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HOUSE BILL NO. 1219

Offered January 8, 2020

Prefiled January 7, 2020

A BILL to amend and reenact §§ 58.1-499 and 58.1-1823 of the Code of Virginia, relating to Department of Taxation; period of limitations; amended returns; refunds.

Patron—Tran

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-499 and 58.1-1823 of the Code of Virginia are amended and reenacted as follows: § 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 seven years from the last day prescribed by law for the timely filing of the return, or within sixty days 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, 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.

INTRODUCED

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59 § 58.1-1823. Reassessment and refund upon the filing of amended return or the payment of an
60 assessment.

61 Any person filing a tax return or paying an assessment required for any tax administered by the
62 Department may file an amended return with the Department within the later of (i) ~~three~~ *seven* years
63 from the last day prescribed by law for the timely filing of the return; (ii) one year from the final
64 determination of any change or correction in the liability of the taxpayer for any federal tax upon which
65 the state tax is based, provided that the refund does not exceed the amount of the decrease in Virginia
66 tax attributable to such federal change or correction; (iii) two years from the filing of an amended
67 Virginia return resulting in the payment of additional tax, provided that the amended return raises issues
68 relating solely to such prior amended return and that the refund does not exceed the amount of the
69 payment with such prior amended return; (iv) two years from the payment of an assessment, provided
70 that the amended return raises issues relating solely to such assessment and that the refund does not
71 exceed the amount of such payment; or (v) one year from the final determination of any change or
72 correction in the income tax of the taxpayer for any other state, provided that the refund does not
73 exceed the amount of the decrease in Virginia tax attributable to such change or correction. If the
74 Department is satisfied, by evidence submitted to it or otherwise, that the tax assessed and paid upon the
75 original return exceeds the proper amount, the Department ~~may~~*shall* reassess the taxpayer and order that
76 any amount excessively paid be refunded to him. The Department may reduce such refund by the
77 amount of any taxes, penalties and interest which are due for the period covered by the amended return,
78 or any past-due taxes, penalties and interest which have been assessed within the appropriate period of
79 limitations. Any order of the Department denying such reassessment and refund, or the failure of the
80 Department to act thereon within three months shall, as to matters first raised by the amended return, be
81 deemed an assessment for the purpose of enabling the taxpayer to pursue the remedies allowed under
82 this chapter.