

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act to amend the Code of Virginia by adding a section numbered 58.1-1802.2, relating to delinquent returns; enforcement; when approval required.

[H 2059]

Approved

**Be it enacted by the General Assembly of Virginia:**

**1. That the Code of Virginia is amended by adding a section numbered 58.1-1802.2 as follows:**

**§ 58.1-1802.2. Delinquent returns; enforcement; when approval required.**

A. For purposes of this section, "willfully" means voluntarily, knowingly, and intentionally violating a legal duty.

Taxpayers failing to file tax returns due pursuant to Chapter 3 (§ 58.1-300 et seq.) shall be requested to prepare and file all such returns except in instances where there is an indication that the taxpayer willfully failed to file the required return or returns, or if there is any other indication of fraud. All delinquent returns submitted by a taxpayer, whether upon his own initiative or at the request of the Department, shall be enforced pursuant to the provisions of subsection C and shall be accepted. However, when an indication that the taxpayer willfully failed to file the required return or if any other indication of fraud exists, the Department may refuse to accept such delinquent return submission in accordance with the laws of the Commonwealth and guidelines developed pursuant to this section.

B. Where it is determined that required returns have not been filed when due, the extent to which compliance for prior years will be enforced shall be determined by reference to factors ensuring compliance and proper administration of staffing and other Department resources. Factors to be considered shall include, but are not limited to, the taxpayer's prior history of noncompliance, existence of income from illegal sources, effects upon voluntary compliance, anticipated revenue, and collectability, in relation to the time and effort required to determine tax due. The Department shall also consider any special circumstances existing in the case of a particular taxpayer, class of taxpayer, or industry, or which may be peculiar to the class of tax involved.

C. Subject to the provisions of subsection A, application of the criteria in subsection B shall result in enforcement by the Department of delinquency procedures for not more than six years of the taxpayer's returns. Enforcement beyond such period shall not be undertaken without prior approval of the applicable manager designated by the Tax Commissioner. However, the approval of such manager shall not be required if the nonfiling taxpayer voluntarily files returns beyond the established enforcement period. Such approval shall reference the facts of the taxpayer's case and detail the reasons why enforcement for the longer period is recommended.

D. The Department shall develop guidelines for the enforcement procedures provided by this section. Such guidelines shall be exempt from the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).