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HOUSE BILL NO. 407

Offered January 11, 2006

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A BILL to amend and reenact §§ 58.1-3 and 58.1-202 of the Code of Virginia, relating to the Department of Taxation; earned income tax credit information.

Patron—Callahan

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:**1. That §§ 58.1-3 and 58.1-202 of the Code of Virginia are amended and reenacted as follows:**

§ 58.1-3. Secrecy of information; penalties.

A. Except in accordance with a proper judicial order or as otherwise provided by law, the Tax Commissioner or agent, clerk, commissioner of the revenue, treasurer, or any other state or local tax or revenue officer or employee, or any person to whom tax information is divulged pursuant to § 58.1-2712.2, or any former officer or employee of any of the aforementioned offices shall not divulge any information acquired by him in the performance of his duties with respect to the transactions, property, including personal property, income or business of any person, firm or corporation. Such prohibition specifically includes any copy of a federal return or federal return information required by Virginia law to be attached to or included in the Virginia return. Any person violating the provisions of this section shall be guilty of a Class 2 misdemeanor. The provisions of this subsection shall not be applicable, however, to:

1. Matters required by law to be entered on any public assessment roll or book;

2. Acts performed or words spoken or published in the line of duty under the law;

3. Inquiries and investigations to obtain information as to the process of real estate assessments by a duly constituted committee of the General Assembly, or when such inquiry or investigation is relevant to its study, provided that any such information obtained shall be privileged;

4. The sales price, date of construction, physical dimensions or characteristics of real property, or any information required for building permits;

5. Copies of or information contained in an estate's probate tax return, filed with the clerk of court pursuant to § 58.1-1714, when requested by a beneficiary of the estate or an heir at law of the decedent;

6. Information regarding nonprofit entities exempt from sales and use tax under § 58.1-609.11, when requested by the General Assembly or any duly constituted committee of the General Assembly.

7. *Information on clients of the Department of Social Services provided by the Department of Taxation to the Department of Social Services regarding the clients' income tax filing status, number and type of dependents, and whether the clients have claimed a federal earned income tax credit.*

B. Nothing contained in this section shall be construed to prohibit the publication of statistics so classified as to prevent the identification of particular reports or returns and the items thereof or the publication of delinquent lists showing the names of taxpayers who are currently delinquent, together with any relevant information which in the opinion of the Department may assist in the collection of such delinquent taxes. This section shall not be construed to prohibit a local tax official from disclosing whether a person, firm or corporation is licensed to do business in that locality and divulging, upon written request, the name and address of any person, firm or corporation transacting business under a fictitious name. Additionally, notwithstanding any other provision of law, the commissioner of revenue is authorized to provide, upon written request stating the reason for such request, the Tax Commissioner with information obtained from local tax returns and other information pertaining to the income, sales and property of any person, firm or corporation licensed to do business in that locality.

C. Notwithstanding the provisions of subsection A or B or any other provision of this title, the Tax Commissioner is authorized to: (i) divulge tax information to any commissioner of the revenue, director of finance or other similar collector of county, city or town taxes who, for the performance of his official duties, requests the same in writing setting forth the reasons for such request; (ii) provide to the Commissioner of the Department of Social Services, upon written request, information on the amount of income reported by persons on their state income tax returns who have applied for public assistance or social services benefits as defined in § 63.2-100; (iii) provide to the chief executive officer of the designated student loan guarantor for the Commonwealth of Virginia, upon written request, the names and home addresses of those persons identified by the designated guarantor as having delinquent loans guaranteed by the designated guarantor; (iv) provide current address information upon request to state agencies and institutions for their confidential use in facilitating the collection of accounts receivable,

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HB407

59 and to the clerk of a circuit or district court for their confidential use in facilitating the collection of
60 fines, penalties and costs imposed in a proceeding in that court; (v) provide to the Commissioner of the
61 Virginia Employment Commission, after entering into a written agreement, such tax information as may
62 be necessary to facilitate the collection of unemployment taxes and overpaid benefits; (vi) provide to the
63 Alcoholic Beverage Control Board, upon entering into a written agreement, such tax information as may
64 be necessary to facilitate the collection of state and local taxes and the administration of the alcoholic
65 beverage control laws; (vii) provide to the Director of the State Lottery Department such tax information
66 as may be necessary to identify those lottery ticket retailers who owe delinquent taxes; (viii) provide to
67 the Department of the Treasury for its confidential use such tax information as may be necessary to
68 facilitate the location of owners and holders of unclaimed property, as defined in § 55-210.2; (ix)
69 provide to the State Corporation Commission, upon entering into a written agreement, such tax
70 information as may be necessary to facilitate the collection of taxes and fees administered by the
71 Commission; (x) provide to the Executive Director of the Potomac and Rappahannock Transportation
72 Commission for its confidential use such tax information as may be necessary to facilitate the collection
73 of the motor vehicle fuel sales tax; (xi) provide to the Director of the Department of Charitable Gaming
74 such tax information as may be necessary to identify those applicants for registration as a supplier of
75 charitable gaming supplies who have not filed required returns or who owe delinquent taxes; (xii)
76 provide to the Department of Housing and Community Development for its confidential use such tax
77 information as may be necessary to facilitate the administration of the remaining effective provisions of
78 the Enterprise Zone Act (§ 59.1-270 et seq.), and the Enterprise Zone Grant Program (§ 59.1-538 et
79 seq.); (xiii) provide current name and address information to private collectors entering into a written
80 agreement with the Tax Commissioner, for their confidential use when acting on behalf of the
81 Commonwealth or any of its political subdivisions; however, the Tax Commissioner is not authorized to
82 provide such information to a private collector who has used or disseminated in an unauthorized or
83 prohibited manner any such information previously provided to such collector; (xiv) provide current
84 name and address information as to the identity of the wholesale or retail dealer that affixed a tax stamp
85 to a package of cigarettes to any person who manufactures or sells at retail or wholesale cigarettes and
86 who may bring an action for injunction or other equitable relief for violation of Chapter 10.1,
87 Enforcement of Illegal Sale or Distribution of Cigarettes Act; (xv) provide to the Commissioner of
88 Labor and Industry, upon entering into a written agreement, such tax information as may be necessary to
89 facilitate the collection of unpaid wages under § 40.1-29; and (xvi) provide to the Director of the
90 Department of Human Resource Management, upon entering into a written agreement, such tax
91 information as may be necessary to identify persons receiving workers' compensation indemnity benefits
92 who have failed to report earnings as required by § 65.2-712. The Tax Commissioner is further
93 authorized to enter into written agreements with duly constituted tax officials of other states and of the
94 United States for the inspection of tax returns, the making of audits, and the exchange of information
95 relating to any tax administered by the Department of Taxation. Any person to whom tax information is
96 divulged pursuant to this section shall be subject to the prohibitions and penalties prescribed herein as
97 though he were a tax official.

98 D. Notwithstanding the provisions of subsection A or B or any other provision of this title, the
99 commissioner of revenue or other assessing official is authorized to (i) provide, upon written request
100 stating the reason for such request, the chief executive officer of any county or city with information
101 furnished to the commissioner of revenue by the Tax Commissioner relating to the name and address of
102 any dealer located within the county or city who paid sales and use tax, for the purpose of verifying the
103 local sales and use tax revenues payable to the county or city; (ii) provide to the Department of
104 Professional and Occupational Regulation for its confidential use the name, address, and amount of gross
105 receipts of any person, firm or entity subject to a criminal investigation of an unlawful practice of a
106 profession or occupation administered by the Department of Professional and Occupational Regulation,
107 only after the Department of Professional and Occupational Regulation exhausts all other means of
108 obtaining such information; and (iii) provide to any representative of a condominium unit owners'
109 association, property owners' association or real estate cooperative association, or to the owner of
110 property governed by any such association, the names and addresses of parties having a security interest
111 in real property governed by any such association; however, such information shall be released only
112 upon written request stating the reason for such request, which reason shall be limited to proposing or
113 opposing changes to the governing documents of the association, and any information received by any
114 person under this subsection shall be used only for the reason stated in the written request. The treasurer
115 or other local assessing official may require any person requesting information pursuant to clause (iii) of
116 this subsection to pay the reasonable cost of providing such information. Any person to whom tax
117 information is divulged pursuant to this subsection shall be subject to the prohibitions and penalties
118 prescribed herein as though he were a tax official.

119 Notwithstanding the provisions of subsection A or B or any other provisions of this title, the
120 treasurer or other collector of taxes for a county, city or town is authorized to provide information

relating to any motor vehicle, trailer or semitrailer obtained by such treasurer or collector in the course of performing his duties to the commissioner of the revenue or other assessing official for such jurisdiction for use by such commissioner or other official in performing assessments.

This section shall not be construed to prohibit a local tax official from imprinting or displaying on a motor vehicle local license decal the year, make, and model and any other legal identification information about the particular motor vehicle for which that local license decal is assigned.

E. Notwithstanding any other provisions of law, state agencies and any other administrative or regulatory unit of state government shall divulge to the Tax Commissioner or his authorized agent, upon written request, the name, address, and social security number of a taxpayer, necessary for the performance of the Commissioner's official duties regarding the administration and enforcement of laws within the jurisdiction of the Department of Taxation. The receipt of information by the Tax Commissioner or his agent which may be deemed taxpayer information shall not relieve the Commissioner of the obligations under this section.

F. Additionally, it shall be unlawful for any person to disseminate, publish, or cause to be published any confidential tax document which he knows or has reason to know is a confidential tax document. A confidential tax document is any correspondence, document, or tax return that is prohibited from being divulged by subsection A, B, C, or D of this section. This prohibition shall not apply if such confidential tax document has been divulged or disseminated pursuant to a provision of law authorizing disclosure. Any person violating the provisions of this subsection shall be guilty of a Class 2 misdemeanor.

§ 58.1-202. General powers and duties of Tax Commissioner.

In addition to the powers conferred and the duties imposed elsewhere by law upon the Tax Commissioner, he shall:

1. Supervise the administration of the tax laws of the Commonwealth, insofar as they relate to taxable state subjects and assessments thereon, with a view to ascertaining the best methods of reaching all such property, of effecting equitable assessments and of avoiding conflicts and duplication of taxation of the same property.

2. Recommend to the Governor and the General Assembly measures to promote uniform assessments, just rates and harmony and cooperation among all officials connected with the revenue system of the Commonwealth.

3. Exercise general supervision over all commissioners of the revenue so far as the duties of such officers pertain to state revenues, and confer with, instruct and advise all such officers in the performance of their duties to the extent stated.

4. Investigate at any time the assessment and collection of state taxes in any county or city and when the assessment is found unreasonable and unjust take steps to correct the same in the manner provided by law.

5. Institute proceedings by motion in writing in the proper court for the removal or suspension of commissioners of the revenue for incompetency, neglect or other official misconduct and order the Comptroller to withhold compensation from any commissioner of the revenue who fails to comply with any law governing the duties or any lawful instruction of the Tax Commissioner, until such commissioner of the revenue complies with such law or instruction.

6. Provide commissioners of the revenue with information and assistance in the assessment of personal property, including the maintenance of a reference library and the conduct of instructional programs.

7. Prescribe the forms of books, schedules and blanks to be used in the assessment and collection of state taxes and call for and prescribe the forms of such statistical reports, notices and other papers as he may deem necessary to the proper administration of the law, and prescribe and install uniform systems to be used by assessing officials.

8. Direct such proceedings, actions and prosecutions to be instituted as may be needful to enforce the revenue laws of the Commonwealth and call on the Attorney General or other proper officer to prosecute such actions and proceedings.

9. Intervene, by petition or otherwise, whenever deemed advisable in any action or proceeding pending in any court wherein the constitutionality or construction of any state tax or revenue statute or the validity of any state tax is in question. The court wherein such action or proceeding is pending may, by order entered therein, make the Tax Commissioner a party thereto whenever deemed necessary.

10. Upon request by any local governing body, local board of equalization or any ten citizens and taxpayers of the locality, render advisory aid and assistance to such board in the matter of equalizing the assessments of real estate and tangible personal property as among property owners of the locality.

11. Annually make available to every county and city and, where appropriate, towns, a general reassessment procedures manual which provides the legal requirements for conducting general reassessments, and guidelines suggesting the broad range of factors in addition to market data that are

182 appropriate for consideration in the determination of fair market value of both rural and urban land and
183 structures.

184 12. Issue an annual report to the members of the House Appropriations Committee, the House
185 Finance Committee, and the Senate Finance Committee detailing procedures used in the collections
186 process and how the Virginia Taxpayer Bill of Rights (§ 58.1-1845) is implemented to assist with such
187 collections.

188 13. Ensure that employees of the Department are not paid, evaluated, or promoted on the basis of the
189 amount of assessments or collections from taxpayers.

190 14. Issue an annual report to the members of the House Appropriations Committee, the House
191 Finance Committee, and the Senate Finance Committee detailing the total amount of corporate income
192 tax relief provided in the Commonwealth during the preceding tax year. The report shall (i) include the
193 total dollar amount of income tax subtractions, deductions, exclusions, and exemptions claimed
194 cumulatively by corporations; (ii) identify all tax credits claimed; and (iii) provide an analysis of the
195 fiscal impact of the corporate tax relief. A preliminary report shall be submitted by December 1, 2006,
196 and each year thereafter. A final report, with any data additions or revisions, shall be submitted by April
197 15 of the subsequent year.

198 15. *Obtain information from each income tax taxpayer whether he claimed a federal earned income*
199 *tax credit and the amount claimed, unless such information can be calculated based on other*
200 *information in the taxpayer's return.*
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