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**HOUSE BILL NO. 444**

Offered January 8, 2014

Prefiled January 5, 2014

*A BILL to amend and reenact §§ 58.1-324, 58.1-326, and 58.1-341 of the Code of Virginia, relating to persons who may file as married persons for purposes of the individual income tax.*

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Patron—Marshall, R.G.

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Referred to Committee on Finance

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 58.1-324, 58.1-326, and 58.1-341 of the Code of Virginia are amended and reenacted as follows:**

**§ 58.1-324. Husband and wife.**

A. If the federal taxable income of husband or wife is determined on a separate federal return, their Virginia taxable incomes shall be separately determined.

B. If the federal taxable income of husband and wife is determined on a joint federal return, or if neither files a federal return:

1. Their tax shall be determined on their joint Virginia taxable income; or

2. Separate taxes may be determined on their separate Virginia taxable incomes if they so elect.

C. Where husband and wife have not separately reported and claimed items of income, exemptions and deductions for federal income tax purposes, and have not elected to file a joint Virginia income tax return, such items allowable for Virginia income tax purposes shall be allocated and adjusted as follows:

1. Income shall be allocated to the spouse who earned the income or with respect to whose property the income is attributable.

2. Allowable deductions with respect to trade, business, production of income, or employment shall be allocated to the spouse to whom attributable.

3. Nonbusiness deductions, where properly taken for federal income tax purposes, shall be allowable for Virginia income tax purposes, but shall be allocable between husband and wife as they may mutually agree. For this purpose, "nonbusiness deductions" consist of allowable deductions not described in subdivision 2 of this subsection.

4. Where the standard deduction or low income allowance is properly taken pursuant to subdivision D 1 a of § 58.1-322 such deduction or allowance shall be allocable between husband and wife as they may mutually agree.

5. Personal exemptions properly allowable for federal income tax purposes shall be allocated for Virginia income tax purposes as husband and wife may mutually agree; however, exemptions for taxpayer and spouse together with exemptions for old age and blindness must be allocated respectively to the spouse to whom they relate.

D. Where allocations are permitted to be made under subsection C pursuant to agreement between husband and wife, and husband and wife have failed to agree as to those allocations, such allocations shall be made between husband and wife in a manner corresponding to the treatment for federal income tax purposes of the items involved, under regulations prescribed by the Department of Taxation.

E. Notwithstanding (i) the filing status used for the federal income tax return, (ii) the legal status of a relationship for any other federal purpose, or (iii) any other provision of this section or other law, in accordance with Article I, Section 15-A of the Constitution of Virginia, only those persons who are in a union that is a marriage recognized under Virginia law may file a (a) joint Virginia income tax return for married persons or (b) separate Virginia income tax return as a spouse. All other persons shall be single persons for purposes of any (1) requirement to file an individual income tax return, (2) individual income tax imposed under this chapter, and (3) other provision of this chapter relating to the individual income tax and shall be required to file as a single person for individual income tax purposes.

**§ 58.1-326. Husband and wife when one nonresident.**

If husband or wife is a resident and the other is a nonresident, separate taxes shall be determined on their separate Virginia taxable incomes on such single or separate forms as may be required by the Department, unless both elect to determine their joint Virginia taxable income as if both were residents.

Notwithstanding (i) the filing status used for the federal income tax return, (ii) the legal status of a relationship for any other federal purpose, or (iii) any other provision of this section or other law, in accordance with Article I, Section 15-A of the Constitution of Virginia, only those persons who are in a union that is a marriage recognized under Virginia law may file a (a) joint Virginia income tax return for married persons or (b) separate Virginia income tax return as a spouse. All other persons shall be

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59 *single persons for purposes of any (1) requirement to file an individual income tax return, (2) individual*  
60 *income tax imposed under this chapter, and (3) other provision of this chapter relating to the individual*  
61 *income tax and shall be required to file as a single person for individual income tax purposes.*

62 **§ 58.1-341. Returns of individuals.**

63 A. On or before May 1 of each year if an individual's taxable year is the calendar year, or on or  
64 before the fifteenth day of the fourth month following the close of a taxable year other than the calendar  
65 year, an income tax return under this chapter shall be made and filed by or for:

66 1. Every resident individual, except as provided in § 58.1-321, required to file a federal income tax  
67 return for the taxable year, or having Virginia taxable income for the taxable year;

68 2. Every nonresident individual having Virginia taxable income for the taxable year, except as  
69 provided in § 58.1-321.

70 Notwithstanding the foregoing, every member of the armed services of the United States deployed  
71 outside of the United States shall be allowed an automatic extension to file an income tax return. Such  
72 extension shall expire 90 days following the completion of such member's deployment. For purposes of  
73 this section, "the armed services of the United States" includes active duty service with the regular  
74 Armed Forces of the United States or the National Guard or other reserve component.

75 B. If the federal income tax liability of husband or wife is determined on a separate federal return,  
76 their Virginia income tax liabilities and returns shall be separate. If the federal income tax liabilities of  
77 husband and wife (other than a husband and wife described in subdivision 2 of subsection A) are  
78 determined on a joint federal return, or if neither files a federal return:

79 1. They shall file a joint Virginia income tax return, and their tax liabilities shall be joint and  
80 several; or

81 2. They may elect to file separate Virginia income tax returns if they comply with the requirements  
82 of the Department in setting forth information (whether or not on a single form), in which event their  
83 tax liabilities shall be separate unless such husband and wife file separately on a combined return. The  
84 election permitted under this subsection may be made or changed at any time within three years from  
85 the last day prescribed by law for the timely filing of the return.

86 C. If either husband or wife is a resident and the other is a nonresident, they shall file separate  
87 Virginia income tax returns on such single or separate forms as may be required by the Department, in  
88 which event their tax liabilities shall be separate except as provided in subsection D, unless both elect to  
89 determine their joint Virginia taxable income as if both were residents, in which event their tax  
90 liabilities shall be joint and several.

91 D. If husband and wife file separate Virginia income tax returns on a single form pursuant to  
92 subsection B or C, and:

93 1. If the sum of the payments by either spouse, including withheld and estimated taxes, exceeds the  
94 amount of the tax for which such spouse is separately liable, the excess may be applied by the  
95 Department to the credit of the other spouse if the sum of the payments by such other spouse, including  
96 withheld and estimated taxes, is less than the amount of the tax for which such other spouse is  
97 separately liable;

98 2. If the sum of the payments made by both spouses with respect to the taxes for which they are  
99 separately liable, including withheld and estimated taxes, exceeds the total of the taxes due, refund of  
100 the excess may be made payable to both spouses.

101 The provisions of this subsection shall not apply if the return of either spouse includes a demand that  
102 any overpayment made by him or her shall be applied only on account of his or her separate liability.

103 E. The return for any deceased individual shall be made and filed by his executor, administrator, or  
104 other person charged with his property.

105 F. The return for an individual who is unable to make a return by reason of minority or other  
106 disability shall be made and filed by his guardian, committee, fiduciary or other person charged with the  
107 care of his person or property (other than a receiver in possession of only a part of his property), or by  
108 his duly authorized agent.

109 G. Notwithstanding (i) the filing status used for the federal income tax return, (ii) the legal status of  
110 a relationship for any other federal purpose, or (iii) any other provision of this section or other law, in  
111 accordance with Article I, Section 15-A of the Constitution of Virginia, only those persons who are in a  
112 union that is a marriage recognized under Virginia law may file a (a) joint Virginia income tax return  
113 for married persons or (b) separate Virginia income tax return as a spouse. All other persons shall be  
114 single persons for purposes of any (1) requirement to file an individual income tax return, (2) individual  
115 income tax imposed under this chapter, and (3) other provision of this chapter relating to the individual  
116 income tax and shall be required to file as a single person for individual income tax purposes.