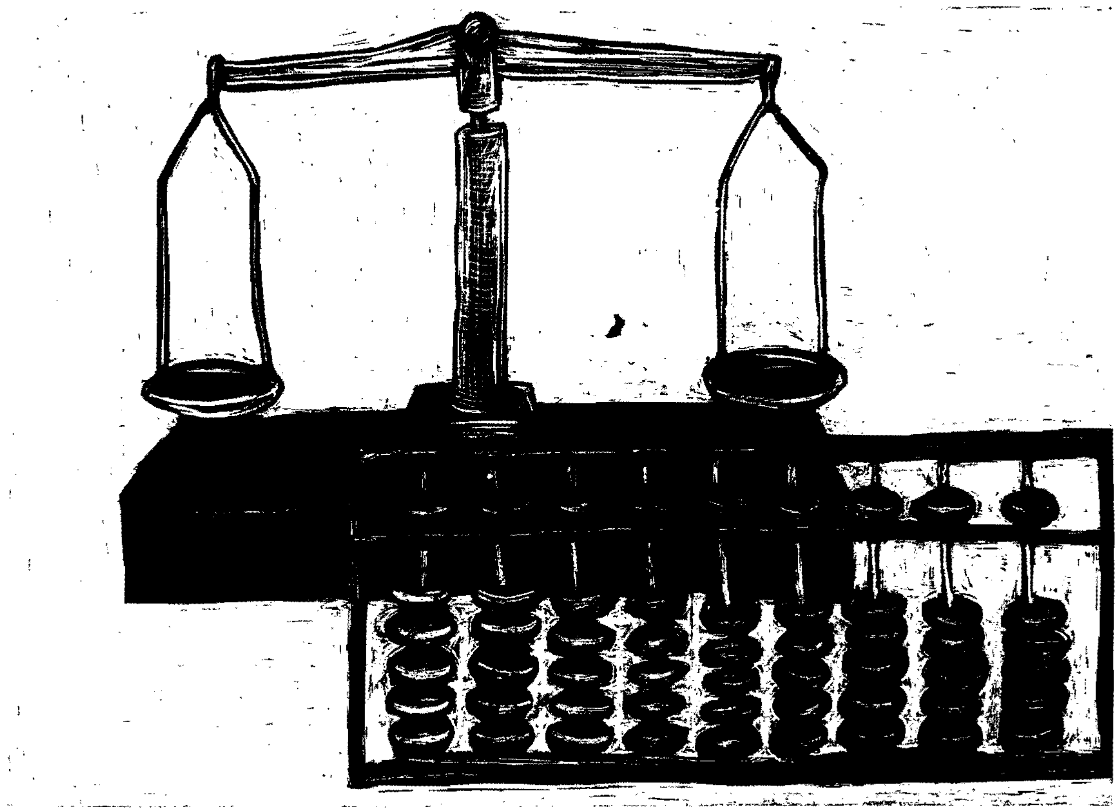
Recent Supreme Court of Virginia Decisions Demonstrate the Urgent Need for New Tax Regulations

by Craig D. Bell and J. Christian Tennant



The January 2015 Supreme Court of Virginia opinion in *The Nielsen Company LLC v. County Board of Arlington County* sent two important messages to state and local governments in Virginia. First, local governments should permit taxpayers to use an estimation methodology when determining a deduction for gross receipts taxed in other states for purposes of the business, professional, and occupational license (BPOL) tax if it is impossible to determine the exact amount of the deduction. Second, the state government, specifically, the Virginia Department of Taxation (tax department) needs to reconsider its current policy of issuing guidelines and public documents instead of regulations in an effort to meaningfully promote taxpayer compliance and minimize tax controversy disputes.

Multi-State Businesses Must Deduct Gross Receipts Taxed By Other States

Since 2009, the Supreme Court of Virginia has delivered three very important opinions concerning the BPOL tax imposed by many Virginia local governments on the businesses operating within their boundaries. Each of these cases involves the proper method of calculating the BPOL tax owed by larger businesses and businesses that operate in multiple states. The Virginia General Assembly reformed the BPOL tax in 1996 to reign in local government officials' over-reaching interpretations of the tax and to provide uniformity on how the tax is imposed in different localities in Virginia.[1] Despite the reformation of the BPOL tax, major issues regarding differing interpretations on the proper method of calculating the BPOL tax still exist for businesses that operate in multiple states. In connection with the 1996 reform, the tax department promulgated regulations concerning the BPOL tax, but has failed to update them since they were first promulgated in 2008.[2] Because the BPOL regulations have not been updated, multi-state businesses continue to be forced to incur unnecessary costs relating to administrative and judicial disputes on core issues that should have been dealt with by new regulations.

The first two BPOL tax opinions from the Supreme Court of Virginia prevented local governments from taxing gross receipts not earned in the locality. In *City of Lynchburg v. English Construction Company*[3], the Court determined that the City of Lynchburg had no authority to tax the gross receipts of a taxpayer earned in other localities where that taxpayer maintained a definite place of business. Then, the Court in *Ford Motor Credit Company v. Chesterfield County*[4] determined a multi-state financial service provider's receipts from an office located in a Virginia locality were not 100 percent attributable to the actions performed in the office when the loans originated in the Virginia office but were funded and serviced through offices outside of Virginia. While both of these cases involved different BPOL tax issues, the opinions correctly controlled the local government's power to tax.

Determining the BPOL Deduction for Gross Receipts Taxed in Other States

Unlike *English Construction* and *Ford Motor Credit*, the most recent dispute concerning the BPOL tax, *The Nielsen Company LLC v. County Board of Arlington County*[5], could have been avoided had the tax department simply updated its regulations. The *Nielsen* case involved an appeal from the Circuit Court of Arlington County that rejected Nielsen's claim of a deduction for gross receipts taxed outside of Virginia for purposes of calculating the BPOL tax.[6] The Supreme Court of Virginia reversed the circuit court's decision and allowed the deduction as calculated by Nielsen.[7]

The dispute in this case involved the interpretation of a statute allowing businesses a deduction for gross receipts taxed in other states. Specifically, the calculation of the permissible deduction was at issue. Through publicly issued rulings, the Virginia Tax Commissioner (tax commissioner) provided his interpretation of how the deduction should be computed. This methodology was not contained in the BPOL tax regulations. In these rulings, the tax commissioner determined that BPOL taxpayers who use payroll apportionment to situs their taxable receipts should use the same apportionment factor to ascertain the proper amount of the deduction permitted by Virginia Code § 58.1-3732.[8]

The dispute between Nielsen and Arlington over the deduction arose upon an audit by Arlington that resulted in assessment for underpaid BPOL tax issued to Nielsen.[9] Nielsen appealed the assessments back to Arlington and ultimately to the tax commissioner pursuant to Virginia Code § 58.1-3703.1(A)(6)(a).[10] The tax commissioner issued his decision on the appeal in Public Document 12-146.[11] The tax commissioner determined that Arlington used an incorrect methodology to calculate the deduction, and instead permitted a payroll percentage methodology to be used.[12] The tax commissioner stated that the rationale behind this requirement is while this methodology provides an estimate, it results in a reasonable approximation of the deduction, is straightforward to administer, and can be applied uniformly.[13] In a ruling issued by the tax commissioner prior to Nielsen's ruling, he specifically articulated the method to calculate the deduction as follows:

1. Ascertain whether any employees at the Virginia definite place of business participated in interstate transactions by, for example, shipping goods to customers in other states, participating with employees in other offices in transactions, etc. If there has been no participation in interstate transactions, then there is no deduction. If there has been participation, then;
2. Ascertain whether any of this interstate participation can be tied to specific receipts.

If so, then those receipts are deducted; however, if payroll apportionment had to be used to assign receipts to the definite place of business, then it is very unlikely that any of those apportioned receipts can be specifically linked to interstate transactions. If not, or if only some of the participation can be tied to specific receipts, then;

3. The payroll factor used for the Virginia definite place of business would be applied to the gross receipts assigned to definite places of business in states in which the taxpayer filed an income tax return. Note that payroll apportionment would probably be needed to assign receipts to definite places of business in other states.[14]

Arlington filed suit challenging the tax commissioner's ruling arguing that "regardless of how the pool of taxable gross receipts was calculated under Code § 58.1-3703.1(A)(3), determining the deduction under Code § 58.1-3732(B)(2) requires the taxpayer to prove by manual accounting that the receipts attributable to business in a foreign jurisdiction where the taxpayer is subject to an income-based tax liability were actually captured in the pool of taxable gross receipts."[15] The circuit court ultimately ruled that usage of payroll apportionment for purposes of the deduction is "arbitrary and capricious" and that "[t]he taxpayer however, is certainly in a position to demonstrate by time sheets, travel expenses, budget, phone logs and other means how Virginia employees may have contributed to revenues generated out-of-state and therefore entitled to the deduction."[16]

Entitlement to the deduction

Requiring Nielsen to calculate its exact deduction ignores the reality that if Nielsen were able to calculate its deduction, it would also be able to directly situs its gross receipts and not be required to use payroll apportionment for situsing purposes. Therefore, the circuit court's ruling that an exact determination was required was in error. Interestingly, Arlington never argued that Nielsen improperly used payroll apportionment to situs its receipts and stipulated that using payroll apportionment to situs receipts was proper for Nielsen.[17] So when the circuit court attempted to require Nielsen to calculate its deduction without using an apportionment formula, the circuit court effectively determined that Nielsen may not claim a deduction to which it was entitled and had been legislatively granted by the General Assembly.[18] The trial court's decision on this issue was contrary to the General Assembly's intent for the BPOL deduction statute.

The Supreme Court of Virginia overturned the circuit court on the basis that the tax commissioner's ruling was neither contrary to law, nor arbitrary and capricious.[19] However, the Supreme Court of Virginia did not state that the tax department's method for calculating the deduction was the method that should be used. After it was acknowledged that the Code of Virginia does not resolve the permissible methodology for calculating the deduction, the Court determined that the tax department's requirement of manual accounting, or payroll apportionment in the event that manual accounting is impossible to calculate the deduction, falls within the scope of accounting methodologies permitted by Virginia Code § 58.1-3732 which provides for the deduction for out-of-state receipts.[20] The Court concludes the tax department's methodology is not contrary to law.[21] The Court also held that the tax department's methodology was not arbitrary or capricious as it followed the statute's scheme for determining the situs of gross receipts when it is impossible or not practical to make such a determination for purposes of the tax.[22] Specifically, the Supreme Court of Virginia stated:

> The use of an estimate methodology when determining a deduction, but only when it is impossible to determine the exact figures to calculate such a deduction, is neither "contrary to ... established rules of law" nor a mechanism permitting an assessment to be "founded on prejudice or preference rather than on reason or fact" when that very same methodology is used to determine the initial tax to be imposed, but only when it is impractical or impossible to determine the exact figures to calculate such a tax.[23]

On this basis, the case was remanded back to the circuit court to issue an order consistent with the opinion.[24]

Litigation could have been avoided with updated tax regulations

The Supreme Court of Virginia in *Nielsen* addressed the issue of the deference or weight that must be given to the tax commissioner's rulings. The tax department has a long history of believing that its rulings should be deferred to and given great weight by the judiciary in its decisions. Virginia courts disagree with providing any such deference. The Court directly addressed this contention when it stated, "A court never defers to

the Tax Commissioner's interpretation of a statute."[25] Great weight is only provided when a statute is obscure or its meaning doubtful.[26]

If the tax department would like its interpretations to receive "great weight," the tax department should follow prior Court guidance:

> For purposes of giving weight to the positions of administrative agencies, it does not matter whether an agency has been consistent in its rulings. This is because an agency's "prior rulings and policies themselves are not entitled to great weight, unless expressed in regulations." *Chesapeake Hosp. Auth. v. Commonwealth*, 262 Va. 551, 560, 554 S.E.2d 55, 59 (2001).[27]

The Court also recognized that the tax department's rulings are only accorded judicial notice and nothing more pursuant to Virginia Code § 58.1-203.[28] This subject begs the question of why the tax department will not promulgate regulations so multistate businesses have the necessary regulatory guidance to comply with Virginia's BPOL tax laws. Simply put, there would not have been an issue in dispute in the *Nielsen* case had the tax department simply promulgated a regulation instead of publishing its desired BPOL deduction methodology in a ruling that Virginia courts and Virginia taxpayers are not entitled to rely upon as precedent.

The Virginia Department of Taxation will not promulgate tax regulations

The issue of promulgating tax regulations in Virginia is contentious. Regulations interpreting tax statutes typically are more desirable than regulations in other areas of law because tax regulations provide answers and more certainty when trying to determine how tax statutes that frequently are in-artfully worded or are somewhat ambiguous apply to them. Both the Tax Policy Committee of the Virginia Chamber of Commerce and the Taxation Committee of the Virginia Bar Association have expressed their belief on numerous occasions to the tax commissioner that the tax department should put forth more of an effort promulgating new and updating existing tax regulations.

Unfortunately, there does not appear to be much interest from the tax department to devote resources to this endeavor. Members of the Tax Policy Committee of the Virginia Chamber of Commerce and the Taxation Committee of the Virginia Bar Association first met with the tax commissioner and his senior staff approximately five years ago. During this meeting, it was expressed to the tax commissioner that the Chamber would assist the tax department in its efforts to restart the regulation process so tax compliance and certainty could be improved. Note that this is the odd situation where business representatives asked the government to write regulations.

The business community's pleas apparently fell on deaf ears. Subsequent meetings between the various business community stakeholders and the tax department leadership were equally unsuccessful even though the tax department recognized the importance and need for tax regulations in many areas of mutual interest. The tax department's inaction with tax regulations can also be observed on the Virginia Regulatory Town Hall website operated by the Virginia Department of Planning and the Budget.[29] The Town Hall website shows that the last activity for any chapter of the Virginia Administrative Code for which the tax department is responsible occurred in 2009.[30] Furthermore, the Town Hall website shows that the tax department has seventeen actions pending.[31] All seventeen actions were initiated by the tax department between late 2006 and early 2008.[32] None of the pending actions have advanced beyond the initial notice stage referred to as the NOIRA (Notice of Intended Regulatory Action).[33]

Rulings and guidelines are not the answer

The tax department has all but abandoned issuing tax regulations. Instead, since 1980 the department has issued approximately 8,800 "public documents," an average of about 245 per year. These "public documents" consist of rulings of the tax commissioner on assessment appeals and refund requests, advisory opinions, and other bulletins and announcements. "Public documents" can cover all of the taxes administered by the tax department plus some local taxes. While it is notable that Virginia releases such documents publicly unlike many other states, such "public documents" are not precedential and receive no deference in a judicial setting.

The tax department last performed a major update of the tax regulations in 1985. In many cases when a new tax policy has been enunciated in a post-1985 public document, the tax regulations have not been updated. The tax regulations also have not been updated to reflect opinions of the Supreme Court of Virginia.[34] Because the regulations have not been updated, Virginia taxpayers in need of more certainty on tax positions must hire advisors simply to comply with the

commonwealth's tax laws. While that is good news for lawyers and CPAs who specialize in Virginia taxation, it is not necessarily financially good news for the taxpayers themselves. The tax department's own auditors must also negotiate the thousands of public documents issued by the tax department in an attempt to find the right tax policy when conducting audits of taxpayers.
The tax department has begun to issue or release "guidelines" as an alternative to tax regulations. Guidelines are provided for in Virginia Code section 58.1-204(A)(4) by requiring the tax commissioner to publish guidelines that he believes "may be of interest to taxpayers and practitioners."[35] It is unclear if anyone asked the tax department to issue such guidelines as both the business community and the legal community has asked for regulations, not guidelines, which taxpayers, the tax imposing authorities, and the Virginia judiciary may rely upon.

The process for issuing guidelines in this manner is easier and less cumbersome. It is the view of the authors that what makes guidelines easier to issue is that there is nothing in the Virginia Code that establishes a procedure for how such guidelines are developed. When writing guidelines, the tax department tries to follow the comment periods provided for in the Administrative Process Act (APA) that are required for the promulgation of regulations. However, the tax department will abandon this practice when it deems it necessary. By writing guidelines completely within the tax department, reviews by other executive branch agencies and the Attorney General of Virginia that are required by the APA for the promulgation of regulations are avoided. The result is a simple statement by the tax department of what it believes to be its policy.

Recognizing the lack of review, the General Assembly chose to give guidelines no weight and solely afforded them judicial notice.[36] Knowing that guidelines receive no formal review outside of the tax department and receive no weight by the judicial system, how can tax lawyers and other tax practitioners advise clients to rely on them? Of all the different state agencies, the tax department probably has the most diect contact with Virginia citizens. Despite that, the tax department has not issued regulations under the APA and instead provides unreviewed policy through the use of guidelines that have no precedential value, thus leading to uncertainty, expense, and litigation that may otherwise be avoided.

Endnotes:

1 Craig D. Bell and J. Christian Tennant, *Is Your Client Overpaying BPOL Tax?*, VIRGINIA LAWYER, Vol. 58/No. 3, (October 2009) at 24.

2 As a temporary measure, the tax department issued BPOL tax guidelines instead of regulations prior to 2008.

3 *City of Lynchburg v. English Construction Company, Incorporated, et al.*, 277 Va. 574, 584; 675 S.E.2d 197, 202 (2009).

4 *Ford Motor Credit Company v. Chesterfield County*, 281 Va. 321; 707 S.E.2d 311 (2011).

5 *The Nielsen Company LLC v. County Board of Arlington County*, 289 Va. 79, 767 S.E.2d 1 (2015).

6 *Nielsen*, 289 Va. at 86.

7 *Nielsen*, 289 Va. at 99.

8 *Nielsen*, 289 Va. at 95.

9 *Nielsen*, 289 Va. at 85.

10 *Id.*

11 *Nielsen*, 289 Va. at 86.

12 *Id.*

13 Ruling of the Virginia Tax Commissioner, Public Document (P.D.) 12-146 (August 31, 2012).

14 Ruling of the Virginia Tax Commissioner, P.D. 12-88 (May 31, 2012).

15 *Nielsen*, 289 Va. at 94.

16 *County Board of Arlington County, Virginia, et al. v. The Nielsen Company (US), LLC*, Case No. CL12-2872, Pg. 5 (County of Arlington Circuit Court, November 19, 2013).

17 Post-trial brief of the respondent at 8, *County Board of Arlington County, Virginia, et al. v. The Nielsen Company (US), LLC*, Case No. CL12-2872 (County of Arlington Circuit Court, November 19, 2013).

18 Post-trial brief of the respondent at 12-13, *County Board of Arlington County, Virginia, et al. v. The Nielsen Company (US), LLC*, Case No. CL12-2872 (County of Arlington Circuit Court, November 19, 2013).

19 *Nielsen*, 289 Va. at 99.

20 *Nielsen*, 289 Va. at 96.

21 *Id.*

22 *Nielsen*, 289 Va. at 97.

23 *Id.*

24 *Nielsen*, 289 Va. at 99.

25 *Nielsen*, 289 Va. at 89.

26 *Nielsen*, 289 Va. at 88 (*citing Superior Steel Corp. v. Commonwealth*, 147 Va. 202, 206, 136 S.E. 666, 667 (1927)).

27 *Nielsen*, 289 Va. at 89.

28 *Nielsen*, 289 Va. at 89 (*citing* Va. Code § 58.1-205(3); *Chesapeake Hosp.*, 262 Va. at 560, 554 S.E.2d at 59).

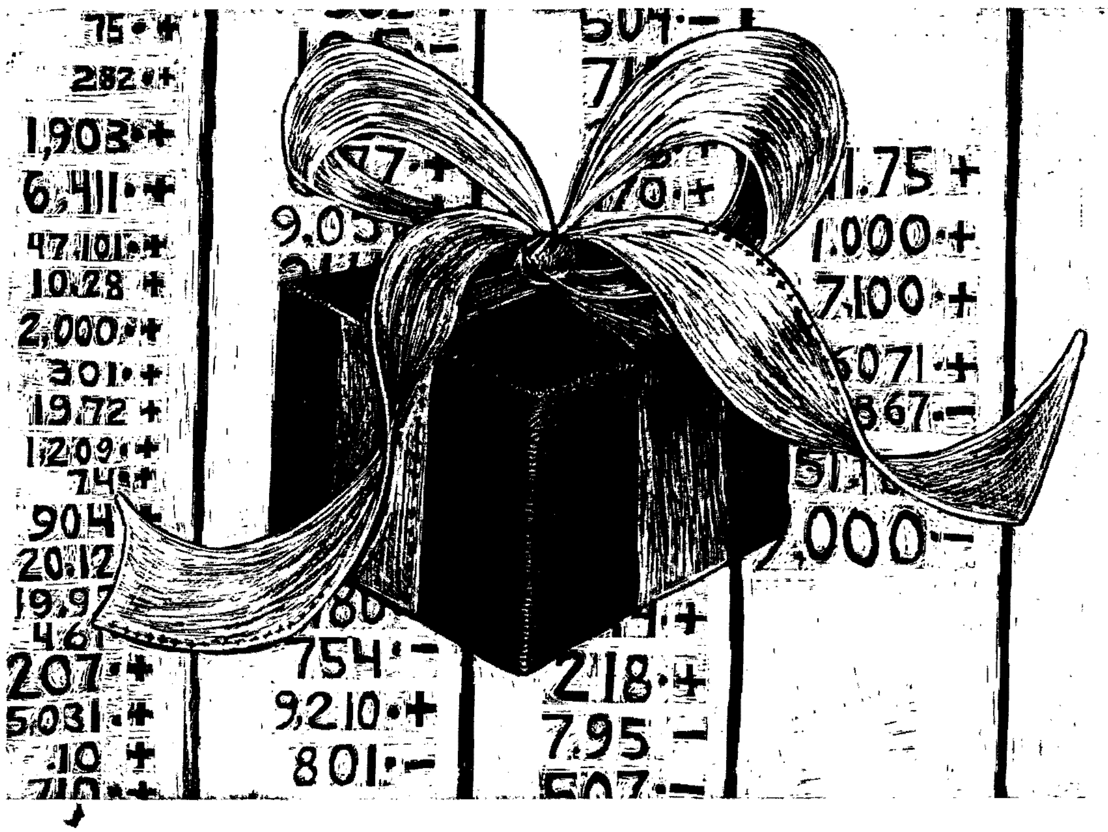
29 http://www.townhall.state.va.us/

30 https://www.townhall.virginia.gov/l/viewboard.cfm?boardid=75&display=chapters

31 https://www.townhall.virginia.gov/L/NowInProgress.cfm

Everything Old Is New Again:
The Virginia Department of Taxation's Attempt to Ignore the Limits of Collection

by Guy C. Crowgey, Robert H. Johnson, and Brockenbrough A. Lamb



On October 17, 2014, the commissioner of the Virginia Department of Taxation issued a Public Document (P.D. 14-177) in which he answered a taxpayer's request for a ruling on the period of limitations for collecting taxes.[1] Turning to § 58.1-1802.1(A) of the Code of Virginia, the commissioner argued "that so long as the any [sic] collection action is initiated or made before the end of the period of limitations, collection may continue until the assessment is satisfied."[2] According to the commissioner, a "collection effort" has occurrec when the Department of Taxation (department) "levies an assessment" on a taxpayer and "encompasses all means of collecting taxes enumerated under Virginia statutes."[3] In practice, this inte pretation of § 58.1-1802.1 permits the department to collect assessed taxes by wage garnishments, *liens, and any othe* means no matter how old the underlying liability.

The commissioner's ruling in P.D. 14-177 raises the question as to what is actually limited by § 58.1-1802.1. If the commissioner's ruling is correct, the department has the same ability to pursue a taxpayer for a liability incurred in 1990 as it does for one incurred in 2014 as long as the department has properly made an assessment. According to the commissioner, a collection effort has already begun once the tax is assessed. Since a liability must be assessed in order to exist, and P.D. 14-177 states the department need only begin a collection effort in order to collect beyond the statutory period, every Virginia tax liability is fair game for collection in perpetuity. This seems contrary to the intent of a code section titled "Period of limitations on collection."[4] Moreover, this statute does not limit the time for the department to assess a liability as that period is set out by Va. Code Ann. § 58.1-1812. If § 58.1-1802.1 does not limit the period of time the department actually has to collect the tax or limit the time the department has to assess a tax, then it does not limit anything at all except for the accrual of interest and penalties under certain circumstances.[5]

The Virginia General Assembly enacted § 58.1-1802.1 in 1990. Prior to this statute, there was no law specifically limiting the collection of tax by the department. Originally § 58.1-1802.1 set forth a limitation on collections of twenty years from the date of a proper assessment[6] of a tax.[7] Since then, the code section has been amended twice, first, in 2010 when the limit was reduced to ten years,[8] and again in 2012 when the limit was reduced to seven years.[9] Under the commissioner's ruling, it is unclear what, if anything, would have been changed by this reduction in years.

In both 2010 and 2012, the department issued impact statements in which it argued the reduced time periods would have little effect on the revenue generated from tax collections because it is unusual for the department not to have instituted a collection effort well before the specified time period.[10] These impact statements naturally dovetail nicely with the commissioner's later ruling in P.D. 14-177. Since the commissioner ruled in P.D. 14-177 that the collection effort commences when the department "levies an assessment," a reduction of the limitations period from twenty years to seven years would, in fact, have no effect on the department's ability to collect assessed liabilities.

It seems unlikely the General Assembly would have created and twice amended a law that is largely meaningless. Evidence that the commissioner has misunderstood the intent of the General Assembly is present in the legislative history. In 2012, the governor formally recommended to the General Assembly an amendment to § 58.1-1802.1, which suggested that the statute, as written, did not, in fact, provide for unlimited collection. The proposed amendment, which the General Assembly tellingly declined to adopt, would have inserted at the end of the statute the following language: "Nothing in this section shall prohibit the continuance of a collection activity begun within the period prescribed in subsection A[11] from continuing beyond that period."[12] Such an amendment would have explicitly allowed for the commissioner's position that the department may continue collection actions past the seven year limit,[13] but again, the General Assembly did not amend § 58.1-1802.1 to include it.

According to the Supreme Court of Virginia, in order to collect a tax, the commissioner must be able to point to a statute that positively and explicitly grants the department such authority.[14] A ruling by the commissioner involving the interpretation of a statute authorizing collection or assessment is presumed to be correct, but only on its face.[15] It may be challenged on the basis that it is "contrary to law, was an abuse of discretion, or was the product of arbitrary, capricious, or unreasonable behavior."[16] Though courts will give weight to the interpretations of the commissioner when statutes are ambiguous, they will never defer to the commissioner.[17] Furthermore, when a statute is unambiguous, a court will grant the interpretation of the commissioner no more consideration than that of a taxpayer.[18]

When it comes to his interpretation of § 58.1-1802.1 in P.D. 14-177, the commissioner has given the department substantial power well beyond the authority explicitly granted by the statute. In P.D. 14-177, the commissioner relies on and interprets a single sentence out of the entire statute:

> Where the assessment of any tax imposed by this subtitle has been made within the period of limitation properly applicable thereto, such tax may be collected by levy, by a proceeding in court, or by any other means available to the Tax Commissioner under the laws of the Commonwealth, but only if such collection effort is made or instituted within seven years from the date of the assessment of such tax.[19]

The commissioner considers this sentence in a vacuum, without the surrounding language, and then gives the taxpayer his "clear" interpretation.

The commissioner suggests that if a collection effort is merely "initiated" within seven years of a proper assessment, "any collection" at any time is good until the debt is repaid.[20] However, the sentence does not say that a collection is good so long as "any collection action is initiated or made before the end of the period"[21] but rather that a collection is good only if "such collection effort is made or instituted"[22] within the period. Even if the statute were limited to this single sentence,[23] it does not say what the commissioner needs it to say. Instead, this sentence, on its own, explicitly limits the collection of taxes to those specific collection actions made or instituted before the expiration of the period of limitations and, as such, is unambiguously at odds with the commissioner's ruling.[24] The commissioner's ruling becomes even more unreasonable once the sentence is read in conjunction with the rest of the statute, as it would require much of 58.1-1802.1 to be meaningless.

Take for instance the following language from § 58.1-1802.1(A) which immediately follows the sentence relied on by the commissioner in P.D. 14-177:[25] "[p]rior to the expiration of any period for collection, the period may be extended by a written agreement between the tax commissioner and the taxpayer."[26] Why would it be necessary to extend a period for collections, especially by written agreement, if all the department has to do to make a collection period last forever is to "lev[y] an assessment"[27] on the taxpayer? Or to ask it another way, why would the General Assembly provide the department with such a meager method of extending a collection period when it has already (according to the commissioner) granted it the tremendous ability to collect a tax in perpetuity?

In the very next sentence of § 58.1-1802.1(A), the General Assembly lists its exceptions to the general "period of limitations provided in this subsection during which a tax may be collected."[28] This language, which directly contradicts the commissioner's ruling, explicitly marks the statute as a general limitation on the time period for collections (with certain listed exceptions). The commissioner, however, rules that the statute does not limit the time period for collections but rather merely limits the time period for the initiation of collections. This reading is likely incorrect because the language of the statute here identifies § 58.1-1802.1 as a straightforward limitation on collections. Moreover, a limitation on the initiation of collections is mean ingless when, as the commissioner contends, a collection is initiated by the assessment itself.

To arrive at his understanding of the statute, the commissioner seems to put great weight on the fact that a "tax may be collected . . . if such collection effort is . . . instituted within seven years from the date of assessment."[29] If these specific words could be considered on their own, without the surrounding language of the statute, they might well suggest that § 58.1-1802.1 is an attempt to limit the time period for the initiation of tax collections rather than the time period for the collections themselves. However, given the surrounding language, such an interpretation is flawed.

Considering the statute as a whole, it seems likely that the General Assembly intended to create something like the general federal Collection Statute Expiration Date (CSED), which applies to IRS collections. Using similar language to § 58.1-1802.1, the CSED provides that "[w]here the assessment of any tax imposed by this title has been made within the period of limitation properly applicable thereto, such tax may be collected by levy or by a proceeding in court, but only if th levy is made or the proceeding begun . . . within 10 years after the assessment of the tax."[30] As in the Virginia statute, the federal CSED mentions that a tax may be collected if a collection proceed ing is made or begins before the expiration of th collection period;[31] however, unlike § 58.1-1802. the CSED statute has always been interpreted to be a general limitation on the time period for co lecting a tax (limiting it to ten years).[32] The IRS interpretation makes sense as such language is easily read to mean that a collection is good to th extent that it is initiated during the statutory period described. Interpreting § 58.1-1802.1 in a similar fashion, the Virginia statute allows that even if a collection cannot be completed during the statutory period, it may still be instituted and partially made during that period. While this reading requires a small degree of interpretation it does not upend the statute.

Until the commissioner's ruling is challenge and overturned by the courts, it will likely remai the stated policy of the department. Such a challenge may be particularly slow in coming given the high cost of litigation when compared with the relatively low-cost administrative avenues fo the resolution of outstanding tax assessments.