

DEPARTMENT OF TAXATION

2019 Fiscal Impact Statement

1. **Patron** M. Keith Hodges

3. **Committee** House Finance

4. **Title** Individual Income Tax and Corporate Income Tax; Public Access Authority Tax Credit

2. **Bill Number** HB 2483

House of Origin:

 X **Introduced**

 Substitute

 Engrossed

Second House:

 In Committee

 Substitute

 Enrolled

5. **Summary/Purpose:**

This bill would provide an individual and corporate income tax credit in an amount equal to 40 percent of the value of a donation to a public access authority. The credit would only be available for a donation to a public access authority that, at the time of the donation, owns an aggregate of at least 200 acres of real property located on a waterfront and is available for use by the general public. No taxpayer would be permitted to claim credits, including carryover credits, of more than \$20,000 per taxable year. The credit would be subject to an annual credit cap of \$5 million per fiscal year.

This bill would be effective for taxable years beginning on or after January 1, 2019, but before January 1, 2024.

6. **Budget amendment necessary:** No.

7. **Fiscal Impact Estimates are:** Preliminary. (See Line 8.)

8. **Fiscal implications:**

Administrative Costs

Due to uncertainty about the systems and processing changes that may be required for the 2018 and 2019 income tax filing seasons, the Department is unable to assign administrative costs to this bill at this time. During 2017, Congress enacted the Tax Cuts and Jobs Act, which made substantial changes to federal tax law. At this time, it is uncertain what Virginia tax policy changes will be adopted in reaction to the federal law.

If substantial changes are enacted or required in response to state/federal law, it is possible that the Department may not have the ability to implement the changes set forth in this bill by the proposed effective date. Accordingly, the Department will reevaluate its costs once action is taken and may request additional funding or an amendment to delay the effective date of this legislation.

Revenue Impact

This bill would have an unknown negative General Fund revenue impact beginning in Fiscal Year 2020. It is unknown how many taxpayers would make donations to qualified public access authorities and claim this credit. Because this credit would be subject to an annual credit cap of \$5 million, the negative revenue impact would be limited to a maximum of \$5 million per taxable year.

9. Specific agency or political subdivisions affected:

Department of Taxation

10. Technical amendment necessary: No.

11. Other comments:

Federal Charitable Contributions Deduction

For federal income tax purposes, a taxpayer may claim a deduction for making a charitable contribution to certain qualified organizations. Such organizations include, but are not limited to, federal, state, and local governmental entities, religious organizations, and educational organizations. Taxpayers may generally deduct an amount up to 60 percent of their adjusted gross income. However, lower limitations apply to taxpayers in certain circumstances.

Virginia does not provide a separate charitable contributions deduction. However, because Virginia generally conforms to federal itemized deductions, taxpayers may claim the federal charitable contributions deduction on their Virginia income tax return to the extent they qualify for such deduction.

Proposed Regulations Regarding Certain State Credits for Charitable Contributions

Pursuant to proposed regulations published by the Internal Revenue Service ("IRS") in August 2018, individual income taxpayers who make charitable contributions that also qualify for state or local tax credits would have the value of their charitable deduction reduced by the amount of the tax credit they received or expect to receive in exchange for their charitable contribution. The proposed regulations provide a de minimis exception for tax credits that do not exceed 15 percent of the amount contributed. Business taxpayers would not be affected by this issue because a business taxpayer's charitable contributions are generally considered to be deductible business expenses.

Land Preservation Tax Credit

The Land Preservation Tax Credit is equal to 40 percent of the fair market value of land or an interest in land located in Virginia which is conveyed for the purpose of agricultural and forestal use, open space, natural resource, and/or biodiversity conservation, or land, agricultural, watershed and/or historic preservation, as an unconditional donation by the taxpayer to a public or private conservation agency.

Taxpayers may claim the credit against the individual income tax and the corporate income tax. The amount of credits that may be claimed by each taxpayer per taxable year is limited to \$20,000 for Taxable Year 2017, and \$50,000 for Taxable Year 2018 and thereafter. The credit is subject to an annual credit cap of \$75 million.

Sunset Dates for Income Tax Credits and Sales Tax Exemptions

Section 3-5.14 of the 2016 Appropriations 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 provide an individual and corporate income tax credit in an amount equal to 40 percent of the value of a donation to a public access authority. The credit would only be available for a donation to a public access authority that, at the time of the donation, owns an aggregate of at least 200 acres of real property located on a waterfront and is available for use by the general public. No taxpayer would be permitted to claim credits, including carryover credits, of more than \$20,000 per taxable year.

“Public access authority” would be defined as the Middle Peninsula Chesapeake Bay Public Access Authority, Northern Neck Chesapeake Bay Public Access Authority, and Eastern Shore Water Access Authority.

The credit would be subject to an annual credit cap of \$5 million per fiscal year. If the aggregate amount of credits approved by the Department exceed \$5 million, the Department would be required to apportion credits to taxpayers on a pro rata basis.

If the amount of credits exceeds the taxpayer’s tax liability for the taxable year, the taxpayer would be allowed to carry over the excess for credit against income taxes for the next three years or until the total amount of the tax credit has been taken, whichever occurs first.

A taxpayer who claims this credit would be prohibited from using the same donation for purposes of claiming a charitable contributions deduction for Virginia income tax purposes or the Land Preservation Tax Credit.

This bill would be effective for taxable years beginning on or after January 1, 2019, but before January 1, 2024.

cc : Secretary of Finance

Date: 1/15/2019 RWC
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