

## HB 3202

### Example of Special Regional Transportation District Option

- 58.1-3221.2(D)(4) enabled NVTAs and Hampton Road localities to create as an option a special regional transportation district within each eligible locality.
- This legislation was created because of a City of Virginia Beach issue.
- Since this legislation needed to be generic and not locality specific, a mathematical formulae needed to be created to address the Virginia Beach issue without naming Virginia Beach.
- The specific circumstance that was being addressed was that Virginia Beach is 310 square miles and its commercial and industrial property (and its transportation needs) are geographically concentrated.
- The attached emails provide a legal interpretation.
- While it is not likely applicable to Alexandria, the following is how it would work mathematically.

#### -- HYPOTHETICAL EXAMPLE --

- A. \$10 billion commercial and industrial tax base  
x85% statutory revenue % requirement  
x25¢ maximum possible tax rate  
\$21.25 million = minimum revenue generation requirement for a district
- B. \$9 billion (value of hypothetical assessed district)  
xN tax rate variable (solve for "N")  
\$21.25 million minimum revenue needed
- C. \$9 billion  
23.6¢ minimum tax rate needed = N  
\$21.25 million = minimum revenue needed
- D. Any rate equal from 23.6¢ to up to 25.0¢ is the range of rates that this example would allow a jurisdiction to choose.

CONCLUSION: Since Alexandria's commercial and industrial properties and transportation needs are dispersed in most areas of the City, the Special Regional Transportation District Option does not appear to be a viable option.

Attached: City Attorney's Office Legal Analysis

January 30, 2008



Christopher Spera/Alex  
01/30/2008 02:39 PM

To "Paul Friedman" <paulfriedman@comcast.net>  
cc George.Foote@bgllp.com, jrenner@rennercpa.com,  
lowalker@aol.com, mark.feldheim@verizon.net,  
Mark.Jinks@alexandriava.gov

bcc

Subject Re: Question re Tax Districts 

Mr. Friedman -

The exact language of Va. Code Section 58.1-3221.2(D)(4) for special regional transportation tax districts provides:

"The total revenues generated from the additional real property taxes in accordance with subsection C and this subsection [*These are the potential taxes imposed on the commercial and industrial property within the special regional transportation tax district*] shall not be less than 85% of the revenues estimated to be generated when imposing the additional real property taxes in accordance with subsections A and B [*These are the "across the board" taxes on all commercial and industrial property within the jurisdiction*] at the rate of \$0.25 per \$100 of assessed value in any locality embraced by the Northern Virginia Transportation Authority . . ."

Accordingly, a locality cannot create a special regional transportation tax district unless that special district will generate 85% of what the "across the board" approach would generate at the full rate of \$0.25 per \$100. It does not contemplate analysis at a lower rate. Accordingly, the statute does not allow a locality to adopt a model along the lines of the one you suggest, since it is mathematically impossible for some subset of the commercial and industrial properties in the City taxed at a rate of \$0.10 per \$100 to generate revenue equal to 85% of the revenue that would be generated at the rate of \$0.25 per \$100 of assessed value if imposed on all the commercial and industrial properties in the City.

As I stated earlier, the special regional transportation tax district option was included at the request of a Tidewater jurisdiction that wanted to exclude from taxation some commercial/industrial properties that were geographically removed from the primary commercial area in that jurisdiction. The collective wisdom of the Northern Virginia jurisdictions with whom I have spoken is that the special regional transportation tax district couldn't really work in any of the NVTA jurisdictions, with the possible exception of Prince William. The consensus seems to be that in the other jurisdictions, including Alexandria, commercial and industrial properties covered by the tax are so spread out throughout the jurisdiction that the special district option doesn't really work, either from a practical or policy perspective, and the only viable option is the across the board approach. The question really is what potential revenues would be generated at various rates if the tax were applied to all subject properties and what impact would the collection of such tax have on the City's share of NVTA revenue. [See, Va. Code Section 15.2-4838.1(B), that provides that revenue generated by any member jurisdiction assessing the commercial/industrial real property tax is considered to be revenue of NVTA when calculating the share of NVTA revenue each jurisdiction will

receive. My understanding is that there is ongoing discussion among the member jurisdictions and NVTAs regarding how this would be calculated, but assessing the tax should reduce the amount of funds received by the jurisdiction from NVTAs.]

I have gone over this in some detail with Mark, who is prepared to go over it with you all tonight at your meeting.

Chris Spera

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"Paul Friedman"  
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>

01/30/2008 01:02 PM

To <Christopher.Spera@alexandriava.gov>,  
<George.Foote@bglp.com>, <mark.feldheim@verizon.net>  
cc <lowalker@aol.com>, <jrenner@rennercpa.com>,  
<Mark.Jinks@alexandriava.gov>  
Subject Re: Question re Tax Districts

Chris,

Thanks for the information.

The section of most interest to me is "but only in the event that the special district will generate 85% or more of the projected revenues if the tax were applied across the board."

Let's hypothetically presume that we choose to set a tax rate of 10 cents. If I understand the meaning of the quote correctly, assuming we could craft such a district fairly, at .9 million dollars per 1 cent raised, we would lose no more than \$1.35 million dollars in revenue of the \$9 million we would have otherwise raised. Alternatively, to raise the same \$9 million, we would need to up the rate from 10 cents to 11.5 or so in the smaller area.

Please confirm that is your understanding.

Mark, presuming that is the case, so we have all potential options to consider, is it possible for you to work up an example of such a tax district for tonight's meeting with both calculations? The example would need to meet certain criteria to be most helpful:

-- It would need to include our largest businesses

-- It would need to include enough businesses to raise the 85% necessary

-- It would need to exclude as many of the smallest business - those least capable of handling a tax increase

-- Then, we would need to see what increased rate option for that district would allow us to raise 100% of the projected revenues had we applied the 10 cents to the entire city

-- Finally, a chart, like the one you have already provided, showing what two, three or four different sized businesses in that special district would actually have to pay in increased taxes under the 85% and 100% plans.

Thanks,

Paul Friedman  
Chair

----- Original Message -----

From: <Christopher.Spera@alexandriava.gov>

To: <George.Foote@bgllp.com>

Cc: <lowalker@aol.com>; <jrenner@rennercpa.com>; <paulfriedman@comcast.net>

Sent: Wednesday, January 30, 2008 12:06 PM

Subject: Question re Tax Districts

>

> Mr. Foote -

>

> Tom Culpepper asked me to respond to your e-mail regarding the special tax  
> district provisions of the section of state code passed in connection with  
> the creation of the Northern Virginia Transportation Authority and the  
> Hampton Roads Transportation Authority. I have some familiarity with this  
> since in addition to my work for the City, I serve as one of four local  
> government attorneys "on loan" to the NVTA until it acquires permanent  
> staff, its so-called "Council of Counsels."

>

> State Code Section 58.1-3221.2(C) creates a separate classification of  
> commercial and industrial property within all the NVTA and HRTA  
> jurisdictions and gives the jurisdictions the option of imposing an  
> additional transportation tax on those properties. As you correctly point  
> out, Subsection (D) of that same section allows the jurisdiction to create  
> a special tax district, rather than apply the additional tax to all  
> commercial and industrial properties within the jurisdiction, but only in  
> the event that the special district will generate 85% or more of the  
> projected revenues if the tax were applied across the board. There is no  
> conflict - it is simply a very narrow exception to the "across the board"  
> imposition of the tax. It is my understanding that this was requested by  
> one of the Tidewater area jurisdictions that has a concentrated area of  
> commercial and industrial properties.

>

> Please feel free to contact me if you have any questions.

>

> Chris Spera

> Assistant City Attorney

> \*\*\*\*\*

>

> Christopher P. Spera, Esq.

> Office of the City Attorney

> 301 King Street, Suite 1300

> Alexandria, Virginia 22314-3211



"Foote, George"  
<George.Foote@bgllp.com>  
01/30/2008 02:12 PM

To "Paul Friedman" <paulfriedman@comcast.net>,  
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<mark.feldheim@verizon.net>  
cc <lowalker@aol.com>, <jrenner@rennercpa.com>,  
<Mark.Jinks@alexandriava.gov>,  
<Tom.Culpepper@alexandriava.gov>

bcc

Subject RE: Question re Tax Districts

Chris:

Thanks for your note. Glad to know someone around here understands this law. In addition to Paul's good questions, I wonder if we could get some more resolution on the tax district approach.

1. Are you saying that the 85% test will be applied only within a district? If so, we have something to work with. But if the tax district has to raise 85% of the amount that would be raised at the 25 cent level across the jurisdiction, I still think there is a conflict because a (potentially) small part of the city in a tax district would have to bear a much greater tax rate than 25 cents to meet the revenue levels that 25 cents across the jurisdiction would produce. If this was produced for a large part of a particular small jurisdiction where this mat would not work a hardship, maybe we are barking up a useless tree.

2. Can we have more than one tax district? More than one tax rate (possible if one district has a lot of property and another does not). If so, how would they work together to meet an overall 85% level?

Thanks.

George

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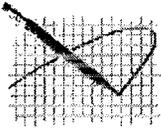
-----Original Message-----

From: Paul Friedman [mailto:paulfriedman@comcast.net]  
Sent: Wednesday, January 30, 2008 1:02 PM  
To: Christopher.Spera@alexandriava.gov; Foote, George;  
mark.feldheim@verizon.net  
Cc: lowalker@aol.com; jrenner@rennercpa.com; Mark.Jinks@alexandriava.gov  
Subject: Re: Question re Tax Districts

Chris,

Thanks for the information.

The section of most interest to me is "but only in the event that the special district will generate 85% or more of the projected revenues if the tax were applied across the board."



Tom Culpepper/Alex  
01/29/2008 01:53 PM

To Christopher Spera/Alex@Alex  
cc Mark Jinks/Alex@Alex  
bcc  
Subject Real Estate Tax Committee Assignment

Chris,

As we discussed earlier, your opinion on the tax district question outlined below is requested.

Tom Culpepper, Deputy Director  
Transportation & Environmental Services  
City of Alexandria, Virginia  
703.838.4966 Phone  
703.519.3356 Fax

----- Forwarded by Tom Culpepper/Alex on 01/29/2008 01:49 PM -----



"Foote, George"  
<George.Foote@bgllp.com>  
01/23/2008 05:24 PM

To <Tom.Culpepper@alexandriava.gov>  
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Subject Real Estate Tax Committee Assignment

Tom:

I am working up some information for the assignment that Lois and I undertook last night. I am starting with a review of the tax district approach we discussed.

Following up on our discussion, I think we are both read the language of Code Section 58.1-3221.2(D) the same way, which is to say it could impose a relatively high tax on the covered businesses. But I would like to get Ignacio or some state lawyers to parse the language with us. I think there is a conflict in the requirements of the statute that may indicate the tax district rate could be lower than we fear. I also would like to explore the creative use of other special tax districts that the Code allows.

Recognizing that I am no state tax expert, here is what looks like a conflict to me: Subsection D says the City can create one or more special tax districts and that the maximum rate in a tax district is \$.25 per \$100. Clause (4) of Subsection D says that the total revenues generated in all the tax districts cannot be less than 85% of the revenues that would be generated under Subsection A and B (that is, a tax on all commercial and industrial property in the jurisdiction).

Well, as a matter of mathematics, if you create tax districts that include less than 85% by value of all the taxable property in the jurisdiction, the taxes could not reach the 85% level unless they were more than \$.25 per hundred. So the two rules conflict.

They can be reconciled if they are read to mean that the grant of authority to the City is limited to creation of districts that include enough property to meet the 85% level. I think that is too indirect to make any sense. Or, and this is better for us, the rule could mean that within the particular district, the taxes have to be 85% of what the \$.25 per \$100 would raise from taxable properties within that district. There is nothing in the language of (D)(4) that says you have to look at the actual taxes that would be collected from the entire jurisdiction under (A) and (B); the language ambiguously refers to taxes that would be collected at the \$.25 rate in "any locality" in the NVTA region.

In a similar vein, I would like to know if the City can create transportation tax and other districts with varied rates.

By the way, I don't want us to be hypnotized by everyone talking about 10 cents. We need a considered view of what the rate, if any, should be.

In any case, I wonder if we might create a large enough tax district that any high burden would wind up being more heavily loaded with the larger commercial properties that will be the prime beneficiaries of the improvements.

It seems to me that the three big corridors we defined in the task force hold not only most of those big businesses, but the corridors also will be the sites of our major transit infrastructure expenditures. Since the plan is for an integrated system, we might even be able to apply the tax revenue to pay for infrastructure that is outside the district.

If we see that a tax district approach works, could we not direct other NVTA funds to improvements that are not for the benefit of the taxed district and follow Mark's and Bruce's suggestion that we could rework other taxes (like gross receipts) to effectively give any tax relief needed?

The information we need to review this approach includes the following:

1. Location of commercial properties and valuations. I imagine some kind of map that shows where the money is. As an aside, I certainly hope we can get the utility properties included in the tax and tax districts.
2. A big one: cost estimates for just about everything the new Transportation Master Plan includes and the alternatives. That would include construction costs for BRT and light rail (including the lines that we dotted in on the map); the smart stops and shelters; feeder buses and facilities; the bike and pedestrian elements; operating projections for all the facilities; and on and on. This cost data is important for our overall recommendations, too, because if we are going to propose a tax, we better know that we need the money and be able to show what it will go for.
3. Any background information about operation of tax districts and whether there is some legal barrier to using them in Alexandria or for the purposes we are discussing.

4. Some real lawyering on the language of the tax district provisions and the statutes that allow creation of other kinds of districts.

Lois or others may have identified other information that we need.

Thanks.

George