

DEPARTMENT OF TAXATION 2001 Fiscal Impact Statement

1. **Patron** Tate

3. **Committee** House Finance

4. **Title** Penalty for Failure to File Certain Tax
Returns

2. **Bill Number** HB 2815

House of Origin:

 X **Introduced**

 Substitute

 Engrossed

Second House:

 In Committee

 Substitute

 Enrolled

5. **Summary/Purpose:**

This bill would limit any penalty either the Department of Taxation or the Virginia Employment Commission (VEC) is allowed to impose for failure to file a tax return or report to two times the amount of the tax due on the return.

The effective date of this bill is not specified.

6. **Fiscal Impact Estimates are:** Not Available. (See Line 8.)

7. **Budget amendment necessary:** No.

8. **Fiscal implications:**

Administrative Cost – Department of Taxation

While this bill does have costs associated with systems development, these cannot be ascertained at this time. The cost for implementing a **single** piece of legislation cannot be calculated precisely due to economies of scale. The actual cost to implement **all** legislation enacted during a given session will more than likely be less than the sum of the costs attributed to individual bills. Further, the ability to accurately predict costs is complicated because TAX is replacing its current database system. As a result, legislative changes may need to be made to both the current and the future system, depending on the effective date. Therefore, TAX is not providing specific systems costs for this bill, but will calculate the total for all tax bills once they have been acted upon favorably in both houses and prior to the conference committee report. Other administrative costs to implement this bill would be minimal.

Administrative Cost – Virginia Employment Commission

The VEC has indicated that they would incur minimal administrative costs as a result of this bill.

Revenue Impact – Department of Taxation

The impact this bill would have on General Fund revenues is unknown. For taxes administered by the department, this bill would only effect taxpayers who have minimal or no tax liability and are subject to a tax with mandatory filing requirements and have a minimum penalty for non-filers. Since the department does not keep records on the number of minimum penalties assessed, the effect on the General Fund cannot be determined.

Revenue Impact – Virginia Employment Commission

According to the VEC, revenues for the Special Unemployment Compensation Administration Fund (a non-general fund) would decrease by \$1.08 million. This estimate is based on an average of 15,000 reports that are not filed each quarter. Of these non-filed reports, about 60% owe no tax. The VEC imposes a minimum \$30 penalty for failure to file withholding reports.

9. Specific agency or political subdivisions affected:

Department of Taxation
Virginia Employment Commission

10. Technical amendment necessary: None.

11. Other comments:

Current Law

The maximum non-fraud penalty for failure to file an individual income tax return is 30% of the tax due. There is no minimum penalty for individual income tax purposes. The maximum non-fraud penalty for failure to file a corporate income tax return is 30% of the tax due. The minimum penalty for failing to file a corporate income tax return is \$100. Both income taxes allow a 100% penalty for failing to file a return if fraud is involved.

For retail sales and use tax purposes, the maximum non-fraud penalty for failure to file a return is 30%. The minimum penalty for failure to file a sales tax return is \$10. A 50% penalty is allowed for failing to file a return if fraud is involved. For withholding tax purposes, the maximum penalty for failure to file a return is 30%. The minimum penalty for failure to file a withholding tax return is \$10. The minimum penalties under the corporate income tax, the withholding tax, and the retail sales and use tax are intended to support the compliance efforts of the department.

All employers are required by Virginia (Code of Virginia § 60.2-513) and federal law (Social Security Act § 1137(a)(3)) to file wage reports, regardless of whether they owe taxes. The VEC imposes a \$30 penalty on employers who fail to file any report required of him with respect to wages and taxes. The \$30 penalty that the VEC charges for late filing is to ensure compliance with federal law and to make a wide range of accurate and timely labor market statistics available. The wage reports also provide important economic information on many items such as labor market information, average weekly wages for industry types, and high demand occupations. This information is essential to Virginia's economic development efforts.

Proposal

This bill would limit any penalty either the Department of Taxation or the Virginia Employment Commission is allowed to impose for failure to file a tax return or report to two times the amount of the tax due on the return.

This proposal would not effect any penalties imposed under the individual income tax. This proposal would however limit the minimum penalties for failing to file a return the department can impose under the corporate income tax, the withholding tax, and the retail sales and use tax.

The penalty would be limited under this bill for all corporate income tax non-filers with a tax due of under \$50. For withholding tax and retail sales and use tax purposes, the penalty would be limited for all non-filer returns with a tax due of less than \$5. For a non-filer with a \$0 tax due return for either the corporate income tax, the withholding tax or the retail sales and use tax, the department would not be permitted to impose any penalty on the taxpayer for not filing a return.

The current VEC penalty would be limited on all non-filed reports with a tax due of less than \$15. For a non-filer with a \$0 tax due VEC report, the VEC would not be allowed to impose any penalty on the employer for not filing a report.

cc: Secretary of Finance

Date: 1/26/01/CT

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