

City of Alexandria, Virginia

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2-12-02

MEMORANDUM

DATE: FEBRUARY 5, 2002

TO: THE HONORABLE MAYOR AND MEMBERS OF CITY COUNCIL

FROM: PHILIP SUNDERLAND, CITY MANAGER ^{PS}

SUBJECT: CONSIDERATION OF CITY POLICY ON PENALTIES FOR LATE FILING AND LATE TAX PAYMENTS

ISSUE: City Council consideration of City Policy on Penalties for Late Filing and Late Tax Payment.

RECOMMENDATION: That City Council discuss the attached report on Late Filing and Late Payment Penalties on City Taxes.

DISCUSSION: Councilman Speck has requested that the memorandum to City Council (attached) on late filing and late payment penalties on City taxes, dated January 29, 2002, be docketed. The key issues in this memorandum are the following:

1. Under the State Code, the City has the discretion to impose late filing and late payment penalties at, or less than, 10%, but has only limited authority to waive the penalties once they are imposed.
2. For decades the City has imposed a 10% late filing penalty (or \$10, whichever is more) on all late Business Personal Property tax returns. A 10% late filing penalty is equal to that of other major jurisdictions in Virginia which have been surveyed.
3. The City imposes a 10% late payment penalty on the total tax bill whenever a vehicle personal property tax bill is paid late. In most cases, the taxpayer is responsible for paying only 30% of the original tax bill; the State pays the remaining 70% the day after the taxpayer makes his/her payment. Under the current City practice, when a taxpayer's payment is late, the taxpayer is held responsible for a 10% penalty on the total tax due, not just the portion owed by the taxpayer, which can amount to a 33% effective penalty. To staff's knowledge, the City's practice in this area is the same as in all other localities in Virginia.

Business Personal Property Taxes

Business personal property generates approximately \$14 million in General Fund revenues for the City. The following chart shows the effect of various options on the late filing penalties.

Penalty Options	Revenue Tax Year 2000	Revenue Tax Year 2001	Estimated Revenue Tax Year 2002
10% Late Filing Penalty Revenues (Current practice)	\$208,900	\$250,000	\$250,000
Cost of Options			
1. 5% Late Filing Penalty			(125,000)
2. 10% Late Filing Penalty up to \$500 Maximum			(140,000)
3. 7% Late Filing Penalty			(75,000)
4. 5% Penalty if Filing Less than 20 Days Late (and the taxpayer has not filed late in the three prior years), 10% otherwise			(50,000)

Staff does not support an across-the-board reduction in the late filing penalty but would support a differentiated penalty structure in the late filing context for “first-time, moderately late” late filing penalty (#4 above). This differentiated penalty structure, if applied to tax year 2001, would have benefitted about 200 of 881 business taxpayers who filed late returns. If the number of back years of filing compliance were reduced to two or one, then the number of beneficiaries and cost would increase to some unknown degree.

Vehicle Personal Property Taxes

The City collected over \$500,000 in penalties from individual taxpayers who did not pay the tax on their vehicle on time by applying a 10% penalty to the total tax bill. As staff puts together the FY 2003 budget, we will consider alternative late payment policies for vehicle personal property taxes to reduce what is now an effective penalty rate of 33% due to the 10% penalty applying to the total tax bill, rather than to the net amount due to the City from the taxpayer. Reducing the penalty to 10% of the taxpayer’s bill, not the total bill, would reduce City revenues by approximately \$350,000 per year. Given that the FY 2003 budget will be a very tight year, it is not likely that such a large reduction in the penalty will, at this time, be feasible.

FISCAL IMPACT: The cost of changing the late filing penalty for business personal property taxes (based on the four options listed above) would be between \$50,000 and \$125,000 per year, with the cost of reducing the vehicle personal property late payment penalty variable depending on what (if any) option is chosen. The maximum cost of reducing the vehicle personal property late payment penalty would be \$350,000 per year.

ATTACHMENT: Memorandum from D. A. Neckel dated January 29, 2002, subject: Late Filing and Late Payment Penalties on City Taxes

STAFF: Daniel A. Neckel, Director of Finance
Mark Jinks, Assistant City Manager

City of Alexandria, Virginia

MEMORANDUM

DATE: JANUARY 29, 2002

TO: THE HONORABLE MAYOR AND MEMBERS OF CITY COUNCIL

THROUGH: PHILIP SUNDERLAND, CITY MANAGER *PS*

FROM: D. A. NECKEL, DIRECTOR OF FINANCE *D.A. Neckel*

SUBJECT: LATE FILING AND LATE PAYMENT PENALTIES ON CITY TAXES

Recently, either through letters or inquiries, a number of issues related to personal property late filing and late payment penalties have been raised. This memorandum addresses three topics in this area:

- I. Business Personal Property Late Filing and Late Payment Penalties;
- II. Vehicle Personal Property Penalties; and
- III. Impact of Post-September 11 Economy on Business Tax Payments.

I. Business Personal Property Late Filing and Late Payment Penalties

Over the past few months, as is typical, the City has received various requests for waiver of its 10% late filing and 10% late payment penalties assessed on business personal property taxes. The penalties are imposed when a taxpayer fails to file his or her tax return on time, or when the taxpayer fails to pay the assessed taxes on or before the payment due date. In FY 2001, the City collected \$0.4 million in late filing and late payment penalties in the business personal property area. These penalties are imposed to provide an incentive to taxpayers to file returns (which identify the business personal property used in their business) and to pay taxes on time. The tax returns, which are due on May 1, provide information that is used by the City to determine the amount of business personal property taxes that are due. Tax bills are sent to businesses in August, and tax payments are due on October 5. The imposition of late filing and late payment penalties is authorized under the State Code and is common in Virginia. A chart is attached that compares the City's policies with those of other Northern Virginia localities and major Virginia cities (Attachment 1). The chart shows the City's 10% late filing and 10% late payment penalties are equal or very similar to these jurisdictions for both business and vehicle personal property taxes.

The 10% late filing penalty for business personal property is the subject of Alexandria Toyota's letter (Attachment 2). The City has had a 10% late filing penalty in the City Code and in practice for decades. It is designed to encourage businesses to timely report their personal property to the

City so that taxes can be assessed. Even though the City mails the business personal property forms and instructions to businesses 45 to 60 days before May's due date, in FY 2001 881 City businesses filed returns late (21% of all businesses which filed personal property tax returns), and paid approximately \$250,000 in late filing penalties. All told, business personal property taxes comprise about \$14 million in annual General Fund revenues.

When the City's current business tax computer systems are fully replaced in FY 2003, we will be able to issue business personal property forms (which include prior year data on a business-by-business basis) and instructions earlier in the calendar year. This will give businesses more time to prepare their personal property returns. This spring, postcards will be issued close to the filing date by the Finance Department to see if a reminder postcard increases the percentage of businesses that file their returns by the May 1 due date.

Under the State Code, the City has the discretion to impose late filing and late payment penalties at, or less than, 10%, but has only limited authority to waive them once they have been imposed. Under Virginia Code §58.1-3516 (and City Council Resolution No. 1536), a penalty may be waived if the failure to file the return or to pay the tax (i) was not the fault of the taxpayer or (ii) was the fault of the Finance Director. Virginia Code §58.1-3516 provides in part: "Penalty and interest for failure to file a return or to pay a tax shall not be imposed [i.e., must be waived] if such failure was not the fault of the taxpayer, or was the fault of the commissioner of the revenue or the treasurer, as the case may be." Resolution No. 1536 specifies the criteria to be used in deciding if a late filing payment is "not the fault of the taxpayer":

1. A transfer of real property occurs after January 1 of the tax year and the City mails the tax bill to the property's prior owner. If the property's new owner pays the tax within two weeks of the mailing of a new tax bill to the new owner the penalty can be waived.
2. The taxpayer substantiates, with his or her own affidavit and either a supporting statement from the U.S. Postal Service or other valid evidence, that the [return or] tax payment, although postmarked subsequent to the due date, was in fact mailed on or before that date.
3. The taxpayer, or the person handling the taxpayer's financial matters, can substantiate with appropriate documentation (doctor's statement, hospital records, death certificate) that the taxpayer died in the six-month period immediately preceding the due date, or that because of medical problems, the taxpayer was incapable of making the personal property filing on the due date.

Various opinions of the Attorney General of Virginia and the City Attorney's Office conclude that the "no fault of taxpayer" and "fault of [tax official]" standards in the State Code are the only standards or circumstances in which penalties may be waived. Neither a less, nor more stringent standard may be utilized in waiving penalties. With respect to the Alexandria Toyota appeal of a

late filing penalty assessed on its business personal property tax accounts, there is no basis on which the City may waive the penalty, since the failure to timely file the return was not “not the fault of the taxpayer.” In the case of Alexandria Toyota, the business personal property return was prepared by the company’s accounting firm and forwarded to Alexandria Toyota for submission to the City. Unfortunately, Alexandria Toyota mistakenly believed that the accounting firm had filed the tax return when in fact it had not. When City staff contacted Alexandria Toyota in early July, the company realized the mistake and immediately forwarded the return to the City. Although the late filing was not intentional, it clearly was not “not the fault of the taxpayer.”

The fact that a taxpayer has delegated the authority to another entity (such as a law or accounting firm) to complete the business personal property tax form and file it does not relieve the taxpayer of the responsibility to file the return on time; nor does it relieve the taxpayer of the liability for a penalty if his or her “delegatee” has filed the return late. In other words, a taxpayer may not satisfy the “not the fault of the taxpayer” standard by delegating the filing requirement to another person.

Most late business personal property tax filings are usually the result of forgetfulness or miscommunication on the part of the taxpayer or taxpayer agent. It should be noted, however, that intentional non-filings also occur, as taxpayers hope the City will not discover that they failed to file their personal property tax return, enabling them to avoid paying local business personal property taxes.

While the City does not have the authority to extend the circumstances in which penalties may be waived, it does have the authority to define the amount of the penalty (i.e., anywhere between 0 and 10%), and the circumstances in which a penalty may be imposed in the first place. Thus, for instance, in the late filing context, the City could impose an across-the-board penalty of less than 10% (e.g., 5%, or a set amount (e.g., \$500), or the greater of 5% or a set amount). Alternatively, for example, the City could impose a less-than-10% penalty in certain defined circumstances (e.g., a 5% penalty where the filing is less than 20 calendar days late and the taxpayer has never previously filed late). While staff does not support an across-the-board reduction in the late filing penalty, we would support the establishment of a differentiated penalty scheme in the late filing context, which reduces (from 10%) the penalty for “first-time, moderately late” late-filing businesses. If City Council were interested in prospectively changing City policy regarding late business property filings, it would need to amend the City Code and Resolution No. 1536 to accomplish the change.

Staff does not, however, believe it advisable to revisit, let alone revise, the rules regarding the late payment of business personal property (or other) taxes. As noted, under the current rules, any late payment of taxes gives rise to a penalty of 10%, unless the late payment is (i) “not the fault of the taxpayer” or (ii) is the fault of City tax officials, in which case the penalty must be waived. These rules provide a significant deterrent to the late payment of taxes -- a matter of considerable fiscal interest to the City -- and should not, in our view, be revised.

II. Vehicle Personal Property Penalties

A number of taxpayer complaints this past fall centered on the 10% late payment penalty for vehicle personal property taxes. The way the late payment penalty has been historically handled in localities across the State (including Alexandria) is that the 10% late payment penalty is applied to the entire vehicle personal property tax bill. However, with car tax relief, the taxpayer is no longer paying 100% of the tax bill, but only 30% (unless the vehicle is assessed for more than \$20,000). As a result, a penalty of 10% on the entire tax bill amounts to a 33% penalty on the taxpayer's own tax bill. For instance:

	<u>Pre-tax Relief</u>		<u>Post-tax Relief</u>
Tax bill	\$500	Tax bill	\$500
		Less State relief	<u>- 350</u>
		Net tax bill	\$150
10% Penalty	\$50	10% Penalty	\$ 50 (10% x \$500)
Effective penalty rate =	10%	Effective penalty rate =	33%

While it was recognized when the car tax relief law was passed that the "effective" late payment rates would rise, the State would not share in the fiscal cost of any penalty reduction related to its percentage share of the car tax. Local governments did not want to lose revenue due to car tax relief, and therefore the 10% penalty continued to be assessed against the total car tax bill. From a fairness point of view, there is a reasonable argument that this way of calculating the late payment penalty should be changed. With the City collecting over \$0.5 million in FY 2001 from late payment penalties, reducing the effective penalty rate would come at some fiscal cost to the City. As staff puts together the FY 2003 budget, we will consider alternative late payment policies for vehicle personal property taxes to reduce what is now an effective penalty rate of 33%.

III. Impact of Post-September 11 Economy on Business Tax Payments

During the October 23 City Council meeting, Councilwoman Pepper requested that staff monitor business tax payments and consider the possibility of waiving the late payment penalty on the personal property taxes for those companies who were affected by the economic downturn that has followed the events of September 11 and the subsequent Anthrax events in the District and elsewhere. Over the last few months, while it is clear that nearly all businesses were negatively impacted in some way, it appears that the impact was not so substantial as to create significant tax payment hardships for most businesses. To date, Finance Department staff have not noticed any major increases in late business tax payments (payments were due October 5, 2001), and have received only a few requests for waiving late tax payment penalties. Only in one case was the late payment waiver request granted, and that was in a situation where the taxpayer's business records were located in a damaged building near the World Trade Center site and were inaccessible. That circumstance met the definition of "no fault of the taxpayer" and therefore a payment penalty waiver could be granted. Arlington and Fairfax Counties have also noted few additional business tax payment hardships over the last three months.

In discussing with the U.S. Small Business Administration loan officers how small businesses react to a sudden, unexpected economic hardship, the loan officers indicated that they have seen when an economic disaster occurs that it takes some time for businesses to get to the point that tax and loan defaults begin to occur. Businesses which are profitable have some margin, cash flow and variable expenses to work with before the situation becomes extreme. Also, business owners are generally optimists who believe their business revenues will rebound. As evidence of this business thinking, very few City businesses have taken advantage of the SBA low-interest long-term loans that were made available in the Northern Virginia region after September 11. However, businesses can apply for loans until June of 2002, making this source available for businesses who may find their businesses in need of cash in the upcoming months.

In addition, as reported in the Monthly Financial Reports, while business revenues are down or flat for many consumer-oriented businesses (retail, business service, restaurants, hotels), the revenue drops by business class (except for hotels) are generally not double digit; nor are they as high as feared in early October.

While it remains to be seen how deep the economic downturn is and how long it lasts, at this time a retrospective changing of the October 5, 2001, business property tax payment due date does not appear to be warranted.

If anyone would like the subject of tax penalties, or one of the suggestions mentioned in Section I above, docketed for a Council meeting, please let me or Michele Evans know.

Attachments: 1. Comparison of Penalty & Interest Charges
2. Correspondence (November 21, 2001) from Alexandria Toyota

cc: Michele Evans, Assistant City Manager
Mark Jinks, Assistant City Manager
Steve Rosenberg, Assistant City Attorney
Daniel Neckel, Director of Finance
Debbie Kidd, Division Chief, Revenue Administration



3750 Jefferson Davis Highway • Alexandria, Virginia 22305 • 703/684-0700

Mr. Kerry J. Donley
Mayor
City of Alexandria
Room 2300, City Hall
301 King St.
Alexandria, Va. 22314



November 21, 2001

Dear Kerry,

Alexandria Toyota was supposed to provide a list of its personal property to the City of Alexandria by May 1. Since 1973, my company has successfully provided the city with this list. My controller has always done this list. Because of our new building she felt that this year we should have our accountant do the list, because we had so much new personal property.

In June, we received a call from the City saying that they thought that they had misplaced the list. We called our accountant to make sure that he had sent it. At that moment we realized that he had sent the list to us, thinking that we would send it to the city and we of course thought he had sent it to the city. As soon as we realized this, we immediately sent the list to the city. My Controller tells me that our failure to get the list in by May 1, did not delay the work of the department of finance.

Subsequent to this, we were notified by the City that a 10 percent penalty would be assessed, because we did not get the list in on time. That penalty was approximately \$8700.00 because our tax bill was \$87,000. I was incensed. The tax was not due until October and was paid in September.

I wrote several e-mails to the City Manager expressing my dismay. I believed that the City Manager has discretion on matters such as this. After all, the tax was paid on time. The City Manager believes the law is the law. I was extremely disappointed by his response given the record of my company on how it has paid its taxes to the City since 1973. The City Manager did say that I could appeal this matter to the Director of Finance. I pointed out to the City Manager that this would require me to hire a lawyer, which would cost more money. In my opinion this comment was met with indifference.

I hired Mary Catherine Gibbs, of Hart, Calley, Gibbs & Karp to write a letter to the Director of Finance. Her letter explained why she felt he had discretion in this matter. A copy of that letter is enclosed along with the Director's response. The Director of Finance denied our request citing Virginia Code, Section 58.1-3916 which states:

If the treasurer determines from all the facts and circumstances that the taxpayer (1) did not fail purposely in his duty to report and pay the taxes due OR (2) did not engage in conduct that materially contributed to the failure to file and pay tax when due, then the treasurer must waive the penalty.

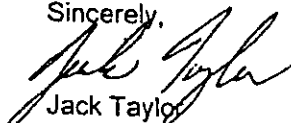
Our position is that the penalty can be waived if we comply with either 1 or 2. For some reason the director of finance believes the word 'or' doesn't mean 'or', it means 'and'. We obviously have a different position.

Mr. Neckels, in his denial, said, "I find that as a matter of fact Jack Taylor's Alexandria Toyota, did engage in conduct that materially contributed to the late filing of its 2001 business tangible personal property tax return when it arranged for the preparation of the tax return, but did not ensure that the return, once completed, was timely filed with the City." For Mr. Neckel to suggest that Alexandria Toyota was engaged in conduct that materially contributed to the late filing was wrong. We hired a professional firm to prepare the list and send it to the City. We thought that happened. When we found out that it did not happen, we immediately corrected the situation. In my opinion, the only conduct that Alexandria Toyota engaged in was to fix a mistake as soon as a mistake was found. For the City to suggest that Alexandria Toyota was inefficient is preposterous.

Up to this point I have put a lot of my time and some money into this matter. This is something that could have been resolved very quickly with a common sense approach. That has not happened. I think it's interesting that when the city called us and told us that we were missing the list, we got it to them immediately. When I hire a lawyer to send a letter to the director of finance it takes them almost 30 days to respond. I believe that this is one more example of how the city couldn't care less about their businesses.

If the city does not change their position, I intend to appeal this to the Circuit Court. Of course this will take lots of time and lots of money. I believe that there is a much more productive use of my time and resources and have proven that over the years. I am now rethinking that position. It has become apparent to me that my time and resources are going to have to be used to fight the City.

Sincerely,



Jack Taylor
President

cc: William Cleveland
Claire Eberwein
William Euille
Del Pepper
David Speck

HART, CALLEY, GIBBS & KARP, P.C.

ATTORNEYS AND COUNSELLORS AT LAW

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BERT L. KARP

October 15, 2001

Ms. Debbie Kidd, Chief
Revenue Division
Department of Finance
City of Alexandria
P.O. Box 178
Alexandria, Virginia 22313

Re: Jack Taylor's Alexandria Toyota
Penalty for late filing of Tangible Personal Property Schedule

Dear Ms. Kidd:

This letter is written to request that you reconsider the 10% penalty imposed upon Jack Taylor's Alexandria Toyota ("Alexandria Toyota") for the late filing of the business's 2001 tangible personal property schedule. As you may be aware, Alexandria Toyota missed the May 1 filing deadline for the schedule of tangible personal property owned by the company because of a mis-communication between it and its accounting firm at Holmes Lowery. When the accounting firm prepared the schedule and sent it to Alexandria Toyota in April 2001, the Controller of Alexandria Toyota, Ms. Adriana Figueras, mistakenly thought that the accountant filed the schedule with your office. When informed in the middle of June of 2001 by Ms. Sharon Richter that she could not find Alexandria Toyota's schedule, she immediately forwarded the schedule to your office. Since that time, Alexandria Toyota paid its tangible personal property taxes prior to the October 5, 2001 due date, so the City is not without any of those funds. Based upon the honest mistake of Ms. Figueras, however, the City has assessed a 10% penalty on Alexandria Toyota for the late filing.

After Ms. Figueras wrote to you on August 16, 2001, you informed her on August 23, 2001 that you could not waive the penalty based upon the Virginia and the City of Alexandria Code. I am writing to request that you reconsider that ruling. Pursuant to Virginia Code § 58.1-3916, "penalty and interest for failure to file a return or to pay a tax shall not be imposed if such failure was not the fault of the taxpayer. . . ." Whether the failure to pay is the fault of the taxpayer is a question of fact to be determined by the local treasurer. However, on several occasions, the Virginia Attorney General looked at this issue of "fault" and has concluded that if the taxpayer "(1) did not fail purposefully in his duty to report and pay the taxes due, or (2) did not engage in conduct that materially contributed to the failure to report or pay the taxes when

Ms. Debbie Kidd
October 15, 2001
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due, then the treasurer must waive the penalty." See 1991 Va. AG 277, 277; 86-87 Va. AG 321, 322; and 83-84 Va. AG 387.

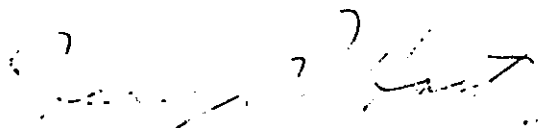
In this case, Alexandria Toyota did not "purposefully" fail in its duty to report its tangible personal property when due. An honest mistake was made by Alexandria Toyota so that it is impossible for Alexandria Toyota to have purposefully failed in its duty to report to the City. As such, the failure to file the report by the May 1 deadline should not be considered the fault of Alexandria Toyota, and consequently, the City should waive the late filing penalty.

In addition, I believe you could also waive this penalty through granting Alexandria Toyota an extension of time in which to file their return/schedule. Virginia Code § 58.1-3916 further provides that, "[t]he governing body may further provide by resolution for reasonable extensions of time, not to exceed ninety days, . . . for filing returns on tangible personal property . . . whenever good cause exists." (Emphasis added). Since the City could provide extensions of time up to ninety days to file returns of tangible personal property for good cause, the City could consider the waiver of this penalty as a grant of an extension in which to file the schedule.

Clearly, good cause exists to grant an extension. This was simply an honest miscommunication between Alexandria Toyota and its accountant. Upon being informed of their mistake, Alexandria Toyota immediately rectified the situation within ninety days of the May 1 deadline and it paid the taxes prior to the due date, so there is no monetary loss to the City which the payment of a penalty might correct.

Please reconsider your decision and waive the imposition of the 10% penalty as Alexandria Toyota did not purposefully fail in its duty to report its tangible personal property or simply grant Alexandria Toyota an extension of time in which to file its schedule of tangible personal property by waiving the 10% penalty imposed. In addition, if such consideration is denied, please inform Alexandria Toyota of its right to appeal in this regard. Thank you in advance for your consideration.

Very truly yours,



Harry P. Hart

cc: Mr. Jack Taylor



DEPARTMENT OF FINANCE

P. O. Box 178 - City Hall
Alexandria, Virginia 22313

ci.alexandria.va.us

Phone (703) 838-4755

November 8, 2001

Mr. Harry P. Hart, Attorney at Law
Hart, Calley, Gibbs & Karp, P.C.
397 North Washington Street
Alexandria, Virginia 22314-2557

Dear Mr. Hart:

Re: Jack Taylor's Alexandria Toyota
Penalty for Late Filing of Business Tangible Personal Property Tax Return

Your letter of October 15, 2001, to Debbie Kidd, concerning the late filing penalty attached to the 2001 business tangible personal property tax account for Jack Taylor's Alexandria Toyota, has been forwarded to me for response. I am treating your letter as an appeal of the assessment of the late filing penalty on the account under Virginia Code §58.1-3980.

Thank you for taking the time to carefully research and present your case. Unfortunately, I must deny your request to waive the late filing penalty on the tax account.

City records show that the 2001 business tangible personal property tax return was mailed to Jack Taylor's Alexandria Toyota at 3750 Jefferson Davis Highway. The return was delivered to the City subsequent to the May 5, 2001 due date. Your October 15, 2001 letter acknowledges that the failure to timely file the return was due to a "mis-communication" between Jack Taylor's Alexandria Toyota and its accounting firm, Homes Lowery.

In support of the waiver of the late filing penalty, you rely on three opinions of the Virginia Attorney General: 91 Att'y Gen. Ann. Rep. 277; 86-87 Att'y Gen. Ann. Rep. 321 and 83-84 Att'y Gen. Ann. Rep. 387. Each of these opinions addresses the determination of "fault" for purposes of Virginia Code §58.1-3916 (or its predecessors). The opinions consistently state that:

if the treasurer determines from all the facts and circumstances that the taxpayer (1) did not fail purposefully in his duty to report and pay the taxes due or (2) did not engage in conduct that materially contributed to the failure to report and pay the tax when due, then the treasurer must waive the penalty.

1191 Att'y Gen. Ann. Rep. 271, 271 (emphasis added).

Mr. Harry P. Hart
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November-8: 2001

This same standard has been adopted by the City Council of the City of Alexandria in Resolution No. 1536, a copy of which is enclosed, to guide the director of finance in his determination of fault. Paragraph 3 of the resolution provides:

That, before determining that a late tax filing or a late tax payment was not the fault of the taxpayer, the director must find that the taxpayer had not purposefully failed to perform a tax-related duty and had not engaged in conduct that materially contributed to the late filing or late payment.

This standard, as stated in the opinions of the Virginia Attorney General and in the resolution adopted by City Council, supports the City's denial of the requested waiver. In your analysis, you focus upon only one part of the standard, that is whether the taxpayer purposefully failed to perform a tax-related duty. As you maintain, it is apparent that the taxpayer made a mistake, but did not intentionally fail to file the tax return.

However, it is equally apparent that the taxpayer did engage in conduct that materially contributed to the late filing, when it arranged for the preparation of the tax return by its accounting firm, but did not ensure that the return, once completed, was timely filed with the City.

In summary, I must deny your request for a waiver for the following reasons:

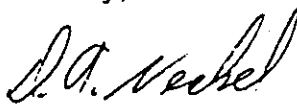
- Resolution No. 1536, adopted by City Council consistently with the provisions of Virginia Code §58.1-3916, clearly provides for the **only circumstances where a lack of fault on the part of the taxpayer may be demonstrated, and is controlling in this matter;**
- In accordance with the resolution and Virginia Code §58.1-3916, the issue of fault is a factual question and is to be determined by the (Director of Finance); and
- The resolution provides that in order to find a lack of fault on the part of the taxpayer the director must find that the taxpayer had not purposefully failed to perform a tax-related duty and had not engaged in conduct that materially contributed to the late filing or late payment. **I find that, as a matter of fact, Jack Taylor's Alexandria Toyota, did engage in conduct that materially contributed to the late filing of its 2001 business tangible personal property tax return, when it arranged for the preparation of the tax return, but did not ensure that the return, once completed, was timely filed with the City.**

An examination of City records currently shows that Jack Taylor's Alexandria Toyota has a total of \$8,739.97 outstanding for late filing penalty. Please arrange for payment of this amount within 15 days.

Mr. Harry P. Hart
Page 3
November 8, 2001

If you are dissatisfied with my response, you have the right to appeal in court pursuant to Virginia Code §58.1-3984. If you have any questions, please contact me at (703) 838-4755.

Sincerely,



D.A. Neckel
Director of Finance

Enclosure

cc: Steve Rosenberg, Senior Assistant City Attorney
Debbie Kidd, Division Chief, Revenue

RESOLUTION NO. 1536

WHEREAS, section 58.1-3916 of the Code of Virginia (1950), as amended, became effective on January 1, 1985; and

WHEREAS, prior to July 1, 1991, section 58.1-3916 authorized the City to impose penalties and interest for the late filing of a tax return and late payment of local taxes except when the failure to file or pay on time "is not the fault of the taxpayer"; and

WHEREAS, section 58.1-3916 was amended by the 1991 General Assembly to prohibit the imposition of penalty and interest for the late filing of a return or the late payment of a tax where the late filing or payment is "the fault" of the responsible tax official; and

WHEREAS, section 58.1-3916 further provides that "the governing body may delegate to the appropriate local tax officials the responsibility to make the determination of fault"; and

WHEREAS, in Resolution No. 1068, adopted on December 11, 1984, and in Resolution No. 1409, adopted October 10, 1989, the Director of Finance was designated as the city official authorized to make the determination of fault; and

WHEREAS, standards were established in Resolution Nos. 1068 and 1409 to guide the director in making determinations of fault; and

WHEREAS, city council now wishes to set forth additional standards to guide the director in making determinations of fault consistent with section 58.1-3916, as amended, to extend the prohibition against the imposition of penalty and interest to cases where the tax official is at fault;

WHEREAS, city council believes that, with respect to the imposition of penalties and interest for the late filing of tax returns and the late payment of taxes, all delegations of authority and the standards applied in exercising such authority should be set forth in a single resolution;

NOW, THEREFORE, BE IT RESOLVED BY
THE CITY COUNCIL OF ALEXANDRIA:

1. That the Director of Finance shall be and is hereby designated the city official with the authority and responsibility to determine whether the failure to file a tax return, or to make a tax payment, on time was not the fault of the taxpayer or was the fault of city tax officials or personnel;

2. That, where the director determines that the failure to file a tax return or to make a tax payment on time was not the fault of the taxpayer or that such failure was the fault of city tax officials or personnel, the taxpayer shall not be liable for any penalty or interest on account of the late filing or the late payment;

3. That, before determining that a late tax filing or a late tax payment was not the fault of the taxpayer, the director must find that the taxpayer had not purposefully failed to perform a tax-related duty and had not engaged in conduct that materially contributed to the late filing or late payment;

4. That the director shall find that the taxpayer has met the criteria of section 3 where:

a. A transfer of the property in issue occurs after January 1 of the tax year, the City mails the tax bill to the property's prior owner, and the property's new owner pays the tax within two weeks of the mailing of a new tax bill to said owner;

b. The taxpayer substantiates, with his or her own affidavit and either a supporting statement from the postal service or other valid evidence (e.g., a check register), that the tax payment, although postmarked subsequent to the due date, was in fact mailed on or before that date; or

c. It is substantiated through appropriate documentation that the taxpayer died in the six-month period immediately preceding the due date or that the taxpayer was, for medical reasons, incapable of making the tax payment on the due date;

5. That, before determining that a late tax filing or a late tax payment was the fault of city tax officials or personnel, the director must find that an action or inaction by one or more such officials or personnel primarily and directly caused the late filing or late payment;

6. That Resolution No. 1409 is hereby repealed;

7. That this resolution shall be effective as of the date of its adoption.

ADOPTED: May 14, 1991



PATRICIA S. TICER MAYOR
On behalf of the City Council
of Alexandria, Virginia

ATTEST:



Beverly I. Jett, CMC City Clerk

City of Alexandria

Comparison of Penalty & Interest Charges

[As of December 4, 2001]

Locality	Personal Propety			Business Personal Property			BPOL *		
	Late Filing Penalty	Late Payment Penalty	Interest/Refund	Late Filing Penalty	Late Payment Penalty	Interest/Refund	Late Filing Penalty	Late Payment Penalty	Interest/Refund
Alexandria	\$10 or 10% of total tax due before PPTRA reduction (applied after 120 days)	\$10 or 10% of total tax due before PPTRA reduction and late filing penalty	10% per annum for 1st yr. 5% per annum thereafter	\$10 or 10% of total tax due	\$10 or 10% of total tax due and late filing penalty	10% per annum for 1st yr. 5% per annum thereafter	n/a	\$10 or 10% of total tax due	10% per annum for 1st yr. 5% per annum thereafter
Arlington Co	None	\$10 or 10% of total tax due before PPTRA reduction	5% per annum	10% of total tax due	10% of total tax due and late filing penalty	5% per annum	n/a	10% of total tax due	5% per annum
Fairfax Co	10% of total tax due before PPTRA reduction	10% of total tax due before PPTRA reduction and late filing penalty	5% per annum	10% of total tax due	10% of total tax due and late filing penalty	5% per annum	10% of total tax due	n/a	5% per annum
Prince William Co	None	10% of total tax due before PPTRA reduction	10% per annum	10% of total tax due	10% of total tax due and late filing penalty	10% per annum	n/a	10% of total tax due	10% per annum
Richmond	10% of total tax due before PPTRA reduction	\$10 or 10% of total tax due before PPTRA reduction and late filing penalty	10% per annum	10% of total tax due	\$10 or 10% of total tax due and late filing penalty	10% per annum	10% of total tax due	\$10 or 10% of total tax due and late filing penalty	10% per annum
Norfolk	10% of total tax due before PPTRA reduction	\$10 or 10% of total tax due before PPTRA reduction and late filing penalty	10% per annum	10% of total tax due	\$10 or 10% of total tax due and late filing penalty	10% per annum	n/a	\$10	6% per annum
Virginia Beach	10% of total tax due before PPTRA reduction	\$10 or 10% of total tax due before PPTRA reduction and late filing penalty	8% per annum	10% of total tax due	\$10 or 10% of total tax due and late filing penalty	8%	n/a	10% of total tax due	10% per annum
Loudon Co	10% of total tax due before PPTRA reduction	\$10 or 10% of total tax due before PPTRA reduction and late filing penalty	10% per annum	10% of total tax due	\$10 or 10% of total tax due and late filing penalty	10% per annum	10% of total tax due	\$10 or 10% of total tax due and late filing penalty	10% per annum

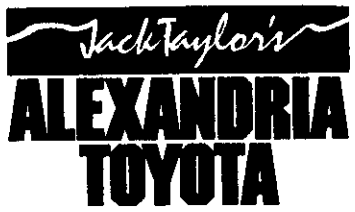
*Only one penalty (either late filing penalty or late payment penalty) can be charged for BPOL.

Virginia Code Sec. 58.1-3531: In calculating penalties, the Treasurer may take into consideration the full amount of the tangible personal property tax levied including any amount to be paid by the Commonwealth.

Virginia Code Sec. 58.1-3916: No penalty for failure to file a return shall be greater than 10% of the tax.

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EXHIBIT NO. 2

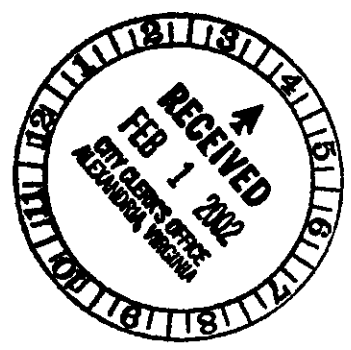


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2-12-02

3750 Jefferson Davis Highway • Alexandria, Virginia 22305 • 703/684-0700

February 1, 2002

The Honorable Kerry J. Donley
Mayor, City of Alexandria
City Hall, Room 2300
301 King Street
Alexandria, VA 22314



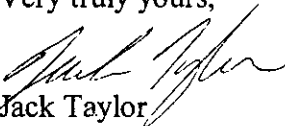
Re: Penalty for Late Filing of Business Personal Property Tax Schedule

Dear Mayor Donley:

In response to the City Manager's memorandum dated January 29, 2002, I wish to bring one issue to the attention of the City Council and bring it to the forefront of this matter. I simply wish to have an explanation of why, when the Virginia Attorney General establishes a standard to determine the "fault" of the taxpayer in order to decide whether or not the taxpayer should be required to pay a late filing penalty, did the City of Alexandria change that standard? The City Manager relies on Resolution No. 1536 and the three examples cited therein as to the only means for finding that the late filing of a tax schedule was not the fault of the taxpayer: 1) a new property owner; 2) a U.S. Postal Service mistake; or 3) death or incapacity of the taxpayer. The City, in adopting this resolution, states that it is attempting to adopt standards that are consistent with Section 58.1-3916 of the Virginia Code. The Attorney General of Virginia, however, has ruled in several instances that the standard under the Code is different from that adopted by the City. The letter sent by the Department of Finance on November 8 clearly shows this distinction. The determination to impose a penalty is based upon whether or not the failure to file is the "fault" of the taxpayer. The Virginia Attorney General states that the local treasurer has to look at all the facts and find that the taxpayer 1) did not fail purposefully in his duty to report when due **OR** 2) did not engage in conduct that materially contributed to the failure to report when due. The City Resolution states that the treasurer must find that the taxpayer 1) did not fail purposefully in his duty to report when due **AND** 2) did not engage in conduct that materially contributed to the failure to report when due. That is not the same standard and the change in one word is of significant consequence here. My lawyer raised this point in her October 15 letter. I again raised that point in my November 21 letter to Council. The City Manager's memorandum does not address this point. I now simply want an answer on this specific point.

I found it very interesting in the memorandum to Council that there were 881 businesses in the City of Alexandria that file their taxes late. It is apparent to me that there's something wrong with the system when 21 percent of all businesses in Alexandria filed a late return. I also found it interesting that the City collected \$250,000.00 in late penalties. That is approximately \$283.00 per business. Alexandria Toyota's penalty is approximately \$8,700.00. This amount represents four percent of the total penalties collected. Does this punishment fit the crime? In this case, the amount of the penalty is not only disproportionate to the average of all penalties, but also bears no rational relationship to the monetary detriment to the City. I look forward to hearing from you.

Very truly yours,


Jack Taylor

Cc: William C. Cleveland
Claire M. Eberwein
William D. Euille
Redella S. Pepper
David G. Speck