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HOUSE BILL NO. 772

Offered January 8, 2014

Prefiled January 7, 2014

A BILL to amend and reenact §§ 58.1-807, 58.1-3018, 58.1-3340, and 58.1-3930 of the Code of Virginia and to amend the Code of Virginia by adding in Chapter 30 of Title 58.1 a section numbered 58.1-3018.1, relating to real property tax liens; assignment to a third party.

Patron—Habeeb

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-807, 58.1-3018, 58.1-3340, and 58.1-3930 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Chapter 30 of Title 58.1 a section numbered 58.1-3018.1 as follows:

§ 58.1-807. Contracts generally; leases.

A. Except as hereinafter provided, on every contract or memorandum thereof relating to real or personal property admitted to record, a recordation tax is hereby levied at the rate of 25 cents on every \$100 or fraction thereof of the consideration or value contracted for.

B. The recordation of a deed of lease for a term of years, or assignment of the lessee's interest therein, or memorandum thereof, shall be taxed according to the provisions of this section, unless provided otherwise in § 58.1-809 or unless the annual rental, multiplied by the term for which the lease runs, or remainder thereof, equals or exceeds the actual value of the property leased. In such cases the tax for recording the deed of lease shall be based upon the actual value of the property at the date of lease, including the value of any realty required by the terms of the lease to be constructed thereon by the lessor.

C. The recordation of an assignment of the lessor's interest in a lease, or memorandum thereof, shall be taxed according to the provisions of this section, unless the assignment of the lessor's interest in the lease is to provide additional security for an obligation of the lessor on which the tax has been previously paid, or the assignment of the lessor's interest is made to the person who owns the property which is subject to the lease. In such cases there shall be no tax for recording the lessor's assignment of the lease.

D. Notwithstanding the other provisions of this section, the tax on the recordation of leases of oil and gas rights shall be \$25. The tax on the recordation of leases of coal and other mineral rights shall be \$50.

E. Notwithstanding the other provisions of this section, the tax on the recordation of leases of outdoor advertising signs owned by a person engaged in the business of outdoor advertising licensed by the Virginia Department of Transportation pursuant to § 33.1-361 shall be \$25.

F. Notwithstanding the other provisions of this section, the tax on the recordation of a lease of a communications tower or a communications tower site shall be \$75; the tax on the recordation of each lease to affix any communications equipment or antenna to any such tower or other structure shall be \$15.

G. Notwithstanding the other provisions of this section, the tax on the recordation of a memorandum of the third-party tax payment pursuant to § 58.1-3018.1 shall be \$25.

§ 58.1-3018. Payment of local taxes on behalf of taxpayer by third party; tax payment agreements.

A. For the purposes of this section, "third-party tax payment agreement" means any agreement whereby a third party contracts with a taxpayer to pay to a county, city or town on behalf of that taxpayer the local taxes, charges, fees or other obligations due and owing to the county, city or town. Such agreement may have as its subject current taxes, charges, fees and obligations, delinquent taxes, penalties and interest, or any combination of the foregoing.

B. The treasurer of any county, city or town may enter into agreements authorizing third parties to offer to taxpayers within such locality third-party tax payment agreements, provided that such agreements meet the following requirements:

1. Every third-party tax payment agreement shall be in writing, in a form approved by the treasurer of the locality, and shall provide for the payment of the taxes which are the subject of such agreement by the third party directly to the treasurer of the county, city or town within ten days of the acceptance of a duly executed agreement by the third party.

2. Third-party tax payment agreements shall provide for the reimbursement of the third party by the

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59 taxpayer on whose behalf taxes were paid in installments over a period not to exceed twenty-four
60 months, and may provide for interest, exclusive of any origination fee, at an annual rate approved by the
61 treasurer which shall not exceed sixteen percent. Such agreements may provide for the payment by the
62 taxpayer of an origination fee at a rate approved by the treasurer which shall not exceed ten percent of
63 the amount paid by the third party. No interest, excluding any origination fee paid by the taxpayer, shall
64 accrue during the six-month period commencing on the date of the payment. This subdivision shall not
65 be construed to permit the treasurer to authorize a third party to make a "mortgage loan" as that term is
66 defined in § 6.2-1600.

67 3. No fee may be charged to or collected from the treasurer or the locality with respect to any
68 third-party tax payment agreement.

69 4. The third party shall provide to the treasurer monthly status reports regarding third-party tax
70 payment agreements entered into by taxpayers of the locality. Such reports shall include, at a minimum,
71 a listing of all active accounts, and with respect to each account, total charges, total taxpayer payments,
72 total amounts paid to the treasurer, and total amounts subject to recourse. A summary of the monthly
73 report, deleting any information that would identify any taxpayer and any other confidential taxpayer
74 information, shall be retained as a public record in the treasurer's office.

75 C. In the event that a taxpayer who is a party to a third-party tax payment agreement fails in his
76 obligations arising under such agreement to reimburse the third party:

77 1. The third party shall be entitled to receive from the treasurer a reimbursement payment equal to
78 all taxes paid on behalf of such taxpayer pursuant to the tax payment agreement, less all payments
79 received by the third party from the taxpayer, exclusive of interest and fees charged by the third party to
80 the taxpayer pursuant to the agreement. No payment may be requested pursuant to this subsection unless
81 the third party has demonstrated to the satisfaction of the treasurer that good-faith efforts to collect the
82 obligations arising under the tax payment agreement have been made and that, notwithstanding these
83 efforts, the taxpayer is more than thirty days delinquent in his obligations arising under the agreement.

84 2. Any treasurer who reimburses a third party pursuant to this subsection shall reinstate the amount
85 of such reimbursement upon the appropriate tax rolls of the locality as delinquent taxes or current taxes,
86 as the case may be, and shall send the taxpayer written notice of such action by first-class mail to the
87 taxpayer's last known address within five business days of such reinstatement.

88 3. If the taxpayer fails to pay in full any sum reinstated pursuant to this section by the ordinary due
89 date of the tax, the treasurer may apply penalties and interest in accordance with general law from the
90 due date of the tax.

91 4. Any right of the third party to payment arising under a third-party tax payment agreement shall
92 terminate upon the receipt by the third party of a reimbursement payment from the treasurer in
93 accordance with the terms of this subsection.

94 D. With respect to each third-party tax payment agreement which has as its subject, in whole or in
95 part, real property taxes, the third party shall cause to be recorded among the land records of the circuit
96 court in each locality within which the real property is situated a copy of the applicable tax payment
97 agreement. Such agreement shall be indexed by the clerk under the name of the taxpayer or taxpayers as
98 grantor and the name of the third party as grantee. Upon the satisfaction of all obligations arising under
99 a tax payment agreement so recorded, the third party, within ninety days of satisfaction, shall cause to
100 be recorded a certificate of release, setting forth the names of the taxpayer and the third party, the date
101 of the third-party tax payment agreement, and the book and page at which the agreement is recorded.
102 Any such certificate of release shall be indexed by the clerk under the name of the third party as grantor
103 and the taxpayer as grantee. The clerk may charge a fee not to exceed thirteen dollars for the
104 recordation of any tax payment agreement or certificate of release.

105 E. Upon the payment of any tax by a third party pursuant to a tax payment agreement, the applicable
106 period of limitation for the enforcement of each tax which is the subject of the agreement shall be tolled
107 during any period in which outstanding obligations remain unsatisfied pursuant to the agreement.

108 F. *Nothing in this section shall be construed to preclude the alternative third-party tax payment*
109 *agreement and assignment of lien pursuant to § 58.1-3018.1.*

110 **§ 58.1-3018.1. Alternative third-party agreement to pay taxes; assignment of lien.**

111 A. *As an alternative to third-party tax payments pursuant to § 58.1-3018, a taxpayer subject to a lien*
112 *on real estate for unpaid local taxes may enter into a third-party tax payment agreement pursuant to*
113 *this section and authorize assignment of the lien to the third party, unless such taxpayer has a*
114 *preexisting escrow account established for the payment of real property taxes with a financial institution*
115 *as defined in § 6.2-100. Such agreement may provide for the payment of all amounts secured by the*
116 *lien, including (i) the amount of real property taxes and associated penalties, interest, and other charges*
117 *paid by the third party; (ii) all transaction costs reasonably and necessarily incurred by the third party*
118 *related to the agreement, not to exceed \$500, exclusive of any costs incurred by the third party for*
119 *recordation paid pursuant to § 58.1-807 and any fee for processing the assignment paid to the*
120 *Treasurer pursuant to subsection B; (iii) interest at an annualized rate not to exceed the maximum rate*

provided by subdivision B 2 of § 58.1-3018 on the amount paid by the third party under clause (i) and this clause; (iv) reimbursement of the third party by the taxpayer of such amounts in installments over a period not to exceed 120 months; and (v) any fees and costs reasonably and necessarily incurred by the third party to enforce the agreement or the tax lien, including, but not limited to, attorney fees and costs incurred if the taxpayer fails to perform in accordance with the terms of the agreement.

B. Such third party shall submit a copy of the signed memorandum of the taxpayer's authorization of the tax lien assignment to the third party that satisfies the requirements of § 17.1-227 to the treasurer in the locality in which the real estate is located. The third party shall submit to such treasurer payment of all real property taxes and associated penalties, interest, and charges due on the real property and covered by the agreement. As a condition of approval of a third party to act as an assignee for purposes of this section, the treasurer may require a blanket performance bond or letter of credit in an amount not to exceed \$25,000 from a person or entity requesting to act as a third-party assignee pursuant to this section. Upon receipt by the treasurer of the items required by this subsection, the treasurer shall assign such tax lien to the third party. The treasurer may establish a form for assignment of tax liens and may charge a fee up to \$25 for processing an assignment of a tax lien and delivering a receipt to the assignee in the form described in § 58.1-3914. The assignment of the lien shall not alter the priority of the lien. Such third party shall submit a copy of the memorandum of the taxpayer's authorization for the tax lien assignment that satisfies the requirements of § 17.1-227 and a copy of the receipt issued under this subsection to record among the land records in the locality in which the real estate is located in accordance with subsection D of § 58.1-3018. When recorded, such documents shall serve as prima facie evidence of the validity of the assignment and the lien. Upon the satisfaction of all obligations arising under a tax payment agreement so recorded, the third party shall record a release in the manner provided in subsection D of § 58.1-3018.

C. In the event that a taxpayer who is a party to a third-party tax payment agreement fails in his obligations arising under such agreement to reimburse the third party, such third party may pursue legal remedies in the manner provided in Chapter 4 (§ 55-48 et seq.) of Title 55 to collect the delinquency. If the treasurer determines such third party violated any provision of state law regarding the agreement or assignment of the lien, the treasurer may revoke the assignment to such third party.

§ 58.1-3340. Lien on real estate for taxes and levies assessed thereon; responsibility of purchaser or trustee at sale; lien on rents.

There shall be a lien on real estate for the payment of taxes and levies assessed thereon prior to any other lien or encumbrance. *The lien may be assigned to a third party pursuant to § 58.1-3018.1.* The lien shall continue to be such prior lien until actual payment shall have been made to the proper officer of the taxing authority, *or, if the lien has been assigned to a third party pursuant to § 58.1-3018.1, until the agreement shall have been satisfied.* The purchaser at a sale, or trustee in the event of a foreclosure sale, shall cause the proceeds to be applied to the payment of all taxes and levies assessed on real estate. In the case of the purchase of a portion of a tract of land, the purchaser shall cause the proceeds to be applied to the payment of taxes and levies assessed on the entire tract, prorated in accordance with the relationship that the purchase price bears to the most recent assessed value of the entire tract. If the cost per acre of the purchased parcel is less than the assessed value per acre of the entire tract, or if, in the reasonable opinion of the local commissioner of the revenue or other assessing officer, the purchase price is less than the fair market value of the purchased parcel, the local commissioner of the revenue or other assessing officer may require that an appraisal, prepared by a state-certified or state-licensed appraiser, of the purchased parcel be provided, and in such event the proration shall be made in accordance with the relationship that the greater of (i) the appraised value of the purchased parcel or (ii) the purchase price bears to the most recent assessed value of the entire tract. In the event a proration is necessary, the purchaser's portion of such tract of land shall be relieved of such lien to the extent the proceeds exceed the purchaser's pro rata share of taxes. It shall be the responsibility of the treasurer or other proper officer of the taxing authority to cause the release of the lien. The seller's liability for taxes and levies shall be effectively prorated contractually. The words "taxes" and "levies" as used in this section include the penalties and interest accruing on such taxes and levies in pursuance of law. The lien imposed hereby shall, in addition to existing remedies for the collection of taxes and levies, be enforceable by suit in equity under the provisions of Article 4 (§ 58.1-3965 et seq.) of Chapter 39.

There shall be a further lien upon the rents of such real estate whether the same be in money or in kind, for taxes of the current year.

§ 58.1-3930. How liens to be recorded; release of liens.

Liens of delinquent real estate taxes and all liens described under § 58.1-3745 shall be recorded in the office of the treasurer in a book or an approved visible card system to be kept for the purpose and indexed in the names of the persons against whom the taxes on real estate are assessed, or in a computer system approved by the Auditor of Public Accounts. Any officer collecting any such taxes unless otherwise specifically provided by law, shall forthwith transmit such payment to the treasurer,

182 who shall give his receipt therefor and record the payment, thereby releasing *or assigning* the lien.
183 Where such list is kept in a visible card index file, the treasurer may, at the time of entry of the records
184 of payment, remove from the file the cards on which such payments have been noted; and such cards
185 may, on certification by the Auditor of Public Accounts that the same are no longer needed for audit, be
186 destroyed.