

# VIRGINIA ACTS OF ASSEMBLY -- 2002 SESSION

## CHAPTER 775

*An Act to amend and reenact § 58.1-623.1 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 58.1-608.4, relating to the misuse of certain tax preferences.*

[H 1054]

Approved April 7, 2002

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

**1. That § 58.1-623.1 of the Code of Virginia is amended and reenacted, and that the Code of Virginia is amended by adding a section numbered 58.1-608.4 as follows:**

**§ 58.1-608.4. Suspension of exemption.**

*Any organization or entity exempt from the tax imposed by this chapter, or imposed pursuant to the authority granted in § 58.1-605 or § 58.1-606, that knows or should have known that an associate, employee, volunteer, other individual or entity has used its tax exemption certificate/letter to make unlawful purchases in the aggregate in excess of \$1,000 in any calendar year, shall have its tax exemption suspended in accordance with § 58.1-623.1.*

**§ 58.1-623.1. Misuse of exemption certificates; suspension of exemptions; penalties.**

A. Whenever the Tax Commissioner determines that any person has misused an exemption certificate, the Tax Commissioner, after giving such person ten days' notice in writing specifying the time and place of hearing and requiring him to show cause why the exemption should not be suspended, may suspend the exemption held by such person. The notice may be personally served or served by registered mail directed to the last known address of such person.

B. Any person who knowingly uses or gives an exemption certificate during a period of suspension of an exemption under this section shall be guilty of a Class 1 misdemeanor.

C. It shall be the duty of any person whose exemption is suspended under the provisions of this section to notify each dealer from whom purchases or leases of tangible personal property are made, of the suspension of its exemption, and of the invalidity of any exemption certificates filed with such dealers.

D. To facilitate the administration of this section, notwithstanding the provisions of § 58.1-623, the Tax Commissioner is authorized to issue exemption permits to any person who is entitled to an exemption, and to require the use of such permits in making purchases. If the Tax Commissioner issues an exemption permit to a nonprofit organization, other than a nonprofit church, that has qualified for a sales and use tax exemption under §§ 58.1-609.4, 58.1-609.7, 58.1-609.8, 58.1-609.9 or § 58.1-609.10, the provisions of subsection F of § 30-19.05 shall apply with respect thereto.

E. In lieu of the suspension of a person's exemption under subsection A of this section, the Tax Commissioner may assess a penalty of up to \$1,000 for the misuse of an exemption certificate by that person ~~or by any other person who, with the consent or knowledge of the exemption holder, has misused the certificate.~~ The penalty shall be assessed and collected as a part of the tax, and the person so assessed may appeal the penalty pursuant to the provisions of Article 2 (§ 58.1-1820 et seq.) of Chapter 18 of this title.

F. In any instance in which the Tax Commissioner determines that there has been any misuse of an exemption certificate, the person holding the exemption shall be liable for the full amount of tax, and any interest thereon, applicable to any purchase improperly made with his exemption certificate.

G. The suspension of the exemption shall require that the person pay the full amount of the tax at the time of purchase and apply for a refund of the tax so paid. No interest shall be paid on any such refund. Upon application of the person whose certificate has been suspended, the Tax Commissioner, for good cause shown, may reinstate the person's certificate; however, any such suspension period shall run for at least one year.

H. Notwithstanding § 58.1-3, the Tax Commissioner may report any gross misuses of exemption certificates to the Secretary of Finance and the chairmen of the money committees, for their confidential use, prior to the beginning of the following session of the General Assembly.