

20106760D

## HOUSE BILL NO. 1220

## AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Finance  
on February 5, 2020)

(Patron Prior to Substitute—Delegate Tran)

A BILL to amend and reenact §§ 58.1-308, 58.1-311, 58.1-351, 58.1-455, and 58.1-486.3 of the Code of Virginia, relating to state income tax; amended return notice; interest accrual period.

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-308, 58.1-311, 58.1-351, 58.1-455, and 58.1-486.3 of the Code of Virginia are amended and reenacted as follows:

§ 58.1-308. Assessment and payment of deficiency; fraud; penalties.

If the amount of tax computed by the Department is greater than the amount theretofore assessed, the excess shall be assessed by the Department and a bill for the same shall be mailed to the taxpayer. The taxpayer shall pay such additional tax to the Department within ~~thirty~~ 30 days after the amount of the tax as computed is mailed by the Department. In such case, if the return was made in good faith and the understatement of the amount in the return was not due to any fault of the taxpayer, there shall be no penalty on the additional tax because of such understatement, but interest shall be added to the amount of the deficiency at a rate determined in accordance with § 58.1-15, from the time the return was required by law to be filed until paid. *However, if the return was made in good faith and the understatement of the amount in the return was not due to any fault of the taxpayer, the Department shall have discretion to waive the interest otherwise due in cases where the assessment is due to a change in federal taxable income pursuant to § 58.1-311.*

If the understatement is false or fraudulent with intent to evade the tax, a penalty of 100 percent shall be added together with interest on the tax at a rate determined in accordance with § 58.1-15, from the time the return was required by law to be filed until paid.

Nothing contained in this section shall prevent the taxpayer from applying to the circuit court of the county or the city wherein he resides for a correction of the assessment made by the Department, with right of appeal in the manner provided by law.

§ 58.1-311. Report of change in federal taxable income.

If the amount of any individual, estate, trust or corporate taxpayer's federal taxable income reported on his federal income tax return for any taxable year is changed or corrected by the United States Internal Revenue Service or other competent authority, or as the result of a renegotiation of a contract or subcontract with the United States, the taxpayer shall file an amended return, or such other form as the Department may prescribe, reporting such change or correction in federal taxable income within one year after the final determination of such change, correction, or renegotiation, or as otherwise required by the Department, and shall concede the accuracy of such determination or state wherein it is erroneous. However, if the Department has sufficient information from which to compute the proper additional tax and the taxpayer has paid such tax, then the taxpayer is not required to file an amended individual income tax return. Any taxpayer filing an amended federal income tax return shall also file within one year thereafter an amended return under this chapter and shall give such information as the Department may require.

*If the Department is made aware that a taxpayer is required to file an amended federal income tax return from information provided by the taxpayer, or any agency or authority of the federal government or the Commonwealth, then the Department shall notify such taxpayer in writing whether an amended return under this chapter shall also be filed. Such written notice shall detail (i) the additional tax owed to the Department, if any, that is assessed as a result of such amended federal income tax return and the amount of overpayment that shall be refunded to the taxpayer, if any, or (ii) any information the Department may require from the taxpayer to compute the amount of additional tax owed or to be refunded, if any.*

The Department may by regulation prescribe such exceptions to the requirements of this section as it deems appropriate.

§ 58.1-351. When, where and how individual income taxes payable and collectible.

Each individual and fiduciary liable for income tax shall pay the same to the treasurer of the county or city with whose commissioner of the revenue the taxpayer files his return at the time fixed by law for filing the return. The full amount of the tax payable as shown on the face of the return shall be so paid. A taxpayer may file his return and pay his tax in full in the closing days of his taxable year provided he is able to prepare a complete return.

If any payment is not made in full when due, there shall be added to the entire tax or to any unpaid balance of the tax, a penalty of six percent of the amount thereof, if the failure is for not more than one

60 month, with an additional six percent for each additional month or fraction thereof during which such  
61 failure to pay continues, not exceeding ~~thirty~~ 30 percent in the aggregate. The entire tax or any unpaid  
62 balance of the tax, together with such penalty, will immediately become collectible. Interest upon such  
63 tax or any unpaid balance of the tax, and on the accrued penalty, shall be added at a rate determined in  
64 accordance with § 58.1-15, from the date the tax or any unpaid balance of the tax, was originally due  
65 until paid. In the case of an additional tax assessed by the commissioner of the revenue under the  
66 provisions of § 58.1-307, if the return was made in good faith and the understatement of the amount in  
67 the return was not due to any fault of the taxpayer, there shall be no penalty on the additional tax  
68 because of such understatement, but interest shall be added to the amount of the deficiency at a rate  
69 determined in accordance with § 58.1-15, from the time the said return was required by law to be filed  
70 until paid. *However, if the return was made in good faith and the understatement of the amount in the*  
71 *return was not due to any fault of the taxpayer, the Department shall have discretion to waive the*  
72 *interest otherwise due in cases where the assessment is due to a change in federal taxable income*  
73 *pursuant to § 58.1-311.*

74 The penalty under this section shall not be applicable to any month or fraction thereof for which the  
75 individual is subject to the penalty imposed under § 58.1-347. In no event shall the total amount of  
76 penalty assessed under this section and under § 58.1-347 exceed ~~thirty~~ 30 percent in the aggregate.

77 **§ 58.1-455. Time of payment of corporation income taxes; penalty and interest for nonpayment.**

78 A. Every corporation liable for income tax shall pay the same to the Department at the time fixed by  
79 law for filing the return. The full amount of the tax payable as shown on the face of the return shall be  
80 so paid. A corporation may file its return and pay its tax in full in the closing days of its taxable year  
81 provided it is able to prepare a complete return.

82 If any payment is not made in full when due, there shall be added to the entire tax or to any unpaid  
83 balance of the tax, a penalty of six percent of the amount thereof, if the failure is for not more than one  
84 month, with an additional six percent for each additional month or fraction thereof during which such  
85 failure to pay continues, not exceeding ~~thirty~~ 30 percent in the aggregate. The entire tax or any unpaid  
86 balance of the tax, together with such penalty, will immediately become collectible. Interest upon such  
87 tax or any unpaid balance of the tax, and on the accrued penalty, shall be added at a rate determined in  
88 accordance with § 58.1-15, from the date the tax or any unpaid balance of the tax was originally due  
89 until paid. In the case of an additional tax assessed by the Department, if the return was made in good  
90 faith and the understatement of the amount in the return was not due to any fault of the taxpayer, there  
91 shall be no penalty on the additional tax because of such understatement, but interest shall be added to  
92 the amount of the deficiency at a rate determined in accordance with § 58.1-15, from the time the return  
93 was required by law to be filed until paid. *However, if the return was made in good faith and the*  
94 *understatement of the amount in the return was not due to any fault of the taxpayer, the Department*  
95 *shall have discretion to waive the interest otherwise due in cases where the assessment is due to a*  
96 *change in federal taxable income pursuant to § 58.1-311.*

97 The penalty under this subsection shall not be applicable to any month or fraction thereof for which  
98 the corporation is subject to the penalty imposed under § 58.1-450. In no event shall the total amount of  
99 penalty assessed under this subsection and under § 58.1-450 exceed ~~thirty~~ 30 percent in the aggregate.

100 B. If the understatement is false or fraudulent with intent to evade the tax, a penalty of 100 percent  
101 shall be added together with interest on the tax at a rate determined in accordance with § 58.1-15, from  
102 the time the return was required by law to be filed until paid.

103 Nothing contained in this section shall prevent the taxpayer from applying to the circuit court of the  
104 county or the city wherein the corporation is located for a correction of the assessment made by the  
105 Department, with right of appeal in the manner provided by law.

106 **§ 58.1-486.3. Penalty.**

107 A. If any payment is not made in full when due, there shall be added to the entire tax or to any  
108 unpaid balance of the tax a penalty of six percent of the amount thereof, if the failure is for not more  
109 than one month, with an additional six percent for each additional month or fraction thereof during  
110 which such failure to pay continues, not exceeding 30 percent in the aggregate. The entire tax or any  
111 unpaid balance of the tax, together with such penalty and interest, shall immediately become collectible.  
112 Interest upon such tax or any unpaid balance of the tax and on the accrued penalty shall be added at a  
113 rate determined in accordance with § 58.1-15 from the date the tax or any unpaid balance of the tax was  
114 originally due until paid. In the case of an additional tax assessed by the Department, if the return was  
115 made in good faith and the understatement of the amount in the return was not due to any fault of the  
116 taxpayer, there shall be no penalty on the additional tax because of such understatement, but interest  
117 shall be added to the amount of the deficiency at a rate determined in accordance with § 58.1-15 from  
118 the time the return was required by law to be filed until paid. *However, if the return was made in good*  
119 *faith and the understatement of the amount in the return was not due to any fault of the taxpayer, the*  
120 *Department shall have discretion to waive the interest otherwise due in cases where the assessment is*  
121 *due to a change in federal taxable income pursuant to § 58.1-311.*

122 B. In any month or fraction thereof for which the pass-through entity is subject to the penalty  
123 imposed under § 58.1-394.1 and the penalty under this section, the greater of the two penalties shall  
124 apply.

125 C. The penalty under this section shall not apply to any tax attributable to income that was included  
126 in a return filed pursuant to § 58.1-395.