

# DEPARTMENT OF TAXATION

## 2022 Fiscal Impact Statement

1. **Patron** G. John Avoli

2. **Bill Number** HB 901

3. **Committee** House Finance

**House of Origin:**

  X   **Introduced**

       **Substitute**

       **Engrossed**

4. **Title** Individual income tax; late payment penalty

**Second House:**

       **In Committee**

       **Substitute**

       **Enrolled**

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

This bill would prohibit the Department of Taxation ("the Department") from assessing a late payment penalty to the entire tax or to any unpaid balance of the income tax owed by an individual unless and until the taxpayer fails to file his return by the time fixed by law for filing a return or by the time prescribed pursuant to a filing extension, as applicable. Under current law, the late payment penalty is assessed at the time a return is received by the Department if payment is not made in full when due.

If this bill is enacted during the 2022 Regular Session of the General Assembly, it would become effective July 1, 2022.

6. **Budget amendment necessary:** No.

7. **Fiscal Impact Estimates are:** Not available. (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 unknown, potentially significant, negative General Fund revenue impact beginning in Fiscal Year 2022. An estimated \$25.4 million late payment penalties were assessed for the late payment of individual income taxes in Fiscal Year 2020, and \$28.1 million in Fiscal Year 2021. An estimated \$16.4 million was similarly assessed in Fiscal Year 2022 through mid-January 2022. The year-to-date total for Fiscal Year 2022 is similar to last year at this time, suggesting that the amount of late payment penalties for Fiscal Year 2022 may be comparable to the amount assessed last year. It is unknown to what extent these penalties would be eliminated by this bill, but it could be as much as 100 percent.

This bill also removes much of the incentive to pay timely, so long as the return has been filed timely. To the extent that this bill effectively creates a payment extension, it could result in the shift of significant revenues from one fiscal year to the next. The individual income tax comprises approximately two-thirds of General Fund revenues, with collections of \$17 billion in FY 2021. To the extent that a portion of such revenues would be shifted from FY 2023 to FY 2024, this bill could have a significant impact.

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

Department of Taxation

**10. Technical amendment necessary:** No.

**11. Other comments:**

Penalties for Late Filing and Late Payment

The penalty for failing to timely file an income tax return is 6 percent per month or fraction of a month up to a maximum penalty of 30 percent of the unpaid tax. The penalty is imposed after the return is filed, at which time the timeliness of filing and the amount of tax can be determined. A similar penalty is imposed for the failure to timely pay income tax, however the penalty is waived for any month in which the late filing penalty is imposed.

Virginia Individual Income Tax Filing Deadlines

Virginia individual income tax returns are generally due on May 1 of each year. Virginia offers automatic filing extensions to all individual taxpayers for up to six months. Therefore, the Virginia extended due date for individual income taxpayers is generally November 1.

Proposed Legislation

This bill would prohibit the Department from assessing a late payment penalty unless the taxpayer has also failed to file an individual income tax return by the statutory or extended due date. Although this bill would allow the late payment penalty to be assessed when the return is filed late, existing law prohibits the assessment of a late payment penalty for a month in which a late filing penalty has been assessed.

Therefore, if an individual files an income tax return on or before the due date but fails to pay the tax shown on the return, no late payment penalty would be imposed. Under current law, a late payment penalty would be imposed for each month the payment is delayed, up to 5 months or 30 percent of the tax due. Under this bill, no late filing or late payment penalty would be assessed in that instance.

If this bill is enacted during the 2022 Regular Session of the General Assembly, it would become effective July 1, 2022.

cc : Secretary of Finance

Date: 2/4/2022 JPJ  
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