

DEPARTMENT OF TAXATION

2020 Fiscal Impact Statement

1. **Patron** George L. Barker

2. **Bill Number** SB 277

3. **Committee** Passed House and Senate

House of Origin:

 Introduced

 Substitute

 Engrossed

4. **Title** Individual and Corporate Income Tax;
Incentive for Commuter Benefits Provided by
an Employer

Second House:

 In Committee

 Substitute

 X **Enrolled**

5. **Summary/Purpose:**

This bill would provide an individual income tax deduction and a corporate income tax subtraction to an employer for commuter benefits it provides to an employee. This tax incentive would be limited to \$265 per employee.

This bill would be effective for taxable years beginning on and after January 1, 2021 but before January 1, 2026. However, this bill would not become effective unless reenacted by the General Assembly during the 2021 Session.

6. **Budget amendment necessary:** Yes.

Items(s): Page 1, Revenue Estimates

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

Because this bill contains a reenactment clause, it would have no General Fund revenue impact unless it is reenacted during the 2021 Session.

If it is reenacted, this bill would have an unknown negative General Fund revenue impact beginning in Fiscal Year 2022. It is unknown to what extent taxpayers will claim a deduction or subtraction for providing commuter benefits for ridesharing arrangements. The ridesharing portion of this bill would apply to any motor vehicle so long as transportation in such a vehicle is (1) incidental to the driver reaching a destination, (2) not to transport persons for profit, and (3) for the purposes of commuting to and from the employer. This portion of the bill would be significantly different and, in certain ways, broader than what qualified for purposes of the federal qualified transportation fringe benefit.

In addition, the portion of this bill providing a tax preference for public transportation benefits would have an estimated negative General Fund revenue impact of up to \$1.80 million in Fiscal Year 2022; \$1.25 million in Fiscal Year 2023; \$1.28 million in Fiscal Year 2024; \$1.31 million in Fiscal Year 2025; and \$0.64 million in Fiscal Year 2026. This estimate is based upon data regarding employers who lost the ability to deduct their qualified transportation fringe for employee mass transit benefits under the federal Tax Cuts and Jobs Act ("TCJA"). Because the tax preference provided by this bill would be limited to \$265 per employee, the actual revenue impact of this portion of the bill may be less.

9. Specific agency or political subdivisions affected:

Department of Taxation

10. Technical amendment necessary: No.

11. Other comments:

Federal Taxation of Fringe Benefits

A fringe benefit is a form of non-cash pay for the performance of services. For example, an employer provides an employee with a fringe benefit when the employee is allowed to use a business vehicle to commute to and from work. Fringe benefits are generally taxable and must be included in the employee's income unless the federal tax law specifically excludes it.

One such benefit specifically excluded under federal tax law are qualified transportation fringe benefits. An employer can generally exclude the value of qualified transportation fringe benefits that are provided to an employee from the employee's wages up a specified limit. These limits are indexed to inflation. For Taxable Year 2019, these limits were:

- \$265 per month for combined commuter highway vehicle transportation and transit passes, and
- \$265 per month for qualified parking.

For Taxable Year 2020, these limits increased to \$270 per month. If the value of a benefit for any month is more than its limit, the employer must include in the employee's wages the amount over the limit minus any amount the employee paid for the benefit.

For qualified transportation fringe benefit purposes, employees include both (1) current employees and (2) leased employees who have provided services to the employer on a substantially full-time basis for at least a year if the services are performed under your primary direction or control. However, a self-employed individual is not an employee

Federal law sets forth three types of fringe benefits that are considered "qualified transportation fringe benefits":

- A ride in a commuter highway vehicle between the employee's home and work place.
- A transit pass.
- Qualified parking.

Commuter highway vehicle

A commuter highway vehicle is any highway vehicle that seats at least 6 adults (not including the driver). In addition, the employer must reasonably expect that at least 80 percent of the vehicle mileage will be for transporting employees between their homes and workplace with employees occupying at least one-half the vehicle's seats (not including the driver's).

Transit Pass

A transit pass is any pass, token, farecard, voucher, or similar item entitling a person to ride, free of charge or at a reduced rate, on one of the following:

- On mass transit, or
- In a vehicle that seats at least 6 adults (not including the driver) if a person in the business of transporting persons for pay or hire operates it.

Mass transit may be publicly or privately operated and includes bus, rail, or ferry. The Internal Revenue Service ("IRS") provides detailed guidance regarding the use of smart cards and debit cards to provide qualified transportation fringes.

Qualified parking

Qualified parking is parking that employers provides to their employees on or near their business premises. It includes parking on or near the location from which their employees commute to work using mass transit, commuter highway vehicles, or carpools. It does not include parking at or near an employee's home.

Virginia conforms to the tax-free treatment of qualified transportation fringe benefits

Federal Tax Cuts and Jobs Act

As a general rule, an employer is allowed a deduction for all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business, including the expenses of providing transportation or commuting benefits to an employee. Beginning with Taxable Year 2018, the federal Tax Cuts and Jobs Act modified this rule by disallowing any deduction to employers to the extent that they provide their employees with qualified transportation fringe benefits ("the deduction disallowance provision"). As a result, although employers can continue to provide qualified transportation fringe benefits up to the specified limit (\$265 per month in Taxable Year 2019) and such benefits will continue to be tax-free to the employee, the TCJA does not allow the employer to claim any deduction for providing such benefits. During the 2019 Session, the General Assembly enacted legislation generally conforming to the TCJA, including the deduction disallowance provision.

Like most other individual provisions of the TCJA, the deduction disallowance provision is currently scheduled to sunset after December 31, 2025, and revert to its pre-2018 form. Future legislation would be required to make such provision effective beyond Taxable Year 2025.

Proposed Legislation

This bill would provide an individual income tax deduction and a corporate income tax subtraction to an employer for commuter benefits it provides to an employee. This would be limited to \$265 per employee. For purposes of this bill, "commuter benefits" would be defined as expenses paid for public transportation and ridesharing arrangements for the purposes of commuting to and from the employer.

"Public transportation" would be defined as passenger transportation by rubber-tired, rail, or other surface conveyance that provides shared ride services open to the general public on a regular and continuing basis. "Public transportation" would not include school buses, charter or sight-seeing services, vehicular ferry service that serves as a link in the highway network, or human service agency or other client-restricted transportation.

"Ridesharing arrangements" would be defined as the transportation of persons in a motor vehicle when such transportation is incidental to the principal purpose of the driver, which is to reach a destination and not to transport persons for profit. The term would include ridesharing arrangements known as carpools, vanpools, and bus pools, but the term would not include a "prearranged ride."

A "prearranged ride" would be defined as passenger transportation for compensation in a transportation network company ("TNC") partner vehicle arranged through a digital platform. A "prearranged ride" would include the period of time that begins when a TNC partner accepts a ride requested through a digital platform, continues while the TNC partner transports a passenger in a TNC partner vehicle, and ends when the passenger exits the TNC partner vehicle.

This bill would require the Virginia Department of Rail and Public Transportation to study the utilization and impacts of commuter tax benefit tax deductions for businesses in Virginia and report to the Chairmen of the Committees on House Finance, House Appropriations, and Senate Finance and Appropriations by December 2020. This bill would also provide that the funding for such study would be provided out of an appropriation for public transportation programs in a general appropriations act passed by the General Assembly in 2020 that becomes law.

This bill would be effective for taxable years beginning on and after January 1, 2021 but before January 1, 2026. However, this bill would not become effective unless reenacted by the General Assembly during the 2021 Session.

cc : Secretary of Finance

Date: 3/27/2020 JJS
SB277FER161