

**REPORT OF THE  
DEPARTMENT OF TAXATION ON  
A Study Of The  
Criminal Penalty Provisions  
In Title 58.1 For  
Noncompliance With The  
Commonwealth's Tax Laws**

**TO THE GOVERNOR AND  
THE GENERAL ASSEMBLY OF VIRGINIA**



**HOUSE DOCUMENT NO. 53**

**COMMONWEALTH OF VIRGINIA  
RICHMOND  
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# COMMONWEALTH of VIRGINIA


*Department of Taxation  
Richmond, Virginia 23282*

TO: The Honorable Gerald L. Baliles  
Governor of Virginia  
and  
The General Assembly of Virginia

The 1989 General Assembly, by House Resolution 83, requested the Tax Commissioner to examine the criminal penalty provisions for noncompliance with the tax laws of the Commonwealth as contained in Title 58.1 of the Code of Virginia to ensure that they continue to be appropriate and equitable.

Enclosed for your review and consideration is the report that has been prepared in response to this resolution.

Respectfully submitted,

  
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**DEPARTMENT OF TAXATION STUDY  
CRIMINAL PENALTY PROVISIONS IN TITLE 58.1**

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# **EXECUTIVE SUMMARY**

House Resolution 83 of the 1989 Session of the General Assembly requested the Tax Commissioner to examine the criminal penalty provisions in Title 58.1 and to determine how they relate to the federal penalty provisions to ensure they continue to be appropriate, equitable and effective.

Under federal law, criminal tax offenses and penalties are consolidated in one chapter of the Internal Revenue Code, and are classified by conduct. More reprehensible conduct, such as fraud with the intent to evade tax, is punished more severely than willful failure to perform a known tax duty. Virginia provides for separate provisions for each offense for each type of tax imposed under Title 58.1, sometimes resulting in inconsistent punishment for similar conduct. Virginia's maximum penalties are much less severe than corresponding federal penalties, and Virginia law does not provide greater maximum penalties for tax evasion through fraudulent conduct.

The Internal Revenue Code provides a three year statute of limitations period for the prosecution of tax crimes, with a six year limitations period applicable to offenses involving certain fraudulent conduct. Virginia's limitations period is one year for misdemeanors; almost all offenses in Title 58.1 are misdemeanors. Virginia's current enforcement efforts are weakened because of the short limitations period available to discover and investigate tax crimes.

The determination of venue (a jurisdiction in which a defendant may be prosecuted) is clear under federal law. Venue is proper either where the offense originated, continued, or was completed. Virginia's venue provision states that prosecution shall take place in the county or city in which the offense was committed. However, it is not always clear where some tax crimes take place; it could be where a fraudulent return is prepared, mailed, or received.

A meeting of a tax advisory group and the results of surveys distributed to the local assessing officers and Commonwealth's Attorneys led to the formulation of four recommendations: (1) Amend Va. Code § 19.2-8 to provide for a longer statute of limitations for the prosecution of certain fraudulent criminal violations under Title 58.1; (2) Enact a new Va. Code § 19.2-245.2, to clarify the venue provision for the prosecution of criminal violations under Title 58.1; (3) Enact a new section in Title 58.1, which would define a felony provision for tax evasion applicable to any tax imposed in Subtitle I (Taxes Administered by the Department of Taxation); Subtitle II (Taxes Administered by Other Agencies) except for Chapters 25, 26, and 27; or which are governed by Subtitle III (Local Taxes) of Title 58.1; and (4) Request the Virginia Code Commission to revise the criminal tax penalties of Title 58.1 by consolidating them in a separate chapter and reclassifying them as appropriate. The implementation of these recommendations, when coupled with pending enhanced enforcement efforts, would help ensure the criminal penalty provisions in Title 58.1 continue to be appropriate, equitable and effective in addressing violations of the Commonwealth's tax laws.

# INTRODUCTION

House Resolution 83 of the 1989 Session of the General Assembly requested the State Tax Commissioner to examine the criminal penalty provisions for noncompliance with the tax laws of the Commonwealth as contained in Title 58.1 and to report his findings and recommendations to the 1990 Session of the General Assembly. Specifically, the Resolution called for an examination of these provisions "to ensure that they continue to be appropriate and equitable."

The Resolution set forth the following assertions in support of the request:

- o Virginia income tax represents over sixty percent of the Commonwealth's general fund;
- o Virginia has chosen to conform its income tax to the federal income tax for administrative simplicity and taxpayer convenience and understanding;
- o Virginia's criminal penalty provisions for noncompliance with the Commonwealth's income tax laws do not conform to the federal criminal penalty provisions for noncompliance with federal income tax laws;
- o Other Virginia taxes have criminal penalty provisions scattered throughout Title 58.1;
- o Title 58.1 provides a variety of different criminal penalty provisions for the various taxes imposed under that title;
- o The criminal penalty provisions in Title 58.1 have not been thoroughly reviewed for a number of years;
- o An examination of the criminal penalty provisions in Title 58.1 would assist in determining how Virginia's income tax penalty provisions relate to the federal and to the criminal penalty provisions of the other Virginia taxes to ensure the penalties are appropriate in today's environment and are consistent and effective.

The timing of such a review is appropriate because of the implementation of Virginia's amnesty program, starting February 1, 1990 and concluding March 31, 1990. The amnesty program gives delinquent taxpayers and/or tax evaders the opportunity to pay past due taxes and to "clear their records," without fear of civil or criminal penalties. At the same time, the tax rolls of the state are increased by adding to the tax base taxpayers who had managed to remain outside the tax rolls. In order for this program to be effective, sanctions must be in place which, from the taxpayer's perception, make the net penalties for noncompliance exceed the net gains. If this is the case, taxpayers will be more likely to come forward and pay their taxes during the amnesty period, rather than face harsh penalties in the future. Therefore, a review of Virginia's criminal penalty provisions is important to determine if the measures, when coupled with increased enforcement and compliance efforts, meet the needs of the impending amnesty program, and if they will continue to be appropriate, equitable, and effective.

# SCOPE

This study focuses solely on the tax criminal penalty provisions of Title 58.1 as they compare to the federal measures. Although the Virginia Lottery crimes are included in Title 58.1, they do not involve tax. Consequently, the Lottery Department requested that those crimes not be included in the study. Civil penalties are also intentionally excluded, though it is recognized that these measures do work in conjunction with the criminal penalty provisions. Furthermore, several civil penalty sections found in Title 58.1 were amended in 1989 to provide for increased penalties for failure to file on time and failure to pay income taxes on time. Based on the provisions of House Resolution 83, the scope of this study may be defined by a number of specific study objectives:

1. Identify and review Virginia statutes imposing criminal penalties for noncompliance with its income tax laws and with other Virginia taxes.
2. Identify and review federal statutes imposing criminal penalties for noncompliance with federal tax laws.
3. Convene a tax advisory group, consisting of representatives of the Department of Taxation, the State Corporation Commission, the Department of Motor Vehicles, the tax sections of the Virginia State Bar and the Virginia Bar Association, the Commonwealth's Attorneys Association, and other interested groups and organizations.
4. Evaluate the Virginia income tax penalty provisions in relation to the penalties at the federal level and to the penalty provisions for noncompliance with the other Virginia taxes.
5. Identify, review and discuss significant legal issues involved in the statutes imposing criminal penalties for noncompliance.
6. To the extent appropriate, make recommendations and formulate new legislation and any amendments to Virginia statutes governing the criminal penalty provisions for noncompliance with the tax laws.

# APPROACH

In addition to in-depth research of Title 58.1 of the Code of Virginia and the Internal Revenue Code, research focused on Acts of the General Assembly to determine when and how Virginia's criminal penalty provisions were enacted. Comparisons were then drawn between federal and Virginia provisions. A meeting of the tax advisory group, involving representatives of affected agencies and interested groups, was held on October 12, 1989. The purpose of the meeting was to give the participants the opportunity to evaluate the appropriateness and the effectiveness of Virginia's criminal penalty provisions, to identify problem areas and to develop



alternatives to increase the effectiveness of the criminal penalties. This was accomplished through the discussion of several topics including: (1) the advantages and disadvantages encountered in enforcing the current criminal penalties; (2) the scope of the study and how the sanctions in Title 58.1 relate to Title 19.2; (3) the organization of crimes in Title 58.1 and its influence on effectiveness; and (4) the definition of crimes and punishment upon conviction in Title 58.1 and how they relate to federal statutes. Questionnaires were developed and mailed to local assessing officers and Commonwealth's Attorneys, seeking their opinions on the organization and definitions of offenses in Title 58.1 and the relationship with procedural matters in Title 19.2. (See Appendix B for samples of the surveys.) The results of the surveys, together with the research and the findings of the tax advisory group, led to the recommendations of this study.

## **HISTORICAL BACKGROUND**

Criminal penalties to deter noncompliance with the tax laws have been in place for many years. In 1950, the General Assembly enacted two statutes to punish taxpayers failing to comply with the income tax laws. Va. Code § 58-115.1 was added to the 1950 Code of Virginia, making it a misdemeanor for a person to willfully fail or refuse to make an income tax return as required by law, and for any person to make any false statement in an income tax return with intent to defraud the State. Va. Code § 58-145.1 was enacted at the same time, making it a misdemeanor for any officer of any corporation or any partner to make a fraudulent income tax return or statement with intent to defeat or evade the payment of tax. The successors to these sections can be found in Va. Code §§ 58.1-348 and 58.1-452, respectively.

As new taxes were imposed, criminal sanctions for noncompliance with that particular tax were often enacted simultaneously. When the Virginia Retail Sales and Use Tax was enacted in 1966, the chapter included criminal sanctions in Va. Code § 58-441.39 (recodified as Va. Code § 58.1-636), which made it a misdemeanor for any dealer subject to the tax to fail or refuse to file a return as required, or to make a false or fraudulent return with the intent to evade the tax. As a result of this piecemeal process of defining crimes for noncompliance with each particular tax, the criminal offenses in Title 58 of the 1950 Code of Virginia became scattered throughout the title, as they are today, mixed in with the substantive provisions.

In 1975, Title 18.1 of the Code of Virginia, relating to crimes and offenses generally, was recodified into Title 18.2. Under this new title, a system of classification of crimes into graded felonies and misdemeanors was adopted for the purposes of punishment and sentencing. Formerly, each crime had its own punishment. In 1984, Title 58 was recodified into Title 58.1, and the classification system of graded felonies and misdemeanors established in Title 18.2 was incorporated into the criminal offenses for noncompliance with the Commonwealth's tax laws. Since the inception of the classification system in Title 18.2 in 1975, the level of fines and imprisonment for each grade of felonies and misdemeanors has not changed.

# DISCUSSION

## FEDERAL CONFORMITY GENERALLY

Virginia's income tax and estate tax laws conform to those of the federal government, as established in the Internal Revenue Code. The computation of Virginia tax is based on calculations from the federal tax return. The Virginia tax for a resident individual is computed by starting with federal adjusted gross income and making appropriate modifications, as specified in Va. Code § 58.1-322, to compute Virginia taxable income. The Virginia tax for a resident estate or trust or for a corporation is based on federal taxable income, with modifications made, as provided in Va. Code §§ 58.1-361 and 58.1-402, respectively, to arrive at Virginia taxable income. The Virginia tax for resident estates is the maximum amount of federal credit for state death taxes allowable by section 2011 of the Internal Revenue Code. Va. Code § 58.1-902.

In the area of criminal offenses for noncompliance with the tax laws, there are four major types of conduct that are defined as criminal offenses in the federal statutes and in Title 58.1. The first offense is attempting to evade or defeat tax through false or fraudulent returns or statements. The second offense involves the willful failure to file a return, supply information, or pay tax, when required. The third offense relates to fraud and false statements generally. The fourth offense pertains to the area of "trust taxes," those taxes collected by a third party and "held in trust" for the government.

## DEFINITION AND PUNISHMENT OF MAJOR FEDERAL CRIMES

Internal Revenue Code section 7201 defines the federal crime of attempting to evade or defeat tax. (See Appendix D) The section is applicable to all taxes imposed under the Internal Revenue Code; no distinction is made between income taxes, estate taxes, or any other taxes. Violation of the section constitutes a felony and is punishable by a fine not to exceed \$100,000 (\$500,000 in the case of a corporation), or imprisonment not to exceed five years, or both. To be guilty under this provision, the offender must act in a fraudulent manner in connection with the intent to evade or defeat a tax.

The penalties for willful failure to file a return, supply information, or pay tax, at the time or times required, are found in Internal Revenue Code section 7203. This section is applicable to any tax imposed or any return required to be filed under the Internal Revenue Code. The offense, characterized by a willful failure or omission to fulfill a known tax duty, is classified as a misdemeanor, punishable by a fine not to exceed \$25,000 (\$100,000 in the case of a corporation), or imprisonment not to exceed one year, or both. Fraud is not an element of this crime.

The penalties for fraud and false statements, provided under section 7206 of the Internal Revenue Code, apply to any tax imposed or any return or document required to be filed thereunder. Section 7206 spells out the types of fraud and false statements it penalizes: (1) declarations under penalties of perjury; (2) aiding or assisting in the preparation or presentation of a false or fraudulent document; (3) fraudulent bonds, permits, and entries; (4) removal or concealment

with intent to defraud; and (5) compromises and closing agreements. A violation under section 7206 is a felony, punishable by a fine not to exceed \$100,000 (\$500,000 in the case of a corporation), or imprisonment not to exceed three years, or both.

Section 7202 of the Internal Revenue Code makes it a felony for any person to willfully fail to collect, truthfully account for, and pay over any tax which such person is required to collect, account for and pay over to the federal government. This is the so-called “trust tax” provision, as taxes collected are deemed to be held in trust for the government. An example of this offense could involve federal withholding tax, where an employer fails to withhold, or withholds from his employee and fails to pay the tax over to the government. A violation of section 7202 constitutes a felony, punishable by a fine not to exceed \$10,000, or imprisonment not to exceed five years, or both.

## **DEFINITION AND PUNISHMENT OF COMPARABLE VIRGINIA CRIMES**

In comparison to the federal penalties, Virginia’s criminal penalties are much less severe. Virginia does not differentiate between willful failure to perform a known duty and more reprehensible conduct of making a false or fraudulent return with intent to defraud or evade taxes. Under Virginia law, the same penalties apply to willful failure to file or pay tax, which involves an omission of a tax duty, and to making a false or fraudulent return, which requires an affirmative act to deceive with intent to evade tax.

Under Va. Code § 58.1-348, applicable to income tax returns of individuals and fiduciaries, both willful failure to file and making a false or fraudulent return are consolidated and are classified as Class 1 misdemeanors. The punishment prescribed for a Class 1 misdemeanor is confinement in jail for not more than twelve months and a fine of not more than \$1,000, either or both. Va. Code § 18.2-11. Va. Code § 58.1-394 makes it a crime for a partnership to file a fraudulent income tax return, incorporating the provisions of Va. Code § 58.1-452, defining criminal liability for fraudulent income tax returns by corporations. The criminal liability of a corporate or partnership officer and any other person who willfully fails to make any return as required by law is defined in Va. Code § 58.1-1814, and such a violation constitutes a Class 1 misdemeanor. In addition, the corporation or partnership “shall be compellable by mandamus to make a return” of income tax. Va. Code § 58.1-450. Va. Code § 58.1-636 states any dealer subject to the retail sales and use tax failing or refusing to file a return as required, or who makes a false or fraudulent return with intent to evade tax shall be guilty of a Class 1 misdemeanor.

Virginia’s other criminal penalty provisions applicable to fraud and false statements are less severe than those at the federal level. For example, Va. Code § 58.1-11 which applies to Title 58.1 generally, punishes a person who willfully subscribes to any return, declaration, or report which one does not believe to be true and correct as to every material matter. Va. Code § 58.1-498 penalizes the same conduct, but is applicable specifically to income tax. Both sections classify a violation as a Class 1 misdemeanor.

Virginia has three separate sections in Title 58.1 relating to “trust taxes”. Va. Code § 58.1-1815 is a general provision, which classifies failure to collect, truthfully account for, and pay over any sales, use or withholding tax as a Class 1 misdemeanor. Va. Code § 58.1-625 relates to a dealer’s failure to collect or pay over sales or use tax, with a violation constituting a Class 1 misdemeanor. A third section, Va. Code § 58.1-485, concerning willful failure by any employer to make a return as required, or willful failure to withhold the required tax or pay it to the Tax Commissioner, as specified, classifies a violation as a Class 1 misdemeanor. The maximum penalties for these offenses are consistent within Title 58.1 but do not approach the severity of the sanctions imposed by federal law.

## **CHANGES IN FEDERAL CRIMINAL PENALTIES**

Few significant changes have been made to the federal criminal penalties since the adoption of the Internal Revenue Code of 1954. However, in 1982, the fines under sections 7201, 7203, 7206 and 7207 of the Internal Revenue Code were increased to the current amounts. (Pub.L. 97-248). This was done because “the maximum fine amounts had not been increased for many years and, due to inflation, no longer represented the same amount of deterrence as was originally intended.” (Conference Committee report on Pub.L. 97-248).

## **CHANGES IN VIRGINIA PENALTIES**

In Title 58.1, there has been little change to the criminal penalties since 1950. There were minor changes made in the 1984 recodification of Title 58, when the classification system in Title 18.2 was adopted for tax crimes. Va. Code § 58-44.1, enacted in 1972 to punish the failure to collect, account for, or pay over trust fund taxes, defined a violation as a felony, punishable by a fine of not more than \$10,000, or imprisonment not to exceed five years, or both. At that time, the fine and jail term were the same as the corresponding federal penalty. In the 1984 recodification, the felony classification was dropped to a Class 1 misdemeanor in Va. Code § 58.1-1815, and the fine was reduced from \$10,000 to \$1,000. In addition, some new penalties were enacted with new taxes imposed after 1950. However, the level of penalties for individuals, corporations, and partnerships failing to comply with the income tax laws has not changed since 1950. Under the 1950 Code of Virginia, these offenses were classified as misdemeanors, punishable by confinement in jail for up to one year, or a fine not exceeding \$1,000, or both. Today, the same offenses are classified as Class 1 misdemeanors, punishable by confinement in jail for up to twelve months and a fine of not more than \$1,000, either or both.

## **ORGANIZATION OF FEDERAL CRIMES**

Under federal law, criminal offenses and penalties are classified by conduct, and not by the type of tax involved. Prohibited conduct relating to the tax laws of the federal government is found in a single, consolidated chapter of the Internal Revenue Code. Within this chapter the definitions and punishments of the crimes are organized so that more reprehensible conduct, such as fraud with the intent to defeat or evade tax, is punished more severely than a willful failure to perform a known tax duty.

## **ORGANIZATION OF VIRGINIA CRIMES**

Virginia provides for separate provisions for each offense for each type of tax imposed. Under Title 58.1, the criminal penalties for noncompliance with the income tax laws -- individual, fiduciary, corporate, and partnership -- are consistent; the offenses are treated as Class 1 misdemeanors. However, the offense of fraud, involving an affirmative act to evade tax, carries the same maximum punishment as a willful failure to file or pay tax, even though fraud is more reprehensible conduct. Furthermore, the punishment for willful failure to file and the making of false and fraudulent returns or statements relating to other taxes is inconsistent. For example, Va. Code § 58.1-812 makes it a Class 2 misdemeanor for any person to knowingly misrepresent any information requested by the clerk of court pertaining to the recordation tax; other sections in Title 58.1 classify the making of false statements as a Class 1 misdemeanor. Va. Code § 58.1-1618 makes it a Class 4 misdemeanor for any person to fail to make a return relating to the forest products tax; other sections in Title 58.1 provide a Class 1 misdemeanor for failure to file a return.

## **FEDERAL STATUTE OF LIMITATIONS**

The Internal Revenue Code, in section 6531, provides a minimum three year statute of limitations period for the prosecution of tax crimes. A six year limitations period is applicable to offenses which are difficult of detect, including the offense of willfully attempting to evade or defeat any tax or payment thereof in any manner, the offense of willfully failing to pay any tax or make a return, and offenses relating to false statements and fraudulent documents.

## **VIRGINIA STATUTE OF LIMITATIONS**

Prosecution of criminal violations under Title 58.1 is governed by the criminal procedures established in Title 19.2 of the Code of Virginia. Under Va. Code § 19.2-8, the prosecution for a misdemeanor, which most criminal offenses under Title 58.1 are, must begin within one year next after the cause therefor, unless otherwise specified. Va. Code §§ 58.1-348, 58.1-394, and 58.1-452, relating to income tax, do specifically provide a five year statute of limitations. Va. Code § 19.2-8 also provides a five year statute of limitations for the prosecution of larceny.

The one year limitation period, which governs in most cases, hampers the ability to prosecute a case involving fraud, due to the time it takes to discover and develop a case, especially when false bookkeeping and concealed or destroyed evidence are involved. Books, records, sales, and income must be reconstructed, all while the statute of limitations is ticking. The same difficulties are present in discovering failure to file cases involving new businesses.

## **VENUE UNDER FEDERAL LAW**

Venue is the legal term for a jurisdiction in which a defendant may be prosecuted for a crime. Venue for the prosecution of all federal crimes is governed by the Federal Rules of

Criminal Procedure, but there is a special venue provision for certain tax crimes. These rules provide that any offense against the United States begun in one district and completed in another, or committed in more than one district, may be prosecuted in any district in which the offense was begun, continued, or completed. In certain cases where venue for prosecution of an offense is based solely on a mailing to the Internal Revenue Service and prosecution is begun in a judicial district other than the judicial district in which the defendant resides, the defendant may, upon motion in the district in which the prosecution is begun, elect to be tried in the district in which he was residing at the time the alleged offense was committed. 18 U.S.C.A. § 3237.

## **VENUE UNDER VIRGINIA LAW**

Under Va. Code § 19.2-244, which governs venue in general, prosecution shall take place in the county or city in which the offense was committed. However, it is not always clear where some tax crimes are committed. It could be where a fraudulent return is prepared, mailed, or received. Virginia law does not contain a special provision for venue where prosecution is based upon mailing a return. Venue may also be unclear when a false return for Locality A's tax is prepared and mailed from an individual's residence or business office in Locality B.

## **ENFORCEMENT AND DETERRENCE**

In Virginia, current enforcement of criminal tax violations is not as strong as it might be. According to the input from the advisory group, the chief problem is the short limitations period for the prosecution of tax crimes. The limitations period often expires before crimes can be discovered and adequately investigated. For example, fraud cases are difficult to uncover and require significant tax expertise and investigative experience to detect false bookkeeping or concealed evidence. It takes a great deal of time to reconstruct books and income receipts to prove the correct amount of tax owed. All this must be done within the limitations period.

Other agencies rarely invoke the criminal provisions of Title 58.1. The Department of Motor Vehicles, which collects tax on motor fuel, tracks fuel closely from manufacturer to retailer; there are few opportunities for fraud. The State Corporation Commission also regulates motor carriers and utilities, and has the power to revoke the operating authority for failure to comply with the tax laws. Consequently, the Department of Motor Vehicles and the State Corporation Commission have rarely used the criminal penalty provisions of Title 58.1.

As part of the amnesty initiative the Department of Taxation is creating a criminal investigative unit. After amnesty ends on March 31, 1990, this new unit will be investigating potential tax crimes in connection with taxes administered by the Department. The unit will work closely with the Commonwealth's Attorneys. Stiff penalty provisions will not necessarily deter noncompliance if the taxpayers do not perceive that enforcement efforts are in place to carry out the penalties. Therefore, deterring noncompliance with the tax laws can come from publicizing convictions of offenders.

# FINDINGS

Two conclusions are obvious after comparison of the federal and Virginia criminal penalty provisions: (1) that the maximum federal penalties imposed under the Internal Revenue Code are more severe than the maximum penalties under Virginia law; (2) that the federal penalties are organized and defined so that more serious conduct is punished more severely regardless of the type of tax involved, while Virginia's penalties are organized by tax type and define most tax crimes as Class 1 misdemeanors. The question is whether or not greater maximum criminal penalties, approaching those found in the Internal Revenue Code, are appropriate and equitable in order to encourage greater voluntary compliance.

## IN GENERAL

At the meeting of the tax advisory group on October 12, 1989, the issue of penalties, and other issues, were discussed. The consensus of those at the meeting was that reorganizing along Internal Revenue Code lines and increasing the criminal penalties in Title 58.1 may be desirable, but it is not recommended at this time. Such an undertaking is beyond the scope of this study, and it is not the most pressing reform needed at the current time. However, further study by the Virginia Code Commission is recommended.

It was also the consensus of the tax advisory group that no effort be made to conform either the severity or the scope of the Virginia criminal penalties to the federal penalty structure. With respect to the income taxes in particular, it appears that it is more appropriate and efficient to continue to let the Internal Revenue Service and the U. S. Justice Department take the lead role in prosecuting serious income tax violations. One of the major benefits to conforming to the federal income tax base is that the majority of strong audit and compliance work can be handled at the federal level given the significantly greater number of resources at their disposal.

Further, the lack of severity in the Virginia criminal penalty statutes was not the chief impediment to more effective enforcement efforts. Rather, as discussed below, the major obstacles are the procedural issues of venue and the statute of limitations.

Nonetheless, there was consensus that at least one major facet of the federal criminal penalty structure be adopted for Virginia. Federal law contains a generic and consistent felony penalty for tax evasion, and the enactment of such a uniform penalty in Virginia would significantly enhance tax compliance in Virginia. This recommendation is discussed in more detail below.

The consensus of the tax advisory group was that the most urgent needs are the statute of limitations and the venue provision. Change is needed in these two areas so that existing crimes can be adequately investigated and prosecuted.

## STATUTE OF LIMITATIONS

A key to enhancing the enforcement efforts would be to provide greater procedural latitude, particularly in the area of the statute of limitations. Increasing the statute of limitations for the prosecution of crimes under Title 58.1 beyond the current one year misdemeanor provision in Va. Code § 19.2-8 would enable the enforcement agencies to uncover more cases of fraud and to follow them through. One year is not sufficient time to discover and flush out all the details of a fraudulent scheme, as is recognized by federal law. Furthermore, discovery of fraud in one year can often disclose a similar pattern of fraud in prior years. Without a greater statute of limitations for tax crimes, many of these offenses would continue to go unpunished.

The responses to the surveys suggest strong support for a longer limitations period. Seventy-four percent of those responding feel that the current one year limitations period is not sufficient for prosecuting criminal offenses under Title 58.1 (See Table 1, Survey Results). Furthermore, 92 percent of those with experience with any of the criminal penalty provisions found in Title 58.1 favor increasing the statute of limitations for the prosecution of criminal offenses under Title 58.1.

A five year limitations period is favored by those with experience with the criminal penalty provisions found in Title 58.1. Overall, a three year statute of limitations received the most support in the surveys; however, 30% of those with experience favor increasing the statute of limitations to five years. And among the Commonwealth's Attorneys with recent experience (prosecution of a criminal case under Title 58.1 within the past 12 months), 41% support a five year statute of limitations; only 12% of the Commonwealth's Attorneys with recent experience favor a three year limitations period.

The proposed legislation in Appendix E would adopt a five year limitations period. This period would be consistent with the existing period for certain income tax misdemeanors and for larceny generally.

## VENUE

A clearer and more flexible venue provision, similar to the federal venue statute, would remove doubts as to the proper place to try criminal tax cases. By enacting a venue statute to provide for options, the prosecution of the case could be benefitted through a more expeditious trial and, upon conviction, punishment.

The results of the surveys returned by the Commonwealth's Attorneys demonstrate overwhelmingly that a new venue provision is favored to clarify the venue question. Ninety percent of those responding support the development of a separate venue provision for the prosecution of tax crimes which would allow prosecution either (1) where a tax return was filed, or (2) where the taxpayer resides or has his place of business.



## **ORGANIZATION**

The tax advisory group found that a reorganization of the criminal penalty provisions in Title 58.1 would be prudent. The criminal tax penalties should be consolidated in a separate chapter, organized by proscribed conduct and reclassified as appropriate. An organization similar to that found in the Internal Revenue Code would be preferable. The State Corporation Commission (SCC), however, prefers the present organization. The SCC feels that the current arrangement is familiar to users of the Code and that any change would be counterproductive, hindering efficient use of the Code (See Appendix G).

Sixty-eight percent of those responding to the survey support such a revision, which would result in a more coherent organization. The support for reorganization is greater (73%) among those with experience with the criminal penalty provisions in Title 58.1. While many who responded do not have an objection to the current organization, they do favor consolidating the provisions in a single chapter. However, it should be noted that the majority of those surveyed are primarily involved only with the administration of taxes administered by the Department of Taxation.

Appendix F contains draft legislation that would request the Virginia Code Commission to study the organization and classification of the penalties in Title 58.1. This study would be beneficial with respect to the taxes administered by the Department of Taxation and the localities in view of the survey results, the relationship between federal and state taxation, and the familiarity of taxpayers and tax practitioners with the federal penalties. The three state agencies affected by such a review, including the SCC, are directed to assist in the study and the Code Commission can be expected to consider the views of the SCC.

## **FELONY PROVISION FOR TAX EVASION**

Because of the amnesty program, the timing is right for some sort of criminal penalty increase. A major element of successful amnesties in other states is that the risks associated with tax evasion increased significantly after the amnesty. The consensus of the tax advisory group was that the most serious conduct, tax evasion through affirmative fraudulent actions, is not adequately addressed under current Virginia law. Therefore, it is recommended that a felony tax evasion crime similar to Internal Revenue Code section 7201 be considered by the 1990 General Assembly.

The SCC opposes a felony provision for tax evasion as it would relate to the assessment and collection of taxes imposed in Chapters 25 (insurance companies), 26 (public service corporations), and 27 (motor carriers) of Title 58.1. Regulation of these industries is closely related to the SCC's tax enforcement responsibilities. The SCC perceives no compelling need to increase the penalties to felony status and believes that such a change would be exceedingly impractical with regard to taxes imposed on these highly regulated industries (See Appendix G).

Responses to the surveys suggest strong support for a felony provision for tax evasion. Overall, 78% of those surveyed believe a felony provision is needed; the current classification of tax evasion as a misdemeanor is not severe enough. Many suggest that this is necessary to “add teeth” to the enforcement side of tax collection.

Appendix E contains draft legislation that would create a new crime of felony tax evasion for any tax imposed in Subtitle I (Taxes Administered by the Department of Taxation); Subtitle II (Taxes Administered by Other Agencies) except for Chapters 25, 26, and 27; or which are governed by Subtitle III (Local Taxes) of Title 58.1.

## OTHER ISSUES

The Internal Revenue Code contains several criminal offenses which have no counterpart in Virginia law. One such offense deals with an employer who fails to withhold and pay over withholding tax. Employers in financial difficulty may scrape together just enough cash to make a “net payroll,” i.e., to pay their employees net of withholding but with no cash left over to pay the withholding taxes. In this situation there may be insufficient evidence to convict the employer of an attempt to evade tax under Internal Revenue Code section 7201 or a failure to collect and pay over under Internal Revenue Code section 7202. However, federal law makes it a felony for the employer to give the employee a false W-2 statement showing that taxes were withheld when the employer knows that taxes have not been withheld and paid over. See IRC 7206(2) described in paragraph I. D. of Appendix D.

## RESULTS OF SURVEYS

Surveys of the local assessing officers and Commonwealth’s Attorneys were developed, with questions reflecting the findings of the tax advisory group. Responses were received from 70 Commonwealth’s Attorneys and 89 local assessing officers. Below is a tabulation of the survey results.

**TABLE 1  
SURVEY RESULTS**

1. Have you had experience with any of the criminal penalty provisions found in Title 58.1?

	<u>YES</u>	<u>NO</u>
Commonwealth’s Attorneys	29 (41%)	41 (59%)
Local Assessing Officers	8 (9%)	81 (91%)
Overall	37 (23%)	122 (77%)

2. Currently, the criminal penalty provisions are scattered throughout Title 58.1, with offenses defined within each chapter imposing a particular tax. Is this organization helpful to you?

	<u>YES</u>	<u>NO</u>	<u>No Answer</u>
Commonwealth's Attorneys	15 (21%)	46 (66%)	9 (13%)
Local Assessing Officers	46 (52%)	38 (43%)	5 ( 5%)
Overall	61 (38%)	84 (53%)	14 ( 9%)

3. Should the criminal penalty provisions of Title 58.1 be recodified, consolidating them in a separate chapter and eliminating those provisions from the various chapters of the Title?

	<u>YES</u>	<u>NO</u>	<u>No Answer</u>
Commonwealth's Attorneys	51 (73%)	13 (19%)	6 ( 8%)
Local Assessing Officers	57 (64%)	29 (33%)	3 ( 3%)
Overall	108 (68%)	42 (26%)	9 ( 6%)

4. Currently, the evasion of tax through fraud is classified as a misdemeanor, as are almost all criminal offenses in Title 58.1. Should Title 58.1 include a felony provision for tax evasion, similar to Section 7201 of the Internal Revenue Code?

	<u>YES</u>	<u>NO</u>	<u>No Answer</u>
Commonwealth's Attorneys	53 (76%)	11 (16%)	6 ( 8%)
Local Assessing Officers	71 (80%)	15 (17%)	3 ( 3%)
Overall	124 (78%)	26 (16%)	9 ( 6%)

5. Do you feel that the one year statute of limitations for prosecuting a misdemeanor is sufficient for the prosecution of criminal offenses under Title 58.1?

	<u>YES</u>	<u>NO</u>	<u>No Answer</u>
Commonwealth's Attorneys	13 (19%)	56 (80%)	1 ( 1%)
Local Assessing Officers	25 (28%)	61 (69%)	3 ( 3%)
Overall	38 (24%)	117 (74%)	4 ( 2%)

If no, how long do you feel the time for prosecuting tax crimes should be?

	2 years	3 years	4 years	5 years	6 years	No Answer
Commonwealth's Attorneys	8 (14%)	20 (36%)	2 ( 4%)	21 (37%)	3 ( 5%)	2 ( 4%)
Local Assessing Officers	5 ( 8%)	30 (49%)	2 ( 3%)	18 (30%)	5 ( 8%)	1 ( 2%)
Overall	13 (11%)	50 (43%)	4 ( 3%)	39 (33%)	8 ( 7%)	3 ( 3%)

6. In determining venue for the prosecution of criminal cases under Title 58.1, should a statute be developed which would allow prosecution either

- (1) where the return was filed, or  
 (2) where the taxpayer resides or has his place of business?

	<u>YES</u>	<u>NO</u>	<u>No Answer</u>
Commonwealth's Attorneys (Only group surveyed for this question)	63 (90%)	6 ( 9%)	1 ( 1%)

## **RECOMMENDATIONS**

1. Amend Va. Code § 19.2-8 to provide for a greater statute of limitations for the prosecution of certain fraudulent criminal violations of the tax laws under Title 58.1 (See Appendix E).
2. Enact a new Va. Code § 19.2-245.2 to provide a clearer, more flexible venue provision for the prosecution of criminal violations of the tax laws under Title 58.1 (See Appendix E).
3. Enact a new section in Title 58.1, which would define a felony provision for tax evasion, applicable to any tax imposed in Subtitle I (Taxes Administered by the Department of Taxation; Subtitle II (Taxes Administered by Other Agencies) except for Chapters 25, 26, and 27; or which are governed by Subtitle III (Local Taxes) of Title 58.1 (See Appendix E).
4. The Virginia Code Commission should be requested to revise the criminal tax penalties of Title 58.1 by consolidating them in a separate chapter, organizing them by proscribed conduct and reclassifying them as appropriate. The Department of Taxation and other affected agencies should be consulted (See Appendix F).

## **APPENDICES**

<b>House Resolution 83</b>	<b>Appendix A</b>
<b>Surveys of Local Assessing Officers and Commonwealth's Attorneys</b>	<b>Appendix B</b>
<b>Criminal Penalties in Title 58.1</b>	<b>Appendix C</b>
<b>Summary of Federal Criminal Penalties</b>	<b>Appendix D</b>
<b>Proposed Legislation</b>	<b>Appendix E</b>
<b>Proposed Joint Resolution</b>	<b>Appendix F</b>
<b>Comments of the State Corporation Commission</b>	<b>Appendix G</b>

**1989 SESSION**

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**HOUSE RESOLUTION 83**

Offered February 9, 1989

*Requesting the State Tax Commissioner to examine the criminal penalty provisions of Title 58.1.*

Patrons—Agee and Stosch

Referred to the Committee on Rules

WHEREAS, the Virginia income tax represents over sixty percent of the Commonwealth's general fund; and

WHEREAS, Virginia has chosen to conform its income tax to the federal income tax for administrative simplicity, taxpayer convenience and understanding, and audit purposes; and

WHEREAS, although Virginia conforms its income tax to the federal income tax, Virginia does not conform its criminal penalty provisions for noncompliance to the criminal penalty provisions at the federal level; and

WHEREAS, the other Virginia taxes (sales and use tax, estate tax, etc.) have criminal penalty provisions scattered throughout Title 58.1; and

WHEREAS, Title 58.1 provides a variety of different criminal penalty provisions for the various taxes imposed by that title of the Code of Virginia; and

WHEREAS, these penalty provisions have not been thoroughly reviewed in a number of years; and

WHEREAS, it would be appropriate to examine the criminal penalty provisions contained in Title 58.1 to determine how Virginia's income tax penalty provisions relate to the federal and how the criminal penalty provisions of the other taxes compare to ensure that they continue to be appropriate in today's environment and are consistent and effective in addressing criminal violations of the Commonwealth's tax laws; now, therefore, be it

RESOLVED by the House of Delegates, That the State Tax Commissioner is requested to examine the criminal penalty provisions for noncompliance with the tax laws of the Commonwealth as contained in Title 58.1 to ensure that they continue to be appropriate and equitable; and, be it

RESOLVED FURTHER, That the appropriate state agencies, such as the State Corporation Commission and the Department of Motor Vehicles, are requested to assist the State Tax Commissioner.

The State Tax Commissioner shall consider recommendations from the Tax Sections of the Virginia State Bar and the Virginia Bar Association and is urged to work closely with these organizations.

The State Tax Commissioner shall complete his work in time to submit his findings and recommendations to the Governor and the 1990 Session of the General Assembly as provided in the procedures of the Division of Legislative Automated Systems for processing legislative documents.

APPENDIX B

CRIMINAL PENALTIES UNDER TITLE 58.1  
QUESTIONNAIRE

Name of Person Completing Survey:

Commissioner of the Revenue or  
Director of Finance or  
Supervisor of Assessments  
for the city/county of \_\_\_\_\_

Throughout this questionnaire, please feel free to include comments with your answers.

1. Have you had experience with any of the criminal penalty provisions found in Title 58.1?  Yes  No

If yes, please list the sections involved:

2. Currently, the criminal penalty provisions are scattered throughout Title 58.1, with offenses defined within each chapter imposing a particular tax. Is this organization helpful to you?  Yes  No

3. Should the criminal penalty provisions of Title 58.1 be recodified, consolidating them in a separate chapter and eliminating those provisions from the various chapters of the Title?  Yes  No

4. Currently, the evasion of tax through fraud is classified as a misdemeanor, as are almost all criminal offenses in Title 58.1. Should Title 58.1 include a felony provision for tax evasion, similar to Section 7201 of the Internal Revenue Code, which states, "Any person who willfully attempts in any manner to evade or defeat any tax imposed by this title or the payment thereof shall, in addition to other penalties provided by law, be guilty of a felony..."?  Yes  No

APPENDIX B

CRIMINAL PENALTIES UNDER TITLE 58.1  
QUESTIONNAIRE

5. Do you feel that the one year statute of limitations for prosecuting a misdemeanor is sufficient for the prosecution of criminal offenses under Title 58.1?  Yes  
 No
- If no, how long do you feel the time for prosecuting tax crimes should be?  2 years  
 3 years  
 4 years  
 5 years  
 6 years

THANK YOU FOR YOUR COOPERATION

Please return by November 10, 1989 to:

Mr. John Josephs  
Senior Tax Policy Analyst  
Tax Policy Division  
Virginia Department of Taxation  
Box 6-L  
Richmond, Virginia 23282



APPENDIX B

VIRGINIA CRIMINAL PENALTIES UNDER TITLE 58.1  
QUESTIONNAIRE

Name of Person Completing Survey:

Commonwealth Attorney  
for the city/county of \_\_\_\_\_

Throughout this questionnaire, please feel free to include comments with your answers.

1. Have you had experience with any of the criminal penalty provisions found in Title 58.1?  Yes  No

If yes, please list the sections involved:

2. Currently, the criminal penalty provisions are scattered throughout Title 58.1, with offenses defined within each chapter imposing a particular tax. Is this organization helpful to you?  Yes  No

3. Should the criminal penalty provisions of Title 58.1 be recodified, consolidating them in a separate chapter and eliminating those provisions from the various chapters of the Title?  Yes  No

4. Currently, the evasion of tax through fraud is classified as a misdemeanor, as are almost all criminal offenses in Title 58.1. Should Title 58.1 include a felony provision for tax evasion, similar to Section 7201 of the Internal Revenue Code, which states, "Any person who willfully attempts in any manner to evade or defeat any tax imposed by this title or the payment thereof shall, in addition to other penalties provided by law, be guilty of a felony..."?  Yes  No

APPENDIX B

VIRGINIA CRIMINAL PENALTIES UNDER TITLE 58.1  
QUESTIONNAIRE

5. Do you feel that the one year statute of limitations for prosecuting a misdemeanor is sufficient for the prosecution of criminal offenses under Title 58.1?  Yes  
 No
- If no, how long do you feel the time for prosecuting tax crimes should be?  2 years  
 3 years  
 4 years  
 5 years  
 6 years
6. Generally, prosecution must take place in the locality where the crime occurred. In determining venue for the prosecution of criminal cases under Title 58.1, should a statute be developed which would allow prosecution either  
(1) where the return was filed, or  
(2) where the taxpayer resides or has his place of business?  Yes  
 No
7. In the past 12 months approximately how many criminal penalties under Title 58.1 has your office prosecuted with respect to state taxes? \_\_\_\_\_

THANK YOU FOR YOUR COOPERATION

Please return by November 10, 1989 to:

Mr. John Josephs  
Senior Tax Policy Analyst  
Tax Policy Division  
Virginia Department of Taxation  
Box 6-L  
Richmond, Virginia 23282

**APPENDIX C**  
**CRIMINAL PENALTIES IN TITLE 58.1**

<b>Code Section</b>	<b>Description</b>
58.1-3	Class 2 misdemeanor for unauthorized disclosure of information by a State officer or employee with respect to the transactions, property, income or business of any person, firm, or corporation acquired in the performance of duty.
58.1-3.1	Incorporates the Class 2 misdemeanor in 58.1-3 for information furnished to local officials. Any information furnished shall be deemed privileged and confidential; each lawful recipient shall not make any unauthorized dissemination of such information in any manner or at any time.
58.1-4	Class 2 misdemeanor for tax preparer to disclose information given by a person in the preparation of a tax return, without the written consent of the person requesting the preparation of such return.
58.1-11	Class 1 misdemeanor for any person to willfully subscribe to any return which he does not believe to be true and correct as to every material matter.
58.1-103	Class 2 misdemeanor for not making records and documents available during regular business hours for inspection by the Tax Commissioner or his duly authorized agents.
58.1-210	Nonfeasance of office for a tax assessing officer to fail to furnish, without good cause, the current rates of local levies to the Department upon request (pursuant to Article IV, 17 of the Constitution of Virginia, nonfeasance is grounds for removal from office).
58.1-348	Class 1 misdemeanor for any individual or fiduciary to fail or refuse to file a return of income as required, or to make a false statement in such return with intent to defraud the Commonwealth. A five year statute of limitations is provided.
58.1-394	Incorporates Class 1 misdemeanor in 58.1-452 for any officer of a partnership who makes a fraudulent return or statement with intent to evade the payment of tax.
58.1-452	Class 1 misdemeanor for any officer of any corporation who makes a fraudulent return or statement with intent to evade the payment of tax. A five year statute of limitations is provided.
58.1-471	Class 1 misdemeanor for an individual to willfully supply false or fraudulent information, or to willfully fail to supply information which would require an increase in withholding.

**APPENDIX C**  
**CRIMINAL PENALTIES IN TITLE 58.1**

<b>Code Section</b>	<b>Description</b>
58.1-485	Class 1 misdemeanor for employer who willfully fails to (1) make any withholding tax return to the Commissioner, (2) withhold the required income tax or pay it over to the Commissioner as specified, or (3) furnish a W-2 statement to an employee.
58.1-486	Larceny for a person to tender a bad check for withholding tax and fail to pay the amount due within five days after notice that the check was returned unpaid. Larceny is defined in 18.2-95 and 18.2-96 of the Code of Virginia. The Bad Check Law under 18.2-181 provides for a charge of larceny for the intentional issuing of a bad check with intent to defraud. Larceny of \$200 or more is a felony; larceny of less than \$200 is a misdemeanor.
58.1-496	Class 1 misdemeanor for any person required to file a declaration of estimated tax to willfully fail or refuse to file such declaration, or to make a false statement in a declaration with intent to defraud the Commonwealth.
58.1-498	Class 1 misdemeanor for any person to willfully subscribe to a return, declaration or report which he does not believe to be true and correct as to every material matter.
58.1-533	Incorporates Class 2 misdemeanor in 58.1-3 for disclosure of information obtained by a claimant agency in pursuit of its debt collection duties, by any person employed by, or formerly employed by, a claimant agency, for any other purpose.
58.1-547	Class 1 misdemeanor for an individual to willfully supply false or fraudulent information, or to willfully fail or refuse to supply information which would require the withholding of local income tax.
58.1-613	Class 2 misdemeanor for any person (including each officer of a corporation) to engage in business as a dealer without obtaining a certificate of registration to collect sales tax, or after a certificate has been revoked. Each day's continuance in business is a separate offense.
58.1-623.1	Class 1 misdemeanor for any person to knowingly use or give an exemption certificate during a period of suspension of an exemption (relating to retail sales and use tax).
58.1-625	Class 1 misdemeanor for any dealer to neglect, fail or refuse to pay or collect the sales tax.

**APPENDIX C**  
**CRIMINAL PENALTIES IN TITLE 58.1**

<b>Code Section</b>	<b>Description</b>
58.1-626	Class 2 misdemeanor for any person to hold out to the public, directly or indirectly, that he will absorb all or any part of the sales or use tax, or that he will relieve the purchaser or consumer of the payment of all or any part of such tax, except as may be authorized.
58.1-633	Class 1 misdemeanor for any wholesaler or jobber to fail to keep required records.  Class 1 misdemeanor for any transportation company to refuse to permit the examination of its books and records.
58.1-636	Class 1 misdemeanor for any dealer subject to the retail sales and use tax to fail or refuse to file a return as required, or to fail or refuse to file a supplemental return or other data required by the Tax Commissioner, or to make a false or fraudulent return with intent to evade tax, or to make a false or fraudulent claim for refund, or to give or knowingly receive a false or fraudulent exemption certificate.
58.1-637	Larceny for a person to tender a bad check for sales tax and fail to pay the amount due within five days after notice that the check was returned unpaid. Refer to 58.1-486 discussion.
58.1-812	Class 2 misdemeanor for any person to knowingly misrepresent any of the information requested by the clerk of court pertaining to recordation tax.
58.1-1003	Class 1 misdemeanor for any cigarette wholesaler or dealer to fail or refuse to stamp cigarettes or to keep records of purchases and sales of cigarettes.
58.1-1004	Class 2 misdemeanor for any retail cigarette dealer to fail or refuse to mail duplicate invoices of purchases and receipts of cigarettes to the Department, in the manner and time allowed.
58.1-1005	Class 3 misdemeanor for a common carrier to fail to maintain a record of consignments and deliveries of cigarettes and to furnish a copy to the Department.
58.1-1006	Class 2 misdemeanor for any person to engage in practices prohibited by rules and regulations of the Department, or to refuse to allow full inspection of the premises or to interfere in any way with any agent of the Department in the performance of his duties in enforcing the cigarette tax.

**APPENDIX C**  
**CRIMINAL PENALTIES IN TITLE 58.1**

<b>Code Section</b>	<b>Description</b>
58.1-1007	Class 2 misdemeanor for any person to fail or refuse to keep and preserve required records relating to the purchase, sale, exchange, receipt or transportation of all cigarettes for a period of three years, or to refuse to allow an audit or inspection of records upon request by a duly authorized agent.
58.1-1008	Class 3 misdemeanor for any wholesaler to fail or refuse to file a monthly report covering the purchase or receipt of all cigarettes during the preceding month.
58.1-1009	Class 6 felony for any person other than the Department to sell cigarette revenue stamps, not affixed to cigarettes sold and delivered by them, whether such stamps are genuine or counterfeit.
58.1-1010	Class 2 misdemeanor for a wholesale dealer to fail to follow required procedures for selling unstamped cigarettes.
58.1-1014	Class 1 misdemeanor for any person to transport or distribute cigarettes without a required permit.
58.1-1015	Class 5 Felony for any person to remove, buy, sell, or possess previously used cigarette stamps with the intent to reuse them; or to manufacture, buy, sell or possess counterfeit stamps. (c.f. 58.1-1009.)
58.1-1017	Class 3 misdemeanor for any person, except as otherwise provided by law, to sell, purchase, transport, receive or possess unstamped cigarettes for the purpose of evading the tax.
58.1-1021	Class 2 misdemeanor for any person to fail or refuse to keep and preserve required records, relating to the storage, use and consumption of cigarettes, or to refuse to allow an audit or inspection of records.
58.1-1403	Class 1 misdemeanor for any person to knowingly misrepresent the value of a watercraft or the amount of tax due to the Commissioner or on any return or invoice.
58.1-1503	Class 1 misdemeanor for any person to knowingly misrepresent the value of an aircraft or the amount of tax due to the Commissioner or on any return or invoice.
58.1-1614	Class 3 misdemeanor for transporter of forest products to fail to make required reports.

**APPENDIX C**  
**CRIMINAL PENALTIES IN TITLE 58.1**

<b>Code Section</b>	<b>Description</b>
58.1-1618	Class 4 misdemeanor for any person to fail to make returns, refuse to permit examination of records, or fail to keep records as required, relating to forest products tax. Each month of failure is a separate offense.
58.1-1724.1	Incorporates Class 2 misdemeanor in 58.1-3 for unauthorized disclosure of information necessary for performing the official duties of administering the motor vehicle fuel sales tax by local finance officers.
58.1-1805	Class 1 misdemeanor for any person to enter padlocked premises without prior approval of the Tax Commissioner.
58.1-1814	Class 1 misdemeanor for any corporate or partnership officer, and any other person to willfully fail to make a return, keep required records or supply information at the time or times required by law or regulations.
58.1-1815	Class 1 misdemeanor for any corporate or partnership officer, or any other person to willfully fail to collect, account for, or pay over sales, use or withholding tax, or to willfully evade or attempt to evade the payment of such taxes.
58.1-2127.6	Class 1 misdemeanor for any person to fail to keep required records, or to make a false statement to the Department of Motor Vehicles.
58.1-2142	Class 2 misdemeanor for any person committing any of a number of prohibited acts in connection with motor fuel taxes. A second or subsequent offense is a Class 1 misdemeanor.
58.1-2402	Class 3 misdemeanor for any person to falsely state the selling price of a vehicle on a bill of sale or other document with intent to evade or to aid another person to evade the tax.
58.1-2410	Class 1 misdemeanor for any person (including each officer of a corporation) to engage in the automobile rental business without obtaining a certificate of registration, or after a certificate has been revoked. Each day of operation is a separate offense.
58.1-2710	Class 1 misdemeanor for any person to willfully and knowingly make a false statement orally, or in writing, or in the form of a receipt for the sale of motor fuel, for the purpose of obtaining or attempting to obtain a credit or refund or reduction of liability of road taxes on motor carriers.

**APPENDIX C**  
**CRIMINAL PENALTIES IN TITLE 58.1**

<b>Code Section</b>	<b>Description</b>
58.1-3111	Class 4 misdemeanor for any person summoned by the Commissioner of Revenue to refuse to (i) furnish access to books of account or other papers (ii) furnish information relating to the assessment of taxes, (iii) answer under oath questions touching any person's tax liability, or (iv) exhibit any subject of taxation liable to assessment. Each day's refusal is a separate offense.
58.1-3112	Class 2 misdemeanor for a Commissioner of the Revenue to fail to keep returns for at least six years after the tax assessment year.
58.1-3121	It is malfeasance in office for a Commissioner of the Revenue to make a false entry on any of his books. Conviction of malfeasance can result in forfeiture of office (pursuant to Article IV, 17 of the Constitution of Virginia).
58.1-3128	Class 4 misdemeanor for any person summoned by the Treasurer to refuse to answer, under oath, questions touching any persons tax liability. Each day's refusal is a separate offense.
58.1-3141	It is embezzlement (when the amount applied, disbursed, or used exceeds fifty dollars) for any treasurer to knowingly apply, disburse or use any part of the public money held by him for any purpose other than the manner and purposes provided by law. Embezzlement is deemed larceny under 18.2-111.
58.1-3142	Class 1 misdemeanor for a treasurer to credit interest on funds belonging to the Commonwealth to any fund other than the particular fund on which such interest accrued.
58.1-3387	Class 4 misdemeanor for any person summoned by the Board of Equalization to refuse to furnish information or to produce books of account or other records. Each day's refusal is a separate offense.
58.1-3520	Class 3 misdemeanor for any person to move a mobile home intended for use as a full-time place of residence without obtaining a permit or otherwise notifying the treasurer.
58.1-3700	It is unlawful for any person to engage in a business employment or profession without obtaining a license when a license is required by law and when the General Assembly has levied a license tax on any such business, employment or profession.



**APPENDIX C**  
**CRIMINAL PENALTIES IN TITLE 58.1**

<b>Code Section</b>	<b>Description</b>
58.1-3726	Class 3 misdemeanor for any person to engage in business as a fortune-teller without a license.
58.1-3832	Any county, city or town having a local cigarette tax may provide by ordinance for a Class 1 misdemeanor for violating any provision of the ordinance and a 50% fraud penalty.
58.1-3901	Class 4 misdemeanor for any person operating an apartment house, trailer court, marina, or privately operated airport to fail to provide a list of tenants or persons renting space to the Commissioner of the Revenue.
58.1-3902	Class 4 misdemeanor for any person operating a marina or boat storage place which accommodates more than four boats to fail to provide information to the Commissioner of the Revenue on boats and owners.
58.1-3912	Class 4 misdemeanor for a treasurer to fail to mail tax bills at least 14 days before the due date of the tax, for tax assessments amounting to five dollars or more (30 days in certain counties).
58.1-3914	Class 4 misdemeanor for any officer to knowingly fail to deliver a receipt at the time of collecting any tax. If such failure is for fraudulent purposes, he shall be guilty of a Class 1 misdemeanor.
58.1-3916.1	An ordinance pertaining to local taxes may provide for criminal penalties for failure to file a return not to exceed those prescribed for (i) a Class 3 misdemeanor if the tax lawfully assessed in connection with the return is \$1,000 or less, or (ii) a Class 1 misdemeanor if the amount of the tax is more than \$1,000.
58.1-3936	Class 3 misdemeanor and malfeasance in office for a treasurer to knowingly omit any delinquent taxes from the delinquent list.
58.1-4009	Class 1 misdemeanor for any person to knowingly and willfully falsify, conceal or misrepresent a material fact or knowingly and willfully make a false, fictitious or fraudulent statement or representation in any application for licensure to the State Lottery Department for lottery sales agent.

**APPENDIX C**  
**CRIMINAL PENALTIES IN TITLE 58.1**

<b>Code Section</b>	<b>Description</b>
58.1-4014	Class 1 misdemeanor for any person other than a licensed lottery sales agent to sell lottery tickets, or to sell them at any price other than that fixed by the rules and regulations of the State Lottery Department
58.1-4015	Class 1 misdemeanor for any person to sell to, or redeem from, any person under the age of eighteen years a lottery ticket or share.
58.1-4016	Class 3 misdemeanor for any person to knowingly give a lottery ticket or share to any person under the age of eighteen years.
58.1-4017	Class 6 felony for any person to forge, alter or fraudulently make any lottery ticket or share and knowingly present such ticket for payment or transfer it to another person to be presented for payment.
58.1-4018	Class 2 felony for any person to wrongfully and fraudulently use, dispose of, conceal or embezzle any public money or funds associated with the operation of the lottery. Class 2 felony for any person to wrongfully and fraudulently tamper with any machinery or equipment used in the operation of the lottery. Class 2 felony for any person to make inaccurate entries regarding the financial accounting of the lottery in order to conceal the truth, defraud the Commonwealth and obtain money to which he is not entitled.

**APPENDIX D**  
**SUMMARY OF FEDERAL CRIMINAL PENALTIES**

**I. Felonies for Taxpayers**

**A. Generally**

1. Punishable by imprisonment for a term exceeding one year.
2. Depends upon intent and conduct of the offender -- questions of fact.
  - a. **Willfull** -- purposeful or intentional; specific intent to do something the law forbids or specific intent to fail to do something the law requires. Knowledge of a tax duty and specific wrongful intent to conceal or evade it. Irrelevant whether a tax is owed or evaded.
  - b. **Fraud** -- a willfull, affirmative act to deceive or cheat in connection with an intent to evade or defeat a tax.
  - c. **False representation** -- a material untrue statement of fact made with the knowledge that the statement was false. Irrelevant whether a tax is owed or evaded; however, a false representation in connection with an intent to evade tax may be considered an affirmative act for purposes of proving fraud.
3. Burden of proof is on the IRS Commissioner -- proof beyond a reasonable doubt.

**B. Attempt to Evade or Defeat Tax**

1. “Any person who willfully attempts in any manner to evade or defeat any tax imposed by this title or the payment thereof shall, in addition to other penalties provided by law, be guilty of a felony.” § 7201 Internal Revenue Code of 1986  
*(Hereafter, all section references are to IRC 1986 unless otherwise noted)*
2. Punishment
  - a. Fine not to exceed \$100,000 (\$500,000 in the case of a corporation), or
  - b. Imprisonment not to exceed 5 years, or
  - c. Both,  
together with the costs of prosecution.

**C. Fraud and False Statements -- Declaration under Penalties of Perjury**

1. “Any person who willfully makes and subscribes any return, statement, or other document, which contains or is verified by a written declaration that it is made under the penalties of perjury, and which he does not believe to be true and correct as to every material matter ... shall be guilty of a felony.” § 7206(1)
2. Punishment
  - a. Fine not to exceed \$100,000 (\$500,000 in the case of a corporation), or
  - b. Imprisonment not to exceed 3 years, or
  - c. Both, together with the costs of prosecution.

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**D. Fraud and False Statements -- Aid or Assistance**

1. “Any person who willfully aids or assists in, or procures, counsels, or advises the preparation or presentation under, or in connection with any matter arising under, the internal revenue laws, of a return, affidavit, claim, or other document, which is fraudulent or is false as to any material matter, whether or not such falsity or fraud is with the knowledge or consent of the person authorized or required to present such return, affidavit, claim, or document ... shall be guilty of a felony.” § 7206(2)
2. Punishment
  - a. Fine not to exceed \$100,000 (\$500,000 in the case of a corporation), or
  - b. Imprisonment not to exceed 3 years, or
  - c. Both,  
together with the costs of prosecution.

**E. Fraud and False Statements -- Fraudulent Bonds, Permits, and Entries**

1. “Any person who simulates or falsely or fraudulently executes or signs any bond, permit, entry, or other document required by the provisions of the internal revenue laws, or by any regulation made in pursuance thereof, or procures the same to be falsely or fraudulently executed, or advises, aids in, or connives at such execution thereof ... shall be guilty of a felony.” § 7206(3)
2. Punishment
  - a. Fine not to exceed \$100,000 (\$500,000 in the case of a corporation), or
  - b. Imprisonment not to exceed 3 years, or
  - c. Both,  
together with the costs of prosecution.

**F. Fraud and False Statements -- Removal or concealment with Intent to Defraud**

1. “Any person who removes, deposits, or conceals, or is concerned in removing, depositing, or concealing, any goods or commodities for or in respect whereof any tax is or shall be imposed, or any property upon which levy is authorized by section 6331, with intent to evade or defeat the assessment or collection of any tax imposed by this title ... shall be guilty of a felony.” § 7206(4)
2. Punishment
  - a. Fine not to exceed \$100,000 (\$500,000 in the case of a corporation), or
  - b. Imprisonment not to exceed 3 years, or
  - c. Both,  
together with the costs of prosecution.

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**G. Fraud and False Statements -- Compromises and Closing Agreements**

1. “Any person who in connection with any compromise under section 7122, or offer of such compromise, or in connection with any closing agreement under section 7121, or offer to enter into any such agreement, willfully conceals from any officer or employee of the United States any property belonging to the estate of a taxpayer or other person liable in respect of the tax, or receives, withholds, destroys, mutilates, or falsifies any book, document, or record, or makes any false statement, relating to the estate or financial condition of the taxpayer or other person liable in respect of the tax ... shall be guilty of a felony.” § 7206(5)
2. Punishment
  - a. Fine not to exceed \$100,000 (\$500,000 in the case of a corporation), or
  - b. Imprisonment not to exceed 3 years, or
  - c. Both,  
together with the costs of prosecution.

**H. Offenses Relating to Stamps -- Counterfeiting**

1. “Any person who with intent to defraud, alters, forges, makes, or counterfeits any stamp, coupon, ticket, book, or other device prescribed under authority of this title for the collection or payment of any tax imposed by this title, or sells, lends, or has in his possession any such altered, forged, or counterfeited stamp, coupon, ticket, book, or other device, or makes, uses, sells, or has in his possession any material in imitation of the material used in the manufacture of such stamp, coupon, ticket, book, or other device ... shall be guilty of a felony.” § 7208(1)
2. Punishment
  - a. Fine not to exceed \$10,000, or
  - b. Imprisonment not to exceed 5 years, or
  - c. Both.

**I. Offenses Relating to Stamps -- Mutilation or Removal**

1. “Any person who fraudulently cuts, tears, or removes from any vellum, parchment, paper, instrument, writing, package, or article, upon which any tax is imposed by this title, any adhesive stamp or the impression of any stamp, die, plate, or other article provided, made, or used in pursuance of this title ... shall be guilty of a felony.” § 7208(2)
2. Punishment
  - a. Fine not to exceed \$10,000, or
  - b. Imprisonment not to exceed 5 years, or
  - c. Both.

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**J. Offenses Relating to Stamps -- Use of Mutilated, Insufficient, or Counterfeited Stamps**

1. “Any person who fraudulently uses, joins, fixes, or places to, with, or upon any vellum, parchment, paper, instrument, writing, package, or article, upon which any tax is imposed by this title, (a) any adhesive stamp, or the impression of any stamp, die, plate, or other article, which has been cut, torn, or removed from any other vellum, parchment, paper, instrument, writing, package, or article, upon which any tax is imposed by this title; or (b) any adhesive stamp or the impression of any stamp, die, plate, or other article of insufficient value; or (c) any forged or counterfeited stamp, or the impression of any forged or counterfeited stamp, die, plate, or other article ... shall be guilty of a felony.” § 7208(3)
2. Punishment
  - a. Fine not to exceed \$10,000, or
  - b. Imprisonment not to exceed 5 years, or
  - c. Both.

**K. Offenses Relating to Stamps -- Reuse of Stamps**

1. “Any person who (a) willfully removes, or alters the cancellation or defacing marks of, or otherwise prepares, any adhesive stamp, with intent to use, or cause the same to be used, after it has already been used; or (b) knowingly or willfully buys, sells, offers for sale, or gives away, any such washed or restored stamp to any person for use, or knowingly uses the same; or (c) knowingly and without lawful excuse (the burden of proof of such excuse being on the accused) has in possession any washed, restored, or altered stamp, which has been removed from any vellum, parchment, paper, instrument, writing, package, or article ... shall be guilty of a felony.” § 7208(4)
2. Punishment
  - a. Fine not to exceed \$10,000, or
  - b. Imprisonment not to exceed 5 years, or
  - c. Both.

**L. Offenses Relating to Stamps -- Emptied Stamped Packages**

1. “Any person who commits the offense described in section 7271 (relating to disposal and receipt of stamped packages) with intent to defraud the revenue, or to defraud any person ... shall be guilty of a felony.” § 7208(5)
2. Punishment
  - a. Fine not to exceed \$10,000, or
  - b. Imprisonment not to exceed 5 years, or
  - c. Both.

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**M. Corrupt or Forcible Interference with Administration of Internal Revenue Laws**

1. “Whoever corruptly or by force ... endeavors to intimidate or impede any officer or employee of the United States acting in an official capacity under this title, or in any other way corruptly or by force ... obstructs or impedes, or endeavors to obstruct or impede, the due administration of this title, shall” ... be fined, or imprisoned, or both. § 7212(a)
2. Punishment
  - a. Fine not to exceed \$5,000, or
  - b. Imprisonment not to exceed 3 years, or
  - c. Both.

**N. Forcible Rescue of Seized Property**

1. “Any person who forcibly rescues or causes to be rescued any property after it shall have been seized under this title, or shall attempt or endeavor so to do, shall, excepting in cases otherwise provided for,” ... be fined or imprisoned. § 7212(b)
2. Punishment
  - a. Fine of not more than \$500, or not more than double the value of the property so rescued, whichever is the greater, or
  - b. Imprisonment not to exceed 2 years.

**O. Willfull Failure to Collect or Pay over Tax -- Trust Taxes**

1. “Any person required under this title to collect, account for, and pay over any tax imposed by this title who willfully fails to collect or truthfully account for and pay over such tax shall, in addition to other penalties provided by law, be guilty of a felony.” § 7202
2. Punishment
  - a. Fine not to exceed \$10,000, or
  - b. Imprisonment not to exceed 5 years, or
  - c. Both,  
together with the costs of prosecution.

**P. Failure to Register, or False Statement Relating to Fuel Taxes**

1. “Every person who fails to register as required by section 4101, or who in connection with any purchase of gasoline, lubricating oil, diesel fuel, or aviation fuel falsely represents himself to be registered as provided by section 4101, or who willfully makes any false statement in an application for registration under section 4101, shall ...” be fined, or imprisoned, or both. § 7232

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2. Punishment
  - a. Fine not to exceed \$5,000, or
  - b. Imprisonment not to exceed 5 years, or
  - c. Both,  
together with the costs of prosecution.

**II. Felonies for U.S. Officers or Employees**

**A. Generally**

1. United States officers or employees are held to a higher standard of conduct or duty.
2. Failure or omission in performance of duties in furtherance of enforcing the tax laws might be sufficient for a felony conviction.
3. Willfulness and an affirmative act still required in certain situations.

**B. Unauthorized Disclosure of Information -- Federal Employees**

1. "It shall be unlawful for any officer or employee of the United States or any person described in section 6103(n) (or an officer or employee of any such person), or any former officer or employee, willfully to disclose to any person, except as authorized in this title, any return or return information (as defined in section 6103(b)). Any violation of this paragraph shall be a felony." § 7213(a)(1)
2. Punishment
  - a. Fine not to exceed \$5,000, or
  - b. Imprisonment not to exceed 5 years, or
  - c. Both,  
together with the costs of prosecution.
  - d. If such offense is committed by any officer or employee of the United States, he shall, in addition to any other punishment, be dismissed from office or discharged from employment upon conviction.

**C. Unauthorized Disclosure of Information -- State Employees**

1. "It shall be unlawful for any person (not described in paragraph (1)) willfully to disclose to any person, except as authorized in this title, any return or return information (as defined in section 6103(b)) acquired by him or another person under subsection (d), (i)(3)(B)(i),(l)(6), (7), (8), (9), or (10), or (m)(2), (4), or (6) of section 6103. Any violation of this paragraph shall be a felony." § 7213(a)(2)



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**2. Punishment**

- a. Fine not to exceed \$5,000, or
- b. Imprisonment not to exceed 5 years, or
- c. Both,  
together with the costs of prosecution.

**D. Unauthorized Disclosure of Information -- Other persons**

- 1. “It shall be unlawful for any person to whom any return or return information (as defined in section 6103(b)) is disclosed in a manner unauthorized by this title thereafter willfully to print or publish in any manner not provided by law any such return or return information. Any violation of this paragraph shall be a felony.”  
§ 7213(a)(3)

**2. Punishment**

- a. Fine not to exceed \$5,000, or
- b. Imprisonment not to exceed 5 years, or
- c. Both,  
together with the costs of prosecution.

**E. Unauthorized Disclosure of Information -- Solicitation**

- 1. “It shall be unlawful for any person willfully to offer any item of material value in exchange for any return or return information (as defined in section 6103(b)) and to receive as a result of such solicitation any such return or return information. Any violation of this paragraph shall be a felony.” § 7213(a)(4)

**2. Punishment**

- a. Fine not to exceed \$5,000, or
- b. Imprisonment not to exceed 5 years, or
- c. Both,  
together with the costs of prosecution.

**F. Unauthorized Disclosure of Information -- Shareholders**

- 1. “It shall be unlawful for any person to whom a return or return information (as defined in section 6103(b)) is disclosed pursuant to the provisions of section 6103(e)(1)(D)(iii) willfully to disclose such return or return information in any manner not provided by law. Any violation of this paragraph shall be a felony.”  
§ 7213(a)(5)

**2. Punishment**

- a. Fine not to exceed \$5,000, or
- b. Imprisonment not to exceed 5 years, or
- c. Both, together with the costs of prosecution.

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**G. Unlawful acts of Revenue Officers or Agents**

1. “Any officer or employee of the United States acting in connection with any revenue law of the United States (1) who is guilty of any extortion or willful oppression under color of law; or (2) who knowingly demands other or greater sums than are authorized by law, or receives any fee, compensation, or reward, except as by law prescribed, for the performance of any duty; or (3) who with intent to defeat the application of any provision of this title fails to perform any of the duties of his office or employment; or (4) who conspires or colludes with any other person to defraud the United States; or (5) who knowingly makes opportunity for any person to defraud the United States; or (6) who does or omits to do any act with intent to enable any other person to defraud the United States; or (7) who makes or signs any fraudulent entry in any book, or makes or signs any fraudulent certificate, return, or statement; or (8) who, having knowledge or information of the violation of any revenue law by any person, or of fraud committed by any person against the United States under any revenue law, fails to report, in writing, such knowledge or information to the Secretary; or (9) who demands, or accepts, or attempts to collect, directly or indirectly as payment or gift, or otherwise, any sum of money or other thing of value for the compromise, adjustment, or settlement of any charge or complaint for any violation or alleged violation of law, except as expressly authorized by law so to do ...” shall be fined, or imprisoned, or both, and dismissed from office. § 7214(a)
2. Punishment
  - a. Fine not to exceed \$10,000, or
  - b. Imprisonment not to exceed 5 years, or
  - c. Both.
  - d. Dismissal from office or discharge from employment.
  - e. The court also shall render judgment against the said officer or employee for the amount of damages sustained in favor of the party injured, to be collected by execution.

**H. Officials Investing or Speculating in Sugar**

1. “Any person, while acting in any official capacity in the administration of chapter 37, relating to manufactured sugar, who invests or speculates in sugar or liquid sugar, contracts relating thereto, or the stock or membership interests of any association or corporation engaged in the production or manufacture of sugar or liquid sugar, ... shall be guilty of a felony.” § 7240
2. Punishment
  - a. Fine not to exceed \$10,000, or
  - b. Imprisonment not to exceed 2 years, or
  - c. Both.
  - d. Dismissal from office or discharge from employment.

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**I. Willfull Failure to Collect or Pay Over Tax -- Trust Taxes**

1. “Any person required under this title to collect, account for, and pay over any tax imposed by this title who willfully fails to collect or truthfully account for and pay over such tax shall ... be guilty of a felony.” § 7202
2. Punishment
  - a. Fine not to exceed \$10,000, or
  - b. Imprisonment not to exceed 5 years, or
  - c. Both,  
together with the costs of prosecution.

**III. Misdemeanors**

**A. Generally**

1. **Failure to comply** -- failure to act; an omission. Usually sufficient to constitute a misdemeanor.
2. Willfullness is required at times, but the application varies.
  - a. Some courts have held that an intentional act, with nothing more, is willfullness under the misdemeanor statutes.
  - b. Other courts require a showing of willfullness in connection with an “evil” or wrongful intent. An intentional act is not enough, unless it is coupled with this wrongful intent.

**B. Willfull Failure to File Return, Supply Information, or Pay Tax**

1. “Any person required under this title to pay any estimated tax or tax, or required by this title or by regulations made under authority thereof to make a return, keep any records, or supply any information, who willfully fails to pay such estimated tax or tax, make such return, keep such records, or supply such information, at the time or times required by law or regulations, shall, in addition to other penalties provided by law, be guilty of a misdemeanor.” § 7203
2. Punishment
  - a. Fine not to exceed \$25,000 (\$100,000 in the case of a corporation), or
  - b. Imprisonment not more than 1 year, or
  - c. Both,  
together with the costs of prosecution.

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**C. Fraudulent Statement or Failure to Make Statement to Employees**

1. “In lieu of any other penalty provided by law (except the penalty provided by section 6674) any person required under the provisions of section 6051 to furnish a statement who willfully furnishes a false or fraudulent statement or who willfully fails to furnish a statement in the manner, at the time, and showing the information required under section 6051, or regulations prescribed thereunder, shall, for each such offense” ... be fined, or imprisoned, or both. § 7204
2. Punishment
  - a. Fine not to exceed \$1,000, or
  - b. Imprisonment not to exceed 1 year, or
  - c. Both.

**D. Fraudulent Withholding Exemption Certificate or Failure to Supply Information -- Withholding of Wages**

1. “Any individual required to supply information to his employer under section 3402 who willfully supplies false or fraudulent information, or who willfully fails to supply information thereunder which would require an increase in the tax to be withheld under section 3402, shall, in addition to any other penalty provided by law” ... be fined, or imprisoned, or both. § 7205(a)
2. Punishment
  - a. Fine not to exceed \$1,000, or
  - b. Imprisonment not to exceed 1 year, or
  - c. Both.

**E. Fraudulent Withholding Exemption Certificate or Failure to Supply Information -- Backup Withholding on Interest and Dividends**

1. “If any individual willfully makes (1) any false certification or affirmation on any statement required by a payor in order to meet the due diligence requirements of section 6676(b), or (2) a false certification under paragraph (1) or (2)(C) of section 3406(d), then such individual shall, in addition to any other penalty provided by law” ... be fined, or imprisoned, or both. § 7205(b)
2. Punishment
  - a. Fine not to exceed \$1,000, or
  - b. Imprisonment not to exceed 1 year, or
  - c. Both.

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**F. Fraudulent Returns, Statements, or other Documents**

1. “Any person who willfully delivers or discloses to the Secretary any list, return, account, statement, or other document, known by him to be fraudulent or to be false as to any material matter, shall” ... be fined, or imprisoned, or both. “Any person required pursuant to subsection (b) of section 6047 or pursuant to subsection (d) or (e) of section 6104 to furnish any information to the Secretary or any other person who willfully furnishes to the Secretary or such other person any information known by him to be fraudulent or to be false as to any material matter shall” ... be fined, or imprisoned, or both. § 7207
2. Punishment
  - a. Fine not to exceed \$10,000 (\$50,000 in the case of a corporation), or
  - b. Imprisonment not to exceed 1 year, or
  - c. Both.

**G. Unauthorized Use or Sale of Stamps**

1. “Any person who buys, sells, offers for sale, uses, transfers, takes or gives in exchange, or pledges or gives in pledge, except as authorized in this title or in regulations made pursuant thereto, any stamp, coupon, ticket, book, or other device prescribed by the Secretary under this title for the collection or payment of any tax imposed by this title, shall” ... be fined, imprisoned, or both. § 7209
2. Punishment
  - a. Fine not to exceed \$1,000, or
  - b. Imprisonment not to exceed 6 months, or
  - c. Both.

**H. Failure to Obey Summons**

1. “Any person who, being duly summoned to appear to testify, or to appear and produce books, accounts, records, memoranda, or other papers, as required under sections 6420(e)(2), 6421(g)(2), 6427(j)(2), 7602, 7603, and 7604(b), neglects to appear or to produce such books, accounts, records, memoranda, or other papers, shall” ... be fined, or imprisoned, or both. § 7210
2. Punishment
  - a. Fine not to exceed \$1,000, or
  - b. Imprisonment not to exceed 1 year, or
  - c. Both,  
together with costs of prosecution.

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**I. False Statements to Purchasers or Lessees Relating to Tax**

1. “Whoever in connection with the sale or lease, or offer for sale or lease, of any article, or for the purpose of making such sale or lease, makes any statement, written or oral (1) intended or calculated to lead any person to believe that any part of the price at which such article is sold or leased, or offered for sale or lease, consists of a tax imposed under the authority of the United States, or (2) ascribing a particular part of such price to a tax imposed under the authority of the United States, knowing that such statement is false or that the tax is not so great as the portion of such price ascribed to such tax, shall be guilty of a misdemeanor.” § 7211
2. Punishment
  - a. Fine not to exceed \$1,000, or
  - b. Imprisonment not more than 1 year, or
  - c. Both.

**J. Attempts to Interfere with Administration of Internal Revenue Laws**

1. “Whoever corruptly or by force or threats of force (including any threatening letter or communication) endeavors to intimidate or impede any officer or employee of the United States acting in an official capacity under this title, or in any other way corruptly or by force or threats of force (including any threatening letter or communication) obstructs or impedes, or endeavors to obstruct or impede, the due administration of this title, shall, ... if the offense is committed only by threats of force, ...” be fined, or imprisoned, or both. “The term ‘threats of force’, as used in this subsection, means threats of bodily harm to the officer or employee of the United States or to a member of his family.” § 7212(a)
2. Punishment
  - a. Fine not to exceed \$3,000, or
  - b. Imprisonment not more than 1 year, or
  - c. Both.

**K. Unauthorized Disclosure of Information -- Disclosure of Operations of Manufacturer or Producer**

1. “Any officer or employee of the United States who divulges or makes known in any manner whatever not provided by law to any person the operations, style of work, or apparatus of any manufacturer or producer visited by him in the discharge of his official duties shall be guilty of a misdemeanor.” § 7213(b)

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**2. Punishment**

- a. Fine not to exceed \$1,000, or
- b. Imprisonment not more than 1 year, or
- c. Both,  
together with the costs of prosecution.
- d. Dismissal from office or discharge from employment.

**L. Offenses with Respect to Collected Taxes**

1. “Any person who fails to comply with any provision of section 7512(b) [relating to the separate accounting for certain collected taxes] shall, in addition to any other penalties provided by law, be guilty of a misdemeanor.” § 7215(a)

**2. Punishment**

- a. Fine not to exceed \$5,000, or
- b. Imprisonment not more than 1 year, or
- c. Both,  
together with costs of prosecution.

**M. Disclosure or Use of Information by Preparers of Returns**

1. “Any person who is engaged in the business of preparing, or providing services in connection with the preparation of, returns of the tax imposed by chapter 1, or any person who for compensation prepares any such return for any other person, and who knowingly or recklessly (1) discloses any information furnished to him for, or in connection with, the preparation of any such return, or (2) uses any such information for any purpose other than to prepare, or assist in preparing, any such return, shall be guilty of a misdemeanor.” § 7216(a)

**2. Punishment**

- a. Fine not to exceed 1,000, or
- b. Imprisonment not more than 1 year, or
- c. Both,  
together with the costs of prosecution.

**N. Failure to Obtain License for Collection of Foreign Items**

1. “Any person required by section 7001 (relating to collection of certain foreign items) to obtain a license who knowingly undertakes to collect the payments described in section 7001 without having obtained a license therefor, or without complying with regulations prescribed under section 7001, shall be guilty of a misdemeanor.”  
§ 7231

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**2. Punishment**

- a. Fine not to exceed \$5,000, or
- b. Imprisonment not more than one year, or
- c. Both.

**O. Representation that Retailer's Excise Tax is Excluded from Price of Article**

1. "Whoever, in connection with the sale or lease, or offer for sale or lease, of any article taxable under chapter 31, makes any statement, written or oral, in advertisement or otherwise, intended or calculated to lead any person to believe that the price of the article does not include the tax imposed by chapter 31, shall on conviction thereof be fined not more than \$1,000." § 7261

**P. Violation of Occupational Tax Laws Relating to Wagering -- Failure to Pay Special Tax**

1. "Any person who does any act which makes him liable for special tax under subchapter B of chapter 35 without having paid such tax, shall, besides being liable to the payment of the tax, be fined not less than \$1,000 and not more than \$5,000." § 7262

**Q. Possession with Intent to Sell in Fraud of Law or to Evade Tax**

1. "Every person who shall have in his custody or possession any goods, wares, merchandise, articles, or objects on which taxes are imposed by law, for the purpose of selling the same in fraud of the internal revenue laws, or with design to avoid payment of the taxes imposed thereon, shall be liable to a penalty of \$500 or not less than double the amount of taxes fraudulently attempted to be evaded." § 7268

**R. Failure to Produce Records**

1. "Whoever fails to comply with any duty imposed upon him by section 6108, 6036 (in the case of an executor), or 6075(a), or, having in his possession or control any record, file, or paper, containing or supposed to contain any information concerning the estate of the decedent, or, having in his possession or control any property comprised in the gross estate of the decedent, fails to exhibit the same upon request to the Secretary who desires to examine the same in the performance of his duties under chapter 11 (relating to estate taxes), shall be liable to a penalty of not exceeding \$500, to be recovered, with costs of suit, in a civil action in the name of the United States." § 7269



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**S. Insurance Policies**

1. “Any person who fails to comply with the requirements of section 4374 (relating to liability for tax on policies issued by foreign insurers), with intent to evade the tax shall, in addition to other penalties provided therefor, pay a fine of double the amount of the tax.” § 7270

**T. Penalties for Offenses Relating to Stamps**

1. “Any person who with respect to any tax payable by stamps -- (1) fails to comply with rules or regulations prescribed pursuant to section 6804 (relating to attachment, cancellation, etc., of stamps), unless such failure is shown to be due to reasonable cause and not willfull neglect; or (2) makes, signs, issues, or accepts, or causes to be made, signed, issued, or accepted, any instrument, document, or paper of any kind or description whatsoever without the full amount of tax thereon being duly paid; or (3) in the case of any container which is stamped, branded, or marked (whether or not under authority of law) in such manner as to show that the provisions of the internal revenue laws with respect to the contents or intended contents thereof have been complied with, and which is empty or contains any contents other than contents therein when the container was lawfully stamped, branded, or marked -- (A) transfers or receives (whether by sale, gift, or otherwise) such container knowing it to be empty or to contain such other contents; or (B) stamps, brands, or marks such container, or otherwise produces such a stamped, branded, or marked container, knowing it to be empty or to contain such other contents; shall be liable for each such offense to a penalty of \$50. § 7271

**U. Penalty for Failure to Register**

1. “Any person (other than persons required to register under subtitle E, or persons engaging in a trade or business on which a special tax is imposed by such subtitle) who fails to register with the Secretary as required by this title or by regulations issued thereunder shall be liable to a penalty of \$50.” § 7272

**V. Penalties for Offenses Relating to Special Taxes**

1. “Any person who shall fail to place and keep stamps denoting the payment of the special tax as provided in section 6806 shall be liable to a penalty (not less than \$10) equal to the special tax for which his business rendered him liable, unless such failure is shown to be due to reasonable cause. If such failure to comply with section 6806 is through willfull neglect or refusal, then the penalty shall be double the amount above described.” § 7273

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**W. Penalty for Offenses Relating to Certain Airline Tickets and Advertising**

1. “Any person who violates any provision of subsection (a) or (b) [relating to airline tickets and advertising for such and the requirement that each state the cost of the transportation and the taxes imposed and the total cost] is, for each violation, guilty of a misdemeanor, and upon conviction thereof shall be fined not more than \$100.”  
§ 7275

**IV. Periods of Limitation on Criminal Prosecutions under the Internal Revenue Code § 6531**

**A. Period of Limitations -- 6 years**

1. Offenses involving the defrauding or attempting to defraud the United States or any agency thereof, whether by conspiracy or not, and in any manner.
2. Offense of willfully attempting in any manner to evade or defeat any tax or the payment thereof.
3. Offense of willfully aiding or assisting in, or procuring, counseling, or advising, the preparation or presentation under, or in connection with any matter arising under, the internal revenue laws, of a false or fraudulent return, affidavit, claim, or document (whether or not such falsity or fraud is with the knowledge or consent of the person authorized or required to present such return, affidavit, claim, or document).
4. Offense of willfully failing to pay any tax, or make any return (other than a return required under authority of part III of subchapter A of chapter 61) at the time or times required by law or regulations.
5. Offenses described in sections 7206(1) and 7207 (relating to false statements and fraudulent documents).
6. Offenses described in section 7212(a) (relating to intimidation of officers and employees of the United States).
7. Offenses described in section 7214(a) committed by officers and employees of the United States.
8. Offenses arising under section 371 of Title 18 of the United States Code, where the object of the conspiracy is to attempt in any manner to evade or defeat any tax or the payment thereof.

**APPENDIX D**  
**SUMMARY OF FEDERAL CRIMINAL PENALTIES**

- B. Periods of limitation for all other offenses is 3 years.**
- C. For the purpose of determining the periods of limitation on criminal prosecutions, the rules of section 6513 (relating to the time a return is deemed filed and tax is considered paid) shall be applicable.**

## APPENDIX E PROPOSED LEGISLATION

§ 19.2-8. Limitation of prosecutions. -- A prosecution for a misdemeanor, or any pecuniary fine, forfeiture, penalty or amercement, shall be commenced within one year next after there was cause therefor, except that a prosecution for petit larceny may be commenced within five years, and for an attempt to produce abortion, within two years after commission of the offense. In a prosecution for violation of laws governing the placement of children for adoption without a license pursuant to § 63.1-196, no action shall be commenced after the expiration of one year from the date of the filing of the petition for adoption. A prosecution for making a false statement or representation of a material fact knowing it to be false or knowingly failing to disclose a material fact, to obtain or increase any benefit or other payment under the Virginia Unemployment Compensation Act ( § 60.2-100 et seq.) shall be commenced within three years next after the commission of the offense. A prosecution for any violation of §§ 10.1-1320, 62.1-44.32 (b), 62.1-194.1, or § 62.1-195 which involves the discharge, dumping or emission of any toxic substance as defined in § 32.1-239 shall be commenced within three years next after the commission of the offense. Prosecution of Building Code violations under § 36-105 shall commence within one year of either commission of the offense or discovery of the offense by the owner or by the building official; provided that such discovery occurs within one year of the date of initial occupancy or use after construction of the building or structure, or the issuance of a certificate of use and occupancy for the building or structure, whichever is later, but in either event not more than two years from the date of the commission of the offense. Prosecution of nonfelonious offenses which constitute malfeasance in office shall commence within two years next after the commission of the offense. Prosecution of any violation of §§ 55-79.87, 55-79.88, 55-79.89, 55-79.90, 55-79.93, 55-79.94, 55-79.95, 55-79.103, or any rule adopted under or order issued pursuant to § 55-79.98, shall commence within three years next after the commission of the offense. Prosecution of illegal sales or purchases of wild birds, wild animals and freshwater fish under § 29.1-553 shall commence within three years after commission of the offense. Prosecution of violations under Title 58.1 for offenses involving false or fraudulent statements, documents or returns, or for the offense of willfully attempting in any manner to evade or defeat any tax or the payment thereof, or for the offense of willfully failing to pay any tax, or make any return at the time or times required by law or regulations shall commence within five years next after the commission of the offense. Nothing in this section shall be construed to apply to any person fleeing from justice or concealing himself within or without this Commonwealth to avoid arrest or be construed to limit the time within which any prosecution may be commenced for desertion of a spouse or child or for neglect or refusal or failure to provide for the support and maintenance of a spouse or child.

§ 19.2-245.2. Tax crimes; where prosecuted. -- If any person shall commit a tax crime, as defined in Title 58.1, that tax crime may be prosecuted either where a false or fraudulent tax return, document or statement was filed or presented, or where the taxpayer resides or has a place of business.

**APPENDIX E**  
**PROPOSED LEGISLATION**

§ 58.1-17. Criminal prosecution for evasion of taxes. -- Notwithstanding any other provisions of this title and in addition to any other penalties provided by law, any person who willfully attempts in any manner to evade or defeat any tax imposed in Subtitle I (Taxes Administered by the Department of Taxation); Subtitle II (Taxes Administered by Other Agencies) except for Chapters 25, 26, and 27; or which are governed by Subtitle III (Local Taxes) of Title 58.1 or the payment thereof shall be guilty of a Class 6 felony.

**APPENDIX F**  
**PROPOSED JOINT RESOLUTION**

*Requesting the Virginia Code Commission to revise Title 58.1 of the Code of Virginia, relating to tax criminal penalty provisions.*

WHEREAS, Title 58.1 provides a variety of different criminal penalty provisions for the various taxes imposed by that title of the Code of Virginia; and

WHEREAS, the criminal penalty provisions for noncompliance with the Commonwealth's tax laws are scattered throughout the various chapters of Title 58.1; and

WHEREAS, Title 58.1 of the Code of Virginia should be revised in order to make the laws governing criminal violations of the Commonwealth's tax laws better organized, and more uniform; and

WHEREAS, consolidating the tax criminal penalty provisions in Title 58.1 in a separate chapter, organizing them by proscribed conduct and reclassifying them as appropriate would provide better organization and uniformity; and

WHEREAS, it is within the purview of the Virginia Code Commission to make such a revision; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That the Virginia Code Commission is requested to make a careful study of the organization of Title 58.1 of the Code of Virginia and report its findings in the form of a revision of such title to the Governor and the General Assembly. The Department of Taxation, the Department of Motor Vehicles, the State Corporation Commission and other affected agencies shall assist the Commission in its study.

COMMONWEALTH OF VIRGINIA



STATE CORPORATION COMMISSION

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(804) 786-8671

December 11, 1989

Ms. Janie E. Bowen, Director  
Tax Policy Division  
Department of Taxation  
Richmond, Virginia 23282

RE: Criminal Penalty Provisions Study

Dear Ms. Bowen:

The draft report on the criminal penalty provisions of Title 58.1 has been reviewed by the Commissioners. I have been requested by them to respectfully advise you of the position of the State Corporation Commission relative to the recommendations of the report.

The Commission is opposed to the third recommendation of the report as it would relate to the assessment and collection of taxes imposed in Chapters 25, 26 and 27 of Title 58.1. Commission regulation of, respectively, insurance companies, public service corporations and motor carriers pursuant to these chapters is uniquely and closely related to its tax enforcement responsibilities. No compelling need to increase the penalties in them to criminal felony status is perceived, and the Commission feels that such a change obviously would be exceedingly impractical with regard to taxes imposed on these highly regulated industries.

The Commission is opposed to the fourth recommendation of the report insofar as it contemplates that the Virginia Code Commission study will result in a recommendation that the penalties provided in Chapters 25, 26 and 27 be removed from their present chapter location and placed in a new chapter to contain penalties for the entire Code title.

The Commission believes that such an arrangement will hinder, rather than facilitate, an efficient use of the Virginia Code. The present penalty arrangement format is consistent with

APPENDIX G


Ms. Janie E. Bowen, Director  
December 11, 1989  
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other Code titles matching penalties with the subject matter (Title 18.2, for example) and thus is familiar to the user. The counterproductive nature of the proposed change is illustrated by the fact that it would presumably have to be accompanied by a multitude of cross reference notes to the appropriate penalty Code sections following many, if not most, of the existing Code sections of Title 58.1. This Commission urges that at least the penalties pertaining to the chapters of Title 58.1 which it administers be left with the subject matter of its administration.

As the other recommendations of the draft report do not appear to significantly involve this Commission's responsibilities, it is felt that it would not be appropriate to offer comments on them.

The Commissioners have also asked that I express their appreciation to Commissioner Forst for his consideration of the position of the Commission as stated herein, and for the inclusion of same in the report. Please contact me if you have any questions or desire any assistance from the Commission.

Very truly yours,



Wayne N. Smith  
Associate General Counsel

WNS/sj

cc: Thomas P. Harwood, Jr., Chairman  
Preston C. Shannon, Commissioner  
Theodore V. Morrison, Jr., Commissioner





