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HOUSE BILL NO. 1220**AMENDMENT IN THE NATURE OF A SUBSTITUTE**(Proposed by the Senate Committee on Finance and Appropriations
on February 25, 2020)

(Patron Prior to Substitute—Delegate Tran)

*A BILL to amend and reenact §§ 58.1-202, 58.1-308, 58.1-351, 58.1-455, and 58.1-486.3 of the Code of Virginia, relating to taxes; waiver of interest.***Be it enacted by the General Assembly of Virginia:****1. That §§ 58.1-202, 58.1-308, 58.1-351, 58.1-455, and 58.1-486.3 of the Code of Virginia are amended and reenacted as follows:****§ 58.1-202. General powers and duties of Tax Commissioner.**

In addition to the powers conferred and the duties imposed elsewhere by law upon the Tax Commissioner, he shall:

1. Supervise the administration of the tax laws of the Commonwealth, insofar as they relate to taxable state subjects and assessments thereon, with a view to ascertaining the best methods of reaching all such property, of effecting equitable assessments and of avoiding conflicts and duplication of taxation of the same property.

2. Recommend to the Governor and the General Assembly measures to promote uniform assessments, just rates and harmony and cooperation among all officials connected with the revenue system of the Commonwealth.

3. Exercise general supervision over all commissioners of the revenue so far as the duties of such officers pertain to state revenues, and confer with, instruct and advise all such officers in the performance of their duties to the extent stated.

4. Investigate at any time the assessment and collection of state taxes in any county or city and when the assessment is found unreasonable and unjust take steps to correct the same in the manner provided by law.

5. Institute proceedings by motion in writing in the proper court for the removal or suspension of commissioners of the revenue for incompetency, neglect or other official misconduct and order the Comptroller to withhold compensation from any commissioner of the revenue who fails to comply with any law governing the duties or any lawful instruction of the Tax Commissioner, until such commissioner of the revenue complies with such law or instruction.

6. Provide commissioners of the revenue with information and assistance in the assessment of personal property, including the maintenance of a reference library and the conduct of instructional programs.

7. Prescribe the forms of books, schedules and blanks to be used in the assessment and collection of state taxes and call for and prescribe the forms of such statistical reports, notices and other papers as he may deem necessary to the proper administration of the law, and prescribe and install uniform systems to be used by assessing officials.

8. Direct such proceedings, actions and prosecutions to be instituted as may be needful to enforce the revenue laws of the Commonwealth and call on the Attorney General or other proper officer to prosecute such actions and proceedings.

9. Intervene, by petition or otherwise, whenever deemed advisable in any action or proceeding pending in any court wherein the constitutionality or construction of any state tax or revenue statute or the validity of any state tax is in question. The court wherein such action or proceeding is pending may, by order entered therein, make the Tax Commissioner a party thereto whenever deemed necessary.

10. Upon request by any local governing body, local board of equalization or any ten citizens and taxpayers of the locality, render advisory aid and assistance to such board in the matter of equalizing the assessments of real estate and tangible personal property as among property owners of the locality.

11. Annually make available to every county and city and, where appropriate, towns, a general reassessment procedures manual which provides the legal requirements for conducting general reassessments, and guidelines suggesting the broad range of factors in addition to market data that are appropriate for consideration in the determination of fair market value of both rural and urban land and structures.

12. Issue an annual report to the members of the House Appropriations Committee, the House Finance Committee, and the Senate Finance Committee detailing procedures used in the collections process and how the Virginia Taxpayer Bill of Rights (§ 58.1-1845) is implemented to assist with such collections.

13. Ensure that employees of the Department are not paid, evaluated, or promoted on the basis of the amount of assessments or collections from taxpayers.

14. Issue an annual report to the members of the General Assembly and post such report on the Department's website that details the total amount of corporate income tax relief provided in the Commonwealth during the second preceding tax year. The report shall (i) include the total dollar amount of income tax subtractions, deductions, exclusions, and exemptions claimed cumulatively by corporations; (ii) identify all tax credits claimed; (iii) provide an analysis of the fiscal impact of the corporate tax relief; and (iv) provide summary information regarding the types of taxpayers who claim the tax relief. The report shall also provide information on the number of companies that have qualified for the major business facility job tax credit established under § 58.1-439 and the amount of such credits. The report shall be submitted by October 1 of each year.

15. Obtain information from each income tax taxpayer as to whether the taxpayer claimed a federal earned income tax credit and the amount claimed, unless such information can be calculated based on other information in the taxpayer's return.

16. Report annually to the General Assembly and the Governor on the amount of penalties and interest waived or otherwise forgiven pursuant to the provisions of §§ 58.1-308, 58.1-351, 58.1-455, and 58.1-486.3.

§ 58.1-308. Assessment and payment of deficiency; fraud; penalties.

If the amount of tax computed by the Department is greater than the amount theretofore assessed, the excess shall be assessed by the Department and a bill for the same shall be mailed to the taxpayer. The taxpayer shall pay such additional tax to the Department within ~~thirty~~ 30 days after the amount of the tax as computed is mailed by the Department. In such case, if the return was made in good faith and the understatement of the amount in the return was not due to any fault of the taxpayer, there shall be no penalty on the additional tax because of such understatement, but interest shall be added to the amount of the deficiency at a rate determined in accordance with § 58.1-15, from the time the return was required by law to be filed until paid. *However, if the return was made in good faith and the understatement of the amount in the return was not due to any fault of the taxpayer, the Department shall have discretion to waive the interest otherwise due in cases where the assessment is due to a change in federal taxable income pursuant to § 58.1-311.*

If the understatement is false or fraudulent with intent to evade the tax, a penalty of 100 percent shall be added together with interest on the tax at a rate determined in accordance with § 58.1-15, from the time the return was required by law to be filed until paid.

Nothing contained in this section shall prevent the taxpayer from applying to the circuit court of the county or the city wherein he resides for a correction of the assessment made by the Department, with right of appeal in the manner provided by law.

§ 58.1-351. When, where and how individual income taxes payable and collectible.

Each individual and fiduciary liable for income tax shall pay the same to the treasurer of the county or city with whose commissioner of the revenue the taxpayer files his return at the time fixed by law for filing the return. The full amount of the tax payable as shown on the face of the return shall be so paid. A taxpayer may file his return and pay his tax in full in the closing days of his taxable year provided he is able to prepare a complete return.

If any payment is not made in full when due, there shall be added to the entire tax or to any unpaid balance of the tax, a penalty of six percent of the amount thereof, if the failure is for not more than one month, with an additional six percent for each additional month or fraction thereof during which such failure to pay continues, not exceeding ~~thirty~~ 30 percent in the aggregate. The entire tax or any unpaid balance of the tax, together with such penalty, will immediately become collectible. Interest upon such tax or any unpaid balance of the tax, and on the accrued penalty, shall be added at a rate determined in accordance with § 58.1-15, from the date the tax or any unpaid balance of the tax, was originally due until paid. In the case of an additional tax assessed by the commissioner of the revenue under the provisions of § 58.1-307, if the return was made in good faith and the understatement of the amount in the return was not due to any fault of the taxpayer, there shall be no penalty on the additional tax because of such understatement, but interest shall be added to the amount of the deficiency at a rate determined in accordance with § 58.1-15, from the time the said return was required by law to be filed until paid. *However, if the return was made in good faith and the understatement of the amount in the return was not due to any fault of the taxpayer, the Department shall have discretion to waive the interest otherwise due in cases where the assessment is due to a change in federal taxable income pursuant to § 58.1-311.*

The penalty under this section shall not be applicable to any month or fraction thereof for which the individual is subject to the penalty imposed under § 58.1-347. In no event shall the total amount of penalty assessed under this section and under § 58.1-347 exceed ~~thirty~~ 30 percent in the aggregate.

§ 58.1-455. Time of payment of corporation income taxes; penalty and interest for nonpayment.

A. Every corporation liable for income tax shall pay the same to the Department at the time fixed by law for filing the return. The full amount of the tax payable as shown on the face of the return shall be so paid. A corporation may file its return and pay its tax in full in the closing days of its taxable year

provided it is able to prepare a complete return.

If any payment is not made in full when due, there shall be added to the entire tax or to any unpaid balance of the tax, a penalty of six percent of the amount thereof, if the failure is for not more than one month, with an additional six percent for each additional month or fraction thereof during which such failure to pay continues, not exceeding ~~thirty~~ 30 percent in the aggregate. The entire tax or any unpaid balance of the tax, together with such penalty, will immediately become collectible. Interest upon such tax or any unpaid balance of the tax, and on the accrued penalty, shall be added at a rate determined in accordance with § 58.1-15, from the date the tax or any unpaid balance of the tax was originally due until paid. In the case of an additional tax assessed by the Department, if the return was made in good faith and the understatement of the amount in the return was not due to any fault of the taxpayer, there shall be no penalty on the additional tax because of such understatement, but interest shall be added to the amount of the deficiency at a rate determined in accordance with § 58.1-15, from the time the return was required by law to be filed until paid. *However, if the return was made in good faith and the understatement of the amount in the return was not due to any fault of the taxpayer, the Department shall have discretion to waive the interest otherwise due in cases where the assessment is due to a change in federal taxable income pursuant to § 58.1-311.*

The penalty under this subsection shall not be applicable to any month or fraction thereof for which the corporation is subject to the penalty imposed under § 58.1-450. In no event shall the total amount of penalty assessed under this subsection and under § 58.1-450 exceed ~~thirty~~ 30 percent in the aggregate.

B. If the understatement is false or fraudulent with intent to evade the tax, a penalty of 100 percent shall be added together with interest on the tax at a rate determined in accordance with § 58.1-15, from the time the return was required by law to be filed until paid.

Nothing contained in this section shall prevent the taxpayer from applying to the circuit court of the county or the city wherein the corporation is located for a correction of the assessment made by the Department, with right of appeal in the manner provided by law.

§ 58.1-486.3. Penalty.

A. If any payment is not made in full when due, there shall be added to the entire tax or to any unpaid balance of the tax a penalty of six percent of the amount thereof, if the failure is for not more than one month, with an additional six percent for each additional month or fraction thereof during which such failure to pay continues, not exceeding 30 percent in the aggregate. The entire tax or any unpaid balance of the tax, together with such penalty and interest, shall immediately become collectible. Interest upon such tax or any unpaid balance of the tax and on the accrued penalty shall be added at a rate determined in accordance with § 58.1-15 from the date the tax or any unpaid balance of the tax was originally due until paid. In the case of an additional tax assessed by the Department, if the return was made in good faith and the understatement of the amount in the return was not due to any fault of the taxpayer, there shall be no penalty on the additional tax because of such understatement, but interest shall be added to the amount of the deficiency at a rate determined in accordance with § 58.1-15 from the time the return was required by law to be filed until paid. *However, if the return was made in good faith and the understatement of the amount in the return was not due to any fault of the taxpayer, the Department shall have discretion to waive the interest otherwise due in cases where the assessment is due to a change in federal taxable income pursuant to § 58.1-311.*

B. In any month or fraction thereof for which the pass-through entity is subject to the penalty imposed under § 58.1-394.1 and the penalty under this section, the greater of the two penalties shall apply.

C. The penalty under this section shall not apply to any tax attributable to income that was included in a return filed pursuant to § 58.1-395.

2. That the provisions of this act shall not become effective unless an appropriation effectuating the purposes of this act is included in a general appropriation act passed in 2020 by the General Assembly that becomes law.