DEPARTMENT OF TAXATION
2018 Fiscal Impact Statement

1. Patron Delores L. McQuinn

2. Bill Number HB 65
House of Origin:
_____ **Introduced**
__X__ **Substitute**
_____ **Engrossed**

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

3. Committee House Finance

4. Title Tax Credit for Employing Individuals Released from Incarceration for Conviction of a Felony

5. Summary/Purpose:

The Department of Taxation ("the Department") understands that the Patron will offer a substitute for this bill. This fiscal impact statement is drafted based on the substitute version.

This bill would provide an individual and corporate income tax credit of $500 for each new full-time job created by the taxpayer that pays an annual salary of at least $25,000 and is filled by an individual released from incarceration. An "individual released from incarceration" would include a person currently not incarcerated who was released from incarceration for conviction of a felony within the five years immediately preceding the date on which the person was hired into the new full-time job.

This bill would be effective for taxable years beginning on or after January 1, 2018, but before January 1, 2023.

6. Budget amendment necessary: No.

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

8. Fiscal implications:

Administrative Costs

The Department has not assigned any administrative costs to this bill because the changes required by a single bill such as this can be implemented as part of the annual changes to our systems and forms. As stand-alone legislation, the Department considers implementation of this bill as "routine," and does not require additional funding.

The Department will provide specific administrative costs on any legislation that is not "routine." Additionally, the Department will review all state tax legislation likely to be enacted prior to the passage by each house. If the aggregate number of routine bills likely to pass either house is unusually large, it is possible that additional resources will be required. If so, the Department will identify the costs at that time.

Revenue Impact

This bill would have an unknown negative General Fund revenue impact beginning in Fiscal Year 2019. It is unknown how many taxpayers would hire qualifying released felons and claim this credit.

9. Specific agency or political subdivisions affected:

Department of Taxation

10. Technical amendment necessary: No.

11. Other comments:

Federal Work Opportunity Tax Credit

The federal Work Opportunity Tax Credit is available to employers for hiring from certain target groups, including certain ex-felons, who have consistently faced significant barriers to employment. To qualify for the credit, the hiring date of an ex-felon cannot be more than one year after their conviction or release from prison. This credit is equal to 25 percent of an ex-felon's first year wages if they work at least 120 hours, and 40 percent if they work at least 400 hours. Employers may earn a credit of up to $2,400 for each newly hired ex-felon. Virginia generally allows employers to claim a deduction on their Virginia income tax returns for salaries and wages that are eligible for the federal Work Opportunity Tax Credit.

Comparable Credits in Other States

California

California allows a credit to a taxpayer who employs a qualified employee in a targeted tax area during the taxable year. The credit is equal to 50 percent of qualified wages in the first year of employment, 40 percent in the second year of employment, 30 percent in the third year of employment, 20 percent in the fourth year of employment, and 10 percent in the fifth year of employment. A "qualified employee includes an individual who, immediately preceding the commencement of employment, was an ex-offender. An individual is treated as convicted for purposes of the credit if they were placed on probation by a state court without a finding of guilt. Qualified wages include wages paid or incurred by the qualified taxpayer to qualified employees during the 60-month period beginning with the day the employee commences employment with the taxpayer. Qualified wages cannot exceed 150 percent of the minimum wage.

Illinois

Illinois provides a credit in an amount equal to 5 percent of the qualified wages paid by the taxpayer during the taxable year to one or more Illinois residents who are qualified ex-offenders. The total credit allowed to a taxpayer with respect to each qualified ex-offender may not exceed $1,500 for all taxable years. A "qualified ex-offender" includes any person who:

- Has been convicted of a crime in Illinois or of an offense in any other jurisdiction, not including any offense or attempted offense that would subject a person to registration under the Sex Offender Registration Act;

- Was sentenced to a period of incarceration in an Illinois adult correctional center; and

- Was hired by the taxpayer within 3 years after being released from an Illinois adult correctional center.

Iowa

Iowa allows small businesses a deduction for hiring an individual domiciled in the state at the time of hiring who has been convicted of a felony in any state or the District of Columbia, is on parole, is on probation for an offense other than a simple misdemeanor, or is in a work release program. The deduction is equal to 65 percent of the wages paid to a qualified individual, but may not exceed $20,000 per individual. This deduction is not allowed for wages paid to an individual who was hired to replace an individual whose employment was terminated within the twelve-month period preceding the date of employment, unless the individual being replaced left employment voluntarily without good cause attributable to the employer or if the individual was discharged for misconduct in connection with the individual's employment.

Louisiana

Louisiana allows a credit to taxpayers who provide full-time employment to an individual who has been convicted of a first time nonviolent offense. The amount of the credit is $144 per taxable year for each eligible employee. A taxpayer may receive the credit for a maximum of two years per employee.

Maryland

Maryland provided a credit in an amount equal to 30 percent of up to the first $6,000 of the wages paid to the qualified ex-felon employee during the first year of employment, and 20 percent of up to the first $6,000 of the wages paid to the qualified ex-felon employee during the second year of employment. A qualified ex-felon employee was defined as anyone who has been convicted of a state or federal felony, is hired within a year of being convicted or released from prison, and is a member of a family with an annual income 70 percent below the Bureau of Labor Statistics living standard. This credit was repealed in 2012.

<u>Sunset Dates for Income Tax Credits and Sales Tax Exemptions</u>

Section 3-5.14 of the 2016-2018 Appropriation Act provides that the General Assembly may not advance the sunset date for any existing income tax credit or sales tax exemption beyond June 30, 2022. Any new income tax credit or sales tax exemption enacted by the General Assembly prior to the 2021 Session must have a sunset date not later than June 30, 2022. This requirement does not apply to sales tax exemptions related to nonprofit entities or to income tax credits or sales tax exemptions with sunset dates after June 30, 2022 that were enacted or advanced during the 2016 Session.

<u>Proposed Legislation</u>

This bill would provide an individual and corporate income tax credit of $500 for each new full-time job created by the taxpayer that pays an annual salary of at least $25,000 and has been filled by an individual released from incarceration. The credit would be permitted for the first taxable year in which the new full-time job is continuously filled throughout the year by an individual released from incarceration and for each of the four succeeding taxable years, provided that the job is continuously filled throughout the respective year by an individual released from incarceration. To qualify for the credit, a taxpayer would have to demonstrate that the new full-time job was created by the taxpayer and that such job was continuously filled in Virginia during the respective taxable year. No credit would be allowed for the taxable year if the number of full-time jobs for which the taxpayer is the employer for the taxable year is less than the base year employment.

"Base year employment" would be defined as the average annual number of full-time jobs for which the taxpayer is the employer during the immediately preceding three taxable years.

"Full-time job" would be defined as a job in Virginia of an indefinite duration, for which the taxpayer is the employer and for which the standard fringe benefits are paid by the taxpayer, requiring a minimum of either 35 hours of an employee's time per week for the entire normal year of the taxpayer's operations which must consist of at least 48 weeks, or 1,680 hours per year. Seasonal or temporary position, and positions created when a job function is shifted from an existing location in Virginia, would not qualify as full-time jobs.

"Individual released from incarceration" would be defined as a person currently not incarcerated and who was released from incarceration for conviction of a felony within the five years immediately preceding the date on which the person was hired into the full-time job.

The amount of the credit would not be permitted to exceed the total amount of income tax imposed upon the taxpayer for the taxable year. A taxpayer would be allowed to carry over any unusable credit for the taxable year for which the credit was allowed for use against the taxpayer's income taxes for the next five succeeding tax years or until the total amount of the credit has been taken, whichever is sooner.

Credits granted to a partnership, limited liability company, or S corporation would be allocated to the individual partners, members, or shareholders, respectively, in proportion to their ownership or interest in such business entities.

A taxpayer would not be allowed the credit for any employee or job for which the taxpayer is allowed a Major Business Facility Job Tax Credit, a Green Job Creation Tax Credit, or receives an Enterprise Zone Job Creation Grant.

The bill would require the Department to develop guidelines, exempt from the provisions of the Administrative Process Act, implementing the provisions of the credit.

This bill would also require the Department to provide a written report to the General Assembly detailing the number of taxpayers that claimed a credit in each of Taxable Years 2018 through 2021, the total dollar amount of such credits claimed for each taxable year, and an assessment of the effectiveness of the credit in promoting participation in the workforce by individuals released from incarceration.

cc: Secretary of Finance

Date: 1/22/2018 JLOF
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