

# VIRGINIA ACTS OF ASSEMBLY -- 1995 SESSION

## CHAPTER 185

*An Act authorizing the Tax Commissioner to determine which retired federal and military taxpayers were denied participation due to missing information necessary to substantiate the validity or amount of a timely filed claim or missed the November 1, 1994, deadline, because of circumstances beyond their control, for filing the documentation or forms necessary to participate in the Harper v. Virginia Department of Taxation case settlement; authorizing the Tax Commissioner to enter into settlement agreements with such taxpayers in an amount equal to the amount agreed to with the retired federal and military taxpayers who filed a completed claim by the November 1, 1994, deadline; and establishing a fund from which such incomplete or late settlement agreement amounts shall be paid.*

[S 831]

Approved March 14, 1995

Whereas, during its Special Session in July 1994, the General Assembly passed legislation authorizing the Tax Commissioner to enter into settlement agreements with retired federal and military Virginia taxpayers affected by the *Harper v. Virginia Department of Taxation* case; and

Whereas, such legislation contained a November 1, 1994, deadline for the affected taxpayers to file certain forms and other supporting documentation, where necessary, with the Department of Taxation in order to participate in the settlement; and

Whereas, a large number of such taxpayers failed to provide the necessary supporting documentation, missed the deadline for filing, or mailed or otherwise sent the appropriate documentation which was not received by the Department of Taxation, thereby missing the opportunity to participate in the settlement; and

Whereas, the General Assembly wants as many of the affected taxpayers as possible to participate in the settlement; now, therefore,

**Be it enacted by the General Assembly of Virginia:**

**1. § 1. *The Tax Commissioner is authorized to make settlement payments to certain retired federal and military taxpayers, as originally authorized in Chapter 5 of the 1994 Acts of Assembly, Special Session I. To be eligible to receive these payments a taxpayer shall have (i) responded to the August 1, 1994, notice on or before November 1, 1994, but was denied either full or partial participation in the settlement program due to the lack of certain information necessary for the Department to compute the taxpayer's disputed refund, or (ii) missed the November 1, 1994, deadline for responses due to circumstances beyond the control of the taxpayer, or (iii) having filed a timely response by the November 1 deadline, missed the February 1, 1995, deadline for delivering a settlement agreement to the Department due to circumstances beyond the control of the taxpayer. Such taxpayers are hereby granted an additional sixty days from the date of enactment to provide the Department with the necessary information to compute their disputed refunds or to provide the Department with response forms or settlement agreements and written explanations that demonstrate that the taxpayers missed the relevant deadline due to circumstances beyond their control. The burden of proof shall be on the taxpayer. Any determination of what constitutes circumstances beyond the control of a taxpayer shall be liberally construed in favor of the taxpayer. Any supporting documentation provided to the Department on forms received prior to the expiration of the additional time period shall be reviewed by the Tax Commissioner. The Tax Commissioner shall determine whether the necessary information was provided or the taxpayer's explanation for missing the original November 1, 1994, deadline or the February 1, 1995, deadline was due to circumstances beyond the control of the taxpayer. The Tax Commissioner's authority to proceed under this section is subject to the following terms and conditions:***

**1. For purposes of this act:**

*"Calculated total disputed refund" means the total of all disputed refunds for all taxpayers who timely filed the required information with the Department, pursuant to subdivision 4a, as calculated by the Department of Taxation.*

*"Department" means the Department of Taxation.*

*"Disputed refund" means the amount of the tax overpayment on retirement or pension benefits received from a federal retirement system for taxable years 1985 through 1988 for which a refund is claimed that resulted from the Department's acceptance and processing of the additional information the taxpayer provided, pursuant to subdivision 4 a. A disputed refund does not include any amount already included in the settlement offer mailed to a taxpayer on December 15, 1994, pursuant to the Federal Retiree Settlement Act.*

*"Federal Retiree Settlement Act" means enactment 2 of Chapter 5 of the 1994 Acts of Assembly, Special Session I.*

*"Final settlement offer" means the amount of the payment to be made to a taxpayer under the settlement agreement mailed to the taxpayer by the Department by the ninetieth day following enactment, pursuant to subdivision 4 b.*

*"Refund of taxes" includes any claim for interest thereon.*

*"Settlement agreement" means the settlement agreement mailed to the taxpayers by the Department under the Federal Retiree Settlement Act or under this act.*

*"Settlement program" means the settlement program established by the Federal Retiree Settlement Act.*

*"Taxpayer" includes the estate, committee and legal beneficiaries of any taxpayer to whom a disputed refund is owed. For purposes of a deceased taxpayer's estate, if that deceased taxpayer died intestate, an affidavit provided by the Department signed by the deceased taxpayer's surviving spouse, or if there is none, the heirs of the deceased taxpayer, shall operate to claim the disputed refund to which the taxpayer was entitled. If the deceased taxpayer died testate, an affidavit provided by the Department signed by the residuary legatees under the will shall operate to claim such refund.*

*2. The payments shall be made over a five-year period in annual installments and shall be disbursed by the Tax Commissioner or his designee to the taxpayers participating in the settlement as follows:*

*a. The Department shall offer each affected taxpayer an amount equal to the same percentage of the disputed refund as computed under the Federal Retiree Settlement Act.*

*b. Disbursements shall be made in up to five payments, the first of which shall be made on July 31, 1995, with each of the remaining four disbursements to be made on March 31 through 1999. The Department shall make payments to taxpayers who settle under this act in the same proportion as calculated for the payments to be made to retirees settling under the Federal Retiree Settlement Act.*

*c. Any amount received by a taxpayer pursuant to this section shall be subject to debt collection pursuant to Article 21 (§ 58.1-520 et seq.) of Chapter 1 of Title 58.1.*

*3. Payments may be made directly from a special fund or from a trust or other legal entity established by the Tax Commissioner to administer the payments. Subject to appropriation by the General Assembly, an amount sufficient to fund the first and second annual settlement payments shall be deposited in the special fund, trust or other legal entity on or before July 1, 1995, pending disbursement. Subject to appropriation by the General Assembly, on each succeeding July 1 through 1998, an amount sufficient to fund the annual settlement payment shall be deposited in the special fund, trust or other legal entity pending disbursement. All earnings on investment of the funds shall be held in the special fund, trust or other legal entity established by the Tax Commissioner and reinvested until the final payments to taxpayers are made on March 31, 1999. For those taxpayers who met the November 1, 1994, filing deadline but missed the February 1, 1995, filing deadline, the first and second settlement payments (to be paid on July 31, 1995, and March 31, 1996) shall be made out of the July 1, 1995, appropriation to be made pursuant to the Federal Retiree Settlement Act; the remaining installments shall be made annually from the subsequent annual appropriations made pursuant to such Act.*

*4. The procedures to be followed by the Tax Commissioner in effecting payments as authorized shall be as follows:*

*a. On or before thirty days from the date of enactment, the Department shall notify by first class mail each taxpayer (i) who timely filed a response to the August 1, 1994, notice issued by the Department pursuant to the terms of the Federal Retiree Settlement Act, but who was denied participation in the settlement program due to the lack of certain information necessary to compute the taxpayer's disputed refund, or (ii) who responded to the August 1, 1994, notice after November 1, 1994, or (iii) who delivered a settlement agreement to the Department after February 1, 1995, of the additional thirty-day period during which he may submit the information necessary to compute his disputed refund or deliver to the Department a signed settlement agreement accepting the final settlement offer and releasing the Commonwealth from any further liability. Each taxpayer so notified shall also be required to submit a written explanation that demonstrates that the taxpayer missed the deadline due to circumstances beyond his control. The additional information or settlement agreement returned to the Department shall be either postmarked on or before midnight of the sixtieth day following the enactment, or if such day is a Saturday, Sunday, or official state holiday, midnight of the next business day, or such information shall be received by the Department by 5:00 p.m. of the sixtieth day following enactment, or if such day is a Saturday, Sunday, or official state holiday, by 5:00 p.m. of the next business day.*

*b. Within ninety days following enactment, the Department shall send to each taxpayer, as appropriate, a notice and a settlement agreement that sets forth the amount of the final settlement offer. Those taxpayers who agree to accept the offer shall sign such settlement agreement releasing the Commonwealth and its agencies, officers and employees from any further liability for claims arising out of taxes paid on federal retirement income during the 1985 through 1988 taxable years and dismissing any litigation as to such claims in which the taxpayer is a party. Such settlement agreement shall be returned to the Department and shall be postmarked on or before midnight of the 120th day following the enactment, or if such day is a Saturday, Sunday, or official state holiday, midnight of the next business day, or such settlement agreement shall be received by the Department by 5:00 p.m. of the*

120th day following enactment, or if such day is a Saturday, Sunday, or official state holiday, by 5:00 p.m. of the next business day.

5. A taxpayer who delivered to the Department a timely but incomplete settlement agreement under the terms of the Federal Retiree Settlement Act or this act shall be deemed to have met the filing deadline, provided that any delay in submitting completed forms to the Department may result in a delay of the first payment required under the settlement program established by the Federal Retiree Settlement Act or under this act. The taxpayer shall provide the Department a completed settlement agreement (i) on or before the thirtieth day after enactment for those taxpayers who qualify for participation in the settlement program created by the Federal Retiree Settlement Act or (ii) on or before the 150th day following enactment for those taxpayers who qualify for the settlement program created by this act.

6. A taxpayer is hereby authorized, for purposes of the settlement created by this act, to sign on behalf of a spouse with whom he or she jointly filed an income tax return for a taxable year to which the settlement is related. By signing the agreement to settle the claim on behalf of both spouses, the signing taxpayer thereby agrees to indemnify the Commonwealth for any amounts related to the settlement payments that it may be required to pay under the law to the nonsigning spouse.

7. The Tax Commissioner is authorized to enter into such contracts or execute such instruments or agreements as may be necessary (i) to effect compromise or settlement of disputed refund claims through creation of a trust or other legal entity or (ii) to obtain administrative or investment services relevant to any such settlement or compromise. Any such contracts or agreements for services shall be approved by the Attorney General and shall be exempt from the provisions of the Virginia Public Procurement Act (§ 11-35 et seq.).

8. Except and to the extent specifically authorized in this act, nothing in this act shall be construed or interpreted to revive any claim barred by the provisions of the Federal Retiree Settlement Act, and nothing in this act shall be construed or interpreted to authorize any taxpayer to opt out of the settlement program or agree to accept the relief granted in pending litigation after the deadlines established in the Federal Retiree Settlement Act.

**2. That an emergency exists and this act is in force from its passage.**