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## HOUSE BILL NO. 1564

## AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Finance  
on January 16, 1995)

(Patron Prior to Substitute—Delegate Cranwell)

A BILL authorizing the Tax Commissioner to determine which retired federal and military taxpayers were denied participation due to missing information necessary to substantiate the validity or amount of a timely filed claim or missed the November 1, 1994, deadline, because of circumstance beyond their control, for filing the documentation or forms necessary to participate in the Harper v. Virginia Department of Taxation case settlement; authorizing the Tax Commissioner to enter into settlement agreements with such taxpayers in an amount equal to the amount agreed to with the retired federal and military taxpayers who filed a completed claim by the November 1, 1994, deadline; and establishing a fund from which such incomplete or late settlement agreement amounts shall be paid.

Whereas, during its Special Session in July 1994, the General Assembly passed legislation authorizing the Tax Commissioner to enter into settlement agreements with retired federal and military Virginia Taxpayers affected by the Harper v. Virginia Department of Taxation case; and

Whereas, such legislation contained a November 1, 1994, deadline for the affected taxpayers to file certain forms and other supporting documentation, where necessary, with the Department of Taxation in order to participate in the settlement; and

Whereas, a large number of such taxpayers failed to provide the necessary supporting documentation, missed the deadline for filing, or mailed or otherwise sent the appropriate documentation which was not received by the Department of Taxation, thereby missing the opportunity to participate in the settlement; and

Whereas, the General Assembly wants as many of the affected taxpayers as possible to participate in the settlement; now, therefore,

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

1. §1. The Tax Commissioner is authorized to make settlement payments to certain retired federal and military taxpayers, as originally authorized in Chapter 5 of the Acts of Assembly, 1994 - Special Session I. To be eligible to receive these payments a taxpayer must have (i) filed a claim on or before November 1, 1994, but was denied either full or partial participation in the settlement program due to the lack of certain information that was necessary for the Department to determine the validity or amount of all or a portion of the claim, or (ii) missed the November 1, 1994, filing deadline due to circumstances beyond the control of the taxpayer. Such taxpayers are hereby granted an additional sixty days from the date of enactment to provide the Department with the necessary information to complete their claim or to provide the Department with a claim form and a written explanation that demonstrates that the taxpayers missed the deadline due to circumstances beyond their control. The burden of proof shall be on the taxpayer. Any supporting documentation provided to the Department or forms received prior to the expiration of the additional time period shall be reviewed by the Tax Commissioner. The Tax Commissioner shall determine whether the necessary information was provided or the taxpayer's explanation for missing the original November 1, 1994, deadline was due to circumstances beyond the control of the taxpayer. The Tax Commissioner's authority to proceed under this section is subject to the following terms and conditions:

A. For purposes of this act:

"Calculated total disputed refund" means the total of all disputed refunds for all taxpayers who timely filed the required information with the Department, pursuant to subdivision D 1, as calculated by the Department of Taxation.

"Department" means the Department of Taxation.

"Disputed refund" means the amount of the tax overpayment on retirement or pension benefits received from a federal retirement system for taxable years 1985 through 1988 for which a refund is claimed that resulted from the Department's acceptance and processing of the additional information the taxpayer provided, pursuant to subsection D 1. A disputed refund does not include any amount already included in the settlement offer mailed to a taxpayer on December 15, 1994, pursuant to the Federal Retiree Settlement Act.

"Federal Retiree Settlement Act" means Enactment Clause 2 of Chapter 5, 1994 Acts of Assembly, Special Session I.

"Final settlement offer" means the amount of the payment to be made to a taxpayer under the settlement agreement mailed to the taxpayer by the Department by the ninetieth day following enactment, pursuant to subsection D 2.

"Refund of taxes" includes any claim for interest thereon.

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60 "Settlement agreement" means the settlement agreement mailed to the taxpayers by the Department  
61 under the Federal Retiree Settlement Act or under this act.

62 "Settlement program" means the settlement program established by the Federal Retiree Settlement  
63 Act.

64 "Taxpayer" includes the estate, committee and legal beneficiaries of any taxpayer to whom a  
65 disputed refund is owed. For purposes of a deceased taxpayer's estate, if that deceased taxpayer died  
66 intestate, an affidavit provided by the Department, signed by the deceased taxpayer's surviving spouse,  
67 or if there is none, the heirs of the deceased taxpayer, shall operate to claim the disputed refund to  
68 which the taxpayer was entitled. If the deceased taxpayer died testate, an affidavit provided by the  
69 Department signed by the residuary legatees under the will shall operate to claim such refund.

70 B. The payments shall be made over a five-year period in annual installments and shall be disbursed  
71 by the Tax Commissioner or his designee to the taxpayers participating in the settlement as follows:

72 1. The Department shall offer each affected taxpayer an amount equal to the same percentage of the  
73 disputed refund as computed under the Federal Retiree Settlement Act.

74 2. Disbursements shall be made in up to five payments, the first of which shall be made on July 31,  
75 1995, with each of the remaining four disbursements made on March 31 through 1999. The Department  
76 shall make payments to taxpayers who settle under this act in the same proportion as calculated for the  
77 payments to be made to retirees settling under the Federal Retiree Settlement Act.

78 3. Any amount received by a taxpayer pursuant to this section shall be subject to debt collection  
79 pursuant to Article 21 (§ 58.1-520 et seq.) of Chapter 1 of Title 58.1.

80 C. Payments may be made directly from a special fund or from a trust or other legal entity  
81 established by the Tax Commissioner to administer the payments. Subject to appropriation by the  
82 General Assembly, an amount sufficient to fund the first and second annual settlement payments shall be  
83 deposited in the special fund, trust or other legal entity on or before July 1, 1995, pending  
84 disbursement. Subject to appropriation by the General Assembly, on each succeeding July 1 through  
85 1998, an amount sufficient to fund the annual settlement payment shall be deposited in the special fund,  
86 trust or other legal entity pending disbursement. All earnings on investment of the funds shall be held in  
87 the special fund, trust or other legal entity established by the Tax Commissioner and reinvested until the  
88 final payments to taxpayers are made on March 31, 1999.

89 D. The procedures to be followed by the Tax Commissioner in effecting payments as authorized shall  
90 be as follows:

91 1. On or before thirty days from the date of enactment, the Department shall notify by first class  
92 mail each taxpayer (i) who timely filed a response to the August 1, 1994, notice issued by the  
93 Department pursuant to the terms of the Federal Retiree Settlement Act, but who was denied  
94 participation in the settlement program due to the lack of certain information necessary to quantify or  
95 validate the claim or (ii) who filed a claim with the department after November 1, 1994, of the  
96 additional thirty-day period during which he may submit information necessary to complete his claim.  
97 The additional information returned to the Department must be either postmarked on or before midnight  
98 of the sixtieth day following the enactment, or if such day is a Saturday, Sunday, or official state  
99 holiday, midnight of the next business day, or such information must be received by the Department by  
100 5:00 p.m. of the sixtieth day following enactment, or if such day is a Saturday, Sunday, or official state  
101 holiday, by 5:00 p.m. of the next business day.

102 2. Within ninety days following enactment, the Department shall send to each taxpayer a notice and  
103 an offer that sets forth the amount of the settlement offer.

104 3. Those taxpayers who agree to accept the offer must sign the settlement agreement releasing the  
105 Commonwealth and its agencies, officers and employees from any further liability for claims arising out  
106 of taxes paid on federal retirement income during the 1985-1988 taxable years and dismissing any  
107 litigation as to such claims in which the taxpayer is a party. Such settlement agreement must be  
108 returned to the Department and must be postmarked on or before midnight of the 120th day following  
109 the enactment, or if such day is a Saturday, Sunday, or official state holiday, midnight of the next  
110 business day, or such settlement agreement must be received by the Department by 5 p.m. of the 120th  
111 day following enactment, or if such day is a Saturday, Sunday, or official state holiday, by 5 p.m. of the  
112 next business day.

113 E. A taxpayer who submitted to the Department a timely but incomplete settlement agreement under  
114 the terms of the Federal Retiree Settlement Act or this act shall be deemed to have met the filing  
115 deadline, provided that any delay in submitting completed forms to the Department may result in a  
116 delay of the first payment required under the settlement program established by the Federal Retiree  
117 Settlement Act or under this act.

118 F. A taxpayer is hereby authorized, for purposes of the settlement created by this act, to sign on  
119 behalf of a spouse with whom he or she jointly filed an income tax return for a taxable year to which  
120 the settlement is related. By signing the agreement to settle the claim on behalf of both spouses, the  
121 signing taxpayer thereby agrees to indemnify the Commonwealth for any amounts related to the

122 settlement payments that it may be required to pay under the law to the nonsigning spouse.  
123 *G. The Tax Commissioner is authorized to enter into such contracts or execute such instruments or*  
124 *agreements as may be necessary (i) to effect compromise or settlement of disputed refund claims*  
125 *through creation of a trust or other legal entity or (ii) to obtain administrative or investment services*  
126 *relevant to any such settlement or compromise. Any such contracts or agreements for services must be*  
127 *approved by the Attorney General and shall be exempt from the provisions of the Virginia Public*  
128 *Procurement Act (§ 11-35 et seq.).*  
129 **2. That an emergency exists and this act is in force from its passage.**