

# VIRGINIA ACTS OF ASSEMBLY -- 2004 SESSION

## CHAPTER 527

*An Act to amend and reenact § 58.1-3983.1 of the Code of Virginia, relating to appeals and rulings of certain local business taxes.*

[H 295]

Approved April 12, 2004

**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), and merchant's capital tax.

B. Any person assessed with any local business tax may apply within one year from the last day of the tax year for which such assessment is made, or within one year from the date of such assessment, 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 90 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 whose application for a correction of assessment pursuant to subsection B has been denied in whole or in part may apply within 90 days of the determination by the commissioner of the revenue or other assessing official to the Tax Commissioner for a correction of such assessment. The Tax Commissioner shall determine whether he has jurisdiction to hear the appeal within 30 days of receipt of the taxpayer's application for correction of an assessment. If the Tax Commissioner has jurisdiction, he shall issue a determination to the taxpayer within 90 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. Such longer period of time shall not exceed 60 days, and the Tax Commissioner shall notify the affected parties of the reason necessitating the longer period of time. If the Tax Commissioner is unable to issue a determination within the 60-day extension period due to the failure of an affected party to supply the Tax Commissioner with necessary information, the Tax Commissioner shall certify this fact in writing prior to the expiration of the extension period. The Tax Commissioner shall then issue his determination within 60 days of receipt of such necessary information. 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 14 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 such an order, either the taxpayer or the commissioner of the

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

2. Any taxpayer whose application for correction pursuant to subsection B has been pending for more than two years without the issuance of a final determination may, upon not less than 30 days' written notice to the assessor, elect to treat the application as denied and appeal the assessment to the Tax Commissioner in accordance with the provisions of subdivision D 1. The Tax Commissioner shall not consider an appeal filed pursuant to the provisions of this subdivision if he finds that the absence of a final determination on the part of the assessor was caused by the willful failure or refusal of the taxpayer to provide information requested and reasonably needed by the assessor to make his determination.

E. On receipt of a notice of intent to file an appeal to the Tax Commissioner under subsection D, the treasurer or other official responsible for the collection of such tax shall further suspend collection activity until a final determination is issued by the Tax Commissioner, 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.

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

*G. The Tax Commissioner shall have the authority to issue advisory written opinions in specific cases as requested to interpret a local business tax and matters related to the administration thereof when an assessment of that tax is subject to appeal to the Tax Commissioner under this chapter. Opinions issued pursuant to this section shall not be applicable as an interpretation of any other tax law.*

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