

# VIRGINIA ACTS OF ASSEMBLY -- 2023 SESSION

## CHAPTER 163

*An Act to amend and reenact §§ 58.1-9 and 58.1-3916 of the Code of Virginia, relating to filing of tax returns or payment of taxes by mail.*

[H 1927]

Approved March 22, 2023

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

**1. That §§ 58.1-9 and 58.1-3916 of the Code of Virginia are amended and reenacted as follows:**

**§ 58.1-9. Filing of tax returns or payment of taxes by mail or otherwise; penalty.**

A. When remittance of a tax return or a tax payment is made by mail or by means of a recognized commercial delivery service, receipt of such return or payment by the person with whom such return is required to be filed or to whom such payment is required to be made, in a sealed envelope or container bearing a postmark or a confirmation of shipment on or before midnight of the day such return is required to be filed or such payment made without penalty or interest, shall constitute filing and payment as if such return had been filed or such payment made before the close of business on the last day on which such return may be filed or such tax may be paid without penalty or interest. *However, if through no fault of the taxpayer (i) no such postmark is affixed or (ii) the postmark affixed by the United States Postal Service is illegible or bears no date, such remittance of a tax return or a tax payment shall be deemed to have been timely if received through the United States mail no later than five days following the time of the close of business on the last day on which such return may be filed or such tax may be paid without penalty or interest. Additionally, no penalty or interest shall be imposed if a taxpayer provides evidence that remittance of a tax return or a tax payment was timely by producing a United States Postal Service Certificate of Mailing, or other proof of mailing, showing such return was filed or such payment was made before the close of business on the last day such return may be filed or such tax may be paid without penalty or interest.*

B. When remittance of a tax payment is made by electronic funds transfer, receipt of funds available for withdrawal, in a bank account designated to receive such payments by the person to whom such payment is required to be made, on or before midnight of the day such payment is required to be made without penalty or interest, shall constitute payment as if such payment had been made before the close of business on the last day on which such tax may be paid without penalty or interest.

C. Notwithstanding any provision of law, the Tax Commissioner may allow the electronic filing of any state tax return, statement or document. For purposes of this subsection, the Tax Commissioner may determine alternative methods for the signing, subscribing or verifying of a state tax return, statement or document that shall have the same validity and consequences as the actual signing by the taxpayer. The Tax Commissioner may prescribe methods of execution, recording, reproduction and certification of electronically filed information pursuant § 59.1-496.

The Tax Commissioner shall devise a method by which a taxpayer will only receive bulletins, publications, or other information provided by the Department electronically upon request.

D. If an income tax return preparer prepared 100 or more individual income tax returns for a taxable year that began on or after January 1, 2004, or 50 or more such returns for a taxable year that began on or after January 1, 2010, then for every taxable year thereafter, all individual income tax returns for taxable years prepared by that income tax return preparer shall be filed using electronic means. If an individual tax return shall be accompanied by attachments or schedules that cannot be accepted through electronic means, the income tax preparer shall file the return using software that produces a two dimensional barcode using 2D technology reflecting information contained in the return in a standard format as prescribed by the Tax Commissioner. This subsection shall not apply to an individual income tax return for a taxpayer who has indicated that he does not want his individual income tax return filed using electronic means or 2D technology.

The Tax Commissioner shall have the authority to waive the requirement to file by electronic means upon finding that the requirement would cause an undue hardship. The income tax return preparer otherwise required to file individual income tax returns using electronic means shall request in writing the waiver from the Tax Commissioner and clearly demonstrate the nature of the undue hardship. The Tax Commissioner shall respond to the income tax return preparer within 45 days after receiving the request for waiver.

For purposes of this subsection, "income tax return preparer" means a person who prepares, or employs one or more individuals to prepare, an income tax return for compensation. Preparation of a substantial portion of an individual income tax return shall be deemed preparation of the entire individual income tax return for purposes of this section.

For purposes of this subsection, "income tax return preparer" ~~shall~~ *does not* include volunteers who

prepare tax returns for the elderly or poor as part of a nonprofit organization's program.

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

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

In the event a transfer of real property ownership occurs after January 1 of a tax year and a real estate tax bill has been mailed pursuant to §§ 58.1-3281 and 58.1-3912, the treasurer or other

appropriate local official designated by ordinance of the local governing body in jurisdictions not having a treasurer, upon ascertaining that a property transfer has occurred, may invalidate a bill sent to the prior owner and reissue the bill to the new owner as permitted by § 58.1-3912, and no penalty for failure to pay any tax for any such assessment shall be imposed if the tax is paid within two weeks after the notice thereof is mailed.

Penalty and interest for failure to file a return or to pay a tax shall not be imposed if such failure was not the fault of the taxpayer, or was the fault of the commissioner of *the* revenue ~~or~~, the treasurer, *or the United States Postal Service when no postmark is properly affixed or if the postmark affixed by the United States Postal Service is illegible or bears no date, and the return or payment is received through the United States mail no later than five days following the time of the close of business on the last day on which such return may be filed or such tax may be paid without penalty or interest, as the case may be. No such penalty and interest shall be imposed if a taxpayer provides evidence that a tax return filing or a tax payment was timely by producing a United States Postal Service Certificate of Mailing, or other proof of mailing, showing such return was filed or such payment was made before the close of business on the last day such return may be filed or such tax may be paid without penalty or interest.* The failure to file a return or to pay a tax due to the death of the taxpayer or a medically determinable physical or mental impairment on the date the return or tax is due shall be presumptive proof of lack of fault on the taxpayer's part, provided the return is filed or the taxes are paid within 30 days of the due date; however, if there is a committee, legal guardian, conservator or other fiduciary handling the individual's affairs, such return shall be filed or such taxes paid within 120 days after the fiduciary qualifies or begins to act on behalf of the taxpayer. Interest on such taxes shall accrue until paid in full. Any such fiduciary shall, on behalf of the taxpayer, by the due date, file any required returns and pay any taxes that come due after the 120-day period. The treasurer shall make determinations of fault relating exclusively to failure to pay a tax, and the commissioner of the revenue shall make determinations of fault relating exclusively to failure to file a return. In jurisdictions not having a treasurer or commissioner of the revenue, the governing body may delegate to the appropriate local tax officials the responsibility to make the determination of fault.

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

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