

DEPARTMENT OF TAXATION

2011 Fiscal Impact Statement

1. **Patron** Scott A. Surovell

3. **Committee** House Finance

4. **Title** Tax administration; awards for detection of tax underpayments

2. **Bill Number** HB 1805

House of Origin:

 X **Introduced**

 Substitute

 Engrossed

Second House:

 In Committee

 Substitute

 Enrolled

5. **Summary/Purpose:**

This bill would authorize the Tax Commissioner to award monetary compensation to individuals who provide information that leads to the successful collection of taxes owed by other individual or business taxpayers. If the Commissioner proceeds with any administrative or judicial action based on such information, the individual shall receive at least 15 percent but not more than 30 percent of the collected proceeds. If the Commissioner determines that the administrative or judicial action was based principally on disclosures of specific allegations from another source of information other than the individual, the individual may receive an award of not more than 10 percent of the collected proceeds. This bill only allows awards for actions against any individual taxpayer with gross income exceeding \$100,000 and any business taxpayer with gross income exceeding \$500,000, and only if the tax penalties, interest, additions to tax, and additional amounts in dispute exceed \$50,000.

This bill would allow any individual informant who is not satisfied with an award determination to bring an action in circuit court. Any information provided to the individual, his representative, and the court about the administrative or judicial action taken would generally be considered tax information protected from further disclosure.

The effective date of this bill is not specified.

6. **Budget amendment necessary:** Yes.

ITEM: 262, Department of Taxation

Sum-sufficient appropriation to pay rewards out of collection

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

8. **Fiscal implications:**

Administrative Costs

TAX considers implementation of this bill as routine, and does not require additional funding.

Revenue Impact

This bill would result in an unknown increase in general fund revenue. The amount of this gain depends on the number and quality of informants. Because of the delay between the receipt of information and collection of delinquent tax, it would likely be several years before revenue would be generated. Based on IRS “whistleblower” data, a similar Virginia program might generate a few hundred thousand dollars.

9. Specific agency or political subdivisions affected:

Department of Taxation

10. Technical amendment necessary: Yes.

Line 47, after date

Strike: if

Insert: is

11. Other comments:

Federal Whistleblower Statute

The Internal Revenue Code has included a whistleblower statute since 1867. In 2006, the Tax Relief and Health Care Act of 2006 made fundamental changes to the IRS informant awards program by creating a non-discretionary awards provision; by adding whistleblower appeal rights; and by requiring the IRS to create a Whistleblower Office.

The current federal whistleblower statute provides that an individual shall receive an award of at least 15% but not more than 30% of the collected proceeds resulting from an administrative or judicial action that was based on information provided by that individual. The collected proceeds include penalties, interest, additions to tax, and additional amounts. The Whistleblower Office’s determination of the amount of the award depends upon the extent to which the individual substantially contributed to the action.

In the event that the Whistleblower Office determines the administrative or judicial action is based principally on disclosures of specific allegations from a source other than the individual, the Whistleblower Office may award an amount that it considers appropriate, but not more than 10% of the collected proceeds resulting from the action. This provision does not apply in cases where the individual provides information that results in the initiation of the administrative or judicial action.

If the Whistleblower Office determines that the claim for an award is brought by an individual who planned and initiated the actions that led to the underpayment of tax or the violation of internal revenue laws, then the Whistleblower Office may appropriately reduce the award. If the individual is convicted of criminal conduct arising from this role, any award shall be denied.

Any determination may be appealed to the Tax Court within 30 days of the determination.

The federal whistleblower statute applies to actions against any taxpayer whose tax, penalties, interest, additions to tax, and additional amounts in dispute exceed \$2 million. The statute only applies to actions against individual taxpayers if the individual's gross income exceeds \$200,000 for any taxable year subject to such action.

Individual informants do not need to enter into a contract to receive an award under the whistleblower statute. Any individual informant may be represented by counsel. No award may be made unless the information is submitted under penalty of perjury.

The IRS may disclose confidential tax return information to the individual informant and his legal representative if necessary. Such information may only be disclosed if there is a written contract between the IRS and the informant (and his legal representative, if applicable) that requires the informant to comply with all IRS confidentiality conditions and requirements. The informant (and his legal representative, if applicable) must also agree in writing to (i) allow an inspection of his or her premises by the IRS relative to the maintenance of the information disclosed, and (ii) dispose of all return information upon completion of the informant's services by returning all information, including any copies or notes made, to the IRS or, if the information cannot be returned, destroying it in a manner required by the IRS.

Any informant or legal representative is subject to civil and criminal penalties for the unauthorized inspection or disclosure of return information. Additionally, if the IRS determines that any information (or his legal representative) has violated any of the confidentiality requirements, it may take any action it deems necessary to ensure that the requirements are satisfied, including (i) suspending further disclosures of return information, and (ii) suspending or terminating any duty or obligation arising under a contract with the IRS.

Proposed Legislation

This bill would authorize the Tax Commissioner to award monetary compensation to individuals who provide information that leads to the successful collection of taxes owed by other individual or business taxpayers. If the Tax Commissioner proceeds with any administrative or judicial action based on such information, the amount of compensation shall be at least 15 percent but not more than 30% of the collected proceeds. If the Tax Commissioner determines that the administrative or judicial action was based principally on disclosures of specific allegations from another source of information other than the individual, the individual may receive an award of not more than 10% of the collected proceeds.

This bill would allow the Commissioner to reduce or deny an award if the individual is a federal, state, or local tax official and the information provided was obtained in the course of the individual's official duties. The Commissioner would also be permitted to reduce or deny any award if the information provided is information that the Department routinely receives from other sources, such as information through an information exchange with the IRS, other state agencies, or local commissioners of the revenue.

This bill would provide that the award amount is reduced if a claim for an award is brought by an individual who planned and initiated the actions that led to the underpayment of taxes. Additionally, if an individual is convicted of criminal conduct arising from a claim for an award, then any award would be denied.

If two or more individuals claim an award with respect to the same action, then this bill would require the Commissioner to divide the award in proportion to the significance of each individual's information and the role placed by each individual or his legal representative in assisting in the action. The total of all awards would not be allowed to exceed 30 percent.

This bill provides that, if any portion of the amount collectible is to be collected over time under an installment plan or restitution order, no award would be paid until all such amounts have been collected. However, this bill would allow an award to be paid based on amounts collected to date if the Commissioner and the individual agree that the collection of additional amounts is unlikely.

This bill would allow individual informants who are not satisfied with an award determination to bring an action in circuit court within 30 days of the determination. The burden of proof would be on the individual to demonstrate that he substantially contributed to the collection of the additional tax proceeds and that the Commissioner abused his discretion in determining the amount of the award.

Virginia law generally prevents TAX from disclosing any information regarding the transactions, property, income, or business of any taxpayer. If an individual informant brings any action in circuit court to contest an award determination, this bill would allow TAX to disclose information related to the administrative or judicial action related to the information provided by the informant. However, any information provided to the individual, his representative, and the court about the administrative or judicial action would generally be considered tax information protected from further disclosure.

Finally, this bill would only apply to actions by the Department of Taxation against any individual taxpayer with gross income exceeding \$100,000 and any business taxpayer with gross income exceeding \$500,000, and only if the tax penalties, interest, additions to tax, and additional amounts in dispute exceed \$50,000.

The effective date of this bill is not specified.

cc : Secretary of Finance

Date: 1/25/2011 KLC
HB1805F161