

# VIRGINIA ACTS OF ASSEMBLY -- 1998 SESSION

## CHAPTER 375

*An Act to amend and reenact § 58.1-3916 of the Code of Virginia, relating to the extension of time for filing tax returns.*

[H 663]

Approved April 11, 1998

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

**1. That § 58.1-3916 of the Code of Virginia is amended and reenacted as follows:**

§ 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 for real estate, local license, machinery and tools and merchants' capital; may offer options, which may include coupon books and payroll deductions, which allow the taxpayer to determine whether to pay the tangible personal property tax through monthly, bimonthly, quarterly, or semiannual installments or in a lump sum, provided such taxes are paid in full by the final due date; 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 actually contracted for, not to exceed twenty percent of the delinquent taxes and other charges so collected.

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, in the case of delinquent tangible personal property tax more than 30 days past due, twenty-five percent of the tax past due on such tangible personal property, or in any case, 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 *the death of the taxpayer or 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, *conservator* or other fiduciary handling the individual's affairs, *such return shall be filed or such taxes paid within 120 days after the fiduciary qualifies or begins to act on behalf of the taxpayer. Interest on such taxes shall accrue until paid in full. Any such fiduciary shall, on behalf of the taxpayer, by the due date, file any required returns and pay any taxes which come due after the 120-day period.* 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.