DEPARTMENT OF TAXATION
2008 Fiscal Impact Statement

1. Patron Brian J. Moran

2. Bill Number HB 1191

House of Origin:
X **Introduced**
_____ **Substitute**
_____ **Engrossed**

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

3. Committee House Finance

4. Title Income Tax: Tax Credit for Long-Term Care Insurance Premiums Paid for Employees by Small Business Employers

5. Summary/Purpose:

This bill would provide a refundable tax credit against the corporate or individual income tax to employers who pay for the annual long-term care insurance premiums on behalf of each employee. The credit would be available to employers with 50 or fewer full-time employees. The amount of the credit would be equal to twenty percent of amount paid per employee.

As this bill is written, the credit would not be available to employers who claimed a deduction for federal income tax purposes for the amount of the premium costs. From speaking with the patron, however, TAX understands that the intent of the bill was to allow the tax credit if the amount of premiums have been added back to Virginia taxable income. A technical amendment has been drafted to reflect this intent.

This bill would be effective for taxable years beginning on or after January 1, 2008.

6. Fiscal Impact Estimates are: Preliminary. (See Line 8.)

7. Budget amendment necessary: No.

8. Fiscal implications:

<u>Administrative Costs</u>

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.

Revenue Impact

The revenue impact from this credit as amended is unknown, but is expected to be minimal. Four states, Maine, Oregon, Maryland, and New York, offer similar corporate credits. There are two major differences between those credits and the one proposed by this bill, however. First, this credit would limit eligibility to employers with fifty or fewer full-time employees. In addition, this credit is refundable. While the refundable nature of the credit would make it more expensive than the credits offered by the other states, the restriction regarding the number of employees would reduce the cost. Therefore, the revenue impact is unknown but likely smaller than the revenue impact forecasted in the states mentioned above. Based on those states' tax expenditure reports, the revenue impact of this bill is likely to be less than $100,000 per year.

9. Specific agency or political subdivisions affected:

Department of Taxation

10. Technical amendment necessary: Yes.

In order to ensure that taxpayers may take advantage of this tax credit without receiving a double benefit for Virginia income tax purposes, the following technical amendment is suggested:

Page 1, Line 26, after (§ 2.2-4000 et seq.).
Strike: Lines 27 through 29
Insert: C. In order to compute this tax credit, the taxpayer must first increase the amount of Virginia taxable income by the amount of any federal income tax deduction regarding the same long-term care insurance premiums if such deduction was included in the calculation of Virginia taxable income.

11. Other comments:

Ordinary and Necessary Business Expenses

Under federal law, ordinary and necessary business expenses may be deducted. An "ordinary expense" is one that is common and accepted in the trade or business. A "necessary expense" is one that is helpful and appropriate for the trade or business. An expense does not have to be indispensable to be considered necessary. Any such deduction for federal income tax purposes would also flow through to the Virginia income tax return.

In general, employers may deduct the ordinary and necessary cost of insurance as a business expense if the expense is for their trade, business, or profession. This includes premiums paid for long-term care insurance.

Proposal

This bill would create a refundable individual and corporate income tax credit for small business employers who pay for at least one-half of the total annual long-term care insurance premiums for each employee. The amount of this credit would be equal to the twenty percent of the amount paid during the taxable year by the employer in long-term care insurance premiums for each employee.

The proposed credit would only be available to employers with businesses employing 50 or fewer employees and would only be available to the extent that the employer did not claim a deduction for federal income tax purposes for the amount of the premium costs. A technical amendment has been drafted that would allow the taxpayer to claim the credit if he has also taken a deduction for federal income tax purposes, but only if he adds back the amount of his federal deduction to his Virginia taxable income.

In order to claim these credits, this bill would require an employer to attach proof of payment of the premium costs to his income tax return. If a taxpayer wished to file electronically, however, no documents may be attached to the return. The guidelines authorized by this bill would allow TAX to develop alternative procedures to verify eligibility for the proposed credit.

This bill would be effective for taxable years beginning on or after January 1, 2008.

Similar Legislation

House Bill 59 would create a nonrefundable corporate and income tax credit for small business employers who pay at least one-half of the annual health insurance premiums per employee, effective for taxable years beginning on and after January 1, 2009.

House Bill 986 would a nonrefundable corporate and income tax credit for small business employers who pay at least one-half of the annual health insurance premiums per employee, effective for taxable years beginning on and after January 1, 2008.

cc : Secretary of Finance

Date: 1/26/2008 AMS
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