



COMMONWEALTH of VIRGINIA

Department of Taxation

November 15, 2023

The Honorable Janet D. Howell
Co-Chair, Senate Finance and Appropriations Committee

The Honorable George L. Barker
Co-Chair, Senate Finance and Appropriations Committee

The Honorable Roxann L. Robinson
Chairwoman, House Finance Committee

During the 2023 Session, the General Assembly enacted House Bill 1369, which directed the Department of Taxation to convene a work group to study current federal and state policies concerning installment agreements and make recommendations regarding how the Commonwealth's policies may better align with installment agreement policies adopted by the Internal Revenue Service. A report summarizing the work group's findings and recommendations is enclosed.

If you have any questions or comments regarding the enclosed report, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Craig M. Burns".

Craig M. Burns
Tax Commissioner

cc: The Honorable Stephen E. Cummings, Secretary of Finance

**Workgroup to Study Current Federal and State Policies
Concerning Installment Agreements Pursuant to 2023
House Bill 1369**

Report

Department of Taxation

November 15, 2023

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Executive Summary

House Bill 1369 (2023 *Acts of Assembly*, Chapter 643) requires the Department of Taxation (the "Department") to offer installment agreements to individual income taxpayers in which the taxpayer may satisfy his or her entire tax liability over a term of up to five years. The legislation repealed the Department's authority to modify or terminate an installment agreement if the financial condition of the taxpayer has significantly changed or the taxpayer fails to provide a financial condition update upon request. House Bill 1369 also established a working group for the Department to study current federal and state policies concerning installment agreements and make recommendations regarding how the Department's policies could better align with installment agreement policies adopted by the Internal Revenue Service (IRS). See Appendix A.

As required by House Bill 1369, the work group was comprised of the following members:

- Two representatives from the Taxation Section of the Virginia Bar Association
- Two representatives from the Virginia Society of Certified Public Accountants
- Two representatives from the Virginia Society of Enrolled Agents

The Department contacted the stakeholder groups identified in the legislation to notify them of the work group and to request that each stakeholder group appoint two representatives to participate in the work group.

The work group met on July 13, 2023. Following the meeting, a survey was distributed to participants. Thereafter, the Department circulated a draft report for written comment. All responses to the survey and all comments received from the work group are attached as Appendix C and D, respectively. This is the final report of the work group.

Background

Virginia Code § [58.1-1817](#) authorizes the Department to enter into an agreement allowing taxpayers to satisfy a tax liability by making installment payments. The Department routinely enters into installment agreements with taxpayers when they are unable to immediately pay the full amount owed but may do so over a period of time. The Department has the authority to modify or terminate any installment agreement for several reasons, such as failure to pay any installment when due, failure to pay other tax liabilities when due, or failure to file any required tax or informational return during the period in which such agreement is in effect.

Prior to July 1, 2023, Virginia law did not set forth maximum or minimum terms with respect to installment agreements. The Department has developed internal procedures to ensure fair and consistent review of requests for installment agreements. Such internal procedures include consideration of the amount owed, the taxpayer's financial situation and other hardship considerations, and whether the taxpayer routinely enters into or defaults on such installment agreements.

Historically, the Department has maintained a general policy of limiting the maximum term of installment agreements to two years for individuals, but no limit was applied to corporations. During the COVID-19 pandemic, the Department extended this general policy by allowing installment agreements of up to four years in certain circumstances where a taxpayer has a significant amount of outstanding tax liability and has not previously requested an installment agreement or has not previously defaulted due to non-payment of taxes owed. The Department made additional changes to the procedural documents that are made available to practitioners, including clarifying the language, removing the financial statement requirements for taxpayers who did not habitually fail to pay, and extending the largest balance range for taxpayers who did not habitually fail to pay to allow repayment over a period of up to 5 years.

House Bill 1369 repealed the Department's authority to modify or terminate the installment agreement if the financial condition of the taxpayer has significantly changed or fails to provide a financial condition update upon request. However, the Department retained the authority to modify or terminate an installment agreement if the taxpayer fails to pay any installment when due or file any required tax or informational return during the period in which such agreement is in effect.

House Bill 1369 also modifies the Department's procedures for installment agreements relating to individual income tax and allows a taxpayer to satisfy his or her entire tax liability over a term of up to five years. This bill does not affect the Department's authority to enter into installment agreements for any other tax type.

The legislation also required the Department to establish a working group to study current federal and state policies concerning installment agreements and make recommendations regarding how the Department's policies could better align with installment agreement policies adopted by the Internal Revenue Service. The working group includes representatives from the Taxation Section of the Virginia Bar Association, the Virginia Society of Certified Public Accountants, and the Virginia Society of Enrolled Agents.

Work Group

The Department contacted the stakeholder groups identified in the legislation to notify them of the work group and to request that each stakeholder group appoint two representatives to participate in the work group. The legislation required the work group to be comprised of the following:

- Two representatives from the Taxation Section of the Virginia Bar Association
- Two representatives from the Virginia Society of Certified Public Accountants
- Two representatives from the Virginia Society of Enrolled Agents

The Department asked each stakeholder group to appoint their own representatives. The appointed representatives were:

- Taxation Section of the Virginia Bar Association: Kyle Wingfield and Bobby Johnson
- Virginia Society of Certified Public Accountants: Cathy Stemple
- Virginia Society of Enrolled Agents: Vaughan Long and Angela Thompson

The work group met on July 13, 2023. Following that meeting, the Department circulated a survey for participants to complete. Thereafter, the Department circulated the draft report for review and written comments. All survey responses and written comments received from the work group are attached as Appendix C and D, respectively.

Work Group Meeting: July 13, 2023

The work group met on July 13, 2023. All work group participants were in attendance. Prior to the meeting, the Department gave all work group participants an agenda with an outline of topics to be discussed. See Appendix B.

The meeting commenced with a review of the work group's mandate, which centered on studying current federal and state policies concerning the installment agreements at issue in the underlying legislation. The primary objective was to make recommendations regarding how the Commonwealth's policies could better align with the installment agreement policies adopted by the Internal Revenue Service (IRS). A comprehensive presentation followed, providing an overview of installment agreement policies and procedures regarding "no-look" installment agreements from both Virginia and the IRS. See Appendix E.

In Virginia, a "no look" installment agreement is an installment agreement that does not require the submission of financial information. These agreements are available to taxpayers who have income tax liabilities of less than \$25,000 and who are considered to be non-habitual taxpayers and may be paid out over a period of 60-months or less. A non-habitual taxpayer is a taxpayer who has no prior defaults in installment agreements due to nonpayment and who is current in all tax filings. The minimum balance allowed is \$1,500 and the minimum required monthly payment is \$25. The Department prefers a down payment of 10% to be made at the time the installment agreement is entered into, although such a down payment is not required.

The IRS refers to this type of “no look” installment agreement as a “Guaranteed Installment Agreement.” See Internal Revenue Manual (IRM) [5.14.5.3](#). Under Internal Revenue Code (IRC) § [6159](#) (c), the IRS must accept proposals to pay in installments if taxpayers are individuals who owe income tax only of \$10,000 or less. Qualifying taxpayers must not have failed to file any income tax returns or have entered into any installment agreements during any of the preceding five taxable years. Taxpayer are also required to have paid any tax shown on such returns during any of the preceding five taxable years. The term length offered by the IRS for these agreements is three years, or before the end of the [Collection Statute Expiration Date](#) (“CSED”).

Following the presentation, the floor was opened to participants for discussion. An initial question prompted a focused discussion on which policies, if any, should be changed to align with federal policies. A few key areas were examined, including whether Virginia should implement a policy similar to the IRS’s prohibition on installment agreement terms extending beyond the CSED date. Additionally, the question of whether Virginia should require a fee, following the IRS’s model of a graduated fee based on the method of submission, was raised. Lastly, there was consideration of reducing the maximum balance for “no-look” installment agreements from \$25,000 to \$10,000, in line with the IRS’s limit.

Practitioners suggested aligning Virginia policies with IRS policies on “Streamlined Installment Agreements” would be a better approach than the policy on “Guaranteed Installment Agreements.” Pursuant to [IRM 5.14.5.2](#), “Streamlined Installment Agreements” are available for balances of \$50,000 or less and do not require the submission of financial documentation. The term length must be 72 months or less, which may be limited by the CSED.

It was suggested that a down payment should not be required, although it might be considered “preferred.” Participants observed that collections representatives were not treating a down payment as a strict requirement. The importance of balancing the focus on collecting as much money as possible with the protection of taxpayer rights, akin to the IRS’s approach, was emphasized.

Concerns were raised about direct debit issues and their potential impact on installment agreements. The group discussed the need for more flexibility in Virginia’s approach to working with taxpayers, noting that they believe the IRS tends to be more accommodating. Differences between Virginia and the IRS regarding adding new liabilities to an installment agreement without creating a default were also examined.

The group expressed interest in better aligning with the IRS’s policy on CSED. Under federal law, the CSED generally continues to run with installment agreements with the applicable installment agreement period being shortened where necessary. In contrast, under Virginia law, the CSED is tolled with installment agreements, such that assessments will never be excluded from maximum installment agreement period due to the CSED. However, while Virginia’s CSED is currently seven years, the IRS generally has a longer ten-year period for collecting. Several members of the group recommended that, while an installment agreement was pending, the statute of limitations on collection should not be stayed, even when the result was to reduce the available term for repayment. Some participants noted that taxpayers might prefer to pay interest and penalties over a more extended period, emphasizing the need for flexibility. Changing the current policy on this issue would require a Virginia law change and, if this option

is considered, the General Assembly should consider whether it would practical to align Virginia's CSED with the longer ten-year period applicable at the federal level.

The requirement that taxpayers have never defaulted on an installment agreement, known as "non-habitual," was deemed onerous, and the group suggested it could be reduced to filing compliance and/or allowing for three or more defaults. Participants recommended that penalty abatement should be allowed for taxpayers with a history of compliance. The absence of a nonpayment structure akin to the IRS's "Currently Not Collectible" status was discussed.

Participants also highlighted the difference in communication practices. The IRS sends a notice of intent to cancel an installment agreement to advise taxpayers of default and give them a chance to cure, whereas Virginia does not provide notice that the installment agreement has been canceled until collection actions have begun.

Findings and Recommendations

The work group mandated by 2023 House Bill 1369 brought together different practitioner groups who commonly represent taxpayers in setting up installment agreements with both the Commonwealth of Virginia and the Internal Revenue Service. The Department appreciates the participants for the important input provided for this report. The Department will take the recommendations from the work group into consideration in developing additional policies and procedures relating to other types of installment agreements provided by the IRS.

The work group identified the following areas of consensus:

1. A down payment should not be required in order for a taxpayer to set up a "no look" installment agreement with Virginia. The Department has implemented new procedures in relation to these agreements and no longer requires a taxpayer to provide a down payment in no look installment agreements.
2. The Department will consider a nonpayment structure akin to the IRS's "Currently Not Collectible" status.
3. While tolling of the CSED is statutorily required pursuant to *Va. Code* § 58.1-1802.1, the implication of further legislative changes to this policy should be considered.

Appendix A: Legislative Mandate

VIRGINIA ACTS OF ASSEMBLY -- 2023 SESSION

CHAPTER 643

An Act to amend and reenact § 58.1-1817 of the Code of Virginia, relating to installment agreements for payment of taxes.

[H 1369]

Approved March 26, 2023

Be it enacted by the General Assembly of Virginia:

1. That § 58.1-1817 of the Code of Virginia is amended and reenacted as follows:

§ 58.1-1817. Installment agreements for the payment of taxes.

A. 1. *The Tax Commissioner is required to offer to enter into a written agreement with any taxpayer filing a return for taxes imposed under Article 2 (§ 58.1-320 et seq.) of Chapter 3 under which such taxpayer is allowed to satisfy his tax liability in installment payments over a payment period of up to five years on petition by the taxpayer, if the Tax Commissioner determines such an agreement will facilitate collection.*

~~The 2. Except as identified in subdivision 1, the Tax Commissioner is authorized to enter into a written agreement with any taxpayer under which such taxpayer is allowed to satisfy his tax liability in installment payments, if the Tax Commissioner determines such an agreement will facilitate collection.~~

B. Except as otherwise provided in this section, any agreement entered into by the Tax Commissioner under subsection A shall remain in effect for the term of the agreement.

The Tax Commissioner may terminate any installment agreement if:

1. Information ~~which that~~ the taxpayer provided prior to the date such agreement was entered into was inaccurate or incomplete; or

2. The Tax Commissioner determines that the collection of any tax to which an agreement relates is in jeopardy.

~~C. If the Tax Commissioner makes a determination that the financial condition of a taxpayer who has entered into an installment agreement under this section has significantly changed, the Tax Commissioner may alter, modify, or terminate such agreement. Such action may be taken only if (i) notice of the action is provided to the taxpayer no later than thirty days prior to the date of such action and (ii) such notice includes the reasons why the Tax Commissioner believes a significant change in the financial condition of the taxpayer has occurred.~~

~~D. The Tax Commissioner may alter, modify, or terminate an installment agreement in the case of the failure of the taxpayer:~~

~~1. To pay any installment at the time it is due;~~

~~2. To pay any other tax liability at the time it is due;~~

~~3. To provide a financial condition update as requested by the Tax Commissioner; or~~

~~4. 3. To file with the Department any required tax or information return during the time period such agreement is in effect.~~

~~E. D. The Tax Commissioner may alter, modify, or terminate an installment agreement under other exceptional circumstances as he deems appropriate.~~

2. That the Department of Taxation (the Department) shall convene a working group to study current federal and state policies concerning installment agreements and to make recommendations regarding how the Commonwealth's policies may better align with the installment agreement policies adopted by the Internal Revenue Service. Such working group shall include two members selected by the Taxation Section of the Virginia Bar Association, two members selected by the Virginia Society of Certified Public Accountants, and two members selected by the Virginia Society of Enrolled Agents. The Division of Legislative Services shall assist the working group. The Department's working group shall complete its meetings by October 1, 2023, and submit a report of its findings and recommendations to the Chairmen of the House Committee on Finance, the House Committee on Appropriations, and the Senate Committee on Finance and Appropriations by November 15, 2023.

Appendix B: Agenda

A work group to study to study current federal and state policies concerning installment agreements and to make recommendations regarding how the Commonwealth's policies may better align with the installment agreement policies adopted by the Internal Revenue Service.

HB 1369 Installment Agreement Work Group

Meeting Agenda

July 13, 2023

Work Group Participants

Kyle Wingfield - *Virginia Bar Association Taxation Section* - kwingfield@williamsmullen.com

Bobby Johnson - *Virginia Bar Association Taxation Section* - bobby@crowgey.com

Cathy Stemple - *Virginia Society of CPA's* - cathy.stemple@kwccpa.com

Vaughan Long - *Virginia Society of Enrolled Agents*- vlong@taxtsa.com

Angela Thompson - *Virginia Society of Enrolled Agents* - angelathompson9033@gmail.com

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Jane Ollice – Compliance Manager – jane.ollice@tax.virginia.gov

Richard Dotson – Audit Manager – richard.dotson@tax.virginia.gov

10:00 AM Start Time

- I. Greeting and Introductions – Anna Dunkum
- II. Review of House Bill 1369 Statement of Purpose
- III. Discussion of changes made by HB 1369
- IV. Comparison of Virginia Tax and IRS Installment Agreement Policies
- V. Tax Practitioner Input
- VI. Next Steps
- VII. Meeting Wrap-up

Appendix C: Follow Up Survey Responses

View results

Respondent

1

Anonymous

11:23

Time to complete

HB 1369 Follow Up Survey

The Department was tasked with convening a work group to study current federal and state policies concerning installment agreements and to make recommendations regarding how the Commonwealth's policies may better align with the installment agreement policies adopted by the IRS. This survey aims to gather feedback and insights from work group participants on their opinions, preferences, and experiences related to no-look, guaranteed installment agreements for taxpayers with individual income tax liabilities. The questions in this survey are open ended and responses are intended to be elaborated upon. Responses may be included in the Department's report of its findings and recommendations to the Chairperson of the House Committee on Finance, the House Committee on Appropriations, and the Senate Committee on Finance and Appropriations. Thank you so much for taking the time to complete this survey.

1. The IRS does not allow installment agreement terms to extend beyond the collections statute expiration date (CSED), limiting the length of time available for repayment. Virginia law currently tolls the CSED while an installment agreement is pending, allowing a repayment to span the 5-year period. **Should Virginia law instead implement a policy similar to the IRS's policy of limiting the length of installment agreement to that of the CSED? Why or why not? ***

The IRS does allow for installment agreements that go beyond the CSED. They are called Partial Payment Installment Agreements and they are explained in detail in Section 5.14.2 of the Internal Revenue Manual (https://www.irs.gov/irm/part5/irm_05-014-002r).

They taxpayer must submit a financial statement substantiating the amount that they are able to pay, and typically the IRS tries to collect updated financial information from the taxpayer to determine whether their situation has changed and if they are able to increase the amount of the monthly payments.

The IRS still retains the right, as does the Commonwealth, to file suit and secure a 20 year judgment at any time before the CSED if it determines that is in the best interest for the government.

I think it is a fundamental mistake, and contrary to the policy behind a CSED, to toll that date for the time when a taxpayer is making payments under an agreement. This policy incentivizes people to avoid participating in the tax collection system. Instead of encouraging taxpayers who make a good faith effort to repay past due taxes to the best of their ability, the tolling punishes taxpayers for participating in the system and potential places them in a situation where they would be paying back taxes into perpetuity. The tolling of the CSED disproportionately hurts low-income taxpayers, and rewards the taxpayers that do not engage with the Department to resolve their unpaid taxes.

View results

Respondent

2

Anonymous

05:54

Time to complete

1. The IRS does not allow installment agreement terms to extend beyond the collections statute expiration date (CSED), limiting the length of time available for repayment. Virginia law currently tolls the CSED while an installment agreement is pending, allowing a repayment to span the 5-year period. **Should Virginia law instead implement a policy similar to the IRS's policy of limiting the length of installment agreement to that of the CSED? Why or why not?** *

So a few things to unpack here. The IRS gives a "temporary" CSED tolling while an installment agreement is pending but it is usually no longer than 30 days. For VA, it is my understanding that the VA CSED tolls the whole time the IA is in affect. So my answer will depend on how VA declares what is "pending". If VA's tolling of a CSED is in line with the 30 day average of the IRS, then conforming to the IRS policy to enforce an IA is paid in full prior to the CSED is the right thing to do. However, if VA treats "pending" as the whole time the IA is in place, then there is no need to worry about any impact to the CSED. I would suggest that VA fully conform to the IRS rules of IA and CSED and if that is done, then yes, VA should incorporate a requirement that a full pay IA to be paid in full prior to the expiration of the CSED.

2. In what ways would Virginia taxpayers benefit from limiting the length of the installment agreement to that of the CSED period? *

This question is required.

3. In what ways would limiting the length of the installment agreement to that of the CSED period be a detriment Virginia taxpayers? *

This question is required.

4. Virginia strongly prefers that taxpayers make a 10% down payment when entering into an installment agreement. In contrast, the IRS does not require a down payment, but applies a fee structure to installment agreements that must be paid up front. **Should it align its policies with the IRS and implement a fee structure for installment agreements instead of a down payment? Why or why not?** *

This question is required.

5. In what ways would Virginia taxpayers benefit from or be harmed by the removal of a required down payment and the implementation of a fee structure to set up installment agreements? *

This question is required.

6. The IRS currently offers a "no look" installment agreement over 3 years for individual income taxpayers with a tax liability of less than \$10,000, and is available to taxpayers who are current in their tax filings over the last 5 years and had not entered an installment agreement within the preceding 5 years. Virginia has a similar "no look" installment agreement over 5 years for individual income taxpayers with a maximum balance of \$25,000, and is available to taxpayers who are current in all tax filings and have not defaulted on installment agreement more than three times within 12 months due to nonpayment. **In what ways would Virginia taxpayers be harmed if Virginia implemented a requirement that taxpayers must not have entered into an installment agreement in the previous 5 years, regardless of default status?** *

This question is required.

7. What elements of Virginia's "no-look" installment agreement policy do you believe should be aligned with the IRS? *

This question is required.

View results

Respondent

3

Anonymous

1523:31

Time to complete

1. The IRS does not allow installment agreement terms to extend beyond the collections statute expiration date (CSED), limiting the length of time available for repayment. Virginia law currently tolls the CSED while an installment agreement is pending, allowing a repayment to span the 5-year period. **Should Virginia law instead implement a policy similar to the IRS's policy of limiting the length of installment agreement to that of the CSED? Why or why not?** *

The challenge right now is that the IRS tolling of the CSED and the State of VA tolling of the CSED are very different when it comes to pending Installment Agreements (IA). For the IRS, when an IA in "pending" the CSED is tolled for an average of 30 days (per instance of a pending IA) so a minor amount of time across the 10 year CSED. Thus the fact that the IRS requires a full pay installment agreement to be paid in full (6 to 12 months) before the expiration of the CSED makes sense. However, for the State of VA, it is my understanding that the CSED tolls the whole time a taxpayer is in an IA not just for the "pending" amount of time. Thus if VA will continue to toll the CSED during an IA, there is no need to have the IA full paid before the end of the CSED since the end of the CSED will never arrive. However, if VA moves to a process that the CSED is not tolled during the whole time in an IA, then I would agree that VA should conform to the IRS requirement that a full pay IA be paid in full before the end of the CSED.

2. In what ways would Virginia taxpayers benefit from limiting the length of the installment agreement to that of the CSED period? *

The focus of a full pay installment agreement (FPIA) is to allow the taxpayer to have 5 years to full pay their overall tax liability in order to lower their monthly payment. Taxpayers will often choose the lower payment even if it means paying additional interest and penalty during the 5 years since their cash flow can only afford the smaller monthly payment that a 5 year FPIA will provide. However, if a taxpayer is getting close to the end of the CSED, I understand the goal of making sure VA is full paid for those taxes. I would suggest that if a taxpayer is acting in good faith to full pay their tax liability but needs more time to do it, the taxpayer should have the option of voluntarily extending the CSED to allow to stay on the smaller payment amount. The IRS has a similar, but rarely used option that allows the taxpayer to voluntarily extend the CSEDs in order to facilitate a monthly payment amount they can afford. The taxpayer will always have the right to submit a financial statement to VA Tax to show they can not afford to make the payment amount that would come with an FPIA and if that is the case, then the CSED would expire.

3. In what ways would limiting the length of the installment agreement to that of the CSED period be a detriment Virginia taxpayers? *

If you limit the length of the IA to the CSED, you will require the taxpayer to make a larger monthly payment than that particular taxpayer could afford to pay. Often, this then leads to the risk of the taxpayer continuing to owe every year, as they are using funds for current taxes to pay old taxes. If that is the case, you force the taxpayer to eventually default on their IA for missing a payment, or the default because the higher monthly IA payment does not leave them sufficient funds to make their current tax deposits or to pay for rent, food, etc.

4. Virginia strongly prefers that taxpayers make a 10% down payment when entering into an installment agreement. In contrast, the IRS does not require a down payment, but applies a fee structure to installment agreements that must be paid up front. **Should it align its policies with the IRS and implement a fee structure for installment agreements instead of a down payment? Why or why not?**

I would strongly suggest that VA should align with the IRS fee (ranging from \$37 to \$250 but waived for low income taxpayers and also discounted if a taxpayer enters into a direct debit agreement) that is paid up front and remove the down payment requirement. In regard to the no fee option, the IRS does not require a fee if the taxpayer has income at or below 250% of the Federal Poverty Level. Also, it would be helpful to understand why VA "strongly prefers" that a down payment be made and what is achieved with a down payment requirement. If the goal is to get more taxpayers paying in full their tax liabilities to the State of VA, then it is my opinion that a down payment appears to be an impediment to achieving the goal of entering as many taxpayers into IAs as possible. In regard to the IRS process, the fee referenced in the question normally comes out of the initial IA payment so the taxpayer does not have to come up with the additional funds up front (unless if the fee exceeds the first month payment - then the IRS does require the full fee to be paid by the taxpayer). In this instance, the IRS does require the first month payment to be high enough to cover that fee, but with the fee amounts being much lower than the proposed 10%, it's rarely an issue for the taxpayer.

Second, a 10% down payment is often more than the IRS initial fee so that is a much higher financial burden to pay. For example, for someone who owes \$20,000 to VA and needs 5 years to pay that amount due to cash flow challenges as well as the fact that taxpayer MUST stay current on their new taxes, the down payment is the problem. If a 10% down payment is required then the taxpayer has to come up with \$2,000 and then they will have 5 years to pay the \$18,000 remaining which is approximately \$300 per month for the IA payment. However, if there is no down payment requirement, then the \$20,000 over 5 years comes to a monthly payment of \$333 per month and the initial fee (like the IRS charges which is often around \$200) would come out of the initial payment. (NOTE: I do recognize that the IA payment will go up about \$50 per month to accommodate the additional interest and penalty during the 5 year IA window but that is still much preferred to taxpayers versus paying a \$2,000 down payment). So coming up with \$2,000 down payment versus agreeing to a monthly payment of an additional incremental amount of approximately \$50 per month is an easy decision for a taxpayer. One other note, if a taxpayer can afford \$350 per month, then asking for a 10% down payment of \$2,000 is equivalent to nearly 6 times as much money (\$2000/\$350 = factor of 5.7) up front and that is a significant financial barrier to get into an installment agreement. The taxpayer's often owe these taxes due to not having the cash on hand to make such large payments. Allowing the taxpayer to avoid the 10% down payment increases the number of people who can now qualify for an agreement and actually help facilitate easier collections both for the VA and for the taxpayer. In summary, I believe the down payment requirement is actually suppressing taxpayers from entering into installment agreements and if VA has data to prove otherwise, please share that for our consideration.

5. In what ways would Virginia taxpayers benefit from or be harmed by the removal of a required down payment and the implementation of a fee structure to set up installment agreements? *

I believe my answer in number 4 addresses this question but in summary:

Benefits: Much lower monthly payment without the cash flow financial burden of coming up with the down payment. Removing it allows more people to qualify for an agreement allowing them to pay their back taxes and move forward, as well as avoid potential hardships through levies and other enforcement action.

Harm: additional interest and penalty to be paid by the taxpayer but that actually incentivizes the taxpayer to pay off the taxes in full early before the 5 year installment plan is complete to save that interest and penalty.

NOTE: Please implement the same no cost fee option for taxpayers at or below 250% of the Federal Poverty Line.

6. The IRS currently offers a "no look" installment agreement over 3 years for individual income taxpayers with a tax liability of less than \$10,000, and is available to taxpayers who are current in their tax filings over the last 5 years and had not entered an installment agreement within the preceding 5 years. Virginia has a similar "no look" installment agreement over 5 years for individual income taxpayers with a maximum balance of \$25,000, and is available to taxpayers who are current in all tax filings and have not defaulted on installment agreement more than three times within 12 months due to nonpayment. **In what ways would Virginia taxpayers be harmed if Virginia implemented a requirement that taxpayers must not have entered into an installment agreement in the previous 5 years, regardless of default status? ***

Unfortunately the IRS "no look" installment agreement is not widely used and it is their "Streamline" installment agreement process that is far more used. The "Streamline" allows for liabilities up to \$250,000 over 7 years. The goal for HB1369 was to emulate the Streamline IRS agreement but to reduce the overall liability dollar amount to 20% of the IRS limit which would come to \$50,000 over 5 years as proposed with no down payment required. One of the goals was to get more VA taxpayers into full pay installment agreements (FPIA), thus increasing collected funds to VA while at the same time reducing the resource at the State of VA that are needed to pursue unpaid tax liabilities. My concern is by using the "no look" IA as the baseline, the \$10,000 amount for VA is not high enough to address the growing tax liabilities for many taxpayers in the State of VA in the post Covid financial environment. By imitating the IRS' streamlined payment agreement options and implementing a \$50,000 VA limit, you allow a taxpayer to have a payment low enough that they should not have any challenge keeping current on their taxes while at the same time paying down their old tax liabilities. Also the current VA system is forcing more taxpayers to submit OICs to VA in order to have sufficiently flexible cash flow terms. Moving to a \$50,000 limit should reduce the volume of OIC submissions to the State of VA as many more taxpayers would qualify for Full Pay Installment Agreements. That would be just 1 example of resource savings but you would also allow your field collection officers to focus on the largest tax liability accounts thus maximizing returns to the State of VA. One other thing to consider is that further restricting the no look agreement to only allow taxpayers who have not been in a payment plan for the prior five years will only restrict the pool of people that will actually be able to use the option, resulting in VA getting less funds.

7. What elements of Virginia's "no-look" installment agreement policy do you believe should be aligned with the IRS? *

I would suggest aligning VA's installment agreement policy to the IRS "streamline" IA policy as outlined above.

View results

Respondent

4 Anonymous

21:44

Time to complete

1. The IRS does not allow installment agreement terms to extend beyond the collections statute expiration date (CSED), limiting the length of time available for repayment. Virginia law currently tolls the CSED while an installment agreement is pending, allowing a repayment to span the 5-year period. **Should Virginia law instead implement a policy similar to the IRS's policy of limiting the length of installment agreement to that of the CSED? Why or why not?** *

I am not sure this is an accurate statement. IRM 5.14.2.3 states as follows:

The American Jobs Creation Act of 2004 amended IRC 6159 to provide the authority for the Service to enter into partial payment installment agreements (i.e., installment agreements that do not provide for full payment of the liabilities). If full payment cannot be achieved by the Collection Statute Expiration Date (CSED), and taxpayers have some ability to pay, the Service can grant Partial Payment Installment Agreements (PPIAs).

I believe Virginia should comport with the IRS in this regard.

2. In what ways would Virginia taxpayers benefit from limiting the length of the installment agreement to that of the CSED period? *

It seems that the benefit would be great for taxpayers who have several years left on the CSED and can benefit by lowering their monthly payment.

3. In what ways would limiting the length of the installment agreement to that of the CSED period be a detriment Virginia taxpayers? *

It would not be so good for those who have a short period of time before the CSED expires. In these cases, it would impose a heavy burden on the taxpayer.

4. Virginia strongly prefers that taxpayers make a 10% down payment when entering into an installment agreement. In contrast, the IRS does not require a down payment, but applies a fee structure to installment agreements that must be paid up front. **Should it align its policies with the IRS and implement a fee structure for installment agreements instead of a down payment? Why or why not?** *

I recall that the IRS fee is nominal. The 10% down-payment is terrible for taxpayers who have limited means to pay, which is basically anyone who has to ask for a payment plan in the first place. It's even worse for businesses, as I understand that they have to put 20% down - customer service tells me that it's not even a preference - it's a requirement. The way that practitioners try to get around this is by filing an offer in compromise with the payment terms. This avoids the 20% down payment if it's accepted and, in some cases, provides an opportunity for the taxpayer to not pay interest on the outstanding balance. Making the payment plans more accessible to taxpayers would prevent this workaround.

5. In what ways would Virginia taxpayers benefit from or be harmed by the removal of a required down payment and the implementation of a fee structure to set up installment agreements? *

I don't see any downside, as long as the user fees are nominal. I believe the IRS even eliminates the fee if the taxpayer uses automatic drafting.

6. The IRS currently offers a "no look" installment agreement over 3 years for individual income taxpayers with a tax liability of less than \$10,000, and is available to taxpayers who are current in their tax filings over the last 5 years and had not entered an installment agreement within the preceding 5 years. Virginia has a similar "no look" installment agreement over 5 years for individual income taxpayers with a maximum balance of \$25,000, and is available to taxpayers who are current in all tax filings and have not defaulted on installment agreement more than three times within 12 months due to nonpayment. **In what ways would Virginia taxpayers be harmed if Virginia implemented a requirement that taxpayers must not have entered into an installment agreement in the previous 5 years, regardless of default status?** *

I don't see any harm, but the "no look" plan has limited utility in my practice. Most of my clients owe far more than \$10,000 or \$25,000.

7. What elements of Virginia's "no-look" installment agreement policy do you believe should be aligned with the IRS? *

See above

View results

Respondent

5 Anonymous

40:50

Time to complete

1. The IRS does not allow installment agreement terms to extend beyond the collections statute expiration date (CSED), limiting the length of time available for repayment. Virginia law currently tolls the CSED while an installment agreement is pending, allowing a repayment to span the 5-year period. **Should Virginia law instead implement a policy similar to the IRS's policy of limiting the length of installment agreement to that of the CSED? Why or why not?** *

Yes, VA should implement a policy similar to the IRS as I believe it would encourage more taxpayers to request payment plans and make the payments. It's easier for a taxpayer experiencing a financial hardship to see some light at the end of the tunnel. In most collection cases, the taxpayer is simply looking for a fresh start. Extending or tolling CSEDs while an installment agreement is pending only prolongs the opportunity for relief. A struggling taxpayer needs an incentive to work to get that debt paid off. The sooner, the better.

2. In what ways would Virginia taxpayers benefit from limiting the length of the installment agreement to that of the CSED period? *

See the answer to question 1

3. In what ways would limiting the length of the installment agreement to that of the CSED period be a detriment Virginia taxpayers? *

I do not see a detriment for limiting the length of an IA to the CSED period. I believe offering a means to an end will encourage the taxpayer to make their payments timely and reach that fresh start.

4. Virginia strongly prefers that taxpayers make a 10% down payment when entering into an installment agreement. In contrast, the IRS does not require a down payment, but applies a fee structure to installment agreements that must be paid up front. **Should it align its policies with the IRS and implement a fee structure for installment agreements instead of a down payment? Why or why not?** *

Yes. Taxpayers are already experiencing a financial hardship when they have a tax debt. Chances are the taxpayer does not have the funds for the down payment. Requiring a down payment would only cause them to put their head back in the sand and continue putting off paying the debt. The taxpayer is looking for a comfortable and affordable option to begin paying off their debt. The first six to twelve months will be the most difficult on a taxpayer because they are already trying to get back on their feet and get their finances in order. Requiring a down payment only sets them up for failure right from the beginning.

5. In what ways would Virginia taxpayers benefit from or be harmed by the removal of a required down payment and the implementation of a fee structure to set up installment agreements? *

The taxpayer would benefit from the removal of a required payment because they are already struggling financially. A down payment sets them up for failure right from the beginning. The taxpayer will benefit from setting an affordable consistent payment plan of equal payments from the very beginning. I believe the state will find more success in collecting their debts if the required payment is removed.

6. The IRS currently offers a "no look" installment agreement over 3 years for individual income taxpayers with a tax liability of less than \$10,000, and is available to taxpayers who are current in their tax filings over the last 5 years and had not entered an installment agreement within the preceding 5 years. Virginia has a similar "no look" installment agreement over 5 years for individual income taxpayers with a maximum balance of \$25,000, and is available to taxpayers who are current in all tax filings and have not defaulted on installment agreement more than three times within 12 months due to nonpayment. **In what ways would Virginia taxpayers be harmed if Virginia implemented a requirement that taxpayers must not have entered into an installment agreement in the previous 5 years, regardless of default status? ***

Life happens Bank accounts change Bank accounts get hacked There are many reasons beyond a taxpayer's control that would cause an installment agreement to default. A taxpayer should not be punished for something beyond their control. Therefore, it is recommended that any taxpayer can reset an installment agreement regardless of any time restrictions. However, if the state is looking for a way to encourage taxpayers to avoid defaulting on their payment plans, a "three-strikes you're out!" policy could be implemented with safe harbors for circumstances that are beyond their control such as identity theft, death, terminal illness, natural disasters, job loss, etc. Keep in mind, that first twelve months is the toughest on a taxpayer trying to get back on their feet.

7. **What elements of Virginia's "no-look" installment agreement policy do you believe should be aligned with the IRS? ***

I'd like to see most VA's collection policies aligned with the IRS.

Appendix D: Participant Comments on Report

Re: HB 1369: Installment Agreement Work Group

Vaughan Long <vlong@taxtsa.com>

Mon 11/13/2023 1:45 PM

To: McGhee, Chelsea (TAX) <Chelsea.McGhee@tax.virginia.gov>; Wingfield, Kyle (kwingfield@williamsmullen.com) <kwingfield@williamsmullen.com>; bobby@crowgey.com <bobby@crowgey.com>; cathy.stemple@kwccpa.com <cathy.stemple@kwccpa.com>; angelathompson9033@gmail.com <angelathompson9033@gmail.com>
Cc: Dunkum, Anna (TAX) <Anna.Dunkum@tax.virginia.gov>; Mayer, Joseph (TAX) <Joseph.Mayer@tax.virginia.gov>; Collins, Kristin (TAX) <Kristin.Collins@tax.virginia.gov>; Savage, James (TAX) <James.Savage@tax.virginia.gov>; Nancy Rossner <nrossner@ctlp.org>

 1 attachments (28 KB)

House Bill 1369 Report 11.6.23 FINAL.docx

Chelsea,

Thank you for the summary and a big thank you to everyone for the opportunity to have these conversations. Bobby made a great point already and I would completely support his point.

In addition, I would like to suggest that this workgroup continue into 2024 and we have conversations on specifics on how much more the State of VA collections could conform to the IRS collection rules. This would encompass many of the items mentioned in the summary to include CNC status, 10 year statute of collections but with the time reducing while on installment agreement, first time penalty abatement for taxpayers who have not had issues in the past (fyi - for the IRS this renews every 3 years), and many more items.

Last, it is my belief that this new piece of legislation (conforming more to the IRS collection rules) could be a collaborative opportunity that could reduce resource requirements at the State of VA while at the same time increasing collection dollars to VA.

Thank you, Vaughan

NOTE: To send me an encrypted reply email, please use the following link: <https://bracket.email/vaughan>

Vaughan M. Long, EA
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IRS Tax Representation

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Appendix E: HB 1369 Presentation

House Bill 1369: Work Group

David Sams & Anna Dunkum
Office of Tax Policy

July 13, 2023



Agenda

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- ▶ Introductions
- ▶ Statement of Purpose
- ▶ Review of Changes Made by HB 1369
- ▶ Comparison of Virginia Tax and IRS Installment Agreement Policies
- ▶ Practitioner Input
- ▶ Next Steps



Department of Taxation Contacts

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- ▶ **Kristin Collins**, Assistant Commissioner of Tax Policy
- ▶ **David Sams**, Director of Tax Policy Development
- ▶ **Joseph Mayer**, Lead Tax Policy Analyst
- ▶ **James Savage**, Lead Tax Policy Analyst
- ▶ **John Josephs**, Senior Tax Policy Analyst
- ▶ **Anna Dunkum**, Tax Policy Analyst
- ▶ **E.V. Goode**, Director of Legislative Support
- ▶ **Heather Cooper**, Director of Communications & Training
- ▶ **Richard Dotson**, Compliance Manager
- ▶ **Jane Ollice**, Compliance Manager



Statement of Purpose

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The Department shall convene a working group to study current federal and state policies concerning installment agreements and to make recommendations regarding how the Commonwealth's policies may better align with the installment agreement policies adopted by the Internal Revenue Service.

- ▶ What changes did House Bill 1369 make to Virginia Tax policies concerning installment agreements?
- ▶ What are the current Virginia Tax and IRS policies concerning installment agreements?
- ▶ Which state policies could be changed to better align with IRS policies?



Recent Changes to Virginia Installment Agreements

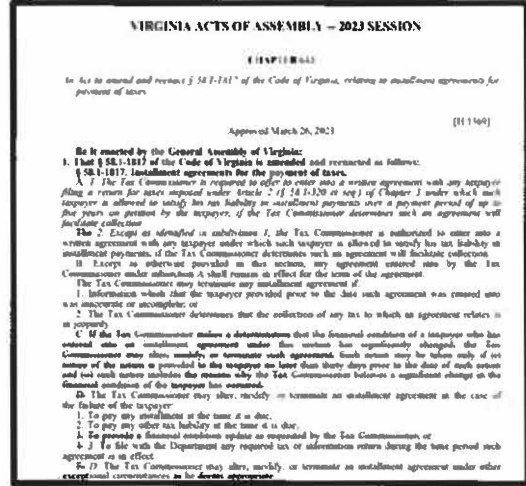
5

HB 1369: 'No-Look' Agreements

This Act specifically modified 'no-look' installment agreements ("payment plans") for individual income taxpayers.

These are agreements available to taxpayers that do not require the submission of financial information.

Installment agreements with businesses and for tax types other than the individual income taxes are unaffected by this change.



Recent Changes to Virginia Installment Agreements

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- ▶ Virginia Code § 58.1-1817 authorizes Virginia Tax to accept and establish payment agreements when a taxpayer cannot pay the full amount of a balance due.
- ▶ House Bill 1369 (Chapter 643) modified Virginia Code § 58.1-1817 and requires Virginia Tax to offer installment agreements to individual income taxpayers over a term of up to 5 years.
 - ▶ Repeals Virginia Tax's authority to modify or cancel an individual income tax installment agreement if the taxpayer's financial condition has significantly changed or if the taxpayer fails to provide a financial condition update upon request.
 - ▶ Only impacts installment agreements pertaining to the individual income tax and does not affect our authority to enter into installment agreements for any other tax.



Comparison of Virginia Tax and IRS Installment Agreement Policies

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'No-Look' Individual Income Taxpayer Installment Agreements

	Virginia Policies and Procedures	IRS Policies and Procedures
Financial Documentation	None	None
Eligibility	Individual income tax liability only; Non-habitual taxpayer: 1. No prior defaults due to nonpayment 2. Current in all tax filings	Individual income tax liability only; Current in tax filings over preceding 5 years; No Installment agreements over preceding 5 years
Maximum Balance	\$25,000 total liabilities	\$10,000 tax liability only
Minimum Payment	\$25/month or a balance due of \$1,500	Total balance over 3 years or CSED expiration; whichever is shorter



Comparison of Virginia Tax and IRS Installment Agreement Policies

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'No Look' Individual Income Taxpayer Installment Agreements

	Virginia Policies and Procedures	IRS Policies and Procedures
Maximum Length	5 years (or 60 months)	3 years (or 36 months)
Collection Statute of Limitations	Tolled during term of installment agreement	Statute of Limitations continues to run
Collection Statute Expiration Date	Approaching Collection Statute Expiration Date (CSED) does not affect 5-year repayment option	Length of agreement is limited by CSED date
Down Payment	Preferred 10%, but not required	None, but fees must be paid up front



Comparison of Virginia Tax and IRS Installment Agreement Policies 9

'No Look' Individual Income Taxpayer Installment Agreements

	Virginia Policies and Procedures	IRS Policies and Procedures
How to apply	In person Telephone Online Portal	In person U.S. Mail Telephone Online Portal
Fee	None	Graduated based on set-up method (\$31 online; \$225 by phone or in person) Reduced fee if payment set up as direct debit
Required Form	None	Form 9465



Tax Practitioner Input 10

What policies, if any, should be changed to align with the federal?

- ▶ The IRS does not allow installment agreement terms to extend beyond the expiration date (CSED) period. Should Virginia implement a similar policy?
- ▶ The IRS requires a graduated fee based on method of submission of the installment agreement application. Should Virginia require a fee?
- ▶ The IRS limits no-look installment agreements to \$10,000 or less. Should Virginia reduce the maximum balance from \$25,000 to \$10,000?



Next Steps

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- ▶ Presentation will be made available on the Tax Practitioner Feedback Work Group webpage: <https://www.tax.virginia.gov/installment-agreement-work-group>
- ▶ Survey for participants – email with link to follow
- ▶ Additional feedback opportunity to be included in our report of findings and recommendations by November 15, 2023, to the Chairperson of the following:
 - ▶ House Committee on Finance;
 - ▶ House Committee on Appropriations; and
 - ▶ Senate Committee on Finance and Appropriations.



Additional Resources



Further Information

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Online Resources

- ▶ Virginia Tax Homepage: <https://www.tax.virginia.gov>
- ▶ Laws, Rules, and Decisions: <https://www.tax.virginia.gov/laws-rules-decisions>
- ▶ Legislative Summaries: <https://www.tax.virginia.gov/legislative-summary-reports>
- ▶ Guidance Documents: <https://www.tax.virginia.gov/guidance-documents>
- ▶ Virginia Regulatory Town Hall: <https://www.townhall.virginia.gov>
- ▶ Taxpayer Bill of Rights <https://www.tax.virginia.gov/taxpayer-rights>



Further Information

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- ▶ Get monthly filing reminders and updates about tax law changes and new services
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