

# VIRGINIA ACTS OF ASSEMBLY -- 1996 SESSION

## CHAPTER 401

*An Act to amend and reenact §§ 58.1-322, 58.1-344, 58.1-344.1, 58.1-491.1 and 58.1-905 of the Code of Virginia, relating to extensions of time for filing returns and paying taxes.*

[H 668]

Approved March 31, 1996

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

**1. That §§ 58.1-322, 58.1-344, 58.1-344.1, 58.1-491.1 and 58.1-905 of the Code of Virginia are amended and reenacted as follows:**

§ 58.1-322. Virginia taxable income of residents.

A. The Virginia taxable income of a resident individual means his federal adjusted gross income for the taxable year, which excludes combat pay for certain members of the Armed Forces of the United States as provided in § 112 of the Internal Revenue Code, as amended, and with the modifications specified in this section.

B. To the extent excluded from federal adjusted gross income, there shall be added:

1. Interest, less related expenses to the extent not deducted in determining federal income, on obligations of any state other than Virginia, or of a political subdivision of any such other state unless created by compact or agreement to which Virginia is a party;

2. Interest or dividends, less related expenses to the extent not deducted in determining federal taxable income, on obligations or securities of any authority, commission or instrumentality of the United States, which the laws of the United States exempt from federal income tax but not from state income taxes;

3. Unrelated business taxable income as defined by § 512 of the Internal Revenue Code;

4. The amount of a lump sum distribution from a qualified retirement plan, less the minimum distribution allowance and any amount excludable for federal income tax purposes which is excluded from federal adjusted gross income solely by virtue of an individual's election to use the averaging provisions under § 402 of the Internal Revenue Code;

5. through 7. [Repealed.]

8. For taxable years beginning on and after January 1, 1990, and before January 1, 1994, any amount of self-employment tax deduction under § 164 (f) of the Internal Revenue Code; and

9. The amount required to be included in income for the purpose of computing the partial tax on an accumulation distribution pursuant to § 667 of the Internal Revenue Code.

C. To the extent included in federal adjusted gross income, there shall be subtracted:

1. Interest or dividends on obligations of the United States and on obligations or securities of any authority, commission or instrumentality of the United States to the extent exempt from state income taxes under the laws of the United States including, but not limited to, stocks, bonds, treasury bills, and treasury notes, but not including interest on refunds of federal taxes, interest on equipment purchase contracts, or interest on other normal business transactions.

2. Interest on obligations of this Commonwealth or of any political subdivision or instrumentality of this Commonwealth.

3. [Repealed.]

4. Benefits received under Title II of the Social Security Act and other benefits subject to federal income taxation solely pursuant to § 86 of the Internal Revenue Code.

4a. A deduction equal to the amount used in computing the federal credit allowed under § 22 of the Internal Revenue Code by a retiree under age sixty-five who qualified for such retirement on the basis of permanent and total disability and who is a qualified individual as defined in § 22 (b) (2) of the Internal Revenue Code; however, any person who claims a subtraction under subdivision 5 of subsection D of this section may not also claim a deduction under this subdivision.

5. The amount of any refund or credit for overpayment of income taxes imposed by the Commonwealth or any other taxing jurisdiction.

6. The amount of wages or salaries eligible for the federal Targeted Jobs Credit which was not deducted for federal purposes on account of the provisions of § 280 C (a) of the Internal Revenue Code.

7. Any amount included therein which is foreign source income as defined in § 58.1-302.

8. For taxable years beginning after December 31, 1983, the available portion of total excess cost recovery as defined in former § 58.1-323 B and for taxable years beginning after December 31, 1987, the excess cost recovery amount specified in § 58.1-323.1 B.

9. [Expired.]

10. Any amount included therein less than \$600 from a prize awarded by the State Lottery Department.

11. The wages or salaries received by any person for active and inactive service in the National Guard of the Commonwealth of Virginia, not to exceed the amount of income derived from thirty-nine calendar days of such service or \$3,000, whichever amount is less; however, only those persons in the ranks of O3 and below shall be entitled to the deductions specified herein.

12. Amounts received by an individual, not to exceed \$1,000 in any taxable year, as a reward for information provided to a law-enforcement official or agency, or to a nonprofit corporation created exclusively to assist such law-enforcement official or agency, in the apprehension and conviction of perpetrators of crimes. This provision shall not apply to the following: an individual who is an employee of, or under contract with, a law-enforcement agency, a victim or the perpetrator of the crime for which the reward was paid, or any person who is compensated for the investigation of crimes or accidents.

13. [Repealed.]

14. (Expires for taxable years beginning on and after January 1, 1999.) The amount of any qualified agricultural contribution as determined in § 58.1-322.2.

15. [Repealed.]

16. The amounts of self-employment tax required to be added in computing Virginia taxable income for taxable years beginning on and after January 1, 1990, but before January 1, 1994, pursuant to subdivision B 8 of this section, as follows:

a. For taxable years beginning on and after January 1, 1994, and before January 1, 1995, the amount of self-employment tax added to federal adjusted gross income in taxable years beginning on and after January 1, 1990, and before January 1, 1991;

b. For taxable years beginning on and after January 1, 1995, and before January 1, 1996, the amount of self-employment tax added to federal adjusted gross income in taxable years beginning on and after January 1, 1991, and before January 1, 1992;

c. For taxable years beginning on and after January 1, 1996, and before January 1, 1997, the amount of self-employment tax added to federal adjusted gross income in taxable years beginning on and after January 1, 1992, and before January 1, 1993;

d. For taxable years beginning on and after January 1, 1997, and before January 1, 1998, the amount of self-employment tax added to federal adjusted gross income in taxable years beginning on and after January 1, 1993, and before January 1, 1994, and any amount of self-employment tax required to be added back for taxable years beginning on and after January 1, 1990, and before January 1, 1994, which was not subtracted in those taxable years.

17. For taxable years beginning on and after January 1, 1995, the amount of "qualified research expenses" or "basic research expenses" eligible for deduction for federal purposes, but which were not deducted, on account of the provisions of § 280 C (c) of the Internal Revenue Code and which shall be available to partners, shareholders of S corporations, and members of limited liability companies to the extent and in the same manner as other deductions may pass through to such partners, shareholders, and members.

18. *For taxable years beginning on or after January 1, 1995, all military pay and allowances, not otherwise subtracted under this subsection, earned for any month during any part of which such member performed military service in any part of the former Yugoslavia, including the air space above such location or any waters subject to related naval operations, in support of Operation JOINT ENDEAVOR as part of the NATO Peace Keeping Force. Such subtraction shall be available until the taxpayer completes such service.*

D. In computing Virginia taxable income there shall be deducted from federal adjusted gross income:

1. a. The amount allowable for itemized deductions for federal income tax purposes where the taxpayer has elected for the taxable year to itemize deductions on his federal return, but reduced by the amount of income taxes imposed by the Commonwealth or any other taxing jurisdiction and deducted on such federal return and increased by an amount which, when added to the amount deducted under § 170 of the Internal Revenue Code for mileage, results in a mileage deduction at the state level for such purposes at a rate of eighteen cents per mile; or

b. Two thousand dollars for taxable years beginning January 1, 1987, through December 31, 1987; \$2,700 for taxable years beginning January 1, 1988, through December 31, 1988; and \$5,000 for married persons (one-half of such amounts in the case of a married individual filing a separate return); and \$3,000 for single individuals for taxable years beginning on and after January 1, 1989; provided that the taxpayer has not itemized deductions for the taxable year on his federal income tax return. For purposes of this section, any person who may be claimed as a dependent on another taxpayer's return for the taxable year may compute the deduction only with respect to earned income.

2. a. A deduction in the amount of \$700 for taxable years beginning January 1, 1987, through December 31, 1987, and \$800 for taxable years beginning on and after January 1, 1988, for each personal exemption allowable to the taxpayer for federal income tax purposes. For taxable years beginning on and after January 1, 1987, each blind or aged taxpayer as defined under § 63 (f) of the Internal Revenue Code shall be entitled to an additional personal exemption.

b. An additional deduction of \$200 for taxable years beginning January 1, 1987, through December 31, 1987, for each blind or aged taxpayer as defined under § 63 (f) of the Internal Revenue Code. The

additional deduction for blind or aged taxpayers allowed under this subdivision and the additional personal exemption allowed to blind or aged taxpayers under subdivision 2 a of this subsection shall be allowable regardless of whether the taxpayer itemizes deductions for the taxable year for federal income tax purposes.

3. A deduction equal to the amount of employment-related expenses upon which the federal credit is based under § 21 of the Internal Revenue Code for expenses for household and dependent care services necessary for gainful employment.

4. An additional \$1,000 deduction for each child residing for the entire taxable year in a home under permanent foster care placement as defined in Chapter 10 (§ 63.1-195 et seq.) of Title 63.1, provided the taxpayer can also claim the child as a personal exemption under § 151 of the Internal Revenue Code.

5. Effective for all taxable years beginning on and after January 1, 1990, a deduction in the amount of \$12,000 for taxpayers age sixty-five or older, or \$6,000 for taxpayers age sixty-two through sixty-four, less any amount received pursuant to the (i) Social Security Act or (ii) Railroad Retirement Act and treated for federal income tax purposes as equivalent to social security. Beginning in taxable year 1992 through taxable year 1993, the \$12,000 and \$6,000 deduction amounts shall be indexed annually in each such taxable year by an amount equivalent to the most recent percentage increase in the social security wage base.

Effective for the taxable year beginning January 1, 1994, a deduction in the amount of \$12,944 for taxpayers age sixty-five or older, or \$6,472 for taxpayers age sixty-two through sixty-four. Effective for the taxable year beginning January 1, 1995, a deduction in the amount of \$10,000 for taxpayers age sixty-five or older, or \$5,000 for taxpayers age sixty-two through sixty-four. Effective for all taxable years beginning on or after January 1, 1996, a deduction in the amount of \$12,000 for taxpayers age sixty-five or older, or \$6,000 for taxpayers age sixty-two through sixty-four.

Beginning in taxable year 1995, the deduction under this subdivision shall not be reduced by any amount received pursuant to the (i) Social Security Act or (ii) Railroad Retirement Act and treated for federal income tax purposes as equivalent to social security.

E. There shall be added to or subtracted from federal adjusted gross income (as the case may be) the individual's share, as beneficiary of an estate or trust, of the Virginia fiduciary adjustment determined under § 58.1-361.

F. There shall be added or subtracted, as the case may be, the amounts provided in § 58.1-315 as transitional modifications.

§ 58.1-344. Extension of time for filing returns.

A. Whenever any individual or fiduciary has been allowed or granted an extension or extensions of time within which to file any federal income tax return for any taxable year, the due date for the filing of the income tax return required under this chapter shall be extended to the date six months after such due date or fifteen days after the extended date for filing the federal income tax return, whichever is earlier, provided that the estimated tax due is paid in accordance with the provisions of subsection C.

B. In addition, the Department may grant an extension or extensions of time not to exceed six months for filing such income tax return, provided that the estimated tax due is paid in accordance with the provisions of subsection C.

C. Any taxpayer desiring an extension of time in accordance with the provisions of subsection A or B shall, on or before the original due date for the filing of such return, in accordance with procedures established by the Tax Commissioner pay the full amount properly estimated as the balance of the tax due for the taxable year after giving effect to any estimated tax payments under § 58.1-491 and any tax credit under § 58.1-499. If any amount of the balance of the tax due is underestimated, interest at the rate prescribed in § 58.1-15 will be assessed on such amount from the original due date for filing of the income tax return to the date of payment. In addition to interest, if the underestimation of the balance of tax due exceeds ten percent of the actual tax liability, there shall be added to the tax as a penalty an amount equal to one-half of one percent per month for each month or fraction thereof from the original due date for the filing of the income tax return to the date of payment.

D. An extension of time for filing returns of income is hereby granted to and including the first day of the seventh month following the close of the taxable year in the case of United States citizens residing or traveling outside the United States and Puerto Rico, including persons in the military or naval service on duty outside the United States and Puerto Rico.

In all such cases a statement must be attached to the return certifying that the taxpayer is the person for whom the return is made and that the taxpayer was outside the United States or Puerto Rico on the due date of the return.

E. Notwithstanding any other provisions of law, any taxpayer who qualifies for an automatic extension under subsection D of this section, and who expects to qualify for foreign income exclusion may, on or before the expiration of the first day of the seventh month, apply for an additional extension of time for filing returns of income for a period of thirty days after the date such taxpayer reasonably expects to qualify for such exclusion. Such extension may not be granted unless a similar request for extension has been made for filing the federal return. An approved copy of the federal extension must be attached to the return when filed.

F. 1. Notwithstanding any other provision of this section, the date for filing income tax returns and paying the tax due for the taxable year beginning on or after January 1, 1990, and before January 1, 1991, for members of the reserve components of the armed forces, as defined in 10 U.S.C. § 261, as amended, who on the original due date of such return were on active duty status, is hereby extended for a period of one year from the original due date of the return.

2. However, in the case of an individual who qualifies for a period of postponement under § 7508 of the Internal Revenue Code or an act of Congress relating to and defining "Desert Shield service" for purposes of the federal income tax, the deadline for filing income tax returns and paying the tax due shall be the date fifteen days after the date on which the federal period of postponement terminates, if such date is greater than one year from the original due date of the return.

3. In all cases, an individual qualifying for an extension under either subdivision 1 or 2 of this subsection shall attach a statement to the return containing such information as may be prescribed by the Tax Commissioner.

*G. 1. Notwithstanding any other provision of this section, the date for filing income tax returns and paying the tax due for the taxable year beginning on or after January 1, 1995, and before January 1, 1997, for members of the of the Armed Forces of the United States, who on the original due date of such return were on active duty status serving in any part of the former Yugoslavia, including the air space above such location or any waters subject to related naval operations in support of Operation JOINT ENDEAVOR as part of the NATO Peace Keeping Force, is hereby extended for a period of one year from the original due date of the return.*

*2. However, in the case of an individual who qualifies for a period of postponement under § 7508 of the Internal Revenue Code for purposes of the federal income tax, the deadline for filing income tax returns and paying the tax due shall be the date fifteen days after the date on which the federal period of postponement terminates, if such date is greater than one year from the original due date of the return.*

*3. In all cases, an individual qualifying for an extension under either subdivision 1 or 2 of this subsection shall attach a statement to the return containing such information as may be prescribed by the Tax Commissioner.*

~~G. H.~~ Any individual who receives an extension for filing an individual income tax return for taxable year 1990 pursuant to subsection F or for taxable year 1995 pursuant to subsection G of this section shall be paid interest on any overpayment of individual income tax for taxable year 1990 or 1995, respectively, beginning from the date the return was originally required to be filed prior to the extension.

§ 58.1-344.1. Postponement of time for performing certain acts.

Penalty, interest, and addition to tax shall not apply or be computed with respect to the tax imposed in Article 2 of this chapter during the period of time that an individual enjoys the extension under subdivision 2 of ~~subsection~~ subsections F and G of § 58.1-344. The periods of limitation prescribed in Chapter 18 (§ 58.1-1800 et seq.) of this title shall also be extended by the number of days to which an individual is entitled to an extension under subdivision 2 of ~~subsection~~ subsections F and G of § 58.1-344.

§ 58.1-491.1. Payments estimated by certain members of the armed services.

Notwithstanding any other provision of this article, estimated tax declarations and installment payments shall not be required of any individual qualifying for an extension under subdivision 1 or 2 of ~~subsection~~ subsections F and G of § 58.1-344 during the period of such extension.

§ 58.1-905. Filing returns; payment of tax due thereon.

A. The personal representative of every estate subject to the tax imposed by this chapter who is required by the laws of the United States to file a federal estate tax return shall file with the Department, on or before the date the federal estate tax return is required to be filed: (i) a return for the tax due under this chapter; and (ii) a copy of the federal estate tax return.

B. If the personal representative has obtained an extension of time for filing the federal estate tax return or paying the federal estate tax or any portion thereof, the filing required by subsection A or payment required by subsection C shall be similarly extended until the end of the time period granted in the federal extension. Upon obtaining an extension of time for filing the federal estate tax return, or paying the federal estate tax or any portion thereof, the personal representative shall provide the Department with a true copy of the instrument providing for this extension.

C. The tax due under this chapter shall be paid by the personal representative to the Department not later than the date specified under subsection A or B. If such tax is paid pursuant to subsection B, interest, at a rate equal to the rate of interest established pursuant to § 58.1-15, shall be added for the period between the date when such tax would have been due had no extension been granted and the date of full payment.

D. Notwithstanding any other provision of this section, the extensions provided to individual taxpayers under subdivisions 1 and 2 of ~~subsection~~ subsections F and G of § 58.1-344 shall be applicable in the same manner to the tax imposed by this chapter.

**2. That an emergency exists and this act is in force from its passage.**