

DEPARTMENT OF TAXATION

2024 Fiscal Impact Statement

1. **Patron** Alfonso H. Lopez
3. **Committee** Senate Finance and Appropriations
4. **Title** Income Tax Credit; Historic Rehabilitation Tax Credit

2. **Bill Number** HB 960
- House of Origin:**
 Introduced
 Substitute
 Engrossed
- Second House:**
 X **In Committee**
 Substitute
 Enrolled

5. **Summary/Purpose:**

This bill would increase the maximum amount of the Historic Rehabilitation Tax Credit that a taxpayer may claim per taxable year from \$5 million to \$10 million.

Beginning on and after July 1, 2024, the aggregate amount of credits that may be claimed by all taxpayers would not exceed \$75 million per fiscal year. If the total credits claimed exceeds this limit, tax credits would be allocated to taxpayers on a pro rata basis. The bill does not specify which agency would be responsible for administering the aggregate annual credit cap.

This bill would be effective for taxable years beginning on and after January 1, 2024.

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

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

8. **Fiscal implications:**

Administrative Costs

Assuming that the Department of Taxation (“the Department”) would be responsible for administering the \$75 million aggregate credit cap and that the technical amendments on Line 10 are adopted, the Department would incur administrative costs of \$755,390 in Fiscal Year 2025 and \$69,640 per fiscal year for each year thereafter. The initial cost would be incurred for purposes of programming and updating the Department’s systems to implement the new credit cap. The \$69,640 cost per fiscal year beginning with Fiscal Year 2026 would be incurred for purposes of monitoring and managing the above-mentioned system. Such costs rely on the assumption that the Department would implement the proposed cap in a similar manner to other capped tax credits and would not impose the cap after tax credits had been claimed on a tax return. Technical amendments are suggested on Line 10 to address this.

If the Department’s technical amendments on Line 10 are not adopted, the Department’s administrative costs to implement the bill are unknown, but it is anticipated that the costs would be higher than the costs described in the above paragraph. This is because the bill would not allow the Department to limit the revenue impact of credits through a front-end pre-return filing

process. Instead, the Department would have to wait for taxpayers to file their returns. If the revenue impact cap of the credit is reached and credits taken are prorated, this will only be discovered after taxpayers have filed their returns and claimed the full credit amount. As a result, taxpayers would be required to file amended returns to pay additional tax and interest, or the Department would have to send out assessments to each such taxpayer, again to pay additional tax and interest. The administrative cost of processing such amended returns and/or sending out assessment letters is unknown as it is unknown how many amended returns and/or assessments would be required as a result of prorated tax credits.

The Department of Historic Resources (“DHR”) indicates that it would be unable to administer a capped credit and, therefore, assumes that the Department of Taxation would be responsible for administering the cap component of the credit program. Therefore, DHR considers implementation of this bill as routine and does not require additional funding.

Revenue Impact

This bill would result in an unknown General Fund revenue impact beginning in Fiscal Year 2025.

Based on data from prior years, increasing the maximum amount of credit that a taxpayer could claim from \$5 million to \$10 million per taxable year could have an impact ranging from approximately \$5 million to \$15 million annually. However, the number of taxpayers impacted by the current \$5 million per taxpayer cap may vary each year, and it is uncertain to what extent taxpayers would have enough available credits or carryover credits from a previous year to claim credits in excess of \$5 million per taxpayer cap.

Because this bill would impose an aggregate cap of \$75 million per fiscal year, it would limit the extent to which the increase in the annual per taxpayer cap would impact state revenues. If the Department of Taxation’s technical amendments on Line 10 are adopted, the overall impact of the tax credit program after the changes proposed by this bill would not exceed \$75 million annually.

The number of taxpayers claiming this tax credit and the aggregate amount that they claimed in prior years is shown below:

Historic Rehabilitation Tax Credit Amount claimed by Fiscal Year		
Fiscal Year	Number of Returns	Amount Claimed
2016	1,095	98,069,652
2017	899	87,762,096
2018	729	69,963,347
2019	811	76,560,799
2020	723	69,046,958
2021	648	92,599,007
2022	536	52,718,434
2023 (p)	569	65,061,847

Please note that the information for Fiscal Year 2023 is preliminary.

If the Department of Taxation's technical amendments on Line 10 are not adopted, the Department would be unable to limit the revenue impact of this credit through a front-end process. As a result, it is possible that the revenue impact of the credit could exceed the \$75 million revenue cap for a given fiscal year, and the Department would have to recover such revenue losses in a subsequent fiscal year either by requiring taxpayers to file amended returns or sending them assessment letters.

9. Specific agency or political subdivisions affected:

Department of Taxation
Department of Historic Resources

10. Technical amendment necessary: Yes.

The Department understands that the intent of the bill is that the Historic Rehabilitation Tax Credit would be capped like similar tax credit programs such as the Land Preservation Tax Credit. Under such tax credit programs, there is an application that must be filed before a return claiming the credit is filed. When the Department receives the applications, it determines how much of the credit is available based upon how the total amount of tax credits applied for, and it awards each taxpayer a specified tax credit amount. The taxpayer then proceeds to claim the specified amount of credit awarded to them on their return. After filing the return, the Department verifies that the amount of credit it awarded to the taxpayer matches the amount of credit claimed by such taxpayer.

The engrossed bill, as currently drafted, imposes the cap on "claimed" credits rather than "awarded" or "issued" credits. This would require proration, if necessary, after credits are claimed on returns in excess of the established limit. Conducting proration after processing all taxpayer returns claiming the credit poses administrative challenges, as it requires additional subsequent follow-up processes such as requiring taxpayers to file amended returns or sending taxpayers assessment letters which could result in penalties or interest for underpayment of tax. Therefore, the Department recommends technical amendment as follows to allow this credit to work like similar capped credits:

Line 23 after "tax liability for such taxable year"

Strike: or may not be claimed in such taxable year pursuant to subdivision B 3

Line 25 before "may be carried"

Strike: or may not be claimed pursuant to subdivision B 3,

Line 50 after "the aggregate amount of credits that may be"

Strike: claimed by all taxpayers

Insert: awarded

Line 52 before "exceeds"

Strike: claimed

Insert: applied for

11. Other comments:

Virginia Historic Rehabilitation Tax Credit

Under Virginia law, a taxpayer with eligible expenses in the rehabilitation of a certified historic structure is entitled to claim a nonrefundable tax credit. The credit is equal to 25 percent of rehabilitation expenses for projects completed in 2000 and thereafter. To qualify for the tax credit, the cost of the rehabilitation must equal to at least 50 percent (or 25 percent if the building is owner occupied) of the assessed value of the building for local real estate tax purposes prior to the rehabilitation. The rehabilitation work must be certified by the Department of Historic Resources ("DHR") and be consistent with the Secretary of the Interior's standards for rehabilitation. The allowable tax credit may not exceed a taxpayer's tax liability. Any unused credits may be carried forward for up to ten years. Currently, there is no per project limitation or state-wide annual cap on the amount of tax credits that may be issued or claimed.

As originally enacted during the 1996 Session, the credit could only be claimed against individual, fiduciary, and corporate income taxes. During the 1998 Session, legislation was enacted to expand the credit to apply against the bank franchise tax, the insurance premium license tax, and the tax on public service corporations.

During the 2017 Session, the General Assembly enacted legislation that limited the amount of the Historic Rehabilitation Tax Credit that may be claimed by each taxpayer to \$5 million, including any amounts carried over from prior taxable years. This limitation was permanently extended during the 2019 Session.

Proposed Legislation

This bill would increase the maximum amount of the Historic Rehabilitation Tax Credit that a taxpayer may claim per taxable year from \$5 million to \$10 million.

Beginning on and after July 1, 2024, the aggregate amount of credits that may be claimed by all taxpayers would not exceed \$75 million per fiscal year; if the total credits claimed surpass this limit, tax credits would be allocated to taxpayers on a pro rata basis.

The bill does not specify which agency would be responsible for administering the aggregate annual credit cap. If the Department of Taxation is responsible for administering this aspect of the tax credit program, taxpayers would be required to undergo two separate application processes – one with the Department of Historic Resources to certify project expenses and one with the Department of Taxation to indicate the amount of credit issued to each taxpayer.

However, without the amendments proposed on Line 10, the Department would not know if proration of tax credits would be necessary, and if so, to what extent, until the end of the tax filing season after all returns claiming such tax credit have been filed. Because tax credits are claimed against taxpayer's Virginia income tax liability, any proration would increase taxpayers' tax liability. As a result of this change in income tax liability, taxpayers who claim a tax credit that is later prorated would have to file amended returns to correct their Virginia tax liability, or the Department would have to send out an assessment to each such taxpayer for underpayment of income tax.

This bill would be effective for taxable years beginning on and after January 1, 2024.

Similar Legislation

SB 556 is substantially similar to this bill; however, it does not include the \$75 million aggregate tax credit cap, and it would be effective for taxable years beginning on and after January 1, 2025.

cc : Secretary of Finance

Date: 2/21/2024 SJH
HB960FE161