DEPARTMENT OF TAXATION
2015 Fiscal Impact Statement

1. Patron Timothy D. Hugo

2. Bill Number HB 2162

House of Origin:
_____ **Introduced**
_____ **Substitute**
_____ **Engrossed**

Second House:
_____ **In Committee**
_____ **Substitute**
__X__ **Enrolled**

3. Committee Passed House and Senate

4. Title Modified Method of Apportionment; Taxpayers with Enterprise Data Center Operations

5. Summary/Purpose:

This bill would require a taxpayer with an enterprise data center operation to apportion Virginia taxable income using single factor apportionment based on sales if such taxpayer enters into a memorandum of understanding with the Virginia Economic Development Partnership Authority ("VEDP") to make a new capital investment of at least $150 million in an enterprise data center in Virginia.

This modified method of apportionment would be phased in as follows:

- From July 1, 2016 until July 1, 2017, qualifying corporations would be required to use a quadruple-weighted sales factor; and

- From July 1, 2017, and thereafter, qualifying corporations would be required to use the single sales factor method to apportion Virginia taxable income.

This bill would be effective for taxable years beginning on or after July 1, 2016.

6. Budget amendment necessary: No.

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

8. Fiscal implications:

Administrative Costs

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

Revenue Impact

This bill would have an unknown negative General Fund revenue impact beginning in Fiscal Year 2017. The extent to which taxpayers with enterprise data center operations would be required to use the modified method of apportionment provided in this bill is unknown. The provisions of this bill would not apply to or impact existing enterprise data center operations.

9. Specific agency or political subdivisions affected:

Department of Taxation

10. Technical amendment necessary: No.

11. Other comments:

Current Law

Statutory Method of Apportionment

Virginia generally requires the Virginia taxable income of a multistate corporation to be apportioned to Virginia by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor, plus twice the sales factor, and the denominator of which is four.

The property factor is a fraction that consists of the average value of the corporation's real and tangible personal property owned or rented and used in Virginia over the like property located everywhere. The payroll factor is a fraction, the numerator being the total amount of compensation paid or accrued within Virginia during the taxable year by a taxpayer, and the denominator being the total compensation paid or accrued everywhere during the taxable year. The sales factor is a fraction, the numerator of which is the total sales of the corporation in Virginia during the taxable year, and the denominator of which is the total sales of the corporation everywhere during the taxable year. Sales, other than sales of tangible personal property, are deemed in Virginia if:

- The income-producing activity is performed in Virginia; or
- The income-producing activity is performed both in and outside of Virginia and a greater proportion of the income producing activity is performed in Virginia than in any other state, based on costs of performance.

An "income producing activity" is an act or acts directly engaged in by the taxpayer for the ultimate purpose of producing a sale subject to apportionment. "Cost of performance" is defined as the cost of all activities directly performed by the taxpayer for the ultimate purpose of producing the sale to be apportioned.

Modified Method of Apportionment for Manufacturing Companies

During the 2009 Session, the General Assembly enacted legislation that allows manufacturing companies to elect whether to apportion Virginia taxable income using the statutory method of apportionment or using a single sales factor method of apportionment. This modification was phased in as follows:

- For taxable years beginning on or after July 1, 2011, but before July 1, 2013, qualifying corporations may elect to use a triple-weighted sales factor;
- For taxable years beginning on or after July 1, 2013, but before July 1, 2014, qualifying corporations may elect to use a quadruple-weighted sales factor; and

- For taxable years beginning on or after July 1, 2014, and thereafter, qualifying corporations may elect to use the single sales factor method to apportion Virginia taxable income.

A manufacturing company that elects to use the modified method of apportionment will be subject to additional taxes if such manufacturing company's average annual number of full-time employees for the first three taxable years that it used the modified method of apportionment is less than 90 percent of its base year employment, or if the average wages of the manufacturing company's full-time employees, as certified by the manufacturing company, is not greater than the lower of the state or local average weekly wage for its industry. "Base year employment" is defined as the average number of full-time employees employed by the manufacturing company in Virginia in the taxable year that ended immediately prior to the first taxable year in which the manufacturing company used the modified method of apportionment for manufacturing companies.

Required Method of Apportionment for Retail Companies

During the 2012 Session, the General Assembly enacted legislation that requires certain retail companies to apportion Virginia taxable income using a single sales factor method of apportionment. This modification is being phased in as follows:

- For taxable years beginning on or after July 1, 2012, but before July 1, 2014, qualifying corporations may elect to use a triple-weighted sales factor;

- For taxable years beginning on or after July 1, 2014, but before July 1, 2015, qualifying corporations may elect to use a quadruple-weighted sales factor; and

- For taxable years beginning on or after July 1, 2015, and thereafter, qualifying corporations may elect to use the single sales factor method to apportion Virginia taxable income.

<u>Proposed Legislation</u>

This bill would require a taxpayer with an enterprise data center operation to apportion Virginia taxable income using single factor apportionment based on sales if such taxpayer enters into a memorandum of understanding with VEDP on or after July 1, 2015, to make a new capital investment of at least $150 million in an enterprise data center in Virginia on or after July 1, 2015. The modified method of apportionment would apply beginning with the taxable year for which VEDP provides a written certification to such taxpayer that the new capital investment has been completed.

This modified method of apportionment would be phased in as follows:

- From July 1, 2016 until July 1, 2017, qualifying corporations would be required to use a quadruple-weighted sales factor; and

- From July 1, 2017, and thereafter, qualifying corporations would be required to use the single sales factor method to apportion Virginia taxable income.

“Enterprise data center operations” would be defined as operations that:

- Physically house various equipment such as servers, switches, routers, data storage devices, or related equipment;
- Manage and process digital data and information to provide application services or management for various data processing, such as web hosting, Internet, intranet, telecommunication, and information technology;
- Are developed and owned by the taxpayer; and
- Are operated by the taxpayer or any of its affiliates substantially for their own use.

This bill would require that, if any provision of this bill is for any reason held to be invalid or unconstitutional by the decision of a court of competent jurisdiction, such provision would not be deemed severable.

This bill would be effective for taxable years beginning on or after July 1, 2016.

Similar Bills

Senate Bill 1142 is identical to this bill.

cc : Secretary of Finance

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