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HOUSE BILL NO. 730**AMENDMENT IN THE NATURE OF A SUBSTITUTE**(Proposed by the House Committee on Finance
on February 11, 1998)

(Patron Prior to Substitute—Delegate Johnson)

A BILL to amend and reenact §§ 58.1-3128, 58.1-3903.1, 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.

Be it enacted by the General Assembly of Virginia:**1. That §§ 58.1-3128, 58.1-3903.1, 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.*

§ 58.1-3903.1. Waiver of time limitation on assessment of local taxes.

Before the expiration of the time prescribed for the assessment of any local tax, if both the commissioner of the revenue or other assessing official and the taxpayer have consented in writing to the tax assessment after such time, the tax ~~may~~ *shall* be assessed at ~~any time prior to the expiration of the period agreed upon~~ *on or before such date as shall be agreed by the commissioner and the taxpayer, but no such agreement shall extend the date of assessment more than sixty days beyond the date for assessment otherwise prescribed by law.* The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

Whenever such an extension is agreed upon, it shall likewise extend the period relating to the collection of local taxes pursuant to § 58.1-3940 and applications for correction pursuant to § 58.1-3980.

§ 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

60 exercise for the purpose of collecting taxes referred to him the powers conferred by law upon the
61 treasurer. The treasurer shall be entitled to credit for all delinquent taxes which are referred to the sheriff
62 or such collector for collection.

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

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

72 § 58.1-3940. Limitation on collection of local taxes.

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

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

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

83 *D. The statutes of limitations established by this section shall be tolled for any period during which*
84 *all or substantially all of the assets or estate of the taxpayer are subject to the control or custody of any*
85 *court or receiver, including without limitation any United States Bankruptcy Court.*

86 § 58.1-3958. Payment of administrative costs, etc.

87 The governing body of any county, city or town may impose on delinquent taxpayers a ~~fee~~ *fees* to
88 cover the administrative costs and reasonable attorney's or collection agency's fees actually contracted
89 for; ~~not to exceed. The attorney's or collection agency's fees shall not exceed~~ twenty percent of the taxes
90 or other charges so collected. ~~Such~~ *The* administrative costs shall be in addition to all penalties and
91 interest, and shall not exceed twenty dollars for taxes collected subsequent to the filing of a warrant or
92 other appropriate legal document but prior to judgment, and twenty-five dollars for taxes collected
93 subsequent to judgment.

94 No tax assessment or tax bill shall be deemed delinquent and subject to the collection procedures
95 prescribed herein during the pendency of any administrative appeal under § 58.1-3980, so long as the
96 appeal is filed within ninety days of the date of the assessment, and for thirty days after the date of the
97 final determination of the appeal, provided that nothing in this paragraph shall be construed to preclude
98 the assessment or refund, following the final determination of such appeal, of such interest as otherwise
99 may be provided by general law as to that portion of a tax bill which has remained unpaid or was
100 overpaid during the pendency of such appeal and is determined in such appeal to be properly due and
101 owing.

102 § 58.1-3980. Application to commissioner of the revenue or other official for correction.

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

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

112 B. Notwithstanding the provisions of subsection A, an unpaid tangible personal property tax
113 assessment may be appealed to the commissioner of the revenue or other assessing official at any time
114 during which such assessment is collectible under § 58.1-3940, provided the taxpayer can demonstrate
115 by clear factual evidence that he was not subject to the tax for the year in question. If the assessing
116 official is satisfied that the assessment is erroneous, he ~~shall order the treasurer or other collecting~~
117 ~~official to discharge such assessment.~~

118 In the case of an erroneous assessment that has been satisfied in whole or in part through an
119 involuntary payment, an appeal to the assessing official must be made within one year from the date of
120 the involuntary payment. If the assessing official is satisfied that the assessment is erroneous, he shall
121 order the treasurer or other collecting official to issue a refund for the amount of the involuntary

122 payment. For purposes of this section, "involuntary payment" means a payment received pursuant to
123 ~~§ 58.1-3952 or § 58.1-520 et seq. (Setoff Debt Collection Act)~~ shall abate the assessment and notify the
124 treasurer or other collecting official of the abatement. Upon receipt of such notice, the treasurer or
125 collecting official shall forthwith issue a refund or take such other steps as may be necessary to correct
126 the taxpayer's liability accordingly upon the books of the locality.
127 2. That §§ 58.1-3927, 58.1-3937 and 58.1-3939.1 of the Code of Virginia are repealed.