

**DEPARTMENT OF TAXATION
2016 Fiscal Impact Statement**

1. **Patron** Kenneth C. Alexander
3. **Committee** Passed House and Senate
4. **Title** Income Tax; Employer Filing Requirements

2. **Bill Number** SB 230
House of Origin:
 Introduced
 Substitute
 Engrossed
- Second House:**
 In Committee
 Substitute
 X **Enrolled**

5. Summary/Purpose:

This bill would codify existing provisions currently set forth in the Appropriations Act that require employers to file certain withholding documents with the Department of Taxation ("the Department") in an electronic medium and by January 31 of each year. As a result, this bill would eliminate inconsistencies between the Appropriations Act and statutory provisions.

The effective date of this bill is not specified.

6. **Budget amendment necessary:** No
7. **No Fiscal Impact.** (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 no General Fund revenue impact.

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

Department of Taxation

10. **Technical amendment necessary:** No

11. Other comments:

Virginia Withholding Requirements

Every employer making payment of wages is generally required to withhold Virginia income tax with respect to the wages of each employee for each payroll period. Such employers are required to file withholding returns and make periodic withholding payments throughout the year. Depending on a particular employer's average monthly liability and the aggregate amount required to be withheld, periodic withholding returns are required to be filed on a quarterly, monthly, or semi-weekly basis. In addition to filing periodic withholding returns throughout the year, employers are required to file an annual withholding return, which must be accompanied by written statements for each employee who had Virginia income tax withheld. Examples of written statements include Forms W-2 and Forms 1099.

Prior to July 1, 2014, all employers were required to file the annual withholding return and accompanying written statements by February 28. Effective July 1, 2014 and thereafter, the date by which all employers are required to submit such documentation was moved from February 28 to January 31. The date change is contained in the Appropriations Act but has not been codified in the Code of Virginia.

Effective July 1, 2013, all employers are required to file periodic withholding returns, annual withholding returns, and written statements electronically. The electronic filing mandate is contained in the Appropriations Act but has not been codified in the Code of Virginia.

Employers are permitted to request waivers from the January 31 due date and the electronic filing mandate in cases where such requirements create an unreasonable burden. Neither the Appropriations Act nor existing statutory language imposes a penalty for the failure to meet either of these requirements. As a result, many employers have failed to comply with the January 31 due date and the electronic filing mandate.

Federal Withholding Requirements

Employers are generally required to file Forms W-2 with the federal government by February 28. However, if an employer elects or is required to file electronically, such forms are due by March 31. All employers that are required to file 250 or more Forms W-2 must file such forms with the federal government electronically.

On December 18, 2015, Congress passed the Consolidated Appropriations Act of 2016, Pub. L. No. 114-113, which advanced the date by which all employers are required to submit Forms W-2 from February 28 and March 31 to January 31. This change is effective for Forms W-2 filed with regard to calendar years beginning after the date of the enactment of the Act. Therefore, the due date for filing Forms W-2 with regard to Calendar Year 2016 and each calendar year thereafter will be January 31, whether the employer files using paper forms or electronically.

If a taxpayer fails to file a correct Form W-2 by the due date and cannot show reasonable cause for his failure to do so, he may be subject to a penalty. The penalty applies if the

taxpayer fails to file timely, fails to include all information required to be shown on Form W-2, includes incorrect information on Form W-2, files paper forms when he is required to file electronically, reports an incorrect taxpayer identification number, fails to report a taxpayer identification number, or fails to file paper Forms W-2 that are machine readable. The amount of the penalty is based on when he files a correct Form W-2. Such penalties are indexed for inflation. On June 29, 2015, Congress increased the amount of such penalties pursuant to the Trade Preferences Extension Act of 2015, Pub. L. No. 114-27, effective with respect to returns and statements required to be filed after December 31, 2015. Penalty amounts for Taxable Years 2015 and 2016 are shown below:

| | 2015 | 2016 |
|---|---|---|
| Employer correctly files within 30 days of the due date. | \$30 per Form W-2; The maximum penalty is \$250,000 per year (\$75,000 for small businesses). | \$50 per Form W-2; the maximum penalty is \$532,000 per year (\$186,000 for small businesses). |
| Employer correctly files more than 30 days after the due date but by August 1. | \$60 per Form W-2; the maximum penalty is \$500,000 per year (\$200,000 for small businesses). | \$100 per Form W-2; the maximum penalty is \$1,596,500 per year (\$532,000 for small businesses). |
| Employer files after August 1, does not file corrections, or does not file required Forms W-2. | \$100 per Form W-2; the maximum penalty is \$1,500,000 per year (\$500,000 for small businesses). | \$260 per Form W-2; the maximum penalty is \$3,193,000 per year (\$1,064,000 for small businesses). |

For purposes of the lower maximum penalties shown above, a taxpayer is considered a small business if its average annual gross receipts for the three most recent tax years (or for the period that taxpayer was in existence, if shorter) ending before the calendar year in which the Forms W-2 were due are \$5 million or less.

Withholding Requirements in Other States

In addition to Virginia, eight other states (Alabama, Connecticut, Kentucky, Nebraska, Pennsylvania, Rhode Island, Utah, and Wisconsin) and the District of Columbia have advanced their filing deadlines from February 28 to either January 31 or February 1. Thirty states (Alabama, Arkansas, California, Colorado, Connecticut, Georgia, Idaho, Illinois, Indiana, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Jersey, New Mexico, New York, Oklahoma, Oregon, Pennsylvania, Rhode Island, Utah, Vermont, West Virginia, and Wisconsin) and the District of Columbia require or will require that employers file withholding returns and associated withholding documents electronically.

Approximately twenty-two states (Alabama, California, Colorado, Connecticut, Idaho, Indiana, Kansas, Kentucky, Louisiana, Minnesota, Mississippi, Missouri, Montana,

Nebraska, New Jersey, New York, North Dakota, Oregon, Rhode Island, Utah, West Virginia, and Wisconsin) impose a penalty for each Form W-2 that is not timely filed. Certain states, including Nebraska and Utah, impose such late-file penalties for each W-2 that is not electronically filed. Other states, including Georgia, Massachusetts, and New York, impose separate penalties specifically for failing to file Forms W-2 electronically.

Refund Fraud and Identity Theft

To combat refund fraud and identity theft, the Department currently compares employer-filed written statements with data reported on a taxpayer's return. Where there is inconsistency between the data reported by a taxpayer and the data reported by the taxpayer's employer, the Department can stop a return before issuing potentially fraudulent refunds. This process, where the Department compares employer-filed written statements against taxpayer-filed return data, works most effectively when employers file written statements by the January 31 due date and comply with the electronic filing mandate.

Proposed Legislation

This bill would codify existing provisions currently set forth in the Appropriations Act which require that employers file certain documents for withholding purposes with the Department of Taxation in an electronic medium and by January 31 of each year. As a result, this bill would eliminate inconsistencies between the Appropriations Act and statutory provisions.

This bill would also codify a provision in the Appropriations Act which permits employers to request waivers from the electronic filing mandate in cases where such requirements create an unreasonable burden.

The effective date of this bill is not specified.

Similar Bills

Senate Bill 1331 is identical to this bill.

cc : Secretary of Finance

Date: 3/21/2016 JJS
SB230FER161