

DEPARTMENT OF TAXATION 2021 Fiscal Impact Statement

1. **Patron** Carrie E. Coyner

3. **Committee** House Finance

4. **Title** Delinquent Income Tax Returns

2. **Bill Number** HB 2059

House of Origin:

 X **Introduced**

 Substitute

 Engrossed

Second House:

 In Committee

 Substitute

 Enrolled

5. **Summary/Purpose:**

This bill would require the Department of Taxation ("the Department") to request taxpayers to file delinquent returns unless there are indications of fraud or a willful failure to file. Filed returns would be enforced pursuant to factors outlined in the bill ensuring compliance and proper administration of staffing and other resources of the Department.

This bill would require the Department to enforce its delinquency procedures with respect to income tax returns for six years unless the Collections Manager has approved enforcement for a period that is less than or in excess of six years and documented the reasons for approval. A taxpayer may voluntarily file returns for taxable years beyond the established period without the approval of the Collections Manager.

If enacted during the regular session of the 2021 General Assembly, this bill would become effective July 1, 2021.

6. **Budget amendment necessary:** No.

7. **Fiscal Impact Estimates are:** Not available. (See Line 8.)

8. **Fiscal implications:**

Administrative Costs

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

Fiscal Impact

The six-year restriction is consistent with the Department of Taxation's current audit procedures and is not expected to have an impact on revenue.

9. Specific agency or political subdivisions affected:

Department of Taxation

10. Technical amendment necessary: Yes. As currently drafted, the bill would require a formal, documented manager whenever staff intends to enforce tax liability for less than 6 years. Because this is routinely effectuated based on staff determination of liability for each taxable year, this would add unnecessary bureaucracy. The bill would also designate a collections manager to review, document and approve any deviations from the bill's 6-year enforcement mandate, but collections staff only collect assessments, they do not make decisions about enforcing tax liabilities. Therefore, the Department recommends an amendment that would resolve both issues as follows:

Page 1, Line 34, at the beginning of the line

Strike: all of Lines 34 through "Manager approval" on Line 37

Insert: manager designated by the Tax Commissioner. However, the approval of such manager

Page 1, Line 39

Strike: or shorter

11. Other comments:

Background

Although there is no limitation on the Department's authority to assess income and withholding taxes when no return is filed or fraud exists, the Department has rarely assessed more than six years unless the taxpayer has agreed to extend the period for assessment or fraud is involved.

When the Department determines that a taxpayer owes tax, penalty, and interest for any taxable year within the applicable three-year or six-year limitation period, the Department will assess the appropriate tax, penalty and interest and attempt to collect the assessment. The Department has authority to waive penalty for reasonable cause, but the Department is required to document the existence of doubtful collectability or doubtful liability before compromising a liability for tax. Interest is adjusted to reflect the amount waived or compromised.

The General Assembly has directed the Department to conduct several tax amnesty programs since 1990. As one of the conditions to the grant of amnesty, all income tax returns were required to be filed for all open taxable years without limitation. This policy applied only with respect to requests for amnesty and did not apply to audits in the normal course of business. Similar "all open taxable years" requirements are sometimes applied when taxpayers request an offer in compromise. It is possible that some automated correspondence programs also asked for more than six years of returns.

Proposal

This bill would require the Department of Taxation (“the Department”) to request taxpayers to file delinquent returns unless there are indications of fraud or a willful failure to file. Filed returns would be enforced pursuant to factors outlined in the bill ensuring compliance and proper administration of staffing and other resources of the Department.

This bill would require the Department to enforce its delinquency procedures with respect to income tax returns for six years unless the Collections Manager has approved enforcement for a period that is less than or in excess of six years and documented the reasons for approval. A taxpayer may voluntarily file returns for taxable years beyond the established period without the approval of the Collections Manager.

The ability of the Collections Manager to approve enforcement for less than six years may conflict with existing law that requires the Department to document the existence of doubtful collectability or doubtful liability before compromising a tax liability.

The Department’s collection staff are only authorized to collect assessments. They do not have the authority to enforce the filing of returns, nor do they assess tax. Therefore, the Collections Manager may not be the most appropriate person to review and approve deviations from the six-year limitation period.

The Department would be required to develop guidelines for the enforcement procedures. The guidelines would be exempt from the Administrative Process Act.

If enacted during the regular session of the 2021 General Assembly, this bill would become effective July 1, 2021.

cc : Secretary of Finance

Date: 1/18/2021 JPJ
HB2059F161