

VIRGINIA ACTS OF ASSEMBLY -- 2008 SESSION

CHAPTER 549

An Act to amend and reenact §§ 58.1-1820, 58.1-1821, 58.1-1822, 58.1-1825, and 58.1-1826 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 58.1-3.3 and 58.1-394.3, relating to the administration of the land preservation tax credit.

[H 849]

Approved March 11, 2008

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-1820, 58.1-1821, 58.1-1822, 58.1-1825, and 58.1-1826 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 58.1-3.3 and 58.1-394.3 as follows:

§ 58.1-3.3. Deemed consent to disclosure.

When a credit or other tax attribute has been transferred from a transferor to a transferee pursuant to a statutory provision permitting such transfer, then:

1. The transferor shall be deemed to consent to the disclosure to the transferee of any confidential tax information relevant to the eligibility and value of the credit or other tax attribute transferred; and

2. The transferee shall be deemed to consent to the disclosure by the Department to the transferor of the amount of the transferred credit or other tax attribute used or absorbed on the transferee's tax return when such disclosure is necessary in the administration of the chapter.

§ 58.1-394.3. Pass-through entity items.

A. The period for assessing any tax imposed by this chapter that is attributable to any pass-through entity item with respect to any owner of a pass-through entity shall not expire before the date that is three years after the later of (i) the last day for filing the pass-through entity return for the taxable year of the pass-through entity, as extended, or (ii) the date on which the pass-through entity return for such taxable year was filed.

B. The period for assessing any tax, as provided in subsection A, may be extended pursuant to agreement under § 58.1-101 or 58.1-220 between the Department and the owner who signed the pass-through entity return or any other owner or person authorized to sign the pass-through entity return.

C. The Tax Commissioner shall mail to each owner whose name and address have been provided by the pass-through entity notice of the beginning of an administrative proceeding at the pass-through entity level with respect to a pass-through entity item, and the final pass-through entity administrative adjustment resulting from any such proceeding. The Tax Commissioner shall not be required to mail notices to any owner with less than a one-percent interest in the profits of the pass-through entity if such entity has more than 100 owners.

D. In any administrative proceeding under § 58.1-1821 in which the taxation of pass-through entity items is an issue, the pass-through entity shall be permitted to participate in the proceeding. In addition, the Department may consolidate proceedings involving more than one taxpayer when the same pass-through items are in issue.

E. The provisions of this section shall apply to any tax attributable to items of income, gain, loss, deduction, credit, or other tax attribute that is recognized or reportable by the pass-through entity and that is required to be reported by the owner of the pass-through entity pursuant to § 58.1-391 or other sections of this chapter.

§ 58.1-1820. Definitions.

The following words, terms and phrases when used in this article shall have the meanings ascribed to them in this section.

1. "Person assessed with any tax," with standing to contest such assessment, shall include the person in whose name such assessment is made, a consumer of goods who, pursuant to law or contract, has paid any sales or use tax assessed against a dealer, a consumer of real estate construction who has by contract specifically agreed to pay the taxes assessed on the contractor, and any dealer who agrees to pass on to his customers the amount of any refund (net after expenses of the refund proceeding) to the extent such tax has been passed on to such customers.

2. "Assessment," as used in this subtitle, shall include an assessment made pursuant to notice by the Department of Taxation and self-assessments made by a taxpayer upon the filing of a return or otherwise not pursuant to notice. Assessments made by the Department of Taxation shall be deemed to be made when a written notice of assessment is delivered to the taxpayer by an employee of the Department of Taxation, or mailed to the taxpayer at his last known address. Upon approval of the use of the specific medium by the taxpayer, an assessment shall also be deemed to be made when a notice of assessment is transmitted by the Department of Taxation to the taxpayer by either facsimile

transmission or electronic mail to a facsimile machine or electronic mail address, respectively, as designated by the taxpayer in writing. Self-assessments shall be deemed made when the tax is paid or, in the case of taxes requiring an annual or monthly return, when the return is filed. A return filed or tax paid before the last day prescribed by law or by regulations pursuant to law for the filing or payment thereof, shall be deemed to be filed or paid on such last day.

3. *"Person aggrieved by an action with respect to a transferred credit or other tax attribute" with standing to contest such action shall include the person who earned a credit or other tax attribute transferable under law and who has transferred such credit or other tax attribute and any subsequent transferor and transferee of such credit or other tax attribute who is affected directly or indirectly by an assessment based upon an adjustment to such credit or other tax attribute or by a formal notice of the Department's intent to adjust such credit or other tax attribute.*

§ 58.1-1821. Application to Tax Commissioner for correction.

Any person assessed with any tax administered by the Department of Taxation may, within ninety days from the date of such assessment, apply for relief to the Tax Commissioner. Such application shall be in the form prescribed by the Department, and shall fully set forth the grounds upon which the taxpayer relies and all facts relevant to the taxpayer's contention. The Tax Commissioner may also require such additional information, testimony or documentary evidence as he deems necessary to a fair determination of the application. *Any person aggrieved by an action by the Department with respect to a transferred credit or other tax attribute may apply for relief under this section or request to join an application already filed by another person assessed with tax or aggrieved by an action with respect to the same credit or other tax attribute. Notwithstanding the provisions of § 58.1-3, the Tax Commissioner shall have the discretion to permit the joinder of a party or consolidate proceedings on applications filed by different taxpayers if the interest of the party or the applications involve adjustments to credits or other tax attributes arising from the same transaction or occurrence, provided that no interests are prejudiced and the joinder or consolidation advances administrative economy.*

On receipt of a notice of intent to file under this section, the Tax Commissioner shall refrain from collecting the tax until the time for filing hereunder has expired, unless he determines that collection is in jeopardy.

Any person whose tax assessment has been improperly collected by the Department may apply hereunder to assert a claim that any amount so collected was exempt from process.

The initial assessment of any tax administered by the Department of Taxation shall include a notice to the taxpayer that specifies all of the taxpayer's rights under this section, including but not limited to the right to have the Tax Commissioner refrain from collecting the tax upon the Commissioner's receipt from the taxpayer of a notice of intent to file for relief under this section.

§ 58.1-1822. Action of Tax Commissioner on application for correction.

If the Tax Commissioner is satisfied, by evidence submitted to him or otherwise, that an applicant is erroneously or improperly assessed with any tax administered by the Department of Taxation, *or that an action with respect to a transferred credit or other tax attribute is erroneous*, the Tax Commissioner may order that such assessment *or action* be corrected. If the assessment exceeds the proper amount, the Tax Commissioner shall order that the applicant be exonerated from the payment of so much as is erroneously or improperly charged, if not already paid into the state treasury, and, if paid, that it be refunded to him. If the assessment is less than the proper amount, the Tax Commissioner shall order that the applicant pay the proper taxes. He shall refund to the taxpayer any exempt funds which have been improperly collected. The Tax Commissioner shall refrain from collecting a contested assessment until he has made a final determination under this section unless he determines that collection is in jeopardy. In any action on an application for correction, the Tax Commissioner shall state in writing the facts and law supporting the action on such application.

§ 58.1-1825. Application to court for correction of erroneous or improper assessments of state taxes generally.

A. Any person assessed with any tax administered by the Department of Taxation and aggrieved by any such assessment, *or aggrieved by an action by the Department with respect to a transferred credit or other tax attribute*, may, unless otherwise specifically provided by law, within (i) three years from the date such assessment is made or (ii) one year from the date of the Tax Commissioner's determination under § 58.1-1822, whichever is later, apply to a circuit court for relief. The venue for such proceeding shall be as specified in subdivision 13 b of § 8.01-261. The application shall be before the court when it is filed in the clerk's office.

B. Except as provided in subsection C, the court shall require the applicant to pay the assessment before proceeding with its application upon granting a motion by the Tax Commissioner seeking to compel such payment and showing to the satisfaction of the court that the Department is likely to prevail on the merits of the case, that the 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 Commonwealth from the litigation; or (iv) otherwise frivolous.

C. In lieu of the payment required in subsection B, the taxpayer may, within 60 days of the court's ruling, (i) post a bond pursuant to the provisions of § 16.1-107, with a corporate surety licensed to do business in Virginia, or (ii) file an irrevocable letter of credit satisfactory to the Tax Commissioner as to the bank or savings institution, the form and substance, and payable to the Commonwealth in the face amount of the contested assessment increased by twice the interest rate for underpayments published by the Department and in effect at the time the application is filed. 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. Such bond or irrevocable letter of credit shall be conditioned upon payment by the applicant of the amount of the taxes, penalty and interest ordered by the court pursuant to § 58.1-1826, if any.

D. Any person whose assessment has been improperly collected from property exempt from process may within three years from the date such assessment is made, or if later, within one year of the Tax Commissioner's decision on a process exemption claim under § 58.1-1821 apply to a circuit court for relief. The venue for such proceeding shall be as specified in subdivision 13 b of § 8.01-261.

The Department shall be named as defendant, and the proceedings shall be conducted as an action at law before the court sitting without a jury. It shall be the burden of the applicant in any such proceeding to show that the assessment or collection *or action on a transferred credit or other tax attribute* complained of is erroneous or otherwise improper. The court's order shall be entered pursuant to § 58.1-1826.

E. Nothing in this section shall prevent the Tax Commissioner from collecting the assessment if he determines that collection is in jeopardy.

§ 58.1-1826. Action of court.

If the court is satisfied that the applicant is erroneously or improperly assessed with any taxes, *or that an action with respect to a transferred credit or other tax attribute is erroneous*, and that the erroneous assessment *or action* was not caused by the willful failure or refusal of the applicant to furnish the Department with the necessary information, as required by law, the court may order that the assessment *or action* be corrected. If the assessment exceeds the proper amount, the court may order that the applicant be exonerated from the payment of so much as is erroneously or improperly charged, if not already paid and, if paid, that it be refunded to him. If the assessment is less than the proper amount, the court shall order that the applicant pay the proper taxes and to this end the court shall be clothed with all the powers and duties of the authority which made the assessment complained of as of the time when such assessment was made and all the powers and duties conferred by law upon such authority between the time such assessment was made and the time such application is heard. The court may order that any amount which has been improperly collected be refunded to such applicant. A copy of any order made under this section or § 58.1-1827 correcting an erroneous or improper assessment shall be certified by the clerk of the court to the Tax Commissioner.

2. That the provisions of this act shall apply to disclosures made in the course of assessing tax on or after July 1, 2008, and to administrative proceedings pending on or filed after July 1, 2008.