

DEPARTMENT OF TAXATION

2025 Fiscal Impact Statement

1. **Patron** Nadarius E. Clark

2. **Bill Number** HB 2549

3. **Committee** Senate Finance and Appropriations

House of Origin:

 Introduced

 Substitute

 Engrossed

4. **Title** Individual income taxes: Creation of
Currently Not Collectible Status

Second House:

 X **In Committee**

 Substitute

 Enrolled

5. **Summary/Purpose:**

The Department of Taxation (the “Department”) understands that the Patron intends on offering an amendment to the engrossed bill. This Fiscal Impact Statement is based on the engrossed bill with the amendment.

This bill would direct the Department of Taxation (“the Department”) to create a program through which taxpayers may apply for currently not collectible (“CNC”) status. The Department would be required to place an applicant in this status upon a finding that the collection of income taxes would create or exacerbate an undue hardship for the applicant. The bill would also allow the Tax Commissioner to require individuals placed in CNC to re-apply for such status every two years within 60 days of the two-year anniversary of the initial determination.

This bill would provide that no memorandum of lien may be filed against the taxpayer while the taxpayer is placed in CNC status. In addition, this bill would provide that the period of limitations on collections shall not be suspended while a taxpayer is in CNC status.

This bill would become effective July 1, 2026.

6. **Budget amendment necessary:** Yes.

Item(s): 258 and 260, Department of Taxation

7. **Fiscal Impact Estimates are:** Preliminary (See Line 8.)

7a. **Expenditure Impact:**

<i>Fiscal Year</i>	<i>Dollars</i>	<i>Positions</i>	<i>Fund</i>
2025-26	\$569,573	6	GF
2026-27	\$560,323	6	GF
2027-28	\$572,023	6	GF
2028-29	\$583,724	6	GF
2029-30	\$596,178	6	GF
2030-31	\$608,618	6	GF

8. Fiscal implications:

Administrative Costs

The Department would incur estimated expenditures, as shown on Line 7a. Such costs would primarily consist of hiring six full-time employees and collections operational cost inherent in the creation of a new program.

Revenue Impact

This bill would have an unknown negative impact on General Fund revenues to the extent that taxpayers who would otherwise pay cease to do so during the CNC period. Because this bill would not suspend the statute of limitations on collections during the CNC period and, unlike the federal CNC program, would not allow the Department to place a memorandum of lien during the CNC status period to preserve the priority of the state tax debt over later debt incurred, the negative impact of this bill could be substantial.

Research into the use of the CNC hardship status at the federal level or among other states did not provide information to develop a reliable estimate for Virginia. In addition, the program as outlined in this bill is broader than its corresponding federal program in the following ways:

- The IRS is permitted to file a Notice of Federal Tax Lien for a taxpayer in federal CNC status, while this bill would prohibit the Tax Commissioner from filing a similar memorandum of lien while the taxpayer is in state CNC status.
- The IRS also conducts reviews at least annually when the income tax return is filed, while this bill allows for a 2-year reapplication cycle.

The Department has a seven-year period to collect delinquent taxes, as compared to the longer ten-year collection period allowed to the IRS under federal tax law. Under this bill, the period of limitations on collections would not be suspended while the taxpayer is in CNC status. As a result, the extent of the negative revenue impact of this bill is unknown. See Line 11 for additional information.

9. Specific agency or political subdivisions affected:

Department of Taxation

10. Technical amendment necessary: No.

11. Other comments:

Background

When facing federal tax liabilities, taxpayers have several options for resolution, including installment agreements, offers in compromise ("OIC"), currently not collectible ("CNC") status, and relief from penalties and interest charges. Installment agreements allow for the

repayment of delinquent taxes through structured monthly installments. OIC enables the settlement of tax liabilities for an amount less than the full balance owed, provided the taxpayer can demonstrate an inability to pay the full amount. Taxpayers who are currently unable to make any payments toward their tax liability may be eligible for CNC status, which temporarily suspends collection activities by the IRS. In certain circumstances, taxpayers may be eligible for relief from penalties or interest charges upon demonstrating reasonable cause for the delayed payment.

While federal law offers a range of resolution options for taxpayers facing tax liabilities, the availability and implementation of these avenues may vary at the state level. Notably, the concept of CNC status, which allows for the temporary suspension of collection activities, is not extensively developed or utilized in state-level tax collection efforts compared to the federal system. Virginia does not currently have a CNC status.

Federal Currently Not Collectible Status

If the IRS determines that the taxpayer cannot pay any of his tax debt, it may report the taxpayer's account as currently not collectible and temporarily delay collection until their financial condition improves. Being currently not collectible does not mean the debt goes away. Instead, it means the IRS has determined that the taxpayer cannot afford to pay the debt at this time. Prior to approving the taxpayer's request to delay collection, the IRS may ask the taxpayer to complete a Collection Information Statement (Form 433-F, Form 433-A or Form 433-B) and provide proof of their financial status. If CNC status is granted, the taxpayer's debt will increase because penalties and interest are charged until they pay the full amount. The IRS reviews the taxpayer's financial situation at least annually to see if they continue to qualify for CNC status.

During the temporary delay offered by CNC, the IRS is allowed to file a public document known as a Notice of Federal Tax Lien. This notice alerts creditors that the government has a legal right to the taxpayer's property. It does not actually take the property to pay the tax debt, as taxpayers are protected by such collection activities while they are in CNC status. The purpose of this notice is for the federal tax lien to have priority over subsequent debt. Unless the IRS files this notice first, the holder of a security interest, mechanic's lienor, and judgment lien creditor will have priority over the federal tax lien.

Proposal

This bill would direct the Department of Taxation ("the Department") to create a program through which taxpayers may apply for currently not collectible (CNC) status. The Department would be required to place an applicant in this status upon a finding that the collection of income taxes would create or exacerbate an undue hardship for the applicant. The bill would also allow the Tax Commissioner to require individuals placed in CNC to re-apply for such status every two years within 60 days of the two-year anniversary of the initial determination. The bill would also would not suspend the statute of limitations on collections while a taxpayer is in CNC status; therefore, the 7-year statute of limitations on collections would continue to run.

This bill would provide that no memorandum of lien may be filed against the taxpayer while the taxpayer is placed in CNC status. Therefore, if a taxpayer incurs debts to other

creditors while in CNC, those creditors could have priority over the Department when the taxpayer's assets ultimately become collectible.

This bill would require the Tax Commissioner to establish guidelines for determining whether an actual undue hardship exists and what constitutes an undue hardship, taking into consideration those factors outlined in the IRS procedures for CNC status. The Tax Commissioner would be permitted to presume that any taxpayer qualifying for CNC status with the IRS meets the criteria for CNC status with the Department.

To qualify for CNC status, a taxpayer would be required to:

1. Apply for such status on a form created by the Department;
2. Promise to remain domiciled within the Commonwealth for the duration such status is in effect;
3. File any past due tax returns and continue to timely file tax returns for the duration such status is in effect; and
4. Provide financial information as requested by the Department.

A taxpayer placed in CNC status would be required to immediately notify the Department of any change in the taxpayer's circumstances related to the undue hardship for which CNC status was granted. This includes changes in income, assets, expenses, address, federal CNC status, or relationships with debtors or creditors, or any other information deemed relevant by the Department.

This bill would not apply to any corporation, partnership, or limited liability company.

This bill would become effective July 1, 2026.

cc : Secretary of Finance

Date: 02/10/2025 SJH
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