DEPARTMENT OF TAXATION
2020 Fiscal Impact Statement

1. Patron C. Matthew Fariss

2. Bill Number HB 1694

House of Origin:
X **Introduced**
_____ **Substitute**
_____ **Engrossed**

3. Committee House Finance

4. Title Tax Credits; Vested Interest

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

5. Summary/Purpose:

This bill would provide that when a taxpayer claims any Virginia tax credit, the taxpayer is deemed to have a vested interest in such credit and any conditions that may exist for such credit at the time it was claimed. This bill would provide that no subsequent act of the General Assembly, whether through general law or an appropriation act, may retroactively alter, diminish, or change any conditions, and the taxpayer would continue to be governed by the same conditions that existed at the time the credit was initially claimed.

The provisions of this bill would be retroactive. However, this bill would not alter the period of time during which a taxpayer is permitted to file an amended return.

If enacted during the 2020 Regular Session of the General Assembly, this bill would become effective July 1, 2020.

6. Budget amendment necessary: No.

7. Fiscal Impact Estimates are: Preliminary. (See Line 8.)

8. Fiscal implications:

<u>Administrative Costs</u>

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

<u>Revenue Impact</u>

This bill would have an unknown, but potentially significant, negative General Fund revenue impact. This bill would permit a taxpayer to disregard any limitations that were imposed on a tax credit after the date when such taxpayer originally claimed the credit. Because this bill would apply retroactively, taxpayers would be permitted to exercise this ability on amended returns within the three-year statute of limitations. Depending on the extent to which taxpayers exercise this right, this could have a significant impact on General Fund revenues.

During the 2017 session, the General Assembly limited the amount of the Historic Rehabilitation Tax Credit that could be claimed annually to $5 million. This provision was anticipated to have a positive annual General Fund revenue impact of $9.9 million. Similarly, a limitation on the amount of Land Preservation Tax Credit that could be claimed annually has been imposed several times. The Land Preservation Tax Credit limitation was most recently reduced from $50,000 to $20,000 for Taxable Years 2016 through 2019, which had an estimated impact of more than $6 million annually. This bill would allow taxpayers to amend returns to claim both credits in excess of these amounts for any years still within the three-year statute of limitations for filing an amended return. Accordingly, the impact of this bill could be significant, particularly in Fiscal Year 2021 when it would become effective.

9. Specific agency or political subdivisions affected:

Department of Taxation

10. Technical amendment necessary: No.

11. Other comments:

Land Preservation Tax Credit

The Land Preservation Tax Credit is equal to forty percent of the fair market value of land or an interest in land located in Virginia which is conveyed for the purpose of agricultural and forestal use, open space, natural resource, and/or biodiversity conservation, or land, agricultural, watershed and/or historic preservation, as an unconditional donation by the taxpayer to a public or private conservation agency. The credit is subject to an annual credit cap of $75 million.

Any taxpayer holding a Land Preservation Tax Credit who is unable to use the credit may either carry the credit over to a subsequent year or transfer the unused credit for use by another taxpayer. Under current law, the amount of the credits that may be claimed by each taxpayer per taxable year is limited as follows:

Limitation on Land Preservation Tax Credits Claimed Per Taxable Year	
2000	$50,000
2001	$75,000
2002-2008	$100,000
2009-2011	$50,000
2012-2014	$100,000
2015-2019	$20,000
2020 and thereafter	$50,000

These limitations applied to all taxpayers with unclaimed Land Preservation Tax Credits, regardless of the year they originally earned such credits and the limitations that applied at such time.

Any unused portion of a credit issued to a taxpayer may generally be carried forward for a maximum of 10 years. For taxpayers affected by the credit reduction for taxable years 2009, 2010, 2011, and 2015 and thereafter, any unused portion of a credit issued to a taxpayer may be carried forward for a maximum of 13 years. For taxpayers to whom a credit has been transferred, any unused portion may be carried forward for a maximum of 11 years after the credit was originally issued. For taxpayers affected by the credit reduction for taxable years 2009, 2010, 2011, and 2015 and thereafter, any portion of a transferred credit may be carried forward for a maximum of 14 years after the credit was originally issued.

Virginia Historic Rehabilitation Tax Credit

Under Virginia law, a taxpayer with eligible expenses in the rehabilitation of a certified historic structure is entitled to claim a tax credit. The credit is equal to 25 percent of rehabilitation expenses for projects completed in 2000 and thereafter. To qualify for the tax credit, the cost of the rehabilitation must equal to at least 50 percent (or 25 percent if the building is owner occupied) of the assessed value of the building for local real estate tax purposes prior to the rehabilitation. The rehabilitation work must be certified by the Department of Historic Resources ("DHR") and be consistent with the Secretary of the Interior's standards for rehabilitation. The allowable tax credit may not exceed a taxpayer's tax liability. Any unused credits may be carried forward for up to ten years. Currently, there is no per project limitation or state-wide annual cap on the amount of tax credits that may be issued or claimed.

As originally enacted during the 1996 Session, the credit could only be claimed against individual, fiduciary, and corporate income taxes. During the 1998 Session, legislation was enacted to expand the credit to apply against the bank franchise tax, the insurance premium license tax, and the tax on public service corporations. Since Fiscal Year 2008, the amounts of Historic Rehabilitation Tax Credit claimed against each tax are as follows (in millions):

Fiscal Year	Income Tax	Bank Franchise Tax	Insurance Premiums License Tax	Total
2008	$39.8	$0.1	$41.4	**$81.4**
2009	$62.8	$0.2	$45.3	**$108.2**
2010	$64.6	$1.2	$48.9	**$114.7**
2011	$46.8	$1.5	$34.8	**$83.2**
2012	$59.2	$5.0	$30.3	**$94.5**
2013	$23.5	$1.7	$42.4	**$67.6**
2014	$27.1	$0.5	$43.3	**$70.9**
2015	$43.8	$2.8	$51.4	**$98.0**
2016	$48.0	$4.7	$45.4	**$98.1**
2017	$38.1	$5.8	$43.9	**$87.8**

2018	$28.8	$6.3	$34.9	**$70.0**
2019 (preliminary)	$37.3	$2.1	$37.2	**$76.6**

During the 2017 Session, the General Assembly enacted legislation that limited the amount of Historic Rehabilitation Tax Credits that may be claimed by each taxpayer per taxable year to $5 million, including any amounts carried over from prior taxable years. This limitation originally applied for taxable years beginning on and after January 1, 2017, but before January 1, 2019. Legislation enacted during the 2019 Session permanently extended the limitation.

These limitations applied to all taxpayers with unclaimed Historic Rehabilitation Tax Credits, regardless of the year they originally earned such credits and the limitations that applied at that time. Any unused amounts may still be carried forward and utilized within the carryforward period.

Proposed Legislation

This bill would provide that when a taxpayer claims any Virginia tax credit, the taxpayer is deemed to have a vested interest in such credit and any conditions that may exist for such credit at the time it was claimed. This bill would provide that no subsequent act of the General Assembly, whether through general law or an appropriation act, may retroactively alter, diminish, or change any conditions, and the taxpayer would continue to be governed by the same conditions that existed at the time the credit was initially claimed.

The provisions of this bill would be retroactive. However, this bill would not alter the period of time during which a taxpayer is permitted to file an amended return.

If enacted during the 2020 Regular Session of the General Assembly, this bill would become effective July 1, 2020.

cc : Secretary of Finance

Date: 1/24/2020 JLOF
HB1694F161