DEPARTMENT OF TAXATION
2020 Fiscal Impact Statement

1. Patron Jason S. Miyares

2. Bill Number HB 5036
House of Origin:
X Introduced
___ Substitute
___ Engrossed

Second House:
___ In Committee
___ Substitute
___ Enrolled

3. Committee House Finance

4. Title Telework Expenses Tax Credit

5. Summary/Purpose:

This bill would reinstate the Telework Expenses Tax Credit, which was repealed during the 2019 General Assembly Session.

This bill would remove the requirement that taxpayers submit an application to the Department of Taxation ("the Department") to reserve credits in the year preceding the calendar year in which eligible expenses will be incurred. This bill would also remove the requirement that taxpayers must enter into a signed telework agreement with their teleworking employees.

This bill would be effective for taxable years beginning on and after January 1, 2020, but before January 1, 2025.

6. Budget amendment necessary: Yes.
Page 1, Revenue Estimates
Item 282, Department of Taxation

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

8. Fiscal implications:

Administrative Costs

As a result of this bill, the Department of Taxation would incur costs of approximately $66,556 in Fiscal Year 2021. These costs include updating the Department's systems and developing new forms and instructions.

Due to the current workload associated with system and processing changes that need to be made prior to the upcoming filing season, it is possible that the Department may not have the ability to implement the changes set forth in this bill by the proposed effective date. Most form development must be completed by August prior to filing season to allow sufficient time for systems testing, both internally and by tax software vendors. While it is possible to make certain smaller modifications later in the development process, programming for more extensive changes such as new credits is more difficult to accomplish in a short time frame. Accordingly, the Department will reevaluate its costs once action is taken and may request additional funding or an amendment to delay the effective date of this legislation.

In addition, any changes made later in the development process could impact commercial tax software that is made available by private vendors, potentially causing delays in the availability of such software and making it difficult for taxpayers who file electronically to do so in a timely and accurate manner.

Revenue Impact

This bill would have a negative General Fund revenue impact beginning in Fiscal Year 2021. It is unclear to what extent taxpayers would qualify for and claim this credit. The credit would be subject to an annual credit cap of $1 million, which would limit the potential impact.

While the Department would normally anticipate a lower negative revenue impact as this credit was historically underutilized before it was repealed, many employers have responded to the coronavirus disease 2019 ("COVID-19") pandemic by increasing teleworking arrangements for employees. According to recent data from U.S. Bureau of Labor Statistics, approximately 35 percent of workers nationwide teleworked or worked from home for pay because of the COVID-19 pandemic during May 2020. In addition, this bill would simplify the process for qualifying and applying for the credit. Because of COVID-19 and the simplified process under this bill, it is possible that the annual credit cap of $1 million could be reached, resulting an annual General Fund revenue impact of $1 million. However, the actual revenue impact may be lower to an unknown extent.

The following table provides information for Fiscal Year 2014 through Fiscal Year 2019 regarding returns on which the Telework Expenses Tax Credit was claimed:

Fiscal Year	Number of Returns	Amount
2014	7	$51,128
2015	10	$112,843
2016	9	$56,127
2017	7	$14,734
2018	13	$68,102
2019	4	$5,328

9. Specific agency or political subdivisions affected:

Department of Taxation

10. Technical amendment necessary: No.

11. Other comments:

Virginia's Telework Expenses Tax Credit

The Telework Expenses Tax Credit was an individual and corporate income tax credit for employers that incurred eligible telework expenses. There were two parts to the credit. Employers could claim a credit for eligible telework expenses incurred during the calendar year, not to exceed $1,200 per eligible teleworking employee. Employers could also claim up to $20,000 for the costs of conducting a telework assessment. The total amount of the Telework Expenses Tax Credit claimed by an employer could not exceed $50,000 in a calendar year. The portion of the credit for conducting a telework assessment could only be claimed once by an employer. The total amount of credits was capped at $1 million annually.

To qualify for a credit for eligible telework expenses, the employer was required to enter into a signed telework agreement with the teleworking employee. This telework agreement was required to be in accordance with policies set by the Department of Rail and Public Transportation.

To receive this credit, taxpayers were required to submit a reservation application to the Department between September 1 and October 31 of the year preceding the taxable year for which the credit was to be earned. If reservation applications for the year exceeded the $1 million credit cap, tentative credits were allocated to taxpayers on a pro rata basis. Once an employer had actually incurred eligible expenses, it was required to submit a final application to the Department in order to an actual receive a credit allocation. If applications for credit allocations exceeded the credit cap, the Department would allocate credits to taxpayers on a pro rata basis. The amount of credit claimed could not exceed the tax liability of the taxpayer and unused credit amounts could not be carried forward to future taxable years. Taxpayers could not claim this credit if any other income credit was also claimed or if the qualified expenses were deducted by the taxpayer in any taxable year.

During the 2019 Session, the General Assembly enacted legislation that repealed the Telework Expenses Tax Credit by moving the credit's sunset date from January 1, 2022 to January 1, 2019.

Proposed Legislation

This bill would reinstate the Telework Expenses Tax Credit, which was repealed during the 2019 General Assembly Session.

This bill would remove the requirement that taxpayers submit an application to the Department to reserve credits in the year preceding the calendar year in which eligible expenses will be incurred. This bill would also remove the requirement that taxpayers enter into a signed telework agreement with their teleworking employees. Instead, the bill would require that taxpayers may only apply for credits for those employees who teleworked on a full-time basis for the taxpayer for at least three months during the taxable year.

This bill would require an employer seeking to claim the credit to submit an application to the Department pursuant to forms and procedures as required by the Tax Commissioner. The Department would be required to establish policies and procedures for eligible employers to apply for credits after incurring an eligible expense. Such policies and procedures would be required to provide:

- The requirements to applying for credits, including provisions allowing an eligible employer to apply for a credit after incurring an expense;
- A system for allocating the available amount of credits among eligible employers; and
- Any other requirements deemed appropriate by the Department.

The Department would not be allowed to require an eligible employer to reserve or obtain advance approval credits.

This bill would be effective for taxable years beginning on and after January 1, 2020, but before January 1, 2025. This bill would not modify eligibility requirements or per employee, per employer, and aggregate caps or any other provisions of the Telework Expenses Tax Credit for prior taxable years.

cc : Secretary of Finance

Date: 8/21/2020 JJS
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