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SENATE BILL NO. 780

Offered January 13, 1999

A *BILL to amend and reenact § 58.1-3984 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 58.1-3983.1, relating to corrections of assessments of certain local business taxes.*

Patrons—Colgan; Delegate: Parrish

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That § 58.1-3984 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 58.1-3983.1 as follows:

§ 58.1-3983.1. Appeals and rulings of certain local business taxes.

A. For purposes of this section:

"Jeopardized by delay" means that a taxpayer desires to (i) depart quickly from the locality, (ii) remove his property therefrom, (iii) conceal himself or his property therein, or (iv) do any other act tending to prejudice, or to render wholly or partially ineffectual, proceedings to collect the tax for the period in question.

"Local business tax" means machinery and tools tax, business tangible personal property tax, or merchant's capital tax.

B. Any person assessed with any local business tax may apply within ninety days from the date of such assessment to the assessor for a correction of the assessment. The application shall be filed in good faith and sufficiently identify the taxpayer, remedy sought, each alleged error in the assessment, the grounds upon which the taxpayer relies, and any other facts relevant to the taxpayer's contention. The assessor may hold a conference with the taxpayer if requested by the taxpayer, or require submission of additional information and documents or other evidence deemed necessary for a proper and equitable determination of the application. The assessment shall be deemed prima facie correct. The assessor shall undertake a full review of the taxpayer's claims and issue a determination to the taxpayer setting forth his position within ninety days after such application is filed. Every assessment pursuant to an audit shall be accompanied by a written explanation of the taxpayer's right to seek correction and the specific procedure to be followed in the jurisdiction (e.g., the name and address to which an application should be directed).

C. Provided a timely and complete application is made, collection activity shall be suspended until a final determination is issued by the assessor, unless the assessor determines that collection would be jeopardized by delay or that the taxpayer has not responded to a request for relevant information after a reasonable time. Interest shall accrue in accordance with the provisions of subdivision 2 e of § 58.1-3703.1, but no further penalty shall be imposed while collection action is suspended.

D. Any person assessed with a local business tax may apply within ninety days of the assessment by the assessing official on an application pursuant to subsection B to the Tax Commissioner for a correction of such assessment. The Tax Commissioner shall issue a determination to the taxpayer within ninety days of receipt of the taxpayer's application, unless the taxpayer and the assessing official are notified that a longer period will be required. The application shall be treated as an application pursuant to § 58.1-1821, and the Tax Commissioner may issue an order correcting such assessment pursuant to § 58.1-1822. Following such an order, either the taxpayer or the assessing official may apply to the appropriate circuit court pursuant to § 58.1-3984. However, the burden shall be on the party making the application to show that the ruling of the Tax Commissioner is erroneous. Neither the Tax Commissioner nor the Department of Taxation shall be made a party to an application to correct an assessment merely because the Tax Commissioner has ruled on it.

E. On receipt of a notice of intent to file an appeal to the Tax Commissioner under subsection D, the assessing official shall further suspend collection activity until a final determination is issued by the Tax Commissioner, unless the assessor determines that collection would be jeopardized by delay or that the taxpayer has not responded to a request for relevant information after a reasonable time. Interest shall accrue in accordance with the provisions of subdivision 2 e of § 58.1-3703.1, but no further penalty shall be imposed while collection action is suspended.

F. Any taxpayer may request a written ruling regarding the application of a local business tax to a specific situation from the assessor. Any taxpayer requesting such a ruling shall provide all the relevant facts for the situation and may present a rationale for the basis of an interpretation of the law most favorable to the taxpayer. Any misrepresentation or change in the applicable law or the factual situation

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60 *as presented in the ruling request shall invalidate any such ruling issued. A written ruling may be*
61 *revoked or amended prospectively if (i) there is a change in the law, a court decision, or the guidelines*
62 *issued by the Department of Taxation upon which the ruling was based or (ii) the assessor notifies the*
63 *taxpayer of a change in the policy or interpretation upon which the ruling was based. However, any*
64 *taxpayer who acts on a written ruling which later becomes invalid shall be deemed to have acted in*
65 *good faith during the period in which such ruling was in effect.*

66 *G. Every person who is assessable with a local business tax shall keep sufficient records to enable*
67 *the assessor to verify the correctness of the tax paid for the taxable years assessable and to enable the*
68 *assessor to ascertain what is the correct amount of tax that was assessable for each of those years. All*
69 *such records, books of accounts and other information shall be open to inspection and examination by*
70 *the assessor in order to allow the assessor to establish whether the tax is due within this jurisdiction.*
71 *The assessor shall provide the taxpayer with the option to conduct the audit in the taxpayer's local*
72 *business office, if the records are maintained there. In the event the records are maintained outside this*
73 *jurisdiction, copies of the appropriate books and records shall be sent to the assessor's office upon*
74 *demand.*

75 *§ 58.1-3984. Application to court to correct erroneous assessments of local levies generally.*

76 *A. Any person assessed with local taxes, aggrieved by any such assessment, may, unless otherwise*
77 *specially provided by law, (i) within three years from the last day of the tax year for which any such*
78 *assessment is made, (ii) within one year from the date of the assessment, (iii) within one year from the*
79 *date of the Tax Commissioner's final determination under § 58.1-3703.1 A 5 or § 58.1-3983.1 D, or (iv)*
80 *within one year from the date of the final determination under § 58.1-3981, whichever is later, apply for*
81 *relief to the circuit court of the county or city wherein such assessment was made. The application shall*
82 *be before the court when it is filed in the clerk's office. In such proceeding the burden of proof shall be*
83 *upon the taxpayer to show that the property in question is valued at more than its fair market value or*
84 *that the assessment is not uniform in its application, or that the assessment is otherwise invalid or*
85 *illegal, but it shall not be necessary for the taxpayer to show that intentional, systematic and willful*
86 *discrimination has been made. The proceedings shall be conducted as an action at law before the court,*
87 *sitting without a jury. The county or city attorney, or if none, the attorney for the Commonwealth, shall*
88 *defend the application.*

89 *B. In the event it comes or is brought to the attention of the commissioner of revenue of the locality*
90 *that the assessment of any tax is improper or is based on obvious error and should be corrected in order*
91 *that the ends of justice may be served, and he is not able to correct it under § 58.1-3981, the*
92 *commissioner of the revenue shall apply to the appropriate court, in the manner herein provided for*
93 *relief of the taxpayer. Such application may include a petition for relief for any of several taxpayers.*

94 **2. That the provisions of this act shall become effective on January 1, 2000.**