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HOUSE BILL NO. 399

Offered January 13, 2016

Prefiled January 6, 2016

A BILL to amend and reenact §§ 58.1-472 and 58.1-478 of the Code of Virginia, relating to withholding of income taxes; related penalties.

Patron—Sullivan

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:**1. That §§ 58.1-472 and 58.1-478 of the Code of Virginia are amended and reenacted as follows:****§ 58.1-472. Employer's returns and payments of withheld taxes.**

Every employer required to deduct and withhold from an employee's wages under this article shall make return and pay over to the Tax Commissioner the amount required to be withheld hereunder as follows:

1. Every employer whose monthly liability is less than \$100 or who is subject to subdivision 3 shall make return and pay over the required amount on or before the last day of the month following the close of each quarterly period;

2. Every employer whose average monthly liability can reasonably be expected to be \$100 or more shall file a return and pay the tax monthly, on or before the twenty-fifth day of the following month;

3. Every employer whose average monthly liability can reasonably be expected to be \$1,000 or more and the aggregate amount required to be withheld by any employer exceeds \$500 shall, in addition to the requirements of subdivision 1 of ~~this section~~, file a form with the Commissioner within three banking days following the close of any period for which the employer is required to deposit federal withholding tax and pay the amount so withheld, except when a payment is due within three days of the due date for the filing of the quarterly returns, then such payment shall be made with such return. Any employer otherwise required to file a return and pay the withholding tax pursuant to this subdivision that has no more than five employees subject to withholding under this article may request a waiver from the Tax Commissioner authorizing the employer to file the return and pay the withholding tax pursuant to subdivision 2.

The Tax Commissioner may authorize an employer to file seasonal returns when in his opinion the administration of the tax imposed under this article would be enhanced. Any employer making payment under subdivision 3 of ~~this section~~ will be deemed to have met the requirements hereof if at least ninety percent of actual tax liability for such period is paid. Employers authorized to file seasonal returns under this paragraph shall file each return on or before the twentieth of the month following the close of the reporting period.

The returns and forms filed under this section shall be in such ~~form~~ *electronic medium* and contain such information as the Tax Commissioner may prescribe.

§ 58.1-478. Withholding tax statements for employees; employers must file annual returns with Tax Commissioner; penalties.

A. Every person required to deduct and withhold from an employee's wages under this article shall furnish to each such employee in respect to the remuneration paid by such person to such employee during the calendar year, on or before January 31 of the succeeding year, or if his employment is terminated before the close of such calendar year, on the day on which the last payment of remuneration is made, a written statement in duplicate showing the following: (i) the name of such person; (ii) the name of the employee and his social security account number; (iii) the total amount of wages; and (iv) the total amount deducted and withheld under this article by such employer.

B. The written statements required to be furnished pursuant to this section in respect of any remuneration shall be furnished at such other times, shall contain such other information, and shall be in such form as the Tax Commissioner may by regulations prescribe.

C. 1. Every employer shall file an annual return with the Tax Commissioner, setting forth such information as the Tax Commissioner may require, not later than ~~February 28~~ *January 31* of the calendar year succeeding the calendar year in which wages were withheld from employees, and such annual return shall be accompanied by an additional copy of each of the written statements furnished to each employee under subsections A and B of ~~this section~~.

2. Every employer who furnishes 250 or more written statements to employees under subsections A and B for any calendar year beginning before January 1, 2010, who furnished 150 or more such statements for any calendar year beginning on and after January 1, 2010, or who furnishes 50 or more

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59 such statements for any calendar year beginning on and after January 1, 2011, shall file the annual
60 ~~report return and copies of written statements~~ required under this subsection using an electronic medium
61 using a format prescribed by the Tax Commissioner. Waivers shall be granted only if the Tax
62 Commissioner finds that this requirement creates an unreasonable burden on the employer. All requests
63 for waiver shall be submitted to the Tax Commissioner in writing. ~~Employers who furnish fewer than~~
64 ~~250 written statements to employees under subsections A and B may, at such employer's option, file~~
65 ~~such annual report on an electronic medium in lieu of filing the annual report on paper.~~

66 D. The Tax Commissioner shall have the authority to require every employer to furnish the names
67 and social security numbers of all employees whose wages or withholding amounts for the taxable year
68 are below levels specified by the Commissioner.

69 *E. In addition to any other penalties imposed by law, any employer that fails to file all copies of the*
70 *written statements required by subsection C within the time required shall be liable for a penalty of \$5*
71 *for each written statement that is not filed within the required time if the failure is for not more than*
72 *one month, with an additional \$5 for each written statement that is not filed within the required time for*
73 *each additional month or fraction thereof during which such failure to file continues, not exceeding six*
74 *months in the aggregate.*

75 *F. In addition to any other penalties imposed by law, any employer that fails to file all copies of the*
76 *written statements required by subsection C using an electronic medium as prescribed by the Tax*
77 *Commissioner shall be liable for a penalty in the following amounts:*

78 *1. Each employer required to submit no more than 50 written statements for any calendar year shall*
79 *be liable for a penalty of \$5 for each written statement that is not filed by the employer using an*
80 *electronic medium.*

81 *2. Each employer required to submit more than 50 but less than 100 written statements for any*
82 *calendar year shall be liable for a penalty of \$10 for each written statement that is not filed by the*
83 *employer using an electronic medium.*

84 *3. Each employer required to submit 100 or more written statements for any calendar year shall be*
85 *liable for a penalty of \$20 for each written statement that is not filed by the employer using an*
86 *electronic medium.*

87 **2. That the provisions of this act shall be applicable to written statements of withholding as**
88 **described under § 58.1-478 of the Code of Virginia and withholding tax returns relating to taxable**
89 **years beginning on or after January 1, 2016.**