

# DEPARTMENT OF TAXATION

## 2012 Fiscal Impact Statement

1. **Patron** Charniele L. Herring

3. **Committee** House Finance

4. **Title** Income Tax: Small Business Tax Credit for  
Hiring Virginia Graduates

2. **Bill Number** HB 191

**House of Origin:**

  X   **Introduced**

       **Substitute**

       **Engrossed**

**Second House:**

       **In Committee**

       **Substitute**

       **Enrolled**

**5. Summary/Purpose:**

This bill would allow a corporate or individual income tax credit, equal to \$2,500, to a small business for each new job it creates in Virginia and fills with a graduate of a Virginia college or university. The tax credit would be allowed in the first taxable year in which the job had been filled for at least one year. This bill would not allow a tax credit to a small business if its number of full-time jobs for the taxable year is less than the base year employment.

The amount of the tax credit would not be allowed to exceed the tax liability of the taxpayer. This bill would allow any unused tax credits to be carried over for five taxable years or until the total amount of the tax credit has been taken, whichever is sooner.

The total amount of credits that could be granted in a fiscal year would be limited to \$2 million. The Department of Taxation (the "Department") would be required to develop procedures for issuing tax credits in the event that applications for tax credits exceed \$2 million in a fiscal year.

This bill would prohibit a small business from claiming this tax credit and the Green Job Creation Tax Credit for the same job or employee.

This bill would be effective for taxable years beginning on or after January 1, 2012, but before January 1, 2014.

**6. Budget amendment necessary:** Yes.

Page 1, Revenue Estimates

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

## **8. Fiscal implications:**

### Administrative Costs

The Department 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, the Department considers implementation of this bill as “routine,” and does not require additional funding.

The Department will provide specific administrative costs on any legislation that is not “routine.” Additionally, the Department 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, the Department will identify the costs at that time.

### Revenue Impact

The negative impact of this bill on General Fund revenue is not known. The reduction, however, could not exceed the \$2 million cap in each fiscal year, beginning in FY 2014. Because the Virginia graduate must be employed for 12 months before claiming the credit, very few credits would be granted for taxable year 2012.

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

Department of Taxation

## **10. Technical amendment necessary: Yes.**

The definition of “in-state institution” incorporates a definition of colleges and universities subject to regulation. Which does not include state-supported colleges and universities. The Department understands that the patron will propose an amendment to ensure that the credit would apply for graduates of all Virginia colleges and universities, including those that are state-supported.

## **11. Other comments:**

### Other States

Oklahoma allows certain aerospace companies to receive a tax credit equal to 10% of the compensation paid to an engineer during the first five years of his or her employment if the engineer graduated from an Oklahoma college. If the engineer graduated from a college outside Oklahoma, the employer would receive a tax credit equal to 5% of the compensation paid to the employee during the first five years.

### Proposal

This bill would allow a corporate or individual income tax credit, equal to \$2,500, to a small business for each new job it creates in Virginia and fills with a graduate of a Virginia

college or university. The tax credit would be allowed in the first taxable year in which the job had been filled for at least one year. This bill would not allow a tax credit to a small business if its number of full-time jobs for the taxable year is less than the base year employment.

The amount of the tax credit would not be allowed to exceed the tax liability of the taxpayer. Any unused tax credits may be carried over for five taxable years or until the total amount of the tax credit has been taken, whichever is sooner.

The total amount of credits that could be granted in a fiscal year would be limited to \$2 million. The Department of Taxation (the "Department") would be required to develop procedures for issuing tax credits in the event that applications for tax credits exceed \$2 million in a fiscal year.

Under this bill, a small business would have to demonstrate to the Department that the new full-time job was created by the small business with a Virginia graduate continuously for one year. In order to claim the credit, a taxpayer would be required to apply to the Department for an allocation of the credit, and receive a written certification from the Department that notifies the taxpayer of the amount of that allocation. The taxpayer would be required to attach this certification to his income tax return.

"Base year employment" would mean the average annual number of full-time jobs for which the small business is the employer for the immediately preceding three taxable years of the small business.

"Full-time job" would mean a job in the Commonwealth of an indefinite duration, for which the small business is the employer and for which the standard fringe benefits are paid by the small business, requiring a minimum of either (i) 35 hours of an employee's time per week for the entire normal year of such small business' operations, which "normal year" must consist of at least 48 weeks, or (ii) 1,680 hours per year. Seasonal or temporary positions, and positions created when a job function is shifted from an existing location in the Commonwealth, shall not qualify as full-time jobs.

"In-state institution" would mean the same as that term is defined under § 23-276.1, which is an institution of higher education that is formed, chartered, or established within Virginia. An out-of-state institution shall be deemed an in-state institution for the purposes of certification as a degree-granting institution if (i) it has no instructional campus in the jurisdiction in which it was formed, chartered, established, or incorporated and (ii) it produces clear and convincing evidence that its main or principal campus is located in Virginia.

"Small business" would mean a business that is at least 51 percent independently owned and controlled by one or more individuals who are U.S. citizens or legal resident aliens, and together with affiliates, has 75 or fewer employees, or average annual gross receipts of \$10 million or less averaged over the immediately preceding three taxable years. One or more of the individual owners shall control both the management and daily business operations of the small business.

"Virginia graduate" would mean a person who was (i) awarded an associate's or bachelor's degree from an in-state institution within the three years immediately preceding the date the person was hired into a full-time job, and (ii) not an independent contractor of the small business within such three-year period.

This bill would prohibit a small business from claiming this tax credit and the Green Job Creation Tax Credit for the same job or employee.

Any credits granted to a partnership, limited liability company, or electing small business corporation (S corporation) would be allocated to the individual partners, members, or shareholders, respectively, in proportion to their ownership or interest in such business entities.

This bill would require the Department to develop guidelines, exempt from the provisions of the Administrative Process Act, to implement this tax credit.

This bill would be effective for taxable years beginning on or after January 1, 2012, but before January 1, 2014.

#### Similar Bills

#### **Executive bills:**

**HB 585 and SB 344** would allow an individual income tax credit for certain investments made to small businesses.

**HB 714 and SB 368** would extend the time during which the major business facility job tax credit may be taken over a two-year period through 2014.

**HB 1013 and SB 226** would extend the subtraction from individual and corporate income tax for capital gains to apply to investments in qualified businesses made through June 30, 2015.

#### **Other bills:**

**HB 111** would grant an individual or corporate income tax credit, equal to \$1,000, for each new full-time job, up to 50, that a small business creates in Virginia.

**HB 149 and SB 61** would reduce the corporate income tax rate to 3% for 3 years for corporations that locate satellite offices in certain localities.

**HB 228** would create a corporate income tax credit for certain large federal government contractors equal to five percent of the value of new qualified subcontracts or the increase in the existing subcontracts with small businesses located in HUB zones or Enterprise Zones or are minority-owned, women-owned, or veteran-owned business.

**HB 335** would allow an individual and corporate income tax deduction for any income taxed as a capital gain or investment services partnership interest income for federal income tax purposes attributable to an investment in a small business held for a period of at least five years.

cc : Secretary of Finance

Date: 2/2/2012 tlg  
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