

**DEPARTMENT OF TAXATION  
2009 Fiscal Impact Statement**

1. **Patron** Charles J. Colgan

3. **Committee** Senate Finance

4. **Title** Virginia Tax Amnesty Program

2. **Bill Number** SB 1120

**House of Origin:**

  X   **Introduced**

       **Substitute**

       **Engrossed**

**Second House:**

       **In Committee**

       **Substitute**

       **Enrolled**

**5. Summary/Purpose:**

This bill would authorize the Tax Commissioner to administer an amnesty program for a period ranging between 60 and 75 days during Fiscal Year 2010. All penalties and 50 percent of the interest would be waived upon payment of the taxpayer's remaining balance. At the conclusion of the amnesty period, any remaining amnesty-qualified liabilities would be assessed an additional 20 percent penalty.

The effective date of this bill is not specified.

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

**6a. Expenditure Impact:**

<i><b>Fiscal Year</b></i>	<i><b>Dollars</b></i>	<i><b>Fund</b></i>
2008-09	\$0	GF
2009-10	\$6,951,928	GF
2010-11	\$0	GF
2011-12	\$0	GF
2012-13	\$0	GF
2013-14	\$0	GF
2014-15	\$0	GF

**6b. Revenue Impact:**

<i><b>Fiscal Year</b></i>	<i><b>Dollars</b></i>	<i><b>Fund</b></i>
2008-09	\$0	GF
2009-10	\$43,295,033	GF
	\$1,468,789	TTF
	\$2,937,577	Local
	\$112,857	NGF
2010-11	\$0	GF
2011-12	\$0	GF
2012-13	\$0	GF
2013-14	\$0	GF
2014-15	\$0	GF

**7. Budget amendment necessary:** Yes. (See Line 8.)

Page 1, Revenue Estimates

ITEM: 270 Department of Taxation

Insert: I. Upon request of the Secretary of Finance, the State Comptroller shall grant the Department of Taxation a Treasury Loan for the planning and implementation of the Virginia Tax Amnesty Program, estimated to be \$6,951,928. Repayment of this loan will be from the gross revenues generated by the Amnesty Program.

**8. Fiscal implications:**

Administrative Costs

In order to implement this bill, TAX would incur total administrative costs of \$6,951,928. These costs include both the amount TAX would directly incur as well as the amount to outsource some functions. These amounts include systems changes, costs for telephone support services, marketing, and post-amnesty reconciliation functions.

These administrative costs assume that TAX will outsource some functions during the implementation of the amnesty program. If TAX is not able to outsource some of these functions, it is possible that the amnesty program would not be able to be implemented before the end of Fiscal Year 2010, thus pushing any revenue gains into the next biennium.

In addition, this administrative cost estimate assumes that TAX will be exempt from the Virginia Information Technology Agency's ("VITA") Project Management and Procurement Oversight. If TAX is not exempted, the costs would increase because of VITA-required external oversight for major projects and VITA's own project management division's fees. TAX has previously implemented two successful amnesty programs.

Revenue Impact

TAX anticipates that this amnesty program could produce approximately \$47,814,256 in revenue in Fiscal Year 2010. Of the \$47,814,256, approximately \$43,295,033 would be General Fund revenue, \$1,468,789 would be Transportation Trust Fund revenue, \$2,937,577 would be local revenue, and \$112,857 would be Non-General Fund revenue.

When administrative costs of \$6,951,928 are subtracted from the revenue estimate of \$47,814,256, the net revenue collected during the amnesty program is estimated to be \$40,862,328.

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

Department of Taxation

## 10. Technical amendment necessary: Yes.

TAX's administrative cost estimate assumes that the implementation of the tax amnesty program would be exempt from VITA's project management. In order to clarify that TAX's implementation of this bill would be exempt from VITA's project management process, the following technical amendment is suggested:

Page 1, Line 58, after Amnesty Program.

Insert: G. For the purpose of implementing the tax amnesty program, the Department is exempt from § 2.2-2015, and §§ 2.2-2018 through 2.2-2021 pertaining to the Virginia Information Technology Agency's Project Management and Procurement Oversight.

## 11. Other comments:

### 1990 Virginia Tax Amnesty Program

In 1990, Virginia held its first tax amnesty program. The amnesty program began February 1, 1990, and ended March 31, 1990. With certain exceptions, any taxpayer required to file a return or pay any tax administered or collected by TAX was eligible to participate in the program. Under the terms of this program, all civil and criminal penalties for the nonpayment, underpayment, non-reporting or under-reporting of tax liabilities were waived upon the full payment of the taxpayer's remaining balance. TAX collected \$32.2 million in amnesty revenue and over 27,000 delinquent taxpayers participated in the program. Direct program expenditures by TAX were \$1.3 million.

The following table shows the participant and payment information by business and individual taxpayers:

	<b>Business</b>	<b>Individual</b>	<b>Total</b>
<b>Percent of Amnesty Requests Filed</b>	34%	66%	100%
<b>Percent of Amnesty Revenue Collected</b>	45%	55%	100%
<b>Average Amnesty Payment</b>	\$1,495	\$938	\$1,125

The penalties for failure to file individual and corporate income tax returns were changed from a total penalty of 10 percent to a penalty of 5 percent for each month that the return had not been filed up to a total cumulative penalty of 25 percent after the amnesty program. In 1991, the rate was increased to its current rate of 6 percent each month for a total cumulative penalty of 30 percent.

### 2003 Virginia Tax Amnesty Program

In 2003, Virginia held its second tax amnesty program. The amnesty program began September 2, 2003, and ended November 3, 2003. With certain exceptions, any taxpayer who had an outstanding assessment with TAX or had not filed a return for any tax administered by TAX was eligible to apply for amnesty. TAX waived all penalties and 50 percent of the interest on full payment of the taxpayer's remaining balance. TAX collected \$94.9 million in amnesty revenue. Over 95,000 delinquent taxpayers participated in the program; and the implementation cost \$7,065,080.

The following table shows the participant and payment information by business and individual taxpayers:

	<b>Business</b>	<b>Individual</b>	<b>Total</b>
<b>Percent of Amnesty Participants</b>	26%	74%	100%
<b>Percent of Amnesty Revenue Collected</b>	54.5%	45.5%	100%
<b>Average Amnesty Payment</b>	\$2,088	\$613	\$996

A new 20 percent penalty was applied to the unpaid tax of any balance when a taxpayer who was eligible to participate in the amnesty program elected not to do so.

### Proposal

This bill would authorize the Tax Commissioner to administer an amnesty program for a period ranging between 60 and 75 days during Fiscal Year 2010. All penalties and 50 percent of the interest would be waived upon payment of the remaining balance.

With certain exceptions, any taxpayer who currently has an outstanding assessment, or has not filed a return for any tax administered by TAX, may apply for amnesty.

The following taxpayers would not be eligible to participate in the tax amnesty program:

- any taxpayer currently under investigation or prosecution for filing a fraudulent return or failing to file a return with the intent to evade tax;
- any taxpayer with an assessment date or due date for an unfiled return less than 90 days prior to the first day of the amnesty program; or
- any taxpayer with an individual, fiduciary or corporate income tax liability for Taxable Year 2008 or after.

The Tax Commissioner would establish the guidelines and rules for the procedures regarding participation, as well as any other rules that are deemed necessary by the Tax Commissioner. The guidelines and rules would be exempt from the Administrative Process Act.

At the conclusion of the amnesty period, any remaining amnesty-qualified liabilities would be assessed a 20 percent penalty. This penalty would be in addition to all other penalties, including the 6 percent per month late payment penalty, with a maximum of 30 percent, and the 20 percent penalty assessed after the 2003 amnesty program, if applicable. Therefore, if an amnesty eligible taxpayer failed to participate in the 2003 amnesty program and fails to come forward during this amnesty, such taxpayer would be facing penalties of 70 percent in the future.

### State Comparison

Forty-one states, not including Virginia, implemented tax amnesty programs prior to 2008. Out of these states, six also implemented or plan to implement a tax amnesty program in 2008 or 2009. Each program varies in terms of who qualifies, the relief offered, and the

penalty imposed on taxpayers who do not participate. Actual or estimated revenue gains are provided when available.

Each of the six states is detailed in the attached chart.

cc : Secretary of Finance

Date: 2/2/2009 JKL  
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State	Dates of Amnesty Program		Scope	Known Taxpayers Eligible	Incentives		Punishment for Not Participating	Expected/ Actual Revenue
	Start Date	End Date			Penalty	Interest		
<b>Alabama</b>	02/01/09	05/15/09	All Taxes	No	Waive			Unknown
<b>Connecticut</b>	05/01/09	06/25/09	All Taxes	No	Waive	Reduce		\$40 million
<b>Illinois</b>	02/01/08	03/17/08	Corporate Franchise Tax	Yes	Waive	Waive	Interest Rate Doubled	\$20 million
<b>Massachusetts</b>	Not Set	Not Set	All Taxes	Yes	Waive			\$20 million
<b>Nevada</b>	07/01/08	9/31/08	All Taxes	No	Waive	Waive		\$41 million
<b>Oklahoma</b>	09/15/08	11/14/08	Sales Tax, Business Tax and Business License Fees	Yes	Waive	Waive	Penalty Equal to Delinquent Amount	\$82 million