DEPARTMENT OF TAXATION
2012 Fiscal Impact Statement

1. Patron Harry R. Purkey

2. Bill Number HB 514

House of Origin:
_X_ **Introduced**
_____ **Substitute**
_____ **Engrossed**

Second House:
_____ **In Committee**
_____ **Substitute**
_____ **Enrolled**

3. Committee House Finance

4. Title Income Tax: Excess Regulatory Tax Credit

5. Summary/Purpose:

This bill would allow an individual, corporate and license tax credit for the direct costs paid by a business, attributable to its location in the Commonwealth, to comply with excessive state regulations. In order to claim the credit, a taxpayer would be required to attach to the applicable tax return any receipts, documents, or other evidence that substantiate the direct costs to comply with excessive state regulations.

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

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

6. Budget amendment necessary: Yes.
Page 1, Revenue Estimates
ITEM: 104, Secretary of Commerce and Trade

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.

Secretary of Commerce and Trade Administrative Costs

According to the Secretary of Commerce and Trade, this bill would require additional staff with the necessary expertise to review all regulations, not just those developed by Commerce and Trade agencies. In addition, the Secretary of Commerce and Trade reports that it does not have the expertise or ability to verify the actual or perceived costs to businesses.

Revenue Impact

This bill would have an unknown negative impact on General Fund revenue. The scope of this credit is highly dependent on how the Secretary of Commerce and Trade would determine which regulations are deemed to be excessive, and the types of businesses that would be able to claim the credit.

9. Specific agency or political subdivisions affected:

Department of Taxation
Secretary of Commerce and Trade

10. Technical amendment necessary: No.

11. Other comments:

Current Law

Since 2007, the Administrative Process Act (the "APA") has required that an economic impact analysis be prepared for each new or amended regulation.

Under the APA, before delivering any proposed regulation to the Registrar, the proposed regulation must be submitted to the Department of Planning and Budget ("DPB"), which must conduct an economic impact analysis of the proposed regulation within 45 days. The economic impact analysis must include, but is not limited to, the projected number of businesses or other entities the regulation will affect, the identity of any locality and type of businesses affected, number of persons and employment positions affected, the impact on the use and value of private property including the cost of development of real property for commercial and residential purposes, and the projected cost to affected businesses, localities and other entities of implementing the proposed regulation.

Proposal

This bill would allow an individual, corporate and license tax credit for the direct costs paid by a business, attributable to its location in the Commonwealth, to comply with excessive state regulations. In order to claim the credit, a taxpayer would be required to attach to the applicable tax return any receipts, documents, or other evidence that substantiate the direct costs to comply with excessive state regulations.

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

"Direct costs" would mean those expenditures that are directly attributable to complying with excessive state regulations. However, the term shall also include lost profits from business in the Commonwealth.

"Excessive state regulations" would mean regulations or mandatory rules or guidelines that are (i) imposed by any Commonwealth board, commission, department, division, agency, or other state entity, (ii) not required by any federal law, regulation, rule, or other federal authority, (iii) in general, costly to comply with, and (iv) imposed on a business for conducting business in the Commonwealth that restrict, condition, or prohibit ordinarily harmless property conditions or the ordinarily harmless exercise or enjoyment by the business of its legal rights. The Secretary of Commerce and Trade shall have the duty and sole discretion to identify excessive state regulations.

Under this bill, the Secretary of Commerce and Trade would be required to review state regulations and mandatory rules or guidelines to identify any excessive state regulations, and maintain a current list of such excessive state regulations on the Secretary's website. The Secretary would be allowed to consult the Joint Commission on Administrative Rules or any other person having expertise with a regulation or a mandatory rule or guideline, to identify such excessive state regulations.

This bill would not allow a tax credit for any costs during the taxable year for compliance with a regulation, rule, or guideline that is not identified by the Secretary of Commerce and Trade as an excessive state regulation for the taxable year.

And 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 Tax Commissioner to develop guidelines, exempt from the provisions of the Administrative Process Act, to implement this credit, including procedures for determining the necessary receipts, documents, or other evidence of excessive state regulation.

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

cc : Secretary of Finance

Date: 2/1/2012 tlg
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