CHAPTER 1030

An Act to amend and reenact §§ 58.1-311, 58.1-499, and 58.1-1823 of the Code of Virginia and to amend the Code of Virginia by adding in Chapter 3 of Title 58.1 a section numbered 58.1-311.2 and by adding an article numbered 9.1, consisting of sections numbered 58.1-396 through 58.1-399.7, relating to income tax; reporting requirements for partnerships.

[H 1417]

Approved April 10, 2020

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-311, 58.1-499, and 58.1-1823 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Chapter 3 of Title 58.1 a section numbered 58.1-311.2 and by adding an article numbered 9.1, consisting of sections numbered 58.1-396 through 58.1-399.7, as follows:

§ 58.1-311. Report of change in federal taxable income.

If the amount of any individual, estate, trust or corporate taxpayer's federal taxable income reported on his federal income tax return for any taxable year is changed or corrected by the United States Internal Revenue Service or other competent authority, or as the result of a renegotiation of a contract or subcontract with the United States, the taxpayer shall file an amended return, or such other form as the Department may prescribe, reporting such change or correction in federal taxable income within one year after the final determination *date, as defined in § 58.1-311.2,* ~~of~~ *for* such change, correction, or renegotiation, or as otherwise required by the Department, and shall concede the accuracy of such determination or state wherein it is erroneous. However, if the Department has sufficient information from which to compute the proper additional tax and the taxpayer has paid such tax, then the taxpayer is not required to file an amended individual income tax return. Any taxpayer filing an amended federal income tax return shall also file within one year thereafter an amended return under this chapter and shall give such information as the Department may require. The Department may by regulation prescribe such exceptions to the requirements of this section as it deems appropriate.

§ 58.1-311.2. Final determination date.

As used in § 58.1-311, "final determination date" means:

1. Except as provided in subdivisions 1 and 2, if the federal adjustment arises from an Internal Revenue Service audit or other action by the Internal Revenue Service, the final determination date is the first day on which no federal adjustments arising from that audit or other action remain to be finally determined, whether by Internal Revenue Service decision with respect to which all rights of appeal have been waived or exhausted, by agreement, or, if appealed or contested, by a final decision with respect to which all rights of appeal have been waived or exhausted. For agreements required to be signed by the Internal Revenue Service and the taxpayer, the final determination date is the date on which the last party signed the agreement.

2. For federal adjustments arising from an Internal Revenue Service audit or other action by the Internal Revenue Service, if the taxpayer filed as a member of a combined or consolidated return under § 58.1-442, the final determination date means the first day on which no related federal adjustments arising from that audit remain to be finally determined, as described in subdivision 1, for the entire group.

3. If the federal adjustment results from filing an amended federal return, a federal refund claim, or an administrative adjustment request, as that term is used in § 58.1-396, or if it is a federal adjustment reported on an amended federal return or other similar report filed pursuant to § 6225(c) of the Internal Revenue Code, the final determination date means the day on which the amended return, refund claim, administrative adjustment request, or other similar report was filed.

Article 9.1.

Reporting Adjustments to Federal Taxable Income from Federal Partnership Audits.

§ 58.1-396. Definitions.

As used in this article, unless the context requires otherwise:

"Administrative adjustment request" means an administrative adjustment request filed by a partnership pursuant to § 6227 of the Internal Revenue Code.

"Audited partnership" means a partnership subject to a partnership-level audit that results in a federal adjustment.

"Corporate partner" means a partner that is subject to tax under Article 10 (§ 58.1-400 et seq.).

"Direct" means, with respect to a partner, that such partner holds a direct interest in a partnership or a pass-through entity and that such interest is not held indirectly through another partnership or pass-through entity.

"Exempt" means, with respect to a partner, that such partner is exempt from Virginia income taxation. If such partner has unrelated business taxable income but otherwise is exempt from Virginia income taxation, such partner shall considered exempt.

"Federal adjustment" means a change to an item or amount determined under the Internal Revenue Code that is used by a taxpayer to compute Virginia tax owed, regardless of whether that change results from an action by the Internal Revenue Service including a partnership-level audit, or the filing of an amended federal return, federal refund claim, or administrative adjustment request by the taxpayer. A federal adjustment is positive to the extent that it increases Virginia taxable income and is negative to the extent that it decreases Virginia taxable income.

"Federal adjustments report" means any methods or forms required by the Department for use by a partner or partnership to report final federal adjustments.

"Federal partnership representative" means the person that a partnership designates for the taxable year as its representative or the person that the Internal Revenue Service appoints pursuant to § 6223(a) of the Internal Revenue Code to act as the federal partnership representative.

"Final determination date" means the date determined pursuant to the provisions of § 58.1-311.2.

"Final federal adjustment" means a federal adjustment for which the final determination date has passed.

"Indirect" means, with respect to a partner, that such partner does not hold a direct interest in a partnership or pass-through entity but instead holds a direct interest in another partnership or pass-through entity that itself holds an interest directly, or through another indirect partner, in the partnership or pass-through entity.

"Nonresident" means, with respect to an individual, estate, or trust partner, that such partner is not a resident partner.

"Partner" means a person that holds an interest directly or indirectly in a partnership or pass-through entity.

"Partnership" means an entity subject to taxation under Subchapter K, 26 U.S.C. § 701 et seq., of Chapter 1 of Subtitle A of the Internal Revenue Code.

"Partnership-level audit" means an examination by the Internal Revenue Service at the partnership level pursuant to Subchapter C, 26 U.S.C. § 6221 et seq., of Chapter 63 of Subtitle F of the Internal Revenue Code that results in federal adjustments.

"Pass-through entity" means any pass-through entity as defined in § 58.1-390.1, other than a partnership as defined in this section.

"Resident" means, with respect to an individual partner, that such partner is a resident, as defined in § 58.1-302, for the relevant tax period. "Resident" means, with respect to an estate or trust partner, that such partner is a resident estate or trust, as defined in § 58.1-302, for the relevant tax period.

"Reviewed year" means the taxable year of a partnership that is subject to a partnership-level audit from which federal adjustments arise.

"State partnership representative" means the person identified as the representative of a partnership pursuant to the provisions of § 58.1-398.

"Tiered partner" means any partner that is a partnership or a pass-through entity and is not an individual.

"Unrelated business taxable income" has the same meaning as such term is defined in § 512 of the Internal Revenue Code.

§ 58.1-397. Reporting requirement; administrative adjustment requests.

Partnerships and partners shall report final federal adjustments arising from a partnership-level audit or an administrative adjustment request and make required payments pursuant to the provisions of this article and shall not be required to comply with the provisions of § 58.1-311. This section shall not apply to adjustments required to be reported for federal income tax purposes pursuant to § 6225(a)(2) of the Internal Revenue Code and shall not apply to the distributive share of adjustments that have been reported as required under § 58.1-311.

§ 58.1-398. State partnership representative.

A. With respect to an action required or permitted to be taken under this article, and with respect to any administrative or judicial appeal of such action pursuant to Chapter 18 (§ 58.1-1800 et seq.), the state partnership representative, as identified pursuant to the provisions of subsection B, shall have the sole authority to act on behalf of a partnership. The actions of the state partnership representative shall be binding on the direct partners and indirect partners of the partnership.

B. The state partnership representative for a reviewed year is the partnership's federal partnership representative unless the partnership designates in writing another person as its state partnership representative.

C. The Department shall establish reasonable qualifications and procedures for designating a person, other than a federal partnership representative, to be the state partnership representative.

§ 58.1-399. Reporting and payment requirements for a partnership subject to a final federal adjustment.

A. Except as otherwise provided in this article, any final federal adjustment shall be reported

pursuant to the provisions of subsection B. This subsection shall not apply to a final federal adjustment for which election has been properly made pursuant to § 58.1-399.1.

B. No later than 90 days after the final determination date, a partnership shall:

1. File with the Department a completed federal adjustments report, which shall include any information required by the Department;

2. Notify each direct partner of its distributive share of the final federal adjustments and provide to each direct partner any other information required by the Department;

3. File an amended composite return pursuant to § 58.1-395 if such return previously was filed on behalf of nonresident partners;

4. File an amended return pursuant to § 58.1-392; and

5. Pay any additional amount that may be required pursuant to the provisions of §§ 58.1-395 and 58.1-486.2.

C. Except as provided under § 58.1-321, no later than one year after the final determination date, each direct partner subject to tax pursuant to the provisions of Article 2 (§ 58.1-320 et seq.), 6 (§ 58.1-360 et seq.), or 10 (§ 58.1-400) shall:

1. File a federal adjustments report that identifies the distributive share of adjustments reported to such direct partner under subdivision B 2; and

2. Pay any additional amount of tax due as if final federal adjustments had been properly reported, including any penalty and interest due under this title. Such payment may be reduced by any credit for related amounts paid or withheld and remitted on behalf of the direct partner pursuant to subdivision B 3, 4, or 5.

§ 58.1-399.1. Elective payment by a partnership.

A. Notwithstanding §§ 58.1-390.2 and 58.1-399, an audited partnership may make an elective payment pursuant to the provisions of this section. Such partnership shall:

1. No later than 90 days after the final determination date, file a completed federal adjustments report, which shall include any information required by the Department;

2. No later than 90 days after a final determination date, notify the Department that it is making an elective payment; and

3. No later than one year after the final determination date, pay the elective payment amount specified in subsection B. Such amount shall be in lieu of taxes owed by the direct and indirect partners.

B. The elective payment amount shall be the amount of final federal adjustments, subject to the following modifications:

1. The elective payment amount shall exclude the distributive share of final federal adjustments that is reported to a direct exempt partner;

2. For the total distributive shares of the remaining final federal adjustments reported to (i) any direct corporate partner subject to tax under § 58.1-400 and (ii) any direct exempt partner subject to tax under § 58.1-400 on its unrelated business income or other taxable income, such adjustments shall be apportioned or allocated, as applicable, pursuant to the provisions of §§ 58.1-405 through 58.1-423 and, after such apportionment or allocation, shall be multiplied by the tax rate specified in § 58.1-400 and, after such multiplication, shall be included in the elective payment;

3. For the total distributive shares of the remaining final federal adjustments reported to any nonresident direct partner that is subject to tax under Article 2 (§ 58.1-320 et seq.) or 6 (§ 58.1-360 et seq.), such adjustments shall be sourced to Virginia pursuant to applicable laws governing sourcing, and any adjustments sourced to Virginia shall be multiplied by the highest tax rate specified in § 58.1-320 and, after such multiplication, shall be included in the elective payment;

4. For the total distributive shares of the remaining final federal adjustments reported to any tiered partner, the elective payment shall include the amount specified in this subdivision. Subject to the modifications specified in this subdivision, the amount shall (i) include that portion of the adjustments that are of a type that would be sourced to Virginia pursuant to applicable laws governing sourcing, and (ii) include all adjustments that are of a type that would not be subject to sourcing in Virginia pursuant to applicable laws governing sourcing. However, the amount specified in clause (ii) shall exclude any amount that can be established, under guidelines issued by the Department, to be properly (a) allocable to a nonresident indirect partner, (b) allocable to a partner that is not subject to tax on such amount, or (c) excludable under procedures for alternative reporting and payment as specified in § 58.1-399.3. The amount specified in clauses (i) and (ii), as reduced by the exclusions specified in clauses (a), (b), and (c), shall be multiplied by the highest tax rate specified in § 58.1-320 or 58.1-360, as applicable, and, after such multiplication, shall be included in the elective payment;

5. For the total distributive shares of the remaining final federal adjustments reported to any resident direct partner that is subject to tax under § 58.1-320 or 58.1-360, such adjustments shall be multiplied by the highest tax rate specified in § 58.1-320 or 58.1-360, as applicable, and, after such multiplication, shall be included in the elective payment; and

6. Any penalty and interest provided for by this title shall be included in the elective payment.

§ 58.1-399.2. Tiered partners.

A. The following categories of partners shall be subject to the reporting and payment requirements specified in § 58.1-399, entitled to make elections as provided in § 58.1-399.1, and entitled to elect an alternative reporting and payment method as provided in § 58.1-399.3:

1. Any direct tiered partner of an audited partnership;

2. Any indirect tiered partner of an audited partnership; and

3. Any partner of a partner specified in subdivision 1 or 2.

B. A partner subject to the provisions of subsection A shall make required reports and payments no later than 90 days after the time for filing and providing statements to tiered partners and their partners pursuant to the provisions of § 6226 of the Internal Revenue Code and any regulations promulgated thereunder. The Department may establish procedures and deadlines for reports and payments required pursuant to this section.

§ 58.1-399.3. Alternative reporting and payment method.

Under procedures adopted by and subject to the approval of the Department, an audited partnership or a tiered partner may enter into an agreement with the Department to use an alternative reporting and payment method. However, the Department shall enter into such agreement only if such audited partnership or tiered partner demonstrates, to the satisfaction of the Department, that the alternative method is reasonably expected to provide for the reporting and payment of taxes, penalties, and interest due under the provisions of this article. Application for approval of an alternative reporting and payment method shall be made by the audited partnership or tiered partner within the applicable time period specified in § 58.1-399.1 or 58.1-399.2.

§ 58.1-399.4. Effect of election.

A. If a partnership or partner makes an election pursuant to § 58.1-399.1 or 58.1-399.3, such election shall not be revocable by such partnership or partner. However, the Department may make a discretionary determination that allows such election to be revoked.

B. If properly reported and paid by the audited partnership or tiered partner, the amount determined pursuant to § 58.1-399.1 or 58.1-399.3 shall be treated as paid in lieu of taxes owed by a direct or indirect partner, to the extent applicable, on the final federal adjustments. A direct partner or indirect partner shall be prohibited from claiming any subtraction, deduction, credit, or refund for such amount. This section shall not prohibit a partner that is a direct partner and a resident partner from (i) claiming a credit against taxes paid to Virginia pursuant to § 58.1-332 or (ii) claiming a credit for any amount paid by the audited partnership or tiered partner on the resident partner's behalf to another jurisdiction in accordance with the provisions of § 58.1-332.

§ 58.1-399.5. Failure to pay.

If an audited partnership or tiered partner fails to timely make any report or payment required by this article, the Department may assess the direct and indirect partners of such partnership or partner for any taxes owed.

§ 58.1-399.6. De minimis exception.

The Department may establish a de minimis tax liability amount. If a partner or partnership has a tax liability less than such amount, the Department may exempt such partner or partnership from the reporting and payment requirements of this article.

§ 58.1-399.7. Administration.

A. For partners and partnerships subject to the provisions of this article, the Department shall assess, collect from, and refund any Virginia income tax, interest, and penalties arising from final federal adjustments as set forth in this article. If any partner or partnership makes an election pursuant to § 58.1-399.1, the Department shall assess and collect in-lieu-of amounts, interest, and penalties arising from final federal adjustments as if the in-lieu-of-amounts are a corporate income tax imposed pursuant to the provisions of Article 10 (§ 58.1-400 et seq.). Penalties and interest imposed on a partner or partnership shall be determined based on the date the partnership return for the reviewed year originally was due. If any partner or partnership subject to § 58.1-399 fails to file its federal adjustments report within the time required, the provisions of § 58.1-394.1 shall be applicable to such report, mutatis mutandis.

B. Notwithstanding the provisions of subsection C of § 58.1-312 and clause (ii) of § 58.1-1823, an assessment shall be issued and an amended return for refund shall be filed by the following dates:

1. If a partner or partnership files with the Department a federal adjustments report or an amended Virginia tax return within the time period specified in § 58.1-399, or § 58.399.1, as applicable, the Department may assess any amounts, including taxes, in-lieu-of-amounts, interest, and penalties arising from those federal adjustments, if the Department issues a notice of assessment to the partner or partnership no later than the expiration of the one-year period following the date of filing with the Department of the federal adjustments report.

2. If a partner or partnership fails to file the federal adjustments report within the time period specified in § 58.1-399, or § 58.399.1, as applicable, or if the federal adjustments report filed by the partner or partnership omits final federal adjustments or understates the correct amount of tax owed, the Department may assess amounts or additional amounts including taxes, in-lieu-of-amounts, interest, and penalties arising from the final federal adjustments, if the Department issues a notice of assessment

to the partner or partnership no later than the expiration of the one-year period following the date of filing with the Department of the federal adjustments report.

3. An amended return for refund arising from federal adjustments made by the Internal Revenue Service shall be filed no later than one year from the date a federal adjustments report, as required by § 58.1-399, or § 58.399.1, as applicable, was due to the Department, including any extensions issued pursuant to the provisions of this section. The partner or partnership may, on the federal adjustments report, report additional tax due, report a claim for refund or credit of a tax, and make any other adjustments resulting from adjustments to the partner's or partnership's federal taxable income, including adjustments to its net operating losses.

4. Unless otherwise agreed to in writing by the partnership or partner and the Department, any adjustments by the Department or by the partner or partnership that are made pursuant to the one-year statute of limitations provided for in this subsection are limited to adjustments to the partner's or partnership's tax liability that arise from federal adjustments.

C. The one-year statute of limitations provided for in subsection B may be extended:

1. Automatically, upon written notice to the Department, by 60 days for an audited partnership or a tiered partner that has 10,000 or more direct partners; or

2. By written agreement between the partnership or partner and the Department pursuant to § 58.1-101.

D. 1. Any extension granted pursuant to subsection C shall extend by an equal time period the last day for the Department to assess any additional amounts arising from the adjustments to federal taxable income and the period for filing a claim for refund or credit of taxes.

2. The one-year statute of limitations provided for in subsection B shall not affect the time within which or the amount for which an assessment may otherwise be made or a refund sought under this title.

§ 58.1-499. Refunds to individual taxpayers; crediting overpayment against estimated tax for ensuing year.

A. In the case of any overpayment of any tax, addition to tax, interest or penalties imposed on an individual income taxpayer by this chapter, whether by reason of excessive withholding, overestimating and overpaying estimated tax, error on the part of the taxpayer, or an erroneous assessment of tax, the Tax Commissioner shall order a refund of the amount of the overpayment to the taxpayer. The overpayment shall be refunded out of the state treasury on the order of the Tax Commissioner upon the Comptroller.

B. If a refund of an overpayment of individual income tax payments is made payable jointly to a husband and wife who receive a final divorce decree after filing a joint income tax return, separate income tax returns on a single form, an amendment thereto, or other claim resulting in the issuance of a refund, the Tax Commissioner shall order the reissuance of the refund in separate checks to the husband and to the wife if the unnegotiated joint refund check is returned to Department with a certification, in a form satisfactory to the Department, made by one spouse that the other spouse refuses to endorse the joint refund check or cannot be located. In making such certification, the spouse returning the check shall agree to indemnify the Commonwealth for any amounts that the Commonwealth may be required to pay to the other spouse with respect to such refund. A certified copy of the final divorce decree, including any agreement with respect to the division of property between the spouses, shall be provided with the certification. If the final divorce decree addresses the apportionment or ownership of the refunded amount, the refund shall be apportioned and separate payments ordered as provided therein. If the final divorce decree does not address the apportionment or ownership of the refunded amount, the amount of the refund shall be divided equally between the husband and wife. The reissuance of refund payments pursuant to this subsection shall not affect the joint and several liability of the husband and wife for tax liabilities for the period for which the return or returns were filed.

C. Whenever the annual income tax return of an individual income taxpayer indicates in the place provided thereon that the taxpayer has overpaid his tax for the taxable year by reason of excessive withholding or overestimating and overpaying estimated tax, or both, the amount of the overpayment as shown on his return, subject to correction for error, may be credited against the estimated income tax for the ensuing year at the taxpayer's election and according to regulations prescribed by the Department and such overpayments by either a husband or wife on a separate return may be credited to the tax for the ensuing year of either of them or may be credited to their joint tax at the election of the person to whom the overpayment is payable; or otherwise such amount shall be refunded to him as soon as practicable. Interest on such refund shall be allowed and computed in accordance with § 58.1-1833. The making of any refund shall not absolve any taxpayer of any income tax liability which may in fact exist and the Tax Commissioner may make an assessment for any deficiency in the manner provided by law.

D. No refund under this section, however, shall be made for any overpayment of less than one dollar except on special written application of the taxpayer, nor shall any refund of any amount under this section be made, whether on discovery by the Department or on written application of the taxpayer, if such discovery is not made or such written application is not received within three years from the last day prescribed by law for the timely filing of the return, or within ~~sixty~~ ~~days~~ *one year* from the final

determination ~~of~~ *date, as defined in § 58.1-311.2, for* any change or correction in the liability of the taxpayer for any federal tax upon which the state tax is based, whichever is later.

E. Notwithstanding the provisions of the Setoff Debt Collection Act, Article 21 (§ 58.1-520 et seq.) of this chapter, whenever any taxpayer is entitled to a refund under this section, or under § 58.1-309 or §§ 58.1-1821 through 58.1-1830 and such taxpayer owes the Commonwealth a past due income tax, or balance thereof, for any year, the amount of such refund may be credited on such past due income tax or balance, to the extent indicated.

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

Any person filing a tax return or paying an assessment required for any tax administered by the Department 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~~ *date, as defined in § 58.1-311.2, for* 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 Virginia return resulting in the payment of additional tax, provided that the amended return raises issues relating solely to such prior amended return and that the refund does not exceed the amount of the payment with such prior amended return; (iv) two years from the payment of an assessment, provided that the amended return raises issues relating solely to such assessment and that the refund does not exceed the amount of such payment; or (v) one year from the final determination of any change or correction in the income tax of the taxpayer for any other state, provided that the refund does not exceed the amount of the decrease in Virginia tax attributable to such change or correction. If the Department is satisfied, by evidence submitted to it or otherwise, that the tax assessed and paid upon the original return exceeds the proper amount, the Department may reassess the taxpayer and order that any amount excessively paid be refunded to him. The Department may reduce such refund by the amount of any taxes, penalties and interest which are due for the period covered by the amended return, or any past-due taxes, penalties and interest which have been assessed within the appropriate period of limitations. Any order of the Department denying such reassessment and refund, or the failure of the Department to act thereon within three months shall, as to matters first raised by the amended return, be deemed an assessment for the purpose of enabling the taxpayer to pursue the remedies allowed under this chapter.

2. That the Department of Taxation shall develop guidelines implementing the provisions of this act. Such guidelines shall be exempt from the provisions of the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

3. That the provisions of this act amending §§ 58.1-311, 58.1-499, and 58.1-1823 of the Code of Virginia shall be effective for all changes or corrections by the Internal Revenue Service or other competent authority, or as the result of a renegotiation of a contract or subcontract with the United States with a final determination date on or after July 1, 2020. For the purpose of this enactment clause, "final determination date" means the same as that term is defined in § 58.1-311.2 of the Code of Virginia, as created by this act.