



COMMONWEALTH of VIRGINIA

Department of Taxation

MEMORANDUM

TO: William J. White
Assistant Tax Commissioner

FROM: Mark C. Haskins
Director, Policy Development Division

DATE: June 20, 2008

SUBJECT: Treatment of Extension Mandated by House Bill 1024

House Bill 1024 (Chapter 591) modifies *Va. Code* § 58.1-341 to allow for extensions for certain members of the armed services. This change states, "Notwithstanding the foregoing, every member of the armed services of the United States deployed outside of the United States shall be allowed an automatic extension to file an income tax return. Such extension shall expire 90 days following the completion of such member's deployment." Therefore, members of the armed services deployed outside of the United States receive an extension that lasts until 90 days after the completion of the deployment.

A question has now arisen regarding what is actually being extended. We have been asked if we are treating this as an extension of the time to file the return or if this will be a change of the taxpayer's due date. If it is only an extension of time to file, the taxpayer will be subjected to extension penalties if he or she has not paid at least 90% of the tax liability by the original due date (i.e. May 1).

We have been required to make similar policy decisions in the past. For example, *Va. Code* § 58.1-444 D provides that, "An extension of time for filing returns of income is hereby granted to and including the first day of the seventh month following the close of the taxable year in the case of United States citizens residing or traveling outside the United States and Puerto Rico, including persons in the military or naval service on duty outside the United States and Puerto Rico." Although the statute refers to an extension of time for filing returns, TAX has interpreted this to mean that the due date of the return is July 1, meaning that the taxpayer must have paid 90% of the tax by that date as opposed to May 1. Therefore, the taxpayer receives a payment extension as well as an extension of time to file.



MEMORANDUM

William J. White

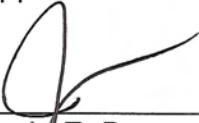
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In addition, TAX has provided payment extensions and extensions of time to file to members of the armed forces who are serving in combat zones. In Tax Bulletin 05-5 (P.D. 05-67, 4/26/05), TAX stated, "Members of the Armed Forces serving in a combat zone will receive either the same individual income tax filing and payment extensions as those granted to them by the IRS, plus an additional fifteen days, OR a one-year extension, whichever date is later." TAX has the authority to create these extensions under *Va. Code* § 58.1-112.

Therefore, TAX currently allows members of the military who are serving in a combat zone to extend the time to pay and the time to file. Because of this, the provisions of House Bill 1024 will primarily affect members of the military who are deployed to a non-combat zone outside of the United States. In order to treat both groups equally, we recommend that we interpret House Bill 1024 as also allowing a change to the due date.

Approved:



Janie E. Bowen
Tax Commissioner