

LD8558136

HOUSE BILL NO. 2263

Offered January 23, 1995

A BILL to amend and reenact §§ 58.1-344, 58.1-450, 58.1-453, 58.1-475 and 58.1-635 of the Code of Virginia, relating to penalties on the late filing of a tax return.

Patrons—Brickley, Abbitt, Barlow, Cooper, Copeland, Cranwell, DeBoer, Johnson, Melvin, Stump and Van Yahres

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-344, 58.1-450, 58.1-453, 58.1-475 and 58.1-635 of the Code of Virginia are amended and reenacted as follows:

§ 58.1-344. Extension of time for filing returns; penalties.

A. Whenever any individual or fiduciary has been allowed or granted an extension or extensions of time within which to file any federal income tax return for any taxable year, the due date for the filing of the income tax return required under this chapter shall be extended to the date six months after such due date or fifteen days after the extended date for filing the federal income tax return, whichever is earlier, provided that the estimated tax due is paid in accordance with the provisions of subsection C.

B. In addition, the Department may grant an extension or extensions of time not to exceed six months for filing such income tax return, provided that the estimated tax due is paid in accordance with the provisions of subsection C.

C. Any taxpayer desiring an extension of time in accordance with the provisions of subsection A or B shall, on or before the original due date for the filing of such return, in accordance with procedures established by the Tax Commissioner pay the full amount properly estimated as the balance of the tax due for the taxable year after giving effect to any estimated tax payments under § 58.1-491 and any tax credit under § 58.1-499. If any amount of the balance of the tax due is underestimated, interest at the rate prescribed in § 58.1-15 will be assessed on such amount from the original due date for filing of the income tax return to the date of payment. In addition to interest, if the underestimation of the balance of tax due exceeds ten percent of the actual tax liability, there shall be added to the tax as a penalty an amount equal to one-half of one percent per month for each month or fraction thereof from the original due date for the filing of the income tax return to the date of payment.

D. An extension of time for filing returns of income is hereby granted to and including the first day of the seventh month following the close of the taxable year in the case of United States citizens residing or traveling outside the United States and Puerto Rico, including persons in the military or naval service on duty outside the United States and Puerto Rico.

In all such cases a statement must be attached to the return certifying that the taxpayer is the person for whom the return is made and that the taxpayer was outside the United States or Puerto Rico on the due date of the return.

E. Notwithstanding any other provisions of law, any taxpayer who qualifies for an automatic extension under subsection D of this section, and who expects to qualify for foreign income exclusion may, on or before the expiration of the first day of the seventh month, apply for an additional extension of time for filing returns of income for a period of thirty days after the date such taxpayer reasonably expects to qualify for such exclusion. Such extension may not be granted unless a similar request for extension has been made for filing the federal return. An approved copy of the federal extension must be attached to the return when filed.

F. 1. Notwithstanding any other provision of this section, the date for filing income tax returns and paying the tax due for the taxable year beginning on or after January 1, 1990, and before January 1, 1991, for members of the reserve components of the armed forces, as defined in 10 U.S.C. § 261, as amended, who on the original due date of such return were on active duty status, is hereby extended for a period of one year from the original due date of the return.

2. However, in the case of an individual who qualifies for a period of postponement under § 7508 of the Internal Revenue Code or an act of Congress relating to and defining "Desert Shield service" for purposes of the federal income tax, the deadline for filing income tax returns and paying the tax due shall be the date fifteen days after the date on which the federal period of postponement terminates, if such date is greater than one year from the original due date of the return.

3. In all cases, an individual qualifying for an extension under either subdivision 1 or 2 of this subsection shall attach a statement to the return containing such information as may be prescribed by the Tax Commissioner.

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60 G. Any individual who receives an extension for filing an individual income tax return for taxable
61 year 1990 pursuant to subsection F of this section shall be paid interest on any overpayment of
62 individual income tax for taxable year 1990 beginning from the date the return was originally required
63 to be filed prior to the extension.

64 *H. Any individual who receives an extension for filing an individual income tax return in accordance*
65 *with this section and fails to make payment of taxes due on the extended due date shall be assessed a*
66 *penalty equal to six percent of the amount of taxes assessable thereon if the failure is for not more than*
67 *one month from the extended due date, with an additional six percent for each month or fraction thereof*
68 *during which failure continues, not exceeding thirty percent in the aggregate. Such penalty shall be*
69 *collected in the same manner as is provided by law for the collection of other taxes.*

70 § 58.1-450. Failure of corporation to make report or return; penalties.

71 Any corporation which fails to make any report or return required by this chapter within the time
72 required shall be liable to a penalty equal to six percent of the amount of taxes assessable thereon if the
73 failure is for not more than one month, with an additional six percent for each additional month or
74 fraction thereof during which such failure to file continues, not exceeding thirty percent in the aggregate.
75 In no case, however, shall the penalty be less than \$100; ~~and such~~ *Such* minimum penalty shall *only*
76 ~~apply whether or not any~~ *when* tax is due for the period for which the filing of a report or return is
77 required. Such penalty is to be assessed and collected by the Department, in the manner provided for the
78 assessment and collection of taxes under this chapter or in a civil action, at the instance of the
79 Department. In addition such corporation shall be compellable by mandamus to make such report or
80 return.

81 § 58.1-453. Extension of time for filing returns by corporations; penalties.

82 A. Whenever any corporation has been allowed or granted an extension or extensions of time within
83 which to file any federal income tax return for any taxable year, the due date for the filing of the
84 income tax return required under this chapter shall be extended to the date six months after such due
85 date or thirty days after the extended date for filing the federal income tax return, whichever is later,
86 provided that the estimated tax due is paid in accordance with the provisions of subsection C.

87 B. In addition, the Department may grant an extension or extensions of time not to exceed a
88 maximum of six months for filing such income tax return, provided the estimated tax due is paid in
89 accordance with the provisions of subsection C.

90 C. Any taxpayer desiring an extension of time in accordance with the provisions of subsection A or
91 B shall, on or before the original due date for the filing of such return, in accordance with the
92 procedures established by the Tax Commissioner pay the full amount properly estimated as the balance
93 of the tax due for the taxable year after giving effect to any estimated tax payments under § 58.1-491
94 and any tax credit under § 58.1-499. If any amount of the balance of the tax due is underestimated,
95 interest at the rate prescribed in § 58.1-15 will be assessed on such amount from the original due date
96 for filing of the income tax return to the date of payment. In addition to interest, if the underestimation
97 of the balance of tax due exceeds ten percent of the actual tax liability, there shall be added to the tax
98 as a penalty an amount equal to one-half of one percent per month for each month or fraction thereof
99 from the original due date for the filing of the income tax return to the date of payment.

100 *D. Any taxpayer who receives an extension for filing a corporate income tax return in accordance*
101 *with this section and fails to make payment of taxes due on the extended due date shall be assessed a*
102 *penalty equal to six percent of the amount of taxes assessable thereon if the failure is for not more than*
103 *one month from the extended due date, with an additional six percent for each month or fraction thereof*
104 *during which failure continues, not exceeding thirty percent in the aggregate. In no case, however, shall*
105 *the penalty be less than \$100. Such penalty shall be collected in the same manner as is provided by law*
106 *for the collection of other taxes.*

107 § 58.1-475. Penalty for failure to withhold.

108 A. Any employer required under the provisions of this article to deduct and withhold from wages
109 and make returns and payments of amounts withheld to the Tax Commissioner, who fails to withhold
110 such amounts or to make such returns, or who fails to remit amounts collected to the Tax
111 Commissioner, or otherwise fails to remit to the Tax Commissioner as required by this article, shall be
112 subject to a penalty equal to six percent of the amount that should have been properly withheld and paid
113 over to the Tax Commissioner if the failure is for not more than one month, with an additional six
114 percent for each additional month or fraction thereof during which such failure continues, not exceeding
115 thirty percent in the aggregate. In no case however, shall the penalty be less than ten dollars. ~~and such~~
116 *Such* minimum penalty shall *only* ~~apply whether or not any~~ *when* tax is due for the period for which the
117 filing of such return was required.

118 Interest at a rate determined in accordance with § 58.1-15, shall accrue on the tax until paid, or until
119 an assessment is made, after which interest shall accrue as provided in § 58.1-15. Such penalty and
120 interest shall be assessed by the Tax Commissioner and shall be collected by him in the same manner as
121 the collection of taxes may be enforced under this title.

122 B. Upon failure of any employer to pay over any amounts withheld or required to be withheld by the
123 employer under this article, the Tax Commissioner may make assessments and enforce the collection of
124 such amounts, including penalties, by any legal process provided for the enforcement of the collection of
125 taxes under this title.

126 § 58.1-635. Failure to file return; fraudulent return; civil penalties.

127 A. When any dealer fails to make any return and pay the full amount of the tax required by this
128 chapter, there shall be imposed, in addition to other penalties provided herein, a specific penalty to be
129 added to the tax in the amount of six percent if the failure is for not more than one month, with an
130 additional six percent for each additional month, or fraction thereof, during which the failure continues,
131 not to exceed thirty percent in the aggregate. In no case, however, shall the penalty be less than ten
132 dollars. ~~and such~~ *Such* minimum penalty shall *only* apply ~~whether or not any~~ *when* tax is due for the
133 period for which such return was required. If such failure is due to providential or other good cause
134 shown to the satisfaction of the Tax Commissioner, such return with or without remittance may be
135 accepted exclusive of penalties. In the case of a false or fraudulent return where willful intent exists to
136 defraud the Commonwealth of any tax due under this chapter, or in the case of a willful failure to file a
137 return with the intent to defraud the Commonwealth of any such tax, a specific penalty of fifty percent
138 of the amount of the proper tax shall be assessed. All penalties and interest imposed by this chapter
139 shall be payable by the dealer and collectible by the Tax Commissioner in the same manner as if they
140 were a part of the tax imposed.

141 B. It shall be prima facie evidence of intent to defraud the Commonwealth of any tax due under this
142 chapter when any dealer reports his gross sales, gross proceeds or cost price, as the case may be, at fifty
143 percent or less of the actual amount.

144 C. Interest at a rate determined in accordance with § 58.1-15, shall accrue on the tax until the same
145 is paid, or until an assessment is made, pursuant to § 58.1-15, after which interest shall accrue as
146 provided therein.