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SENATE BILL NO. 2008

Senate Amendments in [] — July 6, 1994

A *BILL to amend and reenact §§ 51.1-155, 51.1-157, 51.1-206, 51.1-306, 51.1-308, 58.1-322 and 58.1-1823 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 51.1-166.1, 51.1-208.1 and 51.1-306.1; to provide authority and procedures for resolving certain disputed tax refund claims; and to appropriate funds therefor, all relating to federal retirees' tax payments, refunds and funding mechanisms therefor [; retirement deductions; service retirement allowances]*.

Patrons—Cross, Gartlan, Holland, R.J., Chichester, Stosch and Andrews

Referred to the Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That §§ 51.1-155, 51.1-157, 51.1-206, 51.1-306, 51.1-308, 58.1-322 and 58.1-1823 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 51.1-166.1, 51.1-208.1 and 51.1-306.1 as follows:

§ 51.1-155. Service retirement allowance.

A. Retirement allowance. A member shall receive an annual retirement allowance, payable for life, as follows:

1. Normal retirement. - The allowance shall equal 1.50 percent of the first \$13,200 of average final compensation plus 1.65 percent of average final compensation in excess of \$13,200, multiplied by the amount of creditable service. *In addition, beginning October 1, 1994, each such retirement allowance shall be increased by a factor of 3.00 percent of such allowance.* If the member is credited with thirty-five or more years of service, he shall receive 1.65 percent of his average final compensation multiplied by the amount of his creditable service. *In addition, beginning October 1, 1994, each such retirement allowance shall be increased by a factor of 3.00 percent of such allowance.*

2. Early retirement; applicable to teachers, state employees, and certain others. - The allowance shall be determined in the same manner as for normal retirement with creditable service and average final compensation being determined as of the date of actual retirement. If the member has less than thirty years of service at retirement, the amount of the retirement allowance shall be reduced on an actuarial equivalent basis for the period by which the actual retirement date precedes the earlier of (i) his normal retirement date or (ii) the first date on which he would have completed a total of thirty years of creditable service. The provisions of this subdivision shall apply to teachers and state employees. These provisions shall also apply to employees of any political subdivision that participates in the retirement system if the political subdivision makes the election provided in subdivision 3 of this subsection.

3. Early retirement; applicable to employees of certain political subdivisions. - The allowance shall be determined in the same manner as for normal retirement with creditable service and average final compensation being determined as of the date of actual retirement. If the creditable service of the member equals thirty or more years but the sum of his age at retirement plus his creditable service at retirement is less than ninety, the amount of the retirement allowance shall be reduced on an actuarial equivalent basis for the period by which the actual retirement date precedes the earlier of (i) his normal retirement date or (ii) the first date on which the sum of his then attained age plus his then creditable service would have been equal to ninety or more had he remained in service until such date. If the member has less than thirty years of creditable service, the retirement allowance shall be reduced for the period by which the actual retirement date precedes the earlier of (i) his normal retirement date or (ii) the first date on which he would have completed a total of at least thirty years of creditable service and his then creditable service plus his then attained age would have been equal to ninety or more.

The provisions of this subdivision shall apply to the employees of any political subdivision that participates in the retirement system. The participating political subdivision may, however, elect to provide its employees with the early retirement allowance set forth in subdivision 2 of this subsection. Any election pursuant to this subdivision shall be set forth in a legally adopted resolution.

4. Additional allowance. - In addition to the allowance payable under this subsection, a member shall receive an additional allowance which shall be the actuarial equivalent, for his attained age at the time of retirement, of the excess of his accumulated contributions transferred from the abolished system to the retirement system, including interest credited at the rate of two percent compounded annually since the transfer to the date of retirement, over the annual amounts equal to four percent of his annual creditable compensation at the date of abolishment for a period equal to his period of membership in the abolished system.

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60 B. Beneficiary serving in position covered by this title. If a beneficiary of a service retirement
61 allowance under this chapter, other than a member of the General Assembly, is at any time in service as
62 an employee in a position covered for retirement purposes under the provisions of this or any chapter
63 other than Chapter 7 (§ 51.1-700 et seq.) of this title, his retirement allowance shall cease while so
64 employed.

65 § 51.1-157. Disability retirement allowance.

66 A. Allowance payable on retirement. Upon retirement for disability, a member who has five or more
67 years of creditable service shall receive an annual retirement allowance during his lifetime and continued
68 disability equal to 1.65 percent of average final compensation multiplied by the smaller of (i) twice the
69 amount of his creditable service or (ii) the amount of creditable service he would have completed at age
70 sixty if he had remained in service to that age. *In addition, beginning October 1, 1994, each such*
71 *retirement allowance shall be increased by a factor of 3.00 percent of such allowance.* If a member has
72 already attained age sixty, the amount of creditable service at his date of retirement shall be used.

73 B. Workers' compensation guarantee. If a member retires for disability from a cause which is
74 compensable under the Virginia Workers' Compensation Act (§ 65.2-100 et seq.), the amount of the
75 annual retirement allowance shall equal sixty-six and two-thirds percent of the member's average final
76 compensation if the member does not qualify for primary social security benefits under the provisions of
77 the Social Security Act in effect on the date of his retirement. If the member qualifies for primary social
78 security benefits under the provisions of the Social Security Act in effect on the date of his retirement,
79 the allowance payable from the retirement system shall equal fifty percent of his average final
80 compensation. A member shall be entitled to the larger of the retirement allowance as determined under
81 the provisions of subsection A or under the provisions of this subsection.

82 C. Reduction of allowance. Any allowance payable to a member who retires for disability from a
83 cause compensable under the Virginia Workers' Compensation Act shall be reduced by the amount of
84 any payments under the provisions of the Act in effect on the date of retirement of the member and the
85 excess of the allowance shall be paid to the member. When the time for compensation payments under
86 the Act has elapsed, the member shall receive the full amount of the allowance payable during his
87 lifetime and continued disability. If the member's payments under the Virginia Workers' Compensation
88 Act are adjusted or terminated for refusal to work or to comply with the requirements of § 65.2-603, his
89 allowance shall be computed as if he were receiving the compensation to which he would otherwise be
90 entitled.

91 D. Special retirement allowance guarantee. Any member retired from a cause which is not
92 compensable under the Virginia Workers' Compensation Act shall be guaranteed an annual retirement
93 allowance during his lifetime and continued disability which equals fifty percent of the member's
94 average final compensation if the member does not qualify for primary social security benefits under the
95 provisions of the Social Security Act in effect on the date of his retirement. If the member qualifies for
96 primary social security benefits under the provisions of the Social Security Act in effect on the date of
97 retirement, the allowance payable from the retirement system shall equal thirty-three and one-third
98 percent of his average final compensation.

99 E. Determination of retirement allowance. For the purposes of this section, the retirement allowance
100 shall be determined on the assumption that the retirement allowance is payable to the member alone and
101 that no optional retirement allowance is elected.

102 § 51.1-166.1. *Increase in retirement allowance.*

103 *Each retirement allowance payable prior to October 1, 1994, to any beneficiary who retired prior to*
104 *that date under any provision of this chapter shall be increased by a factor of 3.00 percent of such*
105 *allowance.*

106 § 51.1-206. Service retirement allowance.

107 A. A member shall receive an annual retirement allowance, payable for life, as follows:

108 1. Normal retirement. - The allowance shall equal 1.50 percent of the first \$13,200 of average final
109 compensation plus 1.65 percent of average final compensation in excess of \$13,200 multiplied by the
110 amount of creditable service. *In addition, beginning October 1, 1994, each such retirement allowance*
111 *shall be increased by a factor of 3.00 percent of such allowance.* If the member is credited with
112 thirty-five or more years of service, he shall receive 1.65 percent of his average final compensation
113 multiplied by the amount of creditable service. *In addition, beginning October 1, 1994, each such*
114 *retirement allowance shall be increased by a factor of 3.00 percent of such allowance.*

115 2. Early retirement. - The allowance shall be determined in the same manner as for normal retirement
116 with creditable service and average final compensation being determined as of the date of actual
117 retirement. If the member has less than twenty-five years of service at retirement, the amount of the
118 retirement allowance shall be reduced on an actuarial equivalent basis for the period by which the actual
119 retirement date precedes the earlier of (i) his normal retirement date or (ii) the first date on or after his
120 fiftieth birthday on which he would have completed a total of twenty-five years of creditable service.

121 B. In addition to the allowance payable under subsection A of this section, a member shall receive

an additional allowance equal to \$7,080 annually from date of retirement until his sixty-fifth birthday.

Such allowance shall be reviewed and adjusted by the Board biennially to an amount recommended by the actuary of the Virginia Retirement System based upon increases in social security benefits in the interim. This subsection shall not apply to the following: (i) any member who qualifies for retirement under subsection C of § 51.1-205 and is credited with less than twenty years' service rendered in a hazardous position or (ii) any member employed initially on or after July 1, 1974, who is credited with less than twenty years' service rendered in a hazardous position.

C. If a beneficiary of a service retirement allowance under this chapter is at any time in service as an employee in a position covered for retirement purposes under the provisions of this or any chapter other than Chapter 7 (§ 51.1-700 et seq.) of this title, his retirement allowance shall cease while so employed.

§ 51.1-208.1. Increase in retirement allowances.

Each retirement allowance payable prior to October 1, 1994, to any beneficiary who retired prior to that date under any provision of this chapter shall be increased by a factor of 3.00 percent of such allowance.

§ 51.1-306. Service retirement allowance.

A. Retirement allowance. A member shall receive an annual retirement allowance, payable for life as follows:

1. Normal retirement. - The allowance shall equal 1.65 percent of average final compensation multiplied by the amount of creditable service. *In addition, beginning October 1, 1994, each such retirement allowance shall be increased by a factor of 3.00 percent of such allowance.* The allowance shall not exceed seventy-five percent of the average final compensation of the member.

2. Early retirement. - The allowance shall be determined in the same manner as for normal retirement with creditable service and average final compensation being determined as of the date of actual retirement. If the member has not attained his sixtieth birthday or has less than thirty years of service, the amount of the retirement allowance shall be reduced on an actuarial equivalent basis for the period by which the actual retirement date precedes the earlier of (i) his normal retirement date or (ii) the first date on or after his sixtieth birthday on which he would have completed a total of thirty years of creditable service.

B. Normal and early retirement guarantees. Any member who was a member of one of the previous systems immediately prior to July 1, 1970, and who would have been eligible for retirement benefits thereunder shall be guaranteed a minimum retirement allowance no less than that for which he would have qualified had he continued to participate therein.

C. Determination of retirement allowance. For the purposes of subsection B of this section, the retirement allowance shall be determined on the assumption that the retirement allowance is payable to the member alone and that no optional retirement allowance is elected.

D. Beneficiary serving in position covered by this title. If a beneficiary of a service retirement allowance under this chapter or under any of the previous systems is at any time in service as an employee in a position covered for retirement purposes under the provisions of this or any chapter other than Chapter 7 of this title, his retirement allowance shall cease while so employed.

§ 51.1-306.1. Increase in retirement allowances.

Each retirement allowance payable prior to October 1, 1994, to any beneficiary who retired prior to that date under any provision of this chapter shall be increased by a factor of 3.00 percent of such allowance.

§ 51.1-308. Disability retirement allowance.

A. Allowance payable on retirement. Upon retirement for disability, a member who has five or more years of creditable service shall receive an annual retirement allowance, not to exceed seventy-five percent of his average final compensation, payable during his lifetime and continued disability equal to 1.65 percent of average final compensation when multiplied by the smaller of (i) twice the amount of creditable service or (ii) the amount of creditable service he would have completed at age sixty if he had remained in service to that age. *In addition, beginning October 1, 1994, each such retirement allowance shall be increased by a factor of 3.00 percent of such allowance.* If a member has already attained age sixty, the amount of creditable service at his date of retirement shall be used.

B. Workers' compensation guarantee. If a member retires for disability from a cause which is compensable under the Virginia Workers' Compensation Act (§ 65.2-100 et seq.), the amount of the annual retirement allowance shall, subject to the provisions of subsection D, equal sixty-six and two-thirds percent of the member's average final compensation if the member does not qualify for primary social security benefits under the provisions of the Social Security Act in effect on the date of his retirement. If the member qualifies for primary social security benefits under the provisions of the Social Security Act in effect on the date of his retirement, the allowance payable from the retirement system shall equal fifty percent of his average final compensation. A member shall be entitled to the larger of the retirement allowance as determined under the provisions of subsection A of this section or

183 under the provisions of this subsection.

184 C. General disability retirement guarantee. The disability retirement allowance payable to a member
185 who immediately prior to July 1, 1970, was a member of one of the previous systems shall be at least
186 an amount equal to the disability retirement allowance to which he would have been entitled under the
187 provisions of the previous system.

188 D. Determination of retirement allowance. For the purposes of this section, the retirement allowance
189 shall be determined on the assumption that the retirement allowance is payable to the member alone and
190 that no optional retirement allowance is elected.

191 E. Reduction of allowance. Any allowance payable to a member who retires for disability from a
192 cause compensable under the Virginia Workers' Compensation Act shall be reduced by the amount of
193 any payments under the provisions of the Act in effect on the date of retirement of the member and the
194 excess of the allowance shall be paid to such member. When the time for compensation payments under
195 the Act has elapsed, the member shall receive the full amount of the allowance payable during his
196 lifetime and continued disability. If the member's payments under the Virginia Workers' Compensation
197 Act are adjusted or terminated for refusal to work or to comply with the requirements of § 65.2-603, his
198 allowance shall be computed as if he were receiving the compensation to which he would otherwise be
199 entitled.

200 F. Special retirement allowance guarantee. Any member retired from a cause which is not
201 compensable under the Virginia Workers' Compensation Act shall be guaranteed an annual retirement
202 allowance during his lifetime and continued disability which equals fifty percent of the member's
203 average final compensation if the member does not qualify for primary social security benefits under the
204 provisions of the Social Security Act in effect on the date of his retirement. If the member qualifies for
205 primary social security benefits under the provisions of the Social Security Act in effect on the date of
206 retirement, the allowance payable from the retirement system shall equal thirty-three and one-third
207 percent of his average final compensation.

208 § 58.1-322. Virginia taxable income of residents.

209 A. The Virginia taxable income of a resident individual means his federal adjusted gross income for
210 the taxable year, which excludes combat pay for certain members of the Armed Forces of the United
211 States as provided in § 112 of the Internal Revenue Code, as amended, and with the modifications
212 specified in this section.

213 B. To the extent excluded from federal adjusted gross income, there shall be added:

214 1. Interest, less related expenses to the extent not deducted in determining federal income, on
215 obligations of any state other than Virginia, or of a political subdivision of any such other state unless
216 created by compact or agreement to which Virginia is a party;

217 2. Interest or dividends, less related expenses to the extent not deducted in determining federal
218 taxable income, on obligations or securities of any authority, commission or instrumentality of the
219 United States, which the laws of the United States exempt from federal income tax but not from state
220 income taxes;

221 3. Unrelated business taxable income as defined by § 512 of the Internal Revenue Code;

222 4. The amount of a lump sum distribution from a qualified retirement plan, less the minimum
223 distribution allowance and any amount excludable for federal income tax purposes which is excluded
224 from federal adjusted gross income solely by virtue of an individual's election to use the averaging
225 provisions under § 402 of the Internal Revenue Code;

226 5. through 7. [Repealed.]

227 8. For taxable years beginning on and after January 1, 1990, and before January 1, 1994, any amount
228 of self-employment tax deduction under § 164 (f) of the Internal Revenue Code; *and*

229 9. The amount required to be included in income for the purpose of computing the partial tax on an
230 accumulation distribution pursuant to § 667 of the Internal Revenue Code.

231 C. To the extent included in federal adjusted gross income, there shall be subtracted:

232 1. Interest or dividends on obligations of the United States and on obligations or securities of any
233 authority, commission or instrumentality of the United States to the extent exempt from state income
234 taxes under the laws of the United States including, but not limited to, stocks, bonds, treasury bills, and
235 treasury notes, but not including interest on refunds of federal taxes, interest on equipment purchase
236 contracts, or interest on other normal business transactions.

237 2. Interest on obligations of this Commonwealth or of any political subdivision or instrumentality of
238 this Commonwealth.

239 3. [Repealed.]

240 4. Benefits received under Title II of the Social Security Act and other benefits subject to federal
241 income taxation solely pursuant to § 86 of the Internal Revenue Code.

242 4a. A deduction equal to the amount used in computing the federal credit allowed under § 22 of the
243 Internal Revenue Code by a retiree under age sixty-five who qualified for such retirement on the basis
244 of permanent and total disability and who is a qualified individual as defined in § 22 (b) (2) of the

Internal Revenue Code; however, any person who claims a subtraction under subdivision 5 of subsection D of this section may not also claim a deduction under this subdivision.

5. The amount of any refund or credit for overpayment of income taxes imposed by the Commonwealth or any other taxing jurisdiction.

6. The amount of wages or salaries eligible for the federal Targeted Jobs Credit which was not deducted for federal purposes on account of the provisions of § 280 C (a) of the Internal Revenue Code.

7. Any amount included therein which is foreign source income as defined in § 58.1-302.

8. For taxable years beginning after December 31, 1983, the available portion of total excess cost recovery as defined in former § 58.1-323 B and for taxable years beginning after December 31, 1987, the excess cost recovery amount specified in § 58.1-323.1 B.

9. [Expired.]

10. Any amount included therein less than \$600 from a prize awarded by the State Lottery Department.

11. The wages or salaries received by any person for active and inactive service in the National Guard of the Commonwealth of Virginia, not to exceed the amount of income derived from thirty-nine calendar days of such service or \$3,000, whichever amount is less; however, only those persons in the ranks of O3 and below shall be entitled to the deductions specified herein.

12. Amounts received by an individual, not to exceed \$1,000 in any taxable year, as a reward for information provided to a law-enforcement official or agency, or to a nonprofit corporation created exclusively to assist such law-enforcement official or agency, in the apprehension and conviction of perpetrators of crimes. This provision shall not apply to the following: an individual who is an employee of, or under contract with, a law-enforcement agency, a victim or the perpetrator of the crime for which the reward was paid, or any person who is compensated for the investigation of crimes or accidents.

13. [Repealed.]

14. (Expires for taxable years beginning on and after January 1, 1999.) The amount of any qualified agricultural contribution as determined in § 58.1-322.2.

15. [Repealed.]

16. The amounts of self-employment tax required to be added in computing Virginia taxable income for taxable years beginning on and after January 1, 1990, but before January 1, 1994, pursuant to subdivision B 8 of this section, as follows:

1-a. For taxable years beginning on and after January 1, 1994, and before January 1, 1995, the amount of self-employment tax added to federal adjusted gross income in taxable years beginning on and after January 1, 1990, and before January 1, 1991;

2- b. For taxable years beginning on and after January 1, 1995, and before January 1, 1996, the amount of self-employment tax added to federal adjusted gross income in taxable years beginning on and after January 1, 1991, and before January 1, 1992;

3-c. For taxable years beginning on and after January 1, 1996, and before January 1, 1997, the amount of self-employment tax added to federal adjusted gross income in taxable years beginning on and after January 1, 1992, and before January 1, 1993;

4-d. For taxable years beginning on and after January 1, 1997, and before January 1, 1998, the amount of self-employment tax added to federal adjusted gross income in taxable years beginning on and after January 1, 1993, and before January 1, 1994, and any amount of self-employment tax required to be added back for taxable years beginning on and after January 1, 1990, and before January 1, 1994, which was not subtracted in those taxable years.

17. For taxable years beginning on and after January 1, 1995, the amount of "qualified research expenses" or "basic research expenses" eligible for deduction for federal purposes, but which were not deducted, on account of the provisions of § 280 C (c) of the Internal Revenue Code and which shall be available to partners, shareholders of S corporations, and members of limited liability companies to the extent and in the same manner as other deductions may pass through to such partners, shareholders, and members.

D. In computing Virginia taxable income there shall be deducted from federal adjusted gross income:

1. a. The amount allowable for itemized deductions for federal income tax purposes where the taxpayer has elected for the taxable year to itemize deductions on his federal return, but reduced by the amount of income taxes imposed by the Commonwealth or any other taxing jurisdiction and deducted on such federal return and increased by an amount which, when added to the amount deducted under § 170 of the Internal Revenue Code for mileage, results in a mileage deduction at the state level for such purposes at a rate of eighteen cents per mile; or

b. Two thousand dollars for taxable years beginning January 1, 1987, through December 31, 1987; \$2,700 for taxable years beginning January 1, 1988, through December 31, 1988; and \$5,000 for married persons (one-half of such amounts in the case of a married individual filing a separate return); and \$3,000 for single individuals for taxable years beginning on and after January 1, 1989; provided that

the taxpayer has not itemized deductions for the taxable year on his federal income tax return. For purposes of this section, any person who may be claimed as a dependent on another taxpayer's return for the taxable year may compute the deduction only with respect to earned income.

2. a. A deduction in the amount of \$700 for taxable years beginning January 1, 1987, through December 31, 1987, and \$800 for taxable years beginning on and after January 1, 1988, for each personal exemption allowable to the taxpayer for federal income tax purposes. For taxable years beginning on and after January 1, 1987, each blind or aged taxpayer as defined under § 63 (f) of the Internal Revenue Code shall be entitled to an additional personal exemption.

b. An additional deduction of \$200 for taxable years beginning January 1, 1987, through December 31, 1987, for each blind or aged taxpayer as defined under § 63 (f) of the Internal Revenue Code. The additional deduction for blind or aged taxpayers allowed under this subdivision and the additional personal exemption allowed to blind or aged taxpayers under subdivision 2 a of this subsection shall be allowable regardless of whether the taxpayer itemizes deductions for the taxable year for federal income tax purposes.

3. A deduction equal to the amount of employment-related expenses upon which the federal credit is based under § 21 of the Internal Revenue Code for expenses for household and dependent care services necessary for gainful employment.

4. An additional \$1,000 deduction for each child residing for the entire taxable year in a home under permanent foster care placement as defined in Chapter 10 (§ 63.1-195 et seq.) of Title 63.1, provided the taxpayer can also claim the child as a personal exemption under § 151 of the Internal Revenue Code.

5. Effective for all taxable years beginning on and after January 1, 1990, a deduction in the amount of \$12,000 for taxpayers age sixty-five or older, or \$6,000 for taxpayers age sixty-two through sixty-four, less any amount received pursuant to the (i) Social Security Act or (ii) Railroad Retirement Act and treated for federal income tax purposes as equivalent to social security. Beginning in taxable year 1992 *through taxable year 1994*, the \$12,000 and \$6,000 deduction amounts shall be indexed annually in each *such* taxable year by an amount equivalent to the most recent percentage increase in the social security wage base. *Effective for all taxable years beginning on and after January 1, 1995, a deduction in the amount of \$7,600 for taxpayers age sixty-five or older, or \$3,800 for taxpayers age sixty-two through sixty-four.*

E. There shall be added to or subtracted from federal adjusted gross income (as the case may be) the individual's share, as beneficiary of an estate or trust, of the Virginia fiduciary adjustment determined under § 58.1-361.

F. There shall be added or subtracted, as the case may be, the amounts provided in § 58.1-315 as transitional modifications.

§ 58.1-1823. Reassessment and refund upon the filing of amended return.

A. Any person filing a tax return required for any tax administered by the Department of Taxation may file an amended return with the Department (i) within three years from the last day prescribed by law for the timely filing of the return; (ii) within ninety days from the final determination of any change or correction in the liability of the taxpayer for any federal tax upon which the state tax is based, whichever is later, provided that the refund does not exceed the amount of the decrease in Virginia tax attributable to such federal change or correction; or (iii) within one year from the filing of an amended Virginia return resulting in the payment of additional tax, provided that the amended return raises issues relating solely to such prior amended return and that the refund does not exceed the amount of the payment with such prior amended return. If the Department is satisfied, by evidence submitted to it or otherwise, that the tax assessed and paid upon the original return exceeds the proper amount, the Department may reassess the taxpayer and order that any amount excessively paid be refunded to him. The Department may reduce such refund by the amount of any taxes, penalties and interest which are due for the period covered by the amended return, or any past-due taxes, penalties and interest which have been assessed within the appropriate period of limitations. Any order of the Department denying such reassessment and refund, or the failure of the Department to act thereon within three months shall, as to matters first raised by the amended return, be deemed an assessment for the purpose of enabling the taxpayer to pursue the remedies allowed under this chapter.

B. Notwithstanding the time limitation contained in subsection A, an amended individual income tax return claiming a refund for taxes paid with respect to retirement or pension benefits received from a federal retirement system created by the federal government for any officer or employee of the United States, including the United States Civil Service, the United States Armed Forces, or any agency or subdivision thereof for any taxable year beginning on or after January 1, 1985, may be filed within one year from the entry of a final judicial order of a court of competent jurisdiction not subject to further appeal resolving the issue of the application to Virginia income tax law of the United States Supreme Court decision in the case of *Davis v. Michigan Department of the Treasury*, 57 U.S.L.W. 4389 (U.S. March 28, 1989). The decision in *Harper v. Virginia Department of Taxation*, 112 S.Ct. 2519 (June 18, 1993) shall not be deemed to be a final judicial order for purposes of calculating the statute of

limitations under this subsection.

C. Notwithstanding the statute of limitations established in this section, any retired employee of a political subdivision of the Commonwealth, established pursuant to Chapter 627 of the 1958 Acts of Assembly may file an amended individual income tax return until May 1, 1990, for taxable years beginning on and after January 1, 1985, and before January 1, 1986, for taxes paid on retirement income exempt pursuant to § 58.1-322.

DB. Notwithstanding the statute of limitations contained in subsection A, any individual who claimed an age subtraction on his 1990 individual income tax return may file an amended individual income tax return on July 1, 1994, for taxable years beginning on and after January 1, 1990, and ending before January 1, 1991, to claim an income deduction as provided in § 58.1-322 D 5 in lieu of the income subtraction originally claimed.

2. § 1. For purposes of this act:

"Claimant" means any individual or the legal guardian, committee, estate or other legal representative of any individual who (i) received retirement income and (ii) paid individual income tax to the Commonwealth of Virginia on such retirement income during the taxable years beginning on or after January 1, 1985, and ending before January 1, 1989.

"Class member" means any claimant who does not request exclusion from a class action authorized by this act.

"Department" means the Virginia Department of Taxation.

"Retirement income" means retirement or pension benefits received from a federal retirement system created by the federal government for any officer or employee of the United States, including the United States Civil Service, the United States Armed Forces, or any agency or subdivision thereof.

"Settlement amount" means the total amount to be paid to a claimant in settlement of all claims for the refund of tax overpayments. The term "settlement amount" shall not include any interest on payments made by a claimant to the Department [; ~~or attorneys' fees~~].

"Tax overpayment" means the amount of Virginia income tax paid by a claimant with respect to retirement income during the taxable years beginning on or after January 1, 1985, and ending before January 1, 1989, as determined by the Department.

§ 2. Notwithstanding any other provision of law, upon motion of any party made during the pendency of an appeal in a case challenging the validity of an assessment or the collection of a tax on retirement income, the Supreme Court shall within ten days of the date of the motion remand the case for further proceedings in the trial court as provided in this act upon finding that full justice cannot be done or the whole controversy ended as to either party without the presence of new parties. Upon remand, proceedings in the circuit court shall include appropriate proceedings for identifying all claimants, joinder or intervention of additional parties to the remanded case and certification of a class for consideration and approval of a settlement as to certain parties in accordance with this act.

§ 3. A. Two or more claimants challenging the assessment or collection of any tax on retirement income may file an action in the circuit court to which a case has been remanded as provided in § 2 as representative claimants on behalf of a class of claimants seeking to settle their disputes with the Commonwealth concerning tax overpayments.

B. Notice of an order determining that such an action shall proceed as a class action shall be given to all claimants, including those who are parties to the remanded case. Notice shall be by first class mail to the last known address of the claimant as shown by the records of the Department and by such other notice as determined by the court to be practicable under the circumstances. The notice shall advise each claimant (i) that the court will exclude him from the class if he requests exclusion by a certain date, not to exceed thirty days from the date of notice; (ii) that the judgment entered in the class action will include claimants who do not request exclusion; (iii) that any class member may enter an appearance through counsel; (iv) that to participate in any settlement distribution, a class member must file a proof of claim form in accordance with instructions provided; (v) that a class member who requests exclusion may seek to intervene in the remanded case then pending in the court; and (vi) of such other matters as the court deems appropriate.

C. The class action shall not be dismissed or compromised without the approval of the court, and notice of any proposed dismissal or compromise shall be given to all class members in such manner as the court directs. The notice contemplated in subsection B may be combined with the notice required in this subsection.

D. The Commonwealth shall not be liable for interest prior to judgment, punitive damages or attorneys' fees in any class action settlement approved by the court. The total amount recoverable by the entire class of claimants pursuant to the settlement approved by the court shall not exceed \$340 million, nor shall any judgment be payable otherwise than in annual installments of \$60 million in the first full fiscal year after judgment and \$70 million annually thereafter for four successive years.

§ 4. A. The Attorney General, with the approval of the Governor, may enter into a settlement

429 agreement with the class members in a class action authorized by this act, through their class
430 representatives and counsel. The Department, with the approval of the Attorney General, may make
431 payment of settlement amounts to class members with respect to their tax overpayments. The Attorney
432 General and the Department may take all actions necessary to complete such a settlement in accordance
433 with the provisions of this act. Neither the Attorney General nor the Department shall admit liability to
434 any class member.

435 B. Payments of settlement amounts shall be made directly from a special settlement fund (the
436 settlement fund) established at the direction of the Department for the purposes of (i) receiving
437 appropriations made by the General Assembly for purposes of this act and (ii) facilitating administration
438 of the investment and disbursements of such funds. Subject to appropriation by the General Assembly,
439 an initial sum of \$60 million shall be deposited in the settlement fund on or before September 1, 1994,
440 to be held and invested until disbursed to members on or before March 31, 1995. On an annual basis
441 thereafter on July 1, 1995, through July 1, 1998, subject to appropriation by the General Assembly, \$70
442 million shall be deposited in the settlement fund to be held and invested until disbursed to participating
443 class members on or before March 31 of each year from 1996 through 1999. Earnings on the settlement
444 fund shall be held and reinvested until final payments to class members are made on or before March
445 31, 1999. In no event shall the total of amounts appropriated for settlement of the class action exceed
446 \$340 million. Any sums remaining in the settlement fund after final payments in 1999 to class members
447 shall be paid into the general fund of the Commonwealth.

448 For purposes of this act, interest [earnings] on the fund [~~and earnings on the fund~~] shall be
449 computed at the rate of three percent per annum.

450 C. The settlement fund shall be paid to class members as settlement amounts in the following
451 manner:

452 1. If the Department determines that the total monies available from appropriations and the
453 calculated earnings from their investment are insufficient to fully pay each class member's tax
454 overpayment, then, prior to authorizing any disbursements from the settlement fund, the Department
455 shall reduce each class member's settlement amount by a percentage equal to the total tax overpayments
456 for all class members minus the total amount of money available for disbursement, as calculated by the
457 Department, divided by the total tax overpayments for all class members.

458 2. Out of the amount appropriated for disbursement each year, one-half may be used to pay in full
459 the class members with the smallest settlement amounts, after any reduction; the remaining half of the
460 appropriation shall be paid proportionately to the remaining class members, subject to the provisions of
461 this subsection.

462 3. The amount of the tax overpayments claimed by claimants requesting exclusion from the class
463 action shall be deducted from the total amounts available in the settlement fund, thereby reducing the
464 amount in the fund available for payment to class members. In the event the total principal amount of
465 claims of claimants requesting exclusion from the class action exceeds \$15 million, the settlement shall
466 be null and void and any appropriations made to the settlement fund in accordance with this act shall
467 revert to the general fund. Further, upon such event, the circuit court shall conclude matters in the
468 remanded case and dismiss the class action.

469 § 5. Any claimant who, prior to September 1, 1995, fails to (i) file an action to recover taxes paid on
470 retirement income for taxable years beginning on or after January 1, 1985, and ending before January
471 1, 1989, (ii) settle a claim for a refund of such taxes or (iii) intervene or join in *Harper v. Virginia*
472 Department of Taxation shall be forever barred from asserting such claim.

473 § 6. Any amount received by a claimant in compromise of a claim for tax overpayment pursuant to
474 this act shall be subject to debt collection pursuant to Chapter 44 (§ 2.1-726 et seq.) of Title 2.1.

475 § 7. Federal retirees tax settlement.

476 A. Notwithstanding §§ 3-2.01 and 4-1.06 a.7. of Chapter 966 of the 1994 Acts of Assembly, the
477 Governor is authorized to reserve an amount in fiscal year 1994-95, not to exceed \$60 million from the
478 sources set forth below, for the purpose of defraying the settlement cost of tax refund claims by certain
479 federal and military retirees arising out of federal and state court decisions since 1989 relating to
480 taxation of pension benefits by the Commonwealth. The payment of claims pursuant to this authority
481 shall be consistent with statutory authority granted the Governor, Attorney General and Tax
482 Commissioner to compromise or settle claims.

483 B. The Governor may reserve funds from the following sources to satisfy the actual refund claims
484 submitted under the approved settlement, up to the amount of \$60 million. Funds shall be set aside and
485 administered through a special fund account titled "Federal Retiree Tax Reserve," hereinafter referred
486 to as the "Reserve." Once funds are designated as part of the Reserve, they are hereby appropriated for
487 the purpose of making the first year settlement payment of refund claims.

488 1. The first source of funds for payment of claims under the settlement shall be the amount of
489 general fund revenues collected in fiscal year 1993-94 in excess of \$6,477,854,564 and any other
490 amounts which are included as part of the fiscal year 1993-94 undesignated, unreserved general fund

balance, not to exceed \$60 million. Such amounts shall be allocated or transferred to the Reserve.

2. To the extent the amount specified in subdivision 1 totals less than \$60 million, then the State Comptroller is authorized to transfer up to \$28,000,000 from the general fund to the Reserve. The Director of the Department of Planning and Budget shall concurrently unallot, for reversion to the general fund, appropriations from the general fund in Item 396 of Chapter 966 of the 1994 Acts of Assembly equal to any such amount transferred by the State Comptroller. The amounts to be unallotted shall be the minimum amount needed when combined with subdivision 1 to place a total of \$60 million in the Reserve.

3. To the degree that the amounts specified in subdivisions 1 and 2 above totals less than \$60 million, an additional amount may be transferred to the Reserve from the June 30, 1994, general fund balance which results from unexpended operating appropriations of Executive Department agencies and which were reappropriated on July 1, 1994. To accomplish this purpose, the Governor is authorized to unallot unexpended appropriations related to 1993-94 balances in Executive Department agencies both for activities specified in § 4-1.06 a.1. of Chapter 966, 1994 Acts of Assembly, and other activities. The amount to be unallotted from agency balances shall be the minimum amount needed, when combined with the amounts in subdivisions 1 and 2, to place a total of \$60 million in the Reserve.

C. The Governor is authorized to supplement appropriations for the Supreme Court, the Attorney General, the Department of Taxation, the Department of the Treasury or other state agencies, in an amount not to exceed \$3,300,000 from the unappropriated balance derived by subtracting the general fund appropriations from the projected general fund revenues in Chapter 966, 1994 Acts of Assembly, for administrative expenses associated with the payment of claims pursuant to subsection B above. He shall report such supplements to the Chairmen of the House Appropriations and Senate Finance Committees no later than thirty days from the date they are executed.

3. That if any part of this act or the application thereof to any person or circumstance is held invalid by a court of competent jurisdiction, such holding shall not affect the validity of the remainder of the provisions or applications of this act which can be given effect without the invalid provision or application and to that end the provisions of this act are severable.

4. That an emergency exists and this act shall be in force from its passage.

ENGROSSED

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