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HOUSE BILL NO. 2325

Offered January 12, 2005

Prefiled January 11, 2005

A BILL to amend and reenact §§ 58.1-344, 58.1-393.1, and 58.1-453 of the Code of Virginia, relating to the filing of income tax returns.

 Patron—Hull

 Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-344, 58.1-393.1 and 58.1-453 of the Code of Virginia are amended and reenacted as follows:

§ 58.1-344. Extension of time for filing returns.

A. ~~Whenever any~~ *In accordance with procedures established by the Tax Commissioner, any individual or fiduciary has been allowed or granted may elect an extension or extensions of time within which to file any federal income tax return for any taxable year, the due date for the filing of the income tax return required under this chapter shall be extended to the date six months after such due date or fifteen days after the extended date for filing the federal income tax return, whichever is earlier, provided that the estimated tax due is paid in accordance with the provisions of subsection B.*

B. ~~In addition, the Department may grant an extension or extensions of time not to exceed six months for filing such income tax return, provided that the estimated tax due is paid in accordance with the provisions of subsection C.~~

~~C.~~ Any taxpayer desiring an extension of time in accordance with the provisions of subsection A ~~or B~~ shall, on or before the original due date for the filing of such return, in accordance with procedures established by the Tax Commissioner pay the full amount properly estimated as the balance of the tax due for the taxable year after giving effect to any estimated tax payments under § 58.1-491 and any tax credit under § 58.1-499. If any amount of the balance of the tax due is underestimated, interest at the rate prescribed in § 58.1-15 will be assessed on such amount from the original due date for filing of the income tax return to the date of payment. In addition to interest, if the underestimation of the balance of tax due exceeds ~~ten~~ 10 percent of the actual tax liability, there shall be added to the tax as a penalty an amount equal to ~~one-half of one~~ two percent per month for each month or fraction thereof from the original due date for the filing of the income tax return to the date of payment.

C. If the return is not filed, or the full amount of the tax due is not paid, on or before the extended due date elected under subsection A, the penalty imposed by § 58.1-347 shall apply as if no extension had been granted.

D. An extension of time for filing returns of income is hereby granted to and including the first day of the seventh month following the close of the taxable year in the case of United States citizens residing or traveling outside the United States and Puerto Rico, including persons in the military or naval service on duty outside the United States and Puerto Rico.

In all such cases a statement must be attached to the return certifying that the taxpayer is the person for whom the return is made and that the taxpayer was outside the United States or Puerto Rico on the due date of the return.

E. Notwithstanding any other provisions of law, any taxpayer who qualifies for an automatic extension under subsection D of this section, and who expects to qualify for foreign income exclusion may, on or before the expiration of the first day of the seventh month, apply for an additional extension of time for filing returns of income for a period of ~~thirty~~ 30 days after the date such taxpayer reasonably expects to qualify for such exclusion. Such extension may not be granted unless a similar request for extension has been made for filing the federal return. An approved copy of the federal extension must be attached to the return when filed.

F. 1. Notwithstanding any other provision of this section, the date for filing income tax returns and paying the tax due for the taxable year beginning on or after January 1, 1990, and before January 1, 1991, for members of the reserve components of the armed forces, as defined in 10 U.S.C. § 261, as amended, who on the original due date of such return were on active duty status, is hereby extended for a period of one year from the original due date of the return.

2. However, in the case of an individual who qualifies for a period of postponement under § 7508 of the Internal Revenue Code or an act of Congress relating to and defining "Desert Shield service" for purposes of the federal income tax, the deadline for filing income tax returns and paying the tax due shall be the date ~~fifteen~~ 15 days after the date on which the federal period of postponement terminates,

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59 if such date is greater than one year from the original due date of the return.

60 3. In all cases, an individual qualifying for an extension under either subdivision 1 or 2 of this
61 subsection shall attach a statement to the return containing such information as may be prescribed by the
62 Tax Commissioner.

63 G. 1. Notwithstanding any other provision of this section, the date for filing income tax returns and
64 paying the tax due for the taxable years beginning on or after January 1, 1995, and before January 1,
65 1997, for members of the Armed Forces of the United States, who on the original due date of such
66 return were on active duty status serving in any part of the former Yugoslavia, including the air space
67 above such location or any waters subject to related naval operations in support of Operation JOINT
68 ENDEAVOR as part of the NATO Peace Keeping Force, is hereby extended for a period of one year
69 from the original due date of the return.

70 2. However, in the case of an individual who qualifies for a period of postponement under § 7508 of
71 the Internal Revenue Code for purposes of the federal income tax, the deadline for filing income tax
72 returns and paying the tax due shall be the date ~~fifteen~~ 15 days after the date on which the federal period
73 of postponement terminates, if such date is greater than one year from the original due date of the
74 return.

75 3. In all cases, an individual qualifying for an extension under either subdivision 1 or 2 of this
76 subsection shall attach a statement to the return containing such information as may be prescribed by the
77 Tax Commissioner.

78 H. Any individual who receives an extension for filing an individual income tax return for taxable
79 year 1990 pursuant to subsection F or for taxable year 1995 pursuant to subsection G of this section
80 shall be paid interest on any overpayment of individual income tax for taxable year 1990 or 1995,
81 respectively, beginning from the date the return was originally required to be filed prior to the extension.

82 § 58.1-393.1. Extension of time for filing return by pass-through entity.

83 A. ~~Whenever any~~ *In accordance with procedures established by the Tax Commissioner, any*
84 ~~pass-through entity has been allowed or granted may elect~~ an extension of time within which to file ~~any~~
85 ~~federal report of its income for any taxable year, the due date for the filing of the report or return~~
86 ~~required by this article shall be extended~~ to the date six months after such due date, or 30 days after the
87 extended date for filing the federal report, whichever is later.

88 B. ~~In addition, the Department may grant an extension or extensions of time not to exceed a~~
89 ~~maximum of six months beyond the due date required by this article for filing such pass-through entity~~
90 ~~return. If the return is not filed on or before the extended due date elected under subsection A, the~~
91 ~~penalty imposed by § 58.1-394.1 shall apply as if no extension had been granted.~~

92 § 58.1-453. Extension of time for filing returns by corporations.

93 A. ~~Whenever any~~ *In accordance with procedures established by the Tax Commissioner, any*
94 ~~corporation has been allowed or granted may elect~~ an extension ~~or extensions~~ of time within which to
95 file ~~any federal income tax return for any taxable year, the due date for the filing of the income tax~~
96 ~~return required under this chapter shall be extended~~ to the date six months after such due date or
97 ~~thirty~~ 30 days after the extended date for filing the federal income tax return, whichever is later, provided
98 that the estimated tax due is paid in accordance with the provisions of subsection C.

99 B. ~~In addition, the Department may grant an extension or extensions of time not to exceed a~~
100 ~~maximum of six months for filing such income tax return, provided the estimated tax due is paid in~~
101 ~~accordance with the provisions of subsection C.~~

102 C. Any taxpayer desiring an extension of time in accordance with the provisions of subsection A ~~or~~
103 ~~B~~ shall, on or before the original due date for the filing of such return, in accordance with the
104 procedures established by the Tax Commissioner pay the full amount properly estimated as the balance
105 of the tax due for the taxable year after giving effect to any estimated tax payments under § 58.1-491
106 and any tax credit under § 58.1-499. If any amount of the balance of the tax due is underestimated,
107 interest at the rate prescribed in § 58.1-15 will be assessed on such amount from the original due date
108 for filing of the income tax return to the date of payment. In addition to interest, if the underestimation
109 of the balance of tax due exceeds ~~ten~~ 10 percent of the actual tax liability, there shall be added to the
110 tax as a penalty an amount equal to ~~one-half of one~~ two percent per month for each month or fraction
111 thereof from the original due date for the filing of the income tax return to the date of payment.

112 C. *If the return is not filed, or the full amount of the tax due is not paid, on or before the extended*
113 *due date elected under subsection A, the penalty imposed by § 58.1-450 or 58.1-455 shall apply as if no*
114 *extension had been granted.*

115 2. That the provisions of this act shall apply for taxable years beginning on and after January 1,
116 2005.