2011 LEGISLATIVE SUMMARY

Virginia
Department of Taxation

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Tax Commissioner

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INTRODUCTION

The ***Legislative Summary*** is published by the Department of Taxation (TAX) as a convenient reference guide to state and local tax legislation enacted by the 2011 Session of the General Assembly through adjournment of the reconvened session on April 6, 2011. 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 directed studies in which TAX will be directly involved or acting in a technical support role. In general, however, legislation affecting taxes administered by other state agencies is not included in the ***Summary***.

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

Telephone:

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

Live Chat: Click on the icon on TAX’s website: www.tax.virginia.gov.

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
June 2011

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GENERAL PROVISIONS

Admissibility of Tax Documents in Court

House Bill 2145 (Chapter 800) provides that tax bulletins, guidelines, and other documents published by TAX are to be accorded judicial notice by courts. Under Virginia case law, when a matter is judicially noted, it is taken as true without the offering of evidence by the party who should have ordinarily done so, but the opponent is not prevented from disputing the matter. By statute, however, a court is required to sustain a regulation unless unreasonable or plainly inconsistent with applicable provisions of law, while tax bulletins, guidelines, and other documents are accorded judicial notice only. The Act also requires TAX to publish all tax bulletins and guidelines. The Act provides that posting the documents on TAX's website is a permitted publication method instead of requiring distribution to national and state tax services.

In 1980, the Code of Virginia was amended to require TAX to publish its regulations, rulings, and other documents. Since the law was enacted in 1980, TAX has published over 7,000 rulings and other documents that provide policy guidance.

Effective: Proceedings commenced on or after July 1, 2011
Amended: §§ 2.2-4031, 58.1-204, and 58.1-205

Accrual of Interest on Assessments in Dispute

Senate Bill 1152 (Chapter 295) reduces the rate at which interest accrues on the outstanding liability of contested assessments for the period starting nine months after the date of assessment until TAX issues a determination.

Interest generally accrues on the outstanding liability of contested assessments at the rate prescribed in *Va. Code* § 58.1-15. The rate of interest on omitted taxes and assessments is the federal underpayment rate established pursuant to IRC § 6621(a)(2), plus two percent. The rate of interest on refunds is the federal overpayment rate for non-corporate taxpayers established pursuant to IRC § 6621(a)(1), plus two percent.

The federal underpayment rate is equal to the federal short-term rate established pursuant to IRC § 6621(b) plus three percent. The federal overpayment rate for non-corporate taxpayers is equal to the federal short-term rate plus three percent. The federal short-term rate under IRC § 6621(b) is determined by the IRS for the first month of each calendar quarter. This rate is based on the average market yield during any one-month period on outstanding marketable obligations of the United States with remaining periods to maturity of three years or less, and is rounded to the nearest full percent.

After a taxpayer has filed an application for correction of an assessment with TAX, interest will begin to accrue on the outstanding liability at the rate prescribed by *Va. Code* § 58.1-15. This Act requires that, from nine months after the date of assessment until TAX issues a determination, interest will accrue at the federal short-term rate established pursuant to IRC § 6621(b). Thus, interest will accrue at rate between four and one-half and five and one-half percent less than the normal rate prescribed by *Va. Code* § 58.1-15, depending on how the short-term rate is rounded when calculating the federal underpayment rate.

If TAX determines that any portion of a contested assessment is correct, interest will resume accruing at the rate prescribed by *Va. Code* § 58.1-15 thirty days after the date of the action for correction.

Effective: Administrative appeals filed on or after July 1, 2011
Amended: § 58.1-1822

Commercial Delivery Services Accepted As Timely

House Bill 2141 (Chapter 368) recognizes state and local tax returns or payments of state and local taxes remitted by means of a commercial delivery service in an envelope or sealed container as timely filed, provided the documents bear a confirmation of shipment dated on or before midnight of the day the return or payment is due. Prior to enactment of this law, when a tax return or payment was remitted by mail, it was deemed timely filed only if the taxing agency received it in a sealed envelope bearing a postmark from the United States Postal Service on or before midnight of the day the return was required to be filed or the payment was required to be made.

Effective: July 1, 2011
Amended: § 58.1-9

Obsolete Provisions in Tax Code Removed

Senate Bill 1130 (Chapter 851) removes several obsolete provisions and makes several other technical changes to Virginia's Tax Code pertaining to individual and corporate income taxes, estimated taxes, sales and use taxes, and property taxes, as listed below.

Individual and Corporate Income Tax

- *Operation Joint Endeavor*: The law references a subtraction for military pay earned in the former Yugoslavia during Operation Joint Endeavor, which ended in December 1996, rendering this provision obsolete.

- *Tobacco Loss Assistance Program*: The law references the Tobacco Loss Assistance Program, which was repealed by the Fair and Equitable Tobacco Reform Act of 2004; thus, the provision is obsolete.

- *Peanut Quota Buyout Program*: The law referenced this program, which provided for payments to peanut growers until 2007. Because the program has expired, the Virginia subtraction is obsolete.

- *Avian Influenza Indemnity Payments*: A major outbreak of Avian Influenza in Virginia in 2002 prompted the General Assembly to enact a subtraction for indemnity payments made by the U.S. Department of Agriculture when it mandates that poultry that had contracted avian influenza be destroyed. The subtraction has expired.

- *Individual Standard Deduction*: Reference to the amount of the standard deduction before its 2005 increase is deleted as obsolete.

- *Individual Age Deduction*: References to the amount of the age deduction available as revisions were phased in for taxable years 2004 and 2005 are deleted as obsolete.

- *Employee Stock Ownership Programs*: In the past, the Internal Revenue Code ("IRC") allowed corporations a credit for certain contributions to an employee stock ownership plan ("ESOP"). Unused credits could be carried forward or claimed as a deduction under IRC § 404(i). Because the deduction related to a federal tax credit, Virginia law required corporations to add back any deduction claimed under IRC § 404(i). The Tax Reform Act of 1986 repealed both the ESOP credit and IRC § 404(i). Therefore the Virginia provision is obsolete.

- *Cogenerators*: In 1988, an income tax credit for cogenerators who used coal was enacted that was similar to a credit available to electric utilities that used coal. Legislation enacted in 1999 subjected electric utilities to the income tax instead of the public service tax on gross receipts. As part of that legislation, the utility coal credit was included in the income tax chapter, but a provision was included to prevent cogenerators from taking both the cogenerator credit and the utility credit on the same ton of coal. The cogenerator credit (§ 58.1-433) expired in 2001, so the provision is now obsolete.

- *Rent Reductions*: The individual income tax credit for rent reductions expired in 1999 and has been replaced by another rent reduction credit in § 58.1-339.9.

Coalfield Employment Enhancement Tax Credit

- *Cogenerators*: As set forth above, the cogenerator credit expired in 2001, thus rendering the provision obsolete.

- *Credit schedule:* For the first four years, the credit earned in one year was claimed in two different taxable years as specified in a schedule. As the last year specified in that schedule was 2008, this part of the schedule is now obsolete. For credits earned after the first four years, the credit was claimed three years later, although this was spelled out in a schedule for each year. The year-by-year schedule is replaced with language specifying that it is claimed in the third taxable year after the credit is earned.

Estimated Tax

- In 1972, the definition of income for estimated tax allowed consideration of any credits. In 1987, it was changed to list three credits, which were the only credits in the code at that time. The list was never changed to reflect credits added over the years.

Retail Sales and Use Tax

- *Reference to Baptistries*: In 2003, the Retail Sales and Use Tax Code was restructured as a result of the changes to the nonprofit exemption process. As a result, several exemptions were moved from § 58.1-609.8 to § 58.1-609.10. Thus, the cross references relating to the baptistries exemption that was once set forth in § 58.1-609.8 are technically incorrect.

Real Property Tax

- *Annual General Reassessments of Real Estate*: A provision in the Real Property Tax Code addressing annual general reassessments of real estate and equalization of assessments is amended from time to time and remains in effect. This section was last amended in 2003. As the statute does not reflect this recent amendment, it is technically incorrect.

- *List of Delinquent Town Real Estate Taxes*: The cross references to § 58.1-3937 are obsolete, as that section was repealed in 1998.

Effective: Taxable periods beginning on or after January 1, 2011.
Amended: §§ 58.1-322, 58.1-339.9, 58.1-402, 58.1-433.1, 58.1-439.2, 58.1-490, 58.1-610, 58.1-3260, 58.1-3607, and 58.1-3938

Fillable Forms

Senate Bill 1450 (Chapter 680) requires TAX to make all state tax forms available on TAX's website in fillable portable document format (PDF) for periods beginning on and after January 1, 2012, no later than March 1, 2013.

Under this Act, TAX is required to provide all state tax forms as fillable forms in PDF on its website. TAX is required to develop guidelines for using fillable forms and publish them on its website.

In addition to these provisions, the electronic fillable forms are prohibited from interfering with the services of the Virginia Free File program. In 2010, the General Assembly (2010 Acts of Assembly, Chapter 535, House Bill 1349) required TAX to establish a Virginia Free File program based on the IRS Free File program effective for the 2010 filing season. This Act (Chapter 680) specifies that the fillable forms provided by TAX must not replace, supersede, modify, duplicate or compete with the Virginia Free File program in its provision of online interactive tax software and filing products and services for Virginia taxpayers.

Effective: Taxable years beginning on and after July 1, 2012
Added: § 58.1-202.3

Fillable Forms – Free File Program

Item No. 262 M of HB 1500 (Chapter 890) requires TAX to accept a fillable form through the Virginia Free File Program. The fillable form will allow residents of the Commonwealth of Virginia to electronically submit their state income tax returns to TAX without charge. This fillable form program will be available no later than December 31, 2011. TAX is also required to provide a report to the Chairmen of the House Appropriations and Senate Finance Committees no later than September 1, 2011, on the status of implementing the fillable form program.

Effective: July 1, 2011

Mailing Tax Returns

Item No. 262 L of HB 1500 (Chapter 890) provides that TAX is not required to mail its tax returns and instructions unless requested by a taxpayer or his representative. Therefore, effective for taxable year 2011, TAX will not routinely mail blank individual income tax returns to taxpayers, local Commissioners of the Revenue, libraries, etc. for distribution to taxpayers. Forms will be mailed when a taxpayer or his representative requests it.

Effective: July 1, 2011

Electronic Filing of Withholding Returns

Item No. 262 K of HB 1500 (Chapter 890) requires most employers to file the annual report required by Va. Code § 58.1-478, and all forms required by Va. Code § 58.1-472, using an electronic medium using a format prescribed by the Tax Commissioner. The requirement applies to employers whose average monthly liability can reasonably be expected to be $1,000 or more and the aggregate amount required to be withheld by any employer exceeds $500. The Tax Commissioner may grant waivers only if a written request is submitted and the Tax Commissioner finds that the electronic filing requirement creates an unreasonable burden on the employer.

Effective: July 1, 2011

INCOME TAX

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

House Bill 1874 (Chapter 2) and Senate Bill 1384 (Chapter 866) advance Virginia's date of conformity to the Internal Revenue Code ("IRC") from January 22, 2010, to December 31, 2010, with limited exceptions. This avoids the necessity of requiring taxpayers to make adjustments for most federal tax changes enacted in 2010. The advancement allows the benefits of the following measures enacted by Congress since January 22, 2010, to flow through to Virginia taxpayers:

- The Reconciliation Act (H.R. 4872), in combination with the Patient Protection and Affordable Care Act (H.R. 3590), which expand healthcare coverage and provide several tax-related requirements and incentives;
- The Hiring Incentives to Restore Employment Act (H.R. 2847), which extends the increase in expensing of certain depreciable business assets;
- The Education Jobs and Medicaid Assistance Act (H.R. 1586), which modifies certain affiliation rules;
- The Small Business Jobs and Credit Act (H.R. 5297); and
- The Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, which extends certain tax provisions scheduled to expire in 2010.

For taxable year 2010, Virginia will conform to the temporary increase in the federal earned income tax credit (EITC) under IRC § 32(b)(3). Although the EITC increase was extended to taxable year 2011 by the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, Virginia law does not presently conform to this change for taxable year 2011. However, the General Assembly can consider conforming to the extension during the 2012 session.

Virginia will continue to disallow federal income tax deductions for bonus depreciation allowed for certain assets and any five year carry-back of federal net operating loss deductions generated in either taxable year 2008 or 2009. In addition, these Acts deconform from the following federal income tax provisions:

Applicable High Yield Discount Obligations

Virginia will continue to disallow the income tax deductions related to applicable high yield discount obligations under IRC § 163(e)(5)(F). The American Recovery and Reinvestment Act ("ARRA") established a provision that suspends the application of the applicable high yield debt obligation (AHYDO) rules for certain debts issued after

September 30, 2008, and before January 1, 2010. Virginia will continue to not conform to this federal tax provision.

Cancellation of Debt Income

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

For taxable year 2009, a partial deferral of some of these exclusions will be allowed for specified debt reacquired in taxable year 2009. Taxpayers that defer cancellation of debt income from transactions in 2009 on their federal returns will continue to be able to elect to report the addition required by conformity in equal amounts over three taxable years: 2009, 2010, and 2011.

For taxable year 2010, Virginia will extend the treatment of deferral of cancellation of debt to transactions completed on or before April 21, 2010, because the change to the Virginia treatment of this income was not fully known until the Appropriations Act was approved by the General Assembly at its reconvened session on April 21, 2010. Taxpayers may elect to report the income from qualifying transactions in equal amounts over three taxable years: 2010, 2011, and 2012.

Domestic Production Deduction

Virginia will continue to partially deconform from the domestic production deduction allowed under IRC § 199 for taxable years 2010 and thereafter. The federal domestic production deduction is equal to nine percent of qualified production activities income of the taxpayer in 2010 and thereafter. Instead of allowing the full amount of this deduction to flow through, Virginia will allow a deduction equal to two-thirds of the federal deduction. This is equivalent to allowing a deduction of six percent of the qualifying income as had been allowed in taxable years 2008 through 2010.

Effective: Taxable years beginning on and after January 1, 2010
Amended: § 58.1-301

Agricultural Best Management Practices Tax Credit

Senate Bill 974 (Chapter 352) amends the individual income tax credits allowed for agricultural best management practices (BMPs) to allow an individual to receive a refund for 100 percent of the credit amount that exceeds their Virginia tax liability. TAX will be required to issue the requested refund within 90 days of the filing date of the return claiming the refund.

Under current law, an individual engaged in agricultural production for market or who has equines that create needs for agricultural BMPs to reduce nonpoint source pollutants may be allowed a nonrefundable tax credit against individual income tax in an amount equal to 25 percent of the first $70,000 expended for BMPs, not to exceed $17,500. The credit is claimed in the taxable year the approved practice is completed, and any portion of the credit that exceeds the taxpayer's tax liability may be carried forward for up to five taxable years.

This Act also permits a pass-through entity that allocates tax credits among taxpayers to designate a general partner, member-manager, or shareholder as the person that TAX is contact first for the collection of taxes in the event that the tax credit is disallowed in the future.

Finally, this Act prohibits the costs used to determine the credit amount for BMPs from being used to claim any other Virginia income tax credit. Currently, there is no restriction that prevents such costs from being used to claim another Virginia tax credit.

Effective: July 1, 2011
Amended: § 58.1-339.3

Coal Employment and Production Incentive Tax Credit

Senate Bill 1111 (Chapter 294) extends the sunset date from July 1, 2011, to July 1, 2016, for the redemption or refund by a person with an economic interest in coal credits earned by an electricity generator and allocated to him. While coal credits earned by an electricity generator after July 1, 2016, may still be allocated to a person with an economic interest in the coal, that person can only claim the allocated credits against his own tax liabilities.

The Coal Employment and Production Incentive Tax Credit is a corporate income tax credit equal to $3 per ton for the purchase and consumption of Virginia mined coal by an electricity generator in the Commonwealth. The credit may be allocated between an electricity generator and any entity with an economic interest in the coal purchased and consumed by the electricity generator. Under current law, the amount of tax credits earned on or after January 1, 2006, and prior to July 1, 2011, by a person with an economic interest in coal that exceeds his tax liability for the applicable year, is allowed to be redeemed in the form of a refund.

Effective: July 1, 2011
Amended: § 58.1-433.1

Clean Fuel Vehicle and Advanced Cellulosic Biofuels Job Creation Tax Credit

Senate Bill 1236 (Chapter 176) extends the sunset date for the Clean Fuel Vehicle and Advanced Cellulosic Biofuels Job Creation Tax Credit from December 31, 2011, to December 31, 2014.

The Clean Fuel Vehicle and Advanced Cellulosic Biofuels Job Creation Tax Credit allows a corporation to claim an income tax credit equal to $700 for each job it creates that is related to the manufacture and production of clean fuel and advanced cellulosic biofuel vehicles. The credit is allowed in the taxable year in which the job is created and in each of the two succeeding years.

Sunset Date

The Clean Fuel Vehicle and Advanced Cellulosic Biofuels Job Creation Tax Credit is scheduled to expire for taxable years beginning on and after January 1, 2015.

Effective: July 1, 2011
Amended: § 58.1-439.1

Land Preservation Tax Credit: Maximum Credit Amount and Second Appraisals

House Bill 1820 (Chapter 212) and Senate Bill 1232 (Chapter 296) increase the maximum amount of Land Preservation Tax Credits that may be issued in a calendar year by any credit amounts that have been disallowed or invalidated by TAX. These Acts also clarify that, if TAX requires a second qualified appraisal within 30 days after an application for tax credits has been filed, an application for a land preservation credit is not deemed complete until the fair market value of the donation is finally determined by the Tax Commissioner.

Maximum Credit Amount

The Land Preservation Tax Credit was enacted in 2002 and has been modified several times since its enactment. Currently, the credit is equal to forty percent of the fair market value of land or interest in land located in Virginia that is conveyed as an unconditional donation by the taxpayer to a public or private conservation agency for one or more of the following purposes: agricultural and forestal use; open space, natural resource, and/or biodiversity conservation; or land, agricultural, watershed and/or historic preservation.

Beginning in calendar year 2007, the aggregate amount of Land Preservation Tax Credits that may be issued in any one year is subject to a cap. For 2007, the cap amount was $100 million. Since calendar year 2008, the $100 million cap has been increased for inflation. For 2011, the cap is $108,424,000.

In prior years, the capped amount included all credit amounts issued, without accounting for any amounts subsequently disallowed or invalidated. These Acts require that the inflation-adjusted cap be increased to reflect any credit amounts that were disallowed or invalidated in the previous calendar year.

Second Qualified Appraisals

Nothing in these Acts limits the authority of TAX that existed prior to enactment. Accordingly, these Acts have no impact on TAX's authority to audit credits after issuance under *Va. Code* § 58.1-512(D)(6) or on the current procedures for administrative and judicial review of contested assessments.

Sunset Date

The Land Preservation Tax Credit has no expiration date.

Effective: July 1, 2011
Amended: § 58.1-512

Land Preservation Tax Credit: No Reduction for Unused Credit Amounts

Senate Bill 1153 (Chapter 377) provides that a Land Preservation Tax Credit shall not be reduced by the amount of unused credit that could have been claimed in a prior year by the taxpayer but was unclaimed.

The amount of the Land Preservation Tax Credit that may be claimed by each taxpayer is limited to $50,000 for the 2009, 2010, and 2011 taxable years, and $100,000 for the 2012 taxable year and for each taxable year thereafter. Any unused portion of a credit issued to a taxpayer may be carried forward for a maximum of 10 years. For taxpayers affected by the credit reduction for taxable years 2009, 2010, and 2011, any unused portion of a credit issued to a taxpayer may be carried forward for a maximum of 13 years.

For taxpayers to whom a credit has been transferred, any unused portion may be carried forward for a maximum of 11 years after the credit was originally issued. For taxpayers affected by the credit reduction for taxable years 2009, 2010, and 2011, any portion of a transferred credit may be carried forward for a maximum of 14 years after the credit was originally issued.

This Act reverses a policy explained in Public Document 99-48 (4/2/1999), which allowed a taxpayer to claim the amount of a recycling tax credit that was not claimed in the year it was earned, but required the taxpayer to reduce the carryover amount by the amount of credit that could have been claimed in a prior year but was not claimed. This situation occurred because the recycling credit and many other credits must be reported on the return for the year in which the credit was earned in order to establish the existence of any credit to carry over to other years.

Sunset Date

The Land Preservation Tax Credit has no expiration date.

Effective: July 1, 2011

Amended: § 58.1-512

Long-term Care Insurance Tax Credit

House Bill 1840 (Chapter 723) increases the amount of the credit an individual may claim for long-term care insurance premiums from 15 percent to 30 percent of the amount paid.

Under current law, a taxpayer is allowed to claim a credit against his or her individual income tax liability equal to 15 percent of qualified long-term care insurance premiums paid by the taxpayer during the taxable year. The total credits allowed over the life of any long-term care insurance policy cannot exceed 15 percent of the amount of premiums paid for the first 12 months of coverage.

In order for this Act to take effect, the provisions will have to be reenacted by the General Assembly during the 2012 Session.

Sunset Date

The Long-term Care Insurance Tax Credit and Preservation Tax Credit has no expiration date.

Effective: Taxable years beginning on and after January 1, 2012, provided the Act is reenacted by the General Assembly during the 2012 Session
Amended: § 58.1-339.11

Livable Home Tax Credit

House Bill 1950 (Chapter 365) makes a licensed contractor eligible for the Livable Home Tax Credit if he builds new residences or retrofits existing residences to provide visitability or improve accessibility. The Act increases the maximum credit amount from $2,000 to $5,000 for the purchase or construction of each new residential structure or unit or for retrofitting an existing residence, and it expands the carry over period from five to seven years. This Act also provides that any transactions or dealings between affiliated entities or payments to the same or different persons for the same retrofitting, renovation, or construction project, or for the purchase, construction, retrofitting, or renovation of a residential rental property will not qualify for the expanded credit.

The Livable Home Tax Credit is currently offered to taxpayers who purchase a new residence or retrofit or hire someone to retrofit an existing residence to improve accessibility and visitability. Under current law, the maximum amount of the credit is equal to $2,000 for the purchase of a new residence, or 50 percent of the costs for retrofitting an existing residence, up to $2,000, and the carry over period is five years.

In addition to these provisions, the Act divides the existing cap of $1 million for credits earned each year, reserving one-half for the purchase or construction of a new residence and the other half for the renovation of an existing residence. Any portion of the $500,000 reserved for one activity that is not used will be allocated to the remaining balance of tax credits authorized for the other activity. If the total amount of tax credits applied for exceed the amounts allocated by the Department of Housing and Community Development for the fiscal year, then the credits will be prorated and allocated to the taxpayers on a pro rata basis.

Sunset Date

The Livable Home Tax Credit has no expiration date.

Effective: Taxable years beginning on and after January 1, 2011
Amended: § 58.1-339.7

Neighborhood Assistance Act Tax Credit – Expanded to Include Trusts

House Bill 2231 (Chapter 370) expands the types of business firms eligible for tax credits under the Neighborhood Assistance Act ("NAA") to include trusts.

The NAA provides an income tax credit to business firms that make donations to neighborhood organizations for approved programs that benefit impoverished people. The credit amount for donations of cash, stock, merchandise, real estate or the rent/lease of a facility to an approved organization is equal to 40 percent of the contribution. The value of the contribution must be at least $1,000, but no more than $437,500. The credit amount for donations of professional or contracting services is equal to the salary of the employee providing the service, and the credit amount for donations of health care services is equal to the lesser of (i) the cost for similar services rendered by other providers or (ii) $125 per hour. Under the NAA, a "business firm" currently includes any corporation, partnership, electing small business, S-corporation, limited liability company, or sole proprietorship. A qualified neighborhood organization is one that is allocated funding through the Neighborhood Assistance Act Program. The Department of Social Services ("DSS") is responsible for approving the programs and allocating the tax credits to the neighborhood organizations.

Under this Act, a trust that makes a donation to an approved neighborhood organization will be eligible to receive an income tax credit.

Sunset Date

The Neighborhood Assistance Act Tax Credit is scheduled to expire for tax credits authorized after the Commonwealth's fiscal year ending June 30, 2014.

Effective: July 1, 2011
Amended: §§ 58.1-439.18 and 58.1-439.21

Neighborhood Assistance Act Tax Credit – Expanded to Include Certain Pharmacists

Senate Bill 742 (Chapter 132) expands the health care services eligible for tax credits under the Neighborhood Assistance Act ("NAA") to include pharmacists donating pharmaceutical services to patients of a nonprofit free clinic when the services are performed at the direction of an approved neighborhood organization that has received an allocation of tax credits from the Department of Social Services ("DSS"), regardless of where the services are delivered.

In addition to money and property, taxpayers may donate professional services, in order to qualify for the NAA tax credit. "Professional services" includes, but is not limited to, personal services rendered by medical doctors, dentists, architects, professional engineers, certified public accountants, attorneys-at-law, and veterinarians. In addition, health care services provided by licensed physicians, chiropractors, dentists, nurses, nurse practitioners, physician assistants, optometrists, dental hygienists, professional counselors, clinical social workers, clinical psychologists, marriage and family therapists, physical therapists, and pharmacists are also eligible for the NAA tax credit. These health care services are eligible for the tax credit when they are provided to patients of certain health care clinics operated by an organization that has received an allocation of credits from DSS, regardless of where the services are delivered.

This Act will allow pharmacists donating services to patients of a free clinic that is operated by a nonprofit organization to be eligible for the tax credit, regardless of where the services are delivered, provided that the organization has received an allocation of tax credits from DSS.

Sunset Date

The Neighborhood Assistance Act Tax Credit is scheduled to expire for tax credits authorized after the Commonwealth's fiscal year ending June 30, 2014.

Effective: July 1, 2011
Amended: § 58.1-439.22

Neighborhood Assistance Act Tax Credit – Definition of "Impoverished People"

Senate Bill 863 (Chapter 312) changes the definition of "impoverished people" for all purposes under the Neighborhood Assistance Act Tax Credit program to include individuals with family annual income that is not in excess of 200 percent of the current federal poverty guidelines.

In 2010, the General Assembly (2010 Acts of Assembly, Chapter 164, Senate Bill 633) amended the definition of "impoverished people" to mean individuals with family annual income not in excess of 200 percent of the current poverty guidelines for education proposals submitted to the Superintendent of Public Instruction requesting an allocation of tax credits. For proposals other than education proposals, impoverished people continued to mean individuals with family annual income not in excess of 150 percent of the current poverty guidelines.

This Act redefines "impoverished people" so that for education proposals and proposals other than education proposals, it means individuals with family annual income not in excess of 200 percent of the current poverty guidelines.

Sunset Date

The Neighborhood Assistance Act Tax Credit is scheduled to expire for tax credits authorized after the Commonwealth's fiscal year ending June 30, 2014.

Effective: July 1, 2011
Amended: § 58.1-439.18

Neighborhood Assistance Act Tax Credits – Extended Sunset Date

Senate Bill 1129 (Chapter 317) extends the sunset date for the authorization of tax credits allowed under the Neighborhood Assistance Act ("NAA") from July 1, 2011 to July 1, 2014.

Effective: July 1, 2011
Amended: § 58.1-439.20

Port Barge & Rail Tax Credit

House Bill 2385 (Chapter 820) and Senate Bill 1282 (Chapter 861) create an income tax credit for transporting additional containers on a barge or by rail. The amount of the credit for any international trade facility is equal to $25.00 per 20-foot equivalent unit (TEU) moved by barge or rail rather than by trucks or other motor vehicles on Virginia's highways.

The credit may be claimed by an "international trade facility," which is defined for purposes of this credit as a company that is doing business in Virginia and is engaged in port-related activities, including but not limited to warehousing, distribution, freight forwarding and handling, and goods processing; that has the sole discretion and authority to move cargo in containers originating or terminating in Virginia; that uses maritime port facilities located in Virginia; and that undertakes activities that result in utilizing a barge or rail to move cargo containers rather than using trucks or other motor vehicles on a highway.

The credit may be claimed against the individual income tax, the corporate income tax, the tax on estates and trusts, the bank franchise tax, the insurance premiums tax, and the tax on public service corporations. Any amount of credit attributable to a partnership, S-corporation, or limited liability company must be allocated to the individual partners, shareholders, or members, respectively, in proportion to their ownership or interest in the business entity.

To receive this credit, an international trade facility must apply to TAX. No more than $1.5 million in tax credits can be issued in any fiscal year. Each year, TAX will determine the allowable credit amount for the taxable year and provide a written certification of the amount allocated to each taxpayer. If applications for this credit exceed the $1.5 million cap, TAX will allocate these credits on a pro rata basis. Any credit amount not usable for the taxable year may be carried forward for five years.

TAX will issue guidelines regarding the computation and carryover of this credit, as well as criteria for international trade facilities. Among other things, these guidelines will require that an increase in barge or rail traffic be linked to a decrease in traffic on the highways, and that an international trade facility be linked to the person with an ownership interest in the cargo who controls the choice of transportation.

<u>Sunset Date</u>

The Port Barge & Rail Tax Credit is scheduled to expire for taxable years beginning on and after January 1, 2015.

Effective:	Taxable years beginning on and after January 1, 2011 but before January 1, 2015
Added:	§ 58.1-439.12:06 (as enacted. The Virginia Code Commission may renumber this section to avoid conflict with other Acts.)

Port Volume Increase Tax Credit

House Bill 2531 (Chapter 831) and Senate Bill 1481 (Chapter 872) create an individual and corporate income tax credit for taxpayers engaged in the manufacturing of goods or the distribution of manufactured goods that use Virginia port facilities and increase port cargo volume through these facilities.

To qualify for the credit, a taxpayer must generally increase its port cargo volume at Virginia port facilities in a single calendar year by five percent over its base year port cargo volume. Base year port cargo volume is equal to the total amount of net tons of noncontainerized cargo or 20-foot equivalent units (TEUs) of cargo actually transported by way of a waterborne ship or vehicle through a port facility during the 2010 calendar year. For purposes of this credit, a “port facility” includes any publicly or privately owned facility located within Virginia through which cargo is transported by way of a waterborne ship or vehicle to or from destinations outside Virginia and which handles cargo owned by third parties in addition to cargo owned by the port facility’s owner.

A taxpayer’s base year cargo volume must be at least 75 net tons of noncontainerized cargo or 10 TEUs. If a taxpayer does not ship that amount during the 2010 calendar year, its base cargo volume is measured by the initial calendar year in which it meets the requirements of 75 net tons of containerized cargo or 10 loaded

TEUs. Base year port cargo volume must be recalculated each calendar year after the initial base year. The Virginia Port Authority may waive the base year port cargo volume requirement for any taxpayer that qualifies as a major facility. For purposes of the credit, a "major facility" is defined as a new facility located in Virginia that is projected to import or export cargo through a port in excess of 25,000 TEUs in its first calendar year.

The amount of the credit is generally equal to $50 for each TEU above the base year port cargo volume. However, a qualifying major facility may apply for a credit equal to $50 for each TEU transported through a port facility during the major facility's first calendar year.

Any taxpayer claiming this credit must first submit an application to the Virginia Port Authority by March 1 of the calendar year after the taxable year in which the increase in port cargo volume occurs. The taxpayer must attach a schedule with any information requested by the Virginia Port Authority or TAX. The taxpayer may claim the amount of credit certified by the Virginia Port Authority on its income tax return. If the credit amount exceeds the taxpayer's tax liability for the taxable year, the excess amount may be carried forward for five years.

The maximum amount of tax credits is capped at $3.2 million for each calendar year. If, on March 15 of each year, the cumulative amount of tax credits requested by qualifying taxpayers for the prior year exceeds $3.2 million, the credits will be prorated among the qualifying taxpayers who requested the credit. A qualifying taxpayer is generally not permitted to receive more than $250,000 each calendar year. However, if, on March 15 of each year, the $3.2 million credit amount is not fully allocated among qualifying taxpayers, those taxpayers who have already been allocated a credit for the prior year are allowed a pro rata share of the remaining credit amount.

Any amount of credit attributable to a partnership, S-corporation, or limited liability company must be allocated to the individual partners, shareholders, or members, respectively, in proportion to their ownership interests in the business entity.

<u>Sunset Date</u>

The Port Volume Increase Tax Credit is scheduled to expire for taxable years beginning on and after January 1, 2016.

Effective:	Taxable years beginning on and after January 1, 2011 but before January 1, 2016
Added:	§ 58.1-439.12:06 (as enacted. The Virginia Code Commission may renumber this section to avoid conflict with other Acts.)

Port Shippers Tax Credits

Senate Bill 1136 (Chapter 49) creates an individual and corporate income tax credit for either capital investment in an international trade facility or increasing jobs related to an international trade facility.

To be eligible for the credit, a company must be engaged in port-related activities, including, but not limited to, warehousing, distribution, freight forwarding and handling, and goods processing. The company must also use maritime port facilities located in Virginia and transport at least 10 percent more cargo, as measured in 20-foot equivalent ("TEU") marine containers, through maritime port facilities in Virginia during the taxable year than was transported by the company through such facilities during the preceding taxable year

The amount of the credit is equal to either $3,000 per new qualified full-time employee that results from increased qualified trade activities by the taxpayer or two percent of the amount of capital investment made by the taxpayer to facilitate increased eligible trade activities. Taxpayers are permitted to elect either credit, but cannot claim both credits in the same taxable year. The amount of the credit is limited to 50 percent of the taxpayer's tax liability for the taxable year. Any unused credit amount may be carried forward for 10 years.

To receive a credit under this Act, taxpayers must first apply to TAX. No more than $250,000 in tax credits will be issued in any fiscal year. If the amount of tax credits requested exceeds $250,000, the credits will be allocated proportionately among all qualified taxpayers. TAX will determine the credit amount for the taxable year and provide a written certification to each taxpayer.

For purposes of qualifying for this credit, two or more affiliated companies are permitted to aggregate the number of jobs created for qualified full-time employees or the amount of capital investments as the result of the establishment or expansion by the individual companies.

Any amount of credit attributable to a partnership, S-corporation, or limited liability company would be allocated to the individual partners, shareholders, or members, respectively, in proportion to their ownership or interest in such business entities.

<u>Capital Investment Port Tax Credit</u>

This Act defines a "capital investment" as the amount properly chargeable to a capital account for improvements to rehabilitate or expand depreciable real property placed in service during the taxable year and the cost of machinery, tools, and equipment used by an international trade facility directly that is related to the movement of cargo and placed in service on or after January 1, 2010. Machinery, tools, and equipment do not include any of the following:

- Property for which a credit was previously granted;

- Property previously placed in service by the taxpayer, a related party, or a trade or business under common control; or

- Property previously placed in service in Virginia that has a basis in the hands of the person acquiring it, which was determined by reference to the basis of the property in the hands of the person from whom it was acquired

For purposes of the port investment tax credit, "capital investments" include expenditures associated with exterior, structural, mechanical, or electrical improvements necessary to expand or rehabilitate a building for commercial or industrial use and excavations, grading, paving, driveways, roads, sidewalks, landscaping, or other land improvements. However, "capital investments" do not include the cost of acquiring any real property or building; the cost of furnishings; any expenditure associated with appraisal, architectural, engineering, and interior design fees; loan fees, points, or capitalized interest; legal, accounting, realtor, sales and marketing, or other professional fees; closing costs, permits, user fees, zoning fees, impact fees, and inspection fees; bids, insurance, signage, utilities, bonding, copying, rent loss, or temporary facilities incurred during construction; utility hook-up or access fees; outbuildings; or the cost of any well or septic or sewer system.

Port Job Tax Credit

For purposes of the port job tax credit, this Act defines a "qualified full-time employee" as an employee filling a new, permanent full-time position in an international trade facility in Virginia. A "new, permanent full-time position" is a job of indefinite duration, created by the company as a result of the establishment or expansion of an international trade facility in the Commonwealth, requiring a minimum of 35 hours of work per week for at least 48 weeks in a calendar year. The following do not qualify as new, permanent full-time positions:

- Seasonal and temporary positions;

- Jobs created by shifting a job function from elsewhere in Virginia; and

- Positions ancillary to the principal activities performed by employees at international trade facilities

No job tax credit may be claimed under this Act for the same jobs for which a major business facility job tax credit is claimed pursuant to *Va. Code* § 58.1-439. Nor may a credit be claimed for any employee for whom a credit under this Act was previously earned by a related party or trade or business under common control.

If an employee is employed in Virginia for less than twelve full months during the credit year, the credit amount is equal to $3,000 multiplied by a fraction, the numerator of which is the number of full months that the qualified full time employee worked for the international trade facility for the year, and the denominator of which is twelve.

Under this Act, if the number of qualified full-time employees in any of the five years succeeding the credit year decreases below the average number of qualified full-time employees employed during the credit year, the credit will be recaptured by re-computing the credit which would have been earned for the original credit year using the decreased number of qualified full-time employees and subtracting the recomputed credit amount from the amount of credit previously earned. If the average number of qualifying full-time employees employed at an international trade facility falls below the amount employed by the taxpayer prior to claiming any credits in any of the five taxable years succeeding the credit year, all credits earned with respect to the international trade facility must be recaptured. Any recapture will first reduce credits earned but not yet allowed and credits allowed but carried forward before it will increase a taxpayer's tax liability.

International Trade Facilities Located in Tobacco-Dependent Localities

For taxable years beginning before January 1, 2013, the amount of the credit for facilities located in tobacco-dependent localities is increased to $6,000 per job created or four percent of qualified capital investment expenses, to the extent that money is available in the Tobacco-Dependent Localities Fund. If the amount of credits allowable for companies in tobacco-dependent localities exceeds the amount deposited in the Fund, TAX will allocate the credits on a pro rata basis.

This Act makes funds in the Tobacco-Dependent Localities Fund available to reimburse the general fund for providing such credits. All funds remaining in the Tobacco-Dependent Localities Fund will revert to the Tobacco Indemnification and Community Revitalization Fund after all eligible tax credits have been claimed for taxable years beginning before January 1, 2013.

Under this Act, TAX will promulgate guidelines, exempt from the Administrative Process Act, to establish procedures for (i) the computation, carryover, and recapture of the credits provided under this section; (ii) the establishment of criteria for (a) international trade facilities, (b) qualified full-time employees at such facilities, and (c) capital investments; and (iii) the computation, carryover, recapture, and redemption of the credit by affiliated companies.

Sunset Date

The Port Shippers Tax Credit is scheduled to expire for taxable years beginning on and after January 1, 2015.

Effective:	Taxable years beginning on and after January 1, 2011 but before January 1, 2015
Amended:	§ 58.1-439.15
Added:	§ 58.1-439.12:06 (as enacted. The Virginia Code Commission may renumber this section to avoid conflict with other Acts.)

Research and Development Expenses Tax Credit

House Bill 1447 (Chapter 742) and Senate Bill 1326 (Chapter 745) create a refundable individual or corporate income tax credit for qualified research and development expenses paid or incurred during the taxable year. The credit amount is equal to (i) 15 percent of the first $167,000 in Virginia qualified research and development expenses; or (ii) 20 percent of the first $175,000 in Virginia qualified research and development expenses if the research was conducted in conjunction with a Virginia public college or university, to the extent the expenses exceed the Virginia base amount for the taxpayer.

The Virginia base amount will have the same meaning as “base amount” that is defined in § 41 (c) of the IRC, which is the average of the qualified research expenses incurred in the four years immediately preceding the year in which the research and development credit is claimed, but will pertain to research and development conducted in Virginia only. The amount of the Virginia tax credit will be determined by using the incremental expenses for research and development conducted in Virginia that exceed the expenses for research and development that constitute the Virginia base amount.

In order for Virginia research and development expenses to be qualified for the credit, the taxpayer must demonstrate that the research and development conducted in Virginia meets the definition in § 41 (d) of the IRC, as amended. In general, this is research that is undertaken for the purpose of discovering information that is technological in nature and the application of which is intended to be useful in the development of a new or improved business component of the taxpayer.

Under these Acts, any taxpayer that is allowed a research and development expenses tax credit is not allowed to use the same expenses as the basis for claiming any other Virginia tax credit.

The total amount of tax credits available for all taxpayers who qualify is limited to $5 million for each fiscal year. If the total amount of tax credits applied for exceeds the $5 million limit, TAX will prorate the credits and allocate them to the taxpayers on a pro rata basis. In the event that the total amount of approved tax credits is less than the $5 million limit, TAX will allocate the remaining amount to the taxpayers already approved for the tax credits for the taxable year for 15 percent of the second $167,000 in Virginia qualified research expenses or 20 percent of the second $175,000 in Virginia qualified research expenses if the research was conducted in conjunction with a Virginia public college or university, to the extent the expenses exceed the Virginia base amount, on a pro rata basis.

Research and development expenses incurred or paid for research and development conducted in Virginia on human cells or tissue derived from induced abortions or from stem cells obtained from human embryos will not qualify for the credit. However, the credit is allowed for research that is conducted using stem cells other than embryonic stem cells. If the taxpayer conducts research and development in Virginia on human cells or tissue derived from induced abortions or from stem cells obtained from human embryos, then the credit for the approved research and development expenses will not be allowed to be refunded to the taxpayer.

Any credits granted to a partnership, limited liability company, or electing small business corporation (S corporation) must be allocated to the individual partners, members, or shareholders, respectively, in proportion to their ownership interests in the entities or in accordance with a written agreement entered into by the individual partners, members, or shareholders.

Under these Acts, TAX will promulgate guidelines, exempt from the Administrative Process Act, to establish procedures for applying for the tax credits and standards for determining when research and development is considered to have been conducted in Virginia. In order to determine when research and development is conducted in Virginia, TAX may consider (i) the location where the research and development are performed; (ii) the residence or business location of the taxpayer or taxpayers doing the research and development; (iii) the location where supplies used in the research and development are consumed; and (iv) any other factors that TAX deems to be relevant.

Finally, the Virginia Economic Development Partnership will be required to include in the Annual Report on Business Incentives, compiled by the Secretary of Commerce and Trade, (i) the total number of applicants approved for research and development expenses tax credits during the applicable tax year, and (ii) the total number of research and development expenses tax credits approved during the applicable tax year.

<u>Sunset Date</u>

The Research and Development Expenses Tax Credit is scheduled to expire for taxable years beginning on and after January 1, 2016.

Effective: Taxable years beginning on or after January 1, 2011, but before January 1, 2016
Added: § 58.1-439.12:06 (as enacted. The Virginia Code Commission may renumber this section to avoid conflict with other Acts.)

Telework Expenses Tax Credit

House Bill 2197 (Chapter 409) and Senate Bill 1335 (Chapter 417) create an individual and corporate income tax credit for employers who incur eligible telework expenses or conduct telework assessments. The credit amount for telework expenses will be equal to the amount of expenses incurred during the 2012 and 2013 calendar years, not to exceed $50,000 per employer. The maximum amount of expenses that can be used in determining the amount of the credit will be $1,200 per employee. The maximum credit amount for employers who conduct telework assessments will be equal to the costs of preparing the assessment, up to $20,000, and will only be allowed to be claimed one time by an employer. Eligibility criteria will be coordinated with the

Telework!VA program administered by the Department of Rail and Public Transportation.

The total aggregate amount of credits will be capped at $1 million annually in taxable years 2012 and 2013. Taxpayers will be required to apply to TAX for the credits between September 1 and October 31 of the year proceeding the taxable year for which the tax credit is to be earned. If the applications for the credit exceed the cap, the credits will be allocated to employers on a pro rata basis.

Under these Acts, in order to be eligible for either credit, the employer must not deduct the qualified expenses in any taxable year or use the same telework expenses as the basis for another Virginia credit.

Finally, any credit attributable to a partnership, electing small business corporation (S corporation), or limited liability company must be allocated to the individual partners, shareholders, or members, respectively, in proportion to their ownership or interest in such business entities.

Sunset Date

The Telework Expenses Tax Credit is scheduled to expire for taxable years beginning on and after January 1, 2014.

Effective: Taxable years beginning on and after January 1, 2012
Added: § 58.1-439.12:06 (as enacted. The Virginia Code Commission may renumber this section to avoid conflict with other Acts.)

Wineries Tax Credit

House Bill 1837 (Chapter 214) and Senate Bill 1264 (Chapter 226) create an individual and corporate income tax credit for Virginia farm wineries and vineyards equal to 25 percent of the cost of all qualified capital expenditures made in connection with the establishment of new Virginia farm wineries and vineyards and capital improvements made to existing Virginia farm wineries and vineyards.

Capital expenditures that qualify for this credit include all expenditures made by the taxpayer for the purchase and installation of barrels, bins, bottling equipment, capsuling equipment, corkers, chemicals, crushers and destemmers, dirt, fermenters, or other recognized fermentation devices, fertilizer and soil amendments, filters, grape harvesters, grape plants, hoses, irrigation equipment, labeling equipment, poles, posts, presses, pumps, refractometers, refrigeration equipment, seeders, tanks, tractors, vats, weeding and spraying equipment, and wire. However, taxpayers are not permitted to claim both this credit and a federal deduction for the same expenses under IRC § 179.

The credit may be claimed by both Virginia farm wineries that are licensed pursuant to *Va. Code* § 4.1-207 and Virginia vineyards. For purposes of the credit, a "Virginia vineyard" is defined as agricultural lands located in Virginia consisting of at least one contiguous acre dedicated to the growing of grapes that are used or are intended to be used in the production of wine by a Virginia farm winery, as well as any plants or other improvements thereon.

Any amount of credit attributable to a partnership, S-corporation, or limited liability company must be allocated to the individual partners, shareholders, or members, respectively, in proportion to their ownership or interest in the business entity.

The total amount of credits available for a calendar year cannot exceed $250,000. If applications for the credit exceed $250,000, TAX will allocate credits on a pro rata basis. Any credit amount that exceeds a taxpayer's liability for a taxable year may be carried forward for ten years.

Sunset Date

The Wineries Tax Credit has no expiration date.

Effective: Taxable years beginning on and after January 1, 2011
Added: § 58.1-339.12

Withholding Exemption for Certain Nonresident Landlords

House Bill 1611 (Chapter 766) revises provisions of the landlord-tenant laws, and also exempts a nonresident person who is part of a pass-through entity that owns and leases four or fewer dwelling units from the requirement that withholding tax be paid on the share of taxable income attributable to the property. In order to be exempt, the pass-through entity's return must disclose the name and federal taxpayer identification number for all the owners.

Current law requires pass-through entities doing business in Virginia and having taxable income derived from or connected with Virginia sources to pay a withholding tax equal to five percent of each nonresident owner's share of income from Virginia. However, current law also provides some exceptions for corporations and other nonresidents who are exempt from Virginia income tax.

Under this Act, another exception will be added for any nonresident person who is part of a pass-through entity with taxable income attributable to the ownership and lease of four or fewer dwelling units.

Effective: July 1, 2011
Amended: § 58.1-486.2 (and numerous sections unrelated to taxation)

Virginia Commercial Space Flight Authority Revenue Dedication

Senate Bill 1447 (Chapter 563) dedicates to the Virginia Commercial Space Flight Authority ("Authority") an amount estimated by TAX to equal the portion of net revenues generated by corporations that is attributable to the sale of commercial human spaceflights and commercial spaceflight training or incidental to the sale of commercial human spaceflights for fiscal years 2012 through 2015, beginning July 1, 2011. The Comptroller will transfer an amount from general fund revenues equal to the estimate to the Authority each quarter.

In order to provide the estimate of the general fund transfer to the Authority each quarter, TAX may require corporations engaged in commercial human spaceflights or commercial spaceflight training to provide quarterly reports to TAX of the revenues generated by the sale of commercial human spaceflights and commercial spaceflight training.

Under current law, taxpayers may subtract on their Virginia income tax return, any amount of gain recognized from the sale of launch services to space flight participants or launch services intended to provide individuals the training or experience of a launch, without performing an actual launch, so long as the launch services are performed in Virginia or originate from an airport or spaceport in Virginia. Taxpayers may also subtract any gain recognized as a result of resupply services contracts for delivering payload entered into with the Commercial Orbital Transportation Services division of the National Aeronautics and Space Administration or other space flight entity, so long as the launch is from an airport or spaceport in Virginia.

Effective: For fiscal years 2012 through 2015
Added: § 58.1-423

VOLUNTARY CONTRIBUTIONS OF INCOME TAX REFUNDS

Voluntary Contribution for the Office of the Secretary of Veterans Affairs and Homeland Security

House Bill 1773 (Chapter 780) establishes the Office of the Secretary of Veterans Affairs and Homeland Security with responsibility to the Governor for veteran's services and homeland preparedness and security. A number of current state entities related to veterans affairs and emergency preparedness will be moved under this new Secretary.

This Act will also add the Office of the Secretary of Veterans Affairs and Homeland Security to the list of voluntary contributions that in the future may be added to the individual income tax return. All funds received from this voluntary contribution will go the Office of the Secretary of Veterans Affairs and Homeland Security.

Effective: April 6, 2011 (This bill contained an emergency clause which made the bill in force from its passage.
Amended: § 58.1-344.3

Appearance of New Contributions on the Tax Return

In 2004, the General Assembly limited the number of qualifying organizations to 25, and required that organizations receive at least $10,000 in voluntary contributions annually for at least three consecutive years in order to continue to be included on the individual income tax return. Additional legislation in 2005 clarified the process for adding and removing voluntary contributions.

Following this statutory process, as space becomes available on the return, new voluntary contributions will be added to the individual income tax return in the order in which they were enacted. With this year's legislation, there are now eight voluntary contributions awaiting placement on the return. At this time, no organizations are scheduled to be removed from the list of voluntary contributions on the 2011 individual income tax return because the data for returns processed through the end of 2010 indicates that the current organizations have all met the $10,000 threshold.

Anticipated Placement on Returns (as space becomes available)

1) Medicare Part D Counseling Fund;

2) Community foundations;

3) Virginia Foundation for Community College Education;

4) Middle Peninsula Chesapeake Bay Public Access Authority;

5) Breast and Cervical Cancer Prevention and Treatment Fund;

6) Virginia Aquarium and Marine Science Center;

7) Virginia Capitol Preservation Foundation; and

8) The Office of the Secretary of Veterans Affairs and Homeland Security.

Set out in the table below is a summary of all of the voluntary contributions that have been removed from or added to the individual income tax return since *Va. Code* § 58.1-344.3 was amended in 2004 and 2005 to establish the current process.

Summary of Voluntary Contributions

2005: Changes Reflected on Income Tax Returns for 2005

Program / Fund	Enacted	Action	Comments
University of Virginia Center for Government Studies	1999 ch. 948	• Removed from 2005 return • First appeared on 1999 return	• § 58.1-344.3 B 11 • Failed to receive $10,000 in 2001, 2002 & 2003 • Expired with 2004 return
George Mason Law and Economics Center	1999 ch. 948	• Removed from 2005 return • First appeared on 1999 return	• § 58.1-344.3 B 12 • Failed to receive $10,000 in 2001, 2002 & 2003 • Expired with 2004 return
Virginia Foundation for the Humanities and Public Policy Fund	1999 ch. 948	• Removed from 2005 return • First appeared on 1999 return	• § 58.1-344.3 B 10 • Failed to receive $10,000 in 2001, 2002 & 2003 • Expired with 2004 return
Office of Commonwealth Preparedness	2004 ch. 649	• Added to 2005 return	• § 58.1-344.3 B 21

2006: Changes Reflected on Income Tax Returns for 2006

Program / Fund	Enacted	Action	Comments
4-H Educational Centers (4H Camp)	2001 ch. 535	• Removed from 2006 return • First appeared on 2002 return	• § 58.1-344.3 B 14 • Failed to receive $10,000 in 2002, 2003 & 2004
Virginia Transplant Council	2001 ch. 560	• Removed from 2006 return • First appeared on 2002 return	• § 58.1-344.3 B 15 • Failed to receive $10,000 in 2002, 2003 & 2004
Cancer Centers	2004 ch. 649	• Added to 2006 return	• § 58.1-344.3 B 22
Brown v. Board of Education Scholarship Program Fund	2005 ch. 860, 889	• Added to 2006 return	• § 58.1-344.3 B 23

2007: Changes Reflected on Income Tax Returns for 2007

Program / Fund	Enacted	Action	Comments
Commission for the Arts	2003 ch. 878	• Removed from 2007 return • First appeared on 2004 return	• § 58.1-344.3 B 20 • Failed to receive $10,000 in 2004 • Commission also receives contributions via checkoff for Virginia Arts Foundation
Martin Luther King, Jr. Living History and Public Policy Center Fund	2005 ch. 860, 889	• Added to 2007 return	• § 58.1-344.3 B 24

Summary of Voluntary Contributions

2008: *Changes Reflected on Income Tax Returns for 2008*

Program / Fund	Enacted	Action	Comments
Office of Commonwealth Preparedness	2004 ch. 649	• Removed from 2008 return • First appeared on 2005 return	• § 58.1-344.3 B 21 • Failed to receive $10,000 in 2005 and 2006
Jamestown-Yorktown Foundation	1999 ch. 210	• Removed from 2008 return • First appeared on 2000 return	• § 58.1-344.3 C 3 • Authorized for taxable years beginning before January 1, 2008
Virginia Caregivers Grant Fund	2005 ch. 860, 889	• Added to 2008 return	• § 58.1-344.3 B 25
Virginia Military Family Relief Fund	2006 ch. 103, 479	• Added to 2008 return	• § 58.1-344.3 C 8

2009: *Changes Reflected on Income Tax Returns for 2009*

Program / Fund	Enacted	Action	Comments
Brown v. Board of Education Scholarship Program Fund	2005 ch. 860, 889	• Removed from 2009 return • First appeared on 2006 return	• § 58.1-344.3 B 23 • Failed to receive $10,000 in 2006, 2007 and 2008
Virginia Caregivers Grant Fund	2005 ch. 860, 889	• Removed from 2009 return • First appeared on 2008 return	• § 58.1-344.3 B 25 • Program not funded in FY 2009 • Removed at suggestion by DSS
Public library foundations	2007 ch. 70	• Added to 2009 return	• § 58.1-344.3 B 26
Celebrating Special Children, Inc.	2007 ch. 70	• Added to 2009 return	• § 58.1-344.3 B 27

2010: *No Changes Made to Income Tax Returns for 2010*

2011: *No Changes Are Scheduled to Be Made to Income Tax Returns for 2011*

INSURANCE PREMIUMS TAX

Administration of Insurance Premiums Tax

Senate Bill 1124 (Chapter 850) transfers the administration of the insurance premiums tax from the State Corporation Commission (SCC) to TAX.

Responsibilities transferred to TAX under this Act include the processing of tax returns; the handling of related payments and billing; customer service functions; and all collections and auditing duties. Additionally, TAX will administer the retaliatory cost assessment on certain foreign insurance companies, as well as oversee the retaliatory costs tax credit for domestic insurance companies. TAX will also be responsible for submitting an annual premium differential report to the Department of Medical Assistance Services.

The SCC will continue to be responsible for the licensing of insurance companies. In the event that a taxpayer fails to pay the insurance premiums tax, the SCC will be permitted to suspend or revoke the insurer's license upon notification from TAX. The SCC will continue to administer the annual maintenance fund assessment, as well as assessments for the Fire Programs Fund, the Dam Safety, Flood Prevention and Protection Assistance Fund, the program to reduce losses from motor vehicle thefts, and the program to reduce losses from insurance fraud.

To comply with a recently enacted federal law, this Act requires that licensed surplus lines brokers make payments based on the direct gross premium income derived from Virginia policyholders and that every surplus lines broker report the direct gross premium income derived from Virginia policyholders by March 1 of each year. A fine of $50 per day is imposed for the failure of a surplus lines broker to file this report and a payment penalty equal to 10 percent of the tax and interest due applies if the tax is not paid by March 1. This Act also requires that surplus lines brokers pay an annual maintenance fund assessment and any related penalties.

Because the sharing of information between the SCC and TAX is essential to the effective administration of the insurance premiums tax, this Act allows TAX and the SCC to exchange information.

Effective:	Taxable years beginning on and after January 1, 2013; certain provisions related to surplus lines brokers are effective July 1, 2011
Amended:	§§ 32.1-352; 38.2-1026; 38.2-1611.1; 38.2-1709; 38.2-4809; 58.1-435; 58.1-2500; 58.1-2503 through 58.1-2508; 58.1-2510; 58.1-2520; 58.1-2521; 58.1-2522; 58.1-2525; 58.1-2526; 58.1-2528; 58.1-2531; and 59.1-280
Added:	§§ 38.2-4809.1; 38.2-4816; 58.1-2532; and 58.1-2533

Retaliatory Costs Tax Credit

House Bill 2335 (Chapter 817) and Senate Bill 1359 (Chapter 863) increase the maximum annual retaliatory tax credit refund amount for certain insurance companies and limit the amount of the credit for certain other insurance companies.

Virginia grants a credit against its insurance premiums license tax for retaliatory cost assessments imposed on Virginia insurance companies by other states. The credit is generally equal to the amount of retaliatory costs paid to other states. However, the amount of the credit for qualified companies that did not receive a credit for the 2000 taxable year is limited to 60 percent of the retaliatory costs paid to other states.

Any unused credits, including credits carried forward from previous years, may generally be refunded in an amount up to $800,000. However, these Acts increase the refund amount for qualified companies that received a credit in taxable year 2000 from $1.6 million (set by 2010 Acts, ch. 874, § 3-5.02) to $7 million for taxable years beginning on and after January 1, 2011. All refunds will be made after July 1 following the filing of the refund application.

These Acts also allow taxpayers to carry forward any unused credits until the entire credit amount is used, rather than allowing a ten-year carryforward.

Effective: July 1, 2011; however
(i) the increased refund amount is effective for taxable years beginning on and after January 1, 2011; and
(ii) the limitation of the credit to $800,000 for qualified companies that did not receive a credit for the 2000 taxable year is effective for license years beginning on and after July 1, 2006 and for taxable years ending on and after December 31, 2006, consistent with a similar limitation that has been in § 3-5.02 of the Appropriations Acts since 2006.

Amended: § 58.1-2510

RETAIL SALES AND USE TAX

Accelerated Sales Tax

House Bill 1500 (Chapter 890), Item § 3-5.08 increases the annual threshold for dealers and direct payment permit holders ("Dealers") to make accelerated sales tax payments from $1 million of taxable sales and/or purchases to $5.4 million of taxable sales and/or purchases. Dealers with taxable sales and/or purchases exceeding the threshold are currently required to make a payment in June equal to 90 percent of his Retail Sales and Use Tax liability for June of the previous year. This change begins with the tax payment that would be remitted on or before June 25, 2011, if the payment is made by other than electronic transfer, and by June 30, 2011, if payments are made by electronic fund transfer. Affected Dealers will be entitled to take a credit for this amount on the return for June of the current year due July 20. TAX will notify all affected Dealers and provide them with payment instructions and a payment voucher for the additional payment.

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

With the exception of revenues attributable to the local Retail Sales and Use Tax imposed at the rate of 1 percent, all revenues collected from the accelerated sales tax payment will be considered general fund revenue. If the Governor determines on July 31 of each year that funds are available to distribute the state Retail Sales and Use Tax revenue in accordance with §§ 58.1-638 and 58.1-638.1, he shall direct the State Comptroller to make such allocation.

Effective: For the Accelerated Sales Tax Payment due June 2011

Agricultural Produce and Eggs Sold at Farmers Markets Exempt

House Bill 1942 (Chapter 466) provides an exemption from the Retail Sales and Use Tax for agricultural produce and eggs when such items are raised and sold by an individual at retail in local farmers markets and at roadside stands, provided that the annual income from such sales by the agricultural or egg producer do not exceed $1,000. The Act also exempts from the litter tax individuals who qualify for this exemption, provided that the container the producer provides to hold purchased items has been previously used.

Under current law, the Retail Sales and Use Tax generally applies to regular or recurring sales of farm products by farmers or peddlers or at a public market, roadside stand, farm, or any other place. Wholesale sales, including those made by farmers are exempt. Likewise, the retail sale of eggs is subject to the sales tax in Virginia. As with other retailers, a farmer or egg producer regularly engaged in selling tangible personal property at retail must register as a dealer and collect and remit the Retail Sales and Use Tax due on retail sales.

Currently, the Retail Sales and Use Tax is imposed at a reduced rate of 2½ percent for food purchased for home consumption. Generally, this term includes most staple grocery food items and cold prepared foods packaged for home distribution. Farmers markets, supermarkets, and specialty meat and produce stores are among the list of retailers that are generally authorized to charge the reduced sales tax rate on sales of eligible food and beverages.

Virginia also imposes an excise tax on eggs purchased or sold for use or consumption in Virginia. The excise tax is imposed at a rate of 5 cents per 30-dozen case, or, if the eggs are purchased or sold in other than shell form, 11 cents per 100 pounds of liquid eggs or liquid equivalent. The excise tax is levied only once. There is an exemption for any person selling less than 500 cases of 30 dozen eggs per year.

Virginia also imposes an annual litter tax on manufacturers, wholesalers, distributors and retailers of certain products, including “groceries,” at a rate of $10 per establishment, from which business is conducted. An additional litter tax of $15 per establishment is imposed on manufacturers, wholesalers, distributors, and retailers of groceries, soft drinks, carbonated waters, beer, and other malt beverages. TAX has interpreted groceries to include agricultural and dairy products.

Effective: July 1, 2011
Amended: §§ 58.1-609.2 and 58.1-1707

Auditor of Public Accounts to Review Sales and Use Tax Distribution

Senate Bill 1271 (Chapter 614) requires the Auditor of Public Accounts to perform a review of the collection and distribution of the Retail Sales and Use Tax, focusing on local retail sales and use taxes, as part of his annual audit of TAX. The Auditor must subsequently issue a report to the Chairmen of the House Committee on Appropriations, the House Committee on Finance, the Senate Committee on Finance, and the Tax Commissioner. Specifically, the Act requires that, for fiscal years ending June 30, 2011, and June 30, 2012, the Auditor review:

- TAX’s policies and procedures for collecting and distributing the local retail sales and use tax;

- The procedures employed by local officials to identify entities that have not paid retail sales and use taxes, and how TAX could coordinate, assist, or work with local officials to collect and accurately distribute these collections; and

- o TAX's coordination and work with local officials to determine how, together, they can enhance the collections and accuracy of distribution of local retail sales and use taxes.

Under the Act, the Auditor must also evaluate the audits performed by TAX on retail sales and use tax collection and distribution, evaluate TAX's procedures for identifying the proper county or city for distributions of local retail sales and use taxes, and make recommendations to improve TAX's and the local officials' policies and procedures for the collection and distribution of retail sales and use taxes.

The Act also mandates that the Auditor recommend annual benchmarks for evaluating the effectiveness of TAX's local retail sales and use tax collection and distribution process, beginning with the Fiscal Year ending June 30, 2013, and distribute such recommendations to the Chairmen of the House Committees on Appropriations and Finance, the Senate Committee on Finance, and the Tax Commissioner.

Effective: July 1, 2011
Amended: § 30-133.2

Bank Security System Installers Treated as Retailers

House Bill 1524 (Chapter 360) provides that businesses primarily engaged in the furnishing and installation of tangible personal property that provides electronic or physical security on real property used by financial institutions shall be treated as retailers of such property for the purpose of the Retail Sales and Use Tax. As a retailer, each business is required to collect the tax from purchasers, rather than paying the tax on its purchase of the material, even in situations in which such property is installed on real estate that is not for the use of a financial institution. Qualifying businesses must, therefore, give their suppliers a resale exemption certificate (Form ST-10) when making purchases of such items as vaults, safe deposit boxes, vault lockers, electronic security systems, digital video systems, card access systems, and similar equipment.

Currently, sellers and installers of tangible personal property that becomes real property after installation, are generally treated as contractors. As such, they pay tax on their purchases of tangible personal property because these purchases are deemed to be for the ultimate consumer. However, the law makes an exception for retailers who sell and install certain specified items, including fences, venetian blinds, window shades, awnings, storm windows and doors, floor coverings, cabinets, countertops, kitchen equipment, window air conditioning units, or other like or comparable items. These sellers and installers are deemed retailers and are authorized to collect Retail Sales and Use Tax from their customers on the sale of these items, provided they maintain a retail or wholesale place of business and an inventory of the items set forth above, and provided they perform installation as part of or incidental to the sale of the applicable items. If the business does not meet all three requirements of a retailer, as set forth above, it is deemed a contractor and must pay the sales tax on such items at the time of purchase or accrue use tax, even if it is making sales of fences, venetian blinds, or any of the items separately identified above.

Effective: July 1, 2011
Amended: § 58.1-610

Commercial Watercraft Fuel Exemption Expanded

Senate Bill 1137 (Chapter 165) broadens the definition of "commercial watercraft" for the purposes of the Retail Sales and Use Tax exemption for fuels used in a commercial watercraft. The Act provides that "commercial watercraft" includes watercraft owned by a private business and used in the conduct of its own business or operations, including but not limited to the transport of persons or property.

Under current law, "commercial watercraft" is defined as watercraft employed in the business of commercial fishing, transporting persons or property for compensation or hire, or any other trade or business unless the watercraft is used in an activity of a type generally considered entertainment, amusement, or recreation.

The Retail Sales and Use Tax is imposed on every retail sale of fuel unless the fuel is subject to the Virginia Fuels Tax, or another Retail Sales and Use Tax exemption applies. Motor fuel and alternative fuel sold for use in a commercial watercraft are exempt from the Retail Sales and Use Tax, even if the Virginia Fuels Tax has been refunded to the purchaser.

Effective: July 1, 2011
Amended: §§ 58.1-609.1 and 58.1-2201

Drilling Equipment Exemption Sunset Date Extended

Senate Bill 1343 (Chapter 183) extends the sunset date for the exemption from the Retail Sales and Use Tax for machinery, tools, and equipment used in the extraction of natural gas or oil from July 1, 2011 to July 1, 2016.

Virginia provides an exemption from the Retail Sales and Use Tax for raw materials, fuel, power, energy, supplies, machinery or tools or repair parts or replacement parts used directly in the drilling, extraction, or processing of natural gas or oil and the reclamation of the well area. The law defines “natural gas” as gas, natural gas, and coalbed methane gas. This exemption is only available if the preponderance of their use is directly in the drilling, extraction, refining, or processing of natural gas or oil for sale or resale, or in well area reclamation activities required by state or federal law. The exemption was enacted in 1994, with an original sunset date of June 30, 1996, which has since been extended on four separate occasions.

Effective: July 1, 2011
Amended: § 58.1-609.3

Entitlement to Certain Sales Tax Revenues Expanded to Include Certain Hotels

House Bill 2419 (Chapter 274) expands the types of qualifying public facilities for which designated municipalities may issue bonds that are eligible to be repaid from certain Retail Sales and Use Tax revenues generated by such facilities. The definition is expanded to include any hotel that is adjacent to a convention center owned by a public entity, where the hotel owner enters into a public-private partnership whereby the locality contributes infrastructure, real property, or conference space. The Act also extends the time period for which bonds that are eligible to be repaid can be issued to on or after January 1, 2011, but before July 1, 2015. The Act is intended to allow the City of Virginia Beach flexibility to qualify for the public facilities designation, which it originally obtained under 2009 legislation.

Under Virginia law, sales tax revenue attributable to sales in new or substantially and significantly renovated or expanded public facilities can be transferred back to municipalities to pay the costs of the bonds issued to finance these facilities. Qualifying public facilities include auditoriums, coliseums, convention centers, conference centers, and certain hotels and sports facilities located in the Cities of Hampton, Newport News, Norfolk, Portsmouth, Richmond, Roanoke, Salem, Staunton, or Suffolk.

The sales tax revenues generated from all transactions taking place in the applicable public facilities, such as concessionaire, vending machine, and merchandise sales, are transferred to the municipality. The locality is entitled to the funds to pay the costs of the bonds for the lifetime of the bonds, but not beyond 35 years, and such revenue must be applied to the repayment of the bonds. No remittance is made until construction of the facility is complete.

Effective: July 1, 2011
Amended: § 58.1-608.3

Local Commissioners May Register Taxpayers for Retail Sales and Use Tax

House Bill 2183 (Chapter 663) and Senate Bill 1226 (Chapter 674) authorize local commissioners of the revenue to elect to allow dealers seeking to register for the general Retail Sales and Use Tax and out-of-state contractors who are subject to the special use tax in Virginia the option of registering with the local commissioner of the revenue, rather than registering with the Tax Commissioner. The local commissioner must follow the guidelines, rules, or procedures set forth by the Tax Commissioner in providing these services.

The Act permits local commissioners of the revenue to register individuals who wish to register for the special state use tax as well as the general Retail Sales and Use Tax. The special state use tax is imposed on the storage or use of all motor vehicles, machinery, tools, or other equipment brought into Virginia for use in construction contracts. The special use tax does not apply to articles purchased in a state that does not impose a similar tax upon Virginia contractors. Current law requires that the owner or lessee of such property must register with the Tax Commissioner before such property is brought into Virginia, and must subsequently file quarterly reports and remit any taxes due.

The applications to register for the Retail Sales and Use Tax will remain the same, whether completed with the local commissioner of the revenue or the Tax Commissioner, and must set forth the name of the business, the location of the place or places of business, and any other information the Tax Commissioner deems necessary. Engaging in business as a dealer in Virginia without obtaining a certificate of registration or after a certificate of registration has been suspended or revoked continues to be a Class 2 misdemeanor under the Act.

Effective: July 1, 2011
Amended: §§ 58.1-604.2 and 58.1-613

Space Facilities Exemption Sunset Date Removed

Senate Bill 965 (Chapter 286) removes the July 1, 2011 sunset date for the Retail Sales and Use Tax exemption for space facilities, space propulsion systems, satellites, space vehicles, space stations, and related items used to conduct "spaceport activities."

Virginia law provides an exemption from the Retail Sales and Use Tax for the sale, lease, use, storage, consumption or distribution of various types of tangible personal property used to conduct spaceport activities. The exemption includes items such as orbital or suborbital space facilities, space propulsion systems, space vehicles, satellites, space stations, and property contained in these items, as well as fuel, machinery and equipment used exclusively for spaceport activities. The sale of goods and services provided to operate and maintain launch facilities, launch equipment, payload processing facilities, and payload processing equipment is also exempt, provided these items are used to conduct spaceport activities.

Effective: July 1, 2011
Amended: § 58.1-609.3

Tourism Zone Project Revenue Dedication

House Bill 2285 and Senate Bill 1193 (Chapters 814 and 646) dedicate 1 percent of the state sales tax revenues generated by an authorized tourism project to outstanding debt for the project if the locality also directs local tax revenues to the project.

A locality that has established a tourism plan as determined by guidelines set forth by the Virginia Tourism Authority and has an authorized tourism project may direct at least 1 percent of the local sales tax revenues, or an equivalent amount of other local tax revenues, generated by transactions taking place on the premises of the tourism project. The authorized tourism project must have been adopted by ordinance to meet a deficiency identified in the tourism plan. The revenues must be directed to outstanding debt used to construct and equip the project to assist the developer with a gap between expected development costs and available debt and equity capital.

If such an ordinance is adopted by the locality, the project is also entitled to 1 percent of the state sales tax revenues generated by transactions taking place on the premises of the tourism project from discretionary general fund revenues to apply in the same manner until the gap is paid or refinanced.

Prior to any entitlement of tax revenues, the owner of the project must i) have a minimum of 80 percent of funding for the project in place through debt or equity, ii) enter into a performance agreement with the local economic development authority or similar local or regional political subdivision, and iii) enter into an agreement to pay an access fee. The access fee would be the equivalent to 1 percent of the sales and use tax revenue generated and returned to the project. Both the access fee and tax revenues would be used to pay the debt service required to finance the project. In the event that the sales tax entitlement and the access fee exceeds any annual debt service required to finance the construction of the tourism project, such excess would be held in an account dedicated for the project until the debt is paid in full.

Under current law, localities are authorized to establish, by ordinance, one or more tourism zones. Localities may provide tax incentives within tourism zones for up to 20 years including, but not limited to 1) reduction of permit fees, 2) reduction of user fees and 3) reduction of any type of gross receipts tax. Localities are also 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 and 4) any other incentive. The establishment of a tourism zone does not preclude the area from also being designated by the state as an enterprise zone.

Effective: July 1, 2011
Added: § 58.1-3851.1

Tire Recycling Fee to be Collected by Certain Tire Installers

Senate Bill 1431 (Chapter 649) imposes the tire recycling fee on individuals who perform installation of tires in Virginia pursuant to an agreement with a person who makes a retail sale of such tires, but does not collect the tax. Thus, the Act reaches in-state tire installers who have contractual agreements with out-of-state tire retailers that do not have nexus with the state of Virginia.

Every retailer of tires in Virginia is subject to the tire recycling fee, at a rate of $1.00 for each new tire sold. The rate is scheduled to be reduced to $0.50 per tire on July 1, 2011. “Retailer of tires” is defined to mean any person engaged in the business of making retail sales of tires, whether new or used, in Virginia.

Effective: July 1, 2011
Amended: § 58.1-640

TOBACCO PRODUCTS TAX

Reinstatement of Dealer Discount

House Bill 1500 (Chapter 890), Item § 3-5.09 reinstates the two percent dealer compensation for the Tobacco Products Tax beginning with the June 2011 return due July 20, 2011.

In the 2010 General Assembly Session, the dealer discounts for the Tire Fee, the Communications Sales and Use Tax, the landline E-911 Tax, and the Tobacco Products Tax were suspended beginning with the June return due July 20, 2010. The Retail Sales and Use Tax dealer discount was also suspended for dealers required to remit the Retail Sales and Use Tax by electronic funds transfer, and reduced for other dealers. The Tobacco Products Tax is remitted monthly by each distributor to TAX when the distributor files his Form TT-8, Virginia Tobacco Products Tax Return.

Effective: For the June 2011 return

AIRCRAFT SALES AND USE TAX

Exemptions for Certain Aircraft

House Bill 2221 and Senate Bill 1188 (Chapters 492 and 443) provide an exemption from the Aircraft Sales and Use Tax for aircraft sold or leased by certain companies and expand the exemption for aircraft removed from the Commonwealth within 60 days of purchase.

The Acts provide an exemption from the Aircraft Sales and Use Tax beginning July 1, 2011 and ending December 31, 2014 for any aircraft sold or leased by a qualified company that is an aviation-related company, limited liability company, partnership, or a combination of such entities that have a common ownership interest. In order to be eligible for the exemption, the qualified company must i) be headquartered in the Commonwealth, ii) make a new capital investment of at least $4 million in aviation-related real estate and real estate improvements in the Commonwealth related to public-use airports between January 1, 2010 and December 31, 2014, iii) create at least 50 new jobs between January 1, 2010 and December 31, 2014 paying at least one and a half times the prevailing average wage in the locality in which the jobs are located, and iv) own or use aircraft not previously subject to the

Virginia aircraft sales and use tax that are primarily used for intrastate, interstate, or foreign commerce. The investment and jobs are required to be made in accordance with a memorandum of understanding with the Virginia Economic Development Partnership entered into on or before December 31, 2014. Persons qualifying for the exemption are also entitled to a refund for any aircraft sales and use tax paid between January 1, 2011, and before July 1, 2011.

Under current law, the aircraft sales and use tax is generally imposed at the rate of 2 percent on the retail sale of every aircraft sold in Virginia and upon the use in Virginia of any aircraft required to be licensed by the Department of Aviation. All aircraft owned by residents of the Commonwealth or owned by nonresidents, if they are based in Virginia more than 60 days in a 12-month period, are required to be licensed. Aircraft sold in Virginia but removed within 60 days are not subject to the licensure requirement or subject to the tax.

The Acts also exempt aircraft sold in the Commonwealth and registered outside of the Commonwealth from the aircraft sales and use tax so long as the aircraft is removed from the Commonwealth within 60 days of the date of purchase on the Bill of Sale. If the aircraft is removed within 60 days of the date of purchase, the time between the date of purchase and the removal of the aircraft will not be counted for purposes of determining whether an aircraft is required to be licensed in the Commonwealth.

Effective: July 1, 2011
Amended: § 58.1-1505

COMMUNICATIONS SALES AND USE TAX

Local Distributions from the Communications Sales and Use Tax

House Bill 1941 (Chapter 364) increases Lancaster County's monthly distribution from the Communications Sales and Use Tax Trust Fund ("Fund") beginning July 1, 2011, to the distribution due to Lancaster County if, in addition to the revenues Lancaster County received from telecommunications and television cable taxes in Fiscal Year 2006, it had received $270,497 in local consumer utility taxes on telephone service in Fiscal Year 2006.

Under 2006 House Bill 568 (*Acts of Assembly* 2006, Chapter 780), revenue from the Communications Sales and Use Tax, the Landline E-911 Tax and the Cable Television Rights-of-Way Fee (the “Communications Taxes”) is collected and remitted monthly by communications services providers to TAX and deposited into a non-reverting fund known as the Communications Sales and Use Tax Trust Fund (the “Fund”). After transferring moneys from the Fund to TAX to pay for the direct costs of administering the Communications Taxes, the moneys in the Fund are allocated and distributed to localities after payment (1) to the Department of Deaf and Hard-of-Hearing to fund the telephone relay service center and (2) any franchise fee amount due to localities in accordance with any cable television franchise agreements in effect as of January 1, 2007.

Under current law, a locality may request a ruling from TAX adjusting its distribution from the Fund so long as the aggregate redistribution from all other localities does not exceed $100,000. A locality is required to present evidence to TAX that it collected telecommunications or television cable funds in Fiscal Year 2006 from repealed local communications taxes and fees before obtaining a ruling from TAX.

Effective: July 1, 2011
Amended: § 58.1-662

WIRELESS E-911 SURCHARGE

Transfer of the Administration of the Wireless E-911 Surcharge

Senate Bill 1123 (Chapter 162) transfers the collection of the wireless E-911 surcharge from the Wireless E-911 Services Board ("Board") to TAX. Under current law, each wireless service carrier and reseller must collect a surcharge of $0.75 per month on each wireless service number of its postpaid customers through its regular billing and the revenues are deposited into the Wireless E-911 Fund. Wireless service carriers and resellers may retain an amount equal to three percent of the amount collected as dealer compensation.

TAX administers the landline E-911 tax paid by landline carriers, which is remitted using the Communications Sales and Use Tax return. Effective January 1, 2011, a prepaid wireless E-911 fee of $0.50 is imposed on each retail purchase of prepaid wireless calling service. The prepaid wireless E-911 fee is administered by TAX and collected by retail merchants at the point of sale and separately stated on the invoice or receipt or otherwise disclosed to the customer. Prior to January 1, 2011, prepaid wireless calling service was subject to the wireless E-911 surcharge collected by carriers and resellers and remitted to the Board.

The Board is responsible for allocating the wireless E-911 funds and managing moneys appropriated for emergency telecommunication services in local jurisdictions. After the Board subtracts sufficient funds for various appropriations provided in the Appropriations Act, the Board provides payments to wireless service providers based on their estimated allowable wireless E-911 costs, distributes revenues based on a formula to localities for the wireless E-911 costs of their public safety answering point operators, and oversees a grant program.

Effective: July 1, 2011
Amended: § 56-484.17

Definition of "Wireless E-911 Surcharge"

House Bill 2184 (Chapter 120) requires wireless service carriers and resellers to bill the wireless E-911 surcharge of $0.75 per month on each mobile telecommunications service device capable of two-way interactive voice communication of its postpaid customers.

Under current law, wireless service carriers and resellers are required to bill the wireless E-911 surcharge of $0.75 per month on each mobile telecommunications service number of a customer with a place of primary use in Virginia. The surcharge is currently administered by the Wireless E-911 Services Board ("Board"), and the revenues are deposited into the Wireless E-911 Fund. Effective July 1, 2011, the collection of the wireless E-911 surcharge will be transferred from the Wireless E-911 Services Board to TAX.

TAX administers the landline E-911 tax paid by landline carriers, which is remitted using the Communications Sales and Use Tax return. Effective January 1, 2011, a prepaid wireless E-911 fee of $0.50 is imposed on each retail purchase of prepaid wireless calling service. The prepaid wireless E-911 fee is administered by TAX and collected by retail merchants at the point of sale and separately stated on the invoice or receipt or otherwise disclosed to the customer. Prior to January 1, 2011, prepaid wireless calling service was subject to the wireless E-911 surcharge collected by carriers and resellers and remitted to the Board.

Effective: July 1, 2011
Amended: § 56-484.12

Distributions of the Wireless E-911 Fund

Senate Bill 788 (Chapter 630) requires the Wireless E-911 Services Board ("Board") to recalculate the distribution percentage of the Wireless E-911 Fund for each public safety answering point annually before the start of each fiscal year based on the cost and call load data from one or more of the previous fiscal years. Currently, the board calculates the distribution formula each October based on the data from the prior year.

Under current law, wireless service carriers and resellers are required to bill the wireless E-911 surcharge of $0.75 per month on each mobile telecommunications service number of a customer with a place of primary use in Virginia. The surcharge is currently administered by the Board, and the revenues are deposited into the Wireless E-911 Fund. Effective July 1, 2011, the collection of the wireless E-911 surcharge will be transferred from the Wireless E-911 Services Board to TAX.

Effective: July 1, 2011
Amended: § 56-484.17

MOTOR VEHICLE RENTAL TAX

Transfer of the Administration of the Motor Vehicle Rental Tax

House Bill 1798 and Senate Bill 1132 (Chapters 405 and 639) transfer the administration and collection of the Motor Vehicle Rental Tax from the Department of Motor Vehicles ("DMV") to TAX.

Under current law, DMV administers the Motor Vehicle Rental Taxes and Fee. The Motor Vehicle Rental Tax is imposed on motor vehicles with a gross vehicle weight rating or gross combined weight rating of 26,000 pounds or less at a rate of 4 percent of the gross proceeds. An additional motor vehicle rental tax is imposed on the rental of every motor vehicle regardless of the weight, except for motorcycles and manufactured homes, at a rate of 4 percent of the gross proceeds. A 2 percent rental fee is also levied on the gross proceeds from the rental of motor vehicles, except for motorcycles and manufactured homes. Most passenger vehicles that are rented are subject to all of the taxes and fee at a combined rate of 10 percent of the gross proceeds.

The revenues from the vehicle rental tax of 4 percent that is imposed on motor vehicles with a gross vehicle weight rating or gross combined weight rating of 26,000 pounds or less, approximately $30 million annually, are dedicated to the Rail Enhancement Fund. The revenues from the additional vehicle rental tax imposed on the rental of every motor vehicle at the rate of 4 percent, approximately $34 million annually, are distributed quarterly to the city, town, or county where the vehicle was delivered to the rentee. The revenues from the 2 percent vehicle rental fee, approximately $15 million annually, are deposited to the general fund.

Effective:	July 1, 2012
Amended:	§§ 33.1-221.1:1.1, 46.2-711, 46.2-755, 58.1-604.1, 58.1-2401 through 58.1-2404, 58.1-2411, 58.1-2419, 58.1-2420, 58.1-2421, 58.1-2424, 58.1-2425, and 58.1-3510
Added:	§§ 58.1-1734 through 58.1-1741
Repealed:	§§ 58.1-2407 through 58.1-2410 and 58.1-2412 through 58.1-2417

LOCAL TAX

LEGISLATION

GENERAL PROVISIONS

Publication of Information by Local Governments

House Bill 2155 and Senate Bill 844 (Chapters 485 and 597) authorize local governments to publish certain information relating to warrants paid for the locality by the local treasurer. Under the provisions of these acts, local governments would be authorized to publish aggregated information relating to warrants paid, classified by expenditure item, recipient, date, or disbursement. Localities would be prohibited from publishing any information that is protected under federal or state law, including but not limited to confidential tax records.

Under current law, local treasurers must keep a record of all warrants that are legally drawn by the local governing bodies and presented for payment by the local treasurer. Each entry shall contain the amount of the warrant, the number of the warrant, in whose favor the warrant is drawn and the date on which the warrant is issued. Warrants must be paid in the order presented out of the fund drawn upon. Local treasurers are only authorized to release information contained in the warrants in order to establish the status of a claim previously reported as having been paid when a person legally entitled to the funds presents evidence that a previously submitted claim has not been paid.

Effective: July 1, 2011
Amended: § 58.1-3131

COLLECTION OF LOCAL TAXES

Collection of Delinquent Taxes by Private Collection Agents

House Bill 1425 (Chapter 383) reduces the period of delinquency before which a local treasurer may use a private collection agent to collect delinquent local taxes from six months to three months. This Act also allows local treasurers to refer delinquent real estate taxes to private collection agents.

Under current law, local treasurers, with the approval of the local governing body, may employ the services of private collection agents to assist with the collection of any local taxes, other than real estate taxes, that remain delinquent for a period of six months or more and for which the statute of limitations has not yet run. This Act decreases the required period of delinquency from six months to three months and allows local treasurers to refer delinquent real estate taxes to private collection agents for collection, in addition to other local taxes that may currently be referred to private collection agents.

Effective: July 1, 2011
Amended: § 58.1-3919.1

BUSINESS, PROFESSIONAL & OCCUPATIONAL LICENSE TAX

Local Option to Impose Based on Virginia Taxable Income

House Bill 1437 (Chapter 685) allows localities the option to impose the Business, Professional and Occupational License ("BPOL") tax on either the gross receipts or the Virginia taxable income of a business, except for certain public service corporations. The BPOL tax on i) telephone and telegraph companies, ii) water companies, and iii) heat, light and power companies (except electric suppliers, gas utilities and gas suppliers, and pipeline distribution companies) would continue to be required to be imposed at a rate not to exceed one-half of one percent of the gross receipts of such company accruing from sales to the ultimate consumer in the locality.

The Business, Professional and Occupational License (BPOL) tax is a tax on businesses for the privilege of engaging in business at a definite place of business within a Virginia locality. Under current law, the measure or basis of the BPOL tax generally is the gross receipts of the business.

Effective: July 1, 2011
Amended: § 58.1-3702

Tax Relief for Businesses Locating in a Locality

House Bill 1587 (Chapter 25) clarifies that localities, by ordinance, may provide an exemption, refund, rebate, or other relief from the Business, Professional, and Occupational License ("BPOL") Tax for a period not to exceed 2 years for businesses locating for the first time in a locality. The bill would also provide that a business would not be deemed to locate for the first time in a locality on the basis of merger, acquisition, similar business combination or a change in business form.

Effective: July 1, 2011
Amended: § 58.1-3703

Exemption for Unprofitable Businesses

Senate Bill 1408 (Chapter 188) authorizes localities for taxable years beginning on or after January 1, 2012, to exempt, by ordinance, Business, Professional, and Occupational License ("BPOL") tax or fees of any business that does not have an after-tax profit for the taxable year. The business would be required to offer its income tax return to the local commissioner of the revenue as proof. Eligibility would be determined annually, and it is the obligation of the business owner to submit the applicable income tax return.

Effective: July 1, 2011
Amended: § 58.1-3703

TRANSIENT OCCUPANCY TAX

Authorizes Madison County to Levy a Combined Transient Occupancy and Food and Beverage Tax

House Bill 1451 (Chapter 192) authorizes Madison County to levy a combined transient occupancy and food and beverage tax on the aggregate charges for rooms and meals in bed and breakfast establishments, provided such charges are not separately stated. Under the Act, Madison County may impose the tax at a maximum rate of four percent of the total amount charged for the occupancy of the room and for the food and beverages. Madison County must first approve a food and beverage tax in a referendum within the county.

Currently, counties may impose a transient occupancy tax at a maximum rate of two percent on hotels, motels, boarding houses, travel campgrounds, and other facilities offering guest rooms, unless the rooms are rented on a continuous basis by the same individual or group for 30 or more continuous days. Counties with specific statutory authority may impose an additional tax or a tax in excess of two percent.

Counties may also levy a tax on food and beverages sold for human consumption at a maximum rate of four percent of the amount charged for such food and beverages. The tax does not apply to food and beverages sold through vending machines, by nonprofit cafeterias in public schools, by nursing homes, and by hospitals. With the exception of a few specifically enumerated counties, localities may only levy this tax if it is first approved in a referendum within the county.

In 1999, legislation was enacted that authorized Rappahannock County to permit bed and breakfast establishments that provide both transient accommodations and food and beverages to combine such charges and to apply the transient occupancy and food and beverage taxes to the combined charge at a rate not exceeding four percent. Prior to enactment of this Act, besides Rappahannock County, no other counties were authorized to levy this combined transient occupancy and food and beverage tax.

Effective: July 1, 2011
Amended: § 58.1-3842

Authorizes Certain Counties to Impose Transient Occupancy Tax at Increased Rate

Two Acts authorize certain counties to impose the transient occupancy tax at a maximum rate of five percent.

House Bill 1452 (Chapter 385) adds Accomack, Brunswick, Madison and Washington Counties to the list of counties that are currently authorized to impose the transient occupancy tax at a maximum rate of five percent.

Senate Bill 984 (Chapter 606) adds Brunswick and Washington Counties to the list of counties that are currently authorized to impose the transient occupancy tax at a maximum rate of five percent.

Both Acts provide that revenues from the portion of tax in excess of two percent must be used solely for tourism or marketing of tourism.

Currently, any county may impose a transient occupancy tax at a maximum rate of two percent upon the adoption of an ordinance on hotels, motels, boarding houses, travel campgrounds, and other facilities offering guest rooms. The tax applies to rooms rented on a continuous basis by the same individual or group for 30 or more continuous days, and applies only to rooms that are intended or suitable for dwelling and sleeping. Rooms used for alternative purposes, such as banquet and meeting rooms, are not subject to the tax.

Virginia law currently identifies 38 counties that may impose a transient occupancy tax at a maximum rate of five percent. The revenues for the portion of the tax in excess of two percent must be designated and spent solely for tourism, marketing of tourism, or initiatives that attract travelers to the locality and generate tourism revenues in the locality. Several additional counties are authorized to impose additional transient occupancy taxes, at rates separately specified by statute, the funds of which are allocated to promoting tourism, business travel, and other specified projects within the counties.

Effective: July 1, 2011
Amended: § 58.1-3819

Sets forth Additional Rules for Members of the Committee of the Williamsburg Area Destination Marketing Committee

Senate Bill 1344 (Chapter 677) prohibits more than one person from the same local government, including the governing body of the locality, from serving as a member of the Williamsburg Area Destination Marketing Committee, an organization that exists to advertise the Historic Triangle Area as an overnight tourism destination. The Act also prohibits a committee member who subsequently becomes either a member of one of the local governing bodies in the Historic Triangle, or an employee of one of the local governments from serving as a member of the committee during his tenure with the local governing body or local government. In such a case, the body that made the selection must select a replacement to serve as a member of the Committee.

Currently, the Counties of James City and York are authorized to impose an additional transient occupancy tax at a maximum rate of $2 per room per night, the revenues of which are designated 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 by members of the Williamsburg Area Destination Marketing Committee of the Greater Williamsburg Chamber and Tourism.

The Committee consists of 10 members chosen by the governing bodies of the City of Williamsburg, the County of James City, and the County of York, as well as various associations, foundations, and alliances. One member is the President and Chief Executive Officer of the Virginia Tourism Authority, and serves ex-officio. In addition, the President of the Williamsburg Area Chamber of Commerce and Convention and Visitors Bureau and the Executive Director of the Williamsburg Hotel and Motel Association each serve ex officio with nonvoting privileges. With the exception of the members chosen by the governing bodies of Williamsburg, James City County, and York County, and the nonvoting members, each of these members is given one vote apiece.

Effective: July 1, 2011
Amended: § 58.1-3823

REAL PROPERTY TAX

Authorizes Localities to Appoint Two Alternate Board of Equalization Members

House Bill 1470 (Chapter 10) authorizes circuit courts to appoint up to two alternate members to serve and vote on Boards of Equalization if a member of the board is absent or abstains. The Act allows the chairman of the board to select one of the appointed alternates to serve in the absent or abstaining member's place and to vote on any proceeding in which a regular member is absent or abstains. These alternate board members must possess the same qualifications, and are given the same terms and compensation as regular members.

Under current law, circuit courts within each county or city are authorized to appoint a three- to five- member Board of Equalization, whose purpose is to hear complaints regarding a lack of uniformity of errors in acreage in a real property assessment and complaints that real property is assessed at more than fair market value. The Board may subsequently increase, decrease, or confirm assessments based on fairness. If the Board determines that an increase in the assessment amount is necessary, it must provide notice to the owner of the property and an opportunity to show cause against such an increase before the increase is applied.

Under the Act, the number of alternate members a circuit court may appoint differs depending upon the form of government under which the locality operates, and the duration of their terms differ depending upon whether the alternates are appointed to a permanent or temporary board of equalization. Localities that operate under a county manager or county executive plan of government are authorized to appoint up to two alternate members. Localities with temporary boards of equalization (other than those operating under a county manager or county executive form of government) may appoint one alternate member in the case of a three-member board and two alternate members in the case of a five-member board to serve in the absence of a regular board member. Localities with permanent boards of equalization may appoint one alternate member to serve for a two-year term in the case of a three-member board, and two alternate members (one to serve for a one-year term, and one to serve for a two-year term) in the case of a five-member board. Thereafter, alternate members for five-member boards serve for a term of three years.

Effective: July 1, 2011
Amended: §§ 58.1-3371, 58.1-3373, and 58.1-3374

Statements of Income and Expense Submitted Before Boards of Equalization

House Bill 1526 (Chapter 200) clarifies that statements of income and expense may be used in a complaint before a Board of Equalization as long as the statements are submitted to the Board of Equalization no later than the appeal filing deadline of the Board.

Circuit courts within each county or city are authorized to appoint a Board of Equalization of real estate assessments, whose purpose is to hear complaints regarding a lack of uniformity or errors in acreage in a real property assessment, and complaints that real property is assessed at more than fair market value. Once the Board hears these complaints, it is authorized to increase or decrease assessments based on fairness.

Under current law, assessors may require that the owners of income-producing real estate in the county or city subject to local taxation, except rental property of no more than four units and property being used exclusively as an owner-occupied property, furnish to the assessor statements of income and expenses attributable over a specified period of time to each such parcel of real estate. The failure of an owner to furnish such a statement bars the owner from introducing into evidence, or using in any other manner, any of the required but not furnished income and expense information in any judicial action to correct an erroneous assessment.

Effective: July 1, 2011
Amended: § 58.1-3294

Transfer of Certain Tax-Delinquent Properties to the Locality

House Bill 1532 (Chapter 688) lowers the threshold percentage of taxes and other liens, together with penalty and accumulated interest, on property from 50 percent to 35 percent of the assessed value of the parcel for real estate in the Cities of Norfolk, Richmond, Hopewell, Newport News, and Petersburg for a special commissioner to convey the property to the locality in lieu of a public sale at auction. The bill would also lower the threshold percentage if only taxes from 25 percent to 15 percent of the assessed value of the parcel for a special commissioner to convey real estate in the Cities of Norfolk, Richmond, Hopewell, Newport News, and Petersburg to the locality.

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

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

In certain instances, localities may petition the circuit court to appoint a special commissioner to convey the tax-delinquent property to the locality in lieu of the sale at public auction. In order to qualify the parcel must: 1) have delinquent real estate taxes or have a lien against the parcel for removal, repair or securing of a building or structure, removal of trash, or the cutting of grass; 2) have an assessed value of

$50,000 or less; and 3) the taxes or liens, together with penalty and accumulated interest, must exceed 50 percent of the assessed value of the parcel, or the taxes alone must exceed 25 percent of the assessed value of the parcel. In order to initiate proceedings for the appointment of a special commissioner or for the sale of the real estate, the locality must file a bill in equity to subject the real estate to the lien for the delinquent taxes.

Effective: July 1, 2011
Amended: § 58.1-3970.1

Burden of Proof and Records for Appeals of Assessments

House Bill 1588 and Senate Bill 1350 (Chapters 232 and 184) provide that, on appeal, the taxpayer has the burden of rebutting the presumption that the valuation determined by the assessor is correct and showing by a preponderance of the evidence that the property is valued at more than its fair market value.

The Acts also require the assessor in any appeal of an assessment by an owner of real property containing less than four residential units to provide written notice to the owner at least 45 days before the appeal informing him of his right to review the assessment records and to have the assessor make a physical examination of the property. The assessor has 15 days from the written request of the taxpayer in an appeal to provide such assessment records or would be required to present at the hearing: i) copies of the records, ii) testimony to explain methodologies to determine the assessed value of the property, and iii) testimony that states that the assessed value was arrived at in accordance with generally accepted appraisal practices. In appeals to a circuit court, the taxpayer would be required to make the written request for assessment records no later than 45 days prior to trial, unless otherwise ordered by the court.

Under current law, a property owner may appeal to a Board of Equalization or a circuit court seeking relief from an erroneous real property assessment. In all such cases, the taxpayer has the burden of proving that the property in question is valued at more than its fair market value, that the assessment is not uniform in its application, or that the assessment is otherwise not equalized. In order to receive relief, the taxpayer must produce substantial evidence that the valuation determined by the assessor is erroneous.

Effective: For tax years beginning on or after January 1, 2012
Amended: §§ 58.1-3331, 58.1-3379, and 58.1-3984

Exemption for Certain Veterans

House Bill 1645 and Senate Bill 987 (Chapters 769 and 840) provide the necessary statutory authorization required by the constitutional amendment to Article X, § 6 of the *Constitution of Virginia*, adopted by voters authorizing the General Assembly to exempt from taxation, for tax years beginning on or after January 1, 2011, real property that is the principal residence of a veteran (or widow or widower of a veteran) if the veteran has been determined by the United States Department of Veterans Affairs or its successor agency pursuant to federal law to have a 100 percent service-connected, permanent, and total disability. In addition, the land, not to exceed one acre, upon which the dwelling is situated, would also be exempt from taxation. However, if the locality provides for an exemption or deferral or real property taxes of more than one acre for the elderly and handicapped, the locality must also provide an exemption of the same number of acres for veterans and surviving spouses. The surviving spouse of a veteran is eligible for the exemption, so long as the death of the veteran occurs on or after January 1, 2011, the surviving spouse does not remarry, and the surviving spouse continues to occupy the real property as his principal place of residence.

The Acts also provide that the veteran or surviving spouse claiming the exemption must file with the commissioner of the revenue in which the property is located, on forms to be supplied by the locality, an affidavit or written statement setting forth the name of the veteran and spouse, if any, whether the real property is jointly owned, and certifying that the property is occupied as the veteran's principal place of residence. The veteran must also provide documentation from the U.S. Department of Veterans Affairs or its successor agency pursuant to federal law to have a 100 percent combat-related, permanent, and total disability.

Effective:	In force from passage applicable, to tax years beginning on and after January 1, 2011
Added:	§§ 58.1-3219.5 and 58.1-3219.6

Land Use Valuation in James City County

House Bill 1672 (Chapter 12) adds James City County to the list of localities permitted to enact an ordinance to exclude land lying in planned development, industrial or commercial zoning districts established prior to January 1, 1981 from its land use assessment program. The Act also permits James City County to provide that property subject to its land use assessment is no longer eligible for land use assessment and is subject to roll-back taxes at the time the zoning is changed, at the owner's request, to a more intensive nonagricultural use. However, agriculturally zoned property that is subsequently rezoned to a more intensive use which is complementary to agricultural use would not lose its eligibility, provided that the agricultural activity continues to be operated on the property and the property continues to be owned by the same owner.

Under current law, Albemarle County, Arlington County, Augusta County, Loudoun County, and Rockingham County are permitted to enact such provisions regarding zoning classifications and special land use assessments for purposes of the real property tax.

Land use valuation and taxation is intended to encourage conservation by providing tax relief to the owner of real estate devoted solely to agricultural, horticultural, forest or open-space use. Under land use taxation programs, the land dedicated to the special use is taxed at a lower rate than the rate applicable to other real property. In valuing land at its use value, the assessing officer considers only the value of the real estate based on its current use. The assessing officer does not consider the fair market value of the land at its most profitable use.

Owners of real property situated in a locality that has adopted a land-use plan and ordinance providing for use value assessment may apply to their local assessing officer for taxation of their real property on the basis of use value. Such owners must devote a minimum number of acres of real property to agricultural, horticultural, forest, or open-space use.

When the qualified use of real estate changes to a nonqualified use or is zoned for a more intensive use at the request of the owner, roll-back tax liability attaches to the land. Roll-back taxes are the difference between what real property taxes would have been had real property been assessed at fair market value compared to real property taxes based upon use value. Roll-back tax liability is computed by adding the amount of deferred taxes for the past five years and simple interest at the rate applicable to delinquent taxes. In localities that have adopted a sliding scale ordinance, the roll-back tax may be imposed for each of the tax years since the property became subject to land use taxation. Liability for roll-back taxes attaches and is paid to the treasurer only if the amount of tax due exceeds ten dollars.

Effective: July 1, 2011
Amended: § 58.1-3237.1

Separate Classification for Certain Historical Buildings

House Bill 1851 and Senate Bill 860 (Chapters 571 and 581) classify buildings listed on the Virginia Landmarks Register, not including the real estate or land on which they are located, as a separate class of real property from all other real estate and authorize localities to tax such property at a lower rate than the general class of real property, so long as the building is maintained in a condition such that it retains the characteristics for which it was listed on the Virginia Landmarks Registry.

Under current law, all real estate is generally considered to be one class of property subject to the same rate of tax. In the 2002 and 2003 General Assembly Sessions, however, separate classifications of real property were created composed of improvements to real property located in the Cities of Fairfax and Roanoke. These cities were authorized to tax improvements at a lower rate than that applicable to the land. The 2007 General Assembly session created separate classifications of real property for energy efficient buildings and for real property used for or zoned to permit commercial or industrial uses in the counties and cities embraced by the Northern

Virginia Transportation Authority and wholly embraced by the Hampton Roads metropolitan planning organization.

The Virginia Landmarks Register, established in 1966 and managed by the Virginia Department of Historic Resources, is the state's official list of properties important to Virginia's history. Similar to the National Register of Historic Places managed by the National Park Service, the Virginia Landmarks register is designed to recognize Virginia's resources and to encourage their continued preservation. The same criteria are used to evaluate resources for inclusion in each register. Owners of registered properties may donate historic preservation easements (which can reduce real estate taxes) and qualify for the state and federal historic rehabilitation tax credits.

Effective: July 1, 2011
Added: § 58.1-3221.5

Requires Localities Offering Partial Exemptions for Structures in Redevelopment Areas to Notify Property Owner of the Amount of the Assessment

House Bill 1899 (Chapter 460) and Senate Bill 785 (Chapter 423) require the local governing body of a locality in which partial exemptions for structures in redevelopment or conservation areas or rehabilitation districts are available to provide written notification to the property owner of the amount of the assessment of the property that will be exempt from real property taxation and the period of such exemption. The Acts also clarify that the exempt amount is a covenant that runs with the land for the period of the exemption, and prohibits local governing bodies from reducing that amount during the period of the exemption, unless the property owner has received written notification from the local governing body or designee that the exempt amount may be decreased during the period of the exemption.

These Acts also apply to real property in any locality in which the governing body has provided for the partial exemption from taxation of real estate on which any structure or other improvement no less than 15 years of age has undergone substantial rehabilitation, renovation, or replacement for residential use.

Under the terms of these Acts, property owners are not entitled to a refund for any taxes paid for tax years beginning prior to January 1, 2011. Thus, for tax years beginning prior to January 1, 2011, if a governing body or designee reduced the amount of the partial exemption to an amount less than the original amount of the partial exemption during the period of exemption, and did not provide written notice to the property owner that the exempt amount may be decreased during the period of the exemption, the local governing body or designee is required to reinstate the original exempt amount for tax years beginning on or after January 1, 2011, for the balance of the exemption.

Effective: Tax years beginning on or after January 1, 2011
Amended: §§ 58.1-3219.4 and 58.1-3220

Authorizes Localities to Establish Income or Financial Worth Limitations for Real Property Tax Relief for Elderly or Disabled

House Bill 2278 (Chapter 496) and Senate Bill 1073 (Chapter 438) provide the necessary statutory authorization required by the constitutional amendment to Article X, § 6(b) of the *Constitution of Virginia*, adopted by voters authorizing the General Assembly to permit local governments to establish their own income or financial worth limitations for purposes of granting property tax relief for homeowners who are 65 years of age or older, or permanently and totally disabled.

On November 2, 2010, voters approved a constitutional amendment to Article X, § 6 of the *Constitution of Virginia*, authorizing the General Assembly to permit localities to establish their own income or financial worth limitations for purposes of granting property tax relief for homeowners who are 65 years of age or older, or permanently and totally disabled. Prior to this, the *Constitution* limited the authority of the General Assembly to permit localities to provide such relief in situations where the General Assembly deemed the person to bear an extraordinary tax burden on the property in relation to his income or financial worth.

Under the terms of these Acts, if the governing body establishes an annual income limitation, the annual income must be computed by adding together the total income received during the preceding calendar year, without regard to whether a tax return is actually filed by: 1) owners of the dwelling who use it as their principal residence; 2) owners' relatives who live in the dwelling; and 3) at the option of each locality, nonrelatives of the owner who live in the dwelling, except for bona fide tenants or bona fide paid caregivers of the owner. Income is limited to only those sources of income that are subject to tax under federal income tax laws, regulations, rules, or policies.

The Acts also provide that if the governing body establishes a net financial worth limitation, net financial worth must be computed by adding together the total net financial worth, including the present value of all equitable interests, as of December 31 of the immediately preceding calendar year, of the owners, and of the spouse of any owner, of the dwelling. In addition, the Acts authorize localities that provide exemptions or deferrals pursuant to the Acts to exempt or defer the real property taxes on up to ten acres of the land on which the qualifying dwelling is situated.

In addition, the Acts provide that any applicable local ordinance that is in effect as of January 1, 2011, including any ordinance adopted pursuant to this exemption and deferral laws in effect prior to enactment of this bill, is valid. Additionally, any income or financial worth limitations included in that ordinance is deemed to have been established by the local governing body pursuant to authorization granted by the General Assembly.

Effective: Tax years beginning on or after January 1, 2011.
Amended: §§ 15.2-936, 15.2-2407, 21-118.4, 58.1-3211.1; 58.1-3212, 58.1-3213, 58.1-3215

Allows Real Estate Assessor to Require Affordable Rental Housing to Furnish a Statement of Income and Expenses

Senate Bill 784 (Chapter 137) clarifies that a real estate assessor may require an owner of real property with four or fewer residential units that is operated in whole or in part as affordable rental housing to furnish the assessor with a statement of the income and expenses attributable to the property.

In general, real estate assessors may require the owners of all income producing real property to furnish a statement of income and expenses. An exception to the general requirement is allowed for income producing property solely from the rental of no more than four dwelling units. However, this exception does not apply to property assessed as affordable rental housing.

Owners of real property operated in whole or in part as affordable rental housing are generally authorized to apply to the locality in which the property is located to have the real property assessed under special rules for affordable housing. The locality must grant the application if 1) the owner charges rents at levels that meet the locality's definition of affordable housing and 2) the real property does not have any pending building code violations at the time of the application. Under these special assessment rules, in order to determine the fair market value of real property that is operated as affordable rental housing, the real estate assessor must consider: 1) the contract rent and the impact of applicable rent restrictions; 2) the actual operating expenses and expenditures and the impact of any such additional expenses or expenditures; and 3) the restrictions on the transfer of title or other restraints on alienation of the real property. The assessor must also consider evidence presented by the property owner of other restrictions imposed by law that impact these variables.

Effective: July 1, 2011
Amended: § 58.1-3295

Classification of Improvements in Poquoson

Senate Bill 957 (Chapter 146) reclassifies improvements to real property located in the City of Poquoson as a separate class of real property. As a result of this reclassification, Poquoson would be authorized to impose a real property tax on improvements to real property at a rate of tax which is different than the rate applicable to all other real property and is not zero. The Act authorizes Poquoson to levy the real property tax on improvements after publishing a notice in a newspaper having general circulation in the locality at least seven days before the levy is made and giving the citizens an opportunity to appear before, and be heard by, the local governing body on the subject.

Article X, § 1 of the *Constitution of Virginia* authorizes the General Assembly to define and classify taxable subjects. In the 2002 General Assembly session, the City of Fairfax was granted the authorization to reclassify improvements to real property located in the City of Fairfax as a separate class of real property, effective July 1, 2003. In the 2003 General Assembly session, the City of Roanoke was also granted this authorization, effective July 1, 2004. As a result of this reclassification, the governing bodies of these cities are authorized to levy a tax on improvements to real estate at a different rate than that imposed on all other real property provided that the rate of tax on improvements is not zero, and provided the rate is equal to or lower than the rate of tax on all other real property.

Effective: July 1, 2011
Amended: § 58.1-3221.1

MISCELLANEOUS LOCAL TAXES

Authorizes Localities to Create "Defense Production Zones"

House Bill 1822 (Chapter 875) and Senate Bill 999 (Chapter 877) create a separate class of property for purposes of the Machinery and Tools Tax for machinery and tools designed and used directly in manufacturing materials and equipment for national defense. Localities may levy a tax on this separate class at a different rate from that levied on other machinery and tools, provided the rate does not exceed the rate for the general class of machinery and tools.

Generally, machinery and tools used in manufacturing, mining, water well drilling, processing or reprocessing, radio and television broadcasting, dairy, dry cleaning or a laundry business are segregated as a separate class of tangible personal property and are subject to local taxation only.

Additionally, these Acts authorize local governing bodies to create, by ordinance, one or more defense production zones, inside which localities are permitted to grant tax incentives and provide certain regulatory flexibility for a maximum period of twenty years. Among the incentives permissible under this bill are reductions of permit fees, user fees, and any type of gross receipts tax. Under these Acts, local governing bodies may also agree to pay economic development incentive grants to defense production businesses located in defense production zones, conditioned upon the business making certain real property or capital investments, creating and maintaining new jobs, or performing or meeting other economic development objectives. The extent and duration of the incentive proposals must conform to the requirements of the Constitutions of Virginia and the United States.

The Acts also authorize localities to offer regulatory flexibility for a maximum period of twenty years in defense production zones, including special zoning, permit process reform, exemption from ordinances, and any other incentive adopted by ordinance.

Finally, the Acts authorize the adoption of a local enterprise zone taxation program for the defense production zone, and render the laws that apply to enterprise zones also applicable to defense production zones. A local enterprise zone development taxation program allows a specified percentage of real estate and machinery and tools tax revenue resulting from the incremental increase in the assessed value of real estate and machinery and tools located within an enterprise zone to be allocated to the Local Enterprise Zone Development Fund. This fund is used for grants aimed at attracting businesses to an enterprise zone or enhancing governmental services within an enterprise zone. Localities are authorized to adopt a local enterprise zone development taxation program for a locally designated technology zone, regardless of whether the technology zone has been designated as an enterprise zone.

Effective: July 1, 2011
Amended: § 58.1-3245.12
Added: § 58.1-3805.4 and 58.1-3853

Authorizes County and Town Treasurers to Collect Taxes on the Other's Behalf Pursuant to a Reciprocal Agreement

House Bill 2019 (Chapter 475) and Senate Bill 909 (Chapter 431) authorize county treasurers and the treasurer of any town located within that county to enter into reciprocal agreements, with the approval of the respective governing bodies, authorizing the town treasurer to collect real and personal property taxes owed to the county, and the county treasurer to collect real and personal property taxes owed to the town. Each treasurer must account for and pay over whatever amount is owed to the applicable county or town. The Acts define "treasurer" as the town officer or employee vested with the authority by the charter, statute, or the governing body, to collect local taxes.

County, city, and town treasurers must collect real and personal property taxes, and have, as their primary task, the duty of receiving the revenues, levies, and other amounts payable into the treasury of the locality in which they are elected, and disbursing such funds in accordance with state law.

Effective: July 1, 2011
Amended: § 58.1-3910

Authorizes Town of Coeburn to Waive Interest and Penalties on Certain Taxes

House Bill 2171 (Chapter 488) authorizes the Town of Coeburn to waive the interest and penalties on real and personal property taxes for any tax year beginning prior to January 1, 2009, and to refund any penalties and interest paid during the period October 1, 2009 through December 31, 2011.

Prior to enactment of this law, localities were permitted, but not required, to impose penalty and interest on delinquent taxes, but once imposed, had little statutory authority to waive penalties and interest for reasonable cause, with the exception of occasions in which the failure to file or pay timely was not the fault of the taxpayer. Contrarily, TAX has the discretion to waive penalty and interest of state taxes for good cause, provided the Tax Commissioner preserves a record of the reason for the waiver.

Effective: July 1, 2011

Authorizes Localities to Conduct Judicial Sale of Certain Property

Senate Bill 1478 (Chapter 324) authorizes localities to provide for proceedings, by ordinance, to conduct a judicial sale of certain real property located in a community development authority or on abutting property within a community development authority when a special tax or special assessment imposed on the property is delinquent on the first anniversary of the date on which the tax or assessment became due. A community development authority is a form of political subdivision that may be created by counties, cities or towns in response to a petition of the owners of at least 51 percent of the land area or assessed value of land in a contiguous area, and that may issue revenue bonds secured by sources of repayment generated from within the district. The Act prohibits the sale of real property that is a single family residence or an individual unit in a multi-unit structure if the owner of the property or unit is the resident on the first anniversary date. As with any other judicial proceeding for the sale of tax delinquent property, the Act requires the locality to notify the property owner and any lien creditor at least 30 days prior to instituting any proceeding.

Generally, localities have several means of collecting delinquent taxes, including collection from the taxpayer's bank account, wages, income tax refunds, suits against the taxpayer personally, and sale of the real estate to which the tax lien has attached. When taxes are delinquent on the last day of the year following the two-year anniversary date on which such taxes were due, localities may sell the real estate for the purpose of collecting all delinquent taxes on such property, provided they notify the property owners and all other parties who have an interest in the property. Owners may redeem the property at any time prior to the date of the sale by paying all accumulated delinquent taxes, penalties, reasonable attorney's fees, interest and costs.

Localities may also institute proceedings to sell tax-delinquent property on the first anniversary of the date on which the taxes became due if the real property contains: 1) structures that have been condemned by the local building official; 2) structures that constitute nuisances; 3) derelict buildings; or 4) structures that have been declared to be blighted.

Effective: July 1, 2011.
Added: § 58.1-3965.2

LEGISLATIVE

STUDIES

JLARC to Study the Impact of Restructuring the Business, Professional & Occupational License Tax

Item 30 of House Bill 1500 (Chapter 890) requires the Joint Legislative Audit and Review Commission ("JLARC") to study the impact on local revenue streams of restructuring the local Business, Professional, and Occupational License ("BPOL") Tax such that the basis of the tax is changed from gross receipts to net income. TAX will assist as requested by JLARC in the performance of duties to study the local BPOL Tax.

Local tax officials must provide any assistance required by JLARC in the course of the study. Local tax officials are authorized to require any business required to obtain a business license from the locality in calendar year 2011, to calculate its net income and the resulting license tax for the base year used to calculate its license tax in calendar year 2011 based on net income in addition to the requirement that such business shall file and report any tax due on its license application or BPOL return for the year. The business shall report such tax base and tax due to the locality on or before October 1, 2012. Each locality must consolidate the data reported by each taxpayer in the locality in a format determined by JLARC and transmit such data to JLARC by April 1, 2013. JLARC would complete the study and submit a final report by November 1, 2013.

Working Group to Review Current Local Cigarette Tax Enforcement Policies

House Bill 2038 and Senate Bill 1085 (Chapters 366 and 293) require the Tax Commissioner to convene a working group to review the current policies on i) appeals of penalties related to the cigarette tax assessed on wholesalers and retailers; ii) the desirability of having a single stamp for state and local taxes; iii) methods of determining the validity of partially visible cigarette tax stamps; and iv) other related issues. The working group must provide a report and recommendations to the chairmen of the Senate and House Committees on Finance no later than December 1, 2011.

The working group will consist of representatives the Virginia Wholesalers and Distributors Association, Virginia Retail Merchants Association, the Retail Alliance, the Virginia Petroleum, Convenience and Grocery Association, the Northern Virginia Cigarette Tax Board, the Virginia Municipal League, those counties that levy a local cigarette tax, and other individuals as deemed necessary.

All cities and towns with general taxing powers are currently authorized to impose a cigarette tax with no rate limitations. According to Tax Rates 2010, Virginia's Cities, Counties, and Selected Towns, by Weldon Cooper Center for Public Policy, 30 cities and 48 towns currently report imposing a cigarette tax. Only two counties, Arlington and Fairfax, are authorized to impose a local cigarette tax, which is limited to the amount of the state cigarette tax rate. The state cigarette tax rate is currently 30 cents per pack of 20 cigarettes. Local cigarette taxes are typically administered and enforced at the local level. The Northern Virginia Cigarette Tax Board administers and enforces the local cigarette tax on behalf of 16 northern Virginia jurisdictions.

TAX issued comprehensive Guidelines and Rules Related to Enforcement (August 13, 2010) in order to provide guidance to taxpayers regarding the civil penalties, the appeals process, and other matters regarding the enforcement of the state cigarette tax and has provided procedures for the state cigarette tax to allow retailers who have been audited by TAX and found to possess unstamped cigarettes to obtain affidavits from stamping agents stating that the stamping agent was the source of the unstamped cigarettes. Once a stamping agent has issued such an affidavit, TAX will typically issue a warning letter or penalty to the stamping agent instead of the retailer. The stamping agent may then file an appeal or offer-in-compromise with TAX and seek a reduction or abatement of the penalty.

Effective: July 1, 2011

Land Preservation Tax Credit: Department of Conservation and Recreation Report

Senate Bill 979 (Chapter 672) requires the Department of Conservation and Recreation, in preparing its annual report on qualified Land Preservation Tax Credit donations, to provide information about certain riparian buffers on land qualifying for credits.

The Department of Conservation and Recreation is currently required to submit to the House Appropriations, House Finance and Senate Finance Committees an annual report on qualified donations of less-than-fee interests that were accepted by any conservation agency during the prior calendar year. Current law requires that this report include information on land qualifying for credits being used for production agriculture and silviculture that have onsite operational best management practices, which are designed to reduce the amount of nutrients and sediment entering public waters.

This Act requires that the report also include available information about riparian buffers required by deed restriction on land qualifying for Land Preservation Tax Credits in order to protect water quality. Information on both vegetated/forested buggers and no-plow buffers must be included.

Effective: July 1, 2011
Amended: § 58.1-512

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