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SENATE BILL NO. 1043

Offered January 14, 2009

Prefiled January 13, 2009

A *BILL to amend and reenact § 58.1-3237 of the Code of Virginia, relating to roll-back taxes under use value assessment programs.*

Patron—Hanger

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:**1. That § 58.1-3237 of the Code of Virginia is amended and reenacted as follows:**

§ 58.1-3237. Change in use or zoning of real estate assessed under ordinance; roll-back taxes.

A. When real estate qualifies for assessment and taxation on the basis of use under an ordinance adopted pursuant to this article, and the use by which it qualified changes to a nonqualifying use, or the zoning of the real estate is changed to a more intensive use at the request of the owner or his agent, it shall be subject to additional taxes, hereinafter referred to as roll-back taxes. Such additional taxes shall only be assessed against that portion of such real estate which no longer qualifies for assessment and taxation on the basis of use or zoning. Liability for roll-back taxes shall attach and be paid to the treasurer only if the amount of tax due exceeds ten dollars.

B. In localities which have not adopted a sliding scale ordinance, the roll-back tax shall be equal to the sum of the deferred tax for each of the five most recent complete tax years including simple interest on such roll-back taxes at a rate set by the governing body, no greater than the rate applicable to delinquent taxes in such locality pursuant to § 58.1-3916 for each of the tax years. The deferred tax for each year shall be equal to the difference between the tax levied and the tax that would have been levied based on the fair market value assessment of the real estate for that year. In addition the taxes for the current year shall be extended on the basis of fair market value which may be accomplished by means of a supplemental assessment based upon the difference between the use value and the fair market value.

Notwithstanding any other provision of this article, any county, city, or town that (i) has not adopted a sliding scale ordinance, (ii) promptly deposits all roll-back taxes, and interest and penalty thereon, actually collected into a special fund established for funding its local purchase of development rights program, and (iii) uses all such roll-back taxes, interest, and penalty and all other moneys deposited into the special fund solely for funding the local purchase of development rights program may, by ordinance, provide for roll-back taxes to be assessed and collected for a period not to exceed the 15 most recent complete tax years. However, in no case shall the period for which roll-back taxes are assessed or collected exceed the five most recent complete tax years for any recorded commitment pursuant to clause (iii) of subdivision 3 of § 58.1-3233 that was recorded prior to July 1, 2009.

C. In localities which have adopted a sliding scale ordinance, the roll-back tax shall be equal to the sum of the deferred tax from the effective date of the written agreement including simple interest on such roll-back taxes at a rate set by the governing body, which shall not be greater than the rate applicable to delinquent taxes in such locality pursuant to § 58.1-3916, for each of the tax years. The deferred tax for each year shall be equal to the difference between the tax levied and the tax that would have been levied based on the fair market value assessment of the real estate for that year and based on the highest tax rate applicable to the real estate for that year, had it not been subject to special assessment. In addition the taxes for the current year shall be extended on the basis of fair market value which may be accomplished by means of a supplemental assessment based upon the difference between the use value and the fair market value and based on the highest tax rate applicable to the real estate for that year.

D. Liability to the roll-back taxes shall attach when a change in use occurs, or a change in zoning of the real estate to a more intensive use at the request of the owner or his agent occurs. Liability to the roll-back taxes shall not attach when a change in ownership of the title takes place if the new owner does not rezone the real estate to a more intensive use and continues the real estate in the use for which it is classified under the conditions prescribed in this article and in the ordinance. The owner of any real estate which has been zoned to more intensive use at the request of the owner or his agent as provided in subsection E, or otherwise subject to or liable for roll-back taxes, shall, within sixty days following such change in use or zoning, report such change to the commissioner of the revenue or other assessing officer on such forms as may be prescribed. The commissioner shall forthwith determine and assess the roll-back tax, which shall be assessed against and paid by the owner of the property at the time the

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59 change in use which no longer qualifies occurs, or at the time of the zoning of the real estate to a more
60 intensive use at the request of the owner or his agent occurs, and shall be paid to the treasurer within
61 thirty days of the assessment. If the amount due is not paid by the due date, the treasurer shall impose a
62 penalty and interest on the amount of the roll-back tax, including interest for prior years. Such penalty
63 and interest shall be imposed in accordance with §§ 58.1-3915 and 58.1-3916.

64 E. Real property zoned to a more intensive use, at the request of the owner or his agent, shall be
65 subject to and liable for the roll-back tax at the time such zoning is changed. The roll-back tax shall be
66 levied and collected from the owner of the real estate in accordance with subsection D. Real property
67 zoned to a more intensive use before July 1, 1988, at the request of the owner or his agent, shall be
68 subject to and liable for the roll-back tax at the time the qualifying use is changed to a nonqualifying
69 use. Real property zoned to a more intensive use at the request of the owner or his agent after July 1,
70 1988, shall be subject to and liable for the roll-back tax at the time of such zoning. Said roll-back tax,
71 plus interest calculated in accordance with subsection B, shall be levied and collected at the time such
72 property was rezoned. For property rezoned after July 1, 1988, but before July 1, 1992, no penalties or
73 interest, except as provided in subsection B, shall be assessed, provided the said roll-back tax is paid on
74 or before October 1, 1992. No real property rezoned to a more intensive use at the request of the owner
75 or his agent shall be eligible for taxation and assessment under this article, provided that these
76 provisions shall not be applicable to any rezoning which is required for the establishment, continuation,
77 or expansion of a qualifying use. If the property is subsequently rezoned to agricultural, horticultural, or
78 open space, it shall be eligible for consideration for assessment and taxation under this article only after
79 three years have passed since the rezoning was effective.

80 However, the owner of any real property that qualified for assessment and taxation on the basis of
81 use, and whose real property was rezoned to a more intensive use at the owner's request prior to 1980,
82 may be eligible for taxation and assessment under this article provided the owner applies for rezoning to
83 agricultural, horticultural, open-space or forest use. The real property shall be eligible for assessment and
84 taxation on the basis of the qualifying use for the tax year following the effective date of the rezoning.
85 If any such real property is subsequently rezoned to a more intensive use at the owner's request, within
86 five years from the date the property was initially rezoned to a qualifying use under this section, the
87 owner shall be liable for roll-back taxes when the property is rezoned to a more intensive use.
88 Additionally, the owner shall be subject to a penalty equal to fifty percent of the roll-back taxes due as
89 determined under subsection B of this section.

90 F. If real estate annexed by a city and granted use value assessment and taxation becomes subject to
91 roll-back taxes, and such real estate likewise has been granted use value assessment and taxation by the
92 county prior to annexation, the city shall collect roll-back taxes and interest for the maximum period
93 allowed under this section and shall return to the county a share of such taxes and interest proportionate
94 to the amount of such period, if any, for which the real estate was situated in the county.