

DEPARTMENT OF TAXATION

2015 Fiscal Impact Statement

1. **Patron** Michael T. Futrell

3. **Committee** House Finance

4. **Title** Income Tax; Expiration Date for Income Tax Credits

2. **Bill Number** HB 2109

House of Origin:

 X **Introduced**

 Substitute

 Engrossed

Second House:

 In Committee

 Substitute

 Enrolled

5. Summary/Purpose:

This bill would impose a January 1, 2025 sunset date for any income tax credit for which there is no specified expiration date. The out-of-state tax credit and the low income tax credit would be exempt from these requirements.

The effective date of this bill is not specified.

6. Budget amendment necessary: No.

7. No Fiscal Impact. (See Line 8.)

8. Fiscal implications:

This bill would have no General Fund revenue impact at this time because the extension of tax credits is assumed in the official General Fund revenue forecast. Any credit may be extended by an affirmative act of the General Assembly.

In Fiscal Year 2014, taxpayers claimed approximately \$104 million in income tax credits that would be subject to the sunset provisions under this bill. This total does not include amounts claimed for the tax credit for participating landlords, as data for this credit is unavailable. The table below provides details about the amount of credits claimed on Virginia income tax returns processed during Fiscal Year 2014.

Credit	Amount
Conservation Tillage Equipment Credit	\$497,539
Advanced Technology Pesticide and Fertilizer Application Equipment Credit	\$201,548
Tax Credit for Vehicle Emissions Testing Equipment and Clean-Fuel Vehicles and Certain Refueling Property	\$13,434
Historic Rehabilitation Tax Credit	\$27,102,242
Agricultural Best Management Practices Tax Credit	\$798,586
Foreign Tax Credit	\$407,403
Qualified Equity and Subordinated Debt Investments Tax Credit	\$2,361,657
Waste Motor Oil Burning Equipment Credit	\$88,393
Land Preservation Tax Credit	\$70,640,472
Political Candidates Contribution Tax Credit	\$655,893
Livable Home Tax Credit	\$854,611
Virginia Coal Employment and Production Incentive Tax Credit	\$6,714,625
Riparian Forest Buffer Protection for Waterways Tax Credit	\$156,049
Biodiesel and Green Diesel Fuels Producers Tax Credit	\$4,354
Tax Credit for Participating Landlords (Community of Opportunity)	\$7,333
Farm Wineries and Vineyards Tax Credit	\$191,643
	\$110,695,782

This bill would not impact the carryover provisions that apply to these credits, and taxpayers would still claim carryover amounts after the expiration of such credits. For example, the Historic Rehabilitation Tax Credit has a ten-year carryover period. If this bill is enacted and the sunset date is not subsequently extended by the General Assembly, a taxpayer would claim Historic Rehabilitation Tax Credits for Taxable Year 2024 that were approved prior to expiration of the credit. The taxpayer could also claim any carryover amounts from Taxable Year 2024 on returns for Taxable Years 2025 through 2034.

9. Specific agency or political subdivisions affected:

Department of Taxation

10. Technical amendment necessary: Yes.

To correct a technical citation error, the Department recommends the following technical amendment:

Page 1, Line 17, after “in”

Strike: § 58.1-322

Insert: § 58.1-332

11. Other comments:

Income Tax Credits Without Sunsets

Virginia currently allows 34 income tax credits. Of these, the following are not subject to a sunset date.

Conservation Tillage Equipment Credit

Individuals and corporations may claim Conservation Tillage Equipment Tax Credits equal to 25 percent of all expenditures made for the purchase and installation of conservation tillage equipment used in agricultural production by the purchaser. This tax credit is not subject to an overall cap, but taxpayers are limited to a credit of \$4,000 per taxable year.

Fertilizer and Pesticide Application Equipment Tax Credit

Individuals and corporations that are engaged in agricultural production for market and have in place a nutrient management plan approved by the local Soil and Water Conservation District by the required tax return filing date may claim Fertilizer and Pesticide Application Equipment Tax Credits. The amount of the credit is 25 percent of all expenditures made for the purchase of equipment certified by the Virginia Soil and Water Conservation Board as providing more precise pesticide and fertilizer application. This tax credit is not subject to an overall cap, but taxpayers are limited to a credit of \$3,750 per taxable year.

Tax Credit for Vehicle Emissions Testing Equipment and Clean-Fuel Vehicles and Certain Refueling Property

Individuals, corporations, and public service corporations are allowed Vehicle Emissions Testing Equipment, Clean-Fuel Vehicles and Certain Refueling Property Tax Credits equal to 10 percent of the federal deduction for clean-fuel vehicles and certain refueling property for purchases of clean-fuel vehicles principally garaged in Virginia, certain refueling property placed in service in Virginia, or 10 percent of the costs used to compute the federal credit for certain plug-in electric vehicles. Individuals, corporations, and public service corporations are also allowed credits in an amount equal to 20 percent of the purchase or lease price paid for equipment certified by the Department of Environmental Quality for vehicle emissions testing, located within, or within any county, city or town adjacent to, any county, city or town wherein implementation of an enhanced vehicle emissions inspection program is required. This tax credit has no annual or per taxpayer cap.

Tax Credit for Taxes Paid to a Foreign Country on Retirement Income

Virginia residents are allowed a credit for taxes paid to a foreign government on pension retirement income derived from foreign sources as a result of past employment in a foreign country. The credit may be claimed only to the extent such income is included in federal adjusted gross income. The amount of the credit cannot exceed:

- The proportion of the income tax otherwise payable to Virginia in the ratio of the income on which the tax imposed by the foreign country is computed to his or her Virginia taxable income; or
- The Virginia income tax otherwise payable, if the income on which the tax imposed by the foreign country is computed is less than the Virginia taxable income.

Agricultural Best Management Practices Tax Credit

Individuals that are engaged in agricultural production for market, or have equines that create needs for agricultural best management practices to reduce nonpoint source pollutants, and have in place a soil conservation plan approved by the local Soil and Water Conservation District may claim Agricultural Best Management Practices Tax Credits. Corporations that are engaged in agricultural production for market that have in place a soil conservation plan approved by the local Soil and Water Conservation District may claim Agricultural Best Management Practices Tax Credits. This tax credit is not subject to an overall cap, but taxpayers are limited to a credit of \$17,500 per taxable year.

Qualified Equity and Subordinated Debt Investments Tax Credit

Individuals, trusts, and estates are granted a tax credit equal to 50 percent of the cash investment in a qualified business made in the form of equity or subordinated debt. The total amount of the credit that may be used per taxable year by the taxpayer cannot exceed the lesser of the tax imposed for the tax year or \$50,000. The total amount of Qualified Equity and Subordinated Debt Investment Tax Credits available per calendar year is \$5 million.

Waste Motor Oil Burning Equipment Credit

Taxpayers with businesses in Virginia that accept waste motor oil from the public are allowed a credit against individual and corporate income taxes equal to 50 percent of the purchase price paid during the taxable year for equipment used exclusively for burning waste motor oil at the business facility. The maximum annual credit available to a taxpayer is \$5,000.

Political Candidate Contribution Tax Credit

Any individual may claim Political Candidate Contribution Tax Credits equal to 50 percent of the amount contributed by the taxpayer to a candidate in one or more primary, special, or general elections for local or state office held in Virginia. This tax credit is not subject to an overall cap, but individual taxpayers are limited to a credit of \$25 per taxable year.

Livable Home Tax Credit

Individuals and licensed contractors are granted a credit against individual income taxes for a portion of the total amount expended in constructing a new residential structure or unit or retrofitting or renovating an existing residential structure or unit, provided that the new or retrofitted residence is designed to improve accessibility, provide universal visitability and meets the eligibility requirements established by guidelines developed by the Department of Housing and Community Development. Licensed contractors may also claim this credit against the corporate income tax. The maximum credit allowable is \$5,000 for the purchase or construction of a new residence or 50 percent of the total amount expended, capped at \$5,000 for the retrofitting or renovation of an existence residence. The credit is not available for residential rental property.

Riparian Waterway Buffer Tax Credit

Individuals, individuals' grantor trusts and corporations owning land that abuts a waterway on which timber is harvested, who refrain from harvesting timber on certain portions of the land near the waterway are allowed an income tax credit equal to 25 percent of the value of the timber in that portion of the land retained as a buffer. The maximum credit available is \$17,500 or the total amount of the tax, whichever is less, in the year that the timber outside the buffer was harvested. To qualify for the credit, the taxpayer must comply with an Individualized Forest Stewardship Plan to be certified by the State Forester.

Land Preservation Tax Credit

Taxpayers are allowed Land Preservation Tax Credits equal to forty percent of the fair market value of land or an interest in land located in Virginia that is conveyed for the purpose of agricultural and forestal use, open space, natural resource, and/or biodiversity conservation, or land, agricultural, watershed and/or historic preservation, as an unconditional donation by the taxpayer to a public or private conservation agency. For an interest in land to qualify for the Land Preservation Tax Credit, such interest must qualify as a qualified conservation contribution for federal purposes. A qualified conservation contribution is a contribution of a qualified real property interest to a qualified organization exclusively for conservation purposes. A qualified real property interest may include a donation of a donor's entire interest aside from a qualified mineral interest. The credit is capped at \$100 million, and the credits are allocated on a first-come, first-served basis.

Virginia Coal Employment and Production Incentive Tax Credit

The Virginia Coal Employment and Production Incentive Tax Credit is a credit allowed to electricity generators in Virginia against the corporation income tax and the tax that applies to electric suppliers, pipeline distribution companies, gas utilities, and gas suppliers. The amount of the credit is equal to \$3 for each ton of coal purchased and consumed by an electricity generator, provided such coal was mined in Virginia. To the extent an electricity generator purchased coal qualifying for the credit from a person with an economic interest in coal, the credit may be allocated between the electricity generator and such person with an economic interest in coal.

Any credit not allocated to a person with an economic interest in coal that is not usable for the taxable year for which the credit was issued may be carried over for up to ten taxable years. To the extent credit allocated to a person with an economic interest in coal exceeds such person's Virginia tax liability, such taxpayer is entitled to redeem the excess credits in an amount equal to 85 percent of the face value of such excess. The remaining 15 percent is to be deposited in a regional economic development fund administered by the Coalfield Economics Development Authority.

Historic Rehabilitation Tax Credit

Any individual, trust or estate, or corporation incurring eligible expenses in the rehabilitation of a certified historic structure may claim Historic Rehabilitation Tax Credits equal to 25 percent of eligible expenses. This tax credit has no annual or per taxpayer cap.

Biodiesel and Green Diesel Fuels Producers Tax Credit

Biodiesel or green diesel fuel producers are allowed a nonrefundable credit against individual and corporate income taxes equal to \$0.01 per gallon of biodiesel or green diesel fuels produced by the taxpayer. The credit is capped at \$5,000 annually and is only available to the taxpayer for the first three years of production of biodiesel or green diesel fuels.

Communities of Opportunity Tax Credit

Participating landlords renting qualified housing units are allowed a credit against individual and corporate income taxes in an amount equal to 10 percent of the fair market value of the rent for the unit, computed for that portion of the taxable year in which the unit was rented by the landlord to a tenant participating in a housing choice voucher program. The Department of Housing and Community Development administers and issues the credit for participating landlords. The maximum amount of credits available each fiscal year is \$250,000.

Farm Wineries and Vineyards Tax Credit

Virginia farm wineries and vineyards are entitled to a credit against individual income taxes for qualified capital expenditures made in connection with the establishment of new Virginia farm wineries or vineyards and capital improvements made to existing Virginia farm wineries and vineyards. The credit is equal to 25 percent of all qualified capital expenditures. The credit is capped at \$250,000 annually, and is allocated on a pro rata basis if applications for the credit exceed \$250,000 in a calendar year.

Tax Credit for Taxes Paid to Other States

In order to prevent double taxation, Virginia allows taxpayers filing resident individual income tax returns to claim a credit for income tax paid to another state for earned or business income derived from sources outside Virginia, or any gain on the sale of a principal residence outside Virginia, provided the income is taxed by Virginia as well as the other state.

Tax Credit for Low-Income Taxpayers

Virginia's allows an individual to claim either the Tax Credit for Low-Income Individuals or a credit equal to 20 percent of the federal EITC that was claimed for the taxable year:

- The Tax Credit for Low-Income Individuals is a nonrefundable individual income tax credit equal to \$300 each for the individual, the individual's spouse, and any person claimed as a dependent on such individual's or married person's income tax return for the taxable year.
- Virginia also allows a nonrefundable individual income tax credit equal to 20 percent of the federal EITC claimed by an individual for the taxable year. The

credit is for any individual or married persons that are eligible for the federal earned income tax credit for the taxable year and claimed such credit.

Joint Subcommittee to Evaluate Tax Preferences

The 2012 General Assembly established the Joint Subcommittee to Evaluate Tax Preferences to oversee the evaluation of Virginia's tax preferences. The Joint Subcommittee is charged with the following:

- Undertaking a systematic review of Virginia's tax preferences;
- Adopting a schedule for reviewing tax preferences based upon program areas to which the preferences relate;
- Establishing procedures and performance measures to evaluate the effectiveness of tax preferences;
- Requesting that the Governor direct the Department of Taxation staff to conduct independent evaluations of tax preferences in promoting economic activity, generating revenue, or otherwise achieving their intended policy purpose and report the findings to the Joint Subcommittee;
- Recommending a process and guidelines for establishing expiration dates for tax preferences; and
- Submitting an annual report to the General Assembly and the Governor of its recommendations, including which tax preferences should be continued, expanded, modified, or eliminated.

The Joint Subcommittee is currently undergoing a study of specific tax credits and sales tax exemptions, and has not yet completed its evaluation of all of Virginia's tax preferences.

Proposal

This bill would impose a January 1, 2025 sunset date for any income tax credit for which there is no specified expiration date. The out-of-state tax credit and the low income tax credit would be exempt from these requirements.

The effective date of this bill is not specified.

Similar Legislation

House Bill 2167 would impose a January 1, 2017 sunset date on certain income tax credits and sales tax exemptions, and would dedicate 50 percent of the revenue to the reduction of the corporate income tax rate and 50 percent of the revenue to reduction of the individual income tax rate.

Senate Bill 1399 would eliminate the Political Candidate Contribution Tax Credit.

cc : Secretary of Finance

Date: 1/26/2015 KP

DLAS File Name: HB2109F161