

# 2018 Legislative Summary

Virginia Department of Taxation

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Craig M. Burns  
Tax Commissioner

[www.tax.virginia.gov](http://www.tax.virginia.gov)

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# Introduction

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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 2018 Session of the General Assembly, including the reconvened session on April 18, 2018 and Special Session I. Please note that any legislation enacted after July 1, 2018 is not included. The Summary includes a general description of enacted legislation affecting:

- ▶ State taxes administered by the Department, and
- ▶ Local taxes for which the Department assists with administration or upon which the Department renders advisory assistance.

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

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

The Summary is intended to provide a synopsis of enacted legislation and is for informational purposes only. The Summary is not a substitute for the actual state law, local ordinances, and the Department’s regulations or guidelines. Additional information on new legislation affecting state taxes may be obtained from the Department’s website at [www.tax.virginia.gov](http://www.tax.virginia.gov). Additional information on new local tax legislation should be obtained from your local Commissioner of the Revenue, Treasurer, or Director of Finance.

# Table of Contents

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Introduction .....	3
Table of Contents.....	4
State Tax Legislation .....	7
General Provisions .....	7
Tax Preparer Notification of Data Breach.....	7
Requirement that Paid Tax Return Preparers Use Preparer Tax Identification Numbers; Civil Penalty...	7
Accelerated Refund Program Reestablished.....	8
Electronic Requirement for Certain Individual Income Tax Payments.....	8
Membership in the Multistate Tax Commission .....	9
Fee for Advisory Opinions .....	9
Localities Authorized to Disclose Tax Information to Third Party Contractors.....	9
Income Tax Legislation .....	10
Advancement of Virginia’s Fixed Date Conformity to the Internal Revenue Code .....	10
Modified Apportionment Method for Certain Qualified Companies .....	10
Modified Apportionment Method for Debt Buyers .....	11
Subtraction for Virginia Real Estate Investment Trust Income .....	12
Coalfield Employment Enhancement Tax Credit .....	13
Historic Rehabilitation Tax Credit .....	13
Land Preservation Tax Credit: Annual Limitation.....	14
Land Preservation Tax Credit: Transfer to a Designated Beneficiary.....	14
Agricultural Best Management Practices Tax Credit .....	15
Worker Retraining Tax Credit .....	15
Green Job Creation Tax Credit .....	16
Entities Entitled to Voluntary Contributions of Income Tax Refunds .....	16
Retail Sales and Use Tax.....	16
State Sales and Use Tax in the Historic Triangle.....	16
Tax on ATVs, Mopeds and Off-Road Motorcycles .....	17
Sales Tax Exemption for Produce and Eggs Sold at Farmers’ Markets or Roadside Stands.....	17
Aircraft Sales and Use Tax .....	18
Public Facility Entitlement to Sales and Use Tax .....	18
Other State Tax Legislation.....	19
Assessment from the Sale of Cattle .....	19
Regional WMATA Capital Fee .....	19
Motor Vehicle Rental Tax .....	19

<b>Local Tax Legislation .....</b>	<b>20</b>
<b>General Provisions .....</b>	<b>20</b>
Tax Increment Financing for Dredging Projects .....	20
Loudoun County Agreements for Treasurer to Collect and Enforce Real and Personal Property Taxes	20
<b>Real Property Tax.....</b>	<b>21</b>
Real Property Tax Exemption for Disabled Veterans.....	21
Constitutional Amendment: Real Property Tax Exemption for Certain Surviving Spouses .....	21
Constitutional Amendment: Partial Exemption for Flooding Remediation and Abatement .....	21
Exemption for Single Member Limited Liability Companies .....	22
Changes to Exemption for Solar Energy Equipment and Facilities .....	22
Exemption for Certain Leasehold Interests of Land Bank Entities.....	23
Property Tax Exemption for the Norfolk Chapter of the Izaak Walton League of America.....	23
Orders of Publication to Enforce Tax Lien.....	23
Recapture of Deferred Taxes .....	24
Real Property Tax Assessment of Wetlands .....	24
Land Use Valuation .....	25
Determining Fair Market Value of Real Property Owned by a Community Trust.....	25
Bedford County Authorized to Perform General Reassessments .....	26
Electronic Submission of Applications to Boards of Equalization.....	26
Extension of Board of Equalization Term .....	26
<b>Personal Property Tax.....</b>	<b>27</b>
Definition of Agricultural Products .....	27
Computer Equipment and Peripherals Used in Data Centers .....	27
<b>Transient Occupancy Tax.....</b>	<b>28</b>
Transient Occupancy Tax.....	28
Transient Occupancy Tax for Eligible Historic Lodging Properties.....	28
Rockingham County Authorized to Impose Transient Occupancy Tax.....	29
Additional Transient Occupancy Tax in Arlington County.....	29
<b>Other Local Taxes.....</b>	<b>29</b>
Admissions Tax in Wythe County.....	29
Admissions Tax in Washington County .....	30
Merchant’s Capital Tax Classification.....	30
<b>Legislative Studies/Reports .....</b>	<b>31</b>
Accelerated Sales Tax Workgroup.....	31

**Study of Appeals Concerning the Valuation of Business Property .....31**  
**Feasibility of Filing Tax Reports and Payments Electronically.....32**

# State Tax Legislation

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## General Provisions

### Tax Preparer Notification of Data Breach

House Bill 183 (Chapter 283), Senate Bill 271 (Chapter 360), and Item 273 (X)(2) of the 2018 Appropriation Act (House Bill 5002, Special Session I, Chapter 2) require that any signing income tax return preparer who prepares Virginia individual income tax returns during a calendar year notify the Department without unreasonable delay after the discovery or notification of unauthorized access and acquisition of unencrypted and unredacted return information maintained by the tax preparer, that compromises the confidentiality of such information and that creates a reasonable belief that an unencrypted and unredacted version of such information was accessed and acquired by an unauthorized person, and causes, or such tax preparer reasonably believes has caused or will cause, identity theft or other fraud.

These Acts require signing income tax return preparers to provide the Department with the name and taxpayer identification number of any taxpayer that may be affected by a compromise in confidentiality that requires notification to the Department, as well as the name of the signing income tax return preparer, his or her preparer tax identification number, and such other information as the Department may prescribe.

These Acts also require an income tax return preparer to complete such notification requirement on behalf of any of its employees who are signing income tax return preparers and who would otherwise be required to notify the Department.

Effective: July 1, 2018  
Added: § 58.1-341.2

### Requirement that Paid Tax Return Preparers Use Preparer Tax Identification Numbers; Civil Penalty

House Bill 788 (Chapter 150) requires that any income tax return preparer include his or her preparer tax identification number (“PTIN”) on any income tax return that he or she prepares or assists in preparing. In addition to any other penalties that may be provided by law, an income tax return preparer who does not fulfill this requirement will be subject to a civil penalty in an amount equal to \$50 per offense, but not exceeding \$25,000 per calendar year. This Act also permits the Department to bar or suspend any income tax return preparer, without resorting to certain injunctive remedies, for repeated failures of this requirement.

This Act also requires the Department to promulgate regulations for using the PTIN as an oversight mechanism to assess returns and to identify high error rates, patterns of suspected fraud, and unsubstantiated bases for tax

positions by income tax return preparers. Additionally, the Department is required to establish formal and regular communication protocols with the Internal Revenue Service to share and exchange PTIN information on income tax return preparers who are suspected of fraud, who are disciplined, or who are barred from filing tax returns with the Department or the Internal Revenue Service. The Department may also establish communication protocols with other states to exchange the enforcement and discipline information. This Act authorizes the Department to provide to the Internal Revenue Service and other state tax or revenue agencies certain preparer and return data for their confidential use.

Effective: Taxable years beginning on or after January 1, 2019  
Amended: § 58.1-348.2  
Added: §§ 58.1-348.3 and 58.1-348.4

### **Accelerated Refund Program Reestablished**

Senate Bill 531 (Chapter 625) requires that the Department reestablish an accelerated refund program for Virginia taxpayers filing income tax returns in person or via the United States mail with a local commissioner of the revenue. Such program is to be similar to the accelerated refund program that the Department discontinued on December 1, 2016.

Effective: Taxable years beginning on or after January 1, 2018

### **Electronic Requirement for Certain Individual Income Tax Payments**

Item 273 (K)(1)(f) of the 2018 Appropriation Act (House Bill 5002, Special Session I, Chapter 2) requires certain taxpayers subject to the individual income tax who make estimated tax payments to file and remit their individual income tax payments electronically if in any taxable year beginning on or after January 1, 2018:

- ▶ Any installment payment of estimated tax exceeds \$7,500;
- ▶ Any payment made with regard to a return or an extension of time to file exceeds \$7,500; or
- ▶ The taxpayer's total tax liability exceeds or can reasonably be expected to exceed \$30,000.

The Department of Taxation is required to provide reasonable advanced notice to taxpayers affected by this requirement.

Effective: July 1, 2018



### **Membership in the Multistate Tax Commission**

House Bill 373 (Chapter 343) requires the Department to take any steps necessary for Virginia to become an associate member of the Multistate Tax Commission without payment of any membership fees. This Act also requires the Department to participate in all available Multistate Tax Commission discussions and meetings concerning model legislation and uniform tax policies that could impact Virginia.

Effective: July 1, 2018

### **Fee for Advisory Opinions**

Item 273 (V)(1) of the 2018 Appropriation Act (House Bill 5002, Special Session I, Chapter 2) exempts local assessing officers from payment of the \$275 fee charged by the Department of Taxation for each request for a local tax advisory opinion.

Effective: July 1, 2018

### **Localities Authorized to Disclose Tax Information to Third Party Contractors**

House Bill 495 (Chapter 40) provides an exception to Virginia's law prohibiting the disclosure of taxpayer information by authorizing a commissioner of the revenue, treasurer, director of finance, or other similar local official who collects or administers taxes for a county, city, or town to disclose tax information to nongovernmental entities with which such locality has contracted to provide services that assist it in the administration of refund processing or other non-audit services related to the administration of taxes. Such disclosure is prohibited unless the local official has obtained a written acknowledgement from the nongovernmental entity that Virginia's taxpayer information confidentiality and nondisclosure obligations and penalties apply to such entity and that such entity agrees to abide by such obligations.

Effective: July 1, 2018

Amended: § 58.1-3

## Income Tax Legislation

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

House Bill 154 (Chapter 15) and Senate Bill 230 (Chapter 14) advance Virginia's date of conformity to the Internal Revenue Code ("IRC") from December 31, 2016, to February 9, 2018.

These Acts allow Virginia to conform to the Disaster Tax Relief and Airport and Airway Extension Act of 2017, as well as most of the provisions of the Tax Cuts and Jobs Act and the Bipartisan Budget Act of 2018 that are effective for Taxable Year 2017. However, these Acts do not conform to the provision of the Tax Cuts and Jobs Act that temporarily increases the medical expenses deduction for Taxable Years 2017 and 2018. In addition, these Acts deconform from most of the provisions of the Tax Cuts and Jobs Act and the Bipartisan Budget Act of 2018 that are effective for Taxable Year 2018 and thereafter.

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 22, 2018

Amended: § 58.1-301

### Modified Apportionment Method for Certain Qualified Companies

House Bill 222 (Chapter 802) and Senate Bill 883 (Chapter 801) allow certain eligible companies operating in qualified localities to apportion Virginia taxable income using modified apportionment factors. An "eligible company" is defined as a corporation or pass-through entity that does not have any existing property or payroll in Virginia as of January 1, 2018 and that, on or after January 1, 2018, but before January 1, 2025:

- ▶ Either (a) spends at least \$5 million on new capital investment in a qualified locality or qualified localities and creates at least 10 new jobs in a qualified locality or qualified localities or (b) creates at least 50 new jobs in a qualified locality or qualified localities;
- ▶ Is a traded-sector company; and
- ▶ Is certified by the Virginia Economic Development Partnership Authority ("VEDP") as generating a positive fiscal impact.

The Virginia localities in which eligible companies will generally be required to operate are the counties of: Alleghany, Bland, Buchanan, Carroll, Craig, Dickenson, Giles, Grayson, Lee, Russell, Scott, Smyth, Tazewell,

Washington, Wise, Wythe, Amelia, Appomattox, Buckingham, Charlotte, Cumberland, Halifax, Henry, Lunenburg, Mecklenburg, Nottoway, Patrick, Pittsylvania, Prince Edward, Accomack, Caroline, Essex, Gloucester, King and Queen, King William, Lancaster, Mathews, Middlesex, Northampton, Northumberland, Richmond, Westmoreland, Brunswick, and Dinwiddie; and the cities of: Bristol, Galax, Norton, Danville Martinsville, and Petersburg.

These Acts permit an eligible company that operates in a qualified locality to elect to modify the application of Virginia's statutory three-factor method of apportionment by:

- ▶ Reducing the numerator of the property factor by an amount equal to the value of its property acquired in any qualified localities on or after January 1, 2018 but before January 1, 2025;
- ▶ Reducing the numerator of the payroll factor by an amount equal to any payroll attributable to jobs created on or after January 1, 2018 but before January 1, 2025 in any of such localities; and
- ▶ Reducing the numerator of the sales factor by an amount equal to any sales in Virginia for the taxable year.

Eligible companies utilizing a single factor method of apportionment are also permitted to reduce the numerator of such factor.

These Acts also permit an eligible company that transacts or conducts its entire business in Virginia to elect (i) to apportion its income between qualified localities and other localities in the Commonwealth, provided that it may not apportion any of its income to a state other than Virginia, and (ii) use any modified method of apportionment it qualifies to utilize.

VEDP is required to promulgate guidelines regarding the process for certifying eligible companies. The Department is required to promulgate guidelines regarding the modifications to apportionment formulae available for use by eligible companies, and report annually the number of returns claiming, and estimated revenue impact of, such modified methods of apportionment.

Effective: July 1, 2018  
Amended: §§ 2.2-115, 58.1-405, 58.1-408, 58.1-417, 58.1-418, 58.1-419, 58.1-420, 58.1-422, 58.1-422.1, and 58.1-422.2  
Added: §§ 15.2-958.2:01 and 58.1-405.1

### **Modified Apportionment Method for Debt Buyers**

House Bill 798 (Chapter 807) requires debt buyers to apportion their Virginia taxable income using a single factor method of apportionment based on sales. For debt buyers, only money recovered on debt that a debt buyer collected from a person who is a resident of Virginia or an entity that has its commercial domicile in Virginia will be apportioned to Virginia for income tax purposes.

This Act also provides that, for debt buyers, sales other than sales of tangible personal property are in Virginia if they consist of money recovered on debt that a debt buyer collected from a person who is a resident of Virginia or an entity that has its commercial domicile in Virginia. This rule applies regardless of the location of a debt buyer's business.

“Debt buyer” is defined as an entity and its affiliated entities that purchase nonperforming loans from unaffiliated commercial entities that are in default for at least 120 days or are in bankruptcy proceedings. The definition does not include entities that provide debt collection services for unaffiliated entities.

The Department is required to develop and make publicly available guidelines implementing the provisions of this Act. Preliminary guidelines must be promulgated no later than December 31, 2018, and final guidelines no later than December 31, 2019. The guidelines must be updated by December 31, 2021, after which such guidelines will be subject to the Administrative Process Act and accorded the weight of regulations.

Effective: Taxable years beginning on or after January 1, 2019  
Amended: §§ 58.1-408 and 58.1-416  
Added: § 58.1-422.3

### **Subtraction for Virginia Real Estate Investment Trust Income**

House Bill 365 (Chapter 821) allows an individual and corporate income tax subtraction for certain income attributable to an investment in a Virginia real estate investment trust (“REIT”) made on or after January 1, 2019, but before December 31, 2024. To qualify, the REIT must be certified by the Department as a Virginia REIT for the year in which the investment is made.

To be certified as a Virginia REIT, the REIT trustee must register the trust with the Department prior to December 31, 2024, indicating that it intends to invest:

- ▶ At least 90 percent of trust funds in Virginia; and
- ▶ At least 40 percent of trust funds in real estate in localities that are distressed or double distressed.

Localities are considered distressed or double distressed based on whether they meet one or both of the following criteria:

- ▶ The locality has an annual unemployment rate for the most recent calendar year for which such data is available that is greater than the final statewide average unemployment rate for that calendar year; or
- ▶ The locality has a poverty rate for the most recent calendar year for which such data is available that exceeds the statewide average poverty rate for that year.

If the Department determines that the REIT satisfies the preceding criteria, the Department must certify it as a Virginia REIT at such time it actually invests at least 90 percent of trust funds in Virginia and at least 40 percent of trust funds in real estate in localities that are distressed or double distressed.

This Act requires the Department to develop guidelines prior to December 31, 2018 establishing procedures regarding the registration and certification of a REIT as a Virginia REIT. The Department must report annually by November 1 of each year to the Chairmen of the House Appropriations and Senate Finance Committees regarding the number of registrations and certifications of Virginia REITs.

Effective: Taxable years beginning on or after January 1, 2019  
Amended: §§ 58.1-322.02 and 58.1-402

### **Coalfield Employment Enhancement Tax Credit**

House Bill 665 (Chapter 853) and Senate Bill 378 (Chapter 855) reinstate the Coalfield Employment Enhancement Tax Credit. Under these Acts, taxpayers are permitted to claim the Coalfield Employment Enhancement Tax Credit for metallurgical coal mined by underground methods and surface methods. For the purposes of these Acts, metallurgical coal is defined as bituminous coal used for the manufacture of iron and steel with calorific value of 14,000 BTUs or greater on a moisture and ash free basis. Before it expired on December 31, 2016, the credit was available for all coal mined by such methods and was not restricted to metallurgical coal. In addition, these Acts permit taxpayers to claim the Coalfield Employment Enhancement Tax Credit for the production of coalbed methane.

Effective: Taxable years beginning on or after January 1, 2018, but before January 1, 2023  
Amended: § 58.1-439.2

### **Historic Rehabilitation Tax Credit**

Section 3-5.18 of the 2018 Appropriation Act (House Bill 5002, Special Session I, Chapter 2) extends the provision that prohibits a taxpayer from claiming more than \$5 million in Historic Rehabilitation Tax Credits for a taxable year. Taxpayers with credit amounts in excess of \$5 million may carry forward the excess and claim the credit in future taxable years within the credit's current ten-year carryover period or until the full credit is used, whichever occurs first.

Effective: Taxable years beginning on and after January 1, 2018

Supersedes: § 58.1-339.2

### **Land Preservation Tax Credit: Annual Limitation**

Section 3-5.19 of the 2018 Appropriation Act (House Bill 5002, Special Session I, Chapter 2) extends the annual \$20,000 limitation on the amount of Land Preservation Tax Credits that a taxpayer may claim to apply to Taxable Years 2018 and 2019.

Under current law, the Land Preservation Tax Credit is equal to forty percent of the fair market value of land or an interest in land located in Virginia which is conveyed for the purpose of agricultural and forestal use, open space, natural resource, and/or biodiversity conservation, or land, agricultural, watershed and/or historic preservation, as an unconditional donation by the taxpayer to a public or private conservation agency. There is an annual limitation on the amount that each taxpayer may claim per taxable year. For Taxable Years 2015, 2016, and 2017, this limitation was \$20,000, and was scheduled to increase to \$50,000 beginning in Taxable Year 2018. These Acts extend the current \$20,000 limitation to Taxable Years 2018 and 2019.

Any unused portion of a credit issued to a taxpayer may generally be carried forward for a maximum of 10 years. For taxpayers affected by the credit reduction for Taxable Years 2009, 2010, 2011, and 2015 and thereafter, any unused portion of a credit issued to a taxpayer may be carried forward for a maximum of 13 years. For taxpayers to whom a credit has been transferred, any unused portion may be carried forward for a maximum of 11 years after the credit was originally issued. For taxpayers affected by the credit reduction for Taxable Years 2009, 2010, 2011, and 2015 and thereafter, any portion of a transferred credit may be carried forward for a maximum of 14 years after the credit was originally issued.

Effective: Taxable years beginning on and after January 1, 2018 but before January 1, 2020  
Supersedes: § 58.1-512

### **Land Preservation Tax Credit: Transfer to a Designated Beneficiary**

House Bill 1460 (Chapter 560) allows an individual taxpayer, upon his or her death, to transfer unused Land Preservation Tax Credits through a will, bequest, or other instrument of transfer to a designated beneficiary. If such taxpayer dies without a will, any unused credits will be transferred to the next person who is eligible to receive according to Virginia's rules of intestate succession. This Act provides that the ability to transfer Land Preservation Tax Credits upon death is limited to the individual taxpayer who originally earned such credits.

Effective: Applies to transfers of unused credits upon the death of a taxpayer occurring on and after July 1, 2018, regardless of when such unused credits were earned  
Amended: § 58.1-513

### **Agricultural Best Management Practices Tax Credit**

House Bill 1382 (Chapter 556) makes the Agricultural Best Management Practices Tax Credit refundable for corporations. This Act also prohibits taxpayers from claiming both this credit and another credit under Virginia law for costs related to the same eligible practices.

Virginia provides both an individual and corporate income tax credits to agricultural producers that use agricultural best management practices. Under current law, if the amount of the Agricultural Best Management Practices Tax Credit for corporations exceeds the taxpayer's liability for a taxable year, the excess can be carried over for credit against income taxes for up to five taxable years, but it is not refundable. The credit for individuals has been refundable since 2011.

Effective: July 1, 2018  
Amended: § 58.1-439.5

### **Worker Retraining Tax Credit**

House Bill 129 (Chapter 500) modifies the Worker Retraining Tax Credit by allowing a taxpayer primarily engaged in manufacturing to claim an individual or corporate income tax credit equal to 35 percent of its direct costs incurred during the taxable year in conducting orientation, instruction, and training in Virginia relating to the manufacturing activities undertaken by such taxpayer. The credit is permitted only for programs that are provided to students in grades 6 through 12, coordinated with the local school division, and conducted either at a plant or facility owned, leased, rented, or otherwise used by the manufacturer or at a public middle or high school in Virginia. No taxpayer is permitted to claim credits in excess of \$2,000 per taxable year. This Act also decreases the annual aggregate credit cap from \$2.5 million to \$1 million.

Effective: Taxable years beginning on or after January 1, 2018, but before January 1, 2022  
Added: § 58.1-439.6

## Green Job Creation Tax Credit

House Bill 1372 (Chapter 346) and Senate Bill 573 (Chapter 347) extend the sunset date for the Green Job Creation Tax Credit for three years, from January 1, 2018 to January 1, 2021.

Effective: July 1, 2018  
Amended: § 58.1-439.12:05

## Entities Entitled to Voluntary Contributions of Income Tax Refunds

Senate Bill 376 (Chapter 621) requires the nonprofit organization, Children of America Finding Hope, to be listed on the individual income tax return for Taxable Years 2018, 2019, and 2020 as an organization eligible to receive voluntary contributions of tax refunds, regardless of whether it has received at least \$10,000 in contributions in each of the three previous taxable years. For Taxable Years 2021 and thereafter, such organization shall be listed on the individual income tax return only if it has received at least \$10,000 in contributions in each of the three previous taxable years. In 2016, Children of America Finding Hope was removed from the list of voluntary contributions listed on the individual income tax return for failing to meet the \$10,000 minimum contribution requirement.

Effective: Taxable years beginning on or after January 1, 2018

## Retail Sales and Use Tax

### State Sales and Use Tax in the Historic Triangle

Senate Bill 942 (Chapter 850) imposes an additional one percent sales and use tax in the “Historic Triangle,” defined as the City of Williamsburg and the Counties of James City and York. Food purchased for human consumption will not be subject to the new tax.

Fifty percent of the revenues generated by the tax will be transferred to the newly created Tourism Council of the Greater Williamsburg Chamber and Tourism Alliance to market, promote, and advertise the Historic Triangle as a tourism destination. The other fifty percent will be distributed to the localities in which the revenues were collected.



This Act repeals the authority of the City of Williamsburg to impose the current \$2 transient occupancy tax used to promote tourism in the area. The provisions of this Act are contingent on the City of Williamsburg repealing recent ordinances raising its local transient occupancy, food and beverage, and admission taxes and will expire if any of the localities within the Historic Triangle adopt any such taxes prior to January 1, 2026.

Effective: July 1, 2018  
Amended: §§ 58.1-638, and 58.1-3823  
Added: § 58.1-603.2

### **Tax on ATVs, Mopeds and Off-Road Motorcycles**

House Bill 1441 (Chapter 838) and Senate Bill 249 (Chapter 840) exempt all-terrain vehicles, mopeds, and off-road motorcycles from the Retail Sales and Use Tax and instead subject them to the Motor Vehicle Sales and Use Tax. The rate of Motor Vehicle Sales and Use Tax that applies will be 6.0% in the Northern Virginia and Hampton Roads regions and 5.3% in the remainder of the Commonwealth. The revenues collected from the Motor Vehicle Sales Tax on these vehicles will be distributed by the Department of Motor Vehicles in the same manner as the Retail Sales and Use Tax is distributed by the Department of Taxation. All-terrain vehicles, mopeds, and off-road motorcycles that are titled for the first time in the Commonwealth are exempt from the Motor Vehicle Sales Tax if the applicant (i) has owned such vehicle for more than 12 months or (ii) can provide evidence that the Retail Sales and Use Tax has already been paid.

Effective: July 1, 2018  
Amended: §§ 58.1-602, 58.1-2401, 58.1-2402, 58.1-2403, and 58.1-2425

### **Sales Tax Exemption for Produce and Eggs Sold at Farmers' Markets or Roadside Stands**

Senate Bill 332 (Chapter 362) increases the sales tax exemption for sales of agricultural produce and eggs sold at farmers markets or roadside stands. Under prior law, the exemption only applied if the individual selling the produce or eggs had an annual income from such sales of no more than \$1,000. This Act allows the exemption if such annual income does not exceed \$2,500.

Effective: July 1, 2018  
Amended: § 58.1-609.2

## **Aircraft Sales and Use Tax**

House Bill 799 (Chapter 441) and Senate Bill 213 (Chapter 357) amend the definition of public aircraft that are exempt from registering with the Department of Aviation and, therefore, exempt from the Aircraft Sales and Use Tax. Public aircraft under these Acts include fighter or attack jets that are leased or owned by a private entity, provided that the aircraft operations are conducted exclusively for the purpose of military combat training in service to the federal government. These Acts define fighter or attack jets as jet-powered aircraft designed for military combat training or operational mission execution. The provisions of these Acts will expire on September 1, 2023.

Under current law, civil aircraft based in the Commonwealth for more than sixty days during any twelve-month period are subject to registration with the Department of Aviation. Public aircraft are exempt from this requirement. The Aircraft Sales and Use Tax is generally imposed at the rate of two percent on the retail sale of every aircraft either sold in Virginia or used in Virginia and subject to licensure by the Department of Aviation. Registration by the Department of Aviation constitutes licensure for purposes of the Aircraft Sales and Use Tax.

Effective: July 1, 2018

Amended: § 5.1-1

## **Public Facility Entitlement to Sales and Use Tax**

House Bill 179 (Chapter 25) extends, until July 1, 2020, the authority of any municipality to issue bonds for the construction of certain public facilities and retain sales and use tax revenue generated within such facilities to pay off such bonds. Current law allows sales tax revenue attributable to sales in new or substantially and significantly renovated or expanded public facilities to be transferred back to municipalities to pay the costs of the bonds issued to finance such facilities. Such authority previously expired on July 1, 2017.

Effective: July 1, 2018

Amended: § 58.1-608.3

## Other State Tax Legislation

### Assessment from the Sale of Cattle

Senate Bill 374 (Chapter 469) reinstates the assessment on the sale of cattle and calves, at a rate of \$0.50 per head, effective January 1, 2019 through July 1, 2023. Such assessment does not apply to dairy cows going back to farms for milk, animals selling for less than \$100 per head, or cattle of any type weighing 99 pounds or less. Handlers must remit such assessments on or before the last day of each month in which the handler sells cattle. This Act provides a process for producers who are dissatisfied with an assessment to request a refund from the Cattle Industry Board.

Effective: January 1, 2019 through July 1, 2023  
Amended: § 3.2-1306

### Regional WMATA Capital Fee

Senate Bill 856 (Chapter 856) and House Bill 1539 (Chapter 854) repeal the Regional Congestion Relief Fee, an additional grantor's fee, levied in the Northern Virginia region and replace it with the Regional Washington Metropolitan Area Transit Authority Capital Fee (RWCF) in the same localities and at the same rate. The RWCF is levied on all deeds, instruments, and writings by which lands, tenements, or other realty located in any of the counties or cities that are members of the Northern Virginia Transportation Authority (NVTA) are granted, assigned, transferred, or otherwise conveyed. The RWCF is levied at a rate of \$0.15 per \$100, or fraction thereof, of valuation, when the consideration of the value or interest, whichever is greater, equals or exceeds \$100. The NVTA encompasses the counties of Arlington, Fairfax, Loudoun, and Prince William and the cities of Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park.

Effective: July 1, 2018  
Added: § 58.1-802.3  
Repealed: § 58.1-802.2

### Motor Vehicle Rental Tax

Senate Bill 856 (Chapter 856) and House Bill 1539 (Chapter 854) shift the portion of the Motor Vehicle Rental Tax revenue currently deposited into the Transportation Trust Fund and set aside for state of good repair purposes to the Washington Metropolitan Area Transit Authority Capital Fund.

Effective: July 1, 2018  
Amended: § 58.1-1741

## Local Tax Legislation

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### General Provisions

#### Tax Increment Financing for Dredging Projects

House Bill 1092 (Chapter 120) modifies the definition of “development project area” for purposes of tax increment financing to specifically include certain dredging projects, other than a dredging project for or by the Virginia Port Authority, unless the Virginia Port Authority has an agreement with a local governing body for local financial participation in such a project.

Effective: July 1, 2018  
Amended: § 58.1-3245

#### Loudoun County Agreements for Treasurer to Collect and Enforce Real and Personal Property Taxes

House Bill 340 (Chapter 342) and Senate Bill 92 (Chapter 74) permit the Loudoun County Board of Supervisors to authorize the Treasurer of Loudoun County to enter into agreements with towns located partially or wholly within Loudoun County for the collection and enforcement of town real or personal property taxes by the county treasurer. These Acts require the county treasurer collecting town taxes pursuant to an agreement to account for and pay over to the town the amounts collected, as provided by law. Such agreement is required to establish the terms for such collection and enforcement, including payment of reasonable compensation by the town for the services of the county treasurer and the order in which the county treasurer will credit partial payments between taxes owed to the county and those owed to the town. These Acts do not require the town treasurer’s collection of real and personal property taxes owed to the county.

Effective: July 1, 2018

## Real Property Tax

### Real Property Tax Exemption for Disabled Veterans

Senate Bill 430 (Chapter 236) removes an extraneous reference to a “deferral” in a provision relating to the real property tax exemption for principal residences of certain disabled veterans in which no deferral is relevant. Current law provides for an exemption from taxation for the real property of certain disabled veterans and their surviving spouse. There is no provision for a deferral of taxes in this situation.

Effective: July 1, 2018  
Amended: § 58.1-3219.5

### Constitutional Amendment: Real Property Tax Exemption for Certain Surviving Spouses

House Bill 71 (Chapter 421), Senate Bill 900 (Chapter 422), House Joint Resolution 6 (Chapter 812) and Senate Joint Resolution 76 (Chapter 814) provide for a referendum at the November 2018 election to approve or reject an amendment to § 6-A of Article X of the Constitution of Virginia. Ratification by voters would authorize the General Assembly to amend the exemption from taxation of real property that is the principal residence of a surviving spouse of certain disabled veterans. The amendment would provide that the exemption applies to the surviving spouse’s principal place of residence without any restriction on the spouse’s moving to a different principal place of residence.

Effective: July 1, 2018

### Constitutional Amendment: Partial Exemption for Flooding Remediation and Abatement

Senate Bill 219 (Chapter 616) and Senate Joint Resolution 21 (Chapter 813) provide for a referendum at the November 6, 2018 election to approve or reject an amendment to the Constitution of Virginia to allow the General Assembly to authorize the governing body of any county, city, or town to provide for a partial exemption from local real property taxation within such restrictions and upon such conditions as may be prescribed, of improved real estate subject to recurrent flooding upon which flooding abatement, mitigation, or resiliency efforts have been undertaken.

Effective: July 1, 2018

## Exemption for Single Member Limited Liability Companies

House Bill 894 (Chapter 29) clarifies that the property tax exemption by designation or classification for real or personal property, or both, owned by a nonprofit organization, includes property owned by a single member limited liability company (“LLC”) whose sole member is a nonprofit organization.

Under federal income tax law, the Internal Revenue Service does not issue letters designating LLCs to be exempt from federal income taxation under Internal Revenue Code (“IRC”) § 501(c). However, a single member LLC owned by an IRC § 501(c) organization is treated as an IRC § 501(c) organization for federal income tax purposes.

Effective: July 1, 2018  
Amended: § 58.1-3651

## Changes to Exemption for Solar Energy Equipment and Facilities

Senate Bill 902 (Chapter 849) makes several changes to the real and personal property tax exemption for solar equipment and facilities. Generally, this property tax exemption applies to:

- ▶ Projects equaling 20 megawatts or less, for which an initial interconnection request form has been filed with an electric utility or a regional transmission organization on or before December 31, 2018;
- ▶ Projects equaling 20 megawatts or less, that serve certain institutions of higher education;
- ▶ 80 percent of the assessed value of projects for which an initial interconnection request form has been filed after January 1, 2015, and greater than 20 megawatts, for projects first in service on or after January 1, 2017;
- ▶ Projects equaling 5 megawatts or less, for which an initial interconnection request form has been filed on or after January 1, 2019; and
- ▶ 80 percent of the assessed value of all other projects equaling more than 5 megawatts, for which an initial interconnection request form has been filed on or after January 1, 2019.

This Act clarifies the two portions of the exemption that apply to 80 percent of the assessed value of certain projects as follows:

- ▶ Allows an exemption for 80 percent of the assessed value of projects for which an initial interconnection request form has been filed (a) between January 1, 2015 and June 30, 2018 for projects greater than 20 megawatts or (b) on or after July 1, 2018, for projects between 20 and 150 megawatts that are first in service on or after January 1, 2017; and
- ▶ Provides an exemption for 80 percent of the assessed value of all other projects equaling more than 5 megawatts and less than 150 megawatts for which an initial interconnection request form has been filed on or after January 1, 2019.

Effective: July 1, 2018  
Amended: § 58.1-3660

### **Exemption for Certain Leasehold Interests of Land Bank Entities**

House Bill 591 (Chapter 437) exempts leasehold interests in property owned by land bank entities from real property taxation.

Land bank entities are corporate or nonprofit entities established or designated by local ordinance for the purpose of helping such locality deal with vacant, abandoned, and tax delinquent properties. These entities are designated as a public body corporate and treated as political subdivisions of the Commonwealth.

Any real property owned by a land bank entity is exempt from taxation pursuant to *Va. Code* § 15.2-7510. Under prior law, leasehold interests in real property owned by land bank entities were not specifically exempted from real property taxation and were therefore taxable.

Effective: July 1, 2018  
Amended: § 58.1-3203

### **Property Tax Exemption for the Norfolk Chapter of the Izaak Walton League of America**

Senate Bill 485 (Chapter 623) clarifies that an exemption from taxation for property owned by the Norfolk Chapter of the Izaak Walton League of America, located at 2136 Trailsend Lane in Chesapeake, Virginia, has existed and continues to exist pursuant to the Constitution of Virginia.

Effective: July 1, 2018

### **Orders of Publication to Enforce Tax Lien**

Senate Bill 108 (Chapter 800) changes the procedure required for orders of publication in proceedings brought by any county, city, or town to enforce liens for taxes assessed upon real estate. Under current law, whenever an order of publication is entered in any proceeding brought by any county, city, or town to enforce a lien for taxes assessed upon real estate, such order does not need to be published more than once a week for two

successive weeks. Under this Act, the order will not need to be published more than once for real estate that has an assessed value of \$50,000 or less.

Effective: July 1, 2018  
Amended: § 8.01-321

### **Recapture of Deferred Taxes**

Senate Bill 228 (Chapter 291) provides definitions and rules to clarify when deferred real estate taxes are due on property in a tax deferral program for certain real estate owners who are at least 65 years of age, or permanently and totally disabled. Taxes that are deferred must generally be paid upon the sale of the real estate or within one year after the death of the last owner thereof who qualifies for tax deferral. This Act requires payment upon a nonqualified transfer of the real estate, defined as transfer in ownership by gift or otherwise not for bona fide consideration. Exceptions to such nonqualified transfer include a transfer by the qualified owner to a spouse; a transfer by the qualified owner, alone or in conjunction with his spouse, to a revocable inter vivos trust over which the qualified owner, or the qualified owner and his spouse, holds the power of revocation; and a transfer to an irrevocable trust under which the qualified owner 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.

Effective: July 1, 2018  
Amended: § 58.1-3216

### **Real Property Tax Assessment of Wetlands**

House Bill 1442 (Chapter 603) clarifies the assessment procedure for specially and separately assessing the fair market value of all wetlands on real property upon the request of a property owner. Specifically, this Act clarifies that, if the commissioner of the revenue or other assessing official disagrees with the property owner as to the presence of wetlands, then the commissioner of the revenue or other assessing official is required to recognize (i) the National Wetlands Inventory Map prepared by the U.S. Fish and Wildlife Service, (ii) a wetland delineation map confirmed by a Preliminary Jurisdictional Determination or (iii) an Approved Jurisdictional Determination issued by the U.S. Army Corps of Engineers and provided by the property owner in making the determination.

Effective: July 1, 2018  
Amended: § 58.1-3284.3



## Land Use Valuation

House Bill 871 (Chapter 504) expands the definitions of “real estate devoted to agricultural use” and “real estate devoted to horticultural use” to be used in the special classification of real estate that is eligible for a use value assessment. This Act expands the definitions to include property devoted to the production of products made from plants, animals, fruits, vegetables and nursery products on such property. This Act also clarifies that a property will not lose such designation solely because of its location in a newly created zoning district that was not requested by the property owner.

This Act also provides that the minimum time a parcel must be used for a qualifying purpose will include the time similar property was leased by the owner to a lessee and provide a shorter minimum length of time for real property with no prior qualifying use to qualify. Further, it extends the time before which an owner will be required to revalidate the special classification.

Effective: July 1, 2018

Amended: § 58.1-3230, 58.1-3231, and 58.1-3234

## Determining Fair Market Value of Real Property Owned by a Community Trust

House Bill 590 (Chapter 436) imposes certain requirements on real estate assessors when valuing certain property conveyed by or owned by a community land trust. These requirements apply to such real estate that is subject to a ground lease having a term of at least 90 years, while retaining a preemptive option to purchase such structural improvements at a price determined by a formula that is designed to ensure that the improvements remain affordable in perpetuity to low-income and moderate-income families earning less than 120 percent of the area median income, adjusted for family size.

Specifically, this Act requires duly authorized real estate assessors to consider the following factors when determining the fair market value of structural improvements to such real estate conveyed by a community land trust: (i) restrictions on the price at which improvements may be sold, and (ii) the amount of debt incurred by the owner of the improvements as evidenced by a deed showing no interest being due and no repayment prior to the earlier of satisfaction of any interest-earning promissory note or a subsequent transfer of the property.

This Act also requires that, when determining the fair market value of such real property owned by a community land trust in perpetuity, duly authorized real estate assessors utilize the income approach. In so doing, they are required to consider the property’s current use, the contract rent, the income restrictions, and provisions of any arms-length contract, including restrictions on the transfer of title or other title restraints on the alienation of real property.

Effective: July 1, 2018  
Added: § 58.1-3295.2

### **Bedford County Authorized to Perform General Reassessments**

House Bill 124 (Chapter 24) allows Bedford County to conduct a general reassessment of real estate at either five-year or six-year intervals. Counties are generally required to conduct a general reassessment every four years. Augusta County is permitted to conduct a general reassessment of real estate at either a five-year or six-year interval if approved by a majority of the board of supervisors for the County. This Act extends such treatment to Bedford County.

Effective: July 1, 2018  
Amended: § 58.1-3252

### **Electronic Submission of Applications to Boards of Equalization**

House Bill 190 (Chapter 341) clarifies the receipt date for local boards of equalization for applications for relief sent electronically. This Act provides that the date the applicant sends the application electronically will be considered the date of receipt by the governing body if the sender complies with the procedures for such electronic submission.

Under current law, the date by which applications must be made by property owners or lessees for relief is set by the governing body of any county or city and must not be earlier than 30 days after the termination of the date set by the assessing officer to hear objections to the assessments. Prior to this Act, there was no specific provision for electronic filing.

Effective: July 1, 2018  
Amended: § 58.1-3378

### **Extension of Board of Equalization Term**

House Bill 1495 (Chapter 604) allows for an extension of the term for a board of equalization appointed by a circuit court. This Act provides that, if a taxpayer applies to the commissioner of the revenue or other assessing official for relief from a real property tax assessment prior to the expiration of the board of equalization's term,

and the term of the board of equalization expires prior to a final determination on such application for relief, and the taxpayer advises the circuit court that he wishes to appeal the determination to the board of equalization, then the circuit court may reappoint the board of equalization to hear and act on such appeal.

Effective: July 1, 2018  
Amended: §§ 58.1-3370 and 58.1-3378

## Personal Property Tax

### Definition of Agricultural Products

House Bill 1022 (Chapter 30) and Senate Bill 314 (Chapter 618) clarify the definition of “agricultural products” for local property tax purposes to mean any livestock, aquaculture, poultry, horticultural, floricultural, viticulture, silvicultural, or other farm crops. “Agricultural products” are granted a specific mandatory exemption from local property tax while the products are in the hands of the producer. However, prior law did not specifically define “agricultural products” for purposes of such exemption.

Effective: July 1, 2018  
Amended: § 58.1-3505

### Computer Equipment and Peripherals Used in Data Centers

House Bill 828 (Chapter 28) and Senate Bill 268 (Chapter 292) create a separate classification for computer equipment and peripherals used in data centers when valuing such equipment for personal property tax purposes. This new classification of property must be valued by means of a percentage or percentages of original cost or by such other method as may reasonably be expected to determine the actual fair market value.

Effective: July 1, 2018  
Amended: §§ 58.1-3503 and 58.1-3506

## Transient Occupancy Tax

### Transient Occupancy Tax

Senate Bill 856 (Chapter 856) and House Bill 1539 (Chapter 854) repeal the regional transient occupancy tax in the Northern Virginia Transportation District and replace it with a two percent transportation district transient occupancy tax (TDTOT) and a two percent local transportation transient occupancy tax (LTTOT). Both the TDTOT and LTTOT apply to the charge for the occupancy of any room or space that is suitable or intended for occupancy by transients for dwelling, lodging, or sleeping purposes.

The TDTOT is levied in the Northern Virginia Transportation District, which encompasses the counties of Arlington, Fairfax, and Loudoun, and the cities of Alexandria, Fairfax, and Falls Church. The LTTOT applies to counties and cities that are part of the Northern Virginia Transportation Authority but not the Northern Virginia Transportation District. These localities are Prince William County and the cities of Manassas, and Manassas Park.

Effective: July 1, 2018  
Added: §§ 58.1-1743 and 58.1-1744  
Repealed: § 58.1-1742

### Transient Occupancy Tax for Eligible Historic Lodging Properties

Senate Bill 547 (Chapter 626) authorizes a qualified county to impose, after holding a public hearing, an additional transient occupancy tax not to exceed five percent of the amount of the charge for the occupancy of any room or space occupied at eligible historic lodging properties. For purposes of imposing such tax, a “qualified county” is defined as a county in which at least 40 percent of the employment is in accommodations and food services, as set forth in the Quarterly Census of Employment and Wages for the second quarter of 2017, as published by the Virginia Employment Commission. The revenues collected from the additional tax must be designated solely as local funds to be used to incentivize other entities to invest in substantial rehabilitation, renovation, and expansion projects on eligible historic lodging properties that will enhance local economic development and tourism opportunities.

Effective: July 1, 2018  
Added: § 58.1-3825.2:1

## Rockingham County Authorized to Impose Transient Occupancy Tax

Senate Bill 818 (Chapter 293) adds Rockingham 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 are required to be used solely for tourism or marketing of tourism.

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. In addition, Virginia law separately identifies those 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 over two percent must be designated and spent solely for tourism, marketing of tourism, or initiatives that attract travelers to the locality and generate tourism revenues in the locality.

Effective: July 1, 2018  
Amended: § 58.1-3819

## Additional Transient Occupancy Tax in Arlington County

Senate Bill 69 (Chapter 611) extends the sunset date for Arlington County's authority to impose an additional transient occupancy tax of up to 0.25 percent From July 1, 2018 to July 1, 2021.

Under current law, any county may, upon the adoption of an ordinance, impose a transient occupancy tax at a maximum rate of two percent on hotels, motels, boarding houses, travel campgrounds, and other facilities offering guest rooms. In addition, Virginia law separately identifies those counties that are authorized to impose a transient occupancy tax at a maximum rate of five percent. Arlington County is authorized to impose an additional transient occupancy tax, in addition to the five percent rate, at a maximum rate of 0.25 percent.

Effective: July 1, 2018  
Amended: § 58.1-3825.3

## Other Local Taxes

### Admissions Tax in Wythe County

House Bill 369 (Chapter 26) and Senate Bill 501 (Chapter 365) authorize Wythe County to impose an admissions tax of up to ten percent on events held on the grounds of any exposition center in the county that (i) has an

indoor arena seating at least 2,000 persons in addition to an outdoor multipurpose space, and (ii) is located on all or part of a parcel of land or adjacent parcels of land containing at least 40 acres. The Wythe County Board of Supervisors is required to prescribe, by ordinance, the terms, conditions, and amount of the tax and will be permitted to classify between events held for charitable and non-charitable purposes.

Effective: July 1, 2018  
Added: § 58.1-3818.04

### **Admissions Tax in Washington County**

House Bill 1553 (Chapter 287) and Senate Bill 503 (Chapter 289) authorize Washington County to impose an admissions tax of up to ten percent on (i) a multi-sports complex and (ii) an entertainment venue if such complex or venue, or both, (a) is located on all or part of a parcel of land or on adjacent parcels of land, containing at least 250 acres and (b) is in business on or before June 30, 2027. Under prior law, such tax could only be imposed if both the complex and venue met such requirements. The authority for the tax will expire on July 1, 2027 if neither the multi-sports complex nor the entertainment venue is in business in Washington County on or before June 30, 2027.

Effective: July 1, 2018  
Amended: § 58.1-3818.03

### **Merchant's Capital Tax Classification**

House Bill 119 (Chapter 23) creates a separate classification for certain merchants' capital of wholesalers that is reported as inventory and is normally located in a structure that contains at least 100,000 square feet, with at least 100,000 square feet used solely to store such inventory. The governing body of any county, city, or town may levy a tax on such inventory at different rates from the tax levied on other merchants' capital. However, the rates of tax and the rates of assessment are not permitted to exceed the rates that are applicable generally to merchants' capital.

Effective: July 1, 2018  
Amended: § 58.1-3510.02

# Legislative Studies/Reports

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## Accelerated Sales Tax Workgroup

Item 272(D) of the 2018 Appropriation Act (House Bill 5002, Special Session I, Chapter 2) requires the Department to convene a workgroup to examine the provisions related to the timing of accelerated sales tax payments. The workgroup is required to:

- ▶ Establish costs and a timeline for the Department to implement an easy online application for dealers to apply for the hardship exception and to determine whether the current hardship definition is adequate or could be expanded to include additional hardship scenarios;
- ▶ Make recommendations to the Department about providing earlier notice to dealers of accelerated sales tax payments, the equity in assessing late payment penalty fees, how the state would be impacted by options to phase-out the accelerated sales tax by fiscal year 2022, and the ability of the General Assembly to lower the AST threshold by more than 10 percent in one year when threshold is at \$15 million of annual taxable sales or less; and
- ▶ Consider alternatives and limitations to the current accelerated sales tax requirement and shall examine other sales tax-related issues, including bi-monthly remittance of sales taxes as an alternative.

The workgroup must include the staffs of the House Appropriations and Senate Finance Committees, the Secretary of Finance or his designee, the Office of the Governor, and representatives from affected businesses and industries. The workgroup is required to complete its meetings by November 30, 2018 and to submit a report to the Governor and the House Appropriations and Senate Finance Committees by the first day of the 2019 Regular Session of the General Assembly.

Effective: July 1, 2018

## Study of Appeals Concerning the Valuation of Business Property

House Joint Resolution 98 directs the Department to study Virginia's appeals process for businesses disputing the determination of the fair market value of real and tangible personal property for local tax purposes. In conducting such study, the Department is required to evaluate the feasibility and merits of the taxpayer determining the value of individual items of property by allocating a total appraised value for all the machinery and tools at a plant, facility, or any part thereof among the individual items of property at such plant, facility, or any part thereof, on the basis of the percentage of original cost that each such item bears to the total original cost. The Department is also required to evaluate the feasibility and merits of the Tax Commissioner, based on the documents submitted by the taxpayer and the commissioner of the revenue or other assessing official, incorporating the following actions into the appeals process:

- ▶ Determining whether the assessor's method for valuing and assessing machinery and tools is likely to estimate fair market value accurately and whether the assessor has taken into account all forms of depreciation, including obsolescence, and other appropriate factors reasonably necessary to determine fair market value;
- ▶ Determining whether the taxpayer has carried his burden to establish that the machinery and tools in question have been assessed at more than fair market value and the fair market value thereof;
- ▶ Stating the facts and law in support of his determinations, including an analysis of any appraisals or other valuation information presented by the taxpayer and the commissioner of the revenue or other assessing official; and
- ▶ Affirming the assessment if the taxpayer has not carried his burden to establish that the property has a fair market value less than the assessed value, or if the taxpayer has carried his burden, directing that the assessment be corrected by the commissioner of the revenue or other assessing official.

Technical assistance will be provided by the Virginia Economic Development Partnership, the Office of the Attorney General, and any other state agencies upon request. All stakeholders, including local government representatives and manufacturing sector trade associations, are requested to participate. The Department is required to complete its meetings by November 1, 2019 and to submit a report to the Governor and General Assembly by December 1, 2019.

Effective: July 1, 2018

### **Feasibility of Filing Tax Reports and Payments Electronically**

House Bill 538 (Chapter 344) directs the Department of Taxation and the Virginia Employment Commission (“VEC”) to consider the feasibility of permitting taxpayers to submit tax reports and payments electronically for both agencies using a single sign-on platform. The Department and VEC must also consider the feasibility, merits, and costs of developing and implementing an identity management system or retaining a contractor to do so.

Effective: July 1, 2018



## Index by Bill Number

Bill No.	Chapter	Subject	Page
HB 0071	421	Constitutional Amendment: Real Property Tax Exemption for Certain Surviving Spouses.....	21
HB 0119	23	Merchant’s Capital Tax Classification.....	30
HB 0124	24	Bedford County Authorized to Perform General Reassessments.....	26
HB 0129	500	Worker Retraining Tax Credit.....	15
HB 0154	15	Advancement of Virginia’s Fixed Date Conformity to the Internal Revenue Code.....	20
HB 0179	25	Public Facility Entitlement to Sales and Use Tax.....	18
HB 0183	283	Tax Preparer Notification of Data Breach.....	7
HB 0190	341	Electronic Submission of Applications to Boards of Equalization.....	26
HB 0222	802	Modified Apportionment Method for Certain Qualified Companies.....	10
HB 0340	342	Loudoun County Agreements for Treasurer to Collect and Enforce Real and Personal Property Taxes.....	20
HB 0365	821	Subtraction for Virginia Real Estate Investment Trust income.....	12
HB 0369	26	Admissions Tax in Wythe County.....	29
HB 0373	343	Membership in the Multistate Tax Commission.....	9
HB 0495	40	Localities Authorized to Disclose Tax Information to Third Party Contractors.....	9
HB 0538	344	Study on Feasibility of Filing Tax Reports and Payments Electronically.....	32
HB 0590	436	Determining Fair Market Value of Real Property Owned by a Community Trust.....	25
HB 0591	437	Exemption for Certain Leasehold Interests of Land Bank Entities.....	23
HB 0665	853	Coalfield Employment Enhancement Tax Credit.....	13
HB 0788	150	Requirement that Paid Tax Return Preparers Use Preparer Tax Identification Numbers; Civil Penalty.....	7
HB 0798	807	Modified Apportionment Method for Debt Buyers.....	11
HB 0799	441	Aircraft Sales and Use Tax.....	18
HB 0828	28	Computer Equipment and Peripherals Used in Data Centers.....	27
HB 0871	504	Land Use Valuation.....	25
HB 0894	29	Exemption for Single Member Limited Liability Companies.....	22
HB 1022	30	Definition of Agricultural Products.....	27
HB 1092	120	Tax Increment Financing for Dredging Projects.....	20
HB 1372	346	Green Job Creation Tax Credit.....	16
HB 1382	556	Agricultural Best Management Practices Tax Credit.....	15
HB 1441	838	Tax on ATVs, Mopeds and Off-Road Motorcycles.....	17
HB 1442	603	Real Property Tax Assessment of Wetlands.....	24
HB 1460	560	Land Preservation Tax Credit: Transfer to a Designated Beneficiary.....	14
HB 1495	604	Extension of Board of Equalization Term.....	26
HB 1553	287	Admissions Tax in Washington County.....	30
HJ 0006	812	Constitutional Amendment: Real Property Tax Exemption for Certain Surviving Spouses.....	21
HJ 0098		Study of Appeals Concerning the Valuation of Business Property.....	31

Bill No.	Chapter	Subject	Page
SB 0069	611	Additional Transient Occupancy Tax in Arlington County.....	29
SB 0092	74	Loudoun County Agreements for Treasurer to Collect and Enforce Real and Personal Property Taxes.....	20
SB 0108	800	Orders of Publication to Enforce Tax Lien.....	23
SB 0213	357	Aircraft Sales and Use Tax.....	18
SB 0219	616	Constitutional Amendment: Partial Exemption for Flooding Remediation and Abatement.....	21
SB 0228	291	Recapture of Deferred Taxes.....	24
SB 0230	14	Advancement of Virginia’s Fixed Date Conformity to the Internal Revenue Code.....	10
SB 0249	840	TAX on ATVs, Mopeds and Off-Road Motorcycles.....	17
SB 0268	292	Computer Equipment and Peripherals Used in Data Centers.....	27
SB 0271	360	Tax Preparer Notification of Data Breach.....	7
SB 0314	618	Definition of Agricultural Products.....	27
SB 0332	362	Sales Tax Exemption for Produce and Eggs Sold at Farmers’ Markets or Roadside Stands.....	17
SB 0374	469	Assessment from the Sale of Cattle.....	19
SB 0376	621	Entities Entitled to Voluntary Contributions of Tax Refunds.....	16
SB 0378	855	Coalfield Employment Enhancement Tax Credit.....	13
SB 0430	236	Real Property Tax Exemption for Disabled Veterans.....	21
SB 0485	623	Property Tax Exemption for the Norfolk Chapter of the Izaak Walton League of America.....	23
SB 0501	365	Admissions Tax in Wythe County.....	29
SB 0503	289	Admissions Tax in Washington County.....	30
SB 0531	625	Accelerated Refund Program Reestablished.....	8
SB 0547	626	Transient Occupancy Tax for Eligible Historic Lodging Properties.....	28
SB 0573	347	Green Job Creation Tax Credit.....	16
SB 0818	293	Rockingham County to Impose Transient Occupancy Tax.....	29
SB 0856	856	Regional WMATA Capital Fee.....	19
SB 0856	856	Motor Vehicle Rental Tax.....	19
SB 0856	856	Transient Occupancy Tax.....	28
SB 0883	801	Modified Apportionment Method for Certain Qualified Companies.....	10
SB 0900	422	Constitutional Amendment: Real Property Tax Exemption for Certain Surviving Spouses.....	21
SB 0902	849	Changes to Exemption for Solar Energy Equipment and Facilities.....	22
SB 0942	850	State Sales and Use Tax in the Historic Triangle.....	16
SJ 0021	813	Constitutional Amendments: Real Property Tax Exemption for Flooding Remediation, Abatement, etc.....	22
SJ 0076	814	Constitutional Amendment: Real Property Tax Exemption for Certain Surviving Spouses.....	21

## Index by Chapter Number

Bill No.	Chapter	Subject	Page
SB 0230	14	Advancement of Virginia’s Fixed Date Conformity to the Internal Revenue Code.....	10
HB 0154	15	Advancement of Virginia’s Fixed Date Conformity to the Internal Revenue Code.....	20
HB 0119	23	Merchant’s Capital Tax Classification.....	30
HB 0124	24	Bedford County Authorized to Perform General Reassessments.....	26
HB 0179	25	Public Facility Entitlement to Sales and Use Tax.....	18
HB 0369	26	Admissions Tax in Wythe County.....	29
HB 0828	28	Computer Equipment and Peripherals Used in Data Centers.....	27
HB 0894	29	Exemption for Single Member Limited Liability Companies.....	22
HB 1022	30	Definition of Agricultural Products.....	27
HB 0495	40	Localities Authorized to Disclose Tax Information to Third Party Contractors.....	9
SB 0092	74	Loudoun County Agreements for Treasurer to Collect and Enforce Real and Personal Property Taxes.....	20
HB 1092	120	Tax Increment Financing for Dredging Projects.....	20
HB 0788	150	Requirement that Paid Tax Return Preparers Use Preparer Tax Identification Numbers; Civil Penalty.....	7
SB 0430	236	Real Property Tax Exemption for Disabled Veterans.....	21
HB 0183	283	Tax Preparer Notification of Data Breach.....	7
HB 1553	287	Admissions Tax in Washington County.....	30
SB 0503	289	Admissions Tax in Washington County.....	30
SB 0228	291	Recapture of Deferred Taxes.....	24
SB 0268	292	Computer Equipment and Peripherals Used in Data Centers.....	27
SB 0818	293	Rockingham County to Impose Transient Occupancy Tax.....	29
HB 0190	341	Electronic Submission of Applications to Boards of Equalization.....	26
HB 0340	342	Loudoun County Agreements for Treasurer to Collect and Enforce Real and Personal Property Taxes.....	20
HB 0373	343	Membership in the Multistate Tax Commission.....	9
HB 0538	344	Study on Feasibility of Filing Tax Reports and Payments Electronically.....	32
HB 1372	346	Green Job Creation Tax Credit.....	16
SB 0573	347	Green Job Creation Tax Credit.....	16
SB 0213	357	Aircraft Sales and Use Tax.....	18
SB 0271	360	Tax Preparer Notification of Data Breach.....	7
SB 0332	362	Sales Tax Exemption for Produce and Eggs Sold at Farmers’ Markets or Roadside Stands.....	17
SB 0501	365	Admissions Tax in Wythe County.....	29
HB 0071	421	Constitutional Amendment: Real Property Tax Exemption for Certain Surviving Spouses.....	21
SB 0900	422	Constitutional Amendment: Real Property Tax Exemption for Certain Surviving Spouses.....	21

Bill No.	Chapter	Subject	Page
HB 0590	436	Determining Fair Market Value of Real Property Owned by a Community Trust.....	25
HB 0591	437	Exemption for Certain Leasehold Interests of Land Bank Entities.....	23
HB 0799	441	Aircraft Sales and Use Tax.....	18
SB 0374	469	Assessment from the Sale of Cattle.....	19
HB 0129	500	Worker Retraining Tax Credit.....	15
HB 0871	504	Land Use Valuation.....	25
HB 1382	556	Agricultural Best Management Practices Tax Credit.....	15
HB 1460	560	Land Preservation Tax Credit: Transfer to a Designated Beneficiary.....	14
HB 1442	603	Real Property Tax Assessment of Wetlands.....	24
HB 1495	604	Extension of Board of Equalization Term.....	26
SB 0069	611	Additional Transient Occupancy Tax in Arlington County.....	29
SB 0219	616	Constitutional Amendment: Partial Exemption for Flooding Remediation and Abatement.....	21
SB 0314	618	Definition of Agricultural Products.....	27
SB 0376	621	Entities Entitled to Voluntary Contributions of Tax Refunds.....	16
SB 0485	623	Property Tax Exemption for the Norfolk Chapter of the Izaak Walton League of America.....	23
SB 0531	625	Accelerated Refund Program Reestablished.....	8
SB 0547	626	Transient Occupancy Tax for Eligible Historic Lodging Properties.....	28
SB 0108	800	Orders of Publication to Enforce Tax Lien.....	23
SB 0883	801	Modified Apportionment Method for Certain Qualified Companies.....	10
HB 0222	802	Modified Apportionment Method for Certain Qualified Companies.....	10
HB 0798	807	Modified Apportionment Method for Debt Buyers.....	11
HJ 0006	812	Constitutional Amendment: Real Property Tax Exemption for Certain Surviving Spouses.....	21
SJ 0021	813	Constitutional Amendments: Real Property Tax Exemption for Flooding Remediation, Abatement, etc.....	22
SJ 0076	814	Constitutional Amendment: Real Property Tax Exemption for Certain Surviving Spouses.....	21
HB 0365	821	Subtraction for Virginia Real Estate Investment Trust income.....	12
HB 1441	838	Tax on ATVs, Mopeds and Off-Road Motorcycles.....	17
SB 0249	840	TAX on ATVs, Mopeds and Off-Road Motorcycles.....	17
SB 0902	849	Changes to Exemption for Solar Energy Equipment and Facilities.....	22
SB 0942	850	State Sales and Use Tax in the Historic Triangle.....	16
HB 0665	853	Coalfield Employment Enhancement Tax Credit.....	13
SB 0378	855	Coalfield Employment Enhancement Tax Credit.....	13
SB 0856	856	Regional WMATA Capital Fee.....	19
SB 0856	856	Motor Vehicle Rental Tax.....	19
SB 0856	856	Transient Occupancy Tax.....	28
HJ 0098		Study of Appeals Concerning the Valuation of Business Property.....	31