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IN THE

SUPREME COURT OF VIRGINIA

Record No. 751002

R. CROSS, INC.,

Appellant,

v.

CITY OF NEWPORT NEWS,

Appellee.

Appendix

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PETITION FOR RELIEF FROM ERRONEOUS ASSESSMENT

[Filed on December 19, 1974]

TO THE HONORABLE JUDGE OF SAID COURT:

Your Petitioner, R. Cross, Inc. (formerly Continental Rent-A-Car of Tidewater, Incorporated), pursuant to Section 58-1145 of the 1950 Code of Virginia, as amended, respectfully represents as follows:

1. That it is a taxpayer in the City of Newport News, Virginia, and that on January 1, 1973, it owned the hereinafter described tangible personal property which was assessed and taxed as follows:

Page & Line		Account No.	Description	Value	Tax
B - 6	21	96930	'72 Chev. Nova 2D	1650	$ 89.10
B - 6	22	96953	'72 Chevrolet 2D	1900	102.60
B - 6	23	96954	'72 Chevrolet 2D	1900	102.60
B - 6	24	96928	'72 Chev. Nova 4D	1950	105.30
B - 6	25	96929	'72 Chev. Nova 4D	1700	91.80
420	8	12162	'71 Volkswagen 2S	1050	56.70
420	9	12163	'71 Volkswagen 2S	1050	56.70
420	10	12164	'71 Volkswagen 2S	1050	56.70
420	11	12165	'71 Volkswagen 2S	1050	56.70
420	12	12166	'72 Chevrolet 2S	1900	102.60
420	13	12167	'72 Chevrolet 2S	1870	100.98
420	17	12171	'72 Chevrolet 2S	1700	91.80
420	18	12172	'72 Chevrolet 4S	1850	99.90
420	20	12174	'72 Chevrolet 2D HT	2100	113.40
420	21	12175	'72 Chevrolet 2S	1700	91.80
420	22	12176	'72 Chevrolet 4S	1650	89.10
420	23	12178	'72 Chevrolet 2S	1900	102.60
420	26	12181	'72 Chevrolet 4S	1850	99.90
420	27	12182	'72 Chevrolet 4S	1850	99.90
420	28	12183	'72 Chevrolet 2S	1900	102.60
421	3	12188	'73 Ford 4D	1680	90.72
421	4	12189	'73 Ford 2D HT	2580	139.32
421	6	12191	'73 Ford 2D SDN	1980	106.92
421	7	12192	'73 Chevrolet 2D HT	2500	135.00
421	11	12196	'73 Chevrolet 2D HT	2680	144.72
421	12	12197	'71 Ford Maverick	1200	64.80
421	14	12161	'72 Ford Van	1870	100.98
421	15	12177	'72 Ford Van	1870	100.98

2. That it has paid the taxes set forth above to the City of Newport News, Virginia.

3. That the said tangible personal property described herein was assessed by the City of Newport News, Virginia, in 1973 in excess of sixty per cent (60%) of its fair market value; that other property within said city and owned by other taxpayers was classified as tangible personal property and assessed by said city during 1973 at about thirty-three and one-third per cent (33 1/3%) of its fair market value.

4. That it has not failed or refused to provide the tax assessing authority with the necessary information.

5. That the mode of assessment of tangible personal property in the City of Newport News, Virginia, in the year 1973 was not uniform in its application to such property and as a result thereof Petitioner's tangible personal property described herein was erroneously assessed.

WHEREFORE, your Petitioner prays that the Court correct the assessments heretofore made on the property described herein by reducing said assessments and making them uniform with the assessment of other tangible personal property in Newport News, Virginia; that after reducing the assessments the Court adjust the taxes due thereon; and that the Court order the Treasurer of the City of Newport News, Virginia, to refund to Petitioner the excess of any taxes erroneously paid.

* * *

STIPULATION

(Exhibits Omitted)

[Filed on May 13, 1975]

The parties hereto submit this agreed statement of facts setting forth the method by which the Commission of Revenue assesses, for personal property taxation, various items of tangible personal property, both business and individual. For 1973 and prior years return of business tangible personal property were made on exhibit A and individual returns were made on exhibit B. Petitioners do not contend that the method of computing fair market value is erroneous.

It is stipulated that the Petitioner was in the Car Rental Business in 1973, paid the required personal property taxes and that the cars it used in it's business in Newport News were assessed and taxed as follows:

Page & Line		Account No.	Description	Value	Tax
B - 6	21	96930	'72 Chev. Nova 2D	1650	$ 89.10
B - 6	22	96953	'72 Chevrolet 2D	1900	102.60
B - 6	23	96954	'72 Chevrolet 2D	1900	102.60
B - 6	24	96928	'72 Chev. Nova 4D	1950	105.30
B - 6	25	96929	'72 Chev. Nova 4D	1700	91.80
420	8	12162	'71 Volkswagen 2S	1050	56.70
420	9	12163	'71 Volkswagen 2S	1050	56.70
420	10	12164	'71 Volkswagen 2S	1050	56.70
420	11	12165	'71 Volkswagen 2S	1050	56.70
420	12	12166	'72 Chevrolet 2S	1900	102.60
420	13	12167	'72 Chevrolet 2S	1870	100.98
420	17	12171	'72 Chevrolet 2S	1700	91.80
420	18	12172	'72 Chevrolet 4S	1850	99.90
420	20	12174	'72 Chevrolet 2D HT	2100	113.40
420	21	12175	'72 Chevrolet 2S	1700	91.80
420	22	12176	'72 Chevrolet 4S	1650	89.10

Page & Line		Account No.	Description	Value	Tax
420	23	12178	'72 Chevrolet 2S	1900	$ 102.60
420	26	12181	'72 Chevrolet 4S	1850	99.90
420	27	12182	'72 Chevrolet 4S	1850	99.90
420	28	12183	'72 Chevrolet 2S	1900	102.60
421	3	12188	'73 Ford 4D	1680	90.72
421	4	12189	'73 Ford 2D HT	2580	139.32
421	6	12191	'73 Ford 2D SDN	1980	106.92
421	7	12192	'73 Chevrolet 2D HT	2500	135.00
421	11	12196	'73 Chevrolet 2D HT	2680	144.72
421	12	12197	'71 Ford Maverick	1200	64.80
421	14	12161	'72 Ford Van	1870	100.98
421	15	12177	'72 Ford Van	1870	100.98

It is stipulated that the mode of assessment of tangible personal property in Newport News, Virginia in 1973 was as follows:

1. AUTOMOBILES: All automobiles owned by the taxpayer as of January 1, whether business personal property or individually owned, are given an assessed value equal to the loan value for a particular make, model and year as reflected in the NADA Official Used Car Guide, Eastern Edition. (See Exhibit C). The NADA Guide reflects loan value, trade-in value and retail value for virtually all makes, models and years of automobiles. The loan value of any given automobile approximates 70% of its retail value. The retail value contained in the NADA Guide is the best available indicator of fair market value.

In the event a 1973 model is purchased before January 1, 1973, the flat figure shown on Exhibit D is added to the 1972 loan value to establish the assessed value of the 1973 model. This figure is computed by contacting all area dealers. (See exhibit D).

2. TRUCKS: For 1973 and prior years no yardstick for determining fair market value such as the NADA Guide was available for trucks. Consequently, fair market value and assessed value were determined as follows:

A. Trucks under 10,000 pounds gross weight: The average new retail cost as of January 1 of a particular make and model is determined by obtaining from all dealers in the City the new retail cost of all the different models (i.e. half ton pick-up, stake body etc.), of the particular make. Where there is more than one dealer for a particular make, the average new retail cost for each model is computed. The approximate loan value is then determined by applying a percentage based on the age of the truck to the average new retail cost. This percentage declines as the truck grows older. 70% is applied the first year, 60% the second year, 50% the third year, etc. This reduction is comparable to the reduction for automobiles in the NADA Guide from year to year. All trucks under 10,000 pounds gross weight are then given an assessed value equal to the loan value as computed above. (See exhibit E).

B. Trucks over 10,000 pounds gross weight: Within this weight class, the new retail cost of the same model may vary greatly depending on which of a considerable number of options are purchased . For this reason it is impossible to determine a meaningful average new retail cost. Trucks in this category are assessed based on actual cost to the taxpayer, whether he bought it new or used, and on the age of the truck. The loan value is computed by applying the same percentages as in smaller trucks to the taxpayers actual cost. 70% is applied the first year, 60% the second year and so on. For example: If X bought a truck new for $10,000.00 it would be assessed at 70% of $10,000.00 the first year ($7,000.00), 60% of $10,000.00 the second year ($6,000.00) and so on. If, at the end of the second year X sold the truck to Y for $4,000.00, it would then be assessed to Y at 50% of $4,000.00 ($2,000.00). If X sold the truck to Y for $7,000.00 it would then be assessed to Y at 50% of $7,000.00 ($3,500.00). Put another way, the fair market value is taken to be the actual cost to the taxpayer and the loan value is computed by applying a declining percentage based on the age of the truck. This reduction is comparable to the reduction for automobiles in the NADA Guide from year to year. Trucks over 10,000 pounds gross weight are then given an assessed value equal to the loan value as computed above.

3. TRAILERS:

A. Trailers over 10,000 pounds gross weight are assessed by the same method as trucks over 10,000 pounds gross rate.

B. Trailers under 10,000 pounds gross weight are basically utility trailers and are assessed at a flat rate of $120.00 for a new trailer regardless of cost to the taxpayer. The assessed value is decreased by $20.00 a year until a minimum of $20.00 if reached. (See Exhibit F) The assessed value then remains constant. The reason for the flat assessment is the wide range of cost and the fact that such trailers neither appreciate or depreciate to any great extent.

4. MOTORCYCLES: Motorcycles are assessed by using the Official Motorcycle & Mini-Bike Trade-In Guide (Exhibit G). An assessed value equal to the low wholesale (loan) value is assigned to all motorcycles.

5. BOATS: Boats are assessed by using the applicable boat trade-in guide depending on the type of boat i.e. sailboat, inboard, outboard, etc. (See Exhibit H) An assessed value equal to the low wholesale (loan) value is assigned to all boats.

6. AIRPLANES: Airplanes are assessed by using the Aircraft Tax Digest (Exhibit I). An assessed value equal to 60% of the average equipped inventory value is assigned to all aircraft.

7. RECREATIONAL VEHICLES: These items are assessed using the "Unicomp Directory of Used Recreational Vehicles", (Exhibit J). An assessed value equal to the low trade-in

value is assigned to all recreational vehicles. Motor Homes are assessed in the same manner as trucks over 10,000 pounds for the same reason.

8. OTHER TANGIBLE PERSONAL PROPERTY: Included in this class of personal property is all office equipment, office furniture, cash registers, refrigerators, all earth moving equipment such as bulldozers, road graders, etc., cranes, farm equipment. In short, any property used in the conduct of the business that is a fixed asset but excluding automobiles, trucks, motorcyles, boats, and airplanes. All items in this class are assigned an assessed value equal to 33 1/3% of cost to taxpayer. This assessed value remains constant throughout the life of the property.

9. LIVESTOCK: Livestock are assessed at the flat rate shown on Exhibit K.

* * *

ORDINANCE NO. 1509

AN ORDINANCE TO AMEND AND REORDAIN ORDINANCE NUMBERED 1363 ADOPTED ON JUNE 29, 1970 AND TO IMPOSE TAXES ON TAXABLE PROPERTY IN THE CITY OF NEWPORT NEWS FOR THE CALENDAR YEAR BEGINNING JANUARY 1, 1971, AND EACH AND EVERY CALENDAR YEAR THEREAFTER UNLESS CHANGED, AND FOR THE FISCAL YEAR BEGINNING JULY 1, 1971 AND ENDING JUNE 30, 1972 AND EACH AND EVERY FISCAL YEAR THEREAFTER UNLESS CHANGED TO RAISE REVENUE FOR THE SUPPORT OF THE CITY GOVERNMENT, CITY SCHOOLS, AND TO MEET THE GENERAL APPROPRIATIONS AND INTEREST ON THE BONDED INDEBTEDNESS OF THE CITY OF NEWPORT NEWS FOR SAID YEARS AND EACH AND EVERY CALENDAR YEAR AND FISCAL YEAR THEREAFTER.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF NEWPORT NEWS:

1. That Ordinance No. 1363, adopted on June 29, 1970, be, and the same is hereby, amended and reordained to provide as follows:

A. That for the year beginning January 1, 1971, the taxes on taxable real property of public service corporations in the City of Newport News, for the purpose of raising revenue for serial bond maturities and interest on the bonded indebtedness for the City, and for the support of the City Government and to meet the general appropriations for the year 1971 and for the maintenance and operation of the public schools for the year 1971, shall be as follows:

1. For the period beginning on January 1, 1971, and ending on June 30, 1971, the tax on lands, lots and improvements thereon, and for all other taxable real estate of public service corporations shall be, and hereby is, levied at Three Dollars and Forty-Five Cents ($3.45) per year on every One Hundred ($100.00) Dollars of the assessed value thereof, pro-rated for the six (6) month period.

2. For the period beginning on July 1, 1971, and ending on December 31, 1971, the tax on lands, lots and improvements thereon and for all other taxable real estate of public service corporations shall be, and hereby is, levied at Three Dollars and Ninety-Six Cents ($3.96) per year on every One Hundred ($100.00) Dollars of the assessed value thereof, pro-rated for the six (6) month period.

B. That for the year beginning January 1, 1972 and ending December 31, 1972, and for each and every year thereafter unless changed by the City Council, the taxes on taxable real property of public service corporations in the City of Newport News, for the purpose of raising revenue for serial bond maturities and interest on the bonded indebtedness for the City, and for the support of the City Government and to meet the general appropriations for the year 1971, and each and every year thereafter and for the operation and maintenance of the public schools for the year 1971 and each and every year thereafter, shall be as follows:

On lands, lots and improvements thereon, and for all other taxable real rstate of public service corporations shall be, and hereby is, levied at Three Dollars and Ninety-Six Cents ($3.96) on every One Hundred Dollars ($100.00) of the assessed value thereof.

C. That for the fiscal year beginning July 1, 1971 and ending June 30, 1972 and for each and every fiscal year thereafter unless changed by the City Council, the taxes on real property other than real property of public service corporations, for the purpose of raising revenue for serial bond maturities and interest on the bonded indebtedness for said City, and for the support, operation and maintenance of the City Government and public schools and to meet the general appropriations for said fiscal year and each and every fiscal year thereafter, shall be as follows:

On lands, lots and improvements thereon and for all taxable real estate, except that of public service corporations and except such lands, lots and improvements thereon and all real estate as is exempt from taxation by the laws of the Commonwealth of Virginia or by ordinance of the City of Newport News, shall be, and hereby is, levied at Three Dollars and Ninety-Six Cents ($3.96) on every One Hundred ($100.00) Dollars of the assessed value thereof.

D. That for the year beginning January 1, 1971 and for each and every year thereafter, unless changed by the City Council, the taxes on tangible personal property in the City of Newport News, for the purpose of raising revenue for serial bond maturities and interest on the bonded indebtedness for the said City, and for the support, operation and maintenance of the City Government and public schools and to meet the general appropriations for the fiscal year beginning July 1, 1971 and ending June 30, 1972, and for each and every fiscal year thereafter, shall be as follows:

On all taxable machinery and tools used or employed by any person, firm or corporation in any trade or business and all taxable tangible personal property, (except household tangible personal property) and other property segregated to and taxable by the City, except as is comprised in above Section 1., A, B & C hereof, and except as is otherwise specially taxed, and except such personal property as is exempt from taxation by the laws of the Commonwealth of Virginia, or by ordinances of the City of Newport News, shall be, and hereby is, levied at Five Dollars and Forty Cents ($5.40) on every One Hundred Dollars ($100.00) of the assessed value thereof, except that such property of public service corporations (other than rolling stock of corporations operating railroads by steam) taxed as tangible personal property hereunder shall be taxed at a rate up to and including the maximum portion of the amount of said tax hereby levied, which is permitted under law as to any and all such property.

BE IT FURTHER ORDAINED BY THE COUNCIL OF THE CITY OF NEWPORT NEWS:

1. That the City Treasurer be, and he hereby is, authorized and directed to collect the taxes herein levied as provided by law.

2. All words, sentences, clauses, sections or any other portions of this ordinance are intended to be severable, including portions of money amounts stated herein, so that in event any portion hereof shall be declared by a court of competent jurisdiction to be invalid, such declaration shall not affect the remaining portions hereof.

3. An emergency is hereby declared to exist, and this ordinance shall be in effect from the date of its passage.

PASSED BY THE COUNCIL OF THE CITY OF NEWPORT NEWS JUNE 14, 1971.

Louise M. Schmid
City Clerk

J. W. Hornsby, Jr.
Mayor

A true copy, teste:

City Clerk

S T I P U L A T I O N

[Filed on May 13, 1975]

The parties hereto are agreed that the within cause shall be submitted for trial on the following issue:

"Whether or not the City of Newport News has the authority under the Code of Virginia to establish automobiles as a separate class of tangible personal property and impose thereon a mode of assessment different from that imposed on other tangible personal property."

* * *

EXCERPTS FROM REPORTER'S TRANSCRIPT

OF PROCEEDINGS OF MAY 13, 1975

[4] RALPH J. CROSS, after being first duly sworn, testified in behalf of the Petitioner, as follows:

DIRECT EXAMINATION

BY MR. SPRATLEY:

Q Will you state your name and address, sir?

A Yes, sir. Ralph J. Cross; I live at 118-A Windsor Castle Drive, Newport News, Virginia.

Q Directing your attention to 1973, what was your connection, if any, with R. Cross, Inc.?

A I am the President of R. Cross, Inc., sir, which was formerly known, in 1973, as Continental Rent-A-Car of Tidewater, Inc.

Q And in 1973, Mr. Cross, did you file a schedule of cars that you owned and had based in the City of Newport News?

[5] A I did, sir.

Q And what use did you put these cars to?

A The daily rental business, sir.

MR. THOMAS: I believe we have stipulated to all this.

MR. SPRATLEY: Your Honor, I know there is an agreement about this, but it ties in with another thing.

BY MR. SPRATLEY:

Q I hand you Plaintiff's Exhibit 1 and ask you to identify --

A Yes, sir. My bills for personal property taxes on cars operated in Newport News.

Q How many cars are there?

A Twenty-eight, sir. They are also the paid receipts for the twenty-eight cars.

Q Mr. Cross, would you give me the date of acquisition and the cost of each one of these cars, when you acquired it, and tie it in with the account number?

A Yes, sir. I can. Would you like me

[6] to go down the list?

Q Yes, sir.

A Account No. 96930 we acquired on 10-15-71, cost of $2589.69; Account No. 96953 we acquired on 1-10-72 at a cost of $2704.54; 96954 we acquired 10-15-71 at a cost of $3012.84; 96924 -- I'm sorry -- 928, we acquired on 10-15-71 at a cost of $3041.13.

THE COURT: Do you agree to this list?

MR. ROYLANCE: Yes, sir.

MR. SPRATLEY: Would you please mark it as Plaintiff's No. 2 and --

THE COURT: All right, sir.

MR. SPRATLEY: I move for its admission.

THE COURT: No need in reading it all.

MR. SPRATLEY: And I move for the admission of those slips.

THE COURT: Yes. Mark those slips Plaintiff's Exhibit No. 1 and this listing of the automobiles as Plaintiff's Exhibit No. 2.

[7] (Twenty-eight personal property tax receipts of Continental Rent-A-Car of Tidewater, Inc. were received in evidence as Petitioner's Exhibit No. 1.

A list of automobiles assessed, on the letterhead of American International Rent-A-Car was received in evidence as Petitioner's Exhibit No. 2.)

BY MR. SPRATLEY:

Q Mr. Cross, have you totaled the acquisition cost of these twenty-eight vehicles; if so, what is that figure?

A Yes, sir. I have. Total acquisition, $76,560.87.

Q And have you totaled the assessed value of these twenty-eight vehicles; if so, what is that figure?

A The assessed value, $49,930.

MR. SPRATLEY: I have no further questions.

[8] CROSS EXAMINATION

BY MR. THOMAS:

Q Mr. Cross, how often do you trade cars? How long do you keep these cars generally?

A It's an average of probably fifteen, sixteen, seventeen months; sometimes less than six, sometimes more than two years.

* * *

[25] WILLIAM H. FOREST, after being first duly sworn, testified in behalf of the Respondent, as follows:

DIRECT EXAMINATION

BY MR. ROYLANCE:

Q Would you state your name, please?

A William H. Forest.

Q What is your occupation?

A I am Virginia State Tax Commissioner.

Q How long have you been so employed?

A I have been the Virginia State Tax Commissioner since February 1971.

Q How were you employed prior to that?

A Prior to that, I was head of the Iowa Department of Taxation three years, and prior to that with the Kentucky Department of Revenue for nine years.

[25] Q What does your education consist of?

A I have an A.B. Degree in Philosophy.

Q What is your total experience in the field of taxation?

A The nineteen years that I enumerated. Prior to the Kentucky experience -- excuse me. Sixteen

[26] years.

Q In your position as State Tax Commissioner, could you briefly enumerate some of your duties, particularly with respect to the Legislature of this State?

A Well, of course, the State Tax Commissioner has responsibility for advising both the executive and legislative branches of the government in matters regarding taxation. I have the responsibility of collection and enforcement of the State Tax Laws, Title 58 of the Code of Virginia. I also have responsibilities in the area of local government, instructing and counseling the various local constitutional officers, Commissioners of Revenue and Treasurers, concerning Title 58 of the Code. The Department also has responsibility of instructing these people in their duties in relation to collection of State taxes and generally responsible for Title 58 of the Code.

[26] Q Do you provide any forms or books or anything to the local Commissioners?

A Yes. Fact is, the State is required to supply all of the forms for the taxpayer. We supply all of the local property tax forms, both real estate

[27] and tangible personal property. We design these and furnish them to the local government.

* * *

[28] BY MR. ROYLANCE:

Q Let me rephrase it this way, then.

[29] By what authority, if you know, can local Commissioners of Revenue establish different modes of assessment for such different items as automobiles and typewriters?

A Well, the Constitution, as you mentioned earlier, says that the General Assembly has the right to classify property. It also says that all property must be taxed, very clearly. The Section 58-829 sets out the classifications of tangible personal property, and if they were not classifying tangible personal property, there would be no need for the Section, because the Constitution says it has to be taxed anyhow. So they set tangible personal property up in certain classes, and the Department, in designing

[29] the forms that we have sent to the local governments, have set up those very same classes within the tangible personal property. Machinery and tools and merchants' capital, that is Form 762 of the Tax Department. We would tell the local Commissioner or anyone that the Constitution requires that all assessments be uniform within the class. So that if an assessor decides to assess at the loan value all the vehicles in Class 5 of §58-829 or if he wants to assess it at the market value or the loan value or the -- I think they have one other value, the average retail value -- as long as they are
[30] consistent and uniform within that class, they meet the constitutional test and they are not being arbitrary or capricious about their assessment practice. We would tell them regardless of how they treat other tangible personal property, because it's a separate class, as long as they treat that particular class of motor vehicles the same they have met the uniformity test of the Constitution, in our opinion.

Q Are there any other Code Sections that enumerate, that would lend support to your opinion?

[30] A Well, we tax motor vehicles, cars, obviously tangible personal property, in different ways. Sometimes they are taxed as merchants' capital, sometimes just taxed as personal property. When they are taxed as merchants' capital, they are taxed as intangible property, interestingly enough, but they are valued differently for both purposes. An automobile that's in the inventory of a dealer is merchants' capital and taxed one way. If the automobile is taken out of inventory and used as a demonstrator, it's taxed as personal property under the blue book value. So again, the Code treats and the assessors treat, correctly, cars differently depending on which way they are classified.

[31] Antique cars, for instance, were separated. There was no reason to separate them from 829 if they were not classified as cars in 829, they would be a separate class automatically. But they didn't set them up as a separate section, like Section 830, they just amended 829 and took them out of the general classification of automobiles and said that the Constitution now permits that we can tax it at a lower rate, so we are further segregating that automobile into an antique automobile and allowing you to do what the Constitution allows us to do, tax that at a lower rate. I think it's very clear that the tangible

[31] personal property has been classified and the Constitution only provides that the assessment be uniform within a particular class.

Q In regard to Sections 829.1, .2, and .3, would you elucidate on exactly what the purpose of those Sections is, in your opinion?

A Well, of course, the people amended the Constitution and allowed the General Assembly to exempt at local option household goods. Of course, the general rule that all property had to be taxed was in vogue before that. In order to get household goods out of the picture of taxation, they amended the Constitution and put in Section 829.1, which is a local
[32] option section, which allows local government to exempt that property from taxation. That was the reason for §§ 829.1. §§ 829.2 relates to boats, and again, this was amended because of the interest in taxing that particular type of personal property, under the new Constitution, at a lower rate, a rate that could not exceed the regular personal property tax rate. §§ 829.3 is the mobile home classification. It says you can tax mobile homes at a lower rate than other tangible personal property, but not to exceed the rate of tangible personal property, acknowledging that mobile homes are tangible personal

[32] property. These are the extent of the 829 Section amendments.

Q You have talked about, in these last three Sections, or two, anyway, about rate. What is the difference between rate and mode of assessment?

A Well, certainly quite a bit of difference. The assessor, individual set up by law to place a value on a piece of property, would do it independent of any rate making authority. That rate making authority is the local governing body, the City Council or Board of Supervisors. The Board of Supervisors, for instance, when they tax the mobile homes, for instance, a class of tangible personal property, they can set

[33] whatever rate they wish. It just cannot exceed the tangible personal property rate. The Commissioner of the Revenue, however, when he assesses mobile homes, he must have a uniform method of assessing that class in order that it would meet the constitutional test of uniformity.

Q Are there any other specific guidelines laid down in State Code regarding mode of assessment?

A No. The assessor, of course, has to make the judgment. Any value he places on a piece of property is a matter of his own judgment, and the Code

[33] does specify -- for instance, they have just amended the Code to specify that as of January 1, 1977 all real estate shall be assessed at one hundred percent of its fair market value. So the General Assembly may require a specific mode of assessment, but they haven't done that until 1977.

MR. ROYLANCE: I think that's all the questions I have.

CROSS EXAMINATION

BY MR. STEPHENSON:

Q You have been in Virginia since 1971,

[34] in your present position?

A That's correct.

Q In dealing with Code Section 58-829, as I understand it, it is your contention each of these enumerated paragraphs are a separate classification unto themselves; for example, number 1, "The aggregate number of horses, mules and other kindred animals and the value thereof," is it your opinion that is a separate classification of personal property under that Code Section?

A Yes, sir. It would be and is.

[34] Q Is it, further, your opinion the City could tax horses, mules and other kindred animals at one rate, as long as it was uniform within that rate, and treat cattle, which is enumerated in number 2, at a different rate, as long as it was uniform within -- as cattle go?

A Couldn't tax them at a different rate until the General Assembly allowed them to, under the new Constitution, as they did mobile homes. It would have to be a specific statute that would allow them to tax it at a lower rate. They could assess it in a different method as long as the method was uniform within its class, but not different rates.

[35] Q Could the assessment be different for cattle than it could for a horse, under your interpretation?

A Yes, it could.

Q Under that Section, it doesn't deal with the term "classifications." I don't know -- do you have the Statute?

A I have the Statute.

Q It doesn't deal with the term "classifications," does it? Doesn't it say "Tangible personal property having been segregated by law for

[35] local taxation only, the classification hereunder . . ."? It doesn't say "classifications," but one broad classification of tangible personal property?

A Well, Section is entitled "Classification of tangible personal property." It's not entitled "Definition of tangible personal property," and I would say the classes that are enumerated under there would have to be classes of personal property. I mean that's what classification is, setting tangible personal property aside in various classes.

Q But it uses it in one broad term, does it not, "Classification of tangible personal property," not "classifications"?

[36] THE COURT: Let me get my Statute. Go ahead.

BY MR. STEPHENSON:

Q Nowhere in there does it use the term "classifications," does it, Mr. Forest?

A Well, I assume you'd have to decide whether "classification" as it is used there is a noun or a verb.

Q All right. But one interpretation of

[36] this Code Section could be, could it not, that all tangible personal property is classified as one item under 58-829, all of those various things that are enumerated make up tangible personal property?

A Well, the very fact that the one section, number 15, says, "The aggregate value of all other personal property," makes the section all inclusive.

Q All right, sir. You indicated that the General Assembly has the authority to sort of pluck out from 58-829 and set up in a different Code Section, as they have done in 58-829.1, which allows the local authorities to treat that somewhat differently than the other enumerated classifications; isn't that true?

A I think the Constitution gives them

[37] authority to classify.

Q And if the General Assembly wanted the localities to treat automobiles or motor vehicles in a different category than that of sheep or typewriters or pianos, they have the authority to do that, do they not?

A Yes, they do have the authority to do it.

Q All right, sir. Now, is it my understanding that it is your contention that the City

[37] has the authority, under this Section, to treat each of these categories differently as long as it's uniform within that category?

A They can. The assessor can assess each class differently as long as it's uniform within the class.

Q All right, sir. If the City has the authority to do that, Mr. Forest, why would it be necessary for the General Assembly to pluck any of those particular categories out and set them up as a separate class?

A Well, as I said before, the -- let's take automobiles. The General Assembly, under the Constitution, classified automobiles as a separate class.

[38] Now, they wanted to further amend that classification to exempt antique automobiles or to say that antique automobiles are separate within that class, and then, further, they went on, under the Constitution, and allowed that, as the amended Constitution provided, they would allow them to tax it at a lower rate if they wished, rather than the regular tangible personal property tax rate.

Q All right, sir. But if the City has the authority to treat each of these categories

[38] differently, as long as it's uniform within that particular rate, would they not also have the authority not to assess any tax at all within that particular category?

A No. They would have to assess the tax. They would have to value the property. All property has to be assessed. They could put a very nominal rate upon it if the General Assembly said that particular class could have a rate lower than the personal property rate, and they have done this in some localities.

Q But the General Assembly doesn't tell them how to assess that, do they?

A No. The assessment is up to the man that's making the assessment, under the law.

[39] Q As long as the assessment is uniform within that particular city?

A Within the class.

Q I don't know if you might be familiar, but to your knowledge, have there been any bills introduced in the General Assembly regarding the separation and the setting aside of the automobile itself?

A I'm not familiar, in the four years I have been here, with a section of that nature.

[39] Q Do you think you would be aware of it if one had been introduced in recent General Assembly?

A Yes.

* * *

[40] ROBERT WALDO, after being first duly sworn, testified in behalf of the Respondent, as follows:

DIRECT EXAMINATION

BY MR. ROYLANCE:

Q State your name, please, sir.

A Robert Waldo.

Q What is your occupation?

A Commissioner of Revenue, City of Chesapeake.

Q How long have you been so employed?

A Since 1970, Norfolk County and Chesapeake.

Q Mr. Waldo, in the course of your duties -- well, would you indicate what your duties are, just generally?

A We assess personal property, incomes, capital not otherwise taxed, and issue business licenses, State and City.

Q In your assessment of personal

[40] property, I assume you refer to tangible personal property?

A Tangible, yes.

Q Are you aware, in the Code of Virginia, of any authority for you to use different modes of

[41] assessment on different specific items of tangible personal property?

A Yes, sir. We consider 58-829 as being the authority for the various classifications of personal property, as to separate it, say, from intangible personal property, and we assess these as different classes of personal property. Is that what you mean?

Q Do you use, for each, say, number of categories, would you, in performing your assessments, use different methods for different number of categories under that Section?

A Yes, sir. We do. For example, we assess automobiles one way and aircraft another way and boats another way.

Q Is there any differentiation in your assessment between automobiles; in other words, do you do any automobiles different from other automobiles?

A No, sir.

[41] Q Do you do any boats different from other boats?

A No, sir. Except the boats of over five tons, we treat them different than we do the pleasure boats.

[42] Q How long have these different modes of assessment been in effect in your jurisdiction?

A Well, since before I came in office. This is the way it was being done when I came in office in 1960. We have continued that.

MR. ROYLANCE: I have no further questions.

CROSS EXAMINATION

BY MR. SPRATLEY:

Q Mr. Waldo, referring to 58-829, I believe you said it was your interpretation that you could handle automobiles as a class, boats as a class, under certain weight, and aircraft as a separate class?

A Yes, sir.

Q Well, how about horses? Can you handle horses as a separate class?

A You could, I believe.

[42] Q Could you handle cattle as a separate class and have a different mode of assessment?

A I think you could.

Q And you could do the same thing for the number of sheep and goats?

[43] A Yes, sir.

Q So you could come up with, under this Section, with something like sixteen different classes? Is your interpretation there are sixteen different classes?

A Eighteen.

Q Eighteen?

A Yes, sir.

Q And you could have the eighteen classes and you've got some problem with the rate, but you could have a different mode of assessment on each of eighteen classes within 58-829?

A Yes, sir, you could, but don't necessarily have to.

Q But you say you've got the authority?

A I believe we have the authority.

Q I see. Have you been aware of any bill in the General Assembly pertaining to automobiles in recent years, to make it a separate item of classification?

A Last year there was a proposed bill, if

[43] that's what you are talking about. It wasn't passed.

Q It wasn't passed?

A No, sir, because in effect, that would relieve it of all taxes.

* * *

[44] BY MR. SPRATLEY:

Q You say it wasn't passed. What did the proposed bill do?

A The proposed bill would remove leased automobiles from personal property and would put it under merchants' capital. But merchants' capital is, in effect, only used in counties. So, therefore, a person who was in the business of leasing automobiles, if his office was in a city, you couldn't tax those automobiles he owned for personal property because they would be merchants' capital, and if a city has a business license, he can't have merchants' capital, the city couldn't have a tax on merchants' capital. So, therefore, they would escape taxation entirely and, as a matter of fact, most of the people that lease automobiles are located in the city.

Q But this bill was to classify leased automobiles as something other than tangible personal property?

[45] A Yes, sir.

Q Mr. Waldo, as to the mode of assessment of automobiles, boats, aircraft, am I correct in understanding your testimony that this was the way it was done when you came in and you have just followed that practice ever since you have been in?

A Yes, sir.

* * *

A. HOWELL THOMAS, JR., after being first duly sworn, testified in behalf of the Respondent, as follows:

DIRECT EXAMINATION

BY MR. ROYLANCE:

Q Will you state your name, please?

A A. Howell Thomas, Jr.

[46] Q What is your occupation, Mr. Thomas?

A I am Commissioner of Revenue in and for the City of Fairfax, in the Commonwealth.

Q How long have you been so employed?

A Since January 1, 1966.

Q Would you enumerate, if you would,

[46] briefly, some of your duties as a Commissioner of Revenue?

A Generally, we assess and determine all of the taxes, valuations of taxes in the City of Fairfax, with the exception of real property, dog licenses, regulatory taxes and automobile license taxes. That includes personal property, State income taxes, State estimated income taxes, City and State business privilege license taxes, back stock taxes, consumer utility taxes.

Q In your assessment of tangible personal property, are you aware of any authority under the Code of Virginia, whereby you may determine the assessed value of automobiles differently from other items of tangible personal property?

A Yes, sir.

Q Would you expand on that, please?

A Section 58-829, Code of Virginia, as amended to date, gives us that authority in the separate

[47] classifications of property delineated in that Section.

Q In your mode of assessment of automobiles, would you assess one automobile differently from another?

[47] A Not generally, but under certain exceptions we might. Generally that would not be true. Generally we assess automobiles at present in the current year at fifty percent of the retail value shown in the January edition of the Eastern Edition of the N.A.D.A Official Used Car Guide.

Q And they are all done the same way?

A They are all done the same way with a few exceptions. If we cannot find that vehicle in that car guide, then we use a reasonable assessment.

Q Based on fair market value?

A Yes, sir.

Q How long has this particular mode of assessment been in effect in your jurisdiction?

A This has been in effect since we were a City, which was July 1, 1961.

MR. ROYLANCE: That's all the questions I have.

[48] CROSS EXAMINATION

BY MR. STEPHENSON:

Q Mr. Thomas, you became Commissioner of Revenue in 1966?

A Yes, sir.

Q And you continued the method your predecessor had been using in taxation, had you not?

A Generally.

Q These things were being used before, so you followed on using the same type of method and classifications?

A After satisfying myself they were correct.

Q You satisfied yourself by reading 58-829?

A And other means as well.

Q All right, sir. And I think it's in agreement there are eighteen separate classifications under 58-829; is that correct?

A As well as I remember, that's correct.

Q And can you tell me how many different classifications that there might be in the City of Fairfax that you tax differently within that eighteen?

[49] A I'm not sure I understand your question, when you say "tax differently."

Q Well, at a different assessment?

A We use generally two different modes of assessment or methods of assessment, if you will.

Q Would you mind telling me what they are?

A The first one, I believe I have already described, which is fifty percent of the retail value shown in the January issue of the Eastern Edition of the N.A.D.A. Official Used Car Guide.

Q Can I stop you, ask you, just a moment, is it the red book or blue?

A I think it's generally orange or yellowish, but it's generally known as the "blue book," I call it.

Q All right. What is the other?

A The other method is a formula based upon a percentage of cost and date of acquisition.

Q All right, sir. For example, one of the classifications, if we used your theory of the fact that there are eighteen different classifications, would be horses and mules and the second would be that of

[50] cattle. Does the City of Fairfax -- I don't know if you have any horses or mules, but are those two treated differently?

A We have none. So it's never come up.

Q So you indicate you assess approximately fifty percent in reference to automobiles, according to the book?

A Of fair market value.

Q How would you handle a bulldozer in Fairfax?

A Well, a bulldozer would be assessed under the business formula if it were an assessable piece of property.

Q And the business formula would not be this fifty percent, but perhaps on a different basis?

A We have a different system. It's not a flat one-third. We have, as I say, a graded schedule which is based on year of acquisition and the percentage of cost.

Q All right, sir. How about a tractor-trailer?

A That, also, would be assessed under the formula.

Q You would not treat that as a motor

[51] vehicle and it wouldn't fall under Section 5 of 58-829?

A No, sir. We would not.

Q All right, sir. Do you have any authority in the Code that allows you to take that particular tractor-trailer out of the number 5 classification of motor trucks?

A I think the determination of the valuation is left to the elected Commissioner.

Q And I think you'd agree that throughout the Commonwealth it's quite different, is it not, in different cities and jurisdictions?

A Well, I'm not familiar with the entire Commonwealth, but I do know there are differences in valuation.

Q Do you treat leased vehicles in the City of Fairfax any differently from that of a private automobile?

A No, sir. We don't.

Q Have you ever treated them differently, to your knowledge?

A No, sir. We have not.

Q All right, sir. As far as 58-829, you are of the opinion, as I said before, that there are eighteen different classifications you could tax under; is

[52] that correct?

A That appears to be correct.

Q Maybe it's just a question of semantics, but in reading 58-829, do they ever use the terminology "classifications," or do they use one broad "classification" of personal property?

A I don't remember the exact language, but seems to me what they do is to set the classifications. If there were not to be eighteen classifications, it would seem to me the printing on the page would be worthless.

Q And in setting these eighteen classifications, they allow a hog to be treated differently from a horse?

A I don't remember those particularly, because, as I say, we do not assess those.

Q Just referring to 1, 2, and 3, a hog can be treated different from a horse or a sheep?

A Yes, sir. That would appear to be true.

Q In the formulae that you attempt to use in Fairfax, you are really trying to establish fair market value, are you not?

A What we are doing is establishing an

[53] assessed market value. Fair market value enters into that in the construction of the formula.

Q And then everything within that classification is approximately taxed at fifty percent?

A Of fair market value.

Q Which, in fact, is a uniformity within that classification?

A That's what we are attempting to reach, uniformity.

Q Of tangible personal property?

A Yes, sir.

MR. STEPHENSON: Thank you.

THE WITNESS: I might add as well as real estate, real property.

REDIRECT EXAMINATION

BY MR. ROYLANCE:

Q Mr. Thomas, you stated on cross examination that you have two methods of assessment?

A Yes, sir.

Q Within your interpretation of the Code, you could as well have eighteen separate methods, could you not?

[54] A That's true.

Q And by the same token, by your interpretation of the Code, could you have only one method if you could make it fit?

A If we felt it would produce the uniformity that is required for equity in taxation, that would be true.

* * *

SAM T. BARFIELD, after being first duly sworn, testified in behalf of the Respondent, as follows:

DIRECT EXAMINATION

BY MR. ROYLANCE:

Q State your name, please.

A Sam T. Barfield.

[55] Q What is your occupation?

A I am Commissioner of Revenue, City of Norfolk.

Q How long have you been so employed?

A Since 1970.

[55] Q Would you enumerate, if you would, briefly, your duties as Commissioner of Revenue?

A Basically, as assessing officer for the City of Norfolk.

Q What types of things do you assess?

A Personal property, business licenses, other city taxes, local taxes, and, of course, we handle the State income tax, State business license.

Q In your assessment of tangible personal property, are you aware of any authority, under the Code of Virginia, which would permit you to assess automobiles in a different manner from some other item of tangible personal property?

A Yes, sir.

Q Would you tell the Court and expand on what that is and why you think so?

A Under this Section 829, we feel we have the authority to classify personal property, tangible personal property. We separate passenger vehicles,

[56] automobiles. We assess them as one classification. We assess motor vehicles as a separate classification from business personal property.

[56] Q There is a different classification?

A Yes, sir.

Q In your assessment of automobiles, is there ever any variation in your method from one automobile to another?

A No, sir. Uniformity is required under the law.

Q Under your interpretation of 58-829, could you, in fact, establish different modes of assessment for, say, all eighteen categories if such a thing would promote uniformity? Could you do that, under your authority?

A Would you repeat that?

Q Under 58-829, there are some eighteen separate categories or, as you have identified them, classes. You have stated that you assess automobiles in a method different from other personal property. Is there anything that would prevent you from assessing, say, horses in a manner different from automobiles, or cattle in a manner different from horses?

A From my interpretation, there is nothing

[57] that would prevent me from assessing them differently, as long as I did it uniformly.

MR. ROYLANCE: That's all the questions I have.

CROSS EXAMINATION

BY MR. SPRATLEY:

Q In Norfolk, Mr. Barfield, do you attempt first to come up with a fair market value of the piece of tangible personal property?

A Yes, sir.

Q And you do this by various methods?

A Yes, sir.

Q And is it correct to say that this is the basis, and from there you establish your assessed valuation?

A Right, sir.

Q So whether it's a horse or cattle or automobile or boat or airplane, you try to get its fair market value, then you come up with a figure which is what, in Norfolk?

A Not exactly as you put it there. In the case -- we attempt to use, where there is a published

[58] book of values, as an example, in automobiles, we have the N.A.D.A., which we call the "blue book," N.A.D.A. book, which gives us an assessed value of that car. We use that value. We select -- in the case of automobiles, again, we use the loan value or low figure, as we call it.

Q But this is one of your tools to get the approximate fair market value of that item?

A In our opinion, yes, this gives us the most uniform method of doing this.

Q What do you use as to something like a bulldozer?

A A bulldozer? We'll work there on fair market value because there is no listing, no book to list bulldozers as such.

Q Now, Mr. Barfield, once you establish this value, say, of a bulldozer or automobile, do you use a certain percentage there to arrive at your assessed valuation?

A On a bulldozer, we would classify that type of equipment as a separate classification and we would use a ratio to arrive at our assessed value.

Q What ratio do you use?

A I can't tell you at this moment on

[59] bulldozers, sir, just what it would be. In the case of automobiles, we do use, as I say -- there's no ratio applied to the value -- the loan value shown in the blue book.

Q I mean, you don't take one-third of the cost of that item and continue that forever, do you?

A No, sir. Our ratio for business personal property and other property would be forty percent, is what we use. Now, in the case of bulldozers and other heavy equipment, we would assess -- we would get a fair market value and I believe -- and here, again, I wish I knew exactly, but in bulldozers, I think it's forty percent, is what we would use.

Q Of?

A Of the fair market value, yes, and this is a one-time depreciation.

Q What do you mean by that?

A We depreciate that item, that piece of personal property, tangible property by sixty percent or take the fair market value for all time, as long as that equipment is in the possession of the person.

Q And on automobiles, you just use the loan value that you obtain from the so-called books?

A Right, sir.

[60] Q Mr. Barfield, as to rental cars, has Norfolk ever treated them differently from other automobiles?

A No, sir. May I correct that, sir? Before my time, I understand there was a difference. Not since I have been in office. They are treated now as a classification of vehicles regardless of who owns them.

Q You understand at some time there was a discount, before you came in office?

A Yes.

* * *

[61] REDIRECT EXAMINATION

BY MR. ROYLANCE:

Q Now, in your treatment of, for example, bulldozers, can you relate that to Code Section 58-829; in other words, which of those categories would you place it in?

A I wouldn't place it in there. I would just place it as a separate item of classification. Obviously, this doesn't cover all tangible personal property. There will be items from time to time which, in my own discretion, I must establish a class for.

[61] Q So it would be lumped, say, in the "Other" classification of tangible personal property?

[62] When you stated this forty percent figure on other tangible personal property is for all time, what effect does this give to depreciation of fair market value?

A This method was arrived at by sitting down with the business population on the business personal property and we discussed with them what they preferred, would they prefer an annual depreciation, as I understand some areas do use, or would they prefer a one-time depreciation? New businesses coming in would naturally prefer a one-time depreciation. They get the advantage of this sixty percent depreciation when they are first starting business. So for that reason we have settled on that. When we did, this is applied consistently to all business personal property.

MR. ROYLANCE: That's all the questions I have.

RECROSS EXAMINATION

BY MR. SPRATLEY:

Q Just one question: You treat -- when

[62] you talk about tangible personal property, this is a wide group in which you've got seventeen or eighteen separate items?

[63] A That's right, sir.

Q And you don't treat real estate that way? You treat real estate as a single item?

A Real estate is a separate classification.

Q But there's no breakdown in real estate, is there?

A No.

* * *

TAYLOR C. WILSON, JR., after being first duly sworn, testified in behalf of the Respondent, as follows:

DIRECT EXAMINATION

BY MR. ROYLANCE:

Q State your name, please.

[64] Q What is your occupation?

A Commissioner of Revenue, Hampton.

[64] Q How long have you been so employed?

A Since July of 1971.

Q Would you enumerate, briefly, if you could, some of your duties as Commissioner of Revenue?

A Issue business licenses, assess personal property and State income tax.

Q In your assessment of personal property, are you aware of any provision, under the Code of Virginia, where you could assess automobiles differently from some other item of personal property?

A We have a classification in the State Code.

Q And what is that classification?

A 58-829.

Q And what is your interpretation of what that Section does?

A Well, that you can use different classifications on different items of personal property, automobiles, boats, mobile homes.

Q All right. Would you ever assess one automobile differently from another?

[65] A No, sir.

Q Why not?

A Well, because in that classification, you assess everything the same, or at the same rate.

Q And that would be true of --

A Boats, motorcycles. Anything in that classification would be assessed at the same rate.

Q How long has this method of assessment been in effect in your jurisdiction?

A Well, ever since I've been there. It was before I was there, but I mean I can speak since I was there.

MR. ROYLANCE: That's all the questions I have.

CROSS EXAMINATION

BY MR. STEPHENSON:

Q Mr. Wilson, you took office in July of '71?

A Yes, sir.

Q Is it fair to say you just continued the method of operation your predecessor had been using for some time?

[66] A On the whole, yes, sir, that would be fair to say, uh-huh.

Q And in 58-829, that you rely on as to establish your different categories, does it not refer, Mr. Wilson, to a classification of tangible personal property? It doesn't say "classifications," does it?

A Yes, sir.

Q Do you have 58-?

A Yes, but I haven't got my glasses. I left those home.

Q It speaks of one broad classification, does it not?

A Well, no. It lists automobiles and it lists mobile homes and it --

Q How do you treat your automobiles in the City of Hampton? How are they assessed?

A N.A.D.A. book and we use the loan value, which is the least amount.

Q How about a tractor-trailer truck? Would it not be --

A That's not in the N.A.D.A. book.

Q Would that be treated in the same manner?

A All trucks would be treated in the

[67] same manner if they're not in the book, yes, sir.

Q So it would fall under what you call the classification 5 there, which would be automobiles, motor trucks and motorcycles? And how about a bulldozer, a motorized bulldozer?

A Well, then, also, you can't find, or I can't find a book that lists the value of these items.

Q All right, sir. So how --

A We put them in a classification to themselves and then we work on a percentage of the cost.

Q How would you determine what classification a bulldozer might fall within?

A Well, because it would come in with any of the other earth-moving equipment and that sort of equipment that we have no blue book on.

Q So really, in item number 5, when you talk about automobiles, motor trucks, motorcycles, you only include those items which you have a blue book on?

A That's correct.

Q And even though it might be a motor-driven type vehicle, if it doesn't have a blue book value on it, then you place it in some other category?

[68] A Not necessarily. We use another method of getting the assessed value. We don't use the blue book. It's just a different way of getting the assessment.

Q All right. But if we took a bulldozer that was motor-driven, would you treat that in the same manner as an automobile in the City of Hampton?

A It would be assessed on the fair market value, which we use, which the blue book is. I mean I think we all agree that is the fair market value of that. So we would use a percentage of the oost of the tractor.

Q And the percentage of the cost of the tractor, is it a fixed percentage forever and ever and ever?

A No, sir.

Q Does it depreciate each year?

A Yes, sir.

Q And roughly what percentage would you use during the first year, Mr. Wilson?

A Seventy percent of cost.

Q And it depreciates each year?

A Yes, sir.

Q And the rate, after you get the value,

[69] the seventy percent or whatever it is, you would use the same rate per hundred to that as you would to automobiles?

A All personal property, yes.

Q So really you are trying to get to a uniformity in rate?

A Uh-huh.

Q But you don't have uniformity in assessment of value, do you?

A Well, yes. I mean in classifications, we do, yes, sir.

Q But could you -- you say that you wouldn't put a motor-driven --

A Well, I can't classify, Mr. Stephenson, tractor or motor grader or backhoe, I can't classify that as an automobile even though it's motor-driven. I can't classify them as the same.

Q Could I ask you, then, on a motor truck, suppose it was a tractor-trailer truck?

A Well, then you've got two items there. You've got the tractor and the trailer, and like I say, most tractors, you have to go on a cost because there's so much that goes into those, as you realize.

Q Yes, sir. Suppose, Mr. Wilson, it was

[70] just a motor truck of some large size; would you treat that the same as you would an automobile?

A If it were in the blue book, yes, sir.

Q If it wasn't?

A Then the law tells me that I have to get to it at any way I can as far as value is concerned.

Q Fair market value?

A Yes, sir.

Q So what we are really saying, under number 5, on which I assume all of the Commissioners are relying upon in 829 giving the authority to treat automobiles differently, even though it says "the aggregate value of all motorcycles, trucks, other motor vehicles," if there was one of motor trucks you could not find a blue book value on, it wouldn't be treated in the same fashion?

A If it's not in the blue book, couldn't very well.

Q Even though it might be a motor truck?

A Even though it might be a motor truck, yes.

* * *

OPINION OF HONORABLE HENRY D. GARNETT, JUDGE
CIRCUIT COURT FOR THE CITY OF NEWPORT NEWS

[76] _____ It comes down to, as I said, the sole question is whether or not 58-829 defines personal property or whether it classifies personal property.

Now, the second issue that they raise is whether or not everything under 829 is being treated uniformly or not. Under the motor vehicles, they were talking about the bulldozers being motor vehicles. Well, I really don't think that has much to do with this case.

It is the opinion of this Court that 829 does not undertake to define personal property; and if it were not a classification of personal property, it would seem to me the General Assembly would say that all personal property is subject to taxation, etc., and then put whatever restrictions it wanted to, give whatever privileges it wanted to to local governing bodies to tax certain personal

[76] property or to exempt certain personal property, but this is not what they did. Here they said, "Tangible personal property having been

[77] segregated by law for local taxation only, the classification hereunder, except as otherwise provided by law, shall be as follows:" Then they set out the classifications, and this has long been the policy of the Commonwealth. Even though this Court may have some personal misgivings about the mode of assessing the motor vehicles herein involved and the Court might be in great sympathy with an effort to change the law because I think it's a rather heavy tax to put on a man who's engaged in the business of renting cars to tax him on his cars as they would tax me on my personal car, but it's not for this Court to determine whether or not that is a proper tax. The only question is whether or not it's a legal tax. I feel, gentlemen, although I am very impressed with your arguments and very impressed with your brief and, frankly, finding that issue

[77] wasn't a small task in itself -- I think it was unique, well done and, as I say, it has great merit, but I am of the opinion that in view of all things and the history of the Statute, the meaning of the Statute, the implementation

[78] of the Statute by the State in years past, it's obvious to me that the General Assembly intended 829 to be a classification statute. I can't read it any other way. Accordingly, I am going to dismiss your bill and enter up judgment for the Defendant.

* * *

O R D E R

This cause came on to be heard the 13th day of May, 1975, upon stipulation of the parties as to the facts and the issue and upon evidence heard ore tenus and upon argument of counsel for Petitioner and Respondent.

Upon consideration whereof, this Court is of the opinion that, as a matter of law, Section 58-829 of the Code of Virginia 1950, as amended establishes separate classifications of tangible personal property for purposes of taxation and that the mode of assessment of the Petitioners tangible personal property was neither illegal nor erroneous; to which ruling of the Court the Petitioner objects and excepts.

WHEREFORE, it is ADJUDGED, ORDERED AND DECREED that the within petition be, and the same hereby is, DISMISSED.

Enter this 19th day of May, 1975

Henry H. Brown
Judge

* * *

NOTICE OF APPEAL

[Filed on June 2, 1975]

TO GEORGE D. DeSHAZOR, CHIEF CLERK OF THIS COURT:

The Petitioner, R. Cross, Inc., hereby appeals the judgment of the Court in this chancery cause.

ASSIGNMENT OF ERROR

1. The Court erred in ruling that §58-829 of the Code of Virginia (1950), as amended, establishes separate classifications of tangible personal property for purposes of taxation.

2. The Court erred in ruling that the City of Newport News has the authority under §58-829 of the Code to establish automobiles as a separate class of tangible personal property and impose thereon a mode of assessment different from that imposed on other tangible personal property.

3. The Court erred in ruling that the mode of assessment of the Petitioner's personal property was neither illegal nor erroneous.

4. The Court erred in overruling Petitioner's motion to set aside the verdict of the Court as being contrary to the law and the evidence.

STATEMENT

The transcript of the hearing is to be filed hereafter.

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