

# 2023 Legislative Summary

Virginia Department of Taxation

Updated September 15, 2023

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# Introduction

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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 2023 Session of the General Assembly, including the reconvened session on April 12, 2023 and Special Session I on September 6, 2023. Please note that any legislation enacted after Special Session I 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](http://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

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## General Provisions

### Clarifying the Debarment Procedures for Worker Misclassification

House Bill 1684 (Chapter 518) and Senate Bill 1354 (Chapter 519) clarify the procedures under which an employer may be debarred from public contracts for misclassification of workers. Under prior law, it was unclear whether the employer had a right to appeal a determination that the employer failed to properly classify an employee and what procedures the employer must follow to make such an appeal. These Acts clarify that, upon being notified by the Department of Taxation that a worker has been misclassified, an employer has a right to file an administrative or judicial appeal. In addition, these Acts clarify that no employer can be debarred due to worker misclassification unless such employer has exhausted all rights of administrative and judicial appeals or the time period for bringing such appeals has expired.

These Acts also change the timing of when the Department must notify public bodies and covered institutions of a worker misclassification violation. Under prior law, the Department was required to notify all public bodies and covered institutions of an initial worker misclassification violation by an employer. Under these Acts, the Department must notify all public bodies and covered institutions upon an employer's subsequent violation, but only after all rights of administrative and judicial appeals have been exhausted or the time period for bringing such appeals has expired.

Effective: July 1, 2023  
Amended: § 58.1-1902

### Filing of Tax Returns or Payment of Taxes by Mail

House Bill 1927 (Chapter 163) deems a tax return or tax payment timely received if, through no fault of the taxpayer, no postmark is affixed or the postmark affixed by the U.S. Postal Service is illegible or bears no date, provided such tax return or payment is received within five days of the due date. The Act also provides that no penalty or interest may be imposed if a taxpayer provides evidence that a return or payment was timely processed by producing a U.S. Postal Service Certificate of Mailing, or other proof of mailing, showing such return or payment was made on time.

Effective: July 1, 2023  
Amended: §§ 58.1-9 and 58.1-3916

## Limitations on the Collection of Taxes by the Department

House Bill 1625 (Chapter 265) provides that the running of the seven year period of limitations on state collection actions is suspended while any administrative or judicial proceeding contesting the assessment is pending. The Act also repeals a provision suspending the period of limitations on state collection actions while the taxpayer is outside of the Commonwealth.

Effective: July 1, 2023  
Amended: § 58.1-1802.1

## Income Tax Legislation

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

House Bill 1595 (Chapter 772) and Senate Bill 882 (Chapter 1) advance Virginia's date of conformity to the Internal Revenue Code from December 31, 2021 to December 31, 2022. This allows Virginia to conform to the Inflation Reduction Act of 2022, as well as the tax-related provisions contained in the Consolidated Appropriations Act of 2023. Virginia will continue to deconform from the federal tax provisions that it deconforms from under current law.

These Acts clarify that two laws enacted during the 2022 Special Session become effective for Taxable Year 2022, which allow the tax benefits offered by these laws to be claimed on 2022 Virginia income tax returns without processing delays. These laws are:

- ▶ House Bill 103 (2022 Special Session, Chapter 6), which allows an individual income tax deduction of up to \$500 for the amount actually paid or incurred for eligible educator qualifying expenses; and,
- ▶ House Bill 1319 (2022 Special Session, Chapter 18), which provides a nonrefundable individual income tax credit for expenses incurred by a taxpayer for the implementation of beneficial hardwood management practices.

House Bill 1595 (Chapter 772) also clarifies that it prevails over any conflicting provisions of the second enactment of Chapter 2 of the Acts of Assembly of 2022, Special Session I.

Effective: February 27, 2023  
Amended: § 58.1-301

### Rolling Conformity to the Internal Revenue Code

House Bill 2193 (Chapter 791) and Senate Bill 1405 (Chapter 763) conform Virginia to the Internal Revenue Code on a rolling basis. This allows Virginia to conform to federal tax changes to the IRC as soon as they are enacted by Congress. This also allows Virginia to conform to the Inflation Reduction Act and the Consolidated Appropriations Act of 2023.

Virginia will deconform from any amendment enacted on or after January 1, 2023 that would increase or decrease General Fund revenues by more than \$15 million in the fiscal year in which the amendment was enacted or any of the succeeding four fiscal years. This deconformity will not apply to any federal tax changes that the General Assembly subsequently adopts or a federal tax extender as defined under these Acts. Beginning January 1, 2024, the \$15 million threshold will be adjusted annually by the change in the Chained Consumer Price Index for All Urban Consumers (C-CPI-U) for the previous year.

Virginia will also deconform from all amendments enacted on or after January 1, 2023, and occurring between adjournment sine die of the previous regular session of the General Assembly and the first day of the



subsequent regular session of the General Assembly if the cumulative impact of such amendments would increase or decrease General Fund revenues by more than \$75 million in the fiscal year in which the amendments were enacted or any of the succeeding four fiscal years. This deconformity will not apply to any federal tax changes that the General Assembly subsequently adopts or that are enacted before the date on which the cumulative projected impact is met. This deconformity will also not apply to any federal tax extender as defined under these Acts.

Effective: Taxable years beginning on and after January 1, 2023  
Amended: § 58.1-301

### **Clarification Regarding Virginia’s Conformity to the Internal Revenue Code**

The twenty-fifth enactment clause of the 2023 Special Session I Amendments to the 2023 Appropriation Act (House Bill 6001, Special Session I, Chapter 1) clarifies that all of the conformity legislation enacted during the 2023 Regular Session continue to apply and override any conflicting provisions found in the second enactment of such Act. Therefore, Taxable Year 2022 returns may continue to be filed based upon the December 31, 2022 date of conformity provided in House Bill 1595 (2023 Acts of Assembly, Chapter 772) and Senate Bill 882 (2023 Acts of Assembly, Chapter 1). Similarly, returns for Taxable Year 2023 and after may be filed based upon the rolling conformity provisions of House Bill 2193 (2023 Acts of Assembly, Chapter 791) and Senate Bill 1405 (2023 Acts of Assembly, Chapter 763).

Effective: September 14, 2023

### **Individual Income Tax Rebates**

Item 3-5.28 of the 2023 Special Session I Amendments to the 2023 Appropriation Act (House Bill 6001, Special Session I, Chapter 1) allows an individual income tax rebate of up to \$200 for a single taxpayer, or up to \$400 for married taxpayers filing a joint return.

In order to qualify, a Taxable Year 2022 return must be filed on or before November 1, 2023. A refund is allowed only up to the amount of the taxpayer’s tax liability after the application of any deductions, subtractions, or credits to which the taxpayer is entitled. For those filing a return before July 1, 2023, refunds that are determined to be due to eligible taxpayers must be issued on or before November 30, 2023.

This Act also requires that any refunds issued are subject to collection under the Setoff Debt Collection Act and that no interest will be paid on any refund issued under this Act.

This Act also establishes a special nonreverting fund known as the “2023 Individual Income Tax Rebate Fund” and directs the State Comptroller to transfer an estimated \$906,800,000 to it from the General Fund to issue the 2023 individual income tax rebate. The Governor, in consultation with the State Comptroller and the Tax Commissioner, are required to certify to the General Assembly on or before December 1 any additional transfer amounts to the 2023 Individual Income Tax Rebate Fund necessary to issue rebates.

Effective: September 14, 2023

### **Standard Deduction Increase**

The twentieth enactment clause of the 2023 Special Session I Amendments to the 2023 Appropriation Act (House Bill 6001, Special Session I, Chapter 1) increases the standard deduction from \$8,000 to \$8,500 for single filers and from \$16,000 to \$17,000 for married filers filing jointly for taxable years beginning on or after January 1, 2024, but before January 1, 2026.

However, the twenty-second enactment clause of such Act provides that the standard deduction increase is contingent on the Auditor of Public Accounts certifying individual withholding growth of at least the growth rate in the official revenue estimate contained in this Act for the six month period of July 2023 through December 2023. The Auditor of Public Accounts shall complete the certification no later than January 22, 2024. If withholding collection growth is not met for such six-month period, the standard deduction for taxable years beginning on and after January 1, 2024, but before January 1, 2026, shall be \$8,000 for single individuals and \$16,000 for married persons.

The increase in the standard deduction is scheduled to sunset after Taxable Year 2025 and revert to the standard deduction amounts that applied prior to Taxable Year 2019, \$3,000 for single filers and \$6,000 for married couples filing jointly.

Effective: Taxable years beginning on and after January 1, 2024, but before January 1, 2026  
Amended: § 58.1-322.03

### **Land Preservation Tax Credit Changes**

House Bill 1834 (Chapter 173) extends the deadline for filing a complete application for the land preservation tax credit for conveyances made on or after January 1, 2017. The deadline is extended for any number of days exceeding 90 during which the application is being reviewed for verification of conservation value by the Department of Conservation and Recreation, provided that such application is otherwise complete at the time of the original filing deadline.

Effective: July 1, 2023  
Amended: § 58.1-512

### **Pass-through Entity Tax Changes**

House Bill 1456 (Chapter 686) and Senate Bill 1476 (Chapter 687) replace the existing qualifying pass-through entity requirement with a new eligible owner requirement. Prior to this legislation, the qualifying pass-through entity requirement provided that a pass-through entity (“PTE”) could only make the pass-through entity tax (“PTET”) election if it was 100 percent owned by natural persons or persons eligible to be shareholders of an S corporation. Under the eligible owner requirement, only a direct owner of a PTE who is (1) a natural person subject to Virginia’s individual income tax; or (2) an estate or trust subject to Virginia’s fiduciary income tax may claim a refundable PTET credit. Consequently, all PTEs can make the PTET election, but only owners meeting the eligible owner requirement are eligible to claim refundable PTET credits.

This legislation also states that only the pro rata or distributive share of income, gain, loss, or deduction attributable to eligible owners is subject to the PTET. Therefore, such amounts attributable to non-eligible owners, including corporations and other PTEs, are not subject to the PTET.

Effective: Taxable years beginning on and after January 1, 2021  
Amended: §§ 58.1-390.1 and 58.1-390.3

### **Firearm Safety Device Tax Credit**

House Bill 2387 (Chapter 220) establishes an individual income tax credit for the purchase of one or more firearm safety devices in an eligible transaction. “Eligible transaction” means a transaction in which a taxpayer purchases one or more firearm safety devices from a dealer that is federally licensed.

An individual who properly applies may be allowed a credit in an amount of up to \$300 for the cost incurred in the purchase. A taxpayer is allowed only one credit per taxable year. The total amount of credits permitted under this legislation cannot exceed \$5 million per taxable year. Credits will be allocated on a first-come, first-served basis.

The amount of credit claimed in a single year cannot exceed the individual’s tax liability for that year. If the amount is exceeded, then it can be carried over for credit in the next five years or until the total amount is depleted, whichever happens sooner.

This Act requires Virginia Tax to promulgate guidelines regarding the firearm safety device tax credit.

Effective: Taxable years beginning on and after January 1, 2023, but before January 1, 2028  
Amended: § 58.1-339.14

### **Food Crop Donation Credit Renewed and Expanded**

House Bill 2445 (Chapter 165) and Senate Bill 1525 (Chapter 166) extend the sunset date for the Food Crop Donation Tax Credit by five years. Under Item 3-5.26 of the 2022 Appropriation Act, the sunset date of this credit is January 1, 2023. These Acts extend this to January 1, 2028.

In addition, these Acts increase the amount of the tax credit from 30 percent to 50 percent of the fair market value of qualifying donations, and increase the maximum annual amount of tax credits that a taxpayer could earn from \$5,000 to \$10,000.

These Acts also expand the credit to include wholesome food donations. Previously, only donations of food crops qualified for the credit. "Wholesome food" is defined as food that meets all quality and labeling standards imposed by federal, state, and local laws or regulations, including food that may not be readily marketable due to appearance, age, freshness, grade, surplus, or other condition.

Effective: Taxable years beginning on or after January 1, 2023  
Amended: § 58.1-439.12:12

### **Modifications to the Livable Home Tax Credit**

House Bill 2099 (Chapter 444) increases the aggregate cap of the Livable Home Tax Credit from \$1 million to \$2 million per fiscal year. The Department of Housing and Community Development is required to continue to equally split the total amount of credits available between:

- ▶ The purchase or construction of new residences; and
- ▶ The retrofitting and renovation of existing residences.

As a result, this Act increases the amount of credits available for each of the above categories from \$500,000 to \$1 million per fiscal year. This Act also increases the maximum amount of Livable Home Tax Credits a taxpayer may claim per year from \$5,000 to \$6,500.

Effective: The provisions regarding the changes in the amount of the Livable Home Tax Credit an individual taxpayer can claim per year are effective for taxable years beginning on or after January 1, 2023. The remaining provisions are effective on July 1, 2023.

Amended: § 58.1-339.7

### **Green and Alternative Energy Job Creation Tax Credit Changes**

House Bill 2178 (Chapter 509) changes the name of the Green Job Creation Tax Credit to the Green and Alternative Energy Job Creation Tax Credit. This Act also adds methane extracted in Planning District 2 to the list of renewable, alternative energy sources eligible for the newly renamed Green and Alternative Energy Job Creation Tax Credit. Under current law, a non-refundable tax credit of \$500 is available for each new qualifying green job that is created in industries relating to the field of renewable, alternative energies.

Effective: Taxable years beginning after January 1, 2023

Amended: § 58.1-439.12:05

### **Land Preservation Tax Credit Changes**

House Bill 1834 (Chapter 173) extends the deadline for filing a complete application for the land preservation tax credit for conveyances made on or after January 1, 2017. The deadline is extended for any number of days exceeding 90 during which the application is being reviewed for verification of conservation value by the Department of Conservation and Recreation, provided that such application is otherwise complete at the time of the original filing deadline.

Effective: July 1, 2023

Amended: § 58.1-512

### **Affiliated Groups of Corporations Changing to or from the Consolidated Filing Status**

House Bill 1405 (Chapter 520) and Senate Bill 796 (Chapter 521) amend the requirements for an affiliated group to elect to change its corporate income tax filing status to or from the consolidated filing status by removing the condition that its tax liability for the previous tax year not be decreased by such a change in filing status. These Acts retain all other current requirements regarding changing an affiliated group's filing status, including:

- ▶ That the electing affiliated group has filed using the same status for preceding 12 years; and

- ▶ That the electing affiliated group agrees to compute its tax liability under both the prior filing status and the newly elected filing status and pay the greater of the two amounts for the taxable year in which the request is effective and the immediately succeeding taxable year.

Effective: Applications filed on and after July 1, 2023  
Amended: § 58.1-442

### **Market Based Sourcing for Internet Root Infrastructure Providers**

House Bill 1481 (Chapter 405) and Senate Bill 1349 (Chapter 406) allow an internet root infrastructure provider (“Provider”) that meets certain criteria and chooses to enter into a memorandum of understanding (“MOU”) with the Virginia Economic Development Partnership Authority (“the Authority”) to use a hybrid sales factor when filing Virginia corporate income tax returns. To qualify for this hybrid sales factor, a Provider must operate one of the internet root servers of the Internet Assigned Names Authority and enter into an MOU with the Authority that, among other criteria, have at least 550 employees in Planning District 8 with an average annual salary of \$175,000. An internet service provider, cable service provider, or similar company is not considered a Provider for purposes of these Acts.

Under these Acts, sales, other than sales of tangible personal property, require the use of a hybrid sales factor, which applies a market-based sourcing rule for sales of services and the standard cost of performance rule for all other non-service sales. As a result, a Provider making this election would still use the standard three-factor apportionment formula, with sales double weighted, except that sales of services are sourced to Virginia if the benefit of the service is received in Virginia. Under these Acts, sales of other intangible property continue to be sourced to Virginia based on the location of the greater portion of costs of performance.

The Department is required to develop guidelines in consultation with interested parties and after holding a public hearing on the preliminary guidelines. Preliminary guidelines are required to be published by December 31, 2023, and final guidelines are required to be published by December 31, 2024.

Effective: Taxable years beginning on and after January 1, 2023  
Amended: § 58.1-416  
Added: § 58.1-422.5

### **Increase in Income Tax Deduction for Certain Disallowed Business Interest**

The twenty-third enactment clause of the 2023 Special Session I Amendments to the 2023 Appropriation Act (House Bill 6001, Special Session I, Chapter 1) increases the Virginia individual and corporate income tax deduction for business interest to 50 percent of the business interest disallowed as a deduction under the federal business interest limitation. Under prior law, such deduction was equal to 30 percent of disallowed business interest.

Effective: Taxable years beginning on and after January 1, 2024  
Amended: §§ 58.1-322.03 and 58.1-402

### **Modification of Retail Company Apportionment**

House Bill 1978 (Chapter 38) and Senate Bill 1346 (Chapter 39) allow an affiliated group of corporations with eighty percent or more of their sales derived from retail company activities to apportion all their income using the single sales factor on a Virginia consolidated return. Prior to this change, such affiliated groups must use a combination of single sales factor apportionment and three factor apportionment to determine their income subject to Virginia corporate income tax if they contain at least one member that is not a retail company. Under these Acts, the election is only be effective in years during which the eighty percent or more of sales test is met, and such an election cannot be changed without permission of the Department.

Effective: Taxable years beginning on and after January 1, 2023  
Amended: § 58.1-422.1

### **Installment Agreements for Payment of Individual Income Taxes**

House Bill 1369 (Chapter 643) requires the Department to offer installment agreements to individual income taxpayers in which the taxpayer may satisfy their entire tax liability over a term of up to five years. The Act also repeals the Department's authority to modify or cancel an installment agreement if the taxpayer's financial condition has significantly changed or if the taxpayer fails to provide a financial condition update upon request. This Act only impacts installment agreements pertaining to the individual income tax and does not affect the Department's authority to enter into installment agreements for any other tax.

The Act also requires the Department to convene a working group.

Effective: July 1, 2023

Amended: § 58.1-1817

### **Military Benefit Subtraction**

The twenty-first enactment clause of the 2023 Special Session I Amendments to the 2023 Appropriation Act (House Bill 6001, Special Session I, Chapter 1) allows Virginia’s military benefit subtraction to be claimed regardless of age. Under prior law, the subtraction was only allowed for certain military benefits received by an individual age 55 or older.

Effective: Taxable years beginning on and after January 1, 2024  
Amended: § 58.1-322.02

### **Individual Income Tax Subtraction for National Guard Pay**

House Bill 2373 (Chapter 584) and Senate Bill 1210 (Chapter 585) increase the individual income tax subtraction for National Guard pay from \$3,000 to \$5,500. The Acts also expand eligibility for the subtraction from persons in the ranks of O3 and below to persons in the ranks of O6 and below.

Effective: Taxable years beginning on and after January 1, 2023  
Amended: § 58.1-322.02



## Retail Sales and Use Tax

### Combined Sales and Use Tax Holiday

The twenty-fourth enactment clause of the 2023 Special Session I Amendments to the 2023 Appropriation Act (House Bill 6001, Special Session I, Chapter 1) reinstates the combined Retail Sales and Use Tax holiday authorized in state law, applicable to Energy Star or WaterSense qualified products, school supplies, clothing and footwear, and certain hurricane preparedness equipment. The prior combined sales tax holiday expired on July 1, 2023. This Act reauthorizes the combined holiday through July 1, 2025. The sales tax holiday authorized for calendar year 2023 applies only to those sales occurring during the three-day period that begins on Friday, October 20, and ends at 11:59 p.m. on the following Sunday. Typically, the holiday begins at 12:01 a.m. on the first Friday in August of every year and ends at 11:59 p.m. on the Sunday immediately following.

Effective: September 14, 2023

### Extension of Retail Sales and Use Tax Exemption for Certain Data Centers

House Bill 2479 (Chapter 678) and Senate Bill 1522 (Chapter 671) extend the data center Retail Sales and Use Tax exemption to 2040 for a data center operator that, on or after January 1, 2023, but before July 1, 2035: (i) makes or causes to be made a capital investment of at least \$35 billion in data centers in localities identified in a memorandum of understanding; and (ii) creates at least 1,000 new full-time jobs, of which at least 100 jobs pay at least 1.5 times the Commonwealth's prevailing average wage. Such data center operator will be eligible for further extension to 2050 if, on or after January 1, 2023, but before January 1, 2040, the data center operator: (i) makes a total capital investment of at least \$100 billion, inclusive of the initial \$35 billion investment; and (ii) creates a total of at least 2,500 new full-time jobs, of which at least 100 jobs pay at least 1.5 times the Commonwealth's prevailing average wage, inclusive of the 1,000 jobs initially created.

To qualify for such extensions, a data center operator is required to enter into a memorandum of understanding with the Virginia Economic Development Partnership Authority on or after January 1, 2023, that at a minimum provides the details for determining the amount of capital investment made and the number of new jobs created; the locality or localities in which the capital investment shall be made and new jobs shall be created in order to qualify for the extension; and the timeline for making the capital investment and creating the new jobs in each specified locality.

The exemption applies to 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. A data center operator will be considered to own a data center if it is operated on behalf of the data center operator pursuant to a long-term lease of at least ten years.

Effective: July 1, 2023  
Amended: § 58.1-609.3  
Added: § 58.1-284.41

### **Exemption for Indoor, Closed, Controlled- Environment Commercial Agricultural Facilities and Greenhouses**

House Bill 1563 (Chapter 516) and Senate Bill 1240 (Chapter 517) expand the Retail Sales and Use Tax agricultural exemption to include certain property used directly in producing agricultural products for market in an indoor closed, controlled-environment commercial agricultural facility. Such property includes certain internal and external machinery, equipment, and structural components, regardless of whether such machinery, equipment or components are affixed to real property, so long as all items are necessary to create, support, and maintain the necessary growing environment for horticulture, floriculture, viticulture, or other farm crops. This exemption extends to contractors engaged to construct the facilities, but does not apply to property used in the production of cannabis or any derivative thereof.

Effective: July 1, 2023  
Amended: §§ 58.1-609.2 and 58.1-610

### **Sales Tax Exemption for Diagnostic Work and Emergency Roadside Service**

House Bill 1677 (Chapter 35) provides an exemption from the Retail Sales and Use Tax for amounts separately charged for labor rendered in connection with diagnostic work for automotive repair and emergency roadside service for motor vehicles regardless of whether there is a sale of a repair or replacement part or a shop supply charge. Under prior law, amounts charged for diagnostic services were only exempt from the Retail Sales and Use Tax when such charges are not made in connection with the sale of tangible personal property or the tangible personal property exchanged is inconsequential to the transaction.

Effective: July 1, 2023  
Amended: § 58.1-609.5

### **Extension of Sales Tax Exemption for Oil and Gas Drilling Equipment**

House Bill 2334 (Chapter 144) extends the sunset date from July 1, 2023 to July 1, 2024 for the Retail Sales and Use Tax exemption for materials, supplies, machinery, and other specified tangible personal property used

directly in the drilling, extraction or processing of natural gas or oil and the reclamation of the well area. Item § 3-5.24 of the 2022 Appropriation Act (Chapter 2, 2022 Acts of Assembly, Special Session I) previously extended the sunset date from July 1, 2022 to July 1, 2023.

Effective: July 1, 2023

Amended: § 58.1-609.3

## Other State Tax Legislation

### Litter Tax Notice Requirement

House Bill 1645 (Chapter 251) and Senate Bill 996 (Chapter 252) limit the Department's ability to impose penalty and interest for failure to pay the litter tax in full without notifying the taxpayer 30 days prior to the return due date that a return is required.

Under current law, the litter tax is \$20 for each establishment engaged in business as a manufacturer, wholesaler, distributor or retailer of particular products enumerated in state law. An additional litter tax of \$30 per establishment is imposed on manufacturers, wholesalers, distributors, and retailers of groceries, soft drinks, carbonated waters, and beer and other malt beverages. Litter tax returns and payments are due on May 1 of each year. Virginia law imposes a penalty equal to 100% of the tax assessed, plus an additional \$100 if the litter tax is paid late.

Effective: July 1, 2023  
Amended: § 58.1-1709

### Modification to Bank Franchise Tax

House Bill 1896 (Chapter 50) and Senate Bill 1182 (Chapter 51) require banks to file their annual bank franchise tax returns electronically. Under these Acts, the Department is required to maintain a secure online portal to receive returns and other required submissions for use by commissioners of the revenue or other assessing officers. Any bank is permitted, in accordance with procedures established by the Tax Commissioner, to elect a 60-day filing extension for the return and schedules. In addition, all localities imposing a local bank franchise tax are required to provide electronic processes for banks to access real estate assessment records.

In addition, these Acts require that the Department convene a work group and publish a report regarding certain potential changes to the bank franchise tax.

Effective: January 1, 2025  
Amended: §§ 58.1-1206, 58.1-1207, and 58.1-1212

# Local Tax Legislation

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## Real Property Tax

### Real Property Tax: Data Centers

Item 3-5.29 of the 2023 Special Session I Amendments to the 2023 Appropriation Act (House Bill 6001, Special Session I, Chapter 1) clarifies that when fixtures in a data center are classified as real estate and valued by a locality based on the cost approach (cost less depreciation) rather than the income generated, they must be assessed at one-hundred percent of fair market value as determined by the cost approach and consistent with state law.

Effective: September 14, 2023

### Real Property Tax Exemption: Disabled Veterans

House Bill 2414 (Chapter 659) provides that, for purposes of the real property tax exemption for disabled veterans, the veteran or surviving spouse may claim the exemption prior to purchasing the qualifying dwelling by filing any required documentation, including valid documentation of the purchase agreement for the qualifying dwelling. The commissioner of the revenue of the county, city, or town, or such other officer as may be designated by the governing body in which the real property is located, must, within 20 business days following receipt of such documentation, process the application and send the veteran a letter stating whether the application is approved or denied. If the application is approved, the letter must also include the amount of the tax exemption for the qualifying property the veteran intends to purchase. However, the exemption described in such a letter will become effective only after the veteran becomes the owner of the property.

Effective: July 1, 2023  
Amended: § 58.1-3219.6

### Land Use Classifications: Property Qualification

Senate Bill 1511 (Chapter 345) provides that real estate devoted to agricultural use includes a property that formerly participated in a state or federal soil and water conservation program and continues to meet the qualifications of such program but is no longer receiving payments or compensation. This Act also clarifies that the presence of noxious weeds or woody growth may not be the sole basis for the denial of such designation or for the exclusion of such land for the purposes of determining minimum acreage if the landowner provides

documentation, in the form of receipts or invoices, of a regular or annual control method of such weeds or growth. This Act further clarifies that real estate devoted to "horticultural use" includes a property that formerly participated in a state or federal soil and water conservation program and continues to meet the qualifications of such program but is no longer receiving payments or compensation. Finally, this Act provides that the application form for land use taxation must allow a landowner to certify that a property that formerly participated in a state or federal soil and water conservation program and continues to meet the qualifications of such program but is no longer receiving such payments or compensation continues to meet the requirements of such program for the purposes of land use classification.

Effective: July 1, 2023  
Amended: §§ 58.1-3230 and 58.1-3234

### **Address Transfer upon Deed Recordation**

Senate Bill 1389 (Chapter 411) requires the local commissioner of revenue for every county or city to ensure that, upon receipt and review of a recordation receipt for any deed for the partition and conveyance of land, the land book is updated to reflect the grantee and property address or any other such address as may be specified in writing by the grantee for the delivery of future tax bills.

Effective: July 1, 2023  
Amended: § 58.1-3303

### **Installment Agreement for Delinquent Tax Lands**

House Bill 2110 (Chapter 292) extends to 72 months the time period for which a local tax official may suspend an action for the sale of tax delinquent property upon entering into an agreement with the owner of the property for the full payment of the delinquent amounts in installments within that period.

Effective: July 1, 2023  
Amended: § 58.1-3965

## Notice of Rate and Assessment Changes for Real Property Tax

House Bill 1942 (Chapter 667) requires that, in any county, city, or town that conducts an annual or biennial reassessment of real estate or in which reassessment of real estate is conducted primarily by employees of the locality under direction of the commissioner of the revenue, if the proposed rate exceeds the lowered tax rate that would avoid greater than 101 percent of the previous year's real property tax from being collected, the notice shall set out the effective tax rate increase.

Effective: July 1, 2023  
Amended: § 58.1-3330

## Personal Property Tax

### Personal Property Tax: Farm Machinery and Farm Implements

House Bill 1486 (Chapter 344) expands the list of certain farm machinery and farm implements that a locality may exempt from personal property taxes to include: motor vehicles used primarily for agricultural purposes for which the owner is not required to obtain a registration certificate, license plate, and decal or pay a registration fee; privately owned trailers primarily used by farmers in their farming operations for the transportation of farm animals or other farm products; and season-extending vegetable hoop houses used for in-field production of produce.

This Act further provides that a locality that exempts such motor vehicles or privately owned trailers may not collect any unpaid tangible personal property taxes, including interest or penalties that are owed to the locality as of July 1, 2023. Under this Act, such unpaid taxes are deemed uncollectible and stricken from the books of the treasurer.

In addition, this Act modifies the definition of "nursery stock" for purposes of such list of farm machinery and farm implements to state that it means herbaceous plants and any florist or greenhouse plants.

Effective: July 1, 2023  
Amended: § 58.1-3505

## Other Local Tax Legislation

### Local Business Taxes: Penalties

House Bill 1685 (Chapter 14) requires that applications for local business licenses must clearly set out the due date for the application and the amount of any penalty to be charged for late filing of the application, the underpayment of estimated tax, and late payment of tax.

This Act also requires that any bill issued by the treasurer or other collecting official and any communication from the assessing official that imposes a penalty or interest for a local Business Professional and Occupational License tax must separately state the total amount of tax owed, the amount of any interest assessed, and the amount of the penalty imposed. Similarly, any bill issued by the treasurer imposing a penalty or interest for a local machinery and tools tax or business tangible personal property tax must separately state the total amount of tax owed, the amount of any interest assessed, and the amount of the penalty imposed.

Effective: July 1, 2023  
Amended: §§ 58.1-3703.1 and 58.1-3916

### Administration of Local Transient Occupancy Tax

House Bill 1442 (Chapter 410) requires the Department to annually publish on its website the current transient occupancy tax rates imposed in each locality. The law change also requires the tax-assessing officer of a county, city, or town to send the Department the information necessary to publish such rates as soon as the rate information is available after request by the Department or within 30 days of a rate change. If the tax-assessing officer fails, without good cause, to furnish this information to the Department on demand, the officer is guilty of nonfeasance in office.

This Act also provides that any change in the rate of any local transient occupancy tax is effective no earlier than the first day of the calendar quarter following the calendar quarter in which the change in such rate is enacted. Failure to provide notice to the Department would require the county, city, or town to apply the preceding effective tax rate until 30 days after notification of such change is provided to the Department.

The law change requires the tax-assessing officer of a locality to administer and enforce the assessment and collection of transient occupancy taxes from accommodations intermediaries and to provide accommodations intermediaries with adequate information to enable identification of transient occupancy tax rates, the applicable jurisdiction, discounts, deductions, or exemptions.

This Act also requires accommodations intermediaries to file a return on or before the 20th day of each month for the preceding calendar month with such return showing: (i) gross receipts, discounts, deductions, or exemptions; (ii) the rate applied to the net receipts; (iii) the total transient occupancy tax due; (iv) any penalties



or interest due; and (v) where applicable, the number of room nights, the room tax rate applied, the total amount of room tax due, and any regional transportation transient occupancy taxes due.

Effective: July 1, 2023  
Added: §§ 58.1-210.1 and 58.1-3827

### **Coal and Gas Improvement Funds Eligible for Flood Mitigation Use**

House Bill 2401 (Chapter 224) and Senate Bill 1468 (Chapter 225) authorize funds in the Coal and Gas Road Improvement Fund to be used to construct flood mitigation measures that would reduce or prevent flooding of allowable infrastructure. These Acts also extend the sunset date for the expiration of the local gas road improvement and Virginia Coalfield Economic Development Authority tax from January 1, 2024, to January 1, 2026.

Effective: July 1, 2023  
Amended: § 58.1-3713

# Legislative Studies/Reports

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## **Tax Practitioners Work Group**

House Bill 1368 (Chapter 164) requires the Department to convene a work group to study the Department's current policies and procedures in order to determine options for a mechanism for tax practitioners to provide feedback to the Department on an ongoing basis. The work group must include members selected by the Tax Section of the Virginia Bar Association, the Virginia Society of Certified Public Accountants and the Virginia Society of Enrolled Agents and may include members selected by the Commissioners of the Revenue Association of Virginia and representatives from the Low Income Taxpayer Clinics Program. Meetings must be completed by November 1, 2023, and a report of the Department's findings must be submitted to the Chairmen of the House Committee on Finance, the House Committee on Appropriations, and the Senate Committee on Finance and Appropriations by December 1, 2023.

Effective: July 1, 2023

## **Study to Align State and Federal Policies Regarding Installment Agreements**

House Bill 1369 (Chapter 643) requires the Department to establish a work group to study current federal and state policies concerning installment agreements and make recommendations regarding how the Department policies could better align with installment agreement policies adopted by the Internal Revenue Service. The work group is required to include two members selected by the Tax Section of the Virginia Bar Association, the Virginia Society of Certified Public Accountants and the Virginia Society of Enrolled Agents. The Department is required to prepare and submit a report of the work group's 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.

Effective: July 1, 2023

## **Bank Franchise Tax Workgroup**

House Bill 1896 (Chapter 50) and Senate Bill 1182 (Chapter 51) require the Department to convene a work group to develop potential alternative methods for filing and allocation of bank franchise revenue for consideration in the 2024 General Assembly Session. The work group's evaluation must include, but is not limited to:

- ▶ Proposals to allow banks to submit their bank franchise tax payments to the Commonwealth,

- ▶ The formula used to redistribute funds to local governments,
- ▶ The impact of the new method of collecting and distributing funds on counties, cities, and towns,
- ▶ The timeline for implementation of any proposed changes, and
- ▶ The cost to the Commonwealth and local governments of implementing these changes.

Representatives from the Virginia Bankers Association, Virginia Association of Counties, Virginia Municipal League, and Commissioners of the Revenue Association of Virginia and other relevant stakeholders must be included in the work group, and the work group must report its findings and recommendations to the General Assembly by December 1, 2023.

Effective: July 1, 2023

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