Ind. Type. Administration
Converted Assessments

COMMONWEALTH of VIRGINIA
Department of Taxation
Richmond, Virginia 23282

MEMORANDUM

TO: C. B. Davidson, Supervisor
Collections Section
Office Services Division

DATE: February 17, 1987

SUBJECT: Limitations applicable to converted assessments

In response to your memorandum of January 21, 1987, I offer the following:

If the due date for filing a return and paying a tax is January 20, 1987, then the three or six year period for assessing a tax runs from January 20, 1987, the "date on which such taxes became due and payable" under § 58.1-104.

Accordingly, if a return is filed late without payment on March 20, 1987, the period for assessing the tax due will expire on January 20, 1990. However, if no return is filed then the tax may be assessed at any time prior to January 20, 1993.

Virginia law does not contain a provision similar to Internal Revenue Code § 6501(c)(7) which allows a 60 day extension for assessment when a return is filed within 60 days of the expiration of the period for assessing additional tax. Thus, even if a return is filed two years and eleven months late, our period for assessing tax would expire one month later. If a return was filed three years and one month late, we could not assess any additional tax at all.

In the two examples you give, on March 20, 1987, the department assessed the corporation or partnership for taxes which were due on January 20, 1987. Assuming that the assessment is not paid, you ask when would the period for converting the assessments to a "responsible person" expire?

In the first example, a return filed late without payment, the period for converting the tax liability into an assessment against the "responsible person" would expire three years from the date the tax was due, which would be on January 20, 1990.

In your second example, failure to file a return, the period for converting the tax liability into an assessment against the "responsible person" would expire six years from the date the tax was due, which would be on January 20, 1993.

The date on which the corporation or partnership was assessed by the department affects the right of the corporation or partnership to apply to a court for correction of an erroneous assessment, but has no effect on the department's right to assess a "responsible person." The "payment due in 30 days" language on our assessment forms has no impact on any rights of the department or the taxpayer. However, under § 58.1-1812, if the taxpayer pays the amount assessed within 30 days, then no additional interest will be charged.

In the case of an extension granted for filing a return, in most cases the date the tax is due is not extended. For example, a six month extension to file an income tax return would not extend the period for assessing tax against the corporation or any of its "responsible persons."

However, an extension to file a sales tax return may be granted until the end of the month. Such an extension also extends the date for payment of the tax without interest or penalty. If such an extension is granted then the period for assessing tax against the corporation or any of its "responsible persons" would also be extended.

Danny M Payne

Danny M Payne, Director
Tax Policy Division