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SENATE BILL NO. 357

Senate Amendments in [] — January 22, 2010

A *BILL to amend and reenact §§ 58.1-9, 58.1-478, and 58.1-615 of the Code of Virginia, relating to electronic filing of tax returns.*

Patron Prior to Engrossment—Senator Stosch

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-9, 58.1-478, and 58.1-615 of the Code of Virginia are amended and reenacted as follows:

§ 58.1-9. Filing of tax returns or payment of taxes by mail or otherwise; penalty.

A. When remittance of a tax return or a tax payment is made by mail, receipt of such return or payment by the person with whom such return is required to be filed or to whom such payment is required to be made, in a sealed envelope bearing a postmark on or before midnight of the day such return is required to be filed or such payment made without penalty or interest, shall constitute filing and payment as if such return had been filed or such payment made before the close of business on the last day on which such return may be filed or such tax may be paid without penalty or interest.

B. When remittance of a tax payment is made by electronic funds transfer, receipt of funds available for withdrawal, in a bank account designated to receive such payments by the person to whom such payment is required to be made, on or before midnight of the day such payment is required to be made without penalty or interest, shall constitute payment as if such payment had been made before the close of business on the last day on which such tax may be paid without penalty or interest.

C. Notwithstanding any provision of law, the Tax Commissioner may allow the electronic filing of any state tax return, statement or document. For purposes of this subsection, the Tax Commissioner may determine alternative methods for the signing, subscribing or verifying of a state tax return, statement or document that shall have the same validity and consequences as the actual signing by the taxpayer. The Tax Commissioner may prescribe methods of execution, recording, reproduction and certification of electronically filed information pursuant § 59.1-496.

D. If an income tax return preparer prepared 100 or more individual income tax returns for a taxable year that began on or after January 1, 2004, *or 50 or more such returns for a taxable year that began on or after January 1, [2009 2010]*, then for every taxable year thereafter, all individual income tax returns for taxable years prepared by that income tax return preparer shall be filed using electronic means. If an individual tax return must be accompanied by attachments or schedules that cannot be accepted through electronic means, the income tax preparer shall file the return using software that produces a two dimensional barcode using 2D technology reflecting information contained in the return in a standard format as prescribed by the Tax Commissioner. This subsection shall not apply to an individual income tax return for a taxpayer who has indicated that he does not want his individual income tax return filed using electronic means or 2D technology.

The Tax Commissioner shall have the authority to waive the requirement to file by electronic means upon finding that the requirement would cause an undue hardship. The income tax return preparer otherwise required to file individual income tax returns using electronic means must request in writing the waiver from the Tax Commissioner and clearly demonstrate the nature of the undue hardship. The Tax Commissioner shall respond to the income tax return preparer within 45 days after receiving the request for waiver.

For purposes of this subsection, "income tax return preparer" means a person who prepares, or employs one or more individuals to prepare, an income tax return for compensation. Preparation of a substantial portion of an individual income tax return shall be deemed preparation of the entire individual income tax return for purposes of this section.

For purposes of this subsection, "income tax return preparer" shall not include volunteers who prepare tax returns for the elderly or poor as part of a nonprofit organization's program.

§ 58.1-478. Withholding tax statements for employees; employers must file annual returns with Tax Commissioner.

A. Every person required to deduct and withhold from an employee's wages under this article shall furnish to each such employee in respect to the remuneration paid by such person to such employee during the calendar year, on or before January 31 of the succeeding year, or if his employment is terminated before the close of such calendar year, on the day on which the last payment of remuneration is made, a written statement in duplicate showing the following: (i) the name of such person; (ii) the

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60 name of the employee and his social security account number; (iii) the total amount of wages; and (iv)
61 the total amount deducted and withheld under this article by such employer.

62 B. The written statements required to be furnished pursuant to this section in respect of any
63 remuneration shall be furnished at such other times, shall contain such other information, and shall be in
64 such form as the Tax Commissioner may by regulations prescribe.

65 C. 1. Every employer shall file an annual return with the Tax Commissioner, setting forth such
66 information as the Tax Commissioner may require, not later than February 28 of the calendar year
67 succeeding the calendar year in which wages were withheld from employees, and such annual return
68 shall be accompanied by an additional copy of each of the written statements furnished each employee
69 under subsections A and B of this section.

70 2. Every employer who furnishes 250 or more written statements to employees under subsections A
71 and B for any calendar year *beginning before January 1, 2010, who furnished 150 or more such*
72 *statements for any calendar year beginning on and after January 1, 2010, or who furnishes 50 or more*
73 *such statements for any calendar year beginning on and after January 1, 2011*, shall file the annual
74 report required under this subsection using an electronic medium using a format prescribed by the Tax
75 Commissioner. Waivers shall be granted only if the Tax Commissioner finds that this requirement
76 creates an unreasonable burden on the employer. All requests for waiver must be submitted to the Tax
77 Commissioner in writing. Employers who furnish fewer than 250 written statements to employees under
78 subsections A and B may, at such employer's option, file such annual report on an electronic medium in
79 lieu of filing the annual report on paper.

80 D. The Tax Commissioner shall have the authority to require every employer to furnish the names
81 and social security numbers of all employees whose wages or withholding amounts for the taxable year
82 are below levels specified by the Commissioner.

83 § 58.1-615. Returns by dealers.

84 A. Every dealer required to collect or pay the sales or use tax shall, on or before the twentieth day
85 of the month following the month in which the tax shall become effective, transmit to the Tax
86 Commissioner a return showing the gross sales, gross proceeds, or cost price, as the case may be,
87 arising from all transactions taxable under this chapter during the preceding calendar month, and
88 thereafter a like return shall be prepared and transmitted to the Tax Commissioner by every dealer on or
89 before the twentieth day of each month, for the preceding calendar month. In the case of dealers
90 regularly keeping books and accounts on the basis of an annual period which varies 52 to 53 weeks, the
91 Tax Commissioner may make rules and regulations for reporting consistent with such accounting period.

92 Notwithstanding any other provision of this chapter, a dealer may be required by the Tax
93 Commissioner to file sales or use tax returns on an accounting period less frequent than monthly when,
94 in the opinion of the Tax Commissioner, the administration of the taxes imposed by this chapter would
95 be enhanced. If a dealer is required to file other than monthly, each such return shall be due on or
96 before the twentieth day of the month following the close of the period. Each such return shall contain
97 all information required for monthly returns.

98 A sales or use tax return shall be filed by each registered dealer even though the dealer is not liable
99 to remit to the Tax Commissioner any tax for the period covered by the return.

100 B. [Expired.]

101 C. Any return required to be filed with the Tax Commissioner under this section shall be deemed to
102 have been filed with the Tax Commissioner on the date that such return is delivered by the dealer to the
103 commissioner of the revenue or the treasurer for the locality in which the dealer is located and receipt is
104 acknowledged by the commissioner of the revenue or treasurer. The commissioner of the revenue or the
105 treasurer shall stamp such date on the return, and shall mail the return to the Tax Commissioner no later
106 than the following business day. The commissioner of the revenue or the treasurer may collect from the
107 dealer the cost of postage for such mailing.

108 D. *Every dealer who elects to file a consolidated sales tax return for any taxable period [and who*
109 *is required to remit payment by electronic funds transfer pursuant to § 58.1-202.1(B) of the Code of*
110 *Virginia] beginning on and after July 1, 2010, shall file his monthly return using an electronic medium*
111 *prescribed by the Tax Commissioner. A waiver of this requirement may be granted if the Tax*
112 *Commissioner determines that it creates an unreasonable burden on the dealer.*