

**DEPARTMENT OF TAXATION
2024 Fiscal Impact Statement**

1. **Patron** Joseph P. McNamara
3. **Committee** House Finance
4. **Title** Income Tax; Rolling Conformity

2. **Bill Number** HB 261
House of Origin:
 X **Introduced**
 Substitute
 Engrossed
- Second House:**
 In Committee
 Substitute
 Enrolled

5. Summary/Purpose:

This bill would clarify that the amendments to the IRC from which Virginia already deconforms due to the \$15 million per amendment million revenue trigger would not count toward the \$75 million cumulative revenue impact trigger.

Under current law, Virginia generally conforms to amendments made to the IRC automatically as soon as they are passed by Congress. This is referred to as rolling conformity. However, Virginia’s rolling conformity is subject to the following revenue triggers, which will cause Virginia to deconform from an IRC amendment:

- Any amendments to the IRC with an estimated revenue impact of more than \$15 million (the “\$15 million per amendment revenue trigger”), and
- All amendments to the IRC occurring between adjournment sine die of the previous regular session of the General Assembly and the first day of the subsequent regular session of the General Assembly that exceed a cumulative estimated revenue impact of \$75 million for all such amendments (the “\$75 million cumulative revenue trigger”).

If enacted during the 2024 regular session of the General Assembly, this bill would become effective July 1, 2024.

6. Budget amendment necessary: No.

7. No Fiscal Impact: (See Line 8.)

8. Fiscal implications:

Administrative Costs

The Department of Taxation (“the Department”) considers implementation of this bill as routine and does not require additional funding.

Revenue Impact

Because this bill clarifies the interaction between the two revenue triggers under current law, it would have no revenue impact.

9. Specific agency or political subdivisions affected:

Department of Taxation

10. Technical amendment necessary: Yes. The Department understands that the intent of this bill is to compute the \$75 million revenue trigger under subdivision 2 using only amendments to the IRC that have not been previously deconformed from because their revenue impact exceeds the \$15 million revenue trigger under subdivision 1. This is reflected in the added language in Lines 69-70 of the bill. However, Lines 72-74 provide that “[a]ny amendment conformed to pursuant to clause (iv) shall not be included in the calculation of the \$75 million threshold for purposes of determining whether such threshold has been met.” Because clause (B)(2)(iv) is about amendments that have been deconformed from under subdivision 1, rather than amendments to which Virginia conforms, the Department recommends the following technical amendments to mirror the language at Lines 69-70:

Line 72, after “Any amendment”

Strike: *conformed to pursuant to clause (iv)*

Insert: *deconformed from pursuant to subdivision (1)*

11. Other comments:

Virginia’s History with Rolling and Fixed Date Conformity

Prior to 1971, the Virginia Constitution did not allow provisions incorporated into Virginia law if they could be subsequently revised without approval of the General Assembly. The new constitution adopted in 1971 included a provision allowing incorporation of the IRC “as those laws may be or become effective.” From 1972 until 2002, Virginia relied on the new constitutional provision to automatically conform to any Congressional changes in the definition of income. As a result, Virginia was a rolling conformity state during that period.

The Job Creation and Worker Assistance Act of 2002 (“JCWAA”) substantially reduced Virginia taxable income of businesses by creating a new depreciation deduction and modifying the carryback period for net operating loss deductions. The 2002 Appropriation Act included a provision temporarily fixing the date of conformity to the IRC as of December 31, 2001. In 2003, the General Assembly adopted fixed date conformity by adopting the IRC as it existed on December 31, 2002 and specifically excepting the depreciation/NOL provisions modified by JCWAA. From 2002 to 2023, Virginia has been a fixed date conformity state. Annual conformity bills have generally advanced the date of fixed conformity and revised the list of exceptions as needed.

In 2023, the General Assembly adopted rolling conformity by automatically conforming Virginia to amendments to the IRC enacted after January 1, 2023, except:

- Any amendments that would increase or decrease General Fund revenues by more than \$15 million in the fiscal year in which the amendment was enacted or any of the succeeding four fiscal years, or
- All amendments occurring between adjournment sine die of the previous regular session of the General Assembly and the first day of the subsequent regular session of the General Assembly if the cumulative impact of such amendments would increase or decrease General Fund revenues by more than \$75 million in the fiscal year in which the amendments were enacted or any of the succeeding four fiscal years.
- Generally the same exceptions that were in place during fixed date conformity.

Virginia's Current Conformity to Federal Income Tax Law

Beginning on January 1, 2023, Virginia automatically conforms to the IRC on a rolling basis. Virginia law currently deconforms from the following provisions:

- **Bonus depreciation allowed for certain assets under federal income taxation.** Taxpayers who claim bonus depreciation on their federal returns upon purchasing an asset are required to make adjustments on their Virginia returns for the taxable year in which they purchased such asset and in each subsequent year until the asset has been fully depreciated for federal and Virginia purposes.
- **The five-year carry-back of net operating losses (“NOLs”) generated in certain taxable years.** Although no longer available, taxpayers who benefited from the use of a five-year carry-back on their federal returns for losses generated during 2008 and 2009 are required to make adjustments on their Virginia returns for the taxable year in which such losses were generated and in each subsequent year until all such losses have been fully utilized for both federal and Virginia purposes.
- **Tax exclusions related to cancellation of debt income.** Although no longer available, taxpayers who benefited from a deferral of income realized upon the reacquisition of certain business debt during 2009 and 2010 on their federal returns are required to make adjustments on their Virginia returns for the taxable year in which they deferred such income and in each subsequent year until such income is fully reported for both federal and Virginia purposes. However, for transactions completed on or before April 21, 2010, taxpayers were permitted to partially defer such income by reporting the income over three taxable years.
- **Tax deductions related to the application of the applicable high yield debt obligation rules.** Although no longer available, taxpayers who benefited from the suspension of the application of the applicable high yield debt obligation rules for certain debts issued between September 30, 2008 and December 31, 2009 on their federal returns, are required to make adjustments on their Virginia returns for the taxable year in which they claimed a deduction and in each subsequent year until such deductions are fully claimed for both federal and Virginia purposes.

- **Suspension of the federal overall limitation on itemized deductions.** During the 2019 Session, Virginia deconformed from the federal suspension of the overall limitation on itemized deductions (the “Pease Limitation”). This has the effect of reinstating the Pease Limitation for Virginia income tax purposes only beginning with Taxable Year 2019.
- **The reduction in the medical expense deduction floor.** During the 2021 session, Virginia permanently deconformed from the reduction in the adjusted gross income limitation on the medical expense deduction from 10 percent to 7.5 percent. Previously, Virginia deconformed from this provisions for Taxable Years 2017, 2019, and 2020.
- **Certain business provisions of the federal CARES Act.** During the 2021 session, Virginia deconformed from several provisions of the CARES Act that effectively suspended certain provisions of the TCJA temporarily. Specifically, these provisions suspended certain net operating loss (“NOL”) limitations for Taxable Years 2018, 2019, and 2020; suspended the excess business loss limitation for Taxable Year 2018, 2019, and 2020; and increased the business interest limitation for Taxable Year 2019 and 2020.
- **The deduction of business expenses through certain COVID-related small business assistance programs.** During the 2021 Session, the General Assembly enacted legislation that partially deconformed from the full federal deductibility of business expenses funded by forgiven Paycheck Protection Program (“PPP”) loan proceeds. During the 2022 Session, the General Assembly enacted legislation fully conforming to the federal deductibility of business expenses funded by forgiven PPP loan proceeds and Economic Injury Disaster Loan program funds.
- **Any amendment enacted on or after January 1, 2023 that would increase or decrease General Fund revenues by more than \$15 million in the fiscal year in which the amendment was enacted or any of the succeeding four fiscal years.** This deconformity will not apply to any federal tax changes that the General Assembly subsequently adopts or a federal tax extender. Beginning January 1, 2024, the \$15 million threshold will be adjusted annually by the change in the Chained Consumer Price Index for All Urban Consumers (C-CPI-U) for the previous year.
- **All amendments enacted on or after January 1, 2023, and occurring between adjournment sine die of the previous regular session of the General Assembly and the first day of the subsequent regular session of the General Assembly if the cumulative impact of such amendments would increase or decrease General Fund revenues by more than \$75 million in the fiscal year in which the amendments were enacted or any of the succeeding four fiscal years.** This deconformity will not apply to any federal tax changes that the General Assembly subsequently adopts or that are enacted before the date on which the cumulative projected impact is met. This deconformity will also not apply to any federal tax extender.

The Secretary of Finance is required to provide an annual report on the fiscal impact of amendments to the IRC occurring since the adjournment sine die of the prior year's regular

session of the General Assembly to the Chairmen of the Senate Committee on Finance and Appropriations and the House Committees on Appropriations and Finance.

Proposed Legislation

This bill would clarify that the amendments to the IRC from which Virginia already deconforms due to the \$15 million per amendment million revenue trigger would not count toward the \$75 million cumulative revenue impact trigger.

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- All amendments to the IRC occurring between adjournment sine die of the previous regular session of the General Assembly and the first day of the subsequent regular session of the General Assembly that exceed a cumulative estimated revenue impact of \$75 million for all such amendments (the "\$75 million cumulative revenue trigger").

If enacted during the 2024 regular session of the General Assembly, this bill would become effective July 1, 2024.

Similar Bills

Senate Bill 459 is identical to this bill.

cc : Secretary of Finance

Date: 1/14/2024 JLOF
HB261F161