

DEPARTMENT OF TAXATION

2019 Fiscal Impact Statement

1. **Patron** Frank M. Ruff, Jr.

3. **Committee** Senate Finance

4. **Title** Individual Income Tax and Corporate Income Tax; Subtraction for Gain from the Taking of Real Property in a Condemnation Proceeding

2. **Bill Number** SB 1256

House of Origin:

X **Introduced**

 Substitute

 Engrossed

Second House:

 In Committee

 Substitute

 Enrolled

5. Summary/Purpose:

This bill provides an individual and corporate income tax subtraction for any gain recognized by a taxpayer from the taking of real property in a condemnation proceeding.

This bill will be effective for taxable years beginning on and after January 1, 2019.

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 negative General Fund revenue impact beginning in Fiscal Year 2020. The extent to which taxpayers would have gain recognized from the taking of real property in a condemnation proceeding and, thereby, qualify for and claim this subtraction is unknown.

9. Specific agency or political subdivisions affected:

Department of Taxation.

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

11. Other comments:

Federal Law Regarding Eminent Domain

The Fifth Amendment to the Constitution of the United States prohibits federal government from taking the private property without just compensation. This prohibition on governmental taking of property did not apply to state or local governments. In 1868, the Fourteenth Amendment was ratified and extended this protection to takings from state and local governments. In subsequent ruling by the Supreme Court of the United States, the Constitution has been interpreted to allow governments to take personal property provided that the legislature has prescribed a procedure for doing so, the taking is for public use, and just compensation is paid for the property. This governmental power is commonly called “eminent domain,” and is most often accomplished through a condemnation proceeding.

Virginia Law Regarding Eminent Domain

Article I, Section 11 of the Virginia Constitution prohibits the taking of private property except for public use and without just compensation. It further limits the ability state or local governments to take more property than is necessary to achieve the stated public use. The Code of Virginia further clarifies the meaning of “public use” in the Virginia Constitution as an acquisition of property where: (i) the property is taken for the possession, ownership, occupation, and enjoyment of property by the public or a public corporation; (ii) the property is taken for construction, maintenance, or operation of public facilities by public corporations or by private entities provided that there is a written agreement with a public corporation providing for use of the facility by the public; (iii) the property is taken for the creation or functioning of any public service corporation, public service company, or railroad; (iv) the property is taken for the provision of any authorized utility service by a government utility corporation; (v) the property is taken for the elimination of blight provided that the property itself is a blighted property; or (vi) the property taken is in a redevelopment or conservation area and is abandoned or the acquisition is needed to clear title where one of the owners agrees to such acquisition or the acquisition is by agreement of all the owners.

Tax Treatment of Gain Recognized from a Condemnation Proceeding

When real property is taken by the government in a condemnation proceeding, the property owner is required to be compensated the taking of the property. If this compensation results in the owner of the property realizing a gain on the disposition of the real property, the property owner is currently required to recognize that gain as income for federal and Virginia income tax purposes.

Proposed Legislation

This bill provides an individual and corporate income tax subtraction for any gain recognized by a taxpayer from the taking of real property in a condemnation proceeding.

This bill will be effective for taxable years beginning on and after January 1, 2019.

cc : Secretary of Finance

Date: 1/19/2019 RWC
SB1256F161