

DEPARTMENT OF TAXATION

2019 Fiscal Impact Statement

1. **Patron** L. Louise Lucas

3. **Committee** Senate Finance

4. **Title** Virginia Port Volume Increase
Tax Credit; Transferability

2. **Bill Number** SB 1652

House of Origin:

 X **Introduced**

 Substitute

 Engrossed

Second House:

 In Committee

 Substitute

 Enrolled

5. Summary/Purpose:

This bill would allow any taxpayer holding Port Volume Increase Tax Credits to transfer unused, but otherwise allowable credits, for use by another taxpayer on its Virginia income tax return.

If enacted during the 2019 Regular Session of the General Assembly, this bill would become effective July 1, 2019.

6. Budget amendment necessary: No.

7. Fiscal Impact Estimates are: Not available. (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 of Taxation ("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.

The Virginia Port Authority considers implementation of this bill as routine, and does not require additional funding.

Revenue Impact

This bill would have an unknown negative General Fund revenue impact beginning in Fiscal Year 2020. Such impact would exist to the extent that taxpayers holding Port Volume Increase Tax Credits would choose to transfer such credits to taxpayers who are able to claim them on their income tax returns. The extent to which taxpayers would choose to transfer and transferees would claim such credits is unknown.

Taxpayers may claim the Port Volume Increase Tax Credit to the extent of their Virginia income tax liability. Any excess amounts may be carried over for credit against the taxpayer's income tax liability for the next five years, or until the total amount of the credit has been claimed. This bill would not prohibit taxpayers with credit carryovers from credits that were earned in the previous five years from transferring such remaining credits to other taxpayers. In addition, any credits transferred from prior years could be claimed retroactively by transferees, to the extent they amend prior year returns to claim transferred credit amounts. However, credits could only be claimed retroactively to the extent that the amended return is within the statute of limitations. This bill would not extend the five-year carryover period for any taxpayers, including the transferees.

Therefore, the Department anticipates that there may be a larger revenue impact in Fiscal Year 2020 as a result of transfers to taxpayers that are able to immediately claim transferred carryover credits. The amount of credits granted but unclaimed for Taxable Year 2013 through Taxable Year 2017 is \$3.7 million.

The Port Volume Increase Tax Credits is subject to an annual credit cap \$3.2 million. The table below provides the amount of credits granted, claimed, and unused with respect to Taxable Year 2013 through Taxable Year 2017:

Taxable Year	Granted Amount	Total Claimed Amount	Unused Credits Remaining
2013	\$3.2 million	\$2.1 million	\$1.1 million
2014	\$3.2 million	\$2.1 million	\$1.1 million
2015	\$600,000	\$600,000	\$0
2016	\$1.5 million	\$700,000	\$800,000
2017	\$1.5 million	\$800,000	\$700,000
Total	\$10.0 million	\$6.3 million	\$3.7 million

9. Specific agency or political subdivisions affected:

Department of Taxation
Virginia Port Authority

10. Technical amendment necessary: Yes. The Department understands that the intent of this bill is to allow taxpayers to claim transferred credits retroactively on amended returns. However, the Department does not interpret this to extend the statute of limitations for filing amended returns and it is the Department's understanding that this bill does not intend to do so. To clarify this issue, the Department suggests the following amendment:

Line 97, end of line

Insert: However, nothing in this section shall be construed to extend the statute of limitations for filing an amended return under § 58.1-1823 or any other provision of law.

11. Other comments:

Port Volume Increase Tax Credit

The Port Volume Increase Tax Credit is an individual and corporate income tax credit for taxpayers engaged in manufacturing goods or the distribution of manufactured goods that use Virginia port facilities and increase port cargo volume at such facilities by five percent in a single calendar year over base year port cargo volume. The amount of the credit that may be allocated to a taxpayer is generally limited to \$250,000 for each calendar year. However, this limit may be increased on a pro rata basis to the extent that the annual credit cap is not fully allocated among qualifying taxpayers. The credit is subject to an annual credit cap of \$3.2 million. If the credit exceeds the taxpayer's tax liability for the taxable year, the excess amount may be carried forward and claimed against income taxes in the next five succeeding taxable years.

Statute of Limitations for Refunds

After a tax return is filed, both the taxpayer and the Department are authorized to review and make corrections or amendments. The taxpayer may do so by filing an amended return, while the Department may audit the return and issue an assessment for additional taxes due. The statute of limitations regarding amended returns for taxpayers seeking a refund is generally three years from the date the return is due.

Proposed Legislation

This bill would allow any taxpayer holding Port Volume Increase Tax Credits to transfer unused, but otherwise allowable credits, for use by another taxpayer on its Virginia income tax return. A taxpayer who transfers any amount of credit would be required to file a notification of such transfer with the Department in accordance with procedures and forms prescribed by the Department. The bill would permit transferred credits to be retroactively applied from the date such credits were originally issued, and the transferee would be permitted to file an amended return to claim such transferred credit for a prior taxable year.

If enacted during the 2019 Regular Session of the General Assembly, this bill would become effective July 1, 2019.

cc : Secretary of Finance

Date: 1/28/2019 JJS
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