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# Virginia Tax Laws Affecting Churches

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## I. Introduction

This is the second of two articles dealing with external church law in Virginia. The first article[1] was a restatement of all Virginia laws relating to churches except for the tax laws. The subject of taxes was reserved for special treatment at that time because of the volume of tax-related materials. For the most part these

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1. Johnson, *Virginia Laws Affecting Churches—Restated*, 17 U. Rich. L. Rev. 1 (1982).

materials consist of the various constitutional and statutory taxation provisions relating to religious charities and the opinions of the Virginia Attorney General interpreting and applying these provisions. Attorney General opinions take on a special importance in this study because there is only a handful of state supreme court decisions dealing with church tax law.[2] Thus an effort has been made to locate, analyze, and report on all of the opinions relating to the taxation of religious entities that have been issued by the Attorney General's office during the past fifty years. The continuing intent in this second article is to collect and restate contemporary law. Accordingly, the historical development of the law is not dealt with except as it becomes important to the existence or interpretation of present rules.

## II. DEFINITIONS[3]

### Benevolent

> This word "should receive a reasonable interpretation to give effect to its accepted meaning: 'Philanthropic; humane; having a desire or purpose to do good to men; intended for the conferring of benefits, rather than for gain or profit.' "[4]

### Charitable

> This word, "as used in tax exemption provisions, 'should be given a fair and reasonable interpretation, and means intended for charity.' An organization is charitable if it is 'organized and conducted to perform some service of public good or welfare.' "[5]

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2. Concerning the weight of Attorney General opinions, see Barber v. City of Danville, 149 Va. 418, 424, 141 S.E. 126, 127 (1928), where the court held that the "construction of [a] statute by the Attorney General, while in no sense binding upon this court, is of the most persuasive character, and is entitled to due consideration."

3. The liberal construction given to tax-exemption provisions in favor of charities under the 1902 constitution was changed by the 1971 constitution to a rule of strict construction, except for certain grandfathered provisions. *See infra* text accompanying notes 25-36. Consequently, one may find the same words or terms receiving a different interpretation depending on the applicable period. For other church-related definitions, see Johnson, *supra* note 1, at 2-3.

4. Manassas Lodge v. County of Prince William, 218 Va. 220, 224, 237 S.E.2d 102, 105 (1977) (quoting BLACK'S LAW DICTIONARY 201 (4th ed. 1951)).

5. *Manassas Lodge*, 218 Va. at 224, 237 S.E.2d at 105 (quoting City of Richmond v. United Givers Fund, 205 Va. 432, 436, 137 S.E.2d 876, 879 (1964)) (citations omitted).

Exclusively

This word, "as used in tax exemption provisions, 'has never been considered an absolute term.'[6] In determining whether the property of a charitable or benevolent association is exempt from taxation, 'the controlling factor is the dominant purpose in the use of the property.' "[7]

Minister

The Bishop Coadjutor is a minister of the Protestant Episcopal Diocese of Virginia.[8]

Religious Body

The Protestant Episcopal Diocese of Virginia is a religious body.[9]

Religious Worship Service

The term "religious worship service" includes the regularly scheduled weekly church service, as well as weddings, baptisms, christenings, funerals, and special services conducted during religious holidays.[10]

Taxes

In the construction of tax and revenue statutes, the words "taxes" and "levies" shall not include the assessments for local improvements provided for in the Virginia Code in Sections 15.1-239 to -249, 15.1-850 to -851, or in the charter of any city or town.[11]

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6. *Manassas Lodge*, 218 Va. at 224, 237 S.E.2d at 105 (quoting City of Richmond v. Richmond Memorial Hosp., 202 Va. 86, 91, 116 S.E.2d 79, 82 (1960)).

7. *Manassas Lodge*, 218 Va. at 224, 237 S.E.2d at 105 (quoting *United Givers Fund*, 205 Va. at 438, 137 S.E.2d at 880) (citations omitted).

8. Cudlipp v. City of Richmond, 211 Va. 712, 180 S.E.2d 525 (1971).

9. *Id.* at 712, 180 S.E.2d at 525.

10. Va. Retail Sales and Use Tax Reg. 1-22.1 (Va. Dep't of Taxation, July 1, 1982); VA. TAX REP. (CCH) ¶¶ 64-0289.

11. VA. CODE ANN. § 58-3.1 (Repl. Vol. 1974). A like definition, applicable to the use of the word "taxation" in § 58-12, is found in VA. CODE ANN. § 58-12.1 (Repl. Vol. 1974).

## III. The Constitutional Framework

Although the granting of a tax exemption to any charity may be seen by some as a de facto government subsidy,[12] it is clear that exemptions from taxation for religious charities are not in violation of the establishment clause of the first amendment of the United States Constitution as long as a state does not single out any religious organization for preferential treatment.[13] Similarly, exemptions for religious charities do not violate the free exercise or establishment clauses of the Virginia Constitution, absent excessive entanglement with religion or a focus on a particular religion.[14] With regard to taxation, it has been determined that the imposition of a sales tax on churches or religious bodies "does not violate any guarantee of the 'separation of church and state' principle embodied in any of our State or Federal laws."[15] The Virginia Supreme Court, in dictum, recognized the presence of constitutional questions concerning the free exercise of religion on the appeal of a church from a conviction of violating a town ordinance that required the display of local license decals on motor vehicles,[16] but it declined to discuss these questions. Instead, the court reversed the church's conviction on procedural grounds; the trial court erred in not allowing the accused to litigate the issue of whether the town ordinance was a regulatory measure or a revenue measure.[17]

### A. *The Law Prior to July 1, 1971*

Prior to July 1, 1971, when Virginia's present constitution became effective,[18] the tax exemption of churches and other charities was controlled by section 183 of the constitution of 1902.[19] This provision of the 1902 constitution continues to be of great importance today because the 1971 constitution contained a grandfather provision that provided for the continuation of existing tax exemp-

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12. *See* 2 Debates of the Virginia Constitutional Convention 2696 (1901-1902); *see generally id.* at 2682-2700.

13. Walz v. Tax Comm'n of New York, 397 U.S. 664 (1970); Miller v. Ayres, 214 Va. 171, 198 S.E.2d 634 (1973).

14. *See* 1977-1978 Op. Va. Att'y Gen. 445.

15. 1966-1967 *id.* 305-06.

16. Loudoun Baptist Temple v. Town of Leesburg, 223 Va. 592, 592, 292 S.E.2d 315, 315 (1982).

17. *Id.* at 595, 292 S.E.2d at 316-17.

18. Va. Const. Schedule, § 1. The constitution became effective at noon on July 1, 1971.

19. Va. Const. of 1902, § 183.

tions.[20] This grandfathering of the charitable exemption provisions contained in the 1902 constitution into the 1971 constitution, which continues in force today, means that the tax-exempt status of some charities is to be determined by provisions that are no longer published as a part of the Virginia Code. Accordingly, as a service to the practitioner and to facilitate the presentation of the material to follow, the church-related provisions found in section 183 of the 1902 constitution are herewith reproduced as they read on the date of the 1971 constitution's adoption:

§ 183. PROPERTY EXEMPT FROM TAXATION.—Unless otherwise provided in this Constitution, the following property and no other shall be exempt from taxation, State and local, including inheritance taxes:

(a) [government property]. . . .

(b) Buildings with land they actually occupy, and the furniture and furnishings therein and endowment funds lawfully owned and held by churches or religious bodies, and wholly and exclusively used for religious worship, or for the residence of the minister of any such church or religious body, together with the additional adjacent land reasonably necessary for the convenient use of any such building.

(c) [cemetery property]. . . .

(d) [school and library property]. . . .

(e) Real estate belonging to, actually and exclusively occupied and used by, and personal property, including endowment funds, belonging to Young Men's Christian Associations, and other similar religious associations, orphan or other asylums, reformatories, hospitals and nunneries, conducted not for profit, but exclusively as charities, also parks or playgrounds held by trustees for the perpetual use of the general public.

(f) [lodge or meeting rooms of benevolent and charitable associations]. . . .

(g) [historical and patriotic organizations]. . . .

Except as to class (a) above, general laws may be enacted restricting but not extending the above exemptions. . . .

Whenever any building or land, or part thereof, mentioned in

20. VA. CONST. art. X, § 6(f), reproduced *infra* at text accompanying note 30.

this section, and not belonging to the State, shall be leased or shall otherwise be a source of revenue or profit, all of such buildings and land shall be liable to taxation as other land and buildings in the same county, city or town. But the General Assembly may provide for the partial taxation of property not exclusively used for the purposes herein named. . . .[21]

When the Virginia Supreme Court was called upon to establish the guiding principle to be used in the interpretation and application of the foregoing provisions, it recognized that the general rule provides for strict construction of provisions granting tax exemptions to property that is privately owned. However, the court then went on to hold:

> [A]s the policy of the state has always been to exempt property of the character mentioned and described in section 183 of the Constitution, it should not be construed with the same degree of strictness that applies to provisions making exemptions contrary to the policy of the state, since as to such property exemption is the rule and taxation the exception.[22]

Thus was born the rule of liberal construction in Virginia under which "exemption was the rule and taxation was the exception"[23] in connection with constitutional and statutory provisions relating to tax exemptions of charities.[24]

### B. *The Law After July 1, 1971*

The framers of Virginia's present constitution, which became effective on July 1, 1971, determined that the opposite interpretive approach should be taken to charitable exemption provisions and therefore expressly provided that "[e]xemptions of property from taxation as established or authorized hereby shall be strictly con-

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21. VA. CONST. of 1902, § 183. All references and quotes to the 1902 constitution refer to it as it stood on June 30, 1971.

22. Commonwealth v. Lynchburg Y.M.C.A., 115 Va. 745, 748, 80 S.E. 589, 590 (1914).

23. Manassas Lodge v. County of Prince William, 218 Va. 220, 222, 237 S.E.2d 102, 104 (1977).

24. For an excellent discussion of the historical background and development of the charitable exemption laws of Virginia, see Horsley, *Taxation, 1963-64 Annual Survey of Virginia Law*, 50 VA. L. REV. 1470, 1507-11 (1964); Horsley, *Taxation, 1962-63 Annual Survey of Virginia Law*, 49 VA. L. REV. 1662, 1662-64 (1963); Horsley, *Taxation, 1961-62 Annual Survey of Virginia Law*, 48 VA. L. REV. 1554, 1561-65 (1962); Horsley, *Taxation, 1960-61 Annual Survey of Virginia Law*, 47 VA. L. REV. 1311, 1313-16 (1961).

strued . . . ."[25] As previously noted, however, this change from a liberal to a strict constructional approach for charitable tax exemptions is prospective only. The grandfather clause provides for the preservation of all exemptions existing on July 1, 1971, "until otherwise provided by the General Assembly as herein set forth."[26] Instead of providing otherwise, the General Assembly has enacted its own grandfather clause[27] paralleling the one in the 1971 constitution and in addition has provided for the retention of the "rules of statutory construction applicable to this section prior to July one, nineteen hundred seventy-one."[28] In other words, the General Assembly has also provided for the retention of the "liberal" construction rule in connection with these grandfathered charities and their grandfathered property. The relationship between this legislation, the 1902 constitution, and the 1971 constitution was a source of confusion until the Attorney General issued an exhaustive and scholarly opinion in which he concluded that

> [I]n no circumstance is § 58-12 a source of authority for exemption from real property taxation, except for that property which is owned by an organization which (1) existed on July 1, 1971 and (2) held the property on July 1, 1971; and (3) the property was (a) exempt, or (b) entitled to be exempt under the 1902 constitution.[29]

Virginia's present charitable exemption provisions for churches and church-related charities, as recast in the 1971 constitution, are herewith reproduced for purposes of comparison with the 1902 provisions and also to facilitate the presentation of materials to follow:

§ 6. EXEMPT PROPERTY.—(a) Except as otherwise provided in this Constitution, the following property and no other shall be exempt from taxation, State and local, including inheritance taxes:

. . . .

(2) Real estate and personal property owned and exclusively occupied or used by churches or religious bodies for religious worship

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25. VA. CONST. art. X § 6(f).

26. *Id.*

27. VA. CODE ANN. § 58-12 (Repl. Vol. 1974). Section 58-12(2) is identical to § 183(b) of the 1902 constitution and § 58-12(5) is identical (insofar as religious charities are concerned) to § 183(e) of the 1902 constitution.

28. VA. CODE ANN. § 58-12 (Repl. Vol. 1974).

29. Op. Va. Att'y Gen. 17 (Feb. 24, 1984). *See infra* text accompanying note 98.

or for the residences of their ministers.

. . . .

(5) Intangible personal property, or any class or classes thereof, as may be exempted in whole or in part by general law.

(6) Property used by its owner for religious, charitable, patriotic, historical, benevolent, cultural, or public park and playground purposes, as may be provided by classification or designation by a three-fourths vote of the members elected to each house of the General Assembly and subject to such restrictions and conditions as may be prescribed.

. . . .

(c) Except as to property of the Commonwealth, the General Assembly by general law may restrict or condition, in whole or in part, but not extend, any or all of the above exemptions.

. . . .

(f) Exemptions of property from taxation as established or authorized hereby shall be strictly construed; provided, however, that all property exempt from taxation on the effective date of this section shall continue to be exempt until otherwise provided by the General Assembly as herein set forth.

(g) The General Assembly may by general law authorize any county, city, town, or regional government to impose a service charge upon the owners of a class or classes of exempt property for services provided by such governments.[30]

In comparing the church-related tax exemption provisions of the two constitutions, it is clear that the church/minister exemption contained in section 183(b) of the 1902 constitution[31] continues to exist, *mutatis mutandis*, as section 6(a)(2) of the 1971 constitution.[32] However, the exemption for property "belonging to Young Men's Christian Associations and other similar religious associations," found in section 183(e) of the 1902 constitution[33] has been significantly recast. The 1902 language required the appropriate taxation official to make a factual determination in each instance, which was then subject to judicial review as would be any other

30. VA. CONST. art. X, § 6.
31. *See supra* text accompanying note 21.
32. *See supra* text accompanying note 30.
33. *See supra* text accompanying note 21.

administrative decision. The 1971 constitution, in section 6(a)(6),[34] appears to take away the decision-making authority of tax administrators and the judiciary by providing that property used for religious purposes, other than that covered by the church/minister exemption of section 6(a)(2), shall be exempt only if so determined by a three-fourths vote of the members of each house of the General Assembly.

Accordingly, insofar as religious exemptions were concerned, the role of the tax official and the judiciary was initially restricted to those cases where a tax exemption was claimed under section 6(a)(2) of the 1971 constitution, or under the pre-1971 law as kept in force by the grandfather clause of the 1971 constitution. All future tax exemptions for religious entities would have to be granted by the General Assembly. However, in addition to the specific religious exemptions that have been granted by the General Assembly,[35] it has also passed a general religious exemption for "[P]roperty owned by any church, religious association or denomination or its trustees or duly designated ecclesiastical officer, and used exclusively on a nonprofit basis for charitable, religious or educational purposes."[36] The net effect of this latter, general exemption would seem to be to reinvolve the taxation officials and the judiciary in the exemption determination process to a large extent, perhaps contrary to the intent of the framers of the 1971 constitution. Regardless of the framers' original intent, however, it is clear that as a result of this reinvolvement of the taxation officials and the judiciary, the traditional role that precedents play in the decision-making process requires a cataloging and analysis of previous decisions as a guide for the future.

## IV. Property Taxes

### A. *Pre-1971 (Grandfathered) Exemptions.*

It may be assumed that the majority of religious entities seeking a property tax exemption in Virginia are tax-exempt entities within the context of federal income-tax law. This status will not be helpful for property tax purposes however, because "*[p]roperty owned by an organization exempt from federal income taxation is still subject to local real estate taxation, unless a specific State*

34. *See supra* text accompanying note 30.
35. *See infra* text accompanying notes 128-60.
36. Va. Code Ann. § 58-12.24 (Cum. Supp. 1983).

*exemption applies."*[37] Accordingly, in the examination of the pre-1971 tax-exemption decisions, and the post-1971 decisions that are based on prior law because of the grandfather clause, constant reference to the constitutional and statutory provisions in force at the relevant time is necessary. There were two religious exemption provisions during the pre-1971 era. These provisions, which will be examined separately, may be classified as the "church" exemption and the "Y.M.C.A." exemption.

1. The Church Exemption

The church exemption provision in the version written on June 30, 1971, and grandfathered by the 1971 constitution, reads as follows:

> Buildings with land they actually occupy, and the furniture and furnishings therein, and endowment funds lawfully owned and held by churches or religious bodies and wholly and exclusively used for religious worship or for the residence of the minister of any church or religious body, together with the additional adjacent land reasonably necessary for the convenient use of any such building [shall continue to be exempt from taxation].[38]

The mere fact that property is owned by a church or religious body does not guarantee the allowance of any exemption from property taxation. The language of the church statute clearly provides for some form of qualified use as a condition precedent to the allowance of any deduction. For purposes of analysis, the exemptions granted by the church statute may be subdivided into the three categories of (i) religious worship, (ii) minister's residence, and (iii) adjacent land.

Under the first heading, "religious worship," it should be obvious that church land which is not being used for any purpose would not qualify for any exemption because of this non-use.[39] Similarly, church land that was leased at no cost to a nonprofit corporation operating a residence and counseling center for runaway juveniles

37. 1981-1982 Op. Va. Att'y Gen. 373, 374 (emphasis added).

38. VA. CODE ANN. § 58-12(2) (Repl. Vol. 1974)(church exemption). The corresponding constitutional provision contained in § 183(b) of the 1902 constitution is reproduced *supra* in text accompanying note 21.

39. 1974-1975 Op. Va. Att'y Gen. 494; 1964-1965 *id.* at 343.

was not being "used for religious worship" and thus was not entitled to any tax exemption.[40] It has also been held that there can be no exemptions under the heading unless there are buildings on the land[41] and that mobile campers do not qualify as buildings in this context.[42] Although one case has held that if church land used for a Christian camp contained "an assembly structure or outdoor chapel which is primarily used for religious instruction or church services, it should be exempted along with the land which is necessarily involved in such use,"[43] another case has held that the lands of a religious camp do not qualify for a property tax exemption because the property was "not to be used wholly and *exclusively* for religious worship."[44] Notwithstanding this latter decision dealing with "exclusively," in a later case involving churches that use or allow others to use their property for nursery schools, it was recognized that "[t]he word 'exclusively' has never been considered an absolute term in construing property tax exemption provisions."[45] Therefore, in those cases where church property "is primarily used for religious worship . . . an incidental use for another purpose does not destroy the exemption."[46] This "incidental use"

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40. 1973-1974 *id.* 398, 399. Although the reasoning of this opinion is still valid, current Virginia law exempting church property used exclusively for "charitable, religious or educational purposes" would change the result. *See infra* text accompanying notes 101-27.

41. 1970-1971 Op. Va. Att'y Gen. 364.

42. 1967-1968 *id.* at 265.

43. 1973-1974 *id.* at 391. This same opinion held that "[l]ikewise, any structure at the camp which can be said to be a residence for a minister should also be exempt." *Id.*

44. 1969-1970 *id.* at 262, 263 (emphasis added). The purposes of the camp, as stated in its articles of incorporation, were

> [t]o provide a camp for boys and girls where they may hear the gospel and be instructed in the word of God; to teach boys and girls the importance of being good citizens of the United States of America and to its political subdivisions; to promote loyalty and patriotism to the United States of America and to its political subdivisions; to promote comradeship and good fellowship; to provide clean, wholesome, supervised recreation; and to acquire, develop and to operate camp sites, playgrounds; recreational equipment and facilities.

*Id.* at 262. No mention was made in this opinion of a possible exemption under § 183(e), which is referred to as the "Y.M.C.A." clause. *See infra* text accompanying notes 67-96. In an earlier opinion involving a 318-acre tract of land used for "religious and recreational" purposes it was held that there was no exemption allowable under the "church" exemption, but that the property would be exempt under the Y.M.C.A. clause. 1965-1966 Op. Va. Att'y Gen. 277; *see also* opinions cited *infra* at notes 72-75.

45. 1973-1974 Op. Va. Att'y Gen. 357, 358 (citing City of Richmond v. Richmond Memorial Hosp., 202 Va. 86, 91, 116 S.E.2d 79, 82 (1960)).

46. 1973-1974 Op. Va. Att'y Gen. 357, 358 (citing City of Richmond v. United Givers Fund, 205 Va. 432, 439, 137 S.E.2d 876, 880 (1964)). For a discussion of the treatment of those instances where the incidental use results in a profit to the church, see *infra* text accompanying notes 135-43.

test was also used as the basis for a holding that the "use of church property for music and art lessons where the church receives no compensation [but the teacher giving the lessons is paid by her students] will not affect the tax exempt status of the property."[47]

The only church opinion involving the taxation of tangible personal property raised the issue in connection with "motor vehicles owned by a church and used to transport members to services and for other general church purposes, including use by the minister."[48] In denying any exemption, the opinion concluded that "[a] vehicle is not used for religious worship merely because it transports members to church service. The exemption is primarily designed to exempt furniture and furnishings used within the church."[49] There appears to be no problem in connection with the allowance of an exemption for endowment funds of churches.[50]

In the only case dealing with the "use" requirement under the "minister's residence" exemption, it was decided that a church that acquires a residence for the use of its pastor does not have to wait until the pastor actually occupies the residence to claim a tax exemption. In this case the church purchased the property on December 19th, the prior owner did not move out until January 7th, and the pastor did not move in until January 30th. Under these facts, it was "clear that the church owned the property on January 1 for the exclusive purpose of using it as a residence for the pastor of the church."[51] There have been a number of cases focusing on who qualifies as a "minister." Although an early decision expressed "grave doubt" concerning the taxability of church property used as a sexton's residence because this property use was "incidental to the care and maintenance of the church property,"[52] a more recent decision concluded that no exemption is allowable for church property used as the residence of a janitor and maintenance man.[53] In a case involving a member of the church's professional staff, grave

47. 1974-1975 Op. Va. Att'y Gen. 452, 453.

48. 1973-1974 *id.* at 384.

49. *Id.* at 385. *But see* VA. CODE ANN. § 58-12.24 (Cum. Supp. 1983), *reproduced infra* at text accompanying note 101; VA. CODE ANN. § 58-12.86 (Cum. Supp. 1983), *quoted infra* at text accompanying note 129 (specific exemption created for church buses).

50. 1940-1941 Op. Va. Att'y Gen. 179 (notes owned by a church treated as church endowment fund).

51. 1958-1959 *id.* at 278, 279. The ownership of the property on January 1 was vital because that was the date on which tax assessments were to be made. *Id.* at 279.

52. 1962-1963 *id.* at 263.

53. 1973-1974 *id.* at 358.

doubt was again expressed concerning the taxability of church property used as the residence of a full-time music director of a church and its related day school.[54]

In cases dealing not with the local church but rather with "religious bodies," it has been held that the property of the Salvation Army that was used as the residence of its Captain would be tax-exempt if the Captain was in fact an ordained minister.[55] A similar ruling held that the property of the Henry County Baptist Association that was used as the residence of its missions director would be tax exempt if (i) the director was an ordained minister, (ii) he had a mission church under his care, and (iii) the Association was not claiming exempt status for any other minister.[56] This latter requirement was subsequently nullified by the Virginia Supreme Court,[57] in a different case, when it held that there was no intent on the part of the constitutional revisors or the General Assembly to restrict the "minister's residence" tax exemption to only one residence per religious body or church.[58] Following this decision of the supreme court, the Attorney General has ruled that churches are entitled to additional exemptions for property used to house associate ministers,[59] and that "[t]he meaning of the term 'minister' for purposes of § 58-12(2) has not been clearly established."[60] In this latter case an exemption was allowed for church property used as the residence of a minister of music and youth because, even though he was not an ordained minister, the facts demonstrated that he was "a full-time employee of the church, whose duties relate to the religious work of the church, as opposed to duties which merely facilitate the operation of the church."[61]

The first case involving the "adjacent land" use of the church-exemption statute emphasized that all of the adjacent land of a tax exempt religious entity was not automatically exempt from property taxation. Instead, it held that only "such additional adjacent land as may be necessary for the convenient use of the buildings,"[62] which would include a reasonable area for parking, could

54. 1967-1968 *id.* at 266.
55. *Id.*
56. 1970-1971 *id.* at 364.
57. Cudlipp v. City of Richmond, 211 Va. 712, 180 S.E.2d 525 (1971).
58. *Id.* at 713, 180 S.E.2d at 526.
59. 1974-1975 Op. Va. Att'y Gen. 487.
60. 1976-1977 *id.* at 276, 277.
61. *Id.* at 277.
62. 1967-1968 *id.* at 279, 280.

be claimed as exempt. Although this case contains no statement concerning the total acreage owned by the religious body, the opinion concludes that "[a] liberal estimate would be about one acre for parking, and perhaps another acre for other convenient use of the buildings."[63] In a case requiring a factual determination concerning whether or not the adjacent land was involved in an exempt use, it was held that the combination of (i) landscaping, (ii) placing of prominent directional signs on both ends of the property, (iii) obtaining protection and personal security for church property and members, and (iv) obtaining a future parking site resulted in a determination "that the property in question is reasonably necessary to the activity of the church and is being used for religious purposes."[64] However, no exemption was allowed in a case where the purpose of a church that acquired an adjacent gasoline service station was (i) to gain control over the use of the property (which it rented to an individual proprietor), and (ii) to obtain a site for a "possible future building program."[65] If adjacent land is acquired for a religious purpose, it is not necessary that it be put to an immediate religious use to qualify for an exemption, but it must be used for some religious purpose within a reasonable time. Thus, property not so used within seven years was held to be no longer entitled to an exemption.[66]

2. The Y.M.C.A. Exemption

The other religious exemption statute which existed before the 1971 constitution, and which is referred to as the "Y.M.C.A." clause, read as follows on June 30, 1971:

> Real estate belonging to and actually and exclusively occupied and used by and personal property, including endowment funds, belonging to Young Men's Christian Associations and other similar religious associations . . . and nunneries, conducted not for profit but exclusively as charities . . . [shall continue to be exempt from taxation].[67]

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63. *Id.* at 280.

64. 1974-1975 *id.* at 503, *rev'g id.* at 504 on additional facts.

65. 1973-1974 *id.* at 359.

66. 1974-1975 *id.* at 504.

67. VA. CODE ANN. § 58-12(5) (Repl. Vol. 1969). The corresponding constitutional provision, contained in § 183(e) of the 1902 constitution, is reproduced *supra* in text accompanying note 21. On June 30, 1971, the following language also appeared in § 58-12(5), immediately following the language quoted in the text accompanying this note:

*Commonwealth v. Lynchburg Y.M.C.A.*,[68] the landmark case that established the "liberal" constructional rule for charitable exemption provisions, was, rather obviously, decided under this heading. In this case, the third and fourth floors of the Y.M.C.A. building were used as bedrooms or dormitories that were rented to lodgers on a monthly basis, and the income therefrom was applied to the association's general purposes. The specific question before the court was whether the entirety of the Y.M.C.A. premises as "actually and exclusively occupied and used" by the Y.M.C.A. for its chartered purposes.[69] In responding affirmatively to this question, the court stated:

> If the dominant purpose in the use made of these rooms is to obtain revenue or profit, although it is to be applied to the general objects of the association, it would render the property liable to taxation. But if the use made of those rooms has direct reference to the purposes for which the association was incorporated, and tends immediately and directly to promote those purposes, then its use is within the provisions exempting the property from taxation, although revenue or profit is derived therefrom as an incident to such use.[70]

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> [I]ncluding religious mission boards and associations . . . and also property whether real or personal, owned by any church, religious association or denomination or its trustees or duly designated bishop, minister or other ecclesiastical officer, and used or operated exclusively for religious, denominational, educational or charitable purposes and not for profit . . . .

VA. CODE ANN. § 58-12(5) (Repl. Vol. 1969). Although this language was the basis for granting an exemption in 1961-1962 Op. Va. Att'y Gen. 187, the Attorney General later stated that it "appears to be an invalid attempt to extend exemptions beyond those provided in Section 183 of the Constitution, which provides that the property described therein, 'and no other,' shall be exempt from taxation." 1965-1966 *id.* at 277, 278. *See also* 1973-1974 *id.* at 356; 1972-1973 *id.* at 393. In 1974 the General Assembly recast this language and validated the intended exemption by reenacting it as § 58-12.24, in accordance with the requirements of Article X, § 6(a)(6) of the 1971 constitution. 1974-1975 Op. Va. Att'y Gen. 491. *See* VA. CODE ANN. § 58-12.24 (Repl. Vol. 1974 & Cum. Supp. 1983).

68. 115 Va. 745, 80 S.E. 589 (1914). *See also supra* text accompanying notes 22-24.

69. These chartered purposes were "the improvement of the spiritual, mental, social and physical condition of men and boys." *Lynchburg Y.M.C.A.*, 115 Va. at 746, 80 S.E. at 589.

70. *Id.* at 752, 80 S.E. at 591. It should be noted that a negative holding would have resulted in a complete denial of any tax exemption in connection with this building because, at the time of this case, § 183 of the 1902 constitution provided that "whenever any building or land, or any part thereof, mentioned in this section and not belonging to the State shall be leased or shall be a source of revenue or profit, all such buildings and land shall be liable to taxation as other land and buildings in the same county, city or town." For a discussion of the latter law allowing for the partial taxation of property not exclusively used for exempt purposes, see *infra* discussion in text accompanying notes 135-43.

This "dominant purpose/incidental revenue" test laid down in *Commonwealth v. Lynchburg Y.M.C.A.*[71] has been the basis for further holdings of tax-exempt status in cases involving property owned by the Massanetta Bible Conference of the Presbyterian Church which was used as a summer camp,[72] property owned by the Potomac Conference Corporation of Seventh-Day Adventists which was used as an educational camp,[73] property owned by the Norfolk Presbytery of the Presbyterian Church which was used for religious and recreational purposes,[74] and property owned by Camp Wamava, Inc. (the stock of which may only be sold to members of the Church of Christ) which was used as a religious camp.[75]

However, in a case involving a 13.9-acre tract owned by the Mennonite Board of Missions and Charities, which was making no use of approximately ten acres thereof, it was determined that no "dominant purpose" test would shelter the unused portion that was not "actually and exclusively occupied and used by" the religious association.[76] A like ruling was handed down in connection with a 118-acre tract of timberland, not used for any purpose, that was a portion of a larger tract owned by the Peninsula Baptist Association of Virginia;[77] and the principle has been affirmed in a subsequent case where there were insufficient facts upon which to make a final ruling.[78]

In each of the opinions cited thus far, under the Y.M.C.A. provision, it was either specifically held or assumed that the entity claiming the property exemption was a "similar religious association" to the Young Men's Christian Association. In other opinions involving only this issue, it has been held that the Young Women's Christian Association,[79] Christian Retreats, Inc.,[80] and the

71. 115 Va. 745, 80 S.E. 589.
72. 1953-1954 Op. Va. Att'y Gen. 205.
73. 1956-1957 *id.* at 253.
74. 1965-1966 *id.* at 277.
75. 1973-1974 *id.* at 396.
76. 1969-1970 *id.* at 263.
77. 1973-1974 *id.* at 356.
78. *Id.* at 396.
79. 1965-1966 *id.* at 277. This opinion refers to two trial court cases decided by the Hustings Court of the City of Richmond in which denominational church corporations were held to be religious associations similar to the Y.M.C.A. These cases are City of Richmond v. Virginia Christian Missionary Soc'y, Record No. R. 6497 (Oct. 5, 1965); City of Richmond v. Trustees of the Funds of the Protestant Episcopal Church, Record No. R. 5625 (Jan. 14, 1963).
80. 1973-1974 Op. Va. Att'y Gen. 365. The corporate purposes were "[t]o acquire and operate christian retreats for students and others; to provide spiritual and biblical training;

Winchester Union Rescue Mission, Inc.[81] were also religious associations similar to the Y.M.C.A. and thus entitled to tax-exempt status for their properly used property.

On the negative side of the ledger, the Attorney General has held that the Word of Faith Hour Broadcast, Inc.,[82] Christian Enterprises, Inc.,[83] Juvenile Assistance of McLean, Ltd.,[84] Christian Broadcasting Network, Inc.,[85] Christian Bookstore & Library, Inc.,[86] and the Church League of America, Inc.[87] are not religious associations similar to the Y.M.C.A. and thus are not entitled to any property-tax exemption under this provision. Although the result in all of these cases may be correct, the opinion concerning Christian Broadcasting Network, Inc. (CBN), contains certain language that appears to be unjustified and unduly restrictive. In focusing on the last clause of the Y.M.C.A. provision, the opinion holds that

> When contrasted with the broad limits of § 58-12.24, the phrase "conducted . . . exclusively as charities" found in § 58-12(5) makes it clear that the General Assembly intended that the type of organization exempted pursuant to 58-12(5) be limited to those whose "exclusive" purpose is "liberal in benefactions to the poor; beneficent."

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to provide places of abode and meditation for students and others and to provide training for and the ordination of those eligible in the christian ministry." *Id.*

81. 1974-1975 *id.* at 454. This was "a nonprofit corporation organized for the purpose of rendering assistance to alcoholics. The organization advertises that it is 'an arm of the church,' and 'a home mission station' [and] its primary interest is religious. It holds religious services in a chapel on the premises which are conducted by groups from various churches." *Id.*

82. 1956-1957 *id.* at 254.

83. 1972-1973 *id.* at 393. The corporate purposes were "to establish and operate a radio station for cultural, educational and religious broadcasts; to establish a Bible institute; to grant diplomas or degrees in biblical education; to provide for lectures related to Christian education; to establish and operate a book store to distribute religious literature; and to publish religious literature." *Id.*

84. 1973-1974 *id.* at 398. This was "a nonprofit corporation operating a federally funded residence and counseling center for runaway juveniles." *Id.* at 399.

85. 1981-1982 *id.* at 373. A nonprofit corporation "whose stated primary purpose is the sharing of Christian ideas through various forms of telecommunication." *Id.* at 374.

86. *Id.* (Sept. 14, 1983). The first issue concerns "a chartered nonprofit organization that sells church literature. The top floor of the building owned by this corporation is being used for church services three times a week." *Id.*

87. *Id.* "The corporation [in the second issue] is not chartered, but is a nonprofit organization. There would be no other church activities other than the promotional mailing of church literature." *Id. Cf.* 1969-1970 *id.* at 263, reciting a trial court decision that the Mennonite Board of Missions and Charities was a religious charity under the Y.M.C.A. provision and allowing it a tax exemption for the 3.9-acre tract "on which is situated a two-story brick building in which the business of the organization is transacted." *Id.*

> See *City of Richmond v. United Givers Fund*, 205 Va. 432, 137 S.E.2d 876, construing the term "charitable." CBN is a corporation whose purpose and production activities are religious in nature and not charitable as that term is used in § 58-12(5). Consequently, its purpose excludes it from coming within § 58-12(5) . . . .[88]

When related statutes are enacted at or around the same time, one may often gain insight concerning the meaning of one of these statutes by reference to the other. In this case, however, it is submitted that a determination of the General Assembly's intent when it enacted section 58-12(5), which goes back to the constitution of 1902, by reference to section 58-12.24, which was enacted in 1974,[89] is stretching this principle beyond permissible limits. Moreover, the law provides for these sections to be approached differently: section 58-12(5), one of the grandfathered provisions from prior law, is to be interpreted liberally,[90] while section 58-12.24 is to be strictly construed.[91] Thirdly, *City of Richmond v. United Givers Fund (UGF)*,[92] was not dealing with section 58-12(5), but with section 58-12(6) instead. Fourthly, to the extent that the supreme court's decision in *UGF* is to be read as helpful in determining what is meant by the word "charitable," as that word is generally used, it is submitted that the *UGF* language quoted in the CBN opinion does not give as accurate a representation of the supreme court's meaning as does the following (taken from the same case):

> [I]t is aptly said: "The word 'charitable,' as used in laws providing for exemption of property used for charitable purposes, should be given a fair and reasonable interpretation, and means intended for charity. So, in order to be charitable, in this sense, an institution must be organized and conducted to perform some service of public good or welfare . . . ."[93]

Lastly, there is a danger that the conclusion of the quoted language from the CBN opinion will be read as standing for the proposition that a corporation whose purpose is religious in nature

88. 1980-1981 *id.* at 373, 375.
89. *See supra* note 67.
90. *See supra* text accompanying notes 22-29.
91. *See supra* text accompanying note 25.
92. 205 Va. 432, 137 S.E.2d 876 (1964).
93. *Id.* at 436, 137 S.E.2d at 879 (quoting 84 C.J.S. *Taxation* § 282, at 543 (1954)).

cannot, for that reason, be charitable "as that term is used in § 58-12(5)."[94] This interpretation is totally untenable. The supreme court, in *UGF*, specifically recognized that the Salvation Army and the Young Men's Christian Association "are commonly recognized as charitable organizations."[95] Moreover, a prior opinion of the Attorney General not only recognized the more accurate definition of "charity" quoted above, but went on to hold thereunder that the property of the Winchester Union Rescue Mission, Inc., "whose primary interest is religious," was entitled to tax exemption under section 58-12(5).[96]

### B. *Post-1971 Exemptions*

All of the tax-exemption provisions discussed in the pre-1971 portion of this article remain viable today because of the grandfather provision contained in the 1971 constitution.[97] Therefore, for purposes of convenience, all of the post-1971 cases involving the grandfathered pre-1971 provisions were reported in the pre-1971 portion of this article. One must keep in mind that the rule of liberal construction exists only when applying these grandfathered provisions to specific parcels of property actually owned on July 1, 1971, which either were, or could have been found to be, exempt from taxation on July 1, 1971. Accordingly, a requested exemption for a "church organized after July 1, 1971 must be strictly construed in accordance with § 6(f) of the constitution."[98] In addition to this preservation of existing law, the 1971 constitution also contained its own "church" provision,[99] and a provision allowing the General Assembly to provide tax exemptions "by classification or designation by a three-fourths vote" for property used for religious

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94. 1981-1982 Op. Va. Att'y Gen. 373, 375.

95. 205 Va. at 436, 137 S.E.2d at 879.

96. 1974-1975 Op. Va. Att'y Gen. 454. The religious charity in question was a corporation. This opinion is responsive to the dictum in the CBN opinion that "it is unnecessary to determine whether its corporate structure also excludes it [CBN] from the exemption found in that [Y.M.C.A.] section." 1981-1982 *id.* at 373, 375.

97. VA. CONST. art. X, § 6(f), *reproduced supra* at text accompanying note 30; VA. CODE ANN. § 58-12(2) (Repl. Vol. 1974); *id.* § 58-12(5) (Cum. Supp. 1983). *See also* 1982-1983 Op. Va. Att'y Gen. 530.

98. Op. Va. Att'y Gen. 18 (Feb. 24, 1984). *See supra* text accompanying note 29. However, a post-July 1, 1971 change of name "by an organization whose property has been determined to be exempt will not affect the exempt status of that property, provided that the use to which the property is put, or the basis on which the exemption was originally granted, has not also been changed." 1982-1983 Op. Va. Att'y Gen. 568, 569.

99. VA. CONST. art. X, § 6(a)(2), *reproduced supra* at text accompanying note 30.

and other charitable purposes.[100]

1. The General Religious Exemptions

In 1974 the General Assembly exercised this "classification or designation" power conferred upon it by the 1971 constitution by enacting the following statute:

> Property owned by any church, religious association or denomination or its trustees or duly designated ecclesiastical officer, and used exclusively on a nonprofit basis for charitable, religious or educational purposes is hereby designated and classified as religious and charitable in the meaning of Article X, § 6(a)(6) of the Constitution of Virginia. Property so owned and used is hereby determined to be exempt from taxation.[101]

A casual reading of this general religious exemption statute immediately discloses that its scope is much broader than the church—and Y.M.C.A.—exemption provisions that have been previously discussed. Whereas these latter provisions require (or are read to require) some kind of "religion-connected"[102] use, the general exemption statute "will exempt any . . . [church, religious association or denomination] as to property used 'exclusively on a nonprofit basis for *charitable, religious or education purposes*,' effective for the tax year 1975 and thereafter."[103] Thus, in holding that church property leased at no cost to a nonprofit corporation operating a residence and counseling center for runaway juveniles did not qualify for an exemption under the church or Y.M.C.A. provisions, the Attorney General further observed that "Senate Bill 220, recently enacted by the General Assembly and awaiting the Governor's signature, should provide an exemption for 1975 and subsequent years if it becomes law."[104]

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100. *Id.*, § 6(a)(6), *reproduced supra* at text accompanying note 30. The steps that must be taken before the General Assembly will consider a request to provide a tax exemption under this provision are set forth in VA. CODE ANN. § 30-19.04 (Cum. Supp. 1983).

101. VA. CODE ANN. § 58-12.24 (Repl. Vol. 1974 & Cum. Supp. 1983). See *supra* note 67 for the historical background of this statute.

102. *See supra* text accompanying notes 38-96.

103. 1973-1974 Op. Va. Att'y Gen. 391 (emphasis added). The rule remains, however, that property which is not being used for any purpose is not entitled to any exemption. 1974-1975 *id.* at 494. In those cases in which the property has been acquired for an exempt purpose, the property should be entitled to an exemption for a reasonable period of time pending the conversion to the exempt purpose. *Id.* at 504.

104. 1973-1974 *id.* at 398, 399.

Notwithstanding this broadening of the scope of permitted usage under the general exemption, the rule remains that property which is not being used for any purpose is not entitled to any exemption,[105] except for those cases in which the property has been acquired for an exempt purpose, in which case the property should be entitled to an exemption for a reasonable period of time pending the conversion to the exempt purpose.[106]

In the situations raising the issue of whether the property was being used "exclusively" for an exempt purpose, all of the opinions have emphasized the constitutional requirement of a "strict" construction to be given to all post-1971 exemption provisions.[107] Thus, in a question involving property being used for church-related recreational activities during the summer months, it was recognized that, although this was a qualified use, the issue of "exclusive" use remained a factual matter to be resolved in light of applicable law.[108] However, what the "applicable law" is, in this regard, is far from clear at this time. The cited opinion gives only negative guidance by noting that "the definition accorded the term 'exclusively' in *City of Richmond v. United Givers Fund, Inc.*,[109] is not applicable."[110] The only opinion dealing with real estate that

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105. 1974-1975 *id.* at 494.

106. *Id.* at 504, *rev'd id.* at 503 on additional facts. A second issue in this opinion involved the tax-exempt status of a landscaped lot adjoining the church. The opinion determined that this lot was not exempt under the church provision because it was not "reasonably necessary for the convenient use of the church buildings," and that it was not exempt under the general provision because it was not used "exclusively for religious purposes within the strict construction accorded that concept under Article X, Section 6(f). For property to be exempt under either provision, it must necessarily be involved in an exempted use." *Id.* at 505-06. This decision was later reversed, based on additional evidence concerning the property's usage. *Id.* at 503. *See supra* text accompanying note 64.

107. VA. CONST. art. X, § 6(f), *reproduced supra* at text accompanying note 30.

108. 1974-1975 Op. Va. Att'y Gen. 491.

109. 205 Va. 432, 137 S.E.2d 876 (1964). In this case, the court wrote as follows:

> To come within a provision for the exemption of property used exclusively for charitable purposes, an organization must have charity as its primary, if not sole, object." This is in accord with our rule. We have pointed out that in determining whether certain property is exempt from taxation under these constitutional and statutory provisions the controlling factor is the dominant purpose in the use of the property. As we have said . . . if the use of the property "has direct reference to the purposes for which the institution was created, and tends immediately and directly to promote those purposes, it is then within the exemption provision of the Constitution . . . .

*Id.* at 438, 137 S.E.2d at 880 (quoting 51 AM. JUR. *Taxation* § 601 and County of Hanover v. Trustees of Randolph-Macon College, 203 Va. 613, 617, 125 S.E.2d 812, 815 (1962)). Note that this language is still viable in post-1971 cases being decided under the grandfathered church and Y.M.C.A. provisions.

110. 1974-1975 Op. Va. Att'y Gen. 491, 492.

gives any positive guidance concerning the "strict" definition to be accorded the word "exclusively" arose in the context of a Salvation Army campground. In that opinion the Attorney General stated that "I have held that exempt property does not lose its exempt status because its owner receives fees for occasional nonexempt use unless the owner derives a substantial net profit therefrom."[111] In a personal property case involving nine motor vehicles owned by the Potomac Conference of Seventh-Day Adventists, and used by it in various facets of its work, it was concluded that the Conference's usage would meet the "exclusive" test, "if the vehicles used in moving teachers and ministers are not available for use by them in their individual capacities."[112] This decision may present a problem for those religious charities that permit the "company car" to be driven to and from work, or allow other personal use, regardless of whether or not the expenses of this personal use are reimbursed.

A very troublesome issue has recently developed under the general exemption in connection with the meaning of "religious association" in the phrase "[p]roperty owned by any church, religious association or denomination or its trustees or duly designated ecclesiastical officer."[113] In concluding that Christian Broadcasting Network, Inc. (CBN) could not be viewed as a "religious association" under this general exemption *solely because it was a corporation*, the Attorney General reasoned as follows:

> The General Assembly is obviously aware of the distinction between a corporation and other non-incorporated entities. In several subsections of § 58-12, the General Assembly provided for exemptions to corporations. Its omission of corporations from § 58-12.24 evidences its intent not to provide exceptions for corporations seeking to come within the protection afforded by that section. Rather, giving the phrase "church, religious association . . ." its natural meaning, it is clear that the Assembly intended to exempt a relatively narrow range of entities which may be defined, in other terms, as a body of communicants or group gathered in common membership for religious purposes.[114]

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111. *Id.* at 510, 511. As the opinion request in this case did not contain the details of the charges made by the Salvation Army for camping privileges, the Attorney General's opinion concluded that final "resolution of the inquiry necessarily involves factual determinations which must be made by you, as commissioner of revenue, in light of the legal principles set forth herein." *Id.* at 511. But, the question remains, what are the applicable legal principles?

112. 1977-1978 *id.* at 414, 415.

113. VA. CODE ANN. § 58-12.24 (Cum. Supp. 1983).

114. 1981-1982 Op. Va. Att'y Gen. 373, 375.

This reasoning has subsequently been used as a basis for denying tax exemptions to Multi-Media Evangelism, Inc.,[115] Christian Bookstore & Library, Inc.,[116] and the Church League of America, Inc.[117]

It is submitted that this "corporate-disqualification" reasoning in the CBN opinion is fatally flawed. First of all, the opinion calls attention to the fact that specific reference is made to corporations in several (unspecified) subsections of section 58-12. On the basis of this non-specific reference and nothing else, the Attorney General concludes that the General Assembly (i) has demonstrated an awareness of the difference between entities that are incorporated and those that are not, and (ii) has evidenced an intent not to allow any property-tax exemption under the general provision to entities that are incorporated, *solely because of their corporate status*. Granted that there are references to corporations in other (unspecified) subsections of section 58-12, it is submitted that, if the search is for the General Assembly's meaning in its usage of the word "association," vis-a-vis religious charities, then the proper focal point for the interpreter would be a subsection of section 58-12 dealing with religious charities wherein the word "association" is also found. Such an example is section 58-12(5), the Y.M.C.A. provision, where exemption is provided for property "belonging to Young Men's Christian Associations *and other similar religious associations*, including religious mission boards and *associations*. . . ."[118] It is clear that the word "association" in the phrase "other *similar* religious associations" cannot be taken as evidencing any intent to exclude corporations, but rather just the opposite, because Y.M.C.A.'s regularly operate in corporate form.[119] Insofar as the second usage of the word "association" in this phrase of the Y.M.C.A. provision is concerned, it is a basic rule of statutory construction that once the meaning of a word is established in a given subsection of a statute, that meaning is presumed for all subsequent uses of the word in that same subsection.

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115. 1982-1983 *id.* at 577.

116. *Id.* (Sept. 14, 1983) (first issue).

117. *Id.* (second issue).

118. VA. CODE ANN. § 58-12(5) (Cum. Supp. 1983) (emphasis added).

119. The landmark interpretive case under the Y.M.C.A. provision, Commonwealth v. Lynchburg Y.M.C.A., 115 Va. 745, 80 S.E. 589 (1914), refers to the "purposes for which the association was incorporated." *Id.* at 746, 80 S.E. at 590. The records of the State Corporation Commission show that the Y.M.C.A. of Metropolitan Richmond is a Virginia corporation.

Not only does this more precise approach to statutory construction indicate an error in the CBN opinion, but the fact of this error is confirmed by reference to the statutory history of the general exemption provision.[120] This statutory history discloses that the general exemption provision now under consideration was originally enacted by the General Assembly as a part of the Y.M.C.A. provision. It must be admitted that the General Assembly did not intend to use the phrase "religious association" to exclude incorporated entities seeking a tax exemption under the Y.M.C.A. provision. In fact, the Attorney General has previously held that Camp Wamava, Inc.,[121] Christian Retreats, Inc.,[122] and the Winchester Union Rescue Mission, Inc.,[123] are religious associations similar to the Y.M.C.A. and thus entitled to tax-exempt status for their properly used property. What then was the effect of removing a portion of the language from the Y.M.C.A. provisions and enacting it as the general provision? It cannot be credibly maintained that the General Assembly, by merely moving the language in question, *mutatis mutandis*, from section 58-12(2) to section 58-12.24 in 1974 was thereby evidencing any intent to change the meaning of this language or any portion thereof. Instead, the purpose of the General Assembly was simply to validate language that the Attorney General had earlier determined to be unconstitutional because it had not been enacted by the requisite three-fourths majority of the General Assembly.[124]

A further, puzzling factor in the CBN opinion is that it reverses two prior determinations of the Attorney General, without making any reference thereto. The first of these impliedly reversed opinions stated that beginning with the tax year 1975, section 58-12.24 "will exempt all property of the Salvation Army so long as it is used exclusively for charitable, educational or religious purposes."[125] The other of these opinions granted a tax exemption, under the general provision, to the Potomac Conference Corporation of Seventh-Day Adventists, a corporation of the District of

120. *See supra* note 67.

121. 1973-1974 Op. Va. Att'y Gen. 396.

122. *Id.* at 365.

123. 1974-1975 *id.* at 454, 455.

124. *See supra* note 67.

125. 1973-1974 Op. Va. Att'y Gen. 391. The opinion contains no reference to the fact that The Salvation Army is a corporation. However, the records of the State Corporation Commission show that The Salvation Army was incorporated in Fulton County, Georgia, on January 20, 1927.

Columbia, in connection with nine motor vehicles owned by the corporation.[126]

Finally, even if none of the foregoing reasoning existed, it is questionable whether it is sound public policy to make the tax-exempt status of a religious charity's property a function of how that charity has been organized. It is common knowledge that religious charities may organize in a variety of ways. Thus, this rule will not operate to eliminate any sub rosa entities; they will merely operate as unincorporated entities. Instead, the rule will operate as a trap or pitfall[127] for the unwary religious charity that has innocently chosen to operate in the corporate form. Accordingly, it is submitted that, in the absence of express language from the General Assembly requiring such a result, to treat two like religious charities differently for tax-exemption purposes merely because one operates as a corporation and the other does not, is an unsound policy and that this determination ought to be reversed.

2. The Specific Religious Exemptions

In addition to the general exemption discussed above, the General Assembly has exercised the "designation and classification" power[128] conferred upon it by the 1971 constitution to pass other, specific tax-exemption statutes. One of these specific statutes is a generic provision exempting "[v]ehicles designed for carrying more than ten passengers, owned by churches and used for church purposes"[129] from personal property taxation. The remainder of these statutes exempt the property of specific entities on religious grounds. The entities that have been so designated, thus far, are Westminister-Canterbury Corporation,[130] Virginia Baptist Homes, Inc.,[131] Westminister-Canterbury of Lynchburg, Inc.,[132] and the

126. 1977-1978 *id.* at 414, 415. There is no direct reference in this opinion to the fact that the Conference is a corporation. However, the opinion cites a prior opinion, 1956-1957 *id.* at 253, which describes the Conference as a corporation of the District of Columbia.

127. The language of "trap or pitfall" is used advisedly because no one will obtain any idea of the existence of this "corporate disqualification" rule by the most careful reading of the Virginia Code, the annotations thereto, or the reports of the Virginia Supreme Court.

128. VA. CONST. art. X, § 6(a)(6), *reproduced supra* at text accompanying note 30.

129. VA. CODE ANN. § 58-12.86 (Cum. Supp. 1983). Note the broader exemption for church motor vehicles that are used for "charitable, religious or educational purposes" by the general exemption statute. *See* 1977-1978 Op. Va. Att'y Gen. 414.

130. VA. CODE ANN. § 58-12.41 (Cum. Supp. 1983).

131. *Id.* § 58-12.153.

132. *Id.* § 58-12.87.

National Association of Ministers' Wives and Widows, Inc.[133] In addition to these religious exemptions, specific exemptions have also been granted to seemingly similar organizations on the grounds that they are "charitable and benevolent."[134]

### C. *Partial Exemptions*

The foregoing discussion has proceeded on the assumption that a particular building or parcel of land would either be completely tax-exempt or it would not be entitled to any tax exemption. And, within this context, it is clear that when church property is leased to a third party or is otherwise a source of revenue or profit, the property will lose its tax-exempt status even though all of the revenue so obtained is used for church purposes.[135] There is a middle ground, however, to accommodate those instances in which the tax-exempt owner makes a qualifying use of a portion of the property and derives income from another part.

> To deal with these cases, the code provides that when a part but not all of any such building or land shall be leased or otherwise be a source of revenue or profit, and the remainder of such building or land shall be used by any *organization specified in § 58-12* for its purposes, only such portion thereof shall be liable to taxation as is so leased or is otherwise a source of profit or revenue.[136]

Although this statute, by its terms, deals only with property used by any "organization specified in § 58-12," it is believed that this will not require a different result when dealing with organiza-

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133. *Id.* § 58-12.153.

134. *See, e.g., id.* § 58-12.36 (Beth Sholom Home of Va.); *id.* § 58-12.52 (Richmond Section, Nat'l Council of Jewish Women, Inc.); *id.* § 58-12.96 (Beth Sholom Housing Corp.); *id.* § 58-12.139 (Arlington Assembly of God Housing Corp.); *id.* § 58-12.183 (Interim Supp. 1984) (Virginia Mennonite Home, Inc.).

135. *Id.* § 58-14 (Repl. Vol. 1974); 1965-1966 Op. Va. Att'y Gen. 276; 1983-1984 *id.* 352.

136. VA. CODE ANN. § 58-14 (Repl. Vol. 1974) (emphasis added). The statute dealing with partial assessment in such cases provides:

> In assessing any building and the land it occupies which may be owned exclusively by any organization or association mentioned in § 58-12 but all of which is not used exclusively for its purposes, the assessing officers shall only assess for taxation that portion of said property subject to any such lease or otherwise a source of profit or revenue and the tax shall be computed on the basis of the ratio of the space subject to any such lease or otherwise a source of profit or revenue to the entire property; provided that when any such property is leased for portions of a year the tax shall be computed on the basis of the average use of such property for the preceding year.

*Id.* § 58-14.

tions specified in the general religious-exemption statute[137] or one of the specific religious-exemption statutes discussed above.[138] It is likely that the omission of any reference to these organizations in the statute under consideration is the result of inadvertence rather than design, and thus equity and common sense should cause these organizations to be accorded similar treatment. In this connection, it might be noted that the partial-exemption statute has not been amended since 1950 and that the oldest of the other statutes, the general religious-exemption statute, was not enacted until 1974.

The partial-exemption statute has been interpreted very favorably from the tax-exempt owner's standpoint. The Attorney General has concluded that the statute is applicable "only if the owner derives a *substantial* net profit from such lease or use after the deduction of proper expenses, including depreciation."[139] However, it is not necessary that such profit be actually received in a given year to make the statute applicable. Thus it has been held that "real estate owned by the church upon which there is growing timber, which timber is contemplated to be cut and sold upon maturity, is liable under the provisions of § 58-14 of the Code of Virginia to taxes as other land and buildings in the County."[140]

In a situation where the facts were clear (the Peninsula Baptist Association of Virginia was leasing 150 of its 238 acres to farmers for cultivation), the Attorney General was able to conclude that the statute was applicable.[141] In another question where the facts were not so clear (the Louisa Methodist Church was renting office space to the Louisa County Coordinator for $50 per month), the Attorney General merely referred to the existence of the statute without stating a conclusion.[142] This response will probably be the result in future opinions because the Attorney General's position is that the application of the statute to a given case "is necessarily a question of fact to be determined by the commissioner of revenue or other assessing officer."[143]

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137. *Id.* § 58-12.24 (Cum. Supp. 1983).

138. *See supra* notes 128-34 and accompanying text.

139. 1973-1974 Op. Va. Att'y Gen. 357, 358 (emphasis added).

140. 1955-1956 *id.* at 24, 25.

141. 1973-1974 *id.* at 356.

142. 1965-1966 *id.* at 276.

143. 1973-1974 *id.* at 357, 358.

D. *Application and Allowances*

Although a religious entity may be entitled to a tax exemption for all, or a portion, of its property, such exemptions will not necessarily come automatically. The General Assembly has given local governments the authority to pass ordinances requiring non-governmental exempt entities to file biennial applications to obtain or retain exempt status for their property. If the local government elects to pass such an ordinance, the application "shall" (i) show the ownership of the property, (ii) show the usage of the property, and (iii) be filed "within next sixty days preceding the tax year" for which the exemption is sought.[144]

When tax-exempt property is transferred to a non-exempt owner during the year, it immediately becomes subject to taxation and is assessed on a pro rata basis for the remainder of the year.[145] A similar statute provides for a pro rata refund of real estate taxes paid by a private owner when property is transferred to a tax-exempt church or religious entity during the year.[146] However, a transfer of this sort is the only instance in which property which is not tax-exempt on January 1st of a given year can become tax-exempt for a portion of that same year. Thus if land owned by a church on January 1st of a given year is non-exempt because of its non-use, the beginning of a qualified religious use during the year will not entitle the church to a partial abatement of the real estate taxes on the land for the remainder of the year.[147] Similarly, although tax-exemption legislation passed by a session of the General Assembly will become effective on July 1st of that same year, an organization benefiting from that legislation is not entitled to a proration of its real estate taxes for the remainder of that year.[148]

When property that has received the benefit of land-use assessment and taxation is transferred to a church whose use is "non-qualifying" for purposes of land-use taxation, the church becomes

144. VA. CODE ANN. § 58-14.2 (Cum. Supp. 1983). Local assessing officers are required to maintain an inventory of tax-exempt realty showing the fair market value per parcel and per type of exemption as well as a computation showing the amount of taxes that would otherwise be due. A total of all these valuations and a computation of the percentage of local tax-exempt property must be published annually, and a copy filed with the Department of Taxation. *Id.* § 58-14.1.

145. *Id.* § 58-16.1 (Repl. Vol. 1974).

146. *Id.* § 58-822. *See* 1967-1968 Op. Va. Att'y Gen. 259.

147. 1968-1969 Op. Va. Att'y Gen. 241.

148. 1982-1983 *id.* at 529, 530.

liable for the "roll-back" taxes[149] relating to the period before the church acquired the property, even though the church is exempt from all current taxes because of its religious use of the property.[150] In cases where the beneficial ownership to realty is vested in a religious congregation that uses it exclusively for religious worship, but where real estate taxes have been assessed because the legal title to the property was vested in a person, application may be made to the circuit court for relief from any such taxes not already paid and a refund of any taxes paid within the preceding ten years.[151]

### E. *Service Charges*

The 1971 constitution empowered the General Assembly to authorize local governments to impose service charges upon the owners of classes of tax-exempt property in order to recover an appropriate amount for services provided to these properties by local governments.[152] In response thereto, the General Assembly has enacted legislation authorizing the imposition of service charges in order to enable local governments to recover the costs of furnishing police and fire protection to tax-exempt properties.[153] Although referred to as a "service" charge, it has been determined that this service charge "is essentially a tax. It is measured by the value of the property, rather than by the value of the service rendered."[154]

The statute authorizing local governments to impose this service charge also contains a number of exemptions from such imposition. For purposes of this study, the relevant service charge exemption reads as follows:

> Buildings with land they actually occupy, together with the additional adjacent land reasonably necessary for the convenient use of any such building located within such county, city or town shall also be exempt from the service charge provided herein if the buildings are: (i) lawfully owned and held by churches or religious bodies and wholly and exclusively used for religious worship or for the residence

149. VA. CODE ANN. § 58-769.10 (Cum. Supp. 1983).
150. 1979-1980 Op. Va. Att'y Gen. 337.
151. VA. CODE ANN. § 58-1133 (Repl. Vol. 1974).
152. VA. CONST. art. X, § 6(g), *reproduced supra* at text accompanying note 30.
153. VA. CODE ANN. § 58-16.2 (Cum. Supp. 1983) (effective Jan. 1, 1984). In some instances, the service charge also recovers the proportionate cost of the collection and disposition of refuse and the cost of public school education attributable to specific real estate.
154. 1971-1972 Op. Va. Att'y Gen. 389, 391.

> of the minister of any church or religious body or for use as a religious convent, nunnery, monastery, cloister or abbey, or (ii) used or operated exclusively for private educational or charitable purposes and not for profit other than faculty and staff housing of any such educational institution.[155]

It will be noted that clause (i) of this exemption provision uses language that, for the most part, is identical to the language found in one of the tax-exemption statutes, section 58-12(2) of the Virginia Code, which is referred to as the "church" exemption.[156] The only significant difference between these two exemption provisions is the omission of any reference to endowment funds in the service-charge exemption. As a result of this "tracking" of the church tax exemption provision by clause (i) of the service-charge exemption provision, it has been concluded that the General Assembly intended these exemptions to be mutually coextensive and thus "no local service charge may be imposed on any real property exempt from taxation under § 58-12(2) except for such property as may be held in endowment funds."[157] However, religious charities that are exempt from taxation under either the general religious-exemption provision[158] or one of the specific religious-exemption provisions,[159] are subject to the local service charge unless they can bring themselves within the language of one of the two exemptions quoted above that are contained in the service-charge statute.[160]

## V. Recordation Taxes

The Virginia recordation system provides for (i) a basic recordation tax on deeds,[161] (ii) an additional "grantor's" tax on these same deeds,[162] (iii) a recordation tax on deeds of trust or mortgages,[163] (iv) a recordation tax on construction-loan deeds of trust or mortgages,[164] (v) a recordation tax on contracts relating to, or

155. Va. Code Ann. § 58-16.2 (Cum. Supp. 1983) (effective Jan. 1, 1984).
156. *Id.* § 58-12(2) (Repl. Vol. 1974).
157. 1972-1973 Op. Va. Att'y Gen. 444, 445.
158. *See supra* text accompanying notes 101-27.
159. *See supra* notes 128-34 and accompanying text.
160. 1982-1983 Op. Va. Att'y Gen. 534.
161. Va. Code Ann. § 58-54 (Repl. Vol. 1974).
162. *Id.* § 58-54.1 (Cum. Supp. 1983).
163. *Id.* § 58-55.
164. *Id.* § 58-55.1.

leases of, realty or personalty,[165] and (vi) authorization for the imposition of city or county recordation taxes.[166] None of the tax-exemption provisions previously discussed in this article is applicable to any of these recordation taxes. These previously discussed tax exemptions are all *property* tax exemptions, and a tax imposed on the recordation of a deed to property is not classified as a property tax. Instead, the recordation tax is "a tax upon a civil privilege, that is, for the privilege of availing, upon the terms prescribed by statute, of the benefits and advantages of the registration laws of the State."[167]

There are, however, several tax exemption provisions specifically applicable to recordation taxes. The first of these provisions (the "deed" exemption), which deals with deeds to churches, provides as follows:

> The taxes imposed by §§ 58-54 and 58-55 shall not apply to any deed conveying real estate . . . [t]o the trustee or trustees of any church or religious body, where such real estate is intended to be used exclusively for religious purposes, or for the residence of the minister of any such church or religious body . . . .[168]

The second of these provisions (the "mortgage" exemption), which deals with deeds of trust or mortgages given by churches, provides as follows: "The taxes imposed by §§ 58-54 and 58-55 shall not apply to any deed of trust or mortgage . . . [g]iven by the trustee or trustees of a church or religious body . . . ."[169] A definitional provision, which is applicable to both of the above exemption provisions, provides as follows: "The words 'trustee or trustees' as used in paragraphs A 2 and B 2, mean the trustees mentioned in § 57-8 and the ecclesiastical officers mentioned in § 57-16."[170] A final exemption provision (the "construction loan" exemption), which is applicable to construction loan deeds of trust or mortgages, provides as follows: "Deeds of trust and mortgages which are exempt from the recordation tax under § 58-64 shall be also exempt under this section."[171]

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165. *Id.* § 58-58.
166. *Id.* § 58-65.1 (Repl. Vol. 1974).
167. Pocahontas Collieries Co. v. Commonwealth, 113 Va. 108, 112, 73 S.E. 446, 448 (1912). *See also* 1950-1951 Op. Va. Att'y Gen. 292; 1940-1941 *id.* at 185.
168. VA. CODE ANN. § 58-64(A)(2) (Cum. Supp. 1983).
169. *Id.* § 58-64(B)(2).
170. *Id.* § 58-64(C).
171. *Id.* § 58-55.1(d).

It is clear that the deed exemption eliminates "(i) [the] basic recordation tax"[172] on deeds to churches or religious bodies if the property is intended to be used exclusively for religious purposes or for the residence of the minister of any such church or religious body.[173] In construing the qualifying words of the deed exemption to determine whether a particular grantee is a "church or religious body" and whether or not the intended use of the property will be "exclusively for religious purposes" or for a "minister's residence," the cases and rulings discussed under the property-tax heading of this article should also be applicable here.[174] There are also some rulings that have been handed down under the deed exemption, not all of which are necessarily in agreement with parallel rulings under the property-tax exemption provisions. Thus, it has been determined that the Potomac Conference Corporation of Seventh-Day Adventists,[175] a corporation of the District of Columbia that serves as a holding organization for all real estate of the Seventh-Day Adventist Church, qualifies as a "religious body," but that neither the Salvation Army[176] nor the Y.M.C.A.[177] qualifies as a "church or religious body." It has also been determined that, if property is conveyed to a qualified grantee for a religious use, it is not necessary for the deed to recite the intended use;[178] and that conveyances of property for use as an educational camp[179] or for use as a church cemetery[180] meet the "religious use" requirement.

There is no religion-related exemption provision applicable to "(ii) [the] additional 'grantor's' tax on deeds."[181] Prior to 1970, both the basic recordation tax and the additional grantor's tax were imposed by section 58-54[182] and thus both were eliminated by the deed exemption, as just discussed above. However, the 1970 Session of the General Assembly deleted the additional grantor's tax provision from section 58-54 and placed it in a new section by itself, section 58-54.1,[183] without also amending the deed exemp-

172. *Id.* § 58-54 (Repl. Vol. 1974) *See supra* text accompanying note 161.
173. VA. CODE ANN. § 58-64(A)(2) (Cum. Supp. 1983).
174. *See supra* text accompanying notes 37-66.
175. 1956-1957 Op. Va. Att'y Gen. 253.
176. 1968-1969 *id.* at 245; 1967-1968 *id.* at 281.
177. 1969-1970 *id.* at 282; 1968-1969 *id.* at 245.
178. 1955-1956 *id.* at 218.
179. 1956-1957 *id.* at 253.
180. 1963-1964 *id.* at 298.
181. VA. CODE ANN. § 58-54.1 (Cum. Supp. 1983). *See supra* text accompanying note 162.
182. VA. CODE ANN. § 58-54 (Repl. Vol. 1974).
183. 1970 Va. Acts, ch. 772.

tion provision to refer to this new statute. It would seem that this failure to continue the recordation-tax exemption provision applicable to the additional grantor's tax was more likely the result of inadvertence rather than a conscious policy change. Nevertheless, the fact remains that there is no express statutory exemption at this time, and, in its absence, it is doubtful that such an exemption will be implied.

While on the subject of legislative advertence, it might also be noted that the opening language of both the deed and the mortgage exemption provisions refer to "the taxes imposed by sections 58-54 and 58-55," when, in reality, there is no such twofold application in each case. Section 58-55, imposing the tax on deeds of trust and mortgages, is not applicable to "(i) [the] basic recordation tax;" and section 58-54, imposing the basic recordation tax, is not applicable to "(ii) [the] recordation tax on deeds of trust or mortgages." Prior to 1982, both the deed exemption and the mortgage exemption were dealt with as part of the same statute, and thus it was correct for the opening language of this statute to refer to both of these exemptions.[184] In 1982, the General Assembly divided this statute into subsections (with subsection A being the deed exemption and subsection B the mortgage exemption) and placed the entirety of this introductory language in front of each subsection, instead of using only the appropriate part in each instance.[185] This is not a major problem; but, in order to eliminate the confusion, a housekeeping amendment should be made to strike "section 58-55" from the deed exemption provision and to strike "section 58-54" from the mortgage provision.

The mortgage exemption provision eliminates "(iii) [the] recordation tax on deeds of trust or mortgages given by any church or religious body."[186] This provision is much broader than the deed exemption because it is not restricted to property that is exclusively used for religious purposes or for a minister's residence.[187] In fact, there is no use requirement at all. Thus, this exemption is literally applicable to eliminate the recordation tax on deeds of trust or mortgages given by churches or religious bodies on any of their property, even though the property in question might itself

184. VA. CODE ANN. § 58-64 (Repl. Vol. 1974).

185. 1982 Va. Acts, ch. 633.

186. VA. CODE ANN. § 58-55 (Cum. Supp. 1983) *See supra* text accompanying notes 163 & 169.

187. *See* 1953-1954 Op. Va. Att'y Gen. 206.

be subject to property taxation because it was being put to a commercial use.

A provision in the statute imposing "(iv) [the] recordation tax on construction loan deeds of trust or mortgages"[188] incorporates by reference the mortgage-exemption provision, and thus what has been said about deeds of trust or mortgages in the preceding paragraph is equally applicable to construction-loan deeds of trust or mortgages. There is no religion-related exemption provision applicable to "(v) [the] recordation tax on contracts relating to, or leases of, realty or personalty."[189] The statute containing "(vi) [the] authorization for city or county recordation taxes,"[190] provides for such local tax to be "in an amount equal to one third of the amount of State recordation tax collectible for the State on the first recordation of each taxable instrument in such city or county."[191] Thus, a deed exempt from the state recordation tax will also be exempt from any local recordation tax.

## VI. Sales and Use Taxes

The Virginia Retail Sales and Use Tax Act[192] imposes a sales tax on the retail sale or renting of tangible personal property within the state,[193] and a use tax on tangible personal property purchased outside the state for use or consumption within the state.[194] The Act also authorizes cities and counties to levy local sales[195] and use taxes[196] which, however, are expressly made subject to all of the Act's provisions relating to the state tax. The relevant exclusion provision creates an exemption from the sales and use tax for

> [t]angible personal property, except property used in any form of recording and reproducing services, purchased by churches organized not for profit and (i) which are exempt from taxation under § 501(c)(3) of the Internal Revenue Code or (ii) whose real property is exempt from local taxation pursuant to the provisions of § 58-12, for

188. Va. Code Ann. § 58-55.1 (Cum. Supp. 1983). *See supra* text accompanying note 164.
189. Va. Code Ann. § 58-58 (Repl. Vol. 1974) *See supra* text accompanying note 165.
190. Va. Code Ann. § 58-65.1 (Repl. Vol. 1974). *See supra* text accompanying note 166.
191. Va. Code Ann. § 58-65.1 (Repl. Vol. 1974).
192. 1966 Va. Acts, ch. 151 (codified at Va. Code Ann. §§ 58.441.1 to -.441.51 (Repl. Vol. 1974 & Cum. Supp. 1983)).
193. *See* Va. Code Ann. § 58-441.4 (Repl. Vol. 1974).
194. *See id.* § 58-441.5.
195. *Id.* § 58-441.49 (Cum. Supp. 1983).
196. *Id.* § 58-441.49:1 (Repl. Vol. 1974).

> use (i) in religious worship services by a congregation or church membership while meeting together in a single location, and (ii) in the libraries, offices, meeting or counseling rooms or other rooms in the public church buildings used in carrying out the work of the church and its related ministries, including kindergarten, elementary and secondary schools.[197]

By regulation,[198] the State Tax Commissioner has given a partial definition of the term "religious worship service,"[199] as used in this statute, and he has also provided an exemplary listing of property used in religious worship services which may be purchased without payment of any tax if (a) the purchaser is a church, and (b) it furnishes the supplier a properly completed Form ST-13A, Certificate of Exemption.[200] This regulation also emphasizes that "[i]n order to qualify for exemption, tangible personal property *must be purchased* by the nonprofit church. Purchases by the minister from his own funds, purchases by affiliated religious associations, and purchases by church members or others for donation to the church are *subject to the tax.*"[201]

Unless the specific requirements of the above quoted exemption provision are met, it is clear that churches must pay the appropriate sales or use tax in connection with their purchases or leases of

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197. *Id.* § 58-441.6(gg) (Cum. Supp. 1983) (effective July 1, 1984).

198. Va. Retail Sales and Use Tax Reg. 1-22.1 (Va. Dep't of Taxation, July 1, 1982); VA. TAX REP. (CCH) ¶ 64-0289, at 6207-2.

199. *See supra* text accompanying note 10.

200. This listing enumerates the following:

> Acolyte robes; Altar cushions and cloths; Baptism, marriage and membership certificates; Baptismal font; Bible and Bible stand; Bulletins or programs (including paper and ink used to print these); Candles and candelabra used at the location of the worship service; Choir robes; Communion supplies and tables; Flags used at the location of the worship service; Flowers and plants, live or artificial, and accessories thereto used at the location of the worship service; Funeral pall; Hymnals and hymnal racks; Light bulbs used at the location of the worship service; Microphones and public address system used in the worship service, except when incorporated into realty; Musical instruments used in the worship service (e.g., organ, piano, hand bells); Name tags for ushers and guests, and attendance records; Offering envelopes; Pews, cushions, chairs or other seating systems; Portable heaters and fans and window air conditioners used at the location of the worship service; Prayer books; Pulpit, lectern, pulpit lamp; Rosaries, crosses, crucifixes; Carpeting used at the location of the worship service (except glued-down carpeting); Sheet music; Systems to assist persons who are hearing-impaired; Vestments for ecclesiastical celebrants; Wafers, bread, wine, grape juice used in communion service.

Va. Retail Sales and Use Tax Reg. 1-22.1 (Va. Dep't of Taxation, July 1, 1982); VA. TAX REP. (CCH) ¶¶ 64-0289, at 6207-2 to -3.

201. *Id.*; VA. TAX REP. (CCH) ¶¶ 64-0289, at 6207-4 (emphasis added).

tangible personal property to the same extent as any other purchaser, user, or consumer. The various *property-tax* exemptions previously discussed in this article are of no avail to churches because the tax in question here is a "license or privilege tax"[202] and not a property tax.[203] And, if a supplier fails to collect the sales tax upon making a non-exempt sale to a church, the church becomes directly liable to the Department of Taxation for the complimentary use tax, regardless of whether the supplier is located in Virginia or elsewhere.[204]

There is no specific exemption provision relating to churches or other religious entities when they occupy the role of a seller or supplier of tangible personal property. The instances in which a church might occupy such a role are illustrated in the following ruling request directed to the Attorney General:

> 1. Churches of the Episcopal Diocese of Virginia have in the past, from time to time, sponsored fairs, bazaars, or sales, open to the public, at which various items of an edible nature, prepared foods, flowers, animals, clothing, both new and used, and other merchandise, are offered for sale. The items so offered may have been donated, made by members of the congregation, purchased for resale, or on consignment from a dealer.
>
> 2. In addition to the type sale mentioned in No. 1 above, items such as pecans, candies, fruit cakes, Christmas cards, etc., are frequently offered for sale privately to members of the congregation and their friends. In such instances, the items offered for sale are frequently on consignment.
>
> 3. The churches also, at times, serve meals for which a charge is made. Some of these are in connection with activities involving the fairs, bazaars or sales above referred to, and others are directly in connection with meetings or other related activities of the congregation and the church. When meals are served, the charge made is usually barely sufficient to pay for the food and utilities, without regard to the labor involved, which is furnished by the ladies of the congregation as a normal thing, however, at times a charge may be made exceeding actual cost of ingredients and utilities.
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> 4. Some of the activities referred to above are carried on by the church itself, but most of them are carried on usually by church con-

202. VA. CODE ANN. § 58-441.4 (Repl. Vol. 1974).
203. 1977-1978 Op. Va. Att'y Gen. 445, 446; 1966-1967 *id.* at 305, 306.
204. 1977-1978 *id.* at 443; *id.* at 445.

> nected organizations such as Bible Classes, Sunday School Classes, Ladies Auxiliaries, Youth Groups, or the like. The proceeds of the sale of such merchandise and any profits made are used to support the activities of the church, or of the church organization in question, and thus are believed to benefit directly the religious activities of the congregation.[205]

The Attorney General responded that all of these transactions "constitute sales and are subject to the taxing provisions of § 58-441.4 of the Code. None of these transactions would ordinarily be excluded or exempted under the provisions of § 58-441.6."[206] Notwithstanding the absoluteness of this opinion, it is clear that the "occasional sale" exemption will eliminate any duty to collect taxes for some churches occupying the position of a supplier. This exclusion provision exempts from the sales tax

> [a]n "occasional sale," which means a sale of tangible personal property not held or used by a seller in the course of an activity for which he is required to hold a certificate of registration . . . provided such sale or exchange is not one of a series of sales and exchanges sufficient in number, scope, and character to constitute an activity requiring the holding of a certificate of registration.[207]

The outer limits of this occasional sale exemption are unknown at this time because of the almost complete absence of any intrepretative regulations or opinions.[208] Caution should be the watchword until specific guidance becomes available, however, because the Virginia Supreme Court has held that all statutory tax exemptions must be strictly construed against the taxpayer,[209] and

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205. 1966-1967 Op. Va. Att'y Gen. 303, 304.

206. *Id.* at 305; *see also* 1977-1978 *id.* at 447.

207. VA. CODE ANN. § 58-441.6(m) (Cum. Supp. 1983) (effective July 1, 1984).

208. In an informal conversation with the Taxpayer Assistance Division of the Department of Taxation, the author was advised of a "rule of thumb" that would ordinarily cause the sales of one who has no more than three sales in a given year to be classified as "occasional sales." However, if a pattern developed of having three sales every year, it is quite possible that the seller would lose the benefit of this rule. There is also a "magnitude" aspect to this rule of thumb which would cause an unusually large sale to lose the benefit of the rule, even though it was the only sale in a given year. "Whether a church sale constitutes an 'occasional sale' is essentially a factual determination." 1977-1978 Op. Va. Att'y Gen. 447-48. The only opinion dealing directly with an occasional sale involved "farmers who primarily sell cattle on a wholesale basis, but from time to time sell cattle directly to consumers." The Department of Taxation determined that this was not an occasional sale. 1976-1977 *id.* at 300.

209. Commonwealth v. Community Motor Bus Co., 214 Va. 155, 157, 198 S.E.2d 619, 620

the sales tax statute provides that "all sales or leases are subject to the tax until the contrary is established."[210]

## VII. Income Taxes

No Virginia income tax "is imposed, nor any return required to be filed by, (i) any organization which by reason of its purposes or activities is exempt from income tax under the laws of the United States (except organizations which have unrelated business income under such laws)."[211] Included among the organizations exempt from the federal income tax are entities "organized and operated exclusively for religious, charitable, . . . or educational purposes."[212] The churches and other religious charities dealt with in this article clearly fit within this federal exemption language, and thus they will neither have to file a Virginia income tax return nor have to pay any Virginia income tax, except to the extent that they have any "unrelated business income," as that term is defined in the federal tax laws.[213]

## VIII. Inheritance and Gift Taxes

The Virginia laws dealing with inheritance taxes imposed upon the beneficiaries of estates of decedents who died before January 1, 1980, contain an exemption for property passing to or for the use of organizations "organized and operated exclusively for religious, charitable . . . or educational purposes."[214] Virginia law does not impose any inheritance tax in connection with estates of decedents who died after December 31, 1979.[215] The Virginia laws dealing with gifts made prior to January 1, 1980, also contain an exemption for property passing to or for the benefit of organizations "organized and operated exclusively for religious, charitable . . . or educational purposes."[216] Virginia law does not impose any gift tax in connection with transfers made after December 31, 1979.

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(1973), *cited in* 1977-1978 Op. Va. Att'y Gen. 447.

210. Va. Code Ann. § 58-441.17(a) (Repl. Vol. 1974).

211. *Id.* § 58-151.03 (Cum. Supp. 1983).

212. I.R.C. § 501(c)(3) (1982).

213. *Id.* §§ 511-514. No discussion of federal income tax laws is included in this article because of the numerous tax services and treatises which cover that subject in great detail.

214. Va. Code Ann. § 58-154 (Repl. Vol. 1974).

215. There is a Virginia estate tax applicable to estates of decedents dying after December 31, 1979, which imposes a tax in the amount of the credit allowed for state death taxes on the federal estate tax return. *Id.* §§ 58-238.1 to -238.16 (Cum. Supp. 1983).

216. *Id.* § 58-220(2) (Repl. Vol. 1974).

## IX. Consumers' Taxes

The Virginia General Assembly has authorized cities, towns, and counties[217] to impose a local consumers' tax on telephone and telegraph service[218] and on water, heat, light, and power service.[219] It has been determined that "[t]he constitutional requirement of uniformity in Article X, Section 1, of the revised [Virginia] Constitution does not apply to utility taxes because they are not direct taxes on property."[220] Thus a local government "may completely exempt religious, charitable, educational and other consumers which it has placed in a separate classification,"[221] so long as this classification has a sufficiently reasonable basis to prevent any violation of the equal protection clause of the fourteenth amendment to the United States Constitution.[222] However, churches are not exempt from the imposition of this consumers' tax "in the absence of such an exemption in the statute or charter provisions authorizing such a tax or in the ordinance imposing the tax."[223]

## X. Writ Taxes

A state writ tax is imposed in connection with the imposition of legal proceedings in a court of record.[224] It has been determined that "[t]here is no exemption from the writ tax given to a suit brought by the trustees of a church."[225]

## XI. Motor Vehicle Taxes and License Fees

The Virginia General Assembly has enacted legislation providing for the registration and licensing of motor vehicles,[226] and it has also authorized cities, towns, and counties to "levy and assess taxes and charge license fees upon motor vehicles, trailers and semitrail-

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217. Counties with a population of over 150,000 that levy a personal property tax on household goods and personal effects may not also impose a consumers' tax. *Id.* § 58-851.5.

218. *Id.* § 58-587.1 (Cum. Supp. 1983).

219. *Id.* § 58-617.2.

220. Ashland v. Board of Supervisors, 202 Va. 409, 413-14, 117 S.E.2d 679, 682 (1961), *cited in* 1972-1973 Op. Va. Att'y Gen. 391, 392.

221. 1972-1973 Op. Va. Att'y Gen. 391, 392.

222. *See* Whyy, Inc. v. Borough of Glassboro, 393 U.S. 117 (1968), *cited in* 1972-1973 Op. Va. Att'y Gen. 391, 392.

223. 1948-1949 Op. Va. Att'y Gen. 235, 236.

224. Va. Code Ann. § 58-71 (Cum. Supp. 1983); *id.* § 58-72 (Repl. Vol. 1974).

225. 1953-1954 Op. Va. Att'y Gen. 206.

226. Va. Code Ann. §§ 46.1-41 to -167.7 (Repl. Vol. 1980).

ers . . . normally garaged, stored or parked" within their jurisdictions.[227] State law does not contain any church- or religion-related exemption in connection with such levies, and it has been determined that local governments do not have the authority to create such an exemption.[228] On the appeal of a church from a conviction of violating a town ordinance that required the display of local license decals on motor vehicles, the Virginia Supreme Court recognized the presence of constitutional questions concerning the free exercise of religion. However, instead of discussing these questions, the supreme court reversed the church's conviction on the grounds that the trial court erred in not allowing the accused, on procedural grounds, to litigate the issue whether the town ordinance was a regulatory measure or a revenue measure.[229]

## XII. Conclusion

The foregoing represents all of the Virginia constitutional provisions, statutes, regulations, and cases relating to the taxation of religious entities that were found during the research for this article, along with all of the relevant Attorney General opinions issued during the past fifty years.

227. *Id.* § 46.1-65 (Cum. Supp. 1983).

228. 1978-1979 Op. Va. Att'y Gen. 182-83.

229. Loudoun Baptist Temple v. Town of Leesburg, 223 Va. 592, 292 S.E.2d 315 (1982) (noting the presence of a constitutional question while reversing on procedural grounds); *see supra* text accompanying notes 16-17.