

015486952

## HOUSE BILL NO. 2815

Offered January 19, 2001

*A BILL to amend and reenact §§ 58.1-1805 and 60.2-513 of the Code of Virginia, relating to penalties for failure to file certain tax returns.*

Patrons—Tate and Stump

Referred to Committee on Finance

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 58.1-1805 and 60.2-513 of the Code of Virginia are amended and reenacted as follows:**

§ 58.1-1805. Memorandum of lien for collection of taxes; release of lien.

A. If any taxes or fees, including penalties and interest, assessed by the Department of Taxation in pursuance of law against any person, are not paid within thirty days after the same become due, the Tax Commissioner may file a memorandum of lien in the circuit court clerk's office of the county or city in which the taxpayer's place of business is located, or in which the taxpayer resides. If the taxpayer has no place of business or residence within the Commonwealth, such memorandum may be filed in the Circuit Court of the City of Richmond. A copy of such memorandum may also be filed in the clerk's office of all counties and cities in which the taxpayer owns real estate. Such memorandum shall be recorded in the judgment docket book and shall have the effect of a judgment in favor of the Commonwealth, to be enforced as provided in Article 19 (§ 8.01-196 et seq.) of Chapter 3 of Title 8.01, except that a writ of fieri facias may issue at any time after the memorandum is filed. The lien on real estate shall become effective at the time the memorandum is filed in the jurisdiction in which the real estate is located. No memorandum of lien shall be filed unless the taxpayer is first given ten or more days' prior notice of intent to file a lien; however, in those instances where the Tax Commissioner determines that the collection of any tax, penalties or interest required to be paid pursuant to law will be jeopardized by the provision of such notice, notification may be provided to the taxpayer concurrent with the filing of the memorandum of lien. Such notice shall be given to the taxpayer at his last known address. For purposes of this section, "last known address" means the address shown on the most recent return filed by or on behalf of the taxpayer or the address provided in correspondence by or on behalf of the taxpayer indicating that it is a change of the taxpayer's address. *In no event shall the Department impose a penalty for failure to file a tax return under this Title which exceeds two times the tax due with such tax return.*

B. Recordation of a memorandum of lien hereunder shall not affect the right to a refund or exoneration under this chapter, nor shall an application for correction of an erroneous assessment affect the power of the Tax Commissioner to collect the tax, except as specifically provided in this title.

C. If after filing a memorandum of lien as required by subsection A, the Tax Commissioner determines that it is in the best interest of the Commonwealth, the Tax Commissioner may place padlocks on the doors of any business enterprise that is delinquent in either filing or paying any tax owed to the Commonwealth, or both. He shall also post notices of distraint on each of the doors so padlocked. If after three business days, the tax deficiency has not been satisfied or satisfactory arrangements for payment made, the Tax Commissioner may cause a writ of fieri facias to be issued.

It shall be a Class 1 misdemeanor for anyone to enter the padlocked premises without prior approval of the Tax Commissioner.

In the event that the taxpayer against whom the distraint has been applied subsequently makes application for correction of the assessment under § 58.1-1821, the taxpayer shall have the right to post bond equaling the amount of the tax liability in lieu of payment until the application is acted upon.

The provisions of subsection C shall be enforceable only after the promulgation, by the Tax Commissioner, of regulations under the Administrative Process Act (§ 9-6.14:1 et seq.) setting forth the circumstances under which this subsection can be used.

D. A taxpayer may appeal to the Tax Commissioner after a memorandum of lien has been filed under this section if the taxpayer alleges an error in the filing of the lien. The Tax Commissioner shall make a determination of such an appeal within fourteen days. If the Tax Commissioner determines that the filing was erroneous, he shall issue a certificate of release of the lien within seven days after such determination is made.

§ 60.2-513. Failure of employing unit to file reports; assessment and amount of penalty.

A. If any employing unit fails to file with the Commission any report which the Commission deems necessary for the effective administration of this title within thirty days after the Commission requires the same by written notice mailed to the last known address of such employing unit, the Commission

INTRODUCED

HB2815

59 may determine on the basis of such information as it may have whether such employing unit is an  
60 employer, unless such determination has already been made. Also, on the basis of such information, the  
61 Commission may assess the amount of tax due from such employer and shall give written notice of such  
62 determination and assessment to such employer. Such determination and assessment shall be final (i)  
63 unless such employer, within thirty days after the mailing to the employer at his last known address or  
64 other service of the notice of such determination or assessment, applies to the Commission for a review  
65 of such determination and assessment or (ii) unless the Commission, on its own motion, sets aside,  
66 reduces or increases the same.

67 B. If any employer had wages payable for a calendar quarter and fails to file any report as required  
68 of him under this title with respect to wages or taxes, the Commission shall assess upon the employer a  
69 penalty of thirty dollars, which shall be in addition to the taxes due and payable with respect to such  
70 report, *however, in no case shall such penalty exceed an amount equal to two times the tax due.* A  
71 newly covered employer may file by the due date of the quarter in which his account number is  
72 assigned by the Commission, without penalty. If such employer's report is not filed by that date, a thirty  
73 dollar penalty shall be assessed for each report, *however, in no case shall such penalty exceed an*  
74 *amount equal to two times the tax due.* Penalties collected pursuant to this section shall be paid into the  
75 Special Unemployment Compensation Administration Fund.