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SENATE BILL NO. 294

Offered January 10, 2024

Prefiled January 9, 2024

A BILL to amend and reenact §§ 58.1-3913, 58.1-3916, and 58.1-3984 of the Code of Virginia, relating to local tax; penalties and interest.

Patrons—DeSteph and Craig

Referred to Committee on Finance and Appropriations

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-3913, 58.1-3916, and 58.1-3984 of the Code of Virginia are amended and reenacted as follows:

§ 58.1-3913. When treasurer to receive taxes and levies without penalty; how payments credited.

Each treasurer shall commence to receive local levies as soon as he receives copies of the commissioner's books and continue to receive the same without penalty up to and including December 5 of each year, or such other date set by the governing body. Unless otherwise provided by ordinance of the governing body, any payment of local levies received shall be credited first against the most delinquent local account, the collection of which is not subject to a defense of an applicable statute of limitations. *Notwithstanding the foregoing, any payment made by a taxpayer that is (i) not a result of a distress for taxes and (ii) is accompanied by a tax return shall be applied to such outstanding tax liability by the locality pursuant to such return or written instructions.*

§ 58.1-3916. Counties, cities, and towns may provide dates for filing returns and set penalties, interest, etc.

Notwithstanding provisions contained in §§ 58.1-3518, 58.1-3900, 58.1-3913, 58.1-3915, and 58.1-3918, the governing body of any county, city, or town may provide by ordinance the time for filing local license applications and annual returns of taxable tangible personal property, machinery and tools, and merchants' capital. The governing body may also by ordinance establish due dates for the payment of local taxes; may provide that payment be made in a single installment or in two equal installments; may offer options, which may include coupon books and payroll deductions, which allow the taxpayer to determine whether to pay the tangible personal property tax through monthly, bimonthly, quarterly, or semiannual installments or in a lump sum, provided such taxes are paid in full by the final due date; may provide by ordinance penalties for failure to file such applications and returns and for nonpayment in time; may provide for payment of interest on delinquent taxes; and may provide for the recovery of reasonable attorney's or collection agency's fees actually contracted for, not to exceed 20 percent of the delinquent taxes and other charges so collected. A locality that provides for payment of interest on delinquent taxes shall provide for interest at the same rate on overpayments due to erroneously assessed taxes to be paid to the taxpayer, provided that no interest shall be required to be paid on such refund if (i) the amount of the refund is \$10 or less or (ii) the refund is the result of proration pursuant to § 58.1-3516. A court that finds that an overpayment of local taxes has been made in an action brought pursuant to § 58.1-3984 shall award interest at the appropriate rate, notwithstanding the failure of the locality to conform its ordinance to the requirements of this section.

Notwithstanding any contrary provision of law, the local governing body shall allow an automatic extension on real property taxes imposed upon a primary residence and personal property taxes imposed upon a qualifying vehicle, as defined in § 58.1-3523, owed by members of the armed services of the United States deployed outside of the United States. Such extension shall end and the taxes shall be due 90 days following the completion of such member's deployment. For purposes of this section, "the armed services of the United States" includes active duty service with the regular Armed Forces of the United States or the National Guard or other reserve component.

No tax assessment or tax bill shall be deemed delinquent and subject to the collection procedures prescribed herein during the pendency of any administrative appeal under § 58.1-3980, so long as the appeal is filed within 90 days of the date of the assessment, and for 30 days after the date of the final determination of the appeal, provided that nothing in this paragraph shall be construed to preclude the assessment or refund, following the final determination of such appeal, of such interest as otherwise may be provided by general law as to that portion of a tax bill that has remained unpaid or was overpaid during the pendency of such appeal and is determined in such appeal to be properly due and owing.

Interest may commence not earlier than the first day following the day such taxes are due by ordinance to be filed, at a rate not to exceed 10 percent per year. The governing body may impose

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59 interest at a rate not to exceed the rate of interest established pursuant to § 6621 of the Internal Revenue
60 Code of 1954, as amended, or 10 percent annually, whichever is greater, for the second and subsequent
61 years of delinquency. *In cases where the taxpayer has filed an application for correction by the locality,*
62 *administrative appeal, or application to court for meals taxes under § 58.1-3980, 58.1-3983.1, or*
63 *58.1-3984, interest shall cease 90 days after the date such application or appeal was filed and is*
64 *pending, until such time that the appeal is resolved.* No penalty for failure to pay a tax or installment
65 shall exceed ~~(i)~~ (a) 10 percent of the tax past due on such property; ~~(ii)~~ (b) in the case of delinquent
66 tangible personal property tax more than 30 days past due on property classified pursuant to subdivision
67 A 15, 16, or 20 of § 58.1-3506, which remains unpaid after 10 days' written notice sent by United States
68 mail to the taxpayer of the intention to impose a penalty pursuant hereto, the penalty shall not exceed an
69 amount equal to the difference between the tax due and owing with respect to such property and the tax
70 that would have been due and owing if the property in question had been classified as general tangible
71 personal property pursuant to § 58.1-3503; ~~(iii)~~ (c) in the case of delinquent tangible personal property
72 tax more than 30 days past due, 25 percent of the tax past due on such tangible personal property; ~~(iv)~~
73 (d) in the case of delinquent remittance of excise taxes on meals, lodging, or admissions collected from
74 consumers, 10 percent for the first month the taxes are past due, and five percent for each month
75 thereafter, up to a maximum of 25 percent of the taxes collected but not remitted; or ~~(v)~~ (e) \$10,
76 whichever is greater, provided, however, that the penalty shall in no case exceed the amount of the tax
77 assessable. No penalty for failure to file a return shall be greater than 10 percent of the tax assessable
78 on such return or \$10, whichever is greater, provided, however, that the penalty shall in no case exceed
79 the amount of the tax assessable. The assessment of such penalty shall not be deemed a defense to any
80 criminal prosecution for failing to make return of taxable property as may be required by law or
81 ordinance. Penalty for failure to file an application or return may be assessed on the day after such
82 return or application is due; penalty for failure to pay any tax may be assessed on the day after the first
83 installment is due. Any such penalty when so assessed shall become a part of the tax. Any bill issued by
84 the treasurer imposing a penalty or interest for taxes owed on machinery and tools or tangible personal
85 property owned by a business shall separately state the total amount of tax owed, the amount of any
86 interest assessed, and the amount of the penalty imposed.

87 No penalty for failure to pay any tax shall be imposed for any assessment made later than two weeks
88 prior to the day on which the taxes are due, if such assessment is made thereafter through the fault of a
89 local official, and if such assessment is paid within two weeks after the notice thereof is mailed.

90 In the event a transfer of real property ownership occurs after January 1 of a tax year and a real
91 estate tax bill has been mailed pursuant to §§ 58.1-3281 and 58.1-3912, the treasurer or other
92 appropriate local official designated by ordinance of the local governing body in jurisdictions not having
93 a treasurer, upon ascertaining that a property transfer has occurred, may invalidate a bill sent to the prior
94 owner and reissue the bill to the new owner as permitted by § 58.1-3912, and no penalty for failure to
95 pay any tax for any such assessment shall be imposed if the tax is paid within two weeks after the
96 notice thereof is mailed.

97 Penalty and interest for failure to file a return or to pay a tax shall not be imposed if such failure
98 was not the fault of the taxpayer, or was the fault of the commissioner of the revenue, the treasurer, or
99 the United States Postal Service when no postmark is properly affixed or if the postmark affixed by the
100 United States Postal Service is illegible or bears no date, and the return or payment is received through
101 the United States mail no later than five days following the time of the close of business on the last day
102 on which such return may be filed or such tax may be paid without penalty or interest, as the case may
103 be. No such penalty and interest shall be imposed if a taxpayer provides evidence that a tax return filing
104 or a tax payment was timely by producing a United States Postal Service Certificate of Mailing, or other
105 proof of mailing, showing such return was filed or such payment was made before the close of business
106 on the last day such return may be filed or such tax may be paid without penalty or interest. The failure
107 to file a return or to pay a tax due to the death of the taxpayer or a medically determinable physical or
108 mental impairment on the date the return or tax is due shall be presumptive proof of lack of fault on the
109 taxpayer's part, provided the return is filed or the taxes are paid within 30 days of the due date;
110 however, if there is a committee, legal guardian, conservator or other fiduciary handling the individual's
111 affairs, such return shall be filed or such taxes paid within 120 days after the fiduciary qualifies or
112 begins to act on behalf of the taxpayer. Interest on such taxes shall accrue until paid in full. Any such
113 fiduciary shall, on behalf of the taxpayer, by the due date, file any required returns and pay any taxes
114 that come due after the 120-day period. The treasurer shall make determinations of fault relating
115 exclusively to failure to pay a tax, and the commissioner of the revenue shall make determinations of
116 fault relating exclusively to failure to file a return. In jurisdictions not having a treasurer or
117 commissioner of the revenue, the governing body may delegate to the appropriate local tax officials the
118 responsibility to make the determination of fault.

119 The governing body may further provide by resolution for reasonable extensions of time, not to
120 exceed 90 days, for the payment of real estate and personal property taxes and for filing returns on

tangible personal property, machinery and tools, and merchants' capital, and the business, professional, and occupational license tax, whenever good cause exists. The official granting such extension shall keep a record of every such extension. If any taxpayer who has been granted an extension of time for filing his return fails to file his return within the extended time, his case shall be treated the same as if no extension had been granted.

No levy may be made on any property or right to property of any person unless the treasurer, or other official responsible for the collection of any local tax imposed pursuant to this title, has notified the taxpayer in writing at such person's last known address before such levy is made. The notice shall be required only once for each taxable period and shall include, in simple and nontechnical terms, (1) the amount of unpaid tax; (2) the proposed action by the locality; (3) the rights of the person to contest such action; and (4) the alternatives available to taxpayers that could prevent levy on property, such as entering into a payment plan and filing an offer in compromise under § 58.1-3994.

This section shall be the sole authority for local ordinances setting due dates of local taxes and penalty and interest thereon and shall supersede the provisions of any charter or special act.

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

A. Any person assessed with local taxes, aggrieved by any such assessment, may, unless otherwise specially provided by law (including, but not limited to, as provided under (i) § 15.2-717 and (ii) § 3 of Chapter 261 of the Acts of Assembly of 1936 (which was continued in effect by § 58-769 of the Code of Virginia; and now continued in effect by § 58.1-3260), as amended by Chapter 422 of the Acts of Assembly of 1950, as amended by Chapter 339 of the Acts of Assembly of 1958, and as amended by the 2003 Regular Session of the General Assembly), (a) within three years from the last day of the tax year for which any such assessment is made, (b) within one year from the date of the assessment, (c) within one year from the date of the Tax Commissioner's final determination under subdivision A 6 of § 58.1-3703.1 or subsection D of § 58.1-3983.1, or (d) within one year from the date of the final determination under § 58.1-3981, whichever is later, apply for relief to the circuit court of the county or city wherein such assessment was made. The application shall be before the court when it is filed in the clerk's office. The taxpayer filing the application and the locality shall be necessary parties to the proceedings in the circuit court. The locality shall be named in the application as the "City of _____," "Town of _____," or "_____ County," as applicable. In such proceedings, except for proceedings seeking relief from real property taxes, the burden of proof shall be upon the taxpayer to show that the property in question is valued at more than its fair market value or that the assessment is not uniform in its application, or that the assessment is otherwise invalid or illegal, but it shall not be necessary for the taxpayer to show that intentional, systematic, and willful discrimination has been made.

All proceedings pursuant to this section shall be conducted as an action at law before the court, sitting without a jury. The county or city attorney or, if none, the attorney for the Commonwealth shall defend the locality in any such proceedings.

Prior to the release of any information that constitutes confidential tax information under § 58.1-3, pursuant to discovery or otherwise, for the purposes of a proceeding under this section, the court shall, no later than the issuance of the scheduling order, make the following order:

"Unless otherwise ordered by the court, no entity or person who has obtained confidential information protected by § 58.1-3 of the Code of Virginia regarding [property reference], directly or indirectly through any party to this action, shall disclose, exhibit, or discuss the confidential information except as provided herein. Confidential information protected by § 58.1-3 may be revealed to or discussed only with the following persons in connection with the review or litigation of the assessment of the above-referenced property:

1. The taxpayer or the locality (the "Parties");
2. Counsel for any Party to this action and employees of the counsel's firm, including attorneys other than counsel;
3. Outside experts retained by and assisting counsel for any Party in the preparation for or trial of this action;
4. The court or an administrative board reviewing the assessment on the above-referenced property, persons employed by the court or administrative board, and persons employed to transcribe or record the testimony or argument at a hearing, trial, or deposition regarding the assessment of the above-referenced property; and

5. Any person who may be called as a witness in a hearing, trial, or discovery that counsel believes in good faith to be necessary for the preparation or presentation of the case.

No person who is furnished with confidential information shall reveal it to, or discuss it with, any person who is not entitled to receive it under the terms of this order. Prior to their receipt of confidential information, those persons described in subdivisions 3 and 5 shall be required to sign an acknowledgement of this order and agree to be bound by the terms hereof and be subject to the jurisdiction of the court for enforcement thereof. Any person who violates the provisions of this order

182 shall be subject to the penalty provided in subsection F of § 58.1-3."

183 Once the above-referenced order is entered, § 58.1-3 shall not be applicable to prevent the release of
184 any relevant information that is responsive to a request for discovery made in the course of an appeal
185 pursuant to this section.

186 B. In circuit court proceedings to seek relief from real property taxes, there shall be a presumption
187 that the valuation determined by the assessor or as adjusted by the board of equalization is correct. The
188 burden of proof shall be on the taxpayer to rebut such presumption and show by a preponderance of the
189 evidence that the property in question was assessed at more or less than its fair market value or that the
190 assessment is not uniform in its application, and that it was not arrived at in accordance with generally
191 accepted appraisal practices, procedures, rules, and standards as prescribed by nationally recognized
192 professional appraisal organizations such as the International Association of Assessing Officers (IAAO)
193 and applicable Virginia law relating to valuation of property. Mistakes of fact, including computation,
194 that affect the assessment shall be deemed not to be in accordance with generally accepted appraisal
195 practice.

196 However, in any appeal of the assessment of residential property filed by a taxpayer as an owner of
197 real property containing less than four residential units, the assessing officer shall give the required
198 written notice to the taxpayer, or his duly authorized representative, under subsection E of § 58.1-3331,
199 and, upon written request, shall provide the taxpayer or his duly authorized representative copies of the
200 assessment records set out in subsections A, B, and C of § 58.1-3331 pertaining to the assessing officer's
201 determination of fair market value of the property under appeal. A written request by the taxpayer or his
202 duly authorized representative shall be made following the filing of the appeal to circuit court and no
203 later than 45 days prior to trial, unless otherwise provided by an order of the court before which the
204 appeal is pending. Provided the written request is made in accordance with this section or any applicable
205 court order, the assessing officer shall provide such records within 15 days of the written request to the
206 taxpayer or his duly authorized representative. If the assessing officer fails to do so, the assessing officer
207 shall present the following into evidence prior to the presentation of evidence by the taxpayer at the
208 hearing: (i) copies of the assessment records maintained by the assessing officer under § 58.1-3331, (ii)
209 testimony that explains the methodologies employed by the assessing officer to determine the assessed
210 value of the property, and (iii) testimony that states that the assessed value was arrived at in accordance
211 with generally accepted appraisal practices, procedures, rules, and standards as prescribed by nationally
212 recognized professional appraisal organizations such as the International Association of Assessing
213 Officers (IAAO) and applicable Virginia law relating to valuation of property. Upon the conclusion of
214 the presentation of the evidence of the assessing officer, the taxpayer shall have the burden of proof by
215 a preponderance of the evidence to rebut such evidence presented by the assessing officer as otherwise
216 provided in this section.

217 C. The presumptions, burdens, and standards set out in subsection B shall not be construed to change
218 or have any effect upon the presumptions, burdens, and standards applicable to applications for the
219 correction of erroneous assessments of any local tax other than real property taxes.

220 D. In the event it comes or is brought to the attention of the commissioner of the revenue or other
221 assessing official of the locality that the assessment of any tax is improper or is based on obvious error
222 and should be corrected in order that the ends of justice may be served, and he is not able to correct it
223 under § 58.1-3981, the commissioner of the revenue or other assessing official shall apply to the
224 appropriate court, in the manner herein provided for relief of the taxpayer. Such application may include
225 a petition for relief for any of several taxpayers.

226 E. *The court may award reasonable attorney fees to the prevailing party of an action commenced*
227 *under this section.*