

2016 LEGISLATIVE SUMMARY



Virginia
Department of Taxation

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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 2016 Session of the General Assembly, including the reconvened session on April 20, 2016. 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.

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

The Summary is intended to provide a synopsis of enacted legislation and is for informational purposes only. The Summary is not a substitute for the actual state law, local ordinances, and the Department's regulations or guidelines. Additional information on new legislation affecting state taxes may be obtained from the Department as follows:

Website: www.tax.virginia.gov

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

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

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STATE TAX

LEGISLATION

GENERAL PROVISIONS

Sunset Dates for Income Tax Credits and Sales Tax Exemptions

Section 3-5.14 of the 2016 Appropriations Act (House Bill 30, Chapter 780) provides that the General Assembly shall not advance the sunset date for any existing sales tax exemption or income tax credit beyond June 30, 2022. Any new sales tax exemption or income tax credit enacted by the General Assembly prior to the 2021 regular legislative session must have a sunset date not later than June 30, 2022. This requirement does not apply to sales tax exemptions related to nonprofit entities or to exemptions or tax credits with sunset dates after June 30, 2022 that were enacted or advanced during the 2016 session.

This Act also requires the Department to report to the General Assembly and to the Joint Subcommittee to Evaluate Tax Preferences on the revenue impact of every sales tax exemption and tax credit that is scheduled to expire prior to June 30, 2022. Such report is due by November 1, 2020 and must be updated every five years. The report is required to include the prior fiscal year's state and local sales tax impact of each expiring sales tax exemption, and the prior fiscal year's General Fund revenue impact of each expiring income tax credit. An updated revenue impact report is due no later than November 1, 2025, and every five years thereafter, for sales tax exemptions and income tax credits set to expire within two years following the date of the report.

Effective: July 1, 2016

Limitation on the Collection of Taxes by the Department

House Bill 643 (Chapter 634) provides that the Department must cease all efforts to collect any unpaid tax seven years after the assessment of the tax, even if a collection action has been initiated before the expiration of the seven-year period.

Under current law, the period of limitations for the Department to make or institute collection action by levy, a proceeding in court, or any other means available to the Tax Commissioner under the laws of the Commonwealth is seven years from the date of the assessment. If some form of collection action is taken within the seven-year limitations period, most assessments remain collectible until satisfied.

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As under current law, the period of limitations on collection will continue to be suspended for periods when (i) the taxpayer's assets are in control or custody of the U.S. Bankruptcy Court or any other federal or state court, or (ii) the taxpayer is outside the Commonwealth for a continuous period of at least six months. In addition, this legislation clarifies that the period of limitations on collection will be suspended for any periods when an installment payment agreement between the taxpayer and the Department is in effect. Collection actions pursuant to execution of liens created by a judgment lien or a memorandum of lien under *Va. Code* § 58.1-1805 are not affected by this legislation.

Effective: Assessments made on and after July 1, 2016

Amended: § 58.1-1802.1

Electronic Filing Requirement for Dealers

Item 275 (U) of the 2016 Appropriations Act (House Bill 30, Chapter 780) requires Vending Machine Sales Tax dealers, Motor Vehicle Rental Tax dealers, Communications Tax providers, and Tobacco Products Tax distributors to file their returns electronically and remit payments electronically beginning with the July 2016 return, due August 2016, for monthly filers and, for less frequent filers, with the first return they are required to file after July 1, 2016. Dealers may request a waiver from the electronic filing and payment requirement. Waivers will be granted if the Tax Commissioner finds that this requirement creates an unreasonable burden on the person required to use an electronic medium. All requests for waiver should be submitted to the Tax Commissioner in writing.

Effective: July 1, 2016

Supersedes: § 58.1-9

Employer Filing Requirements for Income Tax

House Bill 1331 (Chapter 660) and Senate Bill 230 (Chapter 676) codify existing provisions currently set forth in the Appropriations Act that require employers to file the annual employer withholding return and copies of accompanying written statements with the Department in an electronic medium by January 31 of each year.

Prior to July 1, 2014, the due date for filing the annual withholding return and accompanying written statements was February 28. Effective July 1, 2014 and thereafter, the date by which all employers are required to submit such documentation was moved from February 28 to January 31. Effective July 1, 2013, all employers are required to file periodic withholding returns, annual withholding returns, and written statements electronically. Both the

date change and the electronic filing mandate were contained in the Appropriations Act but neither was previously codified in the Code of Virginia.

Effective: July 1, 2016
Amended: §§ 58.1-472 and 58.1-478

Disclosure of Information Regarding Withholding Records and Cigarette Stamping Agents

House Bill 951 (Chapter 344) and Senate Bill 325 (Chapter 227) allow the Department to disclose to a taxpayer whether the taxpayer's employer or another person or entity required to withhold on behalf of such taxpayer has submitted withholding records to the Department for a specific taxable year.

These Acts also authorize the Department to make available a list of licensed cigarette stamping agents to federal, state, and local law enforcement agencies upon request. The Department is required to update the list of licensed cigarette stamping agents monthly.

Under current law, the Department is not authorized to publish a list of licensed cigarette stamping agents. However, the Department is explicitly authorized to publish a list of licensed distributors of other tobacco products, which include cigars, smokeless tobacco, and pipe tobacco.

Unless an exception applies, the Tax Commissioner or agent, clerk, commissioner of the revenue, treasurer, or any other state or local tax or revenue officer or employee, or any person to whom tax information is divulged pursuant to law, or any former officer or employee of any of the aforementioned offices may not divulge any information acquired by him in the performance of his duties with respect to the transactions, property, including personal property, income or business of any person, firm or corporation. It is also unlawful for any person to disseminate, publish, or cause to be published any confidential tax document which he knows or has reason to know is a confidential tax document. Any person who violates these provisions is guilty of a Class 1 misdemeanor.

Effective: July 1, 2016
Amended: §§ 58.1-3 and 58.1-1011

Disclosure of Information Regarding the Line of Duty Act

House Bill 1345 (Chapter 677) makes several changes to the Line of Duty Act (Chapter 4 of Title 9.1 of the *Code of Virginia*). Among these changes is a provision that allows the Tax

Commissioner to provide tax information to the Virginia Retirement System and the Department of Human Resource Management, after entering into a written agreement, in order to ensure that a disabled person with continued health insurance coverage in a Line of Duty Act Health Benefits Plan does not have earned income in excess of his or her salary at the time of the disability.

Effective: July 1, 2017
Amended: § 58.1-3

Certification of Virginia Collaborative Economic Development Performance Grant Requirements

House Bill 846 (Chapter 777) and Senate Bill 459 (Chapter 776) create a special nonreverting fund known as the Virginia Collaborative Economic Development Performance Grant Fund (“the Fund”). Grants from the Fund will be paid to participating localities that agree to participate in a collaborative economic development plan in the year following certification by the Virginia Economic Development Partnership (“VEDP”) of a certified company in such locality.

After taking into consideration other state and local financial commitments made to the certified company, the annual amount of a grant from the Fund will not be permitted to exceed 45 percent of the total annual personal income tax withheld for payment to the Department from employees holding new jobs at the applicable certified company. By March 31 of each year, VEDP and the Department will be required to determine whether a certified company has met or substantially maintained the new job and capital investment requirements, and will be required to compute, based on the amount of personal income tax withheld from employees holding new jobs, the moneys available to be disbursed as performance grants to the participating localities. If an application for a grant is approved, the aggregate amount of grants awarded for that application over a six-year period will not be permitted to exceed 50 percent of the total investment or contributions of the participating localities to the economic development project or effort.

Effective: July 1, 2016
Added: §§ 2.2-5105 through 2.2-5108

Family and Children’s Trust Fund Exempt from Taxation

House Bill 1207 (Chapter 627) and Senate Bill 346 (Chapter 110) clarify that the Family and Children’s Trust Fund (“the Trust Fund”) performs an essential governmental function and therefore gifts, contributions, grants, devises, or bequests, whether personal or real property, and the income therefrom, accepted by the Trust Fund are exempt from all state and local taxes and regarded as the property of the Commonwealth for the purposes of all tax laws.

The General Assembly created the Trust Fund in 1986. It is held as a separate fund by the Treasurer of Virginia and is administered by a Board of Trustees. The Trust Fund’s objectives are to utilize public and private collaboration for the support and development of services for the prevention and treatment of child abuse and neglect and violence within families.

Under current law, any income received by a state (including its political subdivisions and other instrumentalities) is exempt from federal income tax if it is derived from the exercise of an essential government function. In addition, a deduction may be claimed for charitable contributions to a state provided that the contribution is made exclusively for public purposes.

Effective: July 1, 2016
Amended: § 63.2-2100

INCOME TAX

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

House Bill 402 (Chapter 2) and Senate Bill 545 (Chapter 19) advance Virginia’s date of conformity to the Internal Revenue Code (“IRC”) from December 31, 2014, to December 31, 2015. These Acts allow Virginia to conform to the provisions of the Protecting Americans from Tax Hikes Act of 2015 (the “PATH Act”), and other items of federal legislation that modified the IRC after December 31, 2014. These Acts also permanently conform to the enhanced federal earned income tax credit (“EITC”) provisions that were permanently extended for federal purposes by the PATH Act.

On December 18, 2015, Congress enacted the PATH Act (Division Q of H.R. 2029). This Act extended a number of expiring federal tax provisions including the:

- Increased expensing limitations and treatment of certain real property as IRC § 179 property;
- Provisions related to the depreciation and expensing of certain types of property;
- Above-the-line deduction for certain expenses of elementary and secondary school teachers;
- Deduction for state and local general sales taxes;
- Above-the-line deduction for qualified tuition and related expenses;
- Exclusion for discharge of indebtedness on a principal residence;
- Deductibility of interest on mortgage insurance premiums as qualified residence interest;
- Federal income tax treatment of certain income related to S corporations;
- Federal income tax treatment of certain foreign income; and
- Enhanced EITC.

The PATH Act also modified certain expiring provisions that were extended, and added several new federal tax provisions. Such provisions include several modifications to the IRC § 179 deduction; a provision indexing the \$250 above-the-line deduction for certain expenses of school teachers; enhancements to the federal charitable deduction for contributions of food inventory; a new exclusion for compensation received for wrongful incarceration; and rules related to real estate investment trust (“REIT”) spinoffs.

In addition to the PATH Act, Congress also enacted The Don’t Tax Our Fallen Public Safety Heroes Act (H.R. 606), which exempts certain income received by dependents of public

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safety officers who die in the line of duty, and the Bipartisan Budget Act of 2015 (H.R. 1314), which changes the IRS procedures for auditing partnerships and clarifies some of the federal partnership rules.

Advancing Virginia's date of conformity to December 31, 2015 allowed Virginia taxpayers to take advantage of these provisions for Virginia income tax purposes on their Taxable Year 2015 returns.

Virginia will continue to disallow any bonus depreciation allowed for certain assets under federal income taxation and any five year carry-back of NOLs allowed for NOLs generated in either Taxable Year 2008 or 2009. In addition, Virginia will continue to disallow the federal treatment of tax deductions related to applicable high yield discount obligations. Virginia will also continue to deconform from any 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.

Effective: February 5, 2016
Amended: § 58.1-301

Deduction for Contributions to ABLE Accounts

Item 3-5.11 of the 2016 Appropriations Act (House Bill 30, Chapter 780) establishes a personal income tax deduction for contributions made to Achieving a Better Life Experience ("ABLE") saving trust accounts for the benefit of certain disabled individuals. For contributors under age 70, the deduction claimed on any individual income tax return in any taxable year is limited to \$2,000 per ABLE account. If the contribution to an ABLE account exceeds \$2,000, the remainder may be carried forward and subtracted in future taxable years until the ABLE account contribution has been fully deducted. For contributors who have attained age 70, taxpayers may claim a deduction for the full amount contributed to an ABLE account, less any amounts previously deducted. Notwithstanding the statute of limitations, any deduction that is taken is subject to recapture during the taxable year or years in which distributions or refunds are made for any reason other than to pay qualified disability expenses or the beneficiary's death.

Under the federal Achieving a Better Life Experience Act of 2014, Congress authorized states to establish ABLE savings trust accounts to assist individuals and families in saving for qualified disability expenses. Such expenses include education, housing, transportation, employment training and support, assistive technology and personal support services, health, prevention and wellness, financial management and administrative services, and other expenses of individuals who were disabled or blind prior to the age of 26. Under federal law,

earnings on ABLE accounts are not subject to federal income taxation. Because Virginia conforms to the federal income tax treatment, such earnings are also exempt from Virginia income taxation. The General Assembly established a Virginia ABLE savings program during the 2015 session which is administered by the Virginia College Savings Program.

The Department is required to develop guidelines implementing the provisions of this Act, including but not limited to the computation, carryover, and recapture of the deduction. These guidelines are exempt from the Administrative Process Act.

Effective: Taxable years beginning on or after January 1, 2016

Research and Development Tax Credits

House Bill 884 (Chapter 661) and Senate Bill 58 (Chapter 300) make several changes to the existing Research and Development Expenses Tax Credit and create a new tax credit, the Major Research and Development Expenses Tax Credit.

Changes to the Existing Research and Development Expenses Tax Credit

These Acts make the following changes to the existing Research and Development Expenses Tax Credit:

- Allow a taxpayer to elect to compute the credit using a simplified method in lieu of the current statutory method;
- Increase the amount of credit each taxpayer may earn annually;
- Increase the annual credit cap from \$6 million to \$7 million;
- Extend the sunset date for the credit to taxable years beginning before January 1, 2022; and
- Prohibit taxpayers with Virginia qualified research and development expenses in excess of \$5 million from claiming the credit.

These Acts allow a taxpayer claiming the Research and Development Expenses Tax Credit to elect to compute the credit using a simplified method in lieu of the current statutory method. Under such method, the credit is equal to 10 percent of the difference of:

- The Virginia qualified research and development expenses paid or incurred by the taxpayer during the taxable year; and
- 50 percent of the average Virginia qualified research and development expenses paid or incurred by the taxpayer for the three taxable years immediately preceding the taxable year for which the credit is being determined.

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If a taxpayer electing to use the simplified method did not pay or incur Virginia qualified research and development expenses in any one of the three taxable years immediately preceding the taxable year for which the credit is being determined, the credit is equal to five percent of the Virginia qualified research and development expenses paid or incurred by the taxpayer during the taxable year.

These Acts increase the amount of credits a taxpayer may earn to:

- \$45,000 of credits for a taxable year; or
- \$60,000 of credits for a taxable year if the Virginia qualified research was conducted in conjunction with a Virginia public or private college or university.

These Acts also increase the annual credit cap for the Research and Development Expenses Tax Credit from \$6 million to \$7 million. As under existing law, if the total amount of eligible credit requests exceeds the credit cap for any taxable year, the Department is required to allocate a supplemental amount of credits to all eligible taxpayers. These Acts increase the maximum supplemental allocation of credits to the following amounts:

- An additional \$45,000 of credits for a taxable year; or
- An additional \$60,000 of credits for a taxable year if the Virginia qualified research was conducted in conjunction with a Virginia public or private college or university.

As under existing law, if the Department determines that the amount of eligible supplemental credits exceeds the credit cap, it is required to prorate such supplemental credits.

These Acts extend the sunset date for the existing Research and Development Expenses Tax Credit from taxable years beginning before January 1, 2019 to taxable years beginning before January 1, 2022.

These Acts require that taxpayers submit applications for the credit no later than July 1 of the calendar year following the close of the taxable year in which expenses that are eligible for the credit were paid or incurred. For prior taxable years, the administrative deadline for submitting such applications was April 1.

These Acts prohibit a taxpayer with Virginia qualified research and development expenses in excess of \$5 million from claiming the existing Research and Development Expenses Tax Credit. Such taxpayer may be eligible to claim the Major Research and Development Expenses Tax Credit instead.

Major Research and Development Expenses Tax Credit

These Acts establish the new Major Research and Development Expenses Tax Credit for taxpayers with Virginia qualified research and development expenses in excess of \$5 million for a taxable year. The amount of this credit is equal to 10 percent of the difference between:

- The Virginia qualified research and development expenses paid or incurred by the taxpayer during the taxable year; and
- 50 percent of the average Virginia qualified research and development expenses paid or incurred by the taxpayer for the three taxable years immediately preceding the taxable year for which the credit is being determined.

However, if the taxpayer does not pay or incur Virginia qualified research and development expenses in any one of the three taxable years immediately preceding the taxable year for which the credit is being determined, the credit will equal five percent of the Virginia qualified research and development expenses paid or incurred by the taxpayer during the taxable year. The total amount of Major Research and Development Tax Credits that can be issued for each fiscal year is limited to \$20 million.

These Acts require that taxpayers submit applications for the credit no later than July 1 of the calendar year following the close of the taxable year in which expenses that are eligible for the credit were paid or incurred. No taxpayer is permitted to claim credits in excess of 75 percent of the income tax imposed on the taxpayer for the taxable year. Any credit not usable for the taxable year for which the credit is first allowed may be carried over to the extent usable for the next ten taxable years or until the total amount of credit has been utilized, whichever occurs sooner.

The amount of any credit attributable to a partnership, limited liability company, or electing small business corporation (S corporation) is required to be allocated to the individual partners, members, or shareholders in proportion to their ownership interest in such entities or in accordance with a written agreement entered into by such individual partners, members, or shareholders.

No taxpayer that is an electric utility participating in a renewable energy portfolio standard program is eligible for the Major Research and Development Expenses Tax Credit with regard to any expense incurred or investment made by the participating utility that constitutes a qualified investment for purposes of such program.

These Acts prohibit a taxpayer from claiming the Major Research and Development Expenses Tax Credit for otherwise qualified research and development expenses that are paid for or incurred for research conducted in Virginia on human cells or tissue derived from induced

abortions or from stem cells obtained from human embryos. Such prohibition does not apply to research conducted using stem cells other than embryonic stem cells.

The Department is required to develop and publish guidelines, exempt from the Administrative Process Act, regarding the process for applying for the credit. Such guidelines must also prescribe standards for determining when research and development is considered conducted in Virginia for purposes of allowing the credit.

Effective: Taxable years beginning on or after January 1, 2016, but before January 1, 2022
Amended: §§ 56-585.2 and 58.1-439.12:08
Added: § 58.1-439.12:11 (as enacted. The Virginia Code Commission may renumber this section to avoid conflict with other Acts).

Reporting Requirement for the Research and Development Expenses Tax Credit

House Bill 590 (Chapter 433) requires that the Tax Commissioner's annual report to the Governor include the following information regarding approved Research and Development Expenses Tax Credits:

- The total number of applicants approved for the Research and Development Expenses Tax Credit for the taxable year; and
- The total amount of credits approved for the taxable year.

This eliminates the requirement that the Virginia Economic Development Partnership include data regarding approved Research and Development Expenses Tax Credits in the Annual Report on Business Incentives compiled by the Secretary of Commerce and Trade.

Effective: July 1, 2016
Amended: § 58.1-439.12:08

Tax Credit for Food Crop Donations to Food Banks

House Bill 1093 (Chapter 391) and Senate Bill 580 (Chapter 304) establish a new individual and corporate income tax credit for persons engaged in the business of growing food crops in the Commonwealth who donate crops to a nonprofit food bank. The amount of the credit is equal to 30 percent of the fair market value of such crops. No taxpayer is permitted to claim more than \$5,000 in credits for a taxable year.

Under these Acts, the Tax Commissioner is prohibited from issuing more than \$250,000 in tax credits in any fiscal year. Taxpayers are required to submit an application to the Department in accordance with the forms, instructions, dates, and procedures prescribed by the Department. To the extent a credit is allowed for growing food crops in the Commonwealth and donating the crops to a nonprofit food bank, these Acts require an addition to federal adjusted gross income, in the case of an individual, or an addition to federal taxable income, in the case of a corporation, for any amount claimed as a federal income tax deduction for such donations.

The Tax Commissioner is required to develop guidelines, exempt from the Administrative Process Act, implementing the provisions of this credit. Such guidelines are required to include procedures for the allocation of tax credits among participating taxpayers.

Effective: Taxable years beginning on or after January 1, 2016, but before January 1, 2022
Amended: §§ 58.1-322 and 58.1-402
Added: § 58.1-439.12:11 (as enacted. The Virginia Code Commission may renumber this section to avoid conflict with other Acts).

Tax Credit for Contributions to Political Candidates

House Bill 22 (Chapter 50) and Senate Bill 115 (Chapter 348) establish a January 1, 2017 sunset date for the individual income tax credit for contributions to political candidates. This credit is allowed for contributions to political candidates in a primary, special, or general election for local or state office held in the year in which the contribution was made. The credit is equal to 50 percent of the contribution, up to \$25 for an individual taxpayer, or \$50 for taxpayers filing a joint return.

Effective: July 1, 2016
Amended: § 58.1-339.6

Neighborhood Assistance Act Tax Credit

House Bill 742 (Chapter 426) waives certain requirements imposed on affiliates of neighborhood organizations submitting proposals other than education proposals for purposes of the Neighborhood Assistance Act Tax Credit. Specifically, this Act waives the requirements that:

- At least 50 percent of the persons served by each affiliate of the neighborhood organization be low-income persons;

- At least 50 percent of the revenues of each affiliate of the neighborhood organization be used to provide services to such persons;
- Each affiliate meet the definition of “neighborhood organization;” and
- An audit, review, or compilation for each affiliate be furnished to the Commissioner of Social Services.

This waiver is only available if the neighborhood organization received an allocation of credits for Fiscal Year 2014, and none of its affiliates receives an allocation of tax credits for the program year for which the neighborhood organization has submitted its proposal. Such waiver applies to tax credit allocations beginning with tax credit allocations for Fiscal Year 2017 and is available for each fiscal year thereafter.

Effective: July 1, 2016
Amended: §§ 58.1-439.18 and 58.1-439.20

Education Improvement Scholarships Tax Credit

House Bill 1017 (Chapter 751) and Senate Bill 589 (Chapter 767) make several administrative changes to the Education Improvement Scholarships Tax Credit.

Under current law, taxpayers are allowed to claim an Education Improvement Scholarships Tax Credit equal to 65 percent of the monetary or marketable securities donation they made to a qualifying scholarship foundation. Taxpayers seeking to qualify for this credit are required to request preauthorization for a specified credit amount from the Superintendent of Public Instruction, and provide such preauthorization notice to the scholarship foundation at the time of donation. The scholarship foundation is then required to return such preauthorization notice to the Department of Education within 20 days from the date of donation.

Scholarship foundations are required to meet a number of other requirements. Any donations of marketable securities for which tax credits are issued must be sold by the scholarship foundation for cash within 14 days of receipt. Scholarship foundations are also required to provide specified information to the Department of Education each year.

These Acts make several modifications to the requirements currently imposed on scholarship foundations. Specifically, these Acts extend the deadline by which a scholarship foundation must submit a preauthorization notice to the Department of Education from 20 days to 40 days from the date of the donation. These Acts also extend the maximum amount of time that a scholarship foundation has to sell marketable securities from 14 days after receipt of such securities to 21 days, and modify the requirements regarding what information must be provide annually to the Department of Education.

Effective: July 1, 2016
Amended: §§ 58.1-439.26 and 58.1-439.28

Virginia Port Tax Credits

House Bill 186 (Chapter 69) extends the expiration date of the International Trade Facility Tax Credit, the Barge and Rail Usage Tax Credit, and the Port Volume Increase Tax Credit from January 1, 2017 to January 1, 2022.

Effective: July 1, 2016
Amended: §§ 58.1-439.12:06, 58.1-439.12:09, 58.1-439.12:10, and 58.1-439.15

Exception to the Captive REIT Addition

House Bill 95 (Chapter 342) excludes any voting power or value of the beneficial interests or shares in a real estate investment trust (“REIT”) that are held in a separate asset account of a life insurance corporation from consideration for purposes of determining whether a REIT is a captive REIT subject to the Virginia income tax addition.

To prevent the captive REIT structure from being utilized for tax avoidance purposes in Virginia, the General Assembly enacted legislation during the 2009 Session (House Bill 2504 and Senate Bill 1147 (2009 Acts of Assembly, Chapters 426 and 558)) that requires corporations to add back the amount of dividends deducted by a captive REIT. For purposes of this addition, a REIT is considered a captive REIT if:

- It is not regularly traded on an established securities market;
- More than 50 percent of the voting power or value of beneficial interests or shares of which, at any time during the last half of the taxable year, is owned or controlled, directly or indirectly, by a single entity that is a corporation or an association that is taxable as a corporation for federal income tax purposes, and not a tax exempt entity for federal income tax purposes; and
- More than 25 percent of its income consists of rents from real property.

Under this Act, any voting power or value of the beneficial interests or shares in a REIT that is held in a segregated asset account of a life insurance corporation will not be taken into consideration when determining if such REIT is a captive REIT for purposes of the addition.

Effective: Taxable years beginning on or after January 1, 2016
Amended: § 58.1-402

BANK FRANCHISE TAX

Bank Franchise Tax Cap

House Bill 1224 (Chapter 755) and Senate Bill 670 (Chapter 325) set a cap of \$18 million on the maximum total annual Bank Franchise Tax liability per taxpayer. This cap will increase to \$20 million if at least five banks pay the maximum tax of \$18 million for three consecutive calendar years. After two years at \$20 million, the cap will increase by three percent annually. In the event that the cap increases, the Department is required to notify all bank and trust companies no later than August 15 of the year immediately prior to the year of the increase.

Under current law, an annual Bank Franchise Tax is imposed on a bank's net capital at the rate of \$1 per \$100. Counties, cities and towns are authorized to impose a local Bank Franchise Tax on banks at an amount equal to 80 percent of the state tax. A credit against the state tax is allowed for these local taxes. Therefore, banks pay a total Bank Franchise Tax of \$1 per \$100 on their net capital, but it is effectively split 80 percent to localities and 20 percent to the state.

Effective: July 1, 2016
Amended: § 58.1-1204

RETAIL SALES AND USE TAX

Interest on Tax Refund Claims

House Bill 398 (Chapter 484) and Senate Bill 444 (Chapter 303) prohibit any taxpayer who held a valid exemption certificate issued by the Department at the time of purchase but failed to present it to the merchant from receiving interest on a refund claim for erroneously paid Retail Sales and Use Tax for any period prior to the date a complete refund claim is submitted. This prohibition does not apply to “self executed” or “self-issued” exemption certificates that purchasers download from the Department’s website, complete and sign. The Department is authorized to issue guidelines for taxpayers to follow when seeking Retail Sales and Use Tax refunds.

Generally, interest is required to be paid upon the overpayment of any tax administered by the Department at a rate equal to the rate of interest established pursuant to Va. Code § 58.1-15. The rate of interest on refunds is the "Overpayment Rate" established pursuant to § 6621(a)(2) of the Internal Revenue Code, plus two percent. Interest accrues from a date 60 days after the date of the payment of the tax, or sixty days after the last day prescribed by law for such payment, whichever is later, on such overpayments of tax.

Under current law, Retail Sales and Use Tax dealers are not required to pay interest on refunds to their customers, while the Department is required to pay interest to purchasers that apply directly to the Department for refunds. The Department does not pay interest on sales taxes refunded to a dealer unless the interest is passed on to the purchaser.

Effective: July 1, 2016
Amended: § 58.1-623

Retail Sales and Use Tax Entitlement for the Virginia Beach Arena

House Bill 138 (Chapter 247) and Senate Bill 642 (Chapter 258) extend the expiration date from July 1, 2043 to July 1, 2050, for the fifth enactment of Chapter 767 of the Acts of Assembly of 2013, that grants the City of Virginia Beach the authority to issue bonds to, construct, operate, and receive a portion of sales tax revenues generated by a qualifying sports arena, conference center, or entertainment center in the City of Virginia Beach.

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Under current law, the City of Virginia Beach is authorized to contract for the construction, development, or maintenance of, and regulate the use and operation of a qualifying sports arena or conference center in the City. The City is also entitled to receive a portion of state sales and use tax revenues generated as a result of the construction and operation of the facility. The entitlement, bond authority, and all other authority granted to the City of Virginia Beach related to this facility will expire on January 1, 2018, if the City has not:

- Executed a lease with a NHL or NBA team;
- Issued bonds for an entertainment or conference arena; or
- Entered into a contract for the construction, development, operation or maintenance of the facility.

If the City has met one of these three requirements by the January 1, 2018 deadline, then the City's authority will expire on the earliest of:

- The maturity date of bonds issued by the City or its Development Authority;
- The expiration of the City's or Authority's contractual obligations for the construction, development, operation or maintenance of the facility; or
- July 1, 2043.

Effective: July 1, 2016

Amended: 2013 Acts of Assembly, Chapter 767

Exemption for Certain Veteran Service Organizations

House Bill 63 (Chapter 487) permits nonprofit Veteran Service Organizations ("VSOs") that are exempt from federal income taxation under § 501(c)(19) of the Internal Revenue Code ("I.R.C.") to obtain an exemption from the Retail Sales and Use Tax on purchases of tangible personal property. In addition, this Act allows organizations that have annual gross receipts below \$5,000 and are organized for one of the purposes set forth in I.R.C. § 501(c)(19) to qualify for an exemption from the tax. In either case, the exemption will not apply to tangible personal property used primarily for social and recreational activities for members or for providing insurance benefits to members or members' dependents. As with other nonprofit organizations, VSOs will need to file an application with the Department, meet the applicable criteria, and obtain a certificate of exemption from the Department to make purchases of qualifying tangible personal property exempt of the sales and use tax.

This Act also exempts the gross receipts of these organizations from the Business Professional Occupational and License ("BPOL") tax, except to the extent the organization has

receipts from an unrelated trade or business, which receipts are subject to federal income tax under I.R.C. § 511.

Under current law, organizations exempt from federal income taxation under I.R.C. § 501(c)(3) or, if organized for a charitable purpose, I.R.C. § 501(c)(4), or entities with annual gross receipts less than \$5,000 organized for one of the purposes set forth in I.R.C. § 501(c)(3) or one of the charitable purposes set forth in I.R.C. § 501(c)(4) are eligible for the Retail Sales and Use Tax exemption available to qualifying nonprofit entities on their purchases of tangible personal property. Currently, localities are prohibited from imposing license taxes on the gross receipts of I.R.C. § 501(c)(3) organizations, except to the extent the organization has receipts from an unrelated trade or business. Additionally, gross receipts from gifts, contributions and membership dues of all other I.R.C. § 501(c) organizations, are exempt from the BPOL tax.

Effective: July 1, 2016
Amended: §§ 58.1-609.11 and 58.1-3703

Exemption for Items Used in Commercial Beer Production

House Bill 859 (Chapter 709) provides an exemption from the Retail Sales and Use Tax for certain items, if the preponderance of their use is directly in the commercial production of beer for sale or resale, regardless of whether the beer is sold on or off the premises of the producer. This exemption applies to:

- Machinery, tools, equipment and repair and replacement parts, fuel, power, energy or supplies;
- Materials for future processing, manufacturing or conversion into beer, where the materials either enter into the production of or become a component part of the beer; and
- Materials for future use for packaging the beer for shipment or sale.

The exemption applies only if the eligible tangible personal property is used in the manufacture of beer by brewers holding brewery licenses or limited brewery licenses issued by the Alcoholic Beverage Control Board.

Current law provides an exemption from the Retail Sales and Use Tax for machinery, tools, repair parts, fuel, power, energy supplies, and other specified tangible personal property when used or consumed by an industrial manufacturer or processor of products for sale or resale. In order for the exemption to apply, the production must be industrial in nature.

Effective: July 1, 2016
Amended: § 58.1-609.3

Exemption for Data Centers

House Bill 872 (Chapter 343) and Senate Bill 64 (Chapter 712) extend the sunset date of the Retail Sales and Use Tax exemption for purchases of equipment by data centers and their tenants from June 30, 2020 to June 30, 2035. These Acts also provide that a data center for which a person makes a capital investment of at least \$500 million on or after July 1, 2016, may count jobs relocated from a data center that previously qualified for the data center exemption when meeting the thresholds to qualify for the exemption.

Under current law, the 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) result in the creation by the data center and its tenants, on or after July 1, 2009, of 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. The data center operator must enter into a memorandum of understanding with the Virginia Economic Development Partnership Authority in order to qualify for the exemption. The exemption also extends to purchases made by tenants of a data center that meet the requirements of the data center exemption.

Effective: July 1, 2016
Amended: § 58.1-609.3

Exemption for Certain Items Sold By a Sheriff at a Correctional Facility

House Bill 1191 (Chapter 392) provides an exemption from the Retail Sales and Use Tax for tangible personal property sold by the sheriff in the commissary at a local correctional facility. Additionally, this Act exempts prepared foods sold within the correctional facility.

Virginia law currently provides an exemption from the tax for tangible personal property purchased for use or consumption by the United States, the Commonwealth, and any political subdivision of the Commonwealth. This exemption, however, is not available to inmates that are making purchases of tangible personal property from the government. Therefore, inmates making purchases of tangible personal property or prepared food in commissaries are subject to the tax on these purchases.

Virginia law authorizes sheriffs of local correctional facilities to operate commissaries or stores, in which they may make sales of merchandise to their inmates. The net profits generated from commissary sales made from inmate's accounts must be used within the correctional facility for educational, recreational, or other purposes that benefit the inmates. Any other profits may be used for the general operation of the sheriff's office.

Effective: July 1, 2016
Amended: § 58.1-609.1

Exemption for Wind and Solar Energy Equipment

House Bill 1305 (Chapter 346) provides an exemption from the Retail Sales and Use Tax for machinery, tools, and equipment used by a public service corporation to generate energy derived from sunlight and wind beginning January 1, 2017, and expiring June 30, 2027.

This Act also provides that the exemption from local property taxation for solar photovoltaic systems will apply in full only to:

- Projects equaling 20 megawatts or less, measured in alternating current (AC) generation capacity, for which an initial interconnection request form is filed with an electric utility or regional transmission organization on or before December 31, 2018;
- Projects equaling 20 megawatts or less that serve a public institute of higher education or a private college in the Commonwealth; and
- Projects equaling 5 megawatts or less for which an initial interconnection request form is filed on or after January 1, 2019.

This Act also provides that the exemption from local taxation for solar photovoltaic systems will apply to 80 percent of the assessed value for:

- Projects greater than 20 megawatts first in service on or after January 1, 2017 and for which an initial interconnection request form was filed after January 1, 2015; and
- Projects greater than 5 megawatts for which an initial interconnection request form is filed on or after January 1, 2019.

The Act also provides that the local exemption for solar photovoltaic projects greater than 20 megawatts will not apply to projects upon which construction begins after January 1, 2024.

Under current law, raw materials that are inputs to production of electricity, including fuel, used by a public service corporation are exempt from the Retail Sales and Use Tax. All

other tangible personal property used by a public service corporation in the generation of electric power is subject to the Retail Sales and Use Tax. Currently, the local tax exemption for solar photovoltaic systems applies to projects equaling 20 megawatts or less, as measured in alternating current generation capacity.

Effective: January 1, 2017
Amended: §§ 58.1-609.3, 58.1-3660, and 58.1-3661

Exemption for Certain Drilling Equipment Extended

Senate Bill 563 (Chapter 673) extends the sunset date from July 1, 2016 to July 1, 2022 for the Retail Sales and Use Tax exemption for materials, supplies, machinery, and other specified tangible personal property used directly in the drilling, extraction or processing of natural gas or oil and the reclamation of the well area.

Virginia law currently provides an exemption from the tax for raw materials, fuel, power, energy, supplies, machinery or tools or repair parts or replacement parts that are used directly in the drilling, extraction, or processing of natural gas or oil and the reclamation of the well area. The exemption for machinery, tools, and equipment, or repair parts and replacement parts is available only if the preponderance of their use is directly in the drilling, extraction, refining, or processing of natural gas or oil for sale or resale, or in well area reclamation activities required by state or federal law.

Effective: July 1, 2016
Amended: § 58.1-609.3

Exemption for Motor Fuel Purchased by Hunger Relief Organizations

House Bill 23 (Chapter 34) provides a Retail Sales and Use Tax exemption for fuels used in highway vehicles on which a refund of the Virginia Fuels Tax has been paid to any entity that is exempt from federal income taxation under § 501(c)(3) of the Internal Revenue Code and organized with a principal purpose of providing hunger relief services or food to the needy, if such vehicle is owned and used solely for the purpose of providing hunger relief services or food to the needy. This Act also provides that such fuel will not be subject to the Virginia Fuels Tax.

Under current law, fuel used in highway vehicles for an organization providing hunger relief services is subject to the Virginia Fuels Tax and therefore exempt from the Retail Sales

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and Use Tax. Unless a Retail Sales and Use Tax exemption is available, any fuel exempt from the Fuels Tax is subject to the Retail Sales and Use Tax.

Effective: July 1, 2016
Amended: §§ 58.1-609.1 and 58.1-2259

Accelerated Sales Tax

Item 3-5.06 of the 2016 Appropriations Act (House Bill 30, Chapter 780) establishes a new annual threshold for dealers and direct payment permit holders (“Dealers”) to make accelerated sales tax payments. The payment threshold will increase for the 2017 and 2018 payments as follows:

- June 2017 payment threshold - \$10 million; and
- June 2018 payment threshold - \$25 million.

Item 3-5.07 of the 2016 Appropriations Act (House Bill 29, Chapter 732) provides that the accelerated sales tax payment threshold will remain the same for the 2016 payment at \$2.5 million.

Any dealer with taxable sales and/or purchases exceeding the threshold is 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 tax payment is required to be remitted on or before June 25, if the payment is made by other than electronic transfer, and by June 30, if payment is made by electronic fund transfer. Affected Dealers are entitled to take a credit for this amount on the return for June of the current year due July 20. The Department will notify all affected Dealers and provide them with payment instructions and a payment voucher for the additional payment.

Effective: For the Accelerated Sales Tax Payment due beginning June 2016

EXCISE TAX

Peanut Excise Tax

House Bill 20 (Chapter 165) and Senate Bill 1 (Chapter 5) continue the Peanut Excise Tax at the current rate of \$0.30 per 100 pounds until July 1, 2021. These Acts delete the requirement that the tax revert to the rate of \$0.15 per 100 pounds on July 1, 2016.

The Peanut Excise Tax is levied on peanuts grown in and sold in the Commonwealth for processing. The processor is liable for payment of the tax on all peanuts purchased. A processor is defined as any person, individual, corporation, partnership, trust, association, cooperative and any and all other business units, devices and arrangements that clean, shell or crush peanuts.

Effective: July 1, 2016
Amended: § 3.2-1905

RECORDATION TAX

Exemption for Certain Deeds

House Bill 596 (Chapter 37) provides an exemption from the recordation tax for deeds of partition, or any combination of deeds simultaneously executed and having the effect of a deed of partition, among joint tenants, tenants in common, or coparceners and deeds transferring property pursuant to a decree of divorce or of separate maintenance or pursuant to a written instrument incident to such divorce or separation.

On every deed admitted to record, except a deed exempt from taxation by law, the state recordation tax is generally imposed at the rate of 25 cents on every \$100 or fraction thereof of the consideration of the deed or the actual value of the property conveyed, whichever is greater. However, under current law, deeds of partition, or any combination of deeds simultaneously executed and having the effect of a deed of partition, among joint tenants, tenants in common, or coparceners and deeds transferring property pursuant to a decree of divorce or of separate maintenance or pursuant to a written instrument incident to such divorce or separation are subject to the recordation tax at the rate of \$0.50 per deed.

Effective: July 1, 2016
Amends: § 58.1-811
Repeals: § 58.1-806

Recordation Tax Exemption for Certain Deeds of Trust

House Bill 339 (Chapter 662) provides an exemption from the recordation tax for deeds of trust or mortgages securing a loan made by a locality to a borrower whose household income does not exceed 80 percent of the area median household income established by the U.S. Department of Housing and Urban Development to erect or rehabilitate a home for the borrower and purchase the land for such home. Additionally, this Act provides an exemption from the grantor's tax for a grantor that is a locality at a judicial sale of tax-delinquent property.

Several localities in Virginia currently provide low-interest rate financing for homebuyers who cannot qualify for other available financing using local, state, and federal resources. Eligibility for assistance is typically based on household size and income. The U.S. Department of Housing and Urban Development ("HUD") provides funds to states and localities to use, often in partnership with local nonprofit groups, for grants, direct loans, and loan guarantees or other forms of credit enhancements.

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Under current law, deeds of trust or mortgages securing a loan are generally subject to the state recordation tax at the rate of \$0.25 per \$100 or portion thereof of the amount of the bonds or other obligations secured by the deed of trust or mortgage. An additional recordation tax may be imposed by cities and counties in an amount equal to one-third of the state tax.

Effective: July 1, 2016
Amends: §§ 58.1-802 and 58.1-811

LOCAL TAX

LEGISLATION

GENERAL PROVISIONS

Electronic Dissemination of Tax Documents

Senate Bill 690 (Chapter 768) authorizes treasurers, commissioners of the revenue, and other local tax officials to transmit, with the written consent of the taxpayer, tax bills and other tax documents by electronic means chosen by the taxpayer, including facsimile transmission or electronic mail, in lieu of sending the bill through first class mail. The authorization is notwithstanding the provisions of the Va. Code regarding:

- Notices regarding changes in the assessment of real estate;
- Filing returns for Tangible Personal Property Tax, Machinery and Tools Tax, and Merchants' Capital Tax; and
- Alternative method of filing returns for motor vehicles, trailers, and boats.

This Act also provides that local tax officials, with the consent of the taxpayer, may convey tax bills and other tax documents by allowing the taxpayer to access his information online from a database on the locality's or official's website.

The Code of Virginia requires local tax officials to provide notices or tax documents to taxpayers by mail in certain situations. Additionally, under current law, whenever there is a reassessment of real estate, or any change in the assessed value of any real estate, the officer charged with the assessment of real estate must provide notice by mail to each property owner whose assessment has been changed. The notice must currently be sent by mail at least 15 days prior to the date of a hearing to protest such change in assessment.

Local treasurers are generally required to send every taxpayer assessed with taxes and levies a bill setting forth the amount due no later than 14 days prior to the due date of the taxes. The treasurer may elect not to send a bill amounting to \$20 or less. If the taxes are not paid by the due date, the local treasurer must send the taxpayer a past-due tax bill.

As an alternative and with the taxpayer's written consent, local treasurers may transmit local tax bills by electronic means chosen by the taxpayer, including facsimile transmission or electronic mail, in lieu of sending the bill by first-class mail. Bills transmitted electronically have the same force and effect as mailing by first-class mail. Additionally, local treasurers, with the taxpayer's consent, may transmit local tax bills by allowing the taxpayer to view his bill online from a database on the treasurer's website.

Effective: July 1, 2016
Amended: § 58.1-3912

Local Tax Appeals

House Bill 910 (Chapter 460) and Senate Bill 597 (Chapter 635) require that prior to the release of any confidential tax information in an appeal of a local tax assessment, pursuant to discovery or otherwise, the circuit court must order the parties not to disclose, exhibit, or discuss the confidential information except as provided in the order unless otherwise ordered by the court. These Acts require the order to inform the parties that violating the order is punishable as a Class 1 misdemeanor.

These Acts also require the order to provide that the confidential tax information regarding the assessed property may only be revealed to or discussed with the following persons in connection with the review or litigation of the assessment of such property:

- The parties;
- Counsel for any party and employees of the counsel's firm;
- Outside experts retained by and assisting counsel for any party in the trial or preparation for the trial;
- The court or an administrative board reviewing the assessment, employees of the court or administrative board, and persons employed to transcribe or record the proceedings; and
- Any person who may be called as a witness that counsel believes in good faith to be necessary for the preparation or presentation of the case.

Prior to receiving the confidential information, outside experts and witnesses must sign an acknowledgement of the order and agree to be bound by the terms of the order and subject to the jurisdiction of the court for enforcement of the order.

Effective: July 1, 2016
Amended: § 58.1-3984

Real and Personal Property Taxes

House Bill 80 (Chapter 35) provides that once real or personal property, machinery, equipment, facilities, devices, or real estate improvements have been certified by a state or local certifying authority for the purposes of certain local property tax exemptions, such property is deemed exempt as of the date the property is placed in service. This Act applies to the local property tax exemptions for:

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- Certified pollution control equipment and facilities;
- Certified stormwater management developments and property;
- Certified solar energy equipment, facilities, and devices; and
- Certified recycling equipment, facilities, and devices.

Under current law, certified pollution control equipment and facilities are exempt from local taxation. Additionally, the governing body of any locality is authorized to exempt or partially exempt certified stormwater management developments and property, certified solar energy equipment, and certified recycling equipment from local taxation. These property tax exemptions are currently effective beginning with the first tax year in which the certification is in effect on tax day, which is generally January 1.

Effective: July 1, 2016
Added: § 58.1-3667

REAL ESTATE TAX

Date to Fix Rates

House Bill 148 (Chapter 663) and Senate Bill 445 (Chapter 657) extend the date on which local governments must set their real property tax rate for taxes due on or before June 30 from April 15 to May 15 of each year.

Under current law, department and agency heads of localities are required to prepare and submit to their local governing bodies an estimate of the amount of money needed during the ensuing fiscal year for their departments or agencies by April 1 of each year. Generally, local governing bodies must approve the budget before July 1, the date on which the fiscal year begins. The law requires that the real property tax rate for taxes due on or before June 30 of each year be fixed on or before April 15 of that tax year. The local governing bodies will generally have from April 1st to June 30th to prepare and approve the locality's budget. Because localities depend upon state-appropriated funds as a major source of revenue, it is difficult for them to prepare a local budget without knowing how much money will be appropriated to the locality by the General Assembly. Local governing bodies use this information to determine whether an increase in the real property tax is necessary.

Effective: July 1, 2016

Amended: § 58.1-3321

Constitutional Amendment: Exemption for Surviving Spouse of Certain Emergency Services Providers

House Bill 865 (Chapter 17) provides for a voter referendum at the November 8, 2016, election to approve or reject an amendment to the Constitution of Virginia allowing the General Assembly to provide a local property tax exemption for the real property of the surviving spouse of any law-enforcement officer, firefighter, search and rescue personnel, or emergency medical services personnel who was killed in the line of duty. This amendment provides that the surviving spouse must occupy the real property as his or her principal place of residence and that the exemption ceases if the surviving spouse remarries.

Effective: July 1, 2016

Clarification of Exemption for Disabled Veterans and Spouses of Servicemembers Killed in Action

House Bill 1203 (Chapter 393) and Senate Bill 366 (Chapter 349) clarify that houses, manufactured homes, and other types of dwellings owned by and the residence of certain disabled veterans or surviving spouses of disabled veterans and members of the armed forces killed in action may qualify for real property tax exemptions, even if the disabled veteran or surviving spouse does not own the land on which the residence is located. These Acts provide that such manufactured homes are considered real property and may qualify for these real property tax exemptions regardless of whether the equipment previously used for mobility has been removed and the manufactured home converted to real property. These Acts also provide that if the land is not owned by the disabled veteran or surviving spouse, the land will not be exempt from the real property tax.

Under current law, the principal residence of a surviving spouse of any member of the armed forces of the United States who was killed in action or a veteran (or widow or widower of a veteran) who has been determined to have a 100 percent service-connected, permanent, and total disability is exempt from real property taxation. The land, not to exceed one acre, 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 disabled veterans and their surviving spouses and surviving spouses of soldiers killed in action.

Effective: July 1, 2016

Amended: §§ 46.2-653.1, 58.1-3219.5, and 58.1-3219.9

Exemption for Disabled Veterans and Spouses of Servicemembers Killed in Action

House Bill 421 (Chapter 485) extends the real property tax exemption for certain disabled veterans and surviving spouses of disabled veterans and members of the armed forces killed in action to include real property improvements made to the land surrounding the residences as long as the principal use of the improvement is to house or cover motor vehicles or household goods and personal effects for other than a business purpose.

Under current law, the principal residence of a surviving spouse of any member of the armed forces of the United States who was killed in action or a veteran (or widow or widower of a veteran) who has been determined to have a 100 percent service connected, permanent, and total disability is exempt from real property taxation. The land, not to exceed one acre, upon which the dwelling is situated, is also exempt from taxation. However, if the locality provides for

2016 LEGISLATIVE SUMMARY – LOCAL TAXES

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 disabled veterans and surviving spouses and surviving spouses of servicemembers killed in action.

Effective: Taxable years beginning on or after January 1, 2017
Amended: §§ 58.1-3219.5 and 58.1-3219.9

Real Property Tax Exemption for Spouses of Servicemembers Killed in Action

House Bill 127 (Chapter 539) and Senate Bill 99 (Chapter 347) expand the definition of “killed in action” as determined by the U.S. Department of Defense, for purposes of the real property tax exemption for the principal place of residence of a surviving spouse of a servicemember killed in action, to include the determination of “died of wounds received in action” by the U.S. Department of Defense.

Effective: July 1, 2016
Amended: § 58.1-3219.9

Exemption for Living Shoreline Projects

House Bill 526 (Chapter 610) provides that any living shoreline project approved by the Virginia Marine Resources Commission or the applicable local wetlands board and not prohibited by local ordinance qualifies for full exemption from local taxation.

Under Va. Code § 28.2-104.1, a living shoreline is a shoreline management practice that: 1) provides erosion control and water quality benefits; 2) protects, restores or enhances natural shoreline habitat; and 3) maintains coastal processes through the strategic placement of plants, stone, sand fill, and other structural and organic materials. There is no current requirement that living shorelines be subject to a perpetual easement permitting inundation by water. Legislation enacted in the 2011 General Assembly Session required the Virginia Marine Resources Commission to establish and implement a general permit regulation authorizing and encouraging the use of living shorelines.

Effective: July 1, 2016
Amended: § 58.1-3666

Board of Equalization Members

House Bill 1170 (Chapter 38) changes the maximum number of members appointed to certain boards of equalization from five members to the greater of five or the number of local election districts in the locality. This Act applies to every board of equalization except for temporary boards of equalization created in counties operating under the county executive or county manager forms of government and permanent boards of equalization.

Under current law, circuit courts within most localities are authorized to appoint a three-to five member board of equalization, whose purpose is to hear complaints regarding a lack of uniformity or errors in acreage in a real property assessment and complaints that real property is assessed at more than fair market value.

Effective: July 1, 2016
Amends: § 58.1-3374

TANGIBLE PERSONAL PROPERTY TAX

Multiple Classifications

House Bill 15 (Chapter 483) requires localities to apply the lowest tax rate applicable to any item of tangible personal property that falls under multiple classifications for purposes of the local Tangible Personal Property Tax.

Under current law, localities are authorized to establish different classes of property for purposes of the Tangible Personal Property Tax and assign a different tax rate to each classification. Localities must apply the lowest rate applicable to any computer equipment and peripherals used in a data center, as well as any motor vehicle, if the property falls under multiple classifications. Current law does not specify the tax rate of other items of tangible personal property that fall under multiple classifications.

Effective: July 1, 2016
Amended: § 58.1-3506

OTHER LOCAL TAXES

Local Gas Road Improvement and Virginia Coalfield Economic Development Authority Tax

House Bill 1152 (Chapter 340) and Senate Bill 182 (Chapter 301) allow those localities that comprise the Virginia Coalfield Economic Development Authority to use the portion of the local gas road improvement tax and the local coal road improvement tax revenues paid into the Coal and Gas Road Improvement Fund and currently dedicated to the construction of new water or sewer systems and lines also to use that portion of the revenue for the repair or enhancement of existing water or sewer systems and lines. The Virginia Coalfield Economic Development Authority is comprised of the City of Norton, and the Counties of Buchanan, Dickenson, Lee, Russell, Scott, Tazewell, and Wise.

The localities that comprise the Virginia Coalfield Economic Development Authority may impose a local coal road improvement tax at a rate of 0.75% of the gross receipts from the sale or utilization of coal from small mines and a rate of one percent of the gross receipts from the sale or utilization of all other coal. Such localities also may impose a local gas road improvement tax that is capped at a rate of one percent of the gross receipts from the sale of gases severed within the locality.

Under current law, the revenues generated from the road improvement taxes are allocated as follows: 75% are paid into a special fund in each locality called the Coal and Gas Road Improvement Fund and the remaining 25% of the revenue is paid to the Virginia Coalfield Economic Development Fund. Of the revenues dedicated to the Coal and Gas Road Improvement Fund, 25% may be spent on new water and sewer systems within the locality. In addition, a county or city may allocate 25% of the revenue in the Coal and Gas Road Improvement Fund to the construction, repair, or enhancement of water and sewer systems.

Effective: July 1, 2016
Amends: § 58.1-3713

TRANSIENT OCCUPANCY TAXES

Arlington County Additional Transient Occupancy Tax Reinstated

House Bill 1147 (Chapter 365) and Senate Bill 160 (Chapter 316) reinstate Arlington County's authority to impose an additional transient occupancy tax at a rate not to exceed one-fourth of one percent of the amount charged for occupancy of a room. Under current law, Arlington County is authorized to levy transient occupancy tax at a maximum rate of five percent, provided its local license tax on facilities offering guest rooms rented out for continuous occupancy for fewer than 30 consecutive days does not exceed one percent of the gross receipts from these facilities. This provision will be in effect until July 1, 2018.

Effective: July 1, 2016
Added: § 58.1-3825.3

Frederick County Authorized to Levy Higher Transient Occupancy Tax

House Bill 182 (Chapter 51) adds Frederick County to the list of counties that are currently authorized to impose the transient occupancy tax at a maximum rate of five percent. Revenues from the portion of tax in excess of two percent will be required to be used solely for tourism or marketing of tourism.

Effective: July 1, 2016
Amends: § 58.1-3819

Botetourt County to Levy Additional Transient Occupancy Tax

House Bill 328 (Chapter 56) adds Botetourt County to the list of counties that are currently authorized to impose an additional transient occupancy tax at a maximum rate of two percent. The revenue collected from the additional tax will be designated solely for advertising the Roanoke metropolitan area as an overnight tourist destination by members of the Roanoke Valley Convention and Visitors Bureau.

Under current law, any county may impose a transient occupancy tax at a maximum rate of two percent upon the adoption of an ordinance, on hotels, motels, boarding houses, travel

campgrounds, and other facilities offering guest rooms. Virginia law separately identifies a total of fifty counties, including Botetourt County, that are authorized to impose the tax at a maximum rate of five percent, with the additional revenues designated solely for tourism, marketing of tourism, or initiatives that attract travelers to the locality. Finally, certain other specified counties are authorized to impose additional transient occupancy taxes, with the maximum rates provided by law.

Effective: July 1, 2016
Amends: § 58.1-3823

Bedford County to Levy Additional Transient Occupancy Tax

House Bill 1194 (Chapter 52) authorizes Bedford County to impose an additional transient occupancy tax at a maximum rate of two percent. The revenue collected from the additional tax will be designated solely for tourism and travel; marketing of tourism; or initiatives that attract travelers to the locality, increase occupancy at lodging properties, and generate tourism revenues in the locality.

Under current law, any county may impose a transient occupancy tax at a maximum rate of two percent upon the adoption of an ordinance, on hotels, motels, boarding houses, travel campgrounds, and other facilities offering guest rooms. Virginia law separately identifies a total of fifty counties, including Bedford County, that are authorized to impose the tax at a maximum rate of five percent, with the additional revenues designated solely for tourism, marketing of tourism, or initiatives that attract travelers to the locality. Finally, certain other specified counties are authorized to impose additional transient occupancy taxes, with the maximum rates provided by law.

Effective: July 1, 2016
Amends: § 58.1-3823

LEGISLATIVE

STUDIES

Study of Limited Residential Lodging

Senate Bill 416 (Chapter 674) directs the Housing Commission to convene a work group with representation from the hotel industry, hosting platform providers, local government, state and local tax officials, property owners, and other interested parties to explore issues related to the registration, land use, tax, and other issues associated with the short-term rental of dwelling units. The work group must consider existing policies governing bed and breakfast inns, vacation rentals, and other transient occupancy venues. The work group must complete its work by December 1, 2016, with the goal of developing recommendations and draft legislation for consideration by the 2017 General Assembly.

This Act also contains provisions for regulating and imposing taxes on short-term rentals, but the provisions will not take effect unless the 2017 General Assembly reenacts the bill.

Effective: July 1, 2016
Added: §§ 55-248.53 through 55-248.56

Joint Subcommittee to Study Neighborhood Assistance Act Tax Credit

Item 1(S) of the 2016 Appropriations Act (House Bill 30, Chapter 780) directs the Joint Subcommittee to Evaluate Tax Preferences to review the Neighborhood Assistance Act Tax Credit program and to report to the General Assembly any proposed changes to the program structure, eligibility requirements, distribution of funding, or overall funding amounts made available for the credit by November 15, 2016.

House Bill 777 (2012 Acts of Assembly, Chapter 777) established the Joint Subcommittee to Evaluate Tax Preferences in the legislative branch of government, which oversees the evaluation of Virginia's tax preferences. This Joint Subcommittee has a total membership of fourteen legislative members that consists of eight members of the House of Delegates and six members of the Senate. The Joint Subcommittee is 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 would direct the Joint Subcommittee to undertake a review of the Neighborhood Assistance Act Tax Credit program as part of its work during 2016.

Effective: July 1, 2016

Joint Legislative Audit and Review Committee to Study Tax and Economic Development Incentives

Item 33(H) of the 2016 Appropriations Act (House Bill 30, Chapter 780) directs the Joint Legislative Audit and Review Commission (“JLARC”) to oversee and evaluate economic development initiatives and policies, including grants, tax preferences, and other assistance, on a continuing basis and to make special studies and reports as may be requested by the General Assembly, the House Appropriations Committee, or the Senate Finance Committee.

Under this Act, JLARC is required to review spending on and performance of individual economic incentives, including grants, tax preferences, and other assistance; report the economic benefits to Virginia of total spending on economic development initiatives at least biennially; evaluate the effectiveness, value to taxpayers, and economic benefits to Virginia of individual economic development initiatives on a cycle approved by JLARC; and evaluate the design, oversight, and accountability of economic development entities, initiatives, and policies as needed.

All agencies of the Commonwealth are required to cooperate as requested by JLARC in the performance of its duties under this Act. The Department is authorized to provide to JLARC any tax information that may be necessary to conduct oversight of economic development initiatives and policies unless such disclosure is prohibited by federal law, an agreement with a federal entity, or a court decree.

Effective: July 1, 2016

Report on Tourism Development Financing Program

Item 274 (C) of the 2016 Appropriations Act (House Bill 30, Chapter 780) directs the Department to report to the General Assembly no later than September 1 of every year, to the Chairmen of the House Appropriations, House Finance and Senate Finance Committees, on the

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amount of state sales and use tax revenues authorized to be remitted for the preceding fiscal year for the Tourism Development Financing Program.

Effective: July 1, 2016

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