

**REPORT OF THE
PRACTICES AND PROCEDURES IN THE
COLLECTION AND ADMINISTRATION OF STATE TAXES
STUDY COMMITTEE
TO
THE GOVERNOR
AND
THE GENERAL ASSEMBLY OF VIRGINIA**



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**To
The Governor and the General Assembly of Virginia
Richmond, Virginia
December, 1979**

To: Honorable John N. Dalton, Governor of Virginia
and
The General Assembly of Virginia

INTRODUCTION

This report recommends substantial changes in the laws of Virginia which govern tax procedures. Particularly affected are the procedures for obtaining relief from erroneous assessments, and the requirements on the Department of Taxation in the issuance of rulings and the promulgation of regulations.

The subcommittee's study is a result of extensive work done by the State Law Revision Task Force, which was formed in 1977 as a joint project of the committees on taxation of the Virginia Bar Association, the Virginia State Bar, and the Virginia Society of Certified Public Accountants. Their report, covering various aspects of administrative correction and refund procedures, court correction and refund procedures, regulations, levy and collection of taxes, and penalties, was published in December of 1978, too late for serious consideration by the 1979 Session of the General Assembly. In order that a proposal might be prepared for the 1980 Session, House Joint Resolution No. 342 was introduced and passed both houses:

House Joint Resolution No. 342

WHEREAS, the laws of the Commonwealth which prescribe the procedures for correcting erroneous assessments of State taxes are archaic and confusing; and

WHEREAS, few of the rulings and practices of the Tax Commissioner have been committed to writing for the benefit of taxpayers and tax practitioners of the Commonwealth; and

WHEREAS, a joint task force was appointed by the committees on taxation of the Virginia State Bar and the Virginia Bar Association, to study and recommend improvements in the laws governing tax procedures; and

WHEREAS, the joint task force has recently made its report, recommending substantial changes in many areas, including requirements for promulgation of regulations and publication of rulings and decisions, new procedures for review of Department policies by the Commissioner and the courts, and changes in burden of proof; and

WHEREAS, the recommendations of the joint task force should be examined in depth, in the hope that tax refund procedures may be made simpler and more equitable and tax procedures and information more readily available; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That the Committees on Finance of the House of Delegates and the Senate are directed to study the tax procedures of the Commonwealth, focusing especially on the task force study. The study shall be conducted by a subcommittee of nine members, two of whom shall be members of the Finance Committee of the Senate, appointed by the Chairman thereof; two of whom shall be members of the Finance Committee of the House of Delegates, appointed by the Chairman thereof; two of whom shall be members of the State Tax Law Revision Task Force, one appointed by the Chairman of the House Committee on Finance and one appointed by the Chairman of the Senate Committee on Finance; and two of whom shall be members of the bar, one appointed by the Chairman of the House Committee on Finance and one appointed by the Chairman of the Senate Committee on Finance.

The State Tax Commissioner shall be the ninth member. The subcommittee shall complete its study and make its report to the Finance Committees no later than December one, nineteen hundred seventy-nine.

The chairman of the Senate Finance Committee appointed William B. Hopkins and Herbert H. Bateman to serve from that committee, and Lee F. Davis, Jr. and William L. S. Rowe to serve from the Task Force and the Bar, respectively. The chairman of the House Finance Committee, Archibald A. Campbell, who was chief patron of House Joint Resolution No. 342, appointed himself and Joseph A. Leafe to serve from the committee, Lewis M. Costello to serve as a member of the Task Force, and Edwin S. Cohen to serve as a member of the Bar. The Tax Commissioner, William H. Forst, served ex officio. Staff assistance was provided by Sally T. Warthen, counsel to the House Finance Committee, and Jill M. Pope and Jeanne S. Livsie of the Division of Legislative Services. Mr. Campbell was elected chairman and Senator Hopkins Vice-Chairman.

As most of the administrative provisions in Title 58 date from the creation of the Department of Taxation in 1926, or even earlier, and have never been subjected to a thorough substantive revision since that date, the Task Force and the Subcommittee had a great deal of material to cover. Recommendations of major changes will be described in general in part II of this report, below. The specific legislative proposals, including many changes not described below, will be found in part III of the report, in the form of proposed legislation with explanatory comments.

II. MAJOR RECOMMENDATIONS

A. Regulations and Policy Determinations

Historically, State agencies have been reluctant to commit their interpretations and practices to print, and the Tax Department has been no exception. The sales tax regulations, first promulgated in 1966 by Commissioner Morrisett, were the first comprehensive tax regulations ever to be issued in Virginia, and they are still the only ones. Although a few instruction booklets existed, most policy statements of the Department issued prior to 1971, when the present Commissioner took office, were contained in individual letters of the Tax Commissioner, copies of which are still on file somewhere at the Department. The present Commissioner has recently begun a program designed to make available more of the Department's policies and practices, but it is obviously a large and difficult task which will not be completed for some time unless more resources are allocated to it.

The lack of adequate regulations for the income tax and such complicated areas as the State capital, license and recordation taxes has led to confusion, uncertainty and frustration on the part of practitioners and taxpayers. Moreover, the courts, practitioners and the Department are not in agreement as to what weight should be accorded policy decisions which were never available to the taxpayers and must at times be proved by oral testimony.

The statutory provisions governing the promulgation of regulations are neither consistent nor clear. The Administrative Process Act, which applies to all State agencies, defines "regulation" very broadly and requires that all substantive regulations be promulgated only after public notice and comment. Although there are no general provisions in Title 58 authorizing the promulgation of regulations, specific provisions permit the Commissioner to promulgate regulations governing sales, income, tobacco and some other taxes without following the provisions of the Administrative Process Act. Regulations in these areas may thus be issued without the basic safeguards of public notice and comment which have become a right in most areas of administrative law. In areas not specifically excluded from the Administrative Process Act, the Department's policy determinations made without public notice are subject to challenge.

The Subcommittee recommends two basic changes to address these problems:

1. The Commissioner is authorized to issue two different types of policy determinations:

a. Regulations, issued subject to the Administrative Process Act and published. These are to be sustained unless clearly wrong, and will be the only pronouncements which may be given the "great weight" accorded by courts to long standing administrative practices.

b. Policy determinations, published without comment. These are to be admissible in court

and given such weight as the court deems appropriate.

All other administrative practices are to be given no weight in administrative and court proceedings, and will in fact be inadmissible; however, an assessment made pursuant to such policies is to be accorded the normal presumption of correctness.

In effect, the change described above will require the Department to promulgate, or at least publish, its policies in order to get any use out of them. As they will need some time to effect publication, unpublished policies which are adequately documented and proved may continue to be recognized by the courts until January 1, 1985.

2. The Department is directed by statute to make available to the public the following:

- a. Regulations;
- b. Orders of the Commissioner under § 58-1119;
- c. Orders and opinions of circuit courts or the Board of Tax Appeals in tax matters; and
- d. Any policy determination or statement of interest to taxpayers and practitioners.

B. Procedures for correction of erroneous assessments

Present law provides two avenues for contesting an assessment of taxes administered by the Tax Department. The oldest is a circuit court proceeding called an "application for correction of an erroneous assessment"; the statutes (§§ 58-1130 through 58-1140) date from the Code of 1919, and appear to contemplate an informal proceeding initiated by the taxpayer himself. In modern times the proceeding nearly always takes the same form as a motion for judgment, though it is unclear to what extent the Rules of Court apply. The unusual procedural requirements serve no useful purpose. The action must be brought within two years of the year of the assessment and the tax must be paid first. A challenge to the assessment is no bar to any collection proceeding (see § 58-1158).

With the birth of the Tax Department came the § 58-1118 appeal: administrative review by the Tax Commissioner. This avenue is in addition to the court proceeding but not a prerequisite to it. Under present law there is a three year statute of limitations.

The Task Force and the Subcommittee have perceived several problems in the provisions governing review of assessments:

1. There is no procedure for contesting an assessment before an outside authority without paying it first.

2. Section 58-1130, the only authority for outside challenge to an assessment, permits that challenge to be brought in the City of Richmond or the locality of the taxpayer's residence or business. With jurisdiction so widespread, there is little opportunity for the development of judicial expertise.

3. It is unclear who has standing to contest sales and use tax and bank stock tax.

4. Statutes of limitation are inconsistent and in some areas confusing.

5. The Tax Commissioner has an automatic right to a rehearing of any circuit court tax case on request within six months. The taxpayer has no such right.

As a partial answer to the first two problems, the Subcommittee recommends the creation of an administrative review board, the Board of Tax Appeals, to provide a quick decision of assessment challenges before payment of the tax is required. This avenue is to be taken only after exhaustion of administrative remedies (through an appeal to the Commissioner). The Board is to be a part-time body with a full-time clerk's office. The Board's decision will be subject to appellate review by the circuit courts, and then by the Supreme Court.

Standing rules are clarified by a new section, 58-1117.20, which contains definitions (see part III

below). The statutes of limitation are revised as follows:

1. The taxpayer who pays his assessment is given three years from the date the notice of assessment was mailed to him to contest it either before the Tax Commissioner or the courts. Although the statute will be running while the application is before the Commissioner, the Board of Tax Appeals proceeding will not be affected, as that may be brought within 90 days of the Commissioner's decision.

2. A protective claim for refund is proposed, which would give a taxpayer extra time, once he has paid the tax, and allow the Commissioner to hold the statute open while litigation on the same subject is pending.

3. The statute of limitations which governs the time within which the Tax Department must make an assessment is changed so that it expires three years from the date the tax was due (or paid, whichever is later), instead of three years from December 31 after that date, to alleviate the pressure to make hurried assessments at Christmas time pending the completion of audits.

Finally, the subcommittee recommends that § 58-1137, which establishes the Commissioner's right to an automatic rehearing, be repealed. This right is not enjoyed by the taxpayer.

III. PROPOSED LEGISLATION

§ 58-48.10. Regulations.—A. The Commissioner shall have the power to issue regulations relating to the interpretation and enforcement of the laws of this State governing taxes administered by the Department of Taxation. Such regulations shall not be inconsistent with the constitutions and applicable laws of this State and of the United States. Such regulations shall take precedence over any rules or regulations of the Secretary of the Treasury of the United States or his delegate which are in conflict therewith.

B. In promulgating regulations, the Commissioner shall follow the applicable provisions of the Administrative Process Act (§ 9-6.14:1 et seq. of the Code of Virginia), except that notice of a proposed regulation shall appear at least sixty days in advance of the date prescribed for submittals, and that the Commissioner may restrict public comment to written submittals whenever he determines, based on the limited scope of the regulation, the lack of initial interest or otherwise, that oral comment will not be necessary for a fair presentation and review of the proposal. The Commissioner may prescribe the extent, if any, to which any ruling or regulation shall be applied without retroactive effect.

C. The Commissioner shall have the power to issue rulings and policy statements without complying with the Administrative Process Act. Such rulings and statements shall be entitled only to such weight as is prescribed by the applicable provision of § 58-48.12.

COMMENT: This general power to promulgate regulations will apply to all taxes administered by the Department of Taxation and will replace the specific powers granted in other parts of Title 58 (§§ 58-151.01, 58-151.34, 58-238.14, 58-441.41 and 58-685.34). Two types of policy determinations are prescribed: The "regulation", which is issued only after solicitation of public comment, and is entitled to significant prestige for that reason (see § 58-48.12 below) and the "rulings and policy statements", which are published for information only without comment. The practical difference between the two is shown in § 58-48.11 below. Procedural regulations will not require public notice under the Administrative Process Act.

The only required notice will be publication in a newspaper of general circulation in Richmond. However, it is the Subcommittee's understanding that the Commissioner will make reasonable efforts to reach those who are interested in such regulations by sending announcements to professional periodicals and maintaining a list of interested practitioners and taxpayers to whom all such notices will be sent.

58-48.11. Publication of rulings, decisions, orders and regulations.—A. The Department shall publish the following documents:

(1) Regulations finally adopted by the Commissioner as provided in § 58-48.10;

(2) Orders of the Commissioner under §§ 58-1119 and 58-1119.1;

(3) Final orders entered by a circuit court or the Board of Tax Appeals under §§ 58-1132, 58-1134, 58-1140.6 or 58-1140.9, and any written opinion or memorandum of the Board or Court;

(4) Any written ruling, policy statement or other interpretation of Virginia law which the Commissioner believes may be of interest to taxpayers and practitioners.

B. Notwithstanding § 58-46 or any other provision of law, the Commissioner may publish the documents described above with such changes of name, alterations and deletions as he deems necessary to preserve privileged taxpayer information.

C. For purposes of this section, documents shall be deemed to be published if they are compiled at regular intervals not exceeding three months, made available for inspection and copying at the Department, and distributed to such national and State tax services and other publications as the Commissioner deems necessary to inform taxpayers and practitioners.

COMMENT: This section is proposed as a first step in making available to the public, especially those taxpayers and practitioners who have regular interest in tax matters, the many tax policy determinations of the Tax Department and the courts. Because the subcommittee is unwilling to commit any tax dollars for the purpose, it has restricted the publication requirement significantly. It is hoped that the Department will in the future be authorized to issue a printed report of regulations and rulings, to be available for purchase. The statute requires only that rulings and regulations made after the effective date of this legislation be published. However, if the Department intends to have prior policies available for use in court, it will need to publish them also. See § 58-48.12.

The Task Force proposal had included a requirement that the Department publish orders of the State Corporation Commission. While it agrees that such material should be published, the subcommittee is unwilling to put the burden of obtaining these materials on the Tax Department, and has therefore deleted that requirement. It is hoped that such materials will be made available in the future.

§ 58-48.12. Effect of regulations, rulings and administrative interpretations.—In any proceeding relating to the interpretation or enforcement of the tax laws of this State, the following rules shall apply:

A. Any assessment of a tax by the Department of Taxation shall be deemed prima facie correct.

B. Any regulation promulgated as provided by subsection (B) of § 58-48.10 shall be sustained unless unreasonable or plainly inconsistent with applicable provisions of law.

C. Rulings, policy statements, and administrative interpretations published as provided in § 58-48.11 shall be accorded judicial notice and shall be given such weight as the reviewing authority deems appropriate under the circumstances.

D. In any proceeding commenced under §§ 58-1118, 58-1119.1 or 58-1130 before January one, nineteen hundred eighty-five, unpublished rulings, policy statements and other administrative interpretations which are documented and established by competent evidence to have been in effect prior to July one, nineteen hundred eighty shall be accorded judicial notice and shall be given such weight as the reviewing authority deems appropriate. In all proceedings commenced after such date, such rulings and interpretations shall be subject to subsection E.

E. Rulings and administrative interpretations other than those described in subsections B, C and D shall not be admitted into evidence and shall be accorded no weight, except that an assessment made pursuant to any such ruling or interpretation shall be entitled to the presumption of correctness specified in subsection A.

COMMENT: This section is intended to address the widespread feeling among tax practitioners that some courts rely heavily on "long standing administrative interpretations" which have never been available to the public and can only be established by oral testimony which cannot be

fairly cross examined by the taxpayer. The section specifies that only regulations promulgated after public notice and comment may be given the "great weight" sometimes accorded administrative interpretations by the Supreme Court. Other tax policy statements which have been made available to the public are to be accorded such weight as the court or board deems appropriate; that is, they may be cited and used if the reviewing authority chooses.

In order to give the Tax Department sufficient time to publish and promulgate its policies, the section allows a court or reviewing authority to recognize and accord appropriate weight to certain unpublished interpretations until the year 1985, so long as the Department is able adequately to document them and to establish them to have been in effect prior to the effective date of this legislation. Thereafter, they will be inadmissible; no oral evidence as to Tax Department policies will be relevant, as the only presumption available is the normal presumption of correctness, which does not depend on the existence of any policy.

§ 58-151.01 Meaning of terms; rules and regulations. (a) Any term used in this chapter shall have the same meaning as when used in a comparable context in the laws of the United States relating to federal income taxes, unless a different meaning is clearly required.

(b) Any reference in this chapter to the laws of the United States relating to federal income taxes shall mean the provisions of the Internal Revenue Code of 1954, and amendments thereto, and other provisions of the laws of the United States relating to federal income taxes, as the same may be or become effective at any time or from time to time.

~~(c) The Department of Taxation shall have the power to make and publish reasonable rules and regulations not inconsistent with this chapter, or other applicable laws, or the Constitution of this State, or of the United States, for the interpretation and enforcement of the provisions of this chapter and the collection of the revenues hereunder. Such rules and regulations shall not be subject to chapter 1.1 (§ 9-6.1 et seq.), of Title 9 of the Code of Virginia, the short title of which is "General Administrative Agencies Act." Such rules and regulations shall take precedence over any rules and regulations of the Secretary of the Treasury of the United States or his delegate which are in conflict therewith.~~

(d) If subsection (b) of this section should be held unconstitutional insofar as it provides for the applicability under this chapter of amendments to the Internal Revenue Code of 1954 and of other laws of the United States relating to federal income taxes which are adopted or become law after the adoption of articles 7.1 to 7.6 of this chapter, such provisions of subsection (b) shall be deemed severable and any reference to such Code or laws of the United States shall be construed to mean such Code or laws of the United States as are in force and effect on December thirty-one, nineteen hundred seventy.

COMMENT: Income tax: amended to delete regulation power which conflicts with § 58-48.10.

§ 58-151.32. Rules and regulations. Rules and regulations promulgated by the Commissioner under this chapter shall not be subject to chapter 1.1 (§ 9-6.1 et seq.) of Title 9 of the Code of Virginia, the short title of which is "General Administrative Agencies Act."

COMMENT: Repeal. This section is part of the law on estimated income tax, and conflicts with new § 58-48.10.

§ 58-435. Assessment and payment of deficiency; penalties; application for correction. If the amount of tax computed by the Department shall be greater than the amount theretofore assessed, the excess shall be assessed by the Department and a bill for notice of the same shall be mailed to the taxpayer and advice thereof given to the Comptroller. The taxpayer shall pay remit such additional tax to the State Treasurer Tax Department within thirty days after the amount of the tax as computed shall be mailed by the Department aforesaid from the date of such notice. In such case, 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 §58-1160, from the time the said return was required by law to be filed until paid. If the understatement is false or fraudulent with intent to evade the tax a penalty of one hundred per centum shall be added together with interest on the tax at a rate determined in accordance with §58-1160, from the time the said return was required by law to be filed until paid.

Nothing contained in this section shall prevent the taxpayer from applying to the circuit court of the county or city wherein he resides for a correction of the assessment made by the Department of Taxation with a right of appeal in the manner now provided by law for a correction of any assessment made by the Department of Taxation as provided in Chapter 22 of this Title . (§ 58-1117.20 et seq.)

The taxes imposed by this chapter shall be assessed within three years from ~~December thirty one of the year in the date on which such taxes became due and payable , or the return was filed, whichever later occurs,~~ except that in the case of a false or fraudulent return with intent to evade payment of such taxes, or a failure to file a return, the taxes may be assessed at any time within six years from ~~December thirty one of the year in which such taxes became due and payable such date .~~

COMMENT: State Capital Tax. The first paragraph is amended to delete obsolete language and to reflect the changes in the appeal process effected in Chapter 22 of Title 58. The second paragraph is amended to prevent the expiration of the statute of limitations on an entire year's taxes on December 31.

§ 58-441.38. Period of limitations. The taxes imposed by this chapter shall be assessed within three years from ~~December thirty one of the year in the date on which such taxes became due and payable or the date the return was filed, whichever later occurred ;~~ provided, however, in the case of a false or fraudulent return with intent to evade payment of the taxes imposed by this chapter, or a failure to file a return, the taxes may be assessed, or a proceeding in court for the collection of such taxes may be begun without assessment, at any time within six years from ~~December thirty one of the year in which such taxes became due and payable such date .~~

COMMENT: This section is amended in order to prevent the administrative scramble which results from the expiration of the statute of limitations for an entire year of sales taxes on December 31 of each year.

§ 58-441.41. Rules and regulations.—The Commissioner shall have the power to make and publish reasonable rules and regulations not inconsistent with this chapter, or the other applicable laws, or the Constitution of this State, or of the United States, for the enforcement of the provisions of this chapter and the collection of the revenues hereunder. Such rules and regulations shall not be subject to chapter 1.1 (§ 9-6.1 et seq.) of Title 9 of the Code of Virginia, the short title of which is "General Administrative Agencies Act." The Commissioner shall promulgate and publish sales tax deduction guides for the purpose of aiding the taxpayer in calculating allowable deductions under subsection (c) of § 58-81, relevant to income taxes, which guides shall be based on the following factors: Size of income, size of family, and rate of tax. The guides so promulgated shall not preclude any taxpayer from claiming as a deduction the amount of taxes, levied under the provisions of this chapter, actually paid by him.

COMMENT: Repeal. This section of the sales tax is inconsistent with new § 58-48.10. The last two sentences are obsolete.

§ 58-685.34. Rules of Commissioner. The Commissioner shall have the power to make and publish reasonable rules and regulations not inconsistent with this chapter, or the other applicable laws, or the Constitution of this State, or of the United States, for the enforcement of the provisions of this chapter and the collection of the revenues hereunder. Such rules and regulations shall not be subject to chapter 1.1 (§ 9-6.1 et seq.) of Title 9 of the Code of Virginia.

COMMENT: Repeal. This section of the Aircraft Sales and Use Tax act conflicts with new § 58-48.10.

§ 58-757.1. Tax levied; rates; how paid ; ~~rules and regulations of Department .~~ In addition to all other taxes now imposed by law, every person, firm, corporation, or association, within this State, who sells or stores or receives for the purpose of distribution to any person, firm, corporation, or association within this State, little cigars, cheroots, stogies, cigars, or cigarettes, either or all, shall pay to this State an excise tax as hereinafter provided.

There is hereby levied an excise tax on articles containing tobacco enumerated in this article in the following amounts:

(1) Little cigars. - Upon cigars of all descriptions made of tobacco, or any substitute therefor, and weighing not more than three pounds per thousand, one cent for each ten cigars, or fractional part thereof.

(2) Cheroots, stogies, cigars, etc. - Upon cigars of all descriptions made of tobacco, or any substitute therefor, retailing for three and one-third cents each or less, one dollar per thousand.

(3) Cigars. - Upon cigars of all descriptions made of tobacco, or any substitute therefor, retailing for more than three and one-third cents each and not more than five cents each, two dollars per thousand.

(4) Cigars. - Upon cigars of all descriptions made of tobacco, or any substitute therefor, retailing for more than five cents each and not exceeding eight cents each, three dollars per thousand.

(5) Cigars. - Upon cigars of all descriptions made of tobacco, or any substitute therefor, retailing for more than eight cents each and not exceeding ten cents each, five dollars per thousand.

(6) Cigars. - Upon cigars of all descriptions made of tobacco, or any substitute therefor, retailing for more than ten cents and not exceeding twenty cents each, ten dollars per thousand.

(7) Cigars. - Upon cigars of all descriptions made of tobacco, or any substitute therefor, retailing for more than twenty cents each, thirteen dollars and fifty cents per thousand.

(8) Cigarettes. - Upon all cigarettes made of tobacco, or any substitute therefor, one and one-half mills on each such cigarette.

Whenever in this chapter reference is made to any manufactured tobacco products, manufactured or imported to sell at a certain price, as the basis for computing the tax, it is intended to mean the ordinary, customary, or usual price paid by the consumer for such tobacco products taxable under this chapter. When the retail or selling price is referred to in this chapter as the basis for computing the amount of stamps required on any article, it is intended to mean the retail or selling price of the articles before adding the amount of the tax. When any articles or commodities subject to tax in this chapter are given as prizes or as premiums, etc., the tax shall be based on the ordinary retail selling price of such articles.

The tax hereby levied shall not apply to free distribution of sample cigarettes in packages containing five or fewer cigarettes; nor to any package of cigarettes customarily donated free of charge by manufacturers of cigarettes to employees in factories where cigarettes are manufactured in this State, when such packages of cigarettes are not taxed by the federal government.

The tax herein levied shall be paid through the use of stamps herein provided for. Stamps in denominations to the amount of the tax shall be affixed to the box or other container from or in which tobacco products taxed by this article are normally sold at retail. The stamps shall be affixed in such a manner that their removal will require continued application of water or steam; and in case of cigars, and like manufactured tobacco products, where sales are made from the original container, the stamps shall be affixed to the box or container in such a way that the stamps shall be torn in two or mutilated when such containers or boxes are opened for the sale of the tobacco products. In the case of cigarettes, and like products, sold at retail in packages, the required amount of stamps to cover the tax shall be affixed to each individual package or container.

The Department of Taxation shall, by rules and regulations, provide for the manner in which the taxes shall be paid on any unstamped tobacco products as enumerated herein in the hands of wholesalers or retailers on August one, nineteen hundred sixty.

~~None of the rules and regulations which the department of Taxation is authorized to promulgate under any provision of this chapter shall be subject to chapter 1-1 (§ 9-6.1 et seq.) of Title 9 of the Code of Virginia, the short title of which is "General Administrative Agencies Act."~~

COMMENT: Cigarette tax: amended to prevent conflict with § 58-48.10.

§ 58-757.23. Correction of erroneous assessments. Erroneous assessments under this chapter may be corrected and refunds ordered by the Department of Taxation, and the provisions of §§ 58-1118

through 58-1121 of the Code of Virginia shall be applicable thereto. Aggrieved taxpayers may also apply to the appropriate court for the correction of any erroneous assessments under this chapter, and §§ 58-1130 through 58-1132 and §§ 58-1134 through 58-1139, of the Code of Virginia shall be applicable thereto. as provided in Chapter 22 (§ 58-1117.20 et seq.) of this Title.

COMMENT: Cigarette tax; amended to reflect the changes in the appeal process in Chapter 22.

§ 58-838.17. Remedy of aggrieved taxpayer; limitation. Any taxpayer aggrieved by an assessment made by the Department under this chapter, may apply to the Department for a correction, or he may apply to the appropriate court for a correction, and in the first case, §§ 58-1118 to 58-1121, and in the second case §§ 58-1130 to 58-1132 and 58-1134 to 58-1136, shall be applicable. In either case, the limitation shall be for correction under Chapter 22 (§ 58-1117.20, et seq.) of this Title within one year from December thirty-first of the year in which the assessment was made.

COMMENT: Forest products tax: amended to conform to the changes in Chapter 22. The one year statute of limitations has been left alone, as it is peculiar to this tax.

CHAPTER 22.

Erroneous Assessments.

Article 1.

§ 58-1117.20. *Definitions.—The following words, terms and phrases when used in this article and article 1.1 shall have the meanings ascribed to them in this Section.*

(1) “Person” includes any individual, firm, copartnership, cooperative, nonprofit membership corporation, joint venture, association, corporation, estate, trust, business trust, trustee in bankruptcy, receiver, auctioneer, syndicate, assignee, club society, or other group or combination acting as a unit, body politic or political subdivision, whether public or private, or quasi-public, and the plural as well as the singular number.

(2) “Person assessed with any tax”, with standing to contest such assessment, shall include the person in whose name such assessment is made, a bank the stockholders of which have been assessed with taxes under Chapter 10 or 10.1 of this Title or ordinances enacted pursuant thereto, a consumer of goods who, pursuant to law or contract, has paid any sales or use tax assessed against a dealer, a consumer of real estate construction who has by contract specifically agreed to pay the taxes assessed on the contractor, and any dealer who agrees to pass on to his customers the amount of any refund (net after expenses of the refund proceeding) to the extent such tax has been passed on to such customers.

(3) “Assessment”, as used in this chapter and elsewhere in Title 58, shall include a written assessment made pursuant to notice by the Department of Taxation and self-assessments made by a taxpayer upon the filing of a return or otherwise not pursuant to notice. Assessments made by the Department of Taxation shall be deemed to be made when a written notice of assessment is mailed to the taxpayer at his last known address. Self-assessments shall be deemed made when the tax is paid or, in the case of taxes requiring an annual or monthly return, when the return is filed. A return filed or tax paid before the last day prescribed by law or by regulations pursuant to law for the filing or payment thereof, shall be deemed to be filed or paid on such last day.

(4) “Tax administered by the Department of Taxation” shall include the State and local recordation and probate taxes, the writ tax, the income tax including the withholding and estimated taxes, the inheritance and gift taxes, the estate tax, the State license taxes, the State tax on intangible personal property, the State and local sales and use taxes, the State and local bank stock and bank franchise taxes, the State tobacco tax, the aircraft sales and use tax, the forest products tax, the egg promotion tax, the peanut excise tax, the slaughter hog and feeder pig tax, the soybean tax, the litter tax, the soft drink excise tax and the malt beverages tax.

COMMENT: These definitions are intended to make clear the standing and limitation provisions

in the ensuing chapter. "Person" is defined as broadly as possible, so as to permit unincorporated groups or entities to pursue their remedies. As all the relief statutes apply to "any person assessed with any tax", the definition above will establish the standing rules. Confusing areas in the bank stock tax and the general sales and use tax have been clarified. The bank stock tax situation is already addressed in § 58-1140; that section makes it clear that a bank may apply to correct the assessment of bank stock tax on a stockholder, and the language above confirms it. The sales tax is a difficult area because the tax is assessed on the dealers, but passed on to the consumer by law. If the dealer sues, he is technically not entitled to a refund, since the consumer paid ; the consumer is technically not entitled to sue as he was never assessed . Both are clearly given standing by this definition, as is a person who agrees by contract to pay all taxes assessed on the contractor. The general consumer who pays (by means of higher prices) all the taxes (income, capital, license) of his suppliers is not given standing to contest them.

As the relief sections of Chapter 22 apply to "taxes administered by the Department of Taxation", it was thought desirable to include a listing. This section should be changed any time a new tax is added, but in case it is not, the list should not be considered exclusive.

The definition of "assessment" is important in the interpretation of the statutes of limitation for contest, as they generally run from the date of assessment. Moreover, an assessment must be made within a specific time after the tax was due. Under prior law, the assessment date was presumably the date the entry was made on the Department's "books" (usually by computer). Sometimes no notice of assessment was sent to the taxpayer for months thereafter. This definition establishes the date of assessment as the day the notice is mailed. It would of course be the burden of the taxpayer to prove that notice was not mailed on the date established by Tax Department records.

§ 58-1118. Application to Commissioner for correction. Any person ; ~~firm or corporation~~ assessed with any ~~taxes~~ tax administered by the Department of Taxation may, within ninety days from the date of such assessment ~~was mailed to the taxpayer at his last known address~~ , apply for relief to the State Tax Commissioner. Such application shall *be in the form prescribed by the Department, and shall* fully set forth the grounds upon which the taxpayer relies and all facts relevant to the taxpayer's contention. The Commissioner may also require such additional information, testimony or documentary evidence as he deems necessary to a fair determination of the application.

On receipt of a notice of intent to file under this section, the Commissioner shall refrain from collecting the tax until the time for filing hereunder has expired, unless he determines that collection is in jeopardy.

COMMENT: This section explains the procedure for filing a complaint with the Tax Commissioner. There is no substantial change, other than to permit the Department to prescribe a reasonable form for the application. This is necessary so that the Department personnel will be able to distinguish § 58-1118 petitions from ordinary grouching. Note that this proceeding will be a necessary step before applying to the Board of Tax Appeals. See § 58-1140.5.

The last paragraph is added because assessments must be paid within 30 days, whereas the taxpayer is given 90 days to file his application. The notice of intent to apply can be filed within 30 days to stop the Commissioner from instituting collection proceedings while an application is being prepared.

§ 58-1118.1. Reassessment and refund upon filing of amended return; amended bank stock tax return. Any person, ~~firm or corporation~~ filing a tax return required for any tax administered by the Department of Taxation may, within three years from the last day prescribed by law for the timely filing of the return, or within sixty days from the final determination of any change or correction in the liability of the taxpayer for any federal tax upon which the State tax is based, whichever is later, file an amended return with the Department. If the Department be satisfied, by evidence submitted to it or otherwise, that the tax assessed and paid upon the original return exceeds the proper amount, the Department may reassess the taxpayer and order that any amount excessively paid be refunded to him. *The Department may reduce such refund by the amount of any taxes, penalties and interest which are due for the period covered by the amended return, or any past due taxes, penalties and interest which have been assessed within the appropriate period of limitations.* Any order of the Department denying such reassessment and refund, or the failure of

the Department to act thereon within three months shall, as to matters first raised by the amended return, be deemed an assessment for the purpose of enabling the taxpayer to pursue the remedies allowed under this chapter.

If an amended bank stock tax (chapter 10 of this title, § 58-465 et seq.) return is filed with the Department of Taxation within three years from the last day prescribed by law for the timely filing of the return, and copies are simultaneously filed with the commissioner of the revenue or other official performing the duties imposed on commissioners of the revenue under this title in each locality in which a § 58-481 credit was claimed against the State tax, the Department may reassess the tax and order that any amount excessively paid to the State be refunded to the taxpayer, if the Department be satisfied that the tax assessed and paid upon the original return exceeds the proper amount. The same reassessment procedure shall be applicable in each locality in which an amended return is filed, and a refund made if appropriate. Any order of the Department or respective locality denying such reassessment and refund, or failure to act thereon within three months shall, as to matters first raised by the amended return, be deemed an assessment for the purpose of enabling the taxpayer to pursue the remedies allowed under §§ 58-1118, 58-1119.1, 58-1130, 58-1140 , 58-1140.5 and 58-1145.

COMMENT: Amended return section. The only substantive change is to allow the Department the right to set off any amount of tax the taxpayer owes on a valid assessment (there is no statute of limitations on collection of an assessment), and to open for the purpose of setoff the statute of limitations on assessment for the period covered by the amended return.

§ 58-1119. Action of Commissioner on application for correction.—If the Commissioner be satisfied, by evidence submitted to him or otherwise, that an applicant is erroneously *or improperly* assessed with any ~~such taxes~~ *tax administered by the Department of Taxation* , the Commissioner may order that such assessment be corrected. If the assessment exceeds the proper amount, the Commissioner shall order that the applicant be exonerated from the payment of so much as is erroneously *or improperly* charged, if not already paid into the State treasury, and, if paid, that it be refunded to him. If the assessment be less than the proper amount, the Commissioner shall order that the applicant pay the proper taxes. *The Commissioner shall refrain from collecting the contested assessment until he has made a final determination under this section unless he determines that collection is in jeopardy.*

COMMENT: Ruling on § 58-1118 hearing. The changes make it clear that the Commissioner may not collect a disputed tax until he has decided the application. If the taxpayer goes on to the Board of Tax Appeals, § 58-1140.5 governs collection of the tax. The statute of limitations will continue to run for purposes of a suit under § 58-1130 while the application is pending. The statute for proceeding to the Board of Tax Appeals does not expire, as that runs from final decision by the Commissioner under this section or § 58-1119.1. Appeals to that body must be made within 90 days of the decision by the Commissioner.

§ 58-1119.1. *Protective claim for refund.—Any person who has paid an assessment of taxes administered by the Department of Taxation may preserve his administrative and judicial remedies by filing a claim for refund with the Commissioner on forms prescribed by the Department within three years of the date such tax was assessed. Such taxpayer may, at any time before the end of one year after the date of the Commissioner's decision on such claim, seek redress from the Board of Tax Appeals under § 58-1140.5 or the circuit court under § 58-1130. The Commissioner may decide such claim on the merits in the manner provided in § 58-1119 for appeals under § 58-1118, or may, in his discretion, hold such claim without decision pending the conclusion of litigation affecting such claim. The fact that such claim is pending shall not be a bar to any other action under this Chapter.*

COMMENT: This new section provides a method of holding open the statute of limitations on a paid assessment . Filing of a claim under this section will automatically extend the statute more than one year (depending on how fast it is disposed of by the Commissioner). If the Commissioner believes that the issue raised by the claim may be resolved in the future, he may delay deciding it, thus holding the statute open indefinitely. This claim procedure is an alternative to the hearing under § 58-1118, but may only be used if the tax is paid first. If the Commissioner fails to decide on the claim within a reasonable time, the taxpayer will be able to pursue his remedies in the circuit court or the Board of Tax Appeals. The statute will remain open and the pendency of the claim will not be a bar to the proceeding.

§ 58-1130. Application to court for correction of erroneous assessments of State taxes generally.—Any taxpayer, person assessed with any tax administered by the Department of Taxation, aggrieved by any such assessment may, unless otherwise specifically provided by law, within ~~two~~ *three* years from the ~~thirty first day of December of the year in which~~ *date* such assessment is made, apply to a circuit court for relief. The venue for such proceeding shall be as specified in subdivision 13 b of §8.01-261. *The assessment shall be before the court when it is filed in the clerk's office. Such application shall not be deemed filed unless such assessment has been paid.*

If the assessment complained of was made by the Department of Taxation, a copy of the application shall be served on the State Tax Commissioner at least twentyone days before the hearing.

The Department of Taxation shall be named as defendant and the proceedings shall be conducted as an action at law, subject to the Rules of Court. It shall be the burden of the applicant in any such proceeding to show that the assessment complained of is erroneous or otherwise improper. The court's order shall be entered pursuant to § 58-1134.

COMMENT: This procedure in a circuit court is basically unchanged, as it is now the Tax Department's policy to collect the tax before participating in the correction proceeding, and most courts are now following the rules of court to some extent. The statute of limitations is changed from two years after December 31 to three years, and therefore conforms to §§ 58-1118 and 58-1118.1. In addition, a sentence is added to insure that the statute of limitations does not run out while the application is pending in the clerk's office. An old case made this section a trap for the unwary. The statute of limitations will continue to run, however, unless the assessment is paid as well. The Board of Tax Appeals proceeding, with appellate review by the circuit court (§ 58-1140.2 et seq.) will be a new alternative.

§ 58-1134. Action of court.—If the court be satisfied that the applicant is erroneously or *improperly* assessed with any taxes ~~and that the erroneous assessment was not caused by the wilful failure or refusal of the applicant upon request to furnish a list of his property or other relevant information to the tax assessing authority as the law requires,~~ the court may order that the assessment be corrected. If the assessment exceeds the proper amount, the court may order that the applicant be exonerated from the payment of so much as is erroneously charged, if not already paid and, if paid, that it be refunded to him.

If the assessment be less than the proper amount, the court shall order that the applicant pay the proper taxes and to this end the court shall be clothed with 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 the powers and duties conferred by law upon such authority between the time such assessment was made and the time such application is heard. A copy of any order made under this section or § 58-1132 correcting an erroneous assessment shall be certified by the clerk of the court to the State Tax Commissioner.

COMMENT: This section governs the court's action on a § 58-1130 application. Language in the first paragraph was deleted so that the taxpayer would not have the burden of proving that the erroneous assessment was not due to his failure to cooperate. Its deletion is not intended to change the law on filing of returns, but merely to shift to the Department the burden of presenting evidence showing failure to file or cooperate.

§ 58-1136. Effect of order.—An order of exoneration under § 58-1132 ~~or~~ , 58-1134, *58-1140.6 or 58-1140.9* when delivered to the tax-collecting officer, shall restrain him from collecting so much as is thus erroneously charged. If what was so erroneously charged has been paid ~~into the State treasury~~ , the order of court shall entitle the claimant to a warrant on the treasury for the amount thereof, provided application for the same be made to the Comptroller ~~within one year after the date of such order.~~ *the Board of Tax Appeals under § 58-1140.6 or of the court under 58-1132, 58-1134 or 58-1140.9, when presented to the appropriate state or local official, shall serve as the only direction necessary to obtain refund of the amount so ordered.*

COMMENT: This section, dealing with the effect of a court order of exoneration, is changed to make it easier to obtain relief from a local tax administered by the Department of Taxation.

§ 58-1137. Rehearing.—If, from the statements of the facts or other evidence in a proceeding

under §§ 58-1130 to 58-1132 or 58-1134 to 58-1136, the State Tax Commissioner shall be of opinion that the order of the court granting the redress is erroneous, he may, within six months from the time such order is certified by the clerk to the State Tax Commissioner, file a petition for a rehearing of such application. Such petition may be filed in such court, or with the judge thereof in vacation, and shall be in the name of the Commonwealth and the filing of the same shall operate as a supersedeas and, after five days' notice to the applicant, the matter shall thereupon be reheard in such court and witnesses examined in the same manner as if no previous hearing had been had. Upon the rehearing the court shall make such order thereon as may be proper.

COMMENT: The majority of the subcommittee recommend that this section be repealed. It gives the Tax Commissioner the right to an automatic rehearing within six months of the circuit court's order. The section dates from the era when State taxes were contested in local courts without notice to the Commissioner, and the Commissioner was represented by the local commonwealth's attorney. Now that all State tax cases are tried by assistant attorneys general representing the Commissioner, the majority of the subcommittee see no excuse for perpetuating a rehearing right not shared by the other side. The Tax Commissioner disagrees with the majority and wants the right to a rehearing to be preserved for all § 58-1130 proceedings. He is willing to give up the right only in those cases which go through the Board of Tax Appeals.

§ 58-1138. Appeal.—The State Tax Commissioner or the ~~taxpayer~~ *applicant* may take an appeal from any final order of the court *under §§ 58-1134 or 58-1140.9* to the Supreme Court of Virginia and a supersedeas may be granted in each case in the same manner as provided by law in cases other than cases of appeals of right.

COMMENT: Appeal to Supreme Court. A reference to the circuit court appellate proceeding from the Board of Tax Appeals is included.

§ 58-1139. Costs in proceedings under §§ 58-1130 to 58-1138 and *58-1140.2 to 58-1140.9*.—If the final order of the court in any proceeding under the nine preceding sections (§§ 58-1130 to 58-1138) or *§§ 58-1140.2 to 58-1140.9* grants the relief prayed for, no costs shall be taxed against the applicant; but in no event shall any costs be taxed against the Commonwealth in any proceeding under said sections.

COMMENT: This section governing costs is extended to cover cases coming through the Board of Tax Appeals.

ARTICLE 1.1.

Board of Tax Appeals.

§ 58-1140.2. *Creation.*—There is hereby created a administrative review board which shall be known as the Virginia Board of Tax Appeals. It shall consist of five part-time members to be appointed by the Governor, subject to confirmation by the General Assembly, as follows: one member for a term of one year, one for a term of two years, one for a term of three years, and two for a term of four years. After the initial term, all appointments shall be for a term of four years. Appointments to fill vacancies shall be for the unexpired term. The Governor may remove any member for cause. The Governor shall designate one of the members of the Board to act as chairman.

COMMENT: The Board of Tax Appeals is created as a part-time administrative review board.

§ 58-1140.3. *Qualifications; salary and expenses.*—A. *Members of the Board of Tax Appeals shall be citizens of the State. At least three of the members shall have the qualifications required of candidates for judge of a circuit court, and at least one shall have experience in accounting.*

B. *Members of the Board may hold other positions in State government other than in the Department of Taxation as long as such employment does not constitute a violation of Article III of the Constitution of Virginia or § 9-6.23 of the Code of Virginia. No member shall practice before the Board during his tenure in office nor hear or decide any case in which he has a special interest.*

C. Each member shall receive a salary as provided by law, and necessary expenses incurred while travelling on the business of the Commonwealth.

COMMENT: Only three of the members of the Board of Tax Appeals are required to be lawyers. One must have experience as an accountant and of course he may also be a lawyer.

The subcommittee was not able to restrict members' outside activities too greatly because of the part-time nature of the job. Preventing all practice of State tax law, for instance, would disqualify those with the greatest expertise. The statute as written is intended to prevent a member from participating in a case if a law partner represents one side, or if he is aware that the issues to be decided have a significant effect on himself or a client. It is hoped that those appointed will be sensitive to the ethical problems and refrain from sitting on any case where there is even an appearance of impropriety.

§ 58-1140.4. Offices of the Board, clerk and other employees.—A. The Board shall be provided with adequate offices in the City of Richmond in which its records shall be kept and business transacted. Hearings shall be held in Richmond; provided, that if the chairman determines that a different location is appropriate for a specific application, he may designate another hearing place within the Commonwealth.

B. The chairman of the Board shall, with the concurrence of the other members and subject to the provisions of Chapter 10 (§ 2.1-110 et seq.) of Title 2.1, appoint a clerk and such other employees as are necessary for the performance of the duties of the Board, who shall be compensated as provided by law.

COMMENT: The Subcommittee contemplates a permanent full time clerk-executive secretary of the Board to handle administration. His position will be subject to the personnel act. Hearings are to be in Richmond except in the unusual case where a taxpayer (or the Department) has a significant reason for holding a hearing elsewhere.

§ 58-1140.5. Jurisdiction, application for review.—A. Any person assessed with any tax administered by the Department may within ninety days after a ruling by the Commissioner under §§ 58-1119 or within one year after a ruling under 58-1119.1, or if the Commissioner has failed to rule on an application under §§ 58-1118 or 58-1119.1, any time after ninety days have elapsed from the filing of such application, apply for review by filing an application with the board. The Department shall be named as defendant. It shall be the burden of the applicant in any such proceeding to show that the assessment, ruling or determination complained of is erroneous or otherwise improper.

B. Unless the Commissioner determines that collection is in jeopardy, he shall refrain from the collection of a disputed assessment during the pendency of an application under this section, until the matter shall have been decided by the Board of Tax Appeals. If the applicant appeals the decision of the Board as provided by §§ 58-1140.8 and 58-1138, the Commissioner shall refrain from the collection of such tax provided the applicant files an appeal bond with the Board in an amount sufficient to pay all taxes, penalties and interest, and all fees which may be awarded against the applicant in the circuit court or the Supreme Court, with security acceptable to the Board.

COMMENT: The applicant is required to exhaust his administrative remedies before applying to the Board (note this is not required for filing in the circuit court under § 58-1130),.

The assessment need not be paid until the case is finally decided on appeal, but bond must be posted if the Board decides against the taxpayer. The Tax Commissioner is in disagreement with this provision; he feels the tax should be paid when the decision of the Board is issued.

§ 58-1140.6. Procedure before the Board.—A. All applications before the Board of Tax Appeals shall be heard de novo in accordance with the Rules of Court or such other rules as may be prescribed by the Board. Hearings shall be public, and all records of proceedings shall be public records. The Board shall provide for electronic recording devices to record the proceedings of the board, but it shall be the responsibility of the parties to have a transcript made.

B. The Board shall decide applications in panels of no fewer than three, and shall make written findings on which its orders and decisions are based. In the event that three disinterested members

are not available to hear and decide a case, the Governor may appoint a temporary member to serve for a specified time. Such temporary member shall receive expenses and a per diem of fifty dollars. Evidentiary hearings may be conducted by one or more members, provided that at least one member presiding over such hearing shall have the qualifications of a circuit judge. If the Board is satisfied that the applicant is erroneously assessed with any tax, it shall order that the assessment be corrected. If the assessment exceeds the proper amount, it shall order that the applicant be exonerated from payment, or that payment be refunded. If the assessment is less than the proper amount, it shall order that the applicant pay the proper taxes. The orders and decisions of the Board shall be binding upon all parties unless changed or modified on rehearing or on appeal under §§ 58-1140.7 or 58-1138. If no appeal is prosecuted, the decision of the Board shall constitute a final determination.

C. In all matters within the jurisdiction of the Board, it shall have the powers of a court of record to administer oaths, to compel attendance of witnesses and the production of documents and to punish for contempt or disobedience of its orders. The county and city sheriffs and their deputies shall serve all subpoenas of the Board and shall receive the same fees as are provided by law for like civil actions.

COMMENT: The Board's power to hear and decide tax matters parallel those of the circuit court under § 58-1130 et seq. The Board is to operate like a court in the taking of evidence, and for that reason the member hearing the case must have legal training. Panels of three are used to allow flexibility to prevent conflicts of interest. The Board would be able to rehear a case and decide it en banc if it so chose, in accordance with its own rules.

§ 58-1140.7. *Appeal from Board of Tax Appeals.*—A. Any party feeling aggrieved by an order of the Board of Tax Appeals may, within thirty days after entry of the Board's order, file a notice of appeal therefrom with the clerk of any circuit court specified in subsection 13b of § 8.01-261. The appellant shall give notice of the appeal to the clerk of the Board and to other parties by mailing or delivering a copy of the notice of appeal to them on or before the day of filing with the clerk of the circuit court.

COMMENT: Appeal to the circuit court must be taken within 30 days of the Board's order.

§ 58-1140.8. *Procedure on appeal to circuit court.*—Within twenty-one days after filing of a notice of appeal, the Board shall transmit to the court the record of the proceedings below which shall consist of the application filed pursuant to § 58-1140.5, the response of the Commissioner, documentary and other evidence presented at the hearing (including any transcript of the proceedings when filed with the Board), the findings of the Board and any order entered under § 58-1140.6. The procedure on appeal shall be the same as in the case of an appeal to the Virginia Supreme Court when an appeal has been awarded except that all times for filing briefs, appendices and other papers shall be computed from the date of filing the notice of appeal and only three copies of all briefs, appendices and other papers need be filed with the court. It shall be the burden of the appellant in such appeal to show that the action of the Board was, as to matters of law, erroneous and, as to factual determinations, not supported by the weight of the evidence. The court's order shall be entered pursuant to § 58-1140.9.

COMMENT: This section provides for an appellate proceeding before the circuit court.

§ 58-1140.9. *Action of court; effect of order.*—A. The court shall affirm the judgment of the Board of Tax Appeals if there be no error therein, and reverse the same in whole or in part, if erroneous, and enter such judgment as to the court shall seem right and proper and shall render final judgment on the merits whenever, in the opinion of the court, the facts before it are such as to enable the court to attain the ends of justice. A case shall not be remanded unless the ends of justice require it, but the court shall, in the order of any case it remands, designate upon what point or points a new hearing is to be had. The clerk of the court shall certify and transmit its decisions to the Board of Tax Appeals, which shall enter any decision rendering final judgment as its own.

COMMENT: The Circuit Court may reverse or affirm in whole or in part, and remand if it finds further factual evidence is necessary.

§ 58-1158. No injunctions against assessment or collection of taxes. No suit for the purpose of

restraining the assessment or collection of any tax, State or local, shall be maintained in any court of this Commonwealth, except when the party has no adequate remedy at law *provided, that the Commissioner may be restrained from collecting any tax that is not in jeopardy pending a final decision by the Commissioner under § 58-1119, or of the Board of Tax Appeals, or pending any appeal from the Board if adequate bond has been posted .*

COMMENT: This section prohibiting injunctions against collection of tax is amended to permit an injunction in those incidences where statute prohibits collection.