

024313772

HOUSE BILL NO. 1172

Offered January 10, 2002

A BILL to amend and reenact §§ 58.1-1824 and 58.1-1825 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 58.1-1823.1, relating to corrections of income tax assessments; appeals.

Patron—Howell

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-1824 and 58.1-1825 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding a section numbered 58.1-1823.1 as follows:

§ 58.1-1823.1. Appeals to independent hearing examiner for income tax assessments.

A. Any person assessed with any tax imposed pursuant to Articles 2 (§ 58.1-320 et seq.) and 10 (§ 58.1-400 et seq.) of Chapter 3 of this title and aggrieved by any such assessment may, unless otherwise specifically provided by law, within three years from the date such assessment is made, or one year from the date of the Tax Commissioner's determination under § 58.1-1822, whichever is later, file an appeal with an independent hearing examiner appointed by the Attorney General from a list of experienced tax attorneys licensed to practice law in the Commonwealth.

B. Any person whose income tax assessment has been improperly collected from property exempt from process may within three years from the date such assessment is made, or if later, within one year of the Tax Commissioner's determination on a process exemption claim under § 58.1-1821, file an appeal with an independent hearing examiner in accordance with subsection A.

C. The application for such an appeal shall be filed with the Attorney General's Office on forms provided by the Tax Commissioner within ninety days after an assessment or the Tax Commissioner's determination, whichever is later. It shall be the burden of the taxpayer in any such proceeding to show that the assessment or collection complained of is erroneous or otherwise improper. The venue for an appeal pursuant to this section shall be (i) where the taxpayer resides, (ii) where the taxpayer has a registered office or regularly or systematically conducts business, (iii) where the taxpayer's real or personal property involved in such a proceeding is located or (iv) the Attorney General's office in the City of Richmond.

§ 58.1-1824. Protective claim for refund.

Any person who has paid an assessment of taxes administered by the Department of Taxation may preserve his judicial remedies by filing a claim for refund with the Tax Commissioner on forms prescribed by the Department within three years of the date such tax was assessed. Such taxpayer may, at any time before the end of one year after the date of (i) the Tax Commissioner's decision on such claim, or (ii) in the case of taxes imposed pursuant to Articles 2 (§ 58.1-320 et seq.) and 10 (§ 58.1-400 et seq.) of Chapter 3 of this title, the independent hearing examiner's appeals decision in accordance with § 58.1-1823.1, whichever is later, seek redress from the circuit court under § 58.1-1825. The Tax Commissioner may decide such claim on the merits in the manner provided in § 58.1-1822 for appeals under § 58.1-1821, or may, in his discretion, hold such claim without decision pending the conclusion of litigation affecting such claim. The fact that such claim is pending shall not be a bar to any other action under this chapter.

§ 58.1-1825. Application to court for correction of erroneous or improper assessments of state taxes generally.

A. Any person assessed with any tax administered by the Department of Taxation and aggrieved by any such assessment may, unless otherwise specifically provided by law, within (i) three years from the date such assessment is made, or (ii) one year from the date of the Tax Commissioner's determination under § 58.1-1822, or (iii) in the case of taxes imposed pursuant to Articles 2 (§ 58.1-320 et seq.) and 10 (§ 58.1-400 et seq.) of Chapter 3 of this title, one year from the date the independent hearing examiner's decision under § 58.1-1823.1, whichever is later, apply to a circuit court for relief. The venue for such proceeding shall be as specified in subdivision 13 b of § 8.01-261. The application shall be before the court when it is filed in the clerk's office. Such application shall not be deemed filed unless (i) the assessment has been paid or (ii) in lieu of payment, the taxpayer has posted bond pursuant to the provisions of § 16.1-107, with a corporate surety licensed to do business in Virginia, within ninety days from the date such assessment is made. However, such payment or posting of bond shall not be required when the assessment is for taxes imposed pursuant to Articles 2 (§ 58.1-320 et seq.) and 10 (§ 58.1-400 et seq.) of Chapter 3 of this title.

INTRODUCED

HB1172

59 B. Any person whose assessment has been improperly collected from property exempt from process
60 may (i) within three years from the date such assessment is made, ~~or if later,~~ (ii) within one year of the
61 Tax Commissioner's decision on a process exemption claim under § 58.1-1821, *or (iii), in the case of*
62 *taxes imposed pursuant to Articles 2 (§ 58.1-320 et seq.) and 10 (§ 58.1-400 et seq.) of Chapter 3 of*
63 *this title, within one year of an independent hearing examiner's decision under § 58.1-1823.1, whichever*
64 *is later,* apply to a circuit court for relief. The venue for such proceeding shall be as specified in
65 subdivision 13 b of § 8.01-261.

66 The Department shall be named as defendant, and the proceedings shall be conducted as an action at
67 law before the court sitting without a jury. It shall be the burden of the applicant in any such proceeding
68 to show that the assessment or collection complained of is erroneous or otherwise improper. The court's
69 order shall be entered pursuant to § 58.1-1826.