DEPARTMENT OF TAXATION
2020 Fiscal Impact Statement

1. Patron Kathy K.L. Tran

2. Bill Number HB 1219
House of Origin:
_____ **Introduced**
X **Substitute**
_____ **Engrossed**

Second House:
_____ **In Committee**
_____ **Substitute**
_____ **Enrolled**

3. Committee House Finance

4. Title Extending the Statute of Limitations for Amended Returns and Refunds

5. Summary/Purpose:

The Department of Taxation ("the Department") understands that the Patron intends on introducing a substitute. This fiscal impact statement is based on the substitute.

This bill would extend the statute of limitations from three years from the last day prescribed for the timely filing of a return to four years for the following actions:

- Filing an amended return or the payment of an assessment with respect to the individual income tax; and
- Claiming a refund with respect to an overpayment of individual income taxes.

In addition, this bill would extend the general statute of limitations for the assessment of individual income taxes from three years after the return was filed to four years.

This bill would also shorten the time period during which the Department may collect tax from seven years from the date of assessment to six years.

These changes would be effective for taxable years beginning on and after January 1, 2020. If enacted during the 2020 Regular Session of the General Assembly, this bill would become effective July 1, 2020.

6. Budget amendment necessary: No.

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

7a. Expenditure Impact:

Fiscal Year	***Dollars***	***Positions***	***Fund***
2023-24	$26,110	0	GF
2024-25	$162,321	2	GF
2025-26	$111,792	2	GF

8. Fiscal implications:

Administrative Costs

The Department would incur estimated administrative costs of $26,110 in Fiscal Year 2024, $162,321 in Fiscal Year 2025, and $111,792 in Fiscal Year 2026, plus ongoing expenses in future years. These costs would include hiring two full-time employees for compliance to handle increased amended returns and refund claims, as well as updating the agency's processing system and providing additional customer service support.

Revenue Impact

This bill would have an unknown negative General Fund revenue impact beginning in Fiscal Year 2024. It is unclear to what extent taxpayers would utilize the increased statute of limitations this bill would provide to submit amended returns and refund claims that are not currently authorized. The revenue impact would be partially offset to an unknown extent by taxpayers that pay assessments within the extended statute of limitations this bill would provide, as well as additional assessments that may be made. The negative revenue impact attributable to this bill would be increased to the extent the Department would be required to pay interest on refund claims. In addition, reducing the statute of limitations on collections from seven years to six years would have a negative revenue impact to the extent that otherwise collectible assessments would be discharged once they are six years old.

9. Specific agency or political subdivisions affected:

Department of Taxation

10. Technical amendment necessary: No.

11. Other comments:

Current Law

Amended Returns

For any of the taxes administered by the Department, the period of limitations within which a taxpayer may file an amended return with the Department is:

- Three years from the last day prescribed by law for the timely filing of the return;
- One year from the final determination of any change or correction in the liability of the taxpayer for any federal tax upon which the state tax is based, provided that the refund does not exceed the amount of the decrease in Virginia tax attributable to such federal change or correction;
- Two years from the filing of an amended Virginia return resulting in the payment of additional tax, provided that the amended return raises issues relating solely to such prior amended return and that the refund does not exceed the amount of the payment with such prior amended returns;
- Two years from the payment of an assessment, provided that the amended return raises issues relating solely to such assessment and that the refund does not exceed the amount of such payment; or

- One year from the final determination of any change or correction in the income tax of the taxpayer for any other state, provided that the refund does not exceed the amount of the decrease in Virginia tax attributable to such change or correction.

If the Department is satisfied, by evidence submitted to it or otherwise, that the tax assessed and paid upon the original return exceeds the proper amount, the Department is required to reassess the taxpayer and order that any amount excessively paid be refunded.

Refunds

In the case of any overpayment of any tax, addition to tax, interest, or penalties imposed on an individual income taxpayer, whether by reason of excessive withholding, overestimating and overpaying estimated tax, error on the part of the taxpayer, or an erroneous assessment of tax, the Department is required to provide a refund of the amount of the overpayment to the taxpayer.

For individual income taxpayers, the period of limitation within which the Department may issue a refund for overpayment, whether on discovery by the Department or on written application of the taxpayer, is within three years from the last day prescribed by law for the timely filing of the return, or within sixty days from the final determination of any change or correction in the liability of the taxpayer for any federal tax upon which the Virginia tax is based, whichever is later.

The IRS and 35 other states impose the same three-year statute of limitations on assessments as Virginia. Of the remaining states with an individual income tax, six impose a four-year statute of limitations, one imposes a five-year statute of limitations, one imposes a three-and-a-half year statute of limitations, and one state imposes a one-year statute of limitations.

Interest

Interest on omitted taxes, assessments, and refunds is generally required to be computed at the rates established for federal income tax purposes, plus 2 percent. Federal rates for the first quarter of 2020 are 5 percent for tax underpayments (assessments) and for tax overpayments (refunds) by noncorporate taxpayers. Therefore, Virginia's interest rate for underpayments and overpayments is currently 7 percent.

Assessments

The Department generally may assess taxes within three years from the due date or the date a return is filed, whichever is later. Income taxes may be assessed at any time if no return is filed, a false or fraudulent return is filed with intent to evade taxes, the taxpayer fails to report a change or correction increasing federal taxable income, or the taxpayer fails to report a change or correction decreasing the tax paid to another state for which a credit was claimed on his or her Virginia income tax return. In such cases, there is no statute of limitations. In addition, the Department may assess income taxes within six years after a return is filed, if the taxpayer knowingly failed to disclose a transaction identified by the Department as an abusive tax avoidance transaction.

The IRS and 35 other states impose the same three-year statute of limitations on assessments as Virginia. Of the remaining states with an individual income tax, seven impose a four-year statute of limitations, one imposes a five-year statute of limitations, and one imposes a three-and-a-half year statute of limitations.

Statute of Limitations on Collection Action

Until 1990, there was no limitation on the Department's ability to collect assessments. In 1990, legislation was passed that imposed a period of limitations for the Department to make or institute collection action by levy, proceeding in court, or any other means available to the Tax Commissioner under the laws of the Commonwealth to twenty years from the date of the assessment. This period of limitations was reduced to ten years in 2010 and further reduced to seven years in 2012.

In 2016, the General Assembly enacted legislation requiring the Department to cease all collection actions seven years after an assessment was made, even if the collection action had been initiated before the expiration of the seven-year period. However, collections actions pursuant to execution of liens created by a judgment lien or a memorandum of lien under *Va. Code* § 58.1-1805 were not affected. In addition, the seven-year period is suspended during periods when (i) the taxpayer's assets are in control or custody of the U.S. Bankruptcy or any other federal or state court; (ii) the taxpayer is outside the Commonwealth for six months or more; or (iii) an installment payment agreement between the taxpayer and the Department is in effect.

The majority of other states with an individual income tax impose a longer collection period than Virginia, with 21 states imposing a longer collection period than Virginia and 10 states imposing a shorter collection period. Of those states with a longer collection period, 17 states imposing a collection period of 10 years. Two other states (Ohio and Maryland) also have a seven-year collection period. Eight states have no limitation on collections.

<u>Proposed Legislation</u>

This bill would extend the statute of limitations from three years from the last day prescribed for the timely filing of a return to four years for the following actions:

- Filing an amended return or the payment of an assessment with respect to any tax administered by the Department; and
- Claiming a refund with respect to an overpayment of individual income taxes.

In addition, this bill would extend the general statute of limitations for the assessment of taxes from three years after the return was filed to four years. The statute of limitations would still be six years from the due date of the return in cases where no return is filed, and unlimited in cases of a false or fraudulent return filed with intent to evade the payment of tax.

The statute of limitations for filing amended returns, claiming a refund, and assessment would continue to be three years for all other taxes administered by the Department.

This bill would also shorten the time period during which the Department may collect tax from seven years from the date of assessment to six years.

These changes would be effective for taxable years beginning on and after January 1, 2020. If enacted during the 2020 Regular Session of the General Assembly, this bill would become effective July 1, 2020.

cc : Secretary of Finance

Date: 2/2/2020 JLOF
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