

# VIRGINIA ACTS OF ASSEMBLY -- 1997 SESSION

## CHAPTER 496

*An Act to amend and reenact §§ 46.2-755, 58.1-22, 58.1-526, 58.1-3128, 58.1-3916, 58.1-3921, 58.1-3922, 58.1-3924, 58.1-3933, 58.1-3934, 58.1-3941, 58.1-3952 and 58.1-3958 of the Code of Virginia and to repeal § 58.1-3928 of the Code of Virginia, relating to collection of local revenues.*

[H 2364]

Approved March 18, 1997

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

**1. That §§ 46.2-755, 58.1-22, 58.1-526, 58.1-3128, 58.1-3916, 58.1-3921, 58.1-3922, 58.1-3924, 58.1-3933, 58.1-3934, 58.1-3941, 58.1-3952 and 58.1-3958 of the Code of Virginia are amended and reenacted as follows:**

§ 46.2-755. Limitations on imposition of motor vehicle license taxes and fees.

A. No county, city, or town shall impose any motor vehicle license tax or fee on any motor vehicle, trailer, or semitrailer when:

1. A similar tax or fee is imposed by the county, city, or town wherein the vehicle is normally garaged, stored or parked;

2. The vehicle is owned by a nonresident of such locality and is used exclusively for pleasure or personal transportation and not for hire or for the conduct of any business or occupation other than that set forth in subdivision 3 of this subsection;

3. The vehicle is (i) owned by a nonresident and (ii) used for transporting into and within the locality, for sale in person or by his employees, wood, meats, poultry, fruits, flowers, vegetables, milk, butter, cream, or eggs produced or grown by him, and not purchased by him for sale;

4. The motor vehicle, trailer, or semitrailer is owned by an officer or employee of the Commonwealth who is a nonresident of such county, city, or town and who uses the vehicle in the performance of his duties for the Commonwealth under an agreement for such use;

5. The motor vehicle, trailer, or semitrailer is kept by a dealer or manufacturer for sale or for sales demonstration;

6. The motor vehicle, trailer, or semitrailer is operated by a common carrier of persons or property operating between cities and towns in the Commonwealth and not in intracity transportation or between cities and towns on the one hand and points and places outside cities and towns on the other and not in intracity transportation.

B. No county, city, or town shall impose a license fee for any one motor vehicle owned and used personally by any veteran who holds a current state motor vehicle registration card establishing that he has received a disabled veteran's exemption from the Department and has been issued a disabled veteran's motor vehicle license plate as prescribed in § 46.2-739.

C. No county, city, or town shall impose any license tax or license fee upon any daily rental passenger car, the rental of which is subject to the tax imposed by § 58.1-2402 A 4.

*D. As used in this section, common carrier of persons or property includes any person who undertakes, whether directly or by lease or any other arrangement, to transport passengers or household goods for the general public by motor vehicle for compensation over the highways of the Commonwealth, whether over regular or irregular routes, that has obtained the required certificate of public convenience and necessity from the Department of Motor Vehicles pursuant to § 46.2-2004.*

§ 58.1-22. Accounts not to be settled until taxes paid or provided for.

No commissioner of accounts or assistant commissioner shall, under § 26-32, file any report of an account of the transactions of any executor, administrator, trustee, receiver or other fiduciary, *including trustees in foreclosure actions* until it shall be made to appear to the commissioner that all taxes, whether state, or county or city, assessed and chargeable upon property in the hands of the person for whom such account is settled belonging to the estate concerned in such settlement have been paid or unless such account shall show that there remains in the hands of such person a sufficient sum, over and above the charges of administration, to pay all taxes charged against such person in his capacity as executor, administrator, trustee, receiver or other fiduciary.

§ 58.1-526. Hearing procedure.

A. If a claimant agency other than the Internal Revenue Service receives written application of the debtor's intention to contest at hearing the claim upon which the intended setoff is based, it shall grant a hearing according to procedures established by that agency under its operating statutes to determine whether the claim is valid. Additionally, it shall be determined at the hearing whether the claimed sum asserted as due and owing is correct, and if not, an adjustment to the claim shall be made. A debtor of the Internal Revenue Service shall contest the claim only in accordance with federal law and procedures.

B. Pending final determination at hearing of the validity of the debt asserted by the claimant agency,

no action shall be taken in furtherance of collection through the setoff procedure allowed under this article.

C. No person hearing the debtor's application contesting the claimant agency's claim shall have been involved in the prior circumstances which have culminated in such dispute.

D. No issue may be considered at the hearing which has been previously litigated.

*E. In the case of setoff arising out of delinquent local taxes, the scope of the hearing shall be limited to determining whether the setoff is a tax obligation that remains due and owing to the locality, and shall not address the underlying basis of the tax obligation.*

§ 58.1-3128. Power to summon taxpayers and other persons; penalty.

A. The treasurer may, for the purpose of collecting all taxes due, summon the taxpayer or any other person to appear before him at his office, to answer, under oath, questions touching the tax liability of any and all taxpayers *and to produce documents relating to such tax liability, either or both. For the purposes of administering this section, treasurers and their deputies may administer oaths.*

B. Any person who refuses to answer, under oath, questions touching any ~~persons~~ person's tax liability shall be deemed guilty of a Class 4 misdemeanor. Each day's refusal to answer such questions shall constitute a separate offense. *Any court of competent jurisdiction may, upon the application of the treasurer or his deputy, compel the compliance of a taxpayer summoned or required to produce documents as required by this section.*

§ 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; 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 actually contracted for, not to exceed twenty percent of the delinquent tax bill upon nonpayment taxes and other charges so collected. 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 ninety days of the date of the assessment, and for thirty days after the date of the final determination of the appeal, provided that nothing in this paragraph shall be construed to preclude the assessment or refund, following the final determination of such appeal, of such interest as otherwise may be provided by general law as to that portion of a tax bill which has remained unpaid or was overpaid during the pendency of such appeal and is determined in such appeal to be properly due and owing.

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.

§ 58.1-3921. Treasurer to make out lists of uncollectable taxes and delinquents.

The treasurer, after ascertaining which of the taxes and levies assessed *at any time* in his county or city ~~cannot be~~ *have not been* collected, shall, not later than August 1 in each year, make out lists as follows:

1. A list of real estate on the commissioner's land book improperly placed thereon or not ascertainable, with the amount of taxes charged thereon.

2. A list of other real estate which is delinquent for the nonpayment of the taxes thereon. *This list shall not include any taxes listed under number 4 or 5 of this section.*

3. A list of such of the taxes assessed on tangible personal property, machinery and tools and merchants' capital, and other subjects of local taxation, other than real estate, as he ~~is~~ *was* unable to collect *which are delinquent*. *This list shall not include any taxes listed under number 4 or 5 of this section.*

4. A list of the uncollected taxes amounting to less than five dollars each for which no bills were sent under § 58.1-3912.

5. A list of uncollected balances of previously billed taxes amounting to less than five dollars each as to which the treasurer has determined that the costs of collecting such balances would exceed the amount recoverable, provided that the treasurer shall not include on such list any balance with respect to which he has reason to believe that the taxpayer has purposely paid less than the amount due and owing.

Notwithstanding any other provision of this title, no tax or levy which has been discharged or otherwise rendered legally uncollectable as to a taxpayer liable upon it in a proceeding under the United States Bankruptcy Code (Title 11 of the United States Code) shall be considered delinquent with respect to that taxpayer on and after the date such obligation is discharged or otherwise rendered legally uncollectable, and the treasurer shall not include any such discharged or uncollectable obligation in any list required to be prepared pursuant to this section. Any such discharged or uncollectable obligation shall be stricken from the books of the treasurer as of the date the obligation is discharged or otherwise rendered uncollectable, and the treasurer thereafter shall have no further duty to collect such tax or levy.

The governing body of any town may, by ordinance, adopt the procedures set forth in this section and § 58.1-3924. If such ordinance is adopted, the town treasurer shall submit such lists to the governing body as provided in § 58.1-3924.

§ 58.1-3922. Delinquent lists to speak as of June 30 of each year; when real estate and personal property delinquent.

The lists mentioned in § 58.1-3921 shall conform to the facts as they existed on June 30 of the year they are submitted to the governing body. Delinquent real estate taxes shall be listed in the name of the owner on the date of assessment.

For purposes of this title, ~~real estate and personal property local taxes~~ shall be delinquent if ~~all taxes on it are~~ not paid when due. ~~In~~ *For purposes of compiling the lists required by § 58.1-3921,* any locality which requires the payment of such taxes in installments, ~~real estate taxes~~ shall be *considered* delinquent if all taxes on it are not paid by the date the last installment is due. ~~Any other local tax shall become delinquent if not paid in full when due.~~

§ 58.1-3924. Delinquent lists involving local taxes submitted to local governing bodies; publication of lists.

A copy of each of the five lists mentioned in § 58.1-3921 shall be submitted by the treasurer to the governing body of his county, city or town. Such lists shall be submitted at the first meeting of the governing body held after the treasurer has completed the lists.

The treasurer may, or shall at the direction of the governing body, certify to the commissioner of the revenue a copy of the list of real estate on the commissioner's land book improperly placed thereon or

not ascertainable. The commissioner of the revenue shall correct his land book accordingly. The treasurer shall be given credit for the entire amount of the taxes included in the list and may destroy the tax tickets made out by him for such taxes. The treasurer shall be given credit for all taxes shown on the list mentioned in subdivisions 4 and 5 of § 58.1-3921 and for obligations discharged in bankruptcy as described in § 58.1-3921.

The governing body ~~shall~~ *may* cause the lists mentioned in subdivisions 2 and 3 of § 58.1-3921, or such parts thereof as deemed advisable *by the treasurer*, to be published *at least* once in a newspaper in the county, city or town, but if there be no newspaper published in the county, city or town then in some newspaper having general circulation therein or in handbills to be posted generally throughout the county, city or town, and at the front door of the courthouse thereof for a period of thirty days.

The publication costs shall be *paid for by funds allocated for that purpose by the local governing body, and shall be* charged to the delinquent taxpayers listed. The sum payable by each delinquent taxpayer shall be determined by dividing the total publication costs incurred per thirty-day period, by the number of delinquent taxpayers listed per thirty-day period.

§ 58.1-3933. Subsequent collection by treasurer of delinquent taxes on subjects other than real estate.

~~After the second publication of the list of delinquent taxes as provided in § 58.1-3928 delinquent taxes appear in the lists required by § 58.1-3921, the governing body may require the treasurer to continue to collect the delinquent taxes on subjects other than real estate for an additional period of two years until the expiration of the applicable statute of limitations. At the end of such period he shall return to the governing body a list of such of the taxes as remain unpaid together with any tax tickets representing the same, shall be given credit for the aggregate amount thereof, and shall not thereafter be required to make any further collections thereon.~~

§ 58.1-3934. Collection of delinquent local taxes on subjects other than real estate by sheriff or person employed for purpose.

A. The governing body may, ~~instead of requiring the treasurer so to continue his efforts to collect delinquent local taxes on subjects other than real estate, place the same or the uncollected taxes returned by the treasurer~~ *appoint or hire, with the approval of the treasurer and upon such terms as may be agreed upon, one or more attorneys to collect any local taxes or other charges which may have been delinquent for six months or more. Any attorney so appointed or hired shall be entitled to exercise, for the purpose of collecting the taxes referred to him, the powers conferred by law upon the treasurer, shall promptly report and pay over to the treasurer all collections made and, at the conclusion of his term of appointment or employment, shall provide the treasurer with a list of those taxes referred to the attorney for collection that remain unpaid.*

B. ~~In the alternative to the procedure set forth in subsection A, the governing body may place local taxes or other charges in the hands of the sheriff of the county or city for collection, or employ a local delinquent tax collector to make such collections, upon such terms as may be agreed upon. The governing body may likewise appoint, with the approval of the treasurer, a collector or attorney to collect any local taxes other than real estate which have been delinquent for six months or more. If such delinquent taxes be placed in the hands of the sheriff or if such local delinquent tax collector be employed, Such sheriff or local delinquent tax collector shall have all the power and authority to enforce collection as the treasurers of the counties and cities have under the law be entitled to exercise for the purpose of collecting taxes referred to him the powers conferred by law upon the treasurer. In either such event, The treasurer shall be entitled to credit for all delinquent taxes which may be turned over are referred to the sheriff or such collector for collection. No part thereof shall thereafter be returned to him for collection by him.~~

All collections made by any such sheriff or delinquent tax collector shall be reported by him to such governing body and the moneys so collected shall be paid over to the treasurer, who shall be held accountable therefor; and such sheriff or delinquent tax collector shall, at the end of his term of employment, return to the governing body a list of such delinquent taxes so turned over to him as may then remain unpaid; ~~together with the tax tickets represented thereby.~~

Such governing body shall then have power to employ other delinquent tax collectors to collect the taxes so returned unpaid, for such time and on such terms as may be agreed upon, such collectors to have the same powers as are hereinbefore conferred upon delinquent tax collectors, and be charged with similar duties, or to make such other disposition thereof as such governing body may deem proper.

§ 58.1-3941. What may be distrained for taxes.

Any goods or chattels, money and bank notes in the county, city or town belonging to the person or estate assessed with taxes ~~or~~ *, levies or other charges collected by the treasurer* may be distrained therefor by the treasurer, sheriff, constable or collector. Property subject to levy or distress for taxes shall be liable to levy or distress in the hands of any person for taxes, penalties and interest thereon, except that any motor vehicle as defined in ~~§ 58.1-2104~~ *§ 46.2-100* purchased by a bona fide purchaser for value shall not be liable to levy or distress for such taxes unless the purchaser knew at the time of purchase that the taxes had been specifically assessed against such vehicle.

Property on which taxes were ~~not~~ specifically assessed, *whether assessed per item or in bulk* shall ~~not~~ be subject to distress after it passes into the hands of a bona fide purchaser for value.

§ 58.1-3952. Collection out of estate in hands of or debts due by third party.

A. The treasurer or other tax collector of any county, city or town may apply in writing to any person indebted to or having in his hands estate of a taxpayer *or other debtor* for payment of taxes, *or other charges collected by the treasurer*, more than thirty days delinquent out of such debt or estate. Payment by such person of such taxes, penalties and interest, *or other charges* either in whole or in part, shall entitle him to a credit against such debt or estate. The taxes, penalties and interest, *or other charges* shall constitute a lien on the debt or estate due the taxpayer from the time the application is received. For each application served the person applied to shall be entitled to a fee of twenty dollars which shall constitute a charge or credit against the debt to or estate of the ~~taxpayer~~ *debtor*. The treasurer or collector shall send a copy of the application to the taxpayer *or debtor*, with a notice informing him of the remedies provided in this chapter.

If the person applied to does not pay so much as ought to be recovered out of the debt or estate, the treasurer or collector shall procure a summons directing such person to appear before the appropriate court, where proper payment may be enforced. Any person so summoned shall have the same rights of removal and appeal as are provided by law for the enforcement of demands between individuals. For purposes of this section, the term "person" shall include but shall not be limited to individuals, corporations, partnerships, institutions, and other such entities, as well as the Commonwealth and its agencies and political subdivisions. However, in no event shall the Commonwealth, its agencies, or its political subdivisions incur any liability for the failure to pay the treasurer's or other tax collector's application under this section.

B. Unless otherwise exempted, the wages and salaries of all employees of this Commonwealth, other than state officers, shall be subject to this section. Whenever the salary or wages of such employees as above mentioned shall be so attached, the application shall be mailed to the debtor and to the officer or supervisor who is head of the department, agency, or institution where the employee is employed, or other officer through whom the debtor's salary or wages is paid, provided that process shall not be served upon the State Treasurer or the State Comptroller except as to employees of their respective departments, and upon such service the officer or supervisor shall, on or before the return day of the application, transmit to the treasurer or other tax collector issuing the application a certificate showing the amount due from the Commonwealth to such debtor, up to the return day of the application, which amount the officer or supervisor shall hold subject to further instruction from the treasurer or other tax collector. However, in no case shall the officer or supervisor hold more than the sum of taxes, penalties and interest stated in the application. Such certificate shall be evidence of all facts therein stated, unless a court of appropriate jurisdiction directs that the deposition of the officer or supervisor, or such other officer through whom the debtor's salary or wages be paid, be taken, in which event the deposition of the officer or supervisor shall be taken in his office and returned to the clerk of the court in which the summons is, just as other depositions are returned, and in no such case shall the officer or supervisor be required to leave his office to testify. In all proceedings under this section, the amount found to be due the debtor by the Commonwealth shall be paid as directed by the court.

§ 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 actually contracted for, not to exceed twenty percent of the delinquent tax bill associated with the collection of delinquent taxes or other charges so collected.~~ Such 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 ninety days of the date of the assessment, and for thirty days after the date of the final determination of the appeal, provided that nothing in this paragraph shall be construed to preclude the assessment or refund, following the final determination of such appeal, of such interest as otherwise may be provided by general law as to that portion of a tax bill which has remained unpaid or was overpaid during the pendency of such appeal and is determined in such appeal to be properly due and owing.

**2. That § 58.1-3928 of the Code of Virginia is repealed.**