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## HOUSE BILL NO. 318

Offered January 9, 2002

Prefiled January 7, 2002

A *BILL to amend and reenact § 58.1-3983.1 of the Code of Virginia, relating to local business tax appeals.*

\_\_\_\_\_  
Patron—Howell

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Referred to Committee on Finance

**Be it enacted by the General Assembly of Virginia:****1. That § 58.1-3983.1 of the Code of Virginia is amended and reenacted as follows:**

§ 58.1-3983.1. Appeals and rulings of certain local business taxes.

A. For purposes of this section:

"Jeopardized by delay" means that a taxpayer desires to (i) depart quickly from the locality, (ii) remove his property therefrom, (iii) conceal himself or his property therein, or (iv) do any other act tending to prejudice, or to render wholly or partially ineffectual, proceedings to collect the tax for the period in question.

"Local business tax" means machinery and tools tax; business tangible personal property tax (including, without limitation, computer equipment); consumer utility tax, admission tax, video programming excise tax, cigarette tax, food and beverage tax, and all other miscellaneous taxes authorized by Chapter 38 (§ 58.1-3800 et seq.) of Title 58.1; and merchant's capital tax.

B. Any person assessed with any local business tax may apply within ~~ninety days~~ *three years* from the date of such assessment to the commissioner of the revenue or other official responsible for assessment for a correction of the assessment. The application shall be filed in good faith and sufficiently identify the taxpayer, remedy sought, each alleged error in the assessment, the grounds upon which the taxpayer relies, and any other facts relevant to the taxpayer's contention. The commissioner or other assessing official may hold a conference with the taxpayer if requested by the taxpayer, or require submission of additional information and documents or other evidence deemed necessary for a proper and equitable determination of the application. The assessment shall be deemed prima facie correct. The commissioner or other assessing official shall undertake a full review of the taxpayer's claims and issue a determination to the taxpayer setting forth his position within ninety days after such application is filed. Such determination shall be accompanied by a written explanation of the taxpayer's right to seek correction and the specific procedure to be followed in the jurisdiction (e.g., the name and address to which an application should be directed).

C. Provided a timely and complete application is made, collection activity shall be suspended by the treasurer or other official responsible for the collection of such tax until a final determination is issued by the commissioner or other assessing official, unless the treasurer or other collection official determines that collection would be jeopardized by delay or is advised by the commissioner or other assessing official that the taxpayer has not responded to a request for relevant information after a reasonable time. Interest shall accrue in accordance with the provisions of subdivision A 2 e of § 58.1-3703.1, but no further penalty shall be imposed while collection action is suspended.

D. Any person assessed with a local business tax may apply within ninety days of the determination by the commissioner of the revenue or other assessing official on an application pursuant to subsection B to the Tax Commissioner for a correction of such assessment. *A taxpayer who has filed an application with a local assessing officer under subsection B and not received a final determination from the local assessing officer within one year of such filing may, at his option at anytime after such year, treat such lack of action as an adverse determination and seek review of the assessment by the Tax Commissioner.* The Tax Commissioner shall issue a determination to the taxpayer within ninety days of receipt of the taxpayer's application, unless the taxpayer and the commissioner of the revenue or other assessing official are notified that a longer period will be required. The person making such request for correction to the Tax Commissioner must in all cases have filed with the affected commissioner of the revenue or other local assessing official a copy of such person's application for correction to the Tax Commissioner. The Tax Commissioner shall furnish a copy of such person's request for correction to the affected commissioner of the revenue or other local assessing official within fourteen working days of the receipt of the request for correction and shall allow the local assessing official to participate in the proceedings. The application shall be treated as an application pursuant to § 58.1-1821, and the Tax Commissioner may issue an order correcting such assessment of such property pursuant to § 58.1-1822, if the taxpayer has met the burden of proof provided in § 58.1-3987. Following

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59 such an order, either the taxpayer or the commissioner of the revenue or other assessing official may  
60 apply to the appropriate circuit court pursuant to § 58.1-3984. However, the burden shall be on the party  
61 making the application to show that the ruling of the Tax Commissioner is erroneous. Neither the Tax  
62 Commissioner nor the Department of Taxation shall be made a party to an application to correct an  
63 assessment merely because the Tax Commissioner has ruled on it.

64 E. On receipt of a notice of intent to file an appeal to the Tax Commissioner under subsection D, the  
65 treasurer or other official responsible for the collection of such tax shall further suspend collection  
66 activity until a final determination is issued by the Tax Commissioner, unless the treasurer or other  
67 collection official determines that collection would be jeopardized by delay or is advised by the  
68 commissioner or other assessing official that the taxpayer has not responded to a request for relevant  
69 information after a reasonable time. Interest shall accrue in accordance with the provisions of  
70 subdivision A 2 e of § 58.1-3703.1, but no further penalty shall be imposed while collection action is  
71 suspended.

72 F. Any taxpayer may request a written ruling regarding the application of a local business tax to a  
73 specific situation from the commissioner of the revenue or other assessing official. Any taxpayer  
74 requesting such a ruling shall provide all the relevant facts for the situation and may present a rationale  
75 for the basis of an interpretation of the law most favorable to the taxpayer. Any misrepresentation or  
76 change in the applicable law or the factual situation as presented in the ruling request shall invalidate  
77 any such ruling issued. A written ruling may be revoked or amended prospectively if (i) there is a  
78 change in the law, a court decision, or the guidelines issued by the Department of Taxation upon which  
79 the ruling was based or (ii) the commissioner of the revenue or other assessing official notifies the  
80 taxpayer of a change in the policy or interpretation upon which the ruling was based. However, any  
81 taxpayer who acts on a written ruling which later becomes invalid shall be deemed to have acted in  
82 good faith during the period in which such ruling was in effect.

83 G. Every person who is assessable with a local business tax shall keep sufficient records to enable  
84 the commissioner of the revenue or other assessing official to verify the correctness of the tax paid for  
85 the taxable years assessable and to enable the commissioner of the revenue or other assessing official to  
86 ascertain what is the correct amount of tax that was assessable for each of those years. All such records,  
87 books of accounts and other information shall be open to inspection and examination by the  
88 commissioner of the revenue or other assessing official in order to allow him to establish whether the  
89 tax is due within this jurisdiction. The commissioner of the revenue or other assessing official shall  
90 provide the taxpayer with the option to conduct the audit in the taxpayer's local business office, if the  
91 records are maintained there. In the event the records are maintained outside this jurisdiction, copies of  
92 the appropriate books and records shall be sent to the commissioner's or assessor's office upon demand.

93 **2. That the amendments to subsections A and B of § 58.1-3983.1 shall apply to all appeals filed on**  
94 **or after July 1, 2001; and the amendments to subsection D of § 58.1-3983.1 shall apply to all**  
95 **appeals (i) pending on or after July 1, 2001, or (ii) filed on or after July 1, 2001.**