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HOUSE BILL NO. 464

Offered January 14, 2004

Prefiled January 13, 2004

A BILL to amend and reenact §§ 15.2-717, 58.1-3103, 58.1-3983.1, 58.1-3984, and 58.1-3993 of the Code of Virginia, to amend and reenact § 3 of Chapter 261 of the Acts of Assembly of 1936 (which was continued in effect by § 58-769 of the Code of Virginia; and now continued in effect by § 58.1-3260 of the Code of Virginia), as amended by Chapter 422 of the Acts of Assembly of 1950, as amended by Chapter 339 of the Acts of Assembly of 1958, and as amended by Chapter 1036 of the Acts of Assembly of 2003, relating to local taxes; appeals.

Patron—Drake

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That §§ 15.2-717, 58.1-3103, 58.1-3983.1, 58.1-3984, and 58.1-3993 of the Code of Virginia are amended and reenacted as follows:

§ 15.2-717. Time in which to contest real property assessments.

Any person aggrieved by an assessment of real estate made by the department of real estate assessments may apply for relief to the circuit court of the county ~~within one year from December 31 of the year in which such assessment is made~~ : (i) for assessments made prior to January 1, 2005, *within one year from December 31 of the year in which such assessment is made or one year from the date of the Tax Commissioner's final determination under subsection D of § 58.1-3983.1, whichever is later*; (ii) ~~within two years from December 31 of the year in which such assessment is made~~ for assessments made on and after January 1, 2005, but prior to January 1, 2007, *within two years from December 31 of the year in which such assessment is made or one year from the date of the Tax Commissioner's final determination under subsection D of § 58.1-3983.1, whichever is later*; and within the time frame as provided by general law pursuant to § 58.1-3984 for assessments made on and after January 1, 2007. No person may make such application for a year other than the current year unless such person has provided to the assessor, commissioner of the revenue, or the governing body, written notice of disagreement with the assessment, during the applicable tax year. The application shall be before the court when it is filed in the clerk's office. In such proceeding the burden of proof shall be on the taxpayer to show that the property in question is valued at more than its fair market value or that the assessment is not uniform in its application, or that the assessment is otherwise invalid or illegal, but it shall not be necessary for the taxpayer to show that intentional, systematic and willful discrimination has taken place. The proceedings shall be conducted as an action at law before the court, sitting without a jury, and the court shall act with the authority granted by §§ 58.1-3987 and 58.1-3988.

§ 58.1-3103. When commissioners begin work; commissioners to make assessments.

Each commissioner shall begin annually, on the first day of January, to discharge the duties prescribed by law. As part of his duties each commissioner of the revenue shall ascertain and assess, at fair market value, all subjects of taxation in his county or city on the first day of January in each year, except as otherwise provided by law. *For each such assessment, prior to the time that the tax for such assessment is due, the commissioner shall provide in writing to each applicable taxpayer: (i) the amount of the assessment, and if it is on property, a description of that property; (ii) the valuation method used; (iii) the tax rate that applies; (iv) the date the applicable taxes will be due; (v) the method of calculating any interest that may accrue on the taxes after they become due; and (vi) a description of the procedures available to the taxpayer should he wish to appeal the assessment.*

§ 58.1-3983.1. Appeals and rulings of local 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 tax" means any tax imposed by a county, city, or town.

"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

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59 correction of the assessment. The application shall be filed in good faith and sufficiently identify the
60 taxpayer, remedy sought, each alleged error in the assessment, the grounds upon which the taxpayer
61 relies, and any other facts relevant to the taxpayer's contention. The commissioner or other assessing
62 official may hold a conference with the taxpayer if requested by the taxpayer, or require submission of
63 additional information and documents or other evidence deemed necessary for a proper and equitable
64 determination of the application. The assessment shall be deemed prima facie correct. The commissioner
65 or other assessing official shall undertake a full review of the taxpayer's claims and issue a
66 determination to the taxpayer setting forth his position within 90 days after such application is filed.
67 Such determination shall be accompanied by a written explanation of the taxpayer's right to seek
68 correction and the specific procedure to be followed in the jurisdiction (e.g., the name and address to
69 which an application should be directed).

70 C. Provided a timely and complete application is made, collection activity shall be suspended by the
71 treasurer or other official responsible for the collection of such tax until a final determination is issued
72 by the commissioner or other assessing official, unless the treasurer or other collection official
73 determines that collection would be jeopardized by delay or is advised by the commissioner or other
74 assessing official that the taxpayer has not responded to a request for relevant information after a
75 reasonable time. Interest shall accrue in accordance with the provisions of subdivision A 2 e of
76 § 58.1-3703.1, but no further penalty shall be imposed while collection action is suspended.

77 D. 1. Any person whose application for a correction of assessment pursuant to subsection B has been
78 denied in whole or in part may apply within 90 days of the determination by the commissioner of the
79 revenue or other assessing official to the Tax Commissioner for a correction of such assessment. The
80 Tax Commissioner shall determine whether he has jurisdiction to hear the appeal within 30 days of
81 receipt of the taxpayer's application for correction of an assessment. If the Tax Commissioner has
82 jurisdiction, he shall issue a determination to the taxpayer within 90 days of receipt of the taxpayer's
83 application, unless the taxpayer and the commissioner of the revenue or other assessing official are
84 notified that a longer period will be required. Such longer period of time shall not exceed 60 days, and
85 the Tax Commissioner shall notify the affected parties of the reason necessitating the longer period of
86 time. If the Tax Commissioner is unable to issue a determination within the 60-day extension period due
87 to the failure of an affected party to supply the Tax Commissioner with necessary information, the Tax
88 Commissioner shall certify this fact in writing prior to the expiration of the extension period. The Tax
89 Commissioner shall then issue his determination within 60 days of receipt of such necessary
90 information. The person making such request for correction to the Tax Commissioner must in all cases
91 have filed with the affected commissioner of the revenue or other local assessing official a copy of such
92 person's application for correction to the Tax Commissioner. The Tax Commissioner shall furnish a copy
93 of such person's request for correction to the affected commissioner of the revenue or other local
94 assessing official within 14 working days of the receipt of the request for correction and shall allow the
95 local assessing official to participate in the proceedings. The application shall be treated as an
96 application pursuant to § 58.1-1821, and the Tax Commissioner may issue an order correcting such
97 assessment of such property pursuant to § 58.1-1822, if the taxpayer has met the burden of proof
98 provided in § 58.1-3987. Following such an order, either the taxpayer or the commissioner of the
99 revenue or other assessing official may apply to the appropriate circuit court pursuant to § 58.1-3984.
100 However, the burden shall be on the party making the application to show that the ruling of the Tax
101 Commissioner is erroneous. *If the commissioner of the revenue or other assessing official challenges the*
102 *ruling of the Tax Commissioner in circuit court, then, to prevail, he must prove to the court with clear*
103 *and convincing evidence that the Tax Commissioner's ruling was erroneous.* Neither the Tax
104 Commissioner nor the Department of Taxation shall be made a party to an application to correct an
105 assessment merely because the Tax Commissioner has ruled on it.

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

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

suspended. *No tax that is the subject of an application filed pursuant to subsection D shall be the basis for a locality to withhold any license under Chapter 37 (§ 58.1-3700 et seq.) of this title nor be the basis to withhold a license or indicia of payment under § 46.2-752 during the time the Tax Commissioner retains jurisdiction.*

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. 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.

§ 58.1-3984. Application to court to correct erroneous assessments of local levies generally.

A. Any person assessed with local taxes, aggrieved by any such assessment, may, unless otherwise specially provided by law (including, but not limited to, as provided under (i) § 15.2-717 and (ii) § 3 of Chapter 261 of the Acts of Assembly of 1936 (which was continued in effect by § 58-769 of the Code of Virginia; and now continued in effect by § 58.1-3260), as amended by Chapter 422 of the Acts of Assembly of 1950, as amended by Chapter 339 of the Acts of Assembly of 1958, and as amended by the 2003 Regular Session of the General Assembly), (a) within three years from the last day of the tax year for which any such assessment is made, (b) within one year from the date of the assessment, (c) within one year from the date of the Tax Commissioner's final determination under ~~§ 58.1-3703.1 A 5 or § 58.1-3983.1 D subdivision A 5 of § 58.1-3703.1 or subsection D of § 58.1-3983.1~~, or (d) within one year from the date of the final determination under § 58.1-3981, whichever is later, apply for relief to the circuit court of the county or city wherein such assessment was made. The application shall be before the court when it is filed in the clerk's office. In such proceeding the burden of proof shall be upon the taxpayer to show that the property in question is valued at more than its fair market value or that the assessment is not uniform in its application, or that the assessment is otherwise invalid or illegal, but it shall not be necessary for the taxpayer to show that intentional, systematic and willful discrimination has been made. The proceedings shall be conducted as an action at law before the court, sitting without a jury. The county or city attorney, or if none, the attorney for the Commonwealth, shall defend the application.

B. In the event it comes or is brought to the attention of the commissioner of the revenue of the locality that the assessment of any tax is improper or is based on obvious error and should be corrected in order that the ends of justice may be served, and he is not able to correct it under § 58.1-3981, the commissioner of the revenue shall apply to the appropriate court, in the manner herein provided for relief of the taxpayer. Such application may include a petition for relief for any of several taxpayers.

C. *When an application is filed pursuant to subsection A, the treasurer or other official responsible for the collection of the tax shall suspend collection activity while the court retains jurisdiction and during the pendency of any appeal that may be taken to the Supreme Court of Virginia, unless the assessing official shows to the satisfaction of the court: that collection would be seriously jeopardized by delay; or that the assessing official is likely to prevail on the merits of the case because the taxpayer's 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 locality from the litigation; or (iv) otherwise frivolous.*

D. *If the court permits the treasurer or other official responsible for the collection of the tax to continue collection activities under subsection C, the treasurer or other official responsible for the collection of the tax shall nonetheless cease all collection activity if the taxpayer, within 60 days of the*

court's ruling, (i) posts a bond pursuant to the provisions of § 16.1-107, with a corporate surety licensed to do business in Virginia, or (ii) files an irrevocable letter of credit satisfactory to the assessing official as to the bank or savings institution, the form and substance, and payable to the locality in the face amount of the contested assessment. 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.

E. No tax that is the subject of an application filed pursuant to subsection A shall be the basis for a locality to withhold any license under Chapter 37 (§ 58.1-3700 et seq.) of this title nor be the basis to withhold a license or indicia of payment under § 46.2-752 during the time the court retains jurisdiction and during the pendency of any appeal that may be taken to the Supreme Court of Virginia.

§ 58.1-3993. No injunctions against assessment or collection of taxes.

Except as otherwise provided in § 58.1-3984, no suit for the purpose of restraining the assessment or collection of any local tax shall be maintained in any court of this Commonwealth, except when the party has no adequate remedy at law.

2. That § 3 of Chapter 261 of the Acts of Assembly of 1936 (which was continued in effect by § 58-769 of the Code of Virginia; and now continued in effect by § 58.1-3260 of the Code of Virginia), as amended by Chapter 422 of the Acts of Assembly of 1950, as amended by Chapter 339 of the Acts of Assembly of 1958, and as amended by Chapter 1036 of the Acts of Assembly of 2003, is amended and reenacted as follows:

§ 3. The circuit court of any such city or the judge thereof in vacation shall before the first day of July in each year appoint for such city a board of review of real estate assessments, to be composed of three members, who shall be residents, a majority of whom shall be freeholders, of the city for which they serve, any two of whom shall have authority to act for the board. One member of the board shall be a real estate broker as defined by § 54.1-2100 of the Code of Virginia, one member of the board shall be a contractor as defined in § 58.1-3714 of the Code of Virginia, and one member of the board shall be a person who shall have had at least five years' experience in appraising the value of real estate. The terms of such members shall commence on the date of their appointment and shall expire on the thirtieth day of November of the year in which they are appointed unless such terms are extended. The circuit court or the judge thereof in vacation may extend the terms of the members of the said board of review and shall fill any vacancy therein for the unexpired term. The members of the board shall receive per diem compensation for the time actually engaged in the duties of the board, to be fixed by the circuit court or the judge thereof in vacation and to be paid out of the treasury of such city; provided, however, the said circuit court or judge may limit the per diem compensation to such number of days as in its or his judgment is sufficient for the completion of the work of the board. Such board of review shall have and may exercise the power to review any assessment of real estate made by the assessor or assessors appointed pursuant to § 1 of this chapter in the year in which they serve upon the complaint of the owner of the real estate, and to change, revise, correct and amend any such assessment, and to that end shall have all the powers conferred upon the said assessor or assessors. The board may adopt any regulations providing for the oral presentation, without formal petition or other pleadings or request for review, and looking to the further facilitation and simplification of proceedings before the board. The assessor or one of the assessors appointed pursuant to § 1 of this chapter shall attend and participate in the proceedings of, but shall not vote in, the meetings of the board. Any person or any such city aggrieved by any assessment made by the assessor or assessors appointed pursuant to § 1 of this chapter or by the board of review may apply for relief to the circuit court of such city within one year from the thirty-first day of December of the year in which such assessment is made for assessments made prior to January 1, 2005; within two years from December 31 of the year in which such assessment is made for assessments made on and after January 1, 2005, but prior to January 1, 2007: (i) for assessments made prior to January 1, 2005, within one year from December 31 of the year in which such assessment is made or one year from the date of the Tax Commissioner's final determination under subsection D of § 58.1-3983.1 of the Code of Virginia, whichever is later; (ii) for assessments made on and after January 1, 2005, but prior to January 1, 2007, within two years from December 31 of the year in which such assessment is made or one year from the date of the Tax Commissioner's final determination under subsection D of § 58.1-3983.1, whichever is later; and (iii) within the timeframe as provided by general law pursuant to § 58.1-3984 of the Code of Virginia for assessments made on and after January 1, 2007. No person may make such application for a year other than the current year unless such person has provided to the assessor, commissioner of the revenue, or the governing body, written notice of disagreement with the assessment, during the applicable tax year. All other procedures in such cases shall be

244 in the manner prescribed by §§ 58.1-3984 through 58.1-3989, both inclusive, of the Code of
245 Virginia.

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