

# DEPARTMENT OF TAXATION

## 2016 Fiscal Impact Statement

1. **Patron** Timothy D. Hugo

3. **Committee** House Finance

4. **Title** Department of Taxation; Statute of  
Limitations for Amended Tax Returns

2. **Bill Number** HB 877

**House of Origin:**

  X   **Introduced**

       **Substitute**

       **Engrossed**

**Second House:**

       **In Committee**

       **Substitute**

       **Enrolled**

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

This bill would increase the period in which a taxpayer may file an amended return with the Department of Taxation from three years to five years.

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

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, but potentially significant, General Fund revenue loss, beginning in Fiscal Year 2017. Between 2012 and 2015, the Department denied an approximately \$700,000 in refunds claimed on more than 500 amended returns filed between three and five years after the due date. It is not known how many taxpayers refrained from filing amended returns because they were aware of the three-year statute of limitations.

In addition to the normal volume of taxpayers who discover errors between three and five years after the due date, this bill would increase the Commonwealth's exposure from adverse litigation by one-third. When there is an adverse court decision, the Commonwealth's exposure to refund claims is usually the current taxable year plus the three preceding years. This bill would increase that exposure from four taxable years to six taxable years.

In some cases, substantial amounts may be involved. For example, in the early 1990's the Department was involved in the *Harper* litigation, which resulted in refunds claimed by about 175,000 federal retirees. While the U.S. Supreme Court decision in the case referred to a total liability of \$400 million, Virginia's total exposure was in the neighborhood of \$750 million for Taxable Years 1985 through 1988 once interest was taken into account. Had this bill been in effect when the issue arose in 1989, Virginia's exposure could have been as much as \$250 million greater for Taxable Years 1983 and 1984.

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

Department of Taxation

**10. Technical amendment necessary:**

**11. Other comments:**

Current Law

After a tax return is filed, both the taxpayer and the Department of Taxation have the right to review and correct it. The taxpayer may do so by filing an amended return, while the Department may audit the return and issue an assessment for additional tax. The statutes of limitations concerning amended returns, refunds and assessments currently maintain parity between refunds and assessments.

Event	Refund	Assessment
Filing a return	Three years from the date the return is due	<ul style="list-style-type: none"> <li>• Three years from the date the return was filed, except</li> <li>• At any time if fraudulent or if no return is filed</li> </ul>
Change in federal income (IRS audit or amended federal return)	One year from the date of the federal change	One year from the date of the federal change
Filing an amended Virginia return	Two years from the date an amended return was filed reporting additional tax	<ul style="list-style-type: none"> <li>• Two years from the date of an erroneous refund, except</li> <li>• Five years if fraudulent</li> </ul>
Payment of tax or refund	Two years from the payment of an assessment	<ul style="list-style-type: none"> <li>• Two years from the date of an erroneous refund, except</li> <li>• Five years if fraudulent</li> </ul>
Change in the taxable income of another state affecting the individual credit for income tax paid to another state	One year from the date of another state's change	One year from the date of another state's change

### Proposed Legislation

This bill would increase the period in which a taxpayer may file an amended return with the Department of Taxation from three years to five years. The bill would not affect any of the other time limitations for refunds and assessment.

The effective date of this bill is not specified.

cc : Secretary of Finance

Date: 2/1/2016 JPJ  
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