2009 LEGISLATIVE SUMMARY

Virginia
Department of Taxation

Janie E. Bowen
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 2009 Session of the General Assembly through adjournment *sine die* on February 28, 2009. Please note that any legislation enacted after this date is not included. The ***Summary*** 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, which may be viewed at http://leg1.state.va.us/lis.htm. 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 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**
Corporation Income Tax	**(804) 367-8037**
Sales and Use Tax	**(804) 367-8037**
Employer Withholding Tax	**(804) 367-8037**
Voice/TDD	**(804) 367-8329**

E-Mail: Information may also be obtained by electronic mail as follows:

TaxIndReturns@tax.virginia.gov	**(Personal tax inquiries)**
TaxBusQuestions@tax.virginia.gov	**(Business tax inquiries)**

E-mails sent to these addresses are not encrypted and therefore are not secure. 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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GENERAL PROVISIONS

Requirements of Annual Reports

House Bill 2101 (Chapter 24) allows TAX to combine its yearly report on the fiscal impact of the Sales and Use Tax exemption for nonprofit entities ("the Nonprofit Exemption Report") with its yearly sales and use tax expenditure study ("SUTES Study") filed with the legislature each year. The legislation also allows TAX to eliminate the preliminary report on corporate income tax preferences and extend the deadline for the final annual report from April 15 to October 1.

Previously, the substance of the Nonprofit Exemption Report was also incorporated into the SUTES Study, making the Nonprofit Exemption report redundant. TAX was also required to file a preliminary report on corporate income tax credits and deductions for the preceding tax year no later than December 1, and a final report by April 15. The deadlines for submitting the report did not allow TAX to compile complete information because many corporations had not filed their income tax returns by the due dates.

Effective: July 1, 2009.
Amended: §§ 58.1-202, 58.1-609.11, and 58.1-609.12.

Setoff Debt Collection Act

House Bill 1830 (Chapter 786) and Senate Bill 1292 (Chapter 571) would allow local governments to collect delinquent local tax bills through setoff of the debtor's federal income tax refund provided that Congress enacts legislation that allows local governments to collect delinquent local tax bills using offsets from such refunds. The acts incorporate this authority into the existing debt setoff program managed by TAX.

The acts also establish classifications to be used to determine the priority when there are multiple claims to refunds. The priority classifications will be as follows:

1) Claims by TAX;
2) Claims filed by the Department of Social Services, Division of Child Support Enforcement;
3) Claims filed by any court or administrative unit of state government;
4) Claims filed by any county, city or town;
5) Claims filed by the Internal Revenue Service.

Claims within the same classification will be determined by the order in which the claimant agency filed a written notice of its intent to effect collection through setoff with TAX. Claims filed by any county, city or town for an offset of a federal income tax refund would be limited to claims for delinquent local taxes.

Effective: Contingent upon enactment of authorizing legislation by Congress.
Amended: §§ 58.1-520 and 58.1-530.

Power of Attorney; TAX to Provide Copies of Correspondence

Senate Bill 905 (Chapter 503) requires TAX to provide the person named as power of attorney with a copy of any correspondence, documentation, or other written materials that relate to a tax matter for which a taxpayer has filed a power of attorney. The copy will be required to be furnished to the person named as power of attorney at the same time the information is provided to the taxpayer and under the same delivery method used.

Effective: TAX must implement the act no later than July 1, 2010.
Amended: § 58.1-1834

Virginia Tax Amnesty Program

Senate Bill 1120 (Chapter 611) authorizes the Tax Commissioner to administer an amnesty program for a period ranging between 60 and 75 days during Fiscal Year 2010. All penalties and 50 percent of the interest will be waived upon payment of the remaining balance.

With certain exceptions, any taxpayer who currently has an outstanding assessment, or has not filed a return for any tax administered by TAX, may apply for amnesty. The following taxpayers will <u>not</u> be eligible to participate in the tax amnesty program:

- any taxpayer currently under investigation or prosecution for filing a fraudulent return or failing to file a return with the intent to evade tax;
- any taxpayer with an assessment date or due date for an unfiled return less than 90 days prior to the first day of the amnesty program; or
- any taxpayer with an individual, fiduciary or corporate income tax liability for Taxable Year 2008 or after.

The Tax Commissioner will establish the guidelines and rules for the procedures regarding participation, as well as any other rules that are deemed necessary by the Tax Commissioner. The guidelines and rules will be exempt from the Administrative Process Act.

At the conclusion of the amnesty period, any remaining amnesty-qualified liabilities will be assessed a 20 percent penalty. This penalty will be in addition to all other penalties, including the 6 percent per month late payment penalty, with a maximum of 30 percent, and the 20 percent penalty assessed after the 2003 amnesty program, if applicable.

Effective: Taxable years beginning on and after July 1, 2009.
Amended: § 58.1-1840.1.

Repeal of Obsolete Income Tax Credit Code Sections

House Bill 2347 (Chapter 34) repeals several obsolete Code sections related to the Energy Income Tax Credit, the Qualifying Steam Producers Tax Credit, and the Alternate Tax Credit for Purchase of Machinery and Equipment for Processing Recyclable Materials. All of these credits have expired and are no longer available to be claimed.

Effective: July 1, 2009.
Amended: §§ 58.1-439.7 and 58.1-490.
Repealed: §§ 58.1-331, 58.1-431, 58.1-439.3, and 58.1-439.8.

Repeal Obsolete Fiduciary Filing Requirement

House Bill 2348 (Chapter 35) repeals an obsolete requirement that fiduciaries distributing intangible personal property file an information return with TAX. This requirement was made obsolete when the tax on intangible property of individuals was repealed.

Effective: July 1, 2009.
Repealed: § 58.1-20.

INCOME TAX

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

House Bill 1737 (Chapter 2) and Senate Bill 985 (Chapter 3) advance Virginia's date of conformity to the IRC from December 31, 2007 to December 31, 2008. This avoids the necessity of requiring taxpayers to make adjustments for any federal tax changes enacted in 2008. Virginia continues to disallow federal income tax deductions for bonus depreciation allowed for certain assets and any five year carry-back of federal net operating loss deductions.

The advancement allows the benefits of the following 2008 acts of Congress to flow through to Virginia taxpayers:

- The Economic Stimulus Act, which increases § 179 expensing;
- The Food and Energy Security Act and the Heartland, Habitat, Harvest, and Horticulture Act, which provides targeted tax relief to conservation and agricultural interests;
- The Heroes Earnings Assistance and Relief Tax Act, which provides tax benefits to those serving in the military and in the Peace Corps;
- The Housing and Economic Recovery Act, which modifies certain rules applicable to bonds and provides other forms of tax relief; and
- The Emergency Economic Stabilization Act, which extends the exclusion of discharges of principal residence acquisition indebtedness from gross income of individuals, provides a specified method of cost recovery for certain business, and provides a variety of other tax benefits.

Effective: February 11, 2009, pursuant to an emergency clause.
Amended: § 58.1-301.

Increase the Livable Home Tax Credit

House Bill 1938 (Chapter 15) and Senate Bill 845 (Chapter 496) increase the maximum amount of the Livable Home Tax Credit. The amount of the credit will be $2,000 for a new residence designed to improve accessibility, or 50% of the costs, not to exceed $2,000, for retrofitting an existing residence to improve accessibility. Previously, the maximum amount of the credit was $1,000.

Effective: Taxable years beginning on and after January 1, 2010.
Amended: § 58.1-339.7.

Apportionment for Manufacturers

House Bill 2437 (Chapter 820) modifies the corporate apportionment formula by allowing qualifying manufacturing corporations to determine their Virginia taxable

income by using a single factor apportionment formula based on sales. This modification will be phased in as follows:

- A triple-weighted sales factor may be elected for taxable years beginning on or after July 1, 2011, but before July 1, 2013;
- A quadruple-weighted sales factor may be elected for taxable years beginning on or after July 1, 2013, but before July 1, 2014; and
- A single sales factor may be elected for taxable years beginning on and after July 1, 2014.

The act provides that once a corporation elects to use these methods, it may not change for three taxable years. In addition, a taxpayer making this election will be required to certify to TAX that the average weekly wages of its full-time employees was greater than the lower of the state or local average weekly wages for the taxpayer's industry.

The act also requires corporations to maintain a base year level of employment in the Commonwealth for the first three taxable years after electing to use a single factor apportionment based on sales. If a corporation does not satisfy this criterion, TAX would be directed to assess the corporation the difference between taxes calculated under the standard apportionment in which sales are double-weighted and sales-only apportionment. In addition, a ten percent penalty would be assessed, and interest would accrue.

Effective: Taxable years beginning on and after July 1, 2011.
Amended: §§ 58.1-439.7 and 58.1-490.
Repealed: §§ 58.1-331, 58.1-431, 58.1-439.3, and 58.1-439.8.

Major Business Facility Job Tax Credit

House Bill 2575 (Chapter 753) extends the sunset date for the authorization of tax credits allowed under the Major Business Facility Job Tax Credit from January 1, 2009, to January 1, 2020. In addition, the act allows the taxpayer to claim the credit amount over two years instead of three.

The provision that allows the taxpayer to claim one-half of the credit amount for two years is effective only for taxable years beginning on or after January 1, 2009, but before December 31, 2010.

Effective: Taxable years beginning on and after January 1, 2009.
Amended: § 58.1-439.

Neighborhood Assistance Act Tax Credit; Veterinarians

House Bill 1790 (Chapter 10) expands the professional services eligible for tax credits under the Neighborhood Assistance Act to include services provided by veterinarians.

This bill also extends the sunset date for the authorization of Neighborhood Assistance Act Tax credits from July 1, 2009, to July 1, 2011.

Effective: Taxable years beginning on and after July 1, 2009.
Amended: §§ 58.1-439.18 and 58.1-439.20.

Neighborhood Assistance Act Tax Credits; Extend Sunset

Senate Bill 904 (Chapter 502) extends the sunset date for the authorization of tax credits allowed under the Neighborhood Assistance Act from 2009 to 2011.

Effective: Taxable years beginning on and after July 1, 2009.
Amended: § 58.1-439.20.

Neighborhood Assistance Act Tax Credit; Education

Senate Bill 1325 (Chapter 850) increases the annual cap for tax credits allowed under the Neighborhood Assistance Act from $8 million to $11.9 million. The funds are allocated as follows: $4.9 million for approved education proposals; and the remaining $7 million for other qualified Neighborhood Assistance programs. The aggregate amount of tax credits allowed in a fiscal year to a neighborhood organization or to a group of neighborhood organization affiliates is $500,000. The act also extends the sunset date for the authorization of Neighborhood Assistance Act Tax credits from July 1, 2009, to July 1, 2011.

The Superintendent of Public Instruction and the Department of Social Services are required to work cooperatively to administer the tax credits for the participating programs.

Effective: Taxable years beginning on and after January 1, 2009.
Amended: §§ 58.1-439.18, 58.1-439.20, 58.1-439.21, 58.1-439.22, and 58.1-439.24.
Repealed: § 63.2-2002

Qualifying Dispositions of Real Property

Senate Bill 978 (Chapter 508) allows individual and corporate taxpayers to recognize income from certain dispositions of real property under the installment method for Virginia tax purposes, even though they were required to report the entire gain as income in the year of the disposition for federal income tax purposes. The qualifying dispositions of real property will be those in which the real property is held by the taxpayer for sale to customers in the ordinary course of the taxpayer's trade or business.

The act requires the election for the installment method to be made on or before the due date of the taxpayer's tax return for the taxable year in which the disposition occurred. The act also requires TAX to establish guidelines that outline the restrictions or conditions associated with qualifying dispositions. The disposition is required to be in

accordance with such restrictions or conditions in order for the taxpayer to elect the installment method.

Effective: Taxable years beginning on and after January 1, 2009.
Amended: §§ 58.1-322 and 58.1-402.

Qualified Equity and Subordinated Debt Investments Tax Credit; Qualified Businesses

Senate Bill 1338 (Chapter 852) modifies the Qualified Equity and Subordinated Debt Investment Tax Credit to limit the tax credit to investments in businesses related to advanced computing, advanced materials, advanced manufacturing, agricultural technologies, biotechnology, electronic device technology, energy, environmental technology, medical device technology, nanotechnology, or any similar technology-related field. One-half of the $3 million authorized annually is reserved for "commercialization investment" that supports research developed at or in partnership with an institution of higher education.

The act also modifies the Commonwealth Research Commercialization Fund and the duties and responsibilities of the Virginia Economic Development Partnership Authority. The Commonwealth Research Commercialization Fund is prohibited from providing funds to any business that performs research in Virginia on human cells or tissue derived from induced abortions or from stem cells obtained from human embryos, and no investment in such a business would qualify for the credit. However, funds or tax credits could still be provided for qualified businesses that conduct research using stem cells other than embryonic stem cells.

Effective: Taxable years beginning on or after January 1, 2009.
Amended: §§ 2.2-2233.1, 2.2-2515, 2.2-2516, and 58.1-339.4.

Clean Fuel Vehicle and Advanced Biofuels Job Creation Tax Credit

Senate Bill 1357 (Chapter 730) changes the types of jobs that qualify for the clean fuel vehicle job creation tax credit. The new job types would be (i) the manufacture of the major components of the energy storage, energy supply, or engine, motor, and power train mechanisms unique to a vehicle fueled by clean special fuels; (ii) the manufacture of components uniquely used to convert vehicles designed to operate on gasoline or diesel fuel to operate on clean special fuels or advanced biofuels; (iii) the conversion of vehicles designed to operate on gasoline or diesel fuel to operate on clean special fuels or advanced biofuels; (iv) the manufacture of vehicles designed to operate on clean special fuels; (v) the manufacture of components designed to produce, store, and dispense clean special fuels or advanced biofuels; or (vi) the production of advanced biofuels.

The amount of the tax credit remains $700 for each new qualifying job created in a taxable year. The credit is allowed in the taxable year in which the job is created and

in each of the two succeeding years in which the job is continued. The current sunset date of the credit, December 31, 2011, is unchanged.

Effective: Taxable years beginning on or after January 1, 2009.
Amended: § 58.1-439.1.

Land Preservation Tax Credit; Reduction in Amount Claimed Per Year

House Bill 1891 (Chapter 12) and Senate Bill 986 (Chapter 510) reduce the amount of Land Preservation Credits that may be claimed on income tax returns from $100,000 per taxpayer to $50,000 per taxpayer effective for credits claimed for taxable years beginning on and after January 1, 2009, but before January 1, 2011. The acts also extend the carryover period by two years for those affected by this limitation. While the acts reduce the amount of credit that can be claimed on the return, they do not reduce the amount of credit that may be earned or held by the taxpayer.

Effective: Taxable years beginning on and after January 1, 2009, but before January 1, 2011
Amended: § 58.1-512.

Captive Real Estate Investment Trusts ("REIT")

House Bill 2504 (Chapter 426) and Senate Bill 1147 (Chapter 558) require a captive REIT to pay income tax on the business it does in Virginia. It will not affect publicly traded REITs, or other widely held REITs in which a single corporate entity does not own 50% or more of the REIT's shares. Captive REITs will be required to add back any federal deduction for dividends paid to its shareholders. It will then allocate and apportion income, and pay Virginia income tax, in the same manner as other corporations.

A Captive REIT is defined as a REIT (i) whose shares are not publicly traded, (ii) 50% or more of the shares are owned by a corporate entity, and (iii) more than 25% of the income of the REIT consists of rents from real property.

Exceptions are provided to ensure that an affiliated group of REITs will not be considered captive REITs unless the ultimate ownership of the group is by a single corporate entity. Entities organized under the laws of Australia and other foreign countries that are similar to REITs will also not be considered a captive REIT, if they are widely held.

This act will phase in the addition over three years. The addition created by this bill would be reduced by one-half for Taxable Years 2009 and 2010.

Effective: Taxable years beginning on and after January 1, 2009.
Amended: § 58.1-402.

Minimum Tax on Non-corporate Telecommunications Companies and Electric Suppliers

House Bill 2378 (Chapter 37) and Senate Bill 946 (Chapter 152) continue to subject all telecommunications companies to the greater of either the Corporate Income Tax or the Minimum Tax On Telecommunications Companies. The acts also ensure that the same treatment of non-corporate entities continues to apply to the Virginia Minimum Tax on Certain Electric Suppliers. Additionally, the acts clarify that this and other taxes may also be imposed on non-corporate entities.

On September 12, 2008, in Virginia Cellular, LLC. v. Virginia Department of Taxation, 276 Va. 486, 666 S.E. 2d 374 (2008), the Virginia Supreme Court ruled that the Virginia Telecommunications Companies Minimum Tax (the "Minimum Tax") did not apply to non-corporate companies. This decision overturned almost 20 years of administrative precedent subjecting all telecommunications companies to the greater of the corporate income tax or the minimum tax. In so ruling, the Court created a tax loophole that would have allowed telecommunications companies to avoid paying the tax by simply changing their form of business.

Effective: The provisions applicable to the Virginia Telecommunications Companies Minimum Tax and the Virginia Minimum Tax on Certain Electric Suppliers are retroactive, effective for taxable years beginning on and after January 1, 2004.
The provisions clarifying that other taxes may also be imposed on non-corporate entities are declarative of existing law and effective September 1, 2004.
Amended: §§ 58.1-390.2, 58.1-400.1, and 58.1-400.3.

VOLUNTARY CONTRIBUTIONS OF INCOME TAX REFUNDS

Middle Peninsula Chesapeake Bay Public Access Authority

House Bill 1594 (Chapter 4) adds the Middle Peninsula Chesapeake Bay Public Access Authority to the list of voluntary contributions that may be added to the individual income tax return. All funds received from this voluntary contribution will be used to enhance public access to the Bay as described in *Va. Code* § 15.2-6601.

Effective: See "Appearance of New Contributions on Tax Returns" below.
Amended: § 58.1-344.3.

Breast and Cervical Cancer Prevention and Treatment Fund

House Bill 2200 (Chapter 26) and Senate Bill 1144 (Chapter 521) establish the Breast and Cervical Cancer Prevention and Treatment Fund and add it to the list of voluntary contributions that may be added to the individual income tax return. All funds received from this voluntary contribution will be used to support treatment of breast and

cervical cancer for women under Medicaid pursuant to the federal Breast and Cervical Cancer Prevention and Treatment Act of 2000. The Director of the Department of Medical Assistance Services will administer the Fund.

Effective: See "Appearance of New Contributions on Tax Returns" below.
Amended: § 58.1-344.3.
Added: §§ 32.1-368 and 32.1-369.

Virginia Aquarium and Marine Science Center

House Bill 2545 (Chapter 41) adds the Virginia Aquarium and Marine Science Center to the list of voluntary contributions that may be added to the individual income tax return. All funds received from this voluntary contribution will be used to increase the public's knowledge and appreciation of Virginia's marine environment and inspire commitment to preserve its existence.

Effective: See "Appearance of New Contributions on Tax Returns" below.
Amended: § 58.1-344.3.

Appearance of New Contributions on the Tax Return

Following the statutory process enacted in 2005, new voluntary contributions will be added to the individual income tax return as space becomes available on the return. Under current law, no more than 25 voluntary contributions may be listed on the individual income tax returns. With those enacted this year, there are now eight voluntary contributions awaiting placement on the return. Based on the order in which they were enacted, TAX anticipates placement on returns as follows:

2009 Individual Income Tax Return
(1) Public library foundations

Subsequent Years (as space becomes available)
(2) Celebrating Special Children, Inc. Fund;
(3) Medicare Part D Counseling Fund;
(4) Community foundations;
(5) Virginia Foundation for Community College Education;
(6) Middle Peninsula Chesapeake Bay Public Access Authority;
(7) Breast and Cervical Cancer Prevention and Treatment Fund; and
(8) Virginia Aquarium and Marine Science Center.

RECORDATION TAX

Misrepresenting Consideration is a Misdemeanor

House Bill 2135 (Chapter 95) and Senate Bill 1157 (Chapter 686) provide that any person who knowingly misrepresents the consideration for the interest in property conveyed by a deed or other instrument or any of the other information requested by the

clerk of court is be guilty of a Class 1 misdemeanor. In addition, if an understatement of the consideration is false or fraudulent with intent to evade a tax, a penalty equal to 100 percent of the tax due on the understatement will be added to the amount of the tax due, and interest will also be imposed on the tax.

Effective: July 1, 2009.
Amended: § 58.1-812.

Exemption for Affordable Housing Expanded

Senate Bill 1309 (Chapter 574) expands the recordation tax exemption applicable to conveyances by nonprofit organizations of affordable housing in Amherst County and the City of Lynchburg to apply to conveyances of affordable housing in all localities in the state.

This recordation tax exemption is available to nonprofit organizations that are organized and operated to acquire real property and purchase materials to erect or rehabilitate housing that is subsequently sold to individuals who otherwise could not afford to buy a house. When this exemption was enacted in 1999, the primary organization that was expected to benefit was Habitat for Humanity, Inc.

Effective: July 1, 2009.
Amended: § 58.1-811

RETAIL SALES AND USE TAX

Occasional Sales Definition Broadened for Certain Nonprofit Sales

House Bill 1779 (Chapter 338) expands the Retail Sales and Use Tax exemption for occasional sales by authorizing nonprofit entities that are eligible to apply for a nonprofit entity exemption from taxation on their purchases of tangible personal property pursuant to *Va. Code* § 58.1-609.11, to make exempt sales of: 1) food, prepared food, and meals; and 2) tickets to events that include the provision of food, prepared food, and meals, provided such sales take place on fewer than 24 occasions in a calendar year. This act constitutes an expansion of the TAX's definition of occasional sales, which is generally limited to sales made on three or fewer occasions per year.

Under current law, nonprofit organizations that hold valid certificates of exemption from the TAX are authorized to purchase tangible personal property exempt of the Retail Sales and Use Tax. In addition, certain nonprofit organizations may elect not to collect the tax on otherwise taxable sales, provided: 1) the entity is within the same class of organization of any entity that was exempt from collecting the tax on June 30, 2003, and 2) the entity is organized exclusively to foster, sponsor, and promote physical education, athletic programs, and contests for youths in the Commonwealth. Organizations that enjoyed an exemption from collecting sales tax on taxable sales on

June 30, 2003, include Parent Teacher Association organizations, Little League organizations, and Boy and Girl Scout organizations.

On October 20, 2008, TAX issued Tax Bulletin 08-11, which announced that effective October 1, 2008, any organization exempt from federal income taxation under *Internal Revenue Code* § 501(c) is authorized to make sales of 1) prepared food and meals and 2) tickets to events that include the provision of food, prepared food, and meals without collecting sales tax on such sales, provided certain requirements are met. Among these requirements, the organization is limited to holding such events on twelve or fewer occasions per year. Prior to issuance of Tax Bulletin 08-11, event tickets, cover charges, or minimum charges that included the provision of or the entitlement to food, drinks, or other tangible personal property constituted a sale of tangible personal property and were subject to the Retail Sales and Use Tax.

Effective: July 1, 2009.
Amended: § 58.1-609.10.

Nonprofit Audit Requirements Modified

House Bill 2330 (Chapter 106) and Senate Bill 1222 (Chapter 526) modify the criteria for nonprofit organizations to be eligible for exemption from the Retail Sales and Use Tax by requiring that nonprofit organizations with gross annual revenues in the previous year of $750,000 or greater provide a financial review performed by an independent certified public accountant. This act gives TAX the discretion to determine whether nonprofit entities with gross annual revenues in the previous year of $1 million or greater provide a full financial audit or a financial review in order to qualify for exemption.

Nonprofit organizations are required to meet several requirements in order to be eligible to obtain a nonprofit entity exemption certificate to purchase tangible personal property exempt of the Retail Sales and Use Tax. Prior to enactment of this act, one of the requirements was that nonprofit entities with gross annual revenues in the previous year of $1 million or greater were required to provide a full financial audit performed by an independent certified public accountant, while nonprofits with gross annual revenues between $750,000 and $1 million in the previous year were given the choice of providing a full financial audit, or a less expensive financial review.

Effective: July 1, 2009.
Amended: § 58.1-609.11.

Return and Remittance Schedule for Certain Dealers

House Bill 1600 (Chapter 780), Item 5-0.00 #1c establishes a revised schedule, beginning June 20, 2010, for remittance to the Commonwealth of sales and use taxes collected by dealers with annual taxable sales of $12 million or greater in the previous calendar year. Beginning with the month of June, the dealer would remit any tax due and file a retail sales and use tax return (i) for the first fifteen days of the month, on or

before the 20th of the same month, and (ii) for the remaining days in the month, on or before the 20th day of the following month.

Under current law, every dealer required to collect or pay the Retail Sales and Use Tax shall, on or before the twentieth day of the month, file a retail sales and use tax return arising for the preceding calendar month and remit any tax due. A dealer may be required by the Tax Commissioner to file returns on an accounting period less frequent than monthly when, in the opinion of the Tax Commissioner, the administration of the taxes imposed by this chapter would be enhanced. If a dealer is required to file other than monthly, each such return shall be due on or before the 20th day of the month following the close of the period. Each such return shall contain all information required for monthly returns.

Effective: July 1, 2009.
Amended: § 58.1-615.1.

Entitlement to Sales Tax Revenue for the City of Virginia Beach

House Bill 1691 (Chapter 7) adds the City of Virginia Beach to the list of municipalities eligible to receive certain sales tax revenues generated by qualifying public facilities in their jurisdiction to repay bonds issued to pay the costs of such facilities and expands the list of bonds eligible to be repaid from such sales tax revenues to include bonds issued on or after July 1, 2009, but before July 1, 2012.

Before the 2009 General Assembly session, sales tax revenue attributable to sales in new or substantially renovated public facilities was transferred back to municipalities to pay the costs of the bonds issued to finance such facilities before July 1, 2007. Qualifying public facilities were auditoriums, coliseums, convention centers, conference centers, or hotels owned by a Virginia county, city, town or authority or other such public entity. Qualifying public facilities only included facilities located in the Cities of Hampton, Newport News, Norfolk, Portsmouth, Roanoke, Salem, Staunton, or Suffolk. Sales tax revenues generated from all transactions taking place in the facility, including, but not limited to, concessionaires sales, vending machine sales, and merchandise sales, are transferred back to the municipality. Entitlement to these sales tax revenues continues for the lifetime of the bonds, but not to exceed 35 years, and all such revenues are required to be applied to the repayment of the bonds. No remittance is made until construction of the facility is complete.

Effective: July 1, 2009.
Amended: § 58.1-608.3.

Entitlement to Sales Tax Revenue for the City of Richmond and Qualifying Baseball Stadiums

House Bill 1803 (Chapter 47) and Senate Bill 1021 (Chapter 835):

- Add the City of Richmond to the list of municipalities eligible to receive certain sales tax revenues generated by qualifying public facilities in their jurisdiction to repay bonds issued to pay the costs of such facilities;

- Expand qualifying public facilities to include sports facilities and structures attached thereto that are designed for use primarily as baseball stadiums for minor league professional baseball affiliated teams; and

- Expand the list of bonds eligible to be repaid from Retail Sales and Use Tax revenues generated by public facilities to include the repayment of bonds issued on or after July 1, 2009, but before July 1, 2012.

For more information regarding the previous treatment of sales tax revenues attributable to qualifying public facilities, see "Entitlement to Sales Tax Revenue for the City of Virginia Beach" above.

Effective: July 1, 2009.
Amended: § 58.1-608.3.

Entitlement to Sales Tax Revenue for Qualifying Public Facilities

House Bill 2091 (Chapter 93) and Senate Bill 868 (Chapter 499) expand the list of bonds issued by designated municipalities to pay the costs of qualifying public facilities located within their jurisdiction that are eligible to be repaid from certain Retail Sales and Use Tax revenues generated by such facilities to include the repayment of bonds issued on or after July 1, 2009, but before July 1, 2012 and expand the entitlement to certain sales tax revenues to include bonds issued to pay the costs of increases in floor space of at least 10 percent in a qualifying public facility that was constructed after December 31, 1991. One facility that may benefit from this legislation is the Hotel Roanoke Conference Center, as the City of Roanoke is considering an expansion of the public facility.

For more information regarding the previous treatment of sales tax revenues attributable to qualifying public facilities, see "Entitlement to Sales Tax Revenue for the City of Virginia Beach" above.

Effective: July 1, 2009.
Amended: § 58.1-608.3.

Exemption for the Fabrication of Foodstuffs

House Bill 2360 (Chapter 36) and Senate Bill 944 (Chapter 832) provide an exemption from the Retail Sales and Use Tax for the fabrication of animal meat, grains, vegetables, and other foodstuffs when the purchaser i) supplies the foodstuffs and they are consumed by the purchaser or his family, ii) is an organization exempt from taxation under § 501 (c)(3) or (c)(4) of the Internal Revenue Code, or iii) donates the foodstuffs

to an organization exempt from taxation under § 501 (c)(3) or (c)(4) of the Internal Revenue Code.

Under current law, the processing of meat, grains, vegetables, and other foodstuffs for a charge is considered fabrication labor and is subject to the Virginia Retail Sales and Use Tax. However, the Retail Sales and Use Tax is not applicable to butchers, slaughterhouses and other agricultural product processors when they process meat or other agricultural products that will be resold. Such transactions qualify for the "sale for resale" exemption.

Effective: July 1, 2009.
Amended: § 58.1-609.10.

Exemption for Data Centers

Senate Bill 944 (Chapter 832) provides an exemption from the Retail Sales and Use Tax, beginning July 1, 2010 and ending June 30, 2020, for computer equipment purchased or leased for the processing, storage, retrieval, or communication of data, including but not limited to servers, routers, connections, and other enabling hardware. Such computer equipment must be purchased or leased for use in a data center that (a) is located in a Virginia locality, (b) results in a new capital investment on or after July 1, 2009 of at least $150 million, and (c) results in the creation on or after July 1, 2009 of at least 50 new jobs associated with the operation or maintenance of the data center provided that such jobs pay at least one and one half times the prevailing average wage in that locality. Computer equipment purchased or leased to upgrade, supplement, or replace computer equipment purchased or leased in the initial investment is also exempt from Retail Sales and Use Tax.

Qualifying persons must enter into a memorandum of understanding with the Virginia Economic Development Partnership Authority that, at a minimum, provides the details for (1) determining the amount of capital investments made and the number of new jobs created, (2) the timeline for achieving the capital investment and new job goals, (3) the repayment obligations should those goals not be achieved, and (4) any conditions under which repayment of the exemption may be required.

Effective: July 1, 2009.
Amended: § 58.1-609.10.

COMMUNICATIONS SALES AND USE TAX

Local Distributions from the Communications Sales and Use Tax

House Bill 2607 (Chapter 680) and Senate Bill 891 (Chapter 683) allows TAX to administratively correct distributions from the Communications Sales and Use Tax Trust Fund to localities. If any locality failed to submit, or incorrectly submitted, to the Auditor of Public Accounts data on telecommunications or television cable funds collected in

Fiscal Year 2006 from repealed local communications taxes and fees, the locality may submit such data to TAX by either an audited financial statement or a statement of receipts verified in writing by an independent certified public accountant. The locality would receive the monthly distributions beginning with the next distribution at least 60 days after TAX receives the statement.

The acts allow the Town of Clifton to receive monthly distributions beginning on July 1, 2009 from the Communications Sales and Use Tax Trust Fund as if the Auditor of Public Accounts had certified that the town had received $6,315 of telecommunications and television cable funds in Fiscal Year 2006.

Previously, all of the revenues available for distribution to localities from Communications Sales and Use Tax Trust Fund were allocated based on a percentage determined by the Auditor of Public Accounts based on local revenues from repealed local communications taxes and fees received by localities in Fiscal Year 2006.

Effective: July 1, 2009.
Amended: § 58.1-662.

DIGITAL MEDIA FEE

Imposition of Digital Media Fee

Senate Bill 1421 (Chapter 531) imposes a Digital Media Fee on the in-room rental or purchase of digital media equal to 10 percent of the price of the digital media. The fee is imposed in facilities offering guest rooms rented out for continuous occupancy for fewer than 90 days, such as hotels and motels. Digital media is defined as any audio-visual work received through the in-room television for a separate charge, including, but not limited to, any motion picture, television or audio programming, or game, regardless if it is transmitted in an analog or digital format. Digital media does not include internet access or telephone service.

The fee is administered by the Department of Taxation in the same manner as the Retail Sales and Use Tax. After the administrative costs are subtracted, 50 percent of the revenues generated from the fee is deposited into the General Fund, and the other 50 percent of the revenues is deposited into the Governor's Motion Picture Opportunity Fund to be used for film incentive programs established by the Virginia Film Office.

Effective: July 1, 2009.
Amended: §§ 58.1-1731, 58.1-1732, and 58.1-1733.

TRANSPORTATION AUTHORITY TAXES AND FEES

Abolishment of the Hampton Roads Transportation Authority

House Bill 1580 (Chapter 864) abolishes the Hampton Roads Transportation Authority and eliminate the taxes, fees, and charges that it was authorized to impose. The legislation continues the authority of the counties and cities wholly embraced by the Hampton Roads metropolitan planning area as of January 1, 2008 to impose an additional real property tax on commercial and industrial property and to create special regional transportation tax districts.

On February 29, 2008, the Virginia Supreme Court ruled that the provisions in House Bill 3202 (Acts of Assembly 2007, Chapter 896) that permitted the Northern Virginia Transportation Authority to impose regional taxes and fees violated the Constitution of Virginia and were invalid. While the Hampton Roads Transportation Authority taxes were not addressed in the Virginia Supreme Court's decision, because it was likely that a court would determine that the taxes violate the Virginia Constitution on the same basis, the Hampton Roads Transportation Authority never imposed the taxes.

Under current law, the Cities of Chesapeake, Hampton, Newport News, Norfolk, Poquoson, Portsmouth, Suffolk, Virginia Beach, and Williamsburg and the Counties of Isle of Wright, James City, and York are authorized to impose an additional real property tax not to exceed $0.10 per $100 of assessed value on real property used for or zoned to permit commercial or industrial uses.

Effective: July 1, 2009.
Amended: §§ 33.1-23.03, 58.1-811, 58.1-2403, 58.1-2425, and 58.1-3221.3.

Imposition of the Motor Vehicle Fuel Sales Tax on Distributors

Senate Bill 1532 (Chapter 532) repeals the current Motor Vehicle Fuel Sales Tax imposed in the Northern Virginia Transportation District and the Potomac and Rappahannock Transportation District and replaces it with a tax on distributors engaged in the business of selling fuels at wholesale to retail dealers for retail sale in the Northern Virginia Transportation District and the Potomac and Rappahannock Transportation District. The tax is imposed at a rate of 2.1 percent of the sales price charged by the distributor for motor fuels and remitted monthly to TAX. Distributors are allowed a dealer discount of 2 percent of the tax collected as compensation for accounting for and remitting the tax. The revenue from the tax continues to be distributed monthly to the appropriate district to be used for transportation needs within the district.

Under current law, a 2% Motor Vehicle Fuel Sales Tax is imposed on motor fuel retailers and is levied in the localities that comprise the Potomac and Rappahannock Transportation District and the Northern Virginia Transportation District.

Effective: January 1, 2010.
Amended: §§ 58.1-1719, 58.1-1720, and 58.1-1722.
Added: § 58.1-1718.1.

LOCAL TAX

LEGISLATION

TANGIBLE PERSONAL PROPERTY TAX

Exemption for Pollution Control Equipment Expanded

House Bill 2084 (Chapter 671) provides an exemption from state and local property taxation for all certified pollution control equipment and facilities. It also excludes the land on which such equipment or facilities are located from the definition of certified pollution control equipment.

Prior to enactment of this act, local governing bodies were authorized, but not required, to exempt or partially exempt certified pollution control equipment and facilities from local taxation. Localities were only required to provide an exemption for certified pollution control equipment and facilities consisting of equipment used in collecting, processing, and distributing, or generating electricity from, landfill gas or synthetic or natural gas recovered from waste, including equipment used to grind, chip, or mulch trees, tree stumps, underbrush, and other vegetative cover for reuse as landfill gas or synthetic or natural gas recovered from waste, placed in service on or after July 1, 2006.

Certified pollution control equipment and facilities are defined as any property, including real or personal property, equipment, facilities, or devices, used primarily for the purpose of abating or preventing pollution of the atmosphere or waters of the Commonwealth and which the appropriate state certifying authority has certified to the Department of Taxation as having been constructed, reconstructed, erected, or acquired in conformity with the state program or requirements for abatement or control of water or atmospheric pollution or contamination. Such property includes, but is not limited to, any equipment used to grind, chip, or mulch trees, tree stumps, underbrush, and other vegetative cover for reuse as mulch, compost, landfill gas, synthetic or natural gas recovered from waste or other fuel, and equipment used in collecting, processing, and distributing, or generating electricity from, landfill gas or synthetic or natural gas recovered from waste, whether or not such property has been certified to the Department of Taxation by a state certifying authority.

Effective: July 1, 2009.
Amended: § 58.1-3660.

Duty to File Lists with Commissioner of the Revenue

House Bill 2289 (Chapter 672) and Senate Bill 896 (Chapter 501) require that upon the written request of the local Commissioner of the Revenue, every property owners' association, condominium unit owners' association, and proprietary lessees' association provide to the Commissioner of the Revenue a list of the owners of property it manages, to the extent it maintains such a list. This act also requires that upon the written request of the local Commissioner of the Revenue, owners or operators of self-service storage facilities that make the outdoor common area of such facilities available for storage of tangible personal property on a rental or leased basis file with the Commissioner of the Revenue on or before February 1st of each year, a list giving the

name and address of every tenant renting the common area space of the storage facility as of the preceding January 1st.

Prior to enactment of this act, only owners or operators of apartment houses, office buildings, shopping centers, trailer courts, marinas, or privately owned airports in Virginia were required, upon written request, to file with the local Commissioner of the Revenue, a list giving the name and address of every tenant of such building for use in administering the local property taxes.

Effective: July 1, 2009.
Amended: § 58.1-3901.

Separate Classification for Large Capacity Motor Vehicles

House Bill 2524 (Chapter 40) creates a separate classification for local property tax purposes for motor vehicles with a seating capacity of at least 30 persons, including the driver. Vehicles in this new classification can be taxed at a rate not to exceed the general rate imposed on tangible personal property.

Effective: July 1, 2009.
Amended: § 58.1-3506.

Separate Classification for Motor Vehicles Powered Solely by Electricity

House Bill 2592 (Chapter 44) creates a separate classification for local property tax purposes for motor vehicles powered solely by electricity. Vehicles in this new classification can be taxed at a rate not to exceed the general rate imposed on tangible personal property.

Effective: July 1, 2009.
Amended: § 58.1-3506.

REAL ESTATE TAX

Notice Requirements for Public Hearing to Increase Local Property Rates

House Bill 2308 (Chapter 30) and Senate Bill 1003 (Chapter 511) shorten the notice requirements to fourteen days for the public hearing every locality must hold prior to increasing its real property tax when that locality's assessment of real property results in an increase in real property tax revenue of greater than one percent over the prior year's revenue. The fourteen-day notice requirement applies for any hearing that occurs in a year in which neither a general appropriation act nor amendments to a general appropriation act providing appropriations for the immediately following fiscal year have been enacted by April 30th of that year.

When any annual assessment, biennial assessment, or general reassessment of real property by a locality will result in an increase of one percent or more in the total real property tax levied, the locality is required to reduce its rate of levy for the forthcoming tax year. If the governing body desires to increase the rate above the reduced rate, it must first hold a public hearing, and must provide notice of this hearing at least thirty days prior to the public hearing.

Department and agency heads of localities are required to prepare and submit to their local governing bodies an estimate of the amount of money needed during the ensuing fiscal year for their departments or agencies by April 1 of each year. Generally, local governing bodies must approve the budget and fix a tax rate for the budget year by July 1, the date on which the fiscal year begins. The local governing bodies generally have from April 1st to June 30th to prepare and approve the locality's budget.

Because localities depend upon state appropriated funds as a major source of revenue, it is difficult for them to prepare a local budget without knowing how much money will be appropriated to the locality by the General Assembly. This act assists localities in making the determination as to whether an increase in the real property tax is necessary.

Effective: July 1, 2009.
Amended: § 58.1-3321.

Architects Authorized to Certify Energy Efficiency of Buildings

Senate Bill 1004 (Chapter 512) adds architects to the list of professionals who are authorized to certify that a building qualifies as an energy efficient building for local Real Property Tax purposes.

The *Constitution of Virginia* authorizes the General Assembly to define and classify taxable subjects. Most real estate is considered to be one class of property subject to the same rate of tax. In the 2002, 2003, and 2007 General Assembly Sessions, however, separate classifications of real property were created for certain localities in Virginia.

Energy efficient buildings constitute a separate class of property for purposes of local taxation. An energy efficient building is defined to include any building that exceeds the energy efficiency standards prescribed in the Virginia Uniform Statewide Building Code by at least 30 percent. Prior to enactment of this act, the certification of energy efficiency for these buildings could be made only by a licensed architect or professional engineer designated by the locality. This act adds architects to the list of qualifying professionals authorized to certify that a building qualifies as energy-efficient.

Effective: July 1, 2009.
Amended: § 58.1-3221.2.

Special Assessment Rules for Certain Affordable Rental Housing

Senate Bill 1052 (Chapter 264) authorizes owners of real property containing more than four residential units that is operated as affordable rental housing to apply to the locality in which the property is located to have the property assessed under the special assessment rules for affordable rental housing. Under the terms of the act, the locality is required to grant the owner's application if: 1) the owner charges rents at levels that meet the locality's definition of affordable housing, and 2) the real property does not have any pending building code violations at the time of the application.

Real property containing more than four residential units operated as affordable housing may qualify for special assessment rules. The special assessment rules require localities to consider: 1) the impact of any legally imposed rent restrictions; 2) any additional operating expenses associated with affordable housing compliance requirements; and 3) any legally imposed restrictions on the transfer of title or other restraints on alienation. Federal or state income tax credits with respect to affordable housing are not to be considered real property or income attributable to real property.

Effective: July 1, 2009.
Amended: § 58.1-3295.

Timing of General Reassessments in Augusta County

Senate Bill 1356 (Chapter 529) authorizes Augusta County to elect, by majority vote of its board of supervisors, to conduct its general reassessments at either five-year or six-year intervals.

Prior to enactment of this act, every county was required to conduct a general reassessment of real estate every four years. Only counties with total populations of 50,000 or less were permitted to elect, by majority vote of the board of supervisors, to conduct their general reassessments at either five-year or six-year intervals.

Effective: July 1, 2009.
Amended: § 58.1-3252.

Sale of Tax Delinquent Property

House Bill 2651 (Chapter 682) relieves a deed of trust creditor from the requirement that he or she must file a claim with the circuit court within 90 days after notice of judicial proceedings instituted by the locality to have tax delinquent property sold to pay the delinquent taxes in order to be entitled to any proceeds from the sale.

Localities are given a broad array of tools to collect delinquent taxes, including collection from the taxpayer's bank account, wages, or income tax refunds; suits against the taxpayer personally; and sale of the real estate to which the tax lien has attached. In certain instances, localities may petition the circuit court to appoint a special commissioner to convey tax-delinquent property to the locality in lieu of a sale at public

auction. In order to qualify, the parcel must: 1) have delinquent real estate taxes or have a lien against the parcel for certain specified reasons; 2) have an assessed value of $50,000 or less; and 3) the taxes or liens, together with penalty and accumulated interest, must exceed 60% of the assessed value of the parcel, or the taxes alone must exceed 25% of the assessed value of the parcel. In order to initiate proceedings for the appointment of a special commissioner or for the sale of the real estate, the locality must file a bill in equity to subject the real estate to the lien for the delinquent taxes. Prior to enactment of this act, all parties with an interest in the real estate were required to file a claim to the real estate within the 90 days after notice of such proceedings, or were barred from filing claims in the future. This law change relieves a deed of trust creditor from the 90-day requirement.

Effective: July 1, 2009.
Amended: § 58.1-3967.

Limit for Members of Boards of Equalization

House Bill 2133 (Chapter 25) removes the nine-year term limitation for members of local boards of equalization. After a general reassessment of real estate values in a locality, the board of equalization for that locality hears complaints that landowners may have about the assessed value, such as a lack of uniformity in assessments, errors in acreage, or that the assessed value is greater than the fair market value of the property. The board has the power to review and revise the assessed value. Prior to enactment of this law, members were limited to nine-year terms, and three years had to elapse before a member could be reappointed.

Effective: July 1, 2009.
Amended: §58.1-3774.

Renovation or Demolition of Derelict Buildings

House Bill 1671 (Chapter 181) and Senate Bill 1094 (Chapter 551) authorize localities that offer real estate tax abatement programs to provide by ordinance that owners of buildings declared derelict must submit a plan to demolish or renovate these buildings. Additionally, the act authorizes owners of such property to apply to the locality, requesting that the building be declared derelict.

A derelict building is defined as a residential or nonresidential building or structure, whether or not construction has been completed, that might endanger the public's health, safety, or welfare and for a continuous period in excess of six months, it has been (i) vacant, (ii) boarded up in accordance with the building code, and (iii) not lawfully connected to electric service from a utility service provider or not lawfully connected to any required water or sewer service from a utility service provider. The locality is required to notify the owner of the derelict building in writing that he or she must submit to the locality a plan, within 90 days, to demolish or renovate the building in order to address the items that endanger the public's health, safety, or welfare. The

plan must include a proposed time for commencement and completion of the demolition or renovation.

Before plans to demolish or renovate the derelict building can begin, the real estate assessor must make an assessment of the property in its current derelict condition. On the building permit application, the property owner must declare the costs of demolition or the costs of materials and labor to complete the renovation. If the property owner requests, after the building is renovated or demolished, the real estate assessor shall reflect the fair market value of the demolition costs or the fair market value of the renovation improvements, and reflect those values in the real estate tax assessment records. The real estate tax on an amount equal to the costs of demolition or an amount equal to the interest in the fair market value of the renovations must be abated for a period of at least 15 years and is transferable with the property. This abatement will not apply if the structure demolished is a registered Virginia landmark or is determined by the Department of Historic Resources to contribute to the significance of a registered historic district. However, if the locality has an existing tax abatement program for less than 15 years, as of July 1, 2009, the locality may provide for a tax abatement period of at least five additional years.

Currently, localities and authorities are authorized to acquire or repair any blighted property, even if such property lies inside of a conservation or redevelopment area. Localities and authorities may exercise this power through purchase of the property or by exercise of the power of eminent domain. They may also hold, clear, repair, manage, or dispose of such property. The authority and locality also has the power to recover the costs of any repair or disposal of such property from the owner or owners of record. Once the locality determines that a property is blighted, it must send notice to the owner of record specifying the reasons why the property is blighted. The owners then have 30 days from the date the notice is sent to respond in writing with a spot blight abatement plan to address the blight within a reasonable time.

Prior to enactment of this act, if the owner of the property failed to respond within the 30-day period allotted with an acceptable plan, the locality could request that a public hearing be conducted during which findings and recommendations would be made by the local planning commission concerning the repair or other disposition of the property, subject to approval by the local governing board. This act modifies the procedure by authorizing the locality, by ordinance, to declare the property as blighted without holding a public hearing. Once an ordinance is adopted declaring the property as blighted, the locality has a lien on the property to recover the costs of any improvements made by the locality and any disposal. Under this act, the lien is to be treated as an enforceable tax lien.

This act also modifies the law with respect to delinquent real estate taxes. Prior to enactment of this law, 1) when local real estate taxes were delinquent on December 31st following the second anniversary of the date on which the taxes became due; or 2) for real estate on which was situated any structure that had been condemned by the local building official, the first anniversary of the date on which such taxes had become due; or 3) in the case of real estate deemed abandoned, the taxes on such real estate was delinquent on December 31 following the second anniversary of the date on which

such taxes became due; the real estate could be sold for the purpose of collecting all delinquent taxes on such property. This act adds nuisances, derelict buildings and blighted property, to the list of properties that may be sold for the purpose of collecting all delinquent taxes on such property, and removes from the list abandoned properties.

Prior to enactment of this act, upon a finding by the court that taxes were delinquent on December 31st following the second anniversary of the date on which the taxes became due for real estate with an assessed value of $50,000 or less, where: 1) the land was declared a nuisance by the locality; 2) the property owner failed to abate the nuisance, and 3) the locality had taken steps to abate the nuisance conditions and placed a lien on the property for the cost of the abatement, which remained unpaid; or upon a finding that any taxes on such real estate are delinquent on December 31 following the fifth anniversary of the date on which the taxes became due, the property was deemed abandoned and subject to sale by public auction. This act modifies the assessment value from $50,000 to $100,000, removes the nuisance provision, and provides that if there is any lien on the property, and the lien remains unpaid on December 31st following the first anniversary of the date on which the lien was recorded, the property will be deemed subject to sale by public auction.

Effective: July 1, 2009.
Amended: §§ 36-3, 36-49.1:1, 36-105, 48-5, 58.1-3965, 58.1-3969.
Added: § 15.2-907.1.

Stormwater Management Development Property

House Bill 1930 (Chapter 350) authorizes the Department of Conservation and Recreation to certify stormwater management development properties as being designed, constructed, or reconstructed for the primary purpose of abating or preventing pollution. Prior to enactment of this law, the Department of Environmental Quality was authorized to make this certification. This act was necessary because responsibility for administering the stormwater program was moved from the Department of Environmental Quality to the Department of Conservation and Recreation.

Under this act, “Certified stormwater management developments and property” is defined as any real estate improvements constructed from permeable material, such as, but not limited to, roads, parking lots, patios, and driveways, which are otherwise constructed of impermeable materials, and which the Department of Conservation and Recreation has certified to be designed, constructed, or reconstructed for the primary purpose of abating or preventing pollution of the atmosphere or waters of the Commonwealth by minimizing stormwater runoff.

Certified stormwater management developments and property constitute a separate class of property for purposes of real property taxation. As such, the governing body of any locality may, by ordinance, exempt or partially exempt such property from local taxation.

Effective: July 1, 2009.
Amended: § 58.1-3660.1.

Local Incentives for the Use of Green Roofs

House Bill 1975 (Chapter 17) and Senate Bill 1058 (Chapter 604) authorize localities to grant incentives and provide regulatory flexibility to encourage the use of green roofs, which may include reducing permit fees and gross receipts taxes on green roof contractors and streamlining the approval process for building permits.

A green roof is defined as a solar roof, a solar roofing system that generates reusable energy that accounts for at least 2.5% of the total electric energy used by the building, or a vegetative roof, a roofing system designed in accordance with the Virginia Stormwater Management Program's standards and specifications for green roofs, which will be set forth in the Virginia Stormwater BMP Clearinghouse, in which at least 50 percent of the total roofing area is vegetative.

Effective: July 1, 2009
Amended: § 58.1-3852

Land Use Valuation Assessments

House Bill 2098 (Chapter 799) provides that real property that otherwise qualifies for agricultural, horticultural, forest or open-space use assessment is not disqualified because a portion of such property is being used for a different purpose pursuant to a special use permit or as otherwise allowed by zoning. The portion of the property being used for a different purpose is deemed a separate piece of property for purposes of assessment. The presence of utility lines, zoning designations, and special use permits shall not be the sole considerations in determining whether the property is devoted to agricultural, horticultural, forest or open-space use.

Land use valuation and taxation is intended to encourage conservation by providing tax relief to the owner of real estate devoted solely to agricultural, horticultural, forest or open-space use. In valuing land at its use value, the assessing officer considers only the value of the real estate in its current use. The assessing officer does not consider the fair market value of the land at its most profitable use. Owners of real property situated in a locality that has adopted a land-use plan and ordinance providing for use value assessment may apply to their local assessing officer for taxation of their real property on the basis of use value. Such owners must devote a minimum number of acres of real property to agricultural, horticultural, forest, or open-space use.

If real estate that qualified for assessment and taxation on the basis of use value is subsequently devoted to a nonqualifying use, or the zoning of the real estate is changed to a more intensive use at the request of the owner or his agent, then the real estate is subject to roll-back taxes. Roll-back taxes are only assessed against the portion of real estate that no longer qualifies for assessment and taxation on the basis of use value.

Effective: July 1, 2009.
Amended: § 58.1-3230.

Commercial and Industrial Real Property; Tax Rate Reduction

House Bill 2479 (Chapter 821) decreases the maximum allowable rate of the local option real property tax on certain commercial and industrial property in the counties and cities embraced by the Northern Virginia Transportation Authority from $0.25 per $100 of assessed value to $0.125 per $100 of assessed value. The provisions of this legislation reducing the maximum tax rate expire June 30, 2013.

Under current law, the real property tax on certain commercial and industrial property may be imposed either 1) on all commercial and industrial property, with the revenues generated used exclusively for transportation purposes that benefit the locality imposing the tax, or 2) on the commercial and industrial property located in special regional transportation tax districts created within the locality's boundaries, with the revenues generated used exclusively for transportation purposes that benefit the special regional transportation tax district.

Effective: July 1, 2009.
Amended: § 58.1-3221.3.

Commercial and Industrial Real Property; Use of Tax Revenues

House Bill 2480 (Chapter 677) requires all revenue generated by the local option real property tax on certain commercial and industrial property located in special regional transportation tax districts in the counties and cities embraced by the Northern Virginia Transportation Authority and the Hampton Roads Transportation Authority to be used solely for i) new road construction, design, and right of way acquisition, including new additions to, expansions, or extensions of existing roads that add new capacity, service, or access, ii) new public transit construction, design, and right of way acquisition, including new additions to, expansions, or extensions of existing public transit projects that add new capacity, service, or access, iii) other capital costs related to new transportation projects and directly related operating costs, or iv) the issuance costs and debt service on bonds that may be issued to support the capital costs.

Previously, the real property tax on certain commercial and industrial property may be imposed either 1) on all commercial and industrial property, or 2) on the commercial and industrial property located in special regional transportation tax districts created within the locality's boundaries. Revenue generated from the local real property tax on certain commercial and industrial property located in special regional transportation tax districts must be used exclusively for transportation purposes that benefit the special regional transportation tax district to which such revenue is attributable.

Effective: July 1, 2009.
Amended: § 58.1-3221.3.

MACHINERY AND TOOLS TAX

Separate Classification for Precision Investment Castings

Senate Bill 1315 (Chapter 528) provides a separate classification for local machinery and tools tax purposes for machinery and tools used directly in the manufacture of precision investment castings.

Generally, machinery and tools used in manufacturing, mining, water well drilling, processing or reprocessing, radio and television broadcasting, dairy, dry cleaning or a laundry business are segregated as a separate class of tangible personal property and are subject to local taxation only. The tax rate imposed on machinery and tools may not exceed that imposed on other classes of tangible personal property.

Random House Dictionary defines "investment casting" as "a casting process in which an expendable pattern is surrounded by an investment compound and then baked so that the investment is hardened to form a mold and the pattern material may be melted and run off." According to the North American Industry Classification System ("NAICS"), investment molds are formed by covering a wax shape with a refractory slurry. After the refractory slurry hardens, the wax is melted, leaving a seamless mold. Metals are then poured into the mold to manufacture castings.

Effective: July 1, 2009.
Amended: § 58.1-3508.3.

LOCAL MEALS TAX

Exemptions from the County Food and Beverage Tax and the Local Meals Tax

House Bill 2059 (Chapter 415) expands the exemptions allowed to both the County Food and Beverage Tax and the Local Meals Tax to include food, beverages and meals sold by: i) restaurants to employees as part of their compensation; ii) schools to their students or employees; iii) hospitals and extended care facilities to patients; iv) day care centers; v) homes for the aged, infirm, handicapped, battered women, narcotic addicts, or alcoholics; and vi) age-restricted apartment complexes or residences when included in rental fees. Exemptions are also provided for food, beverages and meals: (a) when used or consumed and paid for by the Commonwealth, any political subdivision of the Commonwealth, or the United States; (b) provided by a public or private nonprofit charitable organization to elderly, infirm, blind, handicapped, or needy persons; and (c) provided by private establishments that contract with the appropriate agency to elderly, infirm, blind, handicapped, or needy persons.

Exemptions to the Local Meals Tax were expanded to include meals sold by: i) volunteer fire departments and rescue squads, and nonprofit churches and organizations on an occasional basis; and ii) churches to their members.

The legislation also amends the exemption to the County Food and Beverage Tax for food and beverages sold by volunteer fire departments and rescue squads, and nonprofit churches and organizations on an occasional basis to provide that such sales may not occur more than 3 times per calendar year. Food and beverages sold by churches to their members continue to be exempt from the County Food and Beverage Tax.

Effective: July 1, 2009.
Amended: §§ 58.1-3833 and 58.1-3840.

TRANSIENT OCCUPANCY TAX

Authorizes Giles, Smyth, and Greene Counties to Impose Additional Transient Occupancy Tax

The following bills add Giles, Smyth, and Greene Counties to the list of counties that are authorized to impose a transient occupancy tax at a maximum rate of five percent. Revenues from the portion of tax in excess of two percent must be used solely for tourism or marketing of tourism. House Bill 1917 (Chapter 13) and Senate Bill 858 (Chapter 497) add Giles County to the list of localities that are currently authorized to impose a transient occupancy tax at a maximum rate of five percent. House Bill 2316 (Chapter 31) adds Smyth County to the list, and Senate Bill 1025 (Chapter 513) adds Greene County to the list.

Generally, counties may impose a transient occupancy tax at a maximum rate of two percent upon the adoption of an ordinance, on hotels, motels, boarding houses, travel campgrounds, and other facilities offering guest rooms. The tax does not apply to rooms rented on a continuous basis by the same individual or group for 30 or more continuous days. The tax applies to rooms intended or suitable for dwelling and sleeping. The tax does not apply to such rooms used for alternative purposes, such as banquet rooms and meeting rooms. Virginia law separately identifies several counties that are authorized to impose a transient occupancy tax at a maximum rate of five percent. The revenues for the portion of tax over two percent must be designated and spent solely for tourism, marketing of tourism, or initiatives that attract travelers to the locality and generate tourism revenues in the locality.

Effective: July 1, 2009.
Amended: § 58.1-3819.

Bath County May Impose Additional Transient Occupancy Tax

House Bill 1947 (Chapter 16) authorizes Bath County to impose an additional transient occupancy tax at a maximum rate of two percent of the charge for the occupancy of any room or space. The revenues from the additional tax must be allocated equally between: 1) tourism, travel, and marketing of tourism, after consultation with local tourism industry organizations; and 2) the design, operation, construction, improvement, acquisition, and debt service for such expenses on debt incurred after June 30, 2009, of tourism facilities, historic sites, beautification projects, promotion of the arts, regional parks and recreation, and information centers that attract travelers to the locality and generate tourism revenues in the locality. If the locality has no local tourism industry organizations, the governing body must hold a public hearing prior to making any determination relating to how to attract travelers to the locality and generate tourism revenues in the locality.

Effective: July 1, 2009.
Amended: 58.1-3825.2.

Additional Transient Occupancy Tax; Localities to Consult Local Lodging Properties

House Bill 2502 (Chapter 116) and Senate Bill 1176 (Chapter 524) specifically require localities that are authorized to increase their transient occupancy tax to five percent to consult with representatives of local lodging properties when the locality consults with local tourism industry organizations in order to determine which tourism related expenditures should be made using the revenue gained from imposing the additional transient occupancy tax. Additionally, these acts specifically include the goal of increasing occupancy at lodging properties as a purpose for which such revenues must be designated and spent. Under the provisions of these acts, the counties of James City and York are deemed in compliance with each of these requirements because they have enacted an additional transient occupancy tax, the revenues of which are expended solely for advertising the Historic Triangle area as an overnight tourism destination.

James City County and York County are also authorized to impose an additional transient occupancy tax at a maximum rate of $2 per room per night pursuant to *Va. Code* § 58.1-3823(C). The revenues collected from the additional tax must be spent solely for advertising the Historic Triangle (which includes all of the City of Williamsburg and the Counties of James City and York) area as an overnight tourism destination. As of the date on which this law was enacted, both counties imposed this additional transient occupancy tax.

Effective: July 1, 2009.
Amended: § 58.1-3819.

MISCELLANEOUS TAXES

Daily Rental Property Tax a Separate Freestanding Tax

House Bill 2472 (Chapter 480) and Senate Bill 1419 (Chapter 692) remove the Daily Rental Property Tax as a component of the Merchants' Capital Tax and make it a separate freestanding tax, renamed the Short-Term Rental Property Tax. This act expands the criteria for a taxpayer to be deemed as engaged in a short-term rental business and increases the Short-Term Rental Property Tax rate for certain heavy equipment rental property. In addition, this act outlines the process for the decertification and recertification of a previously designated short-term rental property lessor. The act also specifies that short-term rental property on which the Short-Term Rental Property Tax is imposed is exempt from the Business Tangible Personal Property Tax.

The Merchants' Capital Tax is a local option property tax imposed on inventory, daily rental passenger cars, and other personal property of merchants except for tangible personal property not for sale as merchandise. Localities that impose the tax are prohibited from imposing a Business, Professional, and Occupational License (BPOL) tax on merchants. Additionally, the tax must be imposed at a rate that does not exceed the rate or ratio that was in effect in that locality on January 1, 1978.

Prior to enactment of this act, the Daily Rental Property Tax was imposed as a component of the Merchants' Capital Tax. The tax rate was limited to 1 percent or less of the gross proceeds of a business engaged in a short-term rental business. For purposes of the Daily Rental Property Tax, a person was deemed to be engaged in the short-term rental business if not less than 80% of the gross rental receipts of such business in any year were from transactions involving rental periods of 92 consecutive days or less. The 92-day period included all extensions and renewals to the same person or a person affiliated with the lessor.

This act removes the Daily Rental Property Tax as a component of the Merchants' Capital Tax and makes it a separate freestanding tax. While it retained most of the Daily Rental Property Tax provisions, it makes the following changes:

<u>Short-Term Rental</u>

The legislation makes several changes to the determination of whether a person is engaged in a short-term rental business. Under the legislation, a person is deemed to be engaged in the short-term rental business if: 1) at least 80% of the gross rental receipts of the business during the preceding calendar year arose from transactions involving the rental of short-term rental property, other than heavy equipment property, for periods of 92 consecutive days or less; or 2) at least 60% of the gross receipts of the business in the preceding year arose from transactions involving the rental of heavy equipment property for periods of 270 consecutive days or less.

Imposition and Collection of the Tax

Like its predecessor, the Short-Term Rental Property Tax will be imposed at a rate of 1%. However, for short-term rentals for which not less than 60% of the gross rental receipts arose from transactions involving the rental of heavy equipment property for periods of 270 consecutive days or less, localities are authorized to impose the Short-Term Rental Property Tax at a rate of 1 ½%.

This act also provides that, with the exception of daily rental vehicles, all rental property must be classified, assessed, and taxed as tangible personal property if: 1) the rental property is owned and rented by a person who is not engaged in a short-term rental business; or 2) the rental property has acquired situs in the Commonwealth and is owned and rented by a person who does not collect and remit to a locality within the Commonwealth a short-term rental property tax with respect to the rental of such property.

This act also authorizes any person engaged in the business of renting "daily rental property" as defined prior to July 1, 2009, who was collecting the daily rental property tax on December 31, 2008 to remain eligible to collect the tax from January 1, 2009 through June 30, 2009, regardless of the requirement that at least 80% of such person's gross receipts arising from rentals be from rentals of 92 days or less.

Effective: Tax years beginning on and after January 1, 2009.
Amended: § 58.1-3510
Added: § 58.1-3510.4 through 58.1-3510.7

Taxation of Gases in Buchanan County

Senate Bill 1507 (Chapter 770) authorizes the Commissioner of the Revenue of Buchanan County to reassess gas wells and related improvements for purposes of imposing the Real Property Tax on an annual basis, provided that gas wells and related improvements are reassessed in the general reassessment for the locality. The act also provides that Buchanan County and a taxpayer may enter into a settlement agreement that would provide a methodology for determining the fair market value of such property. In addition, the act clarifies that when determining the fair market value of gases severed from Buchanan County for purposes of the license tax imposed upon individuals engaged in the business of severing gases from the earth, the individuals are prohibited from taking any deductions, unless the deductions are permitted in a settlement agreement entered into with Buchanan County.

Local commissioners of the revenue are required, as soon as practicable after January 1 of each year, to separately assess all mineral lands and the improvements thereon, and to enter these assessments into the county land books for purposes of determining the Real Property Tax levied upon each parcel of land. Other real estate in Buchanan County is subject to reassessment every six years. Localities are also authorized to levy a license tax on every person engaging in the business of severing coal or gases from the earth at a maximum rate of one percent of the gross receipts

from the sale of coal or gases severed. Prior to enactment of this act, gross receipts constituted the fair market value measured at the time the gases were utilized or sold for utilization in the locality or at the time they were placed in transit for shipment from the locality, without any deductions.

Effective: July 1, 2009
Amended: §§ 58.1-3286 and 58.1-3712

Extends Sunset Date for BPOL Coal and Gas Road Improvement Tax

House Bill 2186 (Chapter 367) extends the sunset date for the local Business, Professional, and Occupational License ("BPOL") coal and gas road improvement tax from December 31, 2012 to December 31, 2014.

The local BPOL coal and gas road improvement tax was originally enacted in 1978 with a January 1, 1979 effective date. The tax, which is levied at a maximum rate of 1% of the gross receipts from the sale of gas or coal severed within the locality, is levied as a license tax on persons engaged in the business of severing gas or coal from the earth. At the time this law was enacted, ten localities imposed a tax on coal, gas, and oil, including the counties of Buchanan, Dickenson, Lee, Russell, Scott, Tazewell, and Wise, the city of Norton, and the towns of Big Stone Gap and Wise.

Prior to enactment of this act, the BPOL coal and gas road improvement tax was set to expire on December 31, 2012. The sunset date for this tax has been extended five times (1985, 1991, 1995, 2002, and 2007).

Effective: July 1, 2009.
Amended: § 58.1-3713.

LEGISLATIVE

STUDIES

Study of Electric Consumption Tax

House Joint Resolution 682 would have required TAX to examine the residential electric consumption tax and options for restructuring the tax to promote energy efficiency while remaining revenue neutral. TAX would have had until November 30, 2009 to complete the study and submit its findings and recommendations. Although the resolution did not pass, TAX will undertake the study on behalf of the legislature.

Senate Bill 1286 (*Acts of Assembly* 1999, Chapter 971), effective January 1, 2001, created the Electric Utility Consumption Tax, which is imposed on the consumers of electricity based on kilowatt hours delivered. The rate of the tax decreases on a sliding scale as each consumer's consumption increases. Electric service providers must collect and remit this tax to the State Corporation Commission ("SCC") and the appropriate locality.

This new tax structure was the product of the Joint Subcommittee Studying the Restructuring of the Electric Utility Industry, which worked from 1997 to 1999 to examine the retail electricity market. The purpose of the study was to determine whether restructuring the retail electricity market was feasible and in the public interest. A Taxation Task Force formed for the study and comprised of representative stakeholders formulated draft legislation designed to 1) retain the same level of revenues and 2) maintain the same apportionment of tax burden among residential, commercial, and industrial users. The current Electric Utility Consumption Tax was the result of the Joint Subcommittee's study.

Study of Recordation and Grantors Taxes

House Bill 1600 (Chapter 780), Item 269 1 c directs the Department of Taxation to convene a working group to review and make recommendations, to the Senate Finance Committee and to the House Finance Committee with respect to the basis on which recordation and grantor taxes are calculated on the transfer of real estate to the actual consideration for the real estate. The study is due on or before November 30, 2009. The working group is to be comprised of representatives of interested parties identified by the Tax Commissioner, and shall include, without limitation, representatives of associations representing real estate businesses in Virginia, the Virginia Association of Realtors, the Virginia Court Clerks Association, the Virginia Association of Counties, and the Virginia Municipal League. The working group is to consider enforcement and implementation issues associated with § 58.1-812 of the Code of Virginia. The working group is also to review the fiscal impacts related to the current law and to proposed changes in the law. The fiscal impacts on state and local governments and the housing industry will be reviewed in terms of order of magnitude.

This study is in response to HB 1823 which was introduced and, if passed, would have required the recordation tax and the grantor's tax on deeds to be based upon stated consideration, even when it is less than the actual value of the real estate conveyed by the deed. There was some discussion over whether stated consideration

or the actual value of the property conveyed should be the basis for calculating the recordation and the grantor's tax. The General Assembly decided to authorize a working group to determine the appropriate method and produce a written report.

The study is due on or before November 30, 2009.

Incentive and Penalty Options for Erroneous Reporting of Sales and Use Tax Data

House Bill 1600 (Chapter 780), Item 270(K) of the 2009 budget requires that the Department of Taxation obtain and utilize software based on Global Positioning System data in order to allocate the 1% local sales and use tax to localities. The Department of Taxation must also modify remittance forms to require each in-state vendor filing a consolidated return to report how many places of business the vendor has in each locality. The Department must also provide localities with increased computer systems access to information-only data in order to facilitate local input in error identification. Finally, the Department must report to the Chairmen of the Senate Finance and House Appropriations Committees by September 1, 2009, on incentive and penalty options for erroneous reporting of sales and use tax data by merchants.

Virginia's Corporate Income Tax System; JLARC to Study

House Joint Resolution 681 requires the Joint Legislative Audit and Review Commission ("JLARC") to study Virginia's corporate income tax system. JLARC is directed to examine all facets of the corporate income tax system and how it compares with other states' corporate income tax systems, especially those states similarly situated to Virginia economically and demographically. In particular, JLARC shall compare corporate income tax rates, revenues, exemptions, credits, and any other tax preferences afforded corporations. JLARC shall also consider Virginia's use of a cost-of-performance formula to calculate corporate income tax of multistate corporations versus the use of a market-based assessment implemented by other states. Finally, JLARC shall examine how many businesses have moved into and out of Virginia during the last 20 years and how many have expanded and minimized their operations in Virginia during the last 20 years and attempt to determine what impact the corporate income tax had on these actions.

Technical assistance shall be provided by the Department of Taxation and the Virginia Economic Development Partnership.

A preliminary report is due by the first day of the 2010 Session, and the final report is due by the first day of the 2011 Session.

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