DEPARTMENT OF TAXATION
2009 Fiscal Impact Statement

1. Patron Mark R. Herring
R. Creigh Deeds

2. Bill Number SB 1097

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

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

3. Committee Senate Finance

4. Title Individual and Corporate Income Tax: Credit for Telework Expenses

5. Summary/Purpose:

This bill would create an individual and corporate income tax credit for employers who incur eligible telework expenses. The credit would equal 100% of the qualified expenses if the business was located in a nonattainment area under the federal Clean Air Act and the participating employees teleworked at least twelve days per month. If the business was not located in such an area and the participating employees teleworked at least twelve days per month, the credit would be equal to 75% of the qualified expenses. Regardless of the area, if the employee teleworked at least five days a month but less than twelve, the credit would be equal to 25% of the qualified expenses. The maximum amount of expenses that could be used in determining the amount of the credit would be $1,200 per employee.

This bill would also create an individual and corporate income tax credit for employers who conduct telework assessments. This credit would be equal to 100% of the costs of preparing the assessment, but would be limited to $20,000. In addition, this credit could only be claimed one time by an employer.

The amount of these credits would not be allowed to exceed the tax liability of the taxpayer. To be eligible for either of the above credits, the employer would not be allowed deduct the qualified expenses in any taxable year. The taxpayer would also not be eligible for this tax credit if any other income tax credit was also claimed.

The total aggregate amount of credits approved by the Tax Commissioner would not be allowed to exceed $1 million for credits earned in taxable years 2010 and 2011. Taxpayers would be required to apply to TAX for an allocation of the credit. If the applications for the credit exceeded the cap, the credits would be allocated to employers on a pro rata basis.

The effective date of this bill would be for taxable years beginning on and after January 1, 2010 but before January 1, 2012. However, taxpayers would be required to apply for the credits beginning on September 1, 2009.

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

Fiscal Year	*Dollars*	*Fund*
2008-09	$0	GF
2009-10	$0	GF
2010-11	($1 million)	GF
2011-12	($1 million)	GF
2012-13	$0	GF
2013-14	$0	GF
2014-15	$0	GF

7. **Budget amendment necessary:** Yes.
   Page 1, Revenue Estimates

8. **Fiscal implications:**

   Administrative Costs

   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 loss associated with this bill would total $1 million in both Fiscal Year 2011 and Fiscal Year 2012, which is the credit cap amount in the bill. Using data from the Bureau of Labor Statistics, it is estimated that employers will incur eligible expenses for almost 4,000 teleworking employees per year. This revenue estimate also assumes that corporations would forego the deduction of expenses from federal taxable income.

9. **Specific agency or political subdivisions affected:**

   Department of Taxation

10. **Technical amendment necessary:** No.

11. Other comments:

Current Law

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. To the extent that telework expenses or telework assessment expenses would qualify as ordinary and necessary expenses for federal income tax purposes, such expenses would flow through on the Virginia income tax return.

State Comparison

In a review of other states, TAX found only one state that provides some form of tax credit for telework programs. Georgia offers a credit, currently set to expire on December 31, 2009, to companies for eligible telework expenses for each participating employee. The maximum amount allowed is $1,200 per employee. Additionally, Georgia offers a credit of up to $20,000 for employers to assess their telework programs.

Proposal

This bill would create an individual and corporate income tax credit for employers who incur eligible telework expenses. The credit would equal 100% of the qualified expenses if the business was located in a nonattainment area under the federal Clean Air Act and the participating employees teleworked at least twelve days per month. If the business was not located in such an area and the participating employees teleworked at least twelve days per month, the credit would be equal to 75% of the qualified expenses. Regardless of the area, if the employee teleworked at least five days a month but less than twelve, the credit would be equal to 25% of the qualified expenses. The maximum amount of expenses that could be used in determining the amount of the credit would be $1,200 per employee.

As of December 18, 2008, the following areas have been designated nonattainment under the Clean Air Act:

- Counties of: Arlington, Fairfax, Loudon, and Prince William

- Cities of: Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park

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The amount of these credits would not be allowed to exceed the tax liability of the taxpayer. To be eligible for either of the above credits, the employer would not be allowed deduct the qualified expenses in any taxable year. The taxpayer would also not be eligible for this tax credit if any other income tax credit was also claimed.

The total amount of credits that could be granted in taxable years 2010 and 2011 would be limited to $1 million. Taxpayers would be required to apply to TAX for an allocation of the credit. The application would be required to be filed between September 1 and October 31 of the year preceding the taxable year for which the tax credit was to be earned. TAX would be required to provide tentative approval by December 31. If the applications for the credit exceeded the cap, the credits would be allocated to employers on a pro rata basis.

TAX would be required to promulgate rules and forms regarding standards for eligibility and the process of application.

The effective date of this bill would be for taxable years beginning on and after January 1, 2010 but before January 1, 2012. However, taxpayers would be required to apply for the credits beginning on September 1, 2009.

Other Legislation

Senate Bill 1098 would allow employers to claim a one-time $500 individual or corporate income tax credit for each employee who enters into a flextime agreement and participates in a flextime program.

cc : Secretary of Finance

Date: 1/22/2009 JKL
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