DEPARTMENT OF TAXATION
2006 Fiscal Impact Statement

1. Patron Kristen J. Amundson

2. Bill Number HB 559
House of Origin:
X **Introduced**
____ **Substitute**
____ **Engrossed**

Second House:
____ **In Committee**
____ **Substitute**
____ **Enrolled**

3. Committee House Finance

4. Title Extending Statute of Limitations for Filing Amended Returns

5. Summary/Purpose:

This bill would extend the statute of limitations from 3 to 10 years for taxpayers to file amended returns. The bill also deletes obsolete language.

This bill does not have an effective date.

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

7. Budget amendment necessary: No.

8. Fiscal implications:

This bill will result in an unknown revenue loss to the General Fund as well as the Transportation Trust Fund and local governments.

TAX has not assigned any administrative costs to this bill because the changes required by a single bill such as this can be implemented as part of the annual changes to our systems and forms. As stand-alone legislation, TAX considers implementation of this bill as "routine," and does not require additional funding.

TAX will provide specific administrative costs on any legislation that is not "routine." Additionally, TAX will review all state tax legislation likely to be enacted prior to the passage by each house. If the aggregate number of routine bills likely to pass either house is unusually large, it is possible that additional resources will be required. If so, TAX will identify the costs at that time.

9. Specific agency or political subdivisions affected:

Department of Taxation

10. Technical amendment necessary: None.

11. Other comments:

Statute of Limitations

Generally, a taxpayer has three years from the due date of the original return to file an amended return requesting a refund. Currently, there are three exceptions to this rule that allow taxpayers to file at a later date. Taxpayers may file an amended return requesting a refund:

- Within one year of any change in federal tax liability;
- Within two years of the date of filing an amended return that results in the payment of additional tax; and
- Within two years of the date of payment of an assessment.

In each of these cases, the issues that may be raised in the amended return are limited to issues related to the event that triggered the right to file the amended return.

Also, these exceptions are a two-way street in that TAX is generally granted similar authority to audit and assess additional tax:

- within 3 years from filing of return;
- within 1 year from the taxpayer's report of a federal change; and
- within 2 years from date TAX makes an erroneous refund.

Statute of limitations in other states

Currently, no state allows taxpayers a longer period to seek a refund than the state has to assess additional tax. Of the forty-six states imposing an income tax, thirty-seven and District of Columbia have a general three year statute of limitations period (many states have exceptions similar to Virginia's). Minnesota imposes a three and a half year statute of limitations period and eight states impose a four-year limitations period. Those eight states are Arizona, California, Colorado, Kentucky, Michigan, New Jersey, Texas and Wisconsin. In addition, three years is the general rule for both assessments and refunds under federal law. It is also the normal period for keeping records. Virginia law requires taxpayers to keep records and documents for three years and authorizes the Department to destroy records after three years.

Proposal

This bill would allow a taxpayer ten years from the due date of the original return to file an amended return requesting a refund without a need for any exception. The above listed exceptions would also apply, should the ten year statute of limitations expire. The time allowed for TAX to audit and assess additional tax would not be similarly extended.

The proposed ten-year period would apply to individual and corporate income taxes, sales and use taxes (including aircraft and watercraft sales tax and the local retail sales tax), estate tax, bank franchise tax, forest products tax, tobacco products tax, soft drink excise tax, litter tax, tire fee, and motor vehicle fuel sales tax in transportation districts. Although most of the revenue from these taxes and fees goes to the general fund, revenue also goes to the localities, transportation trust fund, Litter Control and Recycling Fund, and other special funds.

While most taxpayers discover and correct their errors within the normal three-year period for claiming refunds, a major court case that changes how a tax is administered could have a major revenue impact if it affects ten years instead of three. For example, in 1989 the U.S. Supreme Court decided a case that had a major impact on Virginia. The amended returns filed as a result of that case resulted in approximately $750 million in refund claims. If the statute of limitations had been ten years when that case was decided, then the Commonwealth's exposure to refund claims could have been tripled.

This bill would also delete obsolete language relating to expired provisions.

Other Legislation

SB 583 would address circumstances where the taxpayer's return is changed by another state after the expiration of Virginia's statute of limitations for refunds. Such authority already exists for changes in taxpayers' federal returns.

cc : Secretary of Finance

Date: 01/30/2006 PTR
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