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HOUSE BILL NO. 437

Offered January 13, 2010

Prefiled January 12, 2010

A *BILL to amend and reenact § 58.1-3237 of the Code of Virginia, relating to real property tax; land use assessment.*

Patron—Toscano

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~~ \$10.

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; *however, a locality may provide by ordinance that the roll-back taxes shall be extended to be equal to the sum of the deferred tax for up to each of the 10 most recent complete tax years, including the simple interest on such roll-back taxes.* 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.

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~~ 60 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 change in use which no longer qualifies occurs, or at the time of the zoning of the real estate to a more intensive use at the request of the owner or his agent occurs, and shall be paid to the treasurer within ~~thirty~~ 30 days of the assessment. If the amount due is not paid by the due date, the treasurer shall impose a penalty and interest on the amount of the roll-back tax, including interest for prior years. Such penalty and interest shall be imposed in accordance with §§ 58.1-3915 and 58.1-3916.

E. Real property zoned to a more intensive use, at the request of the owner or his agent, shall be subject to and liable for the roll-back tax at the time such zoning is changed. The roll-back tax shall be

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59 levied and collected from the owner of the real estate in accordance with subsection D. Real property
60 zoned to a more intensive use before July 1, 1988, at the request of the owner or his agent, shall be
61 subject to and liable for the roll-back tax at the time the qualifying use is changed to a nonqualifying
62 use. Real property zoned to a more intensive use at the request of the owner or his agent after July 1,
63 1988, shall be subject to and liable for the roll-back tax at the time of such zoning. Said roll-back tax,
64 plus interest calculated in accordance with subsection B, shall be levied and collected at the time such
65 property was rezoned. For property rezoned after July 1, 1988, but before July 1, 1992, no penalties or
66 interest, except as provided in subsection B, shall be assessed, provided the said roll-back tax is paid on
67 or before October 1, 1992. No real property rezoned to a more intensive use at the request of the owner
68 or his agent shall be eligible for taxation and assessment under this article, provided that these
69 provisions shall not be applicable to any rezoning which is required for the establishment, continuation,
70 or expansion of a qualifying use. If the property is subsequently rezoned to agricultural, horticultural, or
71 open space, it shall be eligible for consideration for assessment and taxation under this article only after
72 three years have passed since the rezoning was effective.

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

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