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HOUSE BILL NO. 2059

Offered January 13, 2021

Prefiled January 12, 2021

A BILL to amend the Code of Virginia by adding a section numbered 58.1-1802.2, relating to delinquent returns; enforcement; when approval required.

Patrons—Coyner, Mugler and Willett

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered 58.1-1802.2 as follows:

§ 58.1-1802.2. Delinquent returns; enforcement; when approval required.

A. For purposes of this section, "willfully" means voluntarily, knowingly, and intentionally violating a legal duty.

Taxpayers failing to file tax returns due pursuant to Chapter 3 (§ 58.1-300 et seq.) shall be requested to prepare and file all such returns except in instances where there is an indication that the taxpayer willfully failed to file the required return or returns, or if there is any other indication of fraud. All delinquent returns submitted by a taxpayer, whether upon his own initiative or at the request of the Department, shall be enforced pursuant to the provisions of subsection C and shall be accepted. However, when an indication that the taxpayer willfully failed to file the required return or if any other indication of fraud exists, the Department may refuse to accept such delinquent return submission in accordance with the laws of the Commonwealth and guidelines developed pursuant to this section.

B. Where it is determined that required returns have not been filed when due, the extent to which compliance for prior years will be enforced shall be determined by reference to factors ensuring compliance and proper administration of staffing and other Department resources. Factors to be considered shall include, but are not limited to, the taxpayer's prior history of noncompliance, existence of income from illegal sources, effects upon voluntary compliance, anticipated revenue, and collectability, in relation to the time and effort required to determine tax due. The Department shall also consider any special circumstances existing in the case of a particular taxpayer, class of taxpayer, or industry, or which may be peculiar to the class of tax involved.

C. Subject to the provisions of subsection A, application of the criteria in subsection B shall result in enforcement by the Department of delinquency procedures for not more than six years of the taxpayer's returns. Enforcement beyond such period shall not be undertaken without prior approval of the applicable Collections Manager. If delinquency procedures will not be enforced for the full six-year period of delinquency, prior approval of the Collections Manager must be secured. Such Collections Manager approval is required if the enforcement activity is less than or exceeds the six-year period. However, Collections Manager approval shall not be required if the nonfiling taxpayer voluntarily files returns beyond the established enforcement period. Such approval shall reference the facts of the taxpayer's case and detail the reasons why enforcement for the longer or shorter period is recommended.

D. The Department shall develop guidelines for the enforcement procedures provided by this section. Such guidelines shall be exempt from the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

INTRODUCED

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