



# TAX BULLETIN 03-10

## Virginia Department of Taxation

November 18, 2003

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### **IMPORTANT INFORMATION REGARDING REAL ESTATE APPEALS TO LOCAL BOARDS OF EQUALIZATION**

*The 2003 Session of the General Assembly made several changes to the local real estate appeals process. The new law prescribes the evidentiary standard a taxpayer must meet to prevail in an appeal to the board of equalization. The new law also changes the eligibility requirements for appointment of board of equalization members, imposes term limits and continuing education requirements on board members and requires every board of equalization to prepare an annual report. Additionally, the new law phases out the special, one-year statute of limitations applicable in some localities for appealing real estate assessments to the circuit court.*

2003 House Bill 2503, (Acts of Assembly 2003, Chapter 1036; Va. Code §§ 15.2-717, 58.1-3256, 58.1-3260, 58.1-3374, 58.1-3378, 58.1-3379, 58.1-3380, 58.1-3384, and 58.1-3984) makes several changes to the local real estate appeals process through the boards of equalization. The new law applies to appeals filed with boards of equalization beginning with each locality's first tax year commencing on or after January 1, 2004.

#### **Authorization for Fair Market Value Appeals to the Boards of Equalization**

Under current law, a taxpayer may appeal an assessment of real property taxes to the local board of equalization and the circuit court. Although the board of equalization must be cognizant of the fair market value of the property, it is generally focused on determining whether the assessment is in line with assessments of similar properties. The circuit court focuses on determining whether the property has been assessed at its fair market value.

The new law expressly authorizes taxpayers to make fair market value appeals to the board of equalization, and authorizes the board to determine the fair market value of the real estate as of the locality's tax day in the applicable year.

#### **New Burden of Proof Applicable to Appeals to Boards of Equalization**

Previously, the *Code of Virginia* provisions authorizing the establishment of boards of equalization did not set forth the standard of proof necessary for a taxpayer to prevail in an appeal.

Solely for purposes of real property tax appeals to boards of equalization, the new law provides that:

- The challenged assessment is presumed to be correct.

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- The burden of proof is upon the taxpayer to show that the property that is the subject of the appeal is valued at more than its fair market value, that the assessment is not uniform in its application, or that the assessment is otherwise not equalized.
- In order to receive relief from the board, the taxpayer must produce substantial evidence that the assessment is erroneous and was not arrived at in accordance with generally accepted appraisal practice.

Under existing Virginia law, substantial evidence is more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.

The new law further provides that mistakes of fact, including computation, that affect the assessment are deemed not to be in accordance with generally accepted appraisal practice. Further, the new statute requires that the board shall be advised that it is not necessary that the taxpayer show that the assessment is a result of manifest error or in disregard of controlling evidence. The new law does not, however, change current law regarding the standard of proof that a taxpayer must produce in the circuit court.

Statute of Limitations for Appeals to the Circuit Court

In general, under current law, there is a three-year statute of limitations for appealing real estate assessments to the circuit court. However, in some localities there has been a one-year statute of limitations pursuant to specific law.

The new law changes the one-year statute of limitation in certain cities and in any county under the county manager plan where real estate assessments are made by a department of real estate assessments pursuant to *Va. Code* § 15.2-716. In these localities, the new change in the law authorizes taxpayers to appeal real estate assessments to the circuit court within one year from December 31 of the year in which such assessment is made for assessments made prior to January 1, 2005; within two years from December 31 of the year in which such assessment is made for assessments made on and after January 1, 2005, but prior to January 1, 2007; and within the time frame provided by general law pursuant to *Va. Code* § 58.1-3984 for assessments made on and after January 1, 2007. At the same time, the new law progressively extends the statute of limitations in those jurisdictions to three years, it adds a new requirement prohibiting taxpayers in these localities from appealing an assessment to the circuit court for a year other than the current year unless the taxpayer has given the locality written notice of disagreement with the assessment during the applicable tax year. It is the responsibility of local officials to determine whether their locality is affected by these changes.

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Localities in Which an Appeal to Board is a Prerequisite to Circuit Court Appeal

In certain localities, in order to appeal a real estate assessment to the circuit court, a taxpayer must first appeal the assessment to the board of equalization. In other words, the taxpayer must exhaust its administrative remedies.

The new law continues such requirements in effect in any locality that imposed the requirement prior to July 1, 2003.

Qualification to Serve on a Board of Equalization

Under prior law, any freeholder in a locality could be appointed to the board of equalization.

The 2003 General Assembly made several changes to the board of equalization eligibility requirements:

- All board members must be residents, a majority of whom must be freeholders, in the locality for which they are to serve and they must be selected from the citizens of the locality.
- Appointments to the board must be broadly representative of the community.
- Thirty percent of the board members must be commercial or residential real estate appraisers, other real estate professionals, builders, developers, or legal or financial professionals, and at least one such member must sit in all cases involving commercial, industrial or multifamily residential property, unless waived by the taxpayer.

In any locality where less than thirty percent of the board members are commercial or residential real estate appraisers, other real estate professionals, builders, developers, or legal or financial professionals, the appointing authority must ensure that at least one member of the board meets these qualifications no later than January 1, 2004. As soon as possible thereafter, in accordance with *Va. Code* § 58.1-3374, the appointing authority must change the membership of the board to meet the thirty percent requirement.

Term limits for Board of Equalization Members

Prior law does not limit the time a person may serve on a board of equalization.

The new law imposes the following term limitations:

- A member is limited to nine consecutive years of service.
- Upon expiration of the nine consecutive years, the member is not eligible for reappointment for a period of three years.

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- Any current board member who has served at least nine consecutive years immediately prior to January 1, 2004, shall be allowed to complete his current term of service, and upon completion of such term, shall not be eligible for reappointment for a period of three years.

Continuing Education Requirement for Board of Equalization Members

Previously, in order to be eligible for appointment to the board of equalization, a prospective member must have attended a half-day basic course of instruction provided by the Department of Taxation.

The new law expands the educational prerequisites to require each board member to take continuing education instruction provided by TAX at least once in every four years of service. Any member who has not met this continuing education requirement as of January 1, 2004, must take this course as soon as practical.

TAX will hold continuing education courses in conjunction with the current basic course of instruction provided to new board members. Boards of equalization will be notified of the availability of this training.

Annual Reports

The new law requires each board of equalization to submit an annual written report of its actions. This report must be made available to the public upon request. TAX has prepared a one-page report form for boards to complete following each appeal that will memorialize the information necessary for the board to prepare its annual report. In addition, TAX is preparing a form for the annual report itself. These report forms will be distributed to boards of equalization not later than January 1, 2004.

Order Forms

The new law requires each board of equalization to enter its orders on forms prepared by the Department of Taxation, or on forms prepared by the board that contain, at a minimum, all of the information required on the forms prepared by the Department of Taxation. Additionally, TAX is mandated to redesign its order forms no later than January 1, 2004. TAX is currently redesigning its order form and will distribute it to boards of equalization not later than January 1, 2004.

Report By TAX

The new law assigns to TAX the responsibility to monitor the results of board of equalization appeals of assessments and provide a report to the General Assembly by October 1, 2006. The law authorizes TAX to request information from the boards to prepare this report. TAX anticipates that its report will address issues of fairness, efficiency, ease and cost of appeals to boards of equalization, with emphasis on the

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processes and standards established by the new law. When complete, the TAX report will be posted to the General Assembly's web site.

TAX will base its report on the information contained in the annual reports prepared by the boards of equalization. In order to expedite the preparation of this report, TAX strongly encourages boards to transmit their 2004 and 2005 reports to TAX electronically. TAX will provide detailed filing instructions at a later date.

Additional Information

Contact the Property Tax Unit, Virginia Department of Taxation, P. O. Box 2460, Richmond, Virginia 23218-2460, or call (804) 367-8020 for additional information.

This Tax Bulletin, along with other reference documents, is available on-line in the Tax Policy Library section of the Department of Taxation's web site, located at [www.tax.state.va.us](http://www.tax.state.va.us).