

# DEPARTMENT OF TAXATION

## 2020 Fiscal Impact Statement

1. **Patron** Mark L. Cole

3. **Committee** House Finance

4. **Title** Income, Sales, and Local Taxes;  
Extension of Penalty and Interest Waiver

2. **Bill Number** HB 5006

**House of Origin:**

  X   **Introduced**

       **Substitute**

       **Engrossed**

**Second House:**

       **In Committee**

       **Substitute**

       **Enrolled**

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

This bill would extend the waiver of penalties and interest Virginia provided in response to the coronavirus disease 2019 ("COVID-19") pandemic for certain Taxable Year 2019 income tax payments originally due during the period from April 1, 2020 to June 1, 2020. The waiver would apply to taxpayers whose business or place of employment suffered a period of closure resulting from an executive order issued in response to the COVID-19. The extended waiver for payments originally due during such period would only be available to taxpayers that provide full payment of their tax liability for such payments, including any penalties or interest due, before December 1, 2020.

This bill would also provide a waiver of interest and penalties for late sales and local tax payments for taxpayers whose business or place of employment suffered a period of closure resulting from an executive order issued in response to the COVID-19 pandemic. The waiver would be available only to taxpayers that provide full payment of their tax liability for such payments, including any penalties or interest due, no later than six months after the original date upon which the tax was due.

This bill would provide refunds to taxpayers who have paid penalties and interest that would be subject to waiver on or before the effective date of this bill. The effective date of this bill is not specified.

### 6. **Budget amendment necessary:** Yes.

Item(s): Page 1, Revenue Estimates  
Item 282, Department of Taxation

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

### 8. **Fiscal implications:**

#### Administrative Costs

As a result of this bill, the Department would incur costs of approximately \$750,000 in Fiscal Year 2021. This includes costs for administering the refund program, updating the

Department's systems, and communicating with and providing customer service to taxpayers regarding the proposed refund program.

This bill would require the Department to automatically provide refunds to certain taxpayers within four weeks of the effective date of this legislation based on criteria that is not readily available to the agency. Accordingly, the Department suggests that the bill be amended to require taxpayers to apply for refunds and penalty waivers (see Line 10). Without this amendment, it would not be possible to identify qualifying taxpayers.

The effective date of the bill is not specified and would, therefore, depend on when the General Assembly adjourns. Depending upon adjournment, refunds could be required to be issued as early as December 2020. Given the extensive system and processing changes that would need to be made as a result of this legislation, as well as the current workload necessary to implement legislation enacted during the 2020 General Assembly session, the Department would not have the ability to implement the changes set forth in this bill within the proposed time frame. Accordingly, the Department suggests that the bill be amended to specify an effective date and to provide an extended time frame for issuing refunds (see Line 10).

The Department's ability to implement this legislation within the specified time frame would also depend on other legislation enacted during the 2020 Special Session. Accordingly, the Department will reevaluate its costs once action is taken and may request additional funding or an amendment to further delay the effective date of this legislation.

Localities that are required to identify taxpayers affected by this bill and issue the required refunds will experience unknown administrative costs.

#### Revenue Impact

This bill would have an unknown significant negative General Fund revenue impact in Fiscal Year 2021. It is unknown to what extent taxpayers would qualify for a refund provided by this bill based on their business or place of employment closing or reducing operations in order to comply with an executive order issued in response to the COVID-19 pandemic. Based on preliminary individual income tax and sales tax data for returns and payments submitted during 2020, the Department estimates that this bill would have a negative revenue impact of at least \$18.6 million in Fiscal Year 2021.

This bill would have an unknown negative revenue impact to localities that have assessed and collected interest and penalties that would be required to be refunded.

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

Department of Taxation  
Localities

## **10. Technical amendment necessary: Yes.**

This bill would require the Department to provide refunds to qualifying taxpayers within four weeks of the effective date of the legislation. However, the Department would be unable to identify taxpayers qualifying for the proposed penalty waiver or make a determination regarding refund eligibility without additional information from taxpayers. Therefore, the Department recommends that the bill be amended to require qualifying taxpayers to apply for refunds and provide information regarding their eligibility.

Given the anticipated large volume of eligible taxpayers, it is likely that it would not be possible to implement and administer this program within the specified time requirements, even if such information was readily available to the agency. Accordingly, the bill would need to be amended to provide a much longer period for reviewing refund claims and issuing refunds to allow adequate time to implement the proposed program. In addition, time would need to be built into the process to allow taxpayers to apply for refunds and for the Department to review and process such applications. It is suggested that such amendments either eliminate the deadlines set forth in the bill or add a deadline by which taxpayers must apply to the Department for relief. Because some taxpayers may not realize that they are eligible for refunds until after the statutory deadline, the former approach may be more taxpayer friendly.

The refunds provided by this bill would be connected to “an executive order issued in response to the COVID-19 pandemic.” However, this bill does not specify which executive orders. For clarity, the Department recommends specifying which executive orders would allow a taxpayer to qualify for the proposed refund program. Otherwise, any future executive orders could impact the Department’s ability to meet the timing requirements set forth in this bill.

## **11. Other comments:**

### Federal Income Tax Payment and Filing Extension

For federal income tax purposes, taxpayers are generally required to file their income tax returns and make payments by April 15. In response to the COVID-19 pandemic, the Treasury Department and the Internal Revenue Service (“IRS”) extended the federal income tax filing deadline for most income taxpayers from April 15, 2020 to July 15, 2020. In addition, taxpayers with filing or payment deadlines falling on or after April 1, 2020, and before July 15, 2020, were granted an automatic extension to July 15, 2020. For taxpayers who availed themselves of this extended filing and payment deadline, no late-filing penalty, late-payment penalty, or interest applied.

### Virginia Income Tax Penalty and Interest Waiver

For Virginia income tax purposes, individual income tax and fiduciary income tax returns and payments are generally due on May 1 for most taxpayers. Corporate income tax returns and payments are generally due on April 15 for most taxpayers.

In response to the COVID-19 pandemic, Virginia provided that any income tax payments due during the period from April 1, 2020 to June 1, 2020 could be submitted to the

Department at any time on or before June 1, 2020 without penalty or the accrual of interest. This waiver applied to any payment required to be made with a Taxable Year 2019 individual income tax, fiduciary income tax, and corporate income tax return, as well as any such payment required to be made with respect to an election to file an extension. In addition, the waiver also applied to payments associated with composite returns, and Taxable Year 2019 and 2020 individual, fiduciary, or corporate estimated income tax payments that were required to be paid during the period from April 1, 2020 to June 1, 2020. However, the waiver of penalties and interest only applied if full payment was made on or before June 1, 2020.

Virginia did not provide a filing extension to taxpayers in response to the COVID-19 pandemic. However, taxpayers were still able to avail themselves of Virginia's automatic filing extension of up to six months for most taxpayers or seven months for certain corporations. Taxpayers filing on extension are required to pay at least 90 percent of the total tax liability by June 1, 2020 in order for the penalty and interest waiver to apply.

#### Virginia Sales Tax Penalty and Interest Waiver

Every dealer required to collect or pay sales and use tax must file a return and full payment on the 20<sup>th</sup> day of the month immediately following the month covered by such return. The penalty for failing to file a return and make full payment on time is six percent per month, not to exceed 30 percent in the aggregate. Interest accrues on the unpaid portion of the tax until the full amount of the tax is paid or until an assessment is made by the Department. In response to the COVID-19 pandemic, the Department allowed dealers to request an extension of the due date for filing and payment of the February 2020 return originally due March 20, 2020. If granted, the Department allowed filing and payment of the February 2020 return on April 20, 2020 with a waiver of any interest and penalties that would have otherwise applied.

#### Virginia Local Taxes and COVID-19

Annual returns and payment of local taxes such as those imposed on machinery and tools, merchants' capital, and personal property are generally due by May 1 of each year unless the local governing body has established a different due date by ordinance. Returns and payment requirements for local Meals, Admissions, and Transient Occupancy Taxes vary by locality, but are typically due on the last day of the month following the month for which the tax is being reported. Taxpayers failing to pay any county, city, or town levy on or before December 5, unless a different date has been established by local ordinance, will incur a penalty of five percent. However, no penalty may be imposed for failure to pay any tax if such failure was not the fault of the taxpayer. As localities are authorized by existing law to discretionarily waive certain interest and penalties, some localities have already exercised this discretion to varying degrees in light of the COVID-19 pandemic.

## Proposed Legislation

### *Income Tax Waiver*

This bill would extend the waiver of penalties and interest Virginia provided in response to the COVID-19 pandemic for certain Taxable Year 2019 income tax payments originally due during the period from April 1, 2020 to June 1, 2020. The waiver would apply to taxpayers whose business or place of employment suffered a period of closure resulting from an executive order issued in response to the COVID-19 pandemic. The extended waiver for payments originally due during such period would only be available to taxpayers that provide full payment of their tax liability for such payments, including any penalties or interest due, before December 1, 2020.

The Department would be required to issue a refund in the amount of any interest and penalties assessed by and paid to the Department by any qualified taxpayer who made such an interest or penalty payment on or before the effective date of this bill. The Department would be required to issue such refunds no later than four weeks after the effective date of this bill.

### *Sales and Local Tax Waivers*

This bill would provide a waiver of interest and penalties for late sales and local tax payments for taxpayers whose business or place of employment suffered a period of closure resulting from an executive order issued in response to the COVID-19 pandemic. The waiver would be available only to taxpayers that provide full payment of their tax liability for such payments, including any penalties or interest due, no later than six months after the original date upon which the tax was due.

The Department and any affected localities would be required to issue a refund in the amount of any interest and penalties assessed by and paid to the Department or locality by any qualified taxpayer who made such an interest or penalty payment on or before the effective date of this bill. The bill would require such refunds to be issued no later than four weeks after the effective date of this bill. The effective date of this bill is not specified.

Any refund issued pursuant to this bill would be in addition to any income tax refund due to a taxpayer. In addition, any refund issued pursuant to this bill would be subject to the Setoff Debt Collection Act.

cc : Secretary of Finance

Date: 8/21/2020 RWC  
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