

VIRGINIA ACTS OF ASSEMBLY -- 2013 SESSION

CHAPTER 29

An Act to amend and reenact § 38.2-4809, as it is effective for the taxable year commencing on or after January 1, 2013, §§ 38.2-4809.1 and 58.1-3, §§ 58.1-2504, 58.1-2505, 58.1-2507, 58.1-2525, and 58.1-2526, as such sections are effective for the taxable year commencing on or after January 1, 2013, and § 58.1-2527 of the Code of Virginia, relating to the administration of fees and taxes on insurance entities.

[H 2155]

Approved February 20, 2013

Be it enacted by the General Assembly of Virginia:

1. That § 38.2-4809, as it is effective for the taxable year commencing on or after January 1, 2013, §§ 38.2-4809.1 and 58.1-3, §§ 58.1-2504, 58.1-2505, 58.1-2507, 58.1-2525, and 58.1-2526, as such sections are effective for the taxable year commencing on or after January 1, 2013, and § 58.1-2527 of the Code of Virginia are amended and reenacted as follows:

§ 38.2-4809. (Effective for the taxable year commencing on or after January 1, 2013) Licensees to pay license taxes on insurers.

A. 1. Every licensed surplus lines broker or any person required to be licensed as a surplus lines broker shall be subject to the annual taxes, license taxes, penalties, and other provisions of Article 1 (§ 58.1-2500 et seq.) of Chapter 25 of Title 58.1 on each policy of insurance procured by him during the preceding calendar year with an insurer not licensed to transact insurance business in this Commonwealth. For policies effective on or after July 1, 2011, such payments shall be made based on the direct gross premium income derived from policies for insureds whose home state is this Commonwealth.

2. Every surplus lines broker *or any person required to be licensed as a surplus lines broker* subject to the provisions of this chapter shall, on or before March 1 of 2012 and 2013 report under oath to the Commission, and on or before March 1 of each year thereafter, report under oath to the Department of Taxation, upon the prescribed form, the direct gross premium income derived from policies for insureds whose home state is this Commonwealth during the preceding year ending December 31.

3. Every surplus lines broker *or any person required to be licensed as a surplus lines broker* failing to file the report required by this section shall be fined \$50 for each day's failure to file the report.

4. Upon the failure of any such surplus lines broker *or any person required to be licensed as a surplus lines broker* to pay the premium license tax within the time required by this section, there shall be added to such tax a penalty of 10 percent of the amount of the tax and interest at a rate equal to the rate of interest established pursuant to § 58.1-15 for the period between the due date and the date of full payment. The Commission or Department of Taxation shall notify the surplus lines broker of all additional amounts owed, and the surplus lines broker shall pay such amounts within 44 30 days of the date of the notice.

5. Upon good cause shown, the Department of Taxation may accept late payment of the premium license tax exclusive of penalties; however, interest shall be paid on such tax as prescribed in this subsection.

6. If any person overestimates and overpays the annual taxes, the Department of Taxation shall refund the amount of the overpayment to the person. The overpayment shall be refunded out of the state treasury.

B. 1. Each licensed surplus lines broker or any person required to be licensed as a surplus lines broker whose annual premium license tax liability can reasonably be expected to exceed \$1,500 shall file a quarterly tax report with the Department of Taxation. Such report shall be in a form prescribed by the Department of Taxation. This report shall be filed no later than thirty calendar days after the end of each calendar quarter. Notwithstanding any provision to the contrary, each such person shall pay the premium license tax owed for the direct gross premiums adjusted for additional and returned premiums shown by each quarterly tax report when such report is filed with the Department of Taxation.

2. *No surplus lines broker or any person required to be licensed as a surplus lines broker shall be subject to any penalty or interest pursuant to Title 58.1 as a result of the failure to timely file a quarterly tax report or make the related quarterly payment when the report is filed pursuant to subdivision 1.*

C. In addition to other penalties provided by law, any licensed surplus lines broker or any person required to be licensed as a surplus lines broker who willfully fails or refuses to pay the full amount of the tax or assessment required by this chapter, either by himself or through his agents or employees, or who makes a false or fraudulent return with intent to evade the tax or assessment hereby levied, or who makes a false or fraudulent claim for refund shall be guilty of a Class 1 misdemeanor.

D. If any licensed surplus lines broker or any person required to be licensed as a surplus lines broker charges and collects from the insured the taxes and assessments required by this section and § 38.2-4809.1, such person shall be a fiduciary to this Commonwealth for any taxes and assessments owed to this Commonwealth under this chapter.

§ 38.2-4809.1. Licensees to pay assessments on insurers.

Every licensed surplus lines broker or any person required to be licensed as a surplus lines broker shall be subject to the annual maintenance fund assessment, penalties, and other provisions of §§ 38.2-400 ~~and~~, 38.2-403, ~~and~~ 38.2-406. If any person ~~overestimates and overpays the assessment or annual taxes~~, the Commission shall order a refund of the amount of the overpayment to the person. The overpayment shall be refunded out of the state treasury on the order of the Commission upon the Comptroller.

§ 58.1-3. Secrecy of information; penalties.

A. Except in accordance with a proper judicial order or as otherwise provided by law, the Tax Commissioner or agent, clerk, commissioner of the revenue, treasurer, or any other state or local tax or revenue officer or employee, or any person to whom tax information is divulged pursuant to § 58.1-512 or 58.1-2712.2, or any former officer or employee of any of the aforementioned offices shall not divulge any information acquired by him in the performance of his duties with respect to the transactions, property, including personal property, income or business of any person, firm or corporation. Such prohibition specifically includes any copy of a federal return or federal return information required by Virginia law to be attached to or included in the Virginia return. This prohibition shall apply to any reports, returns, financial documents or other information filed with the Attorney General pursuant to the provisions of Article 3 (§ 3.2-4204 et seq.) of Chapter 42 of Title 3.2. Any person violating the provisions of this section shall be guilty of a Class 2 misdemeanor. The provisions of this subsection shall not be applicable, however, to:

1. Matters required by law to be entered on any public assessment roll or book;
2. Acts performed or words spoken ~~or published in the line of duty under the law~~, *published, or shared with another agency or subdivision of the Commonwealth in the line of duty under state law*;
3. Inquiries and investigations to obtain information as to the process of real estate assessments by a duly constituted committee of the General Assembly, or when such inquiry or investigation is relevant to its study, provided that any such information obtained shall be privileged;
4. The sales price, date of construction, physical dimensions or characteristics of real property, or any information required for building permits;
5. Copies of or information contained in an estate's probate tax return, filed with the clerk of court pursuant to § 58.1-1714, when requested by a beneficiary of the estate or an heir at law of the decedent;
6. Information regarding nonprofit entities exempt from sales and use tax under § 58.1-609.11, when requested by the General Assembly or any duly constituted committee of the General Assembly;
7. Reports or information filed with the Attorney General by a Stamping Agent pursuant to the provisions of Article 3 (§ 3.2-4204 et seq.), when such reports or information are provided by the Attorney General to a tobacco products manufacturer who is required to establish a qualified escrow fund pursuant to § 3.2-4201 and are limited to the brand families of that manufacturer as listed in the Tobacco Directory established pursuant to § 3.2-4206 and are limited to the current or previous two calendar years or in any year in which the Attorney General receives Stamping Agent information that potentially alters the required escrow deposit of the manufacturer. The information shall only be provided in the following manner: the manufacturer may make a written request, on a quarterly or yearly basis or when the manufacturer is notified by the Attorney General of a potential change in the amount of a required escrow deposit, to the Attorney General for a list of the Stamping Agents who reported stamping or selling its products and the amount reported. The Attorney General shall provide the list within 15 days of receipt of the request. If the manufacturer wishes to obtain actual copies of the reports the Stamping Agents filed with the Attorney General, it must first request them from the Stamping Agents pursuant to subsection C of § 3.2-4209. If the manufacturer does not receive the reports pursuant to subsection C of § 3.2-4209, the manufacturer may make a written request to the Attorney General, including a copy of the prior written request to the Stamping Agent and any response received, for copies of any reports not received. The Attorney General shall provide copies of the reports within 45 days of receipt of the request.

B. Nothing contained in this section shall be construed to prohibit the publication of statistics so classified as to prevent the identification of particular reports or returns and the items thereof or the publication of delinquent lists showing the names of taxpayers who are currently delinquent, together with any relevant information which in the opinion of the Department may assist in the collection of such delinquent taxes. This section shall not be construed to prohibit a local tax official from disclosing whether a person, firm or corporation is licensed to do business in that locality and divulging, upon written request, the name and address of any person, firm or corporation transacting business under a fictitious name. Additionally, notwithstanding any other provision of law, the commissioner of revenue is authorized to provide, upon written request stating the reason for such request, the Tax Commissioner with information obtained from local tax returns and other information pertaining to the income, sales

and property of any person, firm or corporation licensed to do business in that locality.

C. Notwithstanding the provisions of subsection A or B or any other provision of this title, the Tax Commissioner is authorized to: (i) divulge tax information to any commissioner of the revenue, director of finance or other similar collector of county, city or town taxes who, for the performance of his official duties, requests the same in writing setting forth the reasons for such request; (ii) provide to the Commissioner of the Department of Social Services, upon written request, information on the amount of income, filing status, number and type of dependents, and whether a federal earned income tax credit has been claimed as reported by persons on their state income tax returns who have applied for public assistance or social services benefits as defined in § 63.2-100; (iii) provide to the chief executive officer of the designated student loan guarantor for the Commonwealth of Virginia, upon written request, the names and home addresses of those persons identified by the designated guarantor as having delinquent loans guaranteed by the designated guarantor; (iv) provide current address information upon request to state agencies and institutions for their confidential use in facilitating the collection of accounts receivable, and to the clerk of a circuit or district court for their confidential use in facilitating the collection of fines, penalties and costs imposed in a proceeding in that court; (v) provide to the Commissioner of the Virginia Employment Commission, after entering into a written agreement, such tax information as may be necessary to facilitate the collection of unemployment taxes and overpaid benefits; (vi) provide to the Alcoholic Beverage Control Board, upon entering into a written agreement, such tax information as may be necessary to facilitate the collection of state and local taxes and the administration of the alcoholic beverage control laws; (vii) provide to the Director of the State Lottery Department such tax information as may be necessary to identify those lottery ticket retailers who owe delinquent taxes; (viii) provide to the Department of the Treasury for its confidential use such tax information as may be necessary to facilitate the location of owners and holders of unclaimed property, as defined in § 55-210.2; (ix) provide to the State Corporation Commission, upon entering into a written agreement, such tax information as may be necessary to facilitate the collection of taxes and fees administered by the Commission; (x) provide to the Executive Director of the Potomac and Rappahannock Transportation Commission for his confidential use such tax information as may be necessary to facilitate the collection of the motor vehicle fuel sales tax; (xi) provide to the Commissioner of the Department of Agriculture and Consumer Services such tax information as may be necessary to identify those applicants for registration as a supplier of charitable gaming supplies who have not filed required returns or who owe delinquent taxes; (xii) provide to the Department of Housing and Community Development for its confidential use such tax information as may be necessary to facilitate the administration of the remaining effective provisions of the Enterprise Zone Act (§ 59.1-270 et seq.), and the Enterprise Zone Grant Program (§ 59.1-538 et seq.); (xiii) provide current name and address information to private collectors entering into a written agreement with the Tax Commissioner, for their confidential use when acting on behalf of the Commonwealth or any of its political subdivisions; however, the Tax Commissioner is not authorized to provide such information to a private collector who has used or disseminated in an unauthorized or prohibited manner any such information previously provided to such collector; (xiv) provide current name and address information as to the identity of the wholesale or retail dealer that affixed a tax stamp to a package of cigarettes to any person who manufactures or sells at retail or wholesale cigarettes and who may bring an action for injunction or other equitable relief for violation of Chapter 10.1, Enforcement of Illegal Sale or Distribution of Cigarettes Act; (xv) provide to the Commissioner of Labor and Industry, upon entering into a written agreement, such tax information as may be necessary to facilitate the collection of unpaid wages under § 40.1-29; (xvi) provide to the Director of the Department of Human Resource Management, upon entering into a written agreement, such tax information as may be necessary to identify persons receiving workers' compensation indemnity benefits who have failed to report earnings as required by § 65.2-712; (xvii) provide to any commissioner of the revenue, director of finance, or any other officer of any county, city, or town performing any or all of the duties of a commissioner of the revenue and to any dealer registered for the collection of the Communications Sales and Use Tax, a list of the names, business addresses, and dates of registration of all dealers registered for such tax; and (xviii) provide to the Executive Director of the Northern Virginia Transportation Commission for his confidential use such tax information as may be necessary to facilitate the collection of the motor vehicle fuel sales tax. The Tax Commissioner is further authorized to enter into written agreements with duly constituted tax officials of other states and of the United States for the inspection of tax returns, the making of audits, and the exchange of information relating to any tax administered by the Department of Taxation. Any person to whom tax information is divulged pursuant to this section shall be subject to the prohibitions and penalties prescribed herein as though he were a tax official.

D. Notwithstanding the provisions of subsection A or B or any other provision of this title, the commissioner of revenue or other assessing official is authorized to (i) provide, upon written request stating the reason for such request, the chief executive officer of any county or city with information furnished to the commissioner of revenue by the Tax Commissioner relating to the name and address of any dealer located within the county or city who paid sales and use tax, for the purpose of verifying the local sales and use tax revenues payable to the county or city; (ii) provide to the Department of

Professional and Occupational Regulation for its confidential use the name, address, and amount of gross receipts of any person, firm or entity subject to a criminal investigation of an unlawful practice of a profession or occupation administered by the Department of Professional and Occupational Regulation, only after the Department of Professional and Occupational Regulation exhausts all other means of obtaining such information; and (iii) provide to any representative of a condominium unit owners' association, property owners' association or real estate cooperative association, or to the owner of property governed by any such association, the names and addresses of parties having a security interest in real property governed by any such association; however, such information shall be released only upon written request stating the reason for such request, which reason shall be limited to proposing or opposing changes to the governing documents of the association, and any information received by any person under this subsection shall be used only for the reason stated in the written request. The treasurer or other local assessing official may require any person requesting information pursuant to clause (iii) of this subsection to pay the reasonable cost of providing such information. Any person to whom tax information is divulged pursuant to this subsection shall be subject to the prohibitions and penalties prescribed herein as though he were a tax official.

Notwithstanding the provisions of subsection A or B or any other provisions of this title, the treasurer or other collector of taxes for a county, city or town is authorized to provide information relating to any motor vehicle, trailer or semitrailer obtained by such treasurer or collector in the course of performing his duties to the commissioner of the revenue or other assessing official for such jurisdiction for use by such commissioner or other official in performing assessments.

This section shall not be construed to prohibit a local tax official from imprinting or displaying on a motor vehicle local license decal the year, make, and model and any other legal identification information about the particular motor vehicle for which that local license decal is assigned.

E. Notwithstanding any other provisions of law, state agencies and any other administrative or regulatory unit of state government shall divulge to the Tax Commissioner or his authorized agent, upon written request, the name, address, and social security number of a taxpayer, necessary for the performance of the Commissioner's official duties regarding the administration and enforcement of laws within the jurisdiction of the Department of Taxation. The receipt of information by the Tax Commissioner or his agent which may be deemed taxpayer information shall not relieve the Commissioner of the obligations under this section.

F. Additionally, it shall be unlawful for any person to disseminate, publish, or cause to be published any confidential tax document which he knows or has reason to know is a confidential tax document. A confidential tax document is any correspondence, document, or tax return that is prohibited from being divulged by subsection A, B, C, or D and includes any document containing information on the transactions, property, income, or business of any person, firm, or corporation that is required to be filed with any state official by § 58.1-512. This prohibition shall not apply if such confidential tax document has been divulged or disseminated pursuant to a provision of law authorizing disclosure. Any person violating the provisions of this subsection shall be guilty of a Class 2 misdemeanor.

§ 58.1-2504. (Effective for the taxable year commencing on or after January 1, 2013) Companies commencing business.

A. The license tax on a company commencing business in the Commonwealth shall be paid to the Department before the license is issued. If a payment is made in an amount subsequently found to be in error, the Department shall, if an additional amount is due, notify the taxpayer of the additional amount due and the company shall pay such amount within 44 30 days of the date of the notice, and, if an overpayment is made, ~~order~~ *issue* a refund as provided for in § 58.1-2505.

B. No license to transact the business of insurance shall be issued by the Commission for less than a year except to a company when it first commences business in the Commonwealth, in which case the initial license shall be issued for that part of the year from the date of the issuance of the license to June 30 following.

§ 58.1-2505. (Effective for the taxable year commencing on or after January 1, 2013) Amount of license tax for company commencing business.

The license tax on a company commencing business in the Commonwealth shall be measured by an estimate of direct gross premium income reasonably expected to be derived from such business in the Commonwealth from the time of commencing business to December 31 following. Every estimate made under this section shall be subject to review by the Department after the close of the year for which the estimate is made and, *if there is* any variance between the estimate and the actual direct gross premium income ~~shall be adjusted by the Department by order of refund or, the Department shall issue a refund or provide notice of~~ the assessment of additional license tax depending on whether such estimate was in excess of or less than the actual direct gross premium income of such company for such year.

§ 58.1-2507. (Effective for the taxable year commencing on or after January 1, 2013) Penalties for failure to make report or pay tax; revocation of license; recovery by suit.

A. Every company failing to make the report required by § 58.1-2506 shall be fined \$50 for each day's failure to make the report.

B. Upon the failure of any such company to pay the license tax within the time required by this

chapter, there shall be added to such tax a penalty of 10 percent of the amount of the tax and interest at a rate equal to the rate of interest established pursuant to § 58.1-15 for the period between the due date and the date of full payment. The Department shall notify the taxpayer of all additional amounts owed, and the taxpayer shall pay such amounts within 44 30 days of the date of the notice. If an overpayment is made, the Department shall issue a refund of the amount of the overpayment to the taxpayer pursuant to subsection B of § 58.1-2526. The Commission may suspend or revoke the company's license to do business in this Commonwealth pursuant to § 38.2-1040 upon notification by the Department that the additional amounts due are not paid. The Department shall proceed to recover the tax, penalty and interest (i) in the same manner as is done for any other tax administered by the Department or (ii) by proceedings brought to subject any bonds or other securities deposited by such company with the Treasurer.

C. If such failure is due to providential or other good cause shown to the satisfaction of the Department, such return or payment or return and payment may be accepted exclusive of penalties; however, such company shall pay interest on such tax as prescribed in subsection B.

§ 58.1-2525. (Effective for the taxable year commencing on or after January 1, 2013) Extensions of time.

The Department may grant a reasonable extension of time for payment of estimated tax, or any installment, or for filing any declaration pursuant to this article, on condition that the taxpayer shall pay interest on the amount involved at the rate of ~~three-fourths of one percent per month or fraction thereof from the time the payment was due~~ *set forth in § 58.1-15* until the time of payment. ~~Whenever the taxpayer, without having been granted an extension, fails to make payment of estimated tax, or any installment, or file any declaration as required by this article, it shall pay interest on the amount involved at the rate of one percent per month or fraction thereof from the time payment was due until the time of payment.~~

§ 58.1-2526. (Effective for the taxable year commencing on or after January 1, 2013) Where declarations filed and how payments made; refunding overpayments.

A. Every insurance company required by this article to file a declaration and make payment of the estimated tax shall file and pay the same with the Department. All such payments shall be deposited by the Department into the state treasury.

B. If any insurance company overestimates and overpays estimated tax or overpays as a result of increased regulatory costs imposed pursuant to § 38.2-1026, the Department shall issue a refund of the amount of the overpayment to the taxpayer ~~pursuant to Article 2 (§ 58.1-1820 et seq.) of Chapter 18.~~ The overpayment shall be refunded out of the state treasury. *No interest shall be paid on the refund of any overpayment.*

§ 58.1-2527. Failure to pay estimated tax.

A. In case of any underpayment of estimated tax by an insurance company, there shall be added to the tax for the license year interest determined at the rate set forth in § 58.1-15 upon the amount of the underpayment for the period of the underpayment.

B. For purposes of subsection A, the amount of the underpayment shall be the excess of:

1. The amount of the installment which would be required to be paid if the estimated tax were equal to ~~ninety~~ 90 percent of the tax ~~ascertained shown on the report~~ for the license year, over
2. The amount, if any, of the installment paid on or before the last date prescribed for payment.

C. The period of the underpayment shall run from the date the installment was required to be paid to whichever of the following dates is the earlier:

1. The first day of the third month following the close of the taxable year.
2. With respect to any portion of the underpayment, the date on which such portion is paid. For purposes of this paragraph, a payment of estimated tax on any installment date shall be considered a payment of any previous underpayment only to the extent such payment exceeds the amount of the installment determined under subdivision B 1 ~~of this section~~ for such installment date.

2. That the provisions of this act shall become effective for the taxable years commencing on or after January 1, 2013.