

VIRGINIA ACTS OF ASSEMBLY -- 2009 SESSION

CHAPTER 24

An Act to amend and reenact §§ 58.1-202, 58.1-609.11, and 58.1-609.12 of the Code of Virginia, relating to annual reports by the Department of Taxation.

[H 2101]

Approved February 23, 2009

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-202, 58.1-609.11, and 58.1-609.12 of the Code of Virginia are amended and reenacted as follows:

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

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

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

14. Issue an annual report to the members of the House Appropriations Committee, the House

Finance Committee, and the Senate Finance Committee detailing the total amount of corporate income tax relief provided in the Commonwealth during the *second* preceding tax year. The report shall (i) include the total dollar amount of income tax subtractions, deductions, exclusions, and exemptions claimed cumulatively by corporations; (ii) identify all tax credits claimed; and (iii) provide an analysis of the fiscal impact of the corporate tax relief. ~~A preliminary report shall be submitted by December 1, 2006, and each year thereafter. A final~~ The report, with any data additions or revisions, shall be submitted by ~~April 15~~ *October 1* of the ~~subsequent~~ *each* year.

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

§ 58.1-609.11. Exemptions for nonprofit entities.

A. Any nonprofit organization that holds a valid certificate of exemption from the Department of Taxation, or any nonprofit church that holds a valid self-executing certificate of exemption, that exempts it from collecting or paying state and local retail sales or use taxes as of June 30, 2003, pursuant to § 58.1-609.4, 58.1-609.7, 58.1-609.8, 58.1-609.9, or 58.1-609.10, as such sections are in effect on June 30, 2003, shall remain exempt from the collection or payment of such taxes under the same terms and conditions as provided under such sections as such sections existed on June 30, 2003, until: (i) July 1, 2007, for such entities that were exempt under § 58.1-609.4; (ii) July 1, 2008, for such entities that were exempt under § 58.1-609.7; (iii) July 1, 2004, for the first one-half of such entities that were exempt under § 58.1-609.8, except churches, which will remain exempt under the same criteria and procedures in effect for churches on June 30, 2003; (iv) July 1, 2005, for the second one-half of such entities that were exempt under § 58.1-609.8; and (v) July 1, 2006, for such entities that were exempt under § 58.1-609.9 or under § 58.1-609.10. At the end of the applicable period of such exemptions, to maintain or renew an exemption for the period of time set forth in subsection E, each entity must follow the procedures set forth in subsection B and meet the criteria set forth in subsection C. Provided, however, that any entity that was exempt from collecting sales and use tax shall continue to be exempt from such collection, and any entity that was exempt from paying sales and use tax for the purchase of services, as of June 30, 2003, shall continue to be exempt from such payment, provided that it follows the other procedures set forth in subsection B and meets the criteria set forth in subsection C. Provided further, however, that an educational institution doing business in the Commonwealth which provides a face-to-face educational experience in American government and was exempt pursuant to subdivision 4 of § 58.1-609.4 from paying sales and use tax for the purchase of services, as of June 30, 2003, shall continue to be exempt from such payment, provided that it follows the other procedures set forth in subsection B and meets the criteria set forth in subsection C.

B. On and after July 1, 2004, in addition to the organizations described in subsection A, the tax imposed by this chapter or pursuant to the authority granted in §§ 58.1-605 and 58.1-606 shall not apply to purchases of tangible personal property for use or consumption by any nonprofit entity that, pursuant to this section, (i) files an appropriate application with the Department of Taxation, (ii) meets the applicable criteria, and (iii) is issued a certificate of exemption from the Department of Taxation for the period of time covered by the certificate.

C. To qualify for the exemption under subsection B, a nonprofit entity must meet the applicable criteria under this subsection as follows:

1. a. The entity is exempt from federal income taxation (i) under § 501 (c) (3) of the Internal Revenue Code or (ii) under § 501 (c) (4) of the Internal Revenue Code and, if it is exempt under § 501 (c) (4) of the Internal Revenue Code, it is organized for a charitable purpose; or

b. The entity has annual gross receipts less than \$5,000, and the entity is organized for at least one of the purposes set forth in § 501 (c) (3) of the Internal Revenue Code, or one of the charitable purposes set forth in § 501 (c) (4) of the Internal Revenue Code; and

2. The entity is in compliance with all applicable state solicitation laws, and where applicable, provides appropriate verification of such compliance; and

3. The entity's annual general administrative costs, including salaries and fundraising, relative to its annual gross revenue, under generally accepted accounting principles, is not greater than 40 percent; and

4. If the entity's gross annual revenue was \$1 million or greater in the previous year, then the entity must provide a financial audit performed by an independent certified public accountant. If the entity's gross annual revenue was between \$750,000 and \$1 million, then the entity must provide either a financial audit performed by an independent certified public accountant or a financial review performed by an independent certified public accountant; and

5. If the entity filed a federal 990 or 990 EZ tax form, or the successor forms to such forms, with the Internal Revenue Service, then it must provide a copy of such form to the Department of Taxation; and

6. If the entity did not file a federal 990 or 990 EZ tax form, or the successor forms to such forms, with the Internal Revenue Service, then the entity must provide the following information:

a. A list of the Board of Directors or other responsible agents of the entity, composed of at least two individuals, with names and addresses where the individuals physically can be found; and

b. The location where the financial records of the entity are available for public inspection.

D. On and after July 1, 2004, in addition to the criteria set forth in subsection C, the Department of Taxation shall ask each entity for the total taxable purchases made in the preceding year, unless such records are not available through no fault of the entity. If the records are not available through no fault of the entity, then the entity must provide such information to the Department the following year. No information provided pursuant to this subsection (except the failure to provide available information) shall be a basis for the Department of Taxation to refuse to exempt an entity.

E. Any entity that is determined under subsections B, C, and D by the Department of Taxation to be exempt from paying sales and use tax shall also be exempt from collecting sales and use tax, at its election, if (i) the entity is within the same class of organization of any entity that was exempt from collecting sales and use tax on June 30, 2003, or (ii) the entity is organized exclusively to foster, sponsor, and promote physical education, athletic programs, and contests for youths in the Commonwealth.

F. The duration of each exemption granted by the Department of Taxation shall be no less than five years and no greater than seven years. During the period of such exemption, the failure of an exempt entity to maintain compliance with the applicable criteria set forth in subsection C shall constitute grounds for revocation of the exemption by the Department. At the end of the period of such exemption, to maintain or renew the exemption, each entity must provide the Department of Taxation the same information as required upon initial exemption and meet the same criteria.

G. For purposes of this section, the Department of Taxation and the Department of Agriculture and Consumer Services shall be allowed to share information when necessary to supplement the information required.

H. ~~The Department of Taxation shall file an annual report no later than December 1, 2004, and December 1 of each succeeding year with the Chairman of the House Finance Committee, the Chairman of the House Appropriations Committee, and the Chairman of the Senate Finance Committee, setting forth the annual fiscal impact of the sales and use tax exemptions for nonprofit entities.~~

§ 58.1-609.12. Reports to General Assembly on tax exemptions studies.

A. The Tax Commissioner shall determine the fiscal, economic and policy impact of each sales and use tax exemption set out in §§ 58.1-609.10 and 58.1-609.11 and report such findings to the chairmen of the House and Senate Finance Committees *and the chairman of the House Appropriations Committee* no later than December 1 of each year. ~~The first such report shall be due December 1, 2007.~~ Subgroups of the exemptions shall be reviewed in periodic cycles and reports issued on a rotating basis in accordance with a schedule determined by the Tax Commissioner, *excluding the sales and use tax exemptions for nonprofit entities provided by § 58.1-609.11, which shall be reviewed and reported on annually.* When such reports have been completed for each subgroup of the sales and use tax exemptions, the Tax Commissioner shall repeat the process beginning with the subgroup of exemptions for which a report was made in 2007. No exemption shall be analyzed under the provisions of this section more frequently than once every five years, *excluding the annual fiscal impact of the sales and use tax exemptions for nonprofit entities, which shall be studied each year.*

B. When the Tax Commissioner investigates and analyzes the tax exemptions in § 58.1-609.10, the following information shall be considered and included in the report:

1. Estimate of foregone state and local revenues as a direct result of the exemption;
2. Beneficiaries of the exemption;
3. Direct or indirect local, state, or federal government assistance received by the persons or entities granted the exemption, to the extent such information is reasonably available;
4. The extent to which the comparable person, entity, property, service, or industry is exempt from the retail sales and use tax in other states, particularly states contiguous to the Commonwealth;
5. Any external statutory, constitutional, or judicial mandates supporting the exemption;
6. Other Virginia taxes to which the person, entity, property, service, or industry is subject;
7. Similar taxpayers who are not entitled to a retail sales and use tax exemption; and
8. Other criteria, facts or circumstances that may be relevant to the exemption.

C. When the Tax Commissioner investigates and analyzes the tax exemptions in § 58.1-609.11, ~~in addition to the information required by subsection H of § 58.1-609.11,~~ he shall report on the extent to which the person, entity, property, service, or industry is exempt from the retail sales and use tax in other states, particularly states contiguous to the Commonwealth.

D. For purposes of this section, the Department of Taxation and the Department of Agriculture and Consumer Services shall be allowed to share information when necessary to supplement the information required to be reported under this section.