

DEPARTMENT OF TAXATION

2012 Fiscal Impact Statement

1. **Patron** Kathy J. Byron

3. **Committee** House Finance

4. **Title** Local Tax; Rate of Interest and Refunds for
Delinquent Taxes

2. **Bill Number** HB 461

House of Origin:

 X **Introduced**

 Substitute

 Engrossed

Second House:

 In Committee

 Substitute

 Enrolled

5. Summary/Purpose:

This bill would require that the interest rate imposed for delinquent local taxes for the first year of delinquency not exceed the Underpayment Rate established pursuant to § 6621 of the Internal Revenue Code (I.R.C.). For the second and subsequent years of delinquency, the rate would be capped at an additional two percent. In addition, the bill would repeal a statute requiring localities that have not set their penalty and interest rates in an ordinance to impose interest on both delinquent taxes and overpayments at a rate of ten percent per year. The bill would also specify the formula for computing interest, and would authorize local treasurers and local commissioners of the revenue to waive the penalty and interest for good cause.

Under current law, local governing bodies are authorized to impose interest on delinquent local taxes at a maximum rate of ten percent per year for the first year. Localities may impose interest in the second and subsequent years of the delinquency at a rate not to exceed the rate of interest established pursuant to § 6621 of the I.R.C. or ten percent annually, whichever is greater. For the first quarter of 2012, the federal underpayment rate is 3%.

The effective date of this bill is not specified.

6. Budget amendment necessary: No.

7. Fiscal Impact Estimates are: Not available. (See Line 8.)

8. Fiscal implications:

This bill would have no impact on state revenues. To the extent that localities decrease the rate of interest imposed or waive penalties and interest for good cause, the bill would cause a decrease in local revenues, the magnitude of which is unknown.

9. Specific agency or political subdivisions affected:

All localities

10. Technical amendment necessary: No.

11. Other comments:

Interest on Delinquent Taxes

Among their many powers, local governing bodies are authorized to provide for payment of interest on delinquent taxes. Localities that elect to impose such interest must impose interest at the same rate on overpayments due to erroneously assessed taxes. Localities are not required to pay interest on overpayments if 1) the amount of the refund is \$10 or less or (2) the refund is the provided for personal property taxes and is a result of proration due to the tangible personal property acquiring situs after the tax day. Interest can accrue beginning no earlier than the first day following the day such taxes are due.

I.R.C. § 6621

The Internal Revenue Code sets forth the rates on interest for underpayments and overpayments of federal income tax. The Code defines the underpayment rate as the sum of the federal short-term rate plus three percentage points. The Secretary determines the federal short-term rate for the first month in each calendar quarter. For the first quarter of 2012, the federal underpayment rate is 3%.

Penalties on Delinquent Taxes

Localities are also authorized to provide by ordinance penalties for failure to file local license applications and annual returns and for nonpayment in time. Generally, penalty rates are limited to ten percent of the tax past due on the property, though there are exceptions for delinquent tangible personal property tax more than 30 days past due and delinquent excise taxes on meals, lodging, or admissions collected from consumers.

Localities are prohibited from imposing penalty and interest for failure to file a return or pay a tax if the taxpayer was not at fault, or the fault lay with the commissioner of the revenue or the treasurer.

Proposal

This bill would require that the interest rate imposed for delinquent local taxes for the first year of delinquency not exceed the rate established pursuant to § 6621 of the I.R.C. For the second and subsequent years of delinquency, the rate would be capped at an additional two percent. Separate computations of interest would need to be computed by multiplying the deficiency or overpayment for each period by the rate of interest applicable to that period.

In addition, the bill would also repeal *Va. Code* § 58.1-3918, which requires localities that have not set their penalty and interest rates in an ordinance to impose interest on both delinquent taxes and overpayments due to erroneously assessed taxes at a rate of ten percent per year, beginning the first day following the day such taxes are due.

The bill would also authorize local treasurers and local commissioners of the revenue to waive penalties and interest for good cause. Additionally, the bill would require the treasurer to make determinations of good cause relating exclusively to failure to pay a tax, while the commissioner of the revenue would make determinations relating exclusively to failure to file a return. If a jurisdiction does not have a treasurer or commissioner of the revenue, the local governing body would be authorized to delegate the appropriate local tax officials to be responsible for making the determination of good cause.

The effective date of this bill is not specified.

Similar Legislation

House Bill 117 and **House Bill 290** (similar) would provide that no interest would need to be paid by localities on a refund of local taxes if the refund is a result of errors made by the taxpayer. The bill would also provide that no interest would be imposed on the taxpayer for failure to file a return or pay a tax if such failure was not the fault of the taxpayer, or was the fault of the commissioner of revenue or the treasurer, as the case may be.

cc : Secretary of Finance

Date: 1/21/2012 KP
DLAS File Name: HB461F161