

Communicated

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File / Tax Type
Administrative:
Liability
of corporate
appeal

COMMONWEALTH of VIRGINIA

DEPARTMENT OF TAXATION

RICHMOND 23282

MEMORANDUM

TO: Wally Cordle, Director
Field Services Division

DATE: August 22, 1983

SUBJECT: Abatement of 100% Penalty Assessed Under
Section 58-44.1; Abatement of Corporate or
Partnership Liability

For purposes of the User's Guide for Accounts Receivable, you have posed the following question concerning the 100% penalty assessment under Section 58-44.1(a):

"[I]f eventually the corporation pays do we abate the assessment against the individual or if an individual pays do we abate the assessments against the corporation or the other individuals."

Section 58-44.1 was enacted by the 1972 Session of the General Assembly, paragraph (a) of which having been modeled almost exactly by the Internal Revenue Code Section 6672(a). Pursuant to the policy of IRS Policy Statement P-5-60, the government is entitled, through an assertion of 100% penalty assessments, only to one satisfaction of the tax liability; once the government has obtained a single satisfaction, it must abate all 100% penalty assessments which have arisen from the tax liability.

However, the obligation to abate all other assessments once a single satisfaction has been obtained is determined by whether or not the government's right to retain the collection has been established. See Gens v. U.S., CtCl's, 80-1 USTC ¶9238, 615 F2d 1335 (1980). It has been held that the right is established "only upon expiration of the statutory period for commencement of a refund suit or, if a refund suit is filed, upon final adjudication of the action." Crompton-Richmond Co. v. U.S., 70-1 USTC ¶9360, 311 F. Supp. 1184, 1185 (S.D. N.Y. 1970).

MEMORANDUM

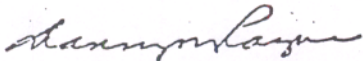
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Our conclusion is that, based on the interpretation by the IRS and the federal courts of the virtually identical federal statute, the department's position is the following:

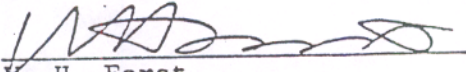
(1) The department will abate all 100 percent assessments against individuals once the tax liability has been collected, to the department's satisfaction, from the original taxpayer entity, i.e., corporation or partnership.

(2) Where the department has collected the tax liability, to its satisfaction, from any one or more responsible individuals vis-a-vis the 100% penalty assessment, or has collected partially from such individual(s) and partially from the original taxpayer entity, then the department will not abate any of the assessments until the expiration of the 3-year statute of limitations for commencement of a refund suit.*



Danny M. Payne, Director
Tax Policy Division

dlk

Approved: 

W. H. Forst
State Tax Commissioner

cc: Raymond Dobyms
Clayton Stewart
Jane Bailey

*However, the fact that these assessments will remain outstanding for three years does not give the department further collection rights. Rather, as was stated above, the state is entitled to only one "satisfaction," whether it is the full tax liability that has been collected or an offer in settlement that has been accepted.