

DEPARTMENT OF TAXATION

2009 Fiscal Impact Statement

1. **Patron** Charles J. Colgan

2. **Bill Number** SB 985

House of Origin:

 Introduced

 Substitute

 Engrossed

3. **Committee** Passed House and Senate

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

Second House:

 In Committee

 Substitute

 X **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 most 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 and would be in force from its passage.

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 incorporates the fiscal impact of this bill. As a result, this proposal would have no revenue impact. The following amounts were incorporated into the Executive Budget for this bill: a revenue decrease of \$2.83 million for FY 2009; and a revenue increase of \$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 and would be in force from its passage.

Other Legislation

House Bill 1737 is identical to this bill.

c : Secretary of Finance

Date: 2/6/2009 TLG
SB985FER161