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HOUSE BILL NO. 2920

Offered January 10, 2007

Prefiled January 10, 2007

A BILL to amend and reenact § 58.1-312 of the Code of Virginia, relating to assessment of personal and corporate income taxes; statute of limitations for abusive tax avoidance transactions.

Patrons—Shannon, Amundson, Armstrong, BaCote, Barlow, Brink, Caputo, Ebbin, Eisenberg, Englin, Hall, Jones, D.C., Lewis, Miller, P.J., Moran, Plum, Poisson, Scott, J.M., Sickles, Toscano, Valentine and Watts

Referred to Committee on Finance

Whereas, abusive tax avoidance transactions, like those associated with the Enron Corporation, burgeoned in the 1990s, costing honest taxpayers across the country billions of dollars each year; and

Whereas, on March 4, 2004, in reaction to this problem the Commonwealth entered into a Memorandum of Agreement with the Internal Revenue Service and 34 other states to share information about abusive tax avoidance transactions; and

Whereas, abusive tax avoidance transactions still flourish and often are so hidden and complex that it can take years before they are detected; and

Whereas, a longer period of the statute of limitations for the Department of Taxation to take action against such transactions would help in the fight against abusive tax avoidance transactions; now, therefore,

Be it enacted by the General Assembly of Virginia:

1. That § 58.1-312 of the Code of Virginia is amended and reenacted as follows:

§ 58.1-312. Limitations on assessment.

A. The tax imposed by this chapter may be assessed at any time if:

1. No return is filed;

2. A false or fraudulent return is filed with intent to evade tax;

3. The taxpayer fails to comply with § 58.1-311 in not reporting a change or correction increasing his federal taxable income as reported on his federal income tax return, or in not reporting a change or correction which is treated in the same manner as if it were a deficiency for federal income tax purposes, or in not filing an amended return; or

4. The taxpayer fails to comply with § 58.1-311.1 by not reporting a change or correction decreasing the tax paid to another state for which a credit was claimed on his Virginia income tax return as a result of an examination conducted by any other state or an amended income tax return filed with any other state.

B. *The tax may be assessed within seven years after the return was filed, whether such return was filed on or after the date prescribed, if the return is based in whole or in part on an abusive tax avoidance transaction. A return of tax filed before the last day prescribed by law for the timely filing thereof shall be considered as filed on the last day. For purposes of this section, an "abusive tax avoidance transaction" means a transaction that does not have a lawful basis for reducing income taxes owed to the Commonwealth and that was entered into for the purpose of or has the effect of creating tax benefits with no other meaningful or legitimate economic purpose. If such return is false or fraudulent, an assessment may be made at any time whether or not the falsity or fraud is related to the abusive tax avoidance transaction.*

BC. If the taxpayer pursuant to § 58.1-311 or 58.1-311.1 reports a change or correction or files an amended return increasing his federal taxable income, decreasing the tax paid to another state, or reports a change or correction which is treated in the same manner as if it were a deficiency for federal income tax purposes, the assessment (if not deemed to have been made upon the filing of the report or amended return) may be made at any time within one year after such report or amended return was filed. The amount of such assessment of tax shall not exceed the amount of the increase in Virginia tax attributable to such federal change or correction. The provisions of this paragraph shall not affect the time within which or the amount for which an assessment may otherwise be made.

CD. If a deficiency is attributable to the application to the taxpayer of a net operating loss carry-back, or to a net capital loss carry-back, it may be assessed at any time that a deficiency for the taxable year of the loss may be assessed.

DE. An erroneous refund shall be considered an underpayment of tax on the date made, and an assessment of a deficiency arising out of an erroneous refund may be made at any time within two years from the making of the refund, except that the assessment may be made within five years from the

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57 making of the refund if it appears that any part of the refund was induced by fraud or misrepresentation
58 of a material fact.

59 *EF.* If a return is required for a decedent or for his estate during the period of administration, the tax
60 shall be assessed within eighteen months after written request therefor (made after the return is filed) by
61 the executor, administrator or other person representing the estate of such decedent, but not more than
62 three years after the return was filed, except as otherwise provided in this subsection.