

**IMPLEMENTATION OF A SIMPLIFIED TAX SYSTEM
FOR VIRGINIA TAXPAYERS**

**REPORT OF THE
INCOME TAX CONFORMITY STATUTE STUDY
COMMISSION
To
THE GOVERNOR
And
THE GENERAL ASSEMBLY OF VIRGINIA**



COMMONWEALTH OF VIRGINIA
Department of Purchases and Supply
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IMPLEMENTATION OF A SIMPLIFIED TAX SYSTEM FOR VIRGINIA TAXPAYERS

Report of the Virginia Income Tax Conformity Statute Study Commission

Richmond, Virginia
January 4, 1971

To:

HONORABLE A. LINWOOD HOLTON, *Governor of Virginia*
and
THE GENERAL ASSEMBLY OF VIRGINIA

At the present time Virginia income tax law differs from the federal income tax law in many significant respects. As a result, taxpayers in Virginia must each year comply with two different sets of rules in preparing their income tax returns and determining their tax liability. Furthermore, under present circumstances, the administration of the Virginia income tax system fails to receive the full benefits of programs providing for exchange of data and audit results between the federal government and the state because the respective income tax bases of the two systems are not sufficiently similar.

Many other states which have faced this situation have revised their state income tax laws to conform to the federal by referencing their state income tax base to the federal definition of adjusted gross income or to the federal definition of taxable income.

In 1966 the General Assembly, recognizing the advantages to the taxpayer that might result from the coordinating of state and federal income tax laws, established an independent commission to study the matter. This commission, which was designated the Virginia Income Tax Study Commission, (hereinafter sometimes referred to as our predecessor commission), was created pursuant to House Joint Resolution No. 64, which charged the commission, in pertinent part, to:

“study and report to the Governor and General Assembly as to the desirability or need by the State to adopt basic federal income tax concepts, especially the definition of taxable income, for the taxation of individuals, fiduciaries and corporations, including estimates of the effect on revenues, consideration of constitutional questions as to incorporation by reference of federal tax legislation and the incorporation of future federal legislation, appropriate adjustments to be made to any federal definition and all related matters.”

During the course of its study our predecessor commission held a public hearing to which all interested parties were invited. It received and considered the views of representatives of the Virginia State Chamber of Commerce, the Virginia Society of Certified Public Accountants and the Accountants Society of Virginia as well as the views of other interested individuals and organizations. It examined the statutes of other states which had conformed their income tax system with that of the federal government, and considered the experience of these states under their conforming statutes. Discrepancies between the Virginia income tax system and the federal were noted and studied. Extensive

and revenue studies of the various alternative approaches to conformity were made.

The Virginia Income Tax Study Commission concluded its work with a report to the Governor and General Assembly entitled "Toward a Simplified Income Tax System for Virginia Taxpayers". The Report of the Commission, which was presented on January 2, 1968, recommended the enactment of a statute which would, with few exceptions, provide conformity between the Virginia income tax system and the federal with no change in the Virginia rate structure.

Legislation reflecting the recommendations of the Commission was introduced in both the 1968 and 1970 sessions of the General Assembly but was not enacted. One of the barriers to favorable action in each of the sessions was concern over the constitutionality of incorporating by reference in a Virginia law the tax laws of the federal government. A further barrier to favorable action in the 1970 session was the federal enactment in late December of 1969 of the Tax Reform Act of 1969, which rendered questionable the revenue estimates of the cost of conformity developed by the Virginia Income Tax Study Commission.

The constitutional issues received a favorable resolution when the 1970 General Assembly approved for submission to the voters the revised Constitution, which, in Article IV, Section 11, expressly permits incorporation by reference of federal income, gift and estate tax laws. The Constitution, as revised, was approved in the referendum conducted at the general election this past November and has become effective.

The interest expressed by the General Assembly in 1966 in the simplification of the Virginia income tax law and in the resulting convenience to the taxpayer continued. In 1970 the General Assembly expressed its desire to consider conformity legislation when it adopted House Joint Resolution No. 91 which established the present Commission. That resolution provided as follows:

Whereas, most of the states which impose state income taxes have now adopted statutory and administrative provisions conforming to those of the federal government; and

Whereas, the Virginia Income Tax Study Commission recommended to the 1968 General Assembly that Virginia conform its tax laws and procedures to those of the federal government to bring about a simplified tax system for the taxpayer and to assist in the sound administration of State income tax laws; and

Whereas, measures were introduced in the 1968 and 1970 regular sessions of the General Assembly to accomplish conformity of Virginia's income tax laws and procedures with those of the federal government; and

Whereas, there is presently pending an amendment to the Constitution of Virginia which would clarify any doubts as to the constitutionality of such a measure; and

Whereas, the federal government in 1969 adopted a comprehensive Tax Reform Act which gives rise to additional policy, administrative and revenue questions as well as those previously arising through consideration of conformity of Virginia's income tax laws to those of the federal government; and

Whereas, it is appropriate that careful and close consideration be given to those measures which have been proposed to accomplish

conformity and to pertinent measures from other states in the light of these policy, administrative and revenue questions, so that the General Assembly will be able to consider a thoroughly reviewed and carefully studied statute to accomplish conformity at its next session; now, therefore, be it

Resolved by the House of Delegates, the Senate concurring; That the Income Tax Conformity Statute Study Commission is hereby created to study and report its specific legislative recommendations for the soundest type of tax conformity statute which should be considered by the General Assembly if the Assembly should deem it advisable to conform Virginia's income tax statutes to those of the federal government. The Commission shall review carefully measures previously introduced to accomplish tax conformity and the laws of other states, changes in federal tax laws which have occurred since the report of the Virginia Income Tax Study Commission and matters pertaining to policy, administrative and revenue questions inherent in accomplishing conformity.

The Commission shall also study and include within the legislation prepared by it provisions to permit a test case on the constitutionality of such proposed conformity legislation in the event that the proposed constitutional amendments pertinent to this issue should fail to be adopted.

The Commission shall be composed of twelve members, two of whom shall be appointed by the President of the Senate from the membership thereof, four of whom shall be appointed by the Speaker of the House of Delegates from the membership thereof, and six of whom shall be appointed by the Governor from the State at large. The Governor shall appoint the Chairman. Members of the Commission shall receive no compensation for their services, but shall be reimbursed for their actual and necessary expenses. For the expenses of the members and for other expenses of the Commission (including expenses or fees for consultants and clerical assistance), there is hereby appropriated from the contingent fund of the General Assembly the sum of five thousand dollars.

The Department of Taxation shall assist the Commission in its investigations and shall prepare such forms and applications pertinent to the statutes reviewed and considered by the Commission as the Commission may request. The Department will also furnish such information and statistical analyses as the Commission may request. All other agencies of the State shall cooperate with the Commission in its study.

The Commission shall complete its study and submit its report and recommendations to the Governor and the General Assembly at least thirty days prior to the next session of the General Assembly.

The Commission authorized by the above resolution was designated the Income Tax Conformity Statute Study Commission. Pursuant to the resolution, the President of the Senate appointed William H. Hodges, member of the Senate, Chesapeake, and George M. Warren, Jr., member of the Senate, Bristol, to serve on the Commission and the Speaker of the House of Delegates appointed Charles W. Gunn, Jr., Delegate, Lexington, Theodore V. Morrison, Jr., Delegate, Newport News, Lester E. Schlitz, Delegate, Portsmouth, and D. French Slaughter, Jr., Delegate, Culpeper.

mond, Edwin S. Cohen, Assistant Secretary of Treasury, Washington, D.C. and Charlottesville, Carle E. Davis, Attorney at Law, Richmond, Roy C. Herrenkohl, President of the Colonial-American National Bank, Roanoke, Douglas Hess, C.P.A., Tazewell, and Stanford E. Parris, Attorney at Law, Fairfax. Subsequently, Mr. Herrenkohl resigned from the Commission. Mr. Slaughter was designated by the Governor to serve as chairman.

The Commission obtained the assistance of Sally T. Warthen, Staff Attorney in the Division of Statutory Research and Drafting, who served as Secretary, and of John E. Donaldson, Professor of Law at the College of William and Mary, who served as drafting consultant. In addition, the Committee was very ably assisted by the Division of State Planning and Community Affairs, and particularly by John Knapp, Barry Lipman and Gail Tatum, who prepared revenue studies of various alternative approaches to conformity.

In the pursuit of its task the Commission reviewed the report and recommendations of the Virginia Income Tax Study Commission, the legislation dealing with conformity which was introduced in the 1968 and 1970 sessions of the General Assembly, and the changes in the federal income tax law which have occurred since 1968. The experiences of other states which have adopted conforming legislation were also considered and evaluated. The Commission regarded as its primary objective the formulation of a sound, administrable conformity statute which would assure, to the extent practical, no loss of revenue, and eliminate to the broadest extent feasible discrepancies between the Virginia income tax law and the federal, to the end that tax compliance and return preparation would be simplified for the Virginia taxpayer.

In undertaking the development of a conformity statute for consideration by the General Assembly, this Commission did not feel it necessary or appropriate to duplicate the massive research and analysis that is reflected in the report of our predecessor commission. That report, entitled "Toward a Simplified Income Tax System for Virginia Taxpayers" in our judgment convincingly and effectively demonstrated the desirability of conforming Virginia's income tax law to the federal law. Our predecessor commission, in addition to studying the need for conformity, developed a number of specific recommendations as to the type of conformity statute suitable to Virginia. Except to the extent affected by the Tax Reform Act of 1969, we regard the bulk of its recommendations to be sound and have in this report borrowed heavily, and at times verbatim, from these recommendations. Your present Commission would be remiss if it did not express its indebtedness to the Virginia Income Tax Study Commission for the thoroughness of its study and report.

At the present time the following twenty-two states have broadly based individual income tax laws whose tax base is governed by federal law pursuant to conformity statutes:

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|----------|---------------|
| Alaska | Michigan |
| Colorado | Minnesota |
| Hawaii | Montana |
| Idaho | Nebraska |
| Illinois | New Mexico |
| Indiana | New York |
| Iowa | North Dakota |
| Kansas | Oregon |
| Kentucky | Vermont |
| Maine | West Virginia |

Similarly, the following twenty-seven states have corporate income tax laws whose tax base is determined by reference to federal law pursuant to conformity statutes:

Alaska	Maryland
Colorado	Michigan
Connecticut	Montana
Delaware	Nebraska
Georgia	New Hampshire
Hawaii	New Jersey
Idaho	New Mexico
Illinois	New York
Indiana	North Carolina
Iowa	North Dakota
Kansas	Pennsylvania
Kentucky	Rhode Island
Maine	Vermont
	West Virginia

That conformity of state income tax bases to federal law is popular is evident from the list of conforming states. Of the states which tax either or both corporate or individual incomes, all but twelve conform to the federal rules as to either or both their corporate and individual income taxes. The principal reasons for the popularity of the concept of conformity between state income tax laws and federal rules are (1) the convenience enjoyed by the taxpayer and (2) the advantages accruing to the tax administrator.

Relating these reasons to Virginia, it is evident that conforming the Virginia income tax law to the federal would serve the interests of both the taxpayer and the tax administrator.

To the Virginia taxpayer conformity would mean that he would not have to master the intricacies of two different income tax systems to compute his income tax liability, that he could determine his Virginia tax liability by following a few mechanical steps after completing his federal return, and that in almost all instances his Virginia return, under conformity, would be less lengthy and simpler than at present. Conformity would virtually eliminate for the Virginia taxpayer the confusion that presently results from different treatment under Virginia and federal law of the following items:

Sick pay	Child care expense
Pensions and annuities	Medical expenses
Dividends	Charitable contributions
Scholarships and fellowships	Education expense
Alimony	Automobile mileage allowances
Life insurance payments	Excise and license tax deductions
Income of trusts and estates	Standard deduction
Capital gains and losses	Personal exemptions
Tax basis of property received by gift or inheritance	Corporate reorganizations & liquidations
Transfers to Corporations	

From the standpoint of the Virginia tax administrator, the advantages of conformity include the ability to rely on federal rules and regulations and court decisions to resolve fine points of substantive tax administration, a reduction in the number of inadvertent errors now caused by discrepancies between the federal and Virginia treatment of similar or identical items, and a capacity to rely more heavily on federal administration of the federal system in assuring compliance with

the Virginia system. In regard to the latter, existing procedures for the exchange of audit data between federal and Virginia tax administrators would acquire greater significance in assuring taxpayer compliance with the Virginia income tax were the Virginia income tax base determined by reference to federal rules. Also in this connection, magnetic tapes generated by the federal government in regard to tax returns filed in Virginia could be acquired by the Virginia Department of Taxation at nominal cost and utilized to assure greater taxpayer compliance with the requirements of the Virginia income tax system.

In short, conformity between the Virginia and federal income tax system would simplify compliance by Virginia taxpayers with their obligations to file returns and would enable a more effective administration of the Virginia income tax system.

ANALYSIS OF DRAFT STATUTE

The draft statute appended to this Report reflects an effort by your Committee to develop conformity legislation within the parameters of the following objectives and limitations:

1. The widest degree of conformity reasonably achievable should be provided.
2. Treatment of specific items under the current Virginia income tax law, where grounded in clearly expressed public policy, and differing from the federal treatment of such items, should be carefully considered and should be retained only if the advantages of separate treatment override the advantages of conformity.
3. Conformity should result in little or no distortion of revenue projections for the future.
4. Conformity should be brought about within the limitations of the current rate structure.

The above mentioned objectives and limitations pursued and observed by the present Commission are not altogether compatible. While complete conformity between the State and federal income tax systems is theoretically desirable, we found from practical considerations, that complete conformity is not feasible at the present time. However, the draft statute appended hereto achieves a substantial degree of conformity between the Virginia income tax system and the federal, preserves essential features of present law, provides no significant distortion of revenues, and preserves the present rate structure.

The recommended conformity between the Virginia income tax system and the federal, as reflected in the draft statute, is discussed below. Exceptions to the principle of complete conformity are noted and explained.

BASIC APPROACH

The basic statutory devices for achieving conformity are definitional. Virginia taxable income of individuals is defined in terms of federal adjusted gross income with adjustments. Virginia taxable income of estates, trusts and corporations is defined by reference to federal taxable income with adjustments.

Taxpayer characterization for Virginia purposes is defined to incorporate federal characterizations. Thus, an association taxable as a corporation for federal purposes is taxable as a corporation for Virginia

purposes. Similarly the treatment of electing small business corporations (Subchapter S) and their shareholders under federal law is adopted for Virginia purposes. Organizations exempt under federal law, or taxable only on unrelated business income, remain exempt for Virginia purposes.

RECOMMENDED VARIANCE FROM THE FEDERAL LAW

As provided in the draft statute, items of income, exclusions and deductions for federal income tax purposes are identically treated for Virginia purposes except as adjustments expressly provide otherwise. The principal items which, in the Commission's judgment, require different treatment in the Virginia law are listed below, with a brief discussion of pertinent considerations.

1. *Government bond interest.* Because of the serious policy and constitutional questions involved in any change, the Commission recommends that the state law continue to exempt from income tax the interest on obligations of the federal government and of the Commonwealth of Virginia and its political subdivisions, and that it continue to include an income interest on obligations of other states and their political subdivisions. This will require an adjustment to the income reported on the federal income tax return to subtract federal bond interest and to add interest on obligations of other states and their subdivisions.

2. *Deduction for state income tax.* The federal law allows a deduction for income taxes paid to the states. Permitting a deduction in computing state income tax for the tax itself produces complex calculations under certain conditions. The present Virginia law does not allow such a deduction and permitting the deduction would cause a significant loss of revenue. Many of the conforming states eliminate deductions for state income tax. Accordingly, the Commission recommends that in computing income subject to the state tax the amount of federal net income be adjusted to exclude a deduction for income tax paid to states or localities.

3. *Dividends on stocks of national and state banks.* The National Banking Act limits the types of taxes that may be imposed by the states upon national banks and their shareholders. The Virginia tax law for many years has imposed a tax upon the stockholders on the value of the shares of stock of national and state banks owned by them on January 1 of each year. The tax is at the rate of 1% and is customarily paid by the bank itself rather than by the shareholders. The revenue from this tax is in effect shared by the state with the localities in which the banks are situated, since the state law permits cities, towns and counties to impose a similar tax at lower rates and permits the bank to credit the amount paid to the locality against the tax paid to the state.

A tax of this type on shares of national banks is permitted under the National Banking Act, but so long as such a tax is imposed that Act prohibits the state from imposing income tax either upon the income of the national bank or upon the dividends paid by the bank to its shareholders. The present state income tax law complies with this prohibition by allowing deduction in determining taxable net income for dividends received on stocks of national banks and state banks and trust companies, and by exempting banks and trust companies from state corporate income tax.

While the National Banking Act specifically applies only to national banks, obviously the tax on state banks and trust com-

panies and their shareholders should be the same as in the case of the national banks.

A change from the present bank stock tax to an income tax would substantially affect the present tax structure applicable to banks and their stockholders and the allocation of revenue between the state and the localities.

The Commission did not consider it appropriate to consider a revision of the bank tax system as a part of its study of conformity of the state and federal income tax laws. Accordingly, the Commission recommends that for the present, in view of the bank stock tax, the state statute should continue to exclude from income subject to state income tax dividends on stocks of national banks and of state banks and trust companies, and that the companies continue to be exempt from corporate income tax.

4. *Dividends received from corporations subject to Virginia corporate income tax.* The present Virginia income tax law allows a deduction in computing net taxable income for dividends received from any corporation, the income of which was assessable for the preceding year for Virginia corporate income tax purposes; and when only a part of the corporate income is so assessable, only a corresponding part of the dividend received from the corporation is deductible.

The present federal income tax law contains no such provision, but permits each individual taxpayer to exclude from income dividends received from domestic corporations up to \$100.00 in any year. Federal law also provides a dividends received exclusion for dividends paid to corporations, which, depending upon the type of corporation and the degree of the intercorporate control, generally varies from 85% to 100%.

Thus, the present Virginia law avoids the imposition of a double Virginia income tax on both the corporation and the shareholder where income is earned by the corporations and distributed to its shareholders, whereas the federal law eliminates a double federal tax only with respect to amounts up to \$100.00 of dividends distributed to each individual shareholder, but as to corporate shareholders, eliminates double corporate taxation of dividends on as much as 85% to 100% of the dividends received.

Because of the sudden adverse effect which adoption of the federal rule would create for shareholders of corporations doing business in Virginia, the Commission recommends in general that the Virginia rule with respect to deduction for dividends on stocks of such corporations be continued for the present except with respect to dividends from corporations which have less than half their income from sources within the State of Virginia. The \$100.00 exclusion provided individual shareholders by the federal law would be allowed under the state law as well, but to avoid duplication of the exclusions the \$100.00 allowance would be reduced by any amounts excluded from income by reason of the source of the corporate income being from within the state of Virginia. Thus, when the individual taxpayer has reflected on his Virginia income tax return his income reported on the federal return, he would make an adjustment to take an additional deduction for the excess of (a) the dividends he received out of Virginia corporate income, over (b) his allowable dividend exclusion on his federal return. Similarly, the Virginia corporate taxpayer would make adjustments to per-

mit an additional deduction for the excess of (a) the dividends received out of Virginia corporate income, over (b) the allowable dividend exclusion on its federal return.

The Commission believes that in view of the above recommended conformity of Virginia law to the federal \$100 exclusion, a further simplification can be achieved if the deduction for dividends received out of income subjected to Virginia corporate income tax is confined to cases in which more than 50% of the income of the corporation is subject to Virginia income tax. At present the Department of Taxation publishes a list of some 600 dividend-paying corporations together with the applicable percentages of their dividends that are subject to Virginia income tax. About 60% of these corporations derive less than 10% of their income from within the state of Virginia, and accordingly more than 90% of their dividends are subject to Virginia income tax in the hands of their shareholders. About 77% of the corporations listed derive less than 50% of their income from within the state.

The present Virginia dividend deduction rule, while having the strength of considerable logic when the corporation pays Virginia income tax on substantially all its income, requires a mathematical calculation that must be made and audited with respect to each affected dividend received by the taxpayer. Where the corporation derives less than half of its income from within the state, the Commission believes that the advantages of the rule are outweighed by the complexities it produces. In these circumstances and in view of the recommended conformity with the federal \$100 exclusion, the Commission recommends that the additional deduction for dividends received out of Virginia corporate income be limited to dividends from corporations which are subject to Virginia corporate income tax on more than half their income. The effect would be to confine the special Virginia deduction to dividends from less than one-fourth of the companies now affected, and yet preserve the deduction for the shareholders of those companies doing a majority of their business within the state, where the duplication of Virginia income tax would be of most concern.

5. *Governmental retirement benefits.* At the present time Virginia statutes relating to the Supplemental Retirement System and to county, city and town retirement systems provide an exemption from state income tax for retirement benefits received thereunder. Also, the present Virginia income tax system provides partial exclusion for retirement benefits paid to certain federal civil and military service retirees. The Commission recommends retention of the present exclusionary treatment of these benefits for Virginia purposes. There is reason to believe that benefits allowed under the Virginia Supplemental Retirement System have been established after taking into account the preferential tax treatment afforded. While it may properly be argued that intention of preferential treatment of retirement benefits paid to federal civil and military service retirees discriminates against other retirees, we believe the overall question of the proper treatment of income of retired persons to be sufficiently complex and significant as to justify separate study and consideration by the General Assembly. In the meanwhile present treatment of these benefits in our judgment should be retained.

6. *Deduction for personal exemption.* The Tax Reform Act of 1969, by significantly liberalizing the rules pertaining to the allow-

ance of deductions for personal exemptions and the standard deduction, and by creating a new minimum standard deduction known as "low income allowance" presented the Commission with a serious problem of choice. In 1968 conformity with the federal treatment of both personal exemptions and the standard deduction seemed possible with little or no effect on State revenues. In 1968, in these terms, conformity meant increasing the standard deduction in Virginia from 5% to 10% and limiting allowances for personal exemptions to \$600 each. However, by reason of the Revenue Act of 1969 the standard deduction will be 14% for 1972 and 15% for the years thereafter, and the personal exemptions will carry an allowance of \$700 for 1972 and \$750 thereafter.

Given the premise that the conformity statute recommended must be one which avoids significant revenue loss, the Commission had to choose between adopting the federal standard deduction and retaining a special rule for Virginia purposes as to personal exemptions, or adopting the federal treatment of personal exemptions and retaining a special rule for the standard deduction for Virginia purposes. Conformity with both the federal standard deduction and the federal treatment of personal exemptions would be too costly from a State revenue standpoint. Compounding the problem is the new federal rule providing, in connection with the liberalized standard deduction, a low income allowance of \$1,000 which is tantamount to a minimum standard deduction of that amount.

The Commission, after considerable study of the revenue implications, recommends conformity with the federal standard deduction and low income allowance, and in addition, recommends the retention of a separate and distinct treatment of allowances for personal exemptions for Virginia purposes. It is proposed that personal exemptions be limited to \$600 even though the exemption allowance for federal purposes will be \$700 for 1971 and \$750 for 1972.

Given the choice that has to be made, it is clear to the Commission that conformity with the federal standard deduction is preferable to conformity with the personal exemption allowances. Without conformity with the federal standard deduction, Virginia taxpayers will frequently find it advantageous to take the standard deduction on their federal returns and to itemize deductions on their state returns. In that event, the desired simplification of the reporting requirements of Virginia taxpayers would be lost.

7. *Income splitting between husband and wife.* Since 1948 federal law has permitted a husband and wife to file separate income tax returns or to file a joint return in which the income tax is twice the tax which would be imposed if the taxable income is cut in half. The joint return option is almost always advantageous to the taxpayer where the taxable income of one spouse is greater than that of the other. As a consequence, more than 800,000 federal joint income tax returns are filed in Virginia annually. Virginia does not, at the present time, afford its taxpayers a corresponding "income-splitting" option.

On the assumption that the present Virginia rate structure should be retained, the Commission is unable to recommend conformity between Virginia law and the federal "income-splitting" option. Under present law if a man has \$10,000 of taxable income (i.e., after deductions and personal exemptions) and his wife has no

income, his state income tax is \$370. If the "split income" provisions of the federal law were made applicable, he and his wife would pay on a joint return twice the \$120 tax that is due on an income of \$5,000, or a total state tax of \$240. Thus there would be savings of \$130 in tax. This is the maximum saving that could be obtained from "split income" under the present Virginia tax rates by a married couple, since the tax on any income above \$5,000 is at the maximum rate of 5%.

If the combined taxable income of husband and wife were \$3,000 or less, no tax reduction would flow from "split income" since the entire income would be taxable at the rate of 2%, whether received by one spouse or the other. With combined income between \$3,000 and \$10,000, some tax would be saved, in amounts ranging up to \$130 per couple, unless in fact their separate incomes were identical in amount.

The aggregate tax savings that would accrue to Virginia taxpayers if "income-splitting" were adopted, and the corresponding revenue loss to the State would be substantial. Estimates developed by our predecessor commission indicate a revenue loss of approximately 7% of personal income tax receipts. If accurate, these estimates disclose that if "income-splitting" had been permitted for 1970, the probable revenue loss would have exceeded sixteen million dollars.

Because of the size of the indicated loss from enactment of "split income" and the state's present need for revenue, the Commission concluded that it could not recommend adoption of the split income concept in the state law at this time if the present rates of income tax are to be retained. However, if a conforming state income tax law is enacted without the split income provision, the income tax returns for the first year of its operation should provide more reliable data from which the potential loss of revenue that would stem from split income could be more accurately predicted. The Commission recommends that the matter of split income be reconsidered when such data is available.

Although the Commission does not recommend the adoption at present of the split income rule of the federal law, the Commission does recommend changes which will permit the use of a simplified Virginia income tax return for a married couple filing a joint federal return.

At the present it is to the advantage of a married couple, after preparing a joint federal return, to file two separate returns in Virginia if their aggregate taxable income exceeds \$3,000 and if each of them has more than \$1,000 of income. This will frequently be the case where the wife is employed or has more than \$1,000 of investment income.

The draft statute would enable the Department of Taxation to permit or require in certain instances husband and wife to file a single combined return in which their separate incomes would be stated in parallel columns, but either spouse would be permitted to claim all or any part of the non-business deductions to which either is entitled. Thus it would not be necessary to determine whether husband or wife paid such deductible nonbusiness items as contributions, interest, taxes, medical expenses, etc.; if the husband's income is the higher he could deduct in his column all of such items, whether they were paid by his

erally these items would merely be transferred from the federal joint return onto the state combined return in the column for the spouse having the higher income. Similarly, either spouse would be allowed to claim the personal exemptions for dependents, regardless of which spouse furnished the support.

A number of states which have had enacted conformity legislation have chosen not to conform as to income splitting. In this category are New York, Wisconsin, Maryland and Kentucky, each of which utilizes the combined returned device. While failure to conform as to income splitting obviously partially inhibits the desired simplification of reporting that is a major advantage of conformity, the device of the combined return for state purposes for husband and wife who have filed a joint federal return is an effective simplification method.

8. *Transitional items.* Because of existing differences in Virginia and federal income tax laws, certain items of income, deduction and loss are includible or deductible at different times under the two systems. The adoption of the federal tax base as the beginning point for determining Virginia taxable income, would if no adjustments were made, result in the double deduction from or double inclusion in income of certain items for Virginia income tax purposes. Similarly, at the present time basis of certain property for purposes of determining gain, loss and depreciation is higher for Virginia purposes than for federal. The draft bill provides transitional adjustments in the determination of Virginia taxable income that prevent the double deduction from, or double inclusion in income for Virginia purposes of items that are currently treated differently under the Virginia and federal systems and which prevent the loss or basis for Virginia purposes that would otherwise occur through conformity of the Virginia income tax law to the federal.

PROVISIONS RELATING TO ADMINISTRATION AND JURISDICTIONAL SCOPE

The draft bill contains essentially two types of provisions—those relating to the definition of Virginia taxable income and those relating to administration of the Virginia income tax system and its jurisdictional scope. The former are discussed above. As to the latter, the provisions in the draft bill are essentially the same provisions relating to administration and jurisdictional scope as those which are currently in effect. The definition of “resident” and “nonresident” and the jurisdictional nexus of nonresident taxpayers to the Virginia income tax system are substantially unchanged, although the definition of a resident trust or estate has been clarified. Insurance companies, utilities, banks and other corporations which are currently excluded from the Virginia corporate income tax remain exempt under the draft bill. The provisions relating to credits for taxes paid to other jurisdictions and to allocation of income from multistate corporate activity are retained without significant change.

Administrative provisions in the draft statutes, by and large, incorporate verbatim existing provisions. The draft bill does, however, contain provisions not found in present law which are designed to enable the Department of Taxation to take maximum administrative advantage of the conformity between the Virginia law and the federal. For example, an extension of time for filing federal income tax returns under the bill results in an extension of time for filing state income tax returns. Also, the taxpayer is required to report changes in his federal taxable income as reported on his federal return, whether or not arising

out of a federal audit, to the Department of Taxation and as to such changes the statutory period limiting the time in which assessment can be made for Virginia purposes is extended. As a result deficiencies disclosed through federal audit activity can lead to assessments of Virginia deficiencies that would, under the present statute of limitations, otherwise have been barred.

EFFECT OF CONFORMITY ON STATE INCOME TAX REVENUE

The Commission throughout its study and consideration of the type of conformity legislation suitable to Virginia has kept a close watch on the revenue effects of alternate approaches. Revenue considerations are largely responsible for the unwillingness of the Commission to recommend conformity with federal income-splitting treatment of joint return income of husband and wife and federal allowance for personal exemptions. As mentioned earlier, the draft statute developed by the Commission is intended to afford the widest degree of conformity between the Virginia and federal income tax laws reasonably possible with no significant loss of revenue.

The conformity legislation recommended by the Commission and contained in the draft statute should have only a minimal adverse effect on income tax revenues. At our request the Research Section of the Division of State Planning and Community Affairs prepared a revenue analysis of the draft bill which compared revenue estimates under the proposed system of conformity with revenue receipts and projections from the present Virginia income tax. That analysis indicates that if conformity becomes effective as to taxable periods beginning after December 31, 1971, the reduction in projected revenue for the last half of Fiscal Year 1971-72 would be 1.4%, for the first half of Fiscal 1972-73, 1.4%, and for the second half of Fiscal 1972-73 and thereafter, 2.1%. In short, the difference in revenue projected under the present income tax law for the above periods and revenue projected under the draft conformity legislation is a difference of from 1.4% to 2.1%.

The principal reason why the draft statute, if adopted, will generate revenues somewhat less than those generated under the present system is its incorporation of the federal standard deduction and the federal low income allowance. The federal standard deduction will be 14% of adjusted gross income, up to \$2,000, for 1972 and 15%, up to \$2,000, for 1973. The low income allowance, which is tantamount to a minimum standard deduction, will be \$1,000. The variation in the estimated reduction in projected revenue attributable to conformity from 1.4% in the second half of Fiscal Year 1971-72 to 2.1% in the second half of Fiscal Year 1972-73 is caused by the change in the federal standard deduction from 14% adjusted gross income to 15% over the periods involved.

It should be emphasized, however, that the price of conformity as reflected in the draft statute may, in actuality, prove to be less than 1.4% to 2.1% of revenue obtainable under the current system. The revenue projections made with respect to the draft statute by the Division of State Planning and Community Affairs were conservative in that no factors were used to measure the effects of greater administrative capability or greater taxpayer compliance under conformity. We believe that the increased ability to utilize federal audit results, the capability to improve taxpayer compliance by comparing Virginia income tax returns with information stored on magnetic tapes available from the federal government as to federal returns filed in Virginia, and the reduction in inadvertent errors caused by discrepancies between present Vir-

ginia and federal tax law will all operate to assure a higher level of taxpayer compliance and reduce "leakage" from the tax base.

Effective date. The draft statute which, if adopted, will implement conformity between the Virginia and federal income tax systems contains effective date language which makes the provisions of the legislation applicable to taxable periods beginning on and after January 1, 1972. The current provisions of Articles 1 through 7 of Chapter 4 will remain effective as to taxable periods beginning before January 1, 1972, but are repealed as to later taxable periods. It is believed by the Commission that the suggested effective date is adequate to permit the Department of Taxation to develop procedures, forms and rules and regulations in sufficient time to implement the suggested legislation.

Conclusion: The Commission is unanimous in recommending favorable consideration by the Governor and General Assembly of the conformity provisions contained in the draft statute. We are satisfied that conformity, as suggested in the draft statute, is desirable and feasible. Given the revenue needs of the State and the limitations of the present rate structure, which is retained, we believe that the draft statute affords the widest degree of conformity reasonably obtainable. The slight reduction in projected revenues that is the price of conformity is insignificant in comparison to the simplification of the Virginia tax system that would be brought about together with the concomitant reduction in taxpayer compliance burdens and improvement in administrative capability. The draft legislation is, we believe, workable, sound, and in the best interest of Virginia.

Respectfully submitted,

D. FRENCH SLAUGHTER, JR., *Chairman*
F. ELMORE BUTLER
EDWIN S. COHEN
CARLE E. DAVIS
CHARLES W. GUNN, JR.
DOUGLAS HESS
WILLIAM H. HODGES
THEODORE V. MORRISON, JR.
STANFORD E. PARRIS
LESTER E. SCHLITZ
GEORGE M. WARREN, JR.

APPENDIX
TO THE REPORT OF THE
VIRGINIA INCOME TAX CONFORMITY
STATUTE STUDY COMMISSION

A BILL to amend and reenact §§ 58-151.2, 58-151.3, 58-151.11, 58-151.14, 58-151.19, 58-151.21, 58-151.28, 58-151.31 and 58-151.39, as severally amended, of the Code of Virginia; to amend the Code of Virginia by adding in Chapter 4 of Title 58 new articles numbered .1 through .6, consisting of sections numbered 58-76.2 through 58-76.112; and to repeal §§ 58-77 through 58-151, as severally amended, of the Code of Virginia, the amended, new and repealed sections relating to taxation of incomes.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia be amended by adding in Chapter 4 of Title 58 new articles numbered .1, .2, .3, .4, .5 and .6, consisting of sections numbered 58-76.2 through 58-76.112, as follows:

ARTICLE .1

GENERAL.

§ 58-76.2. *Meaning of terms; rules and regulations. (a) Any term used in this chapter shall have the same meaning as when used in a comparable context in the laws of the United States relating to federal income taxes, unless a different meaning is clearly required.*

(b) Any reference in this chapter to the laws of the United States relating to federal income taxes shall mean the provisions of the Internal Revenue Code of 1954, and amendments thereto, and other provisions of the laws of the United States relating to federal income taxes, as the same may be or become effective at any time or from time to time.

(c) The Department of Taxation shall have the power to make and publish reasonable rules and regulations not inconsistent with this chapter, or other applicable laws, or the Constitution of this State, or of the United States, for the interpretation and enforcement of the provisions of this chapter and the collection of the revenues hereunder. Such rules and regulations shall not be subject to Chapter 1.1 (§ 9-6.1 et seq.) of Title 9 of the Code of Virginia, the short title of which is "General Administration Agencies Act." Such rules and regulations shall take precedence over any rules and regulations of the Secretary of the Treasury of the United States or his delegate which are in conflict therewith.

(d) If subsection (b) of this section should be held unconstitutional insofar as it provides for the applicability under this chapter of amendments to the Internal Revenue Code of 1954 and of other laws of the United States relating to federal income taxes which are adopted or become law after the adoption of this act, such provisions of subsection (b) shall be deemed severable and any reference to such Code or laws of the United States shall be construed to mean such Code or laws of the United States as are in force and effect on December thirty-one, nineteen hundred seventy.

§ 58-76.3. *Definitions. For the purpose of this chapter and unless otherwise required by the context:*

(a) *“Virginia taxable income” shall mean Virginia taxable income as defined in § 58-76.14, 58-76.23, 58-76.25 or 58-76.33.*

(b) *“Individual” shall mean all natural persons whether married or unmarried and fiduciaries acting for natural persons, but not fiduciaries acting for trusts or estates.*

(c) *“Trust” or “estate” shall mean a trust or estate, or a fiduciary thereof, which is required to file a fiduciary income tax return under the laws of the United States.*

(d) *“Corporation” shall include associations, joint stock companies and insurance companies.*

(e) (1) (i) *“Resident” applies only to natural persons and includes, for the purpose of determining liability to the taxes imposed by this chapter upon the income of any taxable year every person domiciled in this State at any time during the taxable year and every other person who, for an aggregate of more than one hundred eighty-three days of the taxable year, maintained his place of abode within this State, whether domiciled in this State or not.*

(ii) *Any person, however, who, during the taxable year, becomes a resident of this State, whether domiciliary or actual, for purposes of income taxation, by moving to this State from without this State during such taxable year, shall be taxable as a resident for only that portion of the taxable year during which he was a resident of this State and his personal exemptions shall be reduced to an amount which bears the same ratio to the full exemptions as the number of days during which he was a resident of this State bears to three hundred sixty-five days. No person to whom the preceding sentence applies shall be entitled to any credit on his income tax payable to this State for any income tax paid to the state or other jurisdiction of his former domicile or actual residence for that part of the taxable year during which he was a domiciliary or actual resident of such other state or jurisdiction, notwithstanding the provisions of § 58-76.16.*

(iii) *Any person who, on or before the last day of the taxable year, changes his place of abode to a place without this State with the bona fide intention of continuing actually to abide permanently without this State shall be taxable as a resident for only that portion of the taxable year during which he was a resident of this State and his personal exemptions shall be reduced to an amount which bears the same ratio to the full exemptions as the number of days during which he was a resident of this State bears to three hundred sixty-five days. The fact that a person who has changed his place of abode, within six months from so doing abides again in this State, shall be prima facie evidence that he did not intend permanently to have his place of abode without this State.*

(iv) *Any person who is taxable as a resident of this State for only a portion of a taxable year because he moved to this State from without this State during the taxable year as set out in subparagraph (ii), or because he changed his place of abode during the taxable year to a place without this State as set out in subparagraph (iii), and who, as a nonresident of this State for any other part of the taxable year derived income from any property owned or from any business, trade, profession or occupation carried on in this State shall be taxable as a nonresident with respect to such income as provided in § 58-76.14(f).*

(2) "Nonresident" applies only to natural persons and shall mean any person not a resident.

(f) (1) "Resident estate or trust" shall mean:

(i) the estate of a decedent who at his death was domiciled in this State,

(ii) a trust created by will of a decedent who at his death was domiciled in this State,

(iii) a trust created by, or consisting of property of a person domiciled in this State, or

(iv) a trust or estate which is being administered in this State.

(2) "Nonresident estate or trust" shall mean an estate or trust which is not a resident estate or trust.

(g) "Income and deductions from Virginia sources" shall include:

(1) Items of income, gain, loss and deduction attributable to:

(i) the ownership of any interest in real or tangible personal property in this State; or

(ii) a business, trade, profession or occupation carried on in this State.

(2) Income from intangible personal property, including annuities, dividends, interest, royalties and gains from the disposition of intangible personal property to the extent that such income is from property employed by the taxpayer in a business, trade, profession, or occupation carried on in this State.

§ 58-76.4. Imposition of tax. (a) Individuals, estates and trusts. A tax determined in accordance with the rates set forth in § 58-76.12 is hereby annually imposed on the Virginia taxable income for each taxable year of every individual, estate and trust. Notwithstanding any other provision of this subsection, no tax is imposed, nor any return required to be filed by, any organization which by reason of its purposes or activities is exempt from income tax under the laws of the United States (other than unrelated business income tax under such laws.)

(b) Partners and partnerships. A partnership as such shall not be subject to tax under this chapter. Persons carrying on business as partners shall be liable for tax under this chapter only in their separate or individual capacities.

(c) Corporations. A tax determined in accordance with the rate set forth in § 58-76.32 is hereby annually imposed on the Virginia taxable income for each taxable year of every corporation organized under the laws of this State and every foreign corporation having income from Virginia sources (except public service corporations which are subject to a State franchise tax or license tax upon gross receipts, insurance companies which pay a State license tax on gross premiums and reciprocal or interinsurance exchanges which pay a premium tax to the State as provided by law, and State and national banks, banking associations and trust companies, savings and loan associations, credit unions organized and conducted as such under the laws of this State, or under the laws of the United States, electing small business corporations, and religious, educational, benevolent and other corporations not organized or conducted for pecuniary profit.)

§ 58-76.5. Incomes not subject to local taxation. Incomes having

been segregated for State taxation only, no county, city, town or other political subdivision of this State shall impose any tax or levy upon incomes.

§ 58-76.6: *Reserved*

§ 58-76.7: *Reserved*

§ 58-76.8: *Reserved*

§ 58-76.9: *Reserved*

§ 58-76.10: *Reserved*

§ 58-76.11: *Reserved*

ARTICLE .2

INDIVIDUALS

§ 58-76.12. *Rates of Tax. The rates of tax annually imposed upon every individual upon and with respect to his Virginia taxable income for each taxable year are as follows:*

Two per centum of the amount of such income not exceeding three thousand dollars;

Three per centum of the amount of such income in excess of three thousand dollars, but not in excess of five thousand dollars; and

Five per centum of the amount of such income in excess of five thousand dollars.

§ 58-76.13. *Husband and wife. (a) If the federal taxable income of husband or wife is determined on a separate federal return, their Virginia taxable incomes shall be separately determined.*

If the federal taxable income of husband and wife is determined on a joint federal return, or if neither files a federal return:

(1) their tax shall be determined on their joint Virginia taxable income, or

(2) separate taxes may be determined on their separate Virginia taxable incomes if they so elect.

(c) If husband or wife is a resident and the other is a nonresident, separate taxes shall be determined on their separate Virginia taxable incomes on such single or separate forms as may be required by the Department of Taxation, unless both elect to determine their joint Virginia taxable income as if both were residents.

§ 58-76.14. *Virginia taxable income. (a) General. The Virginia taxable income of a resident individual means his federal adjusted gross income for the taxable year, with the modifications specified in this section.*

(b) Additions. To the extent excluded from federal adjusted gross income there shall be added:

(1) Interest, less related expenses to the extent not deducted in determining federal taxable income, on obligations of any state other than this State, or of a political subdivision of any such other state unless created by compact or agreement to which this State is a party; and

(2) Interest or dividends, less related expenses to the extent not

deducted in determining federal taxable income, on obligations of securities of any authority, commission or instrumentality of the United States, which the laws of the United States exempt from federal income tax but not from state income taxes.

(c) Subtractions. To the extent included in federal adjusted gross income, there shall be subtracted:

(1) Interest or dividends on obligations of the United States (other than on refunds of federal taxes) and on obligations or securities of any authority, commission or instrumentality of the United States to the extent exempt from the state income taxes under the laws of the United States; and

(2) Interest on obligations of this State or of any political subdivision or instrumentality of this State.

(3) The following items of pension or retirement income and benefits;

(A) Pensions or retirement income to officers and employees of this State, its subdivisions and agencies exempt from State income taxation under the laws of this State;

(B) Pensions received from the United States or this State on account of military or naval service in armed forces, whether such service was rendered by the recipient of the pension, or by a relative by blood or marriage;

(C) The first two thousand dollars of retirement benefits derived in each taxable year from civilian service for the federal government or any agency thereof; and

(D) The first two thousand dollars of retirement benefits derived from service as a member of the armed forces of the United States received by taxpayers who have attained the age of sixty or before the close of their taxable year.

(4) Dividends, to the extent includible in gross income for federal income tax purposes and in excess of any dividend exclusion provided in the laws of the United States relating to federal income taxes, upon stock in:

(A) National banks and banks and trust companies organized under the laws of this State;

(B) Any corporation, fifty percent or more of the income of which was assessable for the preceding year under the provisions of the income tax laws of this State; provided that when only a part of the income of any such corporation was so assessable, only a corresponding part of the dividends received therefrom shall be subtracted under this subparagraph (B).

(5) The amount of any refund or credit for overpayment of income taxes imposed by this State or any other taxing jurisdiction.

(d) Deductions. There shall be deducted:

(1) 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 this State or any other taxing jurisdiction and deducted on such federal return; or

(2) The amount allowable as the standard deduction or low income allowance for federal income tax purposes where the taxpayer has elected for the taxable year to take such standard deduction or low income allowance on his federal return; and

(3) A deduction in the amount of six hundred dollars for each personal exemption allowable to the taxpayer for federal income tax purposes.

(e) Other modifications and adjustments.

(1) 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 § 58-76.24.

(2) Where husband and wife have not separately reported and claimed items of income, exemptions and deductions for federal income tax purposes, and have not elected to file a joint Virginia income tax return, such items allowable for Virginia income tax purposes, shall be allocated and adjusted as follows:

(A) Income shall be allocated to the spouse who earned the income or with respect to whose property the income is attributable.

(B) Allowable deductions with respect to trade, business, production of income, or employment shall be allocated to the spouse to whom attributable.

(C) Non-business deductions, where properly taken for federal income tax purposes, shall be allowable for Virginia income tax purposes, but shall be allocable between husband and wife as they may mutually agree. For this purpose, "non-business deductions" consist of allowable deductions not described in subparagraph (B) above.

(D) Where the standard deduction or low income allowance is properly taken for federal income tax purposes such deduction or allowance shall be allowable for Virginia income tax purposes and shall be allocable between husband and wife as they may mutually agree, provided, however, that the low income allowance allocated to either spouse shall not exceed five hundred dollars as to either such spouse and the standard deduction shall not, as to either such spouse, exceed one thousand dollars.

(E) Personal exemptions properly allowable for federal income tax purposes shall be allocated for Virginia income tax purposes as husband and wife may mutually agree, provided, however, that exemptions for taxpayer and spouse together with exemptions for old age and blindness must be allocated respectively to the spouse to which they relate.

(3) Where allocations are permitted to be made under subparagraph (2) above pursuant to agreement between husband and wife, and husband and wife have failed to agree as to such allocations, such allocations shall be made between husband and wife in a manner corresponding to the treatment for federal income tax purposes of the items involved, under regulations prescribed by the Department of Taxation.

(f) Nonresidents.

(1) Nonresident individuals, partners and beneficiaries. The Virginia taxable income of a nonresident individual, partner or beneficiary shall be an amount bearing the same proportion to his Virginia taxable

income, computed as though he were a resident, as the net amount of his income, gain, loss and deductions from Virginia sources bears to the net amount of his income, gain, loss and deductions from all sources.

(2) *Certain nonresident shareholders.* For a nonresident individual who is a shareholder in an electing small business corporation, there shall be included in his Virginia taxable income his share of the taxable income of such corporation, and his share of any net operating loss of such corporation shall be deductible from his Virginia taxable income.

(g) *Transitional modifications.* There shall be added or subtracted, as the case may be, the amounts provided in § 58-76.112 as transitional modifications.

(h) *Partner's modifications.* Virginia taxable income shall, as to partners, be adjusted to reflect the modifications provided in § 58-76.15.

§ 58-76.15. *Partners.* (a) *Partner's modifications.* In determining Virginia taxable income of a partner, any modification described in § 58-76.14, which relates to an item of partnership income, gain, loss or deduction shall be made in accordance with the partner's distributive share, for federal income tax purposes, of the item to which the modification relates. Where a partner's distributive share of any such item is not included in any category of income, gain, loss or deduction required to be taken into account separately for federal income tax purposes, the partner's distributive share of such item shall be determined in accordance with his distributive share, for federal income tax purposes, of partnership taxable income or loss.

(b) *Character of items.* Each item of partnership income, gain, loss or deduction shall have the same character for a partner under this chapter as for federal income tax purposes. Where an item is not characterized for federal income tax purposes, it shall have the same character for a partner as if realized directly from the source from which realized by the partnership or incurred in the same manner by the partnership.

(c) *Virginia tax avoidance or evasion.* Where a partner's distributive shares of an item of partnership income, gain, loss or deduction is determined for federal income tax purposes by special provision in the partnership agreement with respect to such item, and where the principal purpose of such provision is the avoidance or evasion of tax under this chapter, the partner's distributive share of such item, and any modification required with respect thereto, shall be determined as if the partnership agreement made no special provision with respect to such item.

§ 58-76.16. *Credits for taxes paid other states.* (a) Whenever a resident of this State has become liable for income tax to another state, as a nonresident of such state, upon his income, or any part thereof, for the taxable year, derived from sources without this State and subject to taxation under this chapter, the amount of income tax payable by him under this chapter shall be credited on his return with the income tax so paid by him to such other state upon proof of such payment; provided, however, that the credit allowable under this section shall not exceed such proportion of the income tax otherwise payable by him under this chapter as his income upon which the tax imposed by such other state was computed bears to his Virginia taxable income upon which the tax imposed by this State was computed. The credit provided for by this section shall not be granted to a resident individual when the laws of another state, under which the income in question is subject to tax assessment, provide a credit to such resident individual substantially similar to that granted by subsection (b) of this section.

(b) Whenever a nonresident individual of this State has become liable for income tax to the state where he resides upon his Virginia taxable income for the taxable year, derived from Virginia sources and subject to taxation under this chapter, the amount of income tax payable by him under this chapter shall be credited with such proportion of the tax so payable by him to the state where he resides, upon proof of such payment, as his income subject to taxation under this chapter bears to his entire income upon which the tax so payable to such other state was imposed; provided, that such credit shall be allowed only if the laws of such state: (1) Grant a substantially similar credit to residents of this State subject to income tax under such laws or (2) impose a tax upon the income of its residents derived from Virginia sources and exempt from taxation the income of residents of this State. No credit shall be allowed against the amount of the tax on any income taxable under this chapter which is exempt from taxation under the laws of such other state.

§ 58-76.17. *Certain persons in armed forces not subject to tax. Persons in the armed forces of the United States stationed on military or naval reservations within Virginia who are not domiciled in Virginia and who maintain no place of abode in Virginia shall not be held liable to income taxation on the ground that they are so stationed and perform services on such reservations or elsewhere in this State.*

§ 58-76.18: *Reserved*

§ 58-76.19: *Reserved*

§ 58-76.20: *Reserved*

§ 58-76.21: *Reserved*

ARTICLE 3

ESTATES AND TRUSTS

§ 58-76.22. *Rates of tax. The rates of tax prescribed by § 58-76.12 for individuals shall also apply to estates and trusts.*

§ 58-76.23. *Virginia taxable income of a resident estate or trust. The Virginia taxable income of a resident estate or trust means its federal taxable income for the taxable year to which there shall be added or subtracted (as the case may be) the share of the estate or trust in the Virginia fiduciary adjustment determined under § 58-76.24.*

§ 58-76.24. *Share of a resident estate, trust or beneficiary in Virginia fiduciary adjustment. (a) General. An adjustment shall be made in determining Virginia taxable income of a resident estate or trust under § 58-76.23, or of a resident beneficiary of an estate or trust under subparagraph (e) (1) of § 58-76.14, in the amount of the share of each in the Virginia fiduciary adjustment as determined in this section.*

(b) *Definition. The Virginia fiduciary adjustment shall be the net amount of the modifications described in § 58-76.14 (including subparagraph (e) (1) thereof if the estate or trust is a beneficiary of another estate or trust), which relate to items of income, gain, loss or deduction of an estate or trust.*

(c) *Shares of Virginia fiduciary adjustment.*

(1) *The respective shares of an estate or trust and its beneficiaries (including, solely for the purpose of this allocation, nonresident bene-*

ficaries) in the Virginia fiduciary adjustment shall be in proportion to their respective shares of distributable net income of the estate or trust.

(2) If the estate or trust has no distributable net income for the taxable year, the share of each beneficiary in the Virginia fiduciary adjustment shall be in proportion to his share of the estate or trust income for such year, under local law or the governing instrument, which is required to be distributed currently and any other amounts of such income distributed in such year. Any balance of the Virginia fiduciary adjustment shall be allocated to the estate or trust.

§ 58-76.25. Virginia taxable income of a nonresident estate or trust. The Virginia taxable income of a nonresident estate or trust shall be determined as follows:

(a) Items in distributable net income. There shall be determined its share of income, gain, loss and deduction attributable to Virginia sources as determined under § 58-76.26.

(b) Items not in distributable net income. There shall be added or subtracted (as the case may be) the amount derived from or connected with Virginia sources of any income, gain, loss and deduction recognized for federal income tax purposes but excluded from the computation of distributable net income of the estate or trust.

(c) Modifications. There shall be added or subtracted (as the case may be) the net amount of any modifications as provided for in § 58-76.14 with respect to the income or gain referred to in subsection (b) of this section.

§ 58-76.26. Share of a nonresident estate, trust or beneficiary in income from Virginia sources. (a) General. The share of a nonresident estate or trust under subsection (a) of § 58-76.25 and the share of a nonresident beneficiary of any estate or trust under provisions otherwise applicable to nonresident individuals in estate or trust income or loss attributable to Virginia sources shall be determined as follows:

(1) Items of distributable net income from Virginia sources. There shall be determined the items of income, gain, loss and deduction derived from Virginia sources, which enter into the computation of distributable net income of the estate or trust for the taxable year (including such items from another estate or trust of which the first estate or trust is a beneficiary).

(2) Addition or subtraction of modifications. There shall be added or subtracted (as the case may be) the modifications described in § 58-76.14 to the extent relating to items of income, gain, loss and deduction derived from Virginia sources which enter into the computation of distributable net income (including all such items from another estate or trust of which the first estate or trust is a beneficiary). No modification shall be made under this subsection which has the effect of duplicating an item already reflected in the computation of distributable net income.

(3) Allocation among estate or trust and beneficiaries.

(A) The amounts determined under paragraphs (1) and (2) shall be allocated among the estate or trust and its beneficiaries (including solely for the purposes of this allocation, resident beneficiaries) in proportion to their respective shares of distributable net income.

(B) The amounts so allocated shall have the same character under this article as under the laws of the United States relating to federal income taxes. Where an item entering into the computation of such

amounts is not characterized by such laws, it shall have the same character as if realized directly from the source from which realized by the estate or trust, or incurred in the same manner as incurred by the estate or trust.

(b) *Alternate method of determining shares.* If the estate or trust has no distributable net income for the taxable year, the share of each beneficiary (including, solely for the purpose of such allocation, resident beneficiaries) in the net amount determined under paragraphs (1) and (2) of subsection (a) shall be in proportion to his share of the estate or trust income for such year, under local law or the governing instrument, which is required to be distributed currently and any other amounts of such income distributed in such year. Any balance of such net amount shall be allocated to the estate or trust.

§ 58-76.27. *Credit to trust beneficiary receiving accumulation distribution.*

(a) *General.* A beneficiary of a trust whose Virginia taxable income includes all or part of an accumulation distribution by such trust, as defined in the laws of the United States relating to federal income taxes, shall be allowed a credit against the tax otherwise due under this chapter for all or a proportionate part of any tax paid by the trust under this chapter which would not have been payable if the trust had in fact made distributions to its beneficiaries at the times and in the amounts specified in the laws of the United States relating to federal income taxes.

(b) *Limitation.* The credit under this section shall not reduce the tax otherwise due from the beneficiary under this chapter to an amount less than would have been due if the accumulation distribution or his part thereof were excluded from his Virginia taxable income.

§ 58-76.28. *Credits for taxes paid other states.* The provisions of § 58-76.16 shall be applicable mutatis mutandis to trusts and estates.

ARTICLE 4

CORPORATIONS

§ 58-76.32. *Rate of tax.* The rate of tax annually imposed on each corporation subject to tax under subsection (c) of § 58-76.4 is five per centum of the Virginia taxable income of such corporation for each taxable year.

§ 58-76.33. *Virginia taxable income.* For purposes of this article, Virginia taxable income for a taxable year shall mean the federal taxable income for such year of a corporation, adjusted as follows:

(a) There shall be added to federal taxable income the amounts described in paragraph (b) of section 58-76.14.

(b) There shall be added to federal taxable income the amount of any income taxes imposed by this State or any other taxing jurisdiction, to the extent deducted in determining federal taxable income.

(c) There shall be subtracted from federal taxable income the amounts described in paragraphs (1), (2), (4) and (5) of subsection (c) of section § 58-76.14, except that the modification specified in paragraph (4) thereof shall not be reduced by the dividend exclusion provided by the laws of the United States relating to federal income taxes, and the reduction specified in subparagraph (B) of said paragraph shall apply only to the extent that it exceeds the dividends received deduction.

(d) Dividends with respect to which a foreign tax credit is allowed under the laws of the United States relating to income taxes shall be included in Virginia taxable income only to the extent of the net amount thereof.

(e) Adjustments to federal taxable income shall be made to reflect the transitional modifications provided in § 58-76.112.

§ 58-76.34. Corporations transacting or conducting entire business within the State. If the entire business of the corporation be transacted or conducted within the State, the tax imposed by this chapter shall be upon the entire Virginia taxable income of such corporation for each taxable year. The entire business of the corporation shall be deemed to have been transacted or conducted within this State if such corporation is not subject to a net income tax or a franchise tax measured by net income in any other State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any foreign country, and would not be subject to a net income tax in any other such taxing jurisdiction if such other taxing jurisdiction adopted the income tax law of this State.

§ 58-76.35. Certain definitions. As used in §§ 58-76.35 through 58-76.51, unless the context otherwise requires:

(a) "Compensation" means wages, salaries, commissions and any other form of remuneration paid or accrued to employees for personal services, other than compensation to general executive officers having company-wide authority.

(b) "Sales" means all gross receipts of the corporation not allocated under §§ 58-76.38 through 58-76.41.

(c) "State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, and any foreign country.

§ 58-76.36. Allocation and apportionment of income. Any corporation having income from business activity which is taxable both within and without this State, shall allocate and apportion its Virginia taxable income as provided in §§ 58-76.35 through 58-76.51.

§ 58-76.37. When corporation deemed taxable in another state. For purposes of allocation and apportionment of income under §§ 58-76.35 through 58-76.51, a corporation is taxable in another state if (1) in that state it is subject to a net income tax or a franchise tax measured by net income, or (2) would be subject to a net income tax in any other such taxing jurisdiction if such other taxing jurisdiction adopted the income tax law of this State.

§ 58-76.38. How certain items allocated. Rents and royalties from real or tangible personal property, capital gains or losses from the sale or other disposition of real estate or tangible and intangible personal property, interest and dividends shall be allocated as provided in §§ 58-76.39 through 58-76.41.

§ 58-76.39. Net rents and royalties. (a) Net rents and royalties from real property located in this State are allocable to this State.

(b) Net rents and royalties from tangible personal property are allocable to this State: (1) if and to the extent that the property is utilized in this State, or (2) in their entirety if the principal place from which the trade or business of the corporation is directed or managed

is in this State and the corporation is not organized under the laws of or taxable in the state in which the property is utilized.

(c) The extent of utilization of tangible personal property in a state is determined by multiplying the rents and royalties by a fraction, the numerator of which is the number of days of physical location of the property in the state during the rental or royalty period in the taxable year and the denominator of which is the number of days of physical location of the property everywhere during all rental or royalty periods in the taxable year. If the physical location of the property during the rental or royalty period is unknown or unascertainable by the corporation, tangible personal property is utilized in the state in which the property was located at the time the rental or royalty payer obtained possession.

§ 58-76.40. Capital gains and losses. (a) Capital gains and losses from sales or other disposition of real property located in this State are allocable to this State.

(b) Capital gains and losses from sales or other disposition of tangible personal property are allocable to this State if (1) the property had a situs in this State at the time of the sale or other disposition or (2) the principal place from which the trade or business of the corporation is directed or managed is in this State and the corporation is not taxable in the state in which the property had a situs.

(c) Capital gains and losses from sales or other disposition of intangible personal property are allocable to this State if the principal place from which the trade or business of the corporation is directed or managed is in this State; provided, however, that capital gains and losses from sales or other disposition of stock or other securities of a subsidiary corporation of the selling or disposing corporation shall not be allocable under this section but shall be apportionable under § 58-76.42.

§ 58-76.41. Interest and dividends. Interest and dividends are allocable to this State if the principal place from which the trade or business of the corporation is directed or managed is in this State; provided, however, that interest and dividends derived from investments in a subsidiary corporation of the recipient corporation shall not be allocable under this section but shall be apportionable under § 58-76.42. For the purposes of this section and § 58-76.40, a corporation shall be considered to be a subsidiary of another corporation if the latter owns more than 50% of the voting stock of such corporation.

§ 58-76.42. What income apportioned and how. The Virginia taxable income of the corporation, excluding the classes of income allocable under §§ 58-76.38 through 58-76.41 shall be apportioned to this State by multiplying such income by a fraction, the numerator of which is the property factor plus the payroll factor, plus the sales factor, and the denominator of which is three, reduced by the number of factors, if any, having no denominator.

§ 58-76.43. Property factor. The property factor is a fraction, the numerator of which is the average value of the real and tangible personal property owned by or rented to the corporation in this State during the taxable year and the denominator of which is the average value of all the real and tangible personal property owned by or rented to the corporation during the taxable year; provided, however, that there shall be excluded from such numerator and denominator the average value of real and tangible personal property owned by the corporation to the

extent that rents and royalties therefrom have been allocated under § 58-76.39.

§ 58-76.44. Valuation of property owned or rented. Property owned by the corporation shall be valued at its original cost plus the cost of additions and improvements. Property rented by the corporation shall be valued at eight times the net annual rental rate. Net annual rental rate is the annual rental rate paid by the corporation less any annual rate received by the corporation from subrentals.

§ 58-76.45. Average value of property. The average value of property shall be determined by averaging the value at the beginning and ending of the taxable year, but the Department of Taxation may require the averaging of monthly values during the taxable year if reasonably required to reflect properly the average value of the corporation's property.

§ 58-76.46. Payroll factor. The payroll factor is a fraction, the numerator of which is the total amount paid or accrued in this State during the tax period by the corporation for compensation, and the denominator of which is the total compensation paid or accrued everywhere during the taxable year. Compensation to general executive officers having company-wide authority, however, shall be excluded from the numerator and the denominator, and all compensation in connection with income allocated under §§ 58-76.38 through 58-76.41 shall be excluded from the numerator and the denominator.

§ 58-76.47. When compensation deemed paid or accrued in this State. Compensation is paid or accrued in this State if: (a) the employee's service is performed entirely within the State; or (b) the employee's service is performed both within and without the State, but the service performed without the State is incidental to the employee's service within the State; or (c) some of the service is performed in the State and (1) the base of operations or, if there is no base of operations, the place from which the service is directed or controlled, is in the State, or (2) the base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the employee's residence is in this State.

§ 58-76.48. Sales factor. The sales factor is a fraction, the numerator of which is the total sales of the corporation in this State during the taxable year, and the denominator of which is the total sales of the corporation everywhere during the taxable year.

§ 58-76.49. When sales of tangible personal property deemed in this State. Sales of tangible personal property are in this State if: (a) the property is delivered or shipped to a purchaser or for his account within this State regardless of the f.o.b. point or other conditions of the sale; or (b) the property is shipped from an office, store, warehouse, factory, or other place in this State and the corporation is not taxable with respect thereto in the state of the purchaser by reason of the fact that such sale is not attributable or assignable to the state of the purchaser under the apportionment formula of such state, or would not be so attributable or assignable if such state had adopted the income tax law of this State.

§ 58-76.50. When certain other sales deemed in this State. Sales, other than sales of tangible personal property, are in this State if: (a) the income-producing activity is performed in this State; or (b) the income-producing activity is performed both in and outside this State

and a greater proportion of the income-producing activity is performed in this State than in any other state, based on costs of performance.

§ 58-76.51. *Motor carriers; apportionment.* Motor carriers of property or passengers shall apportion their net apportionable income to this State by the use of the ratio of vehicle miles in this State to total vehicle miles of the corporation everywhere. For the purposes of this section the words "vehicle miles" in the case of motor carriers of property shall mean miles traveled by vehicles (whether owned or operated by the corporation) hauling property for a charge or traveling on a scheduled route; and in the case of motor carriers of passengers the same shall mean miles traveled by vehicles (whether owned or operated by the corporation) carrying passengers for a fare or traveling on a scheduled route.

§ 58-76.52. *Alternative method of allocation.* If any corporation believes that the method of allocation or apportionment hereinbefore prescribed as administered by the Department of Taxation has operated or will so operate as to subject it to taxation on a greater portion of its Virginia taxable income than is reasonably attributable to business or sources within this State, it shall be entitled to file with the Department a statement of its objections and of such alternative method of allocation or apportionment as it believes to be proper under the circumstances with such detail and proof and within such time as the Department may reasonably prescribe. If the Department shall conclude that the method of allocation or apportionment theretofore employed is in fact inapplicable or inequitable, it shall redetermine the taxable income by such other method of allocation or apportionment as seems best calculated to assign to the State for taxation the portion of the income reasonably attributable to business and sources within the State, not exceeding, however, the amount which would be arrived at by application of the statutory rules for allocation or apportionment.

ARTICLE 5

ACCOUNTING, RETURNS, PROCEDURES, ADMINISTRATION.

§ 58-76.62. *Accounting.* (a) *Accounting periods.* An individual, estate, trust or corporate taxpayer's taxable year under this chapter shall be the same as his taxable year for federal income tax purposes.

(b) *Change of accounting periods.* If a taxpayer's taxable year is changed for federal income tax purposes, his taxable year for purposes of this chapter shall be similarly changed. If a taxable year of less than twelve months results from a change of taxable year, the Virginia taxable income shall be prorated under regulations of the Department of Taxation.

(c) *Accounting methods.* A taxpayer's method of accounting under this chapter shall be the same as his method of accounting for federal income tax purposes. In the absence of any method of accounting for federal income tax purposes, Virginia taxable income shall be computed under such method as in the opinion of the Department of Taxation clearly reflects income.

(d) *Change of accounting methods.* (1) If a taxpayer's method of accounting is changed for federal income tax purposes, his method of accounting for purposes of this chapter shall be similarly changed.

(2) If a taxpayer's method of accounting is changed, other than from an accrual to an installment method, any additional tax which results from adjustments determined to be necessary solely by reason

of the change shall not be greater than if such adjustments were ratably allocated and included for the taxable year of the change and the preceding taxable years, not in excess of two, during which the taxpayer used the method of accounting from which the change is made.

(3) If a taxpayer's method of accounting is changed from an accrual to an installment method, any additional tax for the year of such change of method and for any subsequent year which is attributable to the receipt of installment payments properly accrued in a prior year, shall be reduced by the portion of tax for any prior taxable year attributable to the accrual of such installment payments, in accordance with regulations of the Department of Taxation.

(4) In computing a taxpayer's Virginia taxable income for any taxable year under a method of accounting different from the method under which the taxpayer's Virginia taxable income was computed, there shall be taken into account those adjustments which are determined, under regulations prescribed by the Department of Taxation, to be necessary solely by reason of change in order to prevent amounts from being duplicated or omitted.

(5) Notwithstanding any of the other provisions of this section, any accounting adjustments made for federal income tax purposes for any taxable year shall be applied in computing the taxpayer's taxable income for such year.

§ 58-76.63. Returns of individuals, estates and trusts. (a) General. On or before the first day of May of each year if an individual's taxable year is the calendar year, or on or before the fifteenth day of the fourth month following the close of a taxable year other than the calendar year, an income tax return under this chapter shall be made and filed by or for:

(1) every resident individual required to file a federal income tax return for the taxable year, or having Virginia taxable income for the taxable year determined under § 58-76.14;

(2) every resident or trust required to file a federal income tax return for the taxable year, or having any Virginia taxable income for the taxable year determined under § 58-76.23;

(3) every nonresident individual having Virginia taxable income for the taxable year determined under § 58-76.14;

(4) every nonresident estate or trust having Virginia taxable income for the taxable year determined under § 58-76.25.

(b) Husband and wife.

(1) If the federal income tax liability of husband or wife is determined on a separate federal return, their Virginia income tax liabilities and returns shall be separate.

(2) If the federal income tax liabilities of husband and wife (other than a husband and wife described in paragraph (3)) are determined on a joint federal return, or if neither files a federal return:

(A) they shall file a joint Virginia income tax return, and their tax liabilities shall be joint and several, or

(B) they may elect to file separate Virginia income tax returns if they comply with the requirements of the Department of Taxation in setting forth information (whether or not on a single form), in which

event their tax liabilities shall be separate except as provided in paragraph (4) of this subsection (b).

(3) If either husband or wife is a resident and the other is a nonresident, they shall file separate Virginia income tax returns on such single or separate forms as may be required by the Department of Taxation, in which event their tax liabilities shall be separate except as provided in paragraph (4) of this subsection (b), unless both elect to determine their joint Virginia taxable income as if both were residents, in which event their tax liabilities shall be joint and several.

(4) If husband and wife file separate Virginia income tax returns on a single form pursuant to paragraph (2) or paragraph (3) of this subsection (b), and:

(A) if the sum of the payments by either spouse, including withheld and estimated taxes, exceeds the amount of the tax for which such spouse is separately liable, the excess may be applied by the Department of Taxation to the credit of the other spouse if the sum of the payments by such other spouse, including withheld and estimated taxes, is less than the amount of the tax for which such other spouse is separately liable;

(B) if the sum of the payments made by both spouses with respect to the taxes for which they are separately liable, including withheld and estimated taxes, exceeds the total of the taxes due, refund of the excess may be made payable to both spouses;

provided, however, that the provisions of this paragraph (4) shall not apply if the return of either spouse includes a demand that any overpayment made by him or her shall be applied only on account of his or her separate liability.

(c) Decedents. The return for any deceased individual shall be made and filed by his executor, administrator, or other person charged with his property. If a final return of a decedent is for a fractional part of a year, the due date of such return shall be the fifteenth day of the fourth month following the close of the twelve-month period which began with the first day of such fractional part of the year.

(d) Individuals under a disability. The return for an individual who is unable to make a return by reason of minority or other disability shall be made and filed by his guardian, committee, fiduciary or other person charged with the care of his person or property (other than a receiver in possession of only a part of his property), or by his duly authorized agent.

(e) Estates and trusts. The return for an estate or trust shall be made and filed by the fiduciary.

(f) Joint fiduciaries. If two or more fiduciaries are acting jointly, the return may be made by any one of them.

(g) Tax a debt. Any tax under this article, and any increase, interest or penalty thereon, shall, from the time it is due and payable, be a personal debt of the person liable to pay the same, to the State of Virginia.

§ 58-76.64. Special case in which a nonresident need not file a Virginia return. A nonresident of this State who had no actual place of abode in this State at any time during the taxable year and commuted on a daily basis from his place of residence in another state to his place of employment in this State is hereby relieved of filing an income return

to this State for that taxable year provided: (1) His only income from Virginia sources was from salaries and wages, and (2) such salaries and wages were subject to income taxation by the state of his residence under an income tax law substantially similar in principle to this chapter, and (3) the laws of such other state contain a provision substantially similar in effect to that contained in § 58-76.16 and applicable to residents of this State, and (4) the laws of such other state accord like treatment to a resident of this State who commuted on a daily basis from his place of residence in this State to his place of employment in such other state.

§ 58-76.65. *Place of filing.* (a) *Individuals.* Every resident who is required by this chapter to file a return shall file his return with the commissioner of the revenue for the county or city in which he resides and every nonresident who is required by this chapter to file a return shall file his return with the commissioner of the revenue for the county or city in which all or a part of his income from Virginia sources was derived.

(b) *Fiduciaries.* Every fiduciary required to file a return on behalf of an individual, estate or trust shall file such return with the commissioner of the revenue having jurisdiction in the county or city in which the fiduciary qualified or, if there has been no qualification in this State, in the county or city in which such fiduciary resides, does business or has an office or wherein the beneficiary or any of them may reside, or with the Department of Taxation if provided by regulation thereof.

§ 58-76.66. *Filing of individual, estate or trust income tax returns with the Department of Taxation.* Whenever an individual or fiduciary files with the Department of Taxation a State income tax return for a current year, the Department of Taxation may, at the request of the taxpayer, and for reasons sufficient to it, assess the State income tax against such taxpayer instead of transmitting such return to a commissioner of the revenue for assessment; but in every such case the Department of Taxation shall advise the appropriate commissioner of the revenue of such action.

§ 58-76.67. *Forms for returns.* Blank forms of returns for individual, estate or trust income shall be supplied by the Department of Taxation to the commissioners of the revenue, who shall mail or deliver them to the taxpayers not later than January fifteenth of each year.

Such income returns shall provide for the reporting of the federal adjusted gross income of the individual, and federal taxable income of the estate or trust, modifications thereof, together with such other facts as may be necessary for the proper enforcement of this chapter.

§ 58-76.68. *Extension of time for filing returns.* Whenever an extension of time for filing the federal income return for such period is granted any individual or fiduciary, an extension to the same date shall be granted for the filing of State income tax returns. In addition, the Department of Taxation may grant a reasonable extension of time for filing such income returns whenever in its judgment good cause exists and shall keep a record of every extension. Whenever the time for filing a taxable return be extended, interest at the rate of one-half of one percent per month or fraction thereof from the time the return was originally required to be filed to the time of payment shall be charged and collected. If any taxpayer, who has been granted an extension of time for filing his return, fails to file his return within the extended time and to pay the full amount of the tax as shown on the face of the return at

the time of filing, and the accrued interest, his case shall be treated the same as if no extension had been granted.

§ 58-76.69. *Commissioner of the revenue to obtain and audit returns. Every commissioner of the revenue shall obtain an income tax return from every individual or fiduciary within his jurisdiction who is liable under the law to file such a return with him; but this duty of the commissioner of the revenue to obtain such return shall in no manner diminish any obligation to file a return without being called upon to do so by the commissioner of the revenue or any other officer. Each commissioner of the revenue shall audit returns as soon as practicable after they are made to him and shall assess the amount of taxes, or the amount of additional taxes, as the case may be, which appears to be due; but such auditing shall not be done in such manner or at such time in any case as will result in any delay on the part of the commissioner of the revenue in complying with §§ 58-76.70 and 58-76.77.*

§ 58-76.70. *Income assessment sheets or forms. The Department of Taxation shall prescribe and furnish assessment sheets or forms for the use of every commissioner of the revenue in making assessments of individual and fiduciary income taxes. These assessment sheets or forms shall be made out in as many copies as may be prescribed by the Department of Taxation. The original and, if the Department of Taxation so prescribes, one copy of each such sheet or form shall be delivered to the treasurer of the county or city; one copy shall be sent the Department of Taxation, and one copy shall be retained by the commissioner of the revenue. The commissioner of the revenue shall make out these assessment sheets or forms daily as and when returns are received, or in the case of additional assessments, as and when made, and shall continue so to make out such sheets or forms daily until all returns so received by him have been assessed on such sheets or forms; and the commissioner of the revenue shall each day deliver the original and, if the Department of Taxation so prescribed, one copy of each such sheet or form so made out that day to the treasurer of the county or city. Within ten days after the close of each month the commissioner of the revenue shall transmit to the Department of Taxation its copy of the assessment sheets or forms showing assessments made throughout such month.*

§ 58-76.71. *Disposition of returns; audit. As soon as the individual and fiduciary income tax returns have been received by the commissioner of the revenue and entered upon the assessment sheets or forms, the commissioner of the revenue shall forward such returns to the Department of Taxation; provided, however, that the Department of Taxation may authorize the commissioner of the revenue to retain such returns for such length of time as may be necessary to enable him to review them under § 58-76.69 and to use them in ascertaining delinquents. As soon as practicable after each such return is received by the Department, it shall examine and audit it.*

§ 58-76.72. *Assessment and payment of deficiency; fraud; penalties. If the amount of tax computed by the Department shall be greater than the amount theretofore assessed, the excess shall be assessed by the Department aforesaid and a bill for the same shall be mailed to the taxpayer. The taxpayer shall pay such additional tax to the Department within thirty days after the amount of the tax as computed shall be mailed by the Department. In such case, if the return was made in good faith and the understatement of the amount in the return was not due to any fault of the taxpayer, there shall be no penalty on the additional tax because of such understatement, but interest shall be added to the*

amount of the deficiency at the rate of one-half of one percent per month or fraction thereof from the time the said return was required by law to be filed until paid.

If the understatement is false or fraudulent with intent to evade the tax, a penalty of one hundred per centum shall be added together with interest on the tax at the rate of one-half of one percent per month or fraction thereof from the time the said return was required by law to be filed until paid.

Nothing contained in this section shall prevent the taxpayer from applying to the circuit court of the county or the corporation or hustings court of the city wherein he resides for a correction of the assessment made by the Department of Taxation, with right of appeal in the manner provided by law.

§ 58-76.73. Refund of overpayment. If the amount of taxes as computed shall be less than the amount theretofore paid, the excess shall be refunded out of the State treasury on the order of the Commissioner upon the Comptroller.

§ 58-76.74. Penalty for failure to file income tax returns in time. All individual or fiduciary income tax returns required by law to be filed with the commissioner of the revenue shall be filed with the commissioner of the revenue within the time required by this chapter, unless the time for filing such returns be extended by the Department of Taxation. And upon all returns filed with or assessed by the commissioner of the revenue after the time herein prescribed for the filing of returns, the commissioner of the revenue shall assess a penalty equal to ten per centum of the amount of taxes assessable thereon, but in no case shall such penalty be less than two dollars, and such penalty when so assessed shall become a part of the tax and shall be collected in the same manner as is provided by law for the collection of other taxes.

§ 58-76.75. Criminal prosecution for failure or refusal to file return of income or for making false statement therein; limitation. Notwithstanding any other provisions of this title and in addition to any other penalties provided by law, any individual or fiduciary required under this chapter to make a return of income, who wilfully fails or refuses to make such return, at the time or times required by law, and who, with intent to defraud the State, makes any false statement in any such return, shall be guilty of a misdemeanor, and upon conviction shall be confined in jail not exceeding one year, or fined not exceeding one thousand dollars, or both. A prosecution under this section shall be commenced within five years next after the commission of the offense.

§ 58-76.76. Same; information returns as prima facie evidence. In any prosecution under § 58-76.75, any information return filed with the Department of Taxation or with the local commissioners of the revenue, as required by this chapter, may be admitted in evidence in any court of this State as prima facie evidence of what is stated in said return.

§ 58-76.77. Procuring returns from delinquent individuals or fiduciaries. The commissioner of the revenue shall secure a return from every delinquent individual or fiduciary within his jurisdiction, or if any such individual or fiduciary refuses to make a return or fails to make such return for fifteen days after the Commissioner of the revenue calls upon him to do so, such commissioner shall, from the best information he can obtain, make an estimate of the income of such individual or fiduciary and report the same to the Department of Taxation.

The commissioner of the revenue shall have authority to assess taxes, penalties and interest upon such estimate, and such taxes, penalties and interest shall be collected in like manner as is provided by law for the collection of State taxes.

§ 58-76.78. When, where and how individual income taxes payable and collectible. Each individual and fiduciary liable for income tax shall pay the same to the treasurer of the county or city with whose commissioner of the revenue the taxpayer files his return at the time fixed by law for filing the return. The full amount of the tax payable as shown on the face of the return shall be so paid. A taxpayer may file his return and pay his tax in full in the closing days of his taxable year provided he is able to prepare a complete return.

If any payment is not made in full when due, there shall be added to the entire tax or to any unpaid balance of the tax, as the case may be, a penalty of five per cent of the amount thereof, and the entire tax or any unpaid balance of the tax, as the case may be, together with such penalty, will immediately become collectible, and interest upon such tax or any unpaid balance of the tax, as the case may be, and on the accrued penalty, shall be added at the rate of one-half of one percent per month or fraction thereof from one month after the tax of any unpaid balance of the tax, as the case may be, was originally due until paid; but in the case of an additional tax assessed by the commissioner of the revenue under the provisions of § 58-76.69, if the return was made in good faith and the understatement of the amount in the return was not due to any fault of the taxpayer, there shall be no penalty on the additional tax because of such understatement, but interest shall be added to the amount of the deficiency at the rate of one-half of one per cent per month or fraction thereof from the time the said return was required by law to be filed until paid.

In every case the taxpayer may make payment to the treasurer of the county or city by attaching to his return when he files it with the commissioner of the revenue a check or money order for the proper amount made payable to the order of "Treasurer of the County of ----," "-----," or "Treasurer of the City of -----," as the case may be; and the commissioner of the revenue shall transmit all such checks and money orders to the treasurer at the time he delivers to the treasurer the assessment sheets or forms showing the assessments, or if memorandum assessments are made, at the time such memorandum assessments are certified to the treasurer. In those counties in which a director of finance performs the duties of a county treasurer, checks or money orders shall be made payable to the order of "Director of Finance of the County of -----." If any check be not paid by the bank on which it is drawn, the taxpayer by whom such check was tendered shall remain liable for the payment of the tax and for all legal penalties and interest the same as if such check had not been tendered.

If the taxpayer on filing his return desires to pay in currency or coin, the commissioner of the revenue with whom the return is filed shall forthwith prepare a memorandum assessment on a form to be prescribed and furnished by the Department of Taxation and a copy of such memorandum assessment shall be immediately certified to the treasurer who shall receive the currency or coin from the taxpayer and give his receipt therefor. Memorandum assessments shall be subsequently entered by the commissioner of the revenue on the prescribed assessment sheets or forms; and the Department of Taxation may prescribe and furnish forms for making memorandum assessments in all additional

cases in which, in the opinion of the Department, the same may be necessary to facilitate the assessment and collection of individual and fiduciary income taxes.

Each county and city treasurer shall proceed promptly to collect all individual and fiduciary income taxes for the taxable year that have been assessed by the commissioner of the revenue and remain unpaid after the time fixed by law for payment and shall continue his efforts so to collect until the close of the then current calendar year. The collection of such taxes shall be enforced by legal process to the extent collection cannot be accomplished otherwise, and all remedies available to the treasurer for the collection of other taxes shall apply to the collection of individual and fiduciary income taxes. Forms of necessary tax bills and receipts shall be prescribed by the Department of Taxation.

Within thirty-one days after the close of such calendar year the treasurer shall transmit to the Department of Taxation in such form as the Department of Taxation may prescribe such information and data as may be required by such Department with respect to all assessments made by the commissioner of the revenue during such calendar year as the treasurer was unable to collect. The Department of Taxation, upon receiving and examining the same, shall certify to the Comptroller the necessary information to enable the Comptroller to give such treasurer proper credit on the Comptroller's books for all unpaid items, and such treasurer shall not receive any of such taxes after he has transmitted such information and data to the Department of Taxation, but the same shall be paid directly into the State treasury.

The Department of Taxation shall have the power to issue warrants for the collection of such taxes in the same manner and with the same effect as in the case of warrants issued for the collection of taxes assessed by such Department; and all provisions of law applicable to such warrants shall be applicable to the warrants issued for the collection of taxes under this section. The Department of Taxation shall also have power to collect the taxes aforesaid by other legal process.

§ 58-76.79. Reports by corporations and partnerships. Every corporation and partnership organized under the laws of this State, or having income from Virginia sources, shall make a report to the Department of Taxation on or before the fifteenth day of the fourth month following the close of its taxable year. Such reports shall be made on forms prescribed by the Department of Taxation and shall contain such information as may be necessary for the proper enforcement of this chapter and be accompanied by a copy of any federal tax return or report filed for such taxable year.

Receivers, trustees in dissolution, trustees in bankruptcy, and assignees, operating the property or business of corporations must make returns of income for such corporations. If a receiver has full custody of and control over the business or property of a corporation, he shall be deemed to be operating such business or property, whether he is engaged in carrying on the business for which the corporation was organized or only in marshaling, selling, or disposing of its assets for purposes of liquidation.

§ 58-76.80. Separate or consolidated returns of affiliated corporations. Corporations which are affiliated within the meaning of § 58-76.82 may, for any taxable year, make separate returns or, under regulations prescribed by the Department of Taxation, make a consolidated return of net income for the purpose of this chapter, in which case the taxes thereunder shall be computed and determined upon the basis of such

return. If a return is made on either of such bases, all returns thereafter made shall be upon the same basis unless permission to change the basis is granted by the Department.

§ 58-76.81. *How consolidated tax assessed.* In any case in which a tax is assessed upon the basis of a consolidated return, the total tax shall be computed in the first instance as a unit and shall then be assessed upon the respective affiliated corporations in such proportions as may be agreed upon among them or in the absence of any such agreement, then on the basis of the net income properly assignable to each.

§ 58-76.82. *Definition of affiliated.* For the purpose of § 58-76.80 two or more corporations subject to income taxes under this chapter shall be deemed to be affiliated: (a) If one corporation owns at least eighty per centum of the voting stock of the other or others, or (b) if at least eighty per centum of the voting stock of two or more corporations is owned by the same interests.

§ 58-76.83. *Consolidation of accounts.* In any case of two or more related trades or businesses liable to taxation under this chapter owned or controlled directly or indirectly by the same interests, the Department of Taxation may, and at the request of the taxpayer shall, if necessary in order to make an accurate distribution or apportionment of gains, profits, income, deductions or capital between or among such related trades or businesses, consolidate the accounts of such related trades or businesses.

§ 58-76.84. *Price manipulation; inter-corporate transactions; parent corporations and subsidiaries.* When any corporation liable to taxation under this chapter by agreement or otherwise conducts the business of such corporation in such manner as either directly or indirectly to benefit the members or stockholders of the corporation, or any of them, or any person or persons directly or indirectly interested in such business, by either buying or selling its products or the goods or commodities in which it deals at more or less than a fair price which might be obtained therefor, or when such a corporation sells its products, goods or commodities to another corporation or acquires and disposes of the products, goods or commodities of another corporation in such manner as to create a loss or improper taxable income, and such other corporation by stock ownership, agreement or otherwise controls or is controlled by the corporation liable to taxation under this chapter, the Department of Taxation may require such facts as it deems necessary for the proper computation provided by this chapter and may for the purpose determine the amount which shall be deemed to be the Virginia taxable income of the business of such corporation for the taxable year. In determining such income, the Department shall have regard to the fair profits which, but for any agreement, arrangement or understanding, might be, or could have been, obtained from dealing in such products, goods or commodities.

Any corporation liable to taxation under this chapter and either owned or controlled by or owning or controlling, either directly or indirectly, another corporation may be required by the Department of Taxation to make a report consolidated with such other corporation showing the combined gross and net income and such other information as the Department of Taxation may require, but excluding inter-corporate stock holdings and the inter-corporate accounts. In case it shall appear to the Department of Taxation that any arrangements exist in such a manner as improperly to reflect the business done or the Virginia taxable income earned from business done in this State, the Department of Taxation may, in such manner as it may determine, equitably

adjust the tax. In all cases mentioned in this paragraph such other corporations, not otherwise liable to taxation under this chapter, shall, for the purposes of this chapter, be deemed to be doing business in Virginia through the agency of the corporation liable to taxation under this chapter.

§ 58-76.85. Execution of returns. The return of a corporation with respect to income shall be signed by either the president, vice-president, treasurer, assistant treasurer, chief accounting officer or any other officer duly authorized so to act. In the case of a return made for a corporation by a fiduciary such fiduciary shall sign the return. The fact that an individual's name is signed on the return shall be prima facie evidence that such individual is authorized to sign the return on behalf of the corporation.

The return of a partnership shall be signed by any one of the partners. The fact that a partner's name is signed on the return shall be prima facie evidence that such partner is authorized to sign the return on behalf of the partnership.

§ 58-76.86. Forms to be furnished. Duplicate blank forms of reports shall be furnished by mail by the Department of Taxation to the taxpayer at least thirty days before the time for filing returns, but failure to secure such a blank shall not release any corporation or partnership from the obligation of making any report herein required.

§ 58-76.87. Supplemental reports. The Department of Taxation may require a further or supplemental report under this chapter to contain further information and data necessary for the computation of the tax herein provided.

§ 58-76.88. Failure to make report or return. Any corporation or partnership which fails to make any report or return required by this chapter within the time required shall be liable to a penalty of not exceeding one hundred dollars to be paid to the State, to be assessed and collected by the Department of Taxation, in the manner provided for the assessment and collection of taxes under this chapter or in a civil action, at the instance of the Department of Taxation. In addition such corporation or partnership shall be compellable by mandamus to make such report or return.

§ 58-76.89. Fraudulent returns. Any officer of any corporation or any partner who makes a fraudulent return or statement with intent to defeat or evade the payment of the taxes prescribed by this chapter shall be liable to a penalty of not more than one thousand dollars, to be assessed and collected in the manner prescribed in the preceding section.

§ 58-76.90. Fraudulent returns and statements; criminal liability. In addition to other penalties provided by law, any officer of any corporation or any partner who makes a fraudulent return or statement with intent to defeat or evade the payment of the taxes prescribed by this chapter shall be guilty of a misdemeanor, and upon conviction shall be confined in jail not exceeding one year, or fined not exceeding one thousand dollars, or both. A prosecution under this section shall be commenced within five years next after the commission of the offense.

§ 58-76.91. Extension of time for filing returns. The Department of Taxation may for good cause shown extend the time within which any corporation or partnership is required by this chapter to make a report or return and shall extend the time to the extent that an extension is granted for federal tax purposes for the same taxable year.

§ 58-76.92. *Department may estimate tax when no return filed. If any report or return required to be made by any corporation under this chapter be not made as herein required, the Department of Taxation is authorized to make an estimate of the net income of such corporation and of the amount of tax due under this chapter, from any information in its possession, and to order and state an account according to such estimate for the taxes, penalties and interest due to the State from such corporation.*

§ 58-76.93. *Revision of assessments against corporations. If any application for revision be filed with the Department of Taxation by a corporation against which taxes have been assessed under this chapter within three years from December thirty-first of the year in which such taxes shall have been assessed and if it shall be made to appear to the Department by evidence submitted to it or otherwise that any such amount included taxes or other charges which could not have been lawfully demanded or that payment has been illegally made or exacted of any such amount or if it appears that the tax as originally assessed was less than should have been exacted, the Department shall resettle the same according to law and the facts by increasing or diminishing the taxes and other charges and adjust the accounts accordingly and may, in its discretion, release or modify the penalty imposed for failure to report as provided in this chapter, if any penalty was imposed, and shall send notice of its determination thereon to the corporation forthwith. If it appears from such reassessment that such corporation shall have paid an excess of tax under this chapter for the year for which such reassessment is made, the Department shall credit such corporation with such amount, which shall be refunded out of the State treasury on the order of the State Tax Commissioner upon the Comptroller.*

§ 58-76.94. *Time of payment of corporation income taxes; penalty and interest for nonpayment. Every corporation liable for income tax shall pay the same to the Department of Taxation at the time fixed by law for filing the return. The full amount of the tax payable as shown on the face of the return shall be so paid. A corporation may file its return and pay its tax in full in the closing days of its taxable year provided it is able to prepare a complete return.*

If any payment is not made in full when due, there shall be added to the entire tax or to any unpaid balance of the tax, as the case may be, a penalty of five percent of the amount thereof, and the entire tax or any unpaid balance of the tax, as the case may be, together with such penalty, will immediately become collectible, and interest upon such tax or any unpaid balance of the tax, as the case may be, and on the accrued penalty, shall be added at the rate of one-half of the one percent per month or fraction thereof from one month after the tax or any unpaid balance of the tax, as the case may be, was originally due until paid; but in the case of an additional tax assessed by the Department of Taxation, if the return was made in good faith and the understatement of the amount in the return was not due to any fault of the taxpayer, there shall be no penalty on the additional tax because of such understatement, but interest shall be added to the amount of the deficiency at the rate of one-half of one percent per month or fraction thereof from the time the said return was required by law to be filed until paid.

All moneys collected by the Department of Taxation under this article shall be paid into the general fund of the State treasury.

§ 58-76.95. *Information returns; corporate dividends. Every corporation subject to the jurisdiction of this State shall, when required by*

the Department of Taxation, render a correct return, duly verified under oath, of its payments of dividends to residents of this State, stating the name and address of each shareholder, the number of shares owned by him and the amount of dividends paid to him.

§ 58-76.96. *Same; other income. Every person, firm or corporation, subject to the jurisdiction of this State, in whatever capacity acting, including lessees or mortgagors of real or personal property, fiduciaries and employers, making payment to another person, firm or corporation of interest, rent, salaries, wages, premiums, annuities, compensations, remunerations, emoluments or other fixed or determinable gains, profits and income (other than payments described in the preceding section) of five hundred dollars or more in any taxable year or, in the case of such payments made by the Commonwealth of Virginia and its political subdivisions or the United States or any agency or instrumentality thereof, the officers or employees of this State or its political subdivisions or the United States or any agency or instrumentality thereof having information as to such payments and required to make returns in regard thereto by the regulations hereinafter provided for shall render a true and accurate return to the Department of Taxation, under such regulations and in such form and manner and to such extent as may be prescribed by it, setting forth the amount of such gains, profits, and income and the name and address of the recipient of such payment.*

Such returns may be required, regardless of amounts, in the case of payments of interest upon bonds, mortgages, deeds of trust or other similar obligations of corporations.

When necessary to make effective the provisions of this and the preceding section the name and address of the recipient of the income shall be furnished upon demand of the person paying the income.

The provisions of this section shall not apply to the payment of interest on obligations of the United States or of this State, nor shall the provisions of this section be so construed as is hereinbefore described where such recipient is a nonresident of this State and is not subject to taxation under the income tax laws of this State.

§ 58-76.97. *When information returns to be filed. Information returns shall be filed on or before February fifteenth of each year. In all cases such annual information returns shall give such information for the calendar year next preceding the calendar year in which they are required by this chapter to be filed.*

§ 58-76.98. *Examination of federal returns. Whenever in the opinion of the Department of Taxation it is necessary to examine the federal income returns or any copy thereof of any individual, estate, trust, partnership or corporation in order properly to audit its returns, the Department or the commissioner of revenue shall have the right to examine such return or any copy thereof and all statements, inventories, and schedules in support thereof.*

§ 58-76.99. *Publicity of returns forbidden; exceptions. Except in accordance with proper judicial order or as otherwise provided by law, it shall be unlawful for the Commissioner or any agent, clerk, commissioner of the revenue, treasurer, or any other officer or employee to divulge or make known in any manner the amount of income or any particulars set forth or disclosed in any report or return under this chapter.*

Nothing herein shall be construed to prohibit the publication of statistics so classified as to prevent the identification of particular reports.

and the items thereof or the publication of delinquent lists showing the names of taxpayers who have failed to pay their taxes at the time and in the manner provided by law, together with any relevant information which in the opinion of the Department of Taxation may assist in the collection of such delinquent taxes; or the inspection by the Attorney General or other legal representatives of the State of any return or report of any taxpayer who shall bring action to set aside or review the tax based thereon or against whom an action or proceeding has been instituted in accordance with the provisions of this chapter or other laws.

§ 58-76.100. Separate individual income assessment sheets or forms; how kept. The assessment of individual income taxes shall be made on separate sheets or forms to be prescribed by the Department of Taxation, all copies of which shall be kept by the commissioner of the revenue, the treasurer and the Department, respectively, in such manner as shall preclude inspection by unauthorized persons. Such sheets or forms and returns showing income shall not be inspected by any person save an officer or other person duly authorized by law or directed so to do by order of a court of competent jurisdiction.

§ 58-76.101. Inspection by officials of United States or other states. In the event the United States government or any other state allows this State's officials to examine its income tax returns, or any class thereof, then this State, upon application by the proper authorities of the United States government or of such other state, whose official duties require them to make such inspection, to inspect the income tax returns or such corresponding class of such income tax returns made to this State. No officer or employee shall give any information to any person other than those hereinbefore enumerated, except in obedience to a decree or order of a court of competent jurisdiction.

§ 58-76.102. Violation of preceding sections. Any offense against any of the provisions of the three preceding sections shall be punished by a fine not exceeding one thousand dollars.

§ 58-76.103. Reports and returns, when may be destroyed. Reports and returns received by the Department of Taxation under the provisions of this chapter and former laws shall be preserved for three years and thereafter until the Commissioner orders them to be destroyed.

§ 58-76.104. Report of change in federal taxable income. If the amount of any individual, estate, trust or corporate taxpayer's federal taxable income reported on his federal income tax return for any taxable year is changed or corrected by the United States Internal Revenue Service or other competent authority, or as the result of a renegotiation of a contract or subcontract with the United States, the taxpayer shall report such change or correction in federal taxable income within ninety days after the final determination of such change, correction, or renegotiation, or as otherwise required by the Department of Taxation, and shall concede the accuracy of such determination or state wherein it is erroneous. Any taxpayer filing an amended federal income tax return shall also file within ninety days thereafter an amended return under this chapter and shall give such information as the Department of Taxation may require. The Department of Taxation may by regulation prescribe such exceptions to the requirements of this section as it deems appropriate.

§ 58-76.105. Limitations on assessment. (a) General. Except as otherwise provided in this section and notwithstanding any other provision of law, any tax under this article and the preceding articles of this

chapter shall be assessed within three years after the return was filed (whether or not such return was filed on or after the date prescribed).

For purposes of this section a return of income tax filed before the last day prescribed by law or by regulations promulgated pursuant to law for the filing thereof, shall be deemed to be filed on such last day.

(b) Exceptions.

(1) Assessment at any time. The tax may be assessed at any time if

(A) no return is filed,

(B) a false fraudulent return is filed with intent to evade tax, or

(C) the taxpayer fails to comply with § 58-76.104 in not reporting a change or correction increasing his federal taxable income as reported on his federal income tax return, or in not reporting a change or correction which is treated in the same manner as if it were a deficiency for federal income tax purposes, or in not filing an amended return.

(2) Extension by agreement. Where, before the expiration of the time prescribed for the assessment of tax, both the Department of Taxation and the taxpayer have consented in writing to its assessment after such time, the tax may be assessed at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

(3) Report of changed or corrected federal income. If the taxpayer pursuant to § 58-76.104 reports a change or correction or files an amended return increasing his federal taxable income or reports a change or correction which is treated in the same manner as if it were a deficiency for federal income tax purposes, the assessment (if not deemed to have been made upon the filing of the report or amended return) may be made at any time within one year after such report or amended return was filed. The amount of such assessment of tax shall not exceed the amount of the increase in Virginia tax attributable to such federal change or correction. The provisions of this paragraph shall not affect the time within which or the amount for which an assessment may otherwise be made.

(4) Deficiencies attributable to certain carrybacks. If a deficiency is attributable to the application to the taxpayer of a net operating loss carryback, or to a net capital loss carryback, it may be assessed at any time that a deficiency for the taxable year of the loss may be assessed.

(5) Recovery of erroneous refund. An erroneous refund shall be considered an underpayment of tax on the date made, and an assessment of a deficiency arising out of an erroneous refund may be made at any time within two years from the making of the refund, except that the assessment may be made within five years from the making of the refund if it appears that any part of the refund was induced by fraud or misrepresentation of a material fact.

(6) Request for prompt assessment. If a return is required for a decedent or for his estate during the period of administration, the tax shall be assessed within eighteen months after written request therefor (made after the return is filed) by the executor, administrator or other person representing the estate of such decedent, but not more than three years after the return was filed, except as otherwise provided in this subsection.

- § 58-76.106: *Reserved*
- § 58-76.107: *Reserved*
- § 58-76.108: *Reserved*
- § 58-76.109: *Reserved*
- § 58-76.110: *Reserved*
- § 58-76.111: *Reserved*

ARTICLE .6

TRANSITIONAL PROVISIONS

§ 58-76.112. *Transitional modifications to Virginia taxable income. The modifications of Virginia taxable income to be made in accordance with subsection (g) of section § 58-76.14, so long as applicable, are as follows:*

(a) *There shall be subtracted from Virginia taxable income the amount necessary to prevent the taxation under this chapter of any annuity or of any other amount of income or gain which was properly included in income or gain and was taxable under Articles 1, 2, 3, 4, 5, 6 or 7 to the taxpayer prior to the repeal thereof, or to a decedent by reason of whose death the taxpayer acquires the right to receive the income or gain, or to a trust or estate from which the taxpayer received the income or gain.*

(b) *There shall be added to Virginia taxable income any amount which was deducted, in determining taxable income, as a capital loss carryover from any taxable year ending on or before December thirty-one, nineteen hundred seventy-one.*

(c) *There shall be added to Virginia taxable income any amount which was deducted, in determining taxable income, as a charitable contribution carryover from any taxable year ending on or before December thirty-one, nineteen hundred seventy-one.*

(d) *There shall be added to Virginia taxable income any amount which was deducted, in determining taxable income, as a net operating loss carryover from any taxable year ending on or before December thirty-one, nineteen hundred seventy-one, except that such amount shall not be added to Virginia taxable income to the extent (and within the time limitations) that it would have been allowed as a net operating loss carryover under § 58-81.2 prior to the repeal thereof.*

(e) *The carryback of net operating losses or net capital losses to reduce taxable income of taxable years ending prior to January first, nineteen hundred seventy-two shall not be permitted. Where a taxpayer would have been allowed to deduct an amount as a net operating loss carryover or net capital loss carryover in determining taxable income for a taxable year ending after December thirty-one, nineteen hundred seventy-one, but for the fact that such loss, or a portion of such loss, had been carried back in determining taxable income for a taxable year ending prior to January first, nineteen hundred seventy-two there shall be added to Virginia taxable income any amount which was actually deducted in determining taxable income as a net operating loss carryover or net capital loss carryover and there shall be subtracted from Virginia taxable income the amount which could have been deducted as a net operating loss carryover or net capital loss carryover in arriving at taxable income but for the fact that such loss, or a portion of such loss, had been carried back for federal purposes.*

(f) Without limiting the applicability of subsections (b), (c) and (d), there shall be added to Virginia taxable income the amount necessary to prevent the deduction under this chapter of any item which was properly deductible by the taxpayer in determining a tax under §§ 58-77 through 58-151 prior to the repeal thereof.

(g) There shall be subtracted from Virginia taxable income that portion of any accumulation distribution which is allocable, under the laws of the United States relating to federal income taxes, to undistributed net income of a trust for any taxable year ending on or before December thirty-one, nineteen hundred seventy-one. The rules prescribed by such laws of the United States with reference to any such accumulation distribution shall be applied, mutatis mutandis, to allow for this limitation; and, without limiting the generality of the foregoing, the credit provided by § 58-76.27 in the case of accumulation distributions shall in no instance encompass any part of any tax paid by a taxable year ending on or before December thirty-one, nineteen hundred seventy-one.

(h) There shall be deducted from Virginia taxable income as a depreciation allowance that amount, if any, by which the adjusted basis of depreciable property determined for Virginia income tax purposes for the taxable period immediately preceding the first taxable period to which Articles .1 to .6 of this chapter applies, exceeds the adjusted basis of the same property for federal income tax purposes determined for the same period.

(i) As to gain or loss attributable to the sale or exchange of non-depreciable property, Virginia taxable income shall be adjusted to effect a reduction in such gain or increase in such loss by the amount by which the adjusted basis of such property, determined for Virginia income tax purposes for the taxable period immediately preceding the first taxable period to which Articles .1 to .6 of this chapter applies, exceeds the adjusted basis of such property for federal income tax purposes determined for the same period.

2. That Articles 8 and 9 of Chapter 4 of Title 58 be redesignated respectively Articles .7 and .8 and that §§ 58-151.2, 58-151.3, 58-151.11, 58-151.14, 58-151.19, 58-151.21, 58-151.28, 58-151.31 and 58-151.39, as severally amended, of the Code of Virginia be amended and reenacted as follows:

§ 58-151.2. Requirement of withholding. Every employer making payment of wages on or after January first, nineteen hundred and ~~sixty-three~~ *seventy-two*, shall deduct and withhold with respect to the wages of each employee for each payroll period an amount determined as follows:

Such amount which, if an equal amount was collected for each similar payroll period with respect to a similar amount of wages for each payroll period during an entire calendar year, would aggregate or approximate the income tax liability of such employee under this chapter after making allowance for the personal exemptions to which such employee could be entitled on the basis of his status during such payroll period and after making allowance for withholding purposes for a standard deduction from wages in accordance with § ~~58-81~~ *the laws of the United States relating to federal income taxes*, and without making allowance for any other deductions. In determining the amount to be deducted and withheld under this article, the wages may, at the election of the employer, be computed to the nearest dollar.

§ 58-151.3. Withholding tables. The amount of tax to be withheld for each individual shall be based upon tables to be prepared and distributed by the Commissioner. The tables shall be computed for the several permissible withholding periods and shall take account of the number of exemptions allowed under ~~this chapter~~ *the laws of the United States relating to federal income taxes* and the standard deduction referred to in the next preceding section (§ 58-151.2); and the amounts computed for withholding shall be such that the amount withheld for any individual during his taxable year shall approximate in the aggregate as closely as practicable the tax which is levied and imposed under this chapter for that taxable year, upon his salary, wages or compensation for personal services of any kind for the employer.

§ 58-151.11. Withholding exemption certificates. (a) An employee receiving wages shall be entitled to the exemptions for which such employee qualifies under the ~~provisions of Sec. 58 98~~ *laws of the United States relating to federal income taxes*.

(b) Every employee shall, on or before January first, nineteen hundred ~~sixty three~~ *seventy-two*, or at the time of commencing employment, whichever is later, furnish his employer with a signed withholding exemption certificate relating to the withholding exemptions which he claims, which in no event shall exceed the sum of exemptions to which he is entitled.

(c) Withholding exemption certificates shall take effect as of the beginning of the first payroll period ending, or the first payment of wages made without regard to a payroll period, on or after the date on which such certificate is so furnished, provided that certificates furnished before January first, nineteen hundred sixty-three, shall be considered as furnished on that date.

(d) A withholding exemption certificate which takes effect under this section shall continue in effect with respect to the employer until another such certificate takes effect under this section. If a withholding exemption certificate is furnished to take the place of an existing certificate, the employer, at his option, may continue the old certificate in force with respect to all wages paid on or before the first status determination date, January first or July first, which occurs at least thirty days after the date on which such new certificate is furnished.

(e) If, on any day during the calendar year, the sum of withholding exemptions to which the employee will be, or may reasonably be expected to be, entitled at the beginning of his next taxable year is different from the sum of exemptions to which the employee is entitled on such day, the employee shall in such cases and at such times as the Commissioner may prescribe, furnish the employer with a withholding exemption certificate relating to the exemptions which he claims with respect to such next taxable year, which shall in no event exceed the sum of exemptions to which he will be, or may reasonably be expected to be, so entitled. Exemption certificates furnished pursuant to this subsection shall not take effect with respect to any payment of wages made in the calendar year in which the certificate is furnished.

(f) If, on any day during the calendar year, the sum of withholding exemptions to which the employee is entitled is less than the sum of withholding exemptions claimed by the employee on the withholding exemption certificate then in effect with respect to him, the employee shall, within ten days thereafter, furnish the employer with a new withholding exemption certificate relating to the withholding exemptions which the employee then claims, which shall in no event exceed the sum

of exemptions to which he is entitled on such day. If, on any day during the calendar year, the sum of withholding exemptions to which the employee is entitled is greater than the sum of withholding exemptions claimed, the employee may furnish the employer with a new withholding exemption certificate relating to the withholding exemptions which the employee then claims, which shall in no event exceed the sum of exemptions to which he is entitled on such day.

(g) Withholding exemption certificates shall be in such form and contain such information as the Commissioner may prescribe.

§ 58-151.14. Withholding tax statements for employees; employers must file annual returns with Commissioner. (a) Every person required to deduct and withhold from an employee's wages under this article, shall furnish to each such employee in respect to the remuneration paid by such person to such employee during the calendar year, on or before January thirty-first of the succeeding year, or if his employment is terminated before the close of such calendar year, on the day on which the last payment of remuneration is made, a written statement in duplicate showing the following: (1) the name of such person; (2) the name of the employee and his social security account number; (3) the total amount of wages; (4) the total amount deducted and withheld under this article by such employer.

(b) The written statements required to be furnished pursuant to this section in respect of any remuneration shall be furnished at such other times, shall contain such other information, and shall be in such form as the Commissioner may by regulations prescribe.

(c) Every employer shall file an annual return with the Commissioner, setting forth such information as the Commissioner may require, not later than January thirty-first of the calendar year succeeding the calendar year in which wages were withheld from employees, and such annual return shall be accompanied by an additional copy of each of the written statements furnished each employee under subsections (a) and (b) of this section.

(d) Compliance by an employer with subsection (c) of this section shall be in lieu of filing wage information returns under §§ ~~58 90 and 58-91~~ 58-76.96 and 58-76.97 as to employees whose wages were subject to withholding under this article.

§ 58-151.19. Certain nonresidents; reciprocity with other states. If the income tax law of another state of the United States or of the District of Columbia results in its residents being allowed a credit under § ~~58 104~~ 58-76.16 sufficient to offset all taxes required by this article to be withheld from the wages of an employee, the Commissioner may by regulation relieve the employers of such employees from the withholding requirements of this article with respect to such employees.

§ 58-151.21. Declarations of estimated tax. (a) Requirement of declaration. Every resident and nonresident individual shall, for the taxable year beginning on or after January first, nineteen hundred and ~~sixty three~~ *seventy-two*, and for every taxable year thereafter, make a declaration of his estimated tax for the taxable year, if his Virginia adjusted gross income, other than from wages on which tax is withheld under this article, can reasonably be expected to exceed four hundred dollars plus the sum of the ~~Virginia~~ personal exemptions to which he is entitled.

(b) Definition of estimated tax. The term "estimated tax" means the amount which an individual estimates to be his income tax under

this chapter for the taxable year, less the amount which he estimates to be the sum of any credits allowable against the tax.

(c) Contents of declaration. In the declaration required under subsection (a) the individual shall state:

(1) The amount which he estimates as the amount of tax for which he will be liable under this chapter for the taxable year;

(2) The amount which he estimates will be withheld from wages, if any, for the taxable year under this article;

(3) The excess of the amount estimated under paragraph (1) of this subsection over the amount estimated under paragraph (2) of this subsection shall be considered the estimated tax for the taxable year to be paid by the individual as hereinafter provided:

(4) Such other information as may be required by the Commissioner.

(d) Joint declaration by husband and wife. In the case of a husband and wife, a single declaration under this section may be made by them jointly, in which case the liability with respect to the estimated tax shall be joint and several. No joint declaration may be made if either the husband or the wife is a nonresident of this State unless both are required by this chapter to file a return, if they are separated under a decree of divorce or of separate maintenance, or if they have different taxable years. If a joint declaration is made but a joint return is not made for the taxable year, the estimated tax for such year may be treated as the estimated tax of either the husband or the wife, or may be divided between them.

(e) Time for filing declaration. A declaration of estimated tax of an individual other than a farmer shall be filed on or before May first of the taxable year, except that if the requirements of subsection (a) are first met:

(1) After April fifteenth and before June second of the taxable year, the declaration shall be filed on or before June fifteenth, or

(2) After June first and before September second of the taxable year, the declaration shall be filed on or before September fifteenth, or

(3) After September first of the taxable year, the declaration shall be filed on or before January fifteenth of the succeeding year.

(f) Declaration of estimated tax by a farmer. A declaration of estimated tax of an individual having an estimated ~~Virginia~~ adjusted gross income from farming (including oyster farming) for the taxable year which is at least two-thirds of this total estimated ~~Virginia~~ adjusted gross income for the taxable year may be filed at any time on or before January fifteenth of the succeeding year, in lieu of the time otherwise prescribed.

(g) Declaration of estimated tax of forty dollars or less. A declaration of estimated tax of an individual having a total estimated tax for the taxable year of forty dollars or less may be filed at any time on or before January fifteenth of the succeeding year under regulations of the Commissioner.

(h) Amendments of declaration. An individual may amend a declaration under regulations of the Commissioner.

(i) Return as declaration or amendment. If on or before March

first of the succeeding taxable year an individual files his return for the taxable year for which the declaration is required, and pays therewith the full amount of the tax shown to be due on the return:

(1) Such return shall be considered as his declaration if no declaration was required to be filed during the taxable year, but is otherwise required to be filed on or before January fifteenth.

(2) Such return shall be considered as the amendment permitted by subsection (h) to be filed on or before January fifteenth if the tax shown on the return is greater than the estimated tax shown in a declaration previously made.

(j) Fiscal year. This section shall apply to a taxable year other than a calendar year by the substitution of the months of such fiscal year for the corresponding months specified in this section.

(k) Short taxable year. An individual having a taxable year of less than twelve months shall make a declaration in accordance with regulations of the Commissioner.

(1) Declaration for individual under a disability. The declaration of estimated tax for an individual who is unable to make a declaration by reason of any disability shall be made and filed by his guardian, committee, fiduciary or other person charged with the care of his person or property (other than a receiver in possession of only a part of his property), or by his duly authorized agent.

§ 58-151.28. Certain sections applicable to declarations, returns and reports filed under this article. Sections ~~58 93 through 58 97~~ *58-76.99 through 58-76.103* (relating to the confidential nature of tax information and the preservation of reports and returns) shall apply to declarations of estimated tax as well as to all returns and reports filed under this article. Section ~~58 105.4~~ *58-76.66* (relating to special instances in which an individual taxpayer may file an income tax return with the Department of Taxation) shall also apply to a declaration of estimated tax.

§ 58-151.31. Refunds to individual tax payers; crediting overpayment against estimated tax for ensuing year. In the case of any overpayment of any tax, addition to tax, interest or penalties imposed on an individual income taxpayer by this chapter, whether by reason of excessive withholding, overestimating and overpaying estimated tax, error on the part of the taxpayer, or an erroneous assessment of tax, the Commissioner shall order a refund of the amount of the overpayment to the taxpayer. The overpayment shall be refunded out of the State treasury on the order of the Commissioner upon the Comptroller.

Whenever the annual income tax return of an individual income taxpayer indicates in the place provided thereon that the taxpayer has overpaid his tax for the taxable year by reason of excessive withholding or overestimating and overpaying estimated tax, or both, the amount of the overpayment as shown on his return, subject to correction for error, may be credited against the estimated income tax for the ensuing year at the taxpayer's election and according to regulations prescribed by the Department of Taxation and such overpayments by either a husband or wife on a separate return may be credited to the tax for the ensuing year of either of them or may be credited to their joint tax at the election of the person to whom the overpayment is payable; or otherwise such amount shall be refunded to him as soon as practicable. If such refund be not made within six months from the date the return was filed or due to be filed, whichever is later, interest on such refund

at the rate of four percent per annum shall be computed and allowed from the time of the expiration of such six months' period to the date of payment. The making of any refund shall not absolve any taxpayer of any income tax liability which may in fact exist and the Commissioner may make an assessment for any deficiency in the manner provided by law.

No refund under this section, however, shall be made for any overpayment of less than one dollar except on special written application of the taxpayer, nor shall any refund of any amount under this section be made, whether on discovery or on written application of the taxpayer, if such discovery is not made or such written application is not received within three years from December thirty-first of the year in which the annual return of the taxpayer was required by this chapter to be filed, or within six months of the payment of the tax alleged to be an overpayment, whichever is the later.

Whenever any taxpayer is entitled to a refund under this section, or under § ~~58 114~~ 58-76.73 or §§ 58-1118 through 58-1121 and such taxpayer owes the State a past due income tax, or balance thereof, for any year, the amount of such refund may be credited on such past due income tax or balance, to the extent indicated.

This section, as hereby amended, shall be in force on and after January first, nineteen hundred ~~sixty seven~~ *seventy-two*.

§ 58-151.39. Where declarations filed and how payments made; crediting or refunding overpayments. (a) Every corporation required by this article to file a declaration of estimated income tax shall file the same with the Department of Taxation, and all payments shall be made to it. All moneys collected by the Department under this article shall be paid into the general fund of the State treasury.

(b) If any corporation overestimates and overpays estimated tax, the Department may act under § ~~58 148~~ 58-76.93, or §§ 58-1118 and 58-1119, within the application period of limitations, whether or not an application has been filed. Moreover, the Commissioner may prescribe regulations providing for the crediting against the estimated income tax for any taxable year of the amount shown by the corporation or determined by the Commissioner to be an overpayment of the income tax for a preceding taxable year within the applicable period of limitations.

3. Articles 1, 2, 3, 4, 5, 6 and 7 of Chapter 4, consisting of §§ 58-77 through 58-151, are hereby repealed.

4. The provisions of this act shall be effective for taxable years beginning on and after January one, nineteen hundred seventy-two provided, however, that the provisions hereof shall be deemed effective July one, nineteen hundred seventy-one for the purpose of establishing administrative procedures in advance of such taxable year.