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HOUSE BILL NO. 199

Offered January 10, 1996

A BILL for the relief of Robert E. and Sally H. Milton.

Patron—Ingram

Referred to Committee on Claims

Whereas, in March 1989, the United States Supreme Court ruled in *Davis v. Michigan* that the state's practice of taxing federal pensions while exempting state workers' pensions was unconstitutional; and

Whereas, the Commonwealth of Virginia was among 23 states faced with changing its income tax laws on retirement; and

Whereas, in an April 1989 Special Session, the General Assembly repealed the exemption for VRS retirement benefits so that the Commonwealth's federal and state retirees would be taxed equally; and

Whereas, the special session did not address the issue of refunding the taxes paid by federal retirees between 1985 and 1988, which prompted the filing of *Harper v. Commonwealth of Virginia* on May 31, 1989; and

Whereas, in an effort to bring closure to the case for all the parties involved, on July 8, 1994, the General Assembly set in motion the settlement process with regard to the *Harper* litigation by passing Senate Bill 2008; and

Whereas, Senate Bill 2008, which was signed into law on July 13, 1994, required the Department of Taxation to send tax overpayment notices to retirees and begin a public notification program on August 1, 1994; and

Whereas, November 1, 1994, was the deadline for all federal retirees to respond to the August 1, 1994, notice in order to preserve their rights to recover any Virginia taxes paid on federal retirement income for taxable years 1985 through 1988; and

Whereas, in an effort to provide relief for retired federal and military taxpayers who were denied participation in the settlement process established by Senate Bill 2008, the General Assembly in the 1995 Session enacted House Bill 1564 and Senate Bill 831, which were signed in to law on March 14, 1995; and

Whereas, House Bill 1564 and Senate Bill 831 provided that retired federal and military taxpayers who failed to provide necessary information or missed the applicable deadlines, due to circumstances beyond their control, could file the necessary forms or documents within the 60-day period following their enactment; and

Whereas, Robert E. and Sally H. Milton are federal retirees and were unlawfully taxed on their federal pensions by the Commonwealth during the taxable years 1985 through 1988; and

Whereas, the Miltons received notice of their tax overpayment from the Department of Taxation; and

Whereas, the Miltons signed and dated the form FR1, accepting the Department of Taxation's calculations of the refund owed to them, and mailed the form to the Department of Taxation in a timely manner; and

Whereas, the Miltons received a settlement agreement form (FR5) from the Department of Taxation in December 1994; and

Whereas, the Miltons completed the form FR5 to accept the Department of Taxation's offer to settle their claim for the refund of Virginia income taxes paid on federal retirement income for an amount equal to 76.5459 percent of the amount of their overpayment; and

Whereas, the Miltons mailed their completed form FR5 to the Department of Taxation prior to the February 1, 1995, deadline; and

Whereas, the Miltons did not know that the Department of Taxation did not receive their form FR5, and consequently did not resubmit their form FR5 during the additional 60-day period established pursuant to House Bill 1564 and Senate Bill 831, which expired on May 15, 1995; and

Whereas, the Miltons have subsequently been informed by the Department of Taxation that they cannot participate in the settlement program because the Department of Taxation has no record of ever receiving their form FR5; and

Whereas, the amount of the tax overpayment made by the Miltons in the period 1985 through 1988 is \$2,660, and the amount of the tax refund which the Miltons would have received if they had participated in the settlement program is \$2,036.12; and

Whereas, Robert E. and Sally H. Milton have no other means to obtain their tax refund, except by action of this body; now, therefore,

Be it enacted by the General Assembly of Virginia:

INTRODUCED

HB199

60 1. § 1. That there is hereby appropriated from the general fund of the state treasury the amount of
61 \$2,036.12 to be paid by check issued by the State Treasurer on warrant of the Comptroller to Robert E.
62 and Sally H. Milton, upon a release by them of all claims against the Commonwealth and its political
63 subdivisions, agencies, instrumentalities, officers, or employees arising out of the aforesaid occurrence.