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HOUSE BILL NO. 910

Offered January 13, 2016
Prefiled January 12, 2016

A BILL to amend and reenact § 58.1-3984 of the Code of Virginia, relating to appeal of local tax assessments; confidentiality; trial by jury.

Patron—Minchew

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That § 58.1-3984 of the Code of Virginia is amended and reenacted as follows:

§ 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 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.

All proceedings pursuant to this section *filed with the court prior to July 1, 2016,* shall be conducted as an action at law before the court, sitting without a jury. *All proceedings pursuant to this section filed or refiled on or after July 1, 2016, regardless of the tax year at issue, may be conducted either before the court, sitting without a jury, or as a jury trial, at the discretion of the taxpayer.* The county or city attorney, or if none, the attorney for the Commonwealth, shall defend the application.

Prior to the release to the taxpayer of any information that constitutes confidential tax information under § 58.1-3, pursuant to discovery or otherwise, for the purposes of a proceeding under this section, the court shall, no later than the issuance of the scheduling order, make the following order:

"Unless otherwise ordered by the court, no entity or person who has obtained confidential information protected by § 58.1-3 of the Code of Virginia regarding [property reference], directly or indirectly through any party to this action, shall disclose, exhibit, or discuss the confidential information except as provided herein. Confidential information protected by § 58.1-3 may be revealed to or discussed only with the following persons in connection with the review or litigation of the assessment of the above-referenced property:

1. The taxpayer or the local government (the "Parties");

2. Counsel for any Party to this action and employees of the counsel's firm, including attorneys other than counsel;

3. Outside experts retained by and assisting counsel for any Party in the preparation for or trial of this action;

4. The court or an administrative board reviewing the assessment on the above-referenced property, jurors for the trial, persons employed by the court or administrative board, and persons employed to transcribe or record the testimony or argument at a hearing, trial, or deposition regarding the assessment of the above-referenced property; and

5. Any person who may be called as a witness in a hearing, trial, or discovery that counsel believes in good faith to be necessary for the preparation or presentation of the case.

No person who is furnished with confidential information shall reveal it to, or discuss it with, any person who is not entitled to receive it under the terms of this order. Any person who violates the provisions of this order shall be subject to the penalty provided in subsection F of § 58.1-3."

Once the above-referenced order is entered, § 58.1-3 shall not be applicable to prevent the release of any relevant information that is responsive to a request for discovery made in the course of an appeal

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pursuant to this section.

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 § 58.1-3331 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 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.

D. 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.

E. Except as otherwise provided in this section, the provisions of Chapter 11 (§ 8.01-336 et seq.) of Title 8.01 shall apply to the selection of jurors for an action under this section mutatis mutandis. While preserving the random selection process set forth in § 8.01-345, the jury commissioner shall determine the freeholder status of individuals randomly selected by reference to tax rolls or other reliable data the judge of the circuit court deems appropriate.

F. All of the acting jurors and all of the names drawn for alternate jurors shall be freeholders of property within the jurisdiction. On the day set for trial, jurors who appear shall be called to be sworn on their voir dire until a disinterested and impartial panel is obtained. A juror may be stricken for cause. From the impartial panel the judge shall randomly select 13 jurors. From the panel of 13 jurors each party shall have four peremptory strikes. The court may appoint alternate jurors. Five persons from a panel of not fewer than 13 jurors shall constitute a jury in a tax assessment case. If fewer than seven jurors remain before the court prior to the exercise of peremptory strikes, the trial may proceed and be heard by less than five jurors provided the parties agree. However, no trial shall proceed with fewer than three jurors.

G. The conclusion of the jurors need not be unanimous, and a majority of the jurors may act in the name of the jury.

H. Unless otherwise agreed to by all parties and approved by the court, an action under this section shall proceed under the Uniform Pretrial Schedule Order provided in the Rules of Supreme Court.

I. In an action under this section, any reference to the fiscal impact on the local jurisdiction of the jury's decision is strictly prohibited.

J. Nothing contained herein shall be construed to require the taxpayer to consult with or designate an expert in prosecuting an action brought pursuant to this section.