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HOUSE BILL NO. 401

Offered January 17, 1996

A BILL to amend and reenact § 58.1-219 of the Code of Virginia, relating to contracting with persons to examine the books and records of taxpayers; Contract Auditor Fund.

Patrons—Watkins and Nixon; Senator: Colgan

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:**1. That § 58.1-219 of the Code of Virginia is amended and reenacted as follows:**

§ 58.1-219. Examination of books and records of taxpayers; contracting with persons to conduct examinations; Contract Auditor Fund.

A. The Tax Commissioner may, in any case, in lieu of proceeding under § 58.1-216, cause the books and records of any taxpayer containing information concerning the tax liability of such taxpayer to be examined by one of his authorized auditors or agents in order that the tax and revenue laws of the Commonwealth may be enforced; but, in any such case, if any taxpayer refuses to submit his books and records for examination, as aforesaid, the Department may proceed under § 58.1-216.

B. The Tax Commissioner may contract with accountants, accounting firms, the tax administrators of other states, or other qualified persons to examine and audit the books and records of taxpayers and to assess delinquent and omitted taxes, including any penalties and interest thereon, administered by the Department. The Tax Commissioner may allow reasonable compensation and reimbursement of expenses for such services, to be agreed upon before the service is commenced. In no event shall such compensation be based upon a percentage of the amount assessed or collected. Except for the tax administrator of another state, each person so contracted shall give bond to the Commonwealth for the faithful performance of the duties placed upon him by this section, in penalty to be fixed by, and with surety acceptable to, the Tax Commissioner, in whose office the bond shall be filed.

C. No person shall be permitted to audit a taxpayer's return if such person materially participated in the preparation of, or a transaction reported on, a return to be audited, or otherwise has a relationship with the taxpayer that would create the appearance of a conflict of interest.

D. There is hereby established a special fund in the state treasury to be known as the Contract Auditor Fund, hereafter referred to as the Fund. All moneys collected as the result of an audit performed by a person under contract to the Department shall be placed in the Fund. Compensation and expenses of persons under contract and nonpersonal service expenses directly incurred by the Department to develop and administer a contract auditor program under this section shall be paid out of the Fund on warrant of the Comptroller. The Comptroller shall transfer to the appropriate general, nongeneral, or local fund all moneys in the Fund in excess of that required to be paid to persons under contract, as determined by the Department, no later than June 30 each year.