



COMMONWEALTH of VIRGINIA

Department of Taxation

October 1, 2010

The Honorable Charles J. Colgan
Chairman, Senate Finance Committee
10677 Aviation Lane
Manassas, Virginia 20110

The Honorable Lacey E. Putney
Chairman, House Appropriations
Post Office Box 127
Bedford, Virginia 24523

The Honorable Harry R. Purkey
Chairman, House Finance Committee
2352 Leeward Shore Drive
Virginia Beach, Virginia 23451

Dear Chairmen:

The 1996 General Assembly enacted Chapter 634, 1996 Acts of Assembly (HB 1451), which established the Virginia Taxpayer Bill of Rights. The legislation largely codified the Department of Taxation's existing procedures with respect to audit, collection and appeals processes. The legislation also required that the Department furnish written explanations of its audit and collections processes to taxpayers, as well as create a formal problem resolution program and designate a Taxpayer Rights Advocate to oversee the program. Finally, the legislation created a requirement under Section 58.1-202 of the *Code of Virginia* for the Tax Commissioner to file an annual report detailing the procedures used in the agency's collection process, and how the Virginia Taxpayer Bill of Rights is implemented to assist with collections.

General Provisions

The Virginia Taxpayer Bill of Rights generally provides for rights associated with the Department of Taxation's routine interactions with taxpayers, and the internal controls the agency has in place to ensure that these rights are protected.

The rights specified under the general provisions of the statute are:

Public Contact:

- the right to be treated with dignity and respect;
- the right to prompt, courteous, and accurate responses to questions and requests for tax assistance;



- the right to record meetings or, if we record the meeting, to purchase a transcript at cost;
- the right to request help from the Taxpayer Rights Advocate when issues have not been resolved through normal administrative processes;
- the right to be advised or represented by counsel or another qualified person;
- the right to receive simple, nontechnical statements that explain the Taxpayer Bill of Rights and the audit, collections, and appeals processes; and
- the right to have tax, penalty and interest abated when the taxpayer relies on binding written advice from a department employee, and that advice is later found to be incorrect.

Internal Controls:

- the right to have property protected during assessment, collection and enforcement processes;
- the right to have tax information kept confidential; and
- the right to procedures that ensure department employees are not paid, evaluated, or promoted based on the amount of assessments or collections made.

Taxpayer Rights Advocate / Problem Resolution Program

As required by the Taxpayer Bill of Rights legislation, the agency's Taxpayer Rights Advocate oversees a problem resolution program staffed by the Customer Satisfaction Team. The team was established to address taxpayer issues that were not satisfactorily resolved through normal administrative channels. Most of these requests include issues from state, local and federal elected officials, offers in compromise related to requests for waiver based on reasonable cause, and requests for direct assistance from the Taxpayer Rights Advocate. The team also handles customer education functions, and investigates systemic issues that may hinder the delivery of quality customer service. In addition to overseeing the operations of the Customer Satisfaction Team, the Taxpayer Rights Advocate ensures resolution of sensitive cases, and investigates allegations of rights violations. During the fiscal year ended June 30, 2010, the Taxpayer Rights Advocate investigated 6 claims of rights violations, and found no evidence of violations in any of those cases. In addition, the team handled 103 dispute resolution cases addressed directly to the Taxpayer Rights Advocate or from elected officials.

Beyond the scope of the operations and duties of the Taxpayer Rights Advocate and the Customer Satisfaction Team, every employee of the Department of Taxation is required to adhere to the provisions of the Taxpayer Bill of Rights. Routine procedures employed to protect taxpayer rights in customer contacts include stopping collection action on assessments during any appeals process, as well as negotiating installment payment plans and offers in compromise to settle liabilities in an equitable manner. In addition, the agency's *Virginia Taxpayer Bill of Rights* booklet is given to taxpayers as part of every face-to-face audit or collections contact. In both written and personal

contacts with taxpayers, the Department's goal is to ensure that taxpayers have a clear understanding of Virginia's tax laws, as well as the laws apply to each individual's case.

Collection Processes

The Department of Taxation strictly adheres to the provisions of the Taxpayer Bill of Rights in its collection processes, particularly with respect to confidentiality of taxpayer information. The agency contracts with CGI to manage its outsourced collections. In turn, CGI contracts with Performant, an adjunct of TAX's highest performing outside collection agency (OCA). TAX managed up to five outside collection agencies before the decision was made to outsource the management of the private collection function.

The OCA's receive only limited information about the accounts they collect. In addition, the Department does not report information on outstanding tax liabilities and collection actions to credit bureaus.

When an assessment tax bill is issued, the taxpayer has 30 days to make payment or protest the assessment. If the taxpayer does not respond within that time, the Department may take collection actions to resolve the account. Examples of collection actions include phone calls, letters, and liens. The Virginia Taxpayer Bill of Rights booklet contains a complete description of the agency's collection and audit processes.

Conclusion

The Department of Taxation takes its responsibilities under the Taxpayer Bill of Rights very seriously, and remains committed to making those rights an integral part of its business practices. A copy of the *Virginia Taxpayer Bill of Rights* booklet is attached. The booklet is also available on our web page at www.tax.virginia.gov, along with a wealth of tax forms and information designed to assist taxpayers in understanding and complying with Virginia's tax laws.

Please let me know if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'Craig M. Burns', written in a cursive style.

Craig M. Burns
Acting Tax Commissioner

Cc: The Honorable Richard D. Brown

Attachment: *Virginia Taxpayer Bill of Rights*

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ADDRESSES AND PHONE NUMBERS

Main Office

Customer Services
Department of Taxation
Office of Customer Services
P.O. Box 1115
Richmond, Virginia 23218-1115
(804) 367-8031
(804) 367-1115 Fax

Other Offices

Collections Section
Department of Taxation
Collections
P.O. Box 1880
Richmond, Virginia 23218-1880
(804) 367-8045
(804) 786-2140 Fax

Customer Service Numbers - Tenemos servicios disponible en Español.

Individual Income Tax	804-367-8031
Business Taxes (Sales, Withholding and Corporation)	804-367-8037
Collections	804-367-8045
Practitioner/Locality Hotline	804-367-9286
Tele-Plan (Use to set up payment plans)	804-440-5100
Tele-Tax(Tax refund, tax information and Fax-back)	804-367-2486

INTRODUCTION

The Virginia Taxpayer Bill of Rights was enacted to ensure protection of taxpayers' rights in the tax determination and collection processes administered by the Department of Taxation. This publication provides an overview of your rights under this law.

Your Rights in General

The Virginia Department of Taxation's mission is to serve our customers by delivering an efficient, courteous, confidential and equitable tax revenue system. Our goal is to ensure that your rights are protected in all state tax assessment, audit, and collection procedures, so that you may have the highest confidence in the integrity of our tax system. You have the right to be treated with dignity and respect by our employees. You also have the right to receive prompt, courteous, and accurate responses to tax questions and requests for assistance and information. When you make a written request for tax information, you have the right to rely on our written advice.

Your Rights in Contacts with the Department of Taxation

During any contact you have with the Department of Taxation, you have the right to have anyone present with you. You may also be represented or advised by an attorney or accountant. If you desire to have anyone, including an attorney or accountant, represent you when you are not present, you must sign a power of attorney form authorizing that person to act in your behalf. See the appendix for forms and instructions for registering and filing a power of attorney. You also have the right to make an audio recording of any meeting held in connection with tax determination and collection actions, using your own equipment. You may suspend certain meetings to seek advice from your representative. Finally, you have the right to ask a Taxpayers' Rights Advocate for assistance with problems or complaints

that have not been resolved through normal administrative channels. Information on the Taxpayers' Rights Advocate is discussed later in this publication.

Your Rights to Confidentiality

We keep all information about your tax liability in our records strictly confidential, including tax returns, correspondence, audit reports, and other account information.

Virginia law allows only limited release of tax information, and prohibits the Department of Taxation from releasing information to any individual or organization that does not have the legal right to receive it.

Filing and Paying Your Taxes

Our goal is to help you meet tax filing requirements and determine the correct amount of tax to pay. Our employees are responsible for carrying out the agency's mission according to Virginia law, and are not compensated, evaluated, or promoted on the basis of the assessments or collections they make. If you disagree with the amount owed, the method of computing the balance due, or the interpretation of Virginia law or department policy, you have the right to appeal our actions. You will find more information about your appeal rights later in this publication.

Payment Arrangements

If you cannot pay the full amount due on a tax return or bill, we will help you make payment arrangements or set up an installment payment plan. You may be required to provide a financial

statement, both to prove financial hardship and to help us determine the best payment schedule for you. If your financial statement shows that you can pay the amount due, even if that would mean using available credit or securing a loan, you will be required to do so.

Bills You Receive From Us

If you do not pay the full amount due with a tax return, or if we assess an additional amount, we will send you a bill. The bill will clearly state the amount of tax, penalty, interest or other charges due, as well as the reason for the charges. If you receive a bill as the result of incorrect advice given to you in writing by one of our employees in response to your written request, you have the right to have the bill canceled, including any tax, penalty, or interest assessed, provided you presented full and accurate facts.

Audits and Examinations

We routinely audit tax returns and business tax records to ensure compliance with Virginia law. The selection of your return or account for audit does not mean you will owe additional tax. You have the right to a fair examination and a simple, non-technical explanation of audit procedures, appeal processes, and changes made during an audit. You also have the right to know the reason for any request we make for additional information, as well as what will happen if you do not furnish the information.

Collection Actions

You have the right to receive a simple, nontechnical statement explaining collection procedures, appeal processes, and your rights during any collection proceeding. We prefer to work with you to arrange a payment

plan, and we will not take action to

collect an amount due until you have had 30 days to pay or make payment arrangements, except for Jeopardy Assessments. If you do not pay an amount you owe, or make arrangements for payment, we may take one or more of the actions described in the collections section of this publication.

Taxpayer Rights Advocate

The Taxpayer Rights Advocate will ensure prompt review and resolution of problems and complaints not handled through normal administrative procedures. The Taxpayer Rights Advocate will also ensure that your rights are protected in audit and collections procedures. If you believe you have been denied the legal rights described in this publication, contact:

Taxpayer Rights Advocate
Virginia Department of Taxation
P.O. Box 546
Richmond, Virginia 23218-0546
Phone: (804) 367-8031 for individual
(804) 367-8037 for business
FAX: (804) 254-6113

When contacting the Taxpayer Rights Advocate, you will need to provide a detailed description of the problem or complaint and the steps you have taken to resolve the issue. Please include a daytime phone number in your request.

Appeals

You have the right to seek an informal review of any bill that you believe has been incorrectly issued or any refund that has been improperly denied. If you are not satisfied with the informal review you have the right to file an appeal to the Tax Commissioner and request that the bill be adjusted or refund be issued. If you are not satisfied with the decision of the Tax Commissioner, you may

3 apply for a ruling from the circuit court. If

there is an administrative appeal or court case under consideration that is similar to your case, you may file your case with the Tax Commissioner as a protective claim, and request that your

case be considered based on the outcome of the other appeal or case. Lastly, under certain circumstances, you can propose an offer in compromise for the tax, penalty, or interest assessed.

TAXPAYER RIGHTS AND TAX AUDITS

The Virginia Taxpayer Bill of Rights grants every taxpayer specific rights during an audit. This section explains those rights, describes the audit process, and explains how you may exercise your rights if you are audited.

Taxpayer Rights

You have the **right to:**

- **Be informed of the audit process, the audit procedures and appeal rights** if selected for an audit.
- **Have the audit conducted at a reasonable place and time, and completed in a timely manner.**
- **Be provided with an explanation of any changes** made during an audit.

The Audit Process

Tax returns are routinely reviewed in order to determine if a taxpayer has under reported taxes. Audits frequently conclude with no additional liability found, or a refund to the taxpayer. In addition, many examinations conducted by the department do not require a visit to your home or business. Questions concerning your returns can sometimes be resolved by telephone or letter.

Desk Audits and Examinations

Many examinations of returns are conducted by mail. Typically an examiner will write to you to request additional information about items on your return, or to notify you of errors that need to be adjusted. You will have the

opportunity to respond to a notice before a bill is issued.

Automated Programs

Certain governmental agencies furnish the department information concerning Taxpayers' returns. The largest source of such information is the Internal Revenue Service, but information may be gathered from other federal, state, and local agencies. Information furnished by these sources is compared with Virginia tax returns to identify taxpayers who may have underpaid their Virginia tax liabilities or failed to file a return. All information received from other agencies, as well as information already in our files, is kept strictly confidential.

If we find a discrepancy in your tax return, we will send you a letter to:

- Identify the nature of the problem and explain possible changes in your liability;
- Invite you to provide additional information or explain why you disagree with these changes;
- Give you a date by which you should respond;
- Give you the name and telephone number of the department employee who is responsible for your case.

If you do not respond to the inquiry letter, or if you are unable to demonstrate that you do not owe additional tax, we will bill you for the additional tax, as well as applicable penalty and interest.

Field Audits

An auditor will notify you if your return or account is selected for an onsite audit. The notice will describe the types of records that need to be made available, and the auditor will explain the planned audit method and procedures. The audit will be conducted in a timely manner, and the auditor will review the results with you. We will send you a copy of the audit report and explain your rights of appeal.

Field audits are conducted by in-state auditors or by auditors that are located throughout the country.

We will notify you if you are selected for a field audit:

- Arrangements for audits are made in advance, either by letter or by telephone.
- Audit appointments are made with the owner or corporate officer responsible for tax compliance. The auditor may work with anyone designated by the taxpayer.
- Audit appointments will include the day, time and place of the appointment.
- Audits are usually conducted at your place of business during normal work hours. In every case, we will work with you to minimize the impact of the audit on your schedule or your business operations.
- You will be advised of the general type of records needed to start the audit.

Before the audit, the auditor will do the following:

- Provide you with a copy of this publication and answer any questions you may have regarding your rights.
- Discuss the operation of your business, ask how your records are maintained, and ask you to identify other issues which may affect the audit.
- Discuss the specific audit process to be used.
- Tour your place of business, if necessary.
- Determine how your records will be reviewed.
- Determine the method in which the audit will be conducted. The method the auditor chooses will depend on a number of factors, such as the type of tax, the accuracy and availability of records and the size and complexity of your business. We may conduct a detail audit, which involves looking at all of your records, or we may look at a sample (portion) of your records.

While conducting the audit, the auditor will do the following:

- Determine the audit period. Audits are usually conducted for a three-year period, but may be expanded up to six years if returns are not filed when required.
- Review your records and the returns you have filed.
- If necessary, ask you to voluntarily waive the statute of limitations on the audit period. This is usually done if additional time is needed to conduct the audit. In addition, it can prevent issuing an assessment on unresolved factual issues that may be resolved through the audit process or informal review.

- Explain department policy and its application to your business transactions.
- Allow you adequate time to respond to our questions.

In concluding an audit we will do the following:

- Discuss our findings with you, or send you a letter explaining the changes.
- Explain any penalties to be billed. See Appendix.

- Discuss future filing responsibilities and answer any questions you may have concerning the audit.
 - Provide you with a copy of the audit report identifying issues to be corrected for future compliance as necessary.
 - Explain your rights to appeal should you disagree with the audit findings.
- If our income tax audit raises an issue that affects your federal income tax, we may notify the Internal Revenue Service and will not create a bill until the issue is resolved at the federal level. If this procedure is utilized it will be discussed with you by the Audit Supervisor.

TAXPAYER RIGHTS AND TAX COLLECTIONS

The Virginia Taxpayer Bill of Rights grants every taxpayer specific rights in collection actions taken by the department. Among these is the right to receive, at or before a meeting regarding the collection of your account, a description of the collection process used by the Department of Taxation and your rights in that process. This section describes the collection process used by the department; your rights in that process and the procedures which you need to follow in order to exercise those rights.

Taxpayer Rights

You have the **right to:**

- **Be notified** before we take any collection action that could result in the loss of property, unless the department determines that collection would be jeopardized by delay.
- **Meet** with the department within 14 days of the date a jeopardy assessment is issued to:
 - explain why you believe that collection of the assessment is not in jeopardy and;
 - present any reasons why you believe that a Memorandum of Lien should be released if recorded against your property.
 - send you a written determination on this meeting within 20 days.
- **Have collection actions reviewed** by a department employee:
 - by coming in to the TAX office;
 - by making a phone call to the department; or,
 - by mailing or faxing a written explanation to the department.
- **Request procedures for a payment plan** to pay the taxes due.
 - If you have been contacted by a collection agency you should contact the agency that called or wrote to you. The address and phone number for the agency will be listed on the correspondence sent to you by the collection agency.
 - If you are contacted by one of our offices, you should contact that office.
 - In all cases, the procedure for requesting a payment plan is a simple verbal or written request from you.
- **Request procedures for release of a lien.** Contact us at the address or telephone number shown on the lien form and request the lien release. Describe or, if telephoning, be prepared to describe the basis for your request.

To allow time for a review and to stop further collection actions, you should notify us that you are disputing the amount due before the payment due date.

Have a written notice issued to a credit agency stating that a lien was filed in error, if that is the case. The request for a notice to a credit agency must be made within three years of the release of the lien by the department.

The Collections Process

Payment Arrangements

When you receive a tax bill, and you have no reason to dispute it, the least costly solution to you is to pay the bill in full on or before the stated payment date.

If you are unable to pay your bill in a timely manner, you should contact us as soon as possible. In most cases, we will accept payment in monthly installments.

Because we are required to charge interest on unpaid tax balances, the shortest payment schedule that you can meet will result in the smallest cost to you. If your tax balance is small and the installment plan you request is for a short period of time, we can usually set up the payment plan with information provided in a telephone call from you. In other cases, you may be required to submit a current financial statement before we consider your request for a payment plan. Generally, payment plans are approved for a maximum of 12 months. The plan may be renegotiated at the end of the 12th month if you need additional time to pay.

Not all payment plans are approved. Payment plans may not be approved if:

- you have had a previous payment plan that was not paid promptly; or
- the amount due is not suitable for a payment plan.

If we agree to accept payment of a tax obligation in installments, you will receive a monthly payment reminder with the payment amount and due date printed on it. The payment agreement will stay in effect, and no other collection action will be taken,

except for debt setoff transactions, if you do the following:

- Pay each installment by the due date (allow for mailing and processing time);
- Stay current with any state tax filing requirements and make timely payment of any other state tax obligations not covered in the payment plan;
- Provide us with correct, complete and current financial information when requested.

Depending on the amount due, the department may place a Memorandum of Lien (described below) on your property to secure the tax debt until the payment plan is completed.

Payment Plan Cancellations

If payments are late, or if you do not stay current on your tax obligations, we may cancel the payment plan and take other actions to collect the amount due.

Collection Actions

When a liability for your account is created, you are sent a bill statement giving you 30 days to pay. If there are no other outstanding bills on your account, we will take no collection action during this time.

If you do not pay your bill by the due date or make satisfactory arrangements for payment, we will take collection actions to resolve the account.

Collection actions can consist of one or all of the following:

Phone Calls and Letters

Collection actions are intended to be taken in an order that will resolve delinquent accounts at the smallest cost and with the least impact on you.

Usually our first effort will be to attempt to contact you by telephone or letter. If, however, your account has been delinquent in the past, this step may be bypassed.

Third Party Liens

We may place a lien against your bank account or a garnishment with your employer. This means that funds from your bank account or paycheck will be paid directly to the Department of Taxation to satisfy your debt.

If this action would cause severe hardship, you should contact the department to negotiate an alternative payment arrangement to settle the debt. If you agree to have a specific amount withheld from your wages each pay period to pay the debt, please make sure that your employer approves this arrangement and will forward the payments to the department.

A third party lien is usually not released until the debt is paid or otherwise resolved. More than one lien may be sent on an account. A third party lien is not a matter of public record, but your bank may report the lien to credit bureaus.

Memorandum of Lien

A Memorandum of Lien is recorded as a judgment against your property in favor of the state. When we file a judgment with a circuit court, it remains in effect for 20 years, or until the underlying debt is resolved. Your ability to sell, refinance or otherwise dispose of the property listed on the Memorandum of Lien will be affected until it is released.

Taxpayers must contact the department for a Memorandum of Lien release. Generally, liens are not released unless the amount due to the Commonwealth has been paid or otherwise resolved.

Although we do not report tax account information to credit bureaus, a Memorandum of Lien is a matter of public record and may harm your credit rating.

Erroneous Liens

If you believe that a lien, either a third party lien against your wages or bank account, or a Memorandum of Lien against your property, has been placed in error, you can request that the lien be released.

You should notify us immediately if you believe that a lien has been issued against you improperly. We will research the issue and may delay collection action to allow time for a review of the account.

Conversion of Business Liabilities

If your business does not pay its bills, we can "convert" or transfer the unpaid tax liability to the responsible officers of the business. Before transferring the liability, we will notify you in writing and allow you to present information to show why you should not be held personally liable for the business tax bills.

Visits

Representatives may visit your home or business. Generally, we do not make home visits, unless you have a home-based business. Business visits are made during normal business hours.

Padlocking

If initial collection efforts are unsuccessful, a business may be padlocked. You will be given at least 10 days notice of your scheduled hearing to determine whether the business will be padlocked. You will be able to present evidence at the hearing to show why the business should not be padlocked. If the terms agreed on at the hearing are

not honored, or if a suitable agreement cannot be reached, we may revoke the company's sales tax certificate and business registration and/or padlock the business. If the business is padlocked, the department may cause the assets of the business to be sold.

Revocation of the Certificate of Registration

If you do not pay your sales tax, your certificate of registration authorizing collection of the tax may be revoked. Once a certificate is revoked, the business must stop making sales. Prior to revoking the certificate, we will notify you by letter of a hearing at which you may present evidence to support your case.

Bonds

If your business is frequently delinquent or you are, or were, an officer of another business with a history of delinquency, we may require that you post a bond in order to continue operating. A bond can be posted in the form of cash, securities, line of credit, etc. The bond can be seized, without notice, to satisfy an outstanding tax liability.

Seizure of Assets

If we are unable to collect your tax liability through other means, we may direct the sheriff to seize and sell your property. Before this action can be taken, we will send you a notice giving you ten days to settle the liability. If the liability is not satisfied, the sheriff will proceed to sell the property.

Summons/Notice to Appear in Lieu of Summons

This is a formal written notice requesting that you attend a scheduled meeting with a department representative to answer questions on your tax debt. This is not a legal proceeding. However, if you do not appear, we may seek a court

order to compel compliance, or we may take more severe collection action.

Debt Setoff

If you are due a tax refund, win a lottery prize, or provide goods or services to the Commonwealth, we are required by law to take the payment owed to you and apply it to your tax debt, or other unpaid state or local debt. If this happens, you will be notified in writing and will have the opportunity to protest the action.

Jeopardy Assessments

If the Tax Commissioner determines that collection of a balance due will be jeopardized by delay, we will issue a jeopardy assessment. This accelerated assessment and collection process is rarely used. If we issue a jeopardy assessment, you have 14 days to make an oral or written objection. We will review the information presented and respond in writing within 20 days. If we filed a memorandum of lien it will remain in force throughout the jeopardy review period.

Office Referrals and Collection Agencies

Accounts may be referred to one of our collection representatives when less severe actions have not been effective.

A representative may contact you by phone or letter or visit your business or home. Additionally, the representative may initiate the following actions:

- require you to post a bond in order to continue in business,
- revoke your certificate of registration,
- conduct a hearing to determine liability, and
- padlock the business until the tax payments are made. If payment is not made after a padlock

action, the district representative will initiate a sheriff's sale to dispose of the assets in order to pay the tax debt.

Collection Agencies

The department contracts with commercial collection agencies to assist in collecting overdue taxes. If your account is assigned to a collection agency, you will receive a notice from the collection agency that provides a

name, address and phone number for contacting the agency.

Once an account is assigned to a collection agency, you should work with the agency until the amount is paid in full. Collection agencies must adhere to the Fair Debt Collections Practices Act.

If you believe that a collection agency is acting improperly, you should contact the Department at (804) 367-8045 or write to the Collections section, P.O. Box 1880, Richmond, VA 23218-1880.

TAXPAYER RIGHTS IN THE APPEALS PROCESS

If you believe that a bill has been incorrectly issued or a refund has been improperly denied, you have a right to request that the bill be adjusted or the refund be issued. This section describes the appeals process, your rights in that process and the procedures that you need to follow in order to exercise your rights.

Taxpayer Rights

You have the **right to:**

- **Receive an informal review** when you disagree with a bill that you received or a refund that you were denied.
- **Receive, upon request, simple and nontechnical statements of your appeal rights** with the department.
- **Appeal your case to the Tax Commissioner** if you disagree with the finding of an informal review conducted by the department. (Time limits apply. See Below).
- **File a protective claim with the Tax Commissioner** in order to protect your right to claim a refund of taxes paid in error. (Time limits apply. See Below).
- **Appeal your bill to a circuit court** for relief if you disagree with the decision of the Tax Commissioner on your case. (Time limits apply. See Below).
- **Request an offer in compromise** if you can show reasonable cause for reducing or waiving penalty or show doubtful liability or collectibility for reducing or waiving the tax and interest.

The Appeals Process

Informal Review

Return Errors and Desk Audits

Tax returns that are filed with the department may be adjusted because

an error was identified on the return. For example, an individual income tax return with a missing Form W-2 (Wage and Tax Statement) may cause a bill to be issued by the department. If we adjust your return, we will send you a letter of explanation and a bill.

A desk audit is an examination of a tax return at the central office of the department to determine if a return is filed according to Virginia law. Desk audits are usually based on programs that collect tax information from department records and from other government agencies, such as the Internal Revenue Service. You may be sent a letter describing the results of a desk audit and the amounts that you will be billed if a reply to the letter is not received within a specified time.

Assessment

The assessment of tax, penalty and interest is a formal act that starts time limitations on various administrative and judicial appeal rights, as well as authorizes various collection actions by the Department. If you have received a letter stating that the department intends to assess additional tax (for example, after a desk or field audit), and you believe that the proposed assessment is erroneous, **you should promptly request an informal review.** If the issues can be resolved informally before an assessment is issued, there may be no assessment, or the assessment may be issued in the correct amount.

If the tax has been assessed you may still request an informal review, but **your**

rights to formal administrative and judicial review will not be extended while an informal review is pending.

Therefore, the Department encourages taxpayers to resolve issues informally, before assessment, if possible. If the statute of limitations is about to expire on the Department's right to assess a tax, it is usually in both parties interest to sign a waiver extending the period to assess the tax so that an informal review can take place.

Requesting an Informal Review

If you receive a letter or bill that results from an error on your return or a desk audit, and you disagree, you should contact a representative from the Customer Services Section or the examiner identified on the letter. You should explain the reasons why you disagree and furnish any information or documentation needed to support your position. If necessary, you may request a meeting with the representative to discuss your case. The representative will adjust your account or give you a full explanation of your letter or bill. If you disagree with the explanation of the representative, you may request that the supervisor further review your case.

Field Audits

A field audit is performed when an auditor makes an appointment to audit your records at your place of business, your accountant's office, or other place where you and the auditor agree. Once an audit is completed, you may provide any additional information needed to support your position on a particular issue. We encourage you to provide additional information to the auditor. You can often save the time and expense of an appeal by providing full or clarifying information before the assessment is issued. If necessary, the audit report will be adjusted. If you do not agree with the final results of the

audit, you may request a meeting with the Audit Supervisor to review your case. When the audit has been reviewed, you will be notified of the results, and appropriate adjustments will be made to the audit report. If there is any additional tax due, we will issue an assessment for the additional tax and appropriate penalty and interest.

Collection Matters

After the initial notice of an assessment has been issued, you will receive bills for the tax, penalty and interest owed that reflect any payments, adjustments, and additional accrued interest since the assessment. At any time during the collection process you may question the accuracy of a bill (e.g. payment credits, accrued interest), ask for an installment payment agreement, or propose an offer in compromise. However, your right to contest the accuracy of the assessment on which a bill is based may be limited after it moves to a formal collection stage because certain administrative and judicial remedies are only available for limited times after the date of assessment.

You may also present objections to the actions we take to collect the bill. An informal review of your objections to collection actions may be obtained by discussing your issues directly with the collection agent assigned to your case, or you may ask to speak to or meet with that employee's supervisor. If you are unable to resolve your objections informally, you may file an application with the Tax Commissioner or with the circuit court explaining in detail how any amount was improperly collected from property that was exempt from process.

Taxpayer Appeal Rights

We make every effort to resolve disputed assessments through informal

reviews. If you are not satisfied with the results of your review, you have the right to appeal your assessment.

Appeal to the Tax Commissioner under Code of Virginia §58.1-1821

You have the right to file an appeal directly with the Tax Commissioner if you believe that the Department has incorrectly assessed tax, penalty and interest. A complete appeal, with all relevant facts, citation to controlling legal authority, argument, and supporting documents, must be filed with the Tax Commissioner within 90 days of the date of the assessment. **This 90 day limitation is strictly enforced.** While no special form is required to file an appeal, certain information is required. An optional cover sheet is available that ensures that the required information is supplied, and you are encouraged to use it. (See appendix.) Incomplete filings that must be returned for additional information will not qualify as a timely filing for purposes of the 90 day statutory deadline. If you have not filed an appeal within 90 days, you must pay the full amount of the assessment and file a protective claim for refund with the same information required for an appeal.

Once your appeal is received, further collection action by the Department will be discontinued until the Tax Commissioner makes a final determination on the appeal. Interest on any unpaid balance, after adjustments required by the final determination, if any, will accrue while the appeal is pending. Therefore, you should promptly pay the uncontested portion of an assessment to avoid additional interest. You may pay the full assessment without affecting your appeal rights, and if any portion of a paid assessment is found to be

erroneous, that portion will be refunded to you with interest.

If you do not agree with the decision of the Tax Commissioner, you have the right to file an application for correction of the assessment with the circuit court.

Filing a Protective Claim under Code of Virginia §58.1-1824

You have the right to file a protective claim for refund. A protective claim preserves your right to have a department decision reversed when another taxpayer, whose liability arises from the same issue as your liability, is pursuing an administrative appeal with the Tax Commissioner or is seeking a judicial remedy in court. To file a protective claim, you must do the following:

- Pay all assessed tax, penalties, and interest with interest accrued to the date of payment;
- Write a letter to the Tax Commissioner within three years of the date of your assessment (there is no special protective claim form; however use of the appeal cover sheet is encouraged); and
- Furnish information regarding the type of tax involved, taxable period, date and amount of the bill, payments toward the bill, and a detailed explanation of the contested issues, along with documentation; and
- Request a determination based on the submission, or request that the claim be held pending resolution of another case. You must show that the facts and laws that apply to your case depend on the outcome of another specific case pending with the department or in the court.

Upon receiving your protective claim, the Tax Commissioner may decide the protective claim based on the merits in the same manner as under *Code of Virginia* §58.1-1821 or, at his discretion, may hold the claim without action until the pending case is resolved. If the Tax Commissioner or the court rules in favor of the other person whose case your protective claim was based, you will be notified in writing. The department will issue a refund of the amount you previously paid with interest.

If the Tax Commissioner discovers that the case was not ruled in the favor of the other person, then the Tax Commissioner will deny your protective claim. If you disagree with the Tax Commissioner's decision, you have the right to appeal the decision of the Tax Commissioner to a circuit court within one year from the Tax Commissioner's decision, or within three years from the date of your assessment, whichever is latest.

Appeal to the Court under Code of Virginia §58.1-1825

You have the right to apply to a circuit court if you disagree with the decision of the Tax Commissioner in your appeal. You are not automatically required to pay the assessment in full or post a bond before appealing to the court.

You should consult a lawyer for advice and assistance with any application to the court.

If you feel that an assessment has been improperly collected from property exempt from process, you may within three years from the date such assessment is made, or if later, within one year of the Tax Commissioner's decision on a process exemption claim under § 58.1-1821 apply to a circuit court for relief.

The Tax Commissioner may collect on any assessment if it is determined that the collection of that assessment is in jeopardy.

Filing an Offer in Compromise under Code of Virginia §58.1-105

An offer in compromise is a proposal from you to settle your tax bill for less than the full amount. The offer will be considered based on available information. If you have been assessed penalty, the penalty can be reduced or waived entirely for good cause.

Tax and interest may not be reduced or waived by the Tax Commissioner unless you can show that the liability is doubtful or that it is doubtful that the bill can be collected.

If you want to request an offer in compromise, you should write to the Tax Commissioner describing the type of tax involved, taxable period, date and amount of the bill, and include a detailed explanation, along with supporting documentation, of the reasons why the tax, penalty or interest should be reduced or waived. A check for the amount of the offer should be included with your letter. The check will be applied to your account. The deposit of your check does not indicate the acceptance or denial of your offer. If you are not making a payment with the offer submission, you should indicate when and how payment will be made.

If your offer is made because you cannot pay the bill, you must also include a signed Financial Information Statement. This form is available at any of the offices listed in this publication.

If the Tax Commissioner accepts your offer, any amounts waived will be removed from the bill. If your offer is not

accepted, the balance of the bill must be paid.

You may fax your appeal or offer in compromise with supporting documentation to the Tax Commissioner (804) 786-3536, or mail it to:

Tax Commissioner
Department of Taxation
P.O. Box 2475
Richmond, Virginia 23218-2475.

APPENDIX

Use Tax Compliance Ratio Computation

Offer in Compromise forms

Individual Request for Settlement

Business Request for Settlement

Financial Information Statements

Administrative Appeal for Virginia Code 58.1-1821

POA Forms and Instructions

Use Tax Compliance Ratio Computation

Background

The Department of Taxation has revised its policy regarding the application of penalty to audit deficiencies (Title 23 of the Virginia Administrative Code 10-210-2032). The application of audit penalty is based on the level of compliance exhibited by the taxpayer in complying with Virginia tax laws. For retail sales and use tax assessments issued on or after October 1, 1999, the department will allow the taxpayer to calculate an Alternative Method of computing the use tax ratio that takes into account taxes paid to vendors.

Calculation of Use Tax Compliance Ratio

The department will continue to compute the use tax compliance ratio as follows:

$$\frac{\text{Measure reported}}{\text{Measure reported} + \text{Measure found}} = \text{Compliance ratio}$$

Provided the taxpayer's use tax compliance does not meet 60% for the second generation audits, or 85% for third and all subsequent audits, the audit penalty will be applied.

Alternative Method of Computing Use Tax Compliance as Calculated by the Taxpayer

If penalty is applied based on the department's calculation of the use tax compliance ratio, the taxpayer has the option of calculating the use tax compliance ratio, under the alternative method below.

$$\frac{\text{Measure reported} + \text{Measure paid to vendors}}{\text{Measure reported} + \text{Measure Paid to vendors} + \text{Measure found}} = \text{Compliance ratio}$$

It is the taxpayer's responsibility to compute the above compliance ratio and provide the auditor with documentation supporting the computation. The taxpayer must compute the alternative ratio based on a review of purchases for the same period used by the auditor to compute the traditional compliance ratio. Tolerances for the alternative method will remain the same as those of the traditional compliance ratio.

If it is determined that the use tax audit is applicable based on the traditional compliance ratio calculations, the auditor will advise the taxpayer. If the taxpayer desires to recalculate the compliance under the alternative method, the auditor will separately assess the audit penalty as a contested issue. The taxpayer must complete the alternative method calculations and provide the documentation to the auditor within 60 days of the audit assessment. If the use tax compliance falls within the acceptable tolerances based on the alternative method calculations, the audit penalty will be abated.