

VIRGINIA ACTS OF ASSEMBLY -- 1998 SESSION

CHAPTER 559

An Act to amend and reenact § 1 of the second enactment of Chapter 5 of the 1994 Acts of Assembly, Special Session I; the first enactment of Chapter 185 of the 1995 Acts of Assembly; the first enactment of Chapter 203 of the 1995 Acts of Assembly; and the first enactment of Chapter 719 of the 1996 Acts of Assembly, relating to accelerated payments for participants in federal retiree settlement programs.

[H 100]

Approved April 15, 1998

Be it enacted by the General Assembly of Virginia:

1. That § 1 of the second enactment of Chapter 5 of the 1994 Acts of Assembly, Special Session I, is amended and reenacted as follows:

2. § 1. Upon the recommendation of the Attorney General and with the approval of the Governor, the Tax Commissioner is authorized to make settlement payments to taxpayers to resolve disputed claims for refunds of 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, and ending on or before December 31, 1988. The Tax Commissioner's authority to proceed under this section is subject to the following terms and conditions:

A. For purposes of this section:

"Calculated total disputed refund" means the total of all disputed refunds for all taxpayers who timely respond to the August 1, 1994, notice, pursuant to subdivision F 1, 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.

"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 on December 15, 1994, pursuant to subdivision F 2.

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

"Taxpayer" includes the estate, committee and legal beneficiaries of any taxpayer to whom a disputed refund is owed, except for purposes of notification. 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.

B. The payments may be made directly from a special fund or from a trust or other legal entity established by the Tax Commissioner or his designee to administer the payments. Subject to appropriation by the General Assembly, the initial appropriation of \$60 million shall be deposited in the special fund, trust or other legal entity on or before July 15, 1994, pending disbursement pursuant to this section. Subject to appropriation by the General Assembly, on each succeeding July 1 through 1998, *as necessary*, the amount of \$70 million shall be deposited in the special fund, trust or other legal entity pending disbursement pursuant to this section. All earnings on investment of these 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~~. *The final payment shall be September 30, 1998, provided that the 1997-1998 undesignated and unreserved general fund balance as certified by the Comptroller on August 15, 1998, is greater than or equal to \$62.5 million. If the 1997-1998 undesignated and unreserved general fund balance is less than \$62.5 million as certified by the Comptroller on August 15, 1998, there shall be a special installment payment made on September 30, 1998, based on a percentage of the final payment. The percentage for this calculation shall be as follows: 1997-1998 undesignated and unreserved general fund balance divided by \$62.5 million.* For purposes of this act, earnings on the investment of the funds shall be computed at the rate of four percent per annum.

C. The moneys so appropriated shall be disbursed by the Tax Commissioner or his designee, or any entity established to administer the payments, to the taxpayers participating in the settlement as follows:

1. The Tax Commissioner shall calculate the amount of each taxpayer's disputed refund and the total

of all taxpayers' disputed refunds before December 15, 1994.

2. If the Tax Commissioner or his designee determines that the amount of money available from appropriations and the earnings from such investments will be insufficient to fund fully each participating taxpayer's disputed refund, then, prior to notifying such taxpayers of their final settlement offers on December 15, 1994, the Tax Commissioner shall reduce each participating taxpayer's disputed refund by a percentage derived from the following formula:

the calculated total disputed	the total amount of money available
refunds for all participating	- for disbursement, as computed by
taxpayers	the Tax Commissioner or his designee.

the calculated total disputed refunds for all participating taxpayers

3. If, after making this calculation or at any time prior to March 31, 1999, the Tax Commissioner or his designee determines that the total amount of the moneys to be appropriated and the earnings thereon will exceed the amount necessary to fund fully each taxpayer's disputed refund, then the Tax Commissioner will increase each taxpayer's disputed refund or final settlement offer by a percentage derived from the following formula:

the total amount of money available	the calculated total disputed
for disbursement, as computed by	refunds or final
the Tax Commissioner or his	settlement offers for all
designee	participating taxpayers

the calculated total disputed refunds or final settlement offers for all
participating taxpayers

The amount of any calculated increase shall be disbursed to each participating taxpayer in a single payment ~~on~~ *no later than* March 31, 1999.

4. Disbursements shall be made annually on March 31 and, out of the money available for payments each year, *except for the special installment payment made on September 30, 1998*, one-half shall be used to pay the final settlement offer to the participating taxpayers with the smallest calculated payments after any reduction; the other half shall be paid proportionately to the remaining participating taxpayers.

5. 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.

D. The taxpayers shall be given the option of whether they want to participate in the settlement. Those who do not want to participate will have the option of having their entitlement to refunds determined by existing litigation or filing suit themselves.

E. The appropriation required under subsection B shall be reduced by a percentage of the dollar amount of the claims of taxpayers opting out of the settlement pursuant to subdivision F 2 (ii) and (iii) and those waiving payments pursuant to subdivision F 2 (i) derived from the following formula:

the total amount appropriated, excluding interest

the calculated total disputed refunds which are
timely filed under this act

In the event that the total principal amount of the claims of the taxpayers opting out of the settlement exceeds \$20 million, the entire settlement shall be null and void unless reauthorized by the General Assembly on or before March 1, 1995.

F. The procedure to be followed by the Tax Commissioner in effecting payments as authorized shall be as follows:

1. The Department shall provide notice by August 1, 1994, to affected taxpayers by first-class mail stating the amount of each taxpayer's disputed refund. For purposes of this subdivision, the Tax Commissioner may use gross pension amounts in computing each taxpayer's disputed refund. The computation and methodology shall be reviewed by the Auditor of Public Accounts before taxpayers are notified of their final settlement offers. The notice shall state in bold-faced, fourteen-point type that, regardless of whether the taxpayer previously filed an amended return or returns, in order to be eligible to obtain any refund, the taxpayer must respond to the notice by November 1, 1994, and state whether

the taxpayer accepts or challenges the calculations contained in the notice. The filing of a response to this notice on a form provided by the Tax Commissioner will be a prerequisite to participating in the settlement, or agreeing to accept the relief granted in pending litigation in Virginia courts, or the filing of a separate suit. This requirement shall be set out in the notice in bold-faced, fourteen-point type. Taxpayers who challenge the calculations contained in the notice shall provide with their response documentary evidence indicating that a different amount is due. Such evidence must be sufficient to allow the Department to resolve the challenge.

2. Before December 15, 1994, the Department shall compile all responses received and calculate the total amount of each participating taxpayer's disputed refund and the total of all participating taxpayers' disputed refunds and determine whether any reduction must be made pursuant to subdivision C 2. The estimate shall be forwarded to the Chairmen of the Senate Finance Committee and the House Finance and Appropriations Committees before taxpayers are notified of their final settlement offers. On December 15, 1994, the Department shall send notices by first-class mail to taxpayers who timely responded to the August notices informing them of their right to (i) receive or waive a payment calculated pursuant to subsection B; (ii) opt out of the settlement and initiate suit; or (iii) opt out of the settlement and agree to accept in full satisfaction of their claims the same relief granted to similarly situated taxpayers in pending litigation in Virginia courts determined by the Tax Commissioner to be controlling on the legal issue. The Department shall send with the notices the agreements necessary to effect settlement under clause (i) or to opt out and agree to accept the relief granted in pending litigation under clause (iii) of this paragraph.

3. Those taxpayers who do not opt out of the settlement or waive payment will receive payments as provided in subsection C if they sign and deliver to the Tax Commissioner by February 1, 1995, the 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 1985-1988 taxable years and dismissing any litigation as to such claims in which the taxpayer is a party. On January 10, 1995, the Department shall send a reminder of this requirement to each taxpayer who responded to the August notice indicating an interest in participating in the settlement.

4. Those taxpayers who choose to opt out of the settlement shall (i) sign and deliver to the Tax Commissioner by February 1, 1995, an agreement to accept the relief granted in pending litigation in Virginia courts or (ii) file by February 1, 1995, an action under § 58.1-1825 for recovery of Virginia income taxes paid on retirement income received.

5. A taxpayer may deliver an agreement to the Tax Commissioner in person or by mail. An agreement shall be deemed timely delivered if it is mailed to the Department, postage prepaid, and postmarked no later than February 1, 1995.

6. The Department shall undertake the greatest efforts practicable to identify and reach affected taxpayers by first-class mail and advertising campaigns. The Department shall establish a toll-free hotline for affected taxpayers to call to receive information and answers to questions about the settlement. The Department shall undertake the greatest effort practicable to reach taxpayers whose notices are returned unclaimed and for whom addresses cannot be obtained. The Department as a part of its advertising campaign shall publish notices in selected newspapers throughout the Commonwealth and in other portions of the country where large numbers of affected taxpayers are likely to reside. Such notices shall include an explanation of the terms of the settlement, the information hotline number, and the requirements (in bold-faced, fourteen-point type) of subdivisions F 1, F 3, F 4, and F 5 that a taxpayer who has not been notified by direct mail must satisfy in order to participate in the settlement.

G. 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 must be approved by the Attorney General and shall be exempt from the provisions of the Virginia Public Procurement Act (§ 11-35 et seq.).

H. Notwithstanding any other provision of law and pursuant to § 58.1-105, any taxpayer claiming a refund for any taxable year beginning on or after January 1, 1985, and ending on or before December 31, 1988, 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 shall comply fully with the requirements and procedures set forth in this act or such claims shall be forever barred; provided that if the settlement is null and void and is not reauthorized pursuant to subsection E, any taxpayer claiming such a refund must file an amended individual income tax return pursuant to § 58.1-1823 within one year from the entry of a final judicial order of a court of competent jurisdiction not subject to further appeal resolving the issues involved in *Harper v. Virginia Department of Taxation*, 113 S.Ct. 2510 (June 18, 1993).

2. That the first enactment of Chapter 185 of the 1995 Acts of Assembly is amended and reenacted as follows:

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 4 a, 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 *or special 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~~ *six* payments, the first of which shall be made on July 31, 1995, with each of the remaining ~~four~~ *five* disbursements to be made on March 31 ~~through 1999, 1996, March 31, 1997, March 31, 1998, September 30, 1998, and March 31, 1999, as necessary.~~ 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~~ *1997, and 1998, if necessary,* 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 *September 30, 1998, or 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 (i) submit the information necessary to compute his disputed refund or (ii) 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.

3. That the first enactment of Chapter 203 of the 1995 Acts of Assembly is amended and reenacted as follows:

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 *or special 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~~ *six* payments, the first of which shall be made on July 31, 1995, with each of the remaining ~~four~~ *five* disbursements to be made on March 31 ~~through 1999, 1996, March 31, 1997, March 31, 1998, September 30, 1998, and March 31, 1999, as necessary.~~ 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~~ *1997, and 1998, if necessary,* 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 *September 30, 1998, or 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 (i) submit the information necessary to compute his disputed refund or (ii) 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.

4. That the first enactment of Chapter 719 of the 1996 Acts of Assembly is amended and reenacted as follows:

1. § 1. The Tax Commissioner is hereby authorized to determine which retired federal and military taxpayers were denied participation in either the Federal Retiree Settlement Act (Enactment clause 2 of Chapter 5 of the 1994 Acts of Assembly, Special Session I) or the supplemental federal retiree settlement program (Chapters 185 and 203 of the 1995 Acts of Assembly); and is authorized to enter into settlement agreements with such taxpayers in an amount equal to the settlement amounts retirees will receive or have received under the Federal Retiree Settlement Act.

1. To be eligible to receive these payments, a taxpayer shall (i) have failed to fully or partially participate in either the original settlement program or the supplemental settlement program; (ii) have notified the Tax Department by June 10, 1996, that he or she is not currently participating or did not participate in the prior settlement programs; (iii) provide the Department with the information the Department deems to be necessary for purposes of determining the validity of and quantifying a taxpayer's claimed tax overpayment; and (iv) submit a properly executed settlement agreement, which releases the Commonwealth and its agencies, officers and employees from any further liability for claims arising out of taxes paid on federal retirement income received during the 1985 through 1988 taxable years and dismissing any litigation as to such claims in which the taxpayer is a party. To meet the notice requirement of clause (ii) above, the taxpayer's contact with the Department to put it on notice must be documented in the Department's records.

2. The payments shall be made ~~over a four-year period~~ in annual installments *or special installments* and shall be disbursed by the Tax Commissioner or his designees 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. Disbursements to these taxpayers shall be limited to an amount equal to the percentage of disputed refunds and shall not include any additional amounts.

b. Disbursements shall be made in up to ~~four~~ *five* payments, the first of which shall be made on July 31, 1996, or as soon thereafter as practical with each of the remaining ~~three~~ *four* disbursements to be made on ~~each~~ March 31 ~~thereafter through 1999, 1997, March 31, 1998, September 30, 1998, and March 31, 1999, if necessary.~~

c. Payments under the settlement program created by this act shall be to taxpayers over the same payment schedule as if the taxpayers were participating in the Federal Retiree Settlement Act, except that the initial payment shall be equal to the first two payments that the participants would have received had they participated in the Federal Retiree Settlement Act.

d. 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. The Tax Commissioner is authorized to order payments to be made out of the state treasury as if the amount each affected taxpayer is entitled to receive pursuant to this act is a refund pursuant to § 58.1-309.

4. 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.

5. 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.).

6. 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 Chapter 5 of the 1994 Acts of Assembly, Special Session I, and nothing in this act shall be construed or interpreted to authorize any taxpayer to be entitled to the relief granted in the Harper litigation.