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SENATE BILL NO. 1008

Offered January 19, 1999

A BILL to amend and reenact §§ 58.1-535, 58.1-3916, 58.1-3918, 58.1-3981, and 58.1-3987 of the Code of Virginia and to repeal § 58.1-3991 of the Code of Virginia, relating to interest on overpayments of local taxes; attorney's fees.

Patrons—Howell, Colgan, Hawkins, Houck, Miller, K.G., Mims, Saslaw, Stosch and Walker; Delegates: Albo, Almand, Cranwell, DeBoer, Howell, Hull, Johnson, Marshall, Moran, Plum, Puller, Reid, Rhodes, Stump and Wagner

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-535, 58.1-3916, 58.1-3918, 58.1-3981, and 58.1-3987 of the Code of Virginia are amended and reenacted as follows:

§ 58.1-535. Application of funds on deposit.

A. In addition to the collection remedy provided in this article, if a claimant agency has on deposit any funds which are due to the debtor, the claimant agency may apply such funds to the payment of any delinquent debt which the debtor owes to the claimant agency, provided that the claimant agency first provides written notification to the debtor of its intent to apply the funds against the debt.

B. The contents of the written notification to the debtor shall clearly set forth the basis for the claim to the funds on deposit, the intention to apply the funds against the debt to the claimant agency, and the right of the debtor to contest the validity of the claim before the claimant agency.

C. If as the result of an error by the claimant agency a debtor is denied all or a portion of his funds under the provisions of this section, interest shall be paid by the claimant agency to the debtor at the overpayment rate provided in § 58.1-15 for the time such funds were denied, except that a county, city or town shall pay interest in the manner prescribed in ~~§ 58.1-3991~~ 58.1-3916.

D. As used in this section:

"Debtor" means any individual, business or group having a delinquent debt or account with any claimant agency which obligation has not been satisfied by court order, set aside by court order, or discharged in bankruptcy.

"Funds on deposit" means any funds of a debtor that a claimant agency may have in its possession, including overpayments of taxes and any funds due to a debtor arising from a contractual agreement with a claimant agency.

§ 58.1-3916. Counties, cities and towns may provide dates for filing returns, 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 twenty percent of the delinquent taxes and other charges so collected. *A locality that provides for payment of interest on delinquent taxes shall provide that the rate of such interest shall be at the same rate as interest on overpayments and erroneously assessed taxes to be paid to the taxpayer. A locality that provides for recovery of reasonable attorney's fees on delinquent taxes shall also provide for the payment to the taxpayer of reasonable attorney's fees actually contracted for, not to exceed twenty percent of any overpayment as determined by a court in an action brought pursuant to § 58.1-3984. 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 and attorney's fees subject to the foregoing limitation, notwithstanding the failure of the locality to conform its ordinance to the requirements of this section.*

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 ninety days of the date of the assessment, and for thirty days after the date of the

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60 final determination of the appeal, provided that nothing in this paragraph shall be construed to preclude
61 the assessment or refund, following the final determination of such appeal, of such interest as otherwise
62 may be provided by general law as to that portion of a tax bill which has remained unpaid or was
63 overpaid during the pendency of such appeal and is determined in such appeal to be properly due and
64 owing.

65 Interest may commence not earlier than the first day following the day such taxes are due by
66 ordinance to be filed, at a rate not to exceed ten percent per year. The governing body may impose
67 interest at a rate not to exceed the rate of interest established pursuant to § 6621 of the Internal Revenue
68 Code of 1954, as amended, or ten percent annually, whichever is greater, for the second and subsequent
69 years of delinquency. No penalty for failure to pay a tax or installment shall exceed (i) ten percent of
70 the tax past due on such property, (ii) in the case of delinquent tangible personal property tax more than
71 thirty days past due on property classified pursuant to subdivision A 13, A 14 or A 18 of § 58.1-3506,
72 which remains unpaid after ten days' written notice sent by United States mail to the taxpayer of the
73 intention to impose a penalty pursuant hereto, the penalty shall not exceed an amount equal to the
74 difference between the tax due and owing with respect to such property and the tax that would have
75 been due and owing if the property in question had been classified as general tangible personal property
76 pursuant to § 58.1-3503, (iii) in the case of delinquent tangible personal property tax more than thirty
77 days past due, twenty-five percent of the tax past due on such tangible personal property, or (iv) ten
78 dollars, whichever is greater. No penalty for failure to file a return shall be greater than ten percent of
79 the tax assessable on such return or ten dollars, whichever is greater; provided, however, that the penalty
80 shall in no case exceed the amount of the tax assessable. The assessment of such penalty shall not be
81 deemed a defense to any criminal prosecution for failing to make return of taxable property as may be
82 required by law or ordinance. Penalty for failure to file an application or return may be assessed on the
83 day after such return or application is due; penalty for failure to pay any tax may be assessed on the
84 day after the first installment is due. Any such penalty when so assessed shall become a part of the tax.

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

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

95 Penalty and interest for failure to file a return or to pay a tax shall not be imposed if such failure
96 was not the fault of the taxpayer, or was the fault of the commissioner of revenue or the treasurer, as
97 the case may be. The failure to file a return or to pay a tax due to the death of the taxpayer or a
98 medically determinable physical or mental impairment on the date the return or tax is due shall be
99 presumptive proof of lack of fault on the taxpayer's part, provided the return is filed or the taxes are
100 paid within thirty days of the due date; however, if there is a committee, legal guardian, conservator or
101 other fiduciary handling the individual's affairs, such return shall be filed or such taxes paid within 120
102 days after the fiduciary qualifies or begins to act on behalf of the taxpayer. Interest on such taxes shall
103 accrue until paid in full. Any such fiduciary shall, on behalf of the taxpayer, by the due date, file any
104 required returns and pay any taxes which come due after the 120-day period. The treasurer shall make
105 determinations of fault relating exclusively to failure to pay a tax, and the commissioner of the revenue
106 shall make determinations of fault relating exclusively to failure to file a return. In jurisdictions not
107 having a treasurer or commissioner of the revenue, the governing body may delegate to the appropriate
108 local tax officials the responsibility to make the determination of fault.

109 The governing body may further provide for reasonable extensions of time, not to exceed ninety
110 days, for the payment of real estate taxes and for filing returns on tangible personal property, machinery
111 and tools and merchants' capital, and the business, professional, and occupational license tax, whenever
112 good cause exists. The official granting such extension shall keep a record of every such extension. If
113 any taxpayer who has been granted an extension of time for filing his return fails to file his return
114 within the extended time, his case shall be treated the same as if no extension had been granted.

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

117 § 58.1-3918. Interest on taxes not paid by following day.

118 Interest at the rate of ten percent per annum from the first day following the day such taxes are due
119 shall be collected upon the principal and penalties of all taxes then remaining unpaid, which penalty and
120 interest shall be collected and accounted for by the officers charged with the duty of collecting such
121 taxes, along with the principal sum thereof. *Interest at the same rate shall also be applied and paid to*

the taxpayer on overpayments and erroneously assessed taxes to be paid to the taxpayer. But this section shall not apply to local taxes in any county, city or town when the penalty or interest on such taxes is regulated by ordinance under § 58.1-3916.

§ 58.1-3981. Correction by commissioner or other official performing his duties.

If the commissioner of the revenue, or other official performing the duties imposed on commissioners of the revenue under this title, is satisfied that he has erroneously assessed such applicant with any such tax, he shall correct such assessment. If the assessment exceeds the proper amount, he shall exonerate the applicant from the payment of so much as is erroneously charged if not paid into the treasury of the county or city. If the assessment has been paid, the governing body of the county or city shall, upon the certificate of the commissioner with consent of the town, city or county attorney, or if none, the attorney for the Commonwealth, that such assessment was erroneous, direct the treasurer of the county, city or town to refund the excess to the taxpayer, with interest if authorized pursuant to § ~~58.1-3991~~ 58.1-3916. However, the governing body of the county, city or town may authorize the treasurer to approve and issue any refund up to \$2,500 as a result of an erroneous assessment.

If the assessment is less than the proper amount, the commissioner shall assess such applicant with the proper amount. If any assessment is erroneous because of a mere clerical error or calculation, the same may be corrected as herein provided and with or without petition from the taxpayer. If such error or calculation was made in work performed by others in connection with conducting general assessments, such mistake may be corrected by the commissioner of the revenue. An error in the valuation of property subject to the rollback tax imposed under § 58.1-3237 for those years to which such tax is applicable may be corrected within three years of the assessment of the rollback tax.

A copy of any correction made under this section shall be certified by the commissioner or such other official to the treasurer of his county, city or town. When an unpaid erroneous assessment of real estate is corrected under this section and such real estate has been sold at a delinquent land sale, the commissioner or such other official making such correction shall certify a copy of such correction to the clerk of the circuit court of his county or city; and such clerk shall note such correction in the delinquent land book opposite the entry of the tract or lot for the year or years for which such correction is made.

In any action on application for correction under § 58.1-3980, if so requested by the applicant, the commissioner or other such official shall state in writing the facts and law supporting the action on such application and mail a copy of such writing to the applicant at his last known address.

§ 58.1-3987. Action of court.

If the court is satisfied from the evidence that the assessment is erroneous and that the erroneous assessment was not caused by the wilful failure or refusal of the applicant to furnish the tax-assessing authority with the necessary information, as required by law, the court may order that the assessment be corrected and that the applicant be exonerated from the payment of so much as is erroneously charged, if not already paid. If the tax has been paid, the court shall order that it be refunded to the taxpayer, with interest if authorized pursuant to § ~~58.1-3991~~ at the rate provided by § 58.1-3918 or in the ordinance authorized by § 58.1-3916 or as otherwise authorized in that section. The court shall also award attorney's fees as provided in § 58.1-3916 or in the ordinance authorized by that section, and may allow costs in its discretion.

If, in the opinion of the court, any property is valued for taxation at more than fair market value, the court may reduce the assessment to what in its opinion based on the evidence is the fair market value of the property involved. If, in the opinion of the court, the assessment be less than fair market value, the court shall order it increased to what in its opinion is the fair market value of the property involved and shall order that the applicant pay the proper taxes.

For the purpose of reducing or increasing the assessment and adjusting the taxes the court shall have all the powers and duties of the authority which made the assessment complained of, as of the time when such assessment was made, and all powers and duties conferred by law upon such authority between the time such assessment was made and the time such application is heard.

2. That the provisions of this act relating to payments of interest and attorney's fees shall apply to tax payments made on and after January 1, 1996.

3. That § 58.1-3991 of the Code of Virginia is repealed.