

SENATE BILL NO. 709

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Finance and Appropriations

on \_\_\_\_\_)

(Patron Prior to Substitute--Senator Obenshain)

A BILL to amend and reenact § 58.1-1812 of the Code of Virginia, relating to assessment of omitted taxes; erroneous payments.

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

**1. That § 58.1-1812 of the Code of Virginia is amended and reenacted as follows:**

**§ 58.1-1812. Assessment of omitted taxes by the Department of Taxation.**

A. If the Tax Commissioner ascertains that any person has failed to make a proper return or to pay in full any proper tax, he shall assess the taxes prescribed by law, adding to the taxes so assessed the penalty prescribed by law, if any, for the failure to file a return (if a return was required by law but not filed within the time prescribed by law) and the penalty or penalties prescribed by law for the failure to pay the taxes and penalty or penalties within the time prescribed by law. If no penalty is so prescribed, he shall assess a penalty of five percent of the tax due, or if the failure to pay in full was fraudulent, a penalty of 100 percent of the tax due. In addition thereto, interest on the outstanding tax and penalty shall be charged at the rate established under § 58.1-15 for the period between the due date and the date of full payment.

Except as otherwise provided by law, the amount of tax shall be assessed within three years after the return was filed, whether such return was filed on or after the date prescribed, and no proceeding in court without assessment shall be begun for the collection of such tax after the expiration of such period. A return of tax filed before the last day prescribed by law for the timely filing thereof shall be considered as filed on the last day. A return of recordation tax shall be considered as having been filed on the date of recordation. If no return is filed, the tax may be assessed within six years of the date such return was due.

26 If a false or fraudulent return is filed with intent to evade the payment of tax, an assessment may be made  
27 at any time.

28       Upon such assessment, the Department of Taxation shall send a bill therefor to the taxpayer and  
29 the taxes, penalties, and interest shall be remitted to the Department of Taxation within 30 days from the  
30 date of such bill. Effective January 1, 2023, such bill and notice of assessment shall identify the date the  
31 initial return or payment was received by the Department, any payment amounts received, and an  
32 explanation of the taxes, penalties, and interest related to such assessment on such taxpayer. If such taxes,  
33 penalties, and interest are not paid within such 30 days, interest at the rate provided herein shall accrue  
34 thereon from the date of such assessment until payment.

35       B. The Department of Taxation shall not assess penalty or interest on any assessment of tax for the  
36 recovery of an erroneous refund, provided that the tax is paid to the Department within 30 days from the  
37 date of the bill. If the tax is not remitted to the Department within 30 days from the date of such bill,  
38 interest at the rate provided herein shall accrue thereon from the date of such assessment until payment.

39       As used in this section, "erroneous refund" means any refund of tax resulting solely from an error  
40 by the Department of Taxation that results in the taxpayer receiving a refund to which the taxpayer is not  
41 entitled.

42       C. Upon the application of a taxpayer, if the Department determines that a taxpayer has erroneously  
43 remitted retail sales tax payments to the Department with respect to a transaction under § 58.1-610 and  
44 for which the Department has made a use tax assessment, and such taxpayer has not so requested, the  
45 Department shall apply the erroneously remitted retail sales tax proceeds to a use tax assessment of the  
46 taxpayer for the same transactions. To be eligible, the taxpayer shall provide evidence of the erroneously  
47 paid retail sales tax amount collected and remitted in each transaction. However, in no case shall any  
48 taxpayer apply for and receive the relief described in this subsection if he has previously applied for and  
49 received the relief described in this subsection, or in the case of a false or fraudulent action by the taxpayer  
50 with the intention of evading the tax.

51 **2. That the provisions of this act shall not entitle any taxpayer to a refund of any retail sales tax**  
52 **payments erroneously remitted unless or until the taxpayer can affirmatively show that the tax has**

53 since been refunded to the purchaser or credited to such purchaser's account pursuant to § 58.1-  
54 625 of the Code of Virginia.

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