DEPARTMENT OF TAXATION
2010 Fiscal Impact Statement

1. **Patron** Walter A. Stosch

2. **Bill Number** SB 178
   House of Origin:
   ____ **Introduced**
   ____ **Substitute**
   ____ **Engrossed**

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

3. **Committee** House Finance

4. **Title** Pass-through Entity Withholding Tax Penalties

5. **Summary/Purpose:**

This bill would conform the pass-through entity withholding tax penalties to the penalties applicable to other taxes administered by TAX.

This bill would provide that only the greater of the late filing penalty or late payment penalty would apply if the pass-through entity withholding tax return is filed after the extended due date. Currently, both the late filing penalty and late payment penalty may apply. A late payment penalty of 6 percent per month or fraction thereof is applied to any payment not made in full when due, up to a maximum of 30 percent of the unpaid balance. A late filing penalty of $200 per month or fraction thereof is applied for any return not filed by the extended due date, up to a maximum of $1200. When the return is filed beyond the extended due date, both penalties are currently applied from the original due date as if there was no extension.

This bill would be effective for taxable years beginning on or after January 1, 2009.

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

Taxable Year 2008 was the first year for which pass-through entities were subject to the withholding tax. The first return was due April 15, 2009. If the pass-through entity elected an extension, the tax would have been due on October 15, 2009. As a result, there is insufficient data to determine the impact this bill would have on penalties. Therefore, this bill would result in an unknown revenue loss.

9. Specific agency or political subdivisions affected:

Department of Taxation

10. Technical amendment necessary: No.

11. Other comments:

Pass-through Entity Withholding Tax

Effective for taxable years beginning on and after January 1, 2008, pass-through entities doing business in the Commonwealth and having taxable income derived from Virginia sources are required to pay a withholding tax equal to five percent of their nonresident owners' shares of income from Virginia sources.

Pass-through entities that are required to pay the withholding tax must pay the required amount on Form 502, which is due the 15th day of the fourth month following the close of the taxable year. Although the time for filing Form 502 may be extended to six months after the due date, or 30 days after the extended date for filing the federal report, whichever is later, the time for paying the amount of withholding tax due is not extended.

If the withholding tax return is filed within the extension period, but the pass-through entity does not pay the full amount of the tax due at the time of filing, the unpaid balance is subject to a late payment penalty of 6 percent per month or fraction of a month from the date of filing through the date of payment, up to a maximum of 30 percent. If the return is filed after the extended due date, the extension provisions do not apply and the pass-through entity is subject to the maximum late filing penalty of 30 percent.

If the return is filed after the extended due date, the extension provisions do not apply and a late filing penalty of $200 per month or fraction of a month from the due date of the return through the date of filing, up to a maximum of $1200. The late filing penalty is currently assessed in addition to any late payment penalty that may apply.

Proposal

This bill would conform the pass-through entity withholding tax penalties to the penalties applicable to other taxes administered by TAX.

If the taxpayer paid the withholding tax within the extension period but had underestimated the balance of tax in excess of 10 percent of the actual tax liability, this bill would add a penalty in the amount of two percent per month of the balance of tax due for each month or fraction thereof from the original due date for the filing of the withholding tax return to the date of payment.

If any payment was not made in full when due, this bill would add a late payment penalty of six percent of the unpaid balance of tax per month or fraction thereof during which the failure to pay continued, not to exceed 30 percent in the aggregate. Interest would also be added from the date the tax or any unpaid balance of the tax was originally due until paid. For any month or fraction thereof for with the pass-through entity was subject to this penalty and the late filing penalty of $200 per month up to $1200, the greater of the two penalties would apply.

This bill would also provide that the late payment penalty would not apply to any tax attributable to income that was included on a unified nonresident individual income tax return.

This bill would be effective for taxable years beginning on or after January 1, 2009.

cc : Secretary of Finance

Date: 2/12/2010 JKM
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