

DEPARTMENT OF TAXATION

2018 Fiscal Impact Statement

1. **Patron** Adam P. Ebbin

3. **Committee** Senate Finance

4. **Title** Commonwealth Competitiveness Fund;
Established, Tax Credits for Contributions

2. **Bill Number** SB 963

House of Origin:

 X **Introduced**

 Substitute

 Engrossed

Second House:

 In Committee

 Substitute

 Enrolled

5. **Summary/Purpose:**

This bill would create in the state treasury a special nonreverting fund to be known as the Commonwealth Competitiveness Fund. Moneys in the Fund would be required to be used exclusively for public purposes and would be subject to appropriation by the General Assembly.

This bill would allow a tax credit against the individual income tax, corporate income tax, and income tax imposed on estates and trusts to a taxpayer that makes a monetary contribution to the Commonwealth Competitiveness Fund. The amount of the credit would be equal 90 to percent of such contributions. The credit would be effective for taxable years beginning on and after January 1, 2018.

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") 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.

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

Revenue Impact

This bill would have an unknown, but potentially significant, negative General Fund revenue impact beginning in Fiscal Year 2019. It is unknown how many taxpayers would make contributions to the Commonwealth Competitiveness Fund and, thereby, qualify for and claim the credit that would be provided by this bill. Any negative revenue impact that would result from this bill would be partially offset by requiring an individual income tax addition to the extent a contribution used to claim this credit was also used to claim the federal charitable deduction. In addition, to the extent that contributions are made to the Commonwealth Competitiveness Fund, this bill would have an unknown positive revenue impact on such fund.

9. Specific agency or political subdivisions affected:

Department of Taxation
Department of Accounts

10. Technical amendment necessary: No.

11. Other comments:

Federal Charitable Contribution Deduction

For federal income tax purposes, taxpayers may claim a deduction for charitable contributions. Federal law provides that a charitable contribution deduction is allowed for charitable contributions to the United States, a U.S. state, a U.S. possession, any political subdivision of a U.S. state or U.S. possession, or the District of Columbia, but only if the contribution or gift is made for exclusively public purposes. The requirement that the contribution or gift be made exclusively public purposes is intended to ensure that a deduction is not allowed where a contribution is made for a donor to achieve a private benefit.

An issue exists as to whether the receipt of a state income tax credit may create enough of a private benefit to the donor to allow the Internal Revenue Service ("IRS") to invoke the "quid pro quo" doctrine and deny the donor a charitable contribution deduction. Under this doctrine, charitable contribution deductions are disallowed for the portion of a contribution made in consideration for goods or services provided to the donor. In an unofficial memorandum issued in 2011, the IRS has opined that the receipt of a state tax credit is not generally sufficient to result in the denial of a charitable contribution deduction. However, the memorandum states that there may be unusual circumstances in which it would be appropriate to deny such a deduction by re-characterizing a payment of cash or property that was, in form, a charitable contribution as, in substance, a satisfaction of tax liability. Because the IRS has not provided official guidance, this issue remains unresolved.

Proposed Legislation

Commonwealth Competitiveness Fund

This bill would create in the state treasury a special nonreverting fund to be known as the Commonwealth Competitiveness Fund ("the Fund"). The Fund would be established on the books of the Comptroller. All funds appropriated to the Fund and any gifts, donations, grants, bequests, and other funds received on its behalf would be required to be paid into the state treasury and credited to the Fund. Interest earned on moneys in the Fund would remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year would not be permitted to revert to the General Fund but would remain in the Fund. Moneys in the Fund would be required to be used for exclusively public purposes and would be subject to appropriation by the General Assembly.

This bill would require that ten percent of the amount in the Fund be reallocated to the at-risk add-on based on the concentration of children qualifying for the federal Free Lunch Program pursuant to the General Appropriation Act.

This bill would provide that, for purposes of the Comptroller's preliminary and final annual reports, all deposits to and disbursements from the Fund would be accounted for as part of the General Fund of the state treasury.

Commonwealth Competitiveness Tax Credit

This bill would allow a tax credit against the individual income tax, corporate income tax, and income tax imposed on estates and trusts to a taxpayer who makes a monetary contribution to the Fund. A credit would be allowed only if the monetary contribution is made for exclusively public purposes as specified for the purposes of the federal charitable contribution deduction. The amount of the credit would be equal to 90 percent of his monetary contribution. The amount of the credit would not be permitted to exceed the total amount of income tax imposed upon the taxpayer for the taxable year. Such credit would be effective for taxable years beginning on and after January 1, 2018.

This bill would require the Department to establish procedures for taxpayers to make monetary contributions to the Fund and for any taxpayer to obtain from the Department a certification for the credit. The Department would be required to certify the contribution amount eligible for credit within 45 days following the receipt of the contribution.

Virginia Individual Income Tax Addition

To the extent a Commonwealth Competitiveness Tax Credit is allowed for a monetary contribution to the Fund, this bill would require an addition to a taxpayer's federal adjusted gross income for any amount claimed by the taxpayer as a federal charitable deduction for such donation.

This bill would require the Department of Taxation to promulgate regulations to implement the provisions of this bill.

This bill would require that, if a federal agency or federal court issues a generally applicable public ruling, regulation, or court decision that is applicable to the Commonwealth Competitiveness Tax Credit and that limits the amount of a contribution allowed as a charitable contribution deduction under federal law, the amount of such credits allowed would be equal to the same amount as determined by such agency or court.

The effective date of this bill is not specified.

cc : Secretary of Finance

Date: 1/29/2018 JJS
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