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HOUSE BILL NO. 292

Offered January 10, 1996

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, the February 1, 1995, deadline, and the May 15, 1995, deadline, because of circumstances 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.

Patrons—Brickley, Albo, Almand, Barlow, Behm, Callahan, Christian, Clement, Connally, Cooper, Councill, Cranwell, Cunningham, Darner, Davies, Diamonstein, Drake, Fisher, Forbes, Grayson, Griffith, Hall, Hamilton, Harris, Heilig, Hull, Ingram, Jackson, Johnson, Katzen, Keating, Kilgore, Landes, McClure, McDonnell, Melvin, Mims, Morgan, Moss, Murphy, O'Brien, Plum, Purkey, Rhodes, Robinson, Ruff, Scott, Tata, Van Landingham, Wagner, Wardrup and Watts; Senators: Colgan, Howell, Martin and Schrock

Referred to Committee on Finance

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, such legislation also contained a February 1, 1995, deadline for the affected taxpayers to deliver a settlement agreement accepting the final settlement offer to the Department of Taxation; and

Whereas, a large number of such taxpayers failed to provide the necessary supporting documentation, missed a 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, during the 1995 Session, the General Assembly passed legislation (Chapters 185 and 203 of the 1995 Acts of Assembly) granting retired federal and military taxpayers who failed to provide the necessary supporting documentation or missed the deadline for filing a response or delivering a settlement agreement, due to circumstances beyond their control, a period of sixty days, which expired May 15, 1995, to participate in the settlement by providing the documentation, filing the response, or delivering the settlement agreement; and

Whereas, a large number of retired federal and military taxpayers missed the opportunity to participate in the settlement by failing to provide the necessary supporting documentation, file a response, or deliver a settlement agreement by May 15, 1995; 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 1994 Acts of Assembly, Special Session I. To be eligible to receive these payments, a taxpayer shall have (i) responded to the August 1, 1994, notice 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 necessary for the Department to compute the taxpayer's disputed refund; (ii) missed the November 1, 1994, deadline for responses due to circumstances beyond his control; (iii) having filed a timely response by the November 1 deadline, missed the February 1, 1995, deadline for delivering a settlement agreement to the Department due to circumstances beyond his control; (iv) failed to receive an August 1, 1994, notice due to circumstances beyond his control. In addition to any of the foregoing conditions, to be eligible to receive these payments, a taxpayer shall have missed the May 15, 1995, deadline, established by Chapters 185 and 203 of the 1995 Acts of Assembly, for providing the Department with the necessary information to compute his disputed refund, the response form, or the settlement agreement, together with a written explanation that demonstrates that the taxpayer missed the relevant deadline due to circumstances

60 beyond his control. Such taxpayers are hereby granted an additional sixty days from the date of  
61 enactment to provide the Department with the necessary information to compute their disputed refunds  
62 or to provide the Department with response forms or settlement agreements and written explanations  
63 that demonstrate that the taxpayers (i) failed to provide information necessary for the Department to  
64 compute the disputed refund, (ii) missed the November 1, 1994, deadline, or (iii) missed the February 1,  
65 1995 deadline, due to circumstances beyond their control. The burden of proof shall be on the taxpayer.  
66 If a taxpayer certifies in writing that he (i) deposited any relevant form or document with the United  
67 States Postal Service, properly stamped and addressed to the Department, prior to the relevant deadline,  
68 and the Department has no record of receiving such form or document, or (ii) did not receive an August  
69 1, 1994, notice, the taxpayer shall be deemed to have missed the relevant deadline due to circumstances  
70 beyond his control. Any determination of what constitutes circumstances beyond the control of a  
71 taxpayer shall be liberally construed in favor of the taxpayer. Any supporting documentation provided to  
72 the Department on forms received prior to the expiration of the additional time period shall be reviewed  
73 by the Tax Commissioner. The Tax Commissioner shall determine whether the necessary information  
74 was provided or the taxpayer's explanation for missing the original November 1, 1994, deadline or the  
75 February 1, 1995, deadline was due to circumstances beyond the control of the taxpayer. The Tax  
76 Commissioner's authority to proceed under this section is subject to the following terms and conditions:

77 1. For purposes of this act:

78 "Calculated total disputed refund" means the total of all disputed refunds for all taxpayers who  
79 timely filed the required information with the Department, pursuant to subdivision 4a, as calculated by  
80 the Department of Taxation.

81 "Department" means the Department of Taxation.

82 "Disputed refund" means the amount of the tax overpayment on retirement or pension benefits  
83 received from a federal retirement system for taxable years 1985 through 1988 for which a refund is  
84 claimed that resulted from the Department's acceptance and processing of the additional information the  
85 taxpayer provided, pursuant to subdivision 4a. A disputed refund does not include any amount already  
86 included in the settlement offer mailed to a taxpayer on December 15, 1994, pursuant to the Federal  
87 Retiree Settlement Act.

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

90 "Final settlement offer" means the amount of the payment to be made to a taxpayer under the  
91 settlement agreement mailed to the taxpayer by the Department by the ninetieth day following  
92 enactment, pursuant to subdivision 4b.

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

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

96 "Settlement program" means the settlement program established by the Federal Retiree Settlement  
97 Act.

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

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

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

108 b. Disbursements shall be made in up to five payments, the first of which shall be made on July 31,  
109 1996, with each of the remaining four disbursements to be made on March 31 through 2000. The  
110 Department shall make payments to taxpayers who settle under this act in the same proportion as  
111 calculated for the payments to be made to retirees settling under the Federal Retiree Settlement Act.

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

114 3. Payments may be made directly from a special fund or from a trust or other legal entity  
115 established by the Tax Commissioner to administer the payments. Subject to appropriation by the  
116 General Assembly, an amount sufficient to fund the first and second annual settlement payments shall be  
117 deposited in the special fund, trust or other legal entity on or about July 1, 1996, pending disbursement.  
118 Subject to appropriation by the General Assembly, on each succeeding July 1 through 1996, an amount  
119 sufficient to fund the annual settlement payment shall be deposited in the special fund, trust or other  
120 legal entity pending disbursement. All earnings on investment of the funds shall be held in the special  
121 fund, trust or other legal entity established by the Tax Commissioner and reinvested until the final

122 payments to taxpayers are made on March 31, 2000.

123 4. The procedures to be followed by the Tax Commissioner in effecting payments as authorized shall  
124 be as follows:

125 a. On or before thirty days from the date of enactment of this act, the Department shall notify by  
126 first class mail each taxpayer (i) who timely filed a response to the August 1, 1994, notice issued by the  
127 Department pursuant to the terms of the Federal Retiree Settlement Act, but was denied participation in  
128 the settlement program due to the lack of certain information necessary to compute the taxpayer's  
129 disputed refund; (ii) who responded to the August 1, 1994, notice after November 1, 1994; (iii) who  
130 responded to the August 1, 1994, notice but did not deliver a settlement agreement to the Department;  
131 (iv) who delivered a settlement agreement to the Department after February 1, 1995; or (v) who was  
132 known to the Department but did not receive an August 1, 1994, notice, of the sixty-day period  
133 following enactment of this act during which he may (i) submit the information necessary to compute his  
134 disputed refund or (ii) deliver to the Department a signed settlement agreement accepting the final  
135 settlement offer and releasing the Commonwealth from any further liability. Each taxpayer so notified  
136 shall also be required to submit a written explanation that demonstrates that the taxpayer failed to  
137 provide the necessary additional information or missed the November 1, 1994, deadline or the February  
138 1, 1995, deadline due to circumstances beyond his control. The additional information or settlement  
139 agreement returned to the Department shall be either postmarked on or before midnight of the sixtieth  
140 day following the enactment, or if such day is a Saturday, Sunday, or official state holiday, midnight of  
141 the next business day, or such information shall be received by the Department by 5:00 p.m. of the  
142 sixtieth day following enactment, or if such day is a Saturday, Sunday, or official state holiday, by 5:00  
143 p.m. of the next business day.

144 b. Within ninety days following enactment, the Department shall send to each taxpayer, as  
145 appropriate, a notice and a settlement agreement that sets forth the amount of the final settlement offer.  
146 Those taxpayers who agree to accept the offer shall sign such settlement agreement releasing the  
147 Commonwealth and its agencies, officers and employees from any further liability for claims arising out  
148 of taxes paid on federal retirement income during the 1985 through 1988 taxable years and dismissing  
149 any litigation as to such claims in which the taxpayer is a party. Such settlement agreement shall be  
150 returned to the Department and shall be postmarked on or before midnight of the 120th day following  
151 the enactment, or if such day is a Saturday, Sunday, or official state holiday, midnight of the next  
152 business day, or such settlement agreement shall be received by the Department by 5:00 p.m. of the  
153 120th day following enactment, or if such day is a Saturday, Sunday, or official state holiday, by 5:00  
154 p.m. of the next business day.

155 5. A taxpayer who delivered to the Department a timely but incomplete settlement agreement under  
156 the terms of this act shall be deemed to have met the filing deadline; however, any delay in submitting  
157 completed forms to the Department may result in a delay of the first payment required under the  
158 settlement program established by the Federal Retiree Settlement Act or under this act. The taxpayer  
159 shall provide the Department a completed settlement agreement on or before the 150th day following  
160 enactment.

161 6. A taxpayer is hereby authorized, for purposes of the settlement created by this act, to sign on  
162 behalf of a spouse with whom he or she jointly filed an income tax return for a taxable year to which  
163 the settlement is related. By signing the agreement to settle the claim on behalf of both spouses, the  
164 signing taxpayer thereby agrees to indemnify the Commonwealth for any amounts related to the  
165 settlement payments that it may be required to pay under the law to the nonsigning spouse.

166 7. The Tax Commissioner is authorized to enter into such contracts or execute such instruments or  
167 agreements as may be necessary to (i) effect compromise or settlement of disputed refund claims  
168 through creation of a trust or other legal entity or (ii) obtain administrative or investment services  
169 relevant to any such settlement or compromise. Any such contracts or agreements for services shall be  
170 approved by the Attorney General and shall be exempt from the provisions of the Virginia Public  
171 Procurement Act (§ 11-35 et seq.).

172 8. Except and to the extent specifically authorized in this act, nothing in this act shall be construed  
173 or interpreted to revive any claim barred by the provisions of the Federal Retiree Settlement Act, and  
174 nothing in this act shall be construed or interpreted to authorize any taxpayer to opt out of the  
175 settlement program or agree to accept the relief granted in pending litigation after the deadlines  
176 established in the Federal Retiree Settlement Act.

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