

**REPORT OF THE  
JOINT SUBCOMMITTEE STUDYING  
THE FEASIBILITY OF ALLOWING A STATE  
INCOME TAX DEDUCTION FOR CERTAIN  
HOMEOWNER ASSOCIATION DUES  
TO  
THE GOVERNOR  
AND  
THE GENERAL ASSEMBLY OF VIRGINIA**



**HOUSE DOCUMENT NO. 37**

**COMMONWEALTH OF VIRGINIA  
RICHMOND  
1983**

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Delegate David G. Brickley  
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**Report of the  
Joint Subcommittee Studying  
The Feasibility of Allowing a State  
Income Tax Deduction For Certain  
Homeowner Association Dues  
To  
The Governor and the General Assembly of Virginia  
Richmond, Virginia  
December, 1982**

To: Honorable Charles S. Robb, Governor of Virginia  
and  
The General Assembly of Virginia

**I. INTRODUCTION**

The Joint Subcommittee Studying the Feasibility of Allowing a State Income Tax Deduction for Certain Homeowner Association Dues was established pursuant to House Joint Resolution No. 100 enacted by the 1982 Session of the General Assembly of Virginia. The House Joint Resolution establishing the study reads as follows:

**House Joint Resolution No. 100**

WHEREAS, many citizens of the Commonwealth of Virginia have established homeowner associations to perform various services for the communities in which they live; and

WHEREAS, the associations often provide services that are performed by local government in incorporated jurisdictions; and

WHEREAS, many of the services of the homeowner associations are in areas commonly performed by government, including public safety, streets and highways, maintenance and lighting; and

WHEREAS, the citizens who receive these services from local government are able to deduct the taxes paid for supporting the cost of the services from their state income taxes; and

WHEREAS, the persons who pay homeowner association dues for the same services are not allowed a deduction from their income taxes; and

WHEREAS, it is desirable that the Commonwealth of Virginia promote the involvement of citizens in self-help activities that reduce the need for additional layers of growth of government; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That a joint subcommittee of the Finance Committee of the House of Delegates and the Senate Finance Committee study the feasibility and effect of allowing a deduction from the state income tax or another type of tax incentive for payment of fees to homeowner associations. The joint subcommittee shall consist of nine members, five of whom shall be members of the House of Delegates Finance Committee appointed by the Chairman thereof, one of whom shall be a member of the House of Delegates appointed by the Speaker thereof and three of whom shall be members of the Senate Finance Committee appointed by the Chairman thereof.

The subcommittee shall complete its work in time to submit recommendations to the 1983 Session of the General Assembly.

The cost of conducting this study shall not exceed \$3,500.

The Joint Subcommittee was assisted in its study by the staff of the Virginia Division of Legislative Services. Specific staff assigned to the subcommittee were: W. Rand Cook, Attorney, and John A. Garka, Economist.

## II. BACKGROUND

In recent years residential developments and communities throughout the Commonwealth have taken the initiative to provide their residents with many of the services traditionally provided by local government. Through the formation of well-organized homeowner associations, to which all property owners are legally required to belong and pay dues, these developments have been able to provide services such as sewage, water, road maintenance and recreational programs.

These organizations are often classified for purposes of real estate law as condominium associations, real estate cooperatives or traditional homeowner associations. (The term "homeowner association" shall, for the remainder of the report, include all of the aforementioned forms of real estate ownership organizations.) The operating budget of a typical homeowner association closely resembles that of a local government; many of the line items are identical. This similarity, of course, reflects the fact that homeowner associations usually provide governmental-type services and actually function as a pro forma government. The underlying rationale for the formation of a homeowner association is, however, that residents who form homeowner associations do so in order to avoid additional layers of local government and reduce reliance on existing local government.

The crux of the issue studied by the Joint Subcommittee is that while many of the services provided by local governments and homeowner associations are identical, taxpayers paying for these services through property taxes are allowed a state income tax deduction while those taxpayers paying for the services through dues paid to homeowner associations are not. The Joint Subcommittee was formed to study the feasibility and equity of allowing such a deduction for homeowner association dues.

## III. INITIAL SUBCOMMITTEE DELIBERATIONS

It was agreed that the following questions would have to be answered in the course of the study:

1. Are the services provided by homeowner associations similar to those provided by local government?
2. Should a list of approved services be established and, if so, what should that list include?
3. What type of organizational structure should be required of the homeowner association?
4. What should be the amount of the deduction?
5. How and by whom should the deduction be administered?
6. What fiscal impact would the deduction have on the individual taxpayer and the Commonwealth?

In order to gather information on these questions and become more familiar with the homeowner association concept, the Joint Subcommittee scheduled two public hearings: one in Richmond on September 16, 1982 and the other later that same day in the community of Reston.

## IV. Public Hearing

At the public hearing held in Richmond the Joint Subcommittee heard the testimony of a number of homeowner association officials and members. Mr. Ben Cummings, President of the Brandermill Community Association, spoke in favor of the proposed tax deduction indicating that homeowner associations reduce the demand for services upon local governments. Mr. Cummings insisted that "people helping themselves" should be encouraged by the government. Next Mr. Cummings reviewed the operating budget for the Brandermill Community Association. He pointed out those services which were governmental in nature and suggested that they should qualify for favorable tax treatment. Mr. Cummings also suggested that homeowner associations should be able to qualify for the deduction by meeting established criteria and by being approved by the State Department of Taxation. He emphasized that the deduction should only be allowed for that portion of the dues which goes to finance "legitimate, governmental-type" services. Mr. Cummings also agreed to work with the staff on any and all aspects of the study.

The next speaker was Mrs. Glen B. McClanan, Councilwoman for the City of Virginia Beach and wife of Delegate Glen B. McClanan of Virginia Beach. Mrs. McClanan informed the Joint Subcommittee that both she and her husband supported the idea of a tax deduction for homeowner association dues. She also indicated that between 25,000 and 35,000 Virginia Beach residents lived in planned unit developments (PUD's). To explain the operation of local PUD's in more detail Mrs. McClanan introduced Mr. Joe Fagan, a representative of the Green Run Homeowners Association. Mr. Fagan informed the Joint Subcommittee that many homeowner associations provide such services as street maintenance, garbage removal, recreation, and security. He also stressed that such associations preserve the overall standard of living for the community and strive to prevent decay. Mr. Fagan likewise favored the proposed tax deduction.

At the invitation of Delegate Kenneth R. Plum the Joint Subcommittee traveled to northern Virginia to tour the Reston development and discuss the proposed tax deduction with officials and members of the Reston Homeowners Association (RHOA), one of the largest and oldest homeowner associations in the Commonwealth. The members of the Joint Subcommittee toured the entire area by bus and heard the comments of a RHOA official on the facilities and services provided by the association.

At a public hearing held in the Reston Community Center and attended by about 150 persons, RHOA officials and individual members spoke to the Joint Subcommittee on the equity of allowing a tax deduction for homeowner dues. At the Chairman's request Delegate Kenneth Plum commented on the proposed tax deduction. Delegate Plum emphasized that homeowner associations, such as Reston, perform many of the services traditionally performed by local governments, and that association dues are actually in the nature of property taxes and should therefore be tax deductible. Delegate Plum also stressed that such initiative by private citizens should be encouraged by state government.

Mrs. Judi Ushio, President of RHOA, was the first speaker to be heard by the Joint Subcommittee. Mrs. Ushio stated that Reston homeowners "effectively pay three property taxes":

1. those levied by Fairfax County;
2. those levied by the county on the increase in value of their homes, the increase being caused by the value of the open land; and
3. homeowner association dues.

Mrs. Ushio emphasized that to reduce this tax burden a tax deduction should be allowed on that portion of homeowner dues used to finance governmental-type services. Mrs. Ushio then reviewed the services performed by RHOA and the many independent cluster associations. It was also pointed out that because of a "natural aversion to another layer of government," the Reston community was not in favor of assuming town status.

The Joint Subcommittee then heard the remarks of numerous interested speakers, consisting of homeowners, local government officials, association officers, and other parties. Although not all of the speakers agreed on every aspect of the issue, the overall feeling of the speakers can be summarized as follows:

1. Equity demands that a tax deduction be allowed for homeowner association dues;
2. Homeowner dues are in the nature of property taxes;
3. Homeowner associations are an effective tool for self-government;
4. Homeowner associations encourage self-sufficiency and are an alternative to additional layering of government;
5. Homeowner associations perform many traditional governmental-type services; and
6. "Restonians" are not in favor of assuming town or sanitary district status.

#### V. JOINT SUBCOMMITTEE FINDINGS

Based on information obtained from the public hearings, additional data collected by the Division of Legislative Services and Joint Subcommittee recommendations a working draft version of a statute allowing the deduction was prepared.

### **WORKING DRAFT**

§ 58-151.013 (d) (5) (A) - A deduction equal to the amount of dues or fees, excluding user charges, paid annually by the taxpayer to certified homeowner organizations.

(B) As used in this paragraph the term "certified homeowner organization" shall include: homeowner associations, cluster associations, planned unit developments, real estate cooperatives, condominium associations, property owners associations formed pursuant to § 55-344 of the Code of Virginia, and other organizations certified by the Department of Taxation, on an annual basis, to be in compliance with the following criteria:

1. Dues and fees paid to the homeowner organization must be in excess of \$100 per member property owner per year.
2. Membership in the homeowner organization is a legally imposed condition to living on or purchasing property located within the boundaries of the area governed by the homeowner organization.
3. All officers of the homeowner association are elected by a majority vote of all property owners.
4. At least fifty percent of the homeowner organization's budget, for each of the two years prior to making application to the Department of Taxation for certification, must have been expended for any three of the following governmental-type services: (i) street and parking lot maintenance and construction, (ii) trash, leaf, or snow removal, (iii) water and sewer services, (iv) mass transit, (v) outdoor illumination, or (vi) maintenance of common grounds.

(C) The Department of Taxation shall make available, on or before December 1 of each year, a list of those homeowner organizations that have complied with the criteria listed in subparagraph (B) of this paragraph.

Working from this draft the Joint Subcommittee attempted to determine the fiscal impact of the proposed deduction. To the individual taxpayer the impact of the deduction would equal the amount of dues paid to a certified homeowner organization multiplied by the taxpayer's effective tax rate. To the Commonwealth the impact would equal the loss of tax revenue attributed to the deduction increased by the costs of administering the deduction through the Department of Taxation. The unavailability of data on the number of homeowner associations which would qualify for the deduction prevented the Joint Subcommittee from arriving at a final dollar amount. A partial list of homeowner associations which have expressed interest in the study and potentially qualify for the deduction is shown in Appendix A.

In addition to considering the statute the Joint Subcommittee discussed the possibility of having homeowner associations acquire sanitary district status. It was pointed out that this procedure would allow taxpayers to deduct the annual assessments paid to the district and still enjoy the service benefits of a homeowner association. Delegate Plum, patron of House Joint Resolution No. 100, emphasized that most homeowner associations were formed in order to avoid additional layers of government and to be free from local government control. Delegate Plum added that forming a sanitary district would subject the taxpayers in the district to the control of the local governing body, which would be totally unacceptable to most homeowner associations.

It was also suggested that tax relief for members of homeowner associations could be obtained by assessing the real property owned by the association pursuant to a special use assessment procedure. The resulting tax benefit to the homeowner association would ultimately accrue to the individual association members in the form of a reduction in the annual dues paid to the association. Delegate Brickley suggested that such tax relief could possibly be obtained through an expansion of the "open space" classification provisions of the Code.

## VI. CONCLUSIONS

The Joint Subcommittee has given careful consideration to the proposed tax deduction for homeowner association dues and the other varied forms of tax relief suggested during the course of this study. It recognizes that a legitimate tax equity issue is involved and that important public policy considerations underlie the resolution of this matter. However, at this time, in light of the critical revenue shortage facing the Commonwealth, the Joint Subcommittee makes no recommendation regarding the proposed tax deduction for homeowner dues or the other alternative methods of tax relief considered in the course of the study.

Respectfully submitted

Delegate Claude W. Anderson, Chairman  
Senator John C. Buchanan, Vice-Chairman  
Senator Howard P. Anderson  
Delegate George P. Beard, Jr.  
Delegate David G. Brickley  
Delegate Raymond R. Guest, Jr.  
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Delegate Kenneth R. Plum  
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## **APPENDIX A**

### **A Partial List of Homeowner Associations**

#### **Which Potentially Qualify for the Tax Deduction**

Brandermill  
Burke  
Franklin Farms  
Green Run  
Indian Lake  
King's Mill on the James  
Lake of the Woods  
Reston  
Shenandoah River Estates  
Sugarland Run  
Timberlake