

2019 Legislative Summary

Virginia Department of Taxation

May 2019

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Introduction

The Legislative Summary is published by the Department of Taxation (“Virginia Tax”) as a convenient reference guide to state and local tax legislation enacted by the 2019 Session of the General Assembly, including the reconvened session on April 3, 2019. Please note that any legislation enacted after July 1, 2019 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. 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

Introduction.....	3
Table of Contents.....	4
State Tax Legislation	6
General Provisions	6
Authority to Share Certain Taxpayer Information with the Department of Social Services	6
Disclosure of Tax Information to Clerks of Court	6
Income Tax Legislation.....	7
Advancement of Virginia’s Fixed Date Conformity to the Internal Revenue Code and Other Tax Policy Changes	7
Modified Apportionment Method for Certain Qualified Companies Investing in Page County.....	8
Subtraction for Gain from the Taking of Real Property in a Condemnation Proceeding	9
Virginia Port Volume Increase Tax Credit: Transferability.....	9
Telework Expenses Tax Credit: Repealed	10
Worker Retraining Tax Credit: Sunset Date and Worker Investment Tax Credit.....	10
Land Preservation Tax Credit: Extends the Deadline for Filing a Credit Application	11
Land Preservation Tax Credit: Operation of a Facility on Conveyed Land.....	11
Communities of Opportunity Tax Credit.....	11
Historic Rehabilitation Tax Credit: Annual Limitation on Credits Claimed	12
Major Business Facility Job Tax Credit: Extension of Sunset Date	12
Neighborhood Assistance Act Tax Credit Modifications.....	13
Education Improvement Scholarships Tax Credit: Pre-Kindergarten Eligibility	13
Education Improvement Scholarships Tax Credit: Benefits and Eligibility Requirements	14
Definition of Resident Estate or Trust	14
Retail Sales and Use Tax.....	15
Remote Sales & Use Tax Collection: Sufficient Activity by Remote Sellers and Marketplace Facilitators.....	15
Absorption of Retail Sales and Use Tax by Dealers	15
Retail Sales and Use Tax on Personal Hygiene Products	16
Accelerated Sales Tax Threshold Increased	16
Retail Sales and Use Tax Exemption for Single-member Nonprofit-Owned Limited Liability Companies.....	17
Public Facilities: Virginia Beach Sports and Entertainment Project	17
Additional Local Sales and Use Tax in Halifax County for Educational Purposes.....	17
Other State Tax Legislation	18
Definitions of Cigarette Tax and Tobacco Products Tax Updated	18

Recordation Tax: Exemption for Property Transferred by Deed of Distribution	19
Motor Vehicle Rental Tax.....	20
Local Tax Legislation	20
General Provisions	20
Local License Tax on Mobile Food Units	20
Local Gas Road Improvement Tax; Extension of Sunset Provision.....	21
Private Collectors Authorized for Use by Localities to Collect Delinquent Debts	22
Real Property Tax.....	22
Real Property Tax Exemptions for Elderly and Disabled: Computation of Income Limitation	22
Real Property Tax Exemption for Elderly and Disabled: Improvements to a Dwelling	22
Real Property Tax: Partial Exemption from Real Property Taxes for Flood Mitigation Efforts.....	23
Real Property Tax: Exemption for Certain Surviving Spouses.....	23
Land Preservation; Special Assessment, Optional Limit on Annual Increase in Assessed Value	24
Virginia Regional Industrial Act: Revenue Sharing; Composite Index	24
Real Estate with Delinquent Taxes or Liens: Appointment of Special Commissioner; Increase Required Value	25
Real Estate with Delinquent Taxes or Liens; Appointment of Special Commissioner in the City of Martinsville	25
Personal Property Tax.....	25
Constitutional Amendment: Personal Property Tax Exemption for Motor Vehicle of a Disabled Veteran	25
Personal Property Tax Exemption for Agricultural Vehicles	26
Intangible Personal Property Tax: Classification of Certain Business Property	26
Legislative Studies/Reports	27
Workgroup to Study the Treatment of Interest Deduction Limitation	27
Joint Working Group to Study the Feasibility of Exempting Military Retirement Income	27
Study of Options for Appealing Local Tax Assessments	28

State Tax Legislation

General Provisions

Authority to Share Certain Taxpayer Information with the Department of Social Services

House Bill 2339 (Chapter 853) authorizes the Department to enter into a written agreement with the Department of Social Services (“DSS”) to provide Forms W-2 and 1099 to facilitate the administration of child support services, and public assistance or social services benefits. Under prior law, the Department was permitted to provide DSS, upon written request, information on the amount of income, filing status, number and type of dependents, and whether a federal earned income tax credit has been claimed as reported by persons on their state income tax returns who have applied for public assistance or social services benefits. This Act eliminates the language that previously authorized the Department to provide DSS with information regarding whether certain taxpayers have claimed the federal earned income tax credit.

Effective: July 1, 2019
Amended: § 58.1-3

Disclosure of Tax Information to Clerks of Court

House Bill 2768 (Chapter 261) and Senate Bill 1166 (Chapter 786) allow disclosure of confidential tax information contained in an estate's probate tax return, filed with the clerk of court, when the information is requested by the commissioner of accounts making a settlement of accounts filed in such estate. Prior to these Acts, this information was only available to a beneficiary of the estate or an heir at law of the decedent.

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 in the performance of official duties with respect to the transactions, property, income or business of any person, firm or corporation.

Effective: July 1, 2019
Amended: § 58.1-3

Income Tax Legislation

Advancement of Virginia's Fixed Date Conformity to the Internal Revenue Code and Other Tax Policy Changes

Advancement of Conformity to the Internal Revenue Code

House Bill 2529 (Chapter 17) and Senate Bill 1372 (Chapter 18) advance Virginia's date of conformity to the Internal Revenue Code ("IRC") from February 9, 2018 to December 31, 2018. These Acts also repeal language currently deconforming Virginia from most of the provisions of the Tax Cuts and Jobs Act ("the TCJA") and the Bipartisan Budget Act of 2018 that affect Taxable Year 2018 and after. This allows Virginia to generally conform to the TCJA. The portion of these Acts advancing Virginia's date of conformity and repealing current deconformity language are effective beginning with Taxable Year 2018.

Virginia will continue to disallow any bonus depreciation allowed for certain assets under federal law and the five year carry-back of NOLs allowed for certain 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.

Refunds for Certain Taxable Year 2018 Return Filers

For Taxable Year 2018, these Acts provide a refund of up to \$110 to an individual taxpayer and up to \$220 for married individuals filing a joint income tax return. In order to receive the refund, a final return is required to be filed for Taxable Year 2018 before July 1, 2019. A refund is only allowed up to the amount of the taxpayer's tax liability after the application of any deductions, subtractions, or credits to which the taxpayer is otherwise entitled. Refunds are required to be issued on or after October 1, 2019, but before October 15, 2019. If there is insufficient revenues to issue refunds of \$110 to individual taxpayers and \$220 to married taxpayers filing joint income tax returns, then such refunds are required to be reduced and prorated based on the amount of available funds. This Act also requires that any refunds issued are subject to collection under the Setoff Debt Collection Act.

Individual Tax Policy Changes

Beginning with Taxable Year 2019, these Acts make the following income tax policy changes that may affect individual taxpayers:

- ▶ An increase in the amount of the Virginia standard deduction from \$3,000 to \$4,500 for individuals and married taxpayers filing separately, and from \$6,000 to \$9,000 for married taxpayers filing joint returns, effective for taxable years beginning on and after January 1, 2019, but before January 1, 2026;
- ▶ An individual income tax deduction for the actual amount of real and personal property taxes imposed by Virginia or any other taxing jurisdiction not otherwise deducted solely on account of the \$10,000

annual limitation imposed on the federal deduction for state and local taxes paid for taxable years beginning on and after January 1, 2019; and

- ▶ Deconformity from the TCJA's suspension of the overall limitation on itemized deductions, commonly known as the Pease limitation, for taxable years beginning on and after January 1, 2019.

Business Tax Policy Changes

Beginning with Taxable Year 2018, these Acts make the following income tax law changes that may affect business taxpayers:

- ▶ An individual and corporate income tax deduction in an amount equal to 20 percent of the business interest that is disallowed as a deduction for federal income tax purposes for taxable years beginning on and after January 1, 2018; and
- ▶ An expansion of Virginia's existing corporate income tax subtraction for subpart F income so that it also applies to global intangible low-taxed income ("GILTI") for taxable years beginning on and after January 1, 2018.

Taxpayer Relief Fund

These Acts provide that certain additional revenues generated by TCJA during Fiscal Year 2019 through Fiscal Year 2025 are required to be transferred to a special nonreverting fund established by these Acts, known as the "Taxpayer Relief Fund." These Acts require the General Assembly to appropriate any revenues in the fund to effectuate permanent or temporary tax reform measures.

Effective: February 15, 2019
Amended: §§ 58.1-301, 58.1-322.03, and 58.1-402

Modified Apportionment Method for Certain Qualified Companies Investing in Page County

House Bill 2776 (Chapter 262) and Senate Bill 1428 (Chapter 263) add Page County to the list of localities that a company may invest in for purposes of becoming eligible to utilize modified apportionment factors to decrease the amount of income taxed by Virginia ("certified company apportionment"). These Acts also add Page County to the list of localities authorized to give grants or loans to such companies.

To be eligible to use certified company apportionment under existing law, a company must be a corporation or pass-through entity that does not have any existing property or payroll in Virginia as of January 1, 2018 and, 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 VEDP as generating a positive fiscal impact.

Companies that qualify for certified company apportionment may be eligible to modify the application of Virginia's statutory three-factor method of apportionment by reducing the numerator of its property, payroll, and sales factors or to use certain single factor methods of apportionment. A certified company conducting its entire business within Virginia may elect to apportion its income between qualified localities and other Virginia localities and utilize modified apportionment factors, provided that the certified company does not apportion any of its income to a state other than Virginia

Effective: July 1, 2019
Amended: §§ 15.2-958.2:01 and 58.1-405.1

Subtraction for Gain from the Taking of Real Property in a Condemnation Proceeding

Senate Bill 1256 (Chapter 270) provides an individual and corporate income tax subtraction for any gain recognized by a taxpayer from the taking of real property in a condemnation proceeding.

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

Virginia Port Volume Increase Tax Credit: Transferability

Senate Bill 1652 (Chapter 759) allows any taxpayer holding Port Volume Increase Tax Credits to transfer any unused, but otherwise allowable credits, for use by another taxpayer on its Virginia income tax return. Only tax credits issued in taxable years beginning on and after January 1, 2018, but before January 1, 2022, are transferable under this Act.

A taxpayer who transfers Port Volume Increase Tax Credits is required to file a notification of such transfer with the Department in accordance with procedures and forms prescribed by the Department. Taxpayers are permitted to retroactively apply transferred credits from the date such credits were originally issued, and the transferee may file an amended return to claim such transferred credit for a prior taxable year. However, the provision of this Act permitting the retroactive application of transferred credits does not extend the statute of limitations for filing an amended return. In addition, this Act provides that no transfer of tax credits are to be allowed unless the transfer occurs within one calendar year of the credit holder earning such credit.

Effective: July 1, 2019
Amended: § 58.1-439.12:10

Telework Expenses Tax Credit: Repealed

House Bill 2065 (Chapter 21) repeals the Telework Expenses Tax Credit by moving the credit's sunset date from taxable years beginning on or after January 1, 2022 to taxable years beginning on or after January 1, 2019. As a result, taxpayers cannot claim this credit after Taxable Year 2018.

Effective: Taxable years beginning on and after January 1, 2019
Amended: § 58.1-439.12:07

Worker Retraining Tax Credit: Sunset Date and Worker Investment Tax Credit

House Bill 2539 (Chapter 189) sunsets the Worker Retraining Tax Credit for taxable years beginning on and after January 1, 2019. This Act provides the new Worker Training Tax Credit to a business in an amount equal to 35 percent of the expenses it incurs for eligible worker training during the taxable year. A business is permitted to claim this portion of the credit against the individual income tax, estates and trusts tax, corporate income tax, bank franchise tax, insurance premiums license tax, and license tax on telegraph, telephone, water, heat, light, power, and pipeline companies. The amount of the credit is equal to \$500 for training related to each qualified employee or \$1,000 for training related to each non-highly compensated worker.

This Act also provides the Worker Training Tax Credit to a manufacturing business that currently qualifies for the Worker Retraining Tax Credit for conducting orientation, instruction, and training in Virginia related to its manufacturing activities. A business is permitted to claim this portion of the credit against the individual income tax and the corporate income tax. The requirements for such taxpayers to qualify for the new credit are substantially similar to the requirements currently utilized for purposes of the Worker Retraining Tax Credit.

The annual aggregate credit cap for the Worker Training Tax Credit is \$1 million.

Effective: Taxable years beginning on or after January 1, 2019, but before July 1, 2022, except that the portion of the credit for manufacturing businesses that conduct orientation, instruction, and training related to manufacturing activities is effective for taxable years beginning on or after January 1, 2019, but before January 1, 2022.
Amended: § 58.1-439.6

Added: § 58.1-439.6:1

Land Preservation Tax Credit: Extends the Deadline for Filing a Credit Application

House Bill 1816 (Chapter 183) extends the amount of time that taxpayers have to submit applications for Land Preservation Tax Credits. The application deadline under prior law was December 31 of the first year following the calendar year of a conveyance. For a conveyance made before January 1, 2020, this Act extends the application deadline to December 31 of the third year following the calendar year of a conveyance. For a conveyance made on or after January 1, 2020, this Act extends the application deadline to December 31 of the second year following the calendar year of a conveyance.

Effective: July 1, 2019

Supersedes: § 58.1-512

Land Preservation Tax Credit: Operation of a Facility on Conveyed Land

House Bill 2482 (Chapter 649) provides that if Virginia or an instrumentality of Virginia operates a facility on a conveyance, including charging fees for the use of such facility, such operation does not disqualify the conveyance from eligibility for Land Preservation Tax Credits, so long as any such fees are used for conservation or preservation purposes.

This Act also provides that, if Virginia or an instrumentality of Virginia enters into an agreement with a third party to lease or manage a facility on a conveyance, the fact that such third party is operated primarily as a business with intent for profit does not disqualify the conveyance from eligibility for Land Preservation Tax Credits. For a conveyance to be eligible, such agreement is required to be for conservation or preservation purposes.

Effective: July 1, 2019

Amended: § 58.1-512

Communities of Opportunity Tax Credit

House Bill 1681 (Chapter 19) and Senate Bill 1656 (Chapter 272) modify the Communities of Opportunity Tax Credit by permitting certain landlords renting a qualified housing unit in a census tract within the Virginia Beach-

Norfolk-Newport News Metropolitan Statistical Area in which less than 10 percent of the residents live below the poverty level to be eligible for the credit. The credit was previously limited to certain landlords with qualified housing units within census tracts in the Richmond Metropolitan Statistical Area.

Effective: July 1, 2019
Amended: § 58.1-439.12:04

Historic Rehabilitation Tax Credit: Annual Limitation on Credits Claimed

House Bill 2705 (Chapter 25) permanently extends the limitation that prohibits a taxpayer from claiming more than \$5 million in Historic Rehabilitation Tax Credits in one 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 amount of the credit is used, whichever occurs first.

Effective: July 1, 2019
Added: § 58.1-339.2

Major Business Facility Job Tax Credit: Extension of Sunset Date

House Bill 2003 (Chapter 699) extends the sunset date for the Major Business Facility Job Tax Credit. This credit was set to expire after Taxable Year 2019. Pursuant to this Act, the credit is now scheduled to sunset for taxable years beginning on or after July 1, 2022.

This Act also requires the Department to publish an annual report for Taxable Year 2019 and thereafter containing certain specified information regarding the credit. Such report is due on November 1 of each year for the twelve-month period ending on the preceding December 31. Because Taxable Year 2019 returns will be filed during 2020, the first report is due on November 1, 2021.

Effective: July 1, 2019
Amended: § 58.1-439

Neighborhood Assistance Act Tax Credit Modifications

Item 3-5.22 of the 2019 Appropriation Act (House Bill 1700, Chapter 854) clarifies that a neighborhood organization participating in the Neighborhood Assistance Act Tax Credit program and submitting education proposals to satisfy the requirement that at least 50 percent of the organization's revenues must be used to provide services to low-income persons or eligible students with disabilities by showing that these services were either provided directly by the organization or were provided through the provision of funds to other organizations and groups providing such services. In addition, a participating neighborhood organization submitting education proposals may satisfy the requirement that at least 50 percent of the persons served by the neighborhood organization must be low-income persons or eligible students with disabilities by showing that this requirement is met directly by the neighborhood organization or that this requirement is met through the provision of revenues to other organizations or groups serving such persons. Current law does not specify whether such requirements may be met through the provision of revenues to other organizations and groups providing such services. A tax credit may be issued by the Superintendent of Public Instruction or the Commissioner of Social Services to an individual only upon receipt of a certification made by a neighborhood organization to whom tax credits were allocated for an approved program.

Effective: May 2, 2019

Education Improvement Scholarships Tax Credit: Pre-Kindergarten Eligibility

Senate Bill 1015 (Chapter 817) expands the Education Improvement Scholarships Tax Credit so that scholarship foundations are now permitted to award scholarships to eligible pre-kindergarten children for their qualified educational expenses. A scholarship foundation is permitted to award scholarships from tax-credit-derived funds to pre-kindergarten children only if such children are enrolled in or attending non-public pre-kindergarten programs that meet certain specified requirements. This Act provides that aggregate amount of scholarships provided to each eligible pre-kindergarten child for any single school year by all eligible scholarship foundations from eligible donations is not be permitted to exceed the lesser of the actual qualified educational expenses of the child or the state share of the grant per child under the Virginia Preschool Initiative for the locality in which the eligible pre-kindergarten child resides.

This Act also reduces the penalty that scholarship foundations are required to pay for failing to distribute at least 90 percent of tax-credit-derived donations in the form of scholarships for the qualified educational expenses of eligible students from 200 percent of the difference between 90 percent of credit-derived donations and the actual amount disbursed as scholarships to the amount of such difference.

Effective: July 1, 2019

Amended: §§ 58.1-439.25 and 58.1-439.28

Education Improvement Scholarships Tax Credit: Benefits and Eligibility Requirements

Senate Bill 1365 (Chapter 808) increases the aggregate amount of scholarships that may be provided by all eligible scholarship foundations to an eligible student with a disability for any single school year from 100 percent to 300 percent of the per pupil amount. This Act broadens the definition of "eligible student with a disability" to include any child who is a resident of Virginia for whom an Individualized Education Plan has been written and finalized in accordance with the federal Individuals with Disabilities Education Act. This Act removed the requirement that "eligible students with a disability" meet the articles definition of "student" and that the household income of such students is required to be in excess of 400 percent of the current poverty guidelines. This Act also provides that an eligible student with a disability may only receive the increased amount of scholarship funds if they attend a school for students with disabilities meets certain specified requirements.

Effective: Taxable Years beginning on and after January 1, 2019, but before January 1, 2024

Amended: §§ 58.1-439.25 and 58.1-439.28

Definition of Resident Estate or Trust

House Bill 2526 (Chapter 23) and Senate Bill 1205 (Chapter 192) provide that an estate or trust that is being administered in Virginia is no longer a resident estate or trust for Virginia income tax purposes. All resident estates and trusts that are required to file a federal income tax return or that have any Virginia taxable income for the taxable year are required to file an income tax return in Virginia. These Acts define "resident estate or trust" as:

- ▶ The estate of a decedent who at his death was domiciled in the Commonwealth;
- ▶ A trust created by will of a decedent who at his death was domiciled in the Commonwealth; or
- ▶ A trust created by or consisting of property of a person domiciled in the Commonwealth.

Effective: July 1, 2019

Amended: § 58.1-302

Retail Sales and Use Tax

Remote Sales & Use Tax Collection: Sufficient Activity by Remote Sellers and Marketplace Facilitators

House Bill 1722 (Chapter 815) and Senate Bill 1083 (Chapter 816) require remote sellers and marketplace facilitators to collect and remit sales tax on their sales to Virginia customers if they sell or facilitate greater than \$100,000 in sales or 200 sales transactions annually into the Commonwealth. These Acts provide for a waiver from the collection or reporting requirements if a marketplace facilitator demonstrates, to the satisfaction of the Tax Commissioner, that either all of its marketplace sellers are already registered dealers or that a marketplace seller has sufficient nexus to require registration and the collection of the tax by the facilitator would create an undue burden or hardship for either party. Notwithstanding these Acts, Item 4-14 of the 2019 Appropriation Act (House Bill 1700, Chapter 854) prohibits the Department from temporarily suspending or delaying the collection or reporting requirements, or both, of a marketplace facilitator.

These Acts require the Department to provide information to remote sellers to allow them to identify state and local tax rates and exemptions. These Acts require the Department to allow a remote seller to complete a single audit covering all localities and also to give remote sellers at least 30 days' notice of any change in tax rate. Any change in the rate of any local sales and use tax rate shall only become effective on the first day of a calendar quarter.

These Acts remove the contingencies in 2013 House Bill 2313 (2013 *Acts of Assembly*, Chapter 766) as they pertain to the effects of federal remote collection authority on sales tax revenue and the Motor Fuels Tax rate. These Acts also eliminate the exemption for out-of-state mail order sales of \$100 or less.

Effective: July 1, 2019
Amended: §§ 58.1-601, 58.1-602, 58.1-604, 58.1-605, 58.1-612, 58.1-615, 58.1-625, and 58.1-635
Added: § 58.1-612.1

Absorption of Retail Sales and Use Tax by Dealers

Senate Bill 1615 (Chapter 758) allows a dealer to absorb payment of all or any part of the Retail Sales and Use Tax otherwise due from the purchaser, consumer, or lessee. This Act requires the dealer to separately state the sales price of the item and the full amount of sales or use tax due on such item at the point of the sale or transaction, even if the dealer intends to absorb the amount of the tax due. This Act requires that the dealer remit the full tax amount due in the return covering the date of the transaction where all or any part of the tax was absorbed by the dealer.

Effective: July 1, 2019

Added: § 58.1-626.1

Repealed: § 58.1-626

Retail Sales and Use Tax on Personal Hygiene Products

House Bill 2540 (Chapter 549) and Senate Bill 1715 (Chapter 550) modify the categories of products that are subject to a reduced Retail Sales and Use Tax rate to include “essential personal hygiene products,” in addition to “food purchased for human consumption.” “Essential personal hygiene products” are defined as nondurable incontinence products such as diapers, disposable undergarments, pads, and bed sheets; and menstrual cups and pads, panty liners, sanitary napkins, tampons, and other products used to absorb or contain menstrual flow.

Currently, the state Retail Sales and Use Tax rate on food purchased for human consumption is one and one-half percent. The one percent local sales and use tax rate is also applicable to these purchases. These Acts extend the reduced rate on food purchased for human consumption to essential personal hygiene products, resulting in a combined tax rate of two and one-half percent on essential personal hygiene products. Further, these Acts exempt these categories of products from the additional one percent sales and use tax in the Historic Triangle and the 0.7 percent tax in Northern Virginia and Hampton Roads.

Effective: January 1, 2020

Amended: §§ 58.1-603.1, 58.1-603.2, 58.1-604.01, and 58.1-611.1

Accelerated Sales Tax Threshold Increased

Item 3-5.06 (G)(2) of the 2019 Appropriation Act (House Bill 1700, Chapter 854) raises the accelerated sales tax threshold for the June 2020 payment to taxable sales and purchases of \$10 million or greater for the 12-month period beginning July 1, and ending June 30 of the immediately preceding calendar year. 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. Waivers will be granted if the requirement creates an unreasonable burden on the person required to make accelerated sales tax payments.

Effective: Accelerated sales tax payments due beginning June 2020

Retail Sales and Use Tax Exemption for Single-member Nonprofit-Owned Limited Liability Companies

House Bill 1950 (Chapter 20) clarifies that a single-member limited liability company whose only member is a nonprofit organization may qualify for the Retail Sales and Use Tax exemption for nonprofit organizations.

Effective: July 1, 2019
Amended: § 58.1-609.11

Public Facilities: Virginia Beach Sports and Entertainment Project

Senate Bill 1790 (Chapter 793) authorizes the City of Virginia Beach to issue bonds to facilitate the development of a sports or entertainment project in its designated “sports and entertainment district” upon the execution of a binding development agreement for such a sports or entertainment project.

Virginia Beach is entitled to receive a portion of state sales and use tax revenue that is generated as a result of such project, including revenue generated from its development and construction, and to use such sales tax revenue to repay the costs of the bonds. The provisions of the entitlement to sales and use tax revenue are set to expire on July 1, 2039. The tax entitlement does not include the tax revenue generated by the one-half percent sales and use tax dedicated to the Transportation Trust Fund; the one percent of the state sales and use tax revenue distributed among the counties and cities on the basis of school-age population; or the additional sales and use tax for transportation in Northern Virginia and Tidewater.

This Act also requires the Tax Commissioner to report to the Chairmen of the Senate Committee on Finance, the House Committee on Finance, and the House Committee on Appropriations, annually prior to July 1, the amount of the entitlement.

Effective: July 1, 2019
Amended: §§ 15.2-5928 through 15.2-5934

Additional Local Sales and Use Tax in Halifax County for Educational Purposes

House Bill 1634 (Chapter 648) authorizes Halifax County to impose, by ordinance, an additional local sales and use tax at a rate of up to one percent as determined by its local governing body. This tax is in addition to the one percent general local sales and use tax authorized under current law. The additional tax must first be approved by voters at a referendum and initiated by a resolution of the local governing body. Further, the tax will expire on the date by which bonds or loans are repaid if the capital projects for the construction or renovation of schools are to be financed by bonds or loans; or if the capital projects for the construction or renovation of

schools are not financed by bonds or loans, on a date chosen by the governing body and specified in any resolution that imposes the additional tax. The expiration date will not be permitted to be more than 20 years after the date of the resolution.

Any local sales tax levied under this Act will be administered and collected by the Tax Commissioner in the same manner and subject to the same exemptions and penalties as the state sales tax. The additional tax will not be levied on food purchased for human consumption that is taxed at a reduced rate. Revenue from the tax must be used solely for capital projects for the construction or improvement of schools.

This Act also permits Halifax County to appropriate any amount of local sales tax revenue to an incorporated town regardless of whether such town constitutes a separate special school district or if it has complied with the provisions of its charter relating to the elections of local officials.

Effective: July 1, 2019
Added: § 58.1-605
Amended: §§ 58.1-605.1 and 58.1-606.1

Other State Tax Legislation

Definitions of Cigarette Tax and Tobacco Products Tax Updated

Senate Bill 1371 (Chapter 790) removes the word “heated” from the definition of “cigarette” and adds a provision that a cigarette produces smoke from combustion under ordinary conditions.

Although this Act does not impose a tax on the following items, it provides definitions for purposes of the Tobacco Products Tax:

“Alternative nicotine product” is defined as any noncombustible product containing nicotine that is not made of tobacco and is intended for human consumption, whether chewed, absorbed, dissolved, or ingested by any other means. “Alternative nicotine product” does not include any nicotine vapor product or any product regulated as a drug or device by the U.S. Food and Drug Administration (FDA) under Chapter V (21 U.S.C. § 351 et seq.) of the Federal Food, Drug, and Cosmetic Act.

“Alternative nicotine product” does not include any nicotine vapor product or any product regulated as a drug or device by the U.S. Food and Drug Administration (FDA) under Chapter V (21 U.S.C. § 351 et seq.) of the Federal Food, Drug, and Cosmetic Act.

"Heated tobacco product" means a product containing tobacco that produces an inhalable aerosol (i) by heating the tobacco by means of an electronic device without combustion of the tobacco or (ii) by heat generated from a combustion source that only or primarily heats rather than burns the tobacco.

"Liquid nicotine" means a liquid or other substance containing nicotine in any concentration that is sold, marketed, or intended for use in a nicotine vapor product.

"Nicotine vapor product" means any noncombustible product containing nicotine that employs a heating element, power source, electronic circuit, or other electronic, chemical, or mechanical means, regardless of shape or size, that can be used to produce vapor from nicotine in a solution or other form. "Nicotine vapor product" includes any electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device and any cartridge or other container of nicotine in a solution or other form that is intended to be used with or in an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device. "Nicotine vapor product" does not include any product regulated by the FDA under Chapter V (21 U.S.C. § 351 et seq.) of the Federal Food, Drug, and Cosmetic Act.

"Nicotine vapor product" includes any electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device and any cartridge or other container of nicotine in a solution or other form that is intended to be used with or in an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device.

"Nicotine vapor product" does not include any product regulated by the FDA under Chapter V (21 U.S.C. § 351 et seq.) of the Federal Food, Drug, and Cosmetic Act.

This Act also directs the Joint Subcommittee to Evaluate Tax Preferences to continue studying options for the modernization of cigarette taxes and possible reforms to the taxation of tobacco products. A final report recommending reforms to the taxation of tobacco products is required by November 1, 2019.

Effective: July 1, 2019
Amended: §§ 58.1-1000 and 58.1-1021.01

Recordation Tax: Exemption for Property Transferred by Deed of Distribution

Senate Bill 1610 (Chapter 757) clarifies that the recordation tax exemption for bequests and trust distributions includes conveyances that have been delayed until a power of appointment has been exercised or accelerated when a trust is decanted into a new trust, so long as no consideration has passed between the parties. Such exemption applies so long as the deed is identified as a "deed of distribution" on the first page and no consideration has passed between the parties. A "deed of distribution" includes deeds conveying property from an estate or trust (i) to the original beneficiaries of the trust from the trustee, (ii) the purpose of which is to comply with a devise or bequest in the decedent's will or to transfer title to one or more beneficiaries after the

death of the settlor as required by the trust document, (iii) that carries out the exercise of a power of appointment, or (iv) is pursuant to the exercise of power under the Uniform Trust Decanting Act.

Effective: July 1, 2019
Amended: § 58.1-811

Motor Vehicle Rental Tax

House Bill 1974 (Chapter 53) removes the requirement that the renter of a motor vehicle file a monthly vehicle rental tax return with the Tax Commissioner for periods in which no tax is due. Prior to this law change, motor vehicle renters were required to submit a monthly return regardless of whether or not tax was due for the time period covered by the return.

Effective: July 1, 2018
Amended: § 58.1-1738

Local Tax Legislation

General Provisions

Local License Tax on Mobile Food Units

Senate Bill 1425 (Chapter 791) provides that when the owner of a new business that operates a mobile food unit has paid a license tax as required by the locality in which the mobile food unit is registered, the owner is not required to pay a license tax to any other locality for conducting business from such mobile food unit in such a locality.

This exemption from paying the license tax in other localities expires two years after the payment of the initial license tax in the locality in which the mobile food unit is registered. During the two-year exemption period, the owner is entitled to exempt up to three mobile food units from license taxation in other localities. However, the owner of the mobile food unit is required to register with the Commissioner of the Revenue or Director of

Finance in any locality in which he conducts business from such mobile food unit, regardless of whether the owner is exempt from paying license tax in the locality.

This Act defines “mobile food unit” as a restaurant that is mounted on wheels and readily moveable from place to place at all times during operation. It also defines “new business” as a business that locates for the first time to do business in a locality. A business will not be deemed a new business based on a merger, acquisition, similar business combination, name change, or a change to its business form.

Without the exemption provided in this Act, localities are authorized to impose business, professional and occupational license (BPOL) taxes upon local businesses. Generally, the BPOL tax is levied on the privilege of engaging in business at a definite place of business within a Virginia locality. Businesses that are mobile, however, can be subject to license taxes or fees in multiple localities in certain situations.

Effective: July 1, 2019
Added: § 58.1-3715.1

Local Gas Road Improvement Tax; Extension of Sunset Provision

House Bill 2555 (Chapter 24) and Senate Bill 1165 (Chapter 191) extend the sunset date for the local gas road improvement tax from January 1, 2020 to January 1, 2022. The authority to impose the local gas road improvement tax was previously scheduled to sunset on January 1, 2020.

The localities that comprise the Virginia Coalfield Economic Development Authority 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 this tax are allocated as follows: 75% are paid into a special fund in each locality called the Coal and Gas Road Improvement Fund, where at least 50% are spent on road improvements and 25% may be spent on new water and sewer systems or the construction, repair, or enhancement of natural gas systems and lines within the locality; and the remaining 25% of the revenue is paid to the Virginia Coalfield Economic Development Fund. 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.

Effective: July 1, 2019
Amended: § 58.1-3713

Private Collectors Authorized for Use by Localities to Collect Delinquent Debts

Senate Bill 1301 (Chapter 271) allows a local treasurer to employ private collection agents to assist with the collection of delinquent amounts due other than delinquent local taxes that have been delinquent for a period of three months or more and for which the appropriate statute of limitations has not run.

Effective: July 1, 2019
Amended: § 58.1-3919.1

Real Property Tax

Real Property Tax Exemptions for Elderly and Disabled: Computation of Income Limitation

House Bill 1937 (Chapter 16) provides that, if a locality has established a real estate tax exemption for the elderly and handicapped and enacted an income limitation related to the exemption, it may exclude, for purposes of calculating the income limitation, any disability income received by a family member or nonrelative who lives in the dwelling and who is permanently and totally disabled.

Under current law, if a locality's tax relief ordinance establishes an annual income limitation, the computation of annual income is calculated by adding together the income received during the preceding calendar year of the owners of the dwelling who use it as their principal residence; and the owners' relatives who live in the dwelling, except for those relatives living in the dwelling and providing bona fide caregiving services to the owner whether such relatives are compensated or not; and at the option of each locality, nonrelatives of the owner who live in the dwelling except for bona fide tenants or bona fide caregivers of the owner, whether compensated or not.

Effective: July 1, 2019
Amended: § 58.1-3212

Real Property Tax Exemption for Elderly and Disabled: Improvements to a Dwelling

House Bill 2150 (Chapter 736) and Senate Bill 1196 (Chapter 737) clarify the definition of "dwelling," for purposes of the real property tax exemption for owners who are 65 years of age or older or permanently and totally disabled, to include certain improvements to the exempt land and the land on which the improvements are situated. These Acts define the term "dwelling" to include an improvement to the land that is not used for a business purpose but is used to house certain motor vehicles or household goods.

Under current law, in order to be granted real property tax relief, qualifying property must be owned by and occupied as the sole dwelling of a person who is at least 65 years of age, or, if the local ordinance provides, any person with a permanent disability. Dwellings jointly held by spouses, with no other joint owners, qualify if either spouse is 65 or over or permanently and totally disabled.

Effective: July 1, 2019
Amended: § 58.1-3210

Real Property Tax: Partial Exemption from Real Property Taxes for Flood Mitigation Efforts

Senate Bill 1588 (Chapter 754) enables a locality to provide by ordinance a partial exemption from real property taxes for flooding abatement, mitigation, or resiliency efforts for improved real estate that is subject to recurrent flooding, as authorized by an amendment to Article X, Section 6 of the Constitution of Virginia that was adopted by the voters on November 6, 2018.

This act provides that exemptions may only be granted for qualifying flood improvements that do not increase the size of any impervious area and are made to qualifying structures or to land. “Qualifying structures” are defined as structures that were completed prior to July 1, 2018 or were completed more than 10 years prior to the completion of the improvements. For improvements made to land, the improvements must be made primarily for the benefit of one or more qualifying structures. No exemption will be authorized for any improvements made prior to July 1, 2018.

A locality is granted the authority to (i) establish flood protection standards that qualifying flood improvements must meet in order to be eligible for the exemption; (ii) determine the amount of the exemption; (iii) set income or property value limitations on eligibility; (iv) provide that the exemption shall only last for a certain number of years; (v) determine, based upon flood risk, areas of the locality where the exemption may be claimed; and (vi) establish preferred actions for qualifying for the exemption, including living shorelines.

Effective: July 1, 2019
Amended: § 58.1-3228.1

Real Property Tax: Exemption for Certain Surviving Spouses

House Bill 1655 (Chapter 15) and Senate Bill 1270 (Chapter 801) allow surviving spouses of disabled veterans to continue to qualify for a real property tax exemption regardless of whether the surviving spouse moves to a different residence, as authorized by an amendment to subdivision (a) of Section 6-A of Article X of the

Constitution of Virginia that was adopted by the voters on November 6, 2018. If a surviving spouse was eligible for the exemption but lost such eligibility due to a change in residence, then the surviving spouse is eligible for the exemption again, beginning January 1, 2019.

These Acts also clarify that the real property tax exemptions for spouses of service members killed in action and spouses of certain emergency service providers killed in the line of duty continue to apply regardless of the spouse's moving to a new principal residence.

Effective: Taxable years beginning on or after January 1, 2019
Amended: §§ 58.1-3219.5, 3219.9, and 3219.14

Land Preservation; Special Assessment, Optional Limit on Annual Increase in Assessed Value

House Bill 2365 (Chapter 22) authorizes localities that employ use value assessments for certain classes of real property to provide by ordinance that the annual increase in the assessed value of eligible property may not exceed a specified dollar amount per acre.

Effective: July 1, 2019
Amended: § 58.1-3231

Virginia Regional Industrial Act: Revenue Sharing; Composite Index

House Bill 1838 (Chapter 534) requires that the Department of Taxation's calculation of the true values of real estate and public service company property component of the Commonwealth's educational composite index of local ability-to-pay take into account arrangements by localities entered into pursuant to the Virginia Regional Industrial Facilities Act, whereby a portion of tax revenue is initially paid to one locality and redistributed to another locality. This Act requires such calculation to properly apportion the percentage of tax revenue ultimately received by each locality.

Effective: July 1, 2021
Amended: § 58.1-6407

Real Estate with Delinquent Taxes or Liens: Appointment of Special Commissioner; Increase Required Value

House Bill 2060 (Chapter 541) increases the assessed value of a parcel of land that could be subject to appointment of a special commissioner to convey the real estate to a locality as a result of unpaid real property taxes or liens from \$50,000 or less to \$75,000 or less in most localities. In the Cities of Norfolk, Richmond, Hopewell, Newport News, Petersburg, Fredericksburg, and Hampton, this Act increases the threshold from \$100,000 or less to \$150,000 or less.

Effective: July 1, 2019
Amended: § 58.1-3970.1

Real Estate with Delinquent Taxes or Liens; Appointment of Special Commissioner in the City of Martinsville

House Bill 2405 (Chapter 159) adds the city of Martinsville to the list of cities (Norfolk, Richmond, Hopewell, Newport News, Petersburg, Fredericksburg, and Hampton) that are authorized to have a special commissioner convey tax-delinquent real estate to the locality in lieu of a public sale at auction when the tax-delinquent property has an assessed value of \$100,000 or less. House Bill 2060 raises the threshold in all of these cities from \$100,000 or less to \$150,000 or less.

Effective: July 1, 2019
Amended: § 58.1-3970.1

Personal Property Tax

Constitutional Amendment: Personal Property Tax Exemption for Motor Vehicle of a Disabled Veteran

House Joint Resolution 676 (Chapter 822) is a first resolution proposing a constitutional amendment that permits the General Assembly to authorize the governing body of any county, city, or town to exempt from taxation one motor vehicle of a veteran who has a 100 percent service-connected, permanent, and total disability. The amendment provides that only automobiles and pickup trucks qualify for the exemption.

Additionally, the exemption will only be applicable on the date the motor vehicle is acquired or the effective date of the amendment, whichever is later, but will not be applicable for any period of time prior to the effective date of the amendment.

Effective: July 1, 2019

Personal Property Tax Exemption for Agricultural Vehicles

House Bill 2733 (Chapter 259) expands the definition of agricultural use motor vehicles for personal property taxation purposes. It changes the criteria from motor vehicles used “exclusively” for agricultural purposes to motor vehicles used “primarily” for agricultural purposes, and for which the owner is not required to obtain a registration certificate, license plate, and decal or pay a registration fee.

It also expands the definition of trucks or tractor trucks that are used by farmers in their farming operations for the transportation of farm animals or other farm products or for the transport of farm-related machinery. The criteria is changed from vehicles used “exclusively” by farmers in their farming operations to vehicles used “primarily” by farmers in their farming operations.

Further, this Act expands the classification of farm machinery and equipment that a local governing body may exempt, to include equipment and machinery used by a nursery for the production of horticultural products, and any farm tractor, regardless of whether such farm tractor is used exclusively for agricultural purposes.

Local governing bodies have the option to exempt these classifications, in whole or in part, from taxation or to provide for a different rate of taxation thereon.

Effective: July 1, 2019

Amended: § 58.1-3505

Intangible Personal Property Tax: Classification of Certain Business Property

House Bill 2440 (Chapter 255) classifies as intangible personal property, tangible personal property: i) that is used in a trade or business; ii) with an original cost of less than \$25; and iii) that is not classified as machinery and tools, merchants’ capital, or short-term rental property. It also exempts such property from taxation.

Intangible personal property is a separate class of property segregated for taxation by the Commonwealth. The Commonwealth does not currently tax intangible personal property. Localities are prohibited from taxing intangible personal property.

Certain personal property, while tangible in fact, has previously been designated as intangible and thus exempted from state and local taxation. For example, tangible personal property used in manufacturing, mining,

water well drilling, radio or television broadcasting, dairy, dry cleaning, or laundry businesses has been designated as exempt intangible personal property.

Effective: July 1, 2019
Amended: §§ 58.1-1101 and 58.1-1103

Legislative Studies/Reports

Workgroup to Study the Treatment of Interest Deduction Limitation

Item 272(E) of the 2019 Appropriation Act (House Bill 1700, Chapter 854) requires the Tax Commissioner to convene a working group to study the impact of the limitation on the federal deduction for interest expenses on businesses that are part of an affiliated group and that file a Virginia combined or consolidated return. The working group is required to convene by June 1, 2019. The Tax Commissioner is required to develop and make available guidelines regarding the determination of the limitation of interest expense under section 163(j) of the Internal Revenue Code by December 1, 2019. Such guidelines will apply to taxable years beginning on or after January 1, 2018 and will be exempt from the provisions of the Administrative Process Act.

Effective: May 2, 2019

Joint Working Group to Study the Feasibility of Exempting Military Retirement Income

House Joint Resolution 674 directs the Department of Taxation and the Department of Veterans Services (“DVS”) to study the feasibility of exempting military retirement income from taxation. The Department and DVS must evaluate the effects of phasing in a full exemption of military retirement income over a four-year, five-year, or six-year period or any other time period deemed appropriate. The Department and DVS must also consider:

- ▶ The impact of fully exempting military retirement income on Virginia's current population of veterans;
- ▶ The projected effect of such exemption on Virginia's competitiveness as a desirable state of residence for veterans in comparison with other states;

- ▶ The revenue losses associated with fully exempting military retirement income from state income tax, and;
- ▶ Any other factors deem relevant.

Meetings must be completed by November 30, 2019, and an executive summary and a report must be submitted to the Division of Legislative Automated Systems no later than the first day of the 2020 Regular Session of the General Assembly.

Effective: July 1, 2019

Study of Options for Appealing Local Tax Assessments

House Joint Resolution 687 directs the Small Business Commission (“the Commission”) to study models and streamlined procedures for appealing tax assessment decisions. The Commission will:

- ▶ Seek input from local government representatives, property ownership and management associations, the judicial branch, and state and local tax administrators;
- ▶ Evaluate the tax court systems of other states; and
- ▶ Evaluate other options and models for streamlining appeals of a local board of equalization or similar local body, including options and models provided by research organizations.

Technical assistance to the Commission will be provided by the Tax Commissioner or his designee and the Executive Secretary of the Supreme Court of Virginia or his designee.

Meetings must be completed by November 30, 2019, and an executive summary of findings and recommendations must be submitted to the Division of Legislative Automated Systems no later than the first day of the 2020 Regular Session of the General Assembly.

Effective: July 1, 2019