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HOUSE BILL NO. 99

Offered January 8, 2014

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A BILL to amend and reenact § 58.1-3 of the Code of Virginia, relating to penalties for the unlawful dissemination or publication of tax information.

Patron—Lingamfelter

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:**1. That § 58.1-3 of the Code of Virginia is amended and reenacted as follows:****§ 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~~ is 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, 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

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59 such delinquent taxes. This section shall not be construed to prohibit a local tax official from disclosing
60 whether a person, firm or corporation is licensed to do business in that locality and divulging, upon
61 written request, the name and address of any person, firm or corporation transacting business under a
62 fictitious name. Additionally, notwithstanding any other provision of law, the commissioner of revenue
63 is authorized to provide, upon written request stating the reason for such request, the Tax Commissioner
64 with information obtained from local tax returns and other information pertaining to the income, sales
65 and property of any person, firm or corporation licensed to do business in that locality.

66 C. Notwithstanding the provisions of subsection A or B or any other provision of this title, the Tax
67 Commissioner is authorized to: (i) divulge tax information to any commissioner of the revenue, director
68 of finance or other similar collector of county, city or town taxes who, for the performance of his
69 official duties, requests the same in writing setting forth the reasons for such request; (ii) provide to the
70 Commissioner of the Department of Social Services, upon written request, information on the amount of
71 income, filing status, number and type of dependents, and whether a federal earned income tax credit
72 has been claimed as reported by persons on their state income tax returns who have applied for public
73 assistance or social services benefits as defined in § 63.2-100; (iii) provide to the chief executive officer
74 of the designated student loan guarantor for the Commonwealth of Virginia, upon written request, the
75 names and home addresses of those persons identified by the designated guarantor as having delinquent
76 loans guaranteed by the designated guarantor; (iv) provide current address information upon request to
77 state agencies and institutions for their confidential use in facilitating the collection of accounts
78 receivable, and to the clerk of a circuit or district court for their confidential use in facilitating the
79 collection of fines, penalties and costs imposed in a proceeding in that court; (v) provide to the
80 Commissioner of the Virginia Employment Commission, after entering into a written agreement, such
81 tax information as may be necessary to facilitate the collection of unemployment taxes and overpaid
82 benefits; (vi) provide to the Alcoholic Beverage Control Board, upon entering into a written agreement,
83 such tax information as may be necessary to facilitate the collection of state and local taxes and the
84 administration of the alcoholic beverage control laws; (vii) provide to the Director of the State Lottery
85 Department such tax information as may be necessary to identify those lottery ticket retailers who owe
86 delinquent taxes; (viii) provide to the Department of the Treasury for its confidential use such tax
87 information as may be necessary to facilitate the location of owners and holders of unclaimed property,
88 as defined in § 55-210.2; (ix) provide to the State Corporation Commission, upon entering into a written
89 agreement, such tax information as may be necessary to facilitate the collection of taxes and fees
90 administered by the Commission; (x) provide to the Executive Director of the Potomac and
91 Rappahannock Transportation Commission for his confidential use such tax information as may be
92 necessary to facilitate the collection of the motor vehicle fuel sales tax; (xi) provide to the
93 Commissioner of the Department of Agriculture and Consumer Services such tax information as may be
94 necessary to identify those applicants for registration as a supplier of charitable gaming supplies who
95 have not filed required returns or who owe delinquent taxes; (xii) provide to the Department of Housing
96 and Community Development for its confidential use such tax information as may be necessary to
97 facilitate the administration of the remaining effective provisions of the Enterprise Zone Act (§ 59.1-270
98 et seq.), and the Enterprise Zone Grant Program (§ 59.1-538 et seq.); (xiii) provide current name and
99 address information to private collectors entering into a written agreement with the Tax Commissioner,
100 for their confidential use when acting on behalf of the Commonwealth or any of its political
101 subdivisions; however, the Tax Commissioner is not authorized to provide such information to a private
102 collector who has used or disseminated in an unauthorized or prohibited manner any such information
103 previously provided to such collector; (xiv) provide current name and address information as to the
104 identity of the wholesale or retail dealer that affixed a tax stamp to a package of cigarettes to any
105 person who manufactures or sells at retail or wholesale cigarettes and who may bring an action for
106 injunction or other equitable relief for violation of Chapter 10.1, Enforcement of Illegal Sale or
107 Distribution of Cigarettes Act; (xv) provide to the Commissioner of Labor and Industry, upon entering
108 into a written agreement, such tax information as may be necessary to facilitate the collection of unpaid
109 wages under § 40.1-29; (xvi) provide to the Director of the Department of Human Resource
110 Management, upon entering into a written agreement, such tax information as may be necessary to
111 identify persons receiving workers' compensation indemnity benefits who have failed to report earnings
112 as required by § 65.2-712; (xvii) provide to any commissioner of the revenue, director of finance, or any
113 other officer of any county, city, or town performing any or all of the duties of a commissioner of the
114 revenue and to any dealer registered for the collection of the Communications Sales and Use Tax, a list
115 of the names, business addresses, and dates of registration of all dealers registered for such tax; (xviii)
116 provide to the Executive Director of the Northern Virginia Transportation Commission for his
117 confidential use such tax information as may be necessary to facilitate the collection of the motor
118 vehicle fuel sales tax; and (xix) provide to the Commissioner of Agriculture and Consumer Services the
119 name and address of the taxpayer businesses licensed by the Commonwealth that identify themselves as
120 subject to regulation by the Board of Agriculture and Consumer Services pursuant to § 3.2-5130. 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.