

DEPARTMENT OF TAXATION 2019 Fiscal Impact Statement

1. **Patron** L. Louise Lucas

2. **Bill Number** SB 1652

3. **Committee** Passed House and Senate

House of Origin:

 Introduced

 Substitute

 Engrossed

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

Second House:

 In Committee

 Substitute

 X **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. Only tax credits issued in taxable years beginning on and after January 1, 2018, but before January 1, 2022, would be transferable.

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

The Department of Taxation and the Virginia Port Authority consider implementation of this bill as routine, and do 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 prohibit taxpayers with credit carryovers from credits

that were issued prior to Taxable Year 2018 or after Taxable Year 2021 from transferring such remaining credits to other taxpayers. In addition, 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.

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: No.

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. This 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. Nothing in this bill would be allowed to be construed to extend the statute of limitations for filing an amended return.

This bill would provide that no transfer of tax credits are to be allowed unless such transfer occurs within one calendar year of the credit holder earning such credit. Only tax credits issued in taxable years beginning on and after January 1, 2018, but before January 1, 2022, would be transferable.

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

cc : Secretary of Finance

Date: 2/21/2019 JJS
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