



# **COMMONWEALTH of VIRGINIA**

## **Office of the Governor**

Aubrey L. Layne, Jr.  
Secretary of Finance

January 22, 2019

The Honorable Eileen Filler-Corn  
House Democratic Leader  
House of Delegates  
P.O. Box 523082  
Springfield, Virginia 22152

The Honorable Richard L. Saslaw  
Senate Democratic Leader  
Senate of Virginia  
P.O. Box 1856  
Springfield, Virginia 22151-0856

Dear Delegate Filler-Corn and Senator Saslaw:

Thank you for your letter concerning the impact on taxpayers for the upcoming tax filing season of Virginia's delay in advancing its date of conformity to the federal Internal Revenue Code (IRC). Virginia first conformed to the IRC in 1972. Given the long history of conformity, the Virginia Department of Taxation (Virginia Tax) prepared for the 2018 tax filing season based on the state's typical approach and track record of conformity. As a result, continued delays in advancing Virginia's date of conformity will present significant challenges to taxpayers and the Commonwealth.

The Internal Revenue Service announced that taxpayers can begin filing tax returns effective January 28<sup>th</sup>. On this date, Virginia Tax will receive electronically-filed state tax returns for tax year 2018. However, while they will accept returns, the agency will not be able to process returns or issue refunds. Past experience indicates that by February 6, Virginia Tax could receive about 650,000 returns.

Because the vast majority of taxpayers file electronically, and refunds for electronic filers are typically issued in fewer than 15 days, taxpayers expect to receive refunds from Virginia Tax quickly after filing. However, because returns will not be processed this year until the conformity issue is resolved, refunds will not be issued as promptly as taxpayers expect. In addition, the taxpayers' source for refund information, the "Where's My Refund" website application, would not be able to provide information on the status of individual returns, unlike in prior years. We anticipate that this will drive additional phone calls to Virginia Tax's call center. Because call volumes climb dramatically through February in a normal filing season, the additional calls from taxpayers requesting information on the status of their return/refund could overwhelm the call center, driving up wait times and further frustrating taxpayers. In addition to this challenge, one of the highest volume weeks in filing season begins February 17, which is a holiday weekend. By March 1, Virginia Tax expects to have received 1.5 million returns.

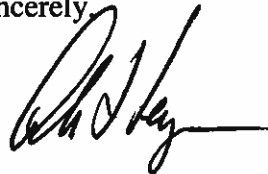
I would further note that continuing delay in advancing the date of conformity severely limits Virginia Tax's ability to make adjustments in a timely manner from the current posture of conformity. For example, if conformity is not advanced and de-conformity from the federal Tax Cuts and Jobs Act ("TCJA") is required, Virginia Tax has estimated that it will take four to six weeks from that decision to update forms and instructions as well as complete and test programming changes to the various processing systems. Please note that this estimate may not include the time required by software vendors, from whom over 80 percent of returns are prepared and filed, to make changes. In addition, new information required by taxpayers and tax preparers to prepare returns if Virginia de-conforms from the TCJA could be substantial and may result in further delays, increased errors, and reprocessing of previously submitted returns.

I also would note that continuing delays might affect the fiscal year revenue estimates developed for the introduced conformity legislation. The estimates and fiscal year cash flow estimates assume timely conformity and processing of income tax returns. De-conformity from the TCJA would clearly impact the revenue and cash flow. In addition, the Commonwealth could be required to pay interest on refunds if processing takes longer than allowed by statute. Further, compliance efforts like the refund fraud prevention program assume that Virginia Tax can take the necessary time on unprocessed returns to verify the validity of the refund.

Finally, decomformity may result in increased complexity and expense for many Virginia taxpayers. Additionally, reconciliation schedules and amended returns may be required to appropriately process returns that were originally prepared assuming conformity.

I share your concerns and appreciate your interest in this important manner. My office and Virginia Tax are available to answer any additional questions you may have.

Sincerely,

A handwritten signature in black ink, appearing to read "A. Layne, Jr.", with a long horizontal flourish extending to the right.

Aubrey L. Layne, Jr.

cc: Craig Burns – Commissioner, Virginia Department of Taxation