

VIRGINIA ACTS OF ASSEMBLY -- 1998 SESSION

CHAPTER 648

An Act to amend and reenact §§ 58.1-3128, 58.1-3919, 58.1-3934, 58.1-3940, 58.1-3958 and 58.1-3980 of the Code of Virginia and to repeal §§ 58.1-3927, 58.1-3937 and 58.1-3939.1 of the Code of Virginia, relating to collection of local revenues; penalty.

[H 730]

Approved April 16, 1998

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-3128, 58.1-3919, 58.1-3934, 58.1-3940, 58.1-3958 and 58.1-3980 of the Code of Virginia are amended and reenacted as follows:

§ 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 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.

C. *Every writ, warrant, notice, summons or other process the treasurer is authorized to issue pursuant to general or local law shall be executed and returned in like manner as the civil process of a court of competent jurisdiction.*

§ 58.1-3919. Collection of taxes or other charges not paid when due; distress for same.

The treasurer, after the due date of any tax or other charge collected by such treasurer, shall call upon each person chargeable with such tax *or other charge* who has not paid the same prior to that time, or upon the agent, if any, of such person resident within the county, city or town for payment thereof; and upon failure or refusal of such person or agent to pay the same he shall proceed to collect by distress or otherwise. Should it come to the knowledge of the treasurer that any person owing taxes *or other charges* is moving or contemplates moving from the county, city or town prior to the due date of such taxes *or other charges*, he shall have power to collect the same by distress or otherwise at any time after such bills shall have come into his hands. Notwithstanding § 58.1-3954, the treasurer or his deputy, in person or by counsel, may institute and prosecute all proceedings to enforce the payment of any tax *or other charge* in courts not of record.

§ 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 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 *which have been delinquent for six months or more* 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. Such sheriff or local delinquent tax collector shall be entitled to exercise for the purpose of collecting taxes referred to him the powers conferred by law upon the treasurer. The treasurer shall be entitled to credit for all delinquent taxes which are referred to the sheriff or such collector for collection.

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.

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.

§ 58.1-3940. Limitation on collection of local taxes.

A. Except as otherwise specifically provided, collection of local taxes shall only be enforceable for five years following December 31 of the year for which such taxes were assessed.

B. Real property taxes shall be enforceable by sale under Article 4 (§ 58.1-3965 et seq.) of the property on which such taxes were assessed and by other means permitted under this chapter for twenty years after December 31 of the year for which such taxes were assessed, provided that whenever taxes or portions of taxes that would otherwise be due have been deferred pursuant to an ordinance enacted in conformity with Article 2 (§ 58.1-3210 et seq.) or Article 2.1 (§ 58.1-3219 et seq.) of Chapter 32 of this title, the statute of limitations provided by this subsection shall be tolled with respect to taxes deferred during the pendency of such deferral.

C. Nothing in this section shall affect a judgment lien resulting from a suit to collect taxes.

D. *The statutes of limitations established by this section shall be tolled, with respect to any tax obligation or tax lien not discharged or otherwise relieved or rendered unenforceable pursuant to applicable law, for any period during which all or substantially all of the assets or estate of the taxpayer are subject to the control or custody of any court or receiver, including without limitation any United States Bankruptcy 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~~ *fees* to cover the administrative costs and reasonable attorney's or collection agency's fees actually contracted for. *The attorney's or collection agency's fees shall,* not ~~to~~ exceed twenty percent of the taxes or other charges so collected. ~~Such~~ *The* 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.

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.

§ 58.1-3980. Application to commissioner of the revenue or other official for correction.

A. Any person, firm or corporation assessed by a commissioner of the revenue or other official performing the duties imposed on commissioners of the revenue under this title with local taxes on tangible personal property, machinery and tools, or merchants' capital, or a local license tax, aggrieved by any such assessment, may, within three years from the last day of the tax year for which such assessment is made, or within one year from the date of the assessment, whichever is later, apply to the commissioner of the revenue or such other official who made the assessment for a correction thereof.

Sections 58.1-3980 through 58.1-3983 shall also apply to erroneous assessments of real estate if the error sought to be corrected in any case was made by the commissioner of the revenue or such other official to whom the application is made.

B. Notwithstanding the provisions of subsection A, an unpaid tangible personal property tax assessment may be appealed to the commissioner of the revenue or other assessing official at any time during which such assessment is collectible under § 58.1-3940, provided the taxpayer can demonstrate by clear factual evidence that he was not subject to the tax for the year in question. If the assessing official is satisfied that the assessment is erroneous, he shall ~~order~~ *abate the assessment and notify* the treasurer or other collecting official ~~to discharge such assessment of the abatement.~~ *Upon receipt of such notice, the treasurer or other collecting official shall forthwith issue a refund or take such other steps as may be necessary to correct the taxpayer's liability accordingly upon the books of the locality.*

In the case of an erroneous assessment that has been satisfied in whole or in part through an involuntary payment, an appeal to the assessing official must be made within one year from the date of the involuntary payment. If the assessing official is satisfied that the assessment is erroneous, he shall ~~order~~ *abate the assessment and notify* the treasurer or other collecting official ~~to of the abatement.~~ *Upon receipt of such notice, the treasurer or other collecting official shall forthwith issue a refund for the amount of the involuntary payment.* For purposes of this section, "involuntary payment" means a payment received pursuant to § 58.1-3952 or § 58.1-520 et seq. (Setoff Debt Collection Act).

2. That §§ 58.1-3927, 58.1-3937 and 58.1-3939.1 of the Code of Virginia are repealed.