

DEPARTMENT OF TAXATION

2012 Fiscal Impact Statement

1. **Patron** David J. Toscano

3. **Committee** House Finance

4. **Title** Termination of certain coal tax credits

2. **Bill Number** HB 446

House of Origin:

 X **Introduced**

 Substitute

 Engrossed

Second House:

 In Committee

 Substitute

 Enrolled

5. Summary/Purpose:

This bill would repeal the Virginia Coal Employment and Production Incentive Tax Credit, the Coalfield Employment Enhancement Tax Credit, and the Virginia Coal Employment and Production Incentive Tax Credit for public service corporations, effective January 1, 2012.

6. Budget amendment necessary: Yes.

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

8. Fiscal implications:

Administrative Costs

The Department of Taxation ("the Department") considers implementation of this bill as routine, and does not require additional funding.

Revenue Impact

This bill would result in an unknown revenue increase as early as FY 2013. Under this bill, the Virginia Coal Employment and Production Incentive Tax Credit would be repealed effective January 1, 2012. Accordingly, the last taxable year in which taxpayers would be able to earn this credit would be for Taxable Year 2011, the returns for which would be filed in FY 2012 and FY 2013. Because electric utilities are subject to a minimum tax, virtually all of these credits are allocated to a person with an economic interest in the coal and claimed with the Coalfield Employment Enhancement Tax Credit.

This bill would also disallow the Coalfield Employment Enhancement Tax Credit for taxable years beginning on or after January 1, 2012. This credit is claimed in the third taxable year following the taxable year in which the credit was earned and allowed. Accordingly, taxpayers that earn the credit for Taxable Years 2009, 2010, and 2011 would be permitted to claim credits on income tax returns for Taxable Years 2012, 2013, and

2014. The first year in which the credit would not be claimed under this bill would be Taxable Year 2015, the returns for which would be filed in FY 2016. Accordingly, there would be a greater increase in General Fund revenues beginning in FY 2016.

The magnitude of the revenue gain in any fiscal year that would result from this bill is unknown. The majority of revenue from a taxable year is received over a 33-month period taking into account estimated payments, returns filed under extension, and businesses that file on a fiscal year, but adjustments continue for several more years because of late returns, amended returns and audits. The Coalfield Employment Enhancement Tax Credit is also affected by other factors such as tons of coal produced, the seam widths where it is produced, and changes in employment levels.

The total amount of coal credits claimed on Taxable Year 2009 returns processed to date is \$26.7 million. This includes the amount of Coalfield Employment Enhancement Tax Credits claimed in Taxable Year 2009 for credits earned in Taxable Year 2006, as well as Virginia Coal Employment and Production Incentive Tax Credits that were allocated to persons with economic interests in coal.

The amount of credits that are claimed in each fiscal year varies and therefore the future impact cannot be estimated. For example, the Coalfield Employment Enhancement Tax Credits processed by the Department during Fiscal Year 2010, which included returns, payments and refunds for several taxable years, totaled \$44.1 million, while the credits processed during Fiscal Year 2011 were \$27.3 million. Furthermore, the credit amounts attributable to credits on gas production are included with and cannot be distinguished from coal tax credits.

9. Specific agency or political subdivisions affected:

Department of Taxation
State Corporation Commission
Department of Mines, Minerals and Energy
Coalfields Economic Development Authority

10. Technical amendment necessary: No.

11. Other comments:

Coal Employment and Production Incentive Tax Credit

The Coal Employment and Production Incentive Tax Credit is a corporate income tax credit equal to \$3 per ton for the purchase and consumption of Virginia mined coal by an electricity generator in the Commonwealth. Unused amounts of the credit may be carried over for ten taxable years.

The credit may be allocated between an electricity generator and any person with an economic interest in the coal purchased and consumed by the electricity generator. The allocation of the credit can be provided in the contract between the parties for the sale of the coal. The parties can amend any such allocation with a written instrument prior to December 31 of the year in which the coal was purchased.

Credits allocated to persons with an economic interest in coal may be used against any tax imposed by Virginia. Credits earned on or after January 1, 2006, and prior to July 1, 2016, that exceed the tax liability of such person could be redeemed along with the Coalfield Employment Enhancement Tax Credit in the form of a refund.

Coalfield Employment Enhancement Tax Credit

The Coalfield Employment Enhancement Tax Credit provides a credit against any tax imposed by the Commonwealth to Virginia producers of coal and coal methane gas. Two credits are available for coal mining, one for underground mines and another for surface mined coal. For coal mined underground, the credit amount varies according to the seam thickness mined. The credit is equal to \$2.00 per ton for a seam thickness of 36 inches or less and \$1.00 per ton for a seam thickness greater than 36 inches. Seam thickness is certified by the Department of Mines, Minerals and Energy. A credit of \$0.40 per ton is permitted for coal mined by surface mining methods. Also available is a credit for coal methane gas producers of \$0.01 per million BTU's of gas produced. The amount of credit earned is subject to a limitation based on employment levels.

The credit is claimed in the third taxable year following the taxable year in which the credit was earned and allowed. To the extent the credit exceeds income tax liability, the excess is refundable up to 85 percent of the face value of the credit. The remaining 15 percent is deposited in a regional fund administered by the Coalfield Economic Development Authority.

The Coalfield Employment Enhancement Tax Credit is currently available for taxable years beginning on or after January 1, 1996 but before January 1, 2015.

Coal Employment and Production Incentive Tax Credit for Public Service Corporations

Corporations in the business of furnishing water, heat, light, or power to Virginia or its citizens are entitled to claim the Coal Employment and Production Incentive Tax Credit against the tax imposed on public service corporations in an amount equal to \$1 per ton for the purchase and consumption of Virginia coal purchased and consumed by the corporation, provided such coal was mined in Virginia as certified the seller. However, the primary users of coal, electric utilities, were transferred to the Virginia income tax in 2001, and no longer claim this credit against the license tax.

Proposal

This bill would repeal the Virginia Coal Employment and Production Incentive Tax Credit, the Coalfield Employment Enhancement Tax Credit, and the Virginia Coal Employment and Production Incentive Tax Credit for public service corporations, effective January 1, 2012. Taxpayers that claim the Coalfield Employment Enhancement Tax Credit according to a deferral schedule would continue to claim credits for Taxable Years 2012, 2013, and 2014 based on the credits earned and allowed in Taxable Years 2009, 2010, and 2011. Taxpayers with credit carryovers would still be permitted to claim prior credits after January 1, 2012.

Similar Legislation

House Bill 1170 would decrease the amount of the Coalfield Employment Enhancement Tax Credit that may be redeemed by a taxpayer from 85 percent to 75 percent of the face value.

House Bill 1192, Senate Bill 609, and Senate Bill 616 would eliminate the sunset date for the Coalfield Employment Enhancement Tax Credit.

cc : Secretary of Finance

Date: 1/23/2012 KLC
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