2012
LEGISLATIVE
SUMMARY

Virginia
Department of Taxation

Craig M. Burns
Tax Commissioner

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INTRODUCTION

The ***Legislative Summary*** is published by the Department of Taxation (the Department) as a convenient reference guide to state and local tax legislation enacted by the 2012 Session of the General Assembly and Special Session I including the reconvened sessions on April 18, 2012 and May 14, 2012. 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 the Department, and
- Local taxes for which the Department assists with administration or on which the Department renders advisory assistance.

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

The ***Summary*** also includes legislative directed studies in which the Department 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 the Department regulations or guidelines. Additional information on new legislation affecting state taxes may be obtained from the Department as follows:

Telephone:

Individual Income Tax	**(804) 367-8031**
Corporate Income Tax	**(804) 367-8037**
Sales and Use Tax	**(804) 367-8037**
Employer Withholding Tax	**(804) 367-8037**
Voice/TDD/TYY	**7-1-1**

Live Chat: Click on the icon on the Department's website: www.tax.virginia.gov.

Email: Information may also be obtained by electronic mail as follows:

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

Emails sent to these addresses are not encrypted and therefore are not secure. The Department 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
July 2012

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GENERAL PROVISIONS

Sales and Use Tax Expenditure Study Mandate Eliminated

House Bill 1301 (Chapter 3, 2012 Special Session I), Item 273 (M) eliminates the mandate that the Department conduct an annual report on the fiscal, economic and policy impact of the miscellaneous Retail Sales and Use Tax exemptions set forth in *Va. Code* § 58.1-609.10. Prior to this enactment, the Department of Taxation was statutorily required to conduct an annual Retail Sales and Use Tax expenditure study. Subgroups of the miscellaneous exemptions were analyzed according to a schedule established by the Tax Commissioner on a rotating basis. Once the reports were completed for each subgroup, the Department was required to repeat the process. No exemption was to be analyzed more frequently than once every five years. The most recent cycle began in 2007 and ended in 2011. During that time, nineteen total exemptions were studied.

In addition to analyzing the miscellaneous exemptions, the Department must analyze annually the fiscal, economic and policy impact of the exemption available for nonprofit organizations that meet the requirements for exemption in Virginia set forth in *Va. Code* § 58.1-609.11. The Department combined its nonprofit report with the report on the miscellaneous exemptions.

Pursuant to this Act, the Department will continue its annual study of the nonprofit exemption and include the results in the Annual Report, but is no longer required to conduct a study on the miscellaneous exemptions set forth in *Va. Code* § 58.1-609.10.

Effective: July 1, 2012
Supersedes: § 58.1-609.12

Electronic Filing and Payment for Corporate Income Taxes

House Bill 1301 (Chapter 3, 2012 Special Session I) Item No. 273 (N) of the 2012 Appropriation Act requires all corporations to file estimated tax payments and annual income tax returns and final payments using an electronic medium in a format prescribed by the Tax Commissioner. Waivers will be granted if the Tax Commissioner finds that this requirement creates an unreasonable burden on the corporation. All requests for waiver must be submitted to the Tax Commissioner in writing.

Effective: January 1, 2013

Supersedes: § 58.1-9

Electronic Filing and Payment for Sales and Use Taxes

House Bill 1301 (Chapter 3, 2012 Special Session I), Item 273 (O) requires that all sales and use tax returns and payments be filed electronically. While the law imposes these electronic filing requirements upon all monthly sales tax filers beginning with the June, 2012 return, due in July, the Tax Commissioner has delayed the effective date for monthly filers to begin with the July, 2012 return, due August 2012 in order to give taxpayers additional time to implement these changes. Less frequent filers must first file and remit payment electronically beginning after July 1, 2013. Waivers will be granted if the Tax Commissioner finds that this requirement creates an unreasonable burden on the dealer. All requests for waiver must be submitted to the Tax Commissioner in writing.

Effective: Beginning with the July, 2012 return, due August 2012 for monthly filers. For less frequent filers, the law is effective with the first return they must file after July 1, 2013, due October 2013.
Supersedes: § 58.1-9

Mailing of Forms and Instructions

House Bill 1301 (Chapter 3, 2012 Special Session I), Item 274 (C) provides that the Department may satisfy the requirement to print and distribute local tax forms, instructions and property tax books by posting such documents on the Department's website. The Department was previously required to furnish copies of certain forms and tax books to local commissioners of the revenue.

Effective: July 1, 2012
Supersedes: § 58.1-3114

Reduce Period of Limitation for Collection Action

House Bill 35 (Chapter 840) reduces the period of limitations for the Department to make or institute collection action by levy, proceeding in court, or any other means available to the Tax Commissioner from ten to seven years from the date of the assessment. It also reduces the period of limitations for the Department to apply interest and penalty to a delinquent tax liability from seven to six years from the date of last contact with the taxpayer if no memorandum of lien has been appropriately filed.

In 2010, legislation was passed (2010 *Acts of Assembly*, Chapter 30, House Bill 17) that reduced the period of limitations from twenty to ten years from the date of the assessment.

Effective: Taxable years beginning on an after July 1, 2012
Amended: § 58.1-1802.1

INCOME TAX

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

House Bill 516 (Chapter 2) and Senate Bill 463 (Chapter 578) advance Virginia's date of conformity to the Internal Revenue Code ("IRC") from December 31, 2010, to December 31, 2011, with limited exceptions. This avoids the necessity of requiring taxpayers to make adjustments for most federal tax changes enacted in 2011.

For taxable year 2011, Virginia will conform to the temporary increase in the federal earned income tax credit (EITC) under IRC § 32(b)(3). The EITC increase was extended to taxable year 2012 by the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, but these Acts will not conform to this change for taxable year 2012. Since individual returns for taxable year 2012 are not due until May 1, 2013, the 2013 Session of the General Assembly would be able to revisit the fiscal impact of conforming to this provision for taxable year 2012.

Virginia will continue 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 generated in either taxable year 2008 or 2009. In addition, these Acts deconform from the following federal income tax provisions:

Applicable High Yield Discount Obligations

Virginia will continue to disallow the income tax deductions related to applicable high yield discount obligations under IRC § 163(e)(5)(F). The American Recovery and Reinvestment Act ("ARRA") established a provision that suspends the application of the applicable high yield debt obligation (AHYDO) rules for certain debts issued after September 30, 2008, and before January 1, 2010. Virginia will continue to not conform to this federal tax provision.

Cancellation of Debt Income

Virginia will continue to disallow the income tax exclusions related to cancellation of debt income realized in connection with a reacquisition of business debt at a discount after December 31, 2008, and before January 1, 2011. Under IRC § 108(i), the income realized upon the reacquisition of certain business debt during 2009 and 2010 may be deferred and reported in taxable years 2014 through 2018.

For taxable year 2009, taxpayers were allowed to elect a partial deferral of these exclusions for specified debt reacquired in taxable year 2009. Taxpayers that deferred cancellation of debt income from transactions in 2009 on their federal returns were allowed to elect to report the addition required by conformity in equal amounts over three taxable years: 2009, 2010 and 2011. Taxpayers who elected in 2009 to report this addition over three years must continue to report the addition for taxable year 2011.

For taxable year 2010, Virginia extended the treatment of deferral of cancellation of debt to transactions completed on or before the adoption of the 2010 Appropriations Act on April 21, 2010 (Chapter 874 of the 2010 Acts of Assembly). Because the change to the Virginia treatment of this income was not fully known until the 2010 Appropriations Act was passed by the General Assembly at its reconvened session on April 21, 2010, the treatment adopted for transactions that occurred in 2009 was extended to transactions that were completed on or before April 21, 2010. Taxpayers who elected in 2010 to report this addition over three years must continue to report the income from qualified transactions in three equal amounts for taxable years 2010, 2011 and 2012.

Domestic Production Deduction

Under these Acts, Virginia will continue to partially deconform from the domestic production deduction allowed under IRC § 199 for taxable years 2010 and thereafter. The federal domestic production deduction is equal to 9percent of qualified production activities income of the taxpayer in 2010 and thereafter. Instead of allowing the full amount of this deduction to flow through, Virginia will allow a deduction equal to two-thirds of the federal deduction. This is equivalent to allowing a deduction of 6percent of the qualifying income, as had been allowed in taxable years 2007 through 2010.

(Note: Pursuant to legislation passed by the General Assembly during the 2012 Session (House Bill 1153, Chapter 335 and Senate Bill 462, Chapter 480), taxpayers will be allowed to claim the full amount of the domestic production deduction for Virginia income tax purposes for taxable years beginning on and after January 1, 2013.)

Effective: Taxable years beginning on and after January 1, 2011
Amended: §§ 58.1-301 and 58.1-322

Conformity to the Federal Deduction for Domestic Production Activities

House Bill 1153 (Chapter 335) and Senate Bill 462 (Chapter 480) allow the entire amount of the federal deduction for domestic production activities to be deducted for Virginia income tax purposes, instead of only two-thirds of the federal deduction allowed under IRC § 199.

In 2010, Virginia partially deconformed from the federal domestic production deduction allowed under IRC § 199. This deduction was created by Congress in 2004, which allows a tax deduction for domestic production by certain businesses. The intent of the change was to reduce the effective tax rate on domestic manufacturing. The federal deduction was phased in at 3percent for taxable years 2005 and 2006, 6percent for taxable years 2007 through 2009, and 9percent for taxable years 2010 and thereafter. Virginia deconformed from the increase in the deduction, effectively freezing it at the 6percent level for Virginia income tax purposes.

Effective: Taxable years beginning on and after January 1, 2013
Amended: § 58.1-301

Apportionment for Manufacturers – Amended Performance Requirements

House Bill 460 (Chapter 427) amends the performance requirements for manufacturers electing to use the single sales factor apportionment method to require that a manufacturer maintain an employment level that is not less than 90 percent of the base year level of employment in the Commonwealth for the first three taxable years after making the election.

This Act also eliminates the penalty provision for failing to meet this requirement; however tax and interest would still be recaptured.

In 2009, legislation was enacted (2009 *Acts of Assembly*, Chapter 821, House Bill 2437) that modified the corporate apportionment formula by allowing manufacturing companies the option to use a single sales factor to determine their Virginia taxable income. A taxpayer making the single sales factor election is required to certify to the Department that the average weekly wage of its full-time employees is greater than the lower of the state or local average weekly wage for the taxpayer's industry. The legislation also required 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, the Department is 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, the legislation required that a ten percent penalty be assessed and that interest accrue.

Effective: July 1, 2012
Amended: § 58.1-422

Apportionment for Retail Companies

House Bill 154 (Chapter 86) and Senate Bill 49 (Chapter 666) modify the corporate apportionment formula by requiring retail companies to use a single factor apportionment based on sales to determine their Virginia taxable income. This modification will be phased in as follows:

- For taxable years beginning on or after July 1, 2012, but before July 1, 2014, qualifying corporations must use a triple-weighted sales factor;
- For taxable years beginning on or after July 1, 2014, but before July 1, 2015, qualifying corporations must use a quadruple-weighted sales factor; and
- For taxable years beginning on or after July 1, 2015, and thereafter, qualifying corporations must use the single sales factor method to apportion Virginia taxable income.

In Virginia, multistate corporations are generally required to use a three-factor formula of property, payroll and double-weighted sales. The sum of the property factor, payroll factor and twice the sales factor is divided by four to arrive at the final apportionment factor. This amount is then multiplied by Virginia taxable income.

Effective: Taxable years beginning on and after July 1, 2012
Amended: § 58.1-408
New: § 58.1-422.1

Coalfield Employment Enhancement Tax Credit

House Bill 1192 (Chapter 309) and Senate Bill 609 (Chapter 649) extend the sunset date for the Coalfield Employment Enhancement Tax Credit from taxable years beginning before January 1, 2015 to taxable years beginning before January 1, 2017. Because this sunset date applies to when credits may be earned, these Acts permit credits to be earned through Taxable Year 2016. The Coalfield Employment Enhancement Tax Credit may be claimed in the third taxable year in which the credit is earned and allowed. Accordingly, credits earned in Taxable Year 2016 would be claimed in Taxable Year 2020.

Effective: July 1, 2012
Amended: § 58.1-439.2

Credit for Taxes Paid to Another State

Senate Bill 681 (Chapter 292) clarifies existing law by defining the types of taxes that constitute an "income tax" for purposes of the individual income tax credit for income taxes paid to other states, and by providing examples of taxes that do not meet this definition. Specifically, this Act defines an "income tax" as a term of art that refers to a specific type of tax levied on all of a resident's earned and unearned income, and all income of a nonresident from sources within the jurisdiction, which is similar to the income tax that Virginia imposes on resident and nonresident individuals. The Act includes examples of taxes that do not qualify for the credit, even though they may be measured, in part, by income. Taxes do not qualify because (i) they are labeled as a franchise or license tax, and (ii) they do not tax all income of the individual. Examples of taxes that do not qualify for the credit when the provisions of this Act are applied include the DC Unincorporated Business Franchise Tax, the Texas Margin Tax, and the Ohio Commercial Activity Tax.

This Act clarifies and restores the intent behind the long-standing policy of allowing a credit only for income taxes that are similar to Virginia's individual income tax. This Act is declarative of existing law and retroactive in nature. It confirms not only the Department's policy for the last 50 years, but also follows the result of a 1997 decision of the Virginia Supreme Court, both of which have been consistently applied by the Department throughout the retroactive period. A recent circuit court case, *Gardiner v. Commonwealth*, created uncertainty over the application of the credit. This Act clarifies the law regarding the application of the credit and eliminates the uncertainty created by the *Gardiner* decision.

Effective: Taxable years beginning on an after January 1, 2007
New: § 58.1-332.2

Dedication of Revenues to the Virginia Commercial Space Flight Authority

House Bill 813 (Chapter 779) and Senate Bill 284 (Chapter 817) establish the Commonwealth Space Flight Fund ("Fund") as part of the Transportation Trust Fund and allocate $9.5 million each fiscal year in Fiscal Years 2013 through 2017 of revenues currently dedicated to the Transportation Trust Fund to the Fund. The Acts allocate the revenue in the Fund to the Board of Directors of the Virginia Commercial Space Flight Authority ("Authority") in order to foster and stimulate the growth of the commercial space flight industry in Virginia. The Acts also make several changes to the administration of the Authority.

The Acts clarify existing law regarding the amount of revenue generated by commercial spaceflight activities that must be transferred to the Authority. The amount that is transferred would be based on the portion of Virginia income tax revenue generated by qualified companies, rather than net revenue. Revenue that is attributable to the sale of commercial human spaceflights or commercial spaceflight training would qualify for the transfer, regardless of point-of-sale or where the spaceflight takes place. Additionally, the provision applies to limited liability companies, as well as corporations.

Under current law, the revenue generated by a 0.5 percent sales and use tax is dedicated to the Transportation Trust Fund. Moneys in this fund are dedicated to transportation needs in the Commonwealth. Of the funds, 4.2 percent are set aside as the Commonwealth Port Fund, 2.4 percent is set aside as the Commonwealth Airport Fund, and 14.7 percent is set aside as the Commonwealth Mass Transit Fund.

Effective: July 1, 2012
Amended: §§ 2.2-2201, 2.2-2202, 2.2-2203, 2.2-2204, 2.2-2213, 2.2-2215, 33.1-23.03:2, 33.1-23.7, 58.1-423, and 58.1-638

New: §§ 2.2-2203.1 through 2.2-2203.4

Education Improvement Scholarships Tax Credit

House Bill 321 (Chapter 842) and Senate Bill 131 (Chapter 731) create an income tax credit for monetary donations made to scholarship foundations. The credit is equal to 65 percent of the monetary donation made to the scholarship foundation and can be claimed for the taxable year following the year of contribution. The credit can be claimed against the individual income tax, corporate income tax, bank franchise tax, insurance premiums license tax, or tax on public service corporations. No tax credit is allowed if the monetary donation is less than $500. No more than $50,000 in tax credits may be issued to an individual or to married persons in a taxable year. This $50,000 limitation does not apply to credits issued to any business entity, including a sole proprietorship.

Requirements for Taxpayers

Taxpayers are required to request and receive preauthorization for a specified tax credit amount from the Superintendent of Public Instruction. The preauthorization notice must accompany the donation from the taxpayer to the scholarship foundation. The scholarship foundation is required to return the notice to the Department of Education within 20 days certifying the amount of the donation and date received. A taxpayer is required to make the preauthorized contribution within 180 days of issuance of the notice.

In addition to being preauthorized, taxpayers claiming credit for a contribution would be required to submit verification from each scholarship foundation to which monetary donations have been made. The receiving scholarship foundation must be on the annual list of approved scholarship foundations published pursuant to the legislation in order for the tax credit to be approved.

Tax credits will be awarded to taxpayers on a first-come, first-served basis in accordance with procedures established by the Department of Education. The total amount of credits available in any fiscal year is capped at $25 million. Any unused tax credits may be carried over for the next five succeeding taxable years or until the total amount of credit has been taken, whichever is sooner.

Requirements for Scholarship Foundations

Scholarship foundations must apply to the Department of Education to be approved to receive and administer tax credit-approved funds. The Department of Education must issue a notice of approval or denial, including reasons for denial to the applicant, within 60 days after the application is submitted. A “scholarship foundation” is defined as a nonstock, nonprofit corporation that is exempt from taxation under IRC § 501(c)(3), that has been approved by the Department of Education, and that is established to provide financial aid for the education of students residing in the Commonwealth.

Scholarship foundations must disburse at least 90 percent of the amount of each donation for which a tax credit may be received within one year of such donation for “qualified educational expenses” through scholarships. Any scholarship foundation that fails to disburse at least 90 percent of any donated amount within one year will be removed from the annual list published by the Department of Education and will not be entitled to request preauthorization for additional tax credits, nor will it be entitled to receive and administer additional tax credit-derived funds. Tax credit-derived funds not used for such scholarships are permitted to be used only for the administrative expenses of the scholarship foundation. "Qualified educational expenses" are defined as school-related tuition and instructional fees and materials, including textbooks, workbooks, and supplies used solely for school-related work. Scholarship foundations must provide receipts to individual taxpayers for their contributions.

By September 30 of each year, each scholarship foundation must provide the following information to the Department of Education:

- The total number and dollar amount of contributions received between September 1 of the prior calendar year and September 1 of the current calendar year;
- The dates when such contributions were received; and
- The total number and dollar amount of qualified educational expenses scholarships awarded for the school year that began during the current calendar year

Any scholarship foundation that fails to provide this report by September 30 will be removed from the annual list published by the Department of Education and will not be entitled to request preauthorization for additional tax credits, nor will it be entitled to receive and administer additional tax credit-derived funds.

In awarding scholarships from tax credit-derived funds, the scholarship foundation must: (i) provide scholarships for qualified educational expenses only to students whose family's annual household income is not in excess of 300 percent of the current poverty guidelines or any eligible student with a disability; (ii) not limit scholarships to students of one school; and (iii) comply with Title VI of the Civil Rights Act of 1964. Scholarship foundations are also required to ensure that schools selected by students to which tax credit-derived funds may be paid meet certain requirements. Eligible schools are required to compile certain data regarding students receiving tax credit-derived scholarships and provide such information to the Department of Education.

The aggregate amount of scholarships provided to each child for any single school year by all eligible scholarship foundations from eligible donations cannot exceed the lesser of: (i) the actual qualified educational expenses, or (ii) 100 percent of the per-pupil amount distributed to the local school division in which the student resides as the state's share of the standards of quality costs using the composite index of ability to pay as defined in the general Appropriations Act. Scholarship foundations must develop procedures for disbursing scholarships in quarterly payments throughout the school year to ensure scholarships are portable.

These Acts also make changes to the Neighborhood Assistance Act Tax Credit (see the section entitled "Neighborhood Assistance Act Tax Credit: Expansion of Credit.")

Effective:	Taxable years beginning on and after January 1, 2013, but before January 1, 2018
New:	Article 13.3 (§§ 58.1-439.25, 58.1-439.26, 58.1-439.27, and 58.1-439.28)
Sunset:	Taxable years beginning on and after January 1, 2018

Historic Rehabilitation Tax Credit – Subtraction for Certain Gain or Income

House Bill 531 (Chapter 92) and Senate Bill 444 (Chapter 639) allow any amount of gain or income recognized by a taxpayer in connection with the Historic Rehabilitation Tax Credit, which is treated as taxable income for federal tax purposes, to be subtracted from individual income, corporate income and estate and trust taxes.

Under Virginia law, an individual, estate, trust, or corporation with eligible expenses in the rehabilitation of a certified historic structure is entitled to claim a tax credit. The credit is equal to 25 percent of rehabilitation expenses for projects completed in 2000 and thereafter.

Virginia law allows tax credits awarded to partnerships to be allocated among the partners in a manner agreed upon by the partners. As a general practice, partnerships solicit investors to join the partnership and receive allocations of the tax credit in exchange for their cash investments. The investors, however, would not receive any material distributions of cash or an allocation of the partnership's income, gain, loss or deductions.

The transactions are typically structured so that investors would receive an allocation of the tax credits immediately following their cash contribution to the partnership. After holding interest in the partnership for a certain amount of time, the investors would then sell their interests back to the partnership for a small fraction of the cash they originally paid.

On March 29, 2011, the U.S. Court of Appeals for the Fourth Circuit overturned the U.S. Tax Court decision in *Virginia Historic Tax Credit Fund 2001 v. Commissioner.* The lower court had determined that three investment funds had been formed for a legitimate business purpose, were valid partnerships and were correctly not assessed income tax related to the investors' capital contributions. In overturning the lower court, the Fourth Circuit Court determined that investors in historic development projects through the Tax Credit Funds were not partners for federal income tax purposes and that the receipt of federal historic tax credits in exchange for their investment should be treated as a sale. Consequently, both the Tax Credit Funds and investors will realize taxable income arising from the deemed sale of the historic tax credits. The Fourth Circuit decision, however, did not directly affect the Virginia Historic Rehabilitation Tax Credit.

These Acts are in response to the Fourth Circuit ruling, and are intended to prevent Virginia taxpayers who invest in historic rehabilitation projects from being adversely affected by the Fourth Circuit decision. These Acts also contain an enactment clause stating that the provisions of the Acts are declarative of existing law.

Effective: July 1, 2012
Amended: § 58.1-339.2
Sunset: None

Land Preservation Tax Credit: Distribution of Transfer Fee Revenues

House Bill 336 (Chapter 232) excludes federal government entities from the public or private conservation agencies or organizations that may receive a portion of the revenue from the two percent fee imposed on Land Preservation Tax Credit transfers. This Act also excludes federal government entities from the calculation of this three-year average of the number of donated interests accepted by public or private conservation agencies or organizations that is used when proportionally distributing revenues from the fee imposed on Land Preservation Tax Credit transfers.

Up to 50 percent of the revenues generated by the two percent transfer fee are used to recover the administrative costs incurred by the Department of Taxation and the Department of Conservation and Recreation. The remaining amount generated by the fee is transferred to the Virginia Land Conservation Fund for annual distribution to the public or private agencies or organizations that are responsible for enforcing the conservation and preservation purposes of the donated interests. This Act would exclude federal government entities from the agencies eligible to receive such distributions.

Revenues must be distributed proportionally to qualifying agencies and organizations based on a three-year average of the number of donated interests accepted by the public or private conservation agencies or organizations during the immediately preceding three-year period. This Act excludes federal government entities from the calculation of this three-year average.

Effective: July 1, 2012
Amended: § 58.1-513
Sunset: None

Major Business Facility Job Tax Credit: Extension of Two-Year Period

House Bill 714 (Chapter 93) and Senate Bill 368 (Chapter 475) extend the time during which the Major Business Facility Job Tax Credit may be taken over a two-year period through taxable years beginning December 31, 2014. The Major Business Facility Job Tax Credit must generally be claimed ratably over three taxable years, beginning with the taxable year following the year in which the major business facility is established or expanded, or the new qualifying jobs are added. Effective for taxable years beginning January 1, 2009 through December 31, 2012, taxpayers are allowed to claim the credit amount over two years instead of three. These Acts would extend this time during which the credit may be claimed over a two-year period through taxable years beginning December 31, 2014.

Effective: July 1, 2012

Amended: § 58.1-439

Major Business Facility Job Tax Credit: Interaction with Enterprise Zone Job Creation Grant Program

House Bill 841 (Chapter 445) allows a qualifying business to receive both a Major Business Facility Job Tax Credit and an Enterprise Zone Job Creation Grant. Previously, any qualified business firm receiving an Enterprise Zone Job Creation Grant was not eligible to receive a Major Business Facility Job Tax Credit. Although this Act would allow a business to receive both incentives for different jobs, it would prohibit a business from claiming the Major Business Facility Job Tax Credit and receiving an Enterprise Zone Job Creation Grant for the same jobs.

Effective: The provisions related to the Major Business Facility Jobs Tax Credit are effective for taxable years beginning on and after January 1, 2012, and the provisions related to Enterprise Zone Job Creation Grants are effective beginning with the 2012 grant year.
Amended: §§ 58.1-439; 59.1-547

Neighborhood Assistance Act Tax Credit – Expanded to Include Mediators

House Bill 368 (Chapter 596) expands the professional services eligible for tax credits under the Neighborhood Assistance Act to include services provided by mediators certified by the Judicial Council of Virginia.

The Virginia Neighborhood Assistance Act provides an income tax credit to businesses and individuals that donate to neighborhood organizations for approved programs that benefit impoverished people. Under this Act, a neighborhood organization is allocated credits through the Neighborhood Assistance Act Program. The Department of Social Services ("DSS") is responsible for approving the programs and allocating the tax credits to the qualifying neighborhood organizations. When an individual or business donates to an organization that qualifies as a neighborhood organization, they are eligible to receive an income tax credit from that neighborhood organization.

In addition to money and property, taxpayers may donate certain professional services in order to qualify for this credit. "Professional services" is currently defined to include personal services rendered by medical doctors, dentists, architects, professional engineers, certified public accountants, attorneys-at-law, and veterinarians.

Effective: July 1, 2012
Amended: § 58.1-439.22

Neighborhood Assistance Act Tax Credit: Expansion of Credit

House Bill 321 (Chapter 842) and Senate Bill 131 (Chapter 731) expand the Neighborhood Assistance Act Tax Credit program by increasing the tax credit percentage, increasing the annual credit cap for education proposals, removing the annual per taxpayer cap for business firms, increasing the amount of tax credits that a neighborhood organization or grouping of neighborhood organization affiliates may reserve, and expanding the requirements for neighborhood organizations. These Acts also change the current procedures for reallocation of Neighborhood Assistance Act Tax Credits and extend the sunset date for the Neighborhood Assistance Act Tax Credit program from July 1, 2014 to July 1, 2017.

These Acts also create an Education Improvement Scholarships Tax Credit (see the section entitled "Education Improvement Scholarships Tax Credit.")

Increase in Percentage Amount

These Acts increase the credit percentage from 40 percent to 65 percent of the value of the money, property, professional services, and contracting services donated by a business firm, or 65 percent of the monetary donation or donation of marketable securities made by an individual.

Annual Credit Cap

These Acts increase the annual cap for Neighborhood Assistance Act Tax Credits from $11.9 million to $15 million. The credit cap for education proposals is increased from $4.9 million to $8 million and the credit cap for all other proposals remains at $7 million.

In addition to increasing the overall credit cap, House Bill 321 removes the annual per taxpayer cap for business firms. Under prior law, business firms were not allowed a tax credit in excess of $175,000 per taxable year. House Bill 321 removes this limitation.

Requirements for Neighborhood Organizations

To qualify as a neighborhood organization under prior law, at least 50 percent of the persons served by the organization must be impoverished people with annual family income not in excess of 200 percent of the current poverty guidelines. Additionally, education proposals are considered to be any type of scholastic instruction or scholastic assistance to an individual with family income not in excess of 200 percent of the current poverty guidelines. This bill would expand these requirements to include assistance provided to an individual with a family annual household income not in excess of 300 percent of the current poverty guidelines, or an eligible student with a disability. For purposes of this bill, an "eligible student with a disability" would be defined as a student (i) for whom an individualized educational program has been written and finalized in accordance with the federal Individuals with Disabilities Education Act (IDEA), regulations promulgated pursuant to IDEA, and regulations of the Board of Education, and (ii) whose family's annual household income is not in excess of 400 percent of the current poverty guidelines.

Reservation Amount for Neighborhood Organizations

These Acts increase the amount of tax credits that a neighborhood organization or grouping of neighborhood organization affiliates may reserve for all education proposals from $500,000 to $850,000. This increased limitation does not apply to any grouping of neighborhood organization affiliates that was approved for more than an aggregate of $500,000 in Neighborhood Assistance Act Tax Credits for education proposals in Fiscal Year 2009 or earlier. The amount of tax credits that a neighborhood organization or grouping of neighborhood organization affiliates may reserve for non-education proposals remains at $500,000.

Changes to Reallocation Procedures

Under prior law, if the amount of tax credits requested by neighborhood organizations and approved by the Superintendent for education proposals is less than $4.9 million, the balance of such amount is allocated to programs for approval by the Commissioner of the Department of Social Services. Under these Acts, any balance after credits for education proposals have been allocated will not be allocated to other programs approved by the Department of Social Services. Rather, if either the Department of Social Services or Department of Education has a balance of tax credits remaining after the initial allocation of tax credits to approved proposals, then the Commissioner of the Department of Social Services or the Superintendent of Public Instruction, as applicable, must reallocate the remaining balance of tax credits to such previously approved proposals to the extent that a neighborhood organization can use or allocate additional tax credits for the previously approved proposal. The $500,000 and $850,000 annual limitations for tax credits approved to a grouping of neighborhood organization affiliates is inapplicable to the extent of any such reallocation. The balance of credits remaining for allocation include the amount of tax credits that have been granted for a proposal approved during the initial allocation but for which the Commissioner of the Department of Social Services or the Superintendent of Public Instruction has been provided notice by the neighborhood organization that it will not be able to use or allocate such amount for the approved proposal.

Effective: July 1, 2012
Amended: §§ 58.1-439.18, 58.1-439.19, 58.1-439.20, 58.1-439.21, and 58.1-439.24

Neighborhood Assistance Act Tax Credit – Reduced Low-Income Persons Threshold

Senate Bill 680 (Chapter 837) revises the minimum percentage of low-income persons that a neighborhood organization must serve in order to qualify for the Neighborhood Assistance Act Tax Credit program. Under this Act, the minimum percentage of low-income persons that neighborhood organizations approved by the Board of Social Services must serve would decrease from 50 to 40 percent. The minimum percentage of low-income persons that must be served by neighborhood organizations approved by the Board of Education would continue to be 50 percent.

Under current law, in order to be eligible for participation in the Neighborhood Assistance Program and receive an allocation of tax credits, an applicant must meet the following criteria: (i) have been in operation as a viable entity, providing neighborhood assistance for impoverished people, for at least 12 months; (ii) must be able to demonstrate that at least 50 percent of the total people served and at least 50 percent of the total expenditures were for impoverished people; (iii) must not contain any significant findings or areas of concern for the ongoing operation of the neighborhood organization following an audit; and (iv) must demonstrate that at least 75 percent of total revenue received is expended to support the applicant's ongoing programs each year.

(Note: Pursuant to legislation passed by the General Assembly during the 2012 Session (House Bill 321, Chapter 842 and Senate Bill 131, Chapter 731), the definition for "impoverished persons" under the Neighborhood Assistance Act was eliminated and replaced with the definition for "low-income persons.")

Effective: July 1, 2012
Amended: § 58.1-439.20

Paper Checks for Individual Refunds Eliminated

House Bill 1301 (Chapter 3, 2012 Special Session I), Item 466 (C) requires the State Comptroller to issue individual income tax refunds only through debit cards, direct deposits or other electronic means, unless the Tax Commissioner determines that a check is more appropriate for a transaction or class of transactions. Currently, taxpayers may request to receive an income tax refund in the form of a paper check or through direct deposit.

Effective: January 1, 2013
Supersedes: § 2.2-1825 and § 59.1-479 et seq.

Port Tax Credits

House Bill 1183 (Chapter 846) and Senate Bill 578 (Chapter 849) make several changes to the existing port tax credits. They extend the sunset dates for the for the International Trade Facility Tax Credit and the Barge and Rail Usage Tax Credit from taxable years beginning before January 1, 2015, to taxable years beginning before January 1, 2017. Under these Acts, the Tax Commissioner is not permitted to issue either of these tax credits subsequent to the Commonwealth's fiscal year ending June 30, 2017. These Acts also extend the sunset date for the Port Volume Increase Tax Credit from taxable years beginning before January 1, 2016, to taxable years beginning before January 1, 2017.

These Acts also make several related to changes to the International Trade Facility Tax Credit and the Barge and Rail Usage Tax Credit. Under these Acts, the amount of the jobs portion of the International Trade Facility Tax Credit increases from $3,000 per qualified full-time employee to $3,500 per qualified full-time employee. These Acts also allow the Barge and Rail Usage Tax Credit to be claimed for qualified shipments of noncontainerized cargo, in an amount equal to $25 per 16 tons of noncontainerized cargo moved by barge or rail rather than by trucks or other motor vehicles on Virginia's highways.

In addition to making changes to the port tax credits, these Acts impose a reporting requirement on the Department of Taxation. The Department must submit a report concerning the International Trade Facility, Barge and Rail, and Port Volume Increase Tax Credits to the House Appropriations, House Finance, and Senate Finance Committees no later than November 15 of the year immediately preceding the sunset date. Such report must include the following information about each of the port tax credits:

- The number of persons, individuals, or other classes of taxpayers claiming the credit in each of the immediately preceding five years;
- The aggregate amount of credits claimed in each of the preceding five years by each class of taxpayers;
- The average amount of credit claimed by each class of taxpayers in each of the preceding five years;
- The average amount of taxes paid, after claiming any credits or deductions, by each class of taxpayers claiming the tax credit in each of the preceding five years;
- Any noted trends in the use of the tax credit; and
- Any other information deemed relevant by the Department.

These Acts also require the Office of the Governor to report to the General Assembly on recommendations regarding the establishment of an economic development zone and incentives to attract the distribution, manufacturing, warehousing, intermodal, and other support facilities needed for the Port of Virginia to realize the projected growth spanning from the Panama Canal Expansion Project. These recommendations must be provided to the Chairmen of the House Appropriations Commission, the House Transportation Committee, the Senate Finance Committee, and the Senate Transportation Committee by December 1, 2012.

Effective:	July 1, 2012.
Amended:	§§ 10.1-1188, 58.1-439.12:06, 58.1-439.12:09, 58.1-439.12:10, 62.1-129, 62.1-132.6, and 62.1-139
New:	§ 62.1-132.3:1

Qualified Equity and Subordinated Debt Investment Tax Credit

Item 3-6.04 of the 2012 Appropriations Act (House Bill 1301, Chapter 3, 2012 Special Session I) and Item 3-5.01 of the 2012 Amendments to the 2011 Appropriations Act (House Bill 1300, Chapter 2) reduce the cap for the Qualified Equity and Subordinated Debt Investments Tax Credit from $5 million to $3 million for taxable years beginning on and after January 1, 2011, but before December 31, 2011. For taxable years beginning on and after January 1, 2012, the 2012 Appropriations Act changes the credit cap to $4 million.

The amount of Qualified Equity and Subordinated Debt Investments Tax Credits available in a calendar year is statutorily limited to $5 million. Since 2006, budgetary language has reduced the annual credit cap to $3 million, beginning with taxable years beginning on and after January 1, 2006. The 2010 Appropriations Act (Chapter 874, Acts of Assembly of 2010) restored the $5 million cap, beginning with taxable years beginning on and after January 1, 2010. The 2012 budget bills impose the $3 million cap for taxable year 2011. For taxable years beginning on and after January 1, 2012, the credit cap is $4 million.

Effective: Taxable years beginning on and after January 1, 2011

Subtraction for Capital Gains Income

House Bill 1013 (Chapter 96) and Senate Bill 226 (Chapter 256) amend the subtraction for certain capital gains to extend the time during which qualifying investments may be made from June 30, 2013 to June 30, 2015.

The subtraction is allowed for capital gains income related to investments in “qualified businesses” as defined for purposes of the Qualified Equity and Subordinated Debt Tax Credit, or in any other technology business approved by the Secretary of Technology, provided its principal office or facility is in the Commonwealth and it has less than $3 million in annual revenues in the fiscal year prior to the investment. Under current law, the related investment must be made between April 1, 2010 and June 30, 2013. These Acts extend the time during which qualifying investments may be made to June 30, 2015.

Effective: July 1, 2012.
Amended: §§ 58.1-322; 58.1-402

Subtraction for Certain Death Benefits

House Bill 879 (Chapter 305) clarifies that a subtraction for death benefit payments from an annuity contract is allowed, provided that (i) the death benefit payment is made pursuant to an annuity contract with an insurance company; (ii) the death benefit payment is paid to the annuitant in a lump sum, and (iii) the death benefit payment is included in federal adjusted gross income.

In 2006, legislation was enacted that created a subtraction for death benefit payments received from an annuity contract that are subject to federal income taxation. It is has been the Department's understanding that the intent of this law was to equalize the tax treatment of death benefits for those who cannot obtain life insurance because they are uninsurable for health reasons. Life insurance benefit payments paid by reason of the death of the insured are exempt from federal taxation, and thus exempt from Virginia taxation, while a portion of the death benefits from an annuity contract are taxable. Thus, those who cannot obtain standard life insurance and so must utilize annuities to provide a similar benefit to their loved ones, are treated dissimilarly for tax purposes. It was on this basis that the death benefits subtraction for annuity contracts was created in 2006 (2006 *Acts of Assembly*, Chapter 617, House Bill 1535).

This Act codifies the Department's interpretation of the existing law.

Effective: July 1, 2012
Amended: § 58.1-322

Sunset Provisions on State Income Tax Credits

House Bill 246 (Chapter 265) prohibits legislation from adding a new state tax credit or renewing an existing state tax credit unless the bill contains an expiration date of not longer than five years from the effective date of the new or renewed state tax credit.

Effective: July 1, 2012
New: § 30-19.1:11

Telework Expenses Tax Credit

House Bill 551 (Chapter 327) and Senate Bill 238 (Chapter 341) extend the sunset date for the Telework Expenses Tax Credit from taxable years beginning before January 1, 2014 to taxable years beginning before January 1, 2017. These Acts also extend the date before which an employer must enter into a telework agreement with a participating employee from January 1, 2014 to January 1, 2017.

These Acts would also make other changes related to the Telework Expenses Tax Credit. Such changes include clarifying that the credit is for expenses incurred during the calendar year that ends during the taxable year and that the reservation application must be submitted in the year preceding the calendar year in which the eligible telework expenses will be incurred. Additionally, these Acts would clarify that the credit cannot exceed $50,000 per employer for each calendar year and that an employer is prohibited from claiming another Virginia income tax credit based on the jobs, wages, or other expenses for the same employee.

Effective: Taxable years beginning on an after January 1, 2012.
Amended: § 58.1-439.12:07

CIGARETTE TAX

Disclosure of Information to Tobacco Products Manufacturers

House Bill 52 (Chapter 395) amends the secrecy of information section of the Tax Code to authorize the disclosure of reports or information filed with the Attorney General by a stamping agent pursuant to the implementation of the Tobacco Master Settlement Agreement statutes. The information must be requested in writing by a tobacco product manufacturer required to establish a qualified escrow fund pursuant to the implementation of the Tobacco Master Settlement Agreement statutes. The disclosure is limited to information for the current or previous two calendar years, or in any year in which the Attorney General receives information from a stamping agent potentially altering the required escrow deposit of the manufacturer, concerning the cigarette brand families of the requesting manufacturer as listed in the directory of cigarettes approved for stamping and sale published by the Attorney General.

Tobacco product manufacturers are allowed to request the information on a quarterly or yearly basis or when a manufacturer is notified by the Attorney General of a potential change in the required escrow deposit. The Act requires the Attorney General to provide a list of the stamping agents who reported stamping or selling the manufacturer's products and the amount reported within 15 days of the request. The manufacturer is allowed to request copies of the stamping agents' reports from the Attorney General only if it has requested copies from the stamping agents as provided in the law and not received them.

Under current law, every tobacco product manufacturer whose cigarettes are sold in Virginia must certify annually to the Tax Commissioner and the Attorney General that it is a participating manufacturer ("PM") in the Master Settlement Agreement ("MSA") or a nonparticipating manufacturers ("NPM") in compliance with the NPM statute. In addition to making this designation, each tobacco product manufacturer must include with its certification a list of brand families sold in Virginia. NPMs must also report detailed information on how many units of each brand were sold in the Commonwealth in the preceding year. Stamping agents must also file a quarterly report with the Attorney General that includes a list by brand family of the total number of cigarettes for which the stamping agent affixed stamps during the previous calendar quarter or otherwise paid the tax due for such cigarettes. *Virginia Code* § 58.1-3 prohibits the disclosure of reports, returns, financial documents or other information filed with the Attorney General pursuant to the implementation of the Tobacco Master Settlement Agreement except in accordance with a proper judicial order or as otherwise provided by law.

Effective: July 1, 2012
Amended: § 58.1-3

Penalties for Tax-paid Contraband Cigarettes

House Bill 479 (Chapter 362) and Senate Bill 347 (Chapter 472) provide criminal and civil penalties for persons other than authorized holders possessing more than 25 cartons of tax-paid cigarettes with the intent to distribute. "Tax-paid cigarettes" is defined as cigarettes that either i) bear valid Virginia cigarette tax stamps or ii) were purchased outside the Commonwealth and either bear a valid tax stamp of the applicable stamp or evidence can be provided that the applicable excise taxes have been paid. "Authorized holder" is defined as i) a manufacturer; ii) a wholesale dealer; iii) a stamping agent; iv) a retail dealer; v) an exclusive distributor; vi) an officer, employee, or other agent of the federal government, a state, locality, or political subdivision of a state, having possession of cigarettes in connection with the performance of official duties; vii) a person properly holding tax-exempt cigarettes; viii) a common or contract carrier transporting cigarettes under a proper bill of lading or other documentation.

Persons other than authorized holders who possess more than 25 cartons of tax-paid cigarettes with the intent to distribute are guilty of a Class 2 misdemeanor for a first offense and a Class 1 misdemeanor for any subsequent offense. Such persons are also required to pay a penalty of $2.50 per pack, up to $5,000, for a first offense, $5 per pack, up to $10,000, for a second offense committed within a 36 month period, and $10 per pack, up to $50,000, for the third or subsequent offense committed within a 36 month period. The civil penalty would be assessed and collected by the Department. The Acts also authorize seized cigarettes to be assigned by a court for use by a law-enforcement operation.

Under current law, stamping agents who fail to properly affix revenue stamps are required to pay a penalty of $2.50 per pack, up to $500, for the first violation by a legal entity within a 36 month period, $5 per pack, up to $1,000, for the second violation by the legal entity within a 36 month period, and $10 per pack, up to $50,000, for the third or subsequent violation by the legal entity within a 36 month period. Stamping agents are required to pay a civil penalty of $25 per pack, up to $250,000, where willful intent exists to defraud. Persons other than stamping agents who sell, purchase, transport, receive, or possess unstamped cigarettes, except as otherwise provided by law, are also subject to the same civil penalties.

Effective: July 1, 2012
Amended: §§ 58.1-1000 and 58.1-1037
New: § 58.1-1017.1

Roll-Your-Own Cigarette Machines

House Bill 314 (Chapter 48) and Senate Bill 74 (Chapter 68) provide that any person who maintains, operates, or rents a "roll-your-own cigarette machine" at a retail establishment that enables a person to process a product that is made or derived from tobacco into a roll or tube shall be deemed a manufacturer of cigarettes. The resulting products are deemed manufactured cigarettes sold to a consumer for purposes of the state and local cigarette taxes, the implementation of the Master Settlement Agreement, and reduced cigarette ignition propensity. The retail establishment may purchase tobacco upon which tax has not been paid and which has not met the requirements of the Master Settlement Agreement statutes provided that i) the tobacco is sold only to consumers for use in making cigarettes on the roll-your-own cigarette machines, ii) the retail establishment pays the taxes due on such cigarettes, and iii) the retail establishment complies with the Master Settlement Agreement statutes. The sale and use of cigarette rolling machines purchased for personal use by an individual consumer to make cigarettes for personal consumption and not for rental or use by other consumers is not subject to these provisions.

Under current law, roll-your-own tobacco is included in the definition of "cigarette" and subject to the Virginia Cigarette Tax at the rate of 10percent of the manufacturer's sales price. Currently, no cigarette may be sold in the Commonwealth unless the manufacturer has certified with the Department of Agricultural and Consumer Services that its ignition strength has been tested and met the performance standard set forth in the Code. The packaging of the cigarette must also be marked as being compliant with such fire safety standards and meet federal requirements related to the health effects of smoking.

Effective: July 1, 2012
New: § 58.1-1003.3

MOTOR VEHICLE FUEL SALES TAX

Transfer of the Administration of the Motor Vehicle Fuel Sales Tax

House Bill 876 (Chapter 217) and Senate Bill 503 (Chapter 225) transfer the administration of the Motor Vehicle Fuel Sales Tax from the Department of Taxation to the Department of Motor Vehicles ("DMV"). This is a recommendation of Governor McDonnell's Government Reform & Restructuring Commission.

Under current law, distributors of fuels must collect the Motor Vehicle Fuel Sales Tax at the rate of 2.1 percent of the sales price imposed upon any retail dealer for retail sale in the Northern Virginia Transportation District and the Potomac and Rappahannock Transportation District. The revenue from the tax is distributed monthly to the appropriate district and used for transportation needs within the district. The Northern Virginia Transportation District is comprised of the Counties of Arlington, Fairfax and Loudoun and the Cities of Alexandria, Fairfax, and Falls Church. The Potomac and Rappahannock Transportation District is comprised of the Counties of Prince William, Spotsylvania, and Stafford and the Cities of Fredericksburg, Manassas and Manassas Park.

Effective:	July 1, 2013
New:	§§ 58.1-2291 through 58.1-2299.20
Repealed:	§§ 58.1-1718.1 through 58.1-1724.1, 58.1-1724.2 and 58.1-1724.4

RECORDATION TAX

Actual Consideration State Deed or Other Document

House Bill 734 (Chapter 513) requires that a deed or other document that conveys real property state on its first page the actual consideration in order to be admitted to record by the Clerk of the Circuit Court.

The recordation taxes consist of several taxes imposed upon the recordation of deeds, deeds of trust, leases and contracts relating to real estate. The tax rate is 25 cents on every $100 (or fraction of $100) of the consideration or the actual value of the property conveyed, whichever is greater. An additional tax may be imposed by the localities equal to one-third of the state tax. In addition to the tax on deeds, a grantor tax is imposed at the rate of 50 cents on every $500 (or fraction of $500) of the consideration or value of the interest exclusive of the value of any lien or encumbrance.

Under current law, a deed or other document will not be submitted to record without certification from the Clerk of the Circuit Court of the amount that was collected.

In 2009, the General Assembly (2009 Acts of Assembly, Chapter 95, House Bill 2135), made it a Class 1 misdemeanor to knowingly misrepresent 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. In addition, it established that 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 would be added to the amount of the tax due, and that interest would be imposed on the tax from the time the tax was required to be filed until it was paid.

Effective: For deeds or other documents submitted to record on or after July 1, 2012
Amended: § 58.1-802

Recordation Tax: Tax for Deeds of Trust Based on Value of Security Interest

House Bill 509 (Chapter 505) clarifies that, in any case in which the obligations described in a deed of trust are not fully secured because they exceed the fair market value of the property conveyed, the recordation tax is based on the fair market value of the property conveyed.

In 1984, the Department promulgated 23 VAC 10-320-40, which states that, when a deed of trust is secured by real estate with a lesser value than the note, the tax is based upon the value of the real estate. This regulation also explains that, when a note is secured by both personal property and a deed of trust on real estate and perfection of the security interest on the personal property will be filed under the Uniform Commercial Code, the recordation tax is only computed upon the real estate under the deed of trust. This Act simply codifies the Department's long-standing policy to impose the recordation tax only on the value of the security interest created by a deed of trust in cases where the amount of obligations described in a deed of trust exceed the fair market value of the property conveyed.

Effective: January 1, 2014. However, in any jurisdiction in which the clerk of the circuit court was taxing deeds of trust in accordance with the provisions of 23 VAC 10-320-40 before January 1, 2011, such clerk would be required to continue to comply with the regulation.
Amended: § 58.1-803

Restructured Tax Rate for Refinanced Deeds of Trust

Senate Bill 409 (Chapter 820) equalizes the recordation tax rate for all refinanced deeds of trust by establishing a maximum recordation tax rate of 18 cents per $100 on refinanced deeds of trust, regardless of whether the loan is refinanced with the same lender or a different lender.

The Act also clarifies that for deeds of trust or mortgages that are refinanced the term "value" would mean the portion of the amount of the bond or other obligation secured by the property conveyed by the deed of trust.

Current law provides that every deed of trust or mortgage admitted to record, except a deed exempt from taxation by law, is subject to a state recordation tax. This tax is imposed in the amount of 25 cents for every $100 or fraction thereof of the amount of bonds or other obligations secured by the deed of trust. If the amount of the obligation cannot be ascertained, the tax is based on the fair market value of the property conveyed.

Under this Act, the maximum tax on the recordation of any deed of trust or mortgage or on any supplemental indenture will be determined in accordance with the following schedule:

- 18 cents for every $100 or portion thereof on the first $10 million of value;
- 16 cents for every $100 or portion thereof on the next $10 million of value;
- 14 cents for every $100 or portion thereof on the next $10 million of value;
- 12 cents for every $100 or portion thereof on the next $10 million of value; and
- 10 cents for every $100 or portion thereof on all over $40 million of value.

This Act would not apply the tax rates on refinancing to the modification of the terms of an existing obligation secured by the original deed of trust. Such modifications would continue to be exempt from tax.

Effective: For deeds of trust or mortgages recorded beginning July 1, 2012
Amended: § 58.1-803

RETAIL SALES AND USE TAX

Accelerated Sales Tax

House Bill 1300 (Chapter 2, 2012 Special Session I), Item § 3-5.08 and House Bill 1301 (Chapter 3, 2012 Special Session I), Item § 3-5.07 increase the annual threshold for dealers and direct payment permit holders ("Dealers") to make accelerated sales tax payments from $5.4 million of taxable sales and/or purchases to $26 million of taxable sales and/or purchases. Dealers with taxable sales and/or purchases exceeding the threshold were required to make a payment in June equal to 90 percent of its Retail Sales and Use Tax liability for June of the previous year. This change begins with the tax payment that would be remitted on or before June 25, 2012, if the payment is made by other than electronic transfer, and by June 30, 2012, if payments are made by electronic fund transfer. Affected Dealers will be entitled to take a credit for this amount on the return for June of the current year due July 20. TAX will notify all affected Dealers and provide them with payment instructions and a payment voucher for the additional payment.

The failure to make a timely and full payment of the accelerated sales tax will subject the Dealer to a penalty of six percent of the amount of tax underpayment. No other penalty for delinquent returns or payments will apply except with respect to fraudulent returns.

With the exception of revenues attributable to the local Retail Sales and Use Tax imposed at the rate of one percent, all revenues collected from the accelerated sales tax payment will be considered general fund revenue. If the Governor determines on July 31 of each year that funds are available to distribute the state Retail Sales and Use Tax revenue in accordance with §§ 58.1-638 and 58.1-638.1, he shall direct the State Comptroller to make such allocation.

Effective: For the Accelerated Sales Tax Payment due June 2012

Entitle City of Bristol to Portion of Revenue Generated by Certain Public Facilities

House Bill 1116 (Chapter 789) and Senate Bill 607 (Chapter 830) allow certain development projects located in the City of Bristol to be treated as "public facilities," thereby entitling the City of Bristol to a portion of the sales tax revenues generated by these projects in order to pay the costs of bonds issued to finance the projects. The entitlement extends solely to projects that meet the following criteria: 1) the locality contributes infrastructure or real property towards the project as part of a public-private partnership with the developer that is equal to at least 20 percent of the aggregate cost of development; 2) the facility is reasonably expected to require a capital investment of at least $50 million; 3) sales within the development are reasonably expected to generate at least $5 million annually; 4) the facility is reasonably expected to attract at least one million visitors annually; 5) the facility expected to create at least 2,000 permanent jobs; 6) the facility is in a locality that had a rate of unemployment at least three percentage points higher than the statewide average in November, 2011; and 7) the facility is in a locality that is adjacent to a state that has adopted a Border Region Retail Tourism Development District Act. Under the Act, the Department must review the locality's findings concerning these requirements and provide a written report to the Chairmen of the House and Senate Finance Committees and the House Appropriations Committee within 30 days from the date the locality provides notification that it intends to contribute infrastructure or real property as part of a public-private partnership with the developer of a development of regional impact.

Virginia law allows sales tax revenue attributable to sales in new or substantially and significantly renovated or expanded public facilities to be transferred to municipalities to pay the costs of the bonds issued to finance such facilities. Qualifying public facilities include auditoriums, coliseums, convention centers, conference centers, and certain hotels and sports facilities located in the Cities of Hampton, Newport News, Norfolk, Portsmouth, Richmond, Roanoke, Salem, Staunton, Suffolk, and Virginia Beach, as well as the cities of Lynchburg and Winchester (pursuant to 2012 legislation). Prior to enactment of this Act, shopping centers and malls did not qualify for qualify for the public facilities designation.

The law specifies the costs to which the revenue can be applied in order to pay issued bonds, including, for example, the purchase price and expenses for the public facility, and costs for plans, land improvements, construction or reconstruction, labor, and other necessary expenses. The 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 beyond 35 years, and all such revenues are required to be applied to the repayment of the bonds.

Effective: July 1, 2012
Amended: § 58.1-608.3

Entitles Lynchburg and Winchester to Portion of Revenue Generated by Designated Public Facilities

Senate Bill 684 (Chapter 678) adds the cities of Lynchburg and Winchester to the list of municipalities eligible to receive certain sales tax revenues generated by qualifying public facilities in their jurisdictions to repay bonds issued to pay the costs of such facilities.

Virginia law allows sales tax revenue attributable to sales in new or substantially and significantly renovated or expanded public facilities to be transferred to municipalities to pay the costs of the bonds issued to finance such facilities. Qualifying public facilities include auditoriums, coliseums, convention centers, conference centers, and certain hotels and sports facilities located in the Cities of Hampton, Newport News, Norfolk, Portsmouth, Richmond, Roanoke, Salem, Staunton, Suffolk, Virginia Beach, and the City of Bristol (pursuant to 2012 legislation). Prior to enactment of 2012 legislation, shopping centers and malls did not qualify for qualify for the public facilities designation.

The law specifies the costs to which the revenue can be applied in order to pay issued bonds, including, for example, the purchase price and expenses for the public facility, and costs for plans, land improvements, construction or reconstruction, labor, and other necessary expenses. The sales tax revenues generated from all transactions taking place in the facility, including, but not limited to, concessionaire 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 beyond 35 years, and all such revenues are required to be applied to the repayment of the bonds.

Effective: July 1, 2012.
Amended: § 58.1-608.3

Expands Exemption for Public Transportation Companies

House Bills 959 (Chapter 95) and Senate Bill 40 (Chapter 276) expand the list of public transportation companies that qualify for exemption from the Retail Sales and Use Tax on their purchases to include all other transit companies that are owned, operated or controlled by any county, city, or town that provides public transportation services. Tangible personal property sold or leased to any county, city or town and subsequently transferred to these companies is also exempt from the use tax under these Acts.

Prior to these Acts, the public transportation exemption extended solely to tangible personal property sold or leased to Alexandria Transit Company, Greater Lynchburg Transit Company, GRTC Transit System, and Greater Roanoke Transit Company. These entities were statutorily granted an exemption in order to correct an unintended consequence of the 2004 repeal of the public service corporation exemption, after which several public transportation systems organized for the purpose of providing public transportation within a specified geographical area lost their public service corporation sales and use tax exemption.

Effective: July 1, 2012
Amended: § 58.1-609.1

Expansion of the Exemption for Qualifying Data Centers

House Bill 216 (Chapter 655) and Senate Bill 112 (Chapter 613) clarify the job creation requirement in order for a data center to qualify for the Retail Sales and Use Tax exemption by allowing new jobs created by tenants of the data center to count towards the threshold job creation requirement, in addition to new jobs created by the owner of the data center. The Acts also extend the exemption to tenants of the data center if the data center and the tenants collectively meet the requirements to qualify for the data center exemption and the data center operator enters into a memorandum of understanding with the Virginia Economic Development Partnership Authority on behalf of itself and its tenants. The exemption for such data centers and tenants is effective for purchases or leases made on or after July 1, 2012 for use in a data center that meets the requirements and enters into the memorandum of understanding on or after January 1, 2009.

The data center exemption is available for data centers that i) are located in a Virginia locality; ii) result in a new capital investment of at least $150 million on or after January 1, 2009; and iii) create, on or after July 1, 2009, at least 50 new jobs paying at least one and one-half the prevailing average wage in the locality, or 25 new jobs paying at least one and one-half the prevailing average wage in the locality if the data center is located in a locality that has an unemployment rate for the preceding year of at least 150 percent of the average statewide unemployment rate or is located in an enterprise zone.

Effective: July 1, 2012
Amended: § 58.1-609.3

Extends Sunset Date for Certain Educational Materials

House Bill 299 (Chapter 411) and Senate Bill 37 (Chapter 275) extend the sunset date for the Retail Sales and Use Tax exemption for textbooks and other educational materials withdrawn from inventory at book-publishing distribution facilities to July 1, 2017. The exemption applies when such materials are withdrawn for free distribution to professors and other individuals with an educational focus, and is currently set to expire on July 1, 2012. This exemption is an exception to the general rule that a business must pay use tax on inventory withdrawn and donated free of charge. The exemption was first enacted in 1998 with a sunset date, which has been extended four times in 2002, 2004, 2007, and 2012.

Effective: July 1, 2012
Amended: § 58.1-609.6

Extends Sunset Date for Energy Star, WaterSense, and Hurricane Preparedness Sales Tax Holidays

House Bill 513 (Chapter 597) extends the expiration date for the Hurricane Preparedness, Energy Star, and WaterSense sales tax holidays from July 1, 2012 to July 1, 2017.

During the four-day Energy Star and WaterSense Sales Tax Holiday period in October, consumers can purchase qualifying Energy Star and WaterSense products exempt of the Retail Sales and Use Tax. Eligible Energy Star items include dishwashers, clothes washers, air conditioners, ceiling fans, compact fluorescent light bulbs, dehumidifiers, programmable thermostats, and refrigerators that have been designated by the United States Environmental Protection Agency and the United States Department of Energy as "Energy Star." Eligible WaterSense items include bathroom sink faucets, faucet accessories, toilets, and showerheads that have been designated as WaterSense by the Environmental Protection Agency. During the seven-day Hurricane Preparedness Sales Tax Holiday in May, consumers can purchase certain hurricane preparedness items, including but not limited to portable generators, batteries, carbon monoxide detectors, and weather band radios exempt of the sales tax. Prior to passage of this Act, each holiday period was set to expire on July 1, 2012.

Effective: July 1, 2012.
Amended: Second Enactment of Chapters 176 and 817, Acts of Assembly of 2007 Third Enactment of Chapter 608, Acts of Assembly of 2007.

Extends Sunset Date for Printing Materials Exemption

Senate Bill 393 (Chapter 477) extends the sunset date for the Retail Sales and Use Tax exemption allowed for the purchase of printing materials by advertising businesses when the printed material is distributed outside the Commonwealth. The exemption, scheduled to expire July 1, 2012, is extended to July 1, 2017.

Advertising businesses that purchase printing for distribution out-of-state are exempt from the Retail Sales and Use Tax. Newspaper supplements, not otherwise exempted, purchased by advertising agencies for placement in instate or out-of-state publications are also exempt. The exemption originally applied only to out-of-state advertising business purchases from Virginia printers, but was extended to all advertising businesses in 1995 with a 2002 sunset date. Since then, the sunset has been extended four times.

Effective: July 1, 2012
Amended: § 58.1-609.6

Presumes Nexus for Out-of-State Dealers Belonging to a Commonly Controlled Group

Senate Bill 597 (Chapter 590) creates a rebuttable presumption that an out-of-state dealer has sufficient activity in Virginia to require the dealer to register and collect retail sales and use tax if a commonly controlled person maintains a distribution center, warehouse, fulfillment center, office, or similar location in Virginia that facilitates the delivery of tangible personal property that is sold by the out-of-state dealer. Affected dealers can rebut this presumption by demonstrating that the activities conducted by the commonly controlled person in Virginia are not significantly associated with the dealer's ability to establish or maintain a market in the Commonwealth for the dealer's sales. The Act defines "commonly controlled person" as "any person that is a member of the same controlled group of corporations, as defined in § 1563(a) of the Internal Revenue Code, as the dealer or any other entity that, notwithstanding its form of organization, bears the same ownership relationship to the dealer as a corporation that is a member of the same controlled group of corporations."

Effective Date

This Act becomes effective on the earlier of September 1, 2013 or the effective date of federal legislation authorizing states to require remote sellers to collect taxes on goods shipped to in-state purchasers. The Act specifies that if the federal legislation is enacted prior to August 15, 2013, and the effective date of the federal legislation is after September 1, 2013, but on or before January 1, 2014, the Act becomes effective on January 1, 2014.

Effective:	The earlier of September 1, 2013 or the effective date of federal legislation, but by January 1, 2014
Amended:	§ 58.1-612

Requires Department to Correct Local Sales Tax Distribution Errors Within Two Months

Senate Bill 614 (Chapter 831) requires the Department to correct errors in the distribution of the one percent local sales tax to localities by adjusting payments in the next two months with one-half of the total adjustment to be included in each payment.

Prior to enactment of this Act, in order to correct errors in a distribution of the local sales tax, the Department would include one-sixth of the total adjustment in the payments to localities for each of the next six months.

In addition to the state Retail Sales and Use Tax, all Virginia cities and counties impose a one percent local Retail Sales and Use Tax, which is distributed monthly to counties and cities based on point of sale. The law requires that revenue from the local tax be distributed to the locality in which the sale was made, while revenue obtained from out-of-state dealers collecting the local use tax is distributed to the locality to which the tangible personal property is destined.

The Department deposits local sales and use tax revenues into the state treasury and, based on the point of sale and destination information filed with dealers' returns, certifies to the Comptroller the proper amount to be credited to each county or city. The Treasurer of Virginia distributes the appropriate amount to each county or city monthly.

Errors in the distribution of the local tax may occur for a variety of reasons and the Department follows procedures mandated by statute to correct these errors. Prior to enactment of this law, in order to correct an underpayment, one-sixth of the total adjustment had to be included in the payments for each of the next six months. This procedure was enacted by the Virginia General Assembly in order to give the locality that received the erroneous overpayment time to absorb the impact of the transfer, particularly in light of the potential for misallocations to date back three years.

Effective: July 1, 2012
Amended: § 58.1-605

Tourism Zone Project Revenue Dedication

House Bill 581 (Chapter 73) and Senate Bill 414 (Chapter 572) clarify the amount of state and local tax revenue that an authorized tourism project is entitled to receive to assist its developer with a gap between expected development costs and available debt and equity capital.

A locality may enact an ordinance dedicating revenues equal to a one percent local sales and use tax, or an equivalent amount of other local tax revenues, generated by transactions taking place on the premises of the tourism project to the payment of principal and interest on the gap financing. If the locality enacts such an ordinance, the project is also entitled to an amount equivalent to a one percent state sales and use tax generated by transactions taking place on the premises of the tourism from discretionary General Fund revenues. The dedication continues until the gap is paid or refinanced.

Prior to any entitlement of tax revenues, the owner of the project must i) have a minimum of 80 percent of funding for the project in place through debt or equity, ii) enter into a performance agreement with the local economic development authority or similar local or regional political subdivision, and iii) enter into an agreement to pay an access fee. The access fee is equivalent to the one percent state sales and use tax revenue generated by and returned to the project. Both the access fee and tax revenues must be used to pay the debt service required to finance the project. In the event that the sales tax entitlement and the access fee exceed any annual debt service required to finance the construction of the tourism project, the excess is held in an account dedicated for the project until the debt is paid in full.

Effective: July 1, 2012
Amended: § 58.1-3851.1

WIRELESS E-911 SURCHARGE

Distribution to Wireless Service Providers of Wireless E-911 Fund Revenues

Senate Bill 632 (Chapter 672) requires wireless service providers to submit requests for payment from the Wireless E-911 Fund no later than four months after the end of the fiscal year in which the costs were incurred. If the fund is not sufficient to pay for all of the costs, the unpaid costs may not be carried over for repayment to a future year. The Act also provides that any funds remaining in the fund at the end of a fiscal year may be designated for a reserve fund.

The Wireless E-911 Fund consists of revenues from both the postpaid wireless E-911 surcharge and the prepaid wireless E-911 fee. Currently, the Wireless E-911 Services Board ("Board") is responsible for allocating the Wireless E-911 Fund revenues and managing moneys appropriated for emergency telecommunication services in local jurisdictions. After the Board subtracts sufficient funds for various appropriations provided in the Appropriations Act, the Board provides payments to wireless service providers based on their estimated allowable wireless E-911 costs (approximately 30 percent of the revenues), distributes revenues based on a formula to PSAPs for their wireless E-911 costs of their operators (60 percent of the revenues), and oversees a grant program for PSAP operators (approximately 10 percent of the revenues).

Effective: July 1, 2012
Amended: § 56-484.17

Transfer of the Distribution to Localities of Wireless E-911 Fund Revenues

House Bill 455 (Chapter 25) and Senate Bill 495 (Chapter 165) change the point of distribution of a portion of the Wireless E-911 Fund from the Wireless E-911 Services Board ("Board") to the Department of Taxation. Beginning July 1, 2012, the 60 percent of the Wireless E-911 Fund distributed on a monthly basis to Public Safety Answering Points ("PSAPs") is allocated based on each PSAP's average pro rata distribution from the Wireless E-911 Fund for fiscal years 2007 through 2012. The Department will take into account any funding adjustments made by the Board when determining each PSAP's average pro rata distribution. The Acts provide that on or before July 1, 2017, and every five years thereafter, the Department of Taxation will recalculate the distribution percentage for each PSAP based on the cost and call load data of the PSAP for the previous five fiscal years. Such cost and call load data will continue to be reported to the Board, which will provide the data to the Department. This is a recommendation of Governor McDonnell's Government Reform & Restructuring Commission.

Under current law, 60 percent of the Wireless E-911 Fund is distributed on a monthly basis to PSAPs according to a formula determined by the Wireless E-911 Services Board and annually recalculated based on the cost and call load data from one or more of the previous fiscal years. The Wireless E-911 Fund consists of revenues from both the postpaid wireless E-911 surcharge and the prepaid wireless E-911 fee. Currently, the Board is responsible for allocating the Wireless E-911 Fund revenues and managing moneys appropriated for emergency telecommunication services in local jurisdictions. After the Board subtracts sufficient funds for various appropriations provided in the Appropriations Act, the Board provides payments to wireless service providers based on their estimated allowable wireless E-911 costs (approximately 30 percent of the revenues), distributes revenues based on a formula to PSAPs for their wireless E-911 costs of their operators (60 percent of the revenues), and oversees a grant program for PSAP operators (approximately 10 percent of the revenues).

Effective: July 1, 2012
Amended: § 56-484.17

LOCAL TAX

LEGISLATION

GENERAL PROVISIONS

Allows Localities to Provide Discount for Full Payment of Real Property Taxes on or before the Due Date

Senate Bill 551 (Chapter 585) clarifies that for purposes of providing a discount for the early payment of any local tax, "early payment" may include payment of real property taxes in full on or before the due date of the tax.

Localities have the option of assessing penalties and interest for late payment of taxes. In addition, they are authorized to establish, by ordinance, a discount for the early payment of any taxes and assessments on property, persons, and other subjects of taxation. Prior to this enactment, the statute did not specify whether full payment of the taxes on or before the due date satisfied the early payment requirement.

Effective: July 1, 2012
Amended: §§ 15.2-1104, 15.2-1201.2

City of Richmond Tax Amnesty Program

House Bill 358 (Chapter 496) and Senate Bill 42 (Chapter 254) authorize the City of Richmond to expand its current tax amnesty program to include all local taxes and accrued interest.

The 2010 General Assembly authorized the City of Richmond tax amnesty program and any person required to file a personal property or machinery and tools tax return or to pay any local personal property tax, machinery and tools tax, and real property tax is eligible to participate. Under the program, any civil penalties assessed or assessable which are the result of nonpayment, underpayment, nonreporting or underreporting of personal property, machinery and tools, or real property tax liabilities, may be waived upon receipt of the payment of the amount of those taxes and interest. However, no person under investigation or prosecution for filing a fraudulent return or failing to file a return with the intent to evade tax may participate in the program.

Effective: July 1, 2012
Amended: § 1 of Chapter 200 of the Acts of Assembly of 2010

Specifies Warrant Information that Localities are Prohibited from Releasing

House Bill 255 (Chapter 88) specifies that the information contained in the list of warrants that localities are prohibited from releasing includes any invoice that has been presented to a locality for payment when the locality has attempted to pay it, but the payment has not been completed because electronic payment has failed or a check was mailed but not cashed.

Local treasurers must keep a well-bound book, into which they must enter all warrants that are legally drawn by the governing body and presented for payment by the treasurer. Localities may not release any information contained in the list of warrants for any reason, except: 1) information relating to warrants paid, as classified by expenditure, recipient date, or disbursement, or 2) in order to establish the status of a claim previously reported as having been paid when a person legally entitled to the funds presents evidence that a previously submitted claim has not been paid. Local governing bodies are also prohibited from publishing any information that is protected under federal or state law, including but not limited to confidential records.

Effective: July 1, 2012
Amended: § 58.1-3131

CIGARETTE TAX

Local Cigarette Tax Stamp Technology

House Bill 277 (Chapter 89) and Senate Bill 394 (Chapters 258) provide that any tax stamp or meter impression used to evidence the payment of a local cigarette tax must be of the same stamp technology that is used or required by the Commonwealth for the state cigarette tax stamp.

Under current law, the state cigarette tax stamp must be affixed to each individual package, bag, box or can in such a manner that their removal will require continued application of water or steam. The Department is authorized to design, adopt and promulgate the form and kind of stamps to be used. 23 *Virginia Administrative Code* 10-370-70 provides that stamps and meter impressions may be affixed by using (1) hand applied stamps, (2) heat stamps attached to the cellophane wrappers and applied by a fusion stamping machine, or (3) Virginia tax paid impressions on the cellophane wrappers applied by cigarette tax stamping meter. Currently the Commonwealth uses heat stamps attached to cellophane wrappers and applied by a fusion stamping machine.

All cities and towns with general taxing powers are currently authorized to impose a cigarette tax with no rate limitations. Currently, the Department is aware of 90 jurisdictions reporting that they impose the local cigarette tax, including thirty-one cities and fifty-seven towns. Only two counties, Arlington and Fairfax, are authorized to impose a local cigarette tax, which is limited to the amount of the state cigarette tax rate. The state cigarette tax rate is currently 30 cents per pack of 20 cigarettes. Local cigarette taxes are typically administered and enforced at the local level. However, the Northern Virginia Cigarette Tax Board ("NVCTB") administers and enforces the local cigarette tax on behalf of 16 northern Virginia jurisdictions.

Effective: July 1, 2012
Amended: § 58.1-3832

COLLECTION OF LOCAL TAXES

Clarifies Procedure for Distraint and Sale of Personal Property for Delinquent Taxes

House Bill 919 (Chapter 623) provides that in cases involving the distraint and sale of personal property to satisfy delinquent taxes, the proceeds from the sale must first be applied to the costs of the distraint, followed by the unpaid taxes, penalty and accrued interest, and finally to the claims of secured parties. The party conducting the sale must provide a sales receipt and affidavit to any person who purchases a motor vehicle during the sale, affirming compliance with the procedures for the distraint and sale of personal property. Under the Act, purchasers may also apply to the Department of Motor Vehicles to receive a certificate of title and registration card for the vehicle.

In order to satisfy a delinquent tax, Virginia law grants local treasurers, sheriffs, constables or collectors of a locality the authority to seize and sell personal property in the locality that is owned by the person owing the delinquent taxes. If a third party has a security interest in the property at issue, and that interest is perfected prior to any distraint for taxes, it will have priority over all taxes, except those specifically assessed either per item or in bulk against the goods and chattels on which tax is owed.

Prior to passage of this law, proceeds from the sale were applied first to unpaid taxes, followed by the claims of the secured parties of record in the order of their priority. If any money remained, it was delivered to the delinquent taxpayer or the estate assessed with taxes.

Effective: July 1, 2012
Amended: § 46.2-617 and 58.1-3942

Modifies Procedure Governing Delinquent Real Property Taxes

House Bill 1128 (Chapter 627) modifies the procedures that govern the judicial sale of real property on which delinquent property taxes are owed. The Act requires that any interested party make a proper objection before the court can refer the case to a commissioner in chancery. The Act also requires that before a delinquent real property taxpayer can stop the judicial sale of real property on which delinquent taxes are owed, the owner must pay all taxes, penalties, and interest owed to a town or other concurrent taxing entity, in addition to the taxes, penalties, and interest imposed by the locality conducting the judicial sale. Finally, the Act requires the local attorney to report to the commissioner of the revenue and request that the commissioner correct the assessment for any real property the attorney discovers is improperly placed on the delinquent land books. If the correction cannot be made, the attorney must move the court to correct the assessment.

Current law sets forth procedure localities must follow in order to collect delinquent real property taxes. A locality hoping to conduct a sale of the property must file a bill in equity in the circuit court requesting that the property be sold. Prior to ordering that the property be sold, the court may refer the case to a commissioner in chancery for a hearing and report concerning the advisability of a sale. If there is no dispute as to title or value of the real estate, the circuit court may authorize a tax sale without a report by a commissioner in chancery upon receipt of 1) proper service of process on all defendants, 2) a written real estate title certificate, and 3) the written report of a licensed real estate appraiser. Localities must notify all property owners and other parties who have an interest in the real property, and prior to enactment of this Act, owners could redeem the property at any time before the sale by paying all accumulated delinquent taxes, penalties, reasonable attorney's fees, interest and costs.

Effective: July 1, 2012
Amended: §§ 58.1-3969, 58.1-3971, and 58.1-3974

CONSUMER UTILITY TAX

Exemption for Natural Gas Service Provided to an Electric Utility

House Bill 103 (Chapter 4) and Senate Bill 519 (Chapter 582) provide an exemption from the local consumer utility tax for natural gas service provided to an electric utility for the purpose of operating a natural gas fueled electricity generation facility that is owned and operated by the electric utility. "Electric utility" would be defined as any investor-owned public utility or cooperative that provides electric energy for use by retail customers.

Under current law, a consumer utility tax may be imposed by any county, city, or town on consumers of utility services provided by water or heat, light and power companies or other public service corporations. Consumers of these utility services may not be taxed at a rate in excess of 20 percent of the monthly charge, and the tax is not applicable to any amount charged in excess of $15 per month for residential customers. Thus, the consumer utility tax on residential customers is effectively capped at $3 a month. There is no ceiling on the local consumer utility tax for commercial and industrial customers. Any locality that had a higher a rate of taxation in effect before July 1, 1972 is allowed to continue imposing the local consumer utility tax at that rate. Currently, utility sales of products used as motor vehicle fuels are exempt from the consumer utility tax.

Effective: July 1, 2012
Amended: § 58.1-3814

MACHINERY AND TOOLS TAX

Classification of Motor Vehicle Cleaning Businesses

House Bill 298 (Chapter 4) creates a separate class of property for purposes of the Machinery and Tools Tax for machinery and tools used by a motor vehicle cleaning business directly in cleaning motor vehicles. Localities would be authorized to levy a tax on this separate class of property at a different rate from that levied on other machinery and tools, but which would not exceed the rate for the general class of machinery and tools.

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. As established in a 1950 opinion of the Tax Commissioner, machinery and tools used in the manufacturing business are those machinery and tools (1) actually and directly used in manufacturing processes and (2) those machinery and tools used in the manufacturing business that are necessary in the particular manufacturing business and are used in connection with operation of machinery that is actually and directly used in manufacturing processes.

Effective: July 1, 2012
New: § 58.1-3508.5

REAL ESTATE TAX

Administration of the Real Property Exemption for Disabled Veterans

House Bill 190 (Chapter 594) requires the Commissioner of the Department of Veterans Services to promulgate rules and regulations governing the administration and implementation of the real property tax exemption for disabled veterans. The Commissioner of the Department of Veterans Services is authorized to provide written guidance to, and respond to requests for information from, veterans and assessing officers regarding the real property tax exemption. The Department of Veterans Services is also authorized to hear and decide appeals by veterans residing in the Commonwealth whose application for the real property tax exemption for disabled veterans has been denied. Such authority is limited to appeals based upon a finding of fact regarding eligibility criteria set forth in the *Constitution of Virginia* and the *Va. Code*. The Department of Veterans Services is not authorized to hear or decide appeals regarding a dispute over the assessed value of any property. Decisions of the Department of Veterans Services are appealable to the circuit court in the locality in which the veteran resides.

House Bill 1645 and Senate Bill 987 (*Acts of Assembly* 2011, Chapters 769 and 840) provided the necessary statutory authorization to exempt from taxation, for tax years beginning on or after January 1, 2011, real property that is the principal residence of a veteran (or widow or widower of a veteran) if the veteran has been determined by the United States Department of Veterans Affairs or its successor agency pursuant to federal law to have a 100 percent service-connected, permanent, and total disability. A maximum of one acre of the land upon which the dwelling is situated is also exempt from taxation. However, if the locality provides for an exemption or deferral of real property taxes of more than one acre for the elderly and handicapped, the locality must also provide an exemption of the same number of acres for qualifying veterans and surviving spouses. The surviving spouse of a veteran is eligible for the exemption, so long as the death of the veteran occurs on or after January 1, 2011, the surviving spouse does not remarry, and the surviving spouse continues to occupy the real property as his principal place of residence.

Effective: July 1, 2012
Amended: § 2.2-4002
New: § 58.1-3219.7

Allows Localities to Provide Discount for Full Payment of Real Property Taxes on or before the Due Date

Senate Bill 551 (Chapter 585) clarifies that for purposes of providing a discount for the early payment of any local tax, "early payment" may include payment of real property taxes in full on or before the due date of the tax.

Localities have the option of assessing penalties and interest for late payment of taxes. In addition, they are authorized to establish, by ordinance, a discount for the early payment of any taxes and assessments on property, persons, and other subjects of taxation. Prior to this enactment, the statute did not specify whether full payment of the taxes on or before the due date satisfied the early payment requirement.

Effective: July 1, 2012
Amended: §§ 15.2-1104, 15.2-1201.2

Application of the Real Property Exemption for Disabled Veterans on Acquired Property

House Bill 933 (Chapter 782) provides that the real property tax exemption for disabled veterans for qualifying property acquired after January 1, 2011 shall begin on the date the property is acquired. The Acts also provides that any taxpayer whose property is acquired or taken by a disabled veteran shall be relieved from real property taxes from the date of divestment and may be entitled to a refund for a pro rata portion of real property taxes paid for such property acquired by a disabled veteran after January 1, 2011. If the veteran's disability rating occurs after January 1, 2011, and the veteran has a qualified primary residence on the date of the rating, then the real property tax exemption for disabled veterans shall begin the date of such rating. However, no locality will be liable for any interest on any refund due to the veteran for taxes paid prior to the veteran's filing of the affidavit or written statement required to claim the exemption.

The fact that a veteran or spouse, who is otherwise qualified for the real property tax exemption, is residing in a hospital, nursing home, convalescent home, or other facility for physical or mental care for extended periods of time may not be construed to mean that real estate for which the exemption being sought does not continue to be the sole dwelling of such person so long as such real estate is not used by or leased to others for consideration.

House Bill 1645 and Senate Bill 987 (*Acts of Assembly* 2011, Chapters 769 and 840) provided the necessary statutory authorization to exempt from taxation, for tax years beginning on or after January 1, 2011, real property that is the principal residence of a veteran (or widow or widower of a veteran) if the veteran has been determined by the United States Department of Veterans Affairs or its successor agency pursuant to federal law to have a 100 percent service-connected, permanent, and total disability. A maximum of one acre of the land upon which the dwelling is situated is also exempt from taxation. However, if the locality provides for an exemption or deferral of real property taxes of more than one acre for the elderly and handicapped, the locality must also provide an exemption of the same number of acres for qualifying veterans and surviving spouses. The surviving spouse of a veteran is eligible for the exemption, so long as the death of the veteran occurs on or after January 1, 2011, the surviving spouse does not remarry, and the surviving spouse continues to occupy the real property as his principal place of residence.

Effective:	July 1, 2012
Amended:	§§ 58.1-3219.5, 58.1-3360, 58.1-3360.1, and 58.1-3360.2
New:	§ 58.1-3219.7

Application of the Real Property Exemption for Disabled Veterans on Property Held in Trust

House Bill 922 (Chapter 75) and Senate Bill 540 (Chapter 263) provide that the real property tax exemption for disabled veterans also applies to real property i) held by a veteran alone or in conjunction with the veteran's spouse as tenant or tenants for life or joint lives; ii) held in a revocable *inter vivos* trust under which the veteran or the veteran and his spouse hold the power of revocation, and iii) held in an irrevocable trust under which the veteran alone or in conjunction with his spouse possesses a life estate or an estate for joint lives or enjoys a continuing right of use or support. If one or more other persons have an ownership interest in such property that permits them to occupy the property, the tax exemption would be prorated based on the percentage of persons having an ownership interest who qualify for the exemption. For real property of a disabled veteran that is jointly owned by two or more individuals, but not held in one of those three ways, the exemption would be prorated based on the percentage of ownership interest held by those persons qualifying for the exemption.

The Acts also provide that any real property taxes paid for tax years beginning January 1, 2011, on real property held in trust under the provisions of the bill would be refunded by the locality to the taxpayer.

On July 15, 2011, the Attorney General held, in Opinion No. 11-061, that the real property tax exemption for disabled veterans afforded pursuant to Article X, § 6-A of the *Constitution of Virginia* was not available when the veteran has chosen to place title to the real estate in i) a revocable *inter vivos* trust with the spouse; ii) a revocable *inter vivos* trust with others apart from the spouse; or iii) an irrevocable trust. The Attorney General stated that in light of the rule of strict construction for property tax exemptions, any ambiguity regarding whether property held in trust qualifies for the exemption would be resolved against eligibility.

Effective: July 1, 2012
Amended: § 58.1-3219.5

Application of the Real Property Exemption for Disabled Veterans on Veterans Rated Disabled after January 1, 2011

Senate Bill 22 (Chapter 806) clarifies that the real property tax exemption for disabled veterans who are rated as having a 100 percent service-connected, permanent, and total disability after January 1, 2011 shall begin the date of such rating. However, no locality would be liable for any interest on any refund due to the veteran for taxes paid prior to the veteran's filing of the affidavit or written statement required to claim the exemption. If the qualified veteran acquires the property after January 1, 2011, the previous owner may be entitled to a refund for a pro rata portion of real property taxes paid for such property acquired by a disabled veteran after January 1, 2011.

House Bill 1645 and Senate Bill 987 (*Acts of Assembly* 2011, Chapters 769 and 840) provided the necessary statutory authorization to exempt from taxation, for tax years beginning on or after January 1, 2011, real property that is the principal residence of a veteran (or widow or widower of a veteran) if the veteran has been determined by the United States Department of Veterans Affairs or its successor agency pursuant to federal law to have a 100 percent service-connected, permanent, and total disability. A maximum of one acre of the land upon which the dwelling is situated is also exempt from taxation. However, if the locality provides for an exemption or deferral of real property taxes of more than one acre for the elderly and handicapped, the locality must also provide an exemption of the same number of acres for qualifying veterans and surviving spouses. The surviving spouse of a veteran is eligible for the exemption, so long as the death of the veteran occurs on or after January 1, 2011, the surviving spouse does not remarry, and the surviving spouse continues to occupy the real property as his principal place of residence.

Effective: July 1, 2012
Amended: § 58.1-3219.5

Extends Sunset Date for Local Option Real Property Tax Rate Decrease in NVTA

House Bill 1068 (Chapter 535) extends the June 30, 2013 sunset date for the law that decreased the maximum rate of the local option real property tax imposed upon certain commercial and industrial property in the Northern Virginia Transportation Authority (NVTA) from $0.25 cents per $100 of assessed value to $0.125 per $100 of assessed value. The Act extends the sunset date to June 30, 2018.

Counties and cities embraced by the Northern Virginia Transportation Authority are authorized to impose an additional real property tax at a rate of $0.125 per $100 of assessed value on all property in the locality specially classified as commercial or industrial. The additional tax 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. The revenues generated by the tax must be used solely for 1) new road construction, design, and right of way acquisition, 2) new public transit construction, design, and right of way acquisition, and 3) capital costs related to new transportation projects, and 4) the issuance costs and debt service on any bonds issued to support capital costs. The NVTA embraces the Cities of Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park and the Counties of Arlington, Fairfax, Loudoun, and Prince William.

Effective: July 1, 2012
Amended: Section Enactment of Chapter 822, Acts of Assembly 2009

Identifies Criteria Boards of Equalization Must Consider in Certain Appeals of Real Property Assessments

House Bill 1073 (Chapter 536) and Senate Bill 73 (Chapter 707) mandate that boards of equalization consider the following in appeals of real property assessments for residential rental apartments in excess of four units: 1) the actual gross income generated from the real property and any resultant loss in income attributable to vacancies, collection losses, and rent concessions; 2) the actual operating expenses and the impact of any additional expenses; and 3) any other evidence relevant to determining the fair market value. If only a portion of the real property is operated as residential rental apartments, only the portion operated as residential rental apartments are subject to this mandate. The Act also requires that the board value the residential rental apartments using the income approach, except when the real property has been sold since the previous assessment, improvements on the real property are being made, or the value arrived at by the income approach does not accord with generally accepted appraisal practices and standards prescribed by the International Association of Assessing Officer. Where property has been sold, the board may consider the sales price of the property and where improvements have been made or the value of the real property does not accord with generally accepted appraisal practices, the board may consider the market value of such property.

Current law allows owners of real property operated wholly or partially as affordable rental housing to apply to the locality in which the property is located to have the real property assessed under special rules for affordable housing. The locality must grant the 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.

Under these special assessment rules, in order to determine the fair market value of real property that is operated as affordable rental housing, the real estate assessor must consider: 1) the contract rent and the impact of applicable rent restrictions; 2) the actual operating expenses and expenditures and the impact of any such additional expenses or expenditures; and 3) restrictions on the transfer of title or other restraints on alienation of the real property. The assessor must also consider evidence presented by the property owner or other restrictions imposed by law that impact these variables.

Local three-to-five member boards of equalization are appointed to hear complaints that real property is assessed at more than fair market value. Once the Board hears these complaints, it is authorized to increase or decrease assessments based on fairness.

Effective:	Assessments for tax years beginning on or after January 1, 2012. (The bill contained an emergency clause, which made the bill in force from its passage)
New:	§ 58.1-3295.1

Modifies Procedure Governing Delinquent Real Property Taxes

House Bill 1128 (Chapter 627) modifies the procedures that govern the judicial sale of real property on which delinquent property taxes are owed. The Act requires that any interested party to make a proper objection before the court can refer the case to a commissioner in chancery. The Act also requires that before a delinquent real property taxpayer can stop the judicial sale of real property on which delinquent taxes are owed, the owner must pay all taxes, penalties, and interest owed to a town or other concurrent taxing entity, in addition to the taxes, penalties, and interest imposed by the locality conducting the judicial sale. Finally, the Act requires the local attorney to report to the commissioner of the revenue and request that the commissioner correct the assessment for any real property the attorney discovers is improperly placed on the delinquent land books. If the correction cannot be made, the attorney must move the court to correct the assessment.

The law sets forth procedure localities must follow in order to collect delinquent real property taxes. A locality hoping to conduct a sale of the property must file a bill in equity in the circuit court requesting that the property be sold. Prior to ordering that the property be sold, the court may refer the case to a commissioner in chancery for a hearing and report concerning the advisability of a sale. If there is no dispute as to title or value of the real estate, the circuit court may authorize a tax sale without a report by a commissioner in chancery upon receipt of 1) proper service of process on all defendants, 2) a written real estate title certificate, and 3) the written report of a licensed real estate appraiser. Localities must notify all property owners and other parties who have an interest in the real property, and prior to enactment of this Act, owners could redeem the property at any time before the sale by paying all accumulated delinquent taxes, penalties, reasonable attorney's fees, interest and costs.

Effective: July 1, 2012
Amended: §§ 58.1-3969, 58.1-3971, and 58.1-3974

Prior Discontinued Uses Not Considered in Land Use Valuation

House Bill 81 (Chapter 653) prohibits local assessing officials from considering prior, discontinued uses of property in determining whether the property qualifies for special assessment as land devoted to agricultural, horticultural, forestal, or open space use.

In localities that have adopted land use taxation programs, the land dedicated to certain special uses is taxed at a lower rate than the rate applicable to other real property. Owners of real property situated in a locality that has adopted a land-use plan and ordinance may apply to their local assessing officer for taxation of their real property on the basis of use value. These owners must devote a minimum number of acres of real property to agricultural, horticultural, forest or open-space use.

Effective: July 1, 2012
Amended: § 58.1-3230

Relaxes Formula for Computing Annual Income and Net Worth for Real Property Tax Relief Qualification Determination

House Bill 408 (Chapter 299) relaxes the formula for computing annual income and net worth for purposes of determining whether elderly or disabled taxpayers qualify for real property tax relief. In determining annual income and net worth, instead of requiring localities to compute the income and net worth using total income or total net worth, the Act allows localities to base the annual income and net worth determination on the sum of the income received during the preceding calendar year or the sum of the net financial worth for the preceding year. Further, in making this determination, the Act removes the requirement that income include only those sources of gross income that are subject to tax under federal income tax laws, regulations, rules or policies.

Localities are authorized to establish annual income and net worth limitations for purposes of determining whether the elderly and disabled qualify for real property tax relief. Prior to this Act, once a locality established an annual income limitation, they would compute the income by adding together the total income received during the preceding calendar year, without regard to whether a tax return is actually filed , by 1) owners of the dwelling who use it as their principal residence, 2) owners' relatives who live in the dwelling, and 3) at the option of each locality, nonrelatives of the owner who live in the dwelling except for bona fide tenants or bona fide paid caregivers of the owner. Further, the law required that in making the income determination, only those sources of gross income subject to tax under federal income tax laws, regulations, rules or policies are included as income. Thus, for example, property acquired by gift, bequest, devise or inheritance; interest on state or local bonds; amounts received under workmen's compensation to compensate for personal injuries or sickness; and the rental value of homes furnished to ministers as part of their compensation could not be included in the income determination because these sources of income are specifically excluded from gross income for purposes of the federal income tax.

Effective: July 1, 2012
Amended: § 58.1-3212

Requires Separate Assessment of Wetlands for Real Property Tax

House Bill 80 (Chapter 742) requires local commissioners of the revenue or other assessing officials to consider separately assessing all wetlands at their fair market value for real property assessments or reassessments, upon request of the property owner, and grants assessing officials the authority to separately assess wetlands or other types of land without a request from the taxpayer. Local commissioners and assessors that disagree as to the presence of wetlands may consider the National Wetlands Inventory Map prepared by U.S. Fish and Wildlife Services in making their determinations. These maps may also be considered in administrative or judicial appeals.

If the local assessor decides to separately assess the wetlands, he must enter the area and fair market value for both the tracts consisting of wetlands and the remaining portion of each tract into the land book. The Act also provides that the actual physical use of the property is the only determining factor of its land use value.

Prior to this Act, wetlands, such as swamps, marshes, bogs, and similar areas, were not separately assessed for purposes of determining the rate of real property tax rate.

Effective: July 1, 2012
New: § 58.1-3284.3

Special Assessments of Improvements in Hampton

Senate Bill 32 (Chapter 186) adds the City of Hampton to the list of localities that may impose taxes or assessments upon the abutting property owners for the initial improving and paving of an existing street provided at least 50 percent of such owners who own at least 50 percent of the property abutting the street request the improvement or paving. The City of Hampton is also authorized to impose taxes or assessments upon abutting property owners subjected to frequent flooding for special benefits conferred upon that property by the installation or construction of flood control barriers, equipment or other improvements for the prevention of flooding. The Act also adds the City of Hampton to the list of localities that may impose taxes or assessments upon the abutting property owners for the underground relocation of distribution lines for electricity, telephone, cable television and similar utilities.

Under current law, the Cities of Chesapeake, Hopewell, Newport News, Norfolk, Richmond, and Virginia Beach may impose taxes or assessments upon the abutting property owners for the initial improving and paving of an existing street provided at least 50 percent of such owners who own at least 50 percent of the property abutting the street request the improvement or paving. The taxes or assessments may not exceed the benefits resulting from the improvements to the property owners and may not exceed the sum of $10 per front foot of property abutting such street or the sum of $1,000 for any one subdivided lot or parcel abutting the street, whichever is lesser.

The Cities of Buena Vista and Waynesboro and the County of Augusta may impose taxes or assessments upon abutting property owners subjected to frequent flooding for special benefits conferred upon that property by the installation or construction of flood control barriers, equipment or other improvements for the prevention of flooding. The taxes or assessments may not exceed the benefits resulting from the improvements to the property owners.

The Cities of Poquoson and Williamsburg may impose taxes or assessments upon the abutting property owners for the underground relocation of distribution lines for electricity, telephone, cable television and similar utilities. The underground relocation of distribution lines may only be ordered by the governing body and the cost apportioned pursuant to an agreement between the governing body and the abutting landowners.

Effective: July 1, 2012

Amended: § 15.2-2404

Transfer of Certain Tax-Delinquent Properties to Hampton

House Bill 202 (Chapter 87) and Senate Bill 33 (Chapter 610) add the City of Hampton to the list of localities authorized to have a special commissioner convey real estate to the locality in lieu of a public sale at auction when the percentage of taxes and other liens, together with penalty and accumulated interest, exceeds 35 percent of the assessed value of the parcel or the percentage of taxes alone exceeds 15 percent of the assessed value of the parcel.

Under current law, localities may petition the circuit court to appoint a special commissioner to convey the tax-delinquent property to the locality in lieu of the sale at public auction if such property: 1) has delinquent real estate taxes or a lien against the parcel for certain specified reasons; 2) has an assessed value of $50,000 or less; and 3) the taxes or liens, together with penalty and accumulated interest, must exceed 50percent of the assessed value of the parcel, or the taxes alone must exceed 25percent of the assessed value of the parcel. The Cities of Norfolk, Richmond, Hopewell, Newport News, and Petersburg are authorized to have a special commissioner convey real estate in lieu of a public sale at auction when the percentage of taxes and other liens, together with penalty and accumulated interest, exceeds 35 percent of the assessed value of the parcel or the percentage of taxes alone exceeds 15 percent of the assessed value of the parcel.

Localities have a broad array of tools to collect delinquent taxes including collection from the taxpayer's bank account, wages, income tax refunds, suits against the taxpayer personally, and sale of the real estate to which the tax lien has attached. When taxes are delinquent on the last day of the year following the two-year anniversary date on which such taxes were due, localities may sell the real estate for the purpose of collecting all delinquent taxes on such property. Localities may sell property that has been declared blighted on the first anniversary of the date on which delinquent taxes are due. Real estate with an assessed value of $100,000 or less is subject to sale at public auction 1) when taxes are delinquent on the last day of the year following the first anniversary date on which such taxes were due or 2) when there is a lien on the real estate for certain reasons, which lien remains unpaid on the last day of the year following the first anniversary of the date on which such lien was recorded.

Localities are required to provide notice to the property owners and all other parties who have an interest in the real property, including any trustee under a deed of trust or mortgagee. Owners of the property may redeem it at any time prior to the date of the sale by paying all accumulated delinquent taxes, penalties, reasonable attorney's fees, interest and costs, and in some instances, are permitted to set up installment payment agreements with the local treasurer for a maximum period of 24 months. 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.

Effective: July 1, 2012
Amended: § 58.1-3970.1

SEVERANCE TAXES

Administration of the Severance Taxes and Review of the Methodology of Determining Gross Receipts

House Bill 1233 (Chapter 665) and Senate Bill 658 (Chapter 722) require counties and cities that imposed a license tax for the severance of coal, gas, or oil for the 2008, 2009, 2010, or 2011 license years to adopt the uniform ordinance provisions for the Business, Professional and Occupational License ("BPOL") tax set out in *Va. Code* § 58.1-3703.1(A) with a retroactive effective date to the 2008 license year within 90 days of the effective date of the Acts. The localities are not required to include provisions substantially similar to those set forth for license requirements and situs of gross receipts. The Acts provide that an ordinance amended in such a manner complies with the requirement of *Va. Code* § 58.1-3703.1 that any ordinance imposing a license tax include provisions substantially similar to the uniform ordinance provisions.

The Acts provide that any person assessed with a severance tax for license years 2008 through 2013 would be allowed to file an administrative appeal to the local assessing official only during the period beginning July 1, 2013, and ending July 1, 2014. Such appeal may be further appealed to the Tax Commissioner and to the appropriate circuit court. Additionally, collection activity is suspended on the assessment of severance taxes for license years 2008 through 2011 until July 1, 2013. The Acts also suspend the collection activity for the license years 2012 and 2013 provided that the person filing the return for such taxes includes with the return a good faith payment of the tax due or a good faith report of the tax due. Collection activity is not required to be suspended if collection of any tax, interest, or penalty is jeopardized by delay, nor is collection activity required to be suspended for any amount of unpaid license tax reported by a person as due in filing a severance tax return.

The Acts also require the Tax Commissioner to convene a working group consisting of representatives of the localities levying severance taxes and the coal, oil, and gas companies subject to the tax. The working group is directed to review the methodology for determining gross receipts subject to the severance taxes and such other issues related to the imposition of severance taxes. Upon completion of the review of the methodology, the Tax Commissioner has the discretion to review with the working group such other tax issues as may be in dispute between such localities and such representatives. The Acts request the working group to begin as soon as possible after the conclusion of the 2012 General Assembly Session and to identify any changes to current law, regulation, or policy that it considers desirable when addressing the above issues and for the working group to provide a report and recommendations to the chairmen of the Senate and House Committees on Finance no later than December 1, 2012.

Effective: April 6, 2012
New: § 58.1-3713.3

TANGIBLE PERSONAL PROPERTY TAX

Allows Localities to Exempt or Impose a Different Tangible Personal Property Tax Rate on Farm-Related Motor Vehicles

House Bill 743 (Chapter 272) expands the list of farm property that a locality may, by ordinance, exempt or tax at a different rate than that applicable to the general class of tangible personal property. The list is expanded to include 1) certain motor vehicles used exclusively for agricultural purposes for which the owner is not required to obtain a registration certificate, license plate, and decal or pay a registration fee; and 2) trucks or tractor trucks used exclusively by farmers in their farming operations for the transportation of farm animals or farm products. The Act defines “trucks” to mean every motor vehicle designed to transport property on its own structure independent of any other vehicle and having a registered gross weight in excess of 7,500 pounds. The term “tractor trucks” is defined as motor vehicles designed and used primarily for drawing other vehicles, and not so constructed as to carry a load other than a part of the load and weight of the attached vehicle.

Virginia law grants cities, counties and towns the authority to levy taxes on the tangible personal property of businesses and individuals. Motor vehicles, business furniture and fixtures, farming equipment, trailers, boats, recreational vehicles, and campers are among the types of items that are subject to tangible personal property tax.

The law provides for the special classification of farm animals, grains, and other feeds used for the nurture of farm animals, farm machinery, and farm implements and equipment for purposes of tangible personal property taxation. Local governing bodies may exempt all the specific classes of property from tax or provide a different rate of tax on all the specific classes of property.

Effective: July 1, 2012
Amended: § 58.1-3505

Allows Separate Classification of Vehicles Owned or Leased by Volunteer Deputy Sheriffs for Tangible Personal Property Tax

House Bill 1148 (Chapter 97) and Senate Bill 534 (Chapter 288) allow motor vehicles that are owned or leased by volunteer deputy sheriffs to be separately classified for purposes of the Tangible Personal Property Tax. Localities may tax this property at a rate not to exceed the rate applicable to the general class of tangible personal property.

The law identifies forty-one categories of property that are separately classified for purposes of the Tangible Personal Property Tax, thirty-six of which can be taxed at a rate not to exceed the general rate imposed on tangible personal property, four of which can be taxed at a rate not to exceed the general rate imposed on machinery and tools, and one that may be taxed at a rate equal to the general rate imposed on real property. There are 16 different classifications of motor vehicles for rate purposes. Prior to this enactment, while motor vehicles owned or leased by persons who serve as auxiliary, reserve or special deputy sheriffs were included among the list of vehicles that are separately classified motor vehicles, volunteer deputy sheriffs' vehicles were not.

Effective: Tax years beginning on or after January 1, 2013
Amended: § 58.1-3506

Changes Rules for Determining Situs for Motor Vehicles for Tangible Personal Property Tax

House Bill 41 (Chapter 651) provides that for purposes of the personal property tax, the situs of a motor vehicle used by a full-time student attending an institution of higher education is the domicile of the owner of the motor vehicle, rather than the locality in which the vehicle is normally garaged or parked. The vehicle owners must present sufficient evidence that they have paid the vehicle's personal property tax to their domicile locality if the locality wherein the institution of higher education is located so requests.

Generally, vehicles are assessed by the locality in which they are normally garaged or parked. Prior to enactment of this law, the situs of vehicles used by full time students attending higher education institutions was the domicile of the student only if the student owned the vehicle.

Effective: Taxable years beginning on an after January 1, 2012
Amended: § 58.1-3511

TRANSIENT OCCUPANCY TAXES

Authorizes Campbell County to Increase Transient Occupancy Tax Rate

Senate Bill 562 (Chapter 290) authorizes Campbell County to increase its transient occupancy tax to a maximum rate of five percent. Revenues from the portion of the tax in excess of two percent must be used solely for tourism or marketing of tourism.

Generally, counties are authorized to 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 applies to rooms rented on a continuous basis by the same individual or group for 30 or more continuous days, and applies only to rooms that are intended or suitable for dwelling and sleeping. Rooms used for alternative purposes, such as banquet and meeting rooms, are not subject to the tax.

In addition, Virginia law separately identifies 42 other counties that are authorized to impose a transient occupancy tax at a maximum rate of five percent. The revenues for the portion of the tax in excess of 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. Several additional counties are authorized to impose additional transient occupancy taxes, at rates separately specified by statute, the funds of which are allocated to promoting tourism, business travel, and other specified projects within the counties.

Effective: July 1, 2012
Amended: § 58.1-3819

Authorizes Roanoke County to Increase Transient Occupancy Tax Rate

Senate Bill 103 (Chapter 340) authorizes Roanoke County to increase its transient occupancy tax rate to a maximum rate of seven percent. Revenues from the portion of tax in excess of five percent must be designated solely to advertising the Roanoke metropolitan area as an overnight tourist destination. The Act defines "advertising the Roanoke metropolitan area as an overnight tourism destination" to mean advertising that is intended to attract visitors from a sufficient distance so as to require an overnight stay of at least one night. Prior to enactment of this law, Roanoke County imposed its transient occupancy tax at a rate of five percent, as authorized by its charter, enacted in 1986.

Generally, counties are authorized to 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 applies to rooms rented on a continuous basis by the same individual or group for 30 or more continuous days, and applies only to rooms that are intended or suitable for dwelling and sleeping. Rooms used for alternative purposes, such as banquet and meeting rooms, are not subject to the tax.

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Effective: July 1, 2012
New: § 58.1-3819.1

LEGISLATIVE

STUDIES

Joint Subcommittee to Evaluate Tax Preferences

House Bill 777 (Chapter 777) establishes the Joint Subcommittee to Evaluate Tax Preferences in the legislative branch of government, which would oversee the evaluation of Virginia's tax preferences. This Joint Subcommittee will have a total membership of fourteen legislative members that would consist of eight members of the House of Delegates and six members of the Senate. The Joint Subcommittee will be responsible for the following:

- Undertaking a systematic review of Virginia's tax preferences;
- Establishing procedures and performance measures to evaluate the effectiveness of tax preferences;
- Recommending a process and guidelines for establishing expiration dates for tax preferences; and
- Submitting an annual report to the General Assembly and the Governor of its recommendations, including which tax preferences should be continued, expanded, modified, or eliminated.

This Act does not specify the extent of the review that would be undertaken annually. Rather, the Joint Subcommittee has the authority to adopt a schedule for reviewing tax preferences based upon program areas to which the preferences relate. The chairman of the Joint Subcommittee is required to submit an annual executive summary of the interim activity and work of the Joint Subcommittee by the first day of each regular General Assembly session to the General Assembly and to the Governor.

The Joint Subcommittee is authorized to request that the Governor direct Department of Taxation staff to conduct independent evaluations of tax preferences in promoting economic activity, generating revenue, or otherwise achieving their intended policy purpose and report the findings to the Joint Subcommittee. The Joint Subcommittee is authorized to establish a technical advisory group to assist the Joint Subcommittee and the Department of Taxation.

Effective: July 1, 2012
New: §§ 30-330; 30-331; 30-332

Virginia State Crime Commission Study of the Practice of Illegal Cigarette Trafficking

Senate Joint Resolution 21 directs the Virginia State Crime Commission to study the practice of illegal cigarette trafficking. In conducting its study, the Virginia State Crime Commission shall (i) determine why illegal cigarette trafficking occurs; (ii) identify the methods of illegal cigarette trafficking and the strategies used by smugglers; (iii) document the effects and financial impact of illegal cigarette trafficking on State and local governments, and cigarette manufacturers, wholesalers, and retailers; (iv) identify the methods used to counterfeit cigarettes and cigarette tax stamps and the prevalence of these methods in the Commonwealth on the availability of counterfeit cigarettes and cigarette tax stamps; (v) determine the beneficiaries of illegal cigarette trafficking; (vi) review statutory options to combat illegal cigarette trafficking; (vii) identify potential uses of information technology to prevent illegal cigarette trafficking and assess the costs and benefits of using such technology; (viii) develop a set of policy and legislative recommendations to enhance the Commonwealth's efforts to combat the practice of illegal cigarette trafficking; (ix) identify the unique and challenging public health implications of illegal non-regulated cigarettes; and (x) consider such other related issues as the Virginia State Crime Commission deems appropriate. The Virginia State Crime Commission is required to seek the participation of interested parties, including cigarette manufacturers, technology providers, wholesalers, and retailers, in the deliberations of this study.

Effective: July 1, 2012

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