

**DEPARTMENT OF TAXATION
2009 Fiscal Impact Statement**

1. **Patron** Charles J. Colgan

3. **Committee** House Finance

4. **Title** Virginia Tax Amnesty Program

2. **Bill Number** SB 1120

House of Origin:

 Introduced

 Substitute

 Engrossed

Second House:

 X **In Committee**

 Substitute

 Enrolled

5. Summary/Purpose:

This bill would authorize the Tax Commissioner to administer an amnesty program for a period ranging between 60 and 75 days during Fiscal Year 2010. All penalties and 50 percent of the interest would be waived upon payment of the taxpayer's remaining balance. At the conclusion of the amnesty period, any remaining amnesty-qualified liabilities would be assessed an additional 20 percent penalty.

TAX's implementation of the amnesty program would be exempt from the Virginia Information Technology Agency ("VITA")'s project management and procurement oversight.

The effective date of this bill is not specified.

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

6a. Expenditure Impact:

| <i>Fiscal Year</i> | <i>Dollars</i> | <i>Fund</i> |
|---------------------------|-----------------------|--------------------|
| 2008-09 | \$0 | GF |
| 2009-10 | \$6,951,928 | GF |
| 2010-11 | \$0 | GF |
| 2011-12 | \$0 | GF |
| 2012-13 | \$0 | GF |
| 2013-14 | \$0 | GF |
| 2014-15 | \$0 | GF |

6b. Revenue Impact:

| <i>Fiscal Year</i> | <i>Dollars</i> | <i>Fund</i> |
|---------------------------|-----------------------|--------------------|
| 2008-09 | \$0 | GF |
| 2009-10 | \$43,295,033 | GF |
| | \$1,468,789 | TTF |
| | \$2,937,577 | Local |
| | \$112,857 | NGF |
| 2010-11 | \$0 | GF |
| 2011-12 | \$0 | GF |
| 2012-13 | \$0 | GF |
| 2013-14 | \$0 | GF |
| 2014-15 | \$0 | GF |

7. Budget amendment necessary: Yes. (See Line 8.)

Page 1, Revenue Estimates

ITEM: 270 Department of Taxation

Insert: I. Upon request of the Secretary of Finance, the State Comptroller shall grant the Department of Taxation a Treasury Loan for the planning and implementation of the Virginia Tax Amnesty Program, estimated to be \$6,951,928. Repayment of this loan will be from the gross revenues generated by the Amnesty Program.

8. Fiscal implications:

Administrative Costs

In order to implement this bill, TAX would incur total administrative costs of \$6,951,928. These costs include both the amount TAX would directly incur as well as the amount to outsource some functions. These amounts include systems changes, costs for telephone support services, marketing, and post-amnesty reconciliation functions.

These administrative costs assume that TAX will outsource some functions during the implementation of the amnesty program. If TAX is not able to outsource some of these functions, it is possible that the amnesty program would not be able to be implemented before the end of Fiscal Year 2010, thus pushing any revenue gains into the next biennium.

Revenue Impact

TAX anticipates that this amnesty program could produce approximately \$47,814,256 in revenue in Fiscal Year 2010. Of the \$47,814,256, approximately \$43,295,033 would be General Fund revenue, \$1,468,789 would be Transportation Trust Fund revenue, \$2,937,577 would be local revenue, and \$112,857 would be Non-General Fund revenue.

When administrative costs of \$6,951,928 are subtracted from the revenue estimate of \$47,814,256, the net revenue collected during the amnesty program is estimated to be \$40,862,328.

9. Specific agency or political subdivisions affected:

Department of Taxation

Technical amendment necessary: No.

11. Other comments:

1990 Virginia Tax Amnesty Program

In 1990, Virginia held its first tax amnesty program. The amnesty program began February 1, 1990, and ended March 31, 1990. With certain exceptions, any taxpayer required to file a return or pay any tax administered or collected by TAX was eligible to participate in the program. Under the terms of this program, all civil and criminal penalties for the nonpayment, underpayment, non-reporting or under-reporting of tax liabilities were waived upon the full payment of the taxpayer's remaining balance. TAX collected \$32.2 million in amnesty revenue and over 27,000 delinquent taxpayers participated in the program. Direct program expenditures by TAX were \$1.3 million.

The following table shows the participant and payment information by business and individual taxpayers:

| | Business | Individual | Total |
|---|-----------------|-------------------|--------------|
| Percent of Amnesty Requests Filed | 34% | 66% | 100% |
| Percent of Amnesty Revenue Collected | 45% | 55% | 100% |
| Average Amnesty Payment | \$1,495 | \$938 | \$1,125 |

The penalties for failure to file individual and corporate income tax returns were changed from a total penalty of 10 percent to a penalty of 5 percent for each month that the return had not been filed up to a total cumulative penalty of 25 percent after the amnesty program. In 1991, the rate was increased to its current rate of 6 percent each month for a total cumulative penalty of 30 percent.

2003 Virginia Tax Amnesty Program

In 2003, Virginia held its second tax amnesty program. The amnesty program began September 2, 2003, and ended November 3, 2003. With certain exceptions, any taxpayer who had an outstanding assessment with TAX or had not filed a return for any tax administered by TAX was eligible to apply for amnesty. TAX waived all penalties and 50 percent of the interest on full payment of the taxpayer's remaining balance. TAX collected \$94.9 million in amnesty revenue. Over 95,000 delinquent taxpayers participated in the program; and the implementation cost \$7,065,080.

The following table shows the participant and payment information by business and individual taxpayers:

| | Business | Individual | Total |
|---|-----------------|-------------------|--------------|
| Percent of Amnesty Participants | 26% | 74% | 100% |
| Percent of Amnesty Revenue Collected | 54.5% | 45.5% | 100% |
| Average Amnesty Payment | \$2,088 | \$613 | \$996 |

A new 20 percent penalty was applied to the unpaid tax of any balance when a taxpayer who was eligible to participate in the amnesty program elected not to do so.

Proposal

This bill would authorize the Tax Commissioner to administer an amnesty program for a period ranging between 60 and 75 days during Fiscal Year 2010. All penalties and 50 percent of the interest would be waived upon payment of the remaining balance.

With certain exceptions, any taxpayer who currently has an outstanding assessment, or has not filed a return for any tax administered by TAX, may apply for amnesty.

The following taxpayers would not be eligible to participate in the tax amnesty program:

- any taxpayer currently under investigation or prosecution for filing a fraudulent return or failing to file a return with the intent to evade tax;
- any taxpayer with an assessment date or due date for an unfiled return less than 90 days prior to the first day of the amnesty program; or
- any taxpayer with an individual, fiduciary or corporate income tax liability for Taxable Year 2008 or after.

The Tax Commissioner would establish the guidelines and rules for the procedures regarding participation, as well as any other rules that are deemed necessary by the Tax Commissioner. The guidelines and rules would be exempt from the Administrative Process Act. TAX's implementation of the amnesty program would be exempt from VITA's project management and procurement oversight.

At the conclusion of the amnesty period, any remaining amnesty-qualified liabilities would be assessed a 20 percent penalty. This penalty would be in addition to all other penalties, including the 6 percent per month late payment penalty, with a maximum of 30 percent, and the 20 percent penalty assessed after the 2003 amnesty program, if applicable. Therefore, if an amnesty eligible taxpayer failed to participate in the 2003 amnesty program and fails to come forward during this amnesty, such taxpayer would be facing penalties of 70 percent in the future.

State Comparison

Forty-one states, not including Virginia, implemented tax amnesty programs prior to 2008. Out of these states, six also implemented or plan to implement a tax amnesty program in 2008 or 2009. Each program varies in terms of who qualifies, the relief offered, and the penalty imposed on taxpayers who do not participate. Actual or estimated revenue gains are provided when available.

Each of the six states is detailed in the attached chart.

cc : Secretary of Finance

Date: 2/10/2009 JKL
SB1120FE161

| State | Dates of Amnesty Program | | Scope | Known Taxpayers Eligible | Incentives | | Punishment for Not Participating | Expected/ Actual Revenue |
|----------------------|--------------------------|----------|---|--------------------------|------------|----------|------------------------------------|--------------------------|
| | Start Date | End Date | | | Penalty | Interest | | |
| Alabama | 02/01/09 | 05/15/09 | All Taxes | No | Waive | | | Unknown |
| Connecticut | 05/01/09 | 06/25/09 | All Taxes | No | Waive | Reduce | | \$40 million |
| Illinois | 02/01/08 | 03/17/08 | Corporate Franchise Tax | Yes | Waive | Waive | Interest Rate Doubled | \$20 million |
| Massachusetts | Not Set | Not Set | All Taxes | Yes | Waive | | | \$20 million |
| Nevada | 07/01/08 | 9/31/08 | All Taxes | No | Waive | Waive | | \$41 million |
| Oklahoma | 09/15/08 | 11/14/08 | Sales Tax, Business Tax and Business License Fees | Yes | Waive | Waive | Penalty Equal to Delinquent Amount | \$82 million |