

# DEPARTMENT OF TAXATION

## 2009 Fiscal Impact Statement

1. **Patron** Charles J. Colgan

3. **Committee** Senate Finance

4. **Title** Taxation; Conformity with Internal Revenue Code

2. **Bill Number** SB 985

**House of Origin:**

  X   **Introduced**

      **Substitute**

      **Engrossed**

**Second House:**

      **In Committee**

      **Substitute**

      **Enrolled**

### 5. **Summary/Purpose:**

This bill would advance Virginia's date of conformity to the Internal Revenue Code (IRC) from December 31, 2007 to December 31, 2008. Virginia would continue to disallow any bonus depreciation and any five year carry-back of certain net operating losses (NOL) allowed for NOLs generated in taxable years 2001 or 2002.

This bill contains an emergency clause which states that it would be in force from its passage.

**This is a Department of Taxation bill.**

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

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

### 8. **Fiscal implications:**

#### Administrative Costs

TAX considers implementation of this bill as "routine," and does not require additional funding.

#### Revenue Impact

**The Introduced Executive Budget assumes the passage of this bill** and therefore incorporates the fiscal impact of federal tax laws passed during 2008. As a result, this bill would have no revenue impact. If this bill is not passed, however, then General Fund revenue would be increased by \$2.83 million for FY 2009, and decreased by \$10.5 million for FY 2010, \$11.9 million for FY 2011, \$10.06 million for FY 2012, \$8.02 million for FY 2013, \$8.96 million for FY 2014, and \$10.49 million for FY 2015.

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

Department of Taxation

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

**11. Other comments:**

Current Law

Virginia's conformity to the IRC is currently fixed to the IRC as it existed on December 31, 2007. Since that date, Congress has enacted five significant measures that would affect income taxation in Virginia:

- The Economic Stimulus Act, which would increase § 179 expensing;
- The Food and Energy Security Act and the Heartland, Habitat, Harvest, and Horticulture act, which would provide targeted tax relief to conservation and agricultural interests;
- The Heroes Earnings Assistance and Relief Tax Act, which provides tax benefits to those serving in the military and in the Peace Corps;
- The Housing and Economic Recovery Act, which modifies certain rules applicable to bonds and provides other forms of tax relief; and
- The Emergency Economic Stabilization Act, which extends the exclusion of discharges of principal residence acquisition indebtedness from gross income of individuals, provides a specified method of cost recovery for certain business, and provides a variety of other tax benefits.

Unless the date of IRC conformity is advanced, none of the provisions of these Acts will flow through to Virginia taxable income. Because federal adjusted gross income (individuals) and federal taxable income (corporations) are the starting point for Virginia tax returns, if this bill is not enacted Virginia taxpayers would be required to make numerous complex "Fixed-Date Conformity" adjustments to remove the effect of these Acts when they prepare their Virginia tax returns.

Proposal

This bill would advance the date of IRC conformity to December 31, 2008, which would include all of the tax Acts passed by Congress in 2008. Virginia would continue to disallow any bonus depreciation allowed for certain assets under IRC § 168(k) and any five year carry-back of certain net operating losses (NOL) allowed for NOLs generated in taxable years 2001 or 2002.

In addition, this bill would disallow any bonus depreciation that is allowed under IRC §§ 168(l), 168(m), 1400L, and 1400N. These sections were designed to benefit the following:

- Cellulosic biofuel plant property – IRC § 168(l);
- Reuse and recycling property – IRC § 168(m);
- New York Liberty Zone property – IRC § 1400L; and
- Gulf Opportunity Zone property – IRC § 1400N.

This bill contains an emergency clause which states that it would be in force from its passage.

#### Other Legislation

**House Bill 1737** is identical to this bill.

cc : Secretary of Finance

Date: 1/16/2009 TLG  
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