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HOUSE BILL NO. 1013

Offered January 25, 1994

A BILL to amend the Code of Virginia by adding in Chapter 1 of Title 58.1 sections numbered 58.1-112 through 58.1-123, relating to enactment of a Taxpayer Bill of Rights.

Patrons—Forbes, Callahan and Howell

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Chapter 1 of Title 58.1 sections numbered 58.1-112 through 58.1-123 as follows:

§ 58.1-112. Policy, application, and construction.

The General Assembly of Virginia, recognizing that there is a need to create new legislation for protection of taxpayers with respect to audits and reviews, collection practices, taxpayer litigation, codification of uniform procedures for collection of taxes, and communication with taxpayers in audits and litigation, hereby establishes the "Taxpayer Bill of Rights." This act shall be liberally construed to accomplish its purposes.

§ 58.1-113. Definitions.

"Commissioner" as used in this section shall refer to the Commissioner of the Department of Taxation.

"Department" as used in this section shall refer to the Department of Taxation, its employees and its agents.

"Employee of the Department" as used in this section shall refer to any collection agent, officer or employee of the Virginia Department of Taxation.

"Taxpayer" means any business, corporation, partnership, sole proprietorship, or individual who has filed or has the responsibility to file taxes in the Commonwealth of Virginia under Title 58.1.

§ 58.1-114. Practitioner hotline.

The office of the Commissioner shall establish a toll-free practitioner hotline, to be staffed during regular business hours, for practitioners before the Department to include accountants, attorneys, and other persons qualified to practice before the Department. This number shall be for the exclusive use of tax practitioners working on behalf of their clients with regard to tax matters before the Department, and such number shall be maintained as confidential with regard to the general public.

§ 58.1-115. Written acknowledgment of correspondence from taxpayer.

In any action involving collection and enforcement action against any taxpayer, the Department shall be required to provide written acknowledgment of any correspondence received from the taxpayer, or his representative, within seven business days of receipt by the Department of Taxation.

§ 58.1-116. Abatement of any penalty or tax attributable to erroneous written advice by the Department of Taxation.

A. The Commissioner shall abate any portion of any penalty or tax attributable to erroneous advice furnished to the taxpayer in writing by an officer or employee (of the Virginia Department of Taxation) acting in such officer's or employee's official capacity.

B. Subsection A shall apply only if:

1. The written advice was reasonably relied upon by the taxpayer and was in response to a specific written request by the taxpayer; and

2. The portion of the penalty or tax did not result from a failure by the taxpayer to provide adequate or accurate information.

C. On or before December 1, 1994, the Commissioner shall prescribe such initial regulations as shall be necessary to carry out this section.

§ 58.1-117. Notice of assessment.

A. Any taxpayer shall be given the opportunity to file within thirty days of receipt of a notice of intent to file a memorandum of lien by the Department a written appeal to the Commissioner protesting all or any portion of taxes proposed to be assessed against the taxpayer.

B. Any notice of assessment from the Department shall describe the basis for and shall identify the amounts (if any) of tax due, interest, additional amounts, and assessable penalties. An inaccurate description under this subsection shall not invalidate such notice.

C. Along with the notice of assessment, the Department shall furnish each taxpayer a simple, nontechnical explanation of the taxpayer's rights during an audit, procedures for appeals, refund claims, taxpayer complaints, and procedures the Department may use in assessing and collecting taxes.

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§ 58.1-118. Agreements for the payments of tax liability in installments.

A. The Commissioner is authorized to enter into a written agreement with any taxpayer under which such taxpayer is allowed to satisfy liability for payment of any tax in installment payments, if the Commissioner determines such an agreement will facilitate collection of the liability.

B. Except as otherwise provided in this subsection, any agreement entered into by the Commissioner under subsection A shall remain in effect for the term of the agreement.

1. The Commissioner may terminate any agreement entered into by the Commissioner under subsection A if:

a. Information which the taxpayer provided to the Commissioner prior to the date such agreement was entered into was inaccurate or incomplete; or

b. The Commissioner believes collection of any tax to which an agreement under this subsection A relates is in jeopardy.

C. If the Commissioner makes a determination that the financial condition of a taxpayer with whom the Commissioner has entered into an agreement under subsection A has significantly changed, the Commissioner may alter, modify, or terminate such agreement. Action may be taken by the Commissioner under this section only if (i) notice of such determination is provided to the taxpayer no later than thirty days prior to the date of such action and (ii) such notice includes the reasons why the Commissioner believes a significant change in the financial condition of the taxpayer has occurred.

D. The Commissioner may alter, modify, or terminate an agreement entered into by the Commissioner under subsection A in the case of the failure of the taxpayer:

1. To pay any installment at the time such installment payment is due under such agreement;

2. To pay any other tax liability at the time such liability is due;

3. To provide a financial condition update as requested by the Commissioner; or

4. To file with the Department any required tax or information return during the time period such agreement is in effect.

§ 58.1-119. Release of lien or discharge of property.

A. Subject to such regulations as the Commissioner may prescribe, the Commissioner shall issue a certificate of release of any lien imposed with respect to any tax assessed by the Department of Taxation not later than thirty days after the day on which:

1. The Commissioner finds that the liability for the amount assessed, together with all interest in respect thereof, has been fully satisfied or has become legally unenforceable; or

2. There is furnished to the Commissioner and accepted by him a bond that is conditioned upon the payment of the amount assessed, together with all interest in respect thereof, within the time prescribed by law (including any extension of such time), and that complies with the requirements relating to terms, conditions, and form of the bond and sureties thereon, as may be specified by such regulations.

B.1. Subject to such regulations as the Commissioner may prescribe, the Commissioner may issue a certificate of discharge of any part of the property subject to any lien imposed under this subtitle if the Commissioner finds that the fair market value of that part of such property remaining subject to the lien is at least double the amount of the unsatisfied liability secured by such lien and the amount of all other liens upon such property which have priority over the tax.

2. Subject to such regulations as the Commissioner may prescribe, the Commissioner may issue a certificate of discharge of any part of the property subject to the lien if:

a. There is paid over to the Commissioner in partial satisfaction of the liability secured by the lien an amount determined by the Commissioner, which shall not be less than the value, as determined by the Commissioner, of the interest of the Commonwealth of Virginia in the part to be so discharged; or

b. The Commissioner determines at any time that the interest of the Commonwealth of Virginia in the part to be so discharged has no value. In determining the value of the interest of the Commonwealth of Virginia in the part to be so discharged, the Commissioner shall give consideration to the value of such part and to such lien or liens thereon as have priority over the lien of the Commonwealth of Virginia.

3. Subject to such regulations as the Commissioner may prescribe, the Commissioner may issue a certificate of discharge of any part of the property subject to the lien if such part of the property is sold and, pursuant to an agreement with the Commissioner, the proceeds of such sale are to be held, as a fund subject to the liens and claims of the Commonwealth of Virginia, in the same manner and with the same priority as such liens and claims had with respect to the discharged property.

C. Subject to such regulations as the Commissioner may prescribe, the Commissioner may issue a certificate of discharge of any or all of the property subject to any lien imposed by Chapter 9 (§ 58.1-900 et seq.) of Title 58.1 if the Commissioner finds that the liability secured by such lien has been fully satisfied or provided for.

D. Subject to such regulations as the Commissioner may prescribe, the Commissioner may issue a certificate of subordination of any lien imposed by this subtitle upon any part of the property subject to such lien if (i) there is paid over to the Commissioner an amount equal to the amount of the lien or interest to which the certificate subordinates the lien of the Commonwealth of Virginia; (ii) the

Commissioner believes that the amount realizable by the Commonwealth of Virginia from the property to which the certificate relates, or from any other property subject to the lien, will ultimately be increased by reason of the issuance of such certificate and that the ultimate collection of the tax liability will be facilitated by such subordination; or (iii) in the case of any lien imposed by Chapter 9 (§ 58.1-900 et seq.), of Title 58.1 if the Commissioner determines that the Commonwealth of Virginia will be adequately secured after such subordination.

E. If the Commissioner determines that, because of confusion of names or otherwise, any person (other than the person against whom the tax was assessed) is or may be injured by the appearance that a memorandum of lien filed under § 58.1-1805 refers to such person, the Commissioner may issue a certificate that the lien does not attach to the property of such person.

F. 1. Except as provided in subdivisions 2 and 3 below, if a certificate is issued pursuant to this section by the Commissioner and is filed in the same office as the memorandum of lien to which it relates (if such memorandum of lien has been filed) such certificate shall have the following effect:

a. In the case of a certificate of release, such certificate shall be conclusive that the lien referred to in such certificate is extinguished;

b. In the case of a certificate of discharge, such certificate shall be conclusive that the property covered by such certificate is discharged from the lien;

c. In the case of a certificate of subordination, such certificate shall be conclusive that the lien or interest to which the lien of the Commonwealth of Virginia is subordinated is superior to the lien of the Commonwealth of Virginia; and

d. In the case of a certificate of nonattachment, such certificate shall be conclusive that the lien of the Commonwealth of Virginia does not attach to the property of the person referred to in such certificate.

2. If the Commissioner determines that a certificate of release or nonattachment of a lien imposed by § 58.1-1805 was issued erroneously or improvidently, and if the period of limitation on collection after assessment has not expired, the Commissioner may revoke such certificate and reinstate the lien:

a. By mailing notice of such revocation to the person against whom the tax was assessed at his last known address; and

b. By filing notice of such revocation in the same office in which the memorandum of lien to which it relates was filed (if such notice of lien had been filed).

Such reinstated lien (i) shall be effective on the date that notice of revocation is mailed to the taxpayer in accordance with the requirements of part a above, but not earlier than the date on which any required filing of notice of revocation is filed in accordance with the provisions of part b above, and (ii) shall have the same force and effect (as of such date), until the expiration of the period of limitation on collection after assessment, as a lien imposed by § 58.1-1805 (relating to lien for taxes).

3. Notwithstanding any other provision of this chapter, any lien imposed by this subtitle shall attach to any property with respect to which a certificate of discharge has been issued if the person liable for the tax reacquires such property after the certificate has been issued.

§ 58.1-120. Administrative appeal of liens.

A. In such form and at such time as the Commissioner shall prescribe by regulations, any person shall be allowed to appeal to the Commissioner after the filing of a memorandum of lien under § 58.1-1805 on the property or the rights to property of such person for a release of such lien alleging an error in the filing of the memorandum of lien.

B. If the Commissioner determines that the filing of the memorandum of any lien was erroneous, the Commissioner shall expeditiously (and, to the extent practicable, within fourteen days after such determination) issue a certificate of release of such lien and shall include in such certificate a statement that the filing was erroneous.

§ 58.1-121. Civil damages for failure to release lien.

A. If any officer or employee of the Virginia Department of Taxation knowingly, or by reason of negligence, fails to release a lien under § 58.1-119 on property of the taxpayer, such taxpayer may bring a civil action for damages against the Commonwealth of Virginia in a circuit court of the Commonwealth of Virginia.

B. In any action brought under subsection A, upon a finding of liability on the part of the defendant, the defendant shall be liable to the plaintiff in an amount equal to the sum of (i) actual, direct economic damages sustained by the plaintiff which, but for the actions of the defendant, would not have been sustained, plus (ii) the costs of the action. The limitation on damages contained in the Virginia Tort Claims Act (§ 8.01-195.1 et seq.) of Title 8.01 shall not apply to actions filed under the authority of this section.

C. The Commissioner shall include in his budget request a reserve fund estimated to be adequate to pay all awards which may be made against the Department of Taxation, and to the extent the General Assembly has specifically appropriated funds to the Department for this purpose, the Department shall

183 pay such awards.

184 D. 1. A judgment for damages shall not be awarded under subsection B unless the court determines
185 that the plaintiff has exhausted the administrative remedies available to such plaintiff within the
186 Department of Taxation.

187 2. The amount of damages awarded under clause B shall be reduced by the amount of such damages
188 which could have reasonably been mitigated by the plaintiff.

189 3. Notwithstanding any other provision of law, an action to enforce liability created under this
190 section may be brought without regard to the amount in controversy and may be brought only within
191 two years after the date the right of action accrues.

192 E. The Commissioner shall by regulation prescribe reasonable procedures for a taxpayer to notify
193 the Commissioner of the failure to release a lien under § 58.1-119 on property of the taxpayer.

194 § 58.1-122. Civil damages for certain unauthorized collection actions.

195 A. If, in connection with any collection of tax with respect to a taxpayer, any officer or employee of
196 the Virginia Department of Taxation recklessly or intentionally disregards any provision of this subtitle,
197 or any regulation promulgated under this subtitle, such taxpayer may bring a civil action for damages
198 against the Commonwealth of Virginia in circuit court. Except as provided in § 58.1-121, such civil
199 action shall be the exclusive remedy for recovering damages resulting from such actions.

200 B. In any action brought under subsection A, upon a finding of liability on the part of the defendant,
201 the defendant shall be liable to the plaintiff in an amount equal to the lesser of \$100,000 or the sum of
202 (i) actual, direct economic damages sustained by the plaintiff as a proximate result of the reckless or
203 intentional actions of the officer or employee, plus (ii) the costs of the action.

204 C. The Tax Commissioner shall include in his budget request a reserve fund estimated to be
205 adequate to pay all awards which may be made against the Department of Taxation, and to the extent
206 the General Assembly has specifically appropriated funds to the Department for this purpose, the
207 Department shall pay such awards.

208 D. 1. A judgment for damages shall not be awarded under subsection B unless the court determines
209 that the plaintiff has exhausted the administrative remedies available to such plaintiff within the Virginia
210 Department of Taxation.

211 2. The amount of damages awarded under clause B shall be reduced by the amount of such damages
212 which could have reasonably been mitigated by the plaintiff.

213 3. Notwithstanding any other provision of law, an action to enforce liability created under this
214 section may be brought without regard to the amount in controversy and may be brought only within
215 two years after the date that the right of action accrues.

216 § 58.1-123. Sanctions and costs awarded by courts.

217 A. 1. Whenever it appears to the circuit court that (i) the taxpayer's action under § 58.1-121 was
218 instituted or maintained by the taxpayer primarily for delay, or (ii) the taxpayer's position in such
219 proceeding is frivolous or groundless, or (iii) the taxpayer unreasonably failed to pursue available
220 administrative remedies, the circuit court, in its discretion, may require the taxpayer to pay the
221 Commonwealth of Virginia a penalty not in excess of \$25,000.

222 2. Whenever it appears to the circuit court that any attorney or other person admitted to practice
223 before the court has, unreasonably and vexatiously, multiplied the proceedings in any case, the court
224 may require (i) that such attorney or other person pay personally the excess costs, expenses, and
225 attorneys' fees reasonably incurred because of such conduct, or (ii) if such attorney is appearing on
226 behalf of the Commissioner, that the Commonwealth pay such excess costs, expenses, and attorneys' fees
227 in the same manner as such an award by a circuit court.

228 B. 1. Whenever it appears to the court that the taxpayer's position in the proceedings before the
229 court instituted or maintained by such taxpayer under § 58.1-122 is frivolous or groundless, the court
230 may require the taxpayer to pay to the Commonwealth a penalty not in excess of \$10,000.

231 2. In any civil proceeding before any court which is brought by or against the Commonwealth of
232 Virginia in connection with the determination, collection, or refund of any tax, interest, or penalty under
233 this title, any monetary sanctions, penalties, or costs awarded by the court to the Commonwealth may be
234 assessed by the Commissioner and, upon notice and demand, may be collected in the same manner as a
235 tax.

236 3. In connection with any appeal from a proceeding in the circuit court of a civil proceeding
237 described in subsection B 2, an order of the Court of Appeals or the Supreme Court of Virginia
238 awarding monetary sanctions, penalties or court costs to the Commissioner may be docketed in a circuit
239 court clerk's office upon filing a certified copy of such order and shall be enforceable as other circuit
240 court judgments. Any such sanctions, penalties, or costs may be assessed by the Commissioner and,
241 upon notice and demand, may be collected in the same manner as a tax.