Virginia Disability Commission: Overview of HB 1880 & HB 2342

Virginia

Department of Taxation

June 20, 2011

House Bill 1880

Overview

- This bill would create:
  - An individual income tax deduction for contributions made to a qualified trust, up to $2,000 per year, and
  - An exclusion from Virginia income taxes for any income earned by a qualified trust
- Types of trusts that would qualify for this treatment:
  - Disabled individual’s special needs trusts,
  - Non-profit pooled income special needs trusts, and
  - Third-party supplemental needs trusts

House Bill 1880

Disabled Individual's Special Needs Trust

- Beneficiary must be under age 65 and disabled under the Social Security definition
- Trust must be established for the sole benefit of a disabled person by a parent, grandparent, legal guardian, or court
- A disabled individual may not create his own special needs trust, even if he is otherwise legally competent
- State must receive the amount remaining in the trust upon death, up to the amount of total medical assistance paid on behalf of the individual under a state Medicaid plan

VIRGINIA·DEPARTMENT·OF·TAXATION

House Bill 1880

Non-Profit Pooled Income Special Needs Trust

- Must be established and managed by a non-profit
- Beneficiary must be disabled under the Social Security definition
- A separate account is maintained for each disabled individual beneficiary, but all accounts are pooled for investment and management purposes
- Upon death, the balance is retained in trust for the non-profit association or paid to the state Medicaid agency

House Bill 1880

Third-Party Supplemental Needs Trusts

- Allows third parties to provide assets to disabled individuals without disqualifying them from Supplemental Social Security (SSI) or Medicaid benefits
- Must be created by a party other than the disabled individual
- Cannot receive assets belonging to the beneficiary
- Must be restricted (not accessible or available to the beneficiary)
- To qualify for the deduction, the property of the trust cannot be considered a resource for SSI purposes, which means:
  - The disabled individual cannot have the legal authority to revoke or terminate the trust, and
  - The disabled individual cannot direct the use of the trust assets for his/her own support and maintenance

House Bill 1880

Fiscal Impact

- This bill would result in an unknown revenue loss
  - According to DMAS, there were 189,536 blind or disabled persons in the Medicaid program in FY 2009
  - The number of these individuals who have a qualifying trust or who would have had one if this bill had been passed is unknown
- Each $2,000 contribution would reduce income tax revenue by as much as $115
- The exclusion of income earned by qualifying trusts would reduce revenue by an unknown amount

House Bill 1880

Potential Issues

- Unknown negative revenue impact
  - The number of taxpayers contributing to qualifying trusts is unknown
  - The amount of revenue loss resulting from the exclusion of trust income is also unknown
- Uncertain that this tax incentive will encourage additional trusts
  - The maximum tax benefit for each $2,000 deduction is $115

House Bill 2342

Overview

- This bill would create the Hiring Employees with Disabilities Tax Credit:
  - Employers would be permitted to claim a credit equal 20 percent of the first $5,000 of annual wages paid to a qualified employee during the first two years of employment
  - The credit would have a three-year carryover
- This bill would also repeal the expired Employees with Disabilities Tax Credit that expired on December 31, 2002

House Bill 2342

The Hiring Employees with Disabilities Tax Credit

- A qualified employee would be an otherwise qualified person with a disability who has completed or is completing a rehabilitative program administered by:
  - The Department of Rehabilitative Services,
  - The Department for the Visually Handicapped, or
  - The U.S. Department of Veterans Affairs
- Certification would be required by the agency administering the rehabilitative program
- Employers would not be permitted to claim the credit for employees that they already employed at the time of enactment
- A credit would not be granted if the employee is a relative of any owner or employer claiming the credit

House Bill 2342

Repeal of the Employees with Disabilities Tax Credit
(*Va. Code* § 58.1-439.11)

- Created by 1999 House Bill 1676
- Equal to 20 percent of the first $6,000 of annual wages paid to a qualified employee during the first two years of employment
- Available for taxable years beginning on and after January 1, 1999
- This credit expired December 31, 2002

House Bill 2342

Federal Work Opportunity Tax Credit

(IRC § 51)

- Equal to 40 percent of the qualified first-year wages paid by an employer during the taxable year to individuals who are members of a targeted group, including certain disabled individuals
- A disabled employee is considered part of a targeted group if he has been certified by the designated local agency as:
  - Having a physical or mental disability which constitutes or results in a substantial handicap to employment
  - Having been referred to the employer upon completion of rehabilitative services approved by a state, an Employment Network under the federal Ticket-to-Work Program, or the U.S. Department of Veterans Affairs

House Bill 2432

Fiscal Impact

- Unknown negative revenue impact
  - The maximum annual benefit would be $1,000 per employee
  - Both the number of employers who would claim the credit and the number of qualified employees are unknown
- During the years when the Employees with Disabilities Tax Credit was available, a small number of taxpayers claimed this credit
- The amount of the Employees with Disabilities Tax Credit claimed against the corporate income tax was less than $4,000

House Bill 2432

Potential Issues

- Unknown revenue impact
- Historical data suggests that few taxpayers may claim the credit
- The bill contains no definition of what qualifies as a “disability”
- Taxpayers may receive both a federal and state benefit for the same employees
  - Federal Work Opportunity Tax Credit
  - Federal deduction for business expenses, including wages

House Bill 2432

Potential Issues (continued)

- Because employers are prohibited from asking certain questions about an employee's disability, this effectiveness of the credit as an incentive to hire the disabled may be decreased
- Certification by other agencies, including one federal agency, may pose several issues:
  - If employers have difficulty determining which employees qualify for the credit, they may request large amounts of information from these agencies
  - Although it will likely provide information voluntarily, Virginia cannot require the U.S. Department of Veterans Affairs to certify a state tax credit