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HOUSE BILL NO. 2442

House Amendments in [] - February 3, 2007

A *BILL to amend and reenact § 58.1-1812 of the Code of Virginia, relating to bills sent by the Department of Taxation for omitted taxes.*

Patron Prior to Engrossment—Delegate Frederick

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:**1. That § 58.1-1812 of the Code of Virginia is amended and reenacted as follows:**

§ 58.1-1812. Assessment of omitted taxes by the Department of Taxation.

A. If the Tax Commissioner ascertains that any person has failed to make a proper return or to pay in full any proper tax he shall assess the taxes prescribed by law, adding to the taxes so assessed the penalty prescribed by law, if any, for the failure to file a return (if a return was required by law but not filed within the time prescribed by law) and the penalty or penalties prescribed by law for the failure to pay the taxes and penalty or penalties within the time prescribed by law. If no penalty is so prescribed, he shall assess a penalty of 5 percent of the tax due, or if the failure to pay in full was fraudulent, a penalty of 100 percent of the tax due. In addition thereto, interest on the outstanding tax and penalty shall be charged at the rate established under § 58.1-15 for the period between the due date and the date of full payment.

Except as otherwise provided by law, the amount of tax shall be assessed within three years after the return was filed, whether such return was filed on or after the date prescribed, and no proceeding in court without assessment shall be begun for the collection of such tax after the expiration of such period. A return of tax filed before the last day prescribed by law for the timely filing thereof shall be considered as filed on the last day. A return of recordation tax shall be considered as having been filed on the date of recordation. If no return is filed, the tax may be assessed within six years of the date such return was due. If a false or fraudulent return is filed with intent to evade the payment of tax, an assessment may be made at any time.

Upon such assessment, the Department of Taxation shall send a bill therefor to the taxpayer and the taxes, penalties and interest shall be remitted to the Department of Taxation within thirty days from the date of such bill. *Any bill relating to such assessment shall (i) identify the specific tax or taxes (or the specific tax return that was not filed) for which the bill is sent, (ii) identify the actual return filed by the taxpayer and type of return, if any, that relates to the assessment of any tax, and (iii) include in separately stated line items the amount of any penalty or interest that is being assessed or charged.* If such taxes, penalties and interest are not paid within such thirty days, interest at the rate provided herein shall accrue thereon from the date of such assessment until payment.

B. The Department of Taxation shall not assess penalty or interest on any assessment of tax for the recovery of an erroneous refund, as defined in this section, provided that the tax is paid to the Department within thirty days from the date of the bill. If the tax is not remitted to the Department within thirty days from the date of such bill, interest at the rate provided herein shall accrue thereon from the date of such assessment until payment.

As used in this section "erroneous refund" means any refund of tax resulting solely from an error by the Department of Taxation which results in the taxpayer receiving a refund to which the taxpayer is not entitled.

[2. That the provisions of this act shall become effective on October 1, 2007.]

ENGROSSED

HB2442E