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**HOUSE BILL NO. 464****AMENDMENT IN THE NATURE OF A SUBSTITUTE**(Proposed by the House Committee on Finance  
on February 11, 2004)

(Patrons Prior to Substitute—Delegates Drake and Parrish [HB 1078])

*A BILL to amend and reenact §§ 58.1-3103, 58.1-3983.1, 58.1-3984, and 58.1-3993 of the Code of Virginia, relating to local taxes; appeals.***Be it enacted by the General Assembly of Virginia:****1. That §§ 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:**

§ 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 of local tax as defined in § 58.1-3983.1, prior to the time that any tax with respect to such assessment is due, the commissioner or other local tax official shall provide in writing to each applicable taxpayer: (i) the amount of the assessment and a description of the property; (ii) the valuation method used; (iii) the date the applicable taxes will be due; and (iv) 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, for the purposes of this section, the tangible personal property tax on airplanes, boats, campers, recreational vehicles, and trailers.*

"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 tax* or 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

60 the Tax Commissioner shall notify the affected parties of the reason necessitating the longer period of  
61 time. If the Tax Commissioner is unable to issue a determination within the 60-day extension period due  
62 to the failure of an affected party to supply the Tax Commissioner with necessary information, the Tax  
63 Commissioner shall certify this fact in writing prior to the expiration of the extension period. The Tax  
64 Commissioner shall then issue his determination within 60 days of receipt of such necessary  
65 information. The person making such request for correction to the Tax Commissioner must in all cases  
66 have filed with the affected commissioner of the revenue or other local assessing official a copy of such  
67 person's application for correction to the Tax Commissioner. The Tax Commissioner shall furnish a copy  
68 of such person's request for correction to the affected commissioner of the revenue or other local  
69 assessing official within 14 working days of the receipt of the request for correction and shall allow the  
70 local assessing official to participate in the proceedings. The application shall be treated as an  
71 application pursuant to § 58.1-1821, and the Tax Commissioner may issue an order correcting such  
72 assessment of such property pursuant to § 58.1-1822, if the taxpayer has met the burden of proof  
73 provided in § 58.1-3987. *The Tax Commissioner shall not make a determination regarding the valuation*  
74 *or the method of valuation of property subject to any local tax other than a local business tax.*  
75 Following such an order, either the taxpayer or the commissioner of the revenue or other assessing  
76 official may apply to the appropriate circuit court pursuant to § 58.1-3984. However, the burden shall be  
77 on the party making the application to show that the ruling of the Tax Commissioner is erroneous.  
78 Neither the Tax Commissioner nor the Department of Taxation shall be made a party to an application  
79 to correct an assessment merely because the Tax Commissioner has ruled on it.

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

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

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

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

117 § 58.1-3984. Application to court to correct erroneous assessments of local levies generally.

118 A. Any person assessed with local taxes, aggrieved by any such assessment, may, unless otherwise  
119 specially provided by law (including, but not limited to, as provided under (i) § 15.2-717 and (ii) § 3 of  
120 Chapter 261 of the Acts of Assembly of 1936 (which was continued in effect by § 58-769 of the Code  
121 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 with respect to a local tax as defined in § 58.1-3983.1 and served upon the parties, the treasurer or other official responsible for the collection of the tax shall suspend collection activity with respect to the amount of tax in dispute 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 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.*

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

~~No~~*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 the provisions of this act shall be effective with respect to tax years commencing on or after January 1, 2005.**