

# DEPARTMENT OF TAXATION

## 2019 Fiscal Impact Statement

1. **Patron** Joseph P. McNamara

3. **Committee** House Rules

4. **Title** Advances Conformity with the Internal Revenue Code; Tax Policy Changes

2. **Bill Number** HB 1980

**House of Origin:**

  X   **Introduced**

       **Substitute**

       **Engrossed**

**Second House:**

       **In Committee**

       **Substitute**

       **Enrolled**

### 5. **Summary/Purpose:**

This bill would advance Virginia's date of conformity to the Internal Revenue Code ("IRC") from February 9, 2018 to December 31, 2018. This bill would also repeal language currently deconforming Virginia from most of the provisions of the Tax Cuts and Jobs Act ("the TCJA") and the Bipartisan Budget Act of 2018 ("the BBA") that affect Taxable Year 2018 and after. This would allow Virginia to fully conform to the TCJA.

This bill would permit taxpayers to claim first-year bonus depreciation on their Virginia income tax returns to the extent that they qualify to do so. This would reverse Virginia's long-standing policy of deconforming from first-year bonus depreciation.

This bill would increase the Virginia standard deduction from \$3,000 to \$6,000 for individuals and married taxpayers filing separately, and from \$6,000 to \$12,000 for married taxpayers filing joint returns.

The provisions of this bill regarding conformity to the IRC and bonus depreciation would be effective for taxable years beginning on and after January 1, 2018. The provisions of this bill regarding increasing the Virginia standard deduction would be effective for taxable years beginning on and after January 1, 2018, but before January 1, 2026.

**This bill contains an emergency clause** which states that it would be in force from its passage.

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

Item(s): Page 1, Revenue Estimates  
273 and 275, Department of Taxation

### 7. **Fiscal impacts are preliminary** (see Line 8.)

#### 7a. **Expenditure Impact:**

<i><b>Fiscal Year</b></i>	<i><b>Dollars</b></i>	<i><b>Positions</b></i>	<i><b>Fund</b></i>
2018-19	\$1.788 million	0	GF
2019-20	\$171,700	0	GF

**7b. Revenue Impact:**

<i><b>Fiscal Year</b></i>	<i><b>Dollars</b></i>	<i><b>Fund</b></i>
2018-19	(\$1.142 billion)	GF
2019-20	(\$1.106 billion)	GF
2020-21	(\$680.8 million)	GF
2021-22	(\$621.0 million)	GF
2022-23	(\$572.7 million)	GF
2023-24	(\$468.8 million)	GF
2024-25	(\$397.8 million)	GF

**8. Fiscal implications:**Administrative Costs

In order to implement the standard deduction and bonus depreciation changes in the middle of filing season, the Department of Taxation ("the Department") would incur costs of \$1,787,806 in Fiscal Year 2019 and \$171,700 in Fiscal Year 2020 and each fiscal year thereafter. Such funding would include the costs of adjusting returns that have already been filed to reflect the standard deduction increase, as well as the costs of processing amended returns to claim bonus depreciation. It would also include costs associated with mailing letters explaining return adjustments and hiring additional wage employees to adjust returns and respond to questions regarding return adjustments.

Revenue Impact

Doubling the standard deduction would have an estimated negative General Fund revenue impact of \$395.6 million in Fiscal Year 2019, \$776.2 million in Fiscal Year 2020, \$479.5 million in Fiscal Year 2021, \$482.0 million in Fiscal Year 2022, \$485.3 million in Fiscal Year 2023, \$487.6 million in Fiscal Year 2024, and \$488.2 million in Fiscal Year 2025. Conforming to the federal bonus depreciation provisions would have an estimated negative General Fund revenue impact of \$746.4 million in Fiscal Year 2019, \$329.6 million in Fiscal Year 2020, \$201.2 million in Fiscal Year 2021, \$139.0 million in Fiscal Year 2022, and \$87.4 million in Fiscal Year 2023, and a positive General Fund revenue impact of \$18.8 million in Fiscal Year 2024 and \$90.4 million in Fiscal Year 2025. If this bill is enacted, the budget would need to be adjusted to reduce General Fund revenues by \$1.142 billion in Fiscal Year 2019 and \$1.106 billion in Fiscal Year 2020 to account for these two provisions.

In addition, advancing the date of conformity would have an estimated positive General Fund revenue impact of \$594.2 million in Fiscal Year 2019; \$611.1 million in Fiscal Year 2020; \$653.7 million in Fiscal Year 2021; \$798.7 million in Fiscal Year 2022; \$943.2 million in Fiscal Year 2023; \$950.6 million in Fiscal Year 2024; and \$943.1 million in Fiscal Year 2025. However, no budget amendment would be necessary for this provision because the General Fund revenue impact of advancing Virginia's date of conformity is assumed in the Introduced Executive Budget.

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

Department of Taxation

**10. Technical amendment necessary:** No.

**11. Other comments:**

Virginia's Date of Conformity to the Internal Revenue Code

Virginia's date of conformity to the IRC is currently fixed to the IRC as it existed on February 9, 2018. Virginia law currently deconforms from the following IRC provisions:

- **Bonus depreciation allowed for certain assets under federal income taxation.** Taxpayers who claim bonus depreciation on their federal returns upon purchasing an asset are required to make adjustments on their Virginia returns for the taxable year in which they purchased such asset and in each subsequent year until the asset has been fully depreciated for federal and Virginia purposes.
- **The five-year carry-back of net operating losses ("NOLs") generated in certain taxable years.** Although no longer available, taxpayers who benefited from the use of a five-year carry-back on their federal returns for losses generated during 2008 and 2009 are required to make adjustments on their Virginia returns for the taxable year in which such losses were generated and in each subsequent year until all such losses have been fully utilized for both federal and Virginia purposes.
- **Tax exclusions related to cancellation of debt income.** Although no longer available, taxpayers who benefited from a deferral of income realized upon the reacquisition of certain business debt during 2009 and 2010 on their federal returns are required to make adjustments on their Virginia returns for the taxable year in which they deferred such income and in each subsequent year until such income is fully reported for both federal and Virginia purposes. However, for transactions completed on or before April 21, 2010, taxpayers were permitted to partially defer such income by reporting the income over three taxable years.
- **Tax deductions related to the application of the applicable high yield debt obligation rules.** Although no longer available, taxpayers who benefited from the suspension of the application of the applicable high yield debt obligation rules for certain debts issued between September 30, 2008 and December 31, 2009 on their federal returns, are required to make adjustments on their Virginia returns for the taxable year in which they claimed a deduction and in each subsequent year until such deductions are fully claimed for both federal and Virginia purposes.

In addition to these IRC provisions from which Virginia has historically deconformed, the General Assembly enacted legislation during the 2018 Session that deconformed Virginia from:

- The provision of the TCJA that temporarily increased the medical expenses deduction for Taxable Years 2017 and 2018; and
- All of the provisions of the TCJA and the Bipartisan Budget Act of 2018 that affect Taxable Year 2018 and after other than the provision of the TCJA providing tax relief for specified 2016 disaster areas and the provision extending combat zone benefits to members of the armed forces performing services in the Sinai Peninsula of Egypt.

### *Tax Cuts and Jobs Act*

On December 22, 2017, the TCJA was signed into law. This federal tax reform legislation substantially changes the federal income taxation of individuals and businesses. The provisions that affect individual taxpayers include, but are not limited to:

- Increasing the standard deduction amount to \$24,000 for joint filers and \$12,000 for individual filers;
- Repealing the "Pease Limitation" that reduced the otherwise allowable amount of itemized deductions by 3 percent of the amount by which federal adjusted gross income exceeded a threshold amount (up to an 80 percent reduction);
- Expanding the charitable contribution deduction by increasing the percentage limitation on the amount of cash contributions that may be made to public charities;
- Imposing a \$10,000 limitation on the state and local tax ("SALT") deduction;
- Limiting the home mortgage interest deduction to interest expenses attributable to mortgage balances no greater than \$750,000 (for mortgages incurred December 15, 2017 or later);
- Repealing the home mortgage interest deduction for all home equity loan interest expenses;
- Repealing certain miscellaneous deductions subject to 2 percent floor, such as the deduction for unreimbursed employee expenses (including travel and home office expenses) and the deduction for tax preparation fees; and
- Repealing the deduction for casualty losses other than for losses incurred in a federally-declared disaster area.

Most of the provisions of the TCJA impacting individual taxpayers are currently scheduled to sunset after December 31, 2025. Future legislation would be required to make the provisions effective beyond Taxable Year 2025.

The provisions that impact businesses include, but are not limited to:

- Expanding IRC § 179 small business expensing by raising the annual dollar limitation from \$500,000 to \$1 million of qualifying property and raising the

threshold for reducing the deduction amount from \$2 million to \$2.5 million of qualifying purchases;

- Increasing first-year bonus depreciation from 50 percent to 100 percent of the purchase price of qualified property;
- Expanding the universe of taxpayers that can use the cash method of accounting by increasing the threshold for the cash method from \$5 million in gross receipts (generally \$1 million for those businesses that are required to use the inventory method) to \$25 million;
- Imposing a 30 percent of adjusted income limit on the deduction for interest expenses for most businesses with gross receipts of over \$25 million;
- Imposing an 80 percent of taxable income limitation on the net operating loss deduction, generally repealing the ability to carry back losses, and providing the ability to indefinitely carry forward losses;
- Repealing the IRC § 199 domestic production activities deduction; and
- Eliminating the ability of taxpayers to immediately deduct certain research and experimentation expenditures and requiring them to be amortized.

Most of the provisions of the TCJA impacting business taxpayers are effective beginning in Taxable Year 2018 and are permanent. However, the provision providing 100 percent bonus depreciation is currently scheduled to sunset after Taxable Year 2022.

The TCJA makes fundamental changes to the United States' international tax structure. In general, the TCJA shifts from the prior system of worldwide taxation with deferral to a participation exemption regime with current taxation of certain foreign income.

### *Bipartisan Budget Act of 2018*

On February 9, 2018, the BBA was signed into law. In addition to providing a continuing resolution to fund the federal government, the BBA extends more than 30 tax provisions, commonly known as "extenders," which had expired at the end of 2016, so that they apply to Taxable Year 2017. The law expands the tax relief previously provided to victims of Hurricanes Harvey, Irma, and Maria so that it applies to victims of the 2017 California wildfires, clarifies the definition of "disaster areas" for Hurricanes Irma and Harvey, and makes other changes.

### First-Year Bonus Depreciation

#### *Federal Bonus Depreciation*

Federal law allows a depreciation deduction for the cost of certain business or income-producing property not held for sale with a useful life of more than one year. It is an annual deduction that is generally claimed over the useful life of property to account for its wear and tear, deterioration, and obsolescence.

In 2002, Congress enacted the Job Creation and Worker Assistance Act of 2002. This federal legislation provided that, in lieu of claiming depreciation deductions annually over the useful life of certain property, all or part of the cost of such property may be deducted in the year in which it is placed in service. The amount of the bonus depreciation

deduction was originally equal to 30 percent of the adjusted basis of a taxpayer's qualified property. Since 2002, the amount of the bonus depreciation deduction has fluctuated, but has generally been equal to 50 percent since 2008.

The TCJA increased bonus depreciation from 50 percent to 100 percent of the purchase price of qualified property. This enhancement currently applies for property placed in service between September 28, 2017 and December 31, 2022.

### *Virginia's Historic Deconformity from Bonus Depreciation*

While Virginia conforms to the federal depreciation deduction generally, it has a long-standing policy of deconforming from the federal bonus depreciation rules that allow taxpayers to accelerate when they claim their deduction. This was first set forth in Virginia's IRC conformity bill during the 2003 Session (House Bill 2455 (2003 *Acts of Assembly*, Chapter 2), and Senate Bill 1049 (2003 *Acts of Assembly*, Chapter 163)). The General Assembly has consistently maintained this deconformity provision each year when advancing Virginia's conformity to the IRC, and has updated it as necessary to add new property classifications that qualify for bonus depreciation for federal income tax purposes.

### Virginia Standard Deduction

Taxpayers that do not itemize their deductions for federal purposes are permitted to claim a standard deduction on their Virginia income tax returns. The amount of the Virginia standard deduction is \$3,000 for single individuals and \$6,000 for married persons filing jointly, and it is not currently indexed for inflation. Virginia's standard deduction amounts increased from Taxable Year 1988 to the present, as shown below:

<b>Year</b>	<b>Virginia Standard Deduction for Single Taxpayers</b>	<b>Virginia Standard Deduction for Married Persons Filing Jointly</b>
1987	\$2,000	\$2,000
1988	\$2,700	\$2,700
1989-2004	\$3,000	\$5,000
2005-present	\$3,000	\$6,000

During the 2005 Session, the General Assembly increased the standard deduction for married persons filing jointly from \$5,000 to \$6,000. This was intended to eliminate the standard deduction marriage penalty at the state level, similar to how this issue was addressed at the federal level. Since 2005, the Virginia standard deduction amounts have remained at \$3,000 for single taxpayers and \$6,000 for married taxpayers filing jointly.

Prior to 1987, the Virginia standard deduction was not a fixed amount. For example, in Taxable Year 1986, the Virginia standard deduction was 15 percent of a taxpayer's federal adjusted gross income with a \$1,300 minimum and a \$2,000 maximum.

## Virginia Individual Income Tax Rate Brackets

Under current law, the Virginia individual income tax is imposed on the following income brackets at these rates:

<b>Virginia Taxable Income</b>	<b>Virginia Tax Rates</b>
\$3,000 and less	2 percent
\$3,001 to \$5,000	3 percent
\$5,001 to \$17,000	5 percent
\$17,001 or more	5.75 percent

In 1971, when Virginia studied conforming to the federal income tax law, Virginia originally considered having on the first three tax brackets shown above. Therefore, the top marginal tax rate would have been 5 percent, applicable to Virginia taxable income of \$5,001 or more. However, by 1972, when the General Assembly voted to conform to federal income tax law, it enacted four tax brackets at the same tax rates as under current law.

The amount of Virginia taxable income subject to Virginia's top marginal tax rate was last modified during the 1987 Session, in response to the 1986 federal tax reform.

<b>Year</b>	<b>Taxable Income Subject to 5.75 percent Tax Rate</b>
1972—1986	\$12,001 or more
1987	\$14,001 or more
1988	\$15,001 or more
1989	\$16,001 or more
1990—Present	\$17,001 or more

Since 1990, the General Assembly has not enacted any legislation affecting Virginia individual income tax rates or brackets and the brackets are not currently indexed for inflation.

## Virginia Personal Exemption

Currently, a \$930 personal exemption may be claimed for each person filing a return (for married couples, each spouse is entitled to an exemption) and for each dependent. In 1971, when Virginia studied conforming to federal income tax law, Virginia's personal exemptions were originally intended to be the same as the federal personal exemptions. However, by 1972, when Virginia voted to conform to federal income tax law, Virginia's personal exemption amount was less than the federal amount because Virginia did not conform to the 1972 federal increase. Virginia's personal exemption amounts have changed over the years, as shown below:

<b>Year(s)</b>	<b>Virginia Personal Exemption</b>
1972	\$600
1973-1986	\$600
1987	\$700
1988-2005	\$800
2006-2007	\$900
2008-present	\$930

In addition to the \$930 personal exemption, an \$800 personal exemption for age or blindness may be claimed for each filer who is blind or who has attained the age of 65 before the close of the taxable year. Virginia's additional personal exemptions for age or blindness have changed over the years, as shown below:

<b>Year(s)</b>	<b>Personal Exemption for Blindness/Age</b>
1972	\$600
1973-1986	\$600 for blindness \$1,000 for age
1987	\$900
1988-present	\$800

Beginning in Taxable Year 1973, the General Assembly allowed an additional \$400 personal exemption for taxpayers who claimed the additional federal personal exemption for age. Therefore, for Taxable Years 1973 through 1986, the total Virginia additional personal exemption for age was \$1,000. There was no additional amount allowed for blindness. Thus, taxpayers who claimed the federal personal exemption for blindness were entitled to only a \$600 additional personal exemption on Virginia returns filed from 1973 through 1986.

For Taxable Years 2018 through 2025, the TCJA effectively eliminated the federal personal exemption by making the amount of the exemption equal to \$0. However, the TCJA did not remove the statutory language in the IRC granting personal exemptions. Therefore, federal law still contains a provision allowing personal exemptions, but the amount of such exemption is \$0. Because Virginia's personal exemption deduction is based on the number of personal exemptions allowable for federal income tax purposes and not on the amount of such exemptions, the TCJA has no effect on Virginia's personal exemption.

#### Proposed Legislation

This bill would advance Virginia's date of conformity to the Internal Revenue Code ("IRC") from February 9, 2018 to December 31, 2018. This bill would also repeal language currently deconforming Virginia from most of the provisions of the Tax Cuts and Jobs Act ("the TCJA") and the Bipartisan Budget Act of 2018 ("the BBA") that affect Taxable Year 2018 and after. This would allow Virginia to fully conform to the TCJA.



This bill would permit taxpayers to claim first-year bonus depreciation on their Virginia income tax returns to the extent that they qualify to do so. This would reverse Virginia's long-standing policy of deconforming from first-year bonus depreciation.

This bill would increase the Virginia standard deduction from \$3,000 to \$6,000 for individuals and married taxpayers filing separately, and from \$6,000 to \$12,000 for married taxpayers filing joint returns.

The provisions of this bill regarding conformity to the IRC and bonus depreciation would be effective for taxable years beginning on and after January 1, 2018. The provisions of this bill regarding increasing the Virginia standard deduction would be effective for taxable years beginning on and after January 1, 2018, but before January 1, 2026.

Because some taxpayers will be preparing their Virginia returns while the General Assembly is in session, this bill contains an emergency clause which states that it would be in force from its passage.

#### Similar Legislation

**House Bill 1851, House Bill 2086, House Bill 2110, House Bill 2529, House Bill 2673, House Bill 2765, Senate Bill 1211, Senate Bill 1225, Senate Bill 1443, and Senate Bill 1631** would make various, different tax policy changes.

**Senate Bill 1531** would increase the standard deduction to \$12,000 for single individuals and \$24,000 for married taxpayers filing joint returns.

**House Bill 2160** and **Senate Bill 1297** would make Virginia's EITC fully refundable.

**House Bill 1618** and **Senate Bill 1237** would allow a taxpayer to elect either to claim the Virginia standard deduction or to itemize his or her deductions, regardless of whether the taxpayer elected for the taxable year to itemize deductions on his or her federal return, for Taxable Year 2019 through Taxable Year 2025.

**House Bill 2708** would allow a taxpayer to elect either to claim the Virginia standard deduction or to itemize his or her deductions, regardless of whether the taxpayer elected for the taxable year to itemize deductions on his or her federal return, for Taxable Year 2019 and after.

**Senate Bill 1320** and **Senate Bill 1372** would advance Virginia's date of conformity to the IRC to December 31, 2018.

**House Bill 2355** would advance Virginia's date of conformity to the IRC to December 31, 2018, and would require additional revenues from the permanent individual provisions of the TCJA for Fiscal Year 2019 and Fiscal Year 2020 be transferred to a fund and refunded to taxpayers that realized a Virginia tax increase as an indirect result of the TCJA.

**Senate Bill 1739** would advance Virginia's date of conformity to the IRC to December 31, 2018, and require additional revenues from the TCJA for fiscal years beginning on and

after July 1, 2018, but before July 2, 2026 to be transferred to a fund and refunded to individual income taxpayers.

**Senate Bill 1744** would increase the standard deduction to \$4,000 for single individuals and \$8,000 for married taxpayers filing jointly for Taxable Year 2018 only, and the standard deduction would revert to its current amounts for Taxable Year 2019 and after.

cc : Secretary of Finance

Date: 1/28/2019 JLOF  
HB1980F161