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HOUSE BILL NO. 1621

Offered January 11, 2023

Prefiled January 7, 2023

A BILL to amend and reenact § 58.1-1812 of the Code of Virginia and to amend the Code of Virginia by adding in Article 2 of Chapter 20 of Title 58.1 a section numbered 58.1-2036, relating to state taxes; notices before penalty and interest.

Patron—Wright

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That § 58.1-1812 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding in Article 2 of Chapter 20 of Title 58.1 a section numbered 58.1-2036 as follows:

§ 58.1-1812. Assessment of omitted taxes by the Department of Taxation.

A. If the Tax Commissioner ascertains that any person has failed to make a proper return or to pay in full any proper tax, he shall assess the taxes prescribed by law, adding to the taxes so assessed the penalty prescribed by law, if any, for the failure to file a return (if a return was required by law but not filed within the time prescribed by law) and the penalty or penalties prescribed by law for the failure to pay the taxes and penalty or penalties within the time prescribed by law. If no penalty is so prescribed, he shall assess a penalty of five percent of the tax due, or if the failure to pay in full was fraudulent, a penalty of 100 percent of the tax due. In addition thereto, interest on the outstanding tax and penalty shall be charged at the rate established under § 58.1-15 for the period between the due date and the date of full payment.

Except as otherwise provided by law, the amount of tax shall be assessed within three years after the return was filed, whether such return was filed on or after the date prescribed, and no proceeding in court without assessment shall be begun for the collection of such tax after the expiration of such period. A return of tax filed before the last day prescribed by law for the timely filing thereof shall be considered as filed on the last day. A return of recordation tax shall be considered as having been filed on the date of recordation. If no return is filed, the tax may be assessed within six years of the date such return was due. If a false or fraudulent return is filed with intent to evade the payment of tax, an assessment may be made at any time.

Upon such assessment, the Department of Taxation shall send a bill therefor to the taxpayer and the taxes, penalties, and interest shall be remitted to the Department of Taxation within 30 days from the date of such bill. Effective January 1, 2023, such bill and notice of assessment shall identify the date the initial return or payment was received by the Department, any payment amounts received, and an explanation of the taxes, penalties, and interest related to such assessment on such taxpayer. *However, in no event may the Department impose any penalty or interest for failure to make a proper return or to pay in full any proper tax without first notifying a taxpayer that a return is required to be made or that a tax assessment bill is due and providing a second notice to such taxpayer prior to the date any penalty will be imposed, any interest will begin to accrue, or both, as applicable.* If such taxes, penalties, and interest are not paid within such 30 days, interest at the rate provided herein shall accrue thereon from the date of such assessment until payment.

B. The Department of Taxation shall not assess penalty or interest on any assessment of tax for the recovery of an erroneous refund, provided that the tax is paid to the Department within 30 days from the date of the bill. If the tax is not remitted to the Department within 30 days from the date of such bill, interest at the rate provided herein shall accrue thereon from the date of such assessment until payment.

As used in this section, "erroneous refund" means any refund of tax resulting solely from an error by the Department of Taxation that results in the taxpayer receiving a refund to which the taxpayer is not entitled.

§ 58.1-2036. Notice required before penalty or interest imposed.

No tax-assessing officer or body authorized by law to assess state taxes on any person who is a subject of taxation pursuant to this subtitle may impose any penalty or interest for failure to pay a state tax or file a return without first notifying a taxpayer that a return is required to be made or that a tax assessment bill is due and providing a second notice to such taxpayer prior to the date any penalty will be imposed, any interest will begin to accrue, or both, as applicable. Such notices shall include an explanation of the taxes, penalties, and interest related to such assessment on such taxpayer.

INTRODUCED

HB1621