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HOUSE BILL NO. 993

Offered January 22, 1996

A BILL to amend and reenact §§ 8.01-195.3, 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, and 58.1-1834 through 58.1-1837, 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.

Patrons—Forbes, Callahan and Spruill

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That §§ 8.01-195.3, 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, and 58.1-1834 through 58.1-1837, and by adding in Chapter 18 of Title 58.1 an article numbered 4, consisting of a section numbered 58.1-1845, as follows:

§ 8.01-195.3. Commonwealth, transportation district or locality liable for damages in certain cases.

Subject to the provisions of this article, the Commonwealth shall be liable for claims for money only accruing on or after July 1, 1982, and any transportation district shall be liable for claims for money only accruing on or after July 1, 1986, on account of damage to or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee while acting within the scope of his employment under circumstances where the Commonwealth or transportation district, if a private person, would be liable to the claimant for such damage, loss, injury or death. However, except to the extent that a transportation district contracts to do so pursuant to § 15.1-1358, neither the Commonwealth nor any transportation district shall be liable for interest prior to judgment or for punitive damages. The amount recoverable by any claimant shall not exceed (i) \$25,000 for causes of action accruing prior to July 1, 1988, \$75,000 for causes of action accruing on or after July 1, 1988, or \$100,000 for causes of action accruing on or after July 1, 1993, or (ii) the maximum limits of any liability policy maintained to insure against such negligence or other tort, if such policy is in force at the time of the act or omission complained of, whichever is greater, exclusive of interest and costs.

Notwithstanding any provision hereof, the individual immunity of judges, the Attorney General, attorneys for the Commonwealth, and other public officers, their agents and employees from tort claims for damages is hereby preserved to the extent and degree that such persons presently are immunized. Any recovery based on the following claims are hereby excluded from the provisions of this article:

1. Any claim against the Commonwealth based upon an act or omission which occurred prior to July 1, 1982.

1a. Any claim against a transportation district based upon an act or omission which occurred prior to July 1, 1986.

2. Any claim based upon an act or omission of the General Assembly or district commission of any transportation district, or any member or staff thereof acting in his official capacity, or to the legislative function of any agency subject to the provisions of this article.

3. Any claim based upon an act or omission of any court of the Commonwealth, or any member thereof acting in his official capacity, or to the judicial functions of any agency subject to the provisions of this article.

4. Any claim based upon an act or omission of an officer, agent or employee of any agency of government in the execution of a lawful order of any court.

5. Any claim arising in connection with the assessment or collection of taxes, *except as provided in § 58.1-1836*.

6. Any claim arising out of the institution or prosecution of any judicial or administrative proceeding, even if without probable cause.

7. Any claim by an inmate of a state correctional facility, as defined in § 53.1-1, unless the claimant verifies under oath, by affidavit, that he has exhausted his remedies under the adult institutional inmate grievance procedures promulgated by the Department of Corrections; provided, that this exemption is applicable only if the Attorney General of the United States has certified under 42 U.S.C. § 1997e (c) (1) that those procedures are in substantial compliance with the minimal standards promulgated under 28 C.F.R. § 40 (1988), as may be amended from time to time. The time for filing the notice of tort claim shall be tolled during the pendency of the grievance procedure.

Nothing contained herein shall operate to reduce or limit the extent to which the Commonwealth or any transportation district, agency or employee was deemed liable for negligence as of July 1, 1982, nor

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60 shall any provision of this article be applicable to any county, city or town in the Commonwealth or be
61 so construed as to remove or in any way diminish the sovereign immunity of any county, city or town
62 in the Commonwealth.

63 § 58.1-202. General powers and duties of Tax Commissioner.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

112 § 58.1-307. Disposition of returns; handling of state income tax payments; audit.

113 A. As soon as the individual and fiduciary income tax returns have been received by the
114 commissioner of the revenue and entered upon the assessment sheets or forms, the commissioner of the
115 revenue shall forward such returns to the Department. The Department, however, may authorize the
116 commissioner of the revenue to retain such returns for such length of time as may be necessary to
117 enable him to review them under § 58.1-305 and to use them in ascertaining delinquents. As soon as
118 practicable after each such return is received by the Department, it shall examine and audit it. *Except in*
119 *criminal and internal investigations, the Department shall conduct its audits, inspections of records, and*
120 *meetings with taxpayers at reasonable times and places. For purposes of informal meetings on appeals*
121 *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

183 with the filing of the memorandum of lien. Such notice shall be given to the taxpayer at his last known
184 address. For purposes of this section, "last known address" means the address shown on the most recent
185 return filed by or on behalf of the taxpayer or the address provided in correspondence by or on behalf
186 of the taxpayer indicating that it is a change of the taxpayer's address.

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

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

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

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

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

204 D. The Tax Commissioner shall release the tax lien on a taxpayer's property if the liability for which
205 the lien was attached has been satisfied. The Tax Commissioner may release the tax lien on all or part
206 of a taxpayer's property if one or more of the following findings is made:

207 1. The lien is creating an economic hardship due to the financial condition of the taxpayer.

208 2. The fair market value of the property exceeds the tax liability and release of the lien on part of
209 the property would not hinder collection of the tax.

210 3. Release of the lien could facilitate, expedite, or enhance the Commonwealth's chances for
211 ultimately collecting the tax.

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

217 § 58.1-1817. Installment agreements for the payment of taxes.

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

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

223 The Tax Commissioner may terminate any installment agreement if:

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

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

228 C. If the Tax Commissioner makes a determination that the financial condition of a taxpayer who
229 has entered into an installment agreement under this section has significantly changed, the Tax
230 Commissioner may alter, modify, or terminate such agreement. Such action may be taken only if (i)
231 notice of the action is provided to the taxpayer no later than thirty days prior to the date of such action
232 and (ii) such notice includes the reasons why the Tax Commissioner believes a significant change in the
233 financial condition of the taxpayer has occurred.

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

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

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

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

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

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

243 § 58.1-1818. Taxpayer problem resolution program; taxpayer assistance orders.

244 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.

§ 58.1-1836. Civil damages for certain unauthorized actions of Department employees.

A. If any employee of the Department recklessly or intentionally (i) fails to release a lien under § 58.1-1805 on property of the taxpayer or (ii) in connection with the collection of any tax, disregards or omits any provision of this chapter, or any related regulation, the taxpayer may bring a civil action for damages against the Department in circuit court. This civil action shall be the exclusive remedy for recovering damages resulting from such actions. However, in a civil action filed under this section, erroneous or improper assessments of state taxes may be recovered pursuant to the provisions of § 58.1-1825.

B. In any action brought under this section, upon a finding of liability on the Department, the Department shall be liable in an amount equal to the lesser of \$100,000 or the sum of (i) the actual, direct economic damages sustained by the taxpayer as a proximate result of the reckless or intentional

306 actions of the employee, plus (ii) the costs of the action, and reasonable attorneys' fees.

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

311 D. A judgment for damages shall not be awarded unless the court determines that the taxpayer has
312 exhausted the administrative remedies available to him within the Department.

313 The amount of damages awarded shall be reduced by the amount of such damages which could have
314 reasonably been mitigated by the taxpayer.

315 Notwithstanding any other provision of law, an action to enforce liability created under this section
316 may be brought without regard to the amount in controversy and must be brought within two years after
317 the date the right of action accrues.

318 § 58.1-1837. Sanctions and costs awarded by courts.

319 A. 1. Whenever it appears to the circuit court that (i) the taxpayer's action under § 58.1-1836
320 relating to the release of the lien was instituted or maintained by the taxpayer primarily for delay, (ii)
321 the taxpayer's position in such proceeding is frivolous or groundless, or (iii) the taxpayer unreasonably
322 failed to pursue available administrative remedies, the circuit court may require the taxpayer to pay the
323 Commonwealth a penalty not in excess of \$25,000.

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

330 B. 1. Whenever it appears to the court that the taxpayer's position in the proceedings instituted or
331 maintained under § 58.1-1836 relating to unauthorized collection actions is frivolous or groundless, the
332 court may require the taxpayer to pay to the Commonwealth a penalty not in excess of \$10,000.

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

337 3. In connection with any appeal from a proceeding in the circuit court of a civil proceeding
338 described in subdivision B 2, an order of the Court of Appeals or the Supreme Court of Virginia
339 awarding monetary sanctions, penalties or court costs to the Commonwealth may be docketed in a
340 circuit court clerk's office upon filing a certified copy of such order and shall be enforceable as other
341 circuit court judgments. Any such sanctions, penalties, or costs may be assessed by the Tax
342 Commissioner and, upon notice and demand, may be collected in the same manner as a tax.

343 Article 4.

344 Virginia Taxpayer Bill of Rights.

345 § 58.1-1845. Virginia Taxpayer Bill of Rights.

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

356 1. The right to available information and prompt, courteous, accurate responses to questions and
357 requests for tax assistance.

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

362 3. The right to be represented or advised by counsel or other qualified representatives at any time in
363 administrative interactions with the Department; the right to procedural safeguards with respect to
364 recording of meetings during tax determination or collection processes conducted by the Department in
365 accordance with § 58.1-1834; and the right to have audits, inspections of records, and meetings
366 conducted at a reasonable time and place except in criminal and internal investigations, in accordance
367 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 and the right to seek a reasonable administrative stay of enforcement actions while the taxpayer pursues other administrative remedies available under Virginia law.

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.

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 an action at law, in accordance with § 58.1-1836, to recover damages against the Commonwealth or the Department for injury caused by the knowing, reckless, or intentional act or omission of an employee of the Department.

14. The right of the taxpayer or the Department, as the prevailing party in a judicial or administrative action brought or maintained without the support of justiciable issues of fact or law, to recover all costs of the administrative or judicial action, in accordance with § 58.1-1837.

15. 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.