

2006 LEGISLATIVE SUMMARY



Virginia
Department of Taxation

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Tax Commissioner

INTRODUCTION

The **Legislative Summary** is published by the Department of Taxation (TAX) as a convenient reference guide to state and local tax legislation enacted by the 2006 Session of the General Assembly through adjournment *sine die* on March 11, 2006. In addition, this summary provides an overview of legislation enacted by the 2006 Special Session I of the General Assembly through June 22, 2006. Please note that any legislation enacted after this date is not included. The **Summary** includes a general description of enacted legislation affecting:

- ◆ State taxes administered by TAX, and
- ◆ Local taxes for which TAX assists with administration or on which TAX renders advisory assistance.

References to chapter numbers are to the corresponding chapters in the Acts of Assembly, which may be viewed at <http://leg1.state.va.us/lis.htm>. Effective dates of the legislation vary and are set out in each description.

The **Summary** also includes legislative studies in which TAX will be directly involved or acting in a technical support role. In general, however, legislation granting property tax exemptions, creating special taxing jurisdictions or affecting taxes administered by other state agencies is not included in the **Summary**.

The **Summary** is intended to provide a synopsis of enacted legislation and is for information purposes only. The **Summary** is not a substitute for the actual state law, local ordinances, and TAX regulations. Additional information on new legislation affecting state taxes may be obtained from TAX at the following telephone numbers:

Individual Income Tax	(804) 367-8031
Corporation Income Tax	(804) 367-8037
Sales and Use Tax	(804) 367-8037
Employer Withholding Tax	(804) 367-8037
Voice/TDD	(804) 367-8329

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

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

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

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

TAX strongly recommends that you avoid including confidential or personal information.

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

Virginia Department of Taxation
July 06

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STATE TAX

LEGISLATION

GENERAL PROVISIONS

False Claims of Employment Status, Penalty

House Bill 168 (Chapter 393) makes it unlawful for a person to knowingly coerce or threaten an individual to falsely declare his employment status for the purpose of evading the withholding or payment of taxes. This bill also makes it unlawful to knowingly and falsely claim an individual employment status in order to evade the withholding or payment of taxes. A violation is a Class 1 misdemeanor.

Effective Date: July 1, 2006

Code Section Added: § 58.1-485.1

Tax Refund Anticipation Loans, Requirements

House Bill 324 (Chapter 399) requires those who make or facilitate tax refund anticipation loans to display their fees for (i) loans, (ii) electronic filing of tax returns, (iii) setting up a refund account, and (iv) other related and necessary activities. In addition, such persons must display related information and provide a clear disclosure containing certain required information. Violations will be subject to the enforcement provisions of the Virginia Consumer Protection Act.

Effective Date: January 1, 2007

Code Section Amended: § 59.1-200

Code Sections Added: §§ 6.1-474 through 6.1-479

INCOME TAX

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

House Bill 531 (Chapter 63) and Senate Bill 69 (Chapter 162) advance Virginia's date of conformity to the IRC from January 7, 2005 to December 31, 2005. This will avoid the necessity of requiring taxpayers to make adjustments for any federal tax changes enacted in 2005. Virginia would 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 2001 or 2002.

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

- The Energy Tax Incentives Act of 2005 eliminates the sunset dates for several energy tax incentives, modifies the depreciation rules for certain properties, and provides a temporary 50% expensing for certain equipment.
- The Katrina Emergency Tax Relief Act of 2005 provides a temporary suspension of limitations for qualified corporate and individual charitable contributions and allows enhanced deductions for contributions of food and books.
- The Gulf Opportunity Zone Act of 2005 temporarily waives limits regarding charitable cash contributions for Rita and Wilma relief and extends the provision allowing combat pay to count as income for purposes of calculating the earned income tax credit.

This bill contains an emergency clause which states that it is in force from the date of its passage.

Effective Date: March 7, 2006

Code Section Amended: § 58.1-301

Subtraction for Certain Death Benefits

House Bill 1535 (Chapter 617) creates a subtraction for death benefit payments received from an annuity contract, to the extent that any portion of the payments is treated as taxable income on the investment in the annuity contract and is subject to federal income taxation. This effectively exempts all annuity payments received by beneficiaries from Virginia income tax.

Effective Date: Taxable years beginning on and after January 1, 2007

Code Section Amended: § 58.1-322

Credit for Purchase of Long-term Care Insurance

House Bill 786 (Chapter 599) and Senate Bill 287 (Chapter 570) create an individual income tax credit for certain long-term care insurance premiums. The credit is granted to an individual taxpayer who enters into such an insurance policy on or after January 1, 2006. The amount of the credit is 15% of the amount paid by an individual during the taxable year for premiums for long-term care coverage for himself. The total credits over the life of any policy, however, are not to exceed 15% of the amount of premiums paid for the first 12 months of coverage. Unused amounts of the credit are carried over for the next 5 years. Individuals who claimed this credit would not also be allowed to claim the long-term care insurance deduction.

This legislation states that individuals claiming the deduction for long-term health care insurance premiums on the federal income tax return would not also be allowed to take this credit for the same insurance premiums. Because of the limitations on the federal deduction, many taxpayers will receive a federal deduction for only a portion of the premiums they pay. TAX will have regulatory authority to clarify any ambiguity arising in determining the amount of premiums for which the taxpayer has claimed a federal deduction. “Long-term care insurance premium” is defined as the amount paid during the taxable year for any qualified long-term care insurance contract, as defined by the IRC, which covers an individual.

Effective Date: Taxable years beginning on or after January 1, 2006

Code Section Amended: § 58.1-322

Code Section Added: § 58.1-339.11

Deduction for Payments to Producers of Quota Tobacco and Tobacco Quota Holders

Senate Bill 70 (Chapter 214) creates an individual and corporate income tax deduction for contract payments to producers of quota tobacco and tobacco quota holders pursuant to the American Jobs Creation Act of 2004. The deduction could be claimed in the year following the year in which a payment is received, or in which an assigned payment would have been received. If producers and quota holders assign future payments in exchange for a lump sum payment, regardless of when the lump sum payment is received, they would be eligible for the deduction over the ten-year period of the program.

Many tobacco quota holders purchased their quotas and would have basis in the tobacco marketing quota. As such, the deduction would be allowed only to the extent that the payments exceed this basis and are included in federal adjusted gross income (individuals) or federal taxable income (corporations).

Effective Date: Taxable years beginning on or after January 1, 2006

Code Sections Amended: §§ 58.1-322 and 58.1-402

Military Family Relief Fund Check-off

House Bill 628 (Chapter 103) and Senate Bill 139 (Chapter 479) establish an individual income tax voluntary contribution to support the Virginia Military Family Relief Fund. Taxpayers would be allowed to contribute their income tax refund or to make an additional payment. Under the provisions of Va. Code § 58.1-344.3, however, this voluntary contribution will be placed on a waiting list until space becomes available on the return.

The Fund will be used to assist members of the Virginia National Guard and Virginia residents who are members of the reserves of the armed forces of the United States who have been called to extended active duty for periods in excess of 90 days, and their families, with living expenses, including but not limited to food, housing, utilities, and medical services. The Office of the Adjutant General will administer the Fund.

Effective Date: July 1, 2006.

Code Section Amended: § 58.1-344.3

Code Section Added: § 44-102.2

Agricultural Best Management Practices Tax Credit

House Bill 963 (Chapter 440) expands those individuals qualifying for the credit to include any individual who has equines that create needs for agricultural best management practices to reduce nonpoint source pollutants and has in place a soil conservation plan approved by the local Soil and Water Conservation District.

Effective Date: Taxable years beginning on or after January 1, 2007

Code Section Amended: § 58.1-339.3

Clean Fuel Vehicle Job Creation Tax Credit

Senate Bill 690 (Chapter 238) amends the clean fuel job creation income tax credit by adding the manufacture of components designed to produce, store, and dispense hydrogen as a vehicle fuel, and extending the sunset provisions applicable to this tax credit from December 31, 2006, to December 31, 2011.

Effective Date: Taxable years beginning on or after January 1, 2006

Code Section Amended: § 58.1-439.1

Virginia Coal Employment and Production Incentive Tax Credit

House Bill 1043 (Chapter 788) and Senate Bill 365 (Chapter 803) allow the credit to be allocated between the electricity generator and any person with an economic interest in coal, effective for purchases of coal made on or after January 1, 2006. The allocation of the credit could be provided in the contract between the parties for the sale of the coal. The parties could amend any such allocation with a written instrument prior to December 31 of the year that the coal was purchased. All contracts and written instruments would be subject to audit by TAX.

This legislation allows credits earned on or after January 1, 2006, which are allocated to persons with an economic interest in coal to be used against any tax imposed by the Commonwealth. If the credits earned on or after January 1, 2006, and prior to July 1, 2011, exceed the tax liability of the taxpayer, the excess could be redeemed in a manner similar to the Coalfield Employment Enhancement Tax Credit. The carryover period for this credit is extended from five years to ten years. This change in the carryover period would be effective for coal purchased and consumed on or after January 1, 2001.

Effective Date: Taxable years beginning on or after January 1, 2006

Code Section Amended: § 58.1-433.1

Coalfield Employment Enhancement Tax Credit

House Bill 1043 (Chapter 788) and Senate Bill 365 (Chapter 803) extend the sunset date of when the credit can be earned and claimed to the 2014 and 2017 years, respectively. Credits earned after taxable years beginning on or after January 1, 2008 would be claimed according to the schedule below.

TAXABLE YEAR EARNED	TAXABLE YEAR REDEEMED
2008	2011
2009	2012
2010	2013
2011	2014
2012	2015
2013	2016
2014	2017

Effective Date: Taxable years beginning on or after January 1, 2006

Code Section Amended: §58.1-439.2

Income Tax Deduction for Purchases of Certain Tangible Personal Property

Senate Bill 262 (Chapter 939) creates an individual income tax deduction equal to 20% of the retail sales and use tax paid by an individual to purchase for his own use the following items of tangible personal property: (i) any clothes washers, room air conditioners, dishwashers, and standard size refrigerators that meet or exceed the applicable energy star efficiency requirements developed by the United States Environmental Protection Agency and the United States Department of Energy; (ii) any fuel cell that (a) generates electricity using an electrochemical process, (b) has an electricity-only generation efficiency greater than 35%, and (c) has a generating capacity of at least two kilowatts; (iii) any gas heat pump that has a coefficient of performance of at least 1.25 for heating and at least 0.70 for cooling; (iv) any electric heat pump hot water heater that yields an energy factor of at least 1.7; (v) any electric heat pump that has a heating system performance factor of at least 8.0 and a cooling seasonal energy efficiency ratio of at least 13.0; (vi) any central air conditioner that has a cooling seasonal energy efficiency ratio of at least 13.5; (vii) any advanced gas or oil water heater that has an energy factor of at least 0.65; (viii) any advanced oil-fired boiler with a minimum annual fuel-utilization rating of 85; and (ix) any advanced oil-fired furnace with a minimum annual fuel-utilization rating of 85. This deduction may not exceed \$500 in each taxable year.

These bills also include certain equipment related to landfill gas in the local property tax exemption for pollution control equipment.

Effective Date: Taxable years beginning on or after January 1, 2007

Code Sections Amended: §§ 2.2-1132, 23-135.7:6, 45.1-390, 56-249.6, 58.1-322, and 58.1-3660

Code Sections Added: §§ 67-100 through 67-102, 67-200 through 67-203, 67-300, 67-400 through 67-403, 67-500, 67-501, 67-600 through 67-604, 67-700, 67-701, 67-800, 67-801, 67-900 through 67-903, and 67-1000 through 67-1003

Additional Withholding Exemptions

House Bill 5002 (Chapter 3, Special Session I of 2006) repeals legislation that would have allowed taxpayers who itemized their deductions to claim additional withholding exemptions. The effective date of this legislation was delayed numerous times since its enactment in 1989. While it was briefly allowed to become effective from July 1, 2002 through January 1, 2003, the effective date was delayed again until July 1, 2006.

Effective Date: January 1, 2003

Code Section Added: Appropriations Act, Second Enactment Clause

RETAIL SALES AND USE TAX

Sales Tax Holiday

House Bill 532 (Chapter 593) and Senate Bill 571 (Chapter 579) create a “sales tax holiday” by providing a temporary exemption from the sales and use tax for certain items of tangible personal property. The exemption will occur on an annual basis, beginning in 2006, and will be in effect for a three-day period starting the first Friday in August and ending at midnight on the first Sunday in August. The exemption applies on a per item basis to school supplies with a selling price of \$20 or less, including but not limited to, dictionaries, notebooks, pens, pencils, notebook paper, and calculators, and also applies to items of clothing or footwear with a selling price of \$100 or less.

In addition to school related items, the legislation allows dealers to elect to absorb the cost of the sales tax during the three-day exemption period. A dealer may elect to absorb the sales and use tax on the sale of any product and is not limited to absorbing the tax on the items eligible for the sales tax exemption. During this period, a dealer may advertise that he will absorb the sales and use tax without violating the general prohibition against doing so.

Effective Date: July 1, 2006

Code Sections Amended: §§ 58.1-625 and 58.1-626

Code Section Added: § 58.1-611.2

Exemptions for Certain Medicines and Drugs for Farm Animals

House Bill 69 (Chapter 331) and Senate Bill 73 (Chapter 361) provide an exemption from the sales and use tax for medicines and drugs when sold to a veterinarian, provided that those items are used or consumed directly in the care and treatment of agricultural production animals. This legislation also provides veterinarians an exemption whenever they purchased medicines and drugs that they themselves used to treat, care and medicate agricultural production animals. An exemption is also available to veterinarians for medicines and drugs purchased for resale to a farmer for direct use in producing an agricultural product for market.

This exemption applies only to medicines and drugs used for the treatment of “agricultural production animals,” and would not apply to those items used to treat domesticated animals such as dogs and cats, and recreational animals, such as horses used for recreational purposes.

Effective Date: July 1, 2006

Code Sections Amended: §§ 58.1-609.2 and 58.1-609.10

Exemption for Certain Church Property

House Bill 576 (Chapter 338) expands the exemption to include tangible personal property used for recording and reproducing services. The exemption covers a nonprofit church's purchase of video recording equipment, microphones, cassette players, and similar items that are used for recording and reproducing services.

As a result of this change, nonprofit churches now have two processes by which they can obtain an exemption for tangible personal property used for recording and reproducing services.

- They may use their self-issued exemption certificate which, while limited, has been expanded by this bill; or
- They may apply to TAX for a broader exemption. Under legislation enacted during the 2003 Virginia General Assembly session, all Internal Revenue Code (IRC) § 501(c)(3) and § 501(c)(4) organizations now qualify for a sales tax exemption, provided they file an appropriate application with TAX and certain criteria are met. The requirements include 1) exemption from federal income taxation under IRC § 501(c)(3) or 501(c)(4); 2) compliance with applicable state solicitation laws; 3) annual general administrative costs that are less than 40%; 4) provision of a financial audit for entities with gross annual revenues of \$500,000 or greater in the previous year or the provision of a review of the financial statements performed by an independent certified public accountant in lieu of a financial audit for entities with gross annual revenues between \$250 and \$500,000 in the previous year; and 5) provision to the Department of a Form 990 or 990 EZ if such a form was filed, or provision of a list of the Board of Directors if such a form was not filed.

Effective Date: July 1, 2006

Code Sections Amended: § 58.1-609.10

Gratuities or Service Charges on Meals

House Bill 896 (Chapter 602) and Senate Bill 85 (Chapter 568) eliminate the retail sales tax and the local meals tax on gratuity or service charges that are mandatory or automatically added to the price of a meal by the dealer. Previously, service charges, sometimes called "mandatory gratuities," were subject to the retail sales tax, while discretionary gratuities were not.

The exemption will only apply if the service charge does not exceed 20% of the sales price of the meal. Those service charges in excess of the 20% cap would remain subject to the retail sales and use tax.

Effective Date: July 1, 2006

Code Sections Amended: §§ 58.1-602, 58.1-3833, and 58.1-3840

Exemption for Semiconductor Wafers

Senate Bill 601 (Chapter 524) provides a retail sales and use tax exemption for all semiconductor wafers used or consumed by a semiconductor manufacturer, regardless of their use.

Effective Date: July 1, 2006, with retroactive effect

Code Section Amended: § 58.1-609.3

Exemption for the Manufacture of Semiconductors

House Bill 530 (Chapter 541) and Senate Bill 475 (Chapter 519) provide a retail sales and use tax exemption for a semiconductor manufacturer that includes: equipment, fuel, power, energy, supplies, or other tangible personal property used primarily in the integrated process of designing, developing, manufacturing, or testing a semiconductor product, a semiconductor manufacturing process or subprocess, or semiconductor equipment without regard to whether the property is actually contained in or used in a cleanroom environment, touches the product, is used before or after production, or is affixed to or incorporated into real estate.

Effective Date: July 1, 2006

Code Sections Amended: §§ 58.1-602 and 58.1-609.3

Exemption for Natural Gas and Oil

House Bill 1539 (Chapter 618) and Senate Bill 714 (Chapter 385) extend the sunset date for the natural gas and oil exploration exemption from July 1, 2006 to July 1, 2011. This legislation also restores the exemption for refining and processing of gas and oil to the general industrial manufacturing and processing exemption.

Effective Date: July 1, 2006

Code Section Amended: § 58.1-609.3

Exemption for Medicine and Drugs

Senate Bill 110 (Chapter 217) expands the current retail sales and use tax exemption for medicine and drugs to include medicines and drugs purchased by for-profit nursing homes, clinics, and similar corporations. Previously, medicines and drugs were exempt when purchased by a nonprofit nursing home or any licensed hospital. Controlled drugs were exempt when purchased by a licensed physician, optometrist, licensed nurse practitioner, or licensed physician assistant for use in a professional practice.

Effective Date: July 1, 2006

Code Section Amended: § 58.1-609.3

Revenue from Certain Public Facilities for Certain Designated Cities

House Bill 1235 (Chapter 608) and Senate Bill 655 (Chapter 581) add the City of Norfolk to those localities currently entitled to certain sales tax revenues generated at public facilities within the locality. The City of Norfolk will use the sales tax revenues generated at the Norfolk Executive Conference Center to repay 20-year bonds used to finance the project. This legislation also amends the definition of what constitutes a “public facility” to exclude residential condominiums, townhomes, and other residential units. The Norfolk Executive Conference Center is planned to provide the opportunity to develop a multi-floor executive center with approximately 70,000 net rentable square feet, one large ballroom of approximately 23,000 square feet, a full service hotel with at least 240 rooms, an upscale destination restaurant, hotel retail experiences, and 50 condominiums. The project is expected to be completed in 2008.

Effective Date: July 1, 2006

Code Section Amended: § 58.1-608.3

Accelerated Sales Tax Payments

House Bill 5012 (Chapter 2, Special Session I of 2006) allows the requirement for dealers or direct payment permit holders with taxable sales and purchases of \$1,300,000 or greater for the 12-month period beginning July 1, and ending July 30 of the immediately preceding calendar year to make accelerated sales tax payments to expire on May 31, 2006.

Effective Date: June 1, 2006

Code Section Added: Additional Appropriations Act, Third Enactment Clause

Sales and Use Tax Exemptions for Nonprofit Organizations

House Bill 5002 (Chapter 3, Special Session I of 2006) and House Bill 5012 (Chapter 2, Special Session I of 2006) modify the criteria that nonprofit entities must meet in order to qualify for a sales and use tax exemption. Previously, one of the criteria required organizations with gross annual revenue of \$250,000 or greater during the previous year to provide a financial audit performed by an independent certified public accountant to TAX. These bills change this requirement to allow an entity with between \$250,000 and \$500,000 of gross annual revenue in the previous year to provide a review of its financial statements in lieu of a full audit. The review must be performed by an independent certified public accountant. Entities with more than \$500,000 of gross annual revenue are still required to provide a full audit performed by an independent certified public accountant. Entities with less than \$250,000 of gross annual revenue will continue to have no requirement to provide any type of financial audit or review.

Effective Date: July 1, 2006

Code Sections Added: Appropriations Act and Additional Appropriations Act § 3-5.07

True Object Test

House Bill 5002 (Chapter 3, Special Session I of 2006) requires TAX to change its current interpretive application of the “true object” test to contractors providing services to the United States, the Commonwealth, or any political subdivision or instrumentality thereof. Effective for “work orders”, “statements of work” and “task orders,” entered into on and after July 1, 2006, TAX must make a taxability determination regarding the true object of the transaction entered into with the government entity based upon the true object of each separate “work order”, “statement of work” and “task order,” rather than the true object of the underlying contract between the government entity and such contractor.

The Tax Commissioner is required to work with the government contracting industry to promulgate an emergency regulation on or before June 30, 2007, to implement this change.

Effective Date: July 1, 2006

Code Section Added: Appropriations Act, Item 268

MISCELLANEOUS TAXES

Communications Tax

Communications Tax Reform

House Bill 568 (Chapter 780) restructures the state and local communications taxes and fees by replacing the current state and local communications taxes and fees with a centrally administered Communications Sales and Use Tax and a uniform statewide E-911 tax. The Communications Tax will be imposed on customers of communications services at the rate of 5% of the sales price of the service, and will appear as a line item on customers' bills. Communications services subject to the tax would include: landline and wireless telephone services (including Voice Over Internet Protocol); paging; cable television; and satellite radio and television. The E-911 tax will be imposed on the end user of each access line at the rate of \$0.75 per access line, and will appear as a line item on customers' bills.

Revenues from these taxes and fees will be collected and remitted monthly by communications services providers to TAX and deposited into a new fund known as the Communications Sales and Use Tax Trust Fund (the "Fund"). Moneys in the Fund will be distributed to localities on a monthly basis after payment (1) to TAX for the direct costs of administering the Communications Tax; (2) to the Virginia Department for the Deaf and Hard-of-Hearing (VDDHH) for the cost of the telephone relay service center; and (3) to localities for any cable television franchise fees due under existing franchise agreements.

Effective Date: January 1, 2007, generally, but certain provisions effective July 1, 2006

Code Sections Amended: §§ 8.01-225, 56-458, 56-462, 56-468.1, 56-484.12, 56-484.17, 56-484.18, 58.1-3, 58.1-3815, and 58.1-3816.2

Code Sections Added: §§ 15.2-2108.1:1, 51.5-115, 58.1-645 through 58.1-662, and 58.1-1730

Code Sections Repealed: §§ 15.2-2108, 56-484.4, 56-484.5, 56-484.6, 58.1-3812, 58.1-3813.1, and 58.1-3818.1 through 58.1-3818.7

Tire Tax

Tire Recycling Fee

House Bill 522 (Chapter 407) extends the expiration date for the \$1.00 tire-recycling fee from July 1, 2006 to July 1, 2008, and changes the commencement date for the imposition of the \$0.50 tire-recycling fee to July 1, 2008.

Effective Date: July 1, 2006

Code Section Amended: § 58.1-641

Motor Fuels Tax

Effective Date for Sales Tax in Certain Transportation Districts

House Bill 1148 (Chapter 354) provides that changes to the motor vehicle fuels sales tax imposed in new or enlarging transportation districts would not become effective until the first day of the first month that is at least 60 days after certification by the Secretary of the Commonwealth. Currently, the law specifies when a new or enlarged transportation district is created, but does not specify when the motor vehicle fuels sales tax would take effect in the new or enlarged transportation district.

Effective Date: July 1, 2006

Code Sections Amended: §§ 15.2-4504, 15.2-4529, and 58.1-1720

Cigarette and Tobacco Product Taxes

Penalty for Failure to Properly Affix Stamps

House Bill 569 (Chapter 409) increases from \$250 per pack to \$500 per pack the penalty for failure to affix tax stamps to cigarettes when the number of packs of cigarettes exceeds 100 packs. This legislation also provides that it is *prima facie* evidence of intent to defraud the Commonwealth when the number of unstamped cigarettes exceeds either 30 packs or 5 percent of the cigarettes in the place of business, whichever is greater. Notwithstanding these threshold limits, it is *prima facie* evidence of intent to defraud if the number of unstamped packs exceeds 500 packs. This legislation establishes a monetary penalty of \$2,500 per pack for selling, purchasing, transporting, receiving or possessing 3,000 or more unstamped packages of cigarettes for the purpose of evading the cigarette tax. Additionally, this legislation creates a safe harbor from the penalty for selling, purchasing, transporting, receiving or possessing unstamped cigarettes for a retail dealer who has lawfully purchased the cigarettes from the holder of a stamping agent permit issued by TAX.

Effective Date: July 1, 2006

Code Sections Amended: §§ 58.1-1013 and 58.1-1017

Special Agents with Office of Attorney General Authorized to Enforce Laws

House Bill 1276 (Chapter 695) authorizes investigators with the Office of the Attorney General to seize cigarettes which are unlawfully sold, possessed, distributed, transported, imported, or otherwise held and to accompany and participate with special agents of the Alcoholic Beverage Control Board or other law-enforcement officials engaging in an enforcement action under §§ 3.1-336.6 or 58.1-1037.

Effective Date: July 1, 2006

Code Section Amended: § 4.1-105

Code Section Added: § 2.2-509.1

Certain Sales Reports to be Filed Directly with Attorney General's Office

House Bill 1277 (Chapter 31) requires that (1) the annual certification required of cigarette manufacturers regarding their status as participating or nonparticipating manufacturers under the Master Settlement Agreement, and (2) the quarterly report required of cigarette stamping agents listing the cigarettes they have stamped be filed with the Office of the Attorney General rather than TAX. This legislation also provides that these reports would continue to be considered confidential taxpayer information.

Effective Date: July 1, 2006

Code Sections Amended: §§ 3.1-336.4, 3.1-336.8, and 58.1-3

Master Settlement Agreement: Nonparticipating Manufacturers

House Bill 980 (Chapter 674) requires the Attorney General to provide nonparticipating tobacco product manufacturers with information regarding the sale of their cigarettes in the Commonwealth in order to facilitate full and accurate escrow payments by such manufacturers. It also requires quarterly escrow payments, rather than annual, by nonparticipating tobacco product manufacturers that (i) are new to the market, (ii) default on any Master Settlement Agreement provisions, or (iii) as determined by the Attorney General, pose a risk of not making their escrow payments in the future.

Effective Date: July 1, 2006

Code Sections Amended: §§ 3.1-336.3, 3.1-336.8, and 3.1-336.10

Code Section Added: § 3.1-336.9:1

Deduction of Bad Debts from Taxes Owed

House Bill 612 (Chapter 64) and Senate Bill 418 (Chapter 229) allow a stamping agent to claim a bad debt deduction against the cigarette tax in situations where a customer fails to pay for stamped cigarettes. The amount of the deduction is the cost of the stamps affixed to the cigarettes.

Effective Date: July 1, 2006

Code Sections Amended: § 58.1-1003

Code Section Added: § 58.1-1003.1

Roll-your-own Tobacco Classified as Cigarette

Senate Bill 729 (Chapter 768) makes roll-your-own tobacco subject to the cigarette excise tax instead of the tobacco products tax. The cigarette tax on roll-your-own tobacco, however, is imposed at the same rate and in the same manner as the tobacco products tax. Distributors of roll-your-own tobacco are considered cigarette stamping agents and are required to prepare an invoice describing the manufacturer, brand and quantity in ounces of roll-your-own tobacco included in each shipment to dealers located within the Commonwealth. A copy of the invoice must be attached to the shipment and will be deemed to be the cigarette revenue stamp. Accordingly, Nonparticipating Manufacturers (NPMs) will be required to include sales of roll-your-own tobacco when determining their required annual escrow deposit.

Effective Date: January 1, 2007

Code Sections Amended: §§ 3.1-336.8, 58.1-1000, 58.1-1001, 58.1-1003, and 58.1-1021.01

Code Section Added: § 58.1-1003.1

TAX ADMINISTRATION AND COLLECTION

Judicial Appeals of Assessments

House Bill 772 (Chapter 342) precludes circuit courts from granting relief to taxpayers seeking correction of erroneous state tax assessments in cases in which the erroneous assessment was attributable to the taxpayer's willful failure or refusal to provide the Department of Taxation with necessary information as required by law.

Effective Date: Appeals filed on or after July 1, 2006

Code Sections Amended: § 58.1-1826

Electronic Receipts of Certain Transactions

House Bill 1217 (Chapter 355) requires the Department of Taxation to accept a monthly electronic transfer of the recordation receipt copy on magnetic tape or other media acceptable to the Department, in lieu of a printed paper copy of the receipt.

Effective Date: July 1, 2006

Code Section Amended: § 58.1-3303

Earned Income Tax Credit Information

House Bill 407 (Chapter 590) and Senate Bill 42 (Chapter 159) authorize TAX to provide the Department of Social Services ("DSS"), upon written request, information on taxpayers who have applied for public assistance or social services benefits regarding such taxpayers' income tax filing status, number and type of dependents, and use of the federal earned income tax credit.

Effective Date: July 1, 2006

Code Sections Amended: §§ 2.2-3803, 58.1-3, and 58.1-202

Public Procurement Act

House Bill 557 (Chapter 408) expands the prohibition on state contracts with vendors to include those who have not paid state income taxes unless the vendor (i) has entered into a payment agreement with the Department of Treasury and is not delinquent under the terms of the agreement, or (ii) has appealed the assessment of the tax.

Effective Date: July 1, 2006

Code Section Amended: § 2.2-4321.1

Amended Returns after Change in Another State

Senate Bill 583 (Chapter 234) allows taxpayers one year from the final determination of a change made by any other state to file an amended return to request a refund resulting from credits for taxes paid to other states. In keeping with the practice of coordinating a taxpayers right to claim a refund with TAX's right to assess additional tax, the legislation requires taxpayers to file amended returns in order to report a reduction to the credit for taxes paid to other states resulting from changes made by any other state and allows TAX to make assessments at any time if the taxpayer fails to file the required returns.

The legislation also makes provisions related to reporting actions by other states similar to provisions relating to reporting actions by the Internal Revenue Service, and reconciles inconsistent statutory periods for filing amended returns resulting from federal changes.

Effective Date: July 1, 2006

Code Sections Amended: §§ 58.1-311, 58.1-312, and 58.1-1823

Code Section Added: § 58.1-311.1

LOCAL TAX

LEGISLATION

Tangible Personal Property Tax

Virginia Energy Plan

Senate Bill 262 (Chapter 939) creates a Virginia Energy Plan and exempts certified pollution control equipment and facilities consisting of equipment used in collecting, processing, and distributing, or generating electricity from, landfill gas or synthetic or natural gas recovered from waste, including equipment used to grind, chip, or mulch trees, tree stumps, underbrush, and other vegetative cover for reuse as landfill gas or synthetic or natural gas recovery from waste. The legislation also expands the definition of "certified pollution control equipment and facilities" to include, but not be limited to, any equipment used to grind, chip, or mulch trees, tree stumps, underbrush, and other vegetative cover for reuse as mulch, compost, landfill gas, synthetic or natural gas recovery from waste or other fuel, and equipment used in collecting, processing, and distributing landfill gas or synthetic or natural gas recovered from waste, whether or not such property has been certified to TAX by a state certifying authority.

These bills also include an individual income tax deduction for purchases of certain tangible personal property.

Effective Date: Property placed in service on or after July 1, 2006

Code Sections Amended: §§ 2.2-1132, 23-135.7:6, 45.1-390, 56-249.6, 58.1-322, and 58.1-3660

Code Sections Added: §§ 67-100 through 67-102, 67-200 through 67-203, 67-300, 67-400 through 67-403, 67-500, 67-501, 67-600 through 67-604, 67-700, 67-701, 67-800, 67-801, 67-900 through 67-903, and 67-1000 through 67-1003

Separate Classifications of Machinery and Tools Used in Business

Senate Bill 417 (Chapter 375) provides a local real and personal property tax exemption for certified pollution control equipment and facilities placed in service on or after July 1, 2006 that consist of equipment used in collecting, processing and distributing or generating electricity from landfill gas or synthetic or natural gas recovered from waste, including equipment used to grind, chip or mulch trees, tree stumps, underbrush and other vegetative cover for reuse as landfill gas or synthetic or natural gas recovered from waste.

Effective Date: July 1, 2006

Code Section Amended: § 58.1-3660

All-terrain Vehicles and Off-road Motorcycles: Exempt from Personal Property Tax

Senate Bill 191 (Chapter 896) requires non-dealer owners of all-terrain vehicles and off-road motorcycles powered by gasoline or diesel engines displacing more than 50 cubic centimeters and purchased as new on or after July 1, 2006, to title their vehicles with DMV. Code sections 58.1-3503 and 58.1-3504 are amended to exempt all-terrain vehicles and off-road motorcycles from local property tax. Section 58.1-3523 is amended to exclude all-terrain vehicles and off-road motorcycles from the definition of qualifying vehicle for purposes of personal property tax relief.

Effective Date: July 1, 2006

Code Sections Amended: §§ 46.2-100, 46.2-616, 46.2-619, 46.2-623, 46.2-629, 46.2-637, 46.2-638, 46.2-915.1, 46.2-1051, 46.2-1993, 46.2-1993.35, 46.2-1993.39, 46.2-1993.55, 58.1-3503, 58.1-3504, and 58.1-3523

Code Sections Added: §§ 46.2-644.1, 46.2-644.2, and 46.2-644.3, 46.2-679.1, and 46.2-679.2

Classification of Watercraft Used for Business Purposes

House Bill 327 (Chapter 400) provides for the following additional separate property tax classifications of boats and watercraft: those weighing five tons or more and not used solely for business purposes; those weighing less than five tons and not used solely for business purposes; and those weighing five tons or more and used solely for business purposes.

Effective Date: July 1, 2006

Code Section Amended: § 58.1-3506

Classification of Certain Aircraft

House Bill 862 (Chapter 200) and Senate Bill 521 (Chapter 231) create a separate classification for local property tax purposes for aircraft having a gross empty weight equal to or greater than 20,000 pounds and that are **not** owned and operated by scheduled air carriers recognized under federal law.

Effective Date: January 1, 2006

Code Sections Amended: §§ 58.1-3506 and 58.1-3916

Rate for Generating Equipment of Electric Suppliers

Senate Bill 404 (Chapter 517) provides that generating equipment of electric suppliers utilizing wind turbines may be taxed by the locality at a rate higher than the real estate rate but shall not exceed the personal property rate for the respective locality.

Effective Date: January 1, 2007

Code Sections Amended: § 58.1-2606

Real Estate Tax***Exemptions for Elderly or Disabled***

House Bill 121 (Chapter 585) makes the following changes to the structure of the exemption and deferral programs that localities may offer to the elderly or handicapped:

- Adds the cities of Norfolk and Richmond to the list of cities that are currently permitted to use \$200,000 as their maximum net combined financial worth amount in determining eligibility for the exemption and deferral programs and increases that amount for all cities listed to \$350,000. Removes the counties of Fauquier and Stafford from that list.
- Adds the counties of Clarke, Fauquier, and Stafford to the cities, counties and towns in Northern Virginia that are currently permitted to use \$340,000 as their maximum net combined financial worth amount in determining eligibility for the exemption and deferral programs, and raises the amount to \$540,000 for those localities.
- Delineates, by name, the localities in Northern Virginia eligible to use the higher total combined income amount in determining eligibility for the exemption and deferral programs.

Effective Date: July 1, 2006

Code Sections Amended: § 58.1-3211

Constitutional Amendment to Exempt Certain Property from Taxation

Senate Bill 357 (Chapter 173) provides for a referendum at the November 2006 election on approval of a proposed constitutional amendment relating to property tax exemptions. The proposed amendment authorizes the General Assembly to enact legislation that will permit localities to provide a partial exemption from real property taxes for real estate and associated new structures and improvements in conservation, redevelopment, or rehabilitation areas.

Senate Bill 358 (Chapter 572) authorizes localities to provide for the partial exemption from taxation of new structures or other improvements to real estate located in redevelopment or conservation areas or rehabilitation districts. The partial exemption would be a percentage of the increase in assessed value as a result of the new structure or improvement or an amount not to exceed 50 percent of the construction cost of such structure or improvement.

Effective Date: Chapter 572 requires a constitutional amendment to become effective (Proposed by SJ 87).

Code Section Added: § 58.1-3219.4

Assessments for Open Space Property for Golf Courses

House Bill 916 (Chapter 817) declares that public and private golf courses are real estate devoted to open-space use for purposes of land use taxation.

Effective Date: July 1, 2006

Code Section Amended: § 58.1-3230

Valuation of Affordable Housing

House Bill 1173 (Chapter 688) requires that, when determining the fair market value of real property containing more than four residential units operated in whole or part as affordable housing, the locality must consider (a) the rent and the impact of applicable rent restrictions, (b) the operating expenses and expenditures, (c) restrictions on the transfer of title, and (d) evidence presented by the property owner of other restrictions imposed by law that affect these variables. Additionally, this bill would require that federal or state income tax credits with respect to affordable housing not be considered real property or income attributable to real property. For property in which only a portion of the units are operated as affordable housing, only that portion determined to be affordable housing would be subject to the provisions.

Effective Date: January 1, 2007, or the beginning of the next general reassessment cycle of the locality in which the property is located

Code Section Amended: § 58.1-3295

Computation of Deferral of Real Estate Taxes

House Bill 1231 (Chapter 356) eliminates the current requirement mandating how localities must calculate the amount of taxes eligible for the local deferral program for real estate taxes that exceed a locally designated percentage of the tax on the property in the previous year.

Effective Date: July 1, 2006

Code Section Repealed: § 58.1-3219.2

Sale of Tax-Delinquent Real Estate

House Bill 194 (Chapter 333) allows the circuit court, where there is no dispute as to title or value of the real estate, to use the written report of a licensed real estate appraiser instead of a deposition to authorize the sale of tax delinquent real estate.

Effective Date: July 1, 2006

Code Section Amended: § 58.1-3969

Sale of Tax-Delinquent Properties

House Bill 1421 (Chapter 616) provides detailed rules concerning nonjudicial sales of tax delinquent real properties of minimal size and value, including requirements that (1) each parcel shall be sold at public auction, (2) the sale shall be free and clear of the tax lien, but shall not affect any easements recorded prior to the date of sale, (3) the treasurer shall convey the parcel by a treasurer's deed, (4) if the sale proceeds are insufficient to pay the taxes in full, the remaining delinquent taxes remain the personal liability of the former owner, (5) the sale proceeds shall be applied first to the costs of sale, then to the taxes, penalty and interest due on the parcel, and then to any other taxes or other charges owed by the former owner to the jurisdiction, (6) any excess proceeds remain the property of the former owner and shall be kept by the treasurer in an interest-bearing escrow account, (7) if no claim for payment of excess proceeds is made by the former owner within two years after the date of sale, the treasurer shall deposit the excess proceeds in the jurisdiction's general fund, and (8) if the sale does not produce a successful bidder, the treasurer shall add the costs of sale to the delinquent real estate account. This legislation also declares that judicial sales of real property do not affect easements recorded prior to the sale.

Effective Date: July 1, 2006

Code Sections Amended: §§ 58.1-3967 and 58.1-3975

Roll-back Taxes; Local Use Value Assessment Ordinances

Senate Bill 186 (Chapter 221) eliminates the current requirement that a landowner who subdivides land into parcels that meet the minimum acreage requirements for land use taxation must attest that the land is still devoted solely to agricultural, horticultural, forest or open-space use in order to continue to qualify for land use taxation. The legislation does not, however, eliminate the requirement that the land must be devoted solely to agricultural, horticultural, forest or open-space use in order to continue to qualify for land use taxation. This legislation also authorizes localities not to impose roll-back taxes when real estate subject to use valuation is subdivided, separated or split-off pursuant to the locality's subdivision ordinance into parcels that do not meet the minimum acreage requirements for land use taxation if title to the resulting parcels is held in the name of an immediate family member for the first 60 months following the subdivision, separation or split-off.

Effective Date: July 1, 2006

Code Sections Amended: § 58.1-3241

Notice of Real Estate Assessment Change

House Bill 491 (Chapter 255) and Senate Bill 731 (Chapter 509) require localities to provide the following information to property owners on each notice of change of their real estate assessment: (1) the immediately prior appraised value of the property and (2) the immediately prior assessed value of the property if different from the appraised value.

Effective Date: July 1, 2006

Code Section Amended: § 58.1-3330

Business, Professional and Occupational License Tax***Definition of “Jeopardized by Delay”***

House Bill 1366 (Chapter 611) makes a technical correction to the Business, Professional and Occupational License (BPOL) Tax, Local Business Tax and Local Mobile Property Tax administrative appeals statutes to make the definitions of “jeopardized by delay” consistent with the original use of the term in Virginia state income tax law. The original use of the term “jeopardize by delay” in Virginia state income tax law refers to situations where a taxpayer designs to do certain acts.

Effective Date: July 1, 2006

Code Sections Amended: §§ 58.1-3703.1 and 58.1-3983.1

Localities to Select Date to Apply Tax

House Bill 869 (Chapter 119) and Senate Bill 522 (Chapter 181) authorize localities that impose the BPOL tax or fee to adopt a license application due date that is on or after March 1, but no later than May 1.

Effective Date: July 1, 2006

Code Section Amended: § 58.1-3703.1

Separate Rate for Fuel Distributors

Senate Bill 597 (Chapter 763) limits the amount of local BPOL taxes paid by persons engaged in the business of selling motor fuels at retail on a daily basis (“gas retailers”). This limitation applies in the license year following any year in which regular grade gasoline prices increase by 20% or greater in any one-week period and do not fall below the increased rate for at least 28 consecutive days. In the event these conditions are met, the gas retailer’s motor fuel sales related BPOL tax liability in the following license year would be limited to 110% of its motor fuel sales related BPOL tax liability in the license year of the increase.

Effective Date: July 1, 2006

Code Sections Amended: §§ 58.1-3700.1 and 58.1-3706

TAX ADMINISTRATION AND COLLECTION

Collection of Unpaid Fines and Costs by Local Treasurers

House Bill 1425 (Chapter 359) authorizes a local treasurer undertaking collection pursuant to an agreement with the attorney for the Commonwealth to collect the administrative fee authorized by § 58.1-3958.

Effective Date: July 1, 2006

Code Section Amended: § 19.2-349

Localities' Use of Collection Agents

Senate Bill 302 (Chapter 372) prohibits a locality from utilizing the local sheriff, an attorney or a private collection agent to assist with collection of a delinquent local tax unless the locality has first attempted to send written notification of the delinquency to the taxpayer at the address contained in the locality's tax records. If the locality has reason to believe the taxpayer's address contained in its tax records is no longer current the locality may obtain the address from other sources available to it, including the Virginia Employment Commission, the Department of Motor Vehicles and the Department of Taxation.

Effective Date: July 1, 2006

Code Sections Amended: §§ 58.1-3919.1 and 58.1-3934

Local Taxes: Cap on Penalty

House Bill 1283 (Chapter 459) provides that no local tax penalty for failure to pay a tax may exceed the amount of the tax assessable.

Effective Date: July 1, 2006

Code Section Amended: § 58.1-3916

MISCELLANEOUS TAXES

Tourism Zones

Establishment of Tourism Zones

House Bill 518 (Chapter 642) authorizes any locality to establish, by ordinance, one or more tourism zones. Localities would be authorized to provide tax incentives within tourism zones for up to ten years including, but not be limited to, 1) reduction of permit fees, 2) reduction of user fees and 3) reduction of any type of gross receipts tax. Localities would also be authorized to provide regulatory flexibility within tourism zones for up to ten years including, but not be limited to 1) special zoning, 2) permit process reform, 3) exemption from ordinances, excluding ordinances adopted pursuant to the requirements of the Chesapeake Bay Preservation Act, the Erosion and Sediment Control Law or the Virginia Stormwater Management Act, and 4) any other incentive.

Effective Date: July 1, 2006

Code Section Added: § 58.1-3851

Virginia Coalfield Economic Development Authority Tax

Coal and Gas Road Improvement Funds to Include Improvement of Water & Sewer Systems

House Bill 1505 (Chapter 78) and Senate Bill 506 (Chapter 497) allow those localities that comprise the Virginia Coalfield Economic Development Authority to use the portion of the revenue from the Local Coal and Gas Road Improvement Tax currently dedicated for the construction of new water and sewer systems to also use that portion of the revenue for the improvement of water and sewer systems.

Effective Date: July 1, 2006

Code Sections Amended: §§ 58.1-3713 and 58.1-3713.01

Litter Tax

Litter Control and Recycling: Increased Percentage of Grants Awarded to Localities

House Bill 448 (Chapter 6) permits TAX to add to the assessment the amount it has expended in collecting delinquent litter taxes.

Effective Date: July 1, 2006

Code Sections Amended: §§ 10.1-1422, 10.1-1422.01, 10.1-1422.03, 10.1-1422.05, and 58.1-1709

Transient Occupancy Tax

Maximum Amount Nelson County May Charge

House Bill 779 (Chapter 111) allows the transient occupancy tax in Nelson County to be increased to 5%. The 3% additional revenue collected from Nelson County must be designated and spent for promoting tourism, travel, or business that generates tourism or travel in Nelson County.

Effective Date: July 1, 2006

Code Section Amended: § 58.1-3821

Imposition for Occupancy of Any Room or Space

Senate Bill 86 (Chapter 216) prohibits the imposition of a city or town's transient occupancy tax on the charge for rooms or space rented for meetings, conferences, and purposes other than sleeping, dwelling or lodging. This legislation brings the transient occupancy tax imposed upon cities and towns in conformity with that imposed upon counties.

Effective Date: July 1, 2006

Code Sections Added: § 58.1-3843

Montgomery County Authorized to Impose

House Bill 1323 (Chapter 67) and Senate Bill 463 (Chapter 376) add Montgomery County to the list of localities that are authorized to impose a transient occupancy tax at a rate of up to 5%. Any revenue generated by the tax imposed at a rate higher than 2% must be designated and spent solely for promoting tourism, travel or businesses that generate tourism in the County.

Effective Date: July 1, 2006

Code Section Affected: § 58.1-3819

Elimination of Sunset Provision in James City and York Counties

Senate Bill 468 (Chapter 377) authorizes James City County and York County to continue to impose an additional transient occupancy tax not to exceed \$2 per room per night for the occupancy of any overnight guest room by eliminating the current sunset date of January 1, 2008. Revenues from the additional tax must continue to be spent for advertising the Historic Triangle area, which includes all of the City of Williamsburg and the Counties of James City and York as an overnight tourism destination.

Effective Date: July 1, 2006

Code Section Amended: § 58.1-3823

Local Meals Tax***Gratuities or Service Charges on Meals***

House Bill 896 (Chapter 602) and Senate Bill 85 (Chapter 568) eliminate the retail sales tax and the local meals tax on gratuity or service charges that are mandatory or automatically added to the price of a meal by the dealer. Previously, service charges, sometimes called “mandatory gratuities,” were subject to the retail sales tax, while discretionary gratuities were not.

The exemption will only apply if the service charge does not exceed 20% of the sales price of the meal. Those service charges in excess of the 20% cap would remain subject to the retail sales and use tax.

Effective Date: July 1, 2006

Code Sections Amended: §§ 58.1-602, 58.1-3833, and 58.1-3840

LEGISLATIVE

STUDIES

Machinery and Tools Taxation Study

House Bill 1290 and Senate Bill 260 would have changed the definition of “idle machinery.” In vetoing these bills, the Governor has created a working group, to be co-chaired by the Secretary of Commerce and the Commissioner of the Department of Taxation, to study the machinery and tools tax. The working group will also include members of the manufacturing community and local government.

Retail Sales and Use Tax Exemption Study

House Bill 1370 (Chapter 559) modifies and clarifies the process by which the Tax Commissioner must prepare and submit annual retail sales and use tax exemption reports to the chairmen of the House and Senate Finance Committees with respect to miscellaneous and nonprofit exemptions. In addition, the due date of the first report is extended from December 1, 2006 to December 1, 2007. The analysis of the nonprofit exemptions will be conducted over four years, with the first report due on December 1, 2008.

Effective Date: July 1, 2006

Code Section Amended: § 58.1-609.12

Tax Clearance Study

House Bill 5002 (Chapter 3, Special Session I of 2006) authorizes the Department of Taxation to study the feasibility of requiring a certification that all tax obligations are paid prior to the issuance of or the renewal of a state license or permit. All other agencies of the Commonwealth, particularly the Department of Professional and Occupational Regulation and the Department of Health Professions, are required to provide the names of licensees, the date of licensure, the length of time that the license continues, the date of license renewal, and any other information or assistance to the Department of Taxation for this study, upon request. A report must be made to the Governor and the General Assembly for consideration by the 2007 Session of the General Assembly.

Effective Date: July 1, 2006

Code Section Added: Appropriations Act, Item 265

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