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SENATE BILL NO. 780

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Finance
on February 4, 1999)

(Patron Prior to Substitute—Senator Colgan)

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.

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 (including, without limitation, computer equipment), and 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 commissioner of the revenue or other official responsible for assessment 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 commissioner or other assessing official 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 commissioner or other assessing official 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. Such determination 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 by the treasurer or other official responsible for the collection of such tax until a final determination is issued by the commissioner or other assessing official, unless the treasurer or other collection official determines that collection would be jeopardized by delay or is advised by the commissioner or other assessing official 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 A, 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 determination by the commissioner of the revenue or other 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 commissioner of the revenue or other assessing official are notified that a longer period will be required. The person making such request for correction to the Tax Commissioner must in all cases have filed with the affected commissioner of the revenue or other local assessing official a copy of such person's application for correction to the Tax Commissioner. The Tax Commissioner shall furnish a copy of such person's request for correction to the affected commissioner of the revenue or other local assessing official within fourteen working days of the receipt of the request for correction and shall allow the local assessing official to participate in the proceedings. The application shall be treated as an application pursuant to § 58.1-1821, and the Tax Commissioner may issue an order correcting such assessment of such property pursuant to § 58.1-1822, if the taxpayer has met the burden of proof provided in § 58.1-3987. Following such an order, either the taxpayer or the commissioner of the revenue or other 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

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60 *treasurer or other official responsible for the collection of such tax shall further suspend collection*
61 *activity until a final determination is issued by the Tax Commissioner, unless the treasurer or other*
62 *collection official determines that collection would be jeopardized by delay or is advised by the*
63 *commissioner or other assessing official that the taxpayer has not responded to a request for relevant*
64 *information after a reasonable time. Interest shall accrue in accordance with the provisions of*
65 *subdivision 2 e of § 58.1-3703.1 A, but no further penalty shall be imposed while collection action is*
66 *suspended.*

67 *F. Any taxpayer may request a written ruling regarding the application of a local business tax to a*
68 *specific situation from the commissioner of the revenue or other assessing official. Any taxpayer*
69 *requesting such a ruling shall provide all the relevant facts for the situation and may present a*
70 *rationale for the basis of an interpretation of the law most favorable to the taxpayer. Any*
71 *misrepresentation or change in the applicable law or the factual situation as presented in the ruling*
72 *request shall invalidate any such ruling issued. A written ruling may be revoked or amended*
73 *prospectively if (i) there is a change in the law, a court decision, or the guidelines issued by the*
74 *Department of Taxation upon which the ruling was based or (ii) the commissioner of the revenue or*
75 *other assessing official notifies the taxpayer of a change in the policy or interpretation upon which the*
76 *ruling was based. However, any taxpayer who acts on a written ruling which later becomes invalid shall*
77 *be deemed to have acted in good faith during the period in which such ruling was in effect.*

78 *G. Every person who is assessable with a local business tax shall keep sufficient records to enable*
79 *the commissioner of the revenue or other assessing official to verify the correctness of the tax paid for*
80 *the taxable years assessable and to enable the commissioner of the revenue or other assessing official to*
81 *ascertain what is the correct amount of tax that was assessable for each of those years. All such*
82 *records, books of accounts and other information shall be open to inspection and examination by the*
83 *commissioner of the revenue or other assessing official in order to allow the him to establish whether*
84 *the tax is due within this jurisdiction. The commissioner of the revenue or other assessing official shall*
85 *provide the taxpayer with the option to conduct the audit in the taxpayer's local business office, if the*
86 *records are maintained there. In the event the records are maintained outside this jurisdiction, copies of*
87 *the appropriate books and records shall be sent to the commissioner's or assessor's office upon demand.*

88 *§ 58.1-3984. Application to court to correct erroneous assessments of local levies generally.*

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

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

107 **2. That the provisions of this act insofar as they relate to matters of valuation shall be effective for**
108 **assessments made on and after January 1, 2001. Interested parties (including but not limited to the**
109 **Virginia Municipal League, Virginia Association of Counties, Commissioners of the Revenue**
110 **Association, Virginia Chamber of Commerce and the Virginia Manufacturers Association) shall**
111 **propose recommendations to address uniform methods of valuation, rate classification and**
112 **associated local revenue impacts for local business taxes to the House Finance and Senate Finance**
113 **Committees by December 15, 1999. The Division of Legislative Services shall provide staff support**
114 **to such parties. All other provisions of this act shall be effective for assessments made on and after**
115 **January 1, 2000.**

116 **3. That the Tax Commissioner shall publish in a public forum, notice of all requests for correction**
117 **filed pursuant to § 58.1-3983.1, subject to the privacy limitations of § 58.1-3.**