

LD4593661

## SENATE BILL NO. 668

Offered January 11, 1995

*A BILL for the relief of Allan D. Searle and Florence G. Searle.*

Patron—Gartlan

Referred to the Committee on Finance

Whereas, Allan D. Searle, a retired employee of the federal government, received federal retirement annuity payments in each of taxable years 1985 through 1988; and

Whereas, Allan D. Searle and Florence G. Searle filed a Virginia individual income tax return for 1985 reporting the federal retirement annuity payment received in such year, and paid income tax to the Commonwealth on this federal retirement income; and

Whereas, the difference between the amount of Virginia income tax paid by Allan D. Searle and Florence G. Searle based on reported income in taxable year 1985 and the amount of tax that would have been due if the federal retirement income for 1985 had been exempt from Virginia income tax is \$2,595; and

Whereas, Chapter 5 of the Acts of Assembly of 1994 Special Session I (the "Federal Retiree Tax Settlement Law"), effective July 13, 1994, established a procedure for settlement of disputed taxes paid on federal retirement income during taxable years 1985 through 1988; and

Whereas, during August 1994, Allan D. Searle and Florence G. Searle received Form FR 1 from the Department of Taxation showing the receipt of federal retirement payments and corresponding overpayments of income tax for taxable years 1986 through 1988, but not for taxable year 1985; and

Whereas, on August 30, 1994, Allan D. Searle and Florence G. Searle returned Form FR 2 to the Department of Taxation with the information regarding the federal retirement income in taxable year 1985 and the tax overpayment of \$2,595 based on such income; and

Whereas, on December 2, 1994, the Department of Taxation notified Allan D. Searle and Florence G. Searle that records of the Department of Taxation indicated that they did not file a tax return for taxable year 1985, and that they would not be eligible to obtain settlement payments pursuant to the Federal Retiree Tax Settlement Law for taxable year 1985; and

Whereas, the decision to deny Allan D. Searle and Florence G. Searle participation in the settlement procedure for taxable year 1985 was the result of a processing error made by the Department of Taxation, which error resulted from the negligent failure of one or more employees of the Department of Taxation to review the Virginia income tax return filed by Allan D. Searle and Florence G. Searle for taxable year 1985, which return was within the possession and control of the Department, and was not contributed to by any act or omission of Allan D. Searle or Florence G. Searle; and

Whereas, the Tax Commissioner, in a letter to Allan D. Searle and Florence G. Searle dated on December 12, 1994, acknowledged that the Department's original determination to deny participation for taxable year 1985 was in error, but stated that the Federal Retiree Tax Settlement Law does not contain a mechanism for correcting processing errors; and

Whereas, the erroneous decision of the Department of Taxation to deny participation in the settlement procedure by Allan D. Searle and Florence G. Searle for taxable year 1985, based on a settlement percentage of 76.5459 percent and a tax overpayment of \$2,595, will reduce the total settlement amount offered to Allan D. Searle and Florence G. Searle under the provisions of the Federal Retiree Tax Settlement Law by \$1,934.47; and

Whereas, Allan D. Searle and Florence G. Searle have no other means to obtain relief except by the action of this body; now, therefore,

Be it enacted by the General Assembly of Virginia:

1. § 1. That the Department of Taxation is hereby directed to increase the total settlement amount offered to Allan D. Searle and Florence G. Searle pursuant to the Federal Retiree Tax Settlement Law by \$1,934.47 to reflect their overpayment of state income taxes for 1985 in the amount of \$2,595, and to extend the deadline for Allan D. Searle and Florence G. Searle to sign and return their Final Settlement Agreement Form FR 5 to a date thirty days following the effective date of this act, upon a release by them of all claims against the Commonwealth and its political subdivisions, agencies, instrumentalities, officers, or employees in connection with, or arising out of, the aforesaid occurrence.

INTRODUCED

SB668