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**HOUSE BILL NO. 803**

Offered January 22, 1996

*A BILL authorizing the Tax Commissioner to determine which retired federal and military taxpayers failed to comply, for good cause, with the February 1, 1995, deadline, for filing the form necessary to reject the settlement offer and to agree to be bound by the final disposition of the Harper v. Virginia Department of Taxation case; authorizing the Tax Commissioner to pay to such taxpayers an amount equal to the amount they would have been paid if they had complied with the deadline for rejecting the settlement offer; and establishing a fund from which amounts shall be paid.*

Patrons—Brickley, Almand and Wardrup; Senator: Maxwell

Referred to Committee on Appropriations

Whereas, in March 1989, the United States Supreme Court ruled in *Davis v. Michigan* that the state's practice of taxing federal pensions while exempting state workers' pensions was unlawful; and

Whereas, in an April 1989 Special Session, the General Assembly repealed the exemption for VRS retirement benefits so that the Commonwealth's federal and state retirees would be taxed equally; and

Whereas, the special session did not address the issue of refunding the taxes paid by federal retirees between 1985 and 1988, which prompted the filing of *Harper v. Commonwealth of Virginia* on May 31, 1989; and

Whereas, in an effort to bring closure to the case for all the parties involved, on July 8, 1994, the General Assembly established a settlement process with regard to the Harper litigation by enacting the Federal Retiree Settlement Act, which was signed into law on July 13, 1994; and

Whereas, the Federal Retiree Settlement Act required the Department of Taxation to send tax overpayment notices to retirees and begin a public notification program on August 1, 1994; and

Whereas, November 1, 1994, was the deadline for all federal retirees to respond to the August 1, 1994, notice in order to preserve their rights to recover any Virginia taxes paid on federal retirement income for taxable years 1985 through 1988; and

Whereas, federal retirees who responded to the notice of proposed settlement by November 1, 1994, were mailed a final settlement agreement form, which allowed taxpayers to select one of three options: (i) to accept the Department's settlement offer in full satisfaction of a claim for the disputed refund ("Option 1"); (ii) to reject the Department's settlement offer and agree to be bound by the final disposition of the Harper case as if the taxpayer was a party to that case ("Option 2"); or (iii) to waive rights to a disputed refund ("Option 3"); and

Whereas, the settlement agreement form was required to be completed and returned to the Department of Taxation by February 1, 1995, in order for federal retirees to participate in the settlement program or participate in any court-ordered relief in the Harper case; and

Whereas, a taxpayer who did not choose one of the three options on the final settlement agreement and return the form in a timely manner is barred from seeking recovery for a disputed refund unless he filed a lawsuit to claim a refund on or before February 1, 1995; 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 a deadline due to circumstances beyond their control, an additional opportunity to participate in the settlement, but did not provide any relief for taxpayers who missed the opportunity to reject the Department's settlement offer; and

Whereas, several taxpayers missed the opportunity to reject the Department's settlement offer and agree to be bound by the final disposition of the Harper case as if the taxpayer was a party to that case, because they missed a deadline for filing, or because the Tax Commissioner did not receive documentation that was mailed to him; and

Whereas, on September 15, 1995, the Virginia Supreme Court entered final judgment in favor of the parties plaintiff in the Harper case and directing that the amounts unlawfully collected from them be refunded, with interest as provided in § 58.1-1833 of the Code of Virginia; and

Whereas, the General Assembly desires to permit any affected taxpayers who, for good cause, missed the opportunity to reject the Department's settlement offer and to agree to be bound by the final disposition of the Harper case as if the taxpayer was a party to that case to receive the same benefits such taxpayers would have received had they returned the settlement agreement form, with Option 2 selected, by February 1, 1995; now, therefore,

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

1. §1. *The Tax Commissioner shall identify those taxpayers who are eligible for full payment. A*

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60 taxpayer shall be eligible for full payment if he proves, to the satisfaction of the Tax Commissioner, that  
61 the taxpayer (i) selected Option 2 on his settlement form and filed the completed settlement form with  
62 the Tax Commissioner by February 1, 1995, but the Tax Department has no record of receiving such  
63 form, or (ii) failed to file the completed settlement agreement form, with Option 2 selected, with the Tax  
64 Commissioner by February 1, 1995, for good cause. In addition, a taxpayer shall not be eligible for full  
65 payment if he has accepted the Department's settlement offer in full satisfaction of his claim for the  
66 disputed refund. As used herein, good cause shall exist if the taxpayer proves that he would have  
67 selected Option 2 on the settlement agreement form and returned the form to the Tax Commissioner by  
68 February 1, 1995, but was prevented from so doing because he did not receive the August 1, 1994,  
69 notice or a settlement agreement form through no fault of the taxpayer, or having received such forms  
70 was subject to an illness or medical condition that prevented the taxpayer from complying with the filing  
71 requirements of the Federal Retiree Settlement Act. The Tax Commissioner is authorized to identify a  
72 taxpayer as being eligible for full payment only if the taxpayer notifies the Tax Commissioner that he is  
73 eligible for full payment, and submits evidence substantiating his claim that he is eligible for full  
74 payment, on or before October 1, 1996. Any evidence provided to the Department on or before October  
75 1, 1996, shall be reviewed by the Tax Commissioner. The burden of proving that a taxpayer is eligible  
76 for full payment shall be on the taxpayer. Decisions of the Tax Commissioner regarding the eligibility of  
77 a taxpayer for full payment shall be final and shall not be subject to administrative or judicial review.  
78 The Tax Commissioner's authority to proceed under this section is subject to the following terms and  
79 conditions:

80 1. For purposes of this act:

81 "Department" means the Department of Taxation.

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

84 "Full payment" means payment of the amount of overpayment of Virginia income tax on federal  
85 retirement income received during taxable years 1985, 1986, and 1987, with interest thereon as  
86 provided in § 58.1-1833 of the Code of Virginia, which a taxpayer would have been eligible to receive  
87 had he been entitled to the relief awarded to the plaintiffs in *Harper v. Virginia Department of*  
88 *Taxation*.

89 "Settlement agreement" means the settlement agreement mailed to the taxpayers by the Department  
90 under the Federal Retiree Settlement Act.

91 "Settlement program" means the settlement program established by the Federal Retiree Settlement  
92 Act.

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

99 2. The Tax Commissioner or his designee shall make full payment to those taxpayers who are  
100 eligible for full payment on March 31, 1997, directly from a special fund or from a trust or other legal  
101 entity established by the Tax Commissioner to administer the payments. Subject to appropriation by the  
102 General Assembly, an amount sufficient to fund the full payments shall be deposited in the special fund,  
103 trust or other legal entity on or before March 31, 1997. Any amount received by a taxpayer pursuant to  
104 this section shall be subject to debt collection pursuant to Article 21 (§ 58.1-520 et seq.) of Chapter 3 of  
105 Title 58.1.

106 3. All earnings on investment of the funds shall be held in the special fund, trust or other legal entity  
107 established by the Tax Commissioner and reinvested until the full payments to those taxpayers who are  
108 eligible for full payment are made on March 31, 1997.

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

111 a. A taxpayer shall be eligible for identification as being eligible for full payment if he notifies the  
112 Tax Commissioner that he is eligible for full payment, and submits evidence substantiating his claim that  
113 he is eligible for full payment, to the Department by October 1, 1996. Such notice and evidence shall be  
114 either postmarked on or before midnight of October 1, 1996, or if such day is a Saturday, Sunday, or  
115 official state holiday, midnight of the next business day, or such notice and evidence shall be received  
116 by the Department by 5:00 p.m. on October 1, 1996, or if such day is a Saturday, Sunday, or official  
117 state holiday, by 5:00 p.m. of the next business day.

118 b. By December 1, 1996, the Commissioner shall have reviewed the notices and evidence submitted,  
119 determined whether the taxpayer is eligible for full payment, and notified the taxpayer of his decision.  
120 Upon identifying which taxpayers are eligible for full payment, the Tax Commissioner shall notify the  
121 chairmen of the Senate Committee on Finance and the House Committee on Appropriations and the

122 Governor of the amount required to make full payment to all taxpayers eligible for full payment.  
123 5. Except and to the extent specifically authorized in this act, nothing in this act shall (i) be  
124 construed or interpreted to revive any claim barred by the provisions of the Federal Retiree Settlement  
125 Act or (ii) be construed or interpreted to authorize any taxpayer to opt out of the settlement program or  
126 agree to accept the relief granted in litigation after the deadlines established in the Federal Retiree  
127 Settlement Act.

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