3221.1. Classification of land and improvements for tax purposes. — A. In the City of Fairfax and the City of Roanoke improvements to real property are declared to be a separate class of property and shall constitute a separate classification for local taxation of real property.

B. The governing body of the City of Fairfax and the City of Roanoke, after giving public notice and an opportunity for the public to be heard in the manner provided in § 58.1-3007, may levy a tax on the property enumerated in subsection A at a different rate than the tax imposed upon the land on which it is located, provided that the rate of tax on the property described in subsection A shall not be zero and shall not exceed the rate of tax on the land on which it is located.

C. Nothing in this section shall be construed to permit the City of Fairfax or the City of Roanoke to alter in any way its valuation of real property covered by this section. (2002, c. 16; 2003, c. 164.)

§ 58.1-3221.2. Classification of certain energy-efficient buildings for tax purposes. — A. Energy-efficient buildings, not including the real estate or land on which they are located, are hereby declared to be a separate class of property and shall constitute a classification for local taxation separate from other classifications of real property. The governing body of any county, city, or town may, by ordinance, levy a tax on the value of such buildings at a different rate from that of tax levied on other real property. The rate of tax imposed by any county, city, or town on such buildings shall not exceed that applicable to the general class of real property.

B. For purposes of this section, an energy-efficient building is any building that exceeds the energy efficiency standards prescribed in the Virginia Uniform Statewide Building Code by 30 percent. Energy-efficient building certification for purposes of this subsection shall be determined by any qualified

architect, professional engineer, or licensed contractor who is not related to the taxpayer and who shall certify to the taxpayer that he or she has qualifications to provide the certification.

C. Notwithstanding the provisions of subsection B, for purposes of this section, an energy-efficient building may also be any building that (i) meets or exceeds performance standards of the Green Globes Green Building Rating System of the Green Building Initiative, (ii) meets or exceeds performance standards of the Leadership in Energy and Environmental Design (LEED) Green Building Rating System of the U.S. Green Building Council, (iii) meets or exceeds performance standards or guidelines under the EarthCraft House Program, or (iv) is an Energy Star qualified home, the energy efficiency of which meets or exceeds performance guidelines for energy efficiency under the Energy Star program developed by the United States Environmental Protection Agency. Energy-efficient building certification for purposes of this subsection shall be determined by (a) the granting of a certification under one of the programs in clauses (i) through (iv) that certifies the building meets or exceeds the performance standards or guidelines of the program, or (b) a qualified architect or professional engineer designated by the county, city, or town who shall determine whether the building meets or exceeds the performance standards or guidelines under any program described in clauses (i) through (iv). (2007, cc. 328, 354; 2008, cc. 288, 401; 2009, c. 512.)

The 2008 amendments. — The 2008 amendments by cc. 288 and 401 are nearly identical, and inserted subsection designations; in subsection B, inserted “for purposes of this subsection”; and added subsection C.

The 2009 amendments. — The 2009 amendment by c. 512 substituted “architect, professional engineer, or licensed contractor” for “licensed engineer, or contractor” in the

second sentence of subsection B; and deleted “licensed” preceding “architect or professional engineer” in the last sentence of subsection C.

Law Review. — For 2007 annual survey article, “Taxation,” see 42 U. Rich. L. Rev. 515 (2007). For article on recent developments in the law affecting Virginia taxation, see 43 U. Rich. L. Rev. 405 (2008).

§ 58.1-3221.3. (Effective until June 30, 2013) Classification of certain commercial and industrial real property and taxation of such property by certain localities. — A. Beginning January 1, 2008, and solely for the purposes of imposing the tax authorized pursuant to this section, in the counties and cities that are wholly embraced by the Northern Virginia Transportation Authority and the Hampton Roads metropolitan planning area as of January 1, 2008, pursuant to § 134 of Title 23 of the United States Code, all real property used for or zoned to permit commercial or industrial uses is hereby declared to be a separate class of real property for local taxation. Such classification of real property shall exclude all residential uses and all multifamily residential uses, including but not limited to single family residential units, cooperatives, condominiums, townhouses, apartments, or homes in a subdivision when leased on a unit by unit basis even though these units may be part of a larger building or parcel of real estate containing more than four residential units.

B. In addition to all other taxes and fees permitted by law, (i) the governing body of any locality embraced by the Northern Virginia Transportation Authority may, by ordinance, annually impose on all real property in the locality specially classified in subsection A: an amount of real property tax, in addition to such amount otherwise authorized by law, at a rate not to exceed \$0.125 per \$100 of assessed value as the governing body may, by ordinance, impose upon the annual assessed value of all real property used for or zoned to permit commercial or industrial uses; and (ii) the governing body of any locality wholly embraced by the Hampton Roads metropolitan planning area as of January 1, 2008, pursuant to § 134 of Title 23 of the United States Code