DEPARTMENT OF TAXATION
2003 Fiscal Impact Statement

1. Patron Phillips (By Request)

2. Bill Number HB 2161

House of Origin:
X **Introduced**
_____ **Substitute**
_____ **Engrossed**

Second House:
_____ **In Committee**
_____ **Substitute**
_____ **Enrolled**

3. Committee House Appropriations

4. Title Claims Bill for Rocky McCowan, Michael and Patricia Owens, Jimmy L. Lee, Roger S. Farmer, and Robert A. Hicks

5. Summary/Purpose:

This bill would provide Rocky McCowan, Michael Owens, Steve Farmer, James Lee, and Robert Hicks (the "Taxpayers") with refunds for Virginia individual income taxes paid for the 1992 through 1996 taxable years that are otherwise barred by the statute of limitations.

The effective date of this bill is not specified.

6. Fiscal Impact Estimates are:

6b. Revenue Impact:

Fiscal Year	Dollars	Fund
2002-03	<$177,541>	GF
2003-04	$0	GF
2004-05	$0	GF

7. Budget amendment necessary: No.

8. Fiscal implications:

The Department would incur minimal administrative costs to implement this bill.

This bill would reduce General Fund revenue by $177,541 in Fiscal Year 2003. While some amended returns were filed by the Taxpayers, the Department's records show that not all of the Taxpayers filed amended returns for all of the taxable years at issue. Consequently, the Department is unable to verify the accuracy of these claims.

9. Specific agency or political subdivisions affected:

Department of Taxation

10. Technical amendment necessary: None.

11. Other comments:

Statues of limitations are a set period in time in which an action must be started. Traditionally, such limitations are considered to promote fairness and efficiency in the administration of law. Under Virginia law, an individual may file an amended return for claiming a refund within the later of: (1) three years from the due date or extended due date of such return; (2) one year from a final determination of a change in tax liability by the Internal Revenue Service; (3) two years from the date an amended return resulting in additional tax was filed (such an amended return may only address issues relating to the prior amended return); or (4) two years from the payment of an assessment (such an amended return may only address issues relating to the assessment). Based on the provisions in the bill, the Department does not have the authority to allow the out-of-state tax credit on any of the Taxpayers' returns for 1992 through 1996 taxable years.

According to the bill, the Taxpayers are Virginia residents who were shareholders in an S corporation that operated in Kentucky. The Taxpayers reported income from the S corporation on their Virginia individual income tax returns for the 1992 through 1996 taxable years. The bill indicates that, as a result of a tax audit, Kentucky issued individual income tax assessments against the Taxpayers in the following amounts:

	Rocky McCowan	Michael Owens	James Lee	Steve Farmer	Robert Hicks
1992				$64,314.00	$34,428.00
1993				$23,560.00	$14,560.00
1994	$394.00	$1,719.00		$3,041.00	$3,487.00
1995	$5,753.00	$4,865.00		$5,852.00	$8,168.00
1996	$1,030.00	$1,406.00	$2,560.00	$1,032.00	$1,372.00
Total	$7,177.00	$7,990.00	$2,560.00	$97,799.00	$62,015.00

Kentucky imposes a tax on the income of resident individuals, and the proportion of nonresident income reasonably attributable to property owned and business done in the state. The Kentucky individual income tax is a graduated tax on net income. The net income of individuals is taxed at 2% from $0 to $3,000, 3% from $3,000.01 to $4,000, 4% from $4,000.01 to $5,000, 5% from $5,000.01 to $8,000, and 6% of net income exceeding $8,000.

Virginia provides an income tax credit to Virginia residents for tax paid to another state on earned or business income subject to taxation in both states. The amount of the out-of-state tax credit is limited to the lesser of: (1) the tax actually paid to another state on non-Virginia source income; or (2) an amount equivalent to the portion of the Virginia income tax liability attributable to the proportion of income taxable in such other state to Virginia taxable income.

Because Kentucky's highest income tax bracket has a higher tax rate and lower threshold, a Virginia resident would most often be limited to an out-of-state tax credit that is less than the amount of income tax paid to Kentucky. As such, it is likely the actual amounts of credit available to the Taxpayers would be less than the amounts included in this bill. In addition, because the Taxpayers did not file all of the amended returns for the 1992 through 1996 taxable years, the accuracy of this claim cannot be verified.

cc : Secretary of Finance

Date: 01/15/03 DTM
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