

**REPORT OF THE  
DEPARTMENT OF TAXATION ON**

**THE STATUTES OF LIMITATIONS FOR  
CONTESTING LOCAL PROPERTY TAX  
ASSESSMENTS AND FOR COLLECTING  
LOCAL TAXES**

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



**HOUSE DOCUMENT NO. 38**

**COMMONWEALTH OF VIRGINIA  
RICHMOND  
1995**



# COMMONWEALTH of VIRGINIA

*Department of Taxation*

January 31, 1995

To:           The Honorable George F. Allen  
                  Governor of Virginia  
                  and  
                  The General Assembly of Virginia

The 1994 General Assembly, in House Joint Resolution 257, requested the Department of Taxation, in conjunction with the State Treasurers' Association and the Commissioners of Revenue Association, to study the laws governing the statutes of limitations for contesting local property tax assessments, particularly tangible personal property, and for collecting local taxes.

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

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Danny M. Payne".

Danny M. Payne  
Tax Commissioner

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## EXECUTIVE SUMMARY

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1994 House Joint Resolution 257 directed the Department of Taxation (TAX), in cooperation with the Commissioners of Revenue and Treasurers' Associations, to study the statutes of limitations for contesting and collecting local property tax assessments.

To assist in this study, TAX created a working group of local government and business sector representatives. This group included members from the Commissioners of Revenue and Treasurers' Associations, the Virginia Municipal League, the Virginia Association of Counties, the Virginia Chamber of Commerce, and the Virginia Manufacturers Association.

### BACKGROUND

Under current law, a locality has three years in which to issue an assessment for omitted taxes -- the three-year period runs from the last day of the tax year for which the assessment is made. For example, tax on omitted property for the tax year 1994 can be assessed by the Commissioner of Revenue up to December 31, 1997.

The same three-year statute also applies in the case of taxpayer appeals, with one modification which was intended to deal with assessments issued near the end of the three-year period. In such cases the taxpayer may file an appeal under the later of the normal three-year statute or one year from the date of assessment.

Current law limits the collection authority of localities to five years from the last day of the tax year for which the assessment is made -- for example, an assessment for tax year 1994 must be collected by December 31, 1999.

### CONSENSUS

The working group agreed that the current three-year assessment and appeals statutes and the five-year collection statute are very reasonable, provided that there can be exoneration of erroneous unpaid assessments outside of the normal three-year appeal period.

An example where exoneration is appropriate is the taxpayer who moves from a locality and is issued a tangible personal property tax assessment for a vehicle. The vehicle is outside of the locality's jurisdiction and is thus not taxable; however, the taxpayer may not discover the assessment until returning to the locality several years later, being contacted by a collection agency, or having an income tax refund attached under the setoff debt collection program.

The working group agreed that exoneration in such cases is appropriate, both for reasons of taxpayer equity and to reduce the volume of improper assessments carried on the books of local Treasurers.

On an issue unrelated to exoneration, the working group also agreed that taxpayers and local Commissioners of Revenue need the flexibility to voluntarily extend the statute of limitations for assessments. This authority is currently available for federal and state tax assessments and would reduce the number of instances where a local official must issue an estimated or "jeopardy" assessment simply because the three-year statute for assessment is nearing expiration.

## **RECOMMENDATIONS**

Based upon the working group's discussions and consideration of the possible options, TAX makes the following recommendations regarding the two components of the exoneration issue. Both recommendations will require legislation.

- ▶ First, taxpayers who have not received notification of an assessment within the three-year statute for appealing an assessment should be allowed to apply for a correction of an erroneous assessment at any time within the five-year collection period.
- ▶ Second, in instances where an erroneous assessment has been involuntarily collected, e.g., through enforcement of liens or the setoff debt collection program, taxpayers should be allowed one year in which to appeal and receive a refund of the erroneously collected tax.

Finally, TAX recommends legislation to allow voluntary extensions of the statute of limitation for assessment, when agreed to by both the taxpayer and local assessing official. This would mirror the current state statute and would also extend appeal and collection rights by the same amount of time that the assessment date is extended.

Draft statutory language to accomplish these recommendations is set out in Appendix B.

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## INTRODUCTION

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House Joint Resolution 257 of the 1994 Virginia General Assembly directed the Department of Taxation (TAX), in cooperation with the State Treasurers' Association and the Commissioners of Revenue Association, to study the statutes of limitation for contesting local property tax assessments, particularly tangible personal property, and for collecting local taxes. The resolution directs TAX to examine all statutes of limitations involving local taxes, including limitations for contesting local tax assessments and for collecting local taxes in an effort to make them more equitable for all parties involved.

A working group of local government and business sector representatives was organized to study the issue. This group included members from the Commissioners of Revenue and Treasurers' Associations, the Virginia Municipal League, the Virginia Association of Counties, the Virginia Chamber of Commerce, and the Virginia Manufacturers Association. The membership of this group is listed in Appendix C.

### Background

Under Code of Virginia §§ 58.1-3980 and 58.1-3984, taxpayers may apply to commissioners of the revenue or to the circuit court for a correction of a local tax assessment:

- ◆ within three years from the last day of the tax year for which such assessment is made; or
- ◆ within one year from the date of assessment, whichever is later.

However, Code of Virginia § 58.1-3940 provides that collection of local taxes by localities is enforceable for five years following December 31 of the year for which such taxes were assessed.

The difference in the two statutes of limitations means that a taxpayer generally has three years to object to an assessment, while the local taxing authority has up to an additional two years to collect the taxes.

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## ISSUES

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The primary concern expressed in HJR 257 is the assessment of tangible personal property taxes, especially those assessments for motor vehicles. This is because assessment notices are generally sent to a taxpayer's last known address, and in the case of motor vehicles, localities may rely on records provided by the Department of Motor Vehicles. In some instances, taxpayers move from one jurisdiction to another and do not receive those assessment notices until the three-year appeal period has run out. Even if the assessment is erroneous, appeals to the Commissioner of the Revenue can be denied when made beyond the statute of limitations set out in § 58.1-3980. Also, collection of the assessment continues to be enforceable for up to an additional two years.

The problem associated with collection of erroneous assessments is compounded when collection of the assessment is made through an involuntary payment procedure. These procedures include third party liens (authorized by Code of Virginia § 58.1-3952), and setoff of tax refunds as authorized by the Setoff Debt Collection Act (Code of Virginia § 58.1-520 et seq.).

Accordingly, two major concerns surface in the collection process when a taxpayer has moved from one jurisdiction to another:

- ◆ The inability to obtain correction of an erroneous assessment in those cases when a taxpayer has not received notification of assessment within the three year period for protesting the assessment, and
- ◆ The inability of such taxpayers to obtain a refund of tax assessments satisfied through an involuntary payment made after the three year period for protesting the assessment.

### **Application for Correction**

The working group agreed that under current statutes an inequity exists when a taxpayer has received an erroneous assessment, but did not have the ability to contest the assessment within the three-year statute. Suggestions were made for adopting procedures to eliminate, or at least greatly reduce, this inequity.

These issues generally do not exist for TAX, which has statutory authority to abate erroneous assessments at any time. For example, see Code of Virginia

§ 58.1-105 relating to offers in compromise. Similar latitude is not expressly granted to local governments, although some local officials currently provide equitable relief in these circumstances.

The working group did not see the need to change the existing three-year appeals and five-year collection statutes, but agreed an exception should be enacted to allow for the exoneration of erroneous assessments within the five-year collection period.

Some local officials have suggested that an extension should not be granted to taxpayers to appeal an assessment that has been paid. The reason for the distinction is the belief that a taxpayer confronted with a demand for payment of an unpaid bill for which he had received no prior notice has not had the opportunity to challenge the assessment. Conversely, a taxpayer who has paid a tax bill, either voluntarily or involuntarily, had the opportunity to challenge the assessment prior to payment.

Accordingly, TAX suggests that an exception to the three-year statute of limitations set out in § 58.1-3980 be granted in instances where a taxpayer can prove that an unpaid tangible personal property tax assessment is erroneous. In such cases, a taxpayer would be allowed to apply for correction of the bill during the five-year collection period. If the assessing official is convinced that the bill is erroneous, he would be authorized to order the treasurer or other collecting official to discharge the assessment.

The authority contemplated in this suggestion would require an amendment to § 58.1-3980 (application for correction). The proposed amendment is provided in Appendix B.

## **Refunds**

The working group did not reach consensus on the issue of refunding erroneous assessments. To some extent, localities are concerned that authorizing refunds beyond the three year statute currently in place would put an undue financial burden on the locality. Local tax officials have also expressed the opinion that taxpayers whose assessments have been collected through set-off or third party liens had ample opportunity to challenge the assessment.

In regard to set-off debt collection, a taxpayer has 30 days to contact the claimant agency (which would be the locality in the case of personal property tax assessments). However, in many instances the personal property tax liability remains outstanding because the taxpayer has moved out of the taxing jurisdiction, and in some cases out of the state. The 30-day time limit for appealing the setoff may not be sufficient. Furthermore, no such opportunity to question the assessment is afforded to



taxpayers when collection is made through a third party lien. In fact, there is no statutory requirement that collection activity be suspended while an application pursuant to § 58.1-3980 is under review, although some treasurers voluntarily suspend collection activity in these circumstances.

Accordingly, TAX recommends extending the statute of limitation for making an application for refund of an erroneous collection to one year from the date of an involuntary payment. TAX further recommends that the commissioner of the revenue or the governing body of the locality be authorized to direct the treasurer to issue a refund of such erroneously collected personal property taxes as set out in § 58.1-3981. This extension of the statute of limitation would not apply to situations where the assessment or payment was made voluntarily.

Enacting these suggestions would require an amendment to § 58.1-3980 as provided in Appendix B.

### **Extensions and Waivers**

A third issue which was raised by the working group is to allow a mutually acceptable extension of the statute of limitation for assessing local property taxes. This issue is primarily of concern to the business community in that it would allow waiving the statute of limitation during an audit situation so that a jeopardy assessment need not be issued. Jeopardy assessments are generally issued during audit situations when the commissioner of the revenue is concerned that the statute of limitations for making an assessment might expire before the audit is completed and an assessment is issued.

This authority is currently available for federal and state tax assessments and the working group agreed that such authority should be available locally. This same issue was raised by TAX and the Advisory Committee studying the Business, Professional and Occupational License (BPOL) tax pursuant to HJR 111 (1994). Such a provision would be similar to the provision in § 58.1-101 for extensions of state taxes and would also extend appeal and collection rights by the same amount of time that the assessment date is extended. Amendatory language to accomplish this recommendation is also provided in Appendix B.

### **Attorney and Collection Agency Fees**

The working group also discussed the impact of the 1994 amendments to Code of Virginia §§ 58.1-3916 and 58.1-3958 (1994 Acts of Assembly, Chapter 932). These amendments allowed local governments to assess certain costs of collections (attorney or collection agency fees) to taxpayers, but also contained language limiting local

collection authority when the taxpayer has filed an administrative appeal. Some localities feel that the 1994 law change can be viewed as a blanket prohibition against collection activity while an administrative appeal is being considered by a local tax official. It was TAX's understanding, however, that the amendments were only intended to apply in conjunction with the legislative change allowing localities to pass along collection and attorney fees to delinquent taxpayers, i.e., the amendments serve only to prevent localities from assessing attorney or collection agency fees to taxpayers when special collection action is taken during the course of an appeal. Although some felt this provision could be interpreted broadly, the Treasurers' Association may seek clarifying legislation; thus, no recommendations are presented in this report

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## CONCLUSION

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There was widespread acknowledgement within the working committee that the concerns addressed in HJR 257 were valid, particularly as they relate to tangible personal property tax assessments for motor vehicles. There was also agreement that some statutory authority was needed to successfully eliminate the inequities brought about by the difference in the statutes of limitations for appealing an assessment and for collecting the assessment.

The recommendations presented in this report address the primary concerns of HJR 257 without an undue burden on localities or taxpayers.

APPENDIX A

GENERAL ASSEMBLY OF VIRGINIA -- 1994 SESSION

HOUSE JOINT RESOLUTION NO. 257

*Requesting the Department of Taxation, in cooperation with the State Treasurers' Association and the Commissioners of Revenue Association, to study the statutes of limitation for contesting local property tax assessments, particularly tangible personal property, and for collecting local taxes.*

Agreed to by the House of Delegates, February 12, 1994

Agreed to by the Senate, March 8, 1994

WHEREAS, any person assessed with local taxes and aggrieved by the assessment must apply for relief with the circuit court within three years from the last day of the tax year for which the assessment was made or within one year from the date of assessment, whichever is later; and

WHEREAS, the collection of local taxes is enforceable for five years following December 31 of the year for which the taxes were assessed; and

WHEREAS, the difference between the two statutes of limitation is at least one year and may be as much as two years so that the taxpayer generally has only three years to object to the assessment while the taxing jurisdiction has five years to collect the taxes; and

WHEREAS, taxpayers move from one taxing jurisdiction to another and never receive the personal property tax assessment notice until after the period has expired for contesting such tax but the limitation has not run out for collecting the tax; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That the Department of Taxation, in cooperation with the State Treasurers' Association and the Commissioners of Revenue Association, be requested to study the statutes of limitation for contesting local property tax assessments, particularly tangible personal property, and for collecting local taxes. The Department shall examine all statutes of limitation involving local taxes, including limitations for contesting local tax assessments and for collecting local taxes in an effort to make them equitable for all parties involved.

The Department shall complete its work in time to submit its findings and recommendations to the Governor and the 1995 Session of the General Assembly as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents.

APPENDIX B

Recommended Legislation on  
Expanding the Statute of Limitations for the Correction  
and Voluntary Extension of Local Taxes

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Senate Bill . . . House Bill . . .

*A Bill to amend the Code of Virginia by adding a section numbered 58.1-3903.1 and to amend and reenact § 58.1-3980 of the Code of Virginia, relating to applications for correction of local taxes and voluntary extensions of the statute of limitations.*

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered 58.1-3930.1 and that § 58.1-3980 of the Code of Virginia is amended and reenacted as follows:

§ 58.1-3903.1. Waiver of time limitation on assessment of local taxes.

Where before the expiration of the time prescribed for the assessment of any local tax both the commissioner of revenue or tax assessing officer and the taxpayer have consented in writing to its assessment after such time, the tax may be assessed at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

Whenever such an extension is agreed upon, it shall likewise extend the period relating to the collection of local taxes pursuant to § 58.1-3940 and applications for correction pursuant to § 58.1-3980.

§ 58.1-3980. Application to commissioner of the revenue or other official for correction.

A. Any person, firm or corporation assessed by a commissioner of the revenue or other official performing the duties imposed on commissioners of the revenue under this title with local taxes on tangible personal property, machinery and tools, or merchants' capital, or a local license tax, aggrieved by any such assessment, may, within three years from the last day of the tax year for which such assessment is made, or within one year from the date of the assessment, whichever is later, apply to the commissioner of the revenue or such other official who made the assessment for a correction thereof.

Sections 58.1-3980 through 58.1-3983 shall also apply to erroneous assessments of real estate if the error sought to be corrected in any case was made by the commissioner of the revenue or such other official to whom the application is made.

B. Notwithstanding the provisions of subsection A, an unpaid tangible personal property tax assessment may be appealed to the commissioner of the revenue or other assessing official at any time during which such assessment is collectible under § 58.1-3940, provided that the taxpayer can demonstrate by clear factual evidence that the property was not subject to the tax for the year in

1 question. If the assessing official is satisfied that the assessment is erroneous, he  
2 shall order the treasurer or other collecting official to discharge such assessment.  
3 In the case of an erroneous assessment that has been satisfied in whole or  
4 in part through an involuntary payment, an appeal to the assessing official must be  
5 made within one year from the date of the involuntary payment. If the assessing  
6 official is satisfied that the assessment is erroneous, he shall order the treasurer  
7 or other collecting official to issue a refund for the amount of the involuntary  
8 payment. For purposes of this section, "involuntary payment" means a payment  
9 received pursuant to § 58.1-3952 (collection from third party) or § 58.1-520 et seq.  
10 (Setoff Debt Collection Act).  
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## APPENDIX C

### List of Members of Working Group for HJR 257

Charles D. Crowson, Jr.  
Commissioner of the Revenue, City of Newport News  
Commissioners of Revenue Association

Ellen Davenport  
Virginia Association of Counties

Alton Hylton  
James River Corporation  
Virginia Manufacturers Association

Betty Long  
Virginia Municipal League

Robert E. Quinn, Jr.  
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Treasurers Association

D. French Slaughter, Esq.  
McGuire, Woods, Battle & Booth  
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For the Virginia Department of Taxation, Office of Tax Policy

J. Timothy Winks  
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