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## HOUSE BILL NO. 2104

Offered January 11, 2017

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*A BILL to amend and reenact §§ 58.1-3507 and 58.1-3983.1 of the Code of Virginia, relating to appeal of certain local taxes, and machinery and tools tax; valuation.*

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Patron—Byron

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Referred to Committee on Finance

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 58.1-3507 and 58.1-3983.1 of the Code of Virginia are amended and reenacted as follows:**

**§ 58.1-3507. Certain machinery and tools segregated for local taxation only; notice prior to change in valuation, hearing.**

A. Machinery and tools, except idle machinery and tools as defined in subsection D and machinery and equipment used by farm wineries as defined in § 4.1-100, used in a manufacturing, mining, water well drilling, processing or reprocessing, radio or television broadcasting, dairy, dry cleaning or laundry business shall be listed and are hereby segregated as a class of tangible personal property separate from all other classes of property and shall be subject to local taxation only. The rate of tax imposed by a county, city or town on such machinery and tools shall not exceed the rate imposed upon the general class of tangible personal property. Idle machinery and tools are taxable as capital under § 58.1-1101.

B. Machinery and tools segregated for local taxation pursuant to subsection A, other than energy conservation equipment of manufacturers, shall be ~~valued by means of~~ *assessed at fair market value, and for such purposes the commissioner of the revenue may use depreciated cost or, a percentage or percentages of original total capitalized cost excluding capitalized interest, or any other method that may reasonably be expected to determine actual fair market value.* In valuing machinery and tools, the commissioner of the revenue shall, upon the written request of the taxpayer, consider any bona fide, independent appraisal presented by the taxpayer. *A commissioner of the revenue shall, upon request of the taxpayer, take into account the condition of the property, all forms of depreciation, including obsolescence, and any other factor appropriate in determining the fair market value that is not adequately taken into account by the valuation method otherwise used.*

*The commissioner of the revenue shall make available to taxpayers upon request a reasonable description of his valuation methods, any adjustments that have been made to reflect the taxpayer's appraisal or written concerns, and the factual, legal, and other bases on which the commissioner relies for disagreeing with the taxpayer's qualified appraisal.*

Whenever the commissioner of the revenue proposes to change the means of valuing machinery and tools, such proposed change shall be published in a newspaper having general circulation in the affected locality at least 30 days before the proposed change would take effect and the citizens of the locality shall be allowed to submit written comments, during the 30-day period, to the commissioner of the revenue regarding the proposed change.

C. All motor vehicles which are registered pursuant to § 46.2-600 with the Department of Motor Vehicles and owned by persons engaged in those businesses set forth in subsection A shall be taxed as tangible personal property by the county, city or town in accordance with the provisions of this chapter. All other motor vehicles and delivery equipment owned by persons engaged in those businesses set forth in subsection A shall be included in and taxed as machinery and tools.

D. ~~Idle~~ *For purposes of this section, "idle machinery and tools" means machinery and tools that (i) have been discontinued in use continuously for at least one year prior to any tax day or (b) on and after January 1, 2007, have been specifically identified in writing by the taxpayer to the commissioner of the revenue or other assessing official, on or before April 1 of such year, as machinery and tools that the taxpayer intends to withdraw from service not later than the next succeeding tax day and (ii) are not in use on the tax day and no reasonable prospect exists that such machinery and tools will be returned to use during the tax year.*

E. In the event that any machinery and tools taken out of use subsequent to January 1, 2007, are returned to use after having been previously classified as idle machinery and tools pursuant to clause (i) (b) of subsection D, the taxpayer shall identify such machinery and tools to the commissioner of the revenue or other assessing official in writing on or before the next return due date without extension, and such machinery and tools shall be subject to tax in accordance with the procedures provided in § 58.1-3903 in the same manner as if such machinery and tools had been in use on the tax day of the

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59 year in which such return to use occurs. Any interest otherwise payable pursuant to applicable law or  
60 ordinance shall apply to taxes imposed pursuant to this subsection and paid after the due date, without  
61 regard to the fault of the taxpayer or lack thereof. Notwithstanding the provisions of § 58.1-3903, if the  
62 taxpayer has provided timely written notice of return to use in accordance with the provisions of this  
63 subsection, no penalty shall be levied with respect to any tax liability arising as a result of the return to  
64 use of machinery and tools classified as idle and actually idle prior to such return to use.

65 F. The Department of Taxation shall promulgate guidelines for the use of local governments in  
66 applying the provisions of this section related to idle machinery and tools. In preparing such guidelines,  
67 the Department shall not be subject to the provisions of the Administrative Process Act (§ 2.2-4000 et  
68 seq.) for guidelines promulgated on or before January 1, 2008, but shall cooperate with and seek the  
69 counsel of local officials and interested groups. After January 1, 2008, such guidelines shall be accorded  
70 the weight of a regulation under § 58.1-205 and any amendments to such guidelines shall be subject to  
71 the Administrative Process Act.

72 G. The Tax Commissioner shall have the authority to issue advisory written opinions in specific  
73 cases to interpret (i) the provisions of this section related to idle machinery, (ii) *valuations pursuant to*  
74 *subsection B involving bona fide, independent appraisals of machinery and tools used in a*  
75 *manufacturing business presented by the taxpayer to the commissioner of the revenue*, and (iii) tools and  
76 the guidelines issued pursuant to subsection F; however, the Tax Commissioner shall not be required to  
77 interpret any local ordinance. The guidelines and opinions issued pursuant to this section shall not be  
78 applicable as an interpretation of any other tax law.

79 **§ 58.1-3983.1. Appeals and rulings of local taxes.**

80 A. Definitions. For purposes of this section:

81 "Amount in dispute," when used with respect to taxes due or assessed, means the amount specifically  
82 identified in the administrative appeal or application for judicial review as disputed by the party filing  
83 such appeal or application.

84 "Frivolous" means a finding, based upon specific facts, that the party asserting the appeal is unlikely  
85 to prevail upon the merits because the appeal is (i) not well grounded in fact; (ii) not warranted by  
86 existing law or a good faith argument for the extension, modification, or reversal of existing law; (iii)  
87 interposed for an improper purpose, such as to harass, to cause unnecessary delay in the payment of tax  
88 or a refund, or to create needless cost from the litigation; or (iv) otherwise frivolous.

89 "Jeopardized by delay" means a finding, based upon specific facts, that a taxpayer designs to (i)  
90 depart quickly from the locality, (ii) remove his property therefrom, (iii) conceal himself or his property  
91 therein, or (iv) do any other act tending to prejudice, or to render wholly or partially ineffectual,  
92 proceedings to collect the tax for the period in question.

93 "Local business tax" means machinery and tools tax, business tangible personal property tax  
94 (including, without limitation, computer equipment), merchant's capital tax, and a consumer utility tax  
95 where the amount in dispute exceeds \$2,500 other than the tax collected on mobile telecommunication  
96 service as defined in § 58.1-3812.

97 "Local mobile property tax" means the tangible personal property tax on airplanes, boats, campers,  
98 recreational vehicles, and trailers.

99 "Taxpayer" includes a business required to collect a local consumer utility tax to the extent that the  
100 business is charged or assessed with such tax.

101 B. Administrative appeal to commissioner of the revenue or other assessing official.

102 1. Any person assessed with any local mobile property tax or local business tax as defined in this  
103 section may appeal such assessment within one year from the last day of the tax year for which such  
104 assessment is made, or within one year from the date of such assessment, whichever is later, to the  
105 commissioner of the revenue or other assessing official.

106 2. The appeal shall be filed in good faith and sufficiently identify the taxpayer, the tax period  
107 covered by the challenged assessment, the amount in dispute, the remedy sought, each alleged error in  
108 the assessment, the grounds upon which the taxpayer relies, and any other facts relevant to the  
109 taxpayer's contention.

110 3. The commissioner of the revenue or other assessing official may hold a conference with the  
111 taxpayer if requested by the taxpayer, or require submission of additional information and documents, an  
112 audit or further audits, or other evidence deemed necessary for a proper and equitable determination of  
113 the application.

114 4. The assessment shall be deemed prima facie correct.

115 5. The commissioner of the revenue or other assessing official shall undertake a full review of the  
116 taxpayer's claims and issue a written determination to the taxpayer setting forth the facts and arguments  
117 in support of his decision within 90 days after such appeal is filed. Such determination shall be  
118 accompanied by a written explanation of the taxpayer's right to file an administrative appeal of the  
119 determination to the Tax Commissioner pursuant to subsection D.

120 6. Any taxpayer whose administrative appeal to the commissioner of the revenue or other assessing

official pursuant to this subsection has been pending for more than one year without the issuance of a final determination may, upon not less than 30 days' written notice to the commissioner of the revenue or other assessing official, elect to treat the application as denied and appeal the assessment to the Tax Commissioner in accordance with the provisions of subsection D. The Tax Commissioner shall not consider an appeal filed pursuant to the provisions of this subsection if he finds that the absence of a final determination on the part of the commissioner of the revenue or other assessing official was caused by the willful failure or refusal of the taxpayer to provide information requested and reasonably needed by the commissioner of the revenue or other assessing official to make his determination.

C. Suspension of collection activity pending administrative appeal to commissioner of the revenue or other assessing official. Provided a timely and complete appeal is filed pursuant to subsection B, collection activity shall be suspended by the treasurer or other official responsible for the collection of such tax until a final determination is issued by the commissioner of the revenue or other assessing official, unless the treasurer or other collection official (i) determines that collection would be jeopardized by delay as defined in this section; or (ii) is advised by the commissioner of the revenue or other assessing official that the taxpayer has not responded to a request for relevant information after a reasonable time. Interest shall accrue in accordance with the provisions of subdivision A 2 e of § 58.1-3703.1, but no further penalty shall be imposed while collection action is suspended.

D. Administrative appeal to Tax Commissioner.

1. Any person whose administrative appeal to the commissioner of the revenue or other assessing official pursuant to subsection B has been denied in whole or in part may appeal the determination of the commissioner of the revenue or other assessing official by filing an appeal with the Tax Commissioner and serving a copy of the appeal upon the commissioner of the revenue or other assessing official within 90 days of the date of the determination of the commissioner of the revenue or other assessing official. The appeal shall include a copy of the written determination of the commissioner of the revenue or other assessing official that is challenged, together with a statement of the facts and grounds upon which the taxpayer relies. *In any appeal relating to the valuation of machinery and tools, the appeal shall also include a copy of any appraisal submitted by the taxpayer to the commissioner of the revenue or other assessing official and any appraisal, comments concerning the taxpayer's appraisal, or other response provided by the commissioner of the revenue or other assessing official.*

2. The Tax Commissioner shall determine whether he has jurisdiction to hear the appeal within 30 days of receipt of the taxpayer's appeal.

3. If the Tax Commissioner determines that he has jurisdiction, he shall provide the commissioner of the revenue or other assessing official with an opportunity to respond to the appeal and permit the commissioner of the revenue or other assessing official to participate in the proceedings. *The response of the commissioner of the revenue or other assessing official shall identify any statement of fact submitted by the taxpayer that the commissioner of the revenue or other assessing official believes to be incorrect, and provide what he believes is a correct statement of fact and his reasons.*

The Tax Commissioner shall issue a determination to the taxpayer within 90 days of receipt of the taxpayer's appeal, unless the taxpayer and the commissioner of the revenue or other assessing official are notified that a longer period will be required. Such longer period of time shall not exceed 60 days, and the Tax Commissioner shall notify the affected parties of the reason necessitating the longer period of time. If the Tax Commissioner is unable to issue a determination within the 60-day extension period due to the failure of an affected party to supply the Tax Commissioner with necessary information, the Tax Commissioner shall certify this fact in writing prior to the expiration of the extension period. The Tax Commissioner shall then issue his determination within 60 days of receipt of such necessary information.

4. *In any appeal relating to the valuation of machinery and tools:*

*a. The taxpayer may determine the value of individual items of property by allocating a total appraised value for all the machinery and tools at a plant, facility, or any part thereof among the individual items of property at such plant, facility, or any part thereof, on the basis of the percentage of original cost that each such item bears to the total original cost.*

*b. Solely on the basis of the documents submitted by the taxpayer and the commissioner of the revenue or other assessing official, the Commissioner shall:*

*(1) Determine whether the locality's method for valuing and assessing machinery and tools is likely to estimate accurately fair market value and whether the locality has taken into account all forms of depreciation, including obsolescence, and other appropriate factors reasonably necessary to determine fair market value.*

*(2) Determine whether the taxpayer has carried his burden to establish that the machinery and tools in question have been assessed at more than fair market value and the fair market value thereof.*

*(3) State the facts and law in support of his determinations, including an analysis of any appraisals*

182 *or other valuation information presented by the taxpayer and the commissioner of the revenue or other*  
183 *assessing official.*

184 (4) *Affirm the assessment if the taxpayer has not carried his burden to establish that the property*  
185 *has a fair market value less than assessed value, or if the taxpayer has carried his burden, direct that*  
186 *the assessment be corrected by the commissioner of the revenue or other assessing official.*

187 5. The appeal shall be treated as an application pursuant to § 58.1-1821, and the Tax Commissioner  
188 may issue an order correcting such assessment of such property pursuant to § 58.1-1822, if the taxpayer  
189 has met the burden of proof provided in § 58.1-3987.

190 ~~5- 6.~~ The Tax Commissioner shall not make a determination regarding the valuation or the method of  
191 valuation of property subject to any local tax other than a local business tax.

192 E. Suspension of collection activity during administrative appeal to Tax Commissioner. On receipt of  
193 a notice of intent to file an appeal to the Tax Commissioner under subsection D, the treasurer or other  
194 official responsible for the collection of such tax shall further suspend collection activity until a final  
195 determination is issued by the Tax Commissioner, unless the treasurer or other collection official (i)  
196 determines that collection would be jeopardized by delay as defined in this section; or (ii) is advised by  
197 the commissioner or other assessing official that the taxpayer has not responded to a request for relevant  
198 information after a reasonable time. Interest shall accrue in accordance with the provisions of  
199 subdivision A 2 e of § 58.1-3703.1, but no further penalty shall be imposed while collection action is  
200 suspended. The requirement that collection activity be suspended shall cease unless an appeal pursuant  
201 to subsection D is filed and served on the necessary parties within 30 days of the service of the notice  
202 of intent to file such appeal.

203 F. Implementation of determination of Tax Commissioner. Promptly upon receipt of a final  
204 determination of the Tax Commissioner, the commissioner of the revenue or other local assessing  
205 official shall take those steps necessary to calculate the amount of tax owed by or refund due to the  
206 taxpayer consistent with the Tax Commissioner's determination and shall provide that information to the  
207 taxpayer and to the treasurer or other official responsible for collection in accordance with the provisions  
208 of this subsection.

209 1. If the determination of the Tax Commissioner sets forth a specific amount of tax due, the  
210 commissioner of the revenue or other assessing official shall certify this amount to the treasurer or other  
211 official responsible for collection, and the treasurer or other official responsible for collection shall issue  
212 a bill to the taxpayer for such amount due, together with interest accrued, within 30 days of the date of  
213 the determination of the Tax Commissioner.

214 2. If the determination of the Tax Commissioner sets forth a specific amount of refund due, the  
215 commissioner of the revenue or other assessing official shall certify this amount to the treasurer or other  
216 official responsible for collection, and the treasurer or other official responsible for collection shall issue  
217 a payment to the taxpayer for such amount due, together with interest accrued, within 30 days of the  
218 date of the determination of the Tax Commissioner.

219 3. If the determination of the Tax Commissioner does not set forth a specific amount of tax due, or  
220 otherwise requires the commissioner of the revenue or other assessing official to undertake a new or  
221 revised assessment that will result in the determination of a tax due that has not previously been paid in  
222 full, the commissioner of the revenue or other assessing official shall promptly commence the steps  
223 necessary to undertake such new or revised assessment, and provide the same to the taxpayer within 60  
224 days of the date of the determination of the Tax Commissioner, or within 60 days after receipt from the  
225 taxpayer of any additional information requested or reasonably required under the determination of the  
226 Tax Commissioner, whichever is later. The commissioner of the revenue or other assessing official shall  
227 certify the new assessment to the treasurer or other official responsible for collection, and the treasurer  
228 or other official responsible for collection shall issue a bill to the taxpayer for the amount due, together  
229 with interest accrued, within 30 days of the date of the new assessment.

230 4. If the determination of the Tax Commissioner does not set forth a specific amount of refund due,  
231 or otherwise requires the commissioner of the revenue or other assessing official to undertake a new or  
232 revised assessment that will result in the determination of a refund of taxes previously paid, the  
233 commissioner of the revenue or other assessing official shall promptly commence the steps necessary to  
234 undertake such new or revised assessment, and provide the same to the taxpayer within 60 days of the  
235 date of the determination of the Tax Commissioner, or within 60 days after receipt from the taxpayer of  
236 any additional information requested or reasonably required under the determination of the Tax  
237 Commissioner, whichever is later. The commissioner of the revenue or other assessing official shall  
238 certify the new assessment to the treasurer or other official responsible for collection, and the treasurer  
239 or other official responsible for collection shall issue a refund to the taxpayer for the amount of tax due,  
240 together with interest accrued, within 30 days of the date of the new assessment.

241 G. Judicial review of determination of Tax Commissioner. Following the issuance of a final  
242 determination of the Tax Commissioner pursuant to subsection D, the taxpayer or commissioner of the  
243 revenue or other assessing official may apply to the appropriate circuit court for judicial review of the

determination, or any part thereof, pursuant to § 58.1-3984. In any such proceeding for judicial review of a determination of the Tax Commissioner, the burden shall be on the party challenging the determination of the Tax Commissioner, or any part thereof, to show that the ruling of the Tax Commissioner is erroneous with respect to the part challenged. Neither the Tax Commissioner nor the Department of Taxation shall be made a party to an application to correct an assessment merely because the Tax Commissioner has ruled on it.

H. Suspension of payment of disputed amount of tax due upon taxpayer's notice of intent to initiate judicial review.

1. On receipt of a notice of intent to file an application for judicial review, pursuant to § 58.1-3984, of a determination of the Tax Commissioner pursuant to subsection D, and upon payment of the amount of the tax that is not in dispute together with any penalty and interest then due with respect to such undisputed portion of the tax, the treasurer or other collection official shall further suspend collection activity while the court retains jurisdiction unless the court, upon appropriate motion after notice and an opportunity to be heard, determines that (i) the taxpayer's application for judicial review is frivolous, as defined in this section; (ii) collection would be jeopardized by delay, as defined in this section; or (iii) suspension of collection would cause substantial economic hardship to the locality. For purposes of determining whether substantial economic hardship to the locality would arise from a suspension of collection activity, the court shall consider the cumulative effect of then-pending appeals filed within the locality by different taxpayers that allege common claims or theories of relief.

2. Upon a determination that the appeal is frivolous, that collection may be jeopardized by delay, or that suspension of collection would result in substantial economic hardship to the locality, the court may require the taxpayer to pay the amount in dispute or a portion thereof, or to provide surety for payment of the amount in dispute in a form acceptable to the court.

3. No suspension of collection activity shall be required if the application for judicial review fails to identify with particularity the amount in dispute.

4. The requirement that collection activity be suspended shall cease unless an application for judicial review pursuant to § 58.1-3984 is filed and served on the necessary parties within 30 days of the service of the notice of intent to file such application.

5. The suspension of collection activity authorized by this subdivision shall not be applicable to any appeal of a local business tax or local mobile property tax that is initiated by the direct filing of an action pursuant to § 58.1-3984 without prior exhaustion of the appeals provided by subsections B and D.

I. Suspension of payment of disputed amount of refund due upon locality's notice of intent to initiate judicial review.

1. Payment of any refund determined to be due pursuant to the determination of the Tax Commissioner shall be suspended if the locality assessing the tax serves upon the taxpayer, within 60 days of the date of the determination of the Tax Commissioner, a notice of intent to file an application for judicial review of the Tax Commissioner's determination pursuant to § 58.1-3984 and pays the amount of the refund not in dispute, including tax and accrued interest. Payment of such refund shall remain suspended while the court retains jurisdiction unless the court, upon appropriate motion after notice and an opportunity to be heard, determines that the locality's application for judicial review is frivolous, as defined in this section.

2. No suspension of refund activity shall be permitted if the locality's application for judicial review fails to identify with particularity the amount in dispute.

3. The requirement that the obligation to make a refund be suspended shall cease unless an application for judicial review pursuant to § 58.1-3984 is filed and served on the necessary parties within 30 days of the service of the notice of intent to file such application.

J. Rulings and advisory opinions.

1. Written rulings from commissioner of the revenue or other assessing official. Any taxpayer or authorized representative of a taxpayer may request a written ruling regarding the application of a local mobile property tax or a local business tax to a specific situation from the commissioner of the revenue or other assessing official. Any taxpayer requesting such a ruling shall provide all facts relevant to the situation and may present a rationale for the basis of an interpretation of the law most favorable to the taxpayer. Any misrepresentation or change in the applicable law or the factual situation as presented in the ruling request shall invalidate any such ruling issued. A written ruling may be revoked or amended prospectively if (i) there is a change in the law, a court decision, or the guidelines issued by the Department of Taxation upon which the ruling was based or (ii) the commissioner of the revenue or other assessing official notifies the taxpayer of a change in the policy or interpretation upon which the ruling was based. However, any taxpayer who acts on a written ruling which later becomes invalid shall be deemed to have acted in good faith during the period in which such ruling was in effect.

2. Advisory opinions of the Tax Commissioner. The Tax Commissioner shall have the authority to issue advisory written opinions in specific cases as requested to interpret a local business tax and

305 matters related to the administration thereof when an assessment of that tax is subject to appeal to the  
306 Tax Commissioner under this chapter. Opinions issued pursuant to this section shall not be applicable as  
307 an interpretation of any other tax law.

308 K. ~~Record-keeping~~ *Recordkeeping* and audits. Every person who is assessable with a local mobile  
309 property tax or a local business tax shall keep sufficient records to enable the commissioner of the  
310 revenue or other assessing official to verify the correctness of the tax paid for the taxable years  
311 assessable and to enable the commissioner of the revenue or other assessing official to ascertain the  
312 correct amount of tax assessable for each of those years. All such records, books of accounts and other  
313 information shall be open to inspection and examination by the commissioner of the revenue or other  
314 assessing official in order to allow him to establish whether the tax is due within this jurisdiction. The  
315 commissioner of the revenue or other assessing official shall provide the taxpayer with the option to  
316 conduct the audit in the taxpayer's local business office, if the records are maintained there. In the event  
317 the records are maintained outside this jurisdiction, copies of the appropriate books and records shall be  
318 sent to the commissioner's or assessor's office upon demand.