

DEPARTMENT OF TAXATION

2017 Fiscal Impact Statement

1. **Patron** Glen H. Sturtevant
3. **Committee** Passed House and Senate
4. **Title** Waiver of Tax Penalties for Small Businesses

2. **Bill Number** SB 793
House of Origin:
 Introduced
 Substitute
 Engrossed

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

5. Summary/Purpose:

This bill would require that tax penalties be waived for a small business during its first two years of operation, provided that such small business enters into an installment agreement with the Tax Commissioner. The term "small business" would be defined as an independently owned and operated business that has been organized pursuant to Virginia law or maintains a principal place of business in Virginia and has ten or fewer employees. This bill would apply only to penalties related to taxes administered by the Department.

The waiver would not apply to penalties imposed for the failure of a business to remit sales or withholding taxes, nor would it apply to the penalty imposed on corporate or partnership officers and business owners and operators who fail to truthfully account for any sales and use or withholding taxes.

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:**

Administrative Costs

The Department of Taxation ("the Department") considers implementation of this bill as routine, and does not require additional funding.

Revenue Impact

This bill would have an unknown, but likely minimal, negative General Fund revenue impact. The waiver created by this bill would apply to certain businesses during their first two years of operation. During Fiscal Year 2016, approximately 45,342 new business accounts registered with the Department. It is unknown how many of these businesses

would be considered small businesses eligible for the waiver and how many of such businesses are in their first two years of operation.

The bill would define a “small business” to include only independently owned and operated businesses with ten or fewer employees. Independently owned businesses with fewer than ten employees represented nearly 72 percent of businesses in the Commonwealth in 2012. It is unknown how many of these independently owned businesses would meet the other requirements in the bill and qualify for a waiver of penalties.

9. Specific agency or political subdivisions affected:

Department of Taxation

10. Technical amendment necessary: No.

11. Other comments:

Current Law

Penalties Applicable to Individuals, Fiduciaries, and Corporations

Virginia law provides an automatic extension of six months for the filing of individual, fiduciary, and corporate income tax returns. There is no extension of time granted for payment of taxes due. To avoid an extension penalty, at least 90 percent of the final tax liability must be paid by the original due date for filing the return with respect to individual, fiduciary, and corporate income tax returns. The extension penalty is assessed on the balance of tax due with the return at a rate of two percent per month or part of a month, from the original due date until the date the return is filed.

If a taxpayer files his return more than six months after the due date and he owes tax, his return will be subject to a late filing penalty. The law provides for the penalty to be assessed at a rate of six percent per month or part of a month from the due date of the return until the return is filed, or until the maximum penalty of 30 percent has accrued.

If a taxpayer files his return within six months after the due date but does not pay the tax due until after that time, his return will be subject to a late payment penalty. Like the late filing penalty, the late payment penalty is assessed at a rate of six percent per month, with a maximum penalty of 30 percent. However, if the return was made in good faith and the understatement of the amount in the return was not due to any fault of the taxpayer, no penalty may be imposed because of such understatement. The late payment penalty will not be imposed in any month for which a late filing penalty has been assessed.

Pass-Through Entity Penalties

If a pass-through entity (“PTE”) files an informational return after the extended due date, the late filing penalty is \$200 per month for a maximum of six months beginning from the original due date. However, if the PTE files its return more than six months after the extended due date, the late filing penalty is equal to the greater of \$1,200 or six percent of

the amount of Virginia taxable income derived by its owners from the PTE for the taxable year.

If a PTE is required to pay income tax and it pays such tax after the due date, a late payment penalty is assessed equal to six percent of the tax due per month, with a maximum penalty of 30 percent of the tax due. However, if the return was made in good faith and the understatement of the amount in the return was not due to any fault of the taxpayer, no penalty may be imposed because of such understatement. In any month or fraction of a month where the PTE is subject to both the late filing penalty and the late payment penalty, the greater of the two penalties will apply.

Penalty for Employer's Failure to Withhold

Employers are generally required to withhold and remit income taxes from the wages of their employees. Amounts withheld are considered to be held in trust and later used to offset employees' tax liabilities. Any employer who fails to properly withhold taxes or who fails to remit amounts collected is subject to a penalty equal to 6 percent of the amount that should have been withheld for each month that such failure continues, not exceeding 30 percent in the aggregate.

Sales and Use Tax Penalties

A return must be filed for each required period even if there is no tax due. The sales tax is imposed on the consumer who purchases a product and is collected by the retailer. Amounts collected by retailers are held in trust and paid to the Department on behalf of their customers. If a dealer fails to file or pay the full amount of the tax when due, a penalty of 6 percent of the tax due will be added to the tax for each month or any part of a month that the return is not filed or the tax is not paid. The maximum penalty is 30 percent; the minimum penalty is \$10. The minimum penalty of \$10 applies even if no tax is due. However, if such failure is due to providential or other good cause shown to the satisfaction of the Department, the Department is not required to impose penalties. In cases where a false or fraudulent return is filed and willful intent to defraud exists, a specific penalty of 50 percent of the amount of the proper tax shall be assessed.

Other Penalties

In addition to the penalties discussed above, civil and criminal penalties are required to be assessed in cases involving fraud, failure to file a return and other violations of Virginia law. In cases where any corporate or partnership officer, or any person owning or operating a business, who through two or more acts or omissions within a period of ninety days intentionally fails to truthfully account for any sales and use or withholding tax totaling \$1,000 or more collected from others with the intent not to pay is guilty of a Class 6 felony, in addition any other penalties imposed by law.

Waiver of Penalties

Where a penalty has been imposed for failure to comply with the requirements of Virginia's tax laws, the Department of Taxation has in its discretion the authority to accept offers made in compromise or in lieu of such penalties. An offer in lieu of the assessment

of a penalty is deemed to be made under *Va. Code* § 58.1-105 when a taxpayer files a return or makes a payment of tax without paying the penalty if information filed with the return or payment of tax or obtained from other sources demonstrates reasonable cause for the taxpayer's failure or omission for which the penalty would be imposed. The reason for the acceptance of such offers in compromise must be preserved among the records of the Department.

Additionally, the Tax Commissioner has the authority to waive penalties and grant extensions of time to file a return or pay a tax, or both, to any class of taxpayers when the Tax Commissioner in his discretion finds that the normal due date has, or would, cause undue hardship to the class of taxpayers because of a natural disaster or other reason.

Proposed Legislation

This bill would require that tax penalties be waived for a small business during its first two years of operation, provided that such small business enters into an installment agreement with the Tax Commissioner. The term "small business" would be defined as an independently owned and operated business that has been organized pursuant to Virginia law or maintains a principal place of business in Virginia and has ten or fewer employees. This bill would apply only to penalties related to taxes administered by the Department.

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cc : Secretary of Finance

Date: 5/3/2017 NM
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