

DEPARTMENT OF TAXATION

2010 Fiscal Impact Statement

1. **Patron** Mark L. Keam

3. **Committee** House Finance

4. **Title** Individual and Corporate Income Tax: Credit
for Telework Expenses

2. **Bill Number** HB 1360

House of Origin:

 X **Introduced**

 Substitute

 Engrossed

Second House:

 In Committee

 Substitute

 Enrolled

5. **Summary/Purpose:**

This bill would create an individual and corporate income tax credit for employers who incur eligible telework expenses. The credit would equal 75 percent of the qualified expenses if the business was located in a nonattainment area under the federal Clean Air Act and the participating employees teleworked at least twelve days per month. If the business was not located in such an area and the participating employees teleworked at least twelve days per month, the credit would be equal to 50 percent of the qualified expenses. Regardless of the area, if the employee teleworked at least five days a month but less than twelve, the credit would be equal to 25 percent of the qualified expenses. The maximum amount of expenses that could be used in determining the amount of the credit would be \$1,200 per employee.

The amount of the credit shall not exceed the tax liability of the taxpayer. To be eligible for the credit, the employer would not be allowed to deduct the qualified expenses in any taxable year. The taxpayer would also not be eligible for this tax credit if any other income tax credit was also claimed.

The effective date of this bill would be for taxable years beginning on and after January 1, 2011 but before January 1, 2013. However, taxpayers would be required to apply for the credits between September 1 and October 31 of the year preceding the taxable year for which the tax credit is to be earned.

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

7. **Budget amendment necessary:** No.

8. Fiscal implications:

Administrative Costs

TAX has not assigned any administrative costs to this bill because the changes required by a single bill such as this can be implemented as part of the annual changes to our systems and forms. As stand-alone legislation, TAX considers implementation of this bill as "routine," and does not require additional funding.

TAX will provide specific administrative costs on any legislation that is not "routine." Additionally, TAX will review all state tax legislation likely to be enacted prior to the passage by each house. If the aggregate number of routine bills likely to pass either house is unusually large, it is possible that additional resources will be required. If so, TAX will identify the costs at that time.

Revenue Impact

This bill would produce an unknown revenue loss in both Fiscal Year 2012 and Fiscal Year 2013. It is estimated that employers will incur eligible expenses for almost 9,000 teleworking employees per year.

Assuming all 9,000 employees were in nonattainment areas and teleworked at least 12 days per month, TAX estimates the credit would reduce General Fund revenue by approximately \$7.9 million. Assuming all 9,000 employees were not in nonattainment areas and teleworked at least 5 days per month, but less than 12 days per month, TAX estimates the credit would reduce General Fund revenue by approximately \$2.6 million. Therefore, in Fiscal Years 2012 and 2013, the revenue loss would be between \$2.6 million and \$7.9 million each year.

9. Specific agency or political subdivisions affected:

Department of Taxation

10. Technical amendment necessary: No.

11. Other comments:

Current Law

Under federal law, ordinary and necessary business expenses may be deducted. An "ordinary expense" is one that is common and accepted in the trade or business. A "necessary expense" is one that is helpful and appropriate for the trade or business. An expense does not have to be indispensable to be considered necessary. Any such deduction for federal income tax purposes would also flow through to the Virginia income tax return. To the extent that telework expenses or telework assessment expenses would qualify as ordinary and necessary expenses for federal income tax purposes, such expenses would flow through on the Virginia income tax return.

Proposal

This bill would create an individual and corporate income tax credit for employers who incur eligible telework expenses. The credit would equal 75 percent of the qualified expenses if the business was located in a nonattainment area under the federal Clean Air Act and the participating employees teleworked at least twelve days per month. If the business was not located in such an area and the participating employees teleworked at least twelve days per month, the credit would be equal to 50 percent of the qualified expenses. Regardless of the area, if the employee teleworked at least five days a month but less than twelve, the credit would be equal to 25 percent of the qualified expenses. The maximum amount of expenses that could be used in determining the amount of the credit would be \$1,200 per employee.

As of November 13, 2009, the following areas have been designated nonattainment under the Clean Air Act:

- Counties of: Arlington, Fairfax, Loudon, and Prince William
- Cities of: Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park

The amount of the credit would not be allowed to exceed the tax liability of the taxpayer. To be eligible for the credit, the employer would not be allowed to deduct the qualified expenses in any taxable year. The taxpayer would also not be eligible for this tax credit if any other income tax credit was also claimed.

Taxpayers would be required to apply to TAX for an allocation of the credit. The application would be required to be filed between September 1 and October 31 of the year preceding the taxable year for which the tax credit was to be earned. TAX would be required to provide tentative approval by December 31. If the applications for the credit exceeded the cap, the credits would be allocated to employers on a pro rata basis.

TAX would be required to promulgate rules and forms regarding standards for eligibility and the process of applications.

The effective date of this bill would be for taxable years beginning on and after January 1, 2011 but before January 1, 2013. However, taxpayers would be required to apply for the credits beginning on September 1, 2010.

Similar Bills

House Bill 47 is similar to this bill, but the credit would equal 100 percent of the qualified expenses if the business was located in a nonattainment area and the participating employees teleworked at least twelve days per month and 75 percent of the qualified expenses if the business was not located in such an area and the participating employees teleworked at least twelve days per month. This bill would also create an additional tax credit for employers who conduct telework assessments and both credits would be capped at \$1 million.

House Bill 745 is similar to this bill, but the credit would equal 100 percent of the qualified expenses if the business was located in a nonattainment area and the participating employees teleworked at least twelve days per month, 75 percent of the qualified expenses if the business was not located in such an area and the participating employees teleworked at least twelve days per month and the credit would be capped at \$1 million. The effective date of this bill would be for taxable years beginning on and after January 1, 2011.

cc : Secretary of Finance

Date: 1/28/2010 JKM
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