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SENATE BILL NO. 1350

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Finance
on February 2, 2011)

(Patron Prior to Substitute—Senator Norment)

A BILL to amend and reenact §§ 58.1-3331, 58.1-3379, and 58.1-3984 of the Code of Virginia, relating to real property tax assessments; appeals.

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-3331, 58.1-3379, and 58.1-3984 of the Code of Virginia are amended and reenacted as follows:

§ 58.1-3331. Public disclosure of certain assessment records.

A. All property appraisal cards or sheets within the custody of a county, city or town assessing officer, except those cards or sheets containing information made confidential by § 58.1-3, shall be open for inspection, after the notice of reassessment is mailed as provided in § 58.1-3330, the normal office hours of such official by any taxpayer, or his duly authorized representative, desiring to review such cards or sheets.

B. Any taxpayer, or his duly authorized representative, whose real property has been assessed for taxation shall, upon request, be allowed to examine the working papers used by any such assessing official in arriving at the appraised and assessed value of such person's land and any improvements thereon.

C. Upon request of any taxpayer or his duly authorized representative, the assessing officer of the governing body shall make available information regarding the methodology employed in the calculation of a property's assessed value to include the capitalization rate used to determine the property's value, a list of comparable properties or sales figures considered in the valuation, and any other market surveys, formulas, matrices, or other factors considered in determining the value of the property. Nothing in this section shall be construed to require disclosure of information that is prohibited from disclosure pursuant to §§ 58.1-3 and 58.1-3294.

D. The assessing officer of the governing body may fix and promulgate a limited period within normal office hours when such records shall be available for inspection and copying, but such period of time may not be less than four hours per day on Monday through Friday, except on such days when the office is otherwise closed.

E. *Notwithstanding any special or general laws to the contrary, in any appeal of the assessment of residential property filed by a taxpayer as an owner of real property containing less than four residential units (i) to the board of equalization pursuant to § 58.1-3379, or (ii) to circuit court pursuant to § 58.1-3984, the assessing officer shall send the taxpayer a written notice provided for in this subsection. Such notice shall be on the first page of such notice and be in bold type no smaller than fourteen points and mailed to, or posted at, the last known address of the taxpayer as shown on the current real estate tax assessment books or current real estate tax assessment records. Notice under this subsection shall satisfy the notice requirements of this section. In an appeal before the board of equalization, such written notice may be contained in the written notice of the hearing date before the board. For all applicable assessments on or after January 1, 2012, such written notice shall: (a) be given at least 45 days prior to the hearing of the taxpayer's appeal; (b) include a statement informing the taxpayer of his rights under this section to review and obtain copies of all of the assessment records pertaining to the assessing officer's determination of fair market value of such real property; and (c) advise the taxpayer of his right to request that the assessor make a physical examination of the subject property.*

F. If, within at least five days prior to any action by a court under § 58.1-3984 or by a board of equalization under § 58.1-3379, the assessing officer fails to disclose or make available for inspection any information required to be disclosed or made available for inspection and copying under this section, then the assessing official and the applicable local government shall not be allowed to introduce such information or use it in any other manner in any such appeal.

§ 58.1-3379. Hearing complaints and equalizing assessments.

A. The board shall hear and give consideration to such complaints and shall adjust and equalize such assessments and shall, moreover, be charged with the especial duty of increasing as well as decreasing assessments, whether specific complaint be laid or not, if in its judgment, the same be necessary to equalize and accomplish the end that the burden of taxation shall rest equally upon all citizens of such county or city.

B. In all cases brought before the board, there shall be a presumption that the valuation determined by the assessor is correct; ~~and the board shall be advised that it is not necessary that the taxpayer show~~

that the assessment is a result of manifest error or disregard of controlling evidence, but rather that the standard of proof is in accordance with subsection C. *The burden of proof on appeal to the board shall be on the taxpayer to rebut the presumption and show by a preponderance of the evidence that the property in question is valued at more than its fair market value or that the assessment is not uniform in its application*

C. The burden of proof shall be upon a taxpayer seeking relief to show that the property in question is valued at more than its fair market value, that the assessment is not uniform in its application, or that the assessment is otherwise not equalized. In order to receive relief, the taxpayer must produce substantial evidence that the valuation determined by the assessor is erroneous and that it was not arrived at in accordance with generally accepted appraisal practices, procedures, rules, and standards as prescribed by nationally recognized professional appraisal organizations such as the International Association of Assessing Officers (IAAO) and applicable Virginia law relating to valuation of property. Mistakes of fact, including computation, that affect the assessment shall be deemed not to be in accordance with generally accepted appraisal practice.

However, in any appeal of the assessment of residential property filed by a taxpayer as an owner of real property containing less than four residential units, the assessing officer shall give the required written notice to the taxpayer, or his duly authorized representative, under subsection E of § 58.1-3331, and, upon written request, shall provide the taxpayer or his duly authorized representative copies of the assessment records set out in subsections A, B, and C of § 58.1-3331 pertaining to the assessing officer's determination of fair market value of the property under appeal. The assessing officer shall provide such records within 15 days of a written request by the taxpayer or his duly authorized representative. If the assessing officer fails to do so, the assessing officer shall present the following into evidence prior to the presentation of evidence by the taxpayer at the hearing: (i) copies of the assessment records maintained by the assessing officer under § 58.1-3331, (ii) testimony that explains the methodologies employed by the assessing officer to determine the assessed value of the property, and (iii) testimony that states that the assessed value was arrived at in accordance with generally accepted appraisal practices, procedures, rules, and standards as prescribed by nationally recognized professional appraisal organizations such as the International Association of Assessing Officers (IAAO) and applicable Virginia law regarding the valuation of property. Upon the conclusion of the presentation of the evidence of the assessing officer, the taxpayer shall have the burden of proof by a preponderance of the evidence to rebut such evidence presented by the assessing officer as otherwise provided in this section.

D. In any case before the board concerning a taxpayer's complaint in which the commissioner of the revenue or other local assessing officer requests the board to increase the assessment after the taxpayer files an appeal to the board on a commercial, multifamily residential, or industrial property, the commissioner or other officer shall provide the taxpayer notice of the request not less than 14 days prior to the hearing of the board. Except as provided herein, if the taxpayer contests the requested increase, the assessor shall either withdraw the request or shall provide the board an appraisal performed by an independent contractor who is licensed and certified by the Virginia Real Estate Appraiser Board to serve as a general real estate appraiser, which appraisal affirms that such increase in value represents the property's fair market value as of the date of the assessment in dispute. The provisions of this subsection that require that the assessor provide the board with an appraisal shall not apply if (i) the requested increase is based on mistakes of fact, including computation errors, or (ii) the information on which the commissioner or other officer bases the requested increase was available to, but not provided by, the taxpayer in response to a request for information made by the commissioner or other officer at the time the challenged assessment was made.

E. The commissioner of the revenue or other local assessing officer of such county or city shall, when requested, attend the meetings of the board, without additional compensation, and shall call the attention of the board to such inequalities in real estate assessments in his county or city as may be known to him.

F. Every board of equalization may go upon and inspect any real estate subject to adjustment or equalization by it.

G. The burdens and standards set out in subsections B and C shall apply in hearings before the board and nothing contained in this section shall be construed to change or have any effect upon the burdens and standards applicable to applications to correct erroneous assessments filed with circuit courts pursuant to §§ 58.1-3984 through 58.1-3987.

§ 58.1-3984. Application to court to correct erroneous assessments of local levies generally.

A. Any person assessed with local taxes, aggrieved by any such assessment, may, unless otherwise specially provided by law (including, but not limited to, as provided under (i) § 15.2-717 and (ii) § 3 of Chapter 261 of the Acts of Assembly of 1936 (which was continued in effect by § 58-769 of the Code of Virginia; and now continued in effect by § 58.1-3260), as amended by Chapter 422 of the Acts of Assembly of 1950, as amended by Chapter 339 of the Acts of Assembly of 1958, and as amended by

the 2003 Regular Session of the General Assembly), (a) within three years from the last day of the tax year for which any such assessment is made, (b) within one year from the date of the assessment, (c) within one year from the date of the Tax Commissioner's final determination under § 58.1-3703.1 A 5 or § 58.1-3983.1 D, or (d) within one year from the date of the final determination under § 58.1-3981, whichever is later, apply for relief to the circuit court of the county or city wherein such assessment was made. The application shall be before the court when it is filed in the clerk's office. In such ~~proceeding~~ *proceedings, except for proceedings seeking relief from real property taxes*, the burden of proof shall be upon the taxpayer to show that the property in question is valued at more than its fair market value or that the assessment is not uniform in its application, or that the assessment is otherwise invalid or illegal, but it shall not be necessary for the taxpayer to show that intentional, systematic and willful discrimination has been made.

~~The~~ *All proceedings pursuant to this section shall be conducted as an action at law before the court, sitting without a jury. The county or city attorney, or if none, the attorney for the Commonwealth, shall defend the application.*

B. In circuit court proceedings to seek relief from real property taxes, there shall be a presumption that the valuation determined by the assessor or as adjusted by the board of equalization is correct. The burden of proof shall be on the taxpayer to rebut such presumption and show by a preponderance of the evidence that the property in question is valued at more than its fair market value or that the assessment is not uniform in its application, and that it was not arrived at in accordance with generally accepted appraisal practices, procedures, rules, and standards as prescribed by nationally recognized professional appraisal organizations such as the International Association of Assessing Officers (IAAO) and applicable Virginia law relating to valuation of property. Mistakes of fact, including computation, that affect the assessment shall be deemed not to be in accordance with generally accepted appraisal practice.

However, in any appeal of the assessment of residential property filed by a taxpayer as an owner of real property containing less than four residential units, the assessing officer shall give the required written notice to the taxpayer, or his duly authorized representative, under subsection E of § 58.1-3331, and, upon written request, shall provide the taxpayer or his duly authorized representative copies of the assessment records set out in subsections A, B, and C of § 58.1-1331 pertaining to the assessing officer's determination of fair market value of the property under appeal. A written request by the taxpayer or his duly authorized representative shall be made following the filing of the appeal to circuit court and no later than 45 days prior to trial, unless otherwise provided by an order of the court before which the appeal is pending. Provided the written request is made in accordance with this section or any applicable court order, the assessing officer shall provide such records within 15 days of the a written request to the taxpayer or his duly authorized representative. If the assessing officer fails to do so, the assessing officer shall present the following into evidence prior to the presentation of evidence by the taxpayer at the hearing: (i) copies of the assessment records maintained by the assessing officer under § 58.1-3331, (ii) testimony that explains the methodologies employed by the assessing officer to determine the assessed value of the property, and (iii) testimony that states that the assessed value was arrived at in accordance with generally accepted appraisal practices, procedures, rules, and standards as prescribed by nationally recognized professional appraisal organizations such as the International Association of Assessing Officers (IAAO) and applicable Virginia law relating to valuation of property. Upon the conclusion of the presentation of the evidence of the assessing officer, the taxpayer shall have the burden of proof by a preponderance of the evidence to rebut such evidence presented by the assessing officer as otherwise provided in this section.

C. The presumptions, burdens, and standards set out in subsection B shall not be construed to change or have any effect upon the presumptions, burdens, and standards applicable to applications for the correction of erroneous assessments of any local tax other than real property taxes.

BD. In the event it comes or is brought to the attention of the commissioner of the revenue of the locality that the assessment of any tax is improper or is based on obvious error and should be corrected in order that the ends of justice may be served, and he is not able to correct it under § 58.1-3981, the commissioner of the revenue shall apply to the appropriate court, in the manner herein provided for relief of the taxpayer. Such application may include a petition for relief for any of several taxpayers.

2. That the provisions of this act are applicable to tax years beginning on or after January 1, 2012.