

12104148D

HOUSE BILL NO. 1264

Offered January 20, 2012

A BILL to amend and reenact § 58.1-344 of the Code of Virginia, relating to extensions of time allowed or elected within which to file individual income tax returns; penalty for late payment of taxes.

Patron—Toscano

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:**1. That § 58.1-344 of the Code of Virginia is amended and reenacted as follows:**

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

A. In accordance with procedures established by the Tax Commissioner, any individual or fiduciary may elect an extension of time within which to file the income tax return required under this chapter to the date six months after such due date, provided that the estimated tax due is paid in accordance with the provisions of subsection B.

B. Any taxpayer desiring an extension of time in accordance with the provisions of subsection A 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 10 percent of the actual tax liability, there shall be added to the tax as a penalty an amount equal to 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 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 15 days after the date on which the federal period of postponement terminates, if such date is greater than one year from the original due date of the return.

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

G. 1. Notwithstanding any other provision of this section, the date for filing income tax returns and paying the tax due for the taxable years beginning on or after January 1, 1995, and before January 1, 1997, for members of the Armed Forces of the United States, who on the original due date of such

INTRODUCED

HB1264

59 return were on active duty status serving in any part of the former Yugoslavia, including the air space
60 above such location or any waters subject to related naval operations in support of Operation JOINT
61 ENDEAVOR as part of the NATO Peace Keeping Force, is hereby extended for a period of one year
62 from the original due date of the return.

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

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

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

74 1. If (i) an individual or a fiduciary is allowed or elects an extension of time pursuant to subsection
75 A, D, or E of this section or subsection A of § 58.1-341, and (ii) the return is filed using electronic
76 means by (a) an income tax return preparer as defined by subsection D of § 58.1-9, (b) a volunteer who
77 prepares tax returns for the elderly or poor as part of a nonprofit organization's program, or (c) an
78 employee or representative of a governmental entity at no charge to the taxpayer under a government
79 sponsored program, then no penalty under § 58.1-347 shall be imposed if the full amount of tax due is
80 paid by the last day of the extension period, regardless of whether the corresponding income tax return
81 was filed prior to the full amount of the tax being paid. For purposes of this subsection, the last day of
82 the extension period shall be the last day by which the taxpayer would have been required to file the
83 income tax return under the extension of time allowed or elected.