

# VIRGINIA ACTS OF ASSEMBLY -- 1994 SESSION

## CHAPTER 932

*An Act to amend and reenact §§ 15.1-321, 58.1-1803, 58.1-3916 and 58.1-3958 of the Code of Virginia, relating to the collection of delinquent utility and tax bills.*

[H 1007]

Approved April 20, 1994

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

**1. That §§ 15.1-321, 58.1-1803, 58.1-3916 and 58.1-3958 of the Code of Virginia are amended and reenacted as follows:**

§ 15.1-321. Fees, rents and charges.

Such fees, rents and charges may be charged to and collected from: (i) any person contracting for the same; (ii) the owner or lessee or tenant, or some or all of them who use or occupy any real estate (a) which directly or indirectly is or has been connected with the sewage disposal system and (b) from or on which sewage or industrial wastes originate or have originated and have directly or indirectly entered or will enter the sewage disposal system; or (iii) any user of a municipality's water or sewer system with respect to combined sanitary and stormwater sewer systems where the user is a resident of the municipality and the purpose of any such fee, rent or charge is related to the control of combined sewer overflow discharges from such systems. Such fees, rents and charges shall be practicable and equitable and payable as directed by the respective county, city or town operating or providing for the operation of the water or sewer system.

Such fees, rents and charges, being in the nature of use or service charges, shall, as nearly as the governing body shall deem practicable and equitable, be uniform for the same type, class and amount of use or service of the sewage disposal system, and may be based or computed either on the consumption of water on or in connection with the real estate, making due allowances for commercial use of water, or on the number and kind of water outlets on or in connection with the real estate or on the number and kind of plumbing or sewage fixtures or facilities on or in connection with the real estate or on the number or average number of persons residing or working on or otherwise connected or identified with the real estate or any other factors determining the type, class and amount of use or service of the sewage disposal system, or on any combination of such factors, or on such other basis as the governing body may determine. Such fees, rents and charges shall be due and payable at such time as the governing body may determine, and the governing body may require the same to be paid in advance for periods of not more than six months. The revenue derived from any or all of such fees, rents and charges is hereby declared to be revenue of such sewage disposal system.

In the event the fees, rents or charges charged for the use and services of the sewage disposal system by or in connection with any real estate shall not be paid when due, interest shall at that time begin to accrue thereon at the rate of one percent per month, and the owner, lessee or tenant, as the case may be, of such real estate shall, until such fees, rents and charges shall be paid with such interest to the date of payment, cease to dispose of sewage or industrial waste originating from or on such real estate by discharge thereof directly or indirectly into the sewage disposal system, and if such owner, lessee or tenant shall not cease such disposal within two months thereafter, the county, city or town or person or corporation supplying water for the use of such real estate shall cease supplying water thereto unless the health officers shall certify that shutting off the water will endanger the health of the occupants of the premises or the health of others.

Such fees, rents and charges and interests thereon ~~may be recovered by the county, city or town by action at law or suit in equity and~~ shall constitute a lien against the property, ranking on a parity with liens for unpaid taxes. *Such amounts, plus reasonable attorney's or collection agency's fees which shall not exceed twenty percent of the delinquent tax bill, may be recovered by the county, city or town by action at law or suit in equity.*

§ 58.1-1803. Department of Taxation may appoint collectors of delinquent state taxes.

A. The Department of Taxation may appoint a collector in any county or city to collect delinquent state taxes therein, and may allow him a reasonable compensation, to be agreed on before the service is commenced, which compensation shall not exceed twenty percent on what may be collected and paid into the state treasury.

B. The Department of Taxation may appoint collectors or contract with collection agencies in any state to collect delinquent state taxes therein from taxpayers not residing or domiciled in this Commonwealth, and allow reasonable compensation for such services, to be agreed on before the service is commenced. Delinquent claims for state taxes may be assigned to collectors or collection agencies so designated for the purpose of litigation in the Department of Taxation's name and at the Department of Taxation's expense.

C. *The Tax Commissioner shall add to an outstanding assessment an amount equal to the*

*compensation, including costs and expenses, to be paid to a collector or collection agency authorized in this section. In cases where collection is made by action at law or suit in equity, such costs and expenses shall include litigation expenses and attorney's fees. Such addition shall not exceed twenty percent of the outstanding assessment.*

C. D. Compensation for collectors and collection agencies appointed by or under contract with the Department of Taxation pursuant to this section shall be paid out of the state treasury on warrant of the Comptroller issued on the certificate of the Tax Commissioner. Such collectors who are attorneys-at-law shall have authority to institute actions at law or suits in equity for the recovery of state taxes. For the purpose of this section, the term "state taxes" shall include any penalty, ~~and~~ interest *and all costs of collection charged by the collector or collection agency for collecting an outstanding assessment* added to delinquent taxes and shall also include the local sales and use tax imposed under the authority of §§ 58.1-605 and 58.1-606 and any penalty and interest applicable thereto. Each collector so appointed or collection agency so contracted with shall give bond to the Commonwealth for the faithful performance of the duties placed upon him by this section, in a penalty to be fixed by the Tax Commissioner, in whose office the bond shall be filed. Any county or city treasurer turning over delinquent tax tickets to any such collector in pursuance of orders issued by the Department of Taxation shall receive credit on the Comptroller's books for the amount so turned over.

§ 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 provide by ordinance penalties for failure to file such applications and returns and for nonpayment in time; ~~and~~ may provide for payment of interest on delinquent taxes; *and may provide for the recovery of reasonable attorney's or collection agency's fees which shall not exceed twenty percent of the delinquent tax bill upon nonpayment. Attorney's fees shall be added only if such delinquency is collected by action at law or suit in equity.*

*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.*

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 ten 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 ten 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 ten percent of the tax past due on such property or the sum of ten dollars, whichever is the greater; provided, however, that the penalty shall in no case exceed the amount of tax due. No penalty for failure to file a return shall be greater than ten percent of the tax assessable on such return or ten dollars, 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 revenue or the treasurer, as the case may be. The failure to file a return or to pay a tax due to 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 thirty days of the due date; however, this provision shall not apply if there is a committee, legal guardian or other fiduciary handling the individual's affairs. 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 for reasonable extensions of time, not to exceed ninety days, for the payment of real estate 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.

§ 58.1-3958. Payment of administrative costs, etc.

The governing body of any county, city or town may impose on delinquent taxpayers a fee to cover the administrative costs *and reasonable attorney's or collection agency's fees which shall not exceed twenty percent of the delinquent tax bill* associated with the collection of delinquent taxes. Such ~~fee~~ *administrative costs* shall be in addition to all penalties and interest, and shall not exceed twenty dollars for taxes collected subsequent to the filing of a warrant or other appropriate legal document but prior to judgment, and twenty-five dollars for taxes collected subsequent to judgment. *Attorney's fees shall be added only if such delinquency is collected by action at law or suit in equity.*

*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.*