DEPARTMENT OF TAXATION
2020 Fiscal Impact Statement

1. Patron Carrie E. Coyner

2. Bill Number HB 926

House of Origin:
X Introduced
_____ Substitute
_____ Engrossed

Second House:
_____ In Committee
_____ Substitute
_____ Enrolled

3. Committee House Finance

4. Title Individual and Corporate Income Tax; Credit for Employer Contributions to Virginia College Savings Plan Accounts

5. Summary/Purpose:

This bill would provide an individual and corporate income tax credit equal to 35 percent of the expenses incurred by a business during the taxable year for contributions into a Virginia College Savings Plan account owned by a qualified employee of such business. The amount of the credit would generally be limited to $500 per qualified employee. However, the maximum credit would increase to $1,000 per employee for a contribution to an employee deemed not highly compensated. The credit would be subject to an annual credit cap of $5 million.

This bill would be effective for taxable years beginning on and after January 1, 2020, but before January 1, 2025.

6. Budget amendment necessary: Yes.
Item(s): Page 1, Revenue Estates

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

8. Fiscal implications:

Administrative Costs

The Department of Taxation ("the Department") 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 of up to $5 million annually beginning in Fiscal Year 2021. It is unclear to what extent employers would contribute to their employees' Virginia College Savings Plan accounts and claim this tax credit. However, the negative revenue impact would be limited by the $5 million annual credit cap.

9. Specific agency or political subdivisions affected:

Department of Taxation

10. Technical amendment necessary: Yes.

As currently drafted, this bill would allow a business owner to claim a tax credit for contributions to their own Virginia College Savings Plans or those of a relative employed by them. Such credit would be in addition to the income tax deduction that they or their relative may otherwise receive for 529 Plan contributions.

Virginia's Worker Training Tax Credit contains language that precludes owners and their relatives from being "qualified employees" for purposes of the credit. If the Patron would like to adopt similar language for the purposes of this credit, the Department recommends the following technical amendments:

Page 1, Line 15, after section:
Insert: *(as a new paragraph)* "Owner" means an individual who owns, directly or indirectly, more than a five percent interest in the business claiming the credit.

Page 1, Line 20, after position.
Insert: "Qualified employee" does not include an owner or relative.

Page 1, Line 23, after credit.
Insert: *(as a new paragraph)* "Relative" means spouse, child, grandchild, parent, or sibling of an owner.

11. Other comments:

<u>Virginia College Savings Plan</u>

In 1996, Congress enacted Internal Revenue Code § 529, which allowed taxpayers to set up tax-advantaged college savings plans, also referred to as qualified tuition plans or Section 529 plans. Such plans are generally exempt from federal income tax. To qualify as a Section 529 plan, the plan must be operated by a state or educational institution. The Virginia College Savings Plan is an independent agency of the Commonwealth that administers Section 529 plans. The Virginia College Savings Plan currently allows two account options for new accounts:

- *Virginia529 inVEST* is a savings plan that allows account owners to choose from a variety of investment options, including age-based evolving and non-evolving portfolios to meet a variety of investment objectives, risk tolerances, and college savings time horizons.
- *CollegeAmerica* is a savings program offered by Virginia529 in partnership with American Funds that offers a large variety of mutual fund options in building a college savings portfolio.

Because Virginia conforms to federal income tax law, Section 529 plans are also generally exempt from the Virginia income tax. Virginia law allows a subtraction for any income attributable to a distribution of benefits or a refund from a prepaid tuition contract or savings trust account with the Virginia College Savings Plan, provided that any income attributable to a refund is due to a beneficiary's death, disability, or receipt of a scholarship.

Virginia also allows an individual income tax deduction for the purchaser or contributor for the amount paid or contributed during the taxable year for a prepaid tuition contract or savings trust account entered into with the Virginia College Savings Plan. The amount deducted on any individual income tax return is generally limited to $4,000 per prepaid tuition contract or savings trust account.

<u>Tax Incentives for Employer 529 Plan Contributions in Other States</u>

Seven states (Arkansas, Colorado, Illinois, Nebraska, Nevada, Wisconsin, and Utah) offer employers a state income tax credit or deduction for contributions to employees' 529 plans.

<u>Sunset Dates for Income Tax Credits and Sales Tax Exemptions</u>

Section 3-5.14 of the Appropriation 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.

<u>Proposed Legislation</u>

This bill would provide an individual and corporate income tax credit equal to 35 percent of the expenses incurred by a business during the taxable year for contributions into a Virginia College Savings Plan account owned by a qualified employee of such business. The amount of the credit would generally be limited to $500 per qualified employee. However, the maximum credit would increase to $1,000 per employee for a contribution to an employee deemed not highly compensated.

The credit would be subject to an annual credit cap of $5 million. If applications for credits exceed $5 million for any taxable year, the credits would be allocated on a pro rata basis.

"Qualified employee" would be defined as an employee of a business eligible for this credit in a full-time position requiring a minimum of 1,680 hours in a normal fiscal year of the business's operations if the standard fringe benefits are paid by the business for the employee and the employee currently resides in Virginia. Seasonal or temporary employees would not qualify as qualified employees.

"Not highly compensated" would be defined as a qualified employee whose income is less than Virginia's median wage, as reported by the Virginia Employment Commission, in the taxable year prior to a business's applying for the credit.

The amount of the credit that may be claimed in any single taxable year would be limited to the taxpayer's income tax liability for the taxable year. If the amount of credits exceeds the taxpayer's tax liability for the taxable year in which the contributions were made, 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.

No credits would be permitted to be applied retroactively to taxable years prior to the taxable year in which the contributions were made.

Credits granted to a partnership, electing small business corporation (S corporation), or limited liability company would be required to be allocated to the individual partners, shareholders, or members, respectively, in proportion to their ownership or interest in such business entity.

This bill would require the Department, in consultation with the Virginia College Savings Plan, to develop guidelines, exempt from the Administrative Process Act, for claiming the credit. This bill would also require the Department to submit an annual report to the Chairmen of the House Finance Committee and Senate Finance and Appropriations Committee regarding the status and implementation of the credit.

This bill would be effective for taxable years beginning on and after January 1, 2020, but before January 1, 2025.

cc : Secretary of Finance

Date: 1/19/2020 JLOF
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