



# COMMONWEALTH of VIRGINIA

*Department of Taxation*

## MEMORANDUM

**TO:** Ron Holt  
Collections

**FROM:** Mike Melson <sup>MSM</sup>  
Office of Tax Policy

**DATE:** April 30, 1998

**SUBJECT:** Successor Liability

This will reply to your memorandum of April 22, 1998, in which you request an opinion regarding the meaning of "purchase money" as that term is used in Code of Virginia § 58.1-629 relating to successor operations.

### Law and Regulation

Code of Virginia § 58.1-629 provides, in part, that when a dealer sells his business or stock of goods, his successors or assigns, if any, must "withhold sufficient of the purchase money to cover the amount of such taxes, penalties, and interest due and unpaid" until the former owner produces a receipt from the Tax Commissioner showing no taxes, penalties, or interest is due. [Emphasis added.] If the purchaser fails to withhold the purchase money, he shall be personally liable for the payment of the taxes, penalties, and interest due and unpaid on account of the operation of the business by any former owner.

The regulation which interprets this provision, 23 VAC 10-210-3090, states that if a sale of a business for a consideration occurs, the dealer's successors or assigns must withhold a sufficient portion of the purchase money to cover any unpaid taxes, penalties, and interest.

### Meaning of "Purchase Money"

The term "purchase money" has a specific legal meaning and is not synonymous with "consideration." According to Black's Law Dictionary, the term "purchase money"

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means "the actual money paid in cash or check initially for the property...." The term "consideration" has a much broader meaning: "the inducement to a contract; the cause, motive, price, or impelling influence which induces a contracting party to enter into a contract." Consideration is a basic, necessary element for the existence of a valid contract that is legally binding on the parties.

### Opinion

By using the term "purchase money" in Code of Virginia § 58.1-629, the General Assembly intended to limit successor liability to those instances in which actual money (and not stock or other property) passes from the purchaser to the seller. Otherwise, the statute would have used the much broader concept of "consideration," which appears in other sections of the Retail Sales and Use Tax Act.

It is the opinion of the Office of Tax Policy that "purchase money" as defined above must be present before successor liability can be imposed on the purchaser of a business. The department cannot pursue successor liability as a collection tool when the sale of a business involves an exchange of "non-money" consideration (stock, property, etc.) only.

Please let me know if you have any questions regarding the opinion set forth in this memorandum or if I can be of additional assistance.