DEPARTMENT OF TAXATION
2018 Fiscal Impact Statement

1. Patron A. Benton Chafin, Jr.

2. Bill Number SB 378

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

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

3. Committee House Finance

4. Title Income Tax; Virginia Coal Tax Credits

5. Summary/Purpose:

This bill would reinstate the Coalfield Employment Enhancement Tax Credit for taxable years beginning on and after January 1, 2018, but before January 1, 2023. Under this bill, taxpayers would be permitted to claim the Coalfield Employment Enhancement Tax Credit for metallurgical coal mined by underground methods. Before it expired on December 31, 2016, the credit was available for all coal mined by underground methods and was not restricted to metallurgical coal. In addition, this bill would permit taxpayers to claim the Coalfield Employment Enhancement Tax Credit for any coal mined by surface methods and for the production of coalbed methane.

This bill would allow taxpayers with an economic interest in coal to redeem Virginia Coal Employment and Production Incentive Tax Credits allocated by an electricity generator that were earned on and after January 1, 2018. Credits received pursuant to an allocation on or after January 1, 2018 would be redeemable for credits earned before July 1, 2023.

This bill would also limit the aggregate amount of Virginia Coal Employment and Production Incentive Tax Credits that may be allocated or claimed by electricity generators to $7.3 million per fiscal year.

This effective date of this bill is not specified.

6. Budget amendment necessary: Yes.
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6. Fiscal Impact Estimates are: Preliminary. (See Line 8.)

7b. Revenue Impact:

Fiscal Year	*Dollars*	*Fund*
2017-18	$0	GF
2017-18	$0	NGF
2018-19	($500,000)	GF
2018-19	$200,000	NGF
2019-20	($400,000)	GF
2019-20	$200,000	NGF
2020-21	($300,000)	GF
2020-21	$200,000	NGF
2021-22	($6.8 million)	GF
2021-22	$1.2 million	NGF
2022-23	($6.0 million)	GF
2022-23	$1.1 million	NGF
2023-24	($5.4 million)	GF
2023-24	$1.0 million	NGF

8. Fiscal implications:

Administrative Costs

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

Revenue Impact

General Fund Revenue Impact

This bill would have a negative General Fund revenue impact of $500,000 in Fiscal Year 2019; $400,000 in Fiscal Year 2020; $300,000 in Fiscal Year 2021; $6.8 million in Fiscal Year 2022; $6.0 million in Fiscal Year 2023; and $5.4 million in Fiscal Year 2024.

The provision of this bill permitting persons with an economic interest in coal to redeem Virginia Coal Employment and Production Incentive Tax Credits earned on or after January 1, 2018 to the extent the credits exceed such person's tax liability would have a negative General Fund revenue impact of $1.5 million in Fiscal Year 2019; $1.4 million in Fiscal Year 2020; $1.3 million in Fiscal Year 2021; $1.2 million in Fiscal Year 2022; $1.2 million in Fiscal Year 2023; and $1.2 million in Fiscal Year 2024.

However, the negative General Fund revenue impact would be partially offset by limiting the amount of such credits that may be claimed to $7.3 million annually and by reducing the carryover period for such credits from ten to seven years. During Fiscal Years 2014 through 2017, taxpayers claimed an average of $8.3 million in Virginia Coal Employment and Production Incentive Tax Credits. Accordingly, the $7.3 million annual cap is estimated to have a positive General Fund revenue impact of $1.0 million per year, beginning in Fiscal Year 2019. The reduction of the carryover period would also have a positive General Fund revenue impact of an unknown amount. These two provisions would also limit the risk to the General Fund of a large amount of credits being claimed during a particular year. During Fiscal Year 2013, taxpayers claimed $59.4 million Virginia Coal Employment and Production Incentive Tax Credits. This significant increase in the amount of credits claimed was caused by taxpayers claiming a large number of carryover credits in Fiscal Year 2013, and was unexpected after no credits were claimed during the prior two fiscal years. Capping the annual amount of newly issued and carryover credits claimed at $7.3 million and reducing the carryover period to seven years would limit the General Fund's exposure to this risk in the future by significantly limiting the degree to which the amount claimed could fluctuate annually.

The reinstatement of the Coalfield Employment Enhancement Tax Credit would have a negative revenue impact beginning in Fiscal Year 2022. Because the credit may not be claimed until the third taxable year after the credit was earned, the revenue impact of reinstating the credit would not be realized until income tax returns are filed for Taxable Year 2021, which generally occurs during Fiscal Year 2022. As a result, this provision would result in a negative General Fund revenue impact of $6.5 million in Fiscal Year 2022; $5.8 million in Fiscal Year 2023; and $5.2 million in Fiscal Year 2024. This estimate assumes that 60 percent of credits claimed under prior law were related to the mining of metallurgical coal.

Impact on the Virginia Coalfield Economic Development Authority

The Virginia Coalfield Economic Development Authority Fund ("the Fund") receives 15 percent of the face value of coal tax credits redeemed by taxpayers. Accordingly, the redemption of Virginia Coal Employment and Production Incentive Tax Credits by persons with an economic interest in coal for credits earned on and after January 1, 2018 would have a positive impact on the Fund, beginning in Fiscal Year 2019. Similarly, the reinstatement of the Coalfield Employment Enhancement Tax Credit would have a positive impact on the Fund, beginning in Fiscal Year 2022. The overall positive impact to the Fund would be $200,000 in Fiscal Year 2019 through Fiscal Year 2021; $1.2 million in Fiscal Year 2022; $1.1 million in Fiscal Year 2023; and $1.0 million in Fiscal Year 2024.

9. Specific agency or political subdivisions affected:

Department of Taxation

10. Technical amendment necessary: No

11. Other comments:

Virginia Coal Employment and Production Incentive Tax Credit

The Virginia Coal Employment and Production Incentive Tax Credit is a credit allowed to electricity generators in Virginia against the corporation income tax and the tax that applies to electric suppliers, pipeline distribution companies, gas utilities, and gas suppliers. The amount of the credit is equal to $3 for each ton of coal purchased and consumed by an electricity generator, provided such coal was mined in Virginia. To the extent an electricity generator purchased coal qualifying for the credit from a person with an economic interest in coal, the credit may be allocated between the electricity generator and such person with an economic interest in coal. Any person with an economic interest in coal that received an allocation of credits is permitted to redeem such credits only if they were earned in a taxable year ending before July 1, 2016. In a taxable year ending on or after July 1, 2016, a person with an economic interest in coal may still receive an allocation of credits. However, the credits must be used to reduce the person's corporate tax liability or any other tax other tax imposed by Virginia in the year during which the credits are received. Any excess may not be carried over to a future taxable year and may not be redeemed in the current taxable year.

Any credit not allocated to a person with an economic interest in coal that is not usable for the taxable year for which the credit was issued may be carried over for up to ten taxable years. To the extent credit allocated to a person with an economic interest in coal exceeds such person’s Virginia tax liability, such taxpayer is entitled to redeem the excess credits in an amount equal to 85 percent of the face value of such excess. The remaining 15 percent is to be deposited in a regional economic development fund administered by the Coalfield Economics Development Authority.

Coalfield Employment Enhancement Tax Credit

Persons with an economic interest in coal mined in Virginia were permitted to claim the Coalfield Employment Enhancement Tax Credit against any tax imposed by Virginia. For coal mined underground, the credit amount varied according to the seam thickness of the coal that is being mined. The credit was equal to $2.00 per ton for a seam thickness of 36 inches or less and $1.00 per ton for a seam thickness greater than 36 inches. For coal mined by surface mining methods, the credit was equal to $0.40 per ton of coal sold. Coalbed methane gas producers may claim a credit equal to $0.01 per million BTU’s of gas produced.

The credit could be claimed in the third taxable year following the taxable year in which the credit was earned and allowed. To the extent the credit exceeded a taxpayer’s Virginia tax liability, the taxpayer was entitled to redeem the excess credits in an amount equal to 85 percent of the face value of such excess. The remaining 15 percent was required to be deposited in a regional economic development fund administered by the Coalfield Economics Development Authority.

The Coalfield Employment Enhancement Tax Credit expired for taxable years beginning on or after January 1, 2017.

JLARC Report on the Coal-Related Tax Credits

During 2011, the Joint Legislative Audit and Review Commission (“JLARC”) reviewed the effectiveness of Virginia’s tax preferences. According to JLARC’s report, the coal credits did not appear to be effectively promoting coal production and employment in Virginia. JLARC found that Virginia coal production and employment have declined by over 50 percent since their historic highs in 1990. Both of the coal credits were enacted to slow the decline of Virginia coal employment and production, which were each predicted to decline by 28 percent between 1996 and 2005 without the credits. Despite the enactment of the Coalfield Employment Enhancement Tax Credit in 1995 and the Virginia Coal Employment and Production Incentive Tax Credit in 1999, between 1996 and 2005, Virginia’s coal production declined by 27 percent and coal employment declined by 36 percent. JLARC concluded that although the coal credits can significantly reduce tax liability for mine operators, they do not appear to be sufficient to counteract the negative impact of other factors on Virginia coal production and employment, such as the high costs of production and transportation.

Despite their potential ineffectiveness, taxpayers claimed $22.6 million in coal-related tax credits during Fiscal Year 2017. In addition to the large fiscal impact, these credits tend to be volatile, which can cause potential unexpected revenue shortfalls. For example, in Fiscal Year 2013, electricity generators claimed $59 million worth of Virginia Coal Employment and Production Incentive Tax Credits after not claiming any of this credit for several years prior. This large revenue loss was due to built-up credit carryovers that were claimed in the same year by several generators that began generating profits, and as a result, finally had sufficient tax liability to absorb the credits.

Sunset Dates for Income Tax Credits and Sales Tax Exemptions

Section 3-5.14 of the 2016-2018 Appropriation Act provides that the General Assembly may not advance the sunset date for any existing income tax credit or sales tax exemption beyond June 30, 2022. Any new income tax credit or sales tax exemption enacted by the General Assembly prior to the 2021 Session must have a sunset date not later than June 30, 2022. This requirement does not apply to sales tax exemptions related to nonprofit entities or to income tax credits or sales tax exemptions with sunset dates after June 30, 2022 that were enacted or advanced during the 2016 Session.

Proposed Legislation

This bill would reinstate the Coalfield Employment Enhancement Tax Credit for taxable years beginning on and after January 1, 2018, but before January 1, 2023. Under this bill, taxpayers would be permitted to claim the Coalfield Employment Enhancement Tax Credit for metallurgical coal mined by underground methods. Before it expired on December 31, 2016, the credit was available for all coal mined by underground methods and was not restricted to metallurgical coal. In addition, this bill would permit taxpayers to claim the Coalfield Employment Enhancement Tax Credit for any coal mined by surface methods and for the production of coalbed methane.

This bill would allow taxpayers with an economic interest in coal to redeem Virginia Coal Employment and Production Incentive Tax Credits allocated by an electricity generator that were earned on or after January 1, 2018. Credits received pursuant to an allocation on or after January 1, 2018 would be redeemable for credits earned before July 1, 2023. Under current law, taxpayers with an economic interest in coal are permitted to redeem credits allocated by an electricity generator if they were earned before July 1, 2016.

This bill would reduce the carryover period for Virginia Coal Employment and Production Incentive Tax Credits retained by electricity generators from ten to seven succeeding taxable years. This bill would also make the seven-year carryover available to taxpayers with an economic interest in coal who have been allocated credits. Under current law, the carryover is limited to credits retained by electricity generators.

This bill would limit the aggregate amount of Virginia Coal Employment and Production Incentive Tax Credits that may be allocated or claimed by electricity generators to $7.3 million per fiscal year. No electricity generator would be permitted to allocate or claim any tax credit during the relevant fiscal year until it has filed an application with the Department. The Department would then be required to determine and approve the amount of tax credits that each electricity generator may allocate or claim during the fiscal year. If applications for the relevant fiscal year exceed $7.3 million, the Department would apportion the tax credits first based on tax credits that were earned during the current taxable year by electricity generators. If such tax credits earned during the current taxable year exceed $7.3 million, the credits would be apportioned pro rata. If there is a remaining balance of tax credits after credits have been apportioned for tax credits earned during the current taxable year, such remaining balance would be apportioned pro rata based on tax credits earned in prior taxable years that are being carried forward by electricity generators.

This bill would require the Department to develop and make publically available guidelines implementing the provisions of this bill. Such guidelines would not be subject to the provisions of the Administrative Process Act (*Va. Code* § 2.2-4000 et seq.).

This effective date of this bill is not specified.

Similar Bills

House Bill 665 is identical to this bill, except that it would also continue to allow taxpayers with an economic interest in coal to use any Virginia Coal Employment and Production Incentive Tax Credits that were earned between July 1, 2016 and January 1, 2018.

cc : Secretary of Finance

Date: 02/16/2018 JJS
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