

# VIRGINIA ACTS OF ASSEMBLY -- 1996 SESSION

## CHAPTER 634

*An Act to amend and reenact §§ 58.1-202, 58.1-307, 58.1-313, and 58.1-1805 of the Code of Virginia, and to amend the Code of Virginia by adding sections numbered 58.1-1817, 58.1-1818, 58.1-1834 and 58.1-1835, and by adding in Chapter 18 of Title 58.1 an article numbered 4, consisting of a section numbered 58.1-1845, relating to the Virginia Taxpayer Bill of Rights.*

[H 1451]

Approved April 5, 1996

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

**1. That §§ 58.1-202, 58.1-307, 58.1-313, and 58.1-1805 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding sections numbered 58.1-1817, 58.1-1818, 58.1-1834 and 58.1-1835, and by adding in Chapter 18 of Title 58.1 an article numbered 4, consisting of a section numbered 58.1-1845, as follows:**

§ 58.1-202. General powers and duties of Tax Commissioner.

In addition to the powers conferred and the duties imposed elsewhere by law upon the Tax Commissioner, he shall:

1. Supervise the administration of the tax laws of the Commonwealth, insofar as they relate to taxable state subjects and assessments thereon, with a view to ascertaining the best methods of reaching all such property, of effecting equitable assessments and of avoiding conflicts and duplication of taxation of the same property.

2. Recommend to the Governor and the General Assembly measures to promote uniform assessments, just rates and harmony and cooperation among all officials connected with the revenue system of the Commonwealth.

3. Exercise general supervision over all commissioners of the revenue so far as the duties of such officers pertain to state revenues, and confer with, instruct and advise all such officers in the performance of their duties to the extent stated.

4. Investigate at any time the assessment and collection of state taxes in any county or city and when the assessment is found unreasonable and unjust take steps to correct the same in the manner provided by law.

5. Institute proceedings by motion in writing in the proper court for the removal or suspension of commissioners of the revenue for incompetency, neglect or other official misconduct and order the Comptroller to withhold compensation from any commissioner of the revenue who fails to comply with any law governing the duties or any lawful instruction of the Tax Commissioner, until such commissioner of the revenue complies with such law or instruction.

6. Provide commissioners of the revenue with information and assistance in the assessment of personal property, including the maintenance of a reference library and the conduct of instructional programs.

7. Prescribe the forms of books, schedules and blanks to be used in the assessment and collection of state taxes and call for and prescribe the forms of such statistical reports, notices and other papers as he may deem necessary to the proper administration of the law, and prescribe and install uniform systems to be used by assessing officials.

8. Direct such proceedings, actions and prosecutions to be instituted as may be needful to enforce the revenue laws of the Commonwealth and call on the Attorney General or other proper officer to prosecute such actions and proceedings.

9. Intervene, by petition or otherwise, whenever deemed advisable in any action or proceeding pending in any court wherein the constitutionality or construction of any state tax or revenue statute or the validity of any state tax is in question. The court wherein such action or proceeding is pending may, by order entered therein, make the Tax Commissioner a party thereto whenever deemed necessary.

10. Upon request by any local governing body, local board of equalization or any ten citizens and taxpayers of the locality, render advisory aid and assistance to such board in the matter of equalizing the assessments of real estate and tangible personal property as among property owners of the locality.

11. Annually make available to every county and city and, where appropriate, towns, a general reassessment procedures manual which provides the legal requirements for conducting general reassessments, and guidelines suggesting the broad range of factors in addition to market data that are appropriate for consideration in the determination of fair market value of both rural and urban land and structures.

12. *Issue an annual report to the members of the House Appropriations Committee, the House Finance Committee, and the Senate Finance Committee detailing procedures used in the collections process and how the Virginia Taxpayer Bill of Rights (§ 58.1-1845) is implemented to assist with such*

*collections.*

13. *Ensure that employees of the Department are not paid, evaluated, or promoted on the basis of the amount of assessments or collections from taxpayers.*

§ 58.1-307. Disposition of returns; handling of state income tax payments; audit.

A. As soon as the individual and fiduciary income tax returns have been received by the commissioner of the revenue and entered upon the assessment sheets or forms, the commissioner of the revenue shall forward such returns to the Department. The Department, however, may authorize the commissioner of the revenue to retain such returns for such length of time as may be necessary to enable him to review them under § 58.1-305 and to use them in ascertaining delinquents. As soon as practicable after each such return is received by the Department, it shall examine and audit it. *Except in criminal and internal investigations, the Department shall conduct its audits, inspections of records, and meetings with taxpayers at reasonable times and places. For purposes of informal meetings on appeals under § 58.1-1821, Richmond shall be a reasonable place to meet.*

B. If any income tax return filed with and received by the commissioner of the revenue or director of finance or other assessing officer is accompanied by payment, in whole or in part, of the liability shown on such return, such officer, within two banking days of receipt of such return, shall deliver such payment or payments to the treasurer. The commissioner of the revenue or director of finance or other assessing officer shall maintain a record of the date on which such payments are received and shall also record the date on which such payments are delivered to the treasurer. The Auditor of Public Accounts shall either prescribe or approve the commissioner of the revenue's or director of finance's or other assessing officer's record-keeping system and shall audit such records as provided for in Chapter 13 (§ 2.1-153 et seq.) of Title 2.1. The Auditor, in his discretion, upon a showing of hardship making it difficult to comply with these requirements, may prescribe or approve alternative arrangements intended to accomplish the same result. The treasurer shall act in accordance with §§ 2.1-198 A and 58.1-3168 in the handling, deposit, and accounting of such payments.

§ 58.1-313. Immediate assessment where collection jeopardized by delay; notice of assessment; termination of taxable period; memorandum of lien.

A. If the Tax Commissioner determines that the collection of any income tax, penalties or interest required to be paid under this title will be jeopardized by delay, the Tax Commissioner shall immediately assess the actual or estimated amount of tax due, together with all penalties and interest, and demand immediate payment from the taxpayer. A notice of such assessment and demand shall be sent by certified mail, return receipt requested, to the taxpayer's last known address or personally delivered to the taxpayer. In the case of a tax for a current period, the Tax Commissioner shall declare the taxable period of the taxpayer immediately terminated and shall cause notice of such finding and declaration to be mailed or personally delivered to the taxpayer together with a demand for immediate payment of the tax based on the period declared terminated, and such tax shall be immediately due and payable, whether or not the time otherwise allowed by law for filing a return and paying the tax has expired. Assessments provided for in this section shall become immediately due and payable, and if any such tax, penalty or interest is not paid upon demand of the Tax Commissioner, he shall proceed to collect the same by legal process as otherwise provided by law. A memorandum of lien provided for in § 58.1-1805 may be issued immediately upon assessment and notice thereof, or the Tax Commissioner may require the taxpayer to file a bond sufficient in the Commissioner's judgment to protect the interest of the Commonwealth. "Jeopardized by delay" for purposes of this section includes a finding by the Tax Commissioner that a taxpayer designs (i) to depart quickly from the Commonwealth, (ii) to remove his property therefrom, (iii) to conceal himself or his property therein, or (iv) to do any other act tending to prejudice or to render wholly or partially ineffectual proceedings to collect the income tax for the period in question.

B. A memorandum of lien may be filed for delinquent income taxes assessed by the Department only within six years after an assessment.

C. *The Department shall notify the taxpayer that he shall have the opportunity to appear at a meeting within fourteen days and make an oral or written statement of why he believes no jeopardy to the revenue exists or why a memorandum of lien should be released, if one was recorded. Upon request of the taxpayer, the Department shall meet with the taxpayer at a time set by the Department within fourteen days after the issuance of the jeopardy assessment. The Department shall determine within twenty days after such meeting whether such jeopardy assessment or lien should be withdrawn and shall send written notice of such finding to the taxpayer. If the finding is not in the taxpayer's favor, he may use the remedies available for corrections of erroneous assessments in Article 2 (§ 58.1-1820 et seq.) of Chapter 18.*

§ 58.1-1805. Memorandum of lien for collection of taxes; release of lien.

A. If any taxes or fees, including penalties and interest, assessed by the Department of Taxation in pursuance of law against any person, are not paid within thirty days after the same become due, the Tax Commissioner may file a memorandum of lien in the circuit court clerk's office of the county or city in which the taxpayer's place of business is located, or in which the taxpayer resides. If the taxpayer has no place of business or residence within the Commonwealth, such memorandum may be filed in the

Circuit Court of the City of Richmond. A copy of such memorandum may also be filed in the clerk's office of all counties and cities in which the taxpayer owns real estate. Such memorandum shall be recorded in the judgment docket book and shall have the effect of a judgment in favor of the Commonwealth, to be enforced as provided in Article 19 (§ 8.01-196 et seq.) of Chapter 3 of Title 8.01, except that a writ of fieri facias may issue at any time after the memorandum is filed. The lien on real estate shall become effective at the time the memorandum is filed in the jurisdiction in which the real estate is located. No memorandum of lien shall be filed unless the taxpayer is first given ten or more days' prior notice of intent to file a lien; however, in those instances where the Tax Commissioner determines that the collection of any tax, penalties or interest required to be paid pursuant to law will be jeopardized by the provision of such notice, notification may be provided to the taxpayer concurrent with the filing of the memorandum of lien. Such notice shall be given to the taxpayer at his last known address. For purposes of this section, "last known address" means the address shown on the most recent return filed by or on behalf of the taxpayer or the address provided in correspondence by or on behalf of the taxpayer indicating that it is a change of the taxpayer's address.

B. Recordation of a memorandum of lien hereunder shall not affect the right to a refund or exoneration under this chapter, nor shall an application for correction of an erroneous assessment affect the power of the Tax Commissioner to collect the tax, except as specifically provided in this title.

C. If after filing a memorandum of lien as required by subsection A, the Tax Commissioner determines that it is in the best interest of the Commonwealth, the Tax Commissioner may place padlocks on the doors of any business enterprise that is delinquent in either filing or paying any tax owed to the Commonwealth, or both. He shall also post notices of distraint on each of the doors so padlocked. If after three business days, the tax deficiency has not been satisfied or satisfactory arrangements for payment made, the Tax Commissioner may cause a writ of fieri facias to be issued.

It shall be a Class 1 misdemeanor for anyone to enter the padlocked premises without prior approval of the Tax Commissioner.

In the event that the taxpayer against whom the distraint has been applied subsequently makes application for correction of the assessment under § 58.1-1821, the taxpayer shall have the right to post bond equaling the amount of the tax liability in lieu of payment until the application is acted upon.

The provisions of subsection C shall be enforceable only after the promulgation, by the Tax Commissioner, of regulations under the Administrative Process Act (§ 9-6.14:1 et seq.) setting forth the circumstances under which this subsection can be used.

*D. A taxpayer may appeal to the Tax Commissioner after a memorandum of lien has been filed under this section if the taxpayer alleges an error in the filing of the lien. The Tax Commissioner shall make a determination of such an appeal within fourteen days. If the Tax Commissioner determines that the filing was erroneous, he shall issue a certificate of release of the lien within seven days after such determination is made.*

*§ 58.1-1817. Installment agreements for the payment of taxes.*

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

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

*The Tax Commissioner may terminate any installment agreement if:*

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

*2. The Tax Commissioner determines that the collection of any tax to which an agreement relates is in jeopardy.*

*C. If the Tax Commissioner makes a determination that the financial condition of a taxpayer who has entered into an installment agreement under this section has significantly changed, the Tax Commissioner may alter, modify, or terminate such agreement. Such action may be taken only if (i) notice of the action 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 Tax Commissioner believes a significant change in the financial condition of the taxpayer has occurred.*

*D. The Tax Commissioner may alter, modify, or terminate an installment agreement in the case of the failure of the taxpayer:*

*1. To pay any installment at the time it is due;*

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

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

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

*E. The Tax Commissioner may alter, modify, or terminate an installment agreement under other exceptional circumstances as he deems appropriate.*

*§ 58.1-1818. Taxpayer problem resolution program; taxpayer assistance orders.*

*A taxpayer problem resolution program shall be available to taxpayers to facilitate the prompt*

review and resolution of taxpayer complaints and problems which have not been addressed or remedied through normal administrative proceedings or operational procedures and to assure that taxpayer rights are safeguarded and protected during the tax determination and collection processes.

The Tax Commissioner shall designate a taxpayers' rights advocate and adequate staff to administer the taxpayer problem resolution program.

The taxpayers' rights advocate may issue a taxpayer assistance order that suspends or stays actions or proposed actions by the Department when a taxpayer suffers or is about to suffer a significant hardship as a result of a tax determination, collection, or enforcement process. When determined to be necessary by the taxpayers' rights advocate, he may require a formal written request to be submitted by the taxpayer.

Relief or remedy may be granted by a taxpayer assistance order only as an extraordinary measure. The process shall not be used to contest the merits of a tax liability, or as a substitute for informal protest procedures, or normal administrative or judicial proceedings for the review of a tax assessment or collection action, or denial of refund.

The running of the period of limitations on an assessment shall be tolled from the date of a taxpayer's request for a taxpayer assistance order until either the date the request is denied or the date specified in the taxpayer assistance order, whichever is applicable.

§ 58.1-1834. Taxpayer meetings; representation; recording meetings.

A. At or before an initial meeting relating to the determination of a tax, the Department shall provide the taxpayer a written explanation of the audit process and the taxpayer's rights in the process. At or before an initial meeting relating to the collection of a tax, the Department shall provide the taxpayer a written explanation of the collection process and the taxpayer's rights in the process.

B. A taxpayer may authorize a person, through a power of attorney filed with the Department, to represent the taxpayer at his cost. The Department may not require a taxpayer to accompany the taxpayer's representative to the meeting unless the Tax Commissioner has summoned the taxpayer pursuant to § 58.1-216.

C. The Department shall suspend a meeting relating to the determination of a tax if, at any time during the meeting, the taxpayer expresses the desire to consult with an attorney, accountant, or other person who, through a power of attorney, may represent the taxpayer before the Department. However, after one such suspension has been granted and upon a finding that a taxpayer's request for suspension is frivolous or groundless, the Department may terminate the meeting and issue an assessment, if appropriate.

D. The Department shall allow a taxpayer to make an audio recording of a meeting relating to the determination of a tax at the taxpayer's expense and using the taxpayer's equipment. The Department may make an audio recording of such meetings at its own expense and using its own equipment. The Department shall, upon request of the taxpayer, provide the taxpayer a transcript of a meeting recorded by the Department. The Department may charge the taxpayer for the cost of the requested transcription and reproduction of the transcript. Receipts from the charges for the transcripts shall be credited to the Department for reimbursement of transcription expenses.

§ 58.1-1835. Abatement of any tax, interest, and penalty attributable to erroneous written advice by the Department.

The Tax Commissioner shall abate any portion of any tax, interest, and penalty attributable to erroneous advice furnished to the taxpayer in writing by an employee of the Department acting in his official capacity if:

1. The written advice was reasonably relied upon by the taxpayer and was in response to a specific written request by the taxpayer;
2. The portion of the penalty or tax did not result from a failure by the taxpayer to provide adequate or accurate information; and
3. The facts of the case described in the written advice and the request therefor are the same, and the taxpayer's business or personal operations have not changed since the advice was rendered.

Article 4.

Virginia Taxpayer Bill of Rights.

§ 58.1-1845. Virginia Taxpayer Bill of Rights.

There is created a Virginia Taxpayer Bill of Rights to guarantee that (i) the rights, privacy, and property of Virginia taxpayers are adequately safeguarded and protected during tax assessment, collection, and enforcement processes administered under the revenue laws of the Commonwealth and (ii) the taxpayer is treated with dignity and respect. The Taxpayer Bill of Rights compiles, in one document, brief but comprehensive statements which explain, in simple, nontechnical terms, the rights and obligations of the Department and taxpayers. The rights afforded taxpayers to assure that their privacy and property are safeguarded and protected during tax assessment and collections are available only insofar as they are implemented in other sections of the Code of Virginia or rules of the Department. The rights so guaranteed Virginia taxpayers in the Code of Virginia and the Department's rules and regulations are:

1. The right to available information and prompt, courteous, accurate responses to questions and

*requests for tax assistance.*

*2. The right to request assistance from a taxpayers' rights advocate of the Department, in accordance with § 58.1-1818, who shall be responsible for facilitating the resolution of taxpayer complaints and problems not resolved through the normal administrative channels within the Department.*

*3. The right to be represented or advised by counsel or other qualified representatives at any time in administrative interactions with the Department; the right to procedural safeguards with respect to recording of meetings during tax determination or collection processes conducted by the Department in accordance with § 58.1-1834; and the right to have audits, inspections of records, and meetings conducted at a reasonable time and place except in criminal and internal investigations, in accordance with § 58.1-307.*

*4. The right to abatement of tax, interest, and penalties, in accordance with § 58.1-1835, attributable to any taxes administered by the Department, when the taxpayer reasonably relies upon binding written advice furnished to the taxpayer by the Department through authorized representatives in response to the taxpayer's specific written request which provided adequate and accurate information.*

*5. The right to obtain simple, nontechnical statements which explain the procedures, remedies, and rights available during audit, appeals, and collection proceedings, including, but not limited to, the rights pursuant to this Taxpayer Bill of Rights and the right to be provided with an explanation for denials of refunds as well as the basis of the audit, assessments, and denials of refunds which identify any amount of tax, interest, or penalty due and which explain the consequences of the taxpayer's failure to comply with the notice, in accordance with § 58.1-1805.*

*6. The right to be informed of impending collection actions which require sale or seizure of property or freezing of assets, except jeopardy assessments, and the right to at least fourteen days' notice in which to pay the liability or seek further review.*

*7. After a jeopardy assessment, the right to have an immediate review of the jeopardy assessment, in accordance with § 58.1-313.*

*8. The right to seek review, through formal or informal proceedings, of any adverse decisions relating to determinations in the audit or collections processes.*

*9. The right to have the taxpayer's tax information kept confidential unless otherwise specified by law, in accordance with § 58.1-3.*

*10. The right to procedures for retirement of tax obligations by installment payment agreements, in accordance with § 58.1-1817, which recognize both the taxpayer's financial condition and the best interests of the Commonwealth, provided that the taxpayer gives accurate, current information and meets all other tax obligations on schedule.*

*11. The right to procedures, in accordance with § 58.1-1805, for requesting release of liens filed by the Department and for requesting that any lien which is filed in error be so noted on the lien cancellation filed by the Department and in a notice to any credit agency at the taxpayer's request, provided such request is made within three years of the release of the lien by the Department.*

*12. The right to procedures which assure that the individual employees of the Department are not paid, evaluated, or promoted on the basis of the amount of assessments or collections from taxpayers, in accordance with subdivision 13 of § 58.1-202.*

*13. The right to have the Department begin and complete its audits in a timely and expeditious manner after notification of intent to audit.*

**2. That the provisions of this act shall become effective on July 1, 1997.**