

DEPARTMENT OF TAXATION

2012 Fiscal Impact Statement

1. **Patron** Walter A. Stosch

3. **Committee** House Finance

4. **Title** Income Tax: Conformity to the Internal Revenue Code

2. **Bill Number** SB 463

House of Origin:

 Introduced

 Substitute

 Engrossed

Second House:

 X **In Committee**

 Substitute

 Enrolled

5. **Summary/Purpose:**

This bill would advance Virginia's date of conformity to the Internal Revenue Code (IRC) from December 31, 2010 to December 31, 2011.

Virginia would continue to allow the federal deduction for qualified domestic production activities under IRC § 199 at a level equal to two-thirds of the federal deduction.

Virginia would also conform to a 2010 federal law that temporarily increased the federal earned income tax credit (EITC) for taxable year 2011.

In addition, this bill would make a technical correction to reinstate language related to the Age Deduction for individuals born on or before January 1, 1939, that was inadvertently deleted last year.

Because some taxpayers will be preparing their Virginia returns while the General Assembly is in session, **this bill contains an emergency clause** which states that it would be in force from its passage.

This is a Department of Taxation bill.

6. **Budget amendment necessary:** No.

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

8. **Fiscal implications:**

Administrative Costs

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

Revenue Impact

The introduced Executive Budget and Executive Amendments assume the passage of this bill and therefore incorporate the revenue decrease of \$6.6 million in Fiscal Year 2012 to conform to the enhanced federal EITC benefit for 2011. There were no federal law changes during 2011 that have a revenue impact on Virginia.

9. Specific agency or political subdivisions affected:

Department of Taxation

10. Technical amendment necessary: No.

11. Other comments:

Current Law

Virginia's conformity to the IRC is currently fixed to the IRC as it existed on December 31, 2010. Congress did not enact any major tax measures in 2011 that would affect Virginia tax revenues.

Federal Law

In 2009, the American Recovery and Reinvestment Act ("ARRA") temporarily increased the earned income tax credit for taxable years 2009 and 2010. The expanded calculation of the EITC was scheduled to sunset on December 31, 2010, reverting back to the calculation as it existed prior to January 1, 2009. However, this was extended through taxable year 2012 by the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010.

Proposal

This bill would advance Virginia's date of conformity to the Internal Revenue Code (IRC) from December 31, 2010 to December 31, 2011. Virginia would continue to disallow any bonus depreciation allowed for certain assets under federal income taxation and any five year carry-back of NOLs allowed for NOLs generated in either taxable year 2008 or 2009. In addition, Virginia would continue to disallow the federal treatment of tax deductions related to applicable high yield discount obligations.

In order to make filing less complicated for certain low-income taxpayers, and to allow them to benefit from federal changes, Virginia would conform to the temporary modifications made to the federal earned income tax credit (EITC) for taxable year 2011 only. The EITC increase was extended to taxable year 2012 by the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, but this bill would not conform to this change for taxable year 2012. Since individual returns for taxable year 2012 are not due until May 1, 2013, the 2013 Session of the General Assembly would be able to revisit the fiscal impact of conforming to this provision for tax year 2012.

Virginia would continue to deconform to the other items that it deconforms to under current law. This includes any tax exclusions related to cancellation of debt income realized in connection with a reacquisition of business debt at a discount after December 31, 2008, and before January 1, 2011. For Virginia income tax purposes, taxpayers that incur cancellation of debt income from transactions in 2009 would continue to be able to elect to report the addition required by conformity in equal amounts in taxable years 2009, 2010 and 2011. This bill would also continue to allow the treatment adopted for transactions occurring in 2009 to be extended to transactions completed on or before April 21, 2010. This modification was made because the change to the Virginia treatment of certain cancellation of debt income was not fully known until the Appropriations Act was passed by the General Assembly at its reconvened session on April 21, 2010.

Virginia would continue to allow the federal deduction for qualified domestic production activities under IRC § 199 at a level equal to two-thirds of the federal deduction.

This bill would also make a technical correction to reinstate language related to the Age Deduction for individuals born on or before January 1, 1939, which was inadvertently deleted during the 2011 Session.

Because some taxpayers will be preparing their Virginia returns while the General Assembly is in session, this bill contains an emergency clause which states that it would be in force from its passage.

Other Bills

House Bill 516 is identical to this bill and has been enacted (2012 *Acts of Assembly*, Chapter 2).

House Bill 1153 as amended, would fully conform to the federal deduction for qualified domestic production activities at the 9% allowed for federal income tax purposes for beginning in taxable year 2013 and thereafter.

Senate Bill 462 would fully conform to the federal deduction for qualified domestic production activities at the 9% allowed for federal income tax purposes for taxable year 2012.

cc : Secretary of Finance

Date: 2/14/2012 tlg
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