DEPARTMENT OF TAXATION
2020 Fiscal Impact Statement

1. Patron Janet D. Howell

2. Bill Number SB 211
House of Origin:
X **Introduced**
_____ **Substitute**
_____ **Engrossed**

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

3. Committee Senate Finance and Appropriations

4. Title Third-Party Settlement Organization; Reporting Requirements

5. Summary/Purpose:

This bill would require third-party settlement organizations to report to the Department of Taxation ("the Department"), and to any participating payee, all information required to be reported for federal tax purposes on Form 1099-K using the thresholds imposed for purposes of Form 1099-MISC. This would lower the threshold for reporting Form 1099-K information for Virginia tax purposes. This requirement would apply only to payments made to participating payees with a Virginia mailing address.

This bill would be effective for all payments made on or after January 1, 2020.

This is a Secretary of Finance bill.

6. Budget amendment necessary: No.

7. Fiscal Impact Estimates are: Preliminary. (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 an estimated positive revenue impact of $10 million in Fiscal Year 2021 and $20 million in Fiscal Year 2022 and thereafter. Because this bill would substantially increase the amount of information provided to the Department regarding certain payment transactions, the agency anticipates that this bill would result in a corresponding increase in taxpayer compliance. This bill would also provide the Department with additional information for auditing purposes.

No budget amendment would be necessary for this bill because the General Fund revenue impact of imposing reduced Form 1099-K thresholds for Virginia tax purposes is assumed in the Introduced Executive Budget. If this bill is not enacted, the budget would need to be adjusted to reduce the revenue estimate by $10 million in Fiscal Year 2021 and by $20 million in Fiscal Year 2022.

9. Specific agency or political subdivisions affected:

Department of Taxation

10. Technical amendment necessary: Yes. The bill cross references the Internal Revenue Code provision, § 6050W several times. However, the text refers to this provision as § 6050(W) rather than § 6050W. Therefore, the Department suggests striking the parenthetical around “W” throughout the text of this bill.

11. Other comments:

Federal Law

For federal tax purposes, all persons in a trade or business that make payments of $600 or more in a taxable year to another person who is not an employee in pursuit of that trade or business are generally required to report such payments to the IRS using Form 1099-MISC. Such businesses are also required to provide the form to their non-employee workers.

However, many app-based, gig economy businesses are currently able to be classified as third-party settlement organizations. For federal tax purposes, this term is defined as “…the central organization which has the contractual obligation to make payment to participating payees of third party network transactions.” This may include ride share, lodging, shopping service, and other similar businesses. This classification permits such businesses to report payments to the IRS and non-employee workers using Form 1099-K. Form 1099-K is only required if the third-party settlement organization has paid someone more than $20,000 and has completed more than 200 separate transactions with the person. As a result, the filing threshold for submitting a Form 1099-K is much higher than the threshold required for filing a Form 1099-MISC.

Proposed Federal Legislation

It is widely recognized that the higher threshold for submitting Form 1099-K to the IRS and to non-employee workers has resulted in an underreporting and payment of federal and state taxes by certain app-based, gig economy non-employee workers. In 2017, Congress considered legislation that would have addressed this issue for federal tax purposes. The Senate version of this legislation would have made the threshold for both forms 1099-MISC and 1099-K $1,000 and eliminated the existing 200-transaction threshold for Form 1099-K. A similar House version of the legislation would have made the threshold for both forms $1,500 and eliminated the existing Form 1099-K 200-transaction requirement. In 2019, the House version of this legislation was reintroduced, but has not yet been acted upon. It is unclear whether Congress will ultimately enact legislation to address this issue.

Virginia and Form 1099-K Information

Virginia currently receives Form 1099-K information directly from the IRS up to one year after the January 31 to March 31 federal deadlines (which vary depending on circumstances). Virginia does not impose a state-specific Form 1099-K requirement. Therefore, Virginia relies indirectly on the federal $20,000 in aggregate payments and 200 transactions threshold for receiving Form 1099-K information.

Other States

Massachusetts and Vermont currently impose reduced, state-specific Form 1099-K thresholds specifically for third-party settlement organizations. The threshold imposed in both states is based on the $600 in aggregate payments threshold imposed federally for Form 1099-MISC.

Proposed Legislation

This bill would require third-party settlement organizations to report to the Department, and to any participating payee, all information required to be reported for federal tax purposes on Form 1099-K using the thresholds imposed for purposes of Form 1099-MISC. This would lower the threshold for reporting Form 1099-K information for Virginia tax purposes. This requirement would apply only to payments made to participating payees with a Virginia mailing address.

"Participating payee," "reportable payment transactions," and "third party settlement organization" would have the same meanings as defined in § 6050W of the Internal Revenue Code as follows:

- "Participating payee" would mean in the case of a payment card transaction, any person who accepts a payment card as payment and, in the case of a third party network transaction, any person who accepts payment from a third party settlement organization in settlement of such action.

- "Reportable payment transactions" would be defined as any payment card transaction (i.e., any transaction in which a payment card is accepted as payment) and any third party network transaction (i.e., any transaction settled through a third party payment network).

- "Third party settlement organization" would be defined as the central organization that has the contractual obligation to make payment to participating payees of third party network transactions.

Such information would be required to be reported to the Department and participating payees within 30 days of the relevant federal deadlines for submitting Form 1099-MISC.

Third-party settlement organizations would be required to report any information required to be reported to the Department on forms and using an electronic medium prescribed by the Tax Commissioner. The Tax Commissioner would have the authority to waive the requirement to submit this information electronically upon a determination that the requirement creates an unreasonable burden on the third-party settlement organization. All requests for waiver would be required to be transmitted to the Tax Commissioner in writing.

This bill would be effective for all payments made on or after January 1, 2020.

Similar Bills

House Bill 730 and **House Bill 1412** are identical to this bill.

cc : Secretary of Finance

Date: 1/14/2020 RWC
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