

COMMONWEALTH of VIRGINIA

Department of Taxation
Richmond, Virginia 23282

DIRECTIVE 86-2
MARCH 25, 1986

SUBJECT: Jeopardy Assessments

EFFECTIVE DATE: January 1, 1986

EXPIRATION DATE: N/A

SUPERSEDES: All previous documents and any oral directives in conflict herewith.

REFERENCES:

- § 58.1-313 Jeopardy assessment; income taxes
- § 58.1-631 Jeopardy assessment; sales tax
- § 58.1-1804 Third party lien
- § 58.1-1805 Memorandum of lien

AUTHORITY: § 58.1-202, General powers and duties of Tax Commissioner.

PURPOSE: To announce changes in the procedure for making jeopardy assessment which are required by the recodification of Title 58.1.

INSTRUCTIONS AND PROCEDURES:

A. Definition of jeopardy assessment.

1. A jeopardy assessment has the same requirements and legal effect as an ordinary assessment defined in Section 58.1-1820. It is a determination that an amount of tax, penalty and interest is due and is deemed to be made when a written notice of assessment is mailed to the taxpayer at his last known address or personally served upon him.

2. In addition, a jeopardy assessment requires a finding that the collection of any amount of income, sales or use tax (including penalty and interest) will be jeopardized by delay. A finding that collection will be jeopardized by delay requires that there be some evidence that the taxpayer designs:

- (a) to depart quickly from Virginia, or
- (b) to remove his property from Virginia, or
- (c) to conceal himself or his property, or
- (d) to do any other act tending, to prejudice or to render wholly or partially ineffectual proceedings to collect the income, sales or use tax for the period in question.

3. In addition, when a substantial tax is anticipated to be due for a taxable period which has not ended or, if ended, for which a return is not yet due, and evidence indicates that collection of the tax will be jeopardized by delay, then the taxable period may be terminated. A notice of the termination must be mailed to, or served on, the taxpayer along with the jeopardy assessment for the terminated taxable period. A Notice of Termination form is attached as Exhibit A.

4. Once issued, a jeopardy assessment has the same effect as any other assessment except that the Department may immediately issue a third party lien or a memorandum of lien under Virginia Code §§ 58.1-1804 and 58.1-1805. Also, if a taxpayer files an application under § 58.1-1821, the Department is not required to refrain from collecting the assessment while the application is pending.

B. Responsibility for Jeopardy Assessments.

1. Jeopardy assessments and termination notices shall be issued only upon authorization of the Tax Commissioner or the Deputy Tax Commissioner authorized to act in the absence of the Tax Commissioner.

2. Jeopardy assessments require the gathering of accurate information from many sources within and without the Department, processing and personal delivery of notices to the taxpayer or law enforcement personnel. Personnel in other sections and divisions who are requested to assist in making a jeopardy assessment, or to take other action concerning a jeopardy assessment, shall handle such request with the highest priority and greatest speed possible.

C. Information to be Gathered.

1. The department must have sufficient information to provide a reasonable basis under the circumstances for finding that collection of tax is in jeopardy and determining the amount of liability. The urgency of each situation will rarely allow enough time to gather all, or even most, of the information suggested below. After a jeopardy assessment has been made Department personnel may continue to seek additional information.

2. Information shall be obtained from any and all sources deemed to be reliable. Where jeopardy assessments involve taxpayers arrested for a crime and property seized in conjunction with an arrest, most information will be obtained from law enforcement personnel, commonwealth attorneys, court records and the Internal Revenue Service.

3. Information relevant to a determination that jeopardy exists may include: prior criminal record, present fugitive status from charges in other jurisdictions, possession of airline tickets or other information indicating an intention to leave the Commonwealth, use of aliases, use of nominees in the ownership of property, other information showing an intent to conceal property, record of resisting, evading or ignoring taxes, financial condition, employment record, and all circumstances surrounding an arrest. The possession of a large amount of cash and other property without any business records or other explanation of the origins of such property (particularly if the property is in the nature of inventory) may indicate that the taxpayer deliberately failed to keep, or concealed, business records in order to evade the payment of income, sales or use tax. Taxes owed by corporations, estates, trusts and partnerships may also be in jeopardy if, for example, the entity is planning to leave the Commonwealth or dissolve itself without payment or provision for taxes owed.

4. Information relevant to the determination of the amount of an assessment may include financial information (i.e. net worth, earnings), information on illegal activities from police surveillance (especially the size of transactions and length of time engaged in), inventory, equipment and other property indicating the size of a business operation and the length of time in operation, any business or financial records, value of cash, property or contraband seized during an arrest. (If any property appears to be inventory obtain the cost to taxpayer and the resale value.) Where there is any information indicating that the

taxpayer has been engaged in an illegal and/or unreported business, the Department personnel shall obtain as much general information as may be available on the particular type of business engaged in by the taxpayer for use in estimating sales and income.

5. Information relevant to cash or other property against which the department may assert a lien may include the amount, nature and value of cash or other property, ownership, location and who presently has custody and control of the property.

D. Analysis and Recommendation

1. Although the Tax Commissioner is the only person authorized to decide if a jeopardy assessment shall be issued, Department personnel must exercise judgment in obtaining the information necessary to recommend such action to the Tax Commissioner.

2. It is recognized that the urgency of many jeopardy situations requires quick action to protect the Commonwealth's right to collect a tax even though the information available at the time may not be complete. Care should be taken to avoid excessive and unreasonable assessments. A jeopardy assessment will not be recommended unless there is some evidence which provides a reasonable basis under the circumstances for believing that a tax is owed and the amount of such tax. An assessment equal to or greater than the amount of money or other valuable property held by a person at the time of arrest is not considered a reasonable computation unless supported by other facts.

3. Pursuant to Virginia Code §§ 58.1-618 and 58.1-631 use tax may be assessed upon the cost value of any tangible personal property which appears to be used in an illegal business and on which no sales tax appears to have been paid. In addition, sales tax may be assessed based upon any evidence indicating that sales have occurred in Virginia.

4. Pursuant to Virginia Code § 58.1-313 income tax (including withholding and estimated) may be assessed based upon any evidence indicating that income has been earned. The procedures set forth in the Internal Revenue Service Audit Manual, Exhibit 4580-5, may be used to compute the amount of the assessment. A copy of these procedures is set forth in Exhibit B. Other procedures may also be used.

5. Such assessments may be for the current and any prior periods for which evidence of liability for income, sales or use tax, or any combination thereof, exists. Where an assessment is for a prior period all applicable penalties and interest shall be included. Where an assessment is for a current terminated period no penalties or interest shall be included.

6. Due to the extraordinary nature of a jeopardy assessment and the time and expense necessary to prepare one, Department personnel shall not recommend jeopardy assessments unless the total of all property subject to seizure or other circumstances indicate a reasonable probability that the Commonwealth will collect at least \$5,000. In other cases normal assessment procedures shall be followed unless the Division Director of OSD or FSD approves the recommendation of a jeopardy assessment for amounts less than \$5,000.

7. When Department personnel receive additional and reliable information which indicates that a jeopardy assessment should be adjusted, any of the following actions may be taken prior to the filing of an application under Section 58.1-1821:

- a) Abate, following normal procedures, the portion of the assessment clearly shown to be excessive.
- b) Recommend an additional jeopardy assessment to the Commissioner.
- c) Assess additional tax, penalty and interest following normal procedures where collection is not found to be in jeopardy or the amount is not large enough to justify a jeopardy assessment.

If an application under Section 58.1-1821 is pending, Department personnel shall submit proposed adjustments to the Tax Policy Division for approval.

E. Administration and Procedure

1. Department personnel shall prepare:
 - a) Notices of Assessment on which shall be typed "JEOPARDY ASSESSMENT DUE AND PAYABLE IMMEDIATELY".
 - b) Termination Notices, if required. (See Exhibit A.)
 - c) A memo to the Tax Commissioner explaining the circumstances and requesting approval for the jeopardy assessments. (See Exhibit C.)

- d) If the property to be seized is cash or similar property in the possession of any person unrelated to the taxpayer (e.g., sheriff, police officer, clerk of court, bank, employer, etc.), then either a Third Party Lien under § 58.1-1804 or a Memorandum of Lien under § 58.1-1805 may be prepared.
- e) If the property to be seized must be sold and converted into cash or if it is in the possession of the taxpayer or a member of his family, then personnel shall prepare a Memorandum of Lien under § 58.1-1805 and a letter requesting a Writ of Fieri Facias from the clerk of the circuit court (No writ is necessary if the property is real estate).

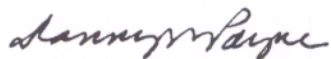
2. If it appears that the property to be seized may be held by law enforcement personnel for use as evidence, the following shall be typed on the Third Party Lien or the letter requiring the writ of Fieri Facias:

If the assets held by the person served must be retained as evidence or until court authorized release, a copy of (this Notice of Lien) (the writ) showing the date and time of service should be kept with the assets until the assets are delivered to the Department of Taxation. Said assets shall not be released to anyone else without the written approval of the Department of Taxation. If there are any questions, please contact (Name - phone number).

The appropriate contact person shall be named and sufficient copies of the Notice of Lien shall be prepared so that a copy can be placed with each and every asset.

3. The written "Notice of Assessment" must be served on or mailed to the taxpayer before a Third Party Lien or Memorandum of Lien can be issued. Because all documents connected with a jeopardy assessment are prepared at the same time, special care must be taken in order to prove that the Notice of Assessment has been served on the taxpayer, or mailed to the taxpayer's last known address, before a Third Party Lien is served on a person or a Memorandum of Lien is recorded. The person mailing or serving the assessment shall prepare and sign an affidavit showing the date, time and place where the Notice of Assessment was placed in the custody of the U. S. Post Office or the date, time, place and person on whom service was made. (See Exhibit D.)

IMPLEMENTATION: The Office of Tax Operations is responsible for investigation, preparation of recommendations and forms, and for follow up activities related to jeopardy assessments.



Danny M. Payne, Director
Tax Policy Division



W. H. Ferst
Tax Commissioner

NOTICE OF TERMINATION
PURSUANT TO:

____ Section 58.1-313
Income Tax

____ Section 58.1-631
Sales and Use Tax

I, William H. Forst, Tax Commissioner of the Commonwealth of Virginia, find that the collection of tax, penalty and interest owed by the taxpayer described below for the current taxable period will be jeopardized by delay.

Accordingly, I declare the current taxable period terminated as of the date specified below and demand immediate payment of the tax for the current taxable period through the date of termination. Pursuant to the applicable section of the Code of Virginia, such tax and any assessments for the current and all prior periods are immediately due and payable.

Taxpayer: _____	Taxable Period
Last known _____	beginning: _____
address: _____	and ending: _____
	I.D. No.: _____

Witness my signature and seal this ____ day of _____, 19__.

Tax Commissioner (SEAL)

Commonwealth of Virginia
City of Richmond

The foregoing instrument was acknowledged before me this ____ day of _____, 19__ by William H. Forst, Tax Commissioner of the Commonwealth of Virginia.

Notary Public

My Commission expires:

Examples of Income Computation

(1) Net Worth and Expenditures Method (Cost of Habit)—The taxpayer was arrested for possession of narcotics on June 3, 1978. At the time of his/her arrest he had in his/her possession \$2,300 in cash which is now in the possession of DEA. From local narcotics authorities it was learned that the taxpayer spends about \$100 per day on his/her habit. The taxable income is computed as follows:

Cost of habit (\$100/day × 155 days)	\$15,500
Living Expenses (\$13/day × 155 days)	2,015
Cash on hand when arrested	<u>2,300</u>
Adjusted Gross Income	\$19,815
Less:	
Exemption	\$750
Excess itemized Deductions	<u>0</u>
Taxable income	\$19,065

(2) Net Worth and Expenditures (Cost of Drugs Seized)—Mr. John Jones was arrested on August 4, 1978, by a State police officer and was charged with violation of Narcotics laws. The arresting officer discovered 10 pounds of pure heroin as well as \$12,000 in cash at his residence. The local Narcotics authorities stated that the cost of pure heroin was approximately \$100,000 per pound. There had been a prior indictment against the taxpayer for the importation of heroin. His income is computed as follows:

Cash on hand when arrested	\$12,000
Cost of heroin (10 lbs. @ \$100,000 per lb.)	1,000,000
Living Expenses (\$13/day × 217 days)	<u>2,821</u>
Adjusted Gross Income	\$1,014,821
Less:	
Exemption	\$750
Excess itemized Deductions	<u>0</u>
Taxable income	\$1,014,071

(3) Source and Application of Funds—Taxpayer was arrested for possession of narcotics on July 27, 1978. At the time of arrest the taxpayer had on his/her person \$4,947 and a small amount of drugs. Taxpayer stated to the arresting office that a truck seized was purchased for cash on May 19, 1972, for \$1,986. Income is computed as follows:

Funds Applied:	
Cash on hand increased	\$4,947
Purchase of truck	6,986
Living expenses	<u>2,717</u>
(\$13/day × 209 days)	
Total funds applied	\$14,650
Funds provided:	
Adjusted Gross income	\$14,650
Adjusted Gross income determined	\$14,650

Less:	
Exemption	\$750
Excess itemized Deductions	<u>0</u>
Taxable income	\$13,900

(4) Sales of Heroin—It was determined by D.E.A. that Mr. Smith bought and sold three to four kilos of heroin per month. D.E.A. also stated that Mr. Smith, during the current year, had purchased 10 kilos of heroin @ \$45,000 per kilo and sold 10 kilos @ \$60,000 per kilo. His income is computed as follows:

Gross Sales (10 kilos @ \$60,000)	\$600,000
Purchase (10 kilos @ 45,000)	<u>450,000</u>
Profit	\$150,000
Less:	
Exemption	\$750
Excess itemized Deductions	<u>0</u>
Taxable income	\$149,250

(5) Sale Price—

(a) Surveillance by undercover agents of the D.E.A. revealed that Joe Winter and Jack Spring are partners dealing in drugs. Pure LSD in crystal form is purchased and "cut" to a reduced purity for subsequent sale. Undercover agents, on two occasions, purchased LSD in a "cut" form. The purchases were for \$3,500 and \$1,500 in official Government funds, at the rate of \$1,500 for one "cut" gram of LSD.

(b) The taxpayers were arrested on May 11, 1978. Winter was arrested inside of a camp bus and Spring was arrested nearby.

(c) A search by the undercover agents revealed \$2,000 in Winter's possession and \$4,030 in Spring's possession.

(d) A search of the vehicle revealed a receipt for a telegraphic money order in the amount of \$5,200 to a California resident with a drug history and one "cut" gram of LSD. Subsequent investigation revealed a second receipt in the amount of \$4,500.

(e) Undercover agents of the D.E.A. have estimated the cost to the taxpayers for one pure gram of LSD at \$900. Also, based on a chemical analysis by D.E.A., it was determined that a pure gram was being cut to realize 3.163 grams of LSD in a selling form.

(f) The selling price was \$1,500 per "cut" gram.

(g) Narcotics agents believe the money order of April 5, 1978, for \$4,500 was for the purchase of 5 "pure" grams of LSD. Five "pure" grams yield 15.815 grams in "cut" form.

MT 4500-351

Exhibit 4580-5

Examples of Income Computation

(1) Net Worth and Expenditures Method (Cost of Habit)—The taxpayer was arrested for possession of narcotics on June 3, 1978. At the time of his/her arrest he had in his/her possession \$2,300 in cash which is now in the possession of DEA. From local narcotics authorities it was learned that the taxpayer spends about \$100 per day on his/her habit. The taxable income is computed as follows:

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Less:	
Exemption	\$750
Excess itemized Deductions	<u>0</u> 750
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Adjusted Gross Income	\$1,014,821
Less:	
Exemption	\$750
Excess itemized Deductions	<u>0</u> 750
Taxable income	\$1,014,071

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Adjusted Gross income determined	<u>\$14,650</u>

Less:	
Exemption	\$750
Excess itemized Deductions	<u>0</u> 750
Taxable income	\$13,900

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Purchase (10 kilos @ 45,000)	<u>450,000</u>
Profit	\$150,000
Less:	
Exemption	\$750
Excess itemized Deductions	<u>0</u> 750
Taxable income	\$149,250

(5) Sale Price—

(a) Surveillance by undercover agents of the D.E.A. revealed that Joe Winter and Jack Spring are partners dealing in drugs. Pure LSD in crystal form is purchased and "cut" to a reduced purity for subsequent sale. Undercover agents, on two occasions, purchased LSD in a "cut" form. The purchases were for \$3,500 and \$1,500 in official Government funds, at the rate of \$1,500 for one "cut" gram of LSD.

(b) The taxpayers were arrested on May 11, 1978. Winter was arrested inside of a camp bus and Spring was arrested nearby.

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(f) The selling price was \$1,500 per "cut" gram.

(g) Narcotics agents believe the money order of April 5, 1978, for \$4,500 was for the purchase of 5 "pure" grams of LSD. Five "pure" grams yield 15.815 grams in "cut" form.

MT 4500-351

Exhibit 4580-5 Cont.**Examples of Income Computation**

(h) The money order for \$5,200 was believed to be for six "pure" grams of LSD yielding 18.978 grams in cut form.

Tax Computation:

Sales to DEA agents	
Selling price.....	\$3,500
Cost.....	665
Profit.....	<u>\$2,835</u>
Selling Price.....	\$1,500
Cost.....	285
Profit.....	<u>\$1,215</u>

Other Sales:	
15.815 grams @ \$1,500.....	\$23,722
Cost.....	4,500
Profit.....	\$19,222
18.978 grams @ \$1,500.....	\$28,467
Cost.....	5,200
Profit.....	<u>\$23,267</u>
Summation of all profits.....	\$47,754
One-half for each partner.....	\$23,877
Less:	
Exemption.....	\$750
Excess itemized Deductions.....	0
Taxable income to each.....	<u>\$23,127</u>

[The next page is 8205.]

Exhibit 4580-5 Cont.**Examples of Income Computation**

(h) The money order for \$5,200 was believed to be for six "pure" grams of LSD yielding 18.978 grams in cut form.

Tax Computation:

Sales to DEA agents	
Selling price	\$3,500
Cost	665
Profit	<u>\$2,835</u>
Sales to DEA agents	
Selling Price	\$1,500
Cost	285
Profit	<u>\$1,215</u>

Other Sales:		
15.815 grams @ \$1,500	\$23,722	
Cost	4,500	
Profit	\$19,222	
18.978 grams @ \$1,500	\$28,467	
Cost	5,200	
Profit	<u>\$23,267</u>	
Summation of all profits		\$47,754
One-half for each partner		\$23,877
Less:		
Exemption	\$750	
Excess itemized Deductions	0	750
Taxable income to each		<u>\$23,127</u>

[The next page is 8205.]

AUTHORIZATION TO ISSUE JEOPARDY ASSESSMENTS

Taxpayer: John Q. Public
 500 Main Street
 Richmond, VA 23219

230-12-3456

<u>Tax Type</u>	<u>Period</u>	<u>Tax</u>	<u>Penalty</u>	<u>Interest to 8/1/83</u>	<u>Total</u>
Sales	April 1985	\$ 800.00	\$120.00	\$22.00	\$ 942.00
Sales	May 1985	800.00	80.00	11.35	891.35
Sales	June 1985	800.00	40.00	2.53	842.53
Sales & Use	July 1985	600.00	0.00	0.00	600.00
Income	to 7/15/85	<u>1,955.00</u>	<u>0.00</u>	<u>0.00</u>	<u>1,955.00</u>
Totals		<u>\$4,955.00</u>	<u>\$240.00</u>	<u>\$35.88</u>	<u>\$5,230.88</u>

Basis for assessment:

Mr. Public was arrested July 15, 1985 and charged with possession of controlled drugs with intent to distribute. At the time of the arrest, police seized cocaine with an estimated cost of \$5,000.00 and retail value of \$10,000.00 and cash in the amount of \$5,000.00.

Estimates are based on information from police sources that drug dealers normally keep no more than two weeks inventory on hand and that profit margins for cocaine are about 50%. It is assumed that Mr. Public sold drugs from April 1 to July 15, and that he turned over his inventory of drugs twice each month. Police indicated that they received information in April that Mr. Public was selling cocaine.

Mr. Public filed income tax returns for 1981 - 1984 showing only income from wages between \$12,000.00 - \$15,000.00. No sales tax return has ever been filed by Mr. Public.

Approved:

 W. H. Forst
 Tax Commissioner

 Date

Commonwealth of Virginia

City/County of _____

Affidavit

The undersigned affiant states that at _____ M on the _____ day of _____, 19 ____ the affiant caused _____ "Notice(s) of Assessment" dated _____ to be served on _____ (the taxpayer) by:

Mailing the "Notice(s) of Assessment" to the taxpayer at the address shown on the notice(s), certified mail, return receipt requested, at the U.S. Post Office or U.S. Mailbox noted below.

Personally serving the "Notice(s) of Assessment" on the person, and at the location, noted below.

_____ affiant

_____ title

The foregoing affidavit was subscribed and sworn before me this _____ day of _____, 19 _____, by _____.

_____ Notary Public

My commission expires: