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HOUSE BILL NO. 1314

Offered January 9, 2008

Prefiled January 9, 2008

A BILL to amend and reenact §§ 58.1-1, 58.1-202, 60.2-111, 60.2-118, 60.2-511, 60.2-512, 60.2-519, 60.2-519.2 through 60.2-524, and 60.2-538 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 60.2-208.1, relating to the duties of the Virginia Employment Commission and Department of Taxation with regard to the collection of unemployment taxes.

Patron—Byron

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-1, 58.1-202, 60.2-111, 60.2-118, 60.2-511, 60.2-512, 60.2-519, 60.2-519.2 through 60.2-524, and 60.2-538 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 60.2-208.1 as follows:

§ 58.1-1. Definitions.

As used in this title:

"Department" means the Department of Taxation. Whenever the words "Department of Taxation," or other words denoting that Department, appear in any provision of law or in any legal or other proceeding or in any other manner, the same shall be construed to mean the Tax Commissioner. When any provision of law imposes a duty upon, or vests power in, the Department, such duty shall be performed and such power shall be exercised by the Tax Commissioner.

"Resident" for purposes of taxation, except as to Chapter 3 (§ 58.1-300 et seq.) of this title or as otherwise specifically provided, includes every person domiciled in the Commonwealth on the first day of any tax year, and every other person who has had his place of abode in the Commonwealth for the longer portion of the twelve months next preceding January 1 in each year, unless on or before that day he has changed his place of abode to a place outside the Commonwealth with the bona fide intention of continuing actually to abide permanently outside the Commonwealth.

The fact that a person who has so changed his place of abode, within six months from so doing, again abides within the Commonwealth shall be prima facie evidence that he did not intend permanently to have his actual place of abode outside the Commonwealth. Such person so changing his actual place of abode and not intending permanently to continue it outside the Commonwealth and not having listed his property for taxation as a resident of the Commonwealth for the purpose of having his personal property listed for taxation in the Commonwealth, shall be deemed to have resided on the day when such property should have been listed, at his last place of abode in the Commonwealth. The fact that a person whose place of abode during the greater portion of such twelve months has been in the Commonwealth does not claim or exercise the right to vote at public elections in the Commonwealth shall not, of itself, constitute him a nonresident of the Commonwealth within the meaning of this term.

"Tax Commissioner" means the chief executive officer of the Department of Taxation or his delegate.

"Tax day" or "date of assessment," except as otherwise specifically provided, is January 1 of each year.

"Tax exempt organization" or "an organization exempt from taxation under § 501 (c) of the Internal Revenue Code" means any corporation, partnership, organization or trust which has received written notice of its exempt status from the Internal Revenue Service, if such notice is required by the Internal Revenue Service to obtain exempt status.

"Tax year," except when otherwise specifically provided, begins on January 1 of each year and ends on December 31 of each year.

"Taxes" and "levies" as used in this title are synonymous. The terms "taxes" and "levies," however, shall not include the assessments for local improvements provided for in Article 2 (§ 15.2-2404 et seq.) of Chapter 24 of Title 15.2 or the charter of any city or town. *The term "taxes" shall include unemployment taxes collectible under the Virginia Employment Compensation Act (§ 60.2-100 et seq.), and, to the extent the Commonwealth is authorized to collect them, taxes owed to the United States pursuant to the Federal Unemployment Tax Act, Chapter 23 (26 U.S.C. § 3301 et seq.) of Title 26 of the United States Code.*

"Taxpayer" includes every person, corporation, partnership, organization, trust or estate subject to taxation under the laws of this Commonwealth, or under the ordinances, resolutions or orders of any county, city, town or other political subdivision of this Commonwealth.

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

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

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

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

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

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

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

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

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

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

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

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

96 11. Annually make available to every county and city and, where appropriate, towns, a general
97 reassessment procedures manual which provides the legal requirements for conducting general
98 reassessments, and guidelines suggesting the broad range of factors in addition to market data that are
99 appropriate for consideration in the determination of fair market value of both rural and urban land and
100 structures.

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

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

107 14. Issue an annual report to the members of the House Appropriations Committee, the House
108 Finance Committee, and the Senate Finance Committee detailing the total amount of corporate income
109 tax relief provided in the Commonwealth during the preceding tax year. The report shall (i) include the
110 total dollar amount of income tax subtractions, deductions, exclusions, and exemptions claimed
111 cumulatively by corporations; (ii) identify all tax credits claimed; and (iii) provide an analysis of the
112 fiscal impact of the corporate tax relief. A preliminary report shall be submitted by December 1, 2006,
113 and each year thereafter. A final report, with any data additions or revisions, shall be submitted by April
114 15 of the subsequent year.

115 15. Obtain information from each income tax taxpayer as to whether the taxpayer claimed a federal
116 earned income tax credit and the amount claimed, unless such information can be calculated based on
117 other information in the taxpayer's return.

118 16. *Perform all acts that had been the responsibility of the Virginia Employment Commission, prior*
119 *to January 1, 2009, with regard to the collection of taxes that are collectible under the Virginia*
120 *Employment Compensation Act (§ 60.2-100 et seq.). All taxes and other sums collected by the*

Department pursuant to this authority shall be paid into the state treasury and credited as provided in § 60.2-301.

§ 60.2-111. Duties and powers of Commission.

A. It shall be the duty of the Commission to administer this title, *except that it shall be the duty of the Department of Taxation to collect all taxes, including any interest, late charges, service charges, and penalties, assessed pursuant to this title.* It shall have power and authority to adopt, amend, or rescind such rules and regulations, to employ such persons, make such expenditures, require such reports, make such investigations, and take such other action, including the appointment of advisory groups, as it deems necessary or suitable to that end. Such rules and regulations shall be subject to the provisions of Chapter 40 (§ 2.2-4000 et seq.) of Title 2.2, except as to the subject matter of subdivisions 2 and 3 of § 60.2-515, which shall become effective in the manner prescribed by § 2.2-4103. The Commission shall determine its own organization and methods of procedure in accordance with provisions of this title, and shall have an official seal which shall be judicially noticed.

B. The Commission shall prepare an annual balance sheet of the moneys in the fund and in the Unemployment Trust Fund to the credit of the Commonwealth in which there shall be provided, if possible, a reserve against the liability in future years to pay benefits in excess of the then current taxes. That reserve shall be set up by the Commission in accordance with accepted actuarial principles on the basis of statistics of employment, business activity, and other relevant factors for the longest possible period. Whenever the Commission believes that a change in tax or benefit rates is necessary to protect the solvency of the Fund, it shall promptly so inform the Governor and the General Assembly and make recommendations with respect thereto.

§ 60.2-118. Civil action to enforce title; actions on behalf of other states.

A. In any civil action to enforce the provisions of this title the Commission, *or the Department if the civil action involves the collection of any tax collectible under this title,* and the Commonwealth may be represented by the Office of the Attorney General.

B. The Office of the Attorney General may commence actions in this Commonwealth as agent for, or on behalf of, any other state:

1. To enforce judgments and liability for unemployment insurance taxes due such other state; or
2. To collect unemployment benefit overpayments of such state if such state extends like comity to this Commonwealth.

C. Venue for such actions shall be the same as for actions to enforce the provisions of this title.

§ 60.2-208.1. *Department.*

"Department" means the Department of Taxation. References to the Department shall be construed as including, where appropriate, the Tax Commissioner.

§ 60.2-511. How and when taxes payable.

Taxes, as set forth in this and the succeeding article, shall accrue and become payable by each employer for each calendar year in which he is subject to this title. Such taxes shall be based upon wages payable for employment, as defined in §§ 60.2-212 through 60.2-219, occurring in such calendar year. Such taxes shall become due and be paid by each employer to the *Department as agent for the Commission* ~~for and deposited in~~ the fund in accordance with such regulations as the Commission may prescribe. Payment of such taxes and the filing of related returns shall be deemed to have been made as of the date of the postmark affixed to such payment and returns by the United States Postal Service, or by receipt given by such representative of the ~~Commission~~ *Department* if physical delivery of such payment and related returns is made to an office of the ~~Commission~~ *Department*.

§ 60.2-512. Requiring payroll and tax reports and payment of taxes.

A. (Effective until January 1, 2009) The Commission is hereby expressly authorized to require the filing of payroll and tax reports, and the payment of the taxes required by § 60.2-511, in monthly, quarterly, semiannual or annual payments as shall be determined by the Commission; however, if the due date for filing of reports or payment of taxes falls on a Saturday, Sunday or legal holiday, the due date shall be extended to the next business day that is not a Saturday, Sunday or legal holiday. The aggregate amount of taxes shall be fully paid to the ~~Commission~~ *Department* on or before January 31 of each year next succeeding the year with respect to employment during which year such taxes are imposed, or in the event the time is extended for filing the return of the taxes imposed by Title IX of the Social Security Act for the year for which such taxes are imposed, then before the expiration of such extension. Taxes due and payable in an amount less than five dollars shall be deemed to be fully paid; however, this does not relieve an employer from filing payroll and tax reports as herein required.

A. (Effective January 1, 2009) The Commission is hereby expressly authorized to require the filing of payroll and tax reports, and the payment of the taxes required by § 60.2-511, in monthly, quarterly, semiannual or annual payments as shall be determined by the Commission; however, if the due date for filing of reports or payment of taxes falls on a Saturday, Sunday or legal holiday, the due date shall be extended to the next business day that is not a Saturday, Sunday or legal holiday. Beginning January 1,

2009, employers may file payroll and tax reports, and pay the taxes required by § 60.2-511, annually, in the time, form and manner prescribed by the Commission, if the employment that is the subject of the report of taxes due under this chapter consists exclusively of domestic service in a private home of the employer, as defined in §§ 31.3121 (a) (7)-1, 31.3306 (c) (2)-1, and 31.3401 (a) (3)-1 of the Employment Tax Regulations promulgated pursuant to §§ 3121, 3306, and 3401 of the Internal Revenue Code, as amended; however, in order to qualify for this election, an employer shall have a total payroll in each calendar quarter that does not exceed \$5,000, regardless of the number of persons providing such domestic service. The aggregate amount of taxes shall be fully paid to the ~~Commission~~ Department on or before January 31 of each year next succeeding the year with respect to employment during which year such taxes are imposed, or in the event the time is extended for filing the return of the taxes imposed by Title IX of the Social Security Act for the year for which such taxes are imposed, then before the expiration of such extension. Taxes due and payable in an amount less than five dollars shall be deemed to be fully paid; however, this does not relieve an employer from filing payroll and tax reports as herein required.

B. Beginning January 1, 1994, through December 31, 2008, employers who report 250 or more employees in any calendar quarter shall file quarterly reports on a magnetic medium using a format prescribed by the Commission. Beginning January 1, 2009, employers who report 100 or more employees in any calendar quarter in 2009, or thereafter, shall file quarterly reports on an electronic medium using a format prescribed by the Commission. Waivers will be granted only if the Commission finds this requirement creates an unreasonable burden on the employer. All requests for waiver must be submitted in writing. Beginning January 1, 2009, if any employer who reports 100 or more employees in any calendar quarter in 2009, or thereafter, and who has not obtained a waiver by the date the employer's quarterly report is due, fails, without good cause shown, to file electronically, the Commission shall assess upon the employer a penalty of \$75, which penalty shall be in addition to the taxes due and payable with respect to such report and to any penalty assessed under subsection B of § 60.2-513. Penalties collected pursuant to this section shall be paid into the Special Unemployment Compensation Administration Fund established pursuant to § 60.2-314.

C. Notwithstanding the provisions of subsection A, no payroll and tax reports shall be filed with respect to an employee of a state or local agency performing intelligence or counterintelligence functions, if the head of such agency has determined that filing such a report could endanger the safety of the employee or compromise an ongoing investigation or intelligence mission.

§ 60.2-519. Interest on past-due taxes.

Taxes unpaid on the date on which they are due and payable, as prescribed by the Commission pursuant to § 60.2-511, shall bear interest at the rate of one and one-half percent per month from and after such date until payment plus accrued interest is received by the ~~Commission~~ Department. Interest collected pursuant to this article shall be paid into the Special Unemployment Compensation Administration Fund continued by § 60.2-314.

§ 60.2-519.2. Service charge for payment of taxes by certain means.

If the ~~Commission~~ Department accepts a form of payment by a means that incurs a charge, the ~~Commission~~ Department shall add that charge to such payment as described in subsection B of § 2.2-614.1.

§ 60.2-520. Taxes which accrued while employer was in armed forces.

No interest shall be assessed against or collected from any employer upon any taxes which accrued against such employer during the period of active service of such employer in the armed forces of the United States. Any proof of such service satisfactory to the ~~Commission~~ Department shall be sufficient. Any such employer who has already paid to the ~~Commission~~ Department any interest on taxes which would have been abated under this provision shall be entitled to a refund for the amount of interest so paid upon the filing of an application therefor.

§ 60.2-521. Collection by civil action; persons subject to civil actions; other remedies; compromise and adjustment.

If, after notice, any employer defaults in any payment of taxes or payment in lieu of taxes or interest or any penalty assessed pursuant to subsection C of § 60.2-501 and § 60.2-513, the amount due shall be collected by civil action in the name of the ~~Commission~~ Department. The employer adjudged in default shall pay the fees and costs of such action. Civil actions brought under this article to collect taxes or interest or any penalty from an employer shall be heard by the court at the earliest possible date. Such civil actions may be brought against any officer, employee, or agent of a corporation or partnership in his individual, personal capacity when that person willfully fails to cause the employer to pay the appropriate taxes and he had the authority to do so. No person shall be subject to this section unless it is proved (i) that such person had knowledge of the failure or attempt to make such payment and (ii) that such person had authority to prevent such failure or attempt. In addition to the foregoing remedies the ~~Commission~~ Department shall have such other remedies as are available to the State Tax Commissioner ~~in it~~ in proceedings under Title 58.1 and county and city treasurers for the collection of

taxes generally. The ~~Commission~~ *Department* is authorized to compromise, settle and adjust any tax or taxes, including interest, or any penalty assessed against any employer where in the judgment of the ~~Commission~~ *Department* the best interests of the Commonwealth will be promoted or served. The *Department*, with the approval of the Commission, may in such cases accept in full settlement of the tax assessed an amount less than that assessed.

§ 60.2-522. Injunction.

When an unsatisfied execution has been returned by an officer, and the employer against whom the judgment has been obtained on which the execution was issued continues in default of payment of taxes, or any portion thereof, such employer may be enjoined from operating and doing business in this Commonwealth until such taxes have been paid. The Circuit Court of the City of Richmond shall have exclusive original jurisdiction to grant such injunction upon the complaint of the ~~Commission~~ *Department*. Notice of the time and place when the application for the injunction will be made shall be served on the employer, and a copy of the bill of complaint shall be served with the notice.

§ 60.2-523. Priorities under legal dissolutions or distributions.

A. 1. In the event of any distribution of an employer's assets, taxes, interest and penalty then or thereafter due shall be a lien against such assets, prior to all claims of lien and general creditors. Taxes accruing by reason of an employment for an employer who is a receiver, trustee or other fiduciary shall be a lien against all the assets in the custody or control of such receiver, trustee or other fiduciary, prior and paramount to all other claims of lien and general creditors.

2. Nothing in this article shall be construed in derogation of any prior lien of the Commonwealth or any of its political subdivisions, nor any mortgage, deed of trust or other lien duly perfected prior to the date the taxes or any part thereof first accrued. However, no such lien in favor of the Commonwealth or any of its subdivisions, nor any mortgage, deed of trust or other lien shall in any case be preferred, paramount or prior to the lien for taxes due by any such receiver, trustee or other fiduciary upon payrolls earned in the employment of such receiver, trustee or other fiduciary.

B. 1. Any taxes, interest or penalty imposed by this chapter shall be a lien upon the assets of the business of any employer, subject to this chapter's provisions, who leases, transfers or sells out his business, or ceases to do business. Such employer shall be required, by the next reporting date as prescribed by the Commission, to file with the Commission all reports and pay to the *Department* all taxes due with respect to wages payable for employment up to the date of such lease, transfer, sale or cessation of the business. Such employer's successor in business shall be required to withhold sufficient of the purchase money to cover the amount of the taxes due and unpaid until such time as the former owner or employer produces a receipt from the ~~Commission~~ *Department* showing that the taxes have been paid, or produces a certificate from the Commission that no taxes are due.

2. If the purchaser of a business or successor of such employer fails to withhold purchase money or any money due to such employer in consideration of a lease or other transfer and the taxes are due and unpaid after the next reporting date, as set forth in subdivision 1 of this subsection, such successor shall be personally liable to the extent of the assets of the business so acquired for the payment of the taxes accrued and unpaid on account of the operation of the business by the former owner or employer.

3. Whenever the purchaser or successor of such employer files with the Commission a written request for a statement showing the amount of any tax due by such employer, unless such statement is furnished to such purchaser or successor within ninety days from the date such written request was filed, such purchaser or successor shall not be liable for any tax or taxes due by such employer, and the lien created by this section shall thereupon be released and discharged.

§ 60.2-524. Refunds.

A. If within three years after the date on which any taxes or interest are paid an employing unit which paid such taxes or interest applies (i) for adjustment in connection with subsequent tax payments, or (ii) for a refund thereof because such adjustment cannot be made, and the ~~Commission~~ *or the Department* determines that such taxes or interest or any portion thereof was erroneously collected, or within ~~sixty~~ 60 days from the final determination of any change or correction in the liability of the employing unit for any tax payable under this chapter, whichever is later, subject to the availability of ~~Commission~~ *or Department* records, the ~~Commission~~ *Department* shall allow such employing unit to make an adjustment, without interest, in connection with subsequent tax payments by it. If such adjustment cannot be made, the ~~Commission~~ *or the Department* shall refund the amount, without interest, from the fund. For like cause and within the same period, an adjustment or refund may be so made on the Commission's own initiative.

B. Where the ~~Commission~~ *or the Department* finds upon satisfactory proof that any employing unit has erroneously paid to this Commonwealth taxes or interest upon wages earned by individuals in employment in another state, or under the provisions of the Federal Railroad Unemployment Insurance Act, a refund or adjustment shall be made, without interest, and without regard to the due date.

C. Where the ~~Commission~~ *or the Department* finds that an instrumentality of the United States has

305 paid to this Commonwealth taxes or interest upon wages for any year with respect to which this
306 Commonwealth is not certified by the Secretary of Labor of the United States under § 3304 of the
307 Internal Revenue Code, a refund shall be made to such instrumentality, without interest, and without
308 regard to the date of payment.

309 § 60.2-538. Where employer's taxes are delinquent.

310 Notwithstanding the provisions of §§ 60.2-500 through 60.2-537, if on July 31 of any year the taxes
311 or any portion thereof or the interest due thereon for any previous quarter is delinquent and unpaid and
312 has been delinquent and unpaid for ~~ninety~~ 90 days or more, the ~~Commission~~ *Department* may issue a
313 notice of delinquency demanding payment. If the amount due is not paid within ~~thirty~~ 30 days after such
314 notice is mailed to the delinquent employer at his last known address, such delinquent employer's rate
315 for the calendar year immediately following the calendar year in which such notice is sent shall not be
316 computed under the provisions of this article, but shall be 6.2 percent.

317 **2. That the provisions of this act shall become effective on January 1, 2009.**