

2021 Legislative Summary

Virginia Department of Taxation

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Craig M. Burns
Tax Commissioner
www.tax.virginia.gov



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Introduction

The Legislative Summary is published by the Department of Taxation (“Virginia Tax” or “the Department”) as a convenient reference guide to state and local tax legislation enacted by the 2021 Session of the General Assembly, including Special Session I and the reconvened session on April 7, 2021. Please note that any legislation enacted after July 1, 2021 is not included. The Summary includes a general description of enacted legislation affecting:

- ▶ State taxes administered by the Department, and
- ▶ Local taxes for which the Department assists with administration or upon which the Department renders advisory assistance.

References to chapter numbers are to the corresponding chapters in the **Acts of Assembly**, which may be viewed at <http://lis.virginia.gov>. Effective dates of the legislation vary and are set out in each description.

In general, legislation affecting taxes administered by other state agencies is not included in the Summary.

The Summary is intended to provide a synopsis of enacted legislation and is for informational purposes only. The Summary is not a substitute for the actual state law, local ordinances, and the Department’s regulations or guidelines. Additional information on new legislation affecting state taxes may be obtained from the Department’s website at www.tax.virginia.gov. Additional information on new local tax legislation should be obtained from your local Commissioner of the Revenue, Treasurer, or Director of Finance.

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State Tax Legislation

General Provisions

Electronic Requirement for Certain Individual Income Tax Payments

Item 282 (K)(1)(f) of the 2021 Appropriation Act (House Bill 1800, Special Session I, Chapter 552) amends the requirement that certain taxpayers subject to the individual income tax who make estimated tax payments file and remit their individual income tax payments electronically. This requirement is now triggered at lower threshold amounts. Therefore, affected taxpayers are required to make all income tax payments on and after July 1, 2021, electronically if in any taxable year beginning on or after January 1, 2021:

- ▶ Any installment payment of estimated tax exceeds \$2,500;
- ▶ Any payment made with regard to a return or an extension of time to file exceeds \$2,500; or
- ▶ The taxpayer's total tax liability exceeds or can reasonably be expected to exceed \$10,000.

The Department of Taxation is required to provide reasonable advanced notice to taxpayers affected by this lower requirement. Pursuant to Item 282(K)(2)(a) of the 2021 Appropriation Act, the Tax Commissioner has the authority to waive the requirement to file or pay by electronic means.

Effective: Payments made on or after July 1, 2021

Authority to Release Certain Confidential Taxpayer Information to Facilitate Health Coverage Enrollment

House Bill 1884 (Special Session I, Chapter 162) requires the Department to include space on its individual income tax returns for an individual to voluntarily provide certain personal information to the Department of Medical Assistance Services (“DMAS”), the Department of Social Services (“DSS”), and the Virginia Health Benefit Exchange (“the Exchange”), and indicate a preferred method for DMAS, DSS, and the Exchange to contact the individual for purposes of an eligibility determination with respect to specified Virginia health programs. This Act modifies Virginia’s law regarding confidential taxpayer information to expand the information the Department provides to DMAS, and allows such confidential taxpayer information to also be shared with DSS and the Exchange. The Department is permitted to provide such information to DMAS, DSS, and the Exchange only after entering into a written agreement regarding the transfer of such information. Such confidential taxpayer information obtained under this Act cannot be used to determine whether an individual is ineligible for medical assistance.

Effective: Taxable years beginning on or after January 1, 2021 for releasing certain personal information to DMAS; taxable years beginning on and after January 1, 2022 for releasing certain personal information to DSS and additional information to DMAS; and taxable years beginning on and after January 1, 2023 for releasing certain personal information to the Exchange.

Amended: §§ 38.2-6505, 58.1-3, and 58.1-341.1

Timeframe for Collection of Delinquent Tax Debt and Contracting of Outside Collection Agencies

Item 282 (BB) of the 2021 Appropriation Act (House Bill 1800, Special Session I, Chapter 552) permits the Department to appoint collectors or contract with collection agencies to collect delinquent taxes at any time, even if such delinquent state taxes were not assessed at least 90 days previously therein. Under prior laws, the Department was required to wait at least 90 days before assigning cases to collectors or contracting with collections agencies to collect delinquent state taxes.

Effective: April 7, 2021

Waiver of Interest When Governor Declares a State of Emergency

House Bill 1999 (Special Session I, Chapter 536) authorizes the Tax Commissioner to waive interest for any class of taxpayers when he finds in his discretion that imposing interest has caused, or would cause, undue hardship to the class of taxpayers because of a natural disaster or other reason. This authority to waive interest is available only to the extent that the Governor has declared a state of emergency to exist in the Commonwealth with respect to such natural disaster or other reason.

Effective: April 7, 2021

Amended: § 58.1-112

Requirement to File Delinquent Tax Returns

House Bill 2059 (Special Session I, Chapter 413) requires the Department to request taxpayers to file delinquent returns unless there are indications of fraud or a willful failure to file. Filed returns are required to be enforced pursuant to certain factors ensuring compliance and proper administration of staffing and other resources of the Department. Such factors include, but are not limited to, the taxpayer's prior history of noncompliance, existence of income from illegal sources, effects upon voluntary compliance, anticipated revenue, and

collectability, in relation to the time and effort required to determine the tax due. The Department is also required to consider any special circumstances existing in the case of a particular taxpayer, class of taxpayer, or industry, which may be peculiar to the class of tax involved.

This Act also requires the Department to enforce its delinquency procedures with respect to income tax returns for no more than six years unless the manager designated by the Tax Commissioner has approved enforcement for a period that is in excess of six years and documented the reasons for approval. A taxpayer may voluntarily file returns for taxable years beyond the established period without the approval of the designated manager.

This Act requires the Department develop guidelines for the enforcement procedures.

Effective: July 1, 2021
Added: § 58.1-1802.2

State and Local Tax Case Appeals

Senate Bill 1261 (Special Session I, Chapter 489) provides that state and local tax cases that are litigated in Virginia Circuit Court may be appealed, by right, to the Virginia Court of Appeals. Under current law, state and local tax cases litigated in Virginia Circuit Court can be appealed only to the Supreme Court of Virginia, where certiorari is required to be granted before an appeal will be considered. Current law will continue apply to any case for which a notice of appeal to the Supreme Court has been filed prior to January 1, 2022.

Effective: Cases appealed on or after January 1, 2022
Amended: §§ 58.1-527, 58.1-1828, 58.1-2282, 58.1-3147, and 58.1-3992

Income Tax Legislation

Advancement of Virginia's Fixed Date Conformity to the Internal Revenue Code

House Bill 1935 (Special Session I, Chapter 117) and Senate Bill 1146 (Special Session I, Chapter 118) advance Virginia's date of conformity to the Internal Revenue Code ("IRC") from December 31, 2019, to December 31, 2020. These Acts allow Virginia to generally conform to the Coronavirus Aid, Relief, and Economic Security ("CARES") Act and the Consolidated Appropriations Act, 2021 ("the CAA"). However, these Acts specifically deconform Virginia from three provisions of the CARES Act that temporarily ease limitations applicable to the net operating loss deduction, excess business losses, and the business interest deduction. These Acts also deconform from the provision of the CAA that permanently reduces the medical expense deduction threshold.

These Acts conform to the federal tax exemption for Paycheck Protection Program (“PPP”) loan forgiveness and certain funding received under the Economic Injury Disaster Loan (“EIDL”) program. However, these Acts partially deconform from the provision of the CAA that allows taxpayers to claim a federal deduction for business expenses funded by forgiven PPP loan proceeds. Instead, these Acts permit a deduction for Taxable Year 2020 only of up to \$100,000 for business expenses funded by forgiven PPP loan proceeds. In addition, these Acts fully deconform from the provisions of the CAA that allows taxpayers to claim a federal deduction for business expenses funded by forgiven EIDL funding proceeds.

These Acts provide an individual and corporate income tax subtraction for Taxable Year 2020 only for up to \$100,000 of all grant funds received by a taxpayer under the Rebuild Virginia program.

Virginia will continue to deconform from the following IRC provisions:

- ▶ Bonus depreciation allowed or certain assets under federal income taxation;
- ▶ The five year carry-back of NOLs allowed for certain NOLs generated in either Taxable Year 2008 or 2009;
- ▶ Tax exclusions related to cancellation of debt income;
- ▶ Tax deductions related to the application of the applicable high yield debt obligation rules; and
- ▶ The suspension of the overall limitation on itemized deductions (commonly known as the Pease limitation).

Effective: March 15, 2021

Amended: §§ 58.1-301, 58.1-322.02, 58.1-322.03, and 58.1-402

Tax Credit for Purchase of Conservation Tillage and Precision Agricultural Equipment

Senate Bill 1163 (Special Session I, Chapter 272) eliminates the nonrefundable Conservation Tillage Equipment and Pesticide and Fertilizer Application Equipment Tax Credits and replaces them with one, new refundable credit for individuals and corporations. The credit established under this Act is equal to 25 percent of all expenditures made for the purchase of equipment that reduces soil compaction such as a "no-till" planter, drill, or other equipment, or equipment that provides more precise pesticide and fertilizer application or injection. To be eligible for the new credit under this Act, a taxpayer must be engaged in agricultural production for market, have in place a soil conservation plan approved by the local soil and water conservation district, and be implementing a nutrient management plan developed by a certified nutrient management planner. The maximum amount of the credit is \$17,500 per taxable year. The credit is subject to a sunset date of January 1, 2026.

Effective: Taxable years beginning on and after January 1, 2021
Amended: §§ 58.1-334, 58.1-337, 58.1-432, and 58.1-436

Agricultural Best Management Practices Tax Credit

House Bill 1763 (Special Session I, Chapter 39) and Senate Bill 1162 (Chapter 40) amends Virginia's Agricultural Best Management Practices Tax Credit to increase the amount that may be claimed and to provide an enhanced Agricultural Best Management Practices Tax Credit for certain taxpayers with an approved resource management plan.

The amount of the enhanced credit under this Act is 50 percent of the first \$100,000 expended for agricultural best management practices. To be eligible for the enhanced credit, the taxpayer is required to:

- ▶ Either be engaged in agricultural production for market, or have equines that create needs for agricultural best management practices to reduce nonpoint source pollutants; and
- ▶ Have in place a resource management plan approved by the local soil and water conservation district.

The enhanced credit is allowed only for agricultural best management practices implemented on an acreage included in the resource management plan.

Certain taxpayers with approved soil conservation plans are permitted to claim the existing Agricultural Best Management Practices Tax Credit. The maximum amount of such credit is increased from 25 percent of the first \$70,000 expended for agricultural best management practices to 25 percent of the first \$100,000 of such expenditures.

These Acts provide that the aggregate amount of the Agricultural Best Management Practices Tax Credit and the new enhanced Agricultural Best Management Practices Tax Credit claimed by a taxpayer cannot exceed \$75,000 per taxable year. Under current law, the maximum amount of the existing credit that may be claimed is \$17,500. In addition, these Acts impose an annual credit cap of \$2 million per fiscal year applicable in aggregate to both the existing credit and the new enhanced credit. Taxpayers are prohibited from claiming tax credits for the same practice in the same management area under both the existing credit and the enhanced credit. These Acts apply a sunset date of January 1, 2025, to both to the existing Agricultural Best Management Practices Tax Credit and to the enhanced Agricultural Best Management Practices Tax Credit.

Effective: Taxable years beginning on or after January 1, 2021
Amended: §§ 58.1-339.3 and 58.439.5

Research and Development Tax Credits: Expansion of Credits to the Bank Franchise Tax

House Bill 1916 (Special Session I, Chapter 47) and Senate Bill 1112 (Special Session I, Chapter 48) permit taxpayers subject to the Bank Franchise Tax to claim the Research and Development Expenses Tax Credit and the Major Research and Development Expenses Tax Credit. Under previous law, these credits could be claimed only against the individual and corporate income tax.

Effective: Taxable years beginning on or after January 1, 2021

Amended: §§ 58.1-439.12:08 and 58.1-439.12:11

Port of Virginia Tax Credits: Extension of the Sunset Dates

Senate Bill 1158 (Special Session I, Chapter 373) extends the sunset date for the International Trade Facility Tax Credit, the Barge and Rail Usage Tax Credit, and the Port Volume Increase Tax Credit from January 1, 2022 to January 1, 2025.

Effective: July 1, 2021

Amended: §§ 58.1-439.12:06, 58.1-439.12:09, and 58.1-439.12:10

Repeal of Virginia's Coal Tax Credits

House Bill 1899 (Special Session I, Chapter 553) and Senate Bill 1252 (Special Session I, Chapter 554) repeal the Coalfield Employment Enhancement Tax Credit, the Virginia Coal Employment and Production Incentive Tax Credit that may be claimed against the corporate income tax, and the Virginia Coal Employment and Production Incentive Tax Credit that may be claimed against the public service corporation's license tax.

Taxpayers that earned Virginia Coal Employment and Production Incentive Tax Credits that may be claimed against the corporate income tax prior to the repeal are permitted to claim such credits pursuant to the applicable carryover period. These Acts limit the amount of such credits that a taxpayer may claim per taxable year pursuant to such applicable carryover or carryforward periods, in aggregate, to \$1 million. No taxpayer is permitted to amend a tax return for a taxable year prior to January 1, 2022 to claim more of such credits than the taxpayer claimed on their return before such amendment.

These Acts further require that the Department of Mines, Minerals and Energy, in coordination with the Virginia Coalfield Economic Development Authority, the Virginia Economic Development Partnership Authority, the Virginia Employment Commission, the Southwest Virginia Workforce Development Board, and the Council on Environmental Justice, convene a stakeholder process, which includes public meetings and public comment

opportunities. The Department of Mines, Minerals and Energy is required to provide an interim report to the General Assembly no later than September 1, 2021 and a final report on December 1, 2021, regarding recommendations for how the Commonwealth can provide economic transition support to the coalfield region, with a particular focus on workforce redevelopment, economic diversification, reclamation of coal-impacted lands and brownfields, community revitalization, infrastructure improvements, and clean energy development.

Effective: Taxable years beginning on and after January 1, 2022

Amended: §§ 58.1-433.1, 58.1-439.2, and 58.1-2626.1

Retail Sales and Use Tax

Retail Sales and Use Tax Exemption for Personal Protective Equipment

House Bill 2185 (Special Session I, Chapter 55) and Senate Bill 1403 (Special Session I, Chapter 56) exempt temporarily from retail sales and use tax, personal protective equipment (“PPE”), defined in these Acts as:

- ▶ Disinfecting products approved for use against SARS-CoV-2 and COVID-19;
- ▶ Coveralls, full body suits, gowns, and vests;
- ▶ Engineering controls such as substitution, isolation, ventilation, and equipment modification to reduce exposure to SARS-CoV-2 and COVID-19 disease-related workplace hazards and job tasks; engineering controls also include UVC sanitation equipment, indoor air quality equipment such as ionization, HEPA filtration, and physical barriers;
- ▶ Face coverings, face shields, and filtering face piece respirators;
- ▶ Gloves;
- ▶ Hand sanitizer;
- ▶ Hand-washing facilities;
- ▶ HVAC, testing, and physical modifications to comply with the American National Standards Institute (ANSI)/American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) Standards 62.1 and 62.2 (ASHRAE 2019a, 2019b);
- ▶ Medical and nonmedical masks;
- ▶ Physical barriers and electronic sensors or systems designed to maintain or monitor physical distancing of employees from other employees, other persons, and the general public, including acrylic sneeze guards, permanent or temporary walls, electronic employee monitors, and proximity sensors in employee badges;
- ▶ Respiratory protection equipment;
- ▶ Safety glasses;
- ▶ Signs related to COVID-19;
- ▶ Temperature-checking devices and monitors; and

- ▶ Testing and related equipment related to COVID-19.

The exemption is available to qualifying businesses, defined as “a business that has in place a COVID-19 safety protocol.” The Department has issued guidelines clarifying what equipment and training qualify for this exemption.

These Acts contain an emergency clause which states that they are in force from their passage. No retroactive exemption may be issued or claimed under the provisions of these Acts for any purchase made before the effective date. The sales tax exemption created by these Acts will expire on the first day following the expiration of the last executive order issued by the Governor related to the COVID-19 pandemic and the termination of the COVID-19 Emergency Temporary Standard and any permanent COVID-19 regulations adopted by the Virginia Safety and Health Codes Board.

Effective: March 11, 2021
Added: § 58.1-609.14

Retail Sales and Use Tax Exemption for Data Centers: Requirement for Qualification

House Bill 2273 (Special Session I, Chapter 367) and Senate Bill 1423 (Special Session I, Chapter 368) reduce the new job creation requirement for any data center located in a distressed locality from 25 jobs to 10 jobs in order to qualify for the Retail Sales and Use Tax exemption for data centers. These Acts reduce the requirement of a \$150 million capital investment to \$70 million for data centers that qualify for the reduced jobs requirement. These Acts modify the definition of “distressed locality” to include:

- ▶ From July 1, 2021, until July 1, 2023, any locality that had (i) an annual unemployment rate for calendar year 2019 that was greater than the final statewide average unemployment rate for that calendar year and (ii) a poverty rate for calendar year 2019 that exceeded the statewide average poverty rate for that year; and
- ▶ From and after July 1, 2023, any locality that has (i) an annual unemployment rate for the most recent calendar year for which such data is available that is greater than the final statewide average unemployment rate for that calendar year and (ii) a poverty rate for the most recent calendar year for which such data is available that exceeds the statewide average poverty rate for that year.

The locality must meet both of the criteria at the time of the execution of the memorandum of understanding signed with the Virginia Economic Development Partnership Authority (“VEDP”).

These Acts also clarify that the exemption includes any data center facilities located in the same locality as the data center that are under common ownership or affiliation of the data center operator.

These Acts require all data centers claiming the exemption to report certain information to VEDP annually. Such information includes employment levels, capital investments, average annual wages, qualifying expenses, and

tax benefit, and such other information as VEDP determines is relevant. Data center operators will be required to submit the annual report to VEDP regardless of when such operators located a new data center in the Commonwealth. The Department, in collaboration with VEDP, will be required to publish a biennial report on the exemption that would include aggregate information on qualifying expenses claimed under this exemption, the total value of the tax benefit, a return on investment analysis that includes direct and indirect jobs created by data center investment, state and local tax revenues generated, and any other information that the Department and VEDP deem appropriate to demonstrate the costs and benefits of the exemption. The report will not include, and the Department and VEDP will not publish or disclose, any such information if it is unaggregated or if such report or publication could be used to identify a business or individual. The Department will publish the report and submit it to the Chairmen of the Senate Committee on Finance and Appropriations and the House Committees on Appropriations and Finance.

Effective: July 1, 2021

Amended: § 58.1-609.3

Retail Sales and Use and Transient Occupancy Taxes on Room Rentals

Senate Bill 1398 (Special Session I, Chapter 383) provides that, beginning September 1, 2021, the retail sales and transient occupancy taxes shall be computed upon the basis of the total charges or the total price paid for use or possession of the room. Where an accommodations provider contracts with an intermediary to facilitate the sale of transient accommodations and the intermediary charges the customer for the room and also an accommodations fee, the intermediary is deemed the dealer for the transaction and must separately state the taxes on the invoice and collect the taxes on the entire amount paid for the use or possession of the room.

When the accommodations are at a hotel, the accommodations intermediary must remit the taxes collected on the accommodations fee to the Department or locality, as applicable, and any remaining tax to the hotel, which amount the hotel must then remit to the Department or locality, as applicable. If the accommodations are not a hotel, the accommodations intermediary must remit the sales tax collected on the entire amount of the transaction to the Department and the occupancy tax collected to the locality.

An “accommodations intermediary” includes any person other than an accommodations provider that facilitates the sale of an accommodation, charges a room charge to the customer, and retains such fee as compensation for facilitating the sale. This Act will exclude from this definition intermediaries:

- ▶ (i) Where the intermediary owns the trademark or trade name under which the accommodations provider is operating, or
- ▶ (ii) Where the price paid by the customer to such person is equal to the price paid by the facilitator to the accommodations provider for use of the room and the only compensation received by the facilitator is a commission to the facilitator from the accommodations provider.

This Act requires the Department to develop and make publicly available guidelines no later than August 1, 2021, for purposes of developing processes and procedures for implementing the Retail Sales and Use Tax provisions of this Act.

Effective: July 1, 2021 and September 1, 2021
Amended: §§ 58.1-602, 58.1-603, 58.1-3819, 58.1-3819.1, 58.1-3823, 58.1-3824, 58.1-3825, 58.1-3825.2, 58.1-3825.3, 58.1-3826, 58.1-3842, and 58.1-3843
Added: §§ 2.2-2320.2, 58.1-612.2, and 58.1-3818.8

Other State Tax Legislation

Crisis Call Center: Crisis Call Center Fund Established

Senate Bill 1302 (Special Session I, Chapter 248) provides that the Virginia Crisis Call Center is designated as the 9-8-8 Crisis Hotline Center for purposes of participating in the National Suicide Prevention Lifeline. This Act creates the Crisis Call Center Fund ("the Fund") for the purposes of establishing and administering the crisis call center. Each seller of prepaid mobile telecommunications service to consumers will be required to collect a prepaid wireless 988 charge of \$0.08 from consumers with respect to each retail transaction. Each seller of mobile telecommunications services will be required to collect a monthly postpaid wireless 988 charge of \$0.12 from each of its customers whose place of primary use is within the Commonwealth. Sellers will be authorized to combine the 988 charges imposed under this act with the current prepaid and postpaid wireless E-911 charges into a combined charge collected on a retail transaction and remitted to the Department. Any seller electing to combine the charges, will be required to identify the combined charge as the "911/988 Charge" on the invoice, receipt, or other similar document. The charges imposed by this Act will be collected by the Department and all revenues from the new 866 charges accrue to the Fund to be used for the purposes identified in the Act.

This Act also increases from \$0.75 to \$0.82 the current wireless E-911 surcharge and increases from \$0.50 to \$0.55 the current prepaid wireless E-911 charge.

Previously, each wireless service carrier and reseller was required to collect a surcharge of \$0.75 per month on each wireless service number of its postpaid customers through its regular billing. Additionally, a prepaid wireless E-911 fee of \$0.50 was imposed on each retail purchase of prepaid wireless calling service and is collected by retail merchants at the point of sale.

Effective: July 1, 2021
Amended: §§ 37.2-311.1, 56-484.12, 56-484.17, and § 56-484.17:1
Added: 37.2-311.2 through 37.2-311.6

Marijuana: Legalization of Simple Possession; Penalties

House Bill 2312 (Special Session I, Chapter 551) and Senate Bill 1406 (Special Session I, Chapter 550) establish a framework for the legalization of non-medical marijuana, including a licensing and regulatory system for cultivation facilities, marijuana manufacturing facilities, marijuana testing facilities, and retail marijuana stores.

These Acts impose a tax on retail marijuana, retail marijuana products, and marijuana paraphernalia sold by a retail marijuana store, as well as non-retail marijuana and non-retail marijuana products at a rate of 21 percent and provide that localities may by ordinance levy a three percent tax on any such marijuana or marijuana products. Such tax will be administered by a new state agency, the Virginia Cannabis Control Authority (“the Authority”). These Acts authorize the Department to provide to the Virginia Cannabis Control Authority, upon entering into a written agreement, such tax information as may be necessary to facilitate the collection of state and local taxes and the administration of the cannabis control laws.

These Acts provide that net profits attributable to regulatory activities of the Authority's Board of Directors will be appropriated as follows:

- ▶ 40 percent to pre-kindergarten programs for at-risk three and four year olds;
- ▶ 30 percent to the Cannabis Equity Reinvestment Fund, established in the Act;
- ▶ 25 percent to substance use disorder prevention and treatment programs; and
- ▶ 5 percent to public health programs.

These Acts also create the Cannabis Control Advisory Board, the Cannabis Equity Reinvestment Board, and the Cannabis Public Health Advisory Council.

The excise tax proposed by these Acts will become effective January 1, 2024.

Effective: January 1, 2024, except as otherwise specified

Amended: § 58.1-3

Added: §§ 4.1-614 and 4.1-1003 through 4.1-1009

Aircraft Sales and Use Tax; Unmanned Aircraft Exempt from Registration Requirement

House Bill 1851 (Special Session I, Chapter 45) and Senate Bill 1098 (Special Session I, Chapter 46) clarify that unmanned aircraft are exempt from the Department of Aviation's registration requirements and therefore also exempt from the Aircraft Sales and Use Tax.

Effective: July 1, 2021

Amended: § 5.1-5

Registration and Licensing of Out-of-State Aircraft

Senate Bill 1144 (Special Session I, Chapter 372) provides that any aircraft registration or registration requirements provided by the Department of Aviation shall be considered the licensure requirement for purposes of the Aircraft Sales and Use Tax and the credit against such tax.

Prior to the law change, the Department of Aviation's aircraft registration requirements were the licensure requirements for purposes of triggering the application of the Aircraft Sales and Use Tax, but those registration requirements did not govern the application of any credits granted against the tax.

Effective: July 1, 2021

Amended: § 5.1-5

Peanut Tax: Extends Sunset Date of Excise Tax on All Peanuts Grown in Virginia

House Bill 1751 (Special Session I, Chapter 120) and Senate Bill 1411 (Special Session I, Chapter 121) extend from July 1, 2021, to July 1, 2026, the sunset date for the excise tax on all peanuts grown in Virginia and reduce the tax rate from \$0.30 per 100 pounds to \$0.25 per 100 pounds. Under existing law, revenues from the tax are dedicated to the Peanut Fund, which is a special nonreverting fund used solely for the purposes of paying the costs of collecting the tax levied on peanuts and the administration of the Virginia Peanut Board.

Effective: July 1, 2021

Amended: § 3.2-1905

Local Tax Legislation

General Provisions

Local Cigarette Tax: Regional Cigarette Tax Boards

Senate Bill 1326 (Special Session I, Chapter 61) defines a regional cigarette tax board and sets forth the duties of such a regional cigarette tax board. Under this Act, the Northern Virginia Cigarette Tax Board is considered a regional tax board. This Act states that it is the policy of the Commonwealth that, where practical, local cigarette stamping and tax collection is encouraged to be accomplished through regional cigarette tax boards modeled on the Northern Virginia Cigarette Tax Board.

This Act requires the Department of Taxation to establish a task force to develop methods for modernizing the current stamping system and to provide assistance as appropriate to localities seeking new regional cigarette tax boards. The task force must include local government representatives, local commissioners of the revenue, cigarette wholesalers and distributors, and representatives of the Northern Virginia Cigarette Tax Board. The task force is required to submit its recommendations to the Virginia General Assembly by November 1, 2021.

Currently, a locality is permitted to delegate its administrative and enforcement authority under its cigarette tax ordinance to one agency or authority. The only such regional entity currently in operation is the Northern Virginia Cigarette Tax Board, which administers and enforces local cigarette taxes on behalf of 19 jurisdictions.

Effective: July 1, 2021
Amended: § 58.1-3830
Added: § 58.1-3832.1

Underground Utility Facilities; Fairfax County

Senate Bill 1385 (Special Session I, Chapter 505) removes the sunset date on a pilot program allowing a locality that has adopted the urban county executive form of government (Fairfax County) to request an electric utility to place underground electric distribution lines as part of a transportation infrastructure improvement project and changes a number of provisions in the program including:

- ▶ Expanding the scope to include electric cooperatives, telecommunications providers, cable providers, and other utilities;
- ▶ Expanding the scope to include all underground facilities;
- ▶ Placing additional limits on the levy to fund the project and the types of projects for which it may be imposed; and
- ▶ Authorizing the locality to secure necessary permits on behalf of the utility or provider.

Under state law, any county, city or town may impose a tax on the consumers of the utility service or services provided by any water or heat, light and power company with some rate restrictions. This Act permits Fairfax County to impose an additional levy on electric utility customers in the County not to exceed \$1 per month on residential customers and not to exceed 6.67 percent of the monthly amount charged to nonresidential consumers of the utility service. The initial proceeds of such levy must be dedicated to a project incorporating bus rapid transit on a road in the National Highway System serving a Metrorail station and an anticipated extension of Metrorail in a designated revitalization area in such locality. The provider of billing services must bill the tax to all users who are subject to the tax and to whom it bills for electricity service and remit such tax to the appropriate locality.

Effective: July 1, 2021
Amended: § 15.2-816.1

Real Property Tax

Sales of Tax Delinquent Land

House Bill 2165 (Special Session I, Chapter 116) extends to 60 months the time period for which a local tax official may suspend an action for the sale of tax delinquent property. This Act also authorizes an official to suspend an action for sale if a person not a party to the action gives notice asserting ownership rights in the subject property via testate or intestate succession. If a court determines such person has ownership rights in the property, such person is allowed to enter into an installment plan to pay the delinquent taxes over a reasonable period of time not to exceed 60 months.

This Act also provides that a final court order confirming the sale of tax delinquent property shall not be entered sooner than the later of (i) 90 days after the official gives notice of the action, or (ii) 90 days after the official receives notice from a person not a party to the action asserting ownership rights.

Effective: July 1, 2021
Amended: § 58.1-3965

Administration of Blighted and Derelict Properties in Certain Localities

House Bill 1969 (Special Session I, Chapter 408) modifies the definition of "qualifying locality" to include any locality with a score of 100 or higher on the fiscal stress index, as published by the Department of Housing and Community Development in July 2020. The 2020 fiscal stress index lists 72 localities that would be included in this category.

Previously, a qualifying locality was one with a score of 107 or higher on the fiscal stress index for 2017. The index for Fiscal Year 2017 lists two localities that meet that criteria. Qualifying localities are able to (i) classify blighted and derelict properties as a separate class of taxable property and assess such property at a higher rate and (ii) sell delinquent tax lands six months after the locality has incurred abatement costs for buildings that have been condemned, constitute a nuisance, are a derelict building, or are declared to be blighted.

This Act also expands the list of localities that have different requirements for the appointment a special commissioner to convey tax-delinquent real estate to the locality in lieu of a public sale at auction. The Act includes any locality with a score of 100 or higher on the fiscal stress index, as published by the Department of Housing and Community Development in July 2020. Previously, the Cities of Norfolk, Richmond, Hopewell, Newport News, Petersburg, Fredericksburg, Hampton, and Martinsville were the only localities that had different requirements for appointing a special commissioner.

Effective: July 1, 2021
Amended: §§ 58.1-3221.6 and 58.1-3970.1

Personal Property Tax

Personal Property Tax Classification of Certain Motor Vehicles, Trailers

House Bill 1774 (Special Session I, Chapter 347) expands the class of tangible personal property for rate purposes that encompasses motor vehicles, trailers, and semitrailers with a gross vehicle weight of 10,000 pounds or more used by a motor carrier engaged in interstate commerce on a for-hire basis to include such vehicles used to transport passengers. Under prior law, this class of property included motor vehicles used to transport property for hire by a motor carrier engaged in interstate commerce.

Effective: July 1, 2021
Amended: § 58.1-3506

Personal Property Tax Exemption: Motor Vehicles of 100 Percent Disabled Veterans

Senate Bill 1130 (Special Session I, Chapter 156) provides that one motor vehicle, defined as only a passenger car or a pickup or panel truck that is registered for personal use, of a veteran of the Armed Forces of the United States or the Virginia National Guard, who has a 100 percent service-connected, permanent, and total disability is exempt from local taxes. A motor vehicle owned by a married person could qualify if either spouse is a veteran who is rated as 100 percent disabled. The exemption is applicable beginning on the date the motor vehicle is acquired or January 1, 2021, whichever is later, but not for any period of time prior to January 1, 2021. The exemption expires on the date of the disabled veteran's death and is not available for the surviving spouse. Such vehicle continues to be eligible for correction of assessment on appeal to a local assessing official.

Effective: July 1, 2021
Added: § 58.1-3668

Tax Exemptions and Revenue Shares for Energy Storage Systems

House Bill 2006 (Special Session I, Chapter 49), House Bill 2269 (Special Session I, Chapter 429), and Senate Bill 1201 (Special Session I, Chapter 50) authorize localities to adopt revenue share ordinances on energy storage systems of up to \$1,400 per megawatt, with the maximum revenue share on storage systems as well as solar photovoltaic projects increasing by ten percent on July 1, 2026 and every five years thereafter for projects approved by the locality on or after January 1, 2021.

In addition, House Bill 2006 and Senate Bill 1201 provide that the certified pollution control equipment and facilities exemption for projects greater than five megawatts but less than 150 megawatts, and for projects greater than five megawatts where the locality has not adopted a revenue share ordinance, is 80 percent of the assessed value in the first five years of service, 70 percent in years six through ten, and 60 percent thereafter. The exemption for projects greater than 5 megawatts is 100 percent if the locality has imposed a revenue share. No exemption is available to projects greater than five megawatts that have not filed an application with the locality before July 1, 2030. These Acts also classify energy storage systems as certified pollution control equipment facilities regardless of whether or not such equipment has been certified to the Department of Taxation by a state certifying authority.

Effective: July 1, 2021
Amended: §§ 58.1-2600, 58.1-2628, 58.1-2636, and 58.1-3660

Other Local Tax Legislation

Extension of the Local Gas Severance Tax Sunset Date

House Bill 2293 (Special Session I, Chapter 430) extends the sunset date for the local gas road improvement tax from January 1, 2022 to January 1, 2024. Under prior law, the local gas road improvement tax imposed by the Virginia Coalfield Economic Development Authority could not be imposed on or after January 1, 2022.

Effective: July 1, 2021

Amended: § 58.1-3713

Combined Transient Occupancy and Food and Beverage Tax

Senate Bill 1438 (Special Session I, Chapter 62) clarifies that for purposes of the combined transient occupancy and food and beverage tax that is authorized in Rappahannock and Madison Counties, the rate limit for the tax shall be the same as if the two taxes were imposed separately. This Act also clarifies that a referendum is not required as a prerequisite to the imposition of the food and beverage tax portion of the combined tax.

Effective: July 1, 2021

Amended: § 58.1-3842

Legislative Studies/Reports

Joint Subcommittee on Tax Policy

Item 1 (AA) of the 2021 Appropriation Act (House Bill 1800, Special Session I, Chapter 552) establishes a Joint Subcommittee on Tax Policy (“the Subcommittee”). The Subcommittee is required to:

- ▶ Evaluate the fiscal impact of amendments to tax brackets, rates, credits, deductions, and exemptions;
- ▶ Evaluate factors relevant to making Virginia’s individual income tax system more fair and equitable;
- ▶ Give consideration to the fairness, certainty, convenience of payment, economy in collection, simplicity, neutrality, and economic efficiency of the Commonwealth’s tax policies and any changes thereto; and
- ▶ Recommend whether the General Assembly should amend the Code of Virginia.

The Subcommittee is required to consist of twelve members: six members from the Senate Finance and Appropriations Committee, three members from the House Appropriations Committee, and three members from the House Finance Committee. Each member of the Subcommittee is required to be appointed by the chair of the corresponding committee.

To assist the Subcommittee, all agencies of the Commonwealth are required to provide technical assistance upon request and the Chair of the Subcommittee. The Chair of the Subcommittee is permitted to appoint a workgroup that may consist of the staff of the Senate Finance and Appropriations Committee, the House Appropriations Committee, and the House Finance Committee, as well as any other stakeholders deemed appropriate.

Effective: July 1, 2021

Working Group to Study the Feasibility of Adopting Unitary Combined Reporting

House Joint Resolution 563 (Special Session I) directs the Division of Legislative Services, in conjunction with the Department of Taxation, to establish a work group to assess the feasibility of transitioning to a unitary combined reporting system for corporate income tax purposes. This work group is required to assess the following with respect to Virginia potentially adopting unitary combined reporting:

- ▶ Administrative feasibility;
- ▶ Impact on major classifications of corporations operating in Virginia;
- ▶ Impact on corporate expansion within and into Virginia; and
- ▶ Projected impact on Virginia's tax revenue.

The work group is also required to:

- ▶ Identify and make recommendations any legislation necessary should Virginia transition to unitary combined reporting;
- ▶ Identify the different legal authorities and requirements that would apply to affected corporations;
- ▶ Identify and solicit input from affected corporations; and
- ▶ Estimate the fiscal impact to Virginia of transitioning to unitary combined reporting.

The Secretary of Finance, the Secretary of Commerce and Trade, and the Chairmen of the House Committee on Finance and the Senate Committee on Finance and Appropriations are required to be represented on this work group and participate in selecting its members.

The work group is required to submit a summary of its findings, recommendations, and a draft of any recommended legislation to the Chairmen of the House Committee on Finance and the Senate Committee on Finance and Appropriations no later than November 1, 2021.

Effective: July 1, 2021

Unitary Combined Reporting Informational Return Requirement

Section 3-5.23 of the 2021 Appropriation Act (House Bill 1800, Special Session I, Chapter 552) requires corporations that are members of a unitary business to file a report, in a manner prescribed by the Tax Commissioner, for the unitary combined group containing the unitary combined net income of such group. The report is required to be based on Taxable Year 2019 computations and must include, at a minimum, the difference in tax owed as a result of filing a unitary combined report compared to the tax owed under the current filing requirements. This report is required to be submitted to the Department on or before July 1, 2021, which date may not be extended. Any corporation required to submit this that fails to do so by July 1, 2021, or that makes a material omission or misstatement in connection with this report, is subject to a \$10,000 penalty. The Commissioner may waive this penalty upon the determination that the requirement would cause an undue hardship.

For purposes of this report, a unitary business is defined as a single economic enterprise made up either of separate parts of a single business entity or of a commonly controlled group of business entities that are sufficiently interdependent, integrated, and interrelated through their activities so as to provide a synergy and mutual benefit that produces a sharing or exchange of value among them and a significant flow of value to the separate parts. A unitary business includes that part of the business that meets this definition and is conducted by a taxpayer through the taxpayer's interest in a partnership, whether the interest in that partnership is held directly or indirectly through a series of partnerships or other pass-through entities. A unitary business does not include persons subject to, or that would be subject to, if doing business in Virginia, the Insurance Premiums License Tax or the Bank Franchise Tax.

The Tax Commissioner is required to submit a report regarding the information provided through this reporting requirement to the Chairmen of the Senate Finance and Appropriations Committee, House Appropriations Committee, and House Finance Committee by December 1, 2021.

Effective: July 1, 2021

Online Portal for Tax Practitioners: the Department Required to Analyze the Prospects of Establishing

House Bill 2060 (Special Session I, Chapter 414) requires the Department to analyze the prospect of establishing an online portal for tax practitioners who possess a valid Power of Attorney and Declaration of Representative form to access client information. In its analysis, the Department is required to evaluate comparable services offered by the Internal Revenue Service or other states, and cybersecurity concerns associated with providing such services.

This Act requires the Department to identify the estimated costs associated with the creation of such a portal, and report its findings and recommendations to the Chairmen of the House Committee on Appropriations, House Committee on Finance, and Senate Committee on Finance and Appropriations no later than December 1, 2021.

Effective: July 1, 2021

JLARC to Study Increasing the Progressivity of Virginia's Individual Income Tax System

House Joint Resolution 567 (Special Session I) requires the Joint Legislative Audit and Review Commission (JLARC) to study increasing the progressivity of Virginia's individual income tax system. JLARC is required to evaluate the fiscal impact of amendments to tax brackets, tax rates, credits, deductions, and exemptions, as well as any other factors it deems relevant to making Virginia's individual income tax system more progressive and fair in response to economic dynamics. JLARC is required to recommend whether the General Assembly should amend the Code of Virginia or administrative regulations of the Department of Taxation and to make any other appropriate recommendations.

The Department is required to provide technical assistance to JLARC. JLARC is required to consult with staff of the House Committee on Finance, the House Committee on Appropriations, the Senate Committee on Finance and Appropriations, and any other stakeholders deemed appropriate. All agencies of the Commonwealth are required to provide assistance to JLARC for this study, upon request.

JLARC is required to complete its meetings by November 30, 2022, and submit an executive summary of its findings and recommendations to the Division of Legislative Automated Systems no later than the first day of the 2023 Regular Session of the General Assembly. The executive summary is required to state whether JLARC intends to submit to the General Assembly and the Governor a report of its findings and recommendations for publication as a House or Senate document.

Effective: July 1, 2021

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