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HOUSE BILL NO. 2145

Offered January 12, 2011

Prefiled January 12, 2011

A BILL to amend and reenact §§ 2.2-4031, 58.1-204, and 58.1-205 of the Code of Virginia, relating to the publication and effect of guidance documents issued by the Department of Taxation.

Patron—Cline

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-4031, 58.1-204 and 58.1-205 of the Code of Virginia are amended and reenacted as follows:

§ 2.2-4031. Publication of Virginia Register of Regulations; exceptions; notice of public hearings of proposed regulations.

A. The Registrar shall publish every two weeks a Virginia Register of Regulations that shall include (i) proposed and final regulations; (ii) emergency regulations; (iii) executive orders; (iv) notices of all public hearings on regulations; and (v) petitions for rulemaking made in accordance with § 2.2-4007; and (vi) tax bulletins. The entire proposed regulation shall be published in the Register; however, if an existing regulation has been previously published in the Virginia Administrative Code, then only those sections of regulations to be amended need to be published in the Register. If the length of the regulation falls within the guidelines established by the Registrar for the publication of a summary in lieu of the full text of the regulation, then, after consultation with the promulgating agency, the Registrar may publish only the summary of the regulation. In this event, the full text of the regulation shall be available for public inspection at the office of the Registrar and the promulgating agency.

If a proposed regulation is adopted as published or, in the sole discretion of the Registrar of Regulations, the only changes that have been made are those that can be clearly and concisely explained, the adopted regulation need not be published at length. Instead, the Register shall contain a notation that the proposed regulation has been adopted as published as a proposed regulation without change or stating the changes made. The proposed regulation shall be clearly identified with a citation to the issue and page numbers where published.

A copy of all reporting forms the promulgating agency anticipates will be incorporated into or be used in administering the regulation shall be published with the proposed and final regulation in the Register.

B. Each regulation shall be prefaced with a summary explaining that regulation in plain and clear language. Summaries shall be prepared by the promulgating agency and approved by the Registrar prior to their publication in the Register. The notice required by § 2.2-4007.03 shall include (i) a statement of the date, time and place of the hearing at which the regulation is to be considered; (ii) a brief statement as to the regulation under consideration; (iii) reference to the legal authority of the agency to act; and (iv) the name, address and telephone number of an individual to contact for further information about that regulation. Agencies shall present their proposed regulations in a standardized format developed by the Virginia Code Commission in accordance with subdivision 1 of § 2.2-4104 of the Virginia Register Act (§ 2.2-4100 et seq.). Notwithstanding the exemptions allowed under § 2.2-4002, 2.2-4006 or 2.2-4011, the proposed and final regulations of all agencies shall be published in the Register. However, proposed regulations of the Marine Resources Commission and regulations exempted by subject from the provisions of this chapter by subsection B of § 2.2-4002 shall be exempt from this section.

C. The Virginia Register of Regulations shall be published by posting the Register on the Virginia Code Commission's website. The Virginia Code Commission may arrange for the printing of the Virginia Register as provided in § 30-146.

§ 58.1-204. Publication of rulings, decisions, orders and regulations.

A. The Department shall publish the following documents:

1. Regulations finally adopted by the Tax Commissioner as provided in § 58.1-203;
2. Orders of the Tax Commissioner under §§ 58.1-1822 and 58.1-1824;
3. Final orders entered by a circuit court under § 58.1-1826 or § 58.1-1827, and any written opinion or memorandum of the court;

4. ~~Any~~ Tax bulletins, guidelines, and any written ruling or other interpretation of Virginia law which the Tax Commissioner believes may be of interest to taxpayers and practitioners.

B. Notwithstanding § 58.1-4 or any other provision of law, the Tax Commissioner may publish the documents described above with such changes of name, alterations and deletions as he deems necessary

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59 to preserve privileged taxpayer information.

60 C. For purposes of this section, documents shall be deemed to be published if they are (i) compiled
61 at regular intervals not exceeding three months, (ii) made available for inspection and copying at the
62 Department, and (iii) *published on the Department's website* ~~distributed to such national and state tax~~
63 ~~services and other publications~~ as the Tax Commissioner deems necessary to inform taxpayers and
64 practitioners.

65 § 58.1-205. Effect of regulations, rulings, etc., and administrative interpretations.

66 In any proceeding relating to the interpretation or enforcement of the tax laws of this
67 Commonwealth, the following rules shall apply:

68 1. Any assessment of a tax by the Department shall be deemed prima facie correct.

69 2. Any regulation promulgated as provided by subsection B of § 58.1-203 shall be sustained unless
70 unreasonable or plainly inconsistent with applicable provisions of law.

71 3. Rulings issued in conformity with § 58.1-203 ~~and, tax bulletins, guidelines, and other documents~~
72 ~~published as provided in § 58.1-204, and guidance documents listed in the Virginia Register of~~
73 ~~Regulations as provided in §§ 2.2-4008 and 2.2-4103~~ shall be accorded judicial notice.

74 4. In any proceeding commenced under §§ 58.1-1821, 58.1-1824 or § 58.1-1825 before January 1,
75 1985, ~~unpublished rulings and other administrative interpretations which are documented and established~~
76 ~~by competent evidence to have been in effect prior to July 1, 1980, shall be accorded judicial notice and~~
77 ~~shall be given such weight as the reviewing authority deems appropriate. In all proceedings commenced~~
78 ~~after such date, such rulings and interpretations shall be subject to the provisions of subsection 5.~~

79 5. ~~Rulings, rulings and administrative interpretations other than those described in subsections~~
80 ~~subdivisions 2, and 3 and 4 shall not be admitted into evidence and shall be accorded no weight, except~~
81 ~~that an assessment made pursuant to any such ruling or interpretation shall be entitled to the~~
82 ~~presumption of correctness specified in subsection subdivision 1.~~

83 2. That the provisions of this act shall be effective in proceedings commenced on and after July 1,
84 2011.

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