

# DEPARTMENT OF TAXATION

## 2015 Fiscal Impact Statement

1. **Patron** Timothy D. Hugo

3. **Committee** House Finance

4. **Title** Sunset Date for Income Tax and Sales and  
Use Tax Credits and Exemptions

2. **Bill Number** HB 2167

**House of Origin:**

  X   **Introduced**

       **Substitute**

       **Engrossed**

**Second House:**

       **In Committee**

       **Substitute**

       **Enrolled**

### 5. **Summary/Purpose:**

This bill would impose a January 1, 2017 sunset date on certain income tax credits and sales tax exemptions. The bill would require that fifty percent of the revenue attributable to the expiration of any tax credit or exemption under this bill be used to reduce the corporate income tax rate by a concomitant amount and fifty percent be used to reduce the individual income tax rates by a concomitant amount.

The effective date of this bill is not specified.

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

7. **Fiscal Impact Estimates are:** Not available. (See Line 8.)

### 8. **Fiscal implications:**

#### Administrative Costs Impact

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

#### Revenue Impact

This bill would have an unknown revenue impact. Because the General Assembly would have the option to extend the sunset date imposed on any of these tax credits during a future session, the bill would have an impact only to the extent that any of the tax credits and sales tax exemptions affected by this bill expire.

#### *Potential Revenue Attributable to the Expiration of Tax Credits*

To the extent that there would be revenue attributable to the expiration of income tax credits under this bill, there would be no overall impact to the General Fund. There would be an increase in revenues as a result of the expiration of certain income tax credits. This

revenue increase would be offset by a decrease in revenues attributable to reduced corporate income and individual income tax rates.

Over the past five fiscal years, taxpayers claimed an average of \$48.6 million of such credits. See the table below for details about the amount of credits claimed on Virginia income tax returns processed during Fiscal Years 2010 through 2014.

	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
Conservation Tillage Equipment Tax Credit	\$370,759	\$440,807	\$297,179	\$428,839	\$497,539
Fertilizer and Pesticide Application Equipment Tax Credit	\$159,507	\$135,422	\$173,169	\$224,791	\$201,548
Historic Rehabilitation Tax Credit	\$64,616,330	\$46,795,338	\$59,216,385	\$23,533,409	\$27,102,242
Agricultural Best Management Practices Tax Credit (individual only)	\$645,197	\$585,469	\$1,241,708	\$819,749	\$775,223
Political Candidate Contribution Tax Credit	\$868,723	\$587,501	\$575,137	\$702,770	\$655,893
Vehicle Emissions Testing Equipment, Clean Fuel Vehicles, and Certain Refueling Property Tax Credit	\$6,288	\$27,657	\$1,003	\$6,084	\$13,434
Major Business Facility Job Tax Credit	\$3,174,753	(\$858,143)	\$4,297,690	\$2,773,843	\$1,310,327
<b>TOTAL</b>	<b>\$69,841,558</b>	<b>\$47,714,051</b>	<b>65,796,270</b>	<b>\$28,498,483</b>	<b>\$30,556,207</b>

This bill is not intended to 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 2017 that were approved prior to the expiration of the credit. The taxpayer could also claim any carryover amounts from Taxable Year 2017 on returns for Taxable Years 2018 through 2027.

The amount of carryover credits that would be claimed for taxable years after the January 1, 2017 sunset date is unknown, but could be significant. Currently, the outstanding amount of credits that may be claimed as carryover amounts in Taxable Year 2015 exceeds \$455 million. Because the timing and extent of carryover claims is unknown, this provision would have an unknown impact.

#### *Potential Revenue Attributable to the Expiration of Sales Tax Exemptions*

While the increased retail sales and use tax revenues resulting from the expiration of sales tax exemptions under this bill would offset the reduction in the corporate and individual income tax revenues resulting from the decrease in corporate and individual income tax rates, the bill would result in increases and decreases to different funds because corporate and individual income tax revenues are dedicated to the General Fund, while sales tax revenues are dedicated to transportation and education funding in addition to the General Fund. The Department lacks sufficient data to estimate the revenue impact of imposing a sunset date on the majority of the sales tax exemptions that would be impacted by this bill. Therefore, this provision would also have an unknown revenue impact.

### *Potential Revenue Attributable to the Reduction of the Corporate Income Tax Rate*

If the January 1, 2017 sunset date imposed by this bill is not extended, there would be a revenue impact beginning in Fiscal Year 2017. The amount of revenue that would be attributable to the expiration of any tax credit or exemption pursuant to this bill is unknown. As a result, the amount by which the corporate income tax rate would be reduced under this bill is unknown.

Reducing the corporate income tax rate from 6 percent to 5.82 percent would decrease corporate income tax revenues by approximately \$24.5 million, an amount approximately equal to one-half the five-year average of income tax credits claimed annually during the prior five fiscal years. However, because of the uncertainty regarding the amount of carryover credits, timing issues related to corporate income tax estimated payments and refunds, and uncertainty regarding the revenue impact of repealing certain sales tax exemptions, the actual rate reduction that would result from this bill is unknown.

### *Potential Revenue Loss Attributable to the Reduction of the Individual Income Tax Rate*

Individual income tax rates are tiered based on taxable income. Taxable income of \$3,000 or less is subject to a 2 percent tax rate. Taxable income over \$17,000 is subject to a 5.75 percent tax rate. Estimating the rate reduction necessary to yield a \$24.5 million reduction in individual income tax revenues is problematic because even very small changes in the top rate results in significant changes in anticipated revenues. A rate change from 5.0 percent to 4.94 percent would yield an estimated negative revenue impact of approximately \$24 million in Fiscal Years 2018 through 2021. Because of timing issues related to when income tax payments are made and refunds are issued, and because of uncertainty around when carryover tax credit balances will be claimed, the estimated reduction in income tax revenues may not match the actual revenue gained from repealing the income and sales tax preferences.

## **9. Specific agency or political subdivisions affected:**

Department of Taxation

## **10. Technical amendment necessary: No.**

## **11. Other comments:**

### Sunset Dates

Virginia currently allows 34 income tax credits. Of these, 14 are subject to sunset date provisions:

- The Major Business Facility Job Tax Credit;
- The Clean Fuel Vehicle and Advanced Cellulosic Biofuels Job Creation Tax Credit;
- The Coalfield Employment Enhancement Tax Credit;
- The Worker Retraining Tax Credit;

- The Recyclable Materials Processing Equipment and Alternative Recycling Tax Credit;
- The Tax Credit for Cigarettes Manufactured and Exported;
- The Green Jobs Creation Tax Credit;
- The International Trade Facility Tax Credit;
- The Telework Expenses Tax Credit;
- The Research and Development Expenses Tax Credit;
- The Barge and Rail Usage Tax Credit;
- The Virginia Port Volume Increase Tax Credit;
- The Education Improvement Scholarships Tax Credit; and
- The Neighborhood Assistance Tax Credit.

Virginia also provides approximately 78 sales tax exemptions. Of these exemptions, five have sunset dates: the sales tax holiday for EnergyStar and Watersense Products, and the exemptions for Natural Gas and Oil Materials and Equipment, Data Center Equipment, Audiovisual Works Productions, and Donated Educational Materials.

### Income Tax Credits

#### *Conservation Tillage Equipment Tax 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. This credit is not subject to a sunset date provision.

#### *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. This credit is not subject to a sunset date provision.

#### *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, and is not subject to a sunset date provision.

#### *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. This credit is not subject to a sunset date provision.

#### *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. This credit is not subject to a sunset date provision.

#### *Vehicle Emissions Testing Equipment, Clean-Fuel Vehicles, and Certain Refueling Property Tax Credit*

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, and is not subject to a sunset date provision.

#### *Major Business Facility Job Tax Credit*

Taxpayers that are engaged in any business in Virginia, aside from certain retail businesses, may claim Major Business Facility Job Tax Credits if they create new full-time jobs in Virginia in connection with the establishment or expansion of a major business facility. The credit is equal to \$1,000 for every job created by the taxpayer in connection with the establishment or expansion of a major business facility in excess of 50 such jobs. If the major business facility is located in a locality identified by the Virginia Economic Development Partnership as an economically distressed area or has been designated as an Enterprise Zone, the job requirement threshold is decreased to 25 jobs. The credit has no annual or per taxpayer cap. The credit is subject to a sunset date of January 1, 2020.

#### Sales Tax Exemptions

##### *Virginia Port Authority Exemption*

The Virginia Port Authority is exempt on purchases of tangible personal property used in or about a marine terminal under its supervision for handling cargo, merchandise, freight and equipment. Agents, lessees, sublessees, and users of tangible personal property owned by or leased to the Authority are also exempt. The exemption extends to personal property purchased by the Authority itself, or by a nonprofit, nonstock corporation that operates a terminal for the authority.

#### *Public Transportation Companies' Exemption*

Tangible personal property sold or leased to the Alexandria Transit Company, the Greater Lynchburg Transit Company, the GRTC Transit System, the Greater Roanoke Transit Company, or any other transit company that is owned, operated or controlled by any county, city, town or any combination, that provides public transportation services is exempt from the sales and use tax.

#### *Additional Governmental Sales Tax Exemptions*

Virginia law provides a number of additional sales tax exemptions that are related to the operation of public facilities or involve state or local agencies, including:

- The exemption for artwork made and sold by prisoners confined in state correctional facilities;
- The exemption for tangible personal property for use or consumption by the Virginia Department for the Blind and Vision Impaired or any nominee of such Department;
- The exemption for tangible personal property sold to residents and patients of the Virginia Veterans Care Center at a canteen operated by the Department of Veterans Services;
- The exemption for tangible personal property for use or consumption by any nonprofit organization whose members include Virginia and other states and which is organized for the purpose of fostering interstate cooperation and excellence in government; and
- The exemption for tangible personal property purchased for use or consumption by any soil and conservation district which is organized in accordance with Virginia law.

None of these sales tax exemptions is currently subject to a sunset date provision.

#### Proposed Legislation

This bill would impose a January 1, 2017 sunset date on certain income tax credits and sales tax exemptions. The following tax credits would be subject to the sunset date imposed by this bill:

- The Conservation Tillage Equipment Tax Credit;
- The Fertilizer and Pesticide Application Equipment Tax Credit;
- The Historic Rehabilitation Tax Credit;

- The Agricultural Best Management Practices Tax Credit (against individual income tax only);
- The Political Candidate Contribution Tax Credit;
- The Vehicle Emissions Testing Equipment, Clean Fuel Vehicles, and Certain Refueling Property Tax Credit;
- The Major Business Facility Job Tax Credit; and

Only one of these credits is set to expire under current law. The Major Business Facility Job Tax Credit is currently set to expire January 1, 2020.

The following sales tax exemptions would be subject to the sunset date imposed by this bill:

- The exemption for tangible personal property used in a marine terminal under the supervision of the Virginia Port Authority;
- The prisoners' artwork exemption;
- The Virginia Department for the Blind and Vision Impaired exemption;
- The Virginia Veterans Care Center exemption;
- The exemption for the Virginia nonprofit organization organized to foster interstate cooperation and excellence in government;
- The soil and conservation district exemption; and
- The exemption for certain public transportation companies.

Fifty percent of the revenue attributable to the expiration of any tax credit or exemption under this bill would be required to be used to reduce the corporate income tax rate by a concomitant amount, and fifty percent would be required to be used to reduce the individual income tax rates by a concomitant amount.

### Similar Legislation

**House Bill 2109** would require that any tax credit that does not indicate an explicit expiration date would only be valid for taxable years beginning before January 1, 2025, unless the General Assembly affirmatively extends the validity of the credit. The out-of-state tax credit and the low income tax credit would be exempt from this requirement.

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

cc : Secretary of Finance

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