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HOUSE BILL NO. 2538

Offered January 8, 2003

Prefiled January 8, 2003

A BILL to amend and reenact § 58.1-1825 of the Code of Virginia, relating to application to court for correction of state tax assessments.

Patrons—Louderback, Joannou, Johnson, McDonnell, Melvin and Parrish; Senators: Bolling, Colgan and Hanger

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:**1. That § 58.1-1825 of the Code of Virginia is amended and reenacted as follows:**

§ 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, 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.

B. Except as provided in subsection C, the court shall require the applicant to pay the assessment before proceeding with its application upon granting a motion by the Tax Commissioner seeking to compel such payment and showing to the satisfaction of the court that the Department is likely to prevail on the merits of the case, that the application is (i) not well grounded in fact; (ii) not warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; (iii) interposed for an improper purpose, such as to harass, to cause unnecessary delay in the collection of the revenue, or to create needless cost to the Commonwealth from the litigation; or (iv) otherwise frivolous.

C. In lieu of the payment required in subsection B, the taxpayer may, within 60 days of the court's ruling, (i) post a bond pursuant to the provisions of § 16.1-107, with a corporate surety licensed to do business in Virginia, or (ii) file an irrevocable letter of credit satisfactory to the Tax Commissioner as to the bank or savings institution, the form and substance, and payable to the Commonwealth in the face amount of the contested assessment increased by twice the interest rate for underpayments published by the Department and in effect at the time the application is filed. The letter of credit shall be from a bank incorporated or authorized to conduct banking business under the laws of this Commonwealth or authorized to do business in this Commonwealth under the banking laws of the United States, or a federally insured savings institution located in this Commonwealth. Such bond or irrevocable letter of credit shall be conditioned upon payment by the applicant of the amount of the taxes, penalty and interest ordered by the court pursuant to § 58.1-1826, if any.

D. Any person whose 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 decision on a process exemption claim under § 58.1-1821 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 Department shall be named as defendant, and the proceedings shall be conducted as an action at law before the court sitting without a jury. It shall be the burden of the applicant in any such proceeding to show that the assessment or collection complained of is erroneous or otherwise improper. The court's order shall be entered pursuant to § 58.1-1826.

E. Nothing in this section shall prevent the Tax Commissioner from collecting the assessment if he determines that collection is in jeopardy.

INTRODUCED

HB2538