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HOUSE BILL NO. 1357

Offered January 21, 2016

A BILL to amend and reenact § 58.1-1823 of the Code of Virginia, and for the relief of Michael E. and Rhonda S. Payne relating to income tax; statute of limitations.

Patron—Morris

Referred to Committee on Appropriations

Whereas, on December 17, 2004, Michael E. and Rhonda S. Payne, husband and wife, sold rental property that they owned at 3817 S. Virginia Dare Trail, Nags Head, North Carolina 27959; and

Whereas, on May 2, 2005, Michael E. and Rhonda S. Payne filed a Virginia income tax return and erroneously paid capital gains tax in the amount of \$12,298.00 on the sale of the Nags Head property; and

Whereas, on February 18, 2009, a final notice of assessment was issued to Michael E. and Rhonda S. Payne by the North Carolina Department of Taxation for taxes due from the sale of the Nags Head property; and

Whereas, on March 25, 2009, Michael E. and Rhonda S. Payne paid taxes due to North Carolina in accordance with the notice of assessment, and on the same day filed an amended tax return with the Virginia Department of Taxation for a refund; and

Whereas, in 2006, the Virginia General Assembly amended § 58.1-1823 of the Code of Virginia by adding clause (v) in subsection A to include returns that were filed within one year from other states' final determination and the credit was claimed on the original return; the taxpayers had not originally claimed a credit because they were unaware that they owed North Carolina tax; and

Whereas, on July 7, 2009, the Virginia Department of Taxation (the Department) denied the refund, stating that the amended return was not filed within any available statute of limitations, including the one provided by clause (v) of subsection A of § 58.1-1823 (within one year of action by another state affecting income tax previously paid to Virginia); and

Whereas, the Department stated that clause (v) of subsection A of § 58.1-1823 did not apply because the statute required the taxpayer to have claimed a credit in Virginia for taxes paid to the other state on their original return filed in 2005; and

Whereas, Michael E. and Rhonda S. Payne had not claimed a credit for taxes paid in another state because they did not pay taxes to North Carolina until March 25, 2009, which is the same date they filed the amended return with Virginia to claim a refund for taxes paid to another state; and

Whereas, in 2010 the General Assembly corrected this anomaly in clause (v) of subsection A of § 58.1-1823 by deleting the requirement to have filed a credit for taxes paid to another state in the original return; and

Whereas, on April 21, 2011, the Department of Taxation issued a final letter of determination denying the amended return because the 2010 amendment by the General Assembly did not apply to amended returns filed prior to July 1, 2010; and

Whereas, on June 13, 2012, Michael E. and Rhonda S. Payne filed a civil complaint with Isle of Wight Circuit Court; and

Whereas, on September 27, 2013, the Isle of Wight Circuit Court denied complaint for essentially the same reasons as the Department of Taxation; now, therefore,

Be it enacted by the General Assembly of Virginia:

1. § 1. That there is hereby appropriated in the amount of \$12,298.00 plus interest as provided in § 58.1-15 of the Code of Virginia for the relief of Michael E. and Rhonda S. Payne upon execution of a release by them from any present or future claims they may have in connection with the aforesaid occurrence against the Commonwealth or any agency, instrumentality, officer, employee, or political subdivision thereof.

2. That § 58.1-1823 of the Code of Virginia is amended and reenacted as follows:

§ 58.1-1823. Reassessment and refund upon the filing of amended return or the payment of an assessment.

A. Any person filing a tax return or paying an assessment required for any tax administered by the Department of Taxation may file an amended return with the Department within the later of: (i) three years from the last day prescribed by law for the timely filing of the return; (ii) one year from the final determination of any change or correction in the liability of the taxpayer for any federal tax upon which the state tax is based, provided that the refund does not exceed the amount of the decrease in Virginia tax attributable to such federal change or correction; (iii) two years from the filing of an amended

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59 Virginia return resulting in the payment of additional tax, provided that the amended return raises issues
60 relating solely to such prior amended return and that the refund does not exceed the amount of the
61 payment with such prior amended return; (iv) two years from the payment of an assessment, provided
62 that the amended return raises issues relating solely to such assessment and that the refund does not
63 exceed the amount of such payment; or (v) *beginning January 1, 2009*, one year from the final
64 determination of any change or correction in the income tax of the taxpayer for any other state, provided
65 that the refund does not exceed the amount of the decrease in Virginia tax attributable to such change or
66 correction. If the Department is satisfied, by evidence submitted to it or otherwise, that the tax assessed
67 and paid upon the original return exceeds the proper amount, the Department may reassess the taxpayer
68 and order that any amount excessively paid be refunded to him. The Department may reduce such
69 refund by the amount of any taxes, penalties and interest which are due for the period covered by the
70 amended return, or any past-due taxes, penalties and interest which have been assessed within the
71 appropriate period of limitations. Any order of the Department denying such reassessment and refund, or
72 the failure of the Department to act thereon within three months shall, as to matters first raised by the
73 amended return, be deemed an assessment for the purpose of enabling the taxpayer to pursue the
74 remedies allowed under this chapter.

75 B. Notwithstanding the statute of limitations established in this section, any retired employee of a
76 political subdivision of the Commonwealth, established pursuant to Chapter 627 of the 1958 Acts of
77 Assembly, may file an amended individual income tax return until May 1, 1990, for taxable years
78 beginning on and after January 1, 1985, and before January 1, 1986, for taxes paid on retirement income
79 exempt pursuant to § 58.1-322.

80 C. Notwithstanding the statute of limitations contained in subsection A, any individual who claimed
81 an age subtraction on his 1990 individual income tax return may file an amended individual income tax
82 return on July 1, 1994, for taxable years beginning on and after January 1, 1990, and ending before
83 January 1, 1991, to claim an income deduction as provided in § 58.1-322 D 5 in lieu of the income
84 subtraction originally claimed.