

HOUSE BILL NO. 2549

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Finance

on _____)

(Patron Prior to Substitute—Delegate Clark)

A BILL to amend and reenact §§ 58.1-351, 58.1-455, 58.1-1805, and 58.1-1817 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 58.1-1802.3, relating to individual income taxes; creation of currently not collectible status.

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-351, 58.1-455, 58.1-1805, and 58.1-1817 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 58.1-1802.3 as follows:

§ 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 *except as otherwise provided by § 58.1-1802.3*. 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

31 paid.

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

35 **§ 58.1-455. Time of payment of corporation income taxes; penalty and interest for nonpayment.**

36 A. Every corporation liable for income tax shall pay the same to the Department at the time fixed by law
37 for filing the return. The full amount of the tax payable as shown on the face of the return shall be so paid. A
38 corporation may file its return and pay its tax in full in the closing days of its taxable year provided it is able
39 to prepare a complete return.

40 If any payment is not made in full when due, there shall be added to the entire tax or to any unpaid
41 balance of the tax, a penalty of six percent of the amount thereof, if the failure is for not more than one
42 month, with an additional six percent for each additional month or fraction thereof during which such failure
43 to pay continues, not exceeding ~~thirty~~ 30 percent in the aggregate. The entire tax or any unpaid balance of the
44 tax, together with such penalty, will immediately become collectible *except as otherwise provided by §*
45 *58.1-1802.3*. Interest upon such tax or any unpaid balance of the tax, and on the accrued penalty, shall be
46 added at a rate determined in accordance with § 58.1-15, from the date the tax or any unpaid balance of the
47 tax was originally due until paid. In the case of an additional tax assessed by the Department, if the return
48 was made in good faith and the understatement of the amount in the return was not due to any fault of the
49 taxpayer, there shall be no penalty on the additional tax because of such understatement, but interest shall be
50 added to the amount of the deficiency at a rate determined in accordance with § 58.1-15, from the time the
51 return was required by law to be filed until paid.

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

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

58 Nothing contained in this section shall prevent the taxpayer from applying to the circuit court of the
59 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.

§ 58.1-1802.3. Currently not collectible status; undue hardship.

A. The Department of Taxation shall create a form through which taxpayers may file for currently not collectible (CNC) status in accordance with this section.

B. Taxpayers may apply to the Department of Taxation for CNC status. The Tax Commissioner shall place any applicant into a CNC status upon a finding that collection of taxes from such applicant would create or exacerbate an undue hardship for such applicant. The Commissioner shall establish guidelines for determining whether an actual undue hardship exists and what qualifies as an undue hardship. The Commissioner shall consider those factors outlined in the Internal Revenue Service procedures for CNC status in establishing such guidelines. The Commissioner may presume that any taxpayer qualifying for CNC status with the Internal Revenue Service meets the criteria for CNC status with the Department.

C. The Department of Taxation shall not attempt to collect state taxes owed by any taxpayer during any period such taxpayer is placed in a currently not collectible status.

D. To qualify for CNC status, a taxpayer shall:

1. Apply for such status on a form created by the Department of Taxation.

2. Promise to remain domiciled within the Commonwealth for the duration such status is in effect.

3. File any past due tax returns and continue to timely file tax returns for the duration such status is in effect.

4. Provide financial information as requested by the Department of Taxation.

E. A taxpayer placed in CNC status shall immediately notify the Department of Taxation of any change in the taxpayer's circumstances related to the undue hardship for which such taxpayer applied for CNC status, including changes in income, assets, expenses, address, federal CNC status, or debtors or creditors in relation to such taxpayer, or anything else that may be deemed relevant to the Department.

F. The Tax Commissioner shall require individuals placed in CNC status to re-apply for such status annually within two years of the tax filing deadline.

§ 58.1-1805. Memorandum of lien for collection of taxes; release of lien.

A. If any taxes or fees, including penalties and interest, assessed by the Department of Taxation in pursuance of law against any person, are not paid within ~~thirty~~ 30 days after the same become due, the Tax Commissioner may file a memorandum of lien in the circuit court clerk's office of the county or city in which

the taxpayer's place of business is located, or in which the taxpayer resides. If the taxpayer has no place of business or residence within the Commonwealth, such memorandum may be filed in the Circuit Court of the City of Richmond. A copy of such memorandum may also be filed in the clerk's office of all counties and cities in which the taxpayer owns real estate. Such memorandum shall be recorded in the judgment docket book and shall have the effect of a judgment in favor of the Commonwealth, to be enforced as provided in Article 19 (§ 8.01-196 et seq.) of Chapter 3 of Title 8.01, except that a writ of fieri facias may issue at any time after the memorandum is filed. The lien on real estate shall become effective at the time the memorandum is filed in the jurisdiction in which the real estate is located. *No memorandum of lien shall be filed against the taxpayer while the taxpayer is placed in currently not collectible status.* No memorandum of lien shall be filed unless the taxpayer is first given ~~ten~~ 10 or more days' prior notice of intent to file a lien; however, in those instances where the Tax Commissioner determines that the collection of any tax, penalties or interest required to be paid pursuant to law will be jeopardized by the provision of such notice, notification may be provided to the taxpayer concurrent with the filing of the memorandum of lien. Such notice shall be given to the taxpayer at his last known address. For purposes of this section, "last known address" means the address shown on the most recent return filed by or on behalf of the taxpayer or the address provided in correspondence by or on behalf of the taxpayer indicating that it is a change of the taxpayer's address.

B. Recordation of a memorandum of lien hereunder shall not affect the right to a refund or exoneration under this chapter, nor shall an application for correction of an erroneous assessment affect the power of the Tax Commissioner to collect the tax, except as specifically provided in this title.

C. If after filing a memorandum of lien as required by subsection A, the Tax Commissioner determines that it is in the best interest of the Commonwealth, the Tax Commissioner may place padlocks on the doors of any business enterprise that is delinquent in either filing or paying any tax owed to the Commonwealth, or both. He shall also post notices of distraint on each of the doors so padlocked. If after three business days, the tax deficiency has not been satisfied or satisfactory arrangements for payment made, the Tax Commissioner may cause a writ of fieri facias to be issued.

It shall be a Class 1 misdemeanor for anyone to enter the padlocked premises without prior approval of the Tax Commissioner.

In the event that the taxpayer against whom the distraint has been applied subsequently makes application for correction of the assessment under § 58.1-1821, the taxpayer shall have the right to post bond equaling the

amount of the tax liability in lieu of payment until the application is acted upon.

The provisions of subsection C shall be enforceable only after the promulgation, by the Tax Commissioner, of regulations under the Administrative Process Act (§ 2.2-4000 et seq.) setting forth the circumstances under which this subsection can be used.

D. A taxpayer may appeal to the Tax Commissioner after a memorandum of lien has been filed under this section if the taxpayer alleges an error in the filing of the lien. The Tax Commissioner shall make a determination of such an appeal within ~~fourteen~~ 14 days. If the Tax Commissioner determines that the filing was erroneous, he shall issue a certificate of release of the lien within seven days after such determination is made.

§ 58.1-1817. Installment agreements for the payment of taxes.

A. 1. The Tax Commissioner is required to offer to enter into a written agreement with any taxpayer filing a return for taxes imposed under Article 2 (§ 58.1-320 et seq.) of Chapter 3 under which such taxpayer is allowed to satisfy his tax liability in installment payments over a payment period of up to five years on petition by the taxpayer, if the Tax Commissioner determines such an agreement will facilitate collection *unless the Tax Commissioner approves such taxpayer's application for currently not collectible status in accordance with § 58.1-1802.3.*

2. Except as identified in subdivision 1, the Tax Commissioner is authorized to enter into a written agreement with any taxpayer under which such taxpayer is allowed to satisfy his tax liability in installment payments, if the Tax Commissioner determines such an agreement will facilitate collection.

B. Except as otherwise provided in this section, any agreement entered into by the Tax Commissioner under subsection A shall remain in effect for the term of the agreement.

The Tax Commissioner may terminate any installment agreement if:

1. Information that the taxpayer provided prior to the date such agreement was entered into was inaccurate or incomplete; or

2. The Tax Commissioner determines that the collection of any tax to which an agreement relates is in jeopardy.

C. The Tax Commissioner may alter, modify, or terminate an installment agreement in the case of the failure of the taxpayer:

1. To pay any installment at the time it is due;

- 147** 2. To pay any other tax liability at the time it is due; or
- 148** 3. To file with the Department any required tax or information return during the time period such
- 149** agreement is in effect.
- 150** D. The Tax Commissioner may alter, modify, or terminate an installment agreement under other
- 151** exceptional circumstances as he deems appropriate.