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## HOUSE BILL NO. 318

## AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Finance  
on February 4, 2002)

(Patron Prior to Substitute—Delegate Howell)

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

**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:

"Appealable event" means an increase in the assessment of a local business tax payable by a taxpayer, the denial of a refund, or the assessment of a local business tax where none previously was assessed, arising out of the local assessing official's (i) examination of records, financial statements, books of account or other information for the purpose of determining the correctness of an assessment, (ii) determination regarding the rate or classification applicable to the machinery and tools, property or merchants' capital at issue, (iii) assessment of a local business tax when no return has been filed by the taxpayer, or (iv) denial of an application for correction of erroneous assessments attendant to the filing of an amended local business tax return.

"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), and merchant's capital tax.

B. Any person assessed with any local business tax may apply within ~~ninety days~~ *one year* from the ~~date of such assessment~~ *last day of the tax year for which such assessment is made, or within one year from the date of an appealable event, whichever is later,* 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. *1. Any person assessed with a local business tax whose application for a correction of assessment pursuant to subsection A has been denied in whole or in part 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. 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*

60 issue an order correcting such assessment of such property pursuant to § 58.1-1822, if the taxpayer has  
61 met the burden of proof provided in § 58.1-3987. Following such an order, either the taxpayer or the  
62 commissioner of the revenue or other assessing official may apply to the appropriate circuit court  
63 pursuant to § 58.1-3984. However, the burden shall be on the party making the application to show that  
64 the ruling of the Tax Commissioner is erroneous. Neither the Tax Commissioner nor the Department of  
65 Taxation shall be made a party to an application to correct an assessment merely because the Tax  
66 Commissioner has ruled on it.

67 2. *Any taxpayer whose application for correction pursuant to subsection A has been pending for*  
68 *more than two years without the issuance of a final determination may, upon not less than thirty days'*  
69 *written notice to the assessor, elect to treat the application as denied and appeal the assessment to the*  
70 *Tax Commissioner in accordance with the provisions of subdivision D. 1. The Tax Commissioner shall*  
71 *not consider an appeal filed pursuant to the provisions of this subdivision if he finds that the absence of*  
72 *a final determination on the part of the assessor was caused by the willful failure or refusal of the*  
73 *taxpayer to provide information requested and reasonably needed by the assessor to make his*  
74 *determination.*

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

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

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

104 **2. That the amendments to subsections A and B of § 58.1-3983.1 shall apply to all appeals filed on**  
105 **or after July 1, 2002; and the amendments to subsection D of § 58.1-3983.1 shall apply to all**  
106 **applications for correction of assessment pending or filed on or after July 1, 2002.**