

# DEPARTMENT OF TAXATION

## 2023 Fiscal Impact Statement

1. **Patron** Carrie E. Coyner

3. **Committee** Passed by the House and Senate

4. **Title** Advisory Tax Administration Commission;  
established; executive summary

2. **Bill Number** HB 1368

**House of Origin:**

           **Introduced**

           **Substitute**

           **Engrossed**

**Second House:**

           **In Committee**

           **Substitute**

      x       **Enrolled**

### 5. **Summary/Purpose:**

This bill would require the Department of Taxation (“the Department”) to convene a work group to study the Department’s current policies and procedures in order to determine options for a mechanism for tax practitioners to provide feedback to the Department on an ongoing basis. Among such options, the work group would be required to consider the scope, feasibility, and function of an ongoing commission or similar structure to provide feedback to the Department.

The work group would be required to include members selected by the Tax Section of the Virginia State Bar Association, the Virginia Society of Certified Public Accounts, and the Virginia Society of Enrolled Agents, and would also be permitted to include members selected by the Commissioners of the Revenue Association of Virginia and representatives from the Low Income Taxpayer Clinics Program. The Division of Legislative Services would be required to provide legal, research, policy analysis, and other services as requested by the work group.

The work group would be required to complete its meetings by November 1, 2023, and the Department would be required to submit a report of its findings and recommendations to the Chairmen of the House Committee on Finance, the House Committee on Appropriations and the Senate Committee on Finance and Appropriations by December 1, 2023.

If enacted during the 2023 Regular Session of the General Assembly, this bill would become effective July 1, 2023.

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

7. **No Fiscal Impact.** (See Line 8.)

## **8. Fiscal implications:**

### Administrative Costs

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

### Revenue Impact

This bill would have no impact on state revenue.

## **9. Specific agency or political subdivisions affected:**

Department of Taxation  
Division of Legislative Services

## **10. Technical amendment necessary: No.**

## **11. Other comments:**

### Current Law

Under current law, the Department of Taxation is responsible for the promulgation of rules, regulations, rulings, and guidelines regarding taxes that it administers. In promulgating regulations, the Tax Commissioner is required to follow the applicable provisions of the Administrative Process Act ("APA"), except that notice of a proposed regulation shall appear at least sixty days in advance of the date prescribed for submittals. The Tax Commissioner may prescribe the extent, if any, to which any ruling or regulation shall be applied without retroactive effect.

Although guidelines and other guidance documents are generally exempt from the APA, the Department, like other state agencies, is required to post guidance documents on the Virginia Regulatory Town Hall website after publication in the Virginia Register of Regulations for a 30-day public comment period. In addition, the Department routinely solicits input from interested parties prior to the development of guidelines. Representatives of the tax practitioner community and affected industries generally participate in the Department's guideline process.

Under the APA, guidance documents do not include agency rulings and advisory opinions, forms and instructions, bulletins and legislative summaries, or studies and reports. Similarly, the assessment of taxes or penalties and other rulings in individual cases in connection with the administration of tax laws are exempt from the APA. However, such documents are generally published on the Department's website, even where not specifically required by law. The Department is specifically required by law to publish the following documents:

- Regulations finally adopted by the Tax Commissioner;
- Orders of the Tax Commissioner;
- Final orders entered by a Circuit Court under *Va. Code* §§ 58.1-1826 or 58.1-1827 and any written opinion or memorandum of the court; and

- Tax bulletins, guidelines, and any written ruling or other interpretation of Virginia law which the Tax Commissioner believes may be of interest to taxpayers and practitioners.

Under current law, documents are deemed published if they are compiled at regular intervals and published on the Department's website as deemed necessary to inform taxpayers and practitioners. Since confidential taxpayer information is protected from disclosure under *Va. Code* § 58.1-3, identifying taxpayer information must be redacted from all published documents, and the Department is not authorized to share such details with external third parties except in cases where a specific statutory exception applies.

### Proposed Legislation

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cc : Secretary of Finance

Date: 2/24/2023 ADD  
HB1368FER161