

DEPARTMENT OF TAXATION

2025 Fiscal Impact Statement

1. **Patron** James W. Morefield

3. **Committee** House Finance

4. **Title** Income tax; eligibility of companies for apportionment modification

2. **Bill Number** HB 2646

House of Origin:

 X **Introduced**

 Substitute

 Engrossed

Second House:

 In Committee

 Substitute

 Enrolled

5. **Summary/Purpose:**

This bill would extend the date by which certain companies could become eligible to apportion Virginia taxable income using modified apportionment factors. Specifically, this bill would extend from January 1, 2025, to January 1, 2031, the date after which a corporation or pass-through entity that did not have any existing property or payroll in Virginia as of January 1, 2018, shall constitute an eligible company if such entity (i) either (a) spends at least \$5 million on new capital investment in a qualified locality or qualified localities and creates at least 10 new jobs in such locality or localities or (b) creates at least 50 new jobs in a qualified locality or qualified localities, (ii) is a traded-sector company, and (iii) is certified by the Virginia Economic Development Partnership Authority as generating a positive fiscal impact.

The bill would also extend from January 1, 2025, to January 1, 2031, the date prior to which an eligible company may (a) acquire property in or create jobs in any qualified locality or qualified localities and (b) subtract the value of such property acquired from the property factor or the value of such payroll attributable to such jobs created from the payroll factor from the numerator used in determining its taxable income apportionable to the Commonwealth.

If enacted during the regular session of the 2025 General Assembly, this bill would become effective July 1, 2025.

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 the extension of the sunset dates on the current provisions granting apportionment modifications to an eligible corporation certified by the VEDP is assumed in the official General Fund revenue forecast, this bill would have no impact on General Fund revenues.

9. Specific agency or political subdivisions affected:

Department of Taxation
Virginia Economic Development Partnership

10. Technical amendment necessary: No.

11. Other comments:

Statutory Method of Apportionment

Virginia generally requires the Virginia taxable income of a multistate corporation to be apportioned to Virginia by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor, plus twice the sales factor, and the denominator of which is four.

- The property factor is a fraction that consists of the average value of the corporation's real and tangible personal property owned or rented and used in Virginia over the like property located everywhere.
- The payroll factor is a fraction, the numerator being the total amount of compensation paid or accrued within Virginia during the taxable year by a taxpayer, and the denominator being the total compensation paid or accrued everywhere during the taxable year.
- The sales factor is a fraction, the numerator of which is the total sales of the corporation in Virginia during the taxable year, and the denominator of which is the total sales of the corporation everywhere during the taxable year.

Since adopting the basic three-factor apportionment method in 1960, variations on this method and alternative methods have been adopted for a number of industries and situations.

Certified Company Apportionment

During the 2018 Session, the General Assembly enacted legislation which allows certain companies that have been certified by VEDP ("certified companies") to use certified company apportionment. Under certified company apportionment, a certified company may elect to modify the application of Virginia's statutory three-factor method of apportionment by:

- Reducing the numerator of the property factor by an amount equal to the value of its property acquired in any qualified localities on or after January 1, 2018 but before January 1, 2025;
- Reducing the numerator of the payroll factor by an amount equal to any payroll attributable to jobs created on or after January 1, 2018 but before January 1, 2025 in any of such localities; and
- Reducing the numerator of the sales factor by an amount equal to any sales in Virginia for the taxable year.

In addition to certified companies using Virginia's statutory three-factor method of apportionment, certified company apportionment permits a certified company using certain single factor methods of apportionment to modify its apportionment factor. Certified company apportionment also permits a certified company conducting its entire business within Virginia to elect to apportion its income between qualified localities and other Virginia localities and utilize modified apportionment factors, provided that the certified company does not apportion any of its income to a state other than Virginia

Requirements for Using Certified Company Apportionment

To be eligible to use certified company apportionment, the company must be a corporation or pass-through entity that does not have any existing property or payroll in Virginia as of January 1, 2018 and, on or after January 1, 2018, but before January 1, 2025:

- Either (a) spends at least \$5 million on new capital investment in a qualified locality or qualified localities and creates at least 10 new jobs in a qualified locality or qualified localities or (b) creates at least 50 new jobs in a qualified locality or qualified localities;
- Is a traded-sector company; and
- Is certified by VEDP as generating a positive fiscal impact.

As part of the certification process, VEDP is required to determine whether a company will generate a positive fiscal impact based on the following factors:

- Job creation;
- Private capital investment; and
- Anticipated additional state and local tax revenue.

VEDP must make an annual re-certification, and no company is permitted to continue using certified company apportionment for any taxable year that VEDP does not grant recertification.

To be certified by VEDP, the company must operate in certain qualified localities. A "qualified locality" is defined as:

- The Counties of Alleghany, Bland, Buchanan, Carroll, Craig, Dickenson, Giles, Grayson, Lee, Russell, Scott, Smyth, Tazewell, Washington, Wise, or Wythe, or the Cities of Bristol, Galax, or Norton;
- The Counties of Amelia, Appomattox, Buckingham, Charlotte, Cumberland, Halifax, Henry, Lunenburg, Mecklenburg, Nottoway, Patrick, Pittsylvania, or Prince Edward, or the Cities of Danville or Martinsville;
- The Counties of Accomack, Caroline, Essex, Gloucester, King and Queen, King William, Lancaster, Mathews, Middlesex, Northampton, Northumberland, Richmond, or Westmoreland;
- The Counties of Brunswick or Dinwiddie, or the City of Petersburg; or
- A qualified development site.

A "qualified development site" is defined as real property that is in a locality adjacent to a qualified locality and, before January 1, 2018, either (i) was owned or partly owned by a qualified locality or an industrial development authority of which a qualified locality is a member or (ii) was owned or partly owned by a locality or industrial development authority, was leased to a private party, and was subject to a revenue-sharing agreement providing that a portion of the revenues from the lease would be distributed to a qualified locality. "Qualified development site" does not include real property that is not owned by Virginia or a political subdivision thereof.

In 2019 the General Assembly enacted legislation to add Page County to the list of

- Qualified localities that a company may invest in for purposes of becoming eligible to utilize certified company apportionment.
- Localities authorized to give grants or loans to such companies.

Proposal

This bill would extend from January 1, 2025, to January 1, 2031, the date after which a corporation or pass-through entity that did not have any existing property or payroll in Virginia as of January 1, 2018, shall constitute an eligible company if such entity (i) either (a) spends at least \$5 million on new capital investment in a qualified locality or qualified localities and creates at least 10 new jobs in such locality or localities or (b) creates at least 50 new jobs in a qualified locality or qualified localities, (ii) is a traded-sector company, and (iii) is certified by the Virginia Economic Development Partnership Authority as generating a positive fiscal impact.

The bill would also extend from January 1, 2025, to January 1, 2031, the date prior to which an eligible company may (a) acquire property in or create jobs in any qualified locality or qualified localities and (b) subtract the value of such property acquired from the

property factor or the value of such payroll attributable to such jobs created from the payroll factor from the numerator used in determining its taxable income apportionable to the Commonwealth.

If enacted during the regular session of the 2025 General Assembly, this bill would become effective July 1, 2025.

cc : Secretary of Finance

Date: 01/21/2025 JPJ
HB2646F161