Taxation: Review of Local Taxes.


Taxpayer may not use accord and satisfaction methods of Uniform Commercial Code to remedy disputed local tax liability. Tax Code provides administrative and judicial remedies for resolution of disputed tax assessments. No statutory authority permits taxpayer to resolve disputed tax liability by withholding payment of penalty and interest from check submitted to treasurer accompanied by statement that acceptance of partial payment of taxes constitutes full satisfaction of assessment.

The Honorable Alfred C. Anderson
Treasurer for Roanoke County
April 20, 1999

You ask whether a treasurer is bound by the accord and satisfaction provisions of § 8.3A-311 of the Code of Virginia, should the treasurer accept and negotiate a taxpayer’s check for partial payment of his personal property tax assessment.

You present a factual situation in which a taxpayer disputes his liability for the penalty and interest imposed for late payment of his personal property taxes. You state that the taxpayer submitted to your office a check in the amount of the tax only, requesting by attached letter that the treasurer cash the check only if the treasurer agrees that the taxpayer's debts to the county are "paid in full."

Section 8.3A-311 is a portion of the negotiable instruments provisions of the Uniform Commercial Code. Section 8.3A-311 provides an informal method whereby the amount of a disputed claim may be resolved by use of a negotiable instrument. Under the conditions specified in the section, a claim is discharged if paid by an instrument containing or accompanied by a conspicuous statement that the instrument was tendered in full satisfaction of the claim and if the claimant obtains payment of the instrument.

A taxpayer may not use the dispute resolution remedy provided for commercial transactions under § 8.3A-311 as a remedy for a disputed local tax liability. The remedies for resolving disputed tax assessments, including the imposition of penalties and interest for the late payment of taxes, are set out in Title 58.1. Sections 58.1-3980 through 58.1-3983 and §§ 58.1-3990 through 58.1-3992 provide administrative remedies for correction of the erroneous assessments of local taxes, and §§ 58.1-3984 through 58.1-3989 provide a judicial remedy for erroneous tax assessments. There clearly is no statutory authority permitting a taxpayer to resolve a disputed tax assessment by withholding payment of the disputed amount and stating that acceptance of partial payment constitutes full satisfaction of the assessment.

Section 8.3A-311 provides: "(a) If a person against whom a claim is asserted proves that (i) that person in good faith tendered an instrument to the claimant as full satisfaction of the claim, (ii) the amount of the claim was unliquidated or subject to a bona fide dispute, and (iii) the claimant obtained payment of the instrument, the following subsections apply.

"(b) Unless subsection (c) applies, the claim is discharged if the person against whom the claim is asserted proves that the instrument or an accompanying written communication contained a
conspicuous statement to the effect that the instrument was tendered as full satisfaction of the claim.

"(c) Subject to subsection (d), a claim is not discharged under subsection (b) if either of the following applies:

"(1) The claimant, if an organization, proves that (i) within a reasonable time before the tender, the claimant sent a conspicuous statement to the person against whom the claim is asserted that communications concerning disputed debts, including an instrument tendered as full satisfaction of a debt, are to be sent to a designated person, office, or place, and (ii) the instrument or accompanying communication was not received by that designated person, office, or place.

"(2) The claimant, whether or not an organization, proves that within ninety days after payment of the instrument, the claimant tendered repayment of the amount of the instrument to the person against whom the claim is asserted. This paragraph does not apply if the claimant is an organization that sent a statement complying with paragraph (1)(i).

"(d) A claim is discharged if the person against whom the claim is asserted proves that within a reasonable time before collection of the instrument was initiated, the claimant, or an agent of the claimant having direct responsibility with respect to the disputed obligation, knew that the instrument was tendered in full satisfaction of the claim."

2 The Uniform Commercial Code consists of titles 8.1 to 8.11.

3 See § 8.3A-311 Official Comment.

4 Section 8.3A-311(a), (b), (d).

5 The purpose of the Uniform Commercial Code is to clarify and make uniform among the various states "the law governing commercial transactions." Section 8.1-102(2)(a).

6 Penalty and interest, when imposed, are considered a part of the tax assessment. Section 58.1-3916.