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HOUSE BILL NO. 984

Offered January 13, 2010

Prefiled January 13, 2010

A BILL to amend and reenact § 58.1-490 of the Code of Virginia, relating to declarations of estimated tax.

Patron—Jones

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:**1. That § 58.1-490 of the Code of Virginia is amended and reenacted as follows:**

§ 58.1-490. Declarations of estimated tax.

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

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

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

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

E. A declaration of estimated tax of an individual other than a farmer, fisherman, or merchant seaman shall be filed on or before May 1 of the taxable year, except that if the requirements of subsection A are first met:

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

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

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

F. A declaration of estimated tax of an individual having an estimated gross income from (i) farming (including oyster farming); (ii) fishing; or (iii) working as a merchant seaman for the taxable year, which is at least two-thirds of his total estimated gross income for the taxable year, may be filed at any time on or before ~~January 15~~ *May 1* of the succeeding year, in lieu of the time otherwise prescribed.

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

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

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

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

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

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

K. An individual having a taxable year of less than twelve months shall make a declaration in

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59 accordance with regulations of the Tax Commissioner.

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

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