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HOUSE BILL NO. 1278

Offered January 20, 2010

A BILL to amend and reenact §§ 58.1-341, 58.1-490, and 58.1-491 of the Code of Virginia, relating to income tax returns and estimated tax returns filing date.

 Patron—Ebbin

 Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-341, 58.1-490, and 58.1-491 of the Code of Virginia are amended and reenacted as follows:

§ 58.1-341. Returns of individuals.

A. On or before ~~May 4~~ *April 15* of each year if an individual's taxable year is the calendar year, or on or before the fifteenth day of the fourth month following the close of a taxable year other than the calendar year, an income tax return under this chapter shall be made and filed by or for:

1. Every resident individual, except as provided in § 58.1-321, required to file a federal income tax return for the taxable year, or having Virginia taxable income for the taxable year;

2. Every nonresident individual having Virginia taxable income for the taxable year, except as provided in § 58.1-321.

Notwithstanding the foregoing, every member of the armed services of the United States deployed outside of the United States shall be allowed an automatic extension to file an income tax return. Such extension shall expire 90 days following the completion of such member's deployment. For purposes of this section, "the armed services of the United States" includes active duty service with the regular Armed Forces of the United States or the National Guard or other reserve component.

B. If the federal income tax liability of husband or wife is determined on a separate federal return, their Virginia income tax liabilities and returns shall be separate. If the federal income tax liabilities of husband and wife (other than a husband and wife described in subdivision 2 of subsection A) are determined on a joint federal return, or if neither files a federal return:

1. They shall file a joint Virginia income tax return, and their tax liabilities shall be joint and several; or

2. They may elect to file separate Virginia income tax returns if they comply with the requirements of the Department in setting forth information (whether or not on a single form), in which event their tax liabilities shall be separate unless such husband and wife file separately on a combined return. The election permitted under this subsection may be made or changed at any time within three years from the last day prescribed by law for the timely filing of the return.

C. If either husband or wife is a resident and the other is a nonresident, they shall file separate Virginia income tax returns on such single or separate forms as may be required by the Department, in which event their tax liabilities shall be separate except as provided in subsection D, unless both elect to determine their joint Virginia taxable income as if both were residents, in which event their tax liabilities shall be joint and several.

D. If husband and wife file separate Virginia income tax returns on a single form pursuant to subsection B or C, and:

1. If the sum of the payments by either spouse, including withheld and estimated taxes, exceeds the amount of the tax for which such spouse is separately liable, the excess may be applied by the Department to the credit of the other spouse if the sum of the payments by such other spouse, including withheld and estimated taxes, is less than the amount of the tax for which such other spouse is separately liable;

2. If the sum of the payments made by both spouses with respect to the taxes for which they are separately liable, including withheld and estimated taxes, exceeds the total of the taxes due, refund of the excess may be made payable to both spouses.

The provisions of this subsection shall not apply if the return of either spouse includes a demand that any overpayment made by him or her shall be applied only on account of his or her separate liability.

E. The return for any deceased individual shall be made and filed by his executor, administrator, or other person charged with his property.

F. The return for an individual who is unable to make a return by reason of minority or other disability shall be made and filed by his guardian, committee, fiduciary or other person charged with the care of his person or property (other than a receiver in possession of only a part of his property), or by his duly authorized agent.

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59 § 58.1-490. Declarations of estimated tax.

60 A. Every resident and nonresident individual shall make a declaration of his estimated tax for every
61 taxable year, if his Virginia tax liability can reasonably be expected to exceed an amount, to be
62 determined under regulations promulgated by the Tax Commissioner, which takes into account the
63 additions, subtractions and deductions set forth in § 58.1-322, the credits set forth in §§ 58.1-330,
64 58.1-332 and 58.1-333 and the filing exclusions set forth in § 58.1-321. Every estate with respect to any
65 taxable year ending two or more years after the date of death of the decedent and every trust shall make
66 a declaration of its estimated tax for every taxable year, if its Virginia taxable income can reasonably be
67 expected to exceed the amount specified by regulation for individuals as set forth above.

68 B. For purposes of this article, "estimated tax" means the amount which an individual estimates to be
69 his income tax under this chapter for the taxable year, less the amount which he estimates to be the sum
70 of any credits allowable against the tax.

71 C. For purposes of this section, the declaration shall be the first voucher.

72 D. In the case of a husband and wife, a single declaration under this section may be made by them
73 jointly, in which case the liability with respect to the estimated tax shall be joint and several. No joint
74 declaration may be made if either the husband or the wife is a nonresident of the Commonwealth unless
75 both are required by this chapter to file a return, if they are separated under a decree of divorce or of
76 separate maintenance, or if they have different taxable years. If a joint declaration is made but a joint
77 return is not made for the taxable year, the estimated tax for such year may be treated as the estimated
78 tax of either the husband or the wife, or may be divided between them.

79 E. A declaration of estimated tax of an individual other than a farmer, fisherman, or merchant
80 seaman shall be filed on or before ~~May 4~~ *April 15* of the taxable year, except that if the requirements of
81 subsection A are first met:

82 1. The declaration shall be filed on or before June 15, or

83 2. After June 1 and before September 2 of the taxable year, the declaration shall be filed on or
84 before September 15, or

85 3. After September 1 of the taxable year, the declaration shall be filed on or before January 15 of the
86 succeeding year.

87 F. A declaration of estimated tax of an individual having an estimated gross income from (i) farming
88 (including oyster farming); (ii) fishing; or (iii) working as a merchant seaman for the taxable year,
89 which is at least two-thirds of his total estimated gross income for the taxable year, may be filed at any
90 time on or before January 15 of the succeeding year, in lieu of the time otherwise prescribed.

91 G. A declaration of estimated tax of an individual having a total estimated tax for the taxable year of
92 forty dollars or less may be filed at any time on or before January 15 of the succeeding year under
93 regulations of the Tax Commissioner.

94 H. An individual may amend a declaration under regulations of the Tax Commissioner.

95 I. If on or before March 1 of the succeeding taxable year an individual files his return for the taxable
96 year for which the declaration is required, and pays therewith the full amount of the tax shown to be
97 due on the return:

98 1. Such return shall be considered as his declaration if no declaration was required to be filed during
99 the taxable year, but is otherwise required to be filed on or before January 15.

100 2. Such return shall be considered as the amendment permitted by subsection H to be filed on or
101 before January 15 if the tax shown on the return is greater than the estimated tax shown in a declaration
102 previously made.

103 J. This section shall apply to a taxable year other than a calendar year by the substitution of the
104 months of such fiscal year for the corresponding months specified in this section.

105 K. An individual having a taxable year of less than twelve months shall make a declaration in
106 accordance with regulations of the Tax Commissioner.

107 L. The declaration of estimated tax for an individual who is unable to make a declaration by reason
108 of any disability shall be made and filed by his guardian, committee, fiduciary or other person charged
109 with the care of his person or property (other than a receiver in possession of only a part of his
110 property), or by his duly authorized agent.

111 M. The declaration of estimated tax for a trust or estate shall be made by the fiduciary. For purposes
112 of the estimated tax imposed in this article, any reference to an "individual" shall be deemed to include
113 the fiduciary required to file a declaration for a trust or estate. Any overpayment of estimated tax with
114 respect to any trust or estate shall be refunded to the fiduciary. A beneficiary of a trust or estate shall
115 not be entitled to a credit against the beneficiary's individual income tax for any overpayment of
116 estimated tax by a trust or estate.

117 § 58.1-491. Payments of estimated tax.

118 A. The estimated tax with respect to which a declaration is required shall be paid as follows:

119 1. If the declaration is filed on or before ~~May 4~~ *April 15* of the taxable year, the estimated tax shall
120 be paid in four equal installments. The first installment shall be paid at the time of the filing of the

121 declaration, and the second, third and fourth installments shall be paid on the following June 15,
122 September 15, and January 15, respectively.

123 2. If the declaration is filed after ~~May 4~~ *April 15* and not after June 15 of the taxable year, and is
124 not required to be filed on or before ~~May 4~~ *April 15* of the taxable year, the estimated tax shall be paid
125 in three equal installments. The first installment shall be paid at the time of the filing of the declaration,
126 and the second and third installments shall be paid on the following September 15 and January 15,
127 respectively.

128 3. If the declaration is filed after June 15 and not after September 15 of the taxable year, and is not
129 required to be filed on or before June 15 of the taxable year, the estimated tax shall be paid in two
130 equal installments. The first installment shall be paid at the time of the filing of the declaration, and the
131 second shall be paid on the following January 15.

132 4. If the declaration is filed after September 15 of the taxable year, and is not required to be filed on
133 or before September 15 of the taxable year, the estimated tax shall be paid in full at the time of the
134 filing of the declaration.

135 5. If the declaration is filed after the time prescribed therefor, or after the expiration of any extension
136 of time therefor, subdivisions 2, 3, and 4 of this subsection shall not apply, and there shall be paid at
137 the time of such filing all installments of estimated tax payable at or before such time, and the
138 remaining installments shall be paid at the times at which, and in the amounts in which, they would
139 have been payable if the declaration had been filed when due.

140 B. If an individual referred to in subsection F of § 58.1-490 (relating to income from farming or
141 fishing) makes a declaration of estimated tax after September 15 of the taxable year and on or before
142 the following January 15, the estimated tax shall be paid in full at the time of the filing of the
143 declaration.

144 C. If any amendment of a declaration is filed, the remaining installments, if any, shall be ratably
145 increased or decreased (as the case may be) to reflect any increase or decrease in the estimated tax by
146 reason of such amendment, and if any amendment is made after September 15 of the taxable year, any
147 increase in the estimated tax by reason thereof shall be paid at the time of making such amendment.

148 D. This section shall apply to a taxable year of less than twelve months in accordance with
149 regulations of the Tax Commissioner.

150 E. This section shall apply to a taxable year other than a calendar year by the substitution of the
151 months of such fiscal year for the corresponding months specified in this section.

152 F. An individual may elect to pay any installment of his estimated tax prior to the date prescribed for
153 its payment. An individual may also elect to file a declaration of estimated tax in the closing days of a
154 calendar year for his taxable year about to begin, and may pay in full the amount of his estimated tax
155 for such taxable year at the time he files the declaration.

156 G. Payment of the estimated tax, or any installment thereof, shall be considered payment on account
157 of the tax for the taxable year.

158 H. The Tax Commissioner may grant a reasonable extension of time for payment of estimated tax (or
159 any installment), or for filing any declaration pursuant to this article, on condition that the taxpayer shall
160 pay interest on the amount involved at a rate determined in accordance with § 58.1-15, from the time
161 the payment was due until the time of payment. Except for a taxpayer who is outside the United States,
162 no such extension shall exceed six months.