

DEPARTMENT OF TAXATION

2020 Fiscal Impact Statement

1. **Patron** John J. McGuire, III

3. **Committee** House Finance

4. **Title** Individual Income Tax; Pandemic-Related
Education Expenses Tax Credit

2. **Bill Number** HB 5129

House of Origin:

X **Introduced**

 Substitute

 Engrossed

Second House:

 In Committee

 Substitute

 Enrolled

5. **Summary/Purpose:**

This bill would provide a refundable individual income tax credit for Taxable Year 2020 and Taxable Year 2021 equal to 50 percent of the pandemic-related education expenses paid and incurred by the taxpayer. The amount of the credit would be limited to the lesser of \$4,500 or the actual amount of pandemic-related education expenses incurred. "Pandemic-related education expenses" would be defined as any education expenses incurred and paid by the taxpayer for his child's education, so long as such expenses are:

- Not education expenses regularly incurred prior to the coronavirus disease 2019 ("COVID-19") pandemic;
- Paid to a private sectarian or nonsectarian elementary or secondary school or preschool that is located in the Commonwealth, and does not discriminate on the basis of race, color, or national origin;
- Verified pursuant to guidelines published by the Department of Taxation ("the Department"); and
- Incurred between August 1, 2020 and July 31, 2021 due to closures of the taxpayer's child's elementary or secondary school as a result of the COVID-19 pandemic or due to such school not offering in-classroom education.

The credit would not be subject to an annual credit cap. This bill would be effective for taxable years beginning on and after January 1, 2020, but before January 1, 2022.

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

Item(s): 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 would incur costs of in \$310,156 Fiscal Year 2021 and \$34,124 in Fiscal Year 2022. This includes costs for updating the Department's systems and communicating with and providing customer service to taxpayers regarding the credit.

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 tax 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 an unknown, but potentially significant, negative General Fund revenue impact in Fiscal Year 2021, Fiscal Year 2022, and Fiscal Year 2023. It is unknown to what extent the COVID-19 pandemic will result in taxpayers incurring increased education expenses that would be eligible for this credit. However, due to the nature of the COVID-19 pandemic and its impact on schools and the economy, the number of qualifying taxpayers and negative revenue impact could be substantial.

9. Specific agency or political subdivisions affected:

Department of Taxation

10. Technical amendment necessary: Yes.

The amount of the credit would be limited to the lesser of \$4,500 or the actual amount of pandemic-related education expenses incurred. However, the portion of this limitation regarding “the actual amount of pandemic-related education expenses incurred” does not account for the provision that limits expenses that may be utilized for purposes of the credit to 50 percent of the pandemic-related education expenses paid and incurred by the taxpayer. To reconcile this contradiction, the Department suggest the following technical correction:

Page 1, Line 25, after “\$4,500 or”
Insert: “50 percent of”

11. Other comments:

529 Accounts and Primary and Secondary Education Expenses

Taxpayers are permitted to make cash contributions to a qualified tuition program, commonly known as a “529 account,” on behalf of a student or future student. Contributions to 529 accounts are not deductible for federal income tax purposes. In contrast, up to \$4,000 in such contributions are deductible for Virginia income tax purposes each year if made to an account established with the Virginia College Savings Plan. Any earnings on these contributions are tax-free for both federal and Virginia income tax purposes. A distribution under a 529 plan that does not exceed the “qualified higher education expenses” of the designated beneficiary generally is tax-free for both federal and Virginia income tax purposes. Such expenses include tuition, fees, books, etc.,

required for the enrollment or attendance of a designated beneficiary at an eligible educational institution.

On December 22, 2017, the federal Tax Cuts and Jobs Act modified the term “qualified higher education expenses” to include expenses for tuition in connection with the enrollment or attendance at an elementary or secondary public, private, or religious school. However, this law also limited the amount of cash distributions for elementary and secondary school tuition from all 529 accounts to a single beneficiary to \$10,000 per year.

Proposed Legislation

This bill would provide a refundable individual income tax credit for Taxable Year 2020 and Taxable Year 2021 equal to 50 percent of the pandemic-related education expenses paid and incurred by the taxpayer. The amount of the credit would be limited to the lesser of \$4,500 or the actual amount of pandemic-related education expenses incurred. “Pandemic-related education expenses” would be defined as any education expenses incurred and paid by the taxpayer for his child’s education, so long as such expenses are:

- Not education expenses regularly incurred prior to the coronavirus disease 2019 (“COVID-19”) pandemic;
- Paid to a private sectarian or nonsectarian elementary or secondary school or preschool that is located in the Commonwealth, and does not discriminate on the basis of race, color, or national origin;
- Verified pursuant to guidelines published by the Department of Taxation (“the Department”); and
- Incurred between August 1, 2020 and July 31, 2021 due to closures of the taxpayer’s child’s elementary or secondary school as a result of the COVID-19 pandemic or due to such school not offering in-classroom education.

If two parents of the same child file separately, only one of the two parents would be permitted to claim the credit. The credit would not be subject to an annual credit cap.

This bill would require the Tax Commissioner to develop guidelines, exempt from the Administrative Process Act, for claiming the credit.

This bill would be effective for taxable years beginning on and after January 1, 2020, but before January 1, 2022.

cc : Secretary of Finance

Date: 9/1/2020 MTH
HB5129F161