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SENATE BILL NO. 710

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Finance
on January 16, 2013)

(Patrons Prior to Substitute—Senators Hanger and Smith [SB 937])

*A BILL to amend and reenact §§ 58.1-3916 and 58.1-3918 of the Code of Virginia, relating to local taxes; interest on refunds and delinquent taxes.***Be it enacted by the General Assembly of Virginia:****1. That §§ 58.1-3916 and 58.1-3918 of the Code of Virginia are amended and reenacted as follows:****§ 58.1-3916. Counties, cities, and towns may provide dates for filing returns, set penalties, interest, etc.**

Notwithstanding provisions contained in §§ 58.1-3518, 58.1-3900, 58.1-3913, 58.1-3915, and 58.1-3918, the governing body of any county, city, or town may provide by ordinance the time for filing local license applications and annual returns of taxable tangible personal property, machinery and tools, and merchants' capital. The governing body may also by ordinance establish due dates for the payment of local taxes; may provide that payment be made in a single installment or in two equal installments; may offer options, which may include coupon books and payroll deductions, which allow the taxpayer to determine whether to pay the tangible personal property tax through monthly, bimonthly, quarterly, or semiannual installments or in a lump sum, provided such taxes are paid in full by the final due date; may provide by ordinance penalties for failure to file such applications and returns and for nonpayment in time; may provide for payment of interest on delinquent taxes; and may provide for the recovery of reasonable attorney's or collection agency's fees actually contracted for, not to exceed 20 percent of the delinquent taxes and other charges so collected. A locality that provides for payment of interest on delinquent taxes shall provide for interest at the same rate on overpayments due to erroneously assessed taxes to be paid to the taxpayer, provided that no interest shall be required to be paid on such refund if (i) the amount of the refund is \$10 or less or (ii) the refund is the result of proration pursuant to § 58.1-3516. *A locality may provide that no interest shall be paid on refunds owed to a taxpayer that are due as a result of willful errors made by the taxpayer.* A court that finds that an overpayment of local taxes has been made in an action brought pursuant to § 58.1-3984 shall award interest at the appropriate rate, notwithstanding the failure of the locality to conform its ordinance to the requirements of this section.

Notwithstanding any contrary provision of law, the local governing body shall allow an automatic extension on real property taxes imposed upon a primary residence and personal property taxes imposed upon a qualifying vehicle, as defined in § 58.1-3523, owed by members of the armed services of the United States deployed outside of the United States. Such extension shall end and the taxes shall be due 90 days following the completion of such member's deployment. For purposes of this section, "the armed services of the United States" includes active duty service with the regular Armed Forces of the United States or the National Guard or other reserve component.

No tax assessment or tax bill shall be deemed delinquent and subject to the collection procedures prescribed herein during the pendency of any administrative appeal under § 58.1-3980, so long as the appeal is filed within 90 days of the date of the assessment, and for 30 days after the date of the final determination of the appeal, provided that nothing in this paragraph shall be construed to preclude the assessment or refund, following the final determination of such appeal, of such interest as otherwise may be provided by general law as to that portion of a tax bill that has remained unpaid or was overpaid during the pendency of such appeal and is determined in such appeal to be properly due and owing.

Interest may commence not earlier than the first day following the day such taxes are due by ordinance to be filed, at a rate not to exceed 10 percent per year. The governing body may impose interest at a rate not to exceed the rate of interest established pursuant to § 6621 of the Internal Revenue Code of 1954, as amended, or 10 percent annually, whichever is greater, for the second and subsequent years of delinquency. No penalty for failure to pay a tax or installment shall exceed (i) 10 percent of the tax past due on such property; (ii) in the case of delinquent tangible personal property tax more than 30 days past due on property classified pursuant to subdivision A 15, A 16, or A 20 of § 58.1-3506, which remains unpaid after 10 days' written notice sent by United States mail to the taxpayer of the intention to impose a penalty pursuant hereto, the penalty shall not exceed an amount equal to the difference between the tax due and owing with respect to such property and the tax that would have been due and owing if the property in question had been classified as general tangible personal property pursuant to § 58.1-3503; (iii) in the case of delinquent tangible personal property tax more than 30 days past due, 25 percent of the tax past due on such tangible personal property; (iv) in the case of delinquent remittance of excise taxes on meals, lodging, or admissions collected from consumers, 10 percent for the first

60 month the taxes are past due, and five percent for each month thereafter, up to a maximum of 25
61 percent of the taxes collected but not remitted; or (v) \$10, whichever is greater, provided, however, that
62 the penalty shall in no case exceed the amount of the tax assessable. No penalty for failure to file a
63 return shall be greater than 10 percent of the tax assessable on such return or \$10, whichever is greater,
64 provided, however, that the penalty shall in no case exceed the amount of the tax assessable. The
65 assessment of such penalty shall not be deemed a defense to any criminal prosecution for failing to
66 make return of taxable property as may be required by law or ordinance. Penalty for failure to file an
67 application or return may be assessed on the day after such return or application is due; penalty for
68 failure to pay any tax may be assessed on the day after the first installment is due. Any such penalty
69 when so assessed shall become a part of the tax.

70 No penalty for failure to pay any tax shall be imposed for any assessment made later than two weeks
71 prior to the day on which the taxes are due, if such assessment is made thereafter through the fault of a
72 local official, and if such assessment is paid within two weeks after the notice thereof is mailed.

73 In the event a transfer of real property ownership occurs after January 1 of a tax year and a real
74 estate tax bill has been mailed pursuant to §§ 58.1-3281 and 58.1-3912, the treasurer or other
75 appropriate local official designated by ordinance of the local governing body in jurisdictions not having
76 a treasurer, upon ascertaining that a property transfer has occurred, may invalidate a bill sent to the prior
77 owner and reissue the bill to the new owner as permitted by § 58.1-3912, and no penalty for failure to
78 pay any tax for any such assessment shall be imposed if the tax is paid within two weeks after the
79 notice thereof is mailed.

80 Penalty and interest for failure to file a return or to pay a tax shall not be imposed if such failure
81 was not the fault of the taxpayer, or was the fault of the commissioner of revenue or the treasurer, as
82 the case may be. The failure to file a return or to pay a tax due to the death of the taxpayer or a
83 medically determinable physical or mental impairment on the date the return or tax is due shall be
84 presumptive proof of lack of fault on the taxpayer's part, provided the return is filed or the taxes are
85 paid within 30 days of the due date; however, if there is a committee, legal guardian, conservator or
86 other fiduciary handling the individual's affairs, such return shall be filed or such taxes paid within 120
87 days after the fiduciary qualifies or begins to act on behalf of the taxpayer. Interest on such taxes shall
88 accrue until paid in full. Any such fiduciary shall, on behalf of the taxpayer, by the due date, file any
89 required returns and pay any taxes that come due after the 120-day period. The treasurer shall make
90 determinations of fault relating exclusively to failure to pay a tax, and the commissioner of the revenue
91 shall make determinations of fault relating exclusively to failure to file a return. In jurisdictions not
92 having a treasurer or commissioner of the revenue, the governing body may delegate to the appropriate
93 local tax officials the responsibility to make the determination of fault.

94 The governing body may further provide by resolution for reasonable extensions of time, not to
95 exceed 90 days, for the payment of real estate and personal property taxes and for filing returns on
96 tangible personal property, machinery and tools, and merchants' capital, and the business, professional,
97 and occupational license tax, whenever good cause exists. The official granting such extension shall
98 keep a record of every such extension. If any taxpayer who has been granted an extension of time for
99 filing his return fails to file his return within the extended time, his case shall be treated the same as if
100 no extension had been granted.

101 This section shall be the sole authority for local ordinances setting due dates of local taxes and
102 penalty and interest thereon, and shall supersede the provisions of any charter or special act.

103 **§ 58.1-3918. Interest on taxes not paid by following day.**

104 Interest at the rate of ~~ten~~ 10 percent per annum from the first day following the day such taxes are
105 due shall be collected upon the principal and penalties of all taxes then remaining unpaid, which penalty
106 and interest shall be collected and accounted for by the officers charged with the duty of collecting such
107 taxes, along with the principal sum thereof. Interest at the same rate shall also be applied and paid to
108 the taxpayer on overpayments due to erroneously assessed taxes to be paid to the taxpayer, provided that
109 no interest shall be required to be paid on such refund if (i) the amount of the refund is ~~ten dollars~~ \$10
110 or less or (ii) the refund is the result of proration pursuant to § 58.1-3516. *A locality may provide that*
111 *no interest shall be paid on refunds owed to a taxpayer that are due as a result of willful errors made*
112 *by the taxpayer.* But this section shall not apply to local taxes in any county, city or town when the
113 penalty or interest on such taxes is regulated by ordinance under § 58.1-3916.

114 **2. That the provisions of this act amending §§ 58.1-3916 and 58.1-3918 of the Code of Virginia**
115 **shall be effective for taxable years beginning on and after January 1, 2014.**

116 **3. That the Chairmen of the House Committee on Finance and the Senate Committee on Finance**
117 **shall convene a working group consisting of representatives from the National Federation of**
118 **Independent Business, the Virginia Manufacturers Association, the Virginia Chamber of**
119 **Commerce, the Virginia Agribusiness Council, the Virginia Retail Merchants Association, the**
120 **Virginia Hospitality and Travel Association, the Virginia Association of Counties, the Virginia**
121 **Municipal League, the Treasurers' Association of Virginia, the Commissioners of the Revenue**

122 Association of Virginia, and the Virginia Society of Certified Public Accountants. The working
123 group shall consider, as it relates to the amendments made to §§ 58.1-3916 and 58.1-3918 of the
124 Code of Virginia pursuant to this act, (i) the feasibility of, and the fiscal impact upon local
125 governments associated with, transitioning to a uniform method of assessing interest earned on
126 overpayment of taxes or charged for underpayment of taxes, and potential assessment methods
127 suitable for uniform statewide application, and (ii) the feasibility of, and the fiscal impact upon
128 local governments associated with, adopting uniform criteria for evaluating and applying timely
129 repayments of taxes. The working group shall submit a written report to the Chairmen of the
130 House Committee on Finance and the Senate Committee on Finance no later than November 1,
131 2013.