

2005 LEGISLATIVE SUMMARY



Virginia
Department of Taxation

Kenneth W. Thorson
Tax Commissioner

INTRODUCTION

The **Legislative Summary** is published by the Department of Taxation (TAX) as a convenient reference guide to state and local tax legislation enacted by the 2005 Session of the General Assembly. It includes a general description of enacted legislation affecting:

- ◆ State taxes administered by TAX, and
- ◆ Local taxes for which TAX assists with administration or on which TAX renders advisory assistance.

References to chapter numbers are to the corresponding chapters in the Acts of Assembly. Effective dates of the legislation vary and are set out in each description.

The **Summary** also includes legislative studies in which TAX will be directly involved or acting in a technical support role. In general, however, legislation granting property tax exemptions, creating special taxing jurisdictions or 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 information purposes only. The **Summary** is not a substitute for the actual state law, local ordinances, and TAX regulations. Additional information on new legislation affecting state taxes may be obtained from TAX at the following telephone numbers:

Individual Income Tax	(804) 367-8031
*Email: TaxIndReturns@tax.virginia.gov (Personal tax inquiries)	
Corporation Income Tax	(804) 367-8037
Sales and Use Tax	(804) 367-8037
Employer Withholding Tax	(804) 367-8037
*Email: TaxBusQuestions@tax.virginia.gov (Business tax inquiries)	
Voice/TDD	(804) 367-8329

*** Note:** *Emails sent to this address are not encrypted and therefore “unsecured.” TAX strongly recommends that you avoid including confidential or personal information.*

Additional information on new local tax legislation should be obtained from your local Commissioner of the Revenue, Treasurer or Director of Finance.

Virginia Department of Taxation
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STATE TAX

LEGISLATION

GENERAL PROVISIONS

Virginia Baseball Stadium Authority - Reestablished

House Bill 2455 (Chapter 106) restores the expanded revenue entitlements for the Virginia Baseball Stadium Authority (the “Authority”) that expired on January 1, 2005. The Authority is entitled, subject to appropriation, to specific income tax revenues resulting from activities performed at a major league baseball facility by individuals, corporations and pass-through entities. Existing sales and use tax entitlements are expanded to include the tax on transactions resulting from development and construction of the baseball facility. This legislation clarifies existing language regarding the local sales and use tax and admissions tax entitlements while permitting the locality in which a baseball facility is located to levy an additional admissions tax for any event at that facility. Finally, the Authority is prohibited from issuing bonds that adversely affect the Commonwealth and using this legislation to establish a facility for a minor league team.

Effective Date: July 1, 2005 and expires on January 1, 2008

Code Sections Amended: §§ 15.2-5800, 15.2-5805, 15.2-5806, 15.2-5808, 15.2-5814, 15.2-5815, 58.1-3818 and 58.1-3840

Code Sections Added: §§15.2-5822 and 15.2-5823

Enterprise Zone Grant Program - Created

House Bill 2570 (Chapter 884) and Senate Bill 983 (Chapter 863) phase out the existing system for enterprise zone tax credits and replace it with the Enterprise Zone Grant Program. The Enterprise Zone Act will expire as scheduled on July 1, 2005, but all enterprise zones that were in effect prior to July 1, 2005 will continue until the end of their 20-year designation period. In addition, the Enterprise Zone Business Tax Credit and the Enterprise Zone Real Property Investment Tax Credit will still be allowed for those businesses that already receive the credits or have signed agreements with the Commonwealth to do so. The cumulative total of tax credits available for these two programs is limited to \$7.5 million annually until June 30, 2019. Under the Enterprise Zone Grant Program that is created, localities will apply for grants from the Department of Housing and Community Development. The localities will be allowed to offer a variety of tax incentives when applying for an enterprise zone designation.

Effective Date: July 1, 2005

Code Sections Amended: §§ 58.1-3, 58.1-439, 58.1-3245.6, 58.1-3245.8, 58.1-3245.12, 59.1-279, 59.1-280, 59.1-280.1, 59.1-282.1, 59.1-282.2, 59.1-284.01, and 59.1-284.17

Code Sections Added: §§ 59.1-530 through 59.1-541

Code Sections Repealed: §§ 59.1-272 through 59.1-278, 59.1-279.1, 59.1-280.2, 59.1-282, and 59.1-282.3 through 59.1-284

INCOME TAX

Advancement of Virginia's Fixed Date Conformity with the Internal Revenue Code - Amended

House Bill 2411 (Chapter 5), Senate Bill 856 (Chapter 26) and Senate Bill 897 (Chapter 29) advance Virginia's date of conformity and conform Virginia's income tax law to the provisions of recent federal legislation. House Bill 2411 and Senate Bill 856 move Virginia's date of conformity to the Internal Revenue Code (IRC) from December 31, 2003 to January 7, 2005. Advancing Virginia's date of conformity allows conformity with the provisions of the Working Families Tax Relief Act of 2004 and the American Jobs Creation Act of 2004. Virginia taxpayers will continue to compute their taxable income without regard to federal deductions for the special bonus depreciation allowance for certain assets or the five year carry-back of net operating losses (NOL) allowed for NOLs generated in either taxable years 2001 or 2002.

The January 7, 2005 date of conformity and the provisions of Senate Bill 897 allow Virginia taxpayers to claim itemized deductions on their 2004 Virginia tax returns for contributions made for tsunami relief in January 2005. All such contributions will be treated as if they were made on December 31, 2004.

Effective Date: February 24, 2005
Code Section Amended: § 58.1-301

Extension for Filing Income Tax Returns - Amended

House Bill 2325 (Chapter 100) allows taxpayers to elect a six-month extension of time within which to file an income tax return, in accordance with procedures established by the Tax Commissioner, without submitting a paper extension request. The penalty for failing to remit at least 90% of the tax due by the original due date is increased from 0.5% per month to 2% per month of the underpayment amount. The penalty on the underpayment for those taxpayers who filed the return late without a valid extension, but not later than 180 days after the return's original due date is reduced from 6% to 2% per month.

Effective Date: For taxable years beginning on and after January 1, 2005
Code Sections Amended: §§ 58.1-344, 58.1-393.1 and 58.1-453

Neighborhood Assistance Act Tax Credit; Annual Amount Allowable per Individual - Increased

House Bill 2041 (Chapter 82) increases the maximum Neighborhood Assistance credit that individuals may receive in a taxable year from \$750 to \$50,000. The \$8 million annual limitation on total credits available remains unchanged.

Effective Date: July 1, 2005

Code Section Amended: § 63.2-2006

Penalty for Preparers of Fraudulent Tax Returns - New

Senate Bill 1225 (Chapter 48) creates a class 6 felony for income tax return preparers who knowingly and willfully aid, assist in, counsel, or advise the preparation or presentation of a fraudulent tax return, affidavit, claim or other document required by the income tax laws that the preparer knows is fraudulent or false as to any material matter.

This legislation authorizes the Tax Commissioner to initiate injunctive action against a fraudulent income tax return preparer in order to stop the preparer from engaging in return preparer fraud or, in certain circumstances, from acting as an income tax return preparer.

An “income tax preparer” is defined as a person who prepares for compensation, or who employs one or more persons to prepare for compensation, any portion of an income tax return or a claim for refund. Excluded from the definition are those who merely furnish typing, reproducing or other mechanical assistance, prepare a return or claim for refund for his employer or prepare a return or claim for refund as a fiduciary.

Effective Date: July 1, 2005

Code Section Amended: § 58.1-302

Code Sections Added: §§ 58.1-348.1 and 58.1-348.2

Effective Date for Personal Exemption Increase Advanced - Amended

House Bill 1833 (Chapter 67) advances the effective date from January 1, 2006, to January 1, 2005 for increasing the personal and dependent exemption amounts from \$800 to \$900. This increase is not applicable to the additional exemption for taxpayers who are blind or are 65 years of age; these exemptions will remain at \$800.

Effective Date: For taxable years beginning on or after January 1, 2005

Code Section Amended: § 58.1-322

Salary Subtraction for Federal and State Employees - Clarified

Senate Bill 866 (Chapter 27) amends the individual income tax salary subtraction allowed to federal and state employees by clarifying that it is available only to employees with a total annual salary from all employment for the taxable year of \$15,000 or less.

Effective Date: For taxable years beginning on or after January 1, 2005

Code Section Amended: § 58.1-322

Rent Reductions Tax Credit - Extended

House Bill 2444 (Chapter 414) extends the sunset date of the Rent Reductions tax credit from December 31, 2005, to December 31, 2010. The only reduced rents that qualify for the credit between January 1, 2006, and January 1, 2011, are those charged by an individual or corporation that validly claimed the credit for all or part of December, 1999, and that rents that unit to the same tenant that occupied it on December 31, 2005.

Effective Date: July 1, 2005

Code Section Amended: § 58.1-339.9

Transferability of Land Preservation Tax Credits - New

House Bill 2788 (Chapter 846) authorizes TAX to recognize the transfer of unused Land Preservation Tax Credits for land donated before January 1, 2002 if certain criteria are met. First, the transfer must have occurred on or before December 31, 2004. Next, notification of at least one transfer attributable to such donation must have been filed with TAX on forms prescribed for that purpose on or before December 31, 2004. Finally, the credit holder who transferred the credit must establish that the transfer was made in reliance on erroneous advice from TAX the transferability of the credits.

Effective Date: July 1, 2005

Code Section Amended: None

Land Preservation Tax Credit; Qualified Appraisal Required - Amended

Senate Bill 1139 (Chapter 940) creates several new features for the appraisal requirements necessary to obtain a Land Preservation Tax Credit. First, the value of the donated interest in land must be reduced by the amount of gain that would not have been long-term capital gain if the property had been sold by the taxpayer at its fair market value. This legislation also requires that the qualified appraiser be licensed in the Commonwealth. Should the appraiser falsely or fraudulently overstate the value of the contributed property, TAX is authorized to disallow further appraisals signed by that appraiser and refer the appraiser to the Real Estate Appraisal Board for appropriate disciplinary action. In addition, if TAX determines that an appraisal was false or fraudulent, TAX is allowed to disregard the appraisal in determining the fair market value of the property and the amount of the tax credit to be allowed.

This legislation also modified an existing provision that excluded open space dedications made for the purpose of fulfilling any density requirements. This legislation extends this limitation to deductions and all other types of conveyances (fee-interests or less-than-fee-interests) in real property that have been dedicated for the purpose of fulfilling density requirements to obtain approvals for zoning, subdivision, site plan, or building permits.

Effective Date: July 1, 2005

Code Sections Amended: §§ 58.1-511 and 58.1-512

Changes to the Conservation Tillage Equipment Credit - Amended

House Bill 1655 (Chapter 58) expands the Conservation Tillage Equipment Tax Credit by broadening the definition of “conservation tillage equipment” and increasing the maximum annual amount of the credit from \$2,500 to \$4,000. Under this expanded definition, equipment used to reduce soil compaction will now qualify for the credit.

Effective Date: For taxable years beginning on or after January 1, 2005

Code Sections Amended: §§ 58.1-334 and 58.1-432

Voluntary Refund Contributions; Process Changes - Amended

House Bill 2303 (Chapter 860) creates a new process for limiting the voluntary contributions listed on the Virginia individual income tax return. As required by 2004 legislation, the number of contributions is limited to 25, and all entities eligible to receive voluntary contributions must receive at least \$10,000 in each of the three previous taxable years for which there is complete data and for which the entity was listed on the individual income tax return. Finally, TAX is directed to submit an annual report, due by opening day of each legislative session, stating the volume of voluntary contributions to the chairmen of the House and Senate Finance Committees.

Effective Date: For taxable years beginning on and after January 1, 2005

Code Sections Amended: §§ 2.2-2702, 29.1-101, 58.1-344.3 and 58.1-546

Code Sections Repealed: §§ 30-19.1:10, 58.1-345, 58.1-345.1, 58.1-346, 58.1-346.1:1, 58.1-346.2:1, 58.1-346.3:1, 58.1-346.4:1 through 58.1-346.24

Spay and Neuter Fund Check-off; Fund Administrator Named - Amended

House Bill 2003 (Chapter 816) clarifies that the existing Spay and Neuter Fund check-off will be administered by the Virginia Federation of Humane Societies for use in its mission of providing low-cost spay and neuter surgeries through direct provision or contract throughout Virginia.

Effective Date: July 1, 2005

Code Section Amended: § 58.1-346.23

RETAIL SALES AND USE TAX

Food Tax Reduction - Accelerated

House Bill 1638 (Chapter 521) and Senate Bill 708 (Chapter 487) reduce the state tax rate on sales of most grocery type food items from 3% to 1.5%. The decrease will result in a combined state and local rate of 2.5% on sales of qualifying food items. This legislation replaces provisions enacted in 2004 that had phased in the rate reduction over a three-year period from 2005 through 2007.

Effective Date: July 1, 2005

Code Section Amended: § 58.1-611.1

Accelerated Sales Tax - Requirements Revised

House Bill 1500 (Chapter 951) modifies the accelerated sales tax payment schedule mandated by the 2002 General Assembly. Currently, every dealer with taxable sales and purchases of \$1,300,000 or greater during the twelve month period beginning on July 1 and ending on June 30th of the preceding year, is required to make a June payment equal to 90 percent of the sales and use tax liability for the previous June. In June of 2006, only those dealers or direct payment permit holders with taxable sales and purchases of \$50,000,000 or greater during the twelve month period beginning on July 1 and ending on June 30th of the preceding year, will be required to make a payment, and the payment will only be equal to 20 percent of the sales and use tax liability for the previous June. The estimated payment requirement is eliminated for all merchants in fiscal year 2007.

Effective Date: May 4, 2005

Code Section Amended: § 58.1-615 as amended by the 2nd Enactment Clause of the Appropriation Act of 2005

Gift Sales for Nonresidents and Bad Debt Accounting - New

Senate Bill 1219 (Chapter 355) defines a “gift transaction” for sales and use tax purposes and provides any Virginia dealer the option of collecting the tax imposed in the state of the recipient or collecting the Virginia tax, provided the dealer is registered in the recipient’s state, the goods are shipped out-of-state and the recipient is someone other than the purchaser. The dealer must obtain approval from the Tax Commissioner before collecting the tax of the state in which the recipient is located. In the event the Virginia dealer is not registered for the collection of the tax in the state of the recipient, the dealer must collect the Virginia retail sales and use tax and remit it to the Virginia Department of Taxation.

Further, this legislation also allows a dealer to utilize an alternative method for computing the bad debt credit for the retail sales and use tax, upon approval by the Tax Commissioner, when it is impractical for a dealer to substantiate the credit on an account-by-account basis.

Effective Date: July 1, 2005

Code Sections Amended: §§ 58.1-602 and 58.1-621

Code Section Added: § 58.1-604.6

Manufactured Signs - Reclassified

House Bill 2774 (Chapter 122) reclassifies manufactured signs as tangible personal property for retail sales and use tax purposes. This allows sign manufacturers to purchase materials used to manufacture signs exempt of the tax and requires them to collect tax on the sale price of the finished sign. Sign manufacturers are no longer liable for the payment of Virginia sales and use tax on materials used to manufacture signs in Virginia for subsequent installation out of state.

Finally, this legislation also makes some sign manufacturers eligible for the manufacturing exemption on their purchase of machinery, equipment and supplies used directly to manufacture signs.

Effective Date: July 1, 2005

Code Section Amended: § 58.1-602

Taxation of Automotive Repair Materials; Separately Stated - Amended

House Bill 2762 (Chapter 121) amends the definition of “retail sale” and “sale at retail” to include separately stated charges for automotive refinish repair materials that are permanently affixed to or applied to a motor vehicle during its repair. This change requires that the tax be collected on any separately stated charge for the refinish repair materials. Automotive repairers and refinishers may purchase these materials exempt from the tax.

Those items purchased that are consumed in the repair but are not permanently affixed to the vehicle or items that are not separately stated on the car owner’s invoice, remain taxable to the repair facility at the time of purchase.

Effective Date: July 1, 2005

Code Section Amended: § 58.1-602

Exemption of Taxable Services for Specific Nonprofit Entities - Extended

House Bill 2100 (Chapter 89) and Senate Bill 1105 (Chapter 42) extend the exemption for taxable services purchased by specific nonprofit educational entities and other specified nonprofit entities that were exempt from paying sales and use tax on the purchase of services as of June 30, 2003.

Effective Date: July 1, 2005

Code Section Amended: § 58.1-609.11

Truck Trailers and Cargo Containers; Limited Collection Action - New

House Bill 2827 (Chapter 328) bars TAX from taking action to collect any retail sales and use tax from the sale, lease or use prior to February 1, 2005 of; (1) any truck trailer whether or not subject to the Motor Vehicle Sales and Use Tax Act; (2) any cargo container designed to be affixed to such truck trailer; or (3) any on-site storage container that is similar to the cargo container designed to be affixed to such truck trailer.

Effective Date: July 1, 2005

Code Section Amended: None

Exemption for Public Transportation Companies - Reinstated & Expanded

House Bill 2599 (Chapter 116) and Senate Bill 1195 (Chapter 46) exempt from retail sales and use tax any tangible personal property sold or leased to the Alexandria Transit Company, Greater Lynchburg Transit Company, Greater Richmond Transit Company, or Greater Roanoke Transit Company, retroactive to September 1, 2004. Further, any tangible personal property sold or leased to any county, city, or town that is transferred to any such public transportation system is exempted.

Prior to September 1, 2004 repeal of the public service corporation exemption, public transportation systems qualified to make purchases of tangible personal property exempt of sales and use tax provided such tangible personal property was used directly in the rendition of their public service as motor carriers of passengers. The exemption available to these four transportation systems is no longer limited to items used in the rendition of their public service. This exemption now applies to any tangible personal property purchased by the public transportation system or purchased by a city, county or town and transferred to the public transportation system.

Effective Date: September 1, 2004

Code Section Amended: § 58.1-609.1

MISCELLANEOUS TAXES

Apple Tax

Apple Excise Tax - Reinstated

House Bill 1746 (Chapter 875) and Senate Bill 1008 (Chapter 864) direct the Board of Agriculture and Consumer Services to authorize the holding of a referendum on the levy of an excise tax of 2.5 cents per tree run bushel of apples. If the referendum is successful, every producer will be required to submit the excise tax levied on apples grown in Virginia in a calendar year, to the Tax Commissioner by January 31 of the following year. The Tax Commissioner will forward the tax collected to the Virginia state treasury for credit to the Virginia Apple Fund.

Effective Date: July 1, 2005

Code Sections Amended: §§ 3.1-618 and 3.1-626

Code Sections Added: §§ 3.1-636.1 through 3.1-636.12

Recordation Tax

Limited Exemption for Transfers to or from Partnerships and Limited Liability Companies - Amended

House Bill 2177 (Chapter 93) modifies the existing exemption from recordation taxes for deeds conveying real estate between partnerships and limited liability companies (LLC) by excluding from the exemption transfers that are precursors to a transfer of control of the partnership, LLC, or its assets to avoid recordation taxes.

Effective Date: July 1, 2005

Code Section Amended: § 58.1-811

Cigarette and Tobacco Product Taxes

Tobacco Products Tax; Changes in Provisions - Amended

House Bill 1885 (Chapter 71) makes a number of changes to the Tobacco Products Tax. This legislation; (1) imposes the tobacco products tax on the actual price paid by distributors of tobacco products instead of being normally computed on the sales price charged by the wholesale dealer; (2) changes the due date of the tobacco products tax return to the twentieth of each month; (3) requires all distributors to apply for a license from TAX, pay a licensing fee not to exceed \$750 and undergo a background check; (4) mandates detailed recordkeeping, record retention and audit information for this tax; and (5) authorizes TAX to seize tobacco products from tax evaders and destroy the seized products.

Effective Date: January 1, 2006

Code Sections Amended: §§ 58.1-1021.01 through 58.1-1021.04

Code Sections Added: §§ 58.1-1021.04:1 through 58.1-1021.04:5

Assignment of Escrow Funds by Nonparticipating Tobacco Manufacturers - Amended

House Bill 2919 (Chapter 899) and Senate Bill 1332 (Chapter 901) authorize Non-Participating Tobacco Manufacturers to assign all funds in their escrow accounts and all future escrow payments to the Commonwealth while authorizing the Commonwealth to withdraw the assigned funds from the escrow account. A portion of the funds may be used to make tax incentive payments to small tobacco product manufacturers for their use of domestic tobacco. Any remaining funds will be deposited into the Virginia Health Care Fund.

Effective Date: July 1, 2005

Code Section Amended: § 32.1-366

Code Sections Added: §§ 3.1-336.2:1, 3.1-336.2:2 and 58.1-439.15:01

Cigarette and Other Tobacco Products Taxes; Discount Allowed or Increased - Amended

House Bill 2625 (Chapter 925) increases the dealer discount allowed to cigarette stamping agents on the purchase of cigarette tax revenue stamps from 2.5 cents per carton to 2% of the amount charged by TAX for the stamps. A dealer discount equal to 2% of the total tax due will now be available to dealers of other tobacco products as well.

Effective Date: July 1, 2005

Code Sections Amended: §§ 58.1-1009 and 58.1-1021.03

Cigarette Stamping Exclusion for Manufacturers and Exclusive Distributors - Revised

House Bill 2899 (Chapter 856) allows for an exclusion from the uniform cigarette stamping requirements for manufacturers and exclusive distributors who also make wholesale sales to retail dealers. This legislation defines an "exclusive distributor" as a distributor with its principal place of business in the Commonwealth who has the exclusive rights to sell a brand of cigarettes to wholesale dealers in the Commonwealth. The manufacturer or exclusive distributor must maintain a record of such transactions for three years.

Effective Date: July 1, 2005

Code Sections Amended: §§ 58.1-1000 and 58.1-1012

Tax Enforcement; Background Checks and Increased Penalties - Amended

Senate Bill 876 (Chapter 28) revises cigarette tax reporting requirements and penalties in order to increase compliance and provide consistency with the Non-Participating Manufacturer (NPM) statute. The revisions include; (1) eliminating certain unused misdemeanor penalties; (2) authorizing TAX to impose civil penalties and to suspend or revoke stamping agent permits in more situations; (3) authorizing TAX to conduct background investigations, including criminal records checks, on stamping permit applicants and charge an application or renewal fee not to exceed \$750 to defray costs; and (4) extending the due date of the return from the tenth to the twentieth of the month.

Effective Date: July 1, 2005

Code Sections Amended: §§ 58.1-1000, 58.1-1003, 58.1-1006, 58.1-1007, 58.1-1008, 58.1-1010, 58.1-1011, 58.1-1017 and 58.1-1021

LOCAL TAX

LEGISLATION

Tangible Personal Property Tax

Separate Classification; Boats Used in Business - New

House Bill 2686 (Chapter 325) and Senate Bill 1273 (Chapter 271) provide a separate classification of tangible personal property for any boat or watercraft that weighs less than five tons and is used solely for business purposes. By adding a special classification for boats and watercraft weighing less than five tons and used for business purposes only, a locality would have the flexibility to apply a different tax rate to each of the three classes of boats and watercraft.

Effective Date: July 1, 2005

Code Section Amended: § 58.1-3506

Separate Classification for Specific Machinery and Tools - New

Senate Bill 1279 (Chapter 357) creates a separate classification of tangible personal property for certain heavy construction machinery owned or used by businesses. This new classification applies to heavy construction machinery, including but not limited to land movers, bulldozers, front-end loaders, graders, packers, power shovels, cranes, pile drivers, forest harvesting and silvicultural activity equipment and ditch and other types of diggers owned by businesses other than those businesses subject to the machinery and tools tax.

Effective Date: July 1, 2005

Code Section Amended: § 58.1-3506

Notice Required for Machinery and Tools Valuation Change - Amended

House Bill 2477 (Chapter 108) requires that a notice of any proposed change in the method of valuing machinery and tools for local property tax purposes be published in a newspaper at least 30 days before the proposed change is to take effect. Citizens may comment in writing to the local commissioner of revenue during the 30-day period.

Effective Date: July 1, 2005

Code Section Amended: § 58.1-3507

Real Estate Tax

Deferral of Taxes for Elderly and Handicapped Persons - Amended

Senate Bill 844 (Chapter 214) and Senate Bill 851 (Chapter 215) modify the income limitations for determining whether persons who are 65 and older, or those who are permanently and totally disabled, qualify for the exemption or deferral of local property taxes. Localities may allow qualifying taxpayers to exclude up to \$5,000 of any permanent or temporary disability benefit received by a taxpayer who is 65 or over or who is permanently or totally disabled.

Effective Date: July 1, 2005

Code Section Amended: § 58.1-3211

Method to Return Surplus Real Estate Taxes - Amended

House Bill 2622 (Chapter 835) allows any locality to develop a method for returning any surplus real property tax revenues to taxpayers who paid real property taxes during the year in which the surplus occurred. Prior to the enactment of this legislation, only Albemarle County had such authority.

Effective Date: July 1, 2005

Code Section Amended: § 15.2-2511.1

Open or Common Space - Defined

Senate Bill 896 (Chapter 218) expands the definition of an "open or common space" for purposes of the local real property tax to include open or common space property that; (1) is part of a planned residential development initially recorded before January 1, 1985, (2) is exempt from the requirements of the Property Owners' Association Act, and (3) did not include automatic membership in a membership corporation or association in its declaration.

Effective Date: July 1, 2005

Code Section Amended: § 58.1-3284.1

Deferred Taxes; Localities Given Interest Rate Flexibility - New

House Bill 2635 (Chapter 561) and Senate Bill 1087 (Chapter 502) allow localities to set an interest rate on the payment of deferred real estate taxes that is lower than the currently mandated rate established by § 6621 of the Internal Revenue Code (IRC) for the underpayment of federal taxes.

Effective Date: July 1, 2005

Code Section Amended: § 58.1-3219.1

Localities Provided New Tools to Set Income Limitation to Qualify for Exemption or Deferral of Real Estate Tax - New

Senate Bill 1051 (Chapter 224) allows localities to use that locality's median adjusted gross income of married residents as the household income limit when qualifying taxpayers for real property tax exemption or deferral programs. Also, this legislation allows the locality to elect to annually increase the net worth limitation for qualification by a percentage equal to the Consumer Price Index to account for inflation.

Currently, localities may use the income limits when qualifying for federal housing assistance as published by the Department of Housing and Urban Development, or \$50,000, whichever is greater.

Effective Date: July 1, 2005

Code Section Amended: § 58.1-3211

Business, Professional and Occupational License Tax***Alternative Method when Determining Basis for Fee - Amended***

House Bill 2372 (Chapter 103) provides that when determining the maximum Business, Professional, and Occupational License (BPOL) fee that may be charged by a locality, either the last United States census or the most current final population estimates of the Weldon Cooper Center for Public Service of the University of Virginia may be used.

Under current law, the population shown by the last United States census must be used to determine the maximum BPOL fee that a locality may charge.

Effective Date: July 1, 2005

Code Section Amended: § 58.1-3703

TAX ADMINISTRATION AND COLLECTION

Numerous Changes to the Administrative Appeals Process - Amended

House Bill 2679 (Chapter 927) makes several changes to the administrative appeals process related to the business, professional and occupational license (BPOL) tax, the machinery and tools tax, the merchants' capital tax, the business tangible personal property tax (the "local business tax") and the tangible personal property tax on airplanes, boats, campers, recreational vehicles and trailers (the "local mobile property tax"). The local business tax administrative appeals process will now include local consumer utility taxes, except for the consumer utility tax on mobile telecommunications, where the amount in dispute exceeds \$2,500. Another change mandates that when a taxpayer appeals an assessment of BPOL taxes to the commissioner of revenue or the Tax Commissioner, collection activity is suspended only on the amount of the assessment that is in dispute. With respect to BPOL tax assessments and appeals of local business and local mobile property tax assessments, localities are directed to suspend collection activity when the taxpayer appeals a determination of the Tax Commissioner to the circuit court. Finally, this legislation shortens from two years to one year the time that must pass before a taxpayer may elect to treat a commissioner of the revenue's failure to issue a final determination on an appeal as a denial so that the taxpayer may appeal the assessment to the Tax Commissioner.

The above changes apply to appeals filed on or after July 1, 2005.

Effective Date: July 1, 2005

Code Sections Amended: §§ 58.1-3703.1 and 58.1-3983.1

Penalties for Delinquent Payment of Certain Local Excise Taxes - Amended

Senate Bill 1052 (Chapter 501) allows localities to impose by ordinance a penalty for the delinquent remittance of excise taxes on meals, lodging, or admissions collected from consumers, not to exceed 10% for the first month the taxes are past due and five percent for each month thereafter, to a maximum 25% of the amount of the taxes not remitted.

Effective Date: July 1, 2005

Code Section Amended: § 58.1-3616

Highway Vehicle; Definitions and Condition for Seizure - Amended

House Bill 1667 (Chapter 59) makes a technical correction clarifying which highway vehicles generally may not be seized and sold for unpaid taxes, levies, or other charges by providing a definition for “highway vehicle.”

This legislation defines “highway vehicle” to mean any vehicle operated, or intended to be operated, on a highway. The term does not include; (1) farm machinery; (2) a vehicle operated on rails; (3) machinery designed principally for off-road use; (4) self-propelled equipment manufactured for a specific off-road purpose, which is used on a job site; or (5) a vehicle operated on the highway and exempt from registration requirements.

Effective Date: July 1, 2005

Code Sections Amended: §§ 58.1-3941 and 58.1-3942

MISCELLANEOUS TAXES

Consumer Utility Tax

Imposition of Telecommunications Consumer Utility Tax in the Town of Dumfries - New

Senate Bill 801 (Chapter 206) authorizes the Town of Dumfries to impose a consumer utility tax on telegraph and telephone companies by adopting an ordinance on or after July 1, 2005. This legislation also provides that when such an ordinance is enacted by the Town of Dumfries, Prince William County may no longer impose a consumer utility tax on telephone and telegraph companies within the town limits of Dumfries, for as long as the ordinance is in effect.

Effective Date: July 1, 2005

Code Section Amended: § 58.1-3812

Transient Occupancy Tax

Imposition of Tax; Overnight Accommodations - Clarification

Senate Bill 793 (Chapter 20) codifies a recent Attorney General opinion by limiting the imposition of the transient occupancy tax to charges for rooms or spaces occupied by transients that are intended or suitable for dwelling, sleeping, or lodging purposes. Therefore, the tax will not apply to charges for rooms rented for alternative purposes, such as banquet rooms and meeting rooms.

Effective Date: July 1, 2005

Code Section Added: § 58.1-3826

Arlington County; Authority to Impose Additional Tax - Extended

House Bill 1857 (Chapter 156) authorizes Arlington County to continue the imposition of an additional ¼% transient occupancy tax and extends the sunset date for three years, from January 1, 2006 to January 1, 2009. All revenue from this additional tax must be spent for promoting tourism, travel or businesses that generate tourism in Arlington County.

Effective Date: July 1, 2005

Code Section Amended: § 58.1-3822

Prince George and Craig Counties; Authority to Impose Additional Tax - Amended

House Bill 1965 (Chapter 76) authorizes Prince George County and Craig County to impose an additional 3% transient occupancy tax. If either county chooses to impose the additional transient occupancy tax, any revenues exceeding those generated by a 2% tax must be spent solely for tourism, marketing of tourism, or initiatives specifically designed to attract travelers to the locality or generate tourism revenues in the locality. Currently, both counties impose a transient occupancy tax at a rate of 2%.

Effective Date: July 1, 2005

Code Section Amended: § 58.1-3819

Carroll County; Authority to Impose Additional Tax - Amended

House Bill 2007 (Chapter 915) authorizes Carroll County to impose an additional 3% transient occupancy tax. Any revenue exceeding those generated by a 2% tax must be spent for tourism, marketing of tourism, or initiatives that, as determined in consultation with the local tourism industry organizations will attract tourists to Carroll County and generate tourism revenues in the locality. Currently, Carroll County imposes a transient occupancy tax at a rate of 2%.

Patrick, Pulaski, and Halifax Counties are authorized to continue to impose an additional transient occupancy tax, at a rate not to exceed five percent. Any revenue exceeding those generated by a 2% tax must be spent for tourism, marketing of tourism, or initiative that will attract tourists to that locality, generating tourism revenue in the county. Also, Montgomery County is authorized to continue to impose a local food and beverage tax at a rate not to exceed 4% by adoption of a local ordinance, rather than by referendum.

In 2004, Senate Bill 684 replaced indirect references (population brackets) to counties with the names of the counties for the transient occupancy tax and the local meals tax. This legislation adds counties that had grown into population brackets before the technical changes became effective, and that imposed the tax. Further, this legislation retroactively ratifies to July 1, 2004, any transient occupancy tax in excess of two percent that was lawfully imposed by any county prior to and after July 1, 2004. Any local meals tax lawfully imposed on and after July 1, 2004 is also retroactively ratified.

Effective Date: July 1, 2005

Code Section Amended: § 58.1-3819

LEGISLATIVE

STUDIES

Comprehensive Communications Tax Study - New

House Bill 2880 (Chapter 126) requires the Auditor of Public Accounts (“APA”) to determine the amount of revenues received by every locality included in the APA’s Comprehensive Revenue Report for Fiscal Year 2005, for the following taxes collected by communications services providers: (1) the Consumer Utility Tax on landline and wireless telephone service; (2) the E-911 tax on landline telephone service; (3) the portion of the local Business, Professional, and Occupational License (BPOL) tax on public service companies exceeding .5% currently billed to customers in some grandfathered localities; (4) the cable television franchise fees; and (5) the Video Programming Excise Tax on cable television services.

The APA will report its findings to the chairmen of the House and Senate Finance Committees and TAX no later than December 1, 2005.

Tax Commissioner’s Annual Report on Corporate Tax Relief - New

Senate Bill 867 (Chapter 216) requires the Tax Commissioner to compile an annual report detailing the amount of corporate income tax relief granted by Virginia and issue that report to the members of the House Appropriations Committee, the House Finance Committee, and the Senate Finance Committee. The initial preliminary report will be submitted to the committees by December 1, 2006 and on December 1 for each year thereafter with a final report by April 15 of the following year.

Effective Date: July 1, 2005

Code Section Amended: § 58.1-202

Reports to General Assembly on Miscellaneous and Nonprofit Exemptions - New

House Bill 2852 (Chapter 853) requires TAX to analyze the fiscal, economic and policy impact of each miscellaneous and nonprofit sales tax exemption over a five-year period and report the findings to the House and Senate Finance Committees by December 1 of each year. The initial report on miscellaneous exemptions is due by December 1, 2006. Analysis of the nonprofit exemptions will be conducted over four years, with the first report due on December 1, 2007. No exemption studied will be analyzed more than once every five years.

Effective Date: July 1, 2005

Code Section Added: § 58.1-609.12

Establishment of Health Savings Accounts - Amended

House Bill 1492 (Chapter 572) and Senate Bill 1097 (Chapter 503) require that the health insurance plans available to state employees include the option of a high deductible health plan that qualifies for a health savings account.

This legislation directs TAX and the State Corporation Commission to amend the Virginia Medical Savings Account Plan and provides several criteria for the new plan, which will be called the Virginia Health Savings Account Plan. TAX and the State Corporation Commission will present the new plan to various General Assembly committees by January 1, 2006.

Effective Date: July 1, 2005

Code Sections Amended: §§ 2.2-28.16, 6.1-2.9:8, 38.2-5601 and 38.2-5602

Code Section Added: § 38.2-5602.1

Code Sections Repealed: §§ 38.2-5600 and 38.2-5603

HJR 656: Identifying Taxes and Fees Which are Inefficient to Collect

Establishes a joint subcommittee that will study the taxes, assessments and fees imposed by the Commonwealth and determine whether they are administered efficiently and whether there are taxes, assessments or fees that can be collected in a more efficient manner. The subcommittee will determine if some levies may be eliminated or consolidated in order to generate larger amounts of revenue while reducing administrative expenses. The joint subcommittee will complete its meetings by November 30, 2005, and submit an executive summary no later than the first day of the 2006 Regular Session of the General Assembly.

HJR 664: Administration of Local Cigarette Taxes

Directs TAX to study: 1) the use of cigarette tax stamps by localities as evidence of the payment of local cigarette taxes by wholesalers; 2) the feasibility of establishing uniformity and consistency among the localities in the design and use of tax stamps or other evidence of payment of local cigarette taxes by tobacco wholesalers; and 3) the feasibility of establishing a combined state and local cigarette tax stamp.

TAX will solicit input from the Virginia Municipal League, the Virginia Association of Counties, the Virginia Retail Merchants Association, the Virginia Wholesalers, the Distributors Association, and other interested parties. TAX will complete its meetings by November 30, 2005 and submit a report of its findings and recommendations to the General Assembly no later than January 11, 2006.

SJR 308: Identification of Tax Preferences Outside of Title 58.1

Directs the Virginia Code Commission be directed to identify tax preferences outside of Title 58.1 in the Code of Virginia. In identifying the preferences, the Virginia Code Commission shall make recommendations to the General Assembly concerning legislation that may be considered to create cross-references in Title 58.1 for these preferences to more easily identify all tax preferences by users of the Code of Virginia.

The Code Commission will submit to the Division of Legislative Automated Systems an executive summary and a report detailing the recommendations directed by this resolution no later than December 1, 2006.

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