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HOUSE BILL NO. 464

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Finance
on March 2, 2004)

(Patron Prior to Substitute—Delegate Drake)

*A BILL to amend and reenact §§ 58.1-3103 and 58.1-3983.1 of the Code of Virginia, relating to local taxes; appeals.***Be it enacted by the General Assembly of Virginia:****1. That §§ 58.1-3103 and 58.1-3983.1 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 mobile property 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 and the records required 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 business tax" means machinery and tools tax, business tangible personal property tax (including, without limitation, computer equipment), and merchant's capital tax.

"Local mobile property tax" means the tangible personal property tax on airplanes, boats, campers, recreational vehicles, and trailers.

B. Any person assessed with any *local mobile property 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 mobile property tax*
97 *or a local business tax* to a specific situation from the commissioner of the revenue or other assessing
98 official. Any taxpayer requesting such a ruling shall provide all the relevant facts for the situation and
99 may present a 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 mobile property tax or a local business tax* shall
108 keep sufficient records to enable the commissioner of the revenue or other assessing official to verify
109 the correctness of the tax paid for the taxable years assessable and to enable the commissioner of the
110 revenue or other assessing official to ascertain what is the correct amount of tax that was assessable for
111 each of those years. All such records, books of accounts and other information shall be open to
112 inspection and examination by the commissioner of the revenue or other assessing official in order to
113 allow him to establish whether the tax is due within this jurisdiction. The commissioner of the revenue
114 or other assessing official shall provide the taxpayer with the option to conduct the audit in the
115 taxpayer's local business office, if the records are maintained there. In the event the records are
116 maintained outside this jurisdiction, copies of the appropriate books and records shall be sent to the
117 commissioner's or assessor's office upon demand.

118 **2. That the provisions of this act amending § 58.1-3103 of the Code of Virginia shall become**
119 **effective for tax years beginning on or after January 1, 2005.**

120 **3. That the provisions of this act amending § 58.1-3983.1 of the Code of Virginia shall become**
121 **effective on January 1, 2005.**

122 4. That the Department of Taxation shall develop and publish guidelines for appeals of local
123 mobile property tax disputes not later than November 1, 2004. The development of such guidelines
124 shall be exempt from the provisions of the Administrative Process Act (§ 2.2-4000 et seq. of the
125 Code of Virginia).