CODE OF VIRGINIA

Title 58.1

Taxation

Title 58.1 - TAXATION

Chapter 0 - GENERAL PROVISIONS OF TITLE 58.1

Article 1 - IN GENERAL

§ 58.1-1. Definitions

As used in this title:

"Department" means the Department of Taxation. Whenever the words "Department of Taxation," or other words denoting that Department, appear in any provision of law or in any legal or other proceeding or in any other manner, the same shall be construed to mean the Tax Commissioner. When any provision of law imposes a duty upon, or vests power in, the Department, such duty shall be performed and such power shall be exercised by the Tax Commissioner.

"Resident" for purposes of taxation, except as to Chapter 3 (§ 58.1-300 et seq.) of this title or as otherwise specifically provided, includes every person domiciled in the Commonwealth on the first day of any tax year, and every other person who has had his place of abode in the Commonwealth for the longer portion of the twelve months next preceding January 1 in each year, unless on or before that day he has changed his place of abode to a place outside the Commonwealth with the bona fide intention of continuing actually to abide permanently outside the Commonwealth.

The fact that a person who has so changed his place of abode, within six months from so doing, again abides within the Commonwealth shall be prima facie evidence that he did not intend permanently to have his actual place of abode outside the Commonwealth. Such person so changing his actual place of abode and not intending permanently to continue it outside the Commonwealth and not having listed his property for taxation as a resident of the Commonwealth for the purpose of having his personal property listed for taxation in the Commonwealth, shall be deemed to have resided on the day when such property should have been listed, at his last place of abode in the Commonwealth. The fact that a person whose place of abode during the greater portion of such twelve months has been in the Commonwealth does not claim or exercise the right to vote at public elections in the Commonwealth shall not, of itself, constitute him a nonresident of the Commonwealth within the meaning of this term.

"Tax Commissioner" means the chief executive officer of the Department of Taxation or his delegate.

"Tax day" or "date of assessment," except as otherwise specifically provided, is January 1 of each year.

"Tax exempt organization" or "an organization exempt from taxation under § 501(c) of the Internal Revenue Code " means any corporation, partnership, organization or trust which has

received written notice of its exempt status from the Internal Revenue Service, if such notice is required by the Internal Revenue Service to obtain exempt status.

"Tax year," except when otherwise specifically provided, begins on January 1 of each year and ends on December 31 of each year.

"Taxes" and "levies" as used in this title are synonymous. The terms "taxes" and "levies," however, shall not include the assessments for local improvements provided for in Article 2 (§ 15.2-2404 et seq.) of Chapter 24 of Title 15.2 or the charter of any city or town.

"Taxpayer" includes every person, corporation, partnership, organization, trust or estate subject to taxation under the laws of this Commonwealth, or under the ordinances, resolutions or orders of any county, city, town or other political subdivision of this Commonwealth.

Code 1950, §§ 58-1 through 58-4, 58-5 through 58-8; 1964, c. 468; 1972, c. 88; 1984, c. 675; 1997, c. 694.

§ 58.1-2. Reciprocal agreements with other states for collection of taxes

A. The Governor may enter into reciprocal agreements on behalf of the Commonwealth with the appropriate authorities of any state within the United States and of the District of Columbia, with respect to the collection of all taxes imposed by the Commonwealth or any political subdivision thereof.

B. All agreements entered into by the Governor with respect to any method of collection as to which provision is expressly made by statute shall conform to the provisions of such statute. As to any other method of collection appropriate to the powers vested in the Governor by this section, the Governor may agree to such terms and conditions as in his judgment are best calculated to promote the interests of this Commonwealth. Except as hereinabove provided, it is the policy of this Commonwealth to grant reciprocity to another state when such state grants reciprocity to the Commonwealth.

Code 1950, § 58-27.1; 1962, c. 25; 1984, c. 675.

§ 58.1-3. (Effective until July 1, 2017) Secrecy of information; penalties

A. Except in accordance with a proper judicial order or as otherwise provided by law, the Tax Commissioner or agent, clerk, commissioner of the revenue, treasurer, or any other state or local tax or revenue officer or employee, or any person to whom tax information is divulged pursuant to § 58.1-512 or 58.1-2712.2, or any former officer or employee of any of the aforementioned offices shall not divulge any information acquired by him in the performance of his duties with respect to the transactions, property, including personal property, income or business of any person, firm or corporation. Such prohibition specifically includes any copy of a federal return or federal return information required by Virginia law to be attached to or included in the Virginia return. This prohibition shall apply to any reports, returns, financial documents or other information filed with the Attorney General pursuant to the provisions of Article 3 (§ 3.2-4204 et seq.) of Chapter 42 of

Title 3.2. Any person violating the provisions of this section is guilty of a Class 1 misdemeanor. The provisions of this subsection shall not be applicable, however, to:

1. Matters required by law to be entered on any public assessment roll or book;

2. Acts performed or words spoken, published, or shared with another agency or subdivision of the Commonwealth in the line of duty under state law;

3. Inquiries and investigations to obtain information as to the process of real estate assessments by a duly constituted committee of the General Assembly, or when such inquiry or investigation is relevant to its study, provided that any such information obtained shall be privileged;

4. The sales price, date of construction, physical dimensions or characteristics of real property, or any information required for building permits;

5. Copies of or information contained in an estate's probate tax return, filed with the clerk of court pursuant to § 58.1-1714, when requested by a beneficiary of the estate or an heir at law of the decedent;

6. Information regarding nonprofit entities exempt from sales and use tax under § 58.1-609.11, when requested by the General Assembly or any duly constituted committee of the General Assembly;

7. Reports or information filed with the Attorney General by a Stamping Agent pursuant to the provisions of Article 3 (§ 3.2-4204 et seq.), when such reports or information are provided by the Attorney General to a tobacco products manufacturer who is required to establish a qualified escrow fund pursuant to § 3.2-4201 and are limited to the brand families of that manufacturer as listed in the Tobacco Directory established pursuant to § 3.2-4206 and are limited to the current or previous two calendar years or in any year in which the Attorney General receives Stamping Agent information that potentially alters the required escrow deposit of the manufacturer. The information shall only be provided in the following manner: the manufacturer may make a written request, on a quarterly or yearly basis or when the manufacturer is notified by the Attorney General of a potential change in the amount of a required escrow deposit, to the Attorney General for a list of the Stamping Agents who reported stamping or selling its products and the amount reported. The Attorney General shall provide the list within 15 days of receipt of the request. If the manufacturer wishes to obtain actual copies of the reports the Stamping Agents filed with the Attorney General, it must first request them from the Stamping Agents pursuant to subsection C of § 3.2-4209. If the manufacturer does not receive the reports pursuant to subsection C of § 3.2-4209, the manufacturer may make a written request to the Attorney General, including a copy of the prior written request to the Stamping Agent and any response received, for copies of any reports not received. The Attorney General shall provide copies of the reports within 45 days of receipt of the request.

B.1. Nothing contained in this section shall be construed to prohibit the publication of statistics so classified as to prevent the identification of particular reports or returns and the items thereof or the publication of delinquent lists showing the names of taxpayers who are currently delinquent, together with any relevant information which in the opinion of the Department may assist in the collection of such delinquent taxes. Notwithstanding any other provision of this section or other law, the Department, upon request by the General Assembly or any duly constituted committee of the General Assembly, shall disclose the total aggregate amount of an income tax deduction or credit taken by all taxpayers, regardless of (i) how few taxpayers took the deduction or credit or (ii) any other circumstances. This section shall not be construed to prohibit a local tax official from disclosing whether a person, firm or corporation is licensed to do business in that locality and divulging, upon written request, the name and address of any person, firm or corporation transacting business under a fictitious name. Additionally, notwithstanding any other provision of law, the commissioner of revenue is authorized to provide, upon written request stating the reason for such request, the Tax Commissioner with information obtained from local tax returns and other information pertaining to the income, sales and property of any person, firm or corporation licensed to do business in that locality.

2. This section shall not prohibit the Department from disclosing whether a person, firm, or corporation is registered as a retail sales and use tax dealer pursuant to Chapter 6 (§ 58.1-600 et seq.) or whether a certificate of registration number relating to such tax is valid. Additionally, notwithstanding any other provision of law, the Department is hereby authorized to make available the names and certificate of registration numbers of dealers who are currently registered for retail sales and use tax.

3. This section shall not prohibit the Department from disclosing information to nongovernmental entities with which the Department has entered into a contract to provide services that assist it in the administration of refund processing or other services related to its administration of taxes.

4. This section shall not prohibit the Department from disclosing information to taxpayers regarding whether the taxpayer's employer or another person or entity required to withhold on behalf of such taxpayer submitted withholding records to the Department for a specific taxable year as required pursuant to subdivision C 1 of § 58.1-478.

C. Notwithstanding the provisions of subsection A or B or any other provision of this title, the Tax Commissioner is authorized to (i) divulge tax information to any commissioner of the revenue, director of finance or other similar collector of county, city or town taxes who, for the performance of his official duties, requests the same in writing setting forth the reasons for such request; (ii) provide to the Commissioner of the Department of Social Services, upon written request, information on the amount of income, filing status, number and type of dependents, and whether a federal earned income tax credit has been claimed as reported by persons on their state income tax returns who have applied for public assistance or social services benefits as defined in § 63.2-100; (iii) provide to the chief executive officer of the designated student loan guarantor for the

Commonwealth of Virginia, upon written request, the names and home addresses of those persons identified by the designated guarantor as having delinquent loans guaranteed by the designated guarantor; (iv) provide current address information upon request to state agencies and institutions for their confidential use in facilitating the collection of accounts receivable, and to the clerk of a circuit or district court for their confidential use in facilitating the collection of fines, penalties and costs imposed in a proceeding in that court; (v) provide to the Commissioner of the Virginia Employment Commission, after entering into a written agreement, such tax information as may be necessary to facilitate the collection of unemployment taxes and overpaid benefits; (vi) provide to the Alcoholic Beverage Control Board, upon entering into a written agreement, such tax information as may be necessary to facilitate the collection of state and local taxes and the administration of the alcoholic beverage control laws; (vii) provide to the Director of the Virginia Lottery such tax information as may be necessary to identify those lottery ticket retailers who owe delinquent taxes; (viii) provide to the Department of the Treasury for its confidential use such tax information as may be necessary to facilitate the location of owners and holders of unclaimed property, as defined in § 55-210.2; (ix) provide to the State Corporation Commission, upon entering into a written agreement, such tax information as may be necessary to facilitate the collection of taxes and fees administered by the Commission; (x) provide to the Executive Director of the Potomac and Rappahannock Transportation Commission for his confidential use such tax information as may be necessary to facilitate the collection of the motor vehicle fuel sales tax; (xi) provide to the Commissioner of the Department of Agriculture and Consumer Services such tax information as may be necessary to identify those applicants for registration as a supplier of charitable gaming supplies who have not filed required returns or who owe delinquent taxes; (xii) provide to the Department of Housing and Community Development for its confidential use such tax information as may be necessary to facilitate the administration of the remaining effective provisions of the Enterprise Zone Act (§ 59.1-270 et seq.), and the Enterprise Zone Grant Program (§ 59.1-538 et seq.); (xiii) provide current name and address information to private collectors entering into a written agreement with the Tax Commissioner, for their confidential use when acting on behalf of the Commonwealth or any of its political subdivisions; however, the Tax Commissioner is not authorized to provide such information to a private collector who has used or disseminated in an unauthorized or prohibited manner any such information previously provided to such collector; (xiv) provide current name and address information as to the identity of the wholesale or retail dealer that affixed a tax stamp to a package of cigarettes to any person who manufactures or sells at retail or wholesale cigarettes and who may bring an action for injunction or other equitable relief for violation of Chapter 10.1, Enforcement of Illegal Sale or Distribution of Cigarettes Act; (xv) provide to the Commissioner of Labor and Industry, upon entering into a written agreement, such tax information as may be necessary to facilitate the collection of unpaid wages under § 40.1-29; (xvi) provide to the Director of the Department of Human Resource Management, upon entering into a written agreement, such tax information as may be necessary to identify persons receiving workers' compensation indemnity benefits who have failed to report

earnings as required by § 65.2-712; (xvii) provide to any commissioner of the revenue, director of finance, or any other officer of any county, city, or town performing any or all of the duties of a commissioner of the revenue and to any dealer registered for the collection of the Communications Sales and Use Tax, a list of the names, business addresses, and dates of registration of all dealers registered for such tax; (xviii) provide to the Executive Director of the Northern Virginia Transportation Commission for his confidential use such tax information as may be necessary to facilitate the collection of the motor vehicle fuel sales tax; (xix) provide to the Commissioner of Agriculture and Consumer Services the name and address of the taxpayer businesses licensed by the Commonwealth that identify themselves as subject to regulation by the Board of Agriculture and Consumer Services pursuant to § 3.2-5130; and (xx) provide to the developer or the economic development authority of a tourism project authorized by § 58.1-3851.1, upon entering into a written agreement, tax information facilitating the repayment of gap financing. The Tax Commissioner is further authorized to enter into written agreements with duly constituted tax officials of other states and of the United States for the inspection of tax returns, the making of audits, and the exchange of information relating to any tax administered by the Department of Taxation. Any person to whom tax information is divulged pursuant to this section shall be subject to the prohibitions and penalties prescribed herein as though he were a tax official.

D. Notwithstanding the provisions of subsection A or B or any other provision of this title, the commissioner of revenue or other assessing official is authorized to (i) provide, upon written request stating the reason for such request, the chief executive officer of any county or city with information furnished to the commissioner of revenue by the Tax Commissioner relating to the name and address of any dealer located within the county or city who paid sales and use tax, for the purpose of verifying the local sales and use tax revenues payable to the county or city; (ii) provide to the Department of Professional and Occupational Regulation for its confidential use the name, address, and amount of gross receipts of any person, firm or entity subject to a criminal investigation of an unlawful practice of a profession or occupation administered by the Department of Professional and Occupational Regulation, only after the Department of Professional and Occupational Regulation exhausts all other means of obtaining such information; and (iii) provide to any representative of a condominium unit owners' association, property owners' association or real estate cooperative association, or to the owner of property governed by any such association, the names and addresses of parties having a security interest in real property governed by any such association; however, such information shall be released only upon written request stating the reason for such request, which reason shall be limited to proposing or opposing changes to the governing documents of the association, and any information received by any person under this subsection shall be used only for the reason stated in the written request. The treasurer or other local assessing official may require any person requesting information pursuant to clause (iii) of this subsection to pay the reasonable cost of providing such information. Any person to whom tax

information is divulged pursuant to this subsection shall be subject to the prohibitions and penalties prescribed herein as though he were a tax official.

Notwithstanding the provisions of subsection A or B or any other provisions of this title, the treasurer or other collector of taxes for a county, city or town is authorized to provide information relating to any motor vehicle, trailer or semitrailer obtained by such treasurer or collector in the course of performing his duties to the commissioner of the revenue or other assessing official for such jurisdiction for use by such commissioner or other official in performing assessments.

This section shall not be construed to prohibit a local tax official from imprinting or displaying on a motor vehicle local license decal the year, make, and model and any other legal identification information about the particular motor vehicle for which that local license decal is assigned.

E. Notwithstanding any other provisions of law, state agencies and any other administrative or regulatory unit of state government shall divulge to the Tax Commissioner or his authorized agent, upon written request, the name, address, and social security number of a taxpayer, necessary for the performance of the Commissioner's official duties regarding the administration and enforcement of laws within the jurisdiction of the Department of Taxation. The receipt of information by the Tax Commissioner or his agent which may be deemed taxpayer information shall not relieve the Commissioner of the obligations under this section.

F. Additionally, it shall be unlawful for any person to disseminate, publish, or cause to be published any confidential tax document which he knows or has reason to know is a confidential tax document. A confidential tax document is any correspondence, document, or tax return that is prohibited from being divulged by subsection A, B, C, or D and includes any document containing information on the transactions, property, income, or business of any person, firm, or corporation that is required to be filed with any state official by § 58.1-512. This prohibition shall not apply if such confidential tax document has been divulged or disseminated pursuant to a provision of law authorizing disclosure. Any person violating the provisions of this subsection is guilty of a Class 1 misdemeanor.

Code 1950, § 58-46; 1972, cc. 311, 565; 1974, c. 134; 1978, c. 161; 1980, c. 49; 1983, c. 372; 1984, cc. 319, 675; 1985, c. 78; 1988, c. 544; 1989, cc. 99, 327; 1990, c. 678; 1992, c. 386; 1993, cc. 41, 519; 1994, c. 493; 1995, c. 38; 1996, cc. 614, 784, 793, 919, 988; 1997, cc. 517, 705, 787; 2000, cc. 717, 880, 901; 2001, c. 84; 2002, cc. 64, 747; 2003, cc. 757, 758, 884; 2004, cc. 166, 515, 536, 582, 594; 2005, cc. 863, 884; 2006, cc. 31, 159, 590, 780; 2008, cc. 387, 689, 785; 2010, c. 34; 2012, c. 395; 2013, cc. 29, 163, 230; 2014, cc. 194, 195, 225; 2015, c. 247; 2016, cc. 227, 344.

§ 58.1-3. (Effective July 1, 2017, until July 1, 2018) Secrecy of information; penalties

A. Except in accordance with a proper judicial order or as otherwise provided by law, the Tax Commissioner or agent, clerk, commissioner of the revenue, treasurer, or any other state or local tax or revenue officer or employee, or any person to whom tax information is divulged pursuant to §

58.1-512 or 58.1-2712.2, or any former officer or employee of any of the aforementioned offices shall not divulge any information acquired by him in the performance of his duties with respect to the transactions, property, including personal property, income or business of any person, firm or corporation. Such prohibition specifically includes any copy of a federal return or federal return information required by Virginia law to be attached to or included in the Virginia return. This prohibition shall apply to any reports, returns, financial documents or other information filed with the Attorney General pursuant to the provisions of Article 3 (§ 3.2-4204 et seq.) of Chapter 42 of Title 3.2. Any person violating the provisions of this section is guilty of a Class 1 misdemeanor. The provisions of this subsection shall not be applicable, however, to:

1. Matters required by law to be entered on any public assessment roll or book;

2. Acts performed or words spoken, published, or shared with another agency or subdivision of the Commonwealth in the line of duty under state law;

3. Inquiries and investigations to obtain information as to the process of real estate assessments by a duly constituted committee of the General Assembly, or when such inquiry or investigation is relevant to its study, provided that any such information obtained shall be privileged;

4. The sales price, date of construction, physical dimensions or characteristics of real property, or any information required for building permits;

5. Copies of or information contained in an estate's probate tax return, filed with the clerk of court pursuant to § 58.1-1714, when requested by a beneficiary of the estate or an heir at law of the decedent;

6. Information regarding nonprofit entities exempt from sales and use tax under § 58.1-609.11, when requested by the General Assembly or any duly constituted committee of the General Assembly;

7. Reports or information filed with the Attorney General by a Stamping Agent pursuant to the provisions of Article 3 (§ 3.2-4204 et seq.), when such reports or information are provided by the Attorney General to a tobacco products manufacturer who is required to establish a qualified escrow fund pursuant to § 3.2-4201 and are limited to the brand families of that manufacturer as listed in the Tobacco Directory established pursuant to § 3.2-4206 and are limited to the current or previous two calendar years or in any year in which the Attorney General receives Stamping Agent information that potentially alters the required escrow deposit of the manufacturer. The information shall only be provided in the following manner: the manufacturer may make a written request, on a quarterly or yearly basis or when the manufacturer is notified by the Attorney General of a potential change in the amount of a required escrow deposit, to the Attorney General for a list of the Stamping Agents who reported stamping or selling its products and the amount reported. The Attorney General shall provide the list within 15 days of receipt of the request. If the manufacturer wishes to obtain actual copies of the reports the Stamping Agents filed with the Attorney General, it must first request them from the Stamping Agents pursuant to subsection C of § 3.2-

4209. If the manufacturer does not receive the reports pursuant to subsection C of § 3.2-4209, the manufacturer may make a written request to the Attorney General, including a copy of the prior written request to the Stamping Agent and any response received, for copies of any reports not received. The Attorney General shall provide copies of the reports within 45 days of receipt of the request.

B.1. Nothing contained in this section shall be construed to prohibit the publication of statistics so classified as to prevent the identification of particular reports or returns and the items thereof or the publication of delinquent lists showing the names of taxpayers who are currently delinquent, together with any relevant information which in the opinion of the Department may assist in the collection of such delinquent taxes. Notwithstanding any other provision of this section or other law, the Department, upon request by the General Assembly or any duly constituted committee of the General Assembly, shall disclose the total aggregate amount of an income tax deduction or credit taken by all taxpayers, regardless of (i) how few taxpayers took the deduction or credit or (ii) any other circumstances. This section shall not be construed to prohibit a local tax official from disclosing whether a person, firm or corporation is licensed to do business in that locality and divulging, upon written request, the name and address of any person, firm or corporation transacting business under a fictitious name. Additionally, notwithstanding any other provision of law, the commissioner of revenue is authorized to provide, upon written request stating the reason for such request, the Tax Commissioner with information obtained from local tax returns and other information pertaining to the income, sales and property of any person, firm or corporation licensed to do business in that locality.

2. This section shall not prohibit the Department from disclosing whether a person, firm, or corporation is registered as a retail sales and use tax dealer pursuant to Chapter 6 (§ 58.1-600 et seq.) or whether a certificate of registration number relating to such tax is valid. Additionally, notwithstanding any other provision of law, the Department is hereby authorized to make available the names and certificate of registration numbers of dealers who are currently registered for retail sales and use tax.

3. This section shall not prohibit the Department from disclosing information to nongovernmental entities with which the Department has entered into a contract to provide services that assist it in the administration of refund processing or other services related to its administration of taxes.

4. This section shall not prohibit the Department from disclosing information to taxpayers regarding whether the taxpayer's employer or another person or entity required to withhold on behalf of such taxpayer submitted withholding records to the Department for a specific taxable year as required pursuant to subdivision C 1 of § 58.1-478.

C. Notwithstanding the provisions of subsection A or B or any other provision of this title, the Tax Commissioner is authorized to (i) divulge tax information to any commissioner of the revenue, director of finance or other similar collector of county, city or town taxes who, for the performance of

his official duties, requests the same in writing setting forth the reasons for such request; (ii) provide to the Commissioner of the Department of Social Services, upon written request, information on the amount of income, filing status, number and type of dependents, and whether a federal earned income tax credit has been claimed as reported by persons on their state income tax returns who have applied for public assistance or social services benefits as defined in § 63.2-100; (iii) provide to the chief executive officer of the designated student loan guarantor for the Commonwealth of Virginia, upon written request, the names and home addresses of those persons identified by the designated guarantor as having delinquent loans guaranteed by the designated guarantor; (iv) provide current address information upon request to state agencies and institutions for their confidential use in facilitating the collection of accounts receivable, and to the clerk of a circuit or district court for their confidential use in facilitating the collection of fines, penalties and costs imposed in a proceeding in that court; (v) provide to the Commissioner of the Virginia Employment Commission, after entering into a written agreement, such tax information as may be necessary to facilitate the collection of unemployment taxes and overpaid benefits; (vi) provide to the Alcoholic Beverage Control Board, upon entering into a written agreement, such tax information as may be necessary to facilitate the collection of state and local taxes and the administration of the alcoholic beverage control laws; (vii) provide to the Director of the Virginia Lottery such tax information as may be necessary to identify those lottery ticket retailers who owe delinquent taxes; (viii) provide to the Department of the Treasury for its confidential use such tax information as may be necessary to facilitate the location of owners and holders of unclaimed property, as defined in § 55-210.2; (ix) provide to the State Corporation Commission, upon entering into a written agreement, such tax information as may be necessary to facilitate the collection of taxes and fees administered by the Commission; (x) provide to the Executive Director of the Potomac and Rappahannock Transportation Commission for his confidential use such tax information as may be necessary to facilitate the collection of the motor vehicle fuel sales tax; (xi) provide to the Commissioner of the Department of Agriculture and Consumer Services such tax information as may be necessary to identify those applicants for registration as a supplier of charitable gaming supplies who have not filed required returns or who owe delinquent taxes; (xii) provide to the Department of Housing and Community Development for its confidential use such tax information as may be necessary to facilitate the administration of the remaining effective provisions of the Enterprise Zone Act (§ 59.1-270 et seq.), and the Enterprise Zone Grant Program (§ 59.1-538 et seq.); (xiii) provide current name and address information to private collectors entering into a written agreement with the Tax Commissioner, for their confidential use when acting on behalf of the Commonwealth or any of its political subdivisions; however, the Tax Commissioner is not authorized to provide such information to a private collector who has used or disseminated in an unauthorized or prohibited manner any such information previously provided to such collector; (xiv) provide current name and address information as to the identity of the wholesale or retail dealer that affixed a tax stamp to a package of cigarettes to any person who manufactures or sells at retail or wholesale cigarettes and who may bring an action for injunction or

other equitable relief for violation of Chapter 10.1, Enforcement of Illegal Sale or Distribution of Cigarettes Act; (xv) provide to the Commissioner of Labor and Industry, upon entering into a written agreement, such tax information as may be necessary to facilitate the collection of unpaid wages under § 40.1-29; (xvi) provide to the Director of the Department of Human Resource Management, upon entering into a written agreement, such tax information as may be necessary to identify persons receiving workers' compensation indemnity benefits who have failed to report earnings as required by § 65.2-712; (xvii) provide to any commissioner of the revenue, director of finance, or any other officer of any county, city, or town performing any or all of the duties of a commissioner of the revenue and to any dealer registered for the collection of the Communications Sales and Use Tax, a list of the names, business addresses, and dates of registration of all dealers registered for such tax; (xviii) provide to the Executive Director of the Northern Virginia Transportation Commission for his confidential use such tax information as may be necessary to facilitate the collection of the motor vehicle fuel sales tax; (xix) provide to the Commissioner of Agriculture and Consumer Services the name and address of the taxpayer businesses licensed by the Commonwealth that identify themselves as subject to regulation by the Board of Agriculture and Consumer Services pursuant to § 3.2-5130; (xx) provide to the developer or the economic development authority of a tourism project authorized by § 58.1-3851.1, upon entering into a written agreement, tax information facilitating the repayment of gap financing; and (xxi) provide to the Virginia Retirement System and the Department of Human Resource Management, after entering into a written agreement, such tax information as may be necessary to facilitate the enforcement of subdivision C 4 of § 9.1-401. The Tax Commissioner is further authorized to enter into written agreements with duly constituted tax officials of other states and of the United States for the inspection of tax returns, the making of audits, and the exchange of information relating to any tax administered by the Department of Taxation. Any person to whom tax information is divulged pursuant to this section shall be subject to the prohibitions and penalties prescribed herein as though he were a tax official.

D. Notwithstanding the provisions of subsection A or B or any other provision of this title, the commissioner of revenue or other assessing official is authorized to (i) provide, upon written request stating the reason for such request, the chief executive officer of any county or city with information furnished to the commissioner of revenue by the Tax Commissioner relating to the name and address of any dealer located within the county or city who paid sales and use tax, for the purpose of verifying the local sales and use tax revenues payable to the county or city; (ii) provide to the Department of Professional and Occupational Regulation for its confidential use the name, address, and amount of gross receipts of any person, firm or entity subject to a criminal investigation of an unlawful practice of a profession or occupation administered by the Department of Professional and Occupational Regulation, only after the Department of Professional and Occupational Regulation exhausts all other means of obtaining such information; and (iii) provide to any representative of a condominium unit owners' association, property owners' association or real estate cooperative association, or to the owner of property governed by any such association,

the names and addresses of parties having a security interest in real property governed by any such association; however, such information shall be released only upon written request stating the reason for such request, which reason shall be limited to proposing or opposing changes to the governing documents of the association, and any information received by any person under this subsection shall be used only for the reason stated in the written request. The treasurer or other local assessing official may require any person requesting information pursuant to clause (iii) of this subsection to pay the reasonable cost of providing such information. Any person to whom tax information is divulged pursuant to this subsection shall be subject to the prohibitions and penalties prescribed herein as though he were a tax official.

Notwithstanding the provisions of subsection A or B or any other provisions of this title, the treasurer or other collector of taxes for a county, city or town is authorized to provide information relating to any motor vehicle, trailer or semitrailer obtained by such treasurer or collector in the course of performing his duties to the commissioner of the revenue or other assessing official for such jurisdiction for use by such commissioner or other official in performing assessments.

This section shall not be construed to prohibit a local tax official from imprinting or displaying on a motor vehicle local license decal the year, make, and model and any other legal identification information about the particular motor vehicle for which that local license decal is assigned.

E. Notwithstanding any other provisions of law, state agencies and any other administrative or regulatory unit of state government shall divulge to the Tax Commissioner or his authorized agent, upon written request, the name, address, and social security number of a taxpayer, necessary for the performance of the Commissioner's official duties regarding the administration and enforcement of laws within the jurisdiction of the Department of Taxation. The receipt of information by the Tax Commissioner or his agent which may be deemed taxpayer information shall not relieve the Commissioner of the obligations under this section.

F. Additionally, it shall be unlawful for any person to disseminate, publish, or cause to be published any confidential tax document which he knows or has reason to know is a confidential tax document. A confidential tax document is any correspondence, document, or tax return that is prohibited from being divulged by subsection A, B, C, or D and includes any document containing information on the transactions, property, income, or business of any person, firm, or corporation that is required to be filed with any state official by § 58.1-512. This prohibition shall not apply if such confidential tax document has been divulged or disseminated pursuant to a provision of law authorizing disclosure. Any person violating the provisions of this subsection is guilty of a Class 1 misdemeanor.

Code 1950, § 58-46; 1972, cc. 311, 565; 1974, c. 134; 1978, c. 161; 1980, c. 49; 1983, c. 372; 1984, cc. 319, 675; 1985, c. 78; 1988, c. 544; 1989, cc. 99, 327; 1990, c. 678; 1992, c. 386; 1993, cc. 41, 519; 1994, c. 493; 1995, c. 38; 1996, cc. 614, 784, 793, 919, 988; 1997, cc. 517, 705, 787; 2000, cc. 717, 880, 901; 2001, c. 84; 2002, cc. 64, 747; 2003, cc. 757, 758, 884; 2004, cc. 166,

515, 536, 582, 594; 2005, cc. 863, 884; 2006, cc. 31, 159, 590, 780; 2008, cc. 387, 689, 785; 2010, c. 34; 2012, c. 395; 2013, cc. 29, 163, 230; 2014, cc. 194, 195, 225; 2015, c. 247; 2016, cc. 227, 344, 677.

§ 58.1-3. (Effective July 1, 2018) Secrecy of information; penalties

A. Except in accordance with a proper judicial order or as otherwise provided by law, the Tax Commissioner or agent, clerk, commissioner of the revenue, treasurer, or any other state or local tax or revenue officer or employee, or any person to whom tax information is divulged pursuant to § 58.1-512 or 58.1-2712.2, or any former officer or employee of any of the aforementioned offices shall not divulge any information acquired by him in the performance of his duties with respect to the transactions, property, including personal property, income or business of any person, firm or corporation. Such prohibition specifically includes any copy of a federal return or federal return information required by Virginia law to be attached to or included in the Virginia return. This prohibition shall apply to any reports, returns, financial documents or other information filed with the Attorney General pursuant to the provisions of Article 3 (§ 3.2-4204 et seq.) of Chapter 42 of Title 3.2. Any person violating the provisions of this section is guilty of a Class 1 misdemeanor. The provisions of this subsection shall not be applicable, however, to:

1. Matters required by law to be entered on any public assessment roll or book;

2. Acts performed or words spoken, published, or shared with another agency or subdivision of the Commonwealth in the line of duty under state law;

3. Inquiries and investigations to obtain information as to the process of real estate assessments by a duly constituted committee of the General Assembly, or when such inquiry or investigation is relevant to its study, provided that any such information obtained shall be privileged;

4. The sales price, date of construction, physical dimensions or characteristics of real property, or any information required for building permits;

5. Copies of or information contained in an estate's probate tax return, filed with the clerk of court pursuant to § 58.1-1714, when requested by a beneficiary of the estate or an heir at law of the decedent;

6. Information regarding nonprofit entities exempt from sales and use tax under § 58.1-609.11, when requested by the General Assembly or any duly constituted committee of the General Assembly;

7. Reports or information filed with the Attorney General by a Stamping Agent pursuant to the provisions of Article 3 (§ 3.2-4204 et seq.), when such reports or information are provided by the Attorney General to a tobacco products manufacturer who is required to establish a qualified escrow fund pursuant to § 3.2-4201 and are limited to the brand families of that manufacturer as listed in the Tobacco Directory established pursuant to § 3.2-4206 and are limited to the current or previous two calendar years or in any year in which the Attorney General receives Stamping

Agent information that potentially alters the required escrow deposit of the manufacturer. The information shall only be provided in the following manner: the manufacturer may make a written request, on a quarterly or yearly basis or when the manufacturer is notified by the Attorney General of a potential change in the amount of a required escrow deposit, to the Attorney General for a list of the Stamping Agents who reported stamping or selling its products and the amount reported. The Attorney General shall provide the list within 15 days of receipt of the request. If the manufacturer wishes to obtain actual copies of the reports the Stamping Agents filed with the Attorney General, it must first request them from the Stamping Agents pursuant to subsection C of § 3.2-4209. If the manufacturer does not receive the reports pursuant to subsection C of § 3.2-4209, the manufacturer may make a written request to the Attorney General, including a copy of the prior written request to the Stamping Agent and any response received, for copies of any reports not received. The Attorney General shall provide copies of the reports within 45 days of receipt of the request.

B.1. Nothing contained in this section shall be construed to prohibit the publication of statistics so classified as to prevent the identification of particular reports or returns and the items thereof or the publication of delinquent lists showing the names of taxpayers who are currently delinquent, together with any relevant information which in the opinion of the Department may assist in the collection of such delinquent taxes. Notwithstanding any other provision of this section or other law, the Department, upon request by the General Assembly or any duly constituted committee of the General Assembly, shall disclose the total aggregate amount of an income tax deduction or credit taken by all taxpayers, regardless of (i) how few taxpayers took the deduction or credit or (ii) any other circumstances. This section shall not be construed to prohibit a local tax official from disclosing whether a person, firm or corporation is licensed to do business in that locality and divulging, upon written request, the name and address of any person, firm or corporation transacting business under a fictitious name. Additionally, notwithstanding any other provision of law, the commissioner of revenue is authorized to provide, upon written request stating the reason for such request, the Tax Commissioner with information obtained from local tax returns and other information pertaining to the income, sales and property of any person, firm or corporation licensed to do business in that locality.

2. This section shall not prohibit the Department from disclosing whether a person, firm, or corporation is registered as a retail sales and use tax dealer pursuant to Chapter 6 (§ 58.1-600 et seq.) or whether a certificate of registration number relating to such tax is valid. Additionally, notwithstanding any other provision of law, the Department is hereby authorized to make available the names and certificate of registration numbers of dealers who are currently registered for retail sales and use tax.

3. This section shall not prohibit the Department from disclosing information to nongovernmental entities with which the Department has entered into a contract to provide services that assist it in the administration of refund processing or other services related to its administration of taxes.

4. This section shall not prohibit the Department from disclosing information to taxpayers regarding whether the taxpayer's employer or another person or entity required to withhold on behalf of such taxpayer submitted withholding records to the Department for a specific taxable year as required pursuant to subdivision C 1 of § 58.1-478.

C. Notwithstanding the provisions of subsection A or B or any other provision of this title, the Tax Commissioner is authorized to (i) divulge tax information to any commissioner of the revenue, director of finance or other similar collector of county, city or town taxes who, for the performance of his official duties, requests the same in writing setting forth the reasons for such request; (ii) provide to the Commissioner of the Department of Social Services, upon written request, information on the amount of income, filing status, number and type of dependents, and whether a federal earned income tax credit has been claimed as reported by persons on their state income tax returns who have applied for public assistance or social services benefits as defined in § 63.2-100; (iii) provide to the chief executive officer of the designated student loan guarantor for the Commonwealth of Virginia, upon written request, the names and home addresses of those persons identified by the designated guarantor as having delinquent loans guaranteed by the designated guarantor; (iv) provide current address information upon request to state agencies and institutions for their confidential use in facilitating the collection of accounts receivable, and to the clerk of a circuit or district court for their confidential use in facilitating the collection of fines, penalties and costs imposed in a proceeding in that court; (v) provide to the Commissioner of the Virginia Employment Commission, after entering into a written agreement, such tax information as may be necessary to facilitate the collection of unemployment taxes and overpaid benefits; (vi) provide to the Virginia Alcoholic Beverage Control Authority, upon entering into a written agreement, such tax information as may be necessary to facilitate the collection of state and local taxes and the administration of the alcoholic beverage control laws; (vii) provide to the Director of the Virginia Lottery such tax information as may be necessary to identify those lottery ticket retailers who owe delinquent taxes; (viii) provide to the Department of the Treasury for its confidential use such tax information as may be necessary to facilitate the location of owners and holders of unclaimed property, as defined in § 55-210.2; (ix) provide to the State Corporation Commission, upon entering into a written agreement, such tax information as may be necessary to facilitate the collection of taxes and fees administered by the Commission; (x) provide to the Executive Director of the Potomac and Rappahannock Transportation Commission for his confidential use such tax information as may be necessary to facilitate the collection of the motor vehicle fuel sales tax; (xi) provide to the Commissioner of the Department of Agriculture and Consumer Services such tax information as may be necessary to identify those applicants for registration as a supplier of charitable gaming supplies who have not filed required returns or who owe delinquent taxes; (xii) provide to the Department of Housing and Community Development for its confidential use such tax information as may be necessary to facilitate the administration of the remaining effective provisions of the Enterprise Zone Act (§ 59.1-270 et seq.), and the Enterprise Zone Grant Program (§ 59.1-538 et seq.); (xiii) provide current name and address information to private collectors

entering into a written agreement with the Tax Commissioner, for their confidential use when acting on behalf of the Commonwealth or any of its political subdivisions; however, the Tax Commissioner is not authorized to provide such information to a private collector who has used or disseminated in an unauthorized or prohibited manner any such information previously provided to such collector; (xiv) provide current name and address information as to the identity of the wholesale or retail dealer that affixed a tax stamp to a package of cigarettes to any person who manufactures or sells at retail or wholesale cigarettes and who may bring an action for injunction or other equitable relief for violation of Chapter 10.1, Enforcement of Illegal Sale or Distribution of Cigarettes Act; (xv) provide to the Commissioner of Labor and Industry, upon entering into a written agreement, such tax information as may be necessary to facilitate the collection of unpaid wages under § 40.1-29; (xvi) provide to the Director of the Department of Human Resource Management, upon entering into a written agreement, such tax information as may be necessary to identify persons receiving workers' compensation indemnity benefits who have failed to report earnings as required by § 65.2-712; (xvii) provide to any commissioner of the revenue, director of finance, or any other officer of any county, city, or town performing any or all of the duties of a commissioner of the revenue and to any dealer registered for the collection of the Communications Sales and Use Tax, a list of the names, business addresses, and dates of registration of all dealers registered for such tax; (xviii) provide to the Executive Director of the Northern Virginia Transportation Commission for his confidential use such tax information as may be necessary to facilitate the collection of the motor vehicle fuel sales tax; (xix) provide to the Commissioner of Agriculture and Consumer Services the name and address of the taxpayer businesses licensed by the Commonwealth that identify themselves as subject to regulation by the Board of Agriculture and Consumer Services pursuant to § 3.2-5130; (xx) provide to the developer or the economic development authority of a tourism project authorized by § 58.1-3851.1, upon entering into a written agreement, tax information facilitating the repayment of gap financing; and (xxi) provide to the Virginia Retirement System and the Department of Human Resource Management, after entering into a written agreement, such tax information as may be necessary to facilitate the enforcement of subdivision C 4 of § 9.1-401. The Tax Commissioner is further authorized to enter into written agreements with duly constituted tax officials of other states and of the United States for the inspection of tax returns, the making of audits, and the exchange of information relating to any tax administered by the Department of Taxation. Any person to whom tax information is divulged pursuant to this section shall be subject to the prohibitions and penalties prescribed herein as though he were a tax official.

D. Notwithstanding the provisions of subsection A or B or any other provision of this title, the commissioner of revenue or other assessing official is authorized to (i) provide, upon written request stating the reason for such request, the chief executive officer of any county or city with information furnished to the commissioner of revenue by the Tax Commissioner relating to the name and address of any dealer located within the county or city who paid sales and use tax, for the purpose of verifying the local sales and use tax revenues payable to the county or city; (ii)

provide to the Department of Professional and Occupational Regulation for its confidential use the name, address, and amount of gross receipts of any person, firm or entity subject to a criminal investigation of an unlawful practice of a profession or occupation administered by the Department of Professional and Occupational Regulation, only after the Department of Professional and Occupational Regulation exhausts all other means of obtaining such information; and (iii) provide to any representative of a condominium unit owners' association, property owners' association or real estate cooperative association, or to the owner of property governed by any such association, the names and addresses of parties having a security interest in real property governed by any such association; however, such information shall be released only upon written request stating the reason for such request, which reason shall be limited to proposing or opposing changes to the governing documents of the association, and any information received by any person under this subsection shall be used only for the reason stated in the written request. The treasurer or other local assessing official may require any person requesting information pursuant to clause (iii) of this subsection to pay the reasonable cost of providing such information. Any person to whom tax information is divulged pursuant to this subsection shall be subject to the prohibitions and penalties prescribed herein as though he were a tax official.

Notwithstanding the provisions of subsection A or B or any other provisions of this title, the treasurer or other collector of taxes for a county, city or town is authorized to provide information relating to any motor vehicle, trailer or semitrailer obtained by such treasurer or collector in the course of performing his duties to the commissioner of the revenue or other assessing official for such jurisdiction for use by such commissioner or other official in performing assessments.

This section shall not be construed to prohibit a local tax official from imprinting or displaying on a motor vehicle local license decal the year, make, and model and any other legal identification information about the particular motor vehicle for which that local license decal is assigned.

E. Notwithstanding any other provisions of law, state agencies and any other administrative or regulatory unit of state government shall divulge to the Tax Commissioner or his authorized agent, upon written request, the name, address, and social security number of a taxpayer, necessary for the performance of the Commissioner's official duties regarding the administration and enforcement of laws within the jurisdiction of the Department of Taxation. The receipt of information by the Tax Commissioner or his agent which may be deemed taxpayer information shall not relieve the Commissioner of the obligations under this section.

F. Additionally, it shall be unlawful for any person to disseminate, publish, or cause to be published any confidential tax document which he knows or has reason to know is a confidential tax document. A confidential tax document is any correspondence, document, or tax return that is prohibited from being divulged by subsection A, B, C, or D and includes any document containing information on the transactions, property, income, or business of any person, firm, or corporation that is required to be filed with any state official by § 58.1-512. This prohibition shall not apply if such confidential tax document has been divulged or disseminated pursuant to a provision of law

authorizing disclosure. Any person violating the provisions of this subsection is guilty of a Class 1 misdemeanor.

Code 1950, § 58-46; 1972, cc. 311, 565; 1974, c. 134; 1978, c. 161; 1980, c. 49; 1983, c. 372; 1984, cc. 319, 675; 1985, c. 78; 1988, c. 544; 1989, cc. 99, 327; 1990, c. 678; 1992, c. 386; 1993, cc. 41, 519; 1994, c. 493; 1995, c. 38; 1996, cc. 614, 784, 793, 919, 988; 1997, cc. 517, 705, 787; 2000, cc. 717, 880, 901; 2001, c. 84; 2002, cc. 64, 747; 2003, cc. 757, 758, 884; 2004, cc. 166, 515, 536, 582, 594; 2005, cc. 863, 884; 2006, cc. 31, 159, 590, 780; 2008, cc. 387, 689, 785; 2010, c. 34; 2012, c. 395; 2013, cc. 29, 163, 230; 2014, cc. 194, 195, 225; 2015, cc. 38, 247, 730; 2016, cc. 227, 344, 677.

§ 58.1-3.1. Availability of information necessary to audit local tax returns and other such privileged or confidential tax information

A. Notwithstanding the provisions of § 58.1-3, any commissioner of revenue or other such local revenue assessing or tax collecting officer of a county, city or town, upon written request by the State Auditor of Public Accounts or by a certified public accountant engaged in making an audit of the accounts of such political subdivision in conformity with authorization of its governing body or by law, or upon the initiative of such officer to seek an audit of the operations of his office, shall make available to such auditors or their representatives such information as he possesses relating to local tax returns, reports and other data on file in his office as may be deemed necessary by any such auditors for their proper verification of the assessments and collections of local taxes and other local revenues including any abatements or exonerations thereof or exclusions therefrom in accordance with law.

B. The provisions of this section shall not be construed to apply to any tax returns, reports and other data or information relating solely to state taxes and other state revenues including abatements and exonerations thereof or exclusions therefrom.

C. Any information furnished to any person in accordance with the provisions of this section shall be deemed privileged and confidential; and each lawful recipient thereof shall be subject to the penalties imposed by § 58.1-3 for any unauthorized dissemination of such information in any manner or at any time.

Code 1950, § 58-46.2; 1975, c. 19; 1984, c. 675.

§ 58.1-3.2. Attorney General's and Tax Commissioner's authority to request and share information

Notwithstanding the provisions of § 58.1-3, the Attorney General and the Tax Commissioner are authorized to disclose any information collected by him, or reported or provided to him, on (i) the sales or purchases of cigarettes or other tobacco products, (ii) tax information relating to such sales or purchases, and (iii) tax information relating to sellers and purchasers of cigarettes or other tobacco products, to any federal, state, or local agency, including any agency of another state or local agency thereof, or any national or regional association of federal, state, or local agencies.

Such tax information shall include any information acquired by him in the performance of his duties with respect to the transactions, property, including personal property, income, business or tax returns of any person, firm, or corporation.

Further, the Attorney General and the Tax Commissioner are authorized to disclose information collected by him, or reported or provided to him, on the sales or purchases of cigarettes or other tobacco products to any tobacco product manufacturer required to establish a qualified escrow fund under § 3.2-4201. Such information provided to any tobacco product manufacturer shall be limited to brands or products of that manufacturer only.

2002, cc. 683, 722; 2012, c. 395; 2015, c. 247.

§ 58.1-3.3. Deemed consent to disclosure

When a credit or other tax attribute has been transferred from a transferor to a transferee pursuant to a statutory provision permitting such transfer, then:

1. The transferor shall be deemed to consent to the disclosure to the transferee of any confidential tax information relevant to the eligibility and value of the credit or other tax attribute transferred; and

2. The transferee shall be deemed to consent to the disclosure by the Department to the transferor of the amount of the transferred credit or other tax attribute used or absorbed on the transferee's tax return when such disclosure is necessary in the administration of the chapter.

2008, c. 549.

§ 58.1-4. Person preparing tax return for another not to disclose information without consent

No person, firm or corporation who undertakes the preparation of (i) any tax return required pursuant to this title or (ii) a federal income or an estate tax return required pursuant to federal law, for or without compensation, shall sell, dispose of or otherwise disclose, for the purpose of solicitation by mail or otherwise, the name or address of the person for whom such return is prepared, or disclose, for the purpose of solicitation by mail or otherwise, any information given by the person in the preparation of such return, without the written consent of the person requesting the preparation of such return. Violators of this section shall be guilty of a Class 2 misdemeanor, and each such disclosure shall constitute a separate offense.

Code 1950, §§ 58-27.4, 58-428; 1971, Ex. Sess., c. 195; 1984, c. 675.

§ 58.1-5. Persons, etc., engaged in more than one business

When any person, firm or corporation is engaged in more than one business which is made by law subject to taxation, such person, firm or corporation shall pay the tax provided by law on each branch of his, their or its business.

Code 1950, § 58-23; 1984, c. 675.

§ 58.1-6. Priority of taxes, etc., in distributions

In any distribution of the assets of any person or corporation assessed with taxes, levies and fees, together with penalties and interest thereon, due to the Commonwealth or any of its political subdivisions, whether heretofore or hereafter imposed, the claims of the Commonwealth and the political subdivisions for such taxes, levies and fees, penalties and interest thereon shall be paramount and prior to all claims of general creditors, except claims given higher dignity by federal law. Nothing in this section shall be construed in derogation of any lien of the Commonwealth or any of its political subdivisions now existing or hereafter created by law; nor shall anything herein be construed to affect the laws now in force with regard to the marshalling of a decedent's estate and in regard to the exemption of a poor debtor.

Code 1950, § 58-24; 1984, c. 675.

§ 58.1-7. Same; liability of recipient of improper corporate distribution

If any corporation assessed with a tax, including penalties and interest thereon, distributes its assets without first paying such assessment to the Commonwealth or to the proper political subdivision, as the case may be, any person with actual notice of such assessment receiving any moneys or other property from such distribution shall be held personally liable for such assessment to an amount not in excess of his participation in such distribution and any purchaser with actual notice of any such assessment shall be liable therefor to the extent of the assets of the corporation coming into his hands. Nothing in this section shall be construed so as to affect the rights of any bona fide purchaser for value.

Code 1950, § 58-25; 1984, c. 675.

§ 58.1-8. Filing of tax returns and payment of taxes which fall due on Saturday, Sunday or legal holiday

When the last day on which a tax return may be filed or a tax may be paid without penalty or interest falls on a Saturday, Sunday or legal holiday, then any return required by this title may be filed or such payment may be made without penalty or interest on the next succeeding business day.

Code 1950, § 58-4.1; 1966, c. 690; 1984, c. 675.

§ 58.1-9. Filing of tax returns or payment of taxes by mail or otherwise; penalty

A. When remittance of a tax return or a tax payment is made by mail or by means of a recognized commercial delivery service, receipt of such return or payment by the person with whom such return is required to be filed or to whom such payment is required to be made, in a sealed envelope or container bearing a postmark or a confirmation of shipment on or before midnight of the day such return is required to be filed or such payment made without penalty or interest, shall constitute filing and payment as if such return had been filed or such payment made before the close of business on the last day on which such return may be filed or such tax may be paid without penalty or interest.

B. When remittance of a tax payment is made by electronic funds transfer, receipt of funds available for withdrawal, in a bank account designated to receive such payments by the person to whom such payment is required to be made, on or before midnight of the day such payment is required to be made without penalty or interest, shall constitute payment as if such payment had been made before the close of business on the last day on which such tax may be paid without penalty or interest.

C. Notwithstanding any provision of law, the Tax Commissioner may allow the electronic filing of any state tax return, statement or document. For purposes of this subsection, the Tax Commissioner may determine alternative methods for the signing, subscribing or verifying of a state tax return, statement or document that shall have the same validity and consequences as the actual signing by the taxpayer. The Tax Commissioner may prescribe methods of execution, recording, reproduction and certification of electronically filed information pursuant § 59.1-496.

The Tax Commissioner shall devise a method by which a taxpayer will only receive bulletins, publications, or other information provided by the Department electronically upon request.

D. If an income tax return preparer prepared 100 or more individual income tax returns for a taxable year that began on or after January 1, 2004, or 50 or more such returns for a taxable year that began on or after January 1, 2010, then for every taxable year thereafter, all individual income tax returns for taxable years prepared by that income tax return preparer shall be filed using electronic means. If an individual tax return shall be accompanied by attachments or schedules that cannot be accepted through electronic means, the income tax preparer shall file the return using software that produces a two dimensional barcode using 2D technology reflecting information contained in the return in a standard format as prescribed by the Tax Commissioner. This subsection shall not apply to an individual income tax return for a taxpayer who has indicated that he does not want his individual income tax return filed using electronic means or 2D technology.

The Tax Commissioner shall have the authority to waive the requirement to file by electronic means upon finding that the requirement would cause an undue hardship. The income tax return preparer otherwise required to file individual income tax returns using electronic means shall request in writing the waiver from the Tax Commissioner and clearly demonstrate the nature of the undue hardship. The Tax Commissioner shall respond to the income tax return preparer within 45 days after receiving the request for waiver.

For purposes of this subsection, "income tax return preparer" means a person who prepares, or employs one or more individuals to prepare, an income tax return for compensation. Preparation of a substantial portion of an individual income tax return shall be deemed preparation of the entire individual income tax return for purposes of this section.

For purposes of this subsection, "income tax return preparer" shall not include volunteers who prepare tax returns for the elderly or poor as part of a nonprofit organization's program.

Code 1950, § 58-4.2; 1966, c. 690; 1984, c. 675; 1996, cc. 370, 449, 635, 657; 2000, c. 995; 2004, c. 562; 2008, c. 217; 2010, cc. 36, 151, 635; 2011, c. 368.

§ 58.1-10. Collection of taxes accrued prior to repeal

Any state or local tax heretofore or hereafter repealed shall be subject to all procedures for the collection of delinquent taxes or for the correction of erroneous assessment as may have been applicable to such tax immediately before such repeal.

Code 1950, § 58-27.3; 1971, Ex. Sess., c. 10; 1984, c. 675.

§ 58.1-11. Oaths or affirmations unnecessary on returns; misdemeanor to make false return

No return of any state or local tax need be verified by the oath or affirmation of the person or persons who are required by law to sign the return but the signature of such person or persons to any such return shall be sufficient. Any such person who willfully subscribes any such return which he does not believe to be true and correct as to every material matter shall be guilty of a Class 1 misdemeanor.

Code 1950, § 58-27; 1972, c. 316; 1984, c. 675.

§ 58.1-12. Payment of tax by bad check

A. If any check tendered for any tax due under this title is not paid by the bank on which it is drawn, the taxpayer for whom such check was tendered shall remain liable for the payment of the tax the same as if such check had not been tendered.

B. If such person fails to pay the amount shown on the face of the check within five days after notice of such nonpayment has been mailed to the taxpayer by the tax assessing official, a penalty of twenty-five dollars shall be added to the tax due. Such penalty shall be in addition to any and all other penalties provided by law.

Code 1950, §§ 58-26.1, 58-151.13:1, 58-441.35; 1966, c. 151; 1972, c. 351; 1979, c. 423; 1984, c. 675; 1992, c. 678 .

§ 58.1-13. State taxes to be paid into the general fund

Except when otherwise specifically provided, all state taxes, including penalties and interest, collected under the provisions of this title, shall, when paid into the state treasury, be paid into the general fund of the state treasury for the support of the government.

Code 1950, § 58-26; 1984, c. 675.

§ 58.1-13.1. Repealed

Repealed by Acts 2002, c. 719.

§ 58.1-14. Out-of-state tax collections

Any state of the United States, or any political subdivision thereof, shall have the right to sue in the courts of Virginia to recover any tax which may be owing to it when the like right is accorded to the Commonwealth of Virginia and its political subdivisions by such state, whether such right is granted by statutory authority or as a matter of comity.

Code 1950, § 58-1021.1; 1952, c. 323; 1984, c. 675.

§ 58.1-15. Rate of interest

A. Unless otherwise specifically provided, interest on omitted taxes, assessments and refunds under this title shall be computed at the rates equal to the rates of interest established pursuant to § 6621 of the Internal Revenue Code . The rate of interest on omitted taxes and assessments under this title shall be the "Underpayment Rate" established pursuant to § 6621(a)(2) of the Internal Revenue Code plus two percent. The rate of interest on refunds under this title shall be the "Overpayment Rate" for noncorporate taxpayers established pursuant to § 6621(a)(1) of the Internal Revenue Code plus two percent. Separate computations shall be made by multiplying the deficiency or overpayment for each period by the rate of interest applicable to that period.

B. In determining the addition to tax under § 58.1-492 for failure by individuals to pay estimated tax, the "Underpayment Rate" plus two percent which applies during the third month following such taxable year shall also apply during the first fifteen days of the fourth month following such taxable year in the case of individuals filing on a basis other than a calendar year. In the case of all other individuals, the "Underpayment Rate" plus two percent which applies during the third month following such taxable year shall also be applicable through May 1.

C. In determining the addition to tax under § 58.1-504 for failure by corporations to pay estimated tax, the "Underpayment Rate" plus two percent which applies during the third month following such taxable year shall also apply during the first fifteen days of the fourth month following such taxable year.

Code 1950, § 58-1160.1; 1980, c. 663; 1984, c. 675; 1987, c. 484; 1991, cc. 316, 331; 1999, cc. 146, 180.

§ 58.1-16. Overcollection of tax

Any person responsible for collecting any tax administered by the Department or the Division of Motor Vehicles who overcollects such tax and fails to account for and pay such overcollection to the appropriate state agency by the time his regular monthly or quarterly return is due shall be liable for the amount of such overcollection, and in addition a penalty of twenty-five percent of such overcollection. The Commissioner administering such tax may waive such penalty for good cause.

Code 1950, § 58-44.2; 1979, c. 133; 1984, c. 675.

§ 58.1-17. Donations to the general fund

Any taxpayer wanting to donate money in excess of his tax liability to the Commonwealth may do so at any time by writing a check payable to the State Treasurer and designating it as a donation to the Commonwealth's general fund. Such donations shall be used only for public purposes and shall be deductible as a charitable contribution to the extent allowed under § 170 of the Internal Revenue Code of 1986, as amended. Taxpayers making donations pursuant to this section may (i) include their donations when filing their Virginia income tax return, or (ii) deliver such donations,

either in person or by mail, to the Tax Commissioner. The Tax Commissioner shall report to the State Treasurer the amount donated monthly and the State Treasurer shall credit such amount to the general fund.

2002, c. 268.

Article 2 - RESPONSIBILITY OF FIDUCIARIES IN TAX MATTERS

§ 58.1-20. Repealed

Repealed by Acts 2009, c. 35.

§ 58.1-21. No decree for distribution until taxes paid or provided for

No decree or order shall be entered by any court of the Commonwealth directing the payment or other distribution of any funds, securities, moneys or other property under its control or under the control or in the hands of any receiver, commissioner or other officer of the court or any executor, administrator, trustee or other fiduciary unless it be made to appear to such court that all taxes and levies upon such funds, securities, moneys or other property have been paid or unless the payment thereof be provided for in such decree or order. No commissioner, executor, administrator, trustee or other fiduciary, receiver, trustee, bank or other person or corporation shall pay out any funds in hand under the order of any court unless a receipt for taxes is produced showing the taxes have been paid, or unless such order shall so state.

Code 1950, § 58-870; 1984, c. 675.

§ 58.1-22. Accounts not to be settled until taxes paid or provided for

No commissioner of accounts shall, under § 64.2-1211, file any report of an account of the transactions of any fiduciary not governed by § 58.1-911 until the commissioner finds that all taxes, whether state, county or city, assessed and chargeable upon property in the hands of the person for whom such account is settled have been paid or unless such account shall show that there remains in the hands of such person a sufficient sum, over and above the charges of administration, to pay all taxes charged against such person in his capacity as fiduciary.

Code 1950, § 58-871; 1984, c. 675; 1997, c. 496; 2002, c. 35.

§ 58.1-23. Inquiries required of fiduciaries

Every personal representative, before settling the estate in his hands, shall make inquiry of the treasurer of the county or city wherein the decedent last resided and of the Department with respect to any unpaid taxes and levies assessed against his decedent.

Code 1950, § 58-872; 1984, c. 675.

§ 58.1-24. Fiduciary to be reimbursed out of estate

When taxes or levies are paid by any fiduciary on any estate in his hands or for which he may be liable, such taxes and levies shall be refunded out of the estate.

Code 1950, § 58-873; 1984, c. 675.

Subtitle I - TAXES ADMINISTERED BY THE DEPARTMENT OF TAXATION

Chapter 1 - GENERAL PROVISIONS

§ 58.1-100. Property subject to state taxation only

Insurance taxes, licenses on insurance companies, taxable intangible personal property, rolling stock of all corporations operating railroads and all other classes of property not specifically exempted or reserved for local taxation, are hereby segregated and made subject to state taxation only.

Code 1950, § 58-10; 1984, c. 675.

§ 58.1-101. Waiver of time limitation on assessment of taxes

Where before the expiration of the time prescribed for the assessment of any tax imposed pursuant to this title and assessable by the Department both the Tax Commissioner and the taxpayer have consented in writing to its assessment after such time, the tax may be assessed at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

Code 1950, § 58-45.1; 1971, Ex. Sess., cc. 48, 245; 1984, c. 675.

§ 58.1-102. Retention of records by taxpayer

It shall be the duty of every taxpayer to retain suitable records and documents substantiating all information contained on any return required by this subtitle and any such other pertinent records or documents as the Tax Commissioner may require by regulation.

The records and documents shall be preserved for a period of three years from the required date for filing a return to which such records or documents pertain.

1984, c. 675.

§ 58.1-103. Inspection of records and documents by the Department

All records and documents required by this subtitle or by rule or regulation shall be available during regular business hours for inspection by the Tax Commissioner or his duly authorized agents. Persons violating the provisions of this section shall be guilty of a Class 2 misdemeanor.

1984, c. 675.

§ 58.1-104. Period of limitations

Except as provided in Chapters 3 (§ 58.1-300 et seq.) and 6 (§ 58.1-600 et seq.) of this title, any tax imposed by this subtitle shall be assessed within three years from the last day prescribed by law for the timely filing of the return. In the case of a false or fraudulent return with the intent to evade payment of any tax imposed by this subtitle, or a failure to file a required return, the taxes may be assessed, or a proceeding in court for the collection of such taxes may be begun without

assessment, at any time within six years from the last day prescribed by law for the timely filing of the return.

1984, c. 675; 1991, cc. 362, 456 .

§ 58.1-105. Offers in compromise; Department may accept; authority and duty of Tax Commissioner

A. In all cases in which under the laws of this Commonwealth a prosecution is authorized for violation of the revenue laws and in all cases in which a penalty is imposed upon the taxpayer for failure to comply with the requirements of the tax laws, the Department shall in its discretion have authority to accept offers made in compromise of such prosecution and in compromise or in lieu of such penalties. An offer in lieu of the assessment of a penalty shall be deemed to be made by the filing of a return or payment of tax without payment of a penalty if information filed with the return or payment of tax or obtained from other sources demonstrates reasonable cause for the failure or omission for which the penalty would be imposed. The reason for the acceptance of such offers in compromise shall be preserved among the records of the Department.

B. The Tax Commissioner may compromise and settle doubtful or disputed claims for taxes or tax liability of doubtful collectibility. An offer in compromise shall be deemed accepted only when the taxpayer is notified in writing of the acceptance by the Tax Commissioner. Whenever such a compromise and settlement is made, the Tax Commissioner shall make a complete record of the case showing the tax assessed, recommendations, reports and audits of departmental personnel, if any, the taxpayer's grounds for dispute or contest together with all evidences thereof, and the amounts, conditions and settlement or compromise of same.

C. The Department may deposit into the state treasury all payments submitted with offers in compromise, unless the taxpayer specifically and clearly directs otherwise.

Code 1950, § 58-45; 1973, c. 446; 1984, c. 675; 1994, c. 800; 1996, cc. 640, 655.

§ 58.1-105.1. Certified mail; subsequent mail or notices may be sent by regular mail

Whenever in this title the Commissioner or the Department is required to send any mail or notice by certified mail and such mail or notice is sent certified mail, return receipt requested, then any subsequent, identical mail or notice that is sent by the Commissioner or the Department may be sent by regular mail.

2011, c. 566.

§ 58.1-106. Tax Commissioner authorized to make reproductions of tax documents

Notwithstanding any other provision of law, the Tax Commissioner may cause all or any part of the state tax returns, correspondence, documents, forms, statements, reports or working papers kept by or in the possession of the Department to be reproduced. As used in this title, the term "reproduction" shall be deemed to include photographs, microphotographs, microfilm, microcard, printouts, optical imaging or other reproductions of electronically stored data, or any other repro-

duction of an original from a process which forms a durable medium for its recording, storing, and reproducing.

Code 1950, § 58-48.1; 1972, c. 350; 1984, c. 675; 1985, c. 204; 1999, c. 103.

§ 58.1-107. Destruction of original documents so reproduced; destruction of other returns, reports, etc

Whenever reproductions have been made pursuant to § 58.1-106 and provision has been made for preserving, examining and using the same, the Tax Commissioner may, notwithstanding any other provisions of law, cause the original tax returns, correspondence, documents, forms, statements, reports or working papers so reproduced, or any part thereof, to be destroyed. All other records of the Department may be destroyed after three years upon order of the Tax Commissioner.

Code 1950, § 58-48.2; 1972, c. 350; 1981, c. 73; 1984, c. 675; 1985, c. 204; 1999, c. 103.

§ 58.1-108. Admissibility of reproductions of documents in evidence

A reproduction or enlargement of any tax return, correspondence, document, form, statement, report or working paper, when duly attested by the Tax Commissioner, shall be received as evidence in any court or other proceeding for any purpose for which the original could be received without proof of the official character or the person whose name is signed thereto. The introduction of a reproduced tax return, correspondence, document, form, statement, report or working paper or of an enlargement thereof shall not preclude admission of the original.

Code 1950, § 58-48.3; 1972, c. 350; 1984, c. 675; 1999, c. 103.

§ 58.1-109. Compliance with subpoena, etc., requiring production of confidential returns

The Tax Commissioner and each employee of the Department, when served with any summons, subpoena, subpoena duces tecum or order, directing him to produce any confidential tax returns kept by or in the possession of the Department, may comply therewith by certifying a reproduction or enlargement thereof in accordance with § 58.1-108 and mailing such reproduction or enlargement in a sealed envelope to the clerk of court. Such envelope shall not be opened unless and until a judge of such court determines that the information contained therein is of such importance that the ends of justice require that the secrecy and confidentiality of such returns be violated and no reproduction of said returns shall be allowed by the court. Unless otherwise directed by a judge of such court, the clerk shall return all such reproductions and enlargements to the Department after the entry of a final order in the case. A charge not exceeding one dollar per page may be made for each such copy and shall be paid by the party requesting such order. Upon good cause shown, any court may direct the Tax Commissioner or any employee of the Department to appear in person, notwithstanding any other provision of this section.

Code 1950, § 58-48.4; 1972, c. 350; 1984, c. 675.

§ 58.1-110. Effect of Tax Commissioner's affidavit as evidence

In any judicial proceeding, civil or criminal, involving any tax administered by the Department, a duly executed affidavit by the Tax Commissioner may be accepted by the court as prima facie evidence as to whether or not a tax return has been filed or the tax has been paid.

Code 1950, § 58-48.5; 1972, c. 350; 1984, c. 675.

§ 58.1-111. Taxpayer refusing to file return; estimated tax

Whenever any taxpayer liable under the law to file a state tax return with the Department shall fail or refuse on demand to file a correct and proper return, the Department may make an estimate of the amount of taxes due the Commonwealth by such taxpayer, from any information in its possession, and assess the taxes, penalties and interest due the Commonwealth by such taxpayer.

Code 1950, § 58-40; 1984, c. 675.

§ 58.1-112. Return filing frequency; waiver of penalties

A. In the case of any return or payment for a tax administered by the Department that is required to be filed or paid more often than annually, the Tax Commissioner shall have the authority to set thresholds or other conditions in which such returns or payments for all or any class of taxpayers may be filed or paid less frequently, but at least annually.

B. The Tax Commissioner shall have the authority to waive penalties and grant extensions of time to file a return or pay a tax, or both, to any class of taxpayers when the Tax Commissioner in his discretion finds that the normal due date has, or would, cause undue hardship to the class of taxpayers because of a natural disaster or other reason.

C. Any action of the Department under this section shall be exempt from the Administrative Process Act and the Virginia Register Act, but the Department shall preserve the reason for its action among its records. The Department shall promulgate its action in a manner that is reasonably calculated to inform the affected class of the action.

1996, cc. 640, 655.

§ 58.1-113. Nonprofit hospitals to provide returns and information to the Department

Any hospital described under § 501(c) of the U.S. Internal Revenue Code of 1986, as amended, shall provide to the Department of Taxation a copy of the hospital's federal 990 or 990-EZ tax form (or the successor form to such form) that was filed with the Internal Revenue Service for the relevant year. Such hospital shall provide the copy to the Department within 30 days following the filing of the federal 990 or 990-EZ tax form with the Internal Revenue Service. In addition, such hospital shall provide to the Department a copy of any interim tax form, report, or return that the hospital filed with or provided to the Internal Revenue Service for the relevant year pursuant to Title 26 of the United States Code or the rules and regulations thereunder. The copy of the interim tax form, report, or return shall be provided to the Department within 30 days following the filing of the same with, or the providing of the same to, the Internal Revenue Service.

2007, c. 746.

Chapter 2 - DEPARTMENT OF TAXATION

§ 58.1-200. Tax Commissioner

The Tax Commissioner shall be appointed by the Governor, subject to confirmation by the General Assembly, if in session when such appointment is made, and, if not in session, then at its next succeeding session. He shall hold office at the pleasure of the Governor for a term coincident with that of each governor making the appointment, or until his successor shall be appointed and qualified. Vacancies shall be filled in the same manner as original appointments are made. No person shall be appointed Tax Commissioner unless he is a person of proved executive ability and knowledge of taxation. He shall devote his full time to his duties and shall receive such compensation for his services as provided by law.

Code 1950, § 58-28; 1976, c. 728; 1984, cc. 675, 720.

§ 58.1-201. Oath and bond

Before entering upon the discharge of his duties, the Tax Commissioner shall take an oath that he will faithfully and honestly execute the duties of the office during his continuance therein and he shall give bond in such amount as may be fixed by the Governor, conditioned upon the faithful discharge of his duties. The premium on such bond shall be paid out of the moneys appropriated to the Department.

Code 1950, § 58-29; 1984, c. 675.

§ 58.1-202. General powers and duties of Tax Commissioner

In addition to the powers conferred and the duties imposed elsewhere by law upon the Tax Commissioner, he shall:

1. Supervise the administration of the tax laws of the Commonwealth, insofar as they relate to taxable state subjects and assessments thereon, with a view to ascertaining the best methods of reaching all such property, of effecting equitable assessments and of avoiding conflicts and duplication of taxation of the same property.

2. Recommend to the Governor and the General Assembly measures to promote uniform assessments, just rates and harmony and cooperation among all officials connected with the revenue system of the Commonwealth.

3. Exercise general supervision over all commissioners of the revenue so far as the duties of such officers pertain to state revenues, and confer with, instruct and advise all such officers in the performance of their duties to the extent stated.

4. Investigate at any time the assessment and collection of state taxes in any county or city and when the assessment is found unreasonable and unjust take steps to correct the same in the manner provided by law.

5. Institute proceedings by motion in writing in the proper court for the removal or suspension of commissioners of the revenue for incompetency, neglect or other official misconduct and order the

Comptroller to withhold compensation from any commissioner of the revenue who fails to comply with any law governing the duties or any lawful instruction of the Tax Commissioner, until such commissioner of the revenue complies with such law or instruction.

6. Provide commissioners of the revenue with information and assistance in the assessment of personal property, including the maintenance of a reference library and the conduct of instructional programs.

7. Prescribe the forms of books, schedules and blanks to be used in the assessment and collection of state taxes and call for and prescribe the forms of such statistical reports, notices and other papers as he may deem necessary to the proper administration of the law, and prescribe and install uniform systems to be used by assessing officials.

8. Direct such proceedings, actions and prosecutions to be instituted as may be needful to enforce the revenue laws of the Commonwealth and call on the Attorney General or other proper officer to prosecute such actions and proceedings.

9. Intervene, by petition or otherwise, whenever deemed advisable in any action or proceeding pending in any court wherein the constitutionality or construction of any state tax or revenue statute or the validity of any state tax is in question. The court wherein such action or proceeding is pending may, by order entered therein, make the Tax Commissioner a party thereto whenever deemed necessary.

10. Upon request by any local governing body, local board of equalization or any ten citizens and taxpayers of the locality, render advisory aid and assistance to such board in the matter of equalizing the assessments of real estate and tangible personal property as among property owners of the locality.

11. Annually make available to every county and city and, where appropriate, towns, a general reassessment procedures manual which provides the legal requirements for conducting general reassessments, and guidelines suggesting the broad range of factors in addition to market data that are appropriate for consideration in the determination of fair market value of both rural and urban land and structures.

12. Issue an annual report to the members of the House Appropriations Committee, the House Finance Committee, and the Senate Finance Committee detailing procedures used in the collections process and how the Virginia Taxpayer Bill of Rights (§ 58.1-1845) is implemented to assist with such collections.

13. Ensure that employees of the Department are not paid, evaluated, or promoted on the basis of the amount of assessments or collections from taxpayers.

14. Issue an annual report to the members of the General Assembly and post such report on the Department's website that details the total amount of corporate income tax relief provided in the Commonwealth during the second preceding tax year. The report shall (i) include the total dollar

amount of income tax subtractions, deductions, exclusions, and exemptions claimed cumulatively by corporations; (ii) identify all tax credits claimed; (iii) provide an analysis of the fiscal impact of the corporate tax relief; and (iv) provide summary information regarding the types of taxpayers who claim the tax relief. The report shall also provide information on the number of companies that have qualified for the major business facility job tax credit established under § 58.1-439 and the amount of such credits. The report shall be submitted by October 1 of each year.

15. Obtain information from each income tax taxpayer as to whether the taxpayer claimed a federal earned income tax credit and the amount claimed, unless such information can be calculated based on other information in the taxpayer's return.

Code 1950, §§ 58-33, 58-33.4; 1980, c. 744; 1983, c. 304; 1984, c. 675; 1996, c. 634; 2005, c. 216; 2006, cc. 159, 590; 2009, c. 24; 2010, c. 379.

§ 58.1-202.1. Payment of taxes by electronic funds transfer

A. In accordance with the limitations contained in subsection B, the Tax Commissioner shall have the authority to require, consistent with the cash management policies of the Department of Treasury and the Department of Accounts, taxpayers subject to the taxes imposed pursuant to Articles 10 (§ 58.1-400 et seq.) and 16 (§ 58.1-460 et seq.) of Chapter 3 of this title and Chapter 6 (§ 58.1-600 et seq.) of this title to remit taxes by electronic funds transfer. Electronic funds transfer shall be made by automated clearinghouse debit transactions; however, the Tax Commissioner may authorize the use of any other means which ensures the availability of such funds to the Commonwealth on or before the due date of the tax.

B. A taxpayer required to remit any of the taxes enumerated in subsection A of this section shall be required to remit such taxes by electronic funds transfer if the average monthly liability for such taxes exceeds $20,000. The $20,000 threshold will apply to each of the taxes on a separate basis. The Tax Commissioner shall promulgate guidelines to determine eligibility criteria and periods. In developing such guidelines, the Department shall seek the counsel of interested groups including tax practitioners and representatives of the business community.

C. All persons who act on a taxpayer's behalf to remit the tax imposed pursuant to Article 16 (§ 58.1-460 et seq.) of Chapter 3 of this title shall be required to remit such withholding by electronic funds transfer if the payment of individual income tax withholding is made on behalf of 100 or more taxpayers. For the purposes of this subsection, electronic funds transfer shall be made by automated clearinghouse credit payment transactions; however, the Tax Commissioner may authorize the use of any other means that ensures the availability of such funds to the Commonwealth on or before the due date of the tax.

1996, cc. 370, 449; 1997, c. 193; 2003, cc. 36, 39.

§ 58.1-202.2. Public-private partnerships; Public Private Partnership Oversight Committee

A. The Tax Commissioner is hereby authorized through the Department of General Services in accordance with the Virginia Public Procurement Act to enter into public-private partnership

contracts to finance agency technology needs. The Tax Commissioner may issue a request for information to seek out potential private partners interested in providing programs pursuant to an agreement under this section. The compensation for such services shall be computed with reference to and paid from the increased revenue attributable to the successful implementation of the technology program for the period specified in the contract.

B. The Public Private Partnership Oversight Committee, hereinafter referred to as the "Committee" is established as an advisory committee in the executive branch of state government to review and approve the terms of contracts under this section relating to the measurement of the revenue attributable to the technology program. The Committee shall consist of five members as follows: one legislative employee appointed by the Senate Committee on Rules after the consideration of the recommendation of the President pro tempore of the Senate, if any; one legislative employee appointed by the Speaker of the House of Delegates; and the State Comptroller, the Director of the Department of Planning and Budget, and the State Inspector General, as ex officio voting members. All members shall be citizens of the Commonwealth.

Ex officio members shall serve terms coincident with their terms of office. Legislative employee members shall be appointed for a term of two years and may be reappointed for successive terms. Appointments to fill vacancies, other than by expiration of a term, shall be for the unexpired terms. Vacancies shall be filled in the same manner as the original appointments.

The Tax Commissioner shall preside over the meetings of the Committee. The Committee may select an alternative to preside in the absence of the Tax Commissioner. A majority of the members shall constitute a quorum. The meetings of the Committee shall be held at the call of the Tax Commissioner or whenever the majority of the members so request.

The Tax Commissioner shall submit an annual executive summary and report no later than November 30 to the Governor and General Assembly on all agreements under this section, describing each technology program, its progress, revenue impact, and such other information as may be relevant. The executive summary and report shall be submitted as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents and reports and shall be posted on the General Assembly's website.

C. The Tax Commissioner shall determine annually the total amount of increased revenue attributable to the successful implementation of a technology program under this section and such amount shall be deposited in a special fund known as the Technology Partnership Fund (the Fund). The Tax Commissioner is authorized to use moneys deposited in the Fund to pay private partners pursuant to the terms of contracts under this section. All moneys in excess of that required to be paid to private partners, as determined by the Department, shall be reported to the Comptroller and transferred to the appropriate general or nongeneral fund.

1996, cc. 643, 653; 2004, c. 1000; 2011, cc. 798, 871.

§ 58.1-202.3. Fillable tax forms

The Tax Commissioner shall ensure that all required state tax forms are fillable forms in a portable document format for taxable periods beginning on and after January 1, 2012, and are available on the Department of Taxation's website. The Tax Commissioner shall begin making fillable forms available no later than January 1, 2012, and shall make all fillable forms available no later than March 1, 2013.

The Tax Commissioner shall develop guidelines for using such forms and publish them on the Department's website.

Nothing in this section shall 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.

2011, c. 680.

§ 58.1-203. Regulations and rulings

A. The Tax Commissioner shall have the power to issue regulations relating to the interpretation and enforcement of the laws of this Commonwealth governing taxes administered by the Department. Such regulations shall not be inconsistent with the Constitutions and applicable laws of this Commonwealth and of the United States. Such regulations shall take precedence over any rules or regulations of the Secretary of the Treasury of the United States or his delegate which are in conflict therewith.

B. In promulgating regulations, the Tax Commissioner shall follow the applicable provisions of the Administrative Process Act (§ 2.2-4000 et seq.), except that notice of a proposed regulation shall appear at least sixty days in advance of the date prescribed for submittals. The Tax Commissioner may prescribe the extent, if any, to which any ruling or regulation shall be applied without retroactive effect.

C. Rulings in individual cases shall not be subject to the Administrative Process Act.

Code 1950, § 58-48.6; 1980, c. 633; 1983, c. 551; 1984, c. 675.

§ 58.1-204. Publication of rulings, decisions, orders and regulations

A. The Department shall publish the following documents:

1. Regulations finally adopted by the Tax Commissioner as provided in § 58.1-203;

2. Orders of the Tax Commissioner under §§ 58.1-1822 and 58.1-1824;

3. Final orders entered by a circuit court under § 58.1-1826 or 58.1-1827, and any written opinion or memorandum of the court;

4. Tax bulletins, guidelines, and any written ruling or other interpretation of Virginia law which the Tax Commissioner believes may be of interest to taxpayers and practitioners.

B. Notwithstanding § 58.1-4 or any other provision of law, the Tax Commissioner may publish the documents described above with such changes of name, alterations and deletions as he deems necessary to preserve privileged taxpayer information.

C. For purposes of this section, documents shall be deemed to be published if they are (i) compiled at regular intervals not exceeding three months, (ii) made available for inspection and copying at the Department, and (iii) published on the Department's website as the Tax Commissioner deems necessary to inform taxpayers and practitioners.

Code 1950, § 58-48.7; 1980, c. 633; 1984, c. 675; 2011, c. 800.

§ 58.1-205. Effect of regulations, rulings, etc., and administrative interpretations

In any proceeding relating to the interpretation or enforcement of the tax laws of this Commonwealth, the following rules shall apply:

1. Any assessment of a tax by the Department shall be deemed prima facie correct.

2. Any regulation promulgated as provided by subsection B of § 58.1-203 shall be sustained unless unreasonable or plainly inconsistent with applicable provisions of law.

3. Rulings issued in conformity with § 58.1-203, tax bulletins, guidelines, and other documents published as provided in § 58.1-204, and guidance documents listed in the Virginia Register of Regulations as provided in §§ 2.2-4008 and 2.2-4103 shall be accorded judicial notice.

4. In any proceeding commenced under § 58.1-1821, 58.1-1824 or 58.1-1825, rulings and administrative interpretations other than those described in subdivisions 2 and 3 shall not be admitted into evidence and shall be accorded no weight, except that an assessment made pursuant to any such ruling or interpretation shall be entitled to the presumption of correctness specified in subdivision 1.

Code 1950, § 58-48.8; 1980, c. 633; 1984, c. 675; 2011, c. 800.

§ 58.1-206. Continuing education program for assessing officers and boards of equalization

There shall be established within the Department a program of continuing education for county, city and town officers responsible for the assessment of real estate, and for members and prospective members of boards of assessors and boards of equalization. Such program shall be composed of basic courses embodying the fundamental instruction essential for the equitable assessment of real estate or tangible personal property and an advanced course designed basically to meet the requirements for full certification by the International Association of Assessing Officers. Such assessing officers and board members attending shall be reimbursed for the actual expenses incurred by their attendance at such program.

Code 1950, § 58-33.1; 1975, c. 616; 1979, cc. 576, 577; 1984, c. 675.

§ 58.1-207. Collection and publication of property tax data

A. The Tax Commissioner annually shall make and issue comprehensive assessment sales ratio studies for each major class of real property in each county or city in the Commonwealth. In order

to determine the degree of assessment uniformity in the assessment of major classes of property within each county or city, the Tax Commissioner shall compute measures of central tendency and dispersion in accordance with appropriate standard statistical techniques.

B. The Tax Commissioner shall construct and maintain a system for the collection and analysis of real property tax facts so as to enable him to make intrajurisdictional comparisons as well as intercounty and intercity comparisons based on assessment sales ratio data.

C. The Tax Commissioner shall publish annually the findings of the assessment sales ratio studies.

D. The appropriate county or city assessing officer shall post annually in his office the assessment sales ratio studies as published by the Tax Commissioner.

Code 1950, § 58-33.2; 1975, c. 617; 1984, c. 675.

§ 58.1-208. Classifications of real property

The Tax Commissioner shall establish a classification system of real property appropriate for inclusion on local land books. Such classification shall be placed on the local land books or the land books shall be organized in a manner appropriate for identification of the classifications by the Tax Commissioner in conducting the annual sales ratio studies. The local assessing officer of any county, city, or town may subdivide such classifications into lesser included classifications should he deem such subclassification desirable.

The Tax Commissioner shall cooperate with and seek the counsel of local assessing officers in establishing such classification system.

Code 1950, § 58-33.3; 1975, c. 623; 1984, c. 675.

§ 58.1-209. Disclosure of social security account numbers

Notwithstanding any other provision of law, the Department may require disclosure of the social security account number of a taxpayer for any purpose relating to taxes administered by the Department, including verification of the identity of any individual. Such numbers shall be regarded as confidential tax information pursuant to the provisions of § 58.1-3.

Code 1950, § 58-46.3; 1976, c. 663; 1984, c. 675.

§ 58.1-210. Publication showing rates of local levies

The Department shall annually publish a pamphlet giving the then current rates of local levies. Every tax assessing officer of a county, city or town shall send to the Department, on forms to be prescribed and furnished by the Department, the information as to his county, city or town necessary to enable the Department to publish such pamphlet. Such information shall be so furnished by such tax assessing officers as soon as it is available after request by the Department. If any such assessing officer fails, without good cause, to furnish the same to the Department, on demand, he shall be guilty of nonfeasance in office. The Department shall furnish to any taxpayer, upon application in writing, a copy of such pamphlet so published.

Code 1950, § 58-47; 1984, c. 675.

§ 58.1-211. Department to advise Comptroller of amounts to be charged state collecting officers

Whenever the Department has information concerning amounts properly chargeable to any collecting or receiving officer by reason of the fact that such collecting officer has been delivered an assessment of state taxes for collection, or otherwise, the Department shall as soon as practicable advise the Comptroller thereof so that he may make the proper entries in his books.

Code 1950, § 58-48; 1984, c. 675.

§ 58.1-212. Office of Tax Commissioner; sessions and investigations elsewhere

The office of the Tax Commissioner shall be in the City of Richmond and suitable space shall be provided by the Governor for its offices. The Tax Commissioner, however, may hold sessions and conduct investigations and hearings at any other place when necessary for the proper performance of the duties prescribed by law.

Code 1950, § 58-32; 1960, c. 339; 1984, c. 675.

§ 58.1-213. Assistants and clerks

The Tax Commissioner may, subject to the provisions of the Virginia Personnel Act (§ 2.2-2900 et seq.), employ and remove such assistants and clerks as may from time to time be necessary, prescribe their duties and fix their compensation.

Code 1950, §§ 58-30, 58-441.42; 1966, c. 151; 1984, c. 675.

§ 58.1-214. Promulgation and distribution of tax forms

To ensure a full collection and accounting for all taxes administered by the Department, it shall design, prepare, print and, upon request, distribute all forms and instructions necessary for filing any return required by this subtitle. In addition, all instructions shall include, in bold type, the address and telephone number of the Department of Taxation and, if available, its e-mail and Internet addresses.

The failure of a taxpayer to receive or procure such forms or instructions shall not, however, relieve such taxpayer from the payment of the tax at the time and in the manner prescribed by law.

Code 1950, § 58-441.44; 1966, c. 151; 1984, c. 675; 1996, c. 316.

§ 58.1-215. Charge for sale of publications

The Tax Commissioner is authorized to impose a charge for the sale of reprints of this title, or portions thereof, for copies of rules and regulations promulgated by the Tax Commissioner and for other publications of the Department. Receipts from such sales shall be credited to the Department for reimbursement of printing expenses. No charge shall be made for state tax forms or instructions.

Code 1950, §§ 58-31, 58-441.44; 1966, c. 151; 1972, c. 291; 1973, c. 281; 1984, c. 675.

§ 58.1-216. Writs, notices, processes, and orders

A. The Tax Commissioner may, in all matters within his jurisdiction, award and issue and have served, executed and returned any writ, notice, process, order or order of publication which may by law be awarded, issued, served, executed or returned by or to any court in this Commonwealth for the purpose of compelling the attendance of witnesses, the production of books and papers and the enforcement and execution of his findings, orders and judgments. Such a summons to any witness or to produce any document may be personally served by an employee of the Department or served in the manner provided by § 58.1-217. But all memoranda of liens for the collection of taxes shall issue under the provisions of § 58.1-1805 or § 58.1-1806.

B. Any person summoned as a witness, or summoned to produce books and papers, or both, who fails or refuses to attend, or to produce such books and papers, or both, may be proceeded against in the circuit court of the city or of the county in which such person resides by a rule or attachment issued on motion of the Tax Commissioner in the name of the Commonwealth to compel such person to attend as a witness, or to produce such books and papers, or both, at such time and place as may be designated by the court.

C. The Tax Commissioner and such other officers or employees of the Department as the Tax Commissioner may authorize in writing may administer oaths in the performance of their duties.

Code 1950, §§ 58-35, 58-36, 58-426; 1952, c. 414; 1960, c. 508; 1984, c. 675; 1992, c. 763 .

§ 58.1-217. Form of writs, processes and orders; how served

All writs, processes and orders of the Tax Commissioner shall run in the name of the Commonwealth, shall be signed by the Tax Commissioner, and shall be directed to the sheriff or constable of the county or city wherein such writ, process or order is to be executed. All writs, notices, processes or orders of the Tax Commissioner may be executed and returned in like manner and upon like persons or property as the processes, writs, notices or orders of the courts of record of this Commonwealth and when so served, executed and returned shall have the same legal effect. The officer serving or executing any writ, notice, process or order of the Tax Commissioner shall receive the same fees allowed by law for the like services to sheriffs of the counties and cities. Any officer who fails to execute and return any writ, process, notice or order of the Tax Commissioner shall be subject to the same penalties provided by law for the failure to execute and return the process of any court, which penalties, after due notice to the officer so failing, may be enforced by the judgment of the Tax Commissioner.

Code 1950, § 58-37; 1971, Ex. Sess., c. 155; 1984, c. 675.

§ 58.1-218. Fees and mileage of witnesses

The Tax Commissioner shall make such allowances for fees and mileage of witnesses summoned before him as are allowed by law for witnesses summoned by the Commonwealth in felony cases, to be paid out of the funds at the disposal of the Tax Commissioner.

Code 1950, § 58-38; 1984, c. 675.

§ 58.1-219. Examination of books and records of taxpayers

The Tax Commissioner may, in any case, in lieu of proceeding under § 58.1-216, cause the books and records of any taxpayer containing information concerning the tax liability of such taxpayer to be examined by one of his authorized auditors or agents in order that the tax and revenue laws of the Commonwealth may be enforced; but, in any such case, if any taxpayer refuses to submit his books and records for examination, as aforesaid, the Department may proceed under § 58.1-216.

Code 1950, § 58-39; 1984, c. 675.

§ 58.1-220. Waiver of time limitation on assessment of omitted or additional state taxes
Where before the expiration of the time prescribed for the assessment of an omitted or additional state tax, both the Tax Commissioner and the taxpayer have consented in writing to its assessment after such time, the tax may be assessed at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

Code 1950, § 58-1162.1; 1954, c. 509; 1984, c. 675.

Chapter 3 - INCOME TAX

Article 1 - GENERAL PROVISIONS

§ 58.1-300. Incomes not subject to local taxation
No county, city, town or other political subdivision of this Commonwealth shall impose any tax or levy upon incomes, incomes being hereby segregated for state taxation only.

Code 1950, § 58-151.04; 1971, Ex. Sess., c. 171; 1984, c. 675; 1989, c. 245; 2013, c. 766.

§ 58.1-301. Conformity to Internal Revenue Code
A. Any term used in this chapter shall have the same meaning as when used in a comparable context in the laws of the United States relating to federal income taxes, unless a different meaning is clearly required.

B. Any reference in this chapter to the laws of the United States relating to federal income taxes shall mean the provisions of the Internal Revenue Code of 1954, and amendments thereto, and other provisions of the laws of the United States relating to federal income taxes, as they existed on December 31, 2015, except for:

1. The special depreciation allowance for certain property provided for under §§ 168(k), 168(l), 168(m), 1400L, and 1400N of the Internal Revenue Code;

2. The carry-back of certain net operating losses for five years under § 172(b)(1)(H) of the Internal Revenue Code;

3. The original issue discount on applicable high yield discount obligations under § 163(e)(5)(F) of the Internal Revenue Code;

4. The deferral of certain income under § 108(i) of the Internal Revenue Code. For Virginia income tax purposes, income from the discharge of indebtedness in connection with the reacquisition of an "applicable debt instrument" (as defined under § 108(i) of the Internal Revenue Code) reacquired in the taxable year shall be fully included in the taxpayer's Virginia taxable income for the taxable year, unless the taxpayer elects to include such income in the taxpayer's Virginia taxable income ratably over a three-taxable-year period beginning with taxable year 2009 for transactions completed in taxable year 2009, or over a three-taxable-year period beginning with taxable year 2010 for transactions completed in taxable year 2010 on or before April 21, 2010. For purposes of such election, all other provisions of § 108(i) of the Internal Revenue Code shall apply mutatis mutandis. No other deferral shall be allowed for income from the discharge of indebtedness in connection with the reacquisition of an "applicable debt instrument"; and

5. The amount of the deduction allowed for domestic production activities pursuant to § 199 of the Internal Revenue Code for taxable years beginning on or after January 1, 2010. For Virginia income tax purposes, two-thirds of the amount deducted pursuant to § 199 of the Internal Revenue Code for federal income tax purposes during the taxable year may be deducted for Virginia income tax purposes for taxable years beginning on and after January 1, 2010. For taxable years beginning on and after January 1, 2013, the entire amount of the deduction allowed for domestic production activities pursuant to § 199 of the Internal Revenue Code may be deducted for Virginia income tax purposes.

The Department of Taxation is hereby authorized to develop procedures or guidelines for implementation of the provisions of this section, which procedures or guidelines shall be exempt from the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

Code 1950, § 58-151.01; 1971, Ex. Sess., c. 171; 1980, c. 633; 1984, c. 675; 1994, c. 1; 2003, cc. 2, 163; 2004, c. 512; 2005, cc. 5, 26; 2006, cc. 63, 162; 2007, cc. 59, 782; 2008, cc. 1, 2; 2009, cc. 2, 3, 781; 2010, cc. 872, 874; 2011, cc. 2, 866, 890; 2012, cc. 2, 335, 480, 578; 2013, cc. 4, 693; 2014, c. 1; 2014, cc. 1, 2; 2015, cc. 1, 61; 2016, cc. 2, 19.

§ 58.1-302. Definitions

For the purpose of this chapter and unless otherwise required by the context:

"Affiliated" means two or more corporations subject to Virginia income taxes whose relationship to each other is such that (i) one corporation owns at least 80 percent of the voting stock of the other or others or (ii) at least 80 percent of the voting stock of two or more corporations is owned by the same interests.

"Compensation" means wages, salaries, commissions and any other form of remuneration paid or accrued to employees for personal services.

"Corporation" includes associations, joint stock companies and insurance companies.

"Domicile" means the permanent place of residence of a taxpayer and the place to which he intends to return even though he may actually reside elsewhere. In determining domicile, consideration may be given to the applicant's expressed intent, conduct, and all attendant circumstances including, but not limited to, financial independence, business pursuits, employment, income sources, residence for federal income tax purposes, marital status, residence of parents, spouse and children, if any, leasehold, sites of personal and real property owned by the applicant, motor vehicle and other personal property registration, residence for purposes of voting as proven by registration to vote, if any, and such other factors as may reasonably be deemed necessary to determine the person's domicile.

"Foreign source income" means:

1. Interest, other than interest derived from sources within the United States;

2. Dividends, other than dividends derived from sources within the United States;

3. Rents, royalties, license, and technical fees from property located or services performed without the United States or from any interest in such property, including rents, royalties, or fees for the use of or the privilege of using without the United States any patents, copyrights, secret processes and formulas, good will, trademarks, trade brands, franchises, and other like properties;

4. Gains, profits, or other income from the sale of intangible or real property located without the United States; and

5. The amount of an individual's share of net income attributable to a foreign source qualified business unit of an electing small business corporation (S corporation). For purposes of this subsection, qualified business unit shall be defined by § 989 of the Internal Revenue Code, and the source of such income shall be determined in accordance with §§ 861, 862 and 987 of the Internal Revenue Code.

In determining the source of "foreign source income," the provisions of §§ 861, 862, and 863 of the Internal Revenue Code shall be applied except as specifically provided in subsection 5 above.

"Income and deductions from Virginia sources" includes:

1. Items of income, gain, loss and deduction attributable to:

a. The ownership of any interest in real or tangible personal property in Virginia;

b. A business, trade, profession or occupation carried on in Virginia; or

c. Prizes paid by the Virginia Lottery Department, and gambling winnings from wagers placed or paid at a location in Virginia.

2. Income from intangible personal property, including annuities, dividends, interest, royalties and gains from the disposition of intangible personal property to the extent that such income is from property employed by the taxpayer in a business, trade, profession, or occupation carried on in Virginia.

"Income tax return preparer" means any person who prepares for compensation, or who employs one or more persons to prepare for compensation, any return of tax imposed by this chapter or any claim for refund of tax. For purposes of the preceding sentence, the preparation for compensation of any portion of a return or claim for refund shall be treated as if it were the preparation of the return or claim for refund. A person shall not be an "income tax return preparer" merely because the person:

1. Furnishes typing, reproducing, or other mechanical assistance;

2. Prepares a return or claim for refund of the employer (or of an officer or employee of the employer) by whom he is regularly and continuously employed;

3. Prepares as a fiduciary a return or claim for refund for any person; or

4. Prepares an application for correction of an erroneous assessment or a protective claim for refund for a taxpayer in response to any assessment pursuant to § 58.1-1812 issued to the taxpayer or in response to any waiver pursuant to § 58.1-101 or 58.1-220 after the commencement of an audit of the taxpayer or another taxpayer if a determination in such audit of such other taxpayer directly or indirectly affects the tax liability of such taxpayer.

"Individual" means all natural persons whether married or unmarried and fiduciaries acting for natural persons, but not fiduciaries acting for trusts or estates.

"Intangible expenses and costs" means:

1. Expenses, losses and costs for, related to, or in connection directly or indirectly with the direct or indirect acquisition, use, maintenance or management, ownership, sale, exchange, lease, transfer, or any other disposition of intangible property to the extent such amounts are allowed as deductions or costs in determining taxable income;

2. Losses related to or incurred in connection directly or indirectly with factoring transactions or discounting transactions;

3. Royalty, patent, technical and copyright fees;

4. Licensing fees; and

5. Other similar expenses and costs.

"Intangible property" means patents, patent applications, trade names, trademarks, service marks, copyrights and similar types of intangible assets.

"Interest expenses and costs" means amounts directly or indirectly allowed as deductions under § 163 of the Internal Revenue Code for purposes of determining taxable income under the Internal Revenue Code to the extent such expenses and costs are directly or indirectly for, related to, or in connection with the direct or indirect acquisition, use, maintenance, management, ownership, sale, exchange, lease, transfer, or disposition of intangible property.

"Nonresident estate or trust" means an estate or trust which is not a resident estate or trust.

"Related entity" means:

1. A stockholder who is an individual, or a member of the stockholder's family enumerated in § 318 of the Internal Revenue Code, if the stockholder and the members of the stockholder's family own, directly, indirectly, beneficially or constructively, in the aggregate, at least 50 percent of the value of the taxpayer's outstanding stock;

2. A stockholder, or a stockholder's partnership, limited liability company, estate, trust or corporation, if the stockholder and the stockholder's partnerships, limited liability companies, estates, trusts and corporations own directly, indirectly, beneficially or constructively, in the aggregate, at least 50 percent of the value of the taxpayer's outstanding stock; or

3. A corporation, or a party related to the corporation in a manner that would require an attribution of stock from the corporation to the party or from the party to the corporation under the attribution rules of § 318 of the Internal Revenue Code, if the taxpayer owns, directly, indirectly, beneficially or constructively, at least 50 percent of the value of the corporation's outstanding stock. The attribution rules of § 318 of the Internal Revenue Code shall apply for purposes of determining whether the ownership requirements of this subdivision have been met.

"Related member" means a person that, with respect to the taxpayer during all or any portion of the taxable year, is a related entity, a component member as defined in § 1563(b) of the Internal Revenue Code, or is a person to or from whom there is attribution of stock ownership in accordance with § 1563(e) of the Internal Revenue Code.

"Resident" applies only to natural persons and includes, for the purpose of determining liability for the taxes imposed by this chapter upon the income of any taxable year every person domiciled in Virginia at any time during the taxable year and every other person who, for an aggregate of more than 183 days of the taxable year, maintained his place of abode within Virginia, whether domiciled in Virginia or not. The word "resident" shall not include any member of the United States Congress who is domiciled in another state.

"Resident estate or trust" means:

1. The estate of a decedent who at his death was domiciled in the Commonwealth;

2. A trust created by will of a decedent who at his death was domiciled in the Commonwealth;

3. A trust created by or consisting of property of a person domiciled in the Commonwealth; or

4. A trust or estate which is being administered in the Commonwealth.

"Sales" means all gross receipts of the corporation not allocated under § 58.1-407, except the sale or other disposition of intangible property shall include only the net gain realized from the transaction.

"State" means for purposes of Article 10 of this chapter any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, and any foreign country.

"Trust" or "estate" means a trust or estate, or a fiduciary thereof, which is required to file a fiduciary income tax return under the laws of the United States.

"Virginia fiduciary adjustment" means the net amount of the applicable modifications described in § 58.1-322 (including subsection E thereof if the estate or trust is a beneficiary of another estate or trust) which relate to items of income, gain, loss or deduction of an estate or trust. The fiduciary adjustment shall not include the modification in subsection D of § 58.1-322, except that the amount of state income taxes excluded from federal taxable income shall be included. The fiduciary adjustment shall also include the modification in subsection D of § 58.1-322, regarding the deduction for the purchase of a prepaid tuition contract or contribution to a savings trust account.

Code 1950, §§ 58-151.02, 58-151.013, 58-151.023, 58-151.034, 58-151.081; 1971, Ex. Sess., c. 171; 1972, cc. 310, 827; 1973, cc. 198, 345, 458; 1974, c. 682; 1975, c. 46; 1976, cc. 528, 694, 781; 1977, cc. 297, 612; 1978, cc. 67, 158; 1979, cc. 226, 404, 596; 1981, cc. 402, 414; 1982, c. 633; 1983, cc. 452, 472; 1984, cc. 153, 162, 636, 674, 675, 729; 1990, c. 294; 1992, c. 678; 1995, c. 602; 2000, cc. 382, 400; 2004, Sp. Sess. I, c. 3; 2005, c. 48.

§ 58.1-303. Residency for portion of tax year

A. Any person who, during the taxable year, becomes a resident of Virginia, whether domiciliary or actual, for purposes of income taxation, by moving to the Commonwealth from without during such taxable year, shall be taxable as a resident for only that portion of the taxable year during which he was a resident of the Commonwealth and his personal exemptions shall be reduced to an amount which bears the same ratio to the full exemptions as the number of days during which he was a resident of the Commonwealth bears to 365 days. No person to whom the preceding sentence applies shall be entitled to any credit on his income tax payable to Virginia for any income tax paid to the state or other jurisdiction of his former domicile or actual residence for that part of the taxable year during which he was a domiciliary or actual resident of such other state or jurisdiction, notwithstanding the provisions of § 58.1-332.

B. Any person who, on or before the last day of the taxable year, changes his place of abode to a place without the Commonwealth with the bona fide intention of continuing actually to abide permanently without Virginia shall be taxable as a resident for only that portion of the taxable year during which he was a resident of Virginia and his personal exemptions shall be reduced to an amount which bears the same ratio to the full exemptions as the number of days during which he was a resident of this Commonwealth bears to 365 days. The fact that a person who has changed his place of abode, within six months from so doing abides again in the Commonwealth, shall be prima facie evidence that he did not intend permanently to have his place of abode without Vir-

ginia. The fact that a person has removed his abode to a place without the Commonwealth is not conclusive evidence of a change of domicile.

C. Any person who is taxable as a resident of the Commonwealth for only a portion of a taxable year because he moved to this Commonwealth from without Virginia during the taxable year as set out in subsection A, or because he changed his place of abode during the taxable year to a place without Virginia as set out in subsection B, and who, as a nonresident of Virginia for any other part of the taxable year derived income from any property owned or from any business, trade, profession or occupation carried on in Virginia shall be taxable as a nonresident with respect to such income as provided in § 58.1-325.

Code 1950, § 58-151.02; 1971, Ex. Sess., c. 171; 1972, cc. 310, 827; 1979, c. 404; 1984, c. 675.

§ 58.1-304. Reserved

Reserved.

§ 58.1-305. Duties of commissioner of the revenue relating to income tax

Every commissioner of the revenue shall obtain an income tax return from every individual or fiduciary within his jurisdiction who is liable under the law to file such a return with him; provided such individual or fiduciary has not filed such a return with the Department of Taxation. This duty of the commissioner of the revenue to obtain such return shall in no manner diminish any obligation to file a return without being called upon to do so by the commissioner of the revenue or any other officer. Each commissioner of the revenue shall audit returns as soon as practicable after they are made to him and shall assess the amount of taxes, or the amount of additional taxes, as the case may be, which appears to be due. Such auditing shall not be done in a manner or at a time in any case as will result in any delay on the part of the commissioner of the revenue in complying with §§ 58.1-307 and 58.1-350.

Code 1950, § 58-151.068; 1971, Ex. Sess., c. 171; 1984, c. 675; 2004, c. 544.

§ 58.1-306. Filing of individual, estate or trust income tax returns with the Department

Every individual and fiduciary responsible for filing income tax returns may file such returns with the Department of Taxation or the appropriate commissioner of the revenue. Whenever an individual or fiduciary files with the Department an income tax return for a current year, the Department may assess the state income tax against such taxpayer instead of transmitting such return to a commissioner of the revenue for assessment. In every such case the Department, however, shall advise the appropriate commissioner of the revenue of such action. The Department may advise taxpayers through its publications and instructions of their right to file state income tax returns with the Department but shall not by any means whatsoever, either directly or indirectly, in its bulletins, instructions, publications or otherwise, request, promote or solicit, in any local jurisdiction, unless requested by the commissioner of the revenue or assessing officer thereof on or before September 1 of each year, the filing of such state income tax return with the Department. Nothing in this chapter shall prohibit the Department from including the mailing addresses of the

local commissioners of the revenue as well as the Department within the appropriate income tax forms and filing instructions.

Code 1950, § 58-151.065; 1971, Ex. Sess., c. 171; 1974, c. 281; 1984, c. 675; 2004, cc. 521, 544.

§ 58.1-307. Disposition of returns; handling of state income tax payments; audit

A. As soon as the individual and fiduciary income tax returns have been received by the commissioner of the revenue and entered upon the assessment sheets or forms, the commissioner of the revenue shall forward such returns to the Department. The Department, however, may authorize the commissioner of the revenue to retain such returns for such length of time as may be necessary to enable him to review them under § 58.1-305 and to use them in ascertaining delinquents. As soon as practicable after each such return is received by the Department, it shall examine and audit it. Except in criminal and internal investigations, the Department shall conduct its audits, inspections of records, and meetings with taxpayers at reasonable times and places. For purposes of informal meetings on appeals under § 58.1-1821, Richmond shall be a reasonable place to meet.

B. If any income tax return filed with and received by the commissioner of the revenue or director of finance or other assessing officer is accompanied by payment, in whole or in part, of the liability shown on such return, such officer, within two banking days of receipt of such return, shall deliver such payment or payments to the treasurer. The commissioner of the revenue or director of finance or other assessing officer shall maintain a record of the date on which such payments are received and shall also record the date on which such payments are delivered to the treasurer. The Auditor of Public Accounts shall either prescribe or approve the commissioner of the revenue's or director of finance's or other assessing officer's record-keeping system and shall audit such records as provided for in Chapter 14 (§ 30-130 et seq.) of Title 30. The Auditor, in his discretion, upon a showing of hardship making it difficult to comply with these requirements, may prescribe or approve alternative arrangements intended to accomplish the same result. The treasurer shall act in accordance with subsection B of § 2.2-806 and 58.1-3168 in the handling, deposit, and accounting of such payments.

Code 1950, § 58-151.070; 1971, Ex. Sess., c. 171; 1984, c. 675; 1991, c. 485; 1996, c. 634.

§ 58.1-308. Assessment and payment of deficiency; fraud; penalties

If the amount of tax computed by the Department is greater than the amount theretofore assessed, the excess shall be assessed by the Department and a bill for the same shall be mailed to the taxpayer. The taxpayer shall pay such additional tax to the Department within thirty days after the amount of the tax as computed is mailed by the Department. In such case, if the return was made in good faith and the understatement of the amount in the return was not due to any fault of the taxpayer, there shall be no penalty on the additional tax because of such understatement, but interest shall be added to the amount of the deficiency at a rate determined in accordance with § 58.1-15, from the time the return was required by law to be filed until paid.

If the understatement is false or fraudulent with intent to evade the tax, a penalty of 100 percent shall be added together with interest on the tax at a rate determined in accordance with § 58.1-15, from the time the return was required by law to be filed until paid.

Nothing contained in this section shall prevent the taxpayer from applying to the circuit court of the county or the city wherein he resides for a correction of the assessment made by the Department, with right of appeal in the manner provided by law.

Code 1950, § 58-151.071; 1971, Ex. Sess., c. 171; 1977, c. 396; 1984, c. 675.

§ 58.1-309. Refund of overpayment

If the amount of taxes as computed is less than the amount theretofore paid, the excess shall be refunded out of the state treasury on the order of the Tax Commissioner upon the Comptroller.

Code 1950, § 58-151.072; 1971, Ex. Sess., c. 171; 1974, c. 178; 1984, c. 675.

§ 58.1-310. Examination of federal returns

Whenever in the opinion of the Department it is necessary to examine the federal income returns or any copy thereof of any individual, estate, trust, partnership or corporation in order properly to audit such returns, the Department or the commissioner of the revenue shall have the right to require such taxpayer to provide such return or a copy thereof and all statements, inventories, and schedules in support thereof.

Code 1950, § 58-151.097; 1971, Ex. Sess., c. 171; 1973, c. 198; 1984, c. 675.

§ 58.1-311. Report of change in federal taxable income

If the amount of any individual, estate, trust or corporate taxpayer's federal taxable income reported on his federal income tax return for any taxable year is changed or corrected by the United States Internal Revenue Service or other competent authority, or as the result of a renegotiation of a contract or subcontract with the United States, the taxpayer shall file an amended return, or such other form as the Department may prescribe, reporting such change or correction in federal taxable income within one year after the final determination of such change, correction, or renegotiation, or as otherwise required by the Department, and shall concede the accuracy of such determination or state wherein it is erroneous. However, if the Department has sufficient information from which to compute the proper additional tax and the taxpayer has paid such tax, then the taxpayer is not required to file an amended individual income tax return. Any taxpayer filing an amended federal income tax return shall also file within one year thereafter an amended return under this chapter and shall give such information as the Department may require. The Department may by regulation prescribe such exceptions to the requirements of this section as it deems appropriate.

Code 1950, § 58-151.0103; 1971, Ex. Sess., c. 171; 1984, c. 675; 1992, c. 678; 2006, c. 234.

§ 58.1-311.1. Report of change in taxes paid to other states

If the amount of any individual taxpayer's income tax reported on a return filed with any other state for any taxable year is changed or corrected by such state as a result of an examination conducted by a competent authority of such state, and the taxpayer previously claimed a credit for such tax pursuant to § 58.1-332, the taxpayer shall file an amended return, or such other form as the Department may prescribe, reporting the effects of such change or correction on the taxpayer's Virginia individual income tax within one year after the final determination of such change or correction, or as otherwise required by the Department, and shall concede the accuracy of such determination or declare wherein it is erroneous. However, if the Department has sufficient information from which to compute the proper additional tax and the taxpayer has paid such tax, then the taxpayer is not required to file an amended individual income tax return. Any taxpayer filing an amended income tax return with any other state that results in a change to the taxpayer's Virginia income tax shall also file an amended return within one year thereafter under this chapter and shall provide such information as the Department may require. The Department may by regulation prescribe such exceptions to the requirements of this section as it deems appropriate.

2006, c. 234.

§ 58.1-312. Limitations on assessment

A. The tax imposed by this chapter may be assessed at any time if:

1. No return is filed;

2. A false or fraudulent return is filed with intent to evade tax;

3. The taxpayer fails to comply with § 58.1-311 in not reporting a change or correction increasing his federal taxable income as reported on his federal income tax return, or in not reporting a change or correction which is treated in the same manner as if it were a deficiency for federal income tax purposes, or in not filing an amended return; or

4. The taxpayer fails to comply with § 58.1-311.1 by not reporting a change or correction decreasing the tax paid to another state for which a credit was claimed on his Virginia income tax return as a result of an examination conducted by any other state or an amended income tax return filed with any other state.

B. The tax may be assessed within six years after the return was filed, whether such return was filed on or after the date prescribed, if the taxpayer knowingly failed to disclose on his state income tax return a transaction identified by the Tax Commissioner as an abusive tax avoidance transaction and published as provided in § 58.1-204. A return of tax filed before the last day prescribed by law for the timely filing thereof shall be considered as filed on the last day. If such return is false or fraudulent, an assessment may be made at any time whether or not the falsity or fraud is related to the abusive tax avoidance transaction.

C. If the taxpayer pursuant to § 58.1-311 or 58.1-311.1 reports a change or correction or files an amended return increasing his federal taxable income, decreasing the tax paid to another state, or

reports a change or correction which is treated in the same manner as if it were a deficiency for federal income tax purposes, the assessment (if not deemed to have been made upon the filing of the report or amended return) may be made at any time within one year after such report or amended return was filed. The amount of such assessment of tax shall not exceed the amount of the increase in Virginia tax attributable to such federal change or correction. The provisions of this paragraph shall not affect the time within which or the amount for which an assessment may otherwise be made.

D. If a deficiency is attributable to the application to the taxpayer of a net operating loss carry-back, or to a net capital loss carry-back, it may be assessed at any time that a deficiency for the taxable year of the loss may be assessed.

E. An erroneous refund shall be considered an underpayment of tax on the date made, and an assessment of a deficiency arising out of an erroneous refund may be made at any time within two years from the making of the refund, except that the assessment may be made within five years from the making of the refund if it appears that any part of the refund was induced by fraud or misrepresentation of a material fact.

F. If a return is required for a decedent or for his estate during the period of administration, the tax shall be assessed within eighteen months after written request therefor (made after the return is filed) by the executor, administrator or other person representing the estate of such decedent, but not more than three years after the return was filed, except as otherwise provided in this subsection.

Code 1950, § 58-151.0104; 1971, Ex. Sess., c. 171; 1984, c. 675; 2006, c. 234; 2007, c. 524.

§ 58.1-313. Immediate assessment where collection jeopardized by delay; notice of assessment; termination of taxable period; memorandum of lien

A. If the Tax Commissioner determines that the collection of any income tax, penalties or interest required to be paid under this title will be jeopardized by delay, the Tax Commissioner shall immediately assess the actual or estimated amount of tax due, together with all penalties and interest, and demand immediate payment from the taxpayer. A notice of such assessment and demand shall be sent by certified mail, return receipt requested, to the taxpayer's last known address or personally delivered to the taxpayer. In the case of a tax for a current period, the Tax Commissioner shall declare the taxable period of the taxpayer immediately terminated and shall cause notice of such finding and declaration to be mailed or personally delivered to the taxpayer together with a demand for immediate payment of the tax based on the period declared terminated, and such tax shall be immediately due and payable, whether or not the time otherwise allowed by law for filing a return and paying the tax has expired. Assessments provided for in this section shall become immediately due and payable, and if any such tax, penalty or interest is not paid upon demand of the Tax Commissioner, he shall proceed to collect the same by legal process as otherwise provided by law. A memorandum of lien provided for in § 58.1-1805 may be issued

immediately upon assessment and notice thereof, or the Tax Commissioner may require the taxpayer to file a bond sufficient in the Commissioner's judgment to protect the interest of the Commonwealth. "Jeopardized by delay" for purposes of this section includes a finding by the Tax Commissioner that a taxpayer designs (i) to depart quickly from the Commonwealth, (ii) to remove his property therefrom, (iii) to conceal himself or his property therein, or (iv) to do any other act tending to prejudice or to render wholly or partially ineffectual proceedings to collect the income tax for the period in question.

B. A memorandum of lien may be filed for delinquent income taxes assessed by the Department only within six years after an assessment.

C. The Department shall notify the taxpayer that he shall have the opportunity to appear at a meeting within fourteen days and make an oral or written statement of why he believes no jeopardy to the revenue exists or why a memorandum of lien should be released, if one was recorded. Upon request of the taxpayer, the Department shall meet with the taxpayer at a time set by the Department within fourteen days after the issuance of the jeopardy assessment. The Department shall determine within twenty days after such meeting whether such jeopardy assessment or lien should be withdrawn and shall send written notice of such finding to the taxpayer. If the finding is not in the taxpayer's favor, he may use the remedies available for corrections of erroneous assessments in Article 2 (§ 58.1-1820 et seq.) of Chapter 18.

Code 1950, § 58-151.0105; 1979, c. 639; 1984, c. 675; 1989, c. 263; 1996, c. 634.

§ 58.1-314. Lien of jeopardy assessment; notice of lien

Upon the completion of all acts necessary to effect a jeopardy assessment under § 58.1-313 and upon the failure of the taxpayer to make payment in full upon demand of all taxes, penalties and interest immediately due thereunder or post a bond in lieu thereof when applicable, such assessment shall be a lien upon and bind the real and personal property of the delinquent taxpayer against whom it may be issued from the time the taxpayer fails to make full payment thereunder, except as against a bona fide purchaser for a valuable consideration. A notice of such lien, drawn by the Tax Commissioner, shall be sent to the clerk of the circuit court in all jurisdictions wherein the taxpayer is known or believed to own any estate. The clerk to whom any such notice of lien is so sent shall record it, as a judgment is required by law to be recorded, and shall index the same in the name of the Commonwealth as well as of the delinquent taxpayer. Such recordation shall thereupon be constructive notice of the lien created by the assessment as to all estate of the delinquent taxpayer located in such jurisdiction.

Code 1950, §§ 58-151.077, 58-151.0106; 1971, Ex. Sess., c. 171; 1977, c. 396; 1979, c. 639; 1984, c. 675.

§ 58.1-315. Transitional modifications to Virginia taxable income

The modifications of Virginia taxable income to be made in accordance with subsection F of § 58.1-322 and subsection D of § 58.1-402, so long as applicable, are as follows:

1. There shall be subtracted from Virginia taxable income the amount necessary to prevent the taxation under this chapter of any annuity or of any other amount of income or gain which was properly included in income or gain and was taxable under Articles 1, 2, 3, 4, 5, 6, or 7 (§§ 58-77 through 58-151) of Chapter 4 of Title 58 to the taxpayer prior to the repeal thereof, or to a decedent by reason of whose death the taxpayer acquires the right to receive the income or gain, or to a trust or estate from which the taxpayer received the income or gain.

2. The carry-back of net operating losses or net capital losses to reduce taxable income of taxable years beginning prior to January 1, 1972, shall not be permitted. Where a taxpayer would have been allowed to deduct an amount as a net operating loss carry-over or net capital loss carry-over in determining taxable income for a taxable year beginning after December 31, 1971, but for the fact that such loss, or a portion of such loss, had been carried back in determining taxable income for a taxable year beginning prior to January 1, 1972, there shall be added to Virginia taxable income any amount which was actually deducted in determining taxable income as a net operating loss carry-over or net capital loss carry-over and there shall be subtracted from Virginia taxable income the amount which could have been deducted as a net operating loss carry-over or net capital loss carry-over in arriving at taxable income but for the fact that such loss, or a portion of such loss, had been carried back for federal purposes.

3. There shall be added to Virginia taxable income the amount necessary to prevent the deduction under this chapter of any item which was properly deductible by the taxpayer in determining a tax under §§ 58-77 through 58-151 prior to the repeal thereof.

4. There shall be subtracted from Virginia taxable income that portion of any accumulation distribution which is allocable, under the laws of the United States relating to federal income taxes, to undistributed net income of a trust for any taxable year beginning on or before December 31, 1971. The rules prescribed by such laws of the United States with reference to any such accumulation distribution shall be applied, mutatis mutandis, to allow for this limitation; and, without limiting the generality of the foregoing, the credit provided by § 58.1-370 in the case of accumulation distributions shall in no instance encompass any part of any tax paid for a taxable year beginning on or before December 31, 1971.

5. As to gain or loss attributable to the sale or exchange of nondepreciable property, Virginia taxable income shall be adjusted to effect a reduction in such gain or increase in such loss by the amount by which the adjusted basis of such property, determined for Virginia income tax purposes at the close of the taxable period immediately preceding the first taxable period to which Articles 7.1 to 7.6 (§ 58-151.01 et seq.) of Title 58 applied prior to repeal thereof exceeds the adjusted basis of such property for federal income tax purposes determined at the close of the same period.

6. There shall be subtracted from the Virginia taxable income of a shareholder of an electing small business corporation any amount included in his taxable income as his share of the undistributed

taxable income of such corporation for any year of the corporation beginning before January 1, 1972.

7. There shall be subtracted from federal taxable income amounts which would have been deductible by the corporation in computing federal taxable income but for the election of such corporation of the additional investment tax credit under § 46(a)(2)(B) of the Internal Revenue Code in effect on January 1, 1978.

Code 1950, § 58-151.0111; 1971, Ex. Sess., c. 171; 1972, c. 827; 1973, c. 323; 1974, c. 248; 1981, c. 402; 1984, c. 675.

§ 58.1-316. Information reporting on rental payments to nonresident payees; penalties

A. Notwithstanding any other provision of this chapter, every nonresident payee receiving gross payments of $600 or more in any calendar year from the rental of real property in this Commonwealth shall register with the Department of Taxation pursuant to forms and regulations adopted by the Tax Commissioner.

B. Any broker as defined in § 6045(c) of the Internal Revenue Code making payments to a nonresident payee attributable to the rental of real property in this Commonwealth shall obtain from the nonresident payee the registration form required in subsection A of this section or satisfactory evidence of prior registration. The broker shall retain a copy of the registration form in his files and shall transmit the original copy to the Department of Taxation on or before the fifteenth day of the month following the month in which the form was received from the payee.

C. If a nonresident payee fails to provide a completed registration form to the broker within sixty days after being requested by the broker or if such payee provides the broker with a registration form that is incomplete or false on its face, the broker shall file a registration form on behalf of the payee providing the payee's name, address, identification number, and such other information as may be required by the Tax Commissioner. In the case of each failure to file a registration form with the Tax Commissioner on the date prescribed therefor, the broker failing to file such registration form shall pay a $50 penalty for each month that each such failure to file continues, not exceeding six months in the aggregate.

D. Any payee who willfully supplies false or fraudulent information to a broker with the intent to evade the payment of income taxes properly due on the rental of real estate in this Commonwealth and any broker who has actual knowledge that any information supplied by a payee is false or fraudulent and fails to notify the Department of Taxation of such shall be guilty of a Class 1 misdemeanor.

E. For purposes of this section, the term "nonresident payee" means every individual who is not a resident, every nonresident estate or trust, every partnership and S corporation which has nonresident partners or shareholders, or every corporation which is not formed or organized under Virginia law.

1990, c. 910 .

§ 58.1-317. Filing of estimated tax by nonresidents upon the sale of real property; penalties

A. Notwithstanding any other provision of this chapter, every nonresident payee receiving payments from the transfer of fee simple title in real property in this Commonwealth shall concurrent with the transfer of title register with the Department of Taxation pursuant to forms and regulations adopted by the Tax Commissioner.

B. The real estate reporting person as defined in § 6045(e) of the Internal Revenue Code and the regulations thereunder shall obtain from the nonresident payee the registration form required in subsection A of this section. The real estate reporting person shall retain a copy of the registration form in his files and shall transmit the original copy to the Department of Taxation on or before the fifteenth day of the month following the month in which the title was transferred. As prescribed by the Tax Commissioner, a payee may be excused from the filing of a registration form by furnishing the real estate reporting person with a certificate stating that the payment is not subject to the corporation or individual income tax.

C. If a nonresident payee fails to provide a completed registration form to the real estate reporting person or if such payee provides the real estate reporting person with a registration form that is incomplete or false on its face, the real estate reporting person shall file a registration form on behalf of the payee providing the payee's name, address, taxpayer identification number, and such other information as may be required by the Tax Commissioner. In the case of each failure to file a registration form with the Tax Commissioner on the date prescribed therefor, the real estate reporting person failing to file such registration form shall pay a $50 penalty for each month that each such failure to file continues, not exceeding six months in the aggregate.

D. Any payee who willfully supplies false or fraudulent information to a real estate reporting person with the intent to evade the payment of income taxes properly due on the transfer of fee simple title to real estate in this Commonwealth and any real estate reporting person who has actual knowledge that any information supplied by a payee is false or fraudulent and fails to notify the Department of Taxation of such shall be guilty of a Class 1 misdemeanor.

E. For purposes of this section, the term "nonresident payee" means every individual who is not a resident, every nonresident estate or trust, every partnership and S corporation which has nonresident partners or shareholders, or every corporation which is not formed or organized under Virginia law.

1990, c. 910 .

§ 58.1-318. Investments eligible for tax credits

A. For purposes of this section, "funding portal" means a website that (i) allows accredited investors to participate in general solicitation transactions by an issuer that meet the requirements of § 4(a)(6) of the Securities Act of 1933, P.L. 112-106, or (ii) is an online broker or funding portal registered with the federal Securities Exchange Commission pursuant to § 4A(a) of the Securities Act of 1993, P.L. 112-106.

B. Any investment made by a taxpayer that is transacted via an online general solicitation, an online broker, or a funding portal shall be eligible for any tax credit authorized pursuant to this chapter, so long as the investment itself meets the criteria set forth in the statute specifically authorizing the credit.

2013, c. 289.

§ 58.1-319. Unclaimed tax credits; report

If any tax credit authorized pursuant to this title has not been claimed by any taxpayer during the preceding five calendar years, such credit shall be deemed obsolete, and the Department shall not authorize any taxpayer to claim such credit against any tax levied pursuant to this title in future calendar years except as expressly authorized by the General Assembly. The Department shall report to the House Committee on Appropriations, the House Committee on Finance, and the Senate Committee on Finance no later than February 1 of each year as to all credits that are deemed obsolete and shall publish such report on its website.

For purposes of this section, a credit shall be considered claimed in the calendar year when it is claimed by a taxpayer and shall not include the carryover or transfer of a credit in subsequent years as authorized by law, nor shall this section be interpreted to prevent the lawful carryover or transfer of a credit previously authorized by the Department.

2013, c. 657.

Article 2 - INDIVIDUAL INCOME TAX

§ 58.1-320. Imposition of tax

A tax is hereby annually imposed on the Virginia taxable income for each taxable year of every individual as follows:

Two percent on income not exceeding $3,000;

Three percent on income in excess of $3,000, but not in excess of $5,000;

Five percent on income in excess of $5,000, but not in excess of $12,000 for taxable years beginning before January 1, 1987;

Five percent on income in excess of $5,000 but not in excess of $14,000 for taxable years beginning January 1, 1987, through December 31, 1987;

Five percent on income in excess of $5,000 but not in excess of $15,000 for taxable years beginning January 1, 1988, through December 31, 1988;

Five percent on income in excess of $5,000 but not in excess of $16,000 for taxable years beginning January 1, 1989, through December 31, 1989;

Five percent on income in excess of $5,000 but not in excess of $17,000 for taxable years beginning January 1, 1990;

Five and three-quarters percent on income in excess of $12,000 for taxable years beginning before January 1, 1987;

Five and three-quarters percent on income in excess of $14,000 for taxable years beginning January 1, 1987, through December 31, 1987;

Five and three-quarters percent on income in excess of $15,000 for taxable years beginning January 1, 1988, through December 31, 1988;

Five and three-quarters percent on income in excess of $16,000 for taxable years beginning January 1, 1989, through December 31, 1989; and

Five and three-quarters percent on income in excess of $17,000 for taxable years beginning on and after January 1, 1990.

Code 1950, §§ 58-151.03, 58-151.011; 1971, Ex. Sess., c. 171; 1972, cc. 310, 563; 1978, cc. 159, 796; 1981, c. 402; 1984, c. 675; 1987, c. 9.

§ 58.1-321. Exemptions and exclusions

A. No tax levied pursuant to § 58.1-320 is imposed, nor any return required to be filed by:

1. A single individual where the Virginia adjusted gross income for such taxable year is less than $5,000 for taxable years beginning on and after January 1, 1987, but before January 1, 2004.

A single individual where the Virginia adjusted gross income plus the modification specified in subdivision D 5 of § 58.1-322 for such taxable year is less than $5,000 for taxable years beginning on and after January 1, 2004, but before January 1, 2005.

A single individual where the Virginia adjusted gross income plus the modification specified in subdivision D 5 of § 58.1-322 for such taxable year is less than $7,000 for taxable years beginning on and after January 1, 2005, but before January 1, 2008.

A single individual where the Virginia adjusted gross income plus the modification specified in subdivision D 5 of § 58.1-322 for such taxable year is less than $11,250 for taxable years beginning on and after January 1, 2008, but before January 1, 2010.

A single individual where the Virginia adjusted gross income plus the modification specified in subdivision D 5 of § 58.1-322 for such taxable year is less than $11,650 for taxable years beginning on and after January 1, 2010, but before January 1, 2012.

A single individual where the Virginia adjusted gross income plus the modification specified in subdivision D 5 of § 58.1-322 for such taxable year is less than $11,950 for taxable years beginning on and after January 1, 2012.

2. An individual and spouse if their combined Virginia adjusted gross income for such taxable year is less than $8,000 for taxable years beginning on and after January 1, 1987, (or one-half of such amount in the case of a married individual filing a separate return) but before January 1, 2004.

An individual and spouse if their combined Virginia adjusted gross income plus the modification specified in subdivision D 5 of § 58.1-322 is less than $8,000 for taxable years beginning on and after January 1, 2004, (or one-half of such amount in the case of a married individual filing a separate return) but before January 1, 2005; less than $14,000 for taxable years beginning on and after January 1, 2005, (or one-half of such amount in the case of a married individual filing a separate return) but before January 1, 2008; less than $22,500 for taxable years beginning on and after January 1, 2008, (or one-half of such amount in the case of a married individual filing a separate return) but before January 1, 2010; less than $23,300 for taxable years beginning on and after January 1, 2010, (or one-half of such amount in the case of a married individual filing a separate return) but before January 1, 2012; and less than $23,900 for taxable years beginning on and after January 1, 2012, (or one-half of such amount in the case of a married individual filing a separate return).

For the purposes of this section "Virginia adjusted gross income" means federal adjusted gross income for the taxable years with the modifications specified in § 58.1-322 B, § 58.1-322 C and the additional deductions allowed under § 58.1-322 D 2 b and D 5 for taxable years beginning before January 1, 2004. For taxable years beginning on and after January 1, 2004, Virginia adjusted gross income means federal adjusted gross income with the modifications specified in subsections B and C of § 58.1-322.

B. Persons in the armed forces of the United States stationed on military or naval reservations within Virginia who are not domiciled in Virginia shall not be held liable to income taxation for compensation received from military or naval service.

Code 1950, §§ 58-151.03, 58.1-016; 1971, Ex. Sess., c. 171; 1972, cc. 310, 827; 1978, cc. 159, 796; 1981, c. 402; 1984, c. 675; 1987, c. 9; 1993, c. 803; 2004, Sp. Sess. I, c. 3; 2007, cc. 527, 543.

§ 58.1-322. Virginia taxable income of residents

A. The Virginia taxable income of a resident individual means his federal adjusted gross income for the taxable year, which excludes combat pay for certain members of the Armed Forces of the United States as provided in § 112 of the Internal Revenue Code, as amended, and with the modifications specified in this section.

B. To the extent excluded from federal adjusted gross income, there shall be added:

1. Interest, less related expenses to the extent not deducted in determining federal income, on obligations of any state other than Virginia, or of a political subdivision of any such other state unless created by compact or agreement to which Virginia is a party;

2. Interest or dividends, less related expenses to the extent not deducted in determining federal taxable income, on obligations or securities of any authority, commission or instrumentality of the United States, which the laws of the United States exempt from federal income tax but not from state income taxes;

3. Unrelated business taxable income as defined by § 512 of the Internal Revenue Code;

4. The amount of a lump sum distribution from a qualified retirement plan, less the minimum distribution allowance and any amount excludable for federal income tax purposes that is excluded from federal adjusted gross income solely by virtue of an individual's election to use the averaging provisions under § 402 of the Internal Revenue Code;

5 through 8. [Repealed.]

9. The amount required to be included in income for the purpose of computing the partial tax on an accumulation distribution pursuant to § 667 of the Internal Revenue Code;

10. For taxable years beginning on and after January 1, 2014, any loss for the taxable year that was deducted as a capital loss for federal income tax purposes by an account holder attributable to such person's first-time home buyer savings account established pursuant to Chapter 32 (§ 55-555 et seq.) of Title 55. For purposes of this subdivision, "account holder" and "first-time home buyer savings account" mean the same as those terms are defined in § 55-555; and

11. For taxable years beginning on or after January 1, 2016, to the extent that tax credit is allowed for the same donation pursuant to § 58.1-439.12:12, any amount claimed as a federal income tax deduction for such donation under § 170 of the Internal Revenue Code, as amended or renumbered.

C. To the extent included in federal adjusted gross income, there shall be subtracted:

1. Income derived from obligations, or on the sale or exchange of obligations, of the United States and on obligations or securities of any authority, commission or instrumentality of the United States to the extent exempt from state income taxes under the laws of the United States including, but not limited to, stocks, bonds, treasury bills, and treasury notes, but not including interest on refunds of federal taxes, interest on equipment purchase contracts, or interest on other normal business transactions.

2. Income derived from obligations, or on the sale or exchange of obligations of this Commonwealth or of any political subdivision or instrumentality of the Commonwealth.

3. [Repealed.]

4. Benefits received under Title II of the Social Security Act and other benefits subject to federal income taxation solely pursuant to § 86 of the Internal Revenue Code.

4a. Through December 31, 2000, the same amount used in computing the federal credit allowed under § 22 of the Internal Revenue Code by a retiree under age 65 who qualified for such retirement on the basis of permanent and total disability and who is a qualified individual as defined in § 22(b)(2) of the Internal Revenue Code; however, any person who claims a deduction under subdivision D 5 may not also claim a subtraction under this subdivision.

4b. For taxable years beginning on or after January 1, 2001, up to $20,000 of disability income, as defined in § 22(c)(2)(B)(iii) of the Internal Revenue Code; however, any person who claims a deduction under subdivision D 5 may not also claim a subtraction under this subdivision.

5. The amount of any refund or credit for overpayment of income taxes imposed by the Commonwealth or any other taxing jurisdiction.

6. The amount of wages or salaries eligible for the federal Targeted Jobs Credit which was not deducted for federal purposes on account of the provisions of § 280C(a) of the Internal Revenue Code.

7, 8. [Repealed.]

9. [Expired.]

10. Any amount included therein less than $600 from a prize awarded by the Virginia Lottery.

11. The wages or salaries received by any person for active and inactive service in the National Guard of the Commonwealth of Virginia, not to exceed the amount of income derived from 39 calendar days of such service or $3,000, whichever amount is less; however, only those persons in the ranks of O3 and below shall be entitled to the deductions specified herein.

12. Amounts received by an individual, not to exceed $1,000 in any taxable year, as a reward for information provided to a law-enforcement official or agency, or to a nonprofit corporation created exclusively to assist such law-enforcement official or agency, in the apprehension and conviction of perpetrators of crimes. This provision shall not apply to the following: an individual who is an employee of, or under contract with, a law-enforcement agency, a victim or the perpetrator of the crime for which the reward was paid, or any person who is compensated for the investigation of crimes or accidents.

13. [Repealed.]

14. [Expired.]

15, 16. [Repealed.]

17. For taxable years beginning on and after January 1, 1995, the amount of "qualified research expenses" or "basic research expenses" eligible for deduction for federal purposes, but which were not deducted, on account of the provisions of § 280C(c) of the Internal Revenue Code and which shall be available to partners, shareholders of S corporations, and members of limited liability companies to the extent and in the same manner as other deductions may pass through to such partners, shareholders, and members.

18. [Repealed.]

19. For taxable years beginning on and after January 1, 1996, any income received during the taxable year derived from a qualified pension, profit-sharing, or stock bonus plan as described by § 401 of the Internal Revenue Code, an individual retirement account or annuity established under

§ 408 of the Internal Revenue Code, a deferred compensation plan as defined by § 457 of the Internal Revenue Code, or any federal government retirement program, the contributions to which were deductible from the taxpayer's federal adjusted gross income, but only to the extent the contributions to such plan or program were subject to taxation under the income tax in another state.

20. (Effective until October 1, 2016) For taxable years beginning on and after January 1, 1997, any income attributable to a distribution of benefits or a refund from a prepaid tuition contract or savings trust account with the Virginia College Savings Plan, created pursuant to Chapter 4.9 (§ 23-38.75 et seq.) of Title 23. The subtraction for any income attributable to a refund shall be limited to income attributable to a refund in the event of a beneficiary's death, disability, or receipt of a scholarship.

20. (Effective October 1, 2016) For taxable years beginning on and after January 1, 1997, any income attributable to a distribution of benefits or a refund from a prepaid tuition contract or savings trust account with the Virginia College Savings Plan, created pursuant to Chapter 7 (§ 23.1-700 et seq.) of Title 23.1. The subtraction for any income attributable to a refund shall be limited to income attributable to a refund in the event of a beneficiary's death, disability, or receipt of a scholarship.

21. For taxable years beginning on or after January 1, 1998, all military pay and allowances, to the extent included in federal adjusted gross income and not otherwise subtracted, deducted or exempted under this section, earned by military personnel while serving by order of the President of the United States with the consent of Congress in a combat zone or qualified hazardous duty area which is treated as a combat zone for federal tax purposes pursuant to § 112 of the Internal Revenue Code.

22. For taxable years beginning on or after January 1, 2000, but before January 1, 2015, the gain derived from the sale or exchange of real property or the sale or exchange of an easement to real property which results in the real property or the easement thereto being devoted to open-space use, as that term is defined in § 58.1-3230, for a period of time not less than 30 years. To the extent a subtraction is taken in accordance with this subdivision, no tax credit under this chapter for donating land for its preservation shall be allowed for three years following the year in which the subtraction is taken.

23. Effective for all taxable years beginning on or after January 1, 2000, $15,000 of military basic pay for military service personnel on extended active duty for periods in excess of 90 days; however, the subtraction amount shall be reduced dollar-for-dollar by the amount which the taxpayer's military basic pay exceeds $15,000 and shall be reduced to zero if such military basic pay amount is equal to or exceeds $30,000.

24. Effective for all taxable years beginning on and after January 1, 2000, the first $15,000 of salary for each federal and state employee whose total annual salary from all employment for the taxable year is $15,000 or less.

25. Unemployment benefits taxable pursuant to § 85 of the Internal Revenue Code.

26. For taxable years beginning on and after January 1, 2001, any amount received as military retirement income by an individual awarded the Congressional Medal of Honor.

27. Effective for all taxable years beginning on and after January 1, 1999, income received as a result of (i) the "Master Settlement Agreement, " as defined in § 3.2-3100; and (ii) the National Tobacco Grower Settlement Trust dated July 19, 1999, by (a) tobacco farmers; (b) any person holding a tobacco marketing quota, or tobacco farm acreage allotment, under the Agricultural Adjustment Act of 1938; or (c) any person having the right to grow tobacco pursuant to such a quota or allotment, but only to the extent that such income has not been subtracted pursuant to subdivision C 18 of § 58.1-402.

28. For taxable years beginning on and after January 1, 2000, items of income attributable to, derived from or in any way related to (i) assets stolen from, hidden from or otherwise lost by an individual who was a victim or target of Nazi persecution or (ii) damages, reparations, or other consideration received by a victim or target of Nazi persecution to compensate such individual for performing labor against his will under the threat of death, during World War II and its prelude and direct aftermath. This subtraction shall not apply to assets acquired with such items of income or with the proceeds from the sale of assets stolen from, hidden from or otherwise lost to, during World War II and its prelude and direct aftermath, a victim or target of Nazi persecution. The provisions of this subdivision shall only apply to an individual who was the first recipient of such items of income and who was a victim or target of Nazi persecution, or a spouse, widow, widower, or child or stepchild of such victim.

"Victim or target of Nazi persecution" means any individual persecuted or targeted for persecution by the Nazi regime who had assets stolen from, hidden from or otherwise lost as a result of any act or omission in any way relating to (i) the Holocaust; (ii) World War II and its prelude and direct aftermath; (iii) transactions with or actions of the Nazi regime; (iv) treatment of refugees fleeing Nazi persecution; or (v) the holding of such assets by entities or persons in the Swiss Confederation during World War II and its prelude and aftermath. A victim or target of Nazi persecution shall also include any individual forced into labor against his will, under the threat of death, during World War II and its prelude and direct aftermath. As used in this subdivision, "Nazi regime" means the country of Nazi Germany, areas occupied by Nazi Germany, those European countries allied with Nazi Germany, or any other neutral European country or area in Europe under the influence or threat of Nazi invasion.

29, 30. [Repealed.]

31. Effective for all taxable years beginning on or after January 1, 2001, the military death gratuity payment made after September 11, 2001, to the survivor of deceased military personnel killed in the line of duty, pursuant to Chapter 75 of Title 10 of the United States Code; however, the sub-

traction amount shall be reduced dollar-for-dollar by the amount that the survivor may exclude from his federal gross income in accordance with § 134 of the Internal Revenue Code.

32. Effective for all taxable years beginning on or after January 1, 2007, the death benefit payments from an annuity contract that are received by a beneficiary of such contract provided that (i) the death benefit payment is made pursuant to an annuity contract with an insurance company and (ii) the death benefit payment is paid solely by lump sum. The subtraction under this subdivision shall be allowed only for that portion of the death benefit payment that is included in federal adjusted gross income.

33. For taxable years beginning on and after January 1, 2009, any gain recognized from the sale of launch services to space flight participants, as defined in 49 U.S.C. § 70102, or launch services intended to provide individuals the training or experience of a launch, without performing an actual launch. To qualify for a deduction under this subdivision, launch services must be performed in Virginia or originate from an airport or spaceport in Virginia.

34. For taxable years beginning on and after January 1, 2009, any gain recognized as a result of resupply services contracts for delivering payload, as defined in 49 U.S.C. § 70102, entered into with the Commercial Orbital Transportation Services division of the National Aeronautics and Space Administration or other space flight entity, as defined in § 8.01-227.8, and launched from an airport or spaceport in Virginia.

35. For taxable years beginning on or after January 1, 2011, any income taxed as a long-term capital gain for federal income tax purposes, or any income taxed as investment services partnership interest income (otherwise known as investment partnership carried interest income) for federal income tax purposes. To qualify for a subtraction under this subdivision, such income shall be attributable to an investment in a "qualified business, " as defined in § 58.1-339.4, or in any other technology business approved by the Secretary of Technology, provided the business has its principal office or facility in the Commonwealth and less than $3 million in annual revenues in the fiscal year prior to the investment. To qualify for a subtraction under this subdivision, the investment shall be made between the dates of April 1, 2010, and June 30, 2020. No taxpayer who has claimed a tax credit for an investment in a "qualified business" under § 58.1-339.4 shall be eligible for the subtraction under this subdivision for an investment in the same business.

36. For taxable years beginning on and after January 1, 2014, any income of an account holder for the taxable year taxed as (i) a capital gain for federal income tax purposes attributable to such person's first-time home buyer savings account established pursuant to Chapter 32 (§ 55-555 et seq.) of Title 55 and (ii) interest income or other income for federal income tax purposes attributable to such person's first-time home buyer savings account.

Notwithstanding the statute of limitations on assessments contained in § 58.1-312, any subtraction taken under this subdivision shall be subject to recapture in the taxable year or years in which moneys or funds withdrawn from the first-time home buyer savings account were used for

any purpose other than the payment of eligible costs by or on behalf of a qualified beneficiary, as provided under § 55-558. The amount subject to recapture shall be a portion of the amount withdrawn in the taxable year that was used for other than the payment of eligible costs, computed by multiplying the amount withdrawn and used for other than the payment of eligible costs by the ratio of the aggregate earnings in the account at the time of the withdrawal to the total balance in the account at such time.

However, recapture shall not apply to the extent of moneys or funds withdrawn that were (i) withdrawn by reason of the qualified beneficiary's death or disability, (ii) a disbursement of assets of the account pursuant to a filing for protection under the United States Bankruptcy Code, 11 U.S.C. §§ 101 through 1330, or (iii) transferred from an account established pursuant to Chapter 32 (§ 55-555 et seq.) of Title 55 into another account established pursuant to such chapter for the benefit of another qualified beneficiary.

For purposes of this subdivision, "account holder, " "eligible costs, " "first-time home buyer savings account, " and "qualified beneficiary" mean the same as those terms are defined in § 55-555.

37. For taxable years beginning on or after January 1, 2015, any income for the taxable year attributable to the discharge of a student loan solely by reason of the student's death. For purposes of this subdivision, "student loan" means the same as that term is defined under § 108(f) of the Internal Revenue Code.

D. In computing Virginia taxable income there shall be deducted from Virginia adjusted gross income as defined in § 58.1-321:

1. a. The amount allowable for itemized deductions for federal income tax purposes where the taxpayer has elected for the taxable year to itemize deductions on his federal return, but reduced by the amount of income taxes imposed by the Commonwealth or any other taxing jurisdiction and deducted on such federal return and increased by an amount which, when added to the amount deducted under § 170 of the Internal Revenue Code for mileage, results in a mileage deduction at the state level for such purposes at a rate of 18 cents per mile; or

b. Three thousand dollars for single individuals and $6,000 for married persons (one-half of such amounts in the case of a married individual filing a separate return) for taxable years beginning on and after January 1, 2005; provided that the taxpayer has not itemized deductions for the taxable year on his federal income tax return. For purposes of this section, any person who may be claimed as a dependent on another taxpayer's return for the taxable year may compute the deduction only with respect to earned income.

2. a. A deduction in the amount of $900 for taxable years beginning on and after January 1, 2005, but before January 1, 2008; and $930 for taxable years beginning on and after January 1, 2008, for each personal exemption allowable to the taxpayer for federal income tax purposes.

b. For taxable years beginning on and after January 1, 1987, each blind or aged taxpayer as defined under § 63(f) of the Internal Revenue Code shall be entitled to an additional personal exemption in the amount of $800.

The additional deduction for blind or aged taxpayers allowed under this subdivision shall be allowable regardless of whether the taxpayer itemizes deductions for the taxable year for federal income tax purposes.

3. A deduction equal to the amount of employment-related expenses upon which the federal credit is based under § 21 of the Internal Revenue Code for expenses for household and dependent care services necessary for gainful employment.

4. An additional $1,000 deduction for each child residing for the entire taxable year in a home under permanent foster care placement as defined in § 63.2-908, provided the taxpayer can also claim the child as a personal exemption under § 151 of the Internal Revenue Code.

5. a. For taxable years beginning on and after January 1, 2004, a deduction in the amount of $12,000 for individuals born on or before January 1, 1939.

b. For taxable years beginning on and after January 1, 2004, a deduction in the amount of $12,000 for individuals born after January 1, 1939, who have attained the age of 65. This deduction shall be reduced by $1 for every $1 that the taxpayer's adjusted federal adjusted gross income exceeds $50,000 for single taxpayers or $75,000 for married taxpayers. For married taxpayers filing separately, the deduction will be reduced by $1 for every $1 the total combined adjusted federal adjusted gross income of both spouses exceeds $75,000.

For the purposes of this subdivision, "adjusted federal adjusted gross income" means federal adjusted gross income minus any benefits received under Title II of the Social Security Act and other benefits subject to federal income taxation solely pursuant to § 86 of the Internal Revenue Code, as amended.

6. For taxable years beginning on and after January 1, 1997, the amount an individual pays as a fee for an initial screening to become a possible bone marrow donor, if (i) the individual is not reimbursed for such fee or (ii) the individual has not claimed a deduction for the payment of such fee on his federal income tax return.

7. a. (Effective until October 1, 2016) A deduction shall be allowed to the purchaser or contributor for the amount paid or contributed during the taxable year for a prepaid tuition contract or college savings trust account entered into with the Virginia College Savings Plan, pursuant to Chapter 4.9 (§ 23-38.75 et seq.) of Title 23. Except as provided in subdivision 7 c, the amount deducted on any individual income tax return in any taxable year shall be limited to $4,000 per prepaid tuition contract or college savings trust account. No deduction shall be allowed pursuant to this section if such payments or contributions are deducted on the purchaser's or contributor's federal income tax return. If the purchase price or annual contribution to a college savings trust account exceeds

$4,000, the remainder may be carried forward and subtracted in future taxable years until the purchase price or college savings trust contribution has been fully deducted; however, except as provided in subdivision 7 c, in no event shall the amount deducted in any taxable year exceed $4,000 per contract or college savings trust account. Notwithstanding the statute of limitations on assessments contained in § 58.1-312, any deduction taken hereunder shall be subject to recapture in the taxable year or years in which distributions or refunds are made for any reason other than (i) to pay qualified higher education expenses, as defined in § 529 of the Internal Revenue Code or (ii) the beneficiary's death, disability, or receipt of a scholarship. For the purposes of this subdivision, the term "purchaser" or "contributor" means the person shown as such on the records of the Virginia College Savings Plan as of December 31 of the taxable year. In the case of a transfer of ownership of a prepaid tuition contract or college savings trust account, the transferee shall succeed to the transferor's tax attributes associated with a prepaid tuition contract or college savings trust account, including, but not limited to, carryover and recapture of deductions.

a. (Effective October 1, 2016) A deduction shall be allowed to the purchaser or contributor for the amount paid or contributed during the taxable year for a prepaid tuition contract or college savings trust account entered into with the Virginia College Savings Plan, pursuant to Chapter 7 (§ 23.1-700 et seq.) of Title 23.1. Except as provided in subdivision 7 c, the amount deducted on any individual income tax return in any taxable year shall be limited to $4,000 per prepaid tuition contract or college savings trust account. No deduction shall be allowed pursuant to this section if such payments or contributions are deducted on the purchaser's or contributor's federal income tax return. If the purchase price or annual contribution to a college savings trust account exceeds $4,000, the remainder may be carried forward and subtracted in future taxable years until the purchase price or college savings trust contribution has been fully deducted; however, except as provided in subdivision 7 c, in no event shall the amount deducted in any taxable year exceed $4,000 per contract or college savings trust account. Notwithstanding the statute of limitations on assessments contained in § 58.1-312, any deduction taken hereunder shall be subject to recapture in the taxable year or years in which distributions or refunds are made for any reason other than (i) to pay qualified higher education expenses, as defined in § 529 of the Internal Revenue Code or (ii) the beneficiary's death, disability, or receipt of a scholarship. For the purposes of this subdivision, the term "purchaser" or "contributor" means the person shown as such on the records of the Virginia College Savings Plan as of December 31 of the taxable year. In the case of a transfer of ownership of a prepaid tuition contract or college savings trust account, the transferee shall succeed to the transferor's tax attributes associated with a prepaid tuition contract or college savings trust account, including, but not limited to, carryover and recapture of deductions.

b. The amount paid for a prepaid tuition contract during taxable years beginning on or after January 1, 1996, but before January 1, 1998, shall be deducted in taxable years beginning on or after January 1, 1998, and shall be subject to the limitations set out in subdivision 7 a.

c. A purchaser of a prepaid tuition contract or contributor to a college savings trust account who has attained age 70 shall not be subject to the limitation that the amount of the deduction not exceed $4,000 per prepaid tuition contract or college savings trust account in any taxable year. Such taxpayer shall be allowed a deduction for the full amount paid for the contract or contributed to a college savings trust account, less any amounts previously deducted.

8. For taxable years beginning on and after January 1, 2000, the total amount an individual actually contributed in funds to the Virginia Public School Construction Grants Program and Fund, established in Chapter 11.1 (§ 22.1-175.1 et seq.) of Title 22.1, provided the individual has not claimed a deduction for such amount on his federal income tax return.

9. For taxable years beginning on and after January 1, 1999, an amount equal to 20 percent of the tuition costs incurred by an individual employed as a primary or secondary school teacher licensed pursuant to Chapter 15 (§ 22.1-289.1 et seq.) of Title 22.1 to attend continuing teacher education courses that are required as a condition of employment; however, the deduction provided by this subsection shall be available only if (i) the individual is not reimbursed for such tuition costs and (ii) the individual has not claimed a deduction for the payment of such tuition costs on his federal income tax return.

10. For taxable years beginning on or after January 1, 2000, the amount an individual pays annually in premiums for long-term health care insurance, provided the individual has not claimed a deduction for federal income tax purposes, or, for taxable years beginning before January 1, 2014, a credit under § 58.1-339.11. For taxable years beginning on or after January 1, 2014, no such deduction for long-term health care insurance premiums paid by the individual during the taxable year shall be allowed if the individual has claimed a federal income tax deduction for such taxable year for long-term health care insurance premiums paid by him.

11. For taxable years beginning on and after January 1, 2006, contract payments to a producer of quota tobacco or a tobacco quota holder, or their spouses, as provided under the American Jobs Creation Act of 2004 (P.L. 108-357), but only to the extent that such payments have not been subtracted pursuant to subsection D of § 58.1-402, as follows:

a. If the payment is received in installment payments, then the recognized gain, including any gain recognized in taxable year 2005, may be subtracted in the taxable year immediately following the year in which the installment payment is received.

b. If the payment is received in a single payment, then 10 percent of the recognized gain may be subtracted in the taxable year immediately following the year in which the single payment is received. The taxpayer may then deduct an equal amount in each of the nine succeeding taxable years.

12. For taxable years beginning on and after January 1, 2007, an amount equal to 20 percent of the sum paid by an individual pursuant to Chapter 6 (§ 58.1-600 et seq.), not to exceed $500 in each taxable year, in purchasing for his own use the following items of tangible personal property:

(i) any clothes washers, room air conditioners, dishwashers, and standard size refrigerators that meet or exceed the applicable energy star efficiency requirements developed by the United States Environmental Protection Agency and the United States Department of Energy; (ii) any fuel cell that (a) generates electricity using an electrochemical process, (b) has an electricity-only generation efficiency greater than 35 percent, and (c) has a generating capacity of at least two kilowatts; (iii) any gas heat pump that has a coefficient of performance of at least 1.25 for heating and at least 0.70 for cooling; (iv) any electric heat pump hot water heater that yields an energy factor of at least 1.7; (v) any electric heat pump that has a heating system performance factor of at least 8.0 and a cooling seasonal energy efficiency ratio of at least 13.0; (vi) any central air conditioner that has a cooling seasonal energy efficiency ratio of at least 13.5; (vii) any advanced gas or oil water heater that has an energy factor of at least 0.65; (viii) any advanced oil-fired boiler with a minimum annual fuel-utilization rating of 85; (ix) any advanced oil-fired furnace with a minimum annual fuel-utilization rating of 85; and (x) programmable thermostats.

13. For taxable years beginning on or after January 1, 2007, the lesser of $5,000 or the amount actually paid by a living donor of an organ or other living tissue for unreimbursed out-of-pocket expenses directly related to the donation that arose within 12 months of such donation, provided the donor has not taken a medical deduction in accordance with the provisions of § 213 of the Internal Revenue Code for such expenses. The deduction may be taken in the taxable year in which the donation is made or the taxable year in which the 12-month period expires.

14. For taxable years beginning on or after January 1, 2013, the amount an individual age 66 or older with earned income of at least $20,000 for the year and federal adjusted gross income not in excess of $30,000 for the year pays annually in premiums for (i) a prepaid funeral insurance policy covering the individual or (ii) medical or dental insurance for any person for whom individual tax filers may claim a deduction for such premiums under federal income tax laws. "Earned income" means the same as that term is defined in § 32(c) of the Internal Revenue Code of 1954, as amended or renumbered. The deduction shall not be allowed for any portion of such premiums paid for which the individual has (a) been reimbursed, (b) claimed a deduction for federal income tax purposes, (c) claimed a deduction or subtraction under another provision of this section, or (d) claimed a federal income tax credit or any income tax credit pursuant to this chapter.

E. There shall be added to or subtracted from federal adjusted gross income, as the case may be, the individual's share, as beneficiary of an estate or trust, of the Virginia fiduciary adjustment determined under § 58.1-361.

F. There shall be added or subtracted, as the case may be, the amounts provided in § 58.1-315 as transitional modifications.

G. Effective for all taxable years beginning on or after January 1, 2007, to the extent included in federal adjusted gross income, there shall be (i) subtracted from federal adjusted gross income by a shareholder of an electing small business corporation (S corporation) that is subject to the bank

franchise tax imposed under Chapter 12 (§ 58.1-1200 et seq.) for the calendar year in which such taxable year begins, the shareholder's allocable share of the income or gain of such electing small business corporation (S corporation), and (ii) added back to federal adjusted gross income such that, federal adjusted gross income shall be increased, by a shareholder of an electing small business corporation (S corporation) that is subject to the bank franchise tax imposed under Chapter 12 (§ 58.1-1200 et seq.) for the calendar year in which such taxable year begins, the shareholder's allocable share of the losses or deductions of such electing small business corporation (S corporation).

Effective for all taxable years beginning on or after January 1, 2007, to the extent excluded from federal adjusted gross income, there shall be added to federal adjusted gross income by a shareholder of an electing small business corporation (S corporation) that is subject to the bank franchise tax imposed under Chapter 12 (§ 58.1-1200 et seq.) for the calendar year in which such taxable year begins, the value of any distribution paid or distributed to the shareholder by such electing small business corporation (S corporation).

H. Notwithstanding any other provision of law, the income from any disposition of real property which is held by the taxpayer for sale to customers in the ordinary course of the taxpayer's trade or business, as defined in § 453(l)(1)(B) of the Internal Revenue Code, of property made on or after January 1, 2009, may, at the election of the taxpayer, be recognized under the installment method described under § 453 of the Internal Revenue Code, provided that (i) the election relating to the dealer disposition of the property has been made on or before the due date prescribed by law (including extensions) for filing the taxpayer's return of the tax imposed under this chapter for the taxable year in which the disposition occurs, and (ii) the dealer disposition is in accordance with restrictions or conditions established by the Department, which shall be set forth in guidelines developed by the Department. Along with such restrictions or conditions, the guidelines shall also address the recapture of such income under certain circumstances. The development of the guidelines shall be exempt from the Administrative Process Act (§ 2.2-4000 et seq.).

Code 1950, § 58-151.013; 1971, Ex. Sess., c. 171; 1972, c. 827; 1973, cc. 198, 345, 458; 1974, c. 682; 1975, c. 46; 1976, cc. 528, 694, 781; 1977, cc. 297, 612; 1978, cc. 67, 158; 1979, cc. 226, 596; 1981, cc. 402, 414; 1982, c. 633; 1983, cc. 452, 472; 1984, cc. 153, 162, 636, 674, 675, 729; 1985, cc. 221, 465; 1986, cc. 474, 515; 1987, cc. 9, 484, 531, 615; 1988, cc. 741, 743, 755, 756; 1989, cc. 39, 639, 749; 1989, Sp. Sess., c. 3; 1990, cc. 507, 525, 714; 1991, cc. 346, 361; 1992, cc. 665, 678, 686, 691; 1993, c. 803; 1994, cc. 488, 590; 1994, 1st Sp. Sess., c. 5; 1996, cc. 401, 624; 1997, cc. 106, 785, 861, 909; 1998, cc. 373, 874; 1999, cc. 285, 298, 339, 365, 485, 498, 518, 535, 588; 2000, cc. 382, 387, 394, 400, 419, 1021, 1039; 2001, c. 476; 2003, cc. 3, 58, 181, 209, 807, 980; 2004, Sp. Sess. I, c. 3; 2005, cc. 27, 67; 2006, cc. 214, 570, 599, 617, 939; 2007, cc. 359, 527, 543, 636, 942; 2008, cc. 149, 211; 2009, c. 508; 2010, cc. 802, 830; 2011, c. 851; 2012, cc. 2, 96, 256, 305, 578; 2013, cc. 88, 801; 2014, cc. 225, 729; 2015, cc. 60, 82, 227, 248, 311, 335, 336; 2016, cc. 304, 391.

§ 58.1-322.1. Expired
Expired.

§ 58.1-322.2. Expired
Expired.

§ 58.1-323. Repealed
Repealed by Acts 1987, c. 9, effective for taxable years beginning on and after January 1, 1988.

§§ 58.1-323.1, 58.1-323.2. Repealed
Repealed by Acts 2000, c. 419.

§ 58.1-324. Husband and wife
A. If the federal taxable income of husband or wife is determined on a separate federal return, their Virginia taxable incomes shall be separately determined.

B. If the federal taxable income of husband and wife is determined on a joint federal return, or if neither files a federal return:

1. Their tax shall be determined on their joint Virginia taxable income; or

2. Separate taxes may be determined on their separate Virginia taxable incomes if they so elect.

C. Where husband and wife have not separately reported and claimed items of income, exemptions and deductions for federal income tax purposes, and have not elected to file a joint Virginia income tax return, such items allowable for Virginia income tax purposes shall be allocated and adjusted as follows:

1. Income shall be allocated to the spouse who earned the income or with respect to whose property the income is attributable.

2. Allowable deductions with respect to trade, business, production of income, or employment shall be allocated to the spouse to whom attributable.

3. Nonbusiness deductions, where properly taken for federal income tax purposes, shall be allowable for Virginia income tax purposes, but shall be allocable between husband and wife as they may mutually agree. For this purpose, "nonbusiness deductions" consist of allowable deductions not described in subdivision 2 of this subsection.

4. Where the standard deduction or low income allowance is properly taken pursuant to subdivision D 1 a of § 58.1-322 such deduction or allowance shall be allocable between husband and wife as they may mutually agree.

5. Personal exemptions properly allowable for federal income tax purposes shall be allocated for Virginia income tax purposes as husband and wife may mutually agree; however, exemptions for taxpayer and spouse together with exemptions for old age and blindness must be allocated respectively to the spouse to whom they relate.

D. Where allocations are permitted to be made under subsection C pursuant to agreement between husband and wife, and husband and wife have failed to agree as to those allocations, such allocations shall be made between husband and wife in a manner corresponding to the treatment for federal income tax purposes of the items involved, under regulations prescribed by the Department of Taxation.

Code 1950, §§ 58-151.012, 58-151.013; 1971, Ex. Sess., c. 171; 1972, c. 827; 1973, cc. 198, 345, 458; 1974, c. 682; 1975, c. 46; 1976, cc. 528, 694, 781; 1977, cc. 297, 612; 1978, cc. 67, 158; 1979, cc. 226, 596; 1981, cc. 402, 414; 1982, c. 633; 1983, cc. 452, 472; 1984, cc. 153, 162, 636, 674, 675, 729.

§ 58.1-325. Virginia taxable income of nonresident individuals, partners, beneficiaries and certain shareholders

A. The Virginia taxable income of a nonresident individual, partner or beneficiary shall be an amount bearing the same proportion to his Virginia taxable income, computed as though he were a resident, as the net amount of his income, gain, loss and deductions from Virginia sources bears to the net amount of his income, gain, loss and deductions from all sources.

B. For a nonresident individual who is a shareholder in an electing small business corporation (S corporation), there shall be included in his Virginia taxable income his share of the taxable income of such corporation, and his share of any net operating loss of such corporation shall be deductible from his Virginia taxable income.

Code 1950, § 58-151.013; 1971, Ex. Sess., c. 171; 1972, c. 827; 1973, cc. 198, 345, 458; 1974, c. 682; 1975, c. 46; 1976, cc. 528, 694, 781; 1977, cc. 297, 612; 1978, cc. 67, 158; 1979, cc. 226, 596; 1981, cc. 402, 414; 1982, c. 633; 1983, cc. 452, 472; 1984, cc. 153, 162, 636, 674, 675, 729.

§ 58.1-326. Husband and wife when one nonresident

If husband or wife is a resident and the other is a nonresident, separate taxes shall be determined on their separate Virginia taxable incomes on such single or separate forms as may be required by the Department, unless both elect to determine their joint Virginia taxable income as if both were residents.

Code 1950, § 58-151.012; 1971, Ex. Sess., c. 171; 1984, c. 675.

Article 3 - TAX CREDITS FOR INDIVIDUALS

§ 58.1-330. Repealed

Repealed by Acts 1990, cc. 507, 525, effective for taxable years beginning on and after January 1, 1990.

§ 58.1-331. Repealed

Repealed by Acts 2009, c. 34, cl. 2.

§ 58.1-332. Credits for taxes paid other states

A. Whenever a Virginia resident has become liable to another state for income tax on any earned or business income or any gain on the sale of a capital asset (within the meaning of § 1221 of the Internal Revenue Code), not including an asset used in a trade or business, to the extent that such gain is included in federal adjusted gross income, for the taxable year, derived from sources outside the Commonwealth and subject to taxation under this chapter, the amount of such tax payable by him shall, upon proof of such payment, be credited on the taxpayer's return with the income tax so paid to the other state.

However, no franchise tax, license tax, excise tax, unincorporated business tax, occupation tax or any tax characterized as such by the taxing jurisdiction, although applied to earned or business income, shall qualify for a credit under this section, nor shall any tax which, if characterized as an income tax or a commuter tax, would be illegal and unauthorized under such other state's controlling or enabling legislation qualify for a credit under this section.

The credit allowable under this section shall not exceed: (i) such proportion of the income tax otherwise payable by him under this chapter as his income upon which the tax imposed by the other state was computed bears to his Virginia taxable income upon which the tax imposed by this Commonwealth was computed or (ii) the income tax otherwise payable under this chapter in the event that the income upon which the tax imposed by the other state is computed is less than the Virginia taxable income upon which the tax imposed by this Commonwealth is computed and all income derived from sources outside the Commonwealth and subject to taxation under this chapter is earned income or business income reported on federal form Schedule C from a single state contiguous to Virginia. The credit provided for by this section shall not be granted to a resident individual when the laws of another state, under which the income in question is subject to tax assessment, provide a credit to such resident individual substantially similar to that granted by subsection B of this section.

B. Whenever a nonresident individual of this Commonwealth has become liable to the state where he resides for income tax upon his Virginia taxable income for the taxable year, derived from Virginia sources and subject to taxation under this chapter, the amount of such tax payable under this chapter shall be credited with such proportion of the tax so payable by him to the state where he resides, upon proof of such payment, as his income subject to taxation under this chapter bears to his entire income upon which the tax so payable to such other state was imposed. The credit, however, shall be allowed only if the laws of such state: (i) grant a substantially similar credit to residents of Virginia subject to income tax under such laws or (ii) impose a tax upon the income of its residents derived from Virginia sources and exempt from taxation the income of residents of this Commonwealth. No credit shall be allowed against the amount of the tax on any income taxable under this chapter which is exempt from taxation under the laws of such other state.

C. For purposes of this section, the amount of any state income tax paid by an electing small business corporation (S corporation) shall be deemed to have been paid by its individual shareholders in proportion to their ownership of the stock of such corporation.

Code 1950, § 58-151.015; 1971, Ex. Sess., c. 171; 1972, c. 827; 1984, c. 675; 1985, c. 466; 1991, cc. 362, 456; 1992, c. 317; 1994, c. 195; 1998, c. 291; 1999, c. 317.

§ 58.1-332.1. Credit for taxes paid to a foreign country on retirement income

A. Whenever a Virginia resident has become liable to a foreign country for income tax paid on any pension or retirement income to the extent that such income is included in federal adjusted gross income for the taxable year, derived from foreign sources as a result of past employment in a foreign country and subject to taxation under this chapter, the amount of such tax payable by him shall, upon proof of such payment, be credited on the taxpayer's return with the income tax so paid to the foreign country. The credit allowable under this section shall not exceed: (i) such proportion of the income tax otherwise payable by him under this chapter as his income upon which the tax imposed by the foreign country was computed bears to his Virginia taxable income upon which the tax imposed by this Commonwealth was computed or (ii) the income tax otherwise payable under this chapter, in the event that the income upon which the tax imposed by the foreign country is computed is less than the Virginia taxable income upon which the tax imposed by this Commonwealth is computed.

B. For purposes of determining this credit, the foreign currency must be translated into United States dollars using the prevailing rate of exchange which most nearly reflects the value of the foreign currency at the time the taxes were actually paid to the foreign country.

C. As used in this section, a foreign country shall include all possessions of the United States. Any foreign country which does not qualify for the federal foreign tax credit under § 901(j) of the Internal Revenue Code will also be disqualified for the credit allowed under this section.

1998, c. 292.

§ 58.1-332.2. (Applicable for taxable years beginning on or after January 1, 2007) Definition of income tax

A. For purposes of the credits in §§ 58.1-332 and 58.1-332.1, the term "income tax" is a term of art that refers to a specific type of tax levied on earned and unearned income and shall not include any other type of tax merely because it may be measured by or referenced to gross or net income. An income tax includes, but is not limited to, a tax imposed on all income of an individual if a resident, or all income of an individual from the jurisdiction's sources if a nonresident; however, an income tax so imposed may incorporate other provisions that grant exemptions, exclusions, deductions, subtractions, credits, or other preferences for specific types of income, expenses, individuals, or other criteria.

B. An income tax shall not include:

1. A tax conditioned upon the exercise of any franchise, privilege, or business within the jurisdiction even though the tax is measured or based upon gross or net income derived therefrom, but such measure does not include income that the person exercising such franchise, privilege, or business may receive from other sources within the jurisdiction.

2. License and occupation taxes, which are payable in respect to the privilege of engaging in or carrying on a particular business or vocation, even though the amount of tax payable by an individual may be measured by the amount of business which he transacts or his earnings therefrom, but such measure does not include income that the person engaging in or carrying on a particular business or vocation may receive from other sources within the jurisdiction.

C. The credits in §§ 58.1-332 and 58.1-332.1 shall apply only when the tax imposed in the other state or foreign country is substantially similar to the tax imposed by Article 2 (§ 58.1-320 et seq.), as defined by this section. The nomenclature used to describe the tax of the other jurisdiction shall not be binding on Virginia for this purpose whether such nomenclature is that of the other jurisdiction's legislature or courts or the United States Congress or courts.

2012, c. 292.

§ 58.1-333. Repealed

Repealed by Acts 2001, cc. 292, 300.

§ 58.1-334. Tax credit for purchase of conservation tillage equipment

A. Any individual shall be allowed a credit against the tax imposed by § 58.1-320 of an amount equaling 25 percent of all expenditures made for the purchase and installation of conservation tillage equipment used in agricultural production by the purchaser. As used in this section the term "conservation tillage equipment" means a planter, drill, or other equipment used to reduce soil compaction commonly known as a "no-till" planter, drill, or other equipment used to reduce soil compaction including guidance systems to control traffic patterns that are designed to minimize disturbance of the soil in planting crops, including such planters, drills, or other equipment designed to reduce soil compaction which may be attached to equipment already owned by the taxpayer.

B. The amount of such credit shall not exceed $4,000 or the total amount of tax imposed by this chapter, whichever is less, in the year of purchase. If the amount of such credit exceeds the taxpayer's tax liability for such tax year, the amount which exceeds the tax liability may be carried over for credit against the income taxes of such individual in the next five taxable years until the total amount of the tax credit has been taken.

C. For purposes of this section, the amount of any credit attributable to the purchase and installation of conservation tillage equipment by a partnership or electing small business corporation (S corporation) shall be allocated to the individual partners or shareholders in proportion to their ownership or interest in the partnership or S corporation.

1985, c. 560; 1990, c. 416; 2005, c. 58.

§ 58.1-335. Repealed

Repealed by Acts 1990, c. 875, effective for taxable years beginning on and after January 1, 1990.

§ 58.1-336. Repealed

Repealed by Acts 2001, cc. 293 and 299.

§ 58.1-337. Tax credit for purchase of advanced technology pesticide and fertilizer application equipment

A. Any individual engaged in agricultural production for market who has in place a nutrient management plan approved by the local Soil and Water Conservation District by the required tax return filing date of the individual shall be allowed a credit against the tax imposed by § 58.1-320 of an amount equaling twenty-five percent of all expenditures made by such individual for the purchase of equipment certified by the Virginia Soil and Water Conservation Board as providing more precise pesticide and fertilizer application. Virginia Polytechnic Institute and State University and Virginia State University shall provide at the request of the Virginia Soil and Water Conservation Board technical assistance in determining appropriate specifications for certified equipment which would provide for more precise pesticide and fertilizer application to reduce the potential for adverse environmental impacts. The equipment shall be divided into the following categories:

1. Sprayers for pesticides and liquid fertilizers;

2. Pneumatic fertilizer applicators;

3. Monitors, computer regulators, and height adjustable booms for sprayers and liquid fertilizer applicators;

4. Manure applicators;

5. Tramline adapters; and

6. Starter fertilizer banding attachments for planters.

B. The amount of such credit shall not exceed $3,750 or the total amount of the tax imposed by this chapter, whichever is less, in the year of purchase. If the amount of such credit exceeds the taxpayer's tax liability for such taxable year, the amount which exceeds the tax liability may be carried over for credit against the income taxes of such individual in the next five taxable years until the total amount of the tax credit has been taken.

C. For purposes of this section, the amount of any credit attributable to the purchase of equipment certified by the Virginia Soil and Water Conservation Board as providing more precise pesticide and fertilizer application by a partnership or electing small business corporation (S corporation) shall be allocated to the individual partners or shareholders in proportion to their ownership or interest in the partnership or S corporation.

1990, c. 416; 1996, c. 739.

§ 58.1-338. Expired

Expired.

§ 58.1-339. Repealed

Repealed by Acts 2011, c. 851, cl. 2, effective for taxable periods on or after January 1, 2011.

§ 58.1-339.1. Repealed

Repealed by Acts 1992, c. 394 .

§ 58.1-339.2. Historic rehabilitation tax credit

A. Effective for taxable years beginning on and after January 1, 1997, any individual, trust or estate, or corporation incurring eligible expenses in the rehabilitation of a certified historic structure shall be entitled to a credit against the tax imposed by Articles 2 (§ 58.1-320 et seq.), 6 (§ 58.1-360 et seq.) and 10 (§ 58.1-400 et seq.) of Chapter 3; Chapter 12 (§ 58.1-1200 et seq.); Article 1 (§ 58.1-2500 et seq.) of Chapter 25; and Article 2 (§ 58.1-2620 et seq.) of Chapter 26, in accordance with the following schedule:

Year	% of Eligible Expenses
1997	10%
1998	15%
1999	20%
2000 and thereafter	25%

If the amount of such credit exceeds the taxpayer's tax liability for such taxable year, the amount that exceeds the tax liability may be carried over for credit against the taxes of such taxpayer in the next ten taxable years or until the full credit is used, whichever occurs first. Credits granted to a partnership or electing small business corporation (S corporation) shall be passed through to the partners or shareholders, respectively. Credits granted to a partnership or electing small business corporation (S corporation) shall be allocated among all partners or shareholders, respectively, either in proportion to their ownership interest in such entity or as the partners or shareholders mutually agree as provided in an executed document, the form of which shall be prescribed by the Director of the Department of Historic Resources.

B. Effective for taxable years beginning on and after January 1, 2000, any individual, trust, estate, or corporation resident in Virginia that incurs eligible expenses in the rehabilitation of a certified historic structure in any other state that has in effect a reciprocal historic structure rehabilitation tax credit program and agreement for residents of that state who rehabilitate historic structures in Virginia shall be entitled to a credit to the same extent as provided in subsection A and other applicable provisions of law; however, no eligible party shall receive any credit authorized under this subsection prior to taxable years beginning on and after January 1, 2002.

C. To claim the credit authorized under this section, the taxpayer shall apply to the Virginia Department of Historic Resources, which shall determine the amount of eligible rehabilitation expenses and issue a certificate thereof to the taxpayer. The taxpayer shall attach the certificate to the Virginia tax return on which the credit is claimed.

D. When used in this section:

"Certified historic structure" means a property listed individually on the Virginia Landmarks Register, or certified by the Director of the Virginia Department of Historic Resources as contributing to the historic significance of a historic district that is listed on the Virginia Landmarks

Register or certified by the Director of the Virginia Department of Historic Resources as meeting the criteria for listing on the Virginia Landmarks Register.

"Eligible rehabilitation expenses" means expenses incurred in the material rehabilitation of a certified historic structure and added to the property's capital account.

"Material rehabilitation" means improvements or reconstruction consistent with "The Secretary of the Interior's Standards for Rehabilitation," the cost of which amounts to at least fifty percent of the assessed value of such building for local real estate tax purposes for the year prior to the initial expenditure of any rehabilitation expenses, unless the building is an owner-occupied building, in which case the cost shall amount to at least twenty-five percent of the assessed value of such building for local real estate tax purposes for the year prior to the initial expenditure of any rehabilitation expenses.

"Owner-occupied building" means any building that is used as a personal residence by the owner.

E. The Director of the Department of Historic Resources shall establish by regulation the requirements needed for this program, including the fees to defray necessary expenses thereof, and, except as otherwise prohibited by this section, the extent to which the availability of the credit provided by this section is coextensive with the availability of the federal tax credit for the rehabilitation of certified historic resources.

F. Any gain or income under federal law from the allocation or application of a tax credit under this section shall not be (i) taxable gain or income for purposes of the tax imposed pursuant to Article 2 (§ 58.1-320 et seq.), (ii) taxable gain or income for purposes of the tax imposed pursuant to Article 6 (§ 58.1-360 et seq.), or (iii) taxable gain or income for purposes of the tax imposed pursuant to Article 10 (§ 58.1-400 et seq.). However, nothing in this subsection shall be construed or interpreted as allowing a subtraction or deduction for such gain or income under federal law if the gain or income is otherwise excluded, deducted, or subtracted in computing the respective tax set forth under clauses (i) through (iii).

1996, c. 520; 1998, cc. 371, 372; 1999, cc. 152, 183, 213; 2000, cc. 356, 367, 429; 2012, cc. 92, 639.

§ 58.1-339.3. Agricultural best management practices tax credit

A. For all taxable years beginning on and after January 1, 1998, any individual who is engaged in agricultural production for market, or has equines that create needs for agricultural best management practices to reduce nonpoint source pollutants, and has in place a soil conservation plan approved by the local Soil And Water Conservation District (SWCD), shall be allowed a credit against the tax imposed by § 58.1-320 of an amount equaling 25 percent of the first $70,000 expended for agricultural best management practices by the individual.

As used in this section, "agricultural best management practice" means a practice approved by the Virginia Soil and Water Conservation Board (VSWCB) which will provide a significant

improvement to water quality in the state's streams and rivers and the Chesapeake Bay and is consistent with other state and federal programs that address agricultural, nonpoint-source-pollution management. Eligible practices shall include, but are not limited to, the following:

1. Livestock-waste and poultry-waste management;

2. Soil erosion control;

3. Nutrient and sediment filtration and detention;

4. Nutrient management; and

5. Pest management and pesticide handling.

A detailed list of the standards and criteria for practices eligible for credit shall be found in the most recently approved "Virginia Agricultural BMP Manual" published annually prior to July 1 by the Department of Conservation and Recreation.

B. Any practice approved by the local Soil and Water Conservation District Board shall be completed within the taxable year in which the credit is claimed. After the practice installation has been completed, the local SWCD Board shall certify the practice as approved and completed, and eligible for credit. The applicant shall forward the certification to the Department of Taxation on forms provided by the Department. The credit shall be allowed only for expenditures made by the taxpayer from funds of his own sources.

C.1. The amount of such credit shall not exceed $17,500 or the total amount of the tax imposed by this chapter, whichever is less, in the year the project was completed, as certified by the Board. Any taxpayer claiming a tax credit under this section shall not claim a credit under any similar Virginia law for costs related to the same eligible practices.

2. If the amount of the credit exceeds the taxpayer's liability for such taxable year, the excess may be refunded by the Tax Commissioner. Tax credits shall be refunded by the Tax Commissioner on behalf of the Commonwealth for 100 percent of face value. Tax credits shall be refunded within 90 days after the filing date of the income tax return on which the individual applies for the refund.

D. For purposes of this section, the amount of any credit attributable to agricultural best management practices by a pass-through entity such as a partnership, limited liability company, or electing small business corporation (S Corporation) shall be allocated to the individual partners, members, or shareholders in proportion to their ownership or interest in such entity.

E. A pass-through tax entity, such as a partnership, limited liability company or electing small business corporation (S corporation), may appoint a tax matters representative, who shall be a general partner, member-manager or shareholder, and register that representative with the Tax Commissioner. The Tax Commissioner shall be entitled to deal with the tax matters representative as representative of the taxpayers to whom credits have been allocated by the entity under this article with respect to those credits. In the event a pass-through tax entity allocates tax credits

arising under this article to its partners, members or shareholders and the allocated credits shall be disallowed, in whole or in part, such that an assessment of additional tax against a taxpayer shall be made, the Tax Commissioner shall first make written demand for payment of any additional tax, together with interest and penalties, from the tax matters representative. In the event such payment demand is not satisfied, the Tax Commissioner shall proceed to collection against the taxpayers in accordance with the provisions of Chapter 18 (§ 58.1-1800 et seq.).

1996, c. 629; 2006, c. 440; 2011, c. 352.

§ 58.1-339.4. Qualified equity and subordinated debt investments tax credit

A. As used in this section:

"Commercialization investment" means a qualified investment in a qualified business that was created to commercialize research developed at or in partnership with an institution of higher education.

"Equity" means common stock or preferred stock, regardless of class or series, of a corporation; a partnership interest in a limited partnership; or a membership interest in a limited liability company, which is not required or subject to an option on the part of the taxpayer to be redeemed by the issuer within three years from the date of issuance.

"Qualified business" means a business which (i) has annual gross revenues of no more than $3 million in its most recent fiscal year, (ii) has its principal office or facility in the Commonwealth, (iii) is engaged in business primarily in or does substantially all of its production in the Commonwealth, (iv) has not obtained during its existence more than $3 million in aggregate gross cash proceeds from the issuance of its equity or debt investments (not including commercial loans from chartered banking or savings and loan institutions), and (v) is primarily engaged, or is primarily organized to engage, in the fields of advanced computing, advanced materials, advanced manufacturing, agricultural technologies, biotechnology, electronic device technology, energy, environmental technology, information technology, medical device technology, nanotechnology, or any similar technology-related field determined by regulation by the Department of Taxation to fall under the purview of this section.

"Qualified investment" means a cash investment in a qualified business in the form of equity or subordinated debt; however, an investment shall not be qualified if the taxpayer who holds such investment, or any of such taxpayer's family members, or any entity affiliated with such taxpayer, receives or has received compensation from the qualified business in exchange for services provided to such business as an employee, officer, director, manager, independent contractor or otherwise in connection with or within one year before or after the date of such investment. For the purposes hereof, reimbursement of reasonable expenses incurred shall not be deemed to be compensation.

"Subordinated debt" means indebtedness of a corporation, general or limited partnership, or limited liability company that (i) by its terms required no repayment of principal for the first three

years after issuance; (ii) is not guaranteed by any other person or secured by any assets of the issuer or any other person; and (iii) is subordinated to all indebtedness and obligations of the issuer to national or state-chartered banking or savings and loan institutions.

B. For taxable years beginning on or after January 1, 1999, a taxpayer shall be allowed a credit against the tax levied pursuant to §§ 58.1-320 and 58.1-360 in an amount equal to 50 percent of such taxpayer's qualified investments during such taxable year. No credit shall be allowed to any taxpayer that has committed capital under management in excess of $10 million and engages in the business of making debt or equity investments in private businesses, or to any taxpayer that is allocated a credit as a partner, shareholder, member or owner of an entity that engages in such business.

C. The amount of any credit attributable to a qualified investment by a partnership, electing small business corporation (S corporation), or limited liability company shall be allocated to the individual partners, shareholders, or members, as the case may be, as they may determine.

D. The aggregate amount of the credit for each taxpayer shall not exceed the lesser of (i) the tax imposed for such taxable year or (ii) $50,000. Any credit not usable for the taxable year in which the credit was allowed may be, to the extent usable, carried over for the next 15 succeeding taxable years or until the total amount of the tax credit has been taken, whichever occurs first.

E. The amount of tax credits available under this section for a calendar year shall be $5 million. Of the amount of available credits, one-half of the amount shall be allocated exclusively for credits for commercialization investments. Such allocation of tax credits shall constitute the minimum amount of tax credits to be allocated for commercialization investments. However, if the amount of tax credits requested for commercialization investments is less than one-half of the total amount of credits available under this section, the balance of such credits shall be allocated for qualified investments in any qualified business under this section.

F. Unless the taxpayer transfers the equity received in connection with a qualified investment as a result of (i) the liquidation of the qualified business issuing such equity, (ii) the merger, consolidation or other acquisition of such business with or by a party not affiliated with such business, or (iii) the death of the taxpayer, any taxpayer that fails to hold such equity for at least three full calendar years following the calendar year for which a tax credit for a qualified investment is allocated pursuant to this section shall forfeit both used and unused tax credits and in addition shall pay the Department of Taxation interest on the total allowed credits at the rate of one percent per month, compounded monthly, from the date the tax credits were allocated to the taxpayer. The Department of Taxation shall deposit any amounts received under this subsection into the general fund of the Commonwealth.

G. Prior to December 31, 1998, the Department of Taxation shall promulgate regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) (i) establishing procedures for claiming the tax credit provided by this section and (ii) providing for the allocation of tax credits among

taxpayers requesting credits in the event the amount of credits for which requests are made exceeds the available amount of credits in any one calendar year. Notwithstanding the foregoing, the Department of Taxation shall permit an application for certification as a qualified business to be filed at any time during the calendar year regardless of when the investment was made during the calendar year.

1998, c. 491; 2004, c. 614; 2009, c. 853.

§ 58.1-339.5. Repealed

Repealed by Acts 2016, c. 305, cl. 2.

§ 58.1-339.6. Political candidate contribution tax credit

For taxable years beginning on and after January 1, 2000, but before January 1, 2017, any individual shall be entitled to a credit against the tax levied pursuant to § 58.1-320 of an amount equal to 50 percent of the amount contributed by the taxpayer to a candidate, as defined in § 24.2-101, in one or more primary, special, or general elections for local or state office held in the Commonwealth in the taxable year in which the contributions are made. The amount of the credit shall not exceed $25 for an individual taxpayer or $50 for taxpayers filing a joint return.

1999, c. 464; 2016, cc. 50, 348.

§ 58.1-339.7. Livable Home Tax Credit

A. For taxable years beginning on and after January 1, 2000, any taxpayer who purchases a new residence or retrofits or hires someone to retrofit an existing residence, provided that such new residence or the retrofitting of such existing residence is designed to improve accessibility, provide universal visitability, and meets the eligibility requirements established by guidelines developed by the Department of Housing and Community Development, shall be allowed a credit against the tax imposed pursuant to § 58.1-320 of an amount equal to $500, or $2,000 for taxable years beginning on or after January 1, 2010, for such new residence or 25 percent of the total amount spent for the retrofitting of such existing residence. For taxable years beginning on or after January 1, 2010, the 25 percent shall increase to 50 percent. The amount of the credit allowed for the retrofitting of an existing residence shall not exceed $500, or $2,000 for taxable years beginning on or after January 1, 2010. Such a credit shall require application by the taxpayer as provided in subsection C. For purposes of this section, the purchase of a new residence means a transaction involving the first sale of a residence or dwelling. The provisions of this subsection shall not be applicable for taxable years beginning on or after January 1, 2011.

B. For taxable years beginning on or after January 1, 2011, an individual shall be allowed a credit against the tax imposed by § 58.1-320 for a portion of the total purchase price paid by him for a new residence or the total amount expended by him to retrofit an existing residence, provided that the new residence or the retrofitting of the existing residence is designed to improve accessibility, to provide universal visitability, and it meets the eligibility requirements established by guidelines developed by the Department of Housing and Community Development. In addition, a

licensed contractor, as defined in § 54.1-1100, shall be allowed a credit against the tax imposed by § 58.1-320 or 58.1-400 for a portion of the total amount it expended in constructing a new residential structure or unit or retrofitting or renovating an existing residential structure or unit, provided that the new residential structure or unit or the retrofitting or renovating of the existing residential structure or unit is designed to improve accessibility, to provide universal visitability, and it meets the eligibility requirements established by guidelines developed by the Department of Housing and Community Development.

The credit shall be allowed for the taxable year in which the residence has been purchased or construction, retrofitting, or renovation of the residence or residential structure or unit has been completed. The credit allowed under this section shall not exceed (i) $5,000 for the purchase of each new residence or the construction of each new residential structure or unit or (ii) 50 percent of the total amount expended, but not to exceed $5,000, for the retrofitting or renovation of each existing residence or residential structure or unit.

No credit shall be allowed under this section for the purchase, construction, retrofitting, or renovation of residential rental property.

C. Eligible taxpayers shall apply for the credit by making application to the Department of Housing and Community Development. The Department of Housing and Community Development shall issue a certification for an approved application to the taxpayer. The taxpayer shall attach the certification to the applicable income tax return. The total amount of tax credits granted under this section for any fiscal year shall not exceed $1 million. In each year, the Department of Housing and Community Development shall allocate $500,000 in tax credits for the purchase or construction of new residences and $500,000 in tax credits for the retrofitting or renovation of existing residences or residential structures or units. If the amount of tax credits approved in a fiscal year for the purchase or construction of new residences is less than $500,000, the Director of the Department of Housing and Community Development shall allocate the remaining balance of such tax credits for the retrofitting or renovation of existing residences or residential structures or units. If the amount of tax credits approved in a fiscal year for the retrofitting or renovation of existing residences or residential structures or units is less than $500,000, the Director of the Department of Housing and Community Development shall allocate the remaining balance of such tax credits for the purchase or construction of new residences. In the event applications for the tax credit exceed the amount allocated by the Director for the fiscal year, the Department of Housing and Community Development shall issue the tax credits pro rata based upon the amount of tax credit approved for each taxpayer and the amount of tax credits allocated by the Director.

In no case shall the Director issue any tax credit relating to transactions or dealings between affiliated entities. In no case shall the Director issue any tax credit more than once to the same or different persons relating to the same retrofitting, renovation, or construction project.

D. In no case shall the amount of credit taken by a taxpayer pursuant to this section exceed the taxpayer's income tax liability for the taxable year. If the amount of credit allowed for the taxable year in which the residence has been purchased or construction, retrofitting, or renovation of the residence or residential structure or unit has been completed exceeds the taxpayer's income tax liability imposed for such taxable year, then the amount that exceeds the tax liability may be carried over for credit against the income taxes of such taxpayer in the next seven taxable years or until the total amount of the tax credit issued has been taken, whichever is sooner. Credits granted to a partnership, limited liability company, or electing small business corporation (S corporation) shall be allocated to the individual partners, members, or shareholders, respectively, in proportion to their ownership or interest in such business entities.

1999, c. 404; 2007, cc. 68, 765; 2009, cc. 15, 496; 2011, c. 365.

§ 58.1-339.8. Income tax credit for low-income taxpayers

A. As used in this section, unless the context requires otherwise:

"Family Virginia adjusted gross income" means the combined Virginia adjusted gross income of an individual, the individual's spouse, and any person claimed as a dependent on the individual's or his spouse's income tax return for the taxable year.

"Poverty guidelines" means the poverty guidelines for the 48 contiguous states and the District of Columbia updated annually in the Federal Register by the U.S. Department of Health and Human Services under the authority of § 673(2) of the Omnibus Budget Reconciliation Act of 1981.

"Virginia adjusted gross income" has the same meaning as the term is defined in § 58.1-321.

B. 1. For taxable years beginning on and after January 1, 2000, any individual or persons filing a joint return whose family Virginia adjusted gross income does not exceed 100 percent of the poverty guideline amount corresponding to a household of an equal number of persons as listed in the poverty guidelines published during such taxable year, shall be allowed a credit against the tax levied pursuant to § 58.1-320 in an amount equal to $300 each for the individual, the individual's spouse, and any person claimed as a dependent on the individual's or married persons' income tax return for the taxable year. For any taxable year in which a husband and wife file separate Virginia income tax returns, the credit provided under this section shall be allowed against the tax for only one of such two tax returns. Additionally, the credit provided under this section shall not be allowed against such tax of a dependent of the individual or of married persons.

2. For taxable years beginning on and after January 1, 2006, any individual or married persons, eligible for a tax credit pursuant to § 32 of the Internal Revenue Code, may for the taxable year, in lieu of the credit authorized under subdivision B 1, claim a credit against the tax imposed pursuant to § 58.1-320 in an amount equal to 20 percent of the credit claimed by the individual or married persons for federal individual income taxes pursuant to § 32 of the Internal Revenue Code for the taxable year. In no case shall a household be allowed a credit pursuant to this subdivision and subdivision B 1 for the same taxable year.

For purpose of this subdivision, "household" means an individual and in the case of married persons, the individual and his spouse regardless of whether or not the individual and his spouse file combined or separate Virginia individual income tax returns.

C. The amount of the credit provided pursuant to subsection B for any taxable year shall not exceed the individual's or married persons' Virginia income tax liability.

D. Notwithstanding any other provision of this section, no credit shall be allowed pursuant to subsection B in any taxable year in which the individual, the individual's spouse, or both, or any person claimed as a dependent on such individual's or married persons' income tax return, claims one or any combination of the following on his or their income tax return for such taxable year:

1. The subtraction under subdivision C 11 of § 58.1-322;

2. The subtraction under subdivision C 23 of § 58.1-322;

3. The subtraction under subdivision C 24 of § 58.1-322;

4. The deduction for the additional personal exemption for blind or aged taxpayers under subdivision D 2 b of § 58.1-322; or

5. The deduction under subdivision D 5 of § 58.1-322.

2000, c. 397; 2004, Sp. Sess. I, c. 3.

§ 58.1-339.9. Repealed

Repealed by Acts 2016, c. 305, cl. 2.

§ 58.1-339.10. Riparian forest buffer protection for waterways tax credit

A. For all taxable years beginning on or after January 1, 2000, any individual who owns land abutting a waterway on which timber is harvested, and who forbears harvesting timber on certain portions of the land near the waterway, shall be allowed a credit against the tax imposed by § 58.1-320 as set forth in this section. For purposes of this section, "waterway" means any perennial or intermittent stream of water depicted on the then most current United States Geological Survey topographical map. For purposes of this section and for taxable years beginning on and after January 1, 2008, "individual" means an individual person and an individual's grantor trust.

B. The State Forester shall develop guidelines setting forth the general requirements of qualifying for the credit, including the land for which credit is eligible. To qualify for the credit, the individual must comply with an individualized Forest Stewardship Plan to be certified by the State Forester. In no event shall the distance from such waterway to the far end of the timber buffer, on which the tax credit is based, be less than thirty-five feet or more than three hundred feet. The minimum duration for the buffer shall be fifteen years. The State Forester shall check each certified buffer annually to verify its continued compliance with the individual's Forest Stewardship Plan. If the State Forester discovers that the timber in that portion of the land retained as a buffer has been harvested prior to the end of the required term, written notification of such violation shall be delivered to the individual by the State Forester.

C. The tax credit shall be an amount equal to twenty-five percent of the value of timber in that portion of the land retained as a buffer. The amount of such credit shall not exceed $17,500 or the total amount of the tax imposed by this chapter, whichever is less, in the year that the timber outside the buffer was harvested. If the amount of the credit exceeds the individual's liability for such taxable year, the excess may be carried over for credit against income taxes in the next five taxable years until the total amount of the tax credit has been taken. For purposes of this section, the amount of any credit attributable to qualified buffer protection by a partnership or electing small business corporation (S Corporation) shall be allocated to the individual partners or shareholders in proportion to their ownership or interest in the partnership or S Corporation. The land which is the subject of a tax credit under this section cannot again be the subject of a tax credit under this section for at least fifteen years. The State Forester shall check each certified buffer annually to verify its continued compliance with the individual's Forest Stewardship Plan. If the State Forester discovers that the timber in that portion of the land retained as a buffer has been harvested prior to the end of the required term, written notification of such noncompliance shall be delivered to the individual by the State Forester.

D. To claim the credit authorized under this section, the individual shall apply to the State Forester, who shall determine the amount of credit, using the assessed value of the timber in that portion of land retained as a buffer, and issue a certificate thereof to the individual. The individual shall attach the certificate to the Virginia tax return on which the credit is claimed. In the event the timber in that portion of land retained as a buffer is harvested by the individual or any other person prior to the end of the term originally established in the individual's Forest Stewardship Plan, the individual shall repay the tax credit claimed. Within sixty days after receiving written notification from the State Forester that the individual's plan no longer qualifies for the credit, repayment shall be made to the Department of Taxation. If repayment is not made within the sixty-day period, the State Forester shall notify the locality's Commonwealth Attorney for assistance in collecting the funds from the individual.

2000, cc. 568, 607; 2008, c. 449.

§ 58.1-339.11. Repealed

Repealed by Acts 2013, c. 801, cl. 2, effective for taxable years beginning on or after January 1, 2014.

§ 58.1-339.12. Farm wineries and vineyards tax credit

A. As used in this section, unless the context requires a different meaning:

"Qualified capital expenditures" means all expenditures made by the taxpayer for the purchase and installation of barrels, bins, bottling equipment, capsuling equipment, chemicals, corkers, 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, wine tanks, and wire.

"Virginia vineyard" means agricultural lands located in the Commonwealth 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 located thereon.

"Virginia farm winery" means an establishment located in the Commonwealth that is licensed as a Virginia farm winery pursuant to § 4.1-207.

B. For taxable years beginning on and after January 1, 2011, any Virginia farm winery or vineyard shall be entitled to a credit against the tax levied pursuant to §§ 58.1-320 and 58.1-400 for qualified capital expenditures made in connection with the establishment of new Virginia farm wineries or vineyards and capital improvements made to existing Virginia farm wineries or vineyards. The amount of the credit shall be equal to 25 percent of all qualified capital expenditures.

C. The total amount of tax credits available under this section for a calendar year shall not exceed $250,000. In the event that applications for such credit exceed $250,000 for any calendar, the Department of Taxation shall allocate the credits on a pro rata basis.

D. If the amount of the credit exceeds the taxpayer's tax liability for the taxable year, the excess may be carried over for credit against the income taxes of the taxpayer in the next 10 taxable years, or until the total credit amount has been taken, whichever occurs first.

E. For purposes of this section, the amount of any credit attributable to a partnership, electing small business corporation (S corporation), or limited liability company shall be allocated to the individual partners, shareholders, or members, respectively, in proportion to their ownership or interest in such business entities.

F. The credit allowed in this section shall not be claimed to the extent the taxpayer has claimed a deduction for the same expenses for federal income tax purposes under § 179 of the Internal Revenue Code, as amended.

2011, cc. 214, 226.

Article 4 - ACCOUNTING, RETURNS, PROCEDURES FOR INDIVIDUALS

§ 58.1-340. Accounting

A. An individual taxpayer's taxable year under this chapter shall be the same as his taxable year for federal income tax purposes.

B. If a taxpayer's taxable year is changed for federal income tax purposes, his taxable year for purposes of this chapter shall be similarly changed. If a taxable year of less than twelve months results from a change of taxable year, the Virginia taxable income shall be prorated under regulations of the Department.

C. A taxpayer's method of accounting under this chapter shall be the same as his method of accounting for federal income tax purposes. In the absence of any method of accounting for federal

income tax purposes, Virginia taxable income shall be computed under such method as in the opinion of the Tax Commissioner clearly reflects income.

D. If a taxpayer's method of accounting is changed for federal income tax purposes, his method of accounting for purposes of this chapter shall be similarly changed. If a taxpayer's method of accounting is changed, other than from an accrual to an installment method, any additional tax which results from adjustments determined to be necessary solely by reason of the change shall not be greater than if such adjustments were ratably allocated and included for the taxable year of the change and the preceding taxable years, not in excess of two, during which the taxpayer used the method of accounting from which the change is made. If a taxpayer's method of accounting is changed from an accrual to an installment method, any additional tax for the year of such change of method and for any subsequent year which is attributable to the receipt of installment payments properly accrued in a prior year, shall be reduced by the portion of tax for any prior taxable year attributable to the accrual of such installment payments, in accordance with regulations of the Department.

E. In computing a taxpayer's Virginia taxable income for any taxable year under a method of accounting different from the method under which the taxpayer's Virginia taxable income was computed, there shall be taken into account those adjustments which are determined, under regulations prescribed by the Department, to be necessary solely by reason of change in order to prevent amounts from being duplicated or omitted.

F. Notwithstanding any of the other provisions of this section, any accounting adjustments made for federal income tax purposes for any taxable year shall be applied in computing the taxpayer's taxable income for such year.

Code 1950, § 58-151.061; 1971, Ex. Sess., c. 171; 1984, c. 675.

§ 58.1-341. Returns of individuals

A. On or before May 1 of each year if an individual's taxable year is the calendar year, or on or before the fifteenth day of the fourth month following the close of a taxable year other than the calendar year, an income tax return under this chapter shall be made and filed by or for:

1. Every resident individual, except as provided in § 58.1-321, required to file a federal income tax return for the taxable year, or having Virginia taxable income for the taxable year;

2. Every nonresident individual having Virginia taxable income for the taxable year, except as provided in § 58.1-321.

Notwithstanding the foregoing, every member of the armed services of the United States deployed outside of the United States shall be allowed an automatic extension to file an income tax return. Such extension shall expire 90 days following the completion of such member's deployment. For purposes of this section, "the armed services of the United States" includes active duty service with the regular Armed Forces of the United States or the National Guard or other reserve component.

B. If the federal income tax liability of husband or wife is determined on a separate federal return, their Virginia income tax liabilities and returns shall be separate. If the federal income tax liabilities of husband and wife (other than a husband and wife described in subdivision 2 of subsection A) are determined on a joint federal return, or if neither files a federal return:

1. They shall file a joint Virginia income tax return, and their tax liabilities shall be joint and several; or

2. They may elect to file separate Virginia income tax returns if they comply with the requirements of the Department in setting forth information (whether or not on a single form), in which event their tax liabilities shall be separate unless such husband and wife file separately on a combined return. The election permitted under this subsection may be made or changed at any time within three years from the last day prescribed by law for the timely filing of the return.

C. If either husband or wife is a resident and the other is a nonresident, they shall file separate Virginia income tax returns on such single or separate forms as may be required by the Department, in which event their tax liabilities shall be separate except as provided in subsection D, unless both elect to determine their joint Virginia taxable income as if both were residents, in which event their tax liabilities shall be joint and several.

D. If husband and wife file separate Virginia income tax returns on a single form pursuant to subsection B or C, and:

1. If the sum of the payments by either spouse, including withheld and estimated taxes, exceeds the amount of the tax for which such spouse is separately liable, the excess may be applied by the Department to the credit of the other spouse if the sum of the payments by such other spouse, including withheld and estimated taxes, is less than the amount of the tax for which such other spouse is separately liable;

2. If the sum of the payments made by both spouses with respect to the taxes for which they are separately liable, including withheld and estimated taxes, exceeds the total of the taxes due, refund of the excess may be made payable to both spouses.

The provisions of this subsection shall not apply if the return of either spouse includes a demand that any overpayment made by him or her shall be applied only on account of his or her separate liability.

E. The return for any deceased individual shall be made and filed by his executor, administrator, or other person charged with his property.

F. The return for an individual who is unable to make a return by reason of minority or other disability shall be made and filed by his guardian, committee, fiduciary or other person charged with the care of his person or property (other than a receiver in possession of only a part of his property), or by his duly authorized agent.

Code 1950, § 58-151.062; 1971, Ex. Sess., c. 171; 1972, c. 827; 1978, c. 796; 1984, c. 675; 2008, c. 591.

§ 58.1-341.1. Returns of individuals; voter registration information

For all taxable years beginning on and after January 1, 1995, the Department of Taxation shall include in any packet of instructions and forms for individual income tax returns an application to register to vote by mail and appropriate instructions for the completion and mailing of the application to register to vote. The form of the application shall be prescribed and the instructions shall be provided by the State Board of Elections.

1994, c. 632.

§ 58.1-342. Special cases in which nonresident need not file Virginia return

A. A nonresident of Virginia who had no actual place of abode in this Commonwealth at any time during the taxable year and commuted on a daily basis from his place of residence in another state to his place of employment in Virginia is hereby relieved of filing an income tax return with this Commonwealth for that taxable year provided:

1. His only income from Virginia sources was from salaries and wages;

2. Such salaries and wages were subject to income taxation by the state of his residence under an income tax law substantially similar in principle to this chapter;

3. The laws of such other state contain a provision substantially similar in effect to that contained in § 58.1-332 and applicable to residents of Virginia; and

4. The laws of such other state accord like treatment to a resident of this Commonwealth who commuted on a daily basis from his place of residence in Virginia to his place of employment in such other state.

B. The Department may enter into reciprocal agreements with other states to exempt nonresidents from the Virginia income tax if such other states similarly exempt Virginia residents. Under such reciprocal agreements nonresidents are not required to pay tax or file a return with, nor be subject to withholding by, the reciprocating state on compensation paid in that state or on income distributed by a trust domiciled in that state.

Code 1950, § 58-151.063; 1971, Ex. Sess., c. 171; 1982, c. 528; 1984, c. 675; 1998, c. 352.

§ 58.1-343. Place of filing

A. Every resident who is required by this chapter to file a return shall file his return with the commissioner of the revenue for the county or city in which he resides, and every nonresident who is required by this chapter to file a return shall file his return with the commissioner of the revenue for the county or city in which all or a part of his income from Virginia sources was derived.

B. Every fiduciary required to file a return on behalf of an individual shall file such return with the commissioner of the revenue having jurisdiction in the county or city in which the fiduciary qualified or, if there has been no qualification in this Commonwealth, in the county or city in which

such fiduciary resides, does business or has an office or wherein the beneficiary or any of them may reside, or with the Department if provided by regulation thereof.

Code 1950, § 58-151.064; 1971, Ex. Sess., c. 171; 1984, c. 675.

§ 58.1-344. Extension of time for filing returns

A. In accordance with procedures established by the Tax Commissioner, any individual or fiduciary may elect an extension of time within which to file the income tax return required under this chapter to the date six months after such due date, provided that the estimated tax due is paid in accordance with the provisions of subsection B.

B. Any taxpayer desiring an extension of time in accordance with the provisions of subsection A shall, on or before the original due date for the filing of such return, in accordance with procedures established by the Tax Commissioner pay the full amount properly estimated as the balance of the tax due for the taxable year after giving effect to any estimated tax payments under § 58.1-491 and any tax credit under § 58.1-499. If any amount of the balance of the tax due is underestimated, interest at the rate prescribed in § 58.1-15 will be assessed on such amount from the original due date for filing of the income tax return to the date of payment. In addition to interest, if the underestimation of the balance of tax due exceeds 10 percent of the actual tax liability, there shall be added to the tax as a penalty an amount equal to two percent per month for each month or fraction thereof from the original due date for the filing of the income tax return to the date of payment.

C. If the return is not filed, or the full amount of the tax due is not paid, on or before the extended due date elected under subsection A, the penalty imposed by § 58.1-347 shall apply as if no extension had been granted.

D. An extension of time for filing returns of income is hereby granted to and including the first day of the seventh month following the close of the taxable year in the case of United States citizens residing or traveling outside the United States and Puerto Rico, including persons in the military or naval service on duty outside the United States and Puerto Rico.

In all such cases a statement must be attached to the return certifying that the taxpayer is the person for whom the return is made and that the taxpayer was outside the United States or Puerto Rico on the due date of the return.

E. Notwithstanding any other provisions of law, any taxpayer who qualifies for an automatic extension under subsection D of this section, and who expects to qualify for foreign income exclusion may, on or before the expiration of the first day of the seventh month, apply for an additional extension of time for filing returns of income for a period of 30 days after the date such taxpayer reasonably expects to qualify for such exclusion. Such extension may not be granted unless a similar request for extension has been made for filing the federal return. An approved copy of the federal extension must be attached to the return when filed.

F.1. Notwithstanding any other provision of this section, the date for filing income tax returns and paying the tax due for the taxable year beginning on or after January 1, 1990, and before January 1, 1991, for members of the reserve components of the armed forces, as defined in 10 U.S.C. § 261, as amended, who on the original due date of such return were on active duty status, is hereby extended for a period of one year from the original due date of the return.

2. However, in the case of an individual who qualifies for a period of postponement under § 7508 of the Internal Revenue Code or an act of Congress relating to and defining "Desert Shield service" for purposes of the federal income tax, the deadline for filing income tax returns and paying the tax due shall be the date 15 days after the date on which the federal period of postponement terminates, if such date is greater than one year from the original due date of the return.

3. In all cases, an individual qualifying for an extension under either subdivision 1 or 2 of this subsection shall attach a statement to the return containing such information as may be prescribed by the Tax Commissioner.

G.1. Notwithstanding any other provision of this section, the date for filing income tax returns and paying the tax due for the taxable years beginning on or after January 1, 1995, and before January 1, 1997, for members of the Armed Forces of the United States, who on the original due date of such return were on active duty status serving in any part of the former Yugoslavia, including the air space above such location or any waters subject to related naval operations in support of Operation JOINT ENDEAVOR as part of the NATO Peace Keeping Force, is hereby extended for a period of one year from the original due date of the return.

2. However, in the case of an individual who qualifies for a period of postponement under § 7508 of the Internal Revenue Code for purposes of the federal income tax, the deadline for filing income tax returns and paying the tax due shall be the date 15 days after the date on which the federal period of postponement terminates, if such date is greater than one year from the original due date of the return.

3. In all cases, an individual qualifying for an extension under either subdivision 1 or 2 of this subsection shall attach a statement to the return containing such information as may be prescribed by the Tax Commissioner.

H. Any individual who receives an extension for filing an individual income tax return for taxable year 1990 pursuant to subsection F or for taxable year 1995 pursuant to subsection G of this section shall be paid interest on any overpayment of individual income tax for taxable year 1990 or 1995, respectively, beginning from the date the return was originally required to be filed prior to the extension.

Code 1950, § 58-151.067; 1971, Ex. Sess., c. 171; 1972, c. 827; 1976, c. 720; 1977, c. 244; 1978, c. 166; 1984, c. 675; 1991, cc. 346, 361, 362, 456; 1996, c. 401; 2005, c. 100.

§ 58.1-344.1. Postponement of time for performing certain acts

Penalty, interest, and addition to tax shall not apply or be computed with respect to the tax imposed in Article 2 of this chapter during the period of time that an individual enjoys the extension under subdivision 2 of subsections F and G of § 58.1-344. The periods of limitation prescribed in Chapter 18 (§ 58.1-1800 et seq.) of this title shall also be extended by the number of days to which an individual is entitled to an extension under subdivision 2 of subsections F and G of § 58.1-344.

1991, cc. 346, 361; 1996, c. 401.

§ 58.1-344.2. Voluntary contributions; cost of administration

For all voluntary contributions made on individual income tax returns for taxable years beginning on or after January 1, 2003, except those made pursuant to § 58.1-344.4, the Department of Taxation may retain up to five percent of all voluntary contributions made for the taxable year, but not to exceed $50,000 for any taxable year, for its costs in administering voluntary contributions. The amount otherwise payable to each organization for which a voluntary contribution has been designated shall be reduced on a pro rata basis in accordance with the amount of voluntary contributions designated to the specific organization in the previous taxable year as compared to the total of all voluntary contributions designated to organizations in the previous taxable year.

2002, cc. 395, 413; 2013, cc. 28, 402.

§ 58.1-344.3. Voluntary contributions of refunds requirements

A.1. For taxable years beginning on and after January 1, 2005, all entities entitled to voluntary contributions of tax refunds listed in subsections B and C must have received at least $10,000 in contributions in each of the three previous taxable years for which there is complete data and in which such entity was listed on the individual income tax return.

2. In the event that an entity listed in subsections B and C does not satisfy the requirement in subdivision 1, such entity shall no longer be listed on the individual income tax return.

3. a. The entities listed in subdivisions B 21 and B 22 as well as any other entities in subsections B and C added subsequent to the 2004 Session of the General Assembly shall not appear on the individual income tax return until their addition to the individual income tax return results in a maximum of 25 contributions listed on the return. Such contributions shall be added in the order that they are listed in subsections B and C.

b. Each entity added to the income tax return shall appear on the return for at least three consecutive taxable years before the requirement in subdivision 1 is applied to such entity.

4. The Department of Taxation shall report annually by the first day of each General Assembly Regular Session to the chairmen of the House and Senate Finance Committees the amounts collected for each entity listed under subsections B and C for the three most recent taxable years for which there is complete data. Such report shall also identify the entities, if any, that will be removed from the individual income tax return because they have failed the requirements in sub-

division 1, the entities that will remain on the individual income tax return, and the entities, if any, that will be added to the individual income tax return.

B. Subject to the provisions of subsection A, the following entities entitled to voluntary contributions shall appear on the individual income tax return and are eligible to receive tax refund contributions of not less than $1:

1. Nongame wildlife voluntary contribution.

a. All moneys contributed shall be used for the conservation and management of endangered species and other nongame wildlife. "Nongame wildlife" includes protected wildlife, endangered and threatened wildlife, aquatic wildlife, specialized habitat wildlife both terrestrial and aquatic, and mollusks, crustaceans, and other invertebrates under the jurisdiction of the Board of Game and Inland Fisheries.

b. All moneys shall be deposited into a special fund known as the Game Protection Fund and which shall be accounted for as a separate part thereof to be designated as the Nongame Cash Fund. All moneys so deposited in the Nongame Cash Fund shall be used by the Commission of Game and Inland Fisheries for the purposes set forth herein.

2. Open space recreation and conservation voluntary contribution.

a. All moneys contributed shall be used by the Department of Conservation and Recreation to acquire land for recreational purposes and preserve natural areas; to develop, maintain, and improve state park sites and facilities; and to provide funds to local public bodies pursuant to the Virginia Outdoor Fund Grants Program.

b. All moneys shall be deposited into a special fund known as the Open Space Recreation and Conservation Fund. The moneys in the fund shall be allocated one-half to the Department of Conservation and Recreation for the purposes stated in subdivision 2 a and one-half to local public bodies pursuant to the Virginia Outdoor Fund Grants Program.

3. Voluntary contribution to political party.

All moneys contributed shall be paid to the State Central Committee of any party that meets the definition of a political party under § 24.2-101 as of July 1 of the previous taxable year. The maximum contribution allowable under this subdivision shall be $25. In the case of a joint return of husband and wife, each spouse may designate that the maximum contribution allowable be paid.

4. United States Olympic Committee voluntary contribution.

All moneys contributed shall be paid to the United States Olympic Committee.

5. Housing program voluntary contribution.

a. All moneys contributed shall be used by the Department of Housing and Community Development to provide assistance for emergency, transitional, and permanent housing for the home-

less; and to provide assistance to housing for the low-income elderly for the physically or mentally disabled.

b. All moneys shall be deposited into a special fund known as the Virginia Tax Check-off for Housing Fund. All moneys deposited in the fund shall be used by the Department of Housing and Community Development for the purposes set forth in this subdivision. Funds made available to the Virginia Tax Check-off for Housing Fund may supplement but shall not supplant activities of the Virginia Housing Trust Fund established pursuant to Chapter 9 (§ 36-141 et seq.) of Title 36 or those of the Virginia Housing Development Authority.

6. Voluntary contributions to the Department for Aging and Rehabilitative Services.

a. All moneys contributed shall be used by the Department for Aging and Rehabilitative Services for the enhancement of transportation services for the elderly and disabled.

b. All moneys shall be deposited into a special fund known as the Transportation Services for the Elderly and Disabled Fund. All moneys so deposited in the fund shall be used by the Department for Aging and Rehabilitative Services for the enhancement of transportation services for the elderly and disabled. The Department for Aging and Rehabilitative Services shall conduct an annual audit of the moneys received pursuant to this subdivision and shall provide an evaluation of all programs funded pursuant to this subdivision annually to the Secretary of Health and Human Resources.

7. Voluntary contribution to the Community Policing Fund.

a. All moneys contributed shall be used to provide grants to local law-enforcement agencies for the purchase of equipment or the support of services, as approved by the Criminal Justice Services Board, relating to community policing.

b. All moneys shall be deposited into a special fund known as the Community Policing Fund. All moneys deposited in such fund shall be used by the Department of Criminal Justices Services for the purposes set forth herein.

8. Voluntary contribution to promote the arts.

All moneys contributed shall be used by the Virginia Arts Foundation to assist the Virginia Commission for the Arts in its statutory responsibility of promoting the arts in the Commonwealth. All moneys shall be deposited into a special fund known as the Virginia Arts Foundation Fund.

9. Voluntary contribution to the Historic Resources Fund.

All moneys contributed shall be deposited in the Historic Resources Fund established pursuant to § 10.1-2202.1.

10. Voluntary contribution to the Virginia Foundation for the Humanities and Public Policy.

All moneys contributed shall be paid to the Virginia Foundation for the Humanities and Public Policy. All moneys shall be deposited into a special fund known as the Virginia Humanities Fund.

11. Voluntary contribution to the Center for Governmental Studies.

All moneys contributed shall be paid to the Center for Governmental Studies, a public service and research center of the University of Virginia. All moneys shall be deposited into a special fund known as the Governmental Studies Fund.

12. Voluntary contribution to the Law and Economics Center.

All moneys contributed shall be paid to the Law and Economics Center, a public service and research center of George Mason University. All moneys shall be deposited into a special fund known as the Law and Economics Fund.

13. Voluntary contribution to Children of America Finding Hope.

All moneys contributed shall be used by Children of America Finding Hope (CAFH) in its programs which are designed to reach children with emotional and physical needs.

14. Voluntary contribution to 4-H Educational Centers.

All moneys contributed shall be used by the 4-H Educational Centers throughout the Commonwealth for their (i) educational, leadership, and camping programs and (ii) operational and capital costs. The State Treasurer shall pay the moneys to the Virginia 4-H Foundation in Blacksburg, Virginia.

15. Voluntary contribution to promote organ and tissue donation.

a. All moneys contributed shall be used by the Virginia Transplant Council to assist in its statutory responsibility of promoting and coordinating educational and informational activities as related to the organ, tissue, and eye donation process and transplantation in the Commonwealth of Virginia.

b. All moneys shall be deposited into a special fund known as the Virginia Donor Registry and Public Awareness Fund. All moneys deposited in such fund shall be used by the Virginia Transplant Council for the purposes set forth herein.

16. Voluntary contributions to the Virginia War Memorial division of the Department of Veterans Services and the National D-Day Memorial Foundation.

All moneys contributed shall be used by the Virginia War Memorial division of the Department of Veterans Services and the National D-Day Memorial Foundation in their work through each of their respective memorials. The State Treasurer shall divide the moneys into two equal portions and pay one portion to the Virginia War Memorial division of the Department of Veterans Services and the other portion to the National D-Day Memorial Foundation.

17. Voluntary contribution to the Virginia Federation of Humane Societies.

All moneys contributed shall be paid to the Virginia Federation of Humane Societies to assist in its mission of saving, caring for, and finding homes for homeless animals.

18. Voluntary contribution to the Tuition Assistance Grant Fund.

a. All moneys contributed shall be paid to the Tuition Assistance Grant Fund for use in providing monetary assistance to residents of the Commonwealth who are enrolled in undergraduate or graduate programs in private Virginia colleges.

b. (Effective until October 1, 2016) All moneys shall be deposited into a special fund known as the Tuition Assistance Grant Fund. All moneys so deposited in the Fund shall be administered by the State Council of Higher Education for Virginia in accordance with and for the purposes provided under the Tuition Assistance Grant Act (§ 23-38.11 et seq.).

b. (Effective October 1, 2016) All moneys shall be deposited into a special fund known as the Tuition Assistance Grant Fund. All moneys so deposited in the Fund shall be administered by the State Council of Higher Education for Virginia in accordance with and for the purposes provided under the Tuition Assistance Grant Act (§ 23.1-628 et seq.).

19. Voluntary contribution to the Spay and Neuter Fund.

All moneys contributed shall be paid to the Spay and Neuter Fund for use by localities in the Commonwealth for providing low-cost spay and neuter surgeries through direct provision or contract or each locality may make the funds available to any private, nonprofit sterilization program for dogs and cats in such locality. The Tax Commissioner shall determine annually the total amounts designated on all returns from each locality in the Commonwealth, based upon the locality that each filer who makes a voluntary contribution to the Fund lists as his permanent address. The State Treasurer shall pay the appropriate amount to each respective locality.

20. Voluntary contribution to the Virginia Commission for the Arts.

All moneys contributed shall be paid to the Virginia Commission for the Arts.

21. Voluntary contribution for the Department of Emergency Management.

All moneys contributed shall be paid to the Department of Emergency Management.

22. Voluntary contribution for the cancer centers in the Commonwealth.

All moneys contributed shall be paid equally to all entities in the Commonwealth that officially have been designated as cancer centers by the National Cancer Institute.

23. Voluntary contribution to the Brown v. Board of Education Scholarship Program Fund.

a. All moneys contributed shall be paid to the Brown v. Board of Education Scholarship Program Fund to support the work of and generate nonstate funds to maintain the Brown v. Board of Education Scholarship Program.

b. All moneys shall be deposited into the Brown v. Board of Education Scholarship Program Fund as established in § 30-231.4.

c. All moneys so deposited in the Fund shall be administered by the State Council of Higher Education in accordance with and for the purposes provided in Chapter 34.1 (§ 30-231.01 et seq.) of Title 30.

24. Voluntary contribution to the Martin Luther King, Jr. Living History and Public Policy Center.

All moneys contributed shall be paid to the Board of Trustees of the Martin Luther King, Jr. Living History and Public Policy Center.

25. Voluntary contribution to the Virginia Caregivers Grant Fund.

All moneys contributed shall be paid to the Virginia Caregivers Grant Fund established pursuant to § 63.2-2202.

26. Voluntary contribution to public library foundations.

All moneys contributed pursuant to this subdivision shall be deposited into the state treasury. The Tax Commissioner shall determine annually the total amounts designated on all returns for each public library foundation and shall report the same to the State Treasurer. The State Treasurer shall pay the appropriate amount to the respective public library foundation.

27. Voluntary contribution to Celebrating Special Children, Inc.

All moneys contributed shall be paid to Celebrating Special Children, Inc. and shall be deposited into a special fund known as the Celebrating Special Children, Inc. Fund.

28. Voluntary contributions to the Department for Aging and Rehabilitative Services.

a. All moneys contributed shall be used by the Department for Aging and Rehabilitative Services for providing Medicare Part D counseling to the elderly and disabled.

b. All moneys shall be deposited into a special fund known as the Medicare Part D Counseling Fund. All moneys so deposited shall be used by the Department for Aging and Rehabilitative Services to provide counseling for the elderly and disabled concerning Medicare Part D. The Department for Aging and Rehabilitative Services shall conduct an annual audit of the moneys received pursuant to this subdivision and shall provide an evaluation of all programs funded pursuant to the subdivision to the Secretary of Health and Human Resources.

29. Voluntary contribution to community foundations.

All moneys contributed pursuant to this subdivision shall be deposited into the state treasury. The Tax Commissioner shall determine annually the total amounts designated on all returns for each community foundation and shall report the same to the State Treasurer. The State Treasurer shall pay the appropriate amount to the respective community foundation. A "community foundation" shall be defined as any institution that meets the membership requirements for a community foundation established by the Council on Foundations.

30. Voluntary contribution to the Virginia Foundation for Community College Education.

a. All moneys contributed shall be paid to the Virginia Foundation for Community College Education for use in providing monetary assistance to Virginia residents who are enrolled in comprehensive community colleges in Virginia.

b. (Effective until October 1, 2016) All moneys shall be deposited into a special fund known as the Virginia Foundation for Community College Education Fund. All moneys so deposited in the Fund shall be administered by the Virginia Foundation for Community College Education in accordance with and for the purposes provided under the Community College Incentive Scholarship Program (§ 23-220.2 et seq.).

b. (Effective October 1, 2016) All moneys shall be deposited into a special fund known as the Virginia Foundation for Community College Education Fund. All moneys so deposited in the Fund shall be administered by the Virginia Foundation for Community College Education in accordance with and for the purposes provided under the Community College Incentive Scholarship Program (former § 23-220.2 et seq.).

31. Voluntary contribution to the Middle Peninsula Chesapeake Bay Public Access Authority.

All moneys contributed shall be paid to the Middle Peninsula Chesapeake Bay Public Access Authority to be used for the purposes described in § 15.2-6601.

32. Voluntary contribution to the Breast and Cervical Cancer Prevention and Treatment Fund.

All moneys contributed shall be paid to the Breast and Cervical Cancer Prevention and Treatment Fund established pursuant to § 32.1-368.

33. Voluntary contribution to the Virginia Aquarium and Marine Science Center.

All moneys contributed shall be paid to the Virginia Aquarium and Marine Science Center for use in its mission to increase the public's knowledge and appreciation of Virginia's marine environment and inspire commitment to preserve its existence.

34. Voluntary contribution to the Virginia Capitol Preservation Foundation.

All moneys contributed shall be paid to the Virginia Capitol Preservation Foundation for use in its mission in supporting the ongoing restoration, preservation, and interpretation of the Virginia Capitol and Capitol Square.

35. Voluntary contribution for the Secretary of Veterans and Defense Affairs.

All moneys contributed shall be paid to the Office of the Secretary of Veterans and Defense Affairs for related programs and services.

C. Subject to the provisions of subsection A, the following voluntary contributions shall appear on the individual income tax return and are eligible to receive tax refund contributions or by making payment to the Department if the individual is not eligible to receive a tax refund pursuant to § 58.1-309 or if the amount of such tax refund is less than the amount of the voluntary contribution:

1. Voluntary contribution to the Family and Children's Trust Fund of Virginia.

All moneys contributed shall be paid to the Family and Children's Trust Fund of Virginia.

2. Voluntary Chesapeake Bay restoration contribution.

a. All moneys contributed shall be used to help fund Chesapeake Bay and its tributaries restoration activities in accordance with tributary plans developed pursuant to Article 7 (§ 2.2-215 et seq.) of Chapter 2 of Title 2.2 or the Chesapeake Bay Watershed Implementation Plan submitted by the Commonwealth of Virginia to the U.S. Environmental Protection Agency on November 29, 2010, and any subsequent revisions thereof.

b. The Tax Commissioner shall annually determine the total amount of voluntary contributions and shall report the same to the State Treasurer, who shall credit that amount to a special nonreverting fund to be administered by the Office of the Secretary of Natural Resources. All moneys so deposited shall be used for the purposes of providing grants for the implementation of tributary plans developed pursuant to Article 7 (§ 2.2-215 et seq.) of Chapter 2 of Title 2.2 or the Chesapeake Bay Watershed Implementation Plan submitted by the Commonwealth of Virginia to the U.S. Environmental Protection Agency on November 29, 2010, and any subsequent revisions thereof.

c. No later than November 1 of each year, the Secretary of Natural Resources shall submit a report to the House Committee on Agriculture, Chesapeake and Natural Resources; the Senate Committee on Agriculture, Conservation and Natural Resources; the House Committee on Appropriations; the Senate Committee on Finance; and the Virginia delegation to the Chesapeake Bay Commission, describing the grants awarded from moneys deposited in the fund. The report shall include a list of grant recipients, a description of the purpose of each grant, the amount received by each grant recipient, and an assessment of activities or initiatives supported by each grant. The report shall be posted on a website maintained by the Secretary of Natural Resources, along with a cumulative listing of previous grant awards beginning with awards granted on or after July 1, 2014.

3. Voluntary Jamestown-Yorktown Foundation Contribution.

All moneys contributed shall be used by the Jamestown-Yorktown Foundation for the Jamestown 2007 quadricentennial celebration. All moneys shall be deposited into a special fund known as the Jamestown Quadricentennial Fund. This subdivision shall be effective for taxable years beginning before January 1, 2008.

4. State forests voluntary contribution.

a. All moneys contributed shall be used for the development and implementation of conservation and education initiatives in the state forests system.

b. All moneys shall be deposited into a special fund known as the State Forests System Fund, established pursuant to § 10.1-1119.1. All moneys so deposited in such fund shall be used by the State Forester for the purposes set forth herein.

5. Voluntary contributions to Uninsured Medical Catastrophe Fund.

All moneys contributed shall be paid to the Uninsured Medical Catastrophe Fund established pursuant to § 32.1-324.2, such funds to be used for the treatment of Virginians sustaining uninsured medical catastrophes.

6. Voluntary contribution to local school divisions.

a. All moneys contributed shall be used by a specified local public school foundation as created by and for the purposes stated in § 22.1-212.2:2.

b. All moneys collected pursuant to subdivision 6 a or through voluntary payments by taxpayers designated for a local public school foundation over refundable amounts shall be deposited into the state treasury. The Tax Commissioner shall determine annually the total amounts designated on all returns for each public school foundation and shall report the same to the State Treasurer. The State Treasurer shall pay the appropriate amount to the respective public school foundation.

c. In order for a public school foundation to be eligible to receive contributions under this section, school boards must notify the Department during the taxable year in which they want to participate prior to the deadlines and according to procedures established by the Tax Commissioner.

7. Voluntary contribution to Home Energy Assistance Fund.

All moneys contributed shall be paid to the Home Energy Assistance Fund established pursuant to § 63.2-805, such funds to be used to assist low-income Virginians in meeting seasonal residential energy needs.

8. Voluntary contribution to the Virginia Military Family Relief Fund.

a. All moneys contributed shall be paid to the Virginia Military Family Relief Fund for use in providing assistance to military service personnel on active duty and their families for living expenses including, but not limited to, food, housing, utilities, and medical services.

b. All moneys shall be deposited into a special fund known as the Virginia Military Family Relief Fund, established and administered pursuant to § 44-102.2.

9. Voluntary contribution to the Federation of Virginia Food Banks.

All moneys contributed shall be paid to the Federation of Virginia Food Banks, a Partner State Association of Feeding America. The Federation of Virginia Food Banks shall as soon as practicable make an equitable distribution of all such moneys to the Blue Ridge Area Food Bank, Capital Area Food Bank, Feeding America Southwest Virginia, FeedMore, Inc., Foodbank of Southeastern Virginia and the Eastern Shore, Fredericksburg Area Food Bank, or Virginia Peninsula Foodbank.

The Secretary of Finance may request records or receipts of all distributions by the Federation of Virginia Food Banks of such moneys contributed for purposes of ensuring compliance with the requirements of this subdivision.

D. Unless otherwise specified and subject to the requirements in § 58.1-344.2, all moneys collected for each entity in subsections B and C shall be deposited into the state treasury. The Tax Commissioner shall determine annually the total amount designated for each entity in subsections B and C on all individual income tax returns and shall report the same to the State Treasurer, who shall credit that amount to each entity's respective special fund.

2004, c. 649; 2005, cc. 860, 889; 2006, cc. 103, 479; 2007, cc. 69, 70, 601; 2008, cc. 97, 313, 461; 2009, cc. 4, 26, 41, 521, 834; 2010, c. 690; 2011, cc. 780, 858; 2012, cc. 803, 835; 2013, cc. 22, 234, 631, 754; 2014, cc. 18, 115, 182, 490; 2015, c. 70.

§ 58.1-344.4. Voluntary contributions of refunds into Virginia College Savings Plan accounts

A. (Effective until October 1, 2016) If an individual is entitled to an income tax refund for the taxable year, that individual may designate on his Virginia individual income tax return a contribution to one or more Virginia College Savings Plan accounts established under Chapter 4.9 (§ 23-38.75 et seq.) of Title 23, in the amount of the entire individual income tax refund or a portion thereof.

A. (Effective October 1, 2016) If an individual is entitled to an income tax refund for the taxable year, that individual may designate on his Virginia individual income tax return a contribution to one or more Virginia College Savings Plan accounts established under Chapter 7 (§ 23.1-700 et seq.) of Title 23.1, in the amount of the entire individual income tax refund or a portion thereof.

B. 1. The Department of Taxation shall send each contribution made pursuant to subsection A to the Virginia College Savings Plan with the following information:

a. The amount of the individual income tax refund or that portion of the refund that the individual has chosen to contribute;

b. The taxpayer's name, Social Security number or taxpayer identification number, address, and telephone number; and

c. The Virginia College Savings Plan account number or numbers into which the contributions will be deposited.

2. If a contribution to a Virginia College Savings Plan account is designated in an individual income tax return filed jointly by a husband and wife, the Department of Taxation shall send the information described in subdivision 1 for both the husband and wife to the Virginia College Savings Plan.

C.1. If the taxpayer owns a single Virginia College Savings Plan account, the Virginia College Savings Plan shall deposit the contribution made pursuant to subsection A into that account.

2. If the taxpayer owns more than one Virginia College Savings Plan account, the Virginia College Savings Plan shall allocate the contribution made pursuant to subsection A between or among the accounts in equal amounts, or as otherwise designated by the taxpayer.

3. If the taxpayer does not own an existing Virginia College Savings Plan account and does not wish to open an account, contributions made pursuant to subsection A shall be returned to the taxpayer by the Virginia College Savings Plan.

D. For the purpose of determining interest on an overpayment or refund under § 58.1-1833, no interest shall accrue after the Department of Taxation sends the contribution to the Virginia College Savings Plan.

E. Any taxpayer designating that a refund be contributed to a Virginia College Savings Plan account shall, by making such designation, be deemed to authorize the Department of Taxation to provide all necessary information, including the information specified in subdivision B 1, to the Virginia College Savings Plan.

2013, cc. 28, 402.

§§ 58.1-345 through 58.1-346. Repealed
Repealed by Acts 2005, cc. 860 and 889, cl. 2.

§ 58.1-346.1. Expired
Expired.

§ 58.1-346.1:1. Repealed
Repealed by Acts 2005, cc. 860 and 889, cl. 2.

§ 58.1-346.2. Expired
Expired.

§ 58.1-346.2:1. Repealed
Repealed by Acts 2005, cc. 860 and 889, cl. 2.

§ 58.1-346.3. Expired
Expired.

§ 58.1-346.3:1. Repealed
Repealed by Acts 2005, cc. 860 and 889, cl. 2.

§ 58.1-346.4. Expired
Expired.

§§ 58.1-346.4:1 through 58.1-346.24. Repealed
Repealed by Acts 2005, cc. 860 and 889, cl. 2.

§ 58.1-347. Penalty for failure to file income tax returns in time
All individual or fiduciary income tax returns required by law to be filed with the commissioner of the revenue shall be filed with the commissioner of the revenue within the time required by this chapter, unless the time for filing such returns is extended by the Department. Upon all returns on which tax is due, filed with or assessed by the commissioner of the revenue after the time herein prescribed for the filing of returns, the commissioner of the revenue shall assess a penalty equal to

six percent of the amount of taxes assessable thereon if the failure is for not more than one month, with an additional six percent for each additional month or fraction thereof during which such failure to file continues, not exceeding thirty percent in the aggregate. Such penalty shall be collected in the same manner as is provided by law for the collection of other taxes.

Code 1950, § 58-151.073; 1971, Ex. Sess., c. 171; 1974, c. 178; 1984, c. 675; 1989, cc. 629, 642; 1991, cc. 316, 331 .

§ 58.1-348. Criminal prosecution for failure or refusal to file return of income or for making false statement therein; limitation

Notwithstanding any other provisions of this title and in addition to any other penalties provided by law, any individual or fiduciary required under this chapter to make a return of income, who willfully fails or refuses to make such return, at the time or times required by law, shall be guilty of a Class 1 misdemeanor, or who, with intent to defraud the Commonwealth, makes any false statement in any such return, shall be guilty of a Class 6 felony. A prosecution under this section shall be commenced within five years next after the commission of the offense.

Code 1950, § 58-151.074; 1971, Ex. Sess., c. 171; 1977, c. 246; 1984, c. 675; 2003, c. 180.

§ 58.1-348.1. Fraudulent assistance; penalty

Any income tax return preparer, as defined in § 58.1-302, who knowingly and willfully aids or assists in, counsels or advises the preparation or presentation of a return, affidavit, claim or other document required by this chapter that he knows is fraudulent or false as to any material matter, is guilty of a Class 6 felony.

2005, c. 48.

§ 58.1-348.2. Authority to enjoin income tax return preparers

A. The Department may commence a civil action to enjoin any person who is an income tax return preparer from further engaging in any conduct described in subsection B or from further action as an income tax return preparer. The venue for any action under this section shall be brought in the circuit court in the circuit where the income tax return preparer resides or has his principal place of business or in the jurisdiction in which the taxpayer with respect to whose income tax return the action is brought resides. The court may exercise its jurisdiction over such action separate and apart from any other administrative or judicial action brought by the Commonwealth against such income tax return preparer or any taxpayer.

B. In any action under subsection A, the court may enjoin the income tax return preparer from further engaging in any conduct specified in this subsection if the court finds that injunctive relief is appropriate to prevent the recurrence of such conduct. The court may enjoin conduct when an income tax return preparer has:

1. Engaged in any conduct subject to penalty under § 6694 or 6695 of the Internal Revenue Code, or subject to any criminal penalty provided by the Internal Revenue Code or this title; or

2. Engaged in any other fraudulent or deceptive conduct that substantially interferes with the proper administration of the tax laws of the Commonwealth.

C. If the court finds that an income tax return preparer has continually or repeatedly engaged in any conduct described in subsection B and that an injunction prohibiting such conduct would not be sufficient to prevent such person's interference with the proper administration of the tax laws of the Commonwealth, the court may enjoin such person from acting as an income tax return preparer. The fact that that person has been enjoined from preparing income tax returns for the United States or any other state in the five years preceding the petition for an injunction shall establish a prima facie case for an injunction under this section.

2005, c. 48.

§ 58.1-349. Information returns prima facie evidence

In any prosecution under § 58.1-348, any information return filed with the Department of Taxation or with the local commissioners of the revenue, as required by this chapter, may be admitted in evidence in any court in the Commonwealth as prima facie evidence of what is stated in said return.

Code 1950, § 58-151.075; 1971, Ex. Sess., c. 171; 1984, c. 675.

§ 58.1-350. Procuring returns from delinquent individuals or fiduciaries

The commissioner of the revenue shall secure a return from every delinquent individual or fiduciary within his jurisdiction, or if any such individual or fiduciary refuses to make a return or fails to make such return for fifteen days after the commissioner of the revenue calls upon him to do so, such commissioner shall, from the best information he can obtain, make an estimate of the income of such individual or fiduciary and report the same to the Department.

The commissioner of the revenue shall have authority to assess taxes, penalties and interest upon such estimate, and such taxes, penalties and interest shall be collected in like manner as is provided by law for the collection of state taxes.

Code 1950, § 58-151.076; 1971, Ex. Sess., c. 171; 1984, c. 675.

§ 58.1-351. When, where and how individual income taxes payable and collectible

Each individual and fiduciary liable for income tax shall pay the same to the treasurer of the county or city with whose commissioner of the revenue the taxpayer files his return at the time fixed by law for filing the return. The full amount of the tax payable as shown on the face of the return shall be so paid. A taxpayer may file his return and pay his tax in full in the closing days of his taxable year provided he is able to prepare a complete return.

If any payment is not made in full when due, there shall be added to the entire tax or to any unpaid balance of the tax, a penalty of six percent of the amount thereof, if the failure is for not more than one month, with an additional six percent for each additional month or fraction thereof during which such failure to pay continues, not exceeding thirty percent in the aggregate. The

entire tax or any unpaid balance of the tax, together with such penalty, will immediately become collectible. Interest upon such tax or any unpaid balance of the tax, and on the accrued penalty, shall be added at a rate determined in accordance with § 58.1-15, from the date the tax or any unpaid balance of the tax, was originally due until paid. In the case of an additional tax assessed by the commissioner of the revenue under the provisions of § 58.1-307, if the return was made in good faith and the understatement of the amount in the return was not due to any fault of the taxpayer, there shall be no penalty on the additional tax because of such understatement, but interest shall be added to the amount of the deficiency at a rate determined in accordance with § 58.1-15, from the time the said return was required by law to be filed until paid.

The penalty under this section shall not be applicable to any month or fraction thereof for which the individual is subject to the penalty imposed under § 58.1-347. In no event shall the total amount of penalty assessed under this section and under § 58.1-347 exceed thirty percent in the aggregate.

Code 1950, § 58-151.077; 1971, Ex. Sess., c. 171; 1977, c. 396; 1984, c. 675; 1989, cc. 629, 642; 1991, cc. 316, 331 .

§ 58.1-352. Memorandum assessments

The commissioner of the revenue shall prepare a memorandum assessment if the taxpayer, on filing his return, desires to pay in currency. Such memorandum shall be prepared on a form to be prescribed and furnished by the Department and a copy of such memorandum assessment shall be immediately certified to the treasurer, who shall receive the currency or coin from the taxpayer and give his receipt therefor. Memorandum assessments shall be subsequently entered by the commissioner of the revenue on the prescribed assessment sheets or forms, and the Department may prescribe and furnish forms for making memorandum assessments in all additional cases in which, in the opinion of the Department, the same may be necessary to facilitate the assessment and collection of individual and fiduciary income taxes.

Code 1950, § 58-151.077; 1971, Ex. Sess., c. 171; 1977, c. 396; 1984, c. 675.

§ 58.1-353. Duties of county and city treasurer in collecting tax

Each county and city treasurer shall proceed promptly to collect all individual and fiduciary income taxes for the taxable year that have been assessed by the commissioner of the revenue and remain unpaid after the time fixed by law for payment and shall continue his efforts so to collect until the close of the then current calendar year. The collection of such taxes shall be enforced by legal process, as provided in § 58.1-3919, and all remedies available to the treasurer for the collection of other taxes shall apply to the collection of individual and fiduciary income taxes. Forms of necessary tax bills and receipts shall be prescribed by the Department.

Within thirty-one days after the close of such calendar year, the treasurer shall transmit to the Department in such form as the Department may prescribe such information and data as may be required by such Department with respect to all assessments made by the commissioner of the

revenue during such calendar year as the treasurer was unable to collect. The Department, upon receiving and examining the same, shall certify to the Comptroller the necessary information to enable the Comptroller to give such treasurer proper credit on the Comptroller's books for all unpaid items, and such treasurer shall not receive any of such taxes after he has transmitted such information and data to the Department, but the same shall be paid directly into the state treasury.

Code 1950, § 58-151.077; 1971, Ex. Sess., c. 171; 1977, c. 396; 1984, c. 675; 1986, c. 267.

§ 58.1-354. Separate individual income assessment sheets or forms; how kept

The assessment of individual income taxes shall be made on separate sheets or forms to be prescribed by the Department, all copies of which shall be kept by the commissioner of the revenue, the treasurer and the Department, respectively, in such manner as shall preclude inspection by unauthorized persons.

Code 1950, § 58-151.099; 1971, Ex. Sess., c. 171; 1972, c. 565; 1984, c. 675.

§ 58.1-355. Income taxes of members of armed services on death

The provisions of § 692(a) and (c) of the Internal Revenue Code, as amended, shall be applicable in the same manner for purposes of the tax imposed in Article 2 of this chapter.

1991, cc. 346, 361 .

Article 6 - TAXATION OF ESTATES AND TRUSTS

§ 58.1-360. Imposition of tax

A tax is hereby annually imposed, at the rates prescribed by § 58.1-320 for individuals, on the Virginia taxable income for each taxable year of every estate and trust.

Code 1950, §§ 58-151.03, 58-151.021; 1971 Ex. Sess., c. 171; 1972, c. 310; 1978, cc. 159, 796; 1981, c. 402; 1984, c. 675.

§ 58.1-361. Virginia taxable income of a resident estate or trust

A. The Virginia taxable income of a resident estate or trust means its federal taxable income for the taxable year to which there shall be added or subtracted, as the case may be, the share of the estate or trust in the Virginia fiduciary adjustment determined under subsection B.

B. The respective shares of an estate or trust and its beneficiaries (including, solely for the purpose of this allocation, nonresident beneficiaries) in the Virginia fiduciary adjustment shall be in proportion to their respective shares of distributable net income of the estate or trust. If the estate or trust has no distributable net income for the taxable year, the share of each beneficiary in the Virginia fiduciary adjustment shall be in proportion to his share of the estate or trust income for such year, under local law or the governing instrument, which is required to be distributed currently and any other amounts of such income distributed in such year. Any balance of the Virginia fiduciary adjustment shall be allocated to the estate or trust.

Code 1950, §§ 58-151.022, 58-151.023; 1971, Ex. Sess., c. 171; 1972, c. 827; 1973, c. 198; 1984, c. 675.

§ 58.1-362. Virginia taxable income of a nonresident estate or trust

The Virginia taxable income of a nonresident estate or trust shall be its share of income, gain, loss and deduction attributable to Virginia sources as determined under § 58.1-363 increased or reduced, as the case may be, by:

1. The amount derived from or connected with Virginia sources of any income, gain, loss and deduction recognized for federal income tax purposes but excluded from the computation of distributable net income of the estate or trust; and

2. The net amount of any modifications as provided for in § 58.1-322 (not including subsection D thereof) with respect to the income or gain referred to in subdivision 1 of this section.

Code 1950, § 58-151.024; 1971, Ex. Sess., c. 171; 1972, c. 827; 1984, c. 675.

§ 58.1-363. Share of a nonresident estate, trust or beneficiary in income from Virginia sources

A. The share of a nonresident estate or trust under § 58.1-362 and the share of a nonresident beneficiary of any estate or trust under provisions otherwise applicable to nonresident individuals in estate or trust income or loss attributable to Virginia sources shall be determined as follows:

1. There shall be determined the items of income, gain, loss and deduction derived from Virginia sources, which enter into the computation of distributable net income of the estate or trust for the taxable year (including such items from another estate or trust of which the first estate or trust is a beneficiary).

2. There shall be added or subtracted (as the case may be) the modifications described in § 58.1-322 to the extent relating to items of income, gain, loss and deduction derived from Virginia sources which enter into the computation of distributable net income (including all such items from another estate or trust of which the first estate or trust is a beneficiary). No modification shall be made under this subsection which has the effect of duplicating an item already reflected in the computation of distributable net income.

3. The amounts determined under subdivisions 1 and 2 shall be allocated among the estate or trust and its beneficiaries (including, solely for the purposes of this allocation, resident beneficiaries) in proportion to their respective shares of distributable net income. The amounts so allocated shall have the same character under this article as under the laws of the United States relating to federal income taxes. Where an item entering into the computation of such amounts is not characterized by such laws, it shall have the same character as if realized directly from the source from which realized by the estate or trust, or incurred in the same manner as incurred by the estate or trust.

B. If the estate or trust has no distributable net income for the taxable year, the share of each beneficiary (including, solely for the purpose of such allocation, resident beneficiaries) in the net amount determined under subdivisions 1 and 2 of subsection A shall be in proportion to his share of the estate or trust income for such year, under local law or the governing instrument, which is required to be distributed currently and any other amounts of such income distributed in such year. Any balance of such net amount shall be allocated to the estate or trust.

Code 1950, § 58-151.025; 1971, Ex. Sess., c. 171; 1984, c. 675.

Article 7 - TAX CREDITS FOR ESTATES AND TRUSTS

§ 58.1-370. Credit to trust beneficiary receiving accumulation distribution

A. A beneficiary of a trust whose Virginia taxable income includes all or part of an accumulation distribution by such trust, as defined in the laws of the United States relating to federal income taxes, shall be allowed a credit against the tax otherwise due under this chapter for all or a proportionate part of any tax paid by the trust under this chapter which would not have been payable if the trust had in fact made distributions to its beneficiaries at the times and in the amounts specified in the laws of the United States relating to federal income taxes.

B. The credit under this section shall not reduce the tax otherwise due from the beneficiary under this chapter to an amount less than would have been due if the accumulation distribution or his part thereof were excluded from his Virginia taxable income.

Code 1950, § 58-151.026; 1971, Ex. Sess., c. 171; 1984, c. 675.

§ 58.1-371. Credits for taxes paid other states

The provisions of § 58.1-332 shall be applicable mutatis mutandis to trusts and estates.

Code 1950, § 58-151.027; 1971, Ex. Sess., c. 171; 1984, c. 675.

Article 8 - ACCOUNTING, RETURNS, PROCEDURES FOR ESTATES AND TRUSTS

§ 58.1-380. Accounting

A. An estate and trust taxable year under this chapter shall be the same as its taxable year for federal income tax purposes.

B. If a taxpayer's taxable year is changed for federal income tax purposes, its taxable year for purposes of this chapter shall be similarly changed. If a taxable year of less than twelve months results from a change of taxable year, the Virginia taxable income shall be prorated under regulations of the Department.

C. A taxpayer's method of accounting under this chapter shall be the same as its method of accounting for federal income tax purposes. In the absence of any method of accounting for federal income tax purposes, Virginia taxable income shall be computed under such method as in the opinion of the Tax Commissioner clearly reflects income.

D. If a taxpayer's method of accounting is changed for federal income tax purposes, its method of accounting for purposes of this chapter shall be similarly changed. If a taxpayer's method of accounting is changed, other than from an accrual to an installment method, any additional tax which results from adjustments determined to be necessary solely by reason of the change shall not be greater than if such adjustments were ratably allocated and included for the taxable year of the change and the preceding taxable years, not in excess of two, during which the taxpayer used the method of accounting from which the change is made. If a taxpayer's method of accounting is changed from an accrual to an installment method, any additional tax for the year of such change of method and for any subsequent year which is attributable to the receipt of installment payments properly accrued in a prior year, shall be reduced by the portion of tax for any prior taxable year attributable to the accrual of such installment payments, in accordance with regulations of the Department.

E. In computing a taxpayer's Virginia taxable income for any taxable year under a method of accounting different from the method under which the taxpayer's Virginia taxable income was computed, there shall be taken into account those adjustments which are determined, under regulations prescribed by the Department of Taxation, to be necessary solely by reason of change in order to prevent amounts from being duplicated or omitted.

F. Notwithstanding any other provisions of this section, any accounting adjustments made for federal income tax purposes for any taxable year shall be applied in computing the taxpayer's taxable income for such year.

Code 1950, § 58-151.061; 1971, Ex. Sess., c. 171; 1984, c. 675.

§ 58.1-381. Returns of estates and trusts

A. On or before May 1 of each year if the taxable year is a calendar year, or on or before the fifteenth day of the fourth month following the close of a taxable year other than a calendar year, an income tax return under this chapter shall be made and filed by or for:

1. Every resident estate or trust required to file a federal income tax return for the taxable year, or having any Virginia taxable income for the taxable year. If the return is for a fractional part of a year, the due date shall be determined as if the return were for a full twelve-month period;

2. Every nonresident estate or trust having Virginia taxable income for the taxable year determined under § 58.1-362.

B. The return for any deceased individual shall be made and filed by his executor, administrator, or other person charged with his property.

C. The return for an estate or trust shall be made and filed by the fiduciary.

D. If two or more fiduciaries are acting jointly, the return may be made by any one of them.

Code 1950, § 58-151.062; 1971, Ex. Sess., c. 171; 1972, c. 827; 1978, c. 796; 1984, c. 675; 1985, c. 221.

§ 58.1-382. Place of filing

Every fiduciary required to file a return on behalf of an estate or trust shall file such return with the commissioner of the revenue having jurisdiction in the county or city in which the fiduciary qualified or, if there has been no qualification in this Commonwealth, in the county or city in which such fiduciary resides, does business or has an office or wherein the beneficiary or any of them may reside, or with the Department if provided by regulation thereof.

Code 1950, § 58-151.064; 1971, Ex. Sess., c. 171; 1984, c. 675.

§ 58.1-383. Extension of time for filing returns

The provisions of § 58.1-344 shall be applicable to the extension of time for filing returns by a fiduciary on behalf of an estate or trust.

1984, c. 675.

Article 9 - TAXATION OF PARTNERSHIPS

§ 58.1-390. Repealed

Repealed by Acts 2004, Sp. Sess. I, c. 3, effective September 1, 2004.

§ 58.1-390.1. Definitions

The following words and terms, when used in this article, shall have the following meanings unless the context clearly indicates otherwise:

"Owner" means any individual or entity who is treated as a partner, member, or shareholder of a pass-through entity for federal income tax purposes.

"Pass-through entity" means any entity, including a limited partnership, a limited liability partnership, a general partnership, a limited liability company, a professional limited liability company, a business trust or a Subchapter S corporation, that is recognized as a separate entity for federal income tax purposes, in which the partners, members or shareholders report their share of the income, gains, losses, deductions and credits from the entity on their federal income tax returns.

2004, Sp. Sess. I, c. 3.

§ 58.1-390.2. Taxation of pass-through entities

Except as provided for in this article, owners of pass-through entities shall be liable for tax under this chapter only in their separate or individual capacities on income passed through to the owners of pass-through entities. Any taxes imposed on the pass-through entity itself, such as, but not limited to, sales and use taxes, withholding taxes with respect to employees or nonresident owners, and minimum taxes in lieu of income taxes, shall be paid by the pass-through entity.

2004, Sp. Sess. I, c. 3; 2009, cc. 37, 152.

§ 58.1-391. Virginia taxable income of owners of a pass-through entity

A. In determining Virginia taxable income of an owner, any modification described in § 58.1-322 that relates to an item of pass-through entity income, gain, loss or deduction shall be made in accordance with the owner's distributive share, for federal income tax purposes, of the item to which the modification relates. Where an owner's distributive share of any such item is not included in any category of income, gain, loss or deduction required to be taken into account separately for federal income tax purposes, the owner's distributive share of such item shall be determined in accordance with his distributive share, for federal income tax purposes, of pass-through entity taxable income or loss.

B. Each item of pass-through entity income, gain, loss or deduction shall have the same character for an owner under this chapter as for federal income tax purposes. Where an item is not characterized for federal income tax purposes, it shall have the same character for an owner as if realized directly from the source from which realized by the pass-through entity or incurred in the same manner by the pass-through entity.

C. Where an owner's distributive shares of an item of pass-through entity income, gain, loss or deduction is determined for federal income tax purposes by special provision in the pass-through entity agreement with respect to such item, and where the principal purpose of such provision is the avoidance or evasion of tax under this chapter, the owner's distributive share of such item, and any modification required with respect thereto, shall be determined as if the pass-through entity agreement made no special provision with respect to such item.

Code 1950, § 58-151.014; 1971, Ex. Sess., c. 171; 1984, c. 675; 2004, Sp. Sess. I, c. 3.

§ 58.1-392. Reports by pass-through entities

A. Every pass-through entity doing business in Virginia, or having income from Virginia sources, shall make a return to the Department of Taxation on or before the fifteenth day of the fourth month following the close of its taxable year. Such returns shall be made and filed in the manner prescribed by the Department.

B. The return of a pass-through entity shall be signed by any one of the owners. An owner's name signed on the return shall be prima facie evidence that such owner is authorized to sign the return on behalf of the pass-through entity.

C. The Tax Commissioner may establish an income threshold for the filing of returns by pass-through entities and their owners. Pass-through entities and owners with income below this threshold shall not be required to file a return.

D. Receivers, trustees in dissolution, trustees in bankruptcy, and assignees operating the property or business of pass-through entities must make and file returns of income for such pass-through entities. If a receiver has full custody of and control over the business or property of a pass-through entity, he shall be deemed to be operating such business or property, whether he is engaged in carrying on the business for which the pass-through entity was organized or only in marshaling, selling, or disposing of its assets for purposes of liquidation.

E. Pass-through entities may be required to file the return using an electronic medium prescribed by the Tax Commissioner. The Tax Commissioner shall establish a minimum number of owners for the electronic filing requirement. Waivers shall be granted only if the Tax Commissioner finds that the requirement creates an unreasonable burden on the pass-through entity. All requests for waivers must be submitted to the Tax Commissioner in writing. A pass-through entity that has fewer than the established minimum number of owners may, at such pass-through entity's option, file such annual return on such prescribed electronic medium in lieu of filing the annual return on paper.

Code 1950, §§ 58-151.078, 58-151.084; 1971, Ex. Sess., c. 171; 1972, c. 465; 1984, c. 675; 1988, c. 249; 2004, Sp. Sess. I, c. 3.

§ 58.1-393. Repealed

Repealed by Acts 1988, c. 249.

§ 58.1-393.1. Extension of time for filing return by pass-through entity

A. In accordance with procedures established by the Tax Commissioner, any pass-through entity may elect an extension of time within which to file the report or return required by this article to the date six months after such due date, or 30 days after the extended date for filing the federal report, whichever is later.

B. If the return is not filed on or before the extended due date elected under subsection A, the penalty imposed by § 58.1-394.1 shall apply as if no extension had been granted.

2004, Sp. Sess. I, c. 3; 2005, c. 100.

§ 58.1-394. Repealed

Repealed by Acts 2004, Sp. Sess. I, c. 3, effective September 1, 2004.

§ 58.1-394.1. Failure of pass-through entity to make a return

A. Any pass-through entity that fails to file a return required by this article within the time required shall be liable for a penalty of $200 if the failure is for not more than one month, with an additional $200 for each additional month or fraction thereof during which such failure to file continues, not exceeding six months in the aggregate. In no case, however, shall the penalty be less than $200.

B. If any pass-through entity's failure to file a return required by this article exceeds six months, the Department shall assess a penalty of six percent of the total amount of Virginia taxable income derived by its owners from the pass-through entity for the taxable year. The Department may determine such penalty from any information in its possession. The penalty assessed pursuant to this subsection shall be reduced by the penalty assessed pursuant to subsection A and any tax paid by the owners on their share of income from the pass-through entity for the taxable year.

C. The penalties set forth in this subsection shall be assessed and collected by the Department in the manner provided for the assessment and collection of taxes under this chapter or in a civil action, at the instance of the Department. In addition, such pass-through entity shall be compellable by mandamus to file such return.

2004, Sp. Sess. I, c. 3.

§ 58.1-394.2. Fraudulent returns, etc., of pass-through entities; penalty

A. Any officer or owner of any pass-through entity who makes a fraudulent return or statement with the intent of assisting or facilitating the evasion of the payment of the taxes prescribed by this chapter by the pass-through entity or an owner shall be liable for a penalty of not more than $1,000, to be assessed and collected in the manner provided for the assessment and collection of taxes under this chapter or in a civil action, at the instance of the Department.

B. In addition to other penalties provided by law, any officer or owner of a pass-through entity who makes a fraudulent return or statement with the intent of assisting or facilitating the evasion of the payment of the taxes prescribed by this chapter by the pass-through entity or an owner, or who willfully fails or refuses to make a return required by this chapter at the time or times required by law shall be guilty of a Class 1 misdemeanor. A prosecution under this section shall be commenced within five years next after the commission of the offense.

2004, Sp. Sess. I, c. 3.

§ 58.1-394.3. Pass-through entity items

A. The period for assessing any tax imposed by this chapter that is attributable to any pass-through entity item with respect to any owner of a pass-through entity shall not expire before the date that is three years after the later of (i) the last day for filing the pass-through entity return for the taxable year of the pass-through entity, as extended, or (ii) the date on which the pass-through entity return for such taxable year was filed.

B. The period for assessing any tax, as provided in subsection A, may be extended pursuant to agreement under § 58.1-101 or 58.1-220 between the Department and the owner who signed the pass-through entity return or any other owner or person authorized to sign the pass-through entity return.

C. The Tax Commissioner shall mail to each owner whose name and address have been provided by the pass-through entity notice of the beginning of an administrative proceeding at the pass-through entity level with respect to a pass-through entity item, and the final pass-through entity administrative adjustment resulting from any such proceeding. The Tax Commissioner shall not be required to mail notices to any owner with less than a one-percent interest in the profits of the pass-through entity if such entity has more than 100 owners.

D. In any administrative proceeding under § 58.1-1821 in which the taxation of pass-through entity items is an issue, the pass-through entity shall be permitted to participate in the pro-

ceeding. In addition, the Department may consolidate proceedings involving more than one taxpayer when the same pass-through items are in issue.

E. The provisions of this section shall apply to any tax attributable to items of income, gain, loss, deduction, credit, or other tax attribute that is recognized or reportable by the pass-through entity and that is required to be reported by the owner of the pass-through entity pursuant to § 58.1-391 or other sections of this chapter.

2008, c. 549.

§ 58.1-395. Nonresident owners

Pass-through entities may make written application to the Tax Commissioner for permission to file a statement of combined pass-through entity income attributable to nonresident owners and thereby relieve nonresident owners from filing individual nonresident returns. The application must state the reasons for seeking such permission. The Tax Commissioner, in his sole discretion, may, for good cause, grant permission to file a combined nonresident return upon such terms as he may determine.

2004, Sp. Sess. I, c. 3.

Article 10 - TAXATION OF CORPORATIONS

§ 58.1-400. Imposition of tax

A tax at the rate of six percent is hereby annually imposed on the Virginia taxable income for each taxable year of every corporation organized under the laws of the Commonwealth and every foreign corporation having income from Virginia sources.

Code 1950, §§ 58-151.03, 58-151.031; 1971, Ex. Sess., c. 171; 1972, cc. 310, 563; 1978, cc. 159, 796; 1981, c. 402; 1984, c. 675.

§ 58.1-400.1. Minimum tax on telecommunications companies

A. A telecommunications company that is incorporated shall be subject to a minimum tax, instead of the corporate income tax imposed by § 58.1-400, at the applicable rate on its gross receipts for the calendar year which ends during the taxable year if the tax imposed by § 58.1-400 is less than the minimum tax imposed by this section. A telecommunications company that is organized as a limited liability company, partnership, corporation that has made an election under subchapter S of the Internal Revenue Code, or other entity treated as a pass-through entity shall be subject to the minimum tax in the manner prescribed by regulation.

The minimum tax shall be imposed at the rate of 0.5 percent of gross receipts.

B. In the case of an income tax return for a period of less than twelve months, the minimum tax shall be based on the gross receipts for the calendar year which ends during the taxable period or, if none, the most recent calendar year which ended before the taxable period. The minimum tax shall be prorated by the number of months in the taxable period.

C. The State Corporation Commission shall certify to the Department for each tax year as defined in § 58.1-2600 the name, address, and gross receipts for each telecommunications company. The Commission shall mail or otherwise deliver a copy of the certification to each affected telecommunications company.

D. The following words and terms, when used in this section, shall have the following meanings:

"Gross receipts" means all revenue from business done within the Commonwealth, including the proportionate part of interstate revenue attributable to the Commonwealth if such inclusion will result in annual gross receipts exceeding $5 million, with the following deductions:

1. Revenue billed on behalf of another such telephone company or person to the extent such revenues are later paid over to or settled with that company or person; and

2. Revenues received from a telecommunications company, or from a telephone utility company providing interstate communications service, for providing to the company any of the following: (i) unbundled network facilities, (ii) completion, origination or interconnection of telephone calls with the taxpayer's network, (iii) transport of telephone calls over taxpayer's network, or (iv) taxpayer's telephone services for resale.

"Telecommunications company" means a telephone company or other person holding a certificate of convenience and necessity granted by the State Corporation Commission authorizing telephone service; or a person authorized by the Federal Communications Commission to provide commercial mobile service as defined in § 332(d)(1) of the Communications Act of 1934, as amended, where such service includes cellular mobile radio communications services or broadband personal communications services; or a person holding a certificate issued pursuant to § 214 of the Communications Act of 1934, as amended, authorizing domestic telephone service and belonging to an affiliated group including a person holding a certificate of convenience and necessity granted by the State Corporation Commission authorizing telephone service; or a telegraph company or other person operating the apparatus necessary to communicate by telegraph. The term "affiliated group" shall have the meaning given in § 58.1-3700.1.

1988, c. 899; 1995, c. 507; 1998, c. 897; 2000, c. 368; 2009, cc. 37, 152.

§ 58.1-400.2. Taxation of electric suppliers, pipeline distribution companies, gas utilities, and gas suppliers

A. Any electric supplier, pipeline distribution company, gas utility, or gas supplier that is subject to income tax pursuant to the Internal Revenue Code of 1986, as amended, except those organized as cooperatives and exempt from federal taxation under § 501 of the Internal Revenue Code of 1986, as amended, shall be subject to the tax levied pursuant to § 58.1-400.

B. Any electric supplier that operates as a cooperative and is exempt from income tax pursuant to § 501 of the Internal Revenue Code of 1986, shall be subject to tax at the tax rate set forth in § 58.1-400 on all modified net income derived from nonmember sales. Any gas supplier, pipeline

distribution company or gas utility which has a taxable year that begins after January 1, 2001, but before January 1, 2002, shall also be subject to the provisions under subsection E.

C. The following words and terms when used in this section shall have the following meanings:

"Electric supplier" means any corporation, cooperative, partnership or other business entity providing electric service.

"Electricity" is deemed tangible personal property for purposes of the corporate income tax pursuant to this article.

"Gas supplier" means any person licensed by the State Corporation Commission to engage in the business of selling natural gas.

"Gas utility" has the same meaning as provided in § 56-235.8.

"Members" means those customers of a cooperative who receive allocations of patronage capital from a cooperative.

"Modified net income" means all revenue of a cooperative from the sale of electricity within the Commonwealth with the following subtractions:

1. Revenue attributable to sales of electric power to its members.

2. Nonmember share of all ordinary and necessary expenses paid or incurred during the taxable year in carrying on the sale of electric power to nonmembers. Such nonmember expenses shall be determined by allocating the amount of such expenses between sales of electricity to members and sales of electricity to nonmembers. Such allocation shall be applicable to all tax credits available to an electric supplier.

"Nonmember" means those customers which are not members.

"Ordinary and necessary expenses paid or incurred" means ordinary and necessary expenses determined according to generally accepted accounting principles.

"Pipeline distribution company" has the same meaning as provided in § 58.1-2600.

D. The Department of Taxation shall promulgate all regulations necessary to implement the intent of this section. This section shall apply to taxable years beginning on and after January 1, 2001.

E.1. Any gas supplier, pipeline distribution company or gas utility which has a taxable year that begins after January 1, 2001, but before January 1, 2002, shall be required to file an income tax return as if a short taxable year has occurred covering the period beginning January 1, 2001, and ending on the last day prior to the beginning of the gas supplier's, pipeline distribution company's or gas utility's taxable year pursuant to § 58.1-440 A.

2. If a return is required to be made under subdivision 1 of this subsection, federal taxable income will be determined using the methodology prescribed in § 443 of the Internal Revenue Code, as if

the gas supplier, pipeline distribution company or gas utility was undergoing a change of annual accounting period, and § 58.1-440 B and the regulations thereunder.

1999, c. 971; 2000, cc. 691, 706.

§ 58.1-400.3. Minimum tax on certain electric suppliers

A.1. An electric supplier, except for those organized as cooperatives and exempt from federal taxation under § 501 of the Internal Revenue Code of 1986, as amended, shall be subject to a minimum tax imposed by this section, instead of the corporate income tax imposed by § 58.1-400 if applicable, net of any income tax credits that may be used to offset such tax, if the tax imposed by § 58.1-400 is less than the minimum tax imposed by this subsection. An electric supplier that is organized as a limited liability, partnership, corporation that has made an election under subchapter S of the Internal Revenue Code, or other entity treated as a pass-through entity shall be subject to the minimum tax in the manner prescribed by regulation.

2. The minimum tax imposed by this subsection shall be equal to 1.45 percent of such electric supplier's gross receipts for the calendar year that ends during the taxable year minus the state's portion of the electric utility consumption tax billed to consumers.

B.1. An electric supplier that is organized as a cooperative and exempt from federal taxation under § 501 of the Internal Revenue Code of 1986, as amended, shall be subject to a minimum tax, instead of the tax on modified net income imposed by § 58.1-400.2, if the tax imposed by § 58.1-400.2, net of any credits that may be used to offset such tax, is less than the minimum tax imposed by this subsection.

2. The minimum tax imposed by this subsection shall be equal to 1.45 percent of such electric supplier's gross receipts from sales to nonmembers for the calendar year that ends during the taxable year minus the consumption tax collected from nonmembers.

C. In the case of an income tax return for a period of less than 12 months, the minimum tax shall be based on the gross receipts for the calendar year that ends during the taxable period or, if none, the most recent calendar year that ended before the taxable period. The minimum tax shall be prorated by the number of months in the taxable period.

D. The State Corporation Commission shall calculate and certify to the Department for each tax year as defined in § 58.1-2600 the name, address, and minimum tax for each electric supplier. The Commission shall mail or otherwise deliver a copy of the certification to each affected electric supplier.

E. When an electric supplier subject to the tax imposed by this section is one of several affiliated corporations that file a consolidated or combined income tax return, the portion of the affiliated corporations' tax liability that is attributable to the electric supplier shall be computed as follows:

1. Each corporation included in the consolidated or combined return shall recompute its corporate income tax liability, net of any income tax credits, as if it were filing a separate return. The

separate income tax liability of the electric supplier shall then be compared to the affiliated corporations' tax liability, net of any income tax credits, indicated on the consolidated or combined return. For purposes of this section, the lesser amount shall be deemed to be the corporate income tax imposed by § 58.1-400 and attributable to the electric supplier.

2. a. If such corporate income tax amount is less than the minimum tax of the electric supplier as calculated pursuant to subsection A, the electric supplier shall be subject to the minimum tax in lieu of the corporate income tax imposed by § 58.1-400.

b. If such corporate income tax amount exceeds the minimum tax of the electric supplier as calculated pursuant to subsection A, the electric supplier shall not owe the minimum tax.

F. The requirements imposed under Article 20 (§ 58.1-500 et seq.) of Chapter 3 of this title regarding the filing of a declaration of estimated income taxes and the payment of such estimated taxes, shall be applicable to electric suppliers regardless of whether such taxpayer expects to be subject to the minimum tax imposed herein or to the corporate income tax imposed by § 58.1-400.

For purposes of determining the applicability of the exceptions under which the addition to the tax for the underpayment of any installment of estimated taxes shall not be imposed, it shall be irrelevant whether the tax shown on the return for the preceding taxable year is the corporate income tax or the minimum tax.

G. To the extent that a taxpayer is subject to the minimum tax imposed under this section, there shall be allowed a credit against the separate, combined, or consolidated corporate income tax for the total amount of minimum tax paid by the electric supplier in all previous years that is in excess of the tax imposed by § 58.1-400 on the electric supplier for such years.

H.1. To the extent an electric supplier or its parent company has remitted estimated income tax payments in excess of its corporate income tax liability for the taxable years beginning on or after January 1, 2001, but before January 1, 2004, such overpayments shall only be utilized to offset any corporate income tax liabilities incurred pursuant to § 58.1-400 for taxable years beginning on and after January 1, 2004, and shall not be claimed as a refund of overpaid taxes, except as provided in subdivision 2 of this subsection. For the purposes of this subsection, estimated income tax payments shall include any overpayments from a prior taxable year carried forward as an estimated payment to be credited towards a future tax liability.

2. If an electric supplier has had a corporate income tax liability of greater than $0 for each taxable year beginning on or after January 1, 2001, but before January 1, 2003, then such electric supplier may claim a refund of any estimated income tax payments in excess of their taxable year 2003 corporate income tax liability.

I. Every electric supplier which owes the minimum tax imposed by this section shall remit such tax payment to the Department of Taxation.

J. Notwithstanding any of the foregoing provisions, an electric supplier may not adjust capped rates pursuant to § 56-582 of the Code of Virginia on any portion of the minimum tax due to the Commonwealth.

K. The following words and terms, for purposes of this section, shall have the following meanings:

"Consumption tax" means the state's portion of the electric utility consumption tax billed pursuant to Chapter 29 (§ 58.1-2900 et seq.) of this title, for which the electric supplier is defined as the "service provider" pursuant to § 58.1-2901 less any amounts billed on behalf of utilities owned and operated by municipalities.

"Electric supplier" means an incumbent electric utility in the Commonwealth that, prior to July 1, 1999, supplied electric energy to retail customers located in an exclusive service territory established by the State Corporation Commission.

"Gross receipts" has the same meaning as defined in § 58.1-2600 less receipts from sales to federal, state and local governments for their own use.

"Nonmember" has the same meaning as defined in § 58.1-400.2.

2004, c. 716; 2009, cc. 37, 152.

§ 58.1-401. Exemptions and exclusions

No tax levied pursuant to § 58.1-400, 58.1-400.1 or 58.1-400.2 is imposed on:

1. A public service corporation to the extent such corporation is subject to the license tax on gross receipts contained in Chapter 26 (§ 58.1-2600 et seq.) of this title;

2. Insurance companies to the extent such company is subject to the license tax on gross premiums under Chapter 25 (§ 58.1-2500 et seq.) of this title and reciprocal or interinsurance exchanges which pay a premium tax to the Commonwealth as provided by law;

3. State and national banks, banking associations and trust companies to the extent such companies are subject to the bank franchise tax on net capital;

3a. Credit unions organized and conducted as such under the laws of the Commonwealth or under the laws of the United States;

4. Electing small business corporations (S corporations);

5. Religious, educational, benevolent and other corporations not organized or conducted for pecuniary profit which by reason of their purposes or activities are exempt from income tax under the laws of the United States, except those organizations which have unrelated business income or other taxable income under such laws, except as provided in § 58.1-400.2;

6. Telephone companies chartered in the Commonwealth which are exclusively a local mutual association and are not designated to accumulate profits for the benefit of, or to pay dividends to, the stockholders or members thereof;

7. A corporation that has contracted with a commercial printer for printing and that is not otherwise taxable shall not become taxable by reason of: (i) the ownership or leasing by that corporation of tangible personal property located at the Virginia premises of the commercial printer and used solely in connection with the printing contract with such person; (ii) the sale by that corporation at another location of property of any kind printed at and shipped or distributed from the Virginia premises of the commercial printer; (iii) the activities in connection with the printing contract with such person of any kind performed by or on behalf of that corporation at the Virginia premises of the commercial printer; and (iv) the activities in connection with the printing contract with such person performed by the commercial printer for or on behalf of that corporation;

8. Foreign sales corporations (FSC) and any income attributable to an FSC under the rules relating to the taxation of an FSC in Part III, Subpart C of the Internal Revenue Code (§ 921 et seq.) and the regulations thereunder; and

9. For taxable years beginning on or after January 1, 2014, domestic international sales corporations (DISC) under the rules relating to the taxation of a DISC in Part IV, Subpart A of the Internal Revenue Code (§ 991 et seq.) and the regulations thereunder.

Code 1950, § 58-151.03; 1971, Ex. Sess., c. 171; 1972, c. 310; 1978, cc. 159, 796; 1981, c. 402; 1984, c. 675; 1985, c. 221; 1987, c. 484; 1988, cc. 581, 899; 1995, cc. 422, 472; 1999, c. 971; 2014, cc. 26, 186.

§ 58.1-402. Virginia taxable income

A. For purposes of this article, Virginia taxable income for a taxable year means the federal taxable income and any other income taxable to the corporation under federal law for such year of a corporation adjusted as provided in subsections B, C, D, and E.

For a regulated investment company and a real estate investment trust, such term means the "investment company taxable income" and "real estate investment trust taxable income, " respectively, to which shall be added in each case any amount of capital gains and any other income taxable to the corporation under federal law which shall be further adjusted as provided in subsections B, C, D, and E.

B. There shall be added to the extent excluded from federal taxable income:

1. Interest, less related expenses to the extent not deducted in determining federal taxable income, on obligations of any state other than Virginia, or of a political subdivision of any such other state unless created by compact or agreement to which the Commonwealth is a party;

2. Interest or dividends, less related expenses to the extent not deducted in determining federal taxable income, on obligations or securities of any authority, commission or instrumentality of the United States, which the laws of the United States exempt from federal income tax but not from state income taxes;

3. [Repealed.]

4. The amount of any net income taxes and other taxes, including franchise and excise taxes, which are based on, measured by, or computed with reference to net income, imposed by the Commonwealth or any other taxing jurisdiction, to the extent deducted in determining federal taxable income;

5. Unrelated business taxable income as defined by § 512 of the Internal Revenue Code;

6. [Repealed.]

7. The amount required to be included in income for the purpose of computing the partial tax on an accumulation distribution pursuant to § 667 of the Internal Revenue Code;

8. a. For taxable years beginning on and after January 1, 2004, the amount of any intangible expenses and costs directly or indirectly paid, accrued, or incurred to, or in connection directly or indirectly with one or more direct or indirect transactions with one or more related members to the extent such expenses and costs were deductible or deducted in computing federal taxable income for Virginia purposes. This addition shall not be required for any portion of the intangible expenses and costs if one of the following applies:

(1) The corresponding item of income received by the related member is subject to a tax based on or measured by net income or capital imposed by Virginia, another state, or a foreign government that has entered into a comprehensive tax treaty with the United States government;

(2) The related member derives at least one-third of its gross revenues from the licensing of intangible property to parties who are not related members, and the transaction giving rise to the expenses and costs between the corporation and the related member was made at rates and terms comparable to the rates and terms of agreements that the related member has entered into with parties who are not related members for the licensing of intangible property; or

(3) The corporation can establish to the satisfaction of the Tax Commissioner that the intangible expenses and costs meet both of the following: (i) the related member during the same taxable year directly or indirectly paid, accrued or incurred such portion to a person who is not a related member, and (ii) the transaction giving rise to the intangible expenses and costs between the corporation and the related member did not have as a principal purpose the avoidance of any portion of the tax due under this chapter.

b. A corporation required to add to its federal taxable income intangible expenses and costs pursuant to subdivision a may petition the Tax Commissioner, after filing the related income tax return for the taxable year and remitting to the Tax Commissioner all taxes, penalties, and interest due under this article for such taxable year including tax upon any amount of intangible expenses and costs required to be added to federal taxable income pursuant to subdivision a, to consider evidence relating to the transaction or transactions between the corporation and a related member or members that resulted in the corporation's taxable income being increased, as required under subdivision a, for such intangible expenses and costs.

If the corporation can demonstrate to the Tax Commissioner's sole satisfaction, by clear and convincing evidence, that the transaction or transactions between the corporation and a related member or members resulting in such increase in taxable income pursuant to subdivision a had a valid business purpose other than the avoidance or reduction of the tax due under this chapter, the Tax Commissioner shall permit the corporation to file an amended return. For purposes of such amended return, the requirements of subdivision a shall not apply to any transaction for which the Tax Commissioner is satisfied (and has identified) that the transaction had a valid business purpose other than the avoidance or reduction of the tax due under this chapter. Such amended return shall be filed by the corporation within one year of the written permission granted by the Tax Commissioner and any refund of the tax imposed under this article shall include interest at a rate equal to the rate of interest established under § 58.1-15 and such interest shall accrue as provided under § 58.1-1833. However, upon the filing of such amended return, any related member of the corporation that subtracted from taxable income amounts received pursuant to subdivision C 21 shall be subject to the tax imposed under this article on that portion of such amounts for which the corporation has filed an amended return pursuant to this subdivision. In addition, for such transactions identified by the Tax Commissioner herein by which he has been satisfied by clear and convincing evidence, the Tax Commissioner may permit the corporation in filing income tax returns for subsequent taxable years to deduct the related intangible expenses and costs without making the adjustment under subdivision a.

The Tax Commissioner may charge a fee for all direct and indirect costs relating to the review of any petition pursuant to this subdivision, to include costs necessary to secure outside experts in evaluating the petition. The Tax Commissioner may condition the review of any petition pursuant to this subdivision upon payment of such fee.

No suit for the purpose of contesting any action of the Tax Commissioner under this subdivision shall be maintained in any court of this Commonwealth.

c. Nothing in subdivision B 8 shall be construed to limit or negate the Department's authority under § 58.1-446;

9. a. For taxable years beginning on and after January 1, 2004, the amount of any interest expenses and costs directly or indirectly paid, accrued, or incurred to, or in connection directly or indirectly with one or more direct or indirect transactions with one or more related members to the extent such expenses and costs were deductible or deducted in computing federal taxable income for Virginia purposes. This addition shall not be required for any portion of the interest expenses and costs, if:

(1) The related member has substantial business operations relating to interest-generating activities, in which the related member pays expenses for at least five full-time employees who maintain, manage, defend or are otherwise responsible for operations or administration relating to the interest-generating activities; and

(2) The interest expenses and costs are not directly or indirectly for, related to or in connection with the direct or indirect acquisition, maintenance, management, sale, exchange, or disposition of intangible property; and

(3) The transaction giving rise to the expenses and costs between the corporation and the related member has a valid business purpose other than the avoidance or reduction of taxation and payments between the parties are made at arm's length rates and terms; and

(4) One of the following applies:

(i) The corresponding item of income received by the related member is subject to a tax based on or measured by net income or capital imposed by Virginia, another state, or a foreign government that has entered into a comprehensive tax treaty with the United States government;

(ii) Payments arise pursuant to a pre-existing contract entered into when the parties were not related members provided the payments continue to be made at arm's length rates and terms;

(iii) The related member engages in transactions with parties other than related members that generate revenue in excess of $2 million annually; or

(iv) The transaction giving rise to the interest payments between the corporation and a related member was done at arm's length rates and terms and meets any of the following: (a) the related member uses funds that are borrowed from a party other than a related member or that are paid, incurred or passed-through to a person who is not a related member; (b) the debt is part of a regular and systematic funds management or portfolio investment activity conducted by the related member, whereby the funds of two or more related members are aggregated for the purpose of achieving economies of scale, the internal financing of the active business operations of members, or the benefit of centralized management of funds; (c) financing the expansion of the business operations; or (d) restructuring the debt of related members, or the pass-through of acquisition-related indebtedness to related members.

b. A corporation required to add to its federal taxable income interest expenses and costs pursuant to subdivision a may petition the Tax Commissioner, after filing the related income tax return for the taxable year and remitting to the Tax Commissioner all taxes, penalties, and interest due under this article for such taxable year including tax upon any amount of interest expenses and costs required to be added to federal taxable income pursuant to subdivision a, to consider evidence relating to the transaction or transactions between the corporation and a related member or members that resulted in the corporation's taxable income being increased, as required under subdivision a, for such interest expenses and costs.

If the corporation can demonstrate to the Tax Commissioner's sole satisfaction, by clear and convincing evidence, that the transaction or transactions between the corporation and a related member or members resulting in such increase in taxable income pursuant to subdivision a had a valid business purpose other than the avoidance or reduction of the tax due under this chapter and that

the related payments between the parties were made at arm's length rates and terms, the Tax Commissioner shall permit the corporation to file an amended return. For purposes of such amended return, the requirements of subdivision a shall not apply to any transaction for which the Tax Commissioner is satisfied (and has identified) that the transaction had a valid business purpose other than the avoidance or reduction of the tax due under this chapter and that the related payments between the parties were made at arm's length rates and terms. Such amended return shall be filed by the corporation within one year of the written permission granted by the Tax Commissioner and any refund of the tax imposed under this article shall include interest at a rate equal to the rate of interest established under § 58.1-15 and such interest shall accrue as provided under § 58.1-1833. However, upon the filing of such amended return, any related member of the corporation that subtracted from taxable income amounts received pursuant to subdivision C 21 shall be subject to the tax imposed under this article on that portion of such amounts for which the corporation has filed an amended return pursuant to this subdivision. In addition, for such transactions identified by the Tax Commissioner herein by which he has been satisfied by clear and convincing evidence, the Tax Commissioner may permit the corporation in filing income tax returns for subsequent taxable years to deduct the related interest expenses and costs without making the adjustment under subdivision a.

The Tax Commissioner may charge a fee for all direct and indirect costs relating to the review of any petition pursuant to this subdivision, to include costs necessary to secure outside experts in evaluating the petition. The Tax Commissioner may condition the review of any petition pursuant to this subdivision upon payment of such fee.

No suit for the purpose of contesting any action of the Tax Commissioner under this subdivision shall be maintained in any court of this Commonwealth.

c. Nothing in subdivision B 9 shall be construed to limit or negate the Department's authority under § 58.1-446.

d. For purposes of subdivision B 9:

"Arm's-length rates and terms" means that (i) two or more related members enter into a written agreement for the transaction, (ii) such agreement is of a duration and contains payment terms substantially similar to those that the related member would be able to obtain from an unrelated entity, (iii) the interest is at or below the applicable federal rate compounded annually for debt instruments under § 1274(d) of the Internal Revenue Code that was in effect at the time of the agreement, and (iv) the borrower or payor adheres to the payment terms of the agreement governing the transaction or any amendments thereto.

"Valid business purpose" means one or more business purposes that alone or in combination constitute the motivation for some business activity or transaction, which activity or transaction improves, apart from tax effects, the economic position of the taxpayer, as further defined by regulation.

10. a. For taxable years beginning on and after January 1, 2009, the amount of dividends deductible under §§ 561 and 857 of the Internal Revenue Code by a Captive Real Estate Investment Trust (REIT). For purposes of this subdivision, a REIT is a Captive REIT if:

(1) It is not regularly traded on an established securities market;

(2) More than 50 percent of the voting power or value of beneficial interests or shares of which, at any time during the last half of the taxable year, is owned or controlled, directly or indirectly, by a single entity that is (i) a corporation or an association taxable as a corporation under the Internal Revenue Code; and (ii) not exempt from federal income tax pursuant to § 501(a) of the Internal Revenue Code; and

(3) More than 25 percent of its income consists of rents from real property as defined in § 856(d) of the Internal Revenue Code.

b. For purposes of applying the ownership test of subdivision 10 a (2), the following entities shall not be considered a corporation or an association taxable as a corporation:

(1) Any REIT that is not treated as a Captive REIT;

(2) Any REIT subsidiary under § 856 of the Internal Revenue Code other than a qualified REIT subsidiary of a Captive REIT;

(3) Any Listed Australian Property Trust, or an entity organized as a trust, provided that a Listed Australian Property Trust owns or controls, directly or indirectly, 75 percent or more of the voting or value of the beneficial interests or shares of such trust; and

(4) Any Qualified Foreign Entity.

c. For purposes of subdivision B 10, the constructive ownership rules prescribed under § 318(a) of the Internal Revenue Code, as modified by § 856(d)(5) of the Internal Revenue Code, shall apply in determining the ownership of stock, assets, or net profits of any person.

d. For purposes of subdivision B 10:

"Listed Australian Property Trust" means an Australian unit trust registered as a Management Investment Scheme, pursuant to the Australian Corporations Act, in which the principal class of units is listed on a recognized stock exchange in Australia and is regularly traded on an established securities market.

"Qualified Foreign Entity" means a corporation, trust, association or partnership organized outside the laws of the United States and that satisfies all of the following criteria:

(1) At least 75 percent of the entity's total asset value at the close of its taxable year is represented by real estate assets, as defined in § 856(c)(5)(B) of the Internal Revenue Code, thereby including shares or certificates of beneficial interest in any REIT, cash and cash equivalents, and U.S. Government securities;

(2) The entity is not subject to a tax on amounts distributed to its beneficial owners, or is exempt from entity level tax;

(3) The entity distributes, on an annual basis, at least 85 percent of its taxable income, as computed in the jurisdiction in which it is organized, to the holders of its shares or certificates of beneficial interest;

(4) The shares or certificates of beneficial interest of such entity are regularly traded on an established securities market or, if not so traded, not more than 10 percent of the voting power or value in such entity is held directly, indirectly, or constructively by a single entity or individual; and

(5) The entity is organized in a country that has a tax treaty with the United States.

e. For taxable years beginning on or after January 1, 2016, for purposes of subdivision B 10, any voting power or value of the beneficial interests or shares in a REIT that is held in a segregated asset account of a life insurance corporation as described in § 817 of the Internal Revenue Code shall not be taken into consideration when determining if such REIT is a Captive REIT.

11. For taxable years beginning on or after January 1, 2016, to the extent that tax credit is allowed for the same donation pursuant to § 58.1-439.12:12, any amount claimed as a federal income tax deduction for such donation under § 170 of the Internal Revenue Code, as amended or renumbered.

C. There shall be subtracted to the extent included in and not otherwise subtracted from federal taxable income:

1. Income derived from obligations, or on the sale or exchange of obligations, of the United States and on obligations or securities of any authority, commission or instrumentality of the United States to the extent exempt from state income taxes under the laws of the United States including, but not limited to, stocks, bonds, treasury bills, and treasury notes, but not including interest on refunds of federal taxes, interest on equipment purchase contracts, or interest on other normal business transactions.

2. Income derived from obligations, or on the sale or exchange of obligations of this Commonwealth or of any political subdivision or instrumentality of this Commonwealth.

3. Dividends upon stock in any domestic international sales corporation, as defined by § 992 of the Internal Revenue Code, 50 percent or more of the income of which was assessable for the preceding year, or the last year in which such corporation has income, under the provisions of the income tax laws of the Commonwealth.

4. The amount of any refund or credit for overpayment of income taxes imposed by this Commonwealth or any other taxing jurisdiction.

5. Any amount included therein by the operation of the provisions of § 78 of the Internal Revenue Code (foreign dividend gross-up).

6. The amount of wages or salaries eligible for the federal Targeted Jobs Credit which was not deducted for federal purposes on account of the provisions of § 280C(a) of the Internal Revenue Code.

7. Any amount included therein by the operation of § 951 of the Internal Revenue Code (subpart F income).

8. Any amount included therein which is foreign source income as defined in § 58.1-302.

9. [Repealed.]

10. The amount of any dividends received from corporations in which the taxpaying corporation owns 50 percent or more of the voting stock.

11. [Repealed.]

12, 13. [Expired.]

14. For taxable years beginning on or after January 1, 1995, the amount for "qualified research expenses" or "basic research expenses" eligible for deduction for federal purposes, but which were not deducted, on account of the provisions of § 280C(c) of the Internal Revenue Code.

15. For taxable years beginning on or after January 1, 2000, the total amount actually contributed in funds to the Virginia Public School Construction Grants Program and Fund established in Chapter 11.1 (§ 22.1-175.1 et seq.) of Title 22.1.

16. For taxable years beginning on or after January 1, 2000, but before January 1, 2015, the gain derived from the sale or exchange of real property or the sale or exchange of an easement to real property which results in the real property or the easement thereto being devoted to open-space use, as that term is defined in § 58.1-3230, for a period of time not less than 30 years. To the extent a subtraction is taken in accordance with this subdivision, no tax credit under this chapter for donating land for its preservation shall be allowed for three years following the year in which the subtraction is taken.

17. For taxable years beginning on and after January 1, 2001, any amount included therein with respect to § 58.1-440.1.

18. For taxable years beginning on and after January 1, 1999, income received as a result of (i) the "Master Settlement Agreement, " as defined in § 3.2-3100; and (ii) the National Tobacco Grower Settlement Trust dated July 19, 1999, by (a) tobacco farming businesses; (b) any business holding a tobacco marketing quota, or tobacco farm acreage allotment, under the Agricultural Adjustment Act of 1938; or (c) any business having the right to grow tobacco pursuant to such a quota allotment.

19, 20. [Repealed.]

21. For taxable years beginning on and after January 1, 2004, any amount of intangible expenses and costs or interest expenses and costs added to the federal taxable income of a corporation pursuant to subdivision B 8 or B 9 shall be subtracted from the federal taxable income of the related member that received such amount if such related member is subject to Virginia income tax on the same amount.

22. For taxable years beginning on and after January 1, 2009, any gain recognized from the sale of launch services to space flight participants, as defined in 49 U.S.C. § 70102, or launch services intended to provide individuals the training or experience of a launch, without performing an actual launch. To qualify for a deduction under this subdivision, launch services must be performed in Virginia or originate from an airport or spaceport in Virginia.

23. For taxable years beginning on and after January 1, 2009, any gain recognized as a result of resupply services contracts for delivering payload, as defined in 49 U.S.C. § 70102, entered into with the Commercial Orbital Transportation Services division of the National Aeronautics and Space Administration or other space flight entity, as defined in § 8.01-227.8, and launched from an airport or spaceport in Virginia.

24. For taxable years beginning on or after January 1, 2011, any income taxed as a long-term capital gain for federal income tax purposes, or any income taxed as investment services partnership interest income (otherwise known as investment partnership carried interest income) for federal income tax purposes. To qualify for a subtraction under this subdivision, such income must be attributable to an investment in a "qualified business, " as defined in § 58.1-339.4, or in any other technology business approved by the Secretary of Technology, provided the business has its principal office or facility in the Commonwealth and less than $3 million in annual revenues in the fiscal year prior to the investment. To qualify for a subtraction under this subdivision, the investment must be made between the dates of April 1, 2010, and June 30, 2020. No taxpayer who has claimed a tax credit for an investment in a "qualified business" under § 58.1-339.4 shall be eligible for the subtraction under this subdivision for an investment in the same business.

D. For taxable years beginning on and after January 1, 2006, there shall be subtracted from federal taxable income contract payments to a producer of quota tobacco or a tobacco quota holder as provided under the American Jobs Creation Act of 2004 (P.L. 108-357) as follows:

1. If the payment is received in installment payments, then the recognized gain, including any gain recognized in taxable year 2005, may be subtracted in the taxable year immediately following the year in which the installment payment is received.

2. If the payment is received in a single payment, then 10 percent of the recognized gain may be subtracted in the taxable year immediately following the year in which the single payment is received. The taxpayer may then deduct an equal amount in each of the nine succeeding taxable years.

E. Adjustments to federal taxable income shall be made to reflect the transitional modifications provided in § 58.1-315.

F. Notwithstanding any other provision of law, the income from any disposition of real property which is held by the taxpayer for sale to customers in the ordinary course of the taxpayer's trade or business, as defined in § 453(l)(1)(B) of the Internal Revenue Code, of property made on or after January 1, 2009, may, at the election of the taxpayer, be recognized under the installment method described under § 453 of the Internal Revenue Code, provided that (i) the election relating to the dealer disposition of the property has been made on or before the due date prescribed by law (including extensions) for filing the taxpayer's return of the tax imposed under this chapter for the taxable year in which the disposition occurs, and (ii) the dealer disposition is in accordance with restrictions or conditions established by the Department, which shall be set forth in guidelines developed by the Department. Along with such restrictions or conditions, the guidelines shall also address the recapture of such income under certain circumstances. The development of the guidelines shall be exempt from the Administrative Process Act (§ 2.2-4000 et seq.).

Code 1950, §§ 58-151.013, 58-151.032; 1971, Ex. Sess., c. 171; 1972, cc. 310, 827; 1973, cc. 198, 345, 458; 1974, cc. 320, 682; 1975, cc. 46, 50; 1976, cc. 528, 694, 781; 1977, cc. 297, 612; 1978, cc. 67, 158, 783, 785; 1979, cc. 226, 371, 596; 1981, cc. 402, 414; 1982, c. 633; 1983, cc. 452, 472; 1984, cc. 153, 162, 636, 672, 674, 675, 729; 1985, cc. 221, 465; 1987, c. 484; 1989, cc. 39, 639; 1992, c. 678; 1994, c. 590; 1997, c. 106; 1998, c. 874; 1999, cc. 339, 971; 2000, cc. 419, 1021, 1039; 2003, cc. 3, 58, 209; 2004, Sp. Sess. I, c. 3; 2006, c. 214; 2008, cc. 149, 211; 2009, cc. 426, 508, 558; 2010, cc. 802, 830; 2011, c. 851; 2012, cc. 96, 256; 2015, cc. 248, 335, 336; 2016, cc. 304, 342, 391.

§ 58.1-403. Additional modifications to determine Virginia taxable income for certain corporations

In addition to the modifications set forth in § 58.1-402 for determining Virginia taxable income for corporations generally, the adjustments set forth in subdivision 1 shall be made to the federal taxable income for savings institutions and as set forth in subdivisions 2 and 3 for railway companies, as set forth in subdivisions 6 and 7 for telecommunications companies, and as set forth in subdivisions 8 and 9 for gas suppliers, pipeline distribution companies and gas utilities.

1. There shall be added the deduction allowed for bad debts. The percentage which would have been used in determining the bad debt deduction under the Internal Revenue Code of 1954, as in effect immediately prior to the enactment of the Tax Reform Act of 1986 (Public Law 99-514), shall then be applied to federal taxable income as adjusted under the provisions of § 58.1-402 and the amount so determined subtracted therefrom.

2. There shall be added to federal taxable income any amount which was deducted in determining taxable income as a net operating loss carryover from any taxable year beginning on or before December 31, 1978.

3. Where such railway company would have been allowed to deduct an amount as a net operating loss carryover or net capital loss carryover in determining taxable income for a taxable year beginning after December 31, 1978, but for the fact that such loss, or a portion of such loss, had been carried back in determining taxable income for a taxable year beginning prior to January 1, 1979, there shall be added to federal taxable income any amount which was actually deducted in determining taxable income as a net operating loss carryover or net capital loss carryover and there shall be subtracted from federal taxable income the amount which could have been deducted as a net operating loss carryover or net capital loss carryover in arriving at taxable income but for the fact that such loss, or a portion of such loss, had been carried back for federal purposes.

4., 5. [Repealed.]

6. There shall be added to federal taxable income any amount which was deducted in determining taxable income as a net operating loss carryover from any taxable year beginning on or before December 31, 1988.

7. Where such telecommunications company would have been allowed to deduct an amount as a net operating loss carryover or net capital loss carryover in determining taxable income for a taxable year beginning after December 31, 1988, but for the fact that such loss, or a portion of such loss, had been carried back in determining taxable income for a taxable year beginning prior to January 1, 1989, there shall be added to federal taxable income any amount which was actually deducted in determining taxable income as a net operating loss carryover or net capital loss carryover and there shall be subtracted from federal taxable income the amount which could have been deducted as a net operating loss carryover or net capital loss in arriving at taxable income but for the fact that such loss, or a portion of such loss, had been carried back for federal purposes.

8. There shall be added to federal taxable income any amount that was deducted in determining taxable income as a net operating loss carryover from any taxable year beginning on or before December 31, 2000.

9. Where such gas supplier, pipeline distribution company or gas utility would have been allowed to deduct an amount as a net operating loss carryover or net capital loss carryover in determining taxable income for a taxable year beginning after December 31, 2000, but for the fact that such loss, or a portion of such loss, had been carried back in determining taxable income for a taxable year beginning prior to January 1, 2001, there shall be added to federal taxable income any amount that was actually deducted in determining taxable income as a net operating loss carryover or net capital loss carryover and there shall be subtracted from federal taxable income the amount that could have been deducted as a net operating loss carryover or net capital loss in arriving at taxable income but for the fact that such loss, or a portion of such loss, had been carried back for federal purposes.

Code 1950, §§ 58-151.032:1, 58-151.032:2; 1972, c. 310; 1973, c. 198; 1978, c. 784; 1979, c. 226; 1981, c. 402; 1982, c. 633; 1984, cc. 672, 675; 1985, c. 221; 1987, c. 614; 1988, c. 899; 1996, c. 77; 2000, cc. 691, 706.

§ 58.1-404. Reserved

Reserved.

§ 58.1-405. Corporations transacting or conducting entire business within this Commonwealth

If the entire business of the corporation is transacted or conducted within the Commonwealth, the tax imposed by this chapter shall be upon the entire Virginia taxable income of such corporation for each taxable year. The entire business of the corporation shall be deemed to have been transacted or conducted within the Commonwealth if such corporation is not subject in any other state to a net income tax, a franchise tax measured by net income, or a franchise tax for the privilege of doing business.

Code 1950, § 58-151.033; 1971, Ex. Sess., c. 171; 1981, c. 402; 1984, c. 675.

§ 58.1-406. Allocation and apportionment of income

Any corporation having income from business activity which is taxable both within and without the Commonwealth shall allocate and apportion its Virginia taxable income as provided in §§ 58.1-407 through 58.1-420.

Code 1950, § 58-151.035; 1971, Ex. Sess., c. 171; 1976, c. 436; 1979, c. 371; 1984, c. 675.

§ 58.1-407. How dividends allocated

Dividends received to the extent included in Virginia taxable income are allocable to the state of commercial domicile of the taxpaying corporation.

Code 1950, § 58-151.037; 1971, Ex. Sess., c. 171; 1981, c. 402; 1984, c. 675.

§ 58.1-408. What income apportioned and how

The Virginia taxable income of any corporation, except those subject to the provisions of § 58.1-417, 58.1-418, 58.1-419, 58.1-420, 58.1-422, 58.1-422.1, or 58.1-422.2, excluding income allocable under § 58.1-407, shall be apportioned to the Commonwealth by multiplying such income by a fraction, the numerator of which is the property factor plus the payroll factor, plus twice the sales factor, and the denominator of which is four; however, where the sales factor does not exist, the denominator of the fraction shall be the number of existing factors and where the sales factor exists but the payroll factor or the property factor does not exist, the denominator of the fraction shall be the number of existing factors plus one.

Code 1950, § 58-151.041; 1971, Ex. Sess., c. 171; 1981, c. 402; 1984, c. 675; 1999, cc. 158, 186; 2009, c. 821; 2012, cc. 86, 666; 2015, cc. 92, 237.

§ 58.1-409. Property factor

The property factor is a fraction, the numerator of which is the average value of the corporation's real and tangible personal property owned and used or rented and used in the Commonwealth during the taxable year and the denominator of which is the average value of all the corporation's real and tangible personal property owned and used or rented and used during the taxable year and located everywhere, to the extent that such property is used to produce Virginia taxable income and is effectively connected with the conduct of a trade or business within the United States and income therefrom is includable in federal taxable income.

Code 1950, § 58-151.042; 1971, Ex. Sess., c. 171; 1978, c. 184; 1981, c. 402; 1984, c. 675.

§ 58.1-410. Valuation of property owned or rented

Property owned by the corporation shall be valued at its original cost plus the cost of additions and improvements. Property rented by the corporation shall be valued at eight times the annual rental rate paid by the corporation. The value of movable tangible personal property used both within and without the Commonwealth shall be included in the numerator to the extent of its utilization in the Commonwealth. The extent of such utilization shall be determined by multiplying the total value of such property by a fraction, the numerator of which is the number of days of physical location of the property in the Commonwealth during the taxable period and the denominator of which is the number of days of physical location of the property everywhere during the taxable period. The number of days of physical location of the property may be determined on a statistical basis or by such other reasonable method acceptable to the Department.

Code 1950, § 58-151.043; 1971, Ex. Sess., c. 171; 1981, c. 402; 1984, c. 675.

§ 58.1-411. Average value of property

The average value of property shall be determined by averaging the value at the beginning and ending of the taxable year, but the Department may require the averaging of monthly values during the taxable year if reasonably required to reflect properly the average value of the corporation's property.

Code 1950, § 58-151.044; 1971, Ex. Sess., c. 171; 1984, c. 675.

§ 58.1-412. Payroll factor

The payroll factor is a fraction, the numerator of which is the total amount paid or accrued in the Commonwealth during the tax period by the corporation for compensation, and the denominator of which is the total compensation paid or accrued everywhere during the taxable year, to the extent that such payroll is used to produce Virginia taxable income and is effectively connected with the conduct of a trade or business within the United States and income therefrom is includable in federal taxable income.

Code 1950, § 58-151.045; 1971, Ex. Sess., c. 171; 1981, c. 402; 1984, c. 675.

§ 58.1-413. When compensation deemed paid or accrued in this Commonwealth

Compensation is paid or accrued in the Commonwealth if:

1. The employee's service is performed entirely within the Commonwealth;

2. The employee's service is performed both within and without the Commonwealth, but the service performed without the Commonwealth is incidental to the employee's service within the Commonwealth; or

3. Some of the service is performed in the Commonwealth; and

a. The base of operations or, if there is no base of operations, the place from which the service is directed or controlled is in the Commonwealth; or

b. The base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the employee's residence is in the Commonwealth.

Code 1950, § 58-151.046; 1971, Ex. Sess., c. 171; 1984, c. 675.

§ 58.1-414. Sales factor

The sales factor is a fraction, the numerator of which is the total sales of the corporation in the Commonwealth during the taxable year, and the denominator of which is the total sales of the corporation everywhere during the taxable year, to the extent that such sales are used to produce Virginia taxable income and are effectively connected with the conduct of a trade or business within the United States and income therefrom is includable in federal taxable income.

Code 1950, § 58-151.047; 1971, Ex. Sess., c. 171; 1981, c. 402; 1984, c. 675.

§ 58.1-415. When sales of tangible personal property deemed in the Commonwealth

Sales of tangible personal property are in the Commonwealth if such property is received in the Commonwealth by the purchaser. In the case of delivery by common carrier or other means of transportation, the place at which such property is ultimately received after all transportation has been completed shall be considered as the place at which such property is received by the purchaser. Direct delivery in the Commonwealth, other than for purposes of transportation, to a person or firm designated by a purchaser, constitutes delivery to the purchaser in the Commonwealth, and direct delivery outside the Commonwealth to a person or firm designated by the purchaser does not constitute delivery to the purchaser in the Commonwealth, regardless of where title passes, or other conditions of sale.

Code 1950, § 58-151.048; 1971, Ex. Sess., c. 171; 1981, c. 402; 1984, c. 675.

§ 58.1-416. When certain other sales deemed in the Commonwealth

Sales, other than sales of tangible personal property, are in the Commonwealth if:

1. The income-producing activity is performed in the Commonwealth; or

2. The income-producing activity is performed both in and outside the Commonwealth and a greater proportion of the income-producing activity is performed in the Commonwealth than in any other state, based on costs of performance.

Code 1950, § 58-151.049; 1971, Ex. Sess., c. 171; 1984, c. 675.

§ 58.1-417. Motor carriers; apportionment

A. Motor carriers of property or passengers shall apportion their net apportionable income to this Commonwealth by the use of the ratio of vehicle miles in this Commonwealth to total vehicle miles of the corporation everywhere. For the purposes of this section the words "vehicle miles" in the case of motor carriers of property shall mean miles traveled by vehicles (whether owned or operated by the corporation) hauling property for a charge or traveling on a scheduled route. In the case of motor carriers of passengers the same shall mean miles traveled by vehicles (whether owned or operated by the corporation) carrying passengers for a fare or traveling on a scheduled route.

B. The provisions of subsection A shall not be applicable to a carrier:

1. Which neither owns nor rents real or tangible personal property within this Commonwealth, except vehicles, which has made no pick-ups or deliveries within this Commonwealth, and which has traveled less than 50,000 vehicle miles in this Commonwealth in the taxable year; or

2. Which neither owns nor rents any real or tangible personal property within this Commonwealth, except vehicles, and which makes no more than twelve round trips into this Commonwealth during a taxable year.

The mileage traveled under 50,000 miles or the mileage traveled in such round trips, however, may not represent more than 5 percent of the total miles annually traveled in all states by such carrier.

Code 1950, § 58-151.050; 1971, Ex. Sess., c. 171; 1977, c. 658; 1984, c. 675.

§ 58.1-418. Financial corporations; apportionment

A. The Virginia taxable income of a financial corporation, as defined herein, excluding income allocable under § 58.1-407, shall be apportioned within and without this Commonwealth in the ratio that the business within this Commonwealth is to the total business of the corporation. Business within this Commonwealth shall be based on cost of performance in the Commonwealth over cost of performance everywhere.

B. "Financial corporation" means any corporation not exempted from the imposition of tax under the provisions of § 58.1-401, which derives more than seventy percent of its gross income from the classes of income enumerated in subdivisions 1 through 4 below, without reference to the state wherein such income is earned, including but not limited to small loan companies, sales finance companies, brokerage companies and investment companies:

1. Fees, commissions, other compensation for financial services rendered;

2. Gross profits from trading in stocks, bonds, or other securities;

3. Interest; and

4. Dividends received to the extent included in Virginia taxable income.

C. In computing the amounts referred to in subdivisions 1 through 4 of subsection B of this section, any amount received by a member of an affiliated group, determined under § 1504(a) of the Internal Revenue Code but without reference to whether any such corporation is an includable corporation under § 1504(b) of the Internal Revenue Code, from another member of such group shall be included only to the extent such amount exceeds expenses of the recipient directly related thereto.

Code 1950, § 58-151.050:1; 1976, c. 436; 1979, c. 32; 1981, c. 402; 1984, c. 675.

§ 58.1-419. Construction corporations; apportionment

A. Construction companies which have elected to report income on the completed contract basis shall apportion income within and without this Commonwealth in the ratio that the business within the Commonwealth is to the total business of the corporation.

B. All other construction corporations not reporting under the completed contract method shall determine Virginia taxable income by reference to §§ 58.1-406 through 58.1-416.

Code 1950, § 58-151.050:2; 1976, c. 436; 1981, c. 402; 1984, c. 675.

§ 58.1-420. Railway companies; apportionment

Notwithstanding the provisions of § 58.1-408, railway companies shall determine their net apportionable income to the Commonwealth by multiplying the Virginia taxable income of such company, excluding the classes of income allocable under § 58.1-407, by the use of the ratio of revenue car miles in the Commonwealth to total revenue car miles of the company everywhere. For the purposes of this section, "revenue car mile" in the case of railway carriers of property or passengers means the movement of a unit of loaded car equipment a distance of one mile. The loaded car miles shall be determined in accordance with the Uniform System of Accounts for Railroad Companies of the Interstate Commerce Commission.

Code 1950, §§ 58-151.021, 58-151.050:3; 1971, Ex. Sess., c. 171; 1978, c. 784; 1979, c. 371; 1981, c. 402; 1984, c. 675.

§ 58.1-421. Alternative method of allocation

If any corporation believes that the method of allocation or apportionment hereinbefore prescribed as administered by the Department has operated or will so operate as to subject it to taxation on a greater portion of its Virginia taxable income than is reasonably attributable to business or sources within this Commonwealth, it shall be entitled to file with the Department a statement of its objections and of such alternative method of allocation or apportionment as it believes to be proper under the circumstances with such detail and proof and within such time as the Department may reasonably prescribe. If the Department concludes that the method of allocation or apportionment theretofore employed is in fact inapplicable or inequitable, it shall redetermine the taxable income by such other method of allocation or apportionment as seems best calculated to assign to the Commonwealth for taxation the portion of the income reasonably attrib-

utable to business and sources within the Commonwealth, not exceeding, however, the amount which would be arrived at by application of the statutory rules for allocation or apportionment.

Code 1950, § 58-151.051; 1971, Ex. Sess., c. 171; 1984, c. 675.

§ 58.1-422. Manufacturing companies; apportionment

A. For taxable years beginning on or after July 1, 2011, the Virginia taxable income of a manufacturing company, excluding income allocable under § 58.1-407, may be apportioned within and without the Commonwealth as provided in § 58.1-408 or as follows:

1. From July 1, 2011, until July 1, 2013, by multiplying such income by a fraction, the numerator of which is the property factor plus the payroll factor plus triple the sales factor and the denominator of which is five, except when the sales factor does not exist, the denominator of the fraction shall be the number of existing factors, and when the sales factor exists but the payroll factor or property factor does not exist, the denominator of the fraction shall be the number of existing factors plus two;

2. From July 1, 2013, until July 1, 2014, by multiplying such income by a fraction, the numerator of which is the property factor plus the payroll factor plus quadruple the sales factor and the denominator of which is six, except when the sales factor does not exist, the denominator of the fraction shall be the number of existing factors, and when the sales factor exists but the payroll factor or property factor does not exist, the denominator of the fraction shall be the number of existing factors plus three; and

3. From July 1, 2014, and thereafter, by multiplying such income by the sales factor.

B. If the taxpayer makes one or more of the elections described in subdivision A 1, A 2, or A 3, the taxpayer may not revoke the election for a period of three taxable years.

In addition, the taxpayer shall certify to the Department that the average weekly wage of its full-time employees is greater than the lower of the state or local average weekly wages for the taxpayer's industry.

C. If the average annual number of full-time employees of a manufacturing company for the first three taxable years (in which the manufacturing company used the alternative apportionment set forth in this section) is less than 90 percent of the base year employment, or the average wage of its full-time employees as certified by the taxpayer is not greater than the lower of the state or local average weekly wage, then the Department of Taxation shall assess the manufacturing company with additional taxes pursuant to this article computed as the difference between (i) the taxes that would have been due under the apportionment formula provided under § 58.1-408 for such three taxable years, minus (ii) the taxes due under the alternative apportionment provided under this section for such three taxable years. Interest shall accrue and shall be assessed on such additional taxes at the rate prescribed under § 58.1-15, with such interest accruing from the original due date for filing of the income tax return to the date of payment of such additional taxes.

Such additional taxes and interest are hereby imposed on manufacturing companies using the alternative apportionment set forth in this section.

D. As used in this section, unless the context requires another meaning :

"Base year employment" means the average number of full-time employees employed by the manufacturing company in the Commonwealth in the taxable year that ended immediately prior to the first taxable year in which the manufacturing company used the alternative apportionment set forth in this section.

"Full-time employee" means an employee of a manufacturing company who is employed for an indefinite duration in the Commonwealth for which the standard fringe benefits are paid by the manufacturing company, for which employment requires a minimum of either (i) 35 hours of an employee's time per week for the entire normal year of such manufacturing company's operations, which "normal year" shall consist of at least 48 weeks, or (ii) 1,680 hours per year.

"Manufacturing company" means a domestic or foreign corporation primarily engaged in activities that, in accordance with the North American Industrial Classification System (NAICS), United States Manual, United States Office of Management and Budget, 1997 Edition, would be included in Sector 11, 31, 32, or 33.

E. The General Assembly of Virginia finds that job creation is essential to the continued fiscal health of the Commonwealth. In this modern economy, states often compete for quality manufacturing jobs. Accordingly, the provisions of this section relating to manufacturing companies that increase their employment in Virginia are integral to the purpose of the election allowed pursuant to this section. If any provision of this section is for any reason held to be invalid or unconstitutional by the decision of a court of competent jurisdiction, that provision shall not be deemed severable.

2009, c. 821; 2012, c. 427.

§ 58.1-422.1. Retail companies; apportionment

A. For taxable years beginning on or after July 1, 2012, the Virginia taxable income of a retail company, excluding income allocable under § 58.1-407, shall be apportioned within and without the Commonwealth as follows:

1. From July 1, 2012, until July 1, 2014, by multiplying such income by a fraction, the numerator of which is the property factor plus the payroll factor plus triple the sales factor and the denominator of which is five, except that when the sales factor does not exist, the denominator of the fraction shall be the number of existing factors, and when the sales factor exists but the payroll factor or property factor does not exist, the denominator of the fraction shall be the number of existing factors plus two;

2. From July 1, 2014, until July 1, 2015, by multiplying such income by a fraction, the numerator of which is the property factor plus the payroll factor plus quadruple the sales factor and the

denominator of which is six, except that when the sales factor does not exist, the denominator of the fraction shall be the number of existing factors, and when the sales factor exists but the payroll factor or property factor does not exist, the denominator of the fraction shall be the number of existing factors plus three; and

3. From July 1, 2015, and thereafter, by multiplying such income by the sales factor.

B. As used in this section, "retail company" means a domestic or foreign corporation primarily engaged in activities that, in accordance with the North American Industry Classification System (NAICS), United States Manual, United States Office of Management and Budget, 1997 Edition, would be included in Sectors 44-45.

2012, cc. 86, 666.

§ 58.1-422.2. Apportionment; taxpayers with enterprise data center operations

A. For taxable years beginning on or after July 1, 2016, the Virginia taxable income of taxpayers with enterprise data center operations, excluding income allocable under § 58.1-407, shall be apportioned within and without the Commonwealth as follows:

1. From July 1, 2016, until July 1, 2017, by multiplying such income by a fraction, the numerator of which is the property factor plus the payroll factor plus quadruple the sales factor and the denominator of which is six, except that when the sales factor does not exist, the denominator of the fraction shall be the number of existing factors, and when the sales factor exists but the payroll factor or property factor does not exist, the denominator of the fraction shall be the number of existing factors plus three; and

2. From July 1, 2017, and thereafter, by multiplying such income by the sales factor.

B. As used in this section:

"Enterprise data center operations" means operations that (i) physically house information technology equipment such as servers, switches, routers, data storage devices, or related equipment; (ii) manage and process digital data and information to provide application services or management for data processing, such as web hosting, Internet, intranet, telecommunication, and information technology; (iii) are developed and owned by the taxpayer; and (iv) are operated by the taxpayer or any of its affiliates substantially for their own use.

C. The provisions of this section requiring an apportionment formula for taxpayers with enterprise data center operations shall apply only to taxpayers that have entered into a memorandum of understanding with the Virginia Economic Development Partnership Authority on or after July 1, 2015, to make a new capital investment of at least $150 million in an enterprise data center in the Commonwealth on or after such date. The apportionment formula under this section shall apply to such taxpayers beginning with the taxable year for which the Virginia Economic Development Partnership Authority provides a written certification to the taxpayer that the new capital investment has been completed.

D. The General Assembly of Virginia finds that capital investment in data centers is essential to the continued fiscal health of the Commonwealth. In this modern economy, states often compete for quality data centers. Accordingly, the provisions of subsection C relating to capital investment in enterprise data centers are integral to the purpose of this section. If any provision of this section is for any reason held to be invalid or unconstitutional by the decision of a court of competent jurisdiction, that provision shall not be deemed severable.

2015, cc. 92, 237.

§ 58.1-423. Income tax paid by commercial spaceflight entities

A. Beginning July 1, 2011, and for fiscal years 2012, 2013, 2014, 2015, and 2016, the portion of the Virginia income tax net revenue generated by qualified corporations or limited liability companies that is attributable to the sale of commercial human spaceflights or commercial spaceflight training (regardless of point of sale, or where space flight takes place), or is incidental to the sale of commercial human spaceflights, shall be transferred to the Virginia Commercial Space Flight Authority, established pursuant to Article 2 (§ 2.2-2201 et seq.) of Chapter 22 of Title 2.2. The Tax Commissioner shall make a written certification to the Comptroller within 15 days of the close of each calendar quarter providing an estimate of the portion of the Virginia income tax net revenue generated during the calendar quarter by the qualified corporations or limited liability companies that is attributable to the sale of commercial human spaceflights or commercial spaceflight training or is incidental to the sale of commercial human spaceflights. Not later than 30 days after the close of each quarter, the Comptroller shall transfer to the Virginia Commercial Space Flight Authority an amount from the general fund that is equal to the estimate provided by the Tax Commissioner.

B. For purposes of this section, a qualified corporation or limited liability company is a corporation or limited liability company that engages in commercial human spaceflights or commercial spaceflight training.

2011, c. 563; 2012, cc. 779, 817; 2015, c. 260.

Article 13 - TAX CREDITS FOR CORPORATIONS

§ 58.1-430. Repealed

Repealed by Acts 2001, cc. 292, 300.

§ 58.1-431. Repealed

Repealed by Acts 2009, c. 34, cl. 2.

§ 58.1-432. Tax credit for purchase of conservation tillage equipment

A. Any corporation shall be allowed a credit against the tax imposed by § 58.1-400 of an amount equaling 25 percent of all expenditures made for the purchase and installation of conservation tillage equipment used in agricultural production by the purchaser. As used in this section, the term "conservation tillage equipment" means a planter, drill, or other equipment used to reduce soil

compaction commonly known as a "no-till" planter, drill, or other equipment used to reduce soil compaction including guidance systems to control traffic patterns that are designed to minimize disturbance of the soil in planting crops, including such planters, drills, or other equipment used to reduce soil compaction which may be attached to equipment already owned by the taxpayer.

B. The amount of such credit shall not exceed $4,000 or the total amount of tax imposed by this chapter, whichever is less, in the year of purchase. If the amount of such credit exceeds the taxpayer's tax liability for such tax year, the amount which exceeds such tax liability may be carried over for credit against income taxes in the next five taxable years until the total amount of the tax credit has been taken.

C. For purposes of this section, the amount of any credit attributable to the purchase and installation of conservation tillage equipment by a partnership or electing small business corporation (S corporation) shall be allocated to the individual partners or shareholders in proportion to their ownership or interest in the partnership or S corporation.

1985, c. 560; 1990, c. 416; 2005, c. 58.

§ 58.1-433. Expired

Expired.

§ 58.1-433.1. Virginia Coal Employment and Production Incentive Tax Credit

A. For taxable years beginning on and after January 1, 2001, every electricity generator in the Commonwealth shall be allowed a three-dollar-per-ton credit against the tax imposed by § 58.1-400 or § 58.1-400.2 for each ton of coal purchased and consumed by such electricity generator, provided such coal was mined in Virginia as certified by such seller. Notwithstanding any other provision of law, no electricity generator shall be allowed more than a three-dollar-per-ton coal tax credit and shall be subject to all limitations set forth in § 58.1-400.2. In no event shall the credit allowed hereunder exceed the total amount of tax liability of such taxpayer. Any tax credit not usable for the taxable year may be carried over to the extent usable for the next 10 succeeding taxable years or until the full credit is utilized, whichever is sooner. For the purposes of the credit provided by this section, "electricity generator" means any person who produces electricity for self-consumption or for sale.

B. For each such ton of coal described in subsection A that is purchased on or after January 1, 2006, from any person with an economic interest in coal as defined under § 58.1-439.2, the $3-per-ton credit allowed under subsection A may be allocated between such electricity generator and such person with an economic interest in coal. The allocation of the $3-per-ton credit may be provided in the contract between such parties for the sale of such coal. Such allocation may be amended by the execution of a written instrument by the parties prior to December 31 of the year of purchase of such coal. Such contracts and written instruments shall be subject to audit by the Department of Taxation to ensure the proper application of credits.

In no case shall the credit allocated for each such ton of coal among such electricity generators and such persons with an economic interest in coal exceed $3 per ton.

All credits earned on or after January 1, 2006, which are allocated to persons with an economic interest in coal as provided under this subsection may be used as tax credits by such persons against the tax imposed by § 58.1-400 and any other tax imposed by the Commonwealth. If the credits earned on or after January 1, 2006 exceed the state tax liability for the applicable taxable year of such person with an economic interest in coal, the excess shall be redeemable by the Tax Commissioner as set forth in subsection D of § 58.1-439.2, provided that the ability of persons with an economic interest in coal to redeem with the Tax Commissioner credits received pursuant to an allocation under this section shall expire for credits earned under this section on or after July 1, 2016.

1999, c. 971; 2000, c. 929; 2006, cc. 788, 803; 2011, cc. 294, 851.

§§ 58.1-434, 58.1-435. Repealed

Repealed by Acts 2016, c. 305, cl. 2.

§ 58.1-435. Low-income housing credit

A. Any person shall be entitled to a credit against the tax imposed by Articles 2 (§ 58.1-320 et seq.), 6 (§ 58.1-360 et seq.), and 10 (§ 58.1-400 et seq.) of Chapter 3; Chapter 12 (§ 58.1-1200 et seq.); or Article 1 (§ 58.1-2500 et seq.) of Chapter 25 of Title 58.1 in the amount certified to the Department or the State Corporation Commission, as applicable, pursuant to subsection F for any five taxable years, as such years are determined by the Board of Housing and Community Development, in which a federal low-income housing credit is allowed for low-income housing units placed in service on or after January 1, 1998, provided such person qualified for and claimed the low-income housing credit on the federal income tax return filed for the taxable year, and meets the qualifications established by the Board for claiming such credit on the applicable Virginia tax return.

B. The Board of Housing and Community Development shall issue regulations establishing the amount of the low-income housing credit allowable, the taxable year or years in which such credit may be taken by the taxpayer, and the terms and conditions for qualifying for such credit. The Virginia low-income housing credit amount shall be a percentage of the federal low-income tax credit claimed for the taxable year; however, the specific percentage shall be determined by the Board. If the low-income housing credit claimed on the person's federal tax return was calculated on a period of less than 12 months, the Board may nevertheless calculate the Virginia low-income housing credit amount on the basis of a 12-month period for the taxable year.

C. The Department of Housing and Community Development shall administer the approval of low-income housing credits. However, the Board shall not approve any low-income housing credits after June 30, 2010. The total maximum amount of low-income housing credits which may be approved by the Board of Housing and Community Development in any calendar year shall be

$500,000. Credits granted to a partnership, limited liability company or electing small business corporation (S corporation) shall be allocated among all partners or shareholders, respectively, either in proportion to their ownership interest in such entity or as the partners or shareholders mutually agree as provided in an executed document, the form of which shall be prescribed by the Board.

D. The amount of credit allowed pursuant to this section shall not exceed the tax imposed for such taxable year. Any credit not usable for the taxable year may be carried over for credit until the earlier of (i) the full amount of the credit is used or (ii) the expiration of the fifth taxable year after the taxable year in which the Department of Housing and Community Development has certified the amount of such tax credit pursuant to subsection F. No credit shall be carried back to a preceding taxable year. If a taxpayer who is subject to the tax limitation imposed pursuant to this subsection is allowed another credit pursuant to any other section of the Code of Virginia, or has a credit carryover from a preceding taxable year, such taxpayer shall be considered to have first utilized any credit allowed that does not have a carryover provision, and then any credit that is carried forward from a preceding taxable year, prior to the utilization of any credit allowed pursuant to this section.

E. If any person qualifies in a taxable year for the Virginia low-income housing credit, and in a subsequent taxable year is subject to the credit recapture provisions for federal income tax purposes, such person shall similarly be subject to a credit recapture amount on the Virginia tax return for which the applicable Virginia low-income housing credit was applied or used. Any credit recapture shall be assessed and collected in the same manner as a tax attributable to a change in federal taxable income within the meaning of § 58.1-311. The Board of Housing and Community Development shall promulgate regulations establishing the terms and conditions for computing the credit recapture amount for the applicable Virginia tax return.

F. To claim the credit authorized under this section, the taxpayer shall apply to the Department of Housing and Community Development to determine the credit amount allowable for the taxable year. The Department shall certify to the Department of Taxation that such person qualified for the Virginia low-income housing credit amount claimed on the applicable tax return for the taxable year. The taxpayer shall attach the certification form to the Virginia tax return filed with the Department of Taxation. The Department of Housing and Community Development shall also provide the Department of Taxation with credit recapture amounts and any other information it may require relating to the credit claimed by the taxpayer.

1989, c. 280; 1990, c. 830; 1992, cc. 325, 347; 1994, c. 611; 1996, cc. 580, 826; 2001, cc. 293, 299; 2007, c. 778; 2010, cc. 520, 608; 2011, c. 850.

§ 58.1-436. Tax credit for purchase of advanced technology pesticide and fertilizer application equipment

A. Any corporation engaged in agricultural production for market which has in place a nutrient management plan approved by the local Soil and Water Conservation District by the required tax return filing date of the corporation shall be allowed a credit against the tax imposed by § 58.1-400 of an amount equaling twenty-five percent of all expenditures made by such corporation for the purchase of equipment certified by the Virginia Soil and Water Conservation Board as providing more precise pesticide and fertilizer application. Virginia Polytechnic Institute and State University and Virginia State University shall provide at the request of the Virginia Soil and Water Conservation Board technical assistance in determining appropriate specifications for certified equipment which would provide for more precise pesticide and fertilizer application to reduce the potential for adverse environmental impacts. The equipment shall be divided into the following categories:

1. Sprayers for pesticides and liquid fertilizers;

2. Pneumatic fertilizer applicators;

3. Monitors, computer regulators, and height adjustable booms for sprayers and liquid fertilizer applicators;

4. Manure applicators;

5. Tramline adapters; and

6. Starter fertilizer banding attachments for planters.

B. The amount of such credit shall not exceed $3,750 or the total amount of the tax imposed by this chapter, whichever is less, in the year of purchase. If the amount of such credit exceeds the taxpayer's tax liability for such taxable year, the amount which exceeds the tax liability may be carried over for credit against the income taxes of such corporation in the next five taxable years until the total amount of the tax credit has been taken. Credits granted to a partnership or electing small business corporation (S corporation) shall be passed through to the partners or shareholders, respectively.

C. For purposes of this section, the amount of any credit attributable to the purchase of equipment certified by the Virginia Soil and Water Conservation Board as providing more precise pesticide and fertilizer application by a partnership or S corporation shall be allocated to the individual partners or shareholders in proportion to their ownership or interest in the partnership or S corporation.

1990, c. 416; 1996, c. 739.

§ 58.1-437. Repealed

Repealed by Acts 1992, c. 394 .

§ 58.1-438. Not effective

Not effective.

§ 58.1-438.1. Tax credit for vehicle emissions testing equipment, clean-fuel vehicles and certain refueling property

Any corporation, individual or public service corporation shall be allowed a credit against the income or gross receipts taxes imposed by Subtitle I (§ 58.1-100 et seq.) and Chapter 26 (§ 58.1-2600 et seq.) of Title 58.1 of (i) an amount equal to ten percent of the deduction allowed to such corporation, individual or public service corporation under Section 179A of the Internal Revenue Code for purchases of clean-fuel vehicles principally garaged in Virginia or certain refueling property placed in service in Virginia or ten percent of the costs used to compute the credit under Section 30 of the Internal Revenue Code and (ii) an amount equal to twenty percent of the purchase or lease price paid during the taxable year for equipment certified by the Department of Environmental Quality for vehicle emissions testing, located within, or within any county, city or town adjacent to, any county, city or town wherein implementation of an enhanced vehicle emissions inspection program, as defined in § 46.2-1176, is required. Credits granted to a partnership or S corporation shall be passed through to the partners or shareholders, respectively. If the credit exceeds the tax liability in a year, the credit may be carried forward up to five succeeding years.

1993, c. 562; 1994, cc. 164, 875; 1995, c. 100; 1997, c. 350; 1998, c. 599.

§ 58.1-439. Major business facility job tax credit

A. For taxable years beginning on and after January 1, 1995, but before January 1, 2020, a taxpayer shall be allowed a credit against the taxes imposed by Articles 2 (§ 58.1-320 et seq.), 6 (§ 58.1-360 et seq.), and 10 (§ 58.1-400 et seq.) of Chapter 3; Chapter 12 (§ 58.1-1200 et seq.); Article 1 (§ 58.1-2500 et seq.) of Chapter 25; or Article 2 (§ 58.1-2620 et seq.) of Chapter 26 as set forth in this section.

B. For purposes of this section, the amount of any credit attributable to a partnership, electing small business corporation (S corporation), or limited liability company shall be allocated to the individual partners, shareholders, or members, respectively, in proportion to their ownership or interest in such business entities.

C. A "major business facility" is a company that satisfies the following criteria:

1. Subject to the provisions of subsections K or L, the establishment or expansion of the company shall result in the creation of at least 50 jobs for qualified full-time employees; the first such 50 jobs shall be referred to as the "threshold amount"; and

2. The company is engaged in any business in the Commonwealth, except a retail trade business if such trade is the principal activity of an individual facility in the Commonwealth. Examples of types of major business facilities that are eligible for the credit provided under this section include, but are not limited to, a headquarters, or portion of such a facility, where company employees are physically employed, and where the majority of the company's financial, personnel, legal or planning functions are handled either on a regional or national basis. A company primarily engaged in the Commonwealth in the business of manufacturing or mining; agriculture,

forestry or fishing; transportation or communications; or a public utility subject to the corporation income tax shall be deemed to have established or expanded a major business facility in the Commonwealth if it meets the requirements of subdivision 1 during a single taxable year and such facilities are not retail establishments. A major business facility shall also include facilities that perform central management or administrative activities, whether operated as a separate trade or business, or as a separate support operation of another business. Central management or administrative activities include, but are not limited to, general management; accounting; computing; tabulating; purchasing; transportation or shipping; engineering and systems planning; advertising; technical sales and support operations; central administrative offices and warehouses; research, development and testing laboratories; computer-programming, data-processing and other computer-related services facilities; and legal, financial, insurance, and real estate services. The terms used in this subdivision to refer to various types of businesses shall have the same meanings as those terms are commonly defined in the Standard Industrial Classification Manual.

D. For purposes of this section, the "credit year" is the first taxable year following the taxable year in which the major business facility commenced or expanded operations.

E. The Department of Taxation shall make all determinations as to the classification of a major business facility in accordance with the provisions of this section.

F. A "qualified full-time employee" means an employee filling a new, permanent full-time position in a major business facility in the Commonwealth. A "new, permanent full-time position" is a job of an indefinite duration, created by the company as a result of the establishment or expansion of a major business facility in the Commonwealth, requiring a minimum of 35 hours of an employee's time a week for the entire normal year of the company's operations, which "normal year" shall consist of at least 48 weeks, or a position of indefinite duration which requires a minimum of 35 hours of an employee's time a week for the portion of the taxable year in which the employee was initially hired for, or transferred to, the major business facility in the Commonwealth. Seasonal or temporary positions, or a job created when a job function is shifted from an existing location in the Commonwealth to the new major business facility and positions in building and grounds maintenance, security, and other such positions which are ancillary to the principal activities performed by the employees at a major business facility shall not qualify as new, permanent full-time positions.

G. For any major business facility, the amount of credit earned pursuant to this section shall be equal to $1,000 per qualified full-time employee, over the threshold amount, employed during the credit year. The credit shall be allowed ratably, with one-third of the credit amount allowed annually for three years beginning with the credit year. However, for taxable years beginning on or after January 1, 2009, one-half of the credit amount shall be allowed each year for two years. The portion of the $1,000 credit earned with respect to any qualified full-time employee who is employed in the Commonwealth for less than 12 full months during the credit year will be determined by multiplying the credit amount by a fraction, the numerator of which is the number of full

months that the qualified full-time employee worked for the major business facility in the Commonwealth during the credit year, and the denominator of which is 12. A separate credit year and a three-year allowance period shall exist for each distinct major business facility of a single taxpayer, except for credits allowed for taxable years beginning on or after January 1, 2009, when a two-year allowance period shall exist for each distinct major business facility of a single taxpayer.

H. The amount of credit allowed pursuant to this section shall not exceed the tax imposed for such taxable year. Any credit not usable for the taxable year the credit was allowed may be, to the extent usable, carried over for the next 10 succeeding taxable years. No credit shall be carried back to a preceding taxable year. In the event that a taxpayer who is subject to the tax limitation imposed pursuant to this subsection is allowed another credit pursuant to any other section of the Code of Virginia, or has a credit carryover from a preceding taxable year, such taxpayer shall be considered to have first utilized any credit allowed which does not have a carryover provision, and then any credit which is carried forward from a preceding taxable year, prior to the utilization of any credit allowed pursuant to this section.

I. No credit shall be earned pursuant to this section for any employee (i) for whom a credit under this section was previously earned by a related party as defined by Internal Revenue Code § 267(b) or a trade or business under common control as defined by Internal Revenue Code § 52(b); (ii) who was previously employed in the same job function in Virginia by a related party as defined by Internal Revenue Code § 267(b) or a trade or business under common control as defined by Internal Revenue Code § 52(b); (iii) whose job function was previously performed at a different location in Virginia by an employee of the taxpayer, a related party as defined by Internal Revenue Code § 267(b), or a trade or business under common control as defined by Internal Revenue Code § 52(b); or (iv) whose job function previously qualified for a credit under this section at a different major business facility on behalf of the taxpayer, a related party as defined by Internal Revenue Code § 267(b), or a trade or business under common control as defined by Internal Revenue Code § 52(b).

J. Subject to the provisions of subsections K or L, recapture of this credit, under the following circumstances, shall be accomplished by increasing the tax in any of the five years succeeding the taxable year in which a credit has been earned pursuant to this section if the number of qualified full-time employees decreases below the average number of qualified full-time employees employed during the credit year. Such tax increase amount shall be determined by (i) recomputing the credit which would have been earned for the original credit year using the decreased number of qualified full-time employees and (ii) subtracting such recomputed credit from the amount of credit previously earned. In the event that the average number of qualifying full-time employees employed at a major business facility falls below the threshold amount in any of the five taxable years succeeding the credit year, all credits earned with respect to such major business facility shall be recaptured. No credit amount will be recaptured more than once pursuant to this subsection. Any

recapture pursuant to this section shall reduce credits earned but not yet allowed, and credits allowed but carried forward, before the taxpayer's tax liability may be increased.

K. In the event that a major business facility is located in an economically distressed area or in an enterprise zone as defined in Chapter 49 (§ 59.1-538 et seq.) of Title 59.1 during a credit year, the threshold amount required to qualify for a credit pursuant to this section and to avoid full recapture shall be reduced from 50 to 25 for purposes of subdivision C 1 and subsection J. An area shall qualify as economically distressed if it is a city or county with an unemployment rate for the preceding year of at least 0.5 percent higher than the average statewide unemployment rate for such year. The Virginia Economic Development Partnership shall identify and publish a list of all economically distressed areas at least annually.

L. For taxable years beginning on or after January 1, 2004, but before January 1, 2006, in the event that a major business facility is located in a severely economically distressed area, the threshold amount required to qualify for a credit pursuant to this section and to avoid full recapture shall be reduced from 100 to 25 for purposes of subdivision C 1 and subsection J. However, the total amount of credit allowable under this subsection shall not exceed $100,000 in aggregate. An area shall qualify as severely economically distressed if it is a city or county with an unemployment rate for the preceding year of at least twice the average statewide unemployment rate for such year. The Virginia Economic Development Partnership shall identify and publish a list of all severely economically distressed areas at least annually.

M. The Tax Commissioner shall promulgate regulations, in accordance with the Administrative Process Act (§ 2.2-4000 et seq.), relating to (i) the computation, carryover, and recapture of the credit provided under this section; (ii) defining criteria for (a) a major business facility, (b) qualifying full-time employees at such facility, and (c) economically distressed areas; and (iii) the computation, carryover, recapture, and redemption of the credit by affiliated companies pursuant to subsection S.

N. The provisions of this section shall apply only in instances where an announcement of intent to establish or expand a major business facility is made on or after January 1, 1994. An announcement of intent to establish or expand a major business facility includes, but is not limited to, a press conference or extensive press coverage, providing information with respect to the impact of the project on the economy of the area where the major business facility is to be established or expanded and the Commonwealth as a whole.

O. The credit allowed pursuant to this section shall be granted to the person who pays taxes for the qualified full-time employees pursuant to Chapter 5 (§ 60.2-500 et seq.) of Title 60.2.

P. No person shall claim a credit allowed pursuant to this section and the credit allowed pursuant to § 58.1-439.2. Any qualified business firm receiving an enterprise zone job creation grant under § 59.1-547 shall not be eligible to receive a major business facility job tax credit pursuant to this section for any job used to qualify for the enterprise zone job creation grant.

Q. No person operating a business in the Commonwealth pursuant to Chapter 29 (§ 59.1-364 et seq.) of Title 59.1 shall claim a credit pursuant to this section.

R. Notwithstanding subsection O, a taxpayer may, for the purpose of determining the number of qualified full-time employees at a major business facility, include the employees of a contractor or a subcontractor if such employees are permanently assigned to the taxpayer's major business facility. If the taxpayer includes the employees of a contractor or subcontractor in its total of qualified full-time employees, it shall enter into a contractual agreement with the contractor or subcontractor prohibiting the contractor or subcontractor from also claiming these employees in order to receive a credit given under this section. The taxpayer shall provide evidence satisfactory to the Department of Taxation that it has entered into such a contract.

S. For purposes of satisfying the criteria of subdivision C 1, two or more affiliated companies may elect to aggregate the number of jobs created for qualified full-time employees as the result of the establishment or expansion by the individual companies in order to qualify for the credit allowed pursuant to this section. For purposes of this subsection, "affiliated companies" means two or more companies related to each other such that (i) one company owns at least 80 percent of the voting power of the other or others or (ii) at least 80 percent of the voting power of two or more companies is owned by the same interests.

T. The General Assembly of Virginia finds that modern business infrastructure allows businesses to locate their administrative or manufacturing facilities with minimal regard to the location of markets or the transportation of raw materials and finished goods, and that the economic vitality of the Commonwealth would be enhanced if such facilities were established in Virginia. Accordingly, the provisions of this section targeting the credit to major business facilities and limiting the credit to those companies which establish a major business facility in Virginia are integral to the purpose of the credit earned pursuant to this section and shall not be deemed severable.

1994, cc. 750, 768; 1995, c. 365; 1996, c. 874; 1997, cc. 786, 852; 1998, c. 367; 2004, cc. 170, 619; 2005, cc. 863, 884; 2009, c. 753; 2010, cc. 363, 469; 2012, cc. 93, 445, 475; 2015, c. 451.

§ 58.1-439.1. Repealed

Repealed by Acts 2016, c. 305, cl. 2.

§ 58.1-439.2. Coalfield employment enhancement tax credit

A. For tax years beginning on and after January 1, 1996, but before January 1, 2017, any person who has an economic interest in coal mined in the Commonwealth shall be allowed a credit against the tax imposed by § 58.1-400 and any other tax imposed by the Commonwealth in accordance with the following:

1. For coal mined by underground methods, the credit amount shall be based on the seam thickness as follows:

Seam Thickness	Credit per Ton

36'' and under	$2.00
Above 36''	$1.00

The seam thickness shall be based on the weighted average isopach mapping of actual coal thickness by mine as certified by a professional engineer. Copies of such certification shall be maintained by the person qualifying for the credit under this section for a period of three years after the credit is applied for and received and shall be available for inspection by the Department of Taxation. The Department of Mines, Minerals and Energy is hereby authorized to audit all information upon which the isopach mapping is based.

2. For coal mined by surface mining methods, a credit in the amount of 40 cents ($0.40) per ton for coal sold in 1996, and each year thereafter.

B. In addition to the credit allowed in subsection A, for tax years beginning on and after January 1, 1996, any person who is a producer of coalbed methane shall be allowed a credit in the amount of one cent ($0.01) per million BTUs of coalbed methane produced in the Commonwealth against the tax imposed by § 58.1-400 and any other tax imposed by the Commonwealth on such person.

C. For purposes of this section, economic interest is the same as the economic ownership interest required by § 611 of the Internal Revenue Code which was in effect on December 31, 1977. A party who only receives an arm's length royalty shall not be considered as having an economic interest in coal mined in the Commonwealth.

D. If the credit exceeds the person's state tax liability for the tax year, the excess shall be redeemable by the Tax Commissioner on behalf of the Commonwealth for 90 percent of the face value within 90 days after filing the return; however, for credit earned in tax years beginning on and after January 1, 2002, such excess shall be redeemable by the Tax Commissioner on behalf of the Commonwealth for 85 percent of the face value within 90 days after filing the return. The remaining 10 or 15 percent of the value of the credit being redeemed, as applicable for such tax year, shall be deposited by the Commissioner in a regional economic development fund administered by the Coalfields Economic Development Authority to be used for regional economic diversification in accordance with guidelines developed by the Coalfields Economic Development Authority and the Virginia Economic Development Partnership.

E. No person may utilize more than one of the credits on a given ton of coal described in subsection A. No person may claim a credit pursuant to this section for any ton of coal for which a credit has been claimed under § 58.1-433.1 or 58.1-2626.1. Persons who qualify for the credit may not apply such credit to their tax returns prior to January 1, 1999, and only one year of credits shall be allowed annually beginning in 1999.

F. The amount of credit allowed pursuant to subsection A shall be the amount of credit earned multiplied by the person's employment factor. The person's employment factor shall be the percentage obtained by dividing the total number of coal mining jobs of the person filing the return, including the jobs of the contract operators of such person, as reflected in the annual tonnage

reports filed with the Department of Mines, Minerals and Energy for the year in which the credit was earned by the total number of coal mining jobs of such persons or operators as reflected in the annual tonnage reports for the year immediately prior to the year in which the credit was earned. In no case shall the credit claimed exceed that amount set forth in subsection A.

G. The tax credit allowed under this section shall be claimed in the third taxable year following the taxable year in which the credit was earned and allowed.

1995, c. 775; 1996, c. 1034; 1999, c. 971; 2000, cc. 91, 1066; 2006, cc. 788, 803; 2011, c. 851; 2012, cc. 309, 649.

§ 58.1-439.3. Repealed

Repealed by Acts 2009, c. 34, cl. 2.

§ 58.1-439.4. Day-care facility investment tax credit

A. For taxable years beginning on and after January 1, 1997, any taxpayer shall be allowed a credit against the taxes imposed by § 58.1-320 or § 58.1-400 in an amount equal to twenty-five percent of all expenditures paid or incurred by such taxpayer in such taxable year for planning, site preparation, construction, renovation, or acquisition of facilities for the purpose of establishing a child day-care facility to be used primarily by the children of such taxpayer's employees, and equipment installed for permanent use within or immediately adjacent to such facility, including kitchen appliances, to the extent that such equipment or appliances are necessary in the use of such facility for purposes of child day-care; however, the amount of credit allowed to any taxpayer under this section shall not exceed $25,000. If two or more taxpayers share in the cost of establishing the child day-care facility for the children of their employees, each such taxpayer shall be allowed such credit in relation to the respective share paid or incurred by such taxpayer, of the total expenditures for the facility in such taxable year.

B. The credits provided under this section shall be allowed only if (i) the child day-care facility shall be operated under the authority of a license issued by the Commissioner of Social Services pursuant to § 63.2-1701, (ii) an application for a building permit for the facility is made after July 1, 1996, and (iii) the Tax Commissioner approves a taxpayer's application for a credit. Proper applications submitted to the Department for the credit shall be approved in the order received. For each application approved for credit it shall be assumed that the amount of the credit will be $25,000, and the amount of the credit will be taken in the fiscal year in which the application is approved and the following two fiscal years. Approval of applications shall be limited to those that are assumed to result in no more than $100,000 of credits in any fiscal year based on the assumptions set forth in this subsection.

C. Any tax credit not usable for the taxable year may be carried over to the extent usable for the next three taxable years; however, the balance of a credit shall not be claimed for any succeeding taxable year in which the child day-care facility is operated for purposes of child day-care for less than six months.

D. For purposes of this section, the amount of any credit attributable to a partnership, electing small business corporation (S corporation), or limited liability company shall be allocated to the individual partners, shareholders, or members, respectively, in proportion to their ownership or interest in such business entities.

1996, c. 497.

§ 58.1-439.5. Agricultural best management practices tax credit

A. For all taxable years beginning on and after January 1, 1998, any corporation engaged in agricultural production for market who has in place a soil conservation plan approved by the local Soil and Water Conservation District (SWCD) shall be allowed a credit against the tax imposed by § 58.1-400 of an amount equaling twenty-five percent of the first $70,000 expended for agricultural best management practices by the corporation. As used in this section, "agricultural best management practice" means a practice approved by the Virginia Soil and Water Conservation Board (VSWCB) which will provide a significant improvement to water quality in the state's streams and rivers and the Chesapeake Bay and is consistent with other state and federal programs that address agricultural, nonpoint-source-pollution management. Eligible practices shall include, but are not limited to, the following:

1. Livestock-waste and poultry-waste management;

2. Soil erosion control;

3. Nutrient and sediment filtration and detention;

4. Nutrient management; and

5. Pest management and pesticide handling.

A detailed list of the standards and criteria for practices eligible for credit shall be found in the most recently approved "Virginia Agricultural BMP Implementation Manual" published by the Department of Conservation and Recreation.

B. Any practice approved by the local Soil and Water Conservation District Board shall be completed within the taxable year in which the credit is claimed. After the practice installation has been completed, the local SWCD Board shall certify the practice as approved and completed, and eligible for credit. The applicant shall forward the certification to the Department of Taxation on forms provided by the Department. The credit shall be allowed only for expenditures made by the taxpayer from funds of his own sources.

C. The amount of such credit shall not exceed $17,500 or the total amount of the tax imposed by this chapter, whichever is less, in the year the project was completed, as certified by the Board. If the amount of the credit exceeds the taxpayer's liability for such taxable year, the excess may be carried over for credit against income taxes in the next five taxable years until the total amount of the tax credit has been taken.

D. For purposes of this section, the amount of any credit attributable to agricultural best management practices by a partnership or electing small business corporation (S Corporation) shall be allocated to the individual partners or shareholders in proportion to their ownership or interest in the partnership or S Corporation.

1996, c. 629.

§ 58.1-439.6. Worker retraining tax credit

A. As used in this section, unless the context clearly requires otherwise:

"Eligible worker retraining" means retraining of a qualified employee that promotes economic development in the form of (i) noncredit courses at any of the Commonwealth's community colleges or a private school or (ii) worker retraining programs undertaken through an apprenticeship agreement approved by the Commissioner of Labor and Industry.

"Qualified employee" means an employee of an employer eligible for a credit under this section in a full-time position requiring a minimum of 1,680 hours in the entire normal year of the employer's operations if the standard fringe benefits are paid by the employer for the employee. Employees in seasonal or temporary positions shall not qualify as qualified employees. A qualified employee (i) shall not be a relative of any owner or the employer claiming the credit and (ii) shall not own, directly or indirectly, more than five percent in value of the outstanding stock of a corporation claiming the credit. As used herein, "relative" means a spouse, child, grandchild, parent or sibling of an owner or employer, and "owner" means, in the case of a corporation, any person who owns five percent or more of the corporation's stock.

"STEM or STEAM discipline" means a science, technology, engineering, mathematics, or applied mathematics related discipline as determined by the Department of Small Business and Supplier Diversity in consultation with the Superintendent of Public Instruction. The term shall include a health care-related discipline.

B. For taxable years beginning on and after January 1, 1999, but prior to January 1, 2018, an employer shall be allowed a credit against the taxes imposed by Articles 2 (§ 58.1-320 et seq.), 6 (§ 58.1-360 et seq.), and 10 (§ 58.1-400 et seq.) of Chapter 3; Chapter 12 (§ 58.1-1200 et seq.); Article 1 (§ 58.1-2500 et seq.) of Chapter 25; or Article 2 (§ 58.1-2620 et seq.) of Chapter 26 in an amount equal to 30 percent of all expenditures paid or incurred by the employer during the taxable year for eligible worker retraining. However, for taxable years beginning prior to January 1, 2013, if the eligible worker retraining consists of courses conducted at a private school, the credit shall be in an amount equal to the cost per qualified employee, but the amount of the credit shall not exceed $100 per qualified employee annually. For taxable years beginning on or after January 1, 2013, if the eligible worker retraining consists of courses conducted at a private school, the credit shall be in an amount equal to the cost per qualified employee, but the amount of the credit shall not exceed $200 per qualified employee annually, or $300 per qualified employee annually if the eligible worker retraining includes retraining in a STEM or STEAM discipline including but not

limited to industry-recognized credentials, certificates, and certifications. The total amount of tax credits granted to employers under this section for each fiscal year shall not exceed $2,500,000.

C. For purposes of this section, the amount of any credit attributable to a partnership, electing small business corporation (S corporation), or limited liability company shall be allocated to the individual partners, shareholders, or members, respectively, in proportion to their ownership or interest in such business entities.

D. An employer shall be entitled to the credit granted under this section only for those courses at a community college or a private school which courses have been certified as eligible worker retraining to the Department of Taxation by the Department of Small Business and Supplier Diversity. The Tax Commissioner shall promulgate regulations, in accordance with the Administrative Process Act (§ 2.2-4000 et seq.), (i) establishing procedures for claiming the credit provided by this section, (ii) defining eligible worker retraining, which shall include only those courses and programs that are substantially related to the duties of a qualified employee or that enhance the qualified employee's job-related skills, and that promote economic development, and (iii) providing for the allocation of credits among employers requesting credits in the event that the amount of credits for which requests are made exceeds the available amount of credits in any year. The Department of Small Business and Supplier Diversity shall review requests for certification submitted by employers and shall advise the Tax Commissioner whether a course or program qualifies as eligible worker retraining and, if it qualifies, whether the course or program is in a STEM or STEAM discipline.

E. Any credit not usable for the taxable year may be carried over for the next three taxable years. The amount of credit allowed pursuant to this section shall not exceed the tax imposed for such taxable year. No credit shall be carried back to a preceding taxable year. If an employer that is subject to the tax limitation imposed pursuant to this subsection is allowed another credit pursuant to any other section of this Code, or has a credit carryover from a preceding taxable year, such employer shall be considered to have first utilized any credit allowed which does not have a carryover provision, and then any credit which is carried forward from a preceding taxable year, prior to the utilization of any credit allowed pursuant to this section.

F. No employer shall be eligible to claim a credit under this section for worker retraining undertaken by any program operated, administered, or paid for by the Commonwealth.

G. The Director of the Department of Small Business and Supplier Diversity shall report annually to the chairmen of the House Finance and Senate Finance Committees on the status and implementation of the credit established by this section, including certifications for eligible worker retraining.

1997, c. 726; 2013, cc. 294, 482; 2014, c. 734.

§ 58.1-439.7. Tax credit for purchase of machinery and equipment for processing recyclable materials

A.1. For taxable years beginning on and after January 1, 1999, but before January 1, 2020, a taxpayer shall be allowed a credit against the tax imposed pursuant to Articles 2 (§ 58.1-320 et seq.) and 10 (§ 58.1-400 et seq.) of Chapter 3 of this title, in an amount equal to 20 percent of the purchase price paid during the taxable year for machinery and equipment used predominantly in or on the premises of manufacturing facilities or plant units which manufacture, process, compound, or produce items of tangible personal property from recyclable materials, within the Commonwealth, for sale. For purposes of determining "purchase price paid" under this section, the taxpayer may use the original total capitalized cost of such machinery and equipment, less capitalized interest.

2. The Department of Environmental Quality shall certify that such machinery and equipment are integral to the recycling process before the taxpayer shall be allowed the tax credit under this section. The taxpayer shall also submit purchase receipts and invoices as may be necessary to confirm the taxpayer's statement of purchase price paid, with the income tax return to verify the amount of purchase price paid for the recycling machinery and equipment.

3. No taxpayer shall be denied the credit under this section based solely on another person's use of the tangible personal property produced by the taxpayer, provided that the tangible personal property was sold by the taxpayer to an unaffiliated person in an arm's-length sale.

4. No credit shall be allowed under this section for machinery and equipment unless the machinery and equipment manufacture, process, compound, or produce items of tangible personal property from recyclable materials.

B. The total credit allowed under this section in any taxable year shall not exceed 40 percent of the Virginia income tax liability of such taxpayer.

C. Any tax credit not used for the taxable year in which the purchase price on recycling machinery and equipment was paid may be carried over for credit against the taxpayer's income taxes in the 10 succeeding taxable years until the total credit amount is used.

D. The Department of Taxation shall administer the tax credits under this section. Beginning with credits allowable for taxable year 2015, in no case shall the Department issue more than $2 million in tax credits pursuant to this section in any fiscal year of the Commonwealth. A taxpayer shall not be allowed to claim any tax credit unless it has applied to the Department of Environmental Quality for certification as described in subdivision A 2 and the Department of Environmental Quality has issued a written certification stating that the machinery and equipment purchased are integral to the recycling process. If the amount of tax credits approved under this section by the Department of Taxation for any taxable year exceeds $2 million, the Department shall apportion the credits by dividing $2 million by the total amount of tax credits so approved, to determine the percentage of otherwise allowed tax credits each taxpayer shall receive.

E. In the event a corporation converts to a partnership, limited liability company, or electing small business corporation (S corporation), such business entity shall be entitled to any unused

credits of the corporation. Credits earned by a partnership, limited liability company, electing small business corporation (S corporation), or a predecessor corporation entitled to such credits, shall be allocated to the individual partners, members, or shareholders, respectively, in proportion to their ownership or interest in such business entities.

1998, c. 253; 2001, c. 91; 2004, c. 611; 2007, cc. 529, 593; 2009, c. 34; 2015, cc. 49, 94.

§ 58.1-439.8. Repealed

Repealed by Acts 2009, c. 34, cl. 2.

§ 58.1-439.9. Tax credit for certain employers hiring recipients of Temporary Assistance for Needy Families

A. As used in this section:

"Qualified business employer" means an employer whose business employed not more than 100 employees at the time that the employer first hired a qualified employee.

"Qualified employee" means an employee who is a Virginia resident and is a recipient of Temporary Assistance for Needy Families (TANF) in accordance with the provisions of Chapter 6 (§ 63.2-600 et seq.) of Title 63.2.

B. For taxable years beginning on and after January 1, 1999, a qualified business employer shall be allowed a credit against the taxes imposed by Articles 2 (§ 58.1-320 et seq.), 6 (§ 58.1-360 et seq.), and 10 (§ 58.1-400 et seq.) of Chapter 3 of this title in an amount equal to five percent of the annual salary actually paid during the taxable year to a qualified employee. However, the annual amount of the credit shall not exceed $750 per qualified employee. Qualified business employers entitled to the credit pursuant to this section shall provide written evidence, satisfactory to the Tax Commissioner, of employing such qualified employee for the taxable year in which the credit is claimed.

C. For purposes of this section, the amount of any credit attributable to a partnership, electing small business corporation (S corporation), or limited liability company shall be allocated to the individual partners, shareholders, or members, respectively, in proportion to their ownership or interest in such business entities.

D. Any credit not usable for the taxable year may be carried over for the next three taxable years. The amount of credit allowed pursuant to this section shall not exceed the tax imposed for such taxable year. No credit shall be carried back to a preceding taxable year. If a qualified business employer that is subject to the tax limitation imposed pursuant to this subsection is allowed another credit pursuant to any other section of this Code, or has a credit carryover from a preceding taxable year, such employer shall be considered to have first utilized any credit allowed which does not have a carryover provision, and then any credit which is carried forward from a preceding taxable year, prior to the utilization of any credit allowed pursuant to this section.

E. The amount of tax credits available under this section in any fiscal year shall not exceed the amount appropriated for such year as provided in the general appropriation act.

F. The State Board of Social Services shall promulgate regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) establishing procedures for claiming the tax credit provided by this section.

1998, c. 486; 2002, c. 747.

§ 58.1-439.10. Tax credit for purchase of waste motor oil burning equipment

A. For taxable years beginning on and after January 1, 1999, a taxpayer who operates a business facility within the Commonwealth which accepts waste motor oil from the public shall be allowed a credit against the taxes imposed pursuant to Articles 2 (§ 58.1-320 et seq.) and 10 (§ 58.1-400 et seq.) of this chapter in an amount equal to fifty percent of the purchase price paid during the taxable year for equipment used exclusively for burning waste motor oil at the business facility. The total credit allowed to any taxpayer under this section in any taxable year shall not exceed $5,000.

B. The Department of Environmental Quality shall certify that such equipment is used to burn waste motor oil at a business facility within the Commonwealth which accepts waste motor oil from the public before the taxpayer shall be entitled to the tax credit under this section. The taxpayer shall also submit with his income tax return such receipts, invoices, and other documentation as may be necessary to confirm the taxpayer's statement of the purchase price paid for the waste motor oil burning equipment. Any tax credit under this section shall be used only for the taxable year in which the purchase price of the waste motor oil burning equipment was paid.

C. For purposes of this section, the amount of any credit attributable to the purchase of equipment used exclusively for burning waste motor oil by a partnership or electing small business corporation (S corporation) shall be allocated to the individual partners or shareholders in proportion to their ownership or interest in the partnership or S corporation.

1998, c. 896.

§ 58.1-439.11. Repealed

Repealed by Acts 2016, c. 305, cl. 2.

§ 58.1-439.12. Riparian forest buffer protection for waterways tax credit

A. For all taxable years beginning on or after January 1, 2000, any corporation that owns land abutting a waterway on which timber is harvested, and that forbears harvesting timber on certain portions of the land near the waterway, shall be allowed a credit against the tax imposed by § 58.1-400 as set forth in this section. For purposes of this section, "waterway" means any perennial or intermittent stream of water depicted on the then most current United States Geological Survey topographical map.

B. The State Forester shall develop guidelines setting forth the general requirements of qualifying for the credit, including the land for which credit is eligible. To qualify for the credit the

corporation must comply with an individualized Forest Stewardship Plan to be certified by the State Forester. In no event shall the distance from such waterway to the far end of the timber buffer, on which the tax credit is based, be less than thirty-five feet or more than three hundred feet. The minimum duration for the buffer shall be fifteen years. The State Forester shall check each certified buffer annually to verify its continued compliance with the taxpayer's Forest Stewardship Plan. If the State Forester discovers that the timber in that portion of the land retained as a buffer has been harvested prior to the end of the required term, written notification of such noncompliance shall be delivered to the taxpayer by the State Forester.

C. The tax credit shall be an amount equal to twenty-five percent of the value of timber in that portion of land retained as a buffer. The amount of such credit shall not exceed $17,500 or the total amount of the tax imposed by this chapter, whichever is less, in the year that the timber outside the buffer was harvested. If the amount of the credit exceeds the taxpayer's liability for such taxable year, the excess may be carried over for credit against income taxes in the next five taxable years until the total amount of the tax credit has been taken. The land which is the subject of a tax credit under this section cannot again be the subject of a tax credit under this section for at least fifteen years.

D. To claim the credit authorized under this section, the taxpayer shall apply to the State Forester, who shall determine the amount of credit, using the assessed value of the timber in that portion of land retained as a buffer, and issue a certificate thereof to the taxpayer. The taxpayer shall attach the certificate to the Virginia tax return on which the credit is claimed. In the event the timber in that portion of land retained as a buffer is harvested by the taxpayer or any other person prior to the end of the term originally established in the taxpayer's individualized Forest Stewardship Plan, the taxpayer shall repay the tax credit claimed. Within sixty days after receiving written notification from the State Forester that the taxpayer's plan no longer qualifies for the credit, repayment shall be made to the Department of Taxation. If repayment is not made within the sixty-day period, the State Forester shall notify the locality's Commonwealth Attorney for assistance in collecting the funds from the taxpayer.

2000, cc. 568, 607.

§ 58.1-439.12:01. Credit for cigarettes manufactured and exported

A. For purposes of this section:

"Base year export volume" means the number of cigarettes manufactured by a corporation, which cigarettes were also exported by such manufacturer during its taxable year beginning in calendar year 2004.

"Cigarette or cigarettes" means the same as that term is defined in § 58.1-1031.

"Current year export volume" means the number of cigarettes manufactured by a corporation, which cigarettes were also exported by such manufacturer in the taxable year for which credit

under this section is claimed. The term shall only apply for taxable years beginning on and after January 1, 2006.

"Exported" or "exports" means the shipment of cigarettes to a foreign country.

"Manufactured" or "manufactures" means manufactured in Virginia.

B. For taxable years beginning on and after January 1, 2006, but before January 1, 2016, any corporation that manufactures cigarettes in Virginia, which cigarettes are exported by such manufacturer, shall be allowed a credit against the tax imposed by § 58.1-400 for such exported cigarettes as follows:

1. If the current year export volume of the corporation is less than 50 percent of the base year export volume for the corporation, no credit shall be allowed for the taxable year.

2. If the current year export volume of the corporation is at least 50 percent but less than 60 percent of the base year export volume for the corporation, the credit allowed shall equal $0.20 per 1,000 cigarettes of the current year export volume.

3. If the current year export volume of the corporation is at least 60 percent but less than 80 percent of the base year export volume for the corporation, the credit allowed shall equal $0.25 per 1,000 cigarettes of the current year export volume.

4. If the current year export volume of the corporation is at least 80 percent but less than 100 percent of the base year export volume for the corporation, the credit allowed shall equal $0.30 per 1,000 cigarettes of the current year export volume.

5. If the current year export volume of the corporation is at least 100 percent but less than 120 percent of the base year export volume for the corporation, the credit allowed shall equal $0.35 per 1,000 cigarettes of the current year export volume.

6. If the current year export volume of the corporation is at least 120 percent of the base year export volume for the corporation, the credit allowed shall equal $0.40 per 1,000 cigarettes of the current year export volume.

C. In no event shall the credit allowed under this section for any taxable year to any corporation exceed the lesser of $6 million or 50 percent of the corporation's income tax liability to the Commonwealth for such taxable year.

D. The total amount of tax credits granted under this section for each fiscal year of the Commonwealth shall not exceed $6 million. A corporation meeting the requirements of this section shall be eligible to receive a tax credit to the extent the corporation reserves such tax credit through the Department as provided herein.

The Department shall establish policies and procedures for the reservation of tax credits by eligible corporations. Such policies and procedures shall provide (i) requirements for applying for reservations of tax credits; (ii) a system for allocating the available amount of tax credits among

eligible corporations; (iii) a method for the issuance of reservations to eligible corporations that did not initially receive a reservation in any year, if the Department determines that tax credit reservations were issued to other corporations that did not use, or were determined to be wholly or partially ineligible for, a reserved tax credit; and (iv) a procedure for the cancellation and reallocation of tax credit reservations allocated to eligible corporations that, after reserving tax credits, have been determined to be ineligible for all or a portion of the tax credits reserved. In no case shall a corporation be allowed to carry over any tax credit to be applied against any income tax for taxable years subsequent to the taxable year of export.

Actions of the Department relating to the approval or denial of applications for reservations for tax credits pursuant to this section shall be exempt from the provisions of the Administrative Process Act pursuant (§ 2.2-4000 et seq.).

E. A corporation claiming the credit under this section for a taxable year shall submit with its application for reservation of tax credits and its state income tax return a written statement certifying its base year export volume and current year export volume. It shall also submit with such application and return a listing of its export volumes as reported on its monthly reports to the Bureau of Alcohol, Tobacco and Firearms of the United States Department of the Treasury for each month of the taxable year and a listing for each month of the taxable year of its export volumes.

2004, Sp. Sess. I, c. 4; 2005, c. 951; 2006, Sp. Sess. I, c. 2.

§ 58.1-439.12:02. Biodiesel and green diesel fuels producers tax credit

A. For purposes of this section:

"Biodiesel fuel" means a fuel composed of mono-alkyl esters of long-chain fatty acids derived from vegetable oils or animal fats, designated B100, and meeting the requirements of ASTM D6751.

"Green diesel fuel" means a fuel produced from nonfossil renewable resources including agricultural or silvicultural plants, animal fats, residue and waste generated from the production, processing, and marketing of agricultural products, silvicultural products, and other renewable resources, and meeting applicable ASTM specifications.

"Feedstock" means the agricultural or other renewable resources, whether plant or animal derived, used to produce biodiesel or green diesel fuels.

"Producer" means any person, entity, or agricultural cooperative association, as defined in the Agricultural Cooperative Association Act (§ 13.1-312 et seq.) that, in a calendar year, produces in the Commonwealth up to two million gallons of biodiesel or green diesel fuels using feedstock originating domestically within the United States.

B. For taxable years beginning on or after January 1, 2008, any taxpayer who is a biodiesel fuel or green diesel fuel producer shall be entitled to a nonrefundable credit against the taxes imposed by § 58.1-320 or 58.1-400 in an amount equal to $0.01 per gallon of biodiesel or green diesel fuels produced by such taxpayer. However, the annual amount of the credit shall not exceed $5,000. The

taxpayer shall be eligible for the credit during the first three years of production of biodiesel or green diesel fuels.

Any taxpayer entitled to a credit under this section may transfer unused but otherwise allowable credits for use by another taxpayer on Virginia income tax returns. A taxpayer who transfers any amount of the credit in accordance with this section shall file a notification of such transfer to the Department of Taxation in accordance with procedures and forms prescribed by the Tax Commissioner.

C. The Department of Mines, Minerals and Energy shall certify that the biodiesel or green diesel fuels producer has satisfied the requirements of this section for the taxable year in which the credit is allowed. In addition, the taxpayer shall submit with his income tax return all documentation as required by the Department of Taxation. Any credit not usable for the taxable year may be carried over the next three taxable years. The amount of the credit allowed pursuant to this section shall not exceed the tax imposed for such taxable year.

D. For purposes of this section, the amount of any credit attributable to a partnership, electing small business corporation (S corporation), or limited liability company shall be allocated to the individual partners, shareholders, or members, respectively, in proportion to their ownership or interest in such business entity.

2008, c. 482.

§ 58.1-439.12:03. Motion picture production tax credit

A. For taxable years beginning on and after January 1, 2011, but prior to January 1, 2019, any motion picture production company with qualifying expenses of at least $250,000 with respect to a motion picture production filmed in Virginia shall be allowed a refundable credit against the taxes imposed by § 58.1-320 or 58.1-400 in an amount equal to 15 percent of the production company's qualifying expenses or 20 percent of such expenses if the production is filmed in an economically distressed area of the Commonwealth. The Virginia Economic Development Partnership Authority shall designate which areas of the Commonwealth are deemed to be economically distressed areas. The credit shall be computed based on all of the taxpayer's qualifying expenses incurred with respect to the production, not just the qualifying expenses incurred during the taxable year. The refundable tax credits allowed under this section are for one tax year only. Where a motion picture production continues for more than one year, a separate application for each tax year the production continues must be made. The grant of a refundable tax credit for a motion picture film production does not create a presumption that the production will receive a refundable tax credit for subsequent tax years. Effective on January 1, 2013, for purposes of eligibility for refundable tax credits, a motion picture film production shall include digital interactive media production.

"Qualifying expenses" means the sum of the following amounts spent in the Commonwealth by a production company in connection with the production of a motion picture filmed in the Commonwealth:

1. Goods and services leased or purchased. For goods with a purchase price of $25,000 or more, the amount included in qualifying expenses is the purchase price less the fair market value of the good at the time the production is completed.

2. Compensation and wages, except in the case of each individual who directly or indirectly receives compensation in excess of $1 million for personal services with respect to a single production. In such a case, only the first $1 million of salary shall be considered a qualifying expense. An individual is deemed to receive compensation indirectly when a production company pays a personal service company or an employee leasing company that pays the individual.

B. 1. In addition to the refundable credit authorized under subsection A, such production company shall be allowed an additional refundable credit equal to 10 percent of the total aggregate payroll for Virginia residents employed in connection with the production of a film in the Commonwealth when total production costs in the Commonwealth are at least $250,000 but not more than $1 million. This additional credit shall be equal to 20 percent of the total aggregate payroll for Virginia residents employed in connection with such production when total production costs in the Commonwealth exceed $1 million.

2. In addition to the credits authorized under subsection A and subdivision B 1, such production company shall be allowed an additional refundable credit equal to 10 percent of the total aggregate payroll for Virginia residents employed for the first time as actors or members of a production crew in connection with the production of a film in the Commonwealth.

C. 1. For purposes of this section, in the case of an episodic television series, an entire season of episodes shall be deemed to be one production.

2. No credit shall be allowed under this section for any production that (i) is political advertising, (ii) is a television production of a news program or live sporting event, (iii) contains obscene material, or (iv) is a reality television production.

D. 1. The issuance of refundable tax credits under this section shall be in accordance with procedures, qualifying criteria, and deadlines established by the Department and the Virginia Film Office. The qualifying criteria established by the Virginia Film Office shall take into account whether the production involves physical production within the Commonwealth of Virginia, the number of residents of Virginia that will be employed in the production and the level of compensation they will be paid, the extent to which the production will contribute to the support and expansion of existing production companies in Virginia, the extent to which the production will impact existing local businesses and the local economy, the extent to which the production will involve existing and new companies located in Virginia, and other relevant considerations. The

taxpayer shall apply for a credit by submitting such forms as prescribed by the Virginia Film Office, prior to the start of production in Virginia.

2. Any taxpayer seeking credits under this section must enter into a memorandum of understanding with the Virginia Film Office that at a minimum provides the requirements that the taxpayer must meet in order to receive the credits, including but not limited to the estimated amount of money to be spent in Virginia, the timeline for completing production in Virginia, and the maximum amount of credits allocated to the taxpayer.

3. Once the taxpayer has satisfied all of the requirements in the memorandum of understanding to the satisfaction of the Virginia Film Office and completed production in Virginia, the taxpayer may claim the applicable amount of credits up to the amount that has been allocated by the Virginia Film Office on a return filed for the taxable year in which the Virginia production activities are completed. The return must state the name of the production, provide a description of the production, and include a detailed accounting of the qualifying expenses with respect to which a credit is claimed.

E. A taxpayer allowed a credit under this section must maintain and make available for inspection any information or records required by the Tax Commissioner. The taxpayer has the burden of proving eligibility for a credit and the amount of the credit. The Tax Commissioner shall consult with the Virginia Film Office in order to determine the amount of qualifying expenses.

F. For purposes of this section, the amount of any credit attributable to a partnership, electing small business corporation (S corporation), or limited liability company may be allocated to the individual partners, shareholders, or members, respectively, in proportion to their ownership or interest in such business entities.

G. The total amount of credits allocated to all taxpayers under this section shall not exceed $2.5 million in the 2010-2012 biennium, $5 million in the 2012-2014 biennium, and $6.5 million in fiscal year 2015 and each fiscal year thereafter.

H. The Department of Taxation, in consultation with the Virginia Film Office, must publish by November 1 of each year for the 12-month period ending the preceding December 31 the following information:

1. Location of sites used in a production for which a credit was claimed;

2. Qualifying expenses for which a credit was claimed, classified by whether the expenses were for goods, services, or compensation paid by the production company;

3. Number of people employed in the Commonwealth with respect to credits claimed; and

4. Total cost to the Commonwealth's general fund of the credits claimed.

Notwithstanding any provision of § 58.1-3 or any other law, such information shall be published by the Department, even if such information is not classified, so as to prevent the identification of particular taxpayers, reports, or returns and items.

I. The Tax Commissioner shall develop guidelines implementing the provisions of this section, including but not limited to the definition of "qualifying expenses" and setting forth the record-keeping requirements applicable to production companies claiming this credit. Such guidelines shall be exempt from the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

2010, cc. 419, 599; 2014, c. 730.

§ 58.1-439.12:04. Tax Credits for Technology Industries Grants for Investment and Research and Development in Tobacco-Dependent Localities

A. As used in this section, unless the context clearly shows otherwise, the term or phrase:

"Dwelling unit" means an individual housing unit in an apartment building, an individual housing unit in multifamily residential housing, a single-family residence, or any similar individual housing unit.

"Eligible housing area" means a census tract in the Richmond Metropolitan Statistical area in which less than 10 percent of the residents live below the poverty level, as defined by the United States government and determined by the most recent United States census.

"Housing authority" means a housing authority created under Article 1 (§ 36-1 et seq.) of Chapter 1 of Title 36 of this Code or other government agency that is authorized by the United States government under the United States Housing Act of 1937 (42 U.S.C. § 1437 et seq.) to administer a housing choice voucher program, or the authorized agent of such a housing authority that is authorized to act upon that authority's behalf. The term shall also include the Virginia Housing Development Authority.

"Housing choice voucher" means tenant-based assistance by a housing authority pursuant to 42 U.S.C. § 1437f et seq.

"Participating landlord" means any person engaged in the business of the rental of dwelling units who is (i) subject to the Virginia Residential Landlord and Tenant Act (§ 55-248.2 et seq.) and (ii) performing obligations under a contract with a housing authority relating to the rental of qualified housing units.

"Qualified housing unit" means a dwelling unit that is located in an eligible housing area for which a portion of the rent is paid by a housing authority, which payment is pursuant to a housing choice voucher program.

B. For taxable years beginning on or after January 1, 2010, a participating landlord renting a qualified housing unit shall be eligible for a credit against the tax levied pursuant to § 58.1-320 or 58.1-400 in an amount equal to 10 percent of the fair market value of the rent for the unit, computed for that portion of the taxable year in which the unit was rented by such landlord to a

tenant participating in a housing choice voucher program. The Department of Housing and Community Development shall administer and issue the tax credit under this section. If (i) the same parcel of real property contains four or more dwelling units and (ii) the total number of qualified housing units on the parcel in the relevant taxable year exceeds 25 percent of the total dwelling units on the parcel, then the tax credit under this section shall apply only to a limited number of qualified housing units with regard to such parcel of real property, with the limited number being equal to 25 percent of the total dwelling units on such parcel of real property in the taxable year.

C. The Department of Housing and Community Development shall issue tax credits under this section on a fiscal year basis. The maximum amount of tax credits that may be issued under this section in each fiscal year shall be $250,000.

D. Participating landlords shall apply to the Department of Housing and Community Development for tax credits under this section. The Department of Housing and Community Development shall determine the credit amount allowable to the participating landlord for the taxable year and shall also determine the fair market value of the rent for the qualified housing unit based on the fair market rent approved by the United States Department of Housing and Urban Development as the basis for the tenant-based assistance provided through the housing choice voucher program for the qualified housing unit. In issuing tax credits under this section, the Department of Housing and Community Development shall provide a written certification to the participating landlord, which certification shall report the amount of the tax credit approved by the Department. The participating landlord shall attach the certification to the applicable income tax return.

E. The Board of Housing and Community Development shall establish and issue guidelines for purposes of implementing the provisions of this section. The guidelines shall provide for the allocation of tax credits among participating landlords requesting credits. The guidelines shall be exempt from the Administrative Process Act (§ 2.2-4000 et seq.).

F. In no case shall the amount of credit taken by a participating landlord for any taxable year exceed the total amount of tax imposed by this chapter for the taxable year. If the amount of credit issued by the Department of Housing and Community Development for a taxable year exceeds the landlord's tax liability imposed by this chapter for such taxable year, then the amount that exceeds the tax liability may be carried over for credit against the income taxes of the participating landlord in the next five taxable years or until the total amount of the tax credit issued has been taken, whichever is sooner. Credits granted to a partnership, limited liability company, or electing small business corporation (S corporation) shall be allocated to the individual partners, members, or shareholders, respectively, in proportion to their ownership or interest in such business entities.

G. In the event that the amount of the qualified requests for tax credits for participating landlords in the fiscal year exceeds $250,000, the Department of Housing and Community Development shall pro rate the tax credits among the qualified applicants.

2010, cc. 520, 608; 2013, cc. 23, 374; 2016, c. 305.

§ 58.1-439.12:05. Green job creation tax credit

A. For taxable years beginning on or after January 1, 2010, but before January 1, 2018, a taxpayer shall be allowed a credit against the tax levied pursuant to § 58.1-320 or 58.1-400 for each new green job created within the Commonwealth by the taxpayer. The amount of the annual credit for each new green job shall be $500 for each annual salary that is $50,000 or more. The credit shall be first allowed for the taxable year in which the job has been filled for at least one year and for each of the four succeeding taxable years provided the job is continuously filled during the respective taxable year. Each taxpayer qualifying under this section shall be allowed the credit for up to 350 green jobs.

B. As used in this section:

"Green job" means employment in industries relating to the field of renewable, alternative energies, including the manufacture and operation of products used to generate electricity and other forms of energy from alternative sources that include hydrogen and fuel cell technology, landfill gas, geothermal heating systems, solar heating systems, hydropower systems, wind systems, and biomass and biofuel systems. The Secretary of Commerce and Trade shall develop a detailed definition and list of jobs that qualify for the credit provided in this section and shall post them on his website.

"Job" means employment of an indefinite duration of an individual whose primary work activity is related directly to the field of renewable, alternative energies and for which the standard fringe benefits are paid by the taxpayer, requiring a minimum of either (i) 35 hours of an employee's time per week for the entire normal year of such taxpayer's operations, which "normal year" must consist of at least 48 weeks, or (ii) 1,680 hours per year. Positions created when a job function is shifted from an existing location in the Commonwealth shall not qualify as a job under this section.

C. To qualify for the tax credit provided in subsection A, a taxpayer shall demonstrate that the green job was created by the taxpayer, and that such job was continuously filled in the Commonwealth during the respective taxable year.

D. The amount of the credit shall not exceed the total amount of tax imposed by this chapter for the taxable year in which the green job was continuously filled. If the amount of credit allowed exceeds the taxpayer's tax liability for such taxable year, the amount that exceeds the tax liability may be carried over for credit against the income taxes of the taxpayer in the next five taxable years or until the total amount of the tax credit has been taken, whichever is sooner.

E. Credits granted to a partnership, limited liability company, or electing small business corporation (S corporation) shall be allocated to the individual partners, members, or shareholders, respectively, in proportion to their ownership or interest in such business entities.

F. If the taxpayer is eligible for the tax credits under this section and creates green jobs in an enterprise zone, as defined in § 59.1-539, such taxpayer may also qualify for the benefits under the Enterprise Zone Grant Program (§ 59.1-538 et seq.).

G. A taxpayer shall not be allowed a tax credit pursuant to this section for any green job for which the taxpayer is allowed (i) a major business facility job tax credit pursuant to § 58.1-439 or (ii) a federal tax credit for investments in manufacturing facilities for clean energy technologies that would foster investment and job creation in clean energy manufacturing.

2010, cc. 722, 727; 2015, cc. 249, 486.

§ 58.1-439.12:06. International trade facility tax credit

A. As used in this section, unless the context requires a different meaning:

"Affiliated companies" means two or more companies related to each other so that (i) one company owns at least 80 percent of the voting power of the other or others or (ii) the same interest owns at least 80 percent of the voting power of two or more companies.

"Capital investment" means 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 in an international trade facility directly related to the movement of cargo. Capital investment includes expenditures associated with any 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. For purposes of this section, machinery, tools, and equipment shall be deemed to include only that property placed in service by the international trade facility on and after January 1, 2011. Machinery, tools, and equipment excludes property (i) for which a credit under this section was previously granted; (ii) placed in service by the taxpayer, a related party as defined in § 267(b) of the Internal Revenue Code, as amended, or by a trade or business under common control as defined in § 52(b) of the Internal Revenue Code, as amended; or (iii) previously in service in the Commonwealth that has a basis in the hands of the person acquiring it, determined in whole or in part by reference to the basis of such property in the hands of the person from whom acquired or § 1014(a) of the Internal Revenue Code, as amended.

"Capital investment" shall not include:

1. The cost of acquiring any real property or building;

2. The cost of furnishings;

3. Any expenditure associated with appraisal, architectural, engineering, or interior design fees;

4. Loan fees, points, or capitalized interest;

5. Legal, accounting, realtor, sales and marketing, or other professional fees;

6. Closing costs, permit fees, user fees, zoning fees, impact fees, and inspection fees;

7. Bids, insurance, signage, utilities, bonding, copying, rent loss, or temporary facilities costs incurred during construction;

8. Utility hook-up or access fees;

9. Outbuildings; or

10. The cost of any well or septic system.

"Credit year" means the first taxable year following the taxable year in which the international trade facility commenced or expanded its operations. A separate credit year and a three-year allowance shall exist for each distinct international trade facility of a single taxpayer.

"International trade facility" means a company that:

1. Is engaged in port-related activities, including, but not limited to, warehousing, distribution, freight forwarding and handling, and goods processing;

2. Uses maritime port facilities located in the Commonwealth; and

3. Transports at least five percent more cargo through maritime port facilities in the Commonwealth during the taxable year than was transported by the company through such facilities during the preceding taxable year.

"New, permanent full-time position" means a job of indefinite duration, created by the company after establishing or expanding an international trade facility in the Commonwealth, requiring a minimum of 35 hours of employment per week for each employee for the entire normal year of the company's operations, or a position of indefinite duration that requires a minimum of 35 hours of employment per week for each employee for the portion of the taxable year in which the employee was initially hired for, or transferred to, the international trade facility in the Commonwealth. Seasonal or temporary positions, or a job created when a job function is shifted from an existing location in the Commonwealth to the international trade facility, and positions in building and grounds maintenance, security, and other such positions that are ancillary to the principal activities performed by the employees at the international trade facility shall not qualify as new, permanent full-time positions.

"Normal year" means at least 48 weeks in a calendar year.

"Qualified full-time employee" means an employee filling a new, permanent full-time position in an international trade facility in the Commonwealth.

"Qualified trade activities" means the completed exportation or importation of at least (i) one International Organization for Standardization ocean container with a minimum 20-foot length, (ii) 16 tons of noncontainerized cargo, or (iii) one unit of roll-on/roll-off cargo through any publicly or privately owned cargo facility located within the Commonwealth through which cargo is transported. Export cargo must be loaded on a barge or ocean-going vessel and import cargo must be discharged from a barge or ocean-going vessel at such facility.

B. For taxable years beginning on and after January 1, 2011, but before January 1, 2022, a taxpayer satisfying the requirements of this section shall be allowed a credit against the taxes imposed by Articles 2 (§ 58.1-320 et seq.) and 10 (§ 58.1-400 et seq.). The amount of the credit earned pursuant to this section shall be equal to either (i) $3,500 per qualified full-time employee that results from increased qualified trade activities by the taxpayer or (ii) an amount equal to two percent of the capital investment made by the taxpayer to facilitate the increased qualified trade activities. The election of which tax credit amount to claim shall be the responsibility of the taxpayer. Both tax credits shall not be claimed for the same activities that occur in a calendar year. The portion of the $3,500 credit earned with respect to any qualified full-time employee who works in the Commonwealth for less than 12 full months during the credit year shall be determined by multiplying the credit amount by a fraction, the numerator of which is the number of full months such employee worked for the international trade facility in the Commonwealth during the credit year and the denominator of which is 12.

C. The Tax Commissioner shall issue tax credits under this section, and in no case shall the Tax Commissioner issue more than $1,250,000 in tax credits pursuant to this section in any fiscal year of the Commonwealth. If the amount of tax credits requested under this section for any taxable year exceeds $1,250,000, such credits shall be allocated proportionately among all qualified taxpayers. The Tax Commissioner shall not issue tax credits under this section subsequent to the Commonwealth's fiscal year ending on June 30, 2022. The taxpayer shall not be allowed to claim any tax credit under this section unless it has applied to the Department for the tax credit and the Department has approved the credit. The Department shall determine the credit amount allowable for the taxable year and shall provide a written certification to the taxpayer, which certification shall report the amount of the tax credit approved by the Department. The taxpayer shall attach the certification to the applicable income tax return.

D. The amount of the credit allowed pursuant to this section shall not exceed 50 percent of the tax imposed for the taxable year. Any remaining credit amount may be carried forward for the next 10 taxable years. In the event a taxpayer who is subject to the limitation imposed pursuant to this subsection is allowed a different tax credit pursuant to another section of the Code, or has a credit carry forward from a preceding taxable year, such taxpayer shall be considered to have first utilized any credit that does not have a carry forward provision, and then any credit carried forward from a preceding taxable year, before using any of the credit allowed pursuant to this section.

E. No credit shall be earned for any employee (i) for whom a credit under this section was previously earned by a related party as defined in § 267(b) of the Internal Revenue Code, as amended, or a trade or business under common control as defined in § 52(b) of the Internal Revenue Code, as amended; (ii) who was previously employed in the same job function in Virginia by a related party as defined in § 267(b) of the Internal Revenue Code, as amended, or a trade or business under common control as defined in § 52(b) of the Internal Revenue Code, as amended; (iii) whose job function was previously performed at a different location in Virginia by an employee of

the taxpayer, by a related party as defined in § 267(b) of the Internal Revenue Code, as amended, or by a trade or business under common control as defined in § 52(b) of the Internal Revenue Code, as amended; or (iv) whose job function previously qualified for a credit under this section at a different major business facility, as defined in subsection C of § 58.1-439, on behalf of the taxpayer, by a related party as defined in § 267(b) of the Internal Revenue Code, as amended, or a trade or business under common control as defined in § 52(b) of the Internal Revenue Code, as amended.

F. For purposes of this section, the amount of any credit attributable to a partnership, electing small business corporation (S corporation), or limited liability company shall be allocated to the individual partners, shareholders, or members, respectively, in proportion to their ownership or interest in such business entities.

G. For purposes of this section, two or more affiliated companies may elect to aggregate the number of jobs created for qualified full-time employees or the amounts of capital investments as the result of the establishment or expansion by the individual companies in order to qualify for the credit allowed herein.

H. Recapture of the credit amount, under the following circumstances, shall be accomplished by increasing the tax in any of the five years succeeding the taxable year in which a credit has been earned pursuant to this section if the number of qualified full-time employees falls below the average number of qualified full-time employees during the taxable year. The tax increase amount shall be determined by (i) recalculating the credit that would have been earned for the original taxable year using the decreased number of qualified full-time employees and (ii) subtracting the recalculated credit amount from the amount previously earned. In the event that the average number of qualified full-time employees employed at an international trade facility falls below the number employed by the taxpayer prior to claiming any credits pursuant to this section in any of the five taxable years succeeding the year in which the credits were earned, all credits earned with respect to the international trade facility shall be recaptured. No credit amount shall be recaptured more than once pursuant to this subsection. Any recapture pursuant to this subsection shall reduce credits earned but not yet allowed, and credits allowed but carried forward, before the taxpayer's tax liability is increased.

I. Notwithstanding the provisions of § 58.1-3, the Department of Taxation shall annually provide information to the Virginia Port Authority related to tax credits issued pursuant to this section.

J. The Tax Commissioner shall issue guidelines that are necessary and desirable to carry out the provisions of this section, including (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. Such

guidelines shall be exempt from the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

2011, c. 49; 2012, cc. 846, 849; 2014, c. 423; 2016, c. 69.

§ 58.1-439.12:07. Telework expenses tax credit

A. As used in this section, unless the context requires a different meaning:

"Eligible telework expenses" means expenses incurred during the taxable year pursuant to a telework agreement, in an amount up to $1,200 for each participating employee, that enable a participating employee to begin to telework, which expenses are not otherwise the subject of a deduction from income claimed by the employer in any tax year. Such expenses include, but are not limited to, expenses paid or incurred to purchase computers, computer-related hardware and software, modems, data processing equipment, telecommunications equipment, high-speed Internet connectivity equipment, computer security software and devices, and all related delivery, installation, and maintenance fees. Such expenses do not include replacement costs for computers, computer-related hardware and software, modems, data processing equipment, telecommunications equipment, or computer security software and devices at the principal place of business when that equipment is relocated to the telework site. Eligible telework expenses may also include up to a maximum of $20,000 for conducting a telework assessment on or after January 1, 2012. Such costs shall be ineligible for this credit if they are otherwise taken as a deduction by the employer from income in any taxable year. The costs included and allowed to be taken as a credit include program planning costs, which may include direct program development and training costs, raw labor costs, and professional consulting fees. Such costs shall not include those for which a credit is claimed under any other provision of this chapter. The credit for conducting a telework assessment shall be allowed once for each employer meeting the requirements herein.

"Employer" means any employer subject to the income tax imposed by this chapter.

"Participating employee" means an employee who has entered into a telework agreement with his employer on or after July 1, 2012, in accordance with policies set by the Virginia Department of Rail and Public Transportation. The term shall not include an individual who is self-employed or an individual who ordinarily spends a majority of the workday at a location other than the place where his duties are normally performed.

"Telework" means the performance of normal and regular work functions on a workday at a location different from the place where work functions are normally performed and that is within or closer to the participating employee's residence. The term shall not include home-based businesses, extensions of the workday, or work performed on a weekend or holiday.

"Telework agreement" means an agreement signed by the employer and the participating employee, on or after July 1, 2012, but before January 1, 2017, that defines the terms of a telework arrangement, including the number of days per month the participating employee will tele-

work in order to qualify for the credit, and any restrictions on the location from which the employee will telework.

"Telework assessment" means an optional assessment leading to the development of policies and procedures necessary to implement a formal telework program that would qualify the employer for the credit provided in this section, including but not limited to a workforce profile; a telework program business case and plan; a detailed accounting of the purpose, goals, and operating procedures of the telework program; methodologies for measuring telework program activities and success; and a deployment schedule for increasing telework activity.

B. For taxable years beginning on or after January 1, 2012, but before January 1, 2017, an employer shall be allowed a credit against the taxes imposed pursuant to Articles 2 (§ 58.1-320 et seq.) and 10 (§ 58.1-400 et seq.) of this chapter for eligible telework expenses incurred during the calendar year that ends during the taxable year. The amount of the credit shall not exceed $50,000 per employer for each calendar year.

Such expenses may be incurred (i) only once per participating employee and (ii) directly by the employer on behalf of the participating employee or directly by the participating employee and reimbursed by the employer.

C. For purposes of this section, the amount of any credit attributable to a partnership, electing small business corporation (S corporation), or limited liability company shall be allocated to the individual partners, shareholders, or members, respectively, in proportion to their ownership or interest in such business entities.

D. The amount of tax credits available to any employer under this section in any taxable year shall not exceed the employer's tax liability. No unused tax credit shall be carried forward or carried back against the employer's tax liability. An employer shall be ineligible for a tax credit pursuant to this section if such employer claims a credit based on the jobs, wages, or other expenses for the same employee under any other provision of this chapter.

E. An employer seeking to claim a tax credit provided herein shall submit a reservation application to the Tax Commissioner for tentative approval of the credit between September 1 and October 31 of the year preceding the calendar year in which the eligible telework expenses will be incurred. The Tax Commissioner shall establish policies and procedures for the reservation of tax credits by eligible employers. Such policies and procedures shall provide (i) requirements for applying for reservations of tax credits; (ii) a system for allocating the available amount of tax credits among eligible employers; and (iii) a procedure for the cancellation and reallocation of tax credit reservations allocated to eligible employers that, after reserving tax credits, have been determined to be ineligible for all or a portion of the tax credits reserved. Such application shall certify that the employer would not have incurred the eligible telework expenses for which the credit is sought but for the availability of such credit. The Tax Commissioner shall provide tentative approval of the applications no later than December 31 of the year in which the applications are received. When

the application and amount of tax credits have been approved and the employer applicant notified, such employer may make purchases approved for the tax credits during the immediately following taxable year or lose the right to such credits.

F. In no event shall the aggregate amount of tax credits approved by the Tax Commissioner exceed $1 million annually. In the event the credit amounts on the applications filed with the Tax Commissioner exceed the maximum aggregate amount of tax credits, then the tax credits shall be allocated on a pro rata basis based on the amounts allowed by subsection B among the eligible employers who filed timely applications.

G. Actions of the Tax Commissioner relating to the approval or denial of applications for reservations of tax credits pursuant to this section shall be exempt from the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

2011, cc. 409, 417; 2012, cc. 327, 341.

§ 58.1-439.12:08. Research and development expenses tax credit

A. As used in this section, unless the context requires a different meaning:

"Virginia base amount" means the base amount as defined in § 41(c) of the Internal Revenue Code, as amended, that is attributable to Virginia, determined by (i) substituting "Virginia qualified research and development expense" for "qualified research expense"; (ii) substituting "Virginia qualified research" for "qualified research"; and (iii) instead of "fixed base percentage, " using:

1. The percentage that the Virginia qualified research and development expense for the three taxable years immediately preceding the current taxable year in which the expense is incurred is of the taxpayer's total gross receipts for such years; or

2. The percentage that the Virginia qualified research and development expense for the applicable number of taxable years immediately preceding the current taxable year in which the expense is incurred is of the taxpayer's total gross receipts for such years, for the taxpayer that has fewer than three but at least one prior taxable year.

"Virginia gross receipts" means the same as "gross receipts" as defined in § 58.1-3700.1.

"Virginia qualified research" means qualified research, as defined in § 41(d) of the Internal Revenue Code, as amended, that is conducted in the Commonwealth.

"Virginia qualified research and development expenses" means qualified research expenses, as defined in § 41(b) of the Internal Revenue Code, as amended, incurred for Virginia qualified research.

B. For taxable years beginning on or after January 1, 2011, but before January 1, 2022, a taxpayer shall be allowed a credit against the tax levied pursuant to § 58.1-320 or 58.1-400 in an amount equal to (i) 15 percent of the first $300,000 in Virginia qualified research and development expenses paid or incurred by the taxpayer during the taxable year or (ii) 20 percent of the first

$300,000 in Virginia qualified research and development expenses paid or incurred by the taxpayer during the taxable year if the Virginia qualified research was conducted in conjunction with a Virginia public or private college or university, to the extent the expenses exceed the Virginia base amount for the taxpayer.

C.1. Effective for taxable years beginning on or after January 1, 2016, at the election of the taxpayer, the credit otherwise allowed under this section shall be computed under this subsection and shall equal 10 percent of the difference of (i) the Virginia qualified research and development expenses paid or incurred by the taxpayer during the taxable year and (ii) 50 percent of the average Virginia qualified research and development expenses paid or incurred by the taxpayer for the three taxable years immediately preceding the taxable year for which the credit is being determined. If the taxpayer did not pay or incur Virginia qualified research and development expenses in any one of the three taxable years immediately preceding the taxable year for which the credit is being determined, the tax credit shall equal five percent of the Virginia qualified research and development expenses paid or incurred by the taxpayer during the relevant taxable year.

2. The aggregate amount of credits allowed to each taxpayer under this subsection shall not exceed $45,000 for the taxable year, except that the aggregate amount of credits allowed to each taxpayer shall not exceed $60,000 for the taxable year if the Virginia qualified research was conducted in conjunction with a Virginia public or private college or university.

D. The aggregate amount of credits available under this section for each fiscal year of the Commonwealth shall be as follows:

1. For taxable years beginning on or after January 1, 2014, but prior to January 1, 2016, the total amount of credits granted for each of fiscal years 2015 and 2016 shall not exceed $6 million.

2. For taxable years beginning on or after January 1, 2016, the total amount of credits granted for each fiscal year of the Commonwealth beginning with fiscal year 2017 shall not exceed $7 million.

E. A taxpayer meeting the requirements of this section shall be eligible to receive a tax credit as provided herein. The Department shall develop and publish guidelines for applications and such guidelines shall be exempt from the Administrative Process Act (§ 2.2-4000 et seq.). Applications must be received by the Department no later than July 1 of the calendar year following the close of the taxable year in which the expenses were paid or incurred. In the event approved applications for the tax credits allowed under this section exceed the amount of credits specified in subsection D for the taxable year, the Department shall apportion the credits by dividing the amount of credits specified in subsection D by the total amount of tax credits approved, to determine the percentage of allowed tax credits each taxpayer shall receive. In the event that the total amount of approved tax credits under this section for all applications for any taxable year is less than the maximum amount of credits for the year as specified in subsection D, the Department shall allocate credits up to the maximum amount as specified in subsection D, on a pro rata basis, to taxpayers who are already approved for the tax credit for the taxable year, in the following amounts:

1. If the taxpayer computed the credit pursuant to subsection B, in an amount equal to 15 percent of the second $300,000 in qualified research expenses during the taxable year or 20 percent of the second $300,000 in qualified research expenses if the Virginia qualified research was conducted in conjunction with a public or private college or university located in the Commonwealth; or

2. If the taxpayer computed the credit under subdivision C 1, in an amount equal to the excess of the limitation set forth in subdivision C 2, up to an additional $45,000 per taxpayer, or $60,000 per taxpayer if the Virginia qualified research was conducted in conjunction with a public or private college or university located in the Commonwealth.

F. If the amount of the credit allowed exceeds the taxpayer's tax liability for the taxable year, the amount that exceeds the tax liability shall be refunded to the taxpayer, subject to the limitations set forth in the guidelines developed by the Department.

G. Any taxpayer who claims the tax credit for Virginia qualified research and development expenses pursuant to this section shall not use such expenses as the basis for claiming any other credit provided under the Code of Virginia.

H. Effective for taxable years beginning on or after January 1, 2016, no taxpayer with Virginia qualified research and development expenses in excess of $5 million for the taxable year shall claim both the credit allowed pursuant to this section and the credit allowed under § 58.1-439.12:11 for such year.

I. Credits granted to a partnership, limited liability company, or electing small business corporation (S corporation) shall be allocated to the individual partners, members, or shareholders, respectively, in proportion to their ownership interests in such entities or in accordance with a written agreement entered into by such individual partners, members, or shareholders, unless the partnership, limited liability company, or electing small business corporation (S corporation) elects for such credits not to be so allocated but to be received and claimed at the entity level by the partnership, limited liability company, or electing small business corporation (S corporation) pursuant to guidelines that shall be issued by the Department for purposes of such election.

J. The Department shall adopt guidelines to prescribe standards for determining when research and development is considered conducted in the Commonwealth for purposes of allowing the credit under this section. In adopting guidelines, the Department may consider (i) the location where the research and development is performed; (ii) the residence or business location of the taxpayer or taxpayers conducting the research and development; (iii) the location where supplies used in the research and development are consumed; and (iv) any other factors that the Department deems to be relevant.

K. The Tax Commissioner's annual report to the Governor on revenue collections by tax source shall include (i) the total number of applicants approved for tax credits pursuant to this section for the applicable tax year and (ii) the total amount of such tax credits approved for the applicable tax year.

L. The Department shall require taxpayers applying for the credit to provide information including (i) the number of full-time employees employed by the taxpayer in the Commonwealth during the taxable year for which the credit is sought; (ii) the taxpayer's sector or sectors according to the 2012 edition of the North American Industry Classification System (NAICS) as published by the United States Census Bureau; (iii) a brief description of the area, discipline, or field of Virginia qualified research performed by the taxpayer; (iv) the total gross receipts or anticipated total gross receipts of the taxpayer for the taxable year for which the credit is sought; and (v) whether the Virginia qualified research was conducted in conjunction with a Virginia public or private college or university. The Department shall aggregate and summarize the information collected and make it available to the Governor and any member of the General Assembly upon request, regardless of the number of taxpayers applying for the credit.

M. No tax credit shall be allowed pursuant to this section if the otherwise qualified research and development expenses are paid for or incurred by a taxpayer for research conducted in the Commonwealth on human cells or tissue derived from induced abortions or from stem cells obtained from human embryos. The foregoing provision shall not apply to research conducted using stem cells other than embryonic stem cells.

2011, cc. 742, 745; 2014, cc. 227, 306; 2016, cc. 300, 433, 661.

§ 58.1-439.12:09. Barge and rail usage tax credit

A. As used in this section:

"International trade facility" means a company that:

1. Is doing business in the Commonwealth and engaged in port-related activities, including but not limited to warehousing, distribution, freight forwarding and handling, and goods processing;

2. Has the sole discretion and authority to move cargo originating or terminating in the Commonwealth;

3. Uses maritime port facilities located in the Commonwealth; and

4. Uses barges and rail systems to move cargo through port facilities in the Commonwealth rather than trucks or other motor vehicles on the Commonwealth's highways.

B. For taxable years beginning on and after January 1, 2011, but before January 1, 2022, a company that is an international trade facility shall be allowed a credit against the taxes imposed by Articles 2 (§ 58.1-320 et seq.), 6 (§ 58.1-360 et seq.), and 10 (§ 58.1-400 et seq.); Chapter 12 (§ 58.1-1200 et seq.); Article 1 (§ 58.1-2500 et seq.) of Chapter 25; or Article 2 (§ 58.1-2620 et seq.) of Chapter 26. The amount of the credit shall be $25 per 20-foot equivalent unit (TEU), 16 tons of noncontainerized cargo, or one unit of roll-on/roll-off cargo moved by barge or rail rather than by trucks or other motor vehicles on the Commonwealth's highways.

C. The Tax Commissioner shall issue tax credits under this section, and in no case shall the Tax Commissioner issue more than $500,000 in tax credits pursuant to this section in any fiscal year

of the Commonwealth. In addition, the Tax Commissioner shall not issue tax credits under this section subsequent to the Commonwealth's fiscal year ending on June 30, 2022. The international trade facility shall not be allowed to claim any tax credit under this section unless it has applied to the Department for the tax credit and the Department has approved the credit. The Department shall determine the credit amount allowable for the year and shall provide a written certification to the international trade facility, which certification shall report the amount of the tax credit approved by the Department. The international trade facility shall attach the certification to the applicable tax return.

D. For purposes of this section, the amount of any credit attributable to a partnership, electing small business corporation (S corporation), or limited liability company shall be allocated to the individual partners, shareholders, or members, respectively, in proportion to their ownership or interest in such business entities.

E. Any credit not usable for the taxable year may be carried over for the next five taxable years or until such credit is fully taken, whichever occurs first. The amount of the credit allowed pursuant to this section shall not exceed the tax imposed for such taxable year. No credit shall be carried back to a preceding taxable year. If a taxpayer that is subject to the tax limitation imposed pursuant to this subsection is allowed another credit pursuant to any other section of this Code or has a credit carryover from a preceding taxable year, such taxpayer shall be considered to have first utilized any credit allowed that does not have a carryover provision, and then any credit that is carried forward from a preceding taxable year, before using any credit allowed pursuant to this section.

F. Notwithstanding the provisions of § 58.1-3, the Department of Taxation shall annually provide information to the Virginia Port Authority related to tax credits issued pursuant to this section.

G. The Tax Commissioner shall issue guidelines that are necessary and desirable to carry out the provisions of this section, including (i) the computation and carryover of the credits provided under this section and (ii) the establishment of criteria for international trade facilities. Such guidelines shall be exempt from the Administrative Process Act (§ 2.2-4000 et seq.).

2011, cc. 820, 861; 2012, cc. 846, 849; 2014, c. 423; 2016, c. 69.

§ 58.1-439.12:10. Virginia port volume increase tax credit

A. As used in this section, unless the context indicates otherwise:

"Agricultural entity" means a person engaged in growing or producing wheat, grains, fruits, nuts, crops; tobacco, nursery, or floral products; forestry products excluding raw wood fiber or wood fiber processed or manufactured for use as fuel for the generation of electricity; or seafood, meat, dairy, or poultry products.

"Base year port cargo volume" means the total amount of (i) net tons of noncontainerized cargo, (ii) TEUs of cargo, or (iii) units of roll-on/roll-off cargo actually transported by way of a

waterborne ship or vehicle through a port facility during the period from (i) January 1, 2010, through December 31, 2010, for manufacturing-related entities or (ii) January 1, 2012, through December 31, 2012, for agricultural entities and mineral and gas entities. Base year port cargo volume must be at least 75 net tons of noncontainerized cargo, 10 loaded TEUs, or 10 units of roll-on/roll-off cargo for a taxpayer to be eligible for the credits provided in this section. For a taxpayer that does not ship that amount in the year ending December 31, 2010, or December 31, 2012, as applicable, including a taxpayer who locates in Virginia after such periods, its base cargo volume will be measured by the initial January 1 through December 31 calendar year in which it meets the requirements of 75 net tons of noncontainerized cargo, 10 loaded TEUs, or 10 units of roll-on/roll-off cargo. Base year port cargo volume must be recalculated each calendar year after the initial base year.

"Major facility" means a new facility to be 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.

"Manufacturing-related entity" means a person engaged in the manufacturing of goods or the distribution of manufactured goods.

"Mineral and gas entity" means a person engaged in severing minerals or gases from the earth.

"Port cargo volume" means the total amount of net tons of noncontainerized cargo, net units of roll-on/roll-off cargo, or containers measured in TEUs of cargo transported by way of a waterborne ship or vehicle through a port facility.

"Port facility" means any publicly or privately owned facility located within the Commonwealth through which cargo is transported by way of a waterborne ship or vehicle to or from destinations outside the Commonwealth and which handles cargo owned by third parties in addition to cargo owned by the port facility's owner.

"TEU" or "20-foot equivalent unit" means a volumetric measure based on the size of a container that is 20 feet long by eight feet wide by eight feet, six inches high.

B.1. For taxable years beginning on and after January 1, 2011, but before January 1, 2022, a taxpayer that is an agricultural entity, manufacturing-related entity, or mineral and gas entity that uses port facilities in the Commonwealth and increases its port cargo volume at these facilities by a minimum of five percent in a single calendar year over its base year port cargo volume is eligible to claim a credit against the tax levied pursuant to §§ 58.1-320 and 58.1-400 in an amount determined by the Virginia Port Authority. The Virginia Port Authority may waive the requirement that port cargo volume be increased by a minimum of five percent over base year port cargo volume for any taxpayer that qualifies as a major facility.

2. Qualifying taxpayers that increase their port cargo volume by a minimum of five percent in a qualifying calendar year shall receive a $50 credit against the tax levied pursuant to §§ 58.1-320 and 58.1-400 for each TEU, unit of roll-on/roll-off cargo, or 16 net tons of noncontainerized

cargo, as applicable, above the base year port cargo volume. A qualifying taxpayer that is a major facility as defined in this section shall receive a $50 credit against the tax levied pursuant to §§ 58.1-320 and 58.1-400 for each TEU, unit of roll-on/roll-off cargo, or 16 net tons of non-containerized cargo, as applicable, transported through a port facility during the major facility's first calendar year. A qualifying taxpayer may not receive more than $250,000 for each calendar year except as provided for in subdivision C 2. The maximum amount of credits allowed for all qualifying taxpayers pursuant to this section shall not exceed $3.2 million for each calendar year. The Virginia Port Authority shall allocate the credits pursuant to the provisions in subdivisions C 1 and C 2.

3. If the credit exceeds the taxpayer's tax liability for the taxable year, the excess amount may be carried forward and claimed against income taxes in the next five succeeding taxable years.

4. The credit may be claimed by the taxpayer as provided in subdivision 1 only if the taxpayer owns the cargo at the time the port facilities are used.

C. 1. For every year in which a taxpayer claims the credit, the taxpayer shall submit an application to the Virginia Port Authority by March 1 of the calendar year after the calendar year in which the increase in port cargo volume occurs. The taxpayer shall attach a schedule to the taxpayer's application to the Virginia Port Authority with the following information and any other information requested by the Virginia Port Authority or the Department:

a. A description of how the base year port cargo volume and the increase in port cargo volume were determined;

b. The amount of the base year port cargo volume;

c. The amount of the increase in port cargo volume for the taxable year stated both as a percentage increase and as a total increase in net tons of noncontainerized cargo, TEUs of cargo, and units of roll-on/roll-off cargo, as applicable, including information that demonstrates an increase in port cargo volume in excess of the minimum amount required to claim the tax credits pursuant to this section;

d. Any tax credit utilized by the taxpayer in prior years; and

e. The amount of tax credit carried over from prior years.

2. If on March 15 of each year the $3.2 million amount of credit is not fully allocated among qualifying taxpayers, then those taxpayers who have been allocated a credit for the prior year shall be allowed a pro rata share of the remaining allocated credit up to $3.2 million. 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, then the $3.2 million in credits shall be prorated among the qualifying taxpayers who requested the credit.

3. The taxpayer shall claim the credit on its income tax return in a manner prescribed by the Department. The Department may require a copy of the certification form issued by the Virginia

Port Authority be attached to the return or otherwise provided. Qualifying taxpayers may also claim the credit pursuant to § 58.1-439.12:09 for the same containers, noncontainerized cargo, or roll-on/roll-off units of cargo for which a credit is claimed under this section provided such taxpayer meets the applicable criteria set forth therein.

D. Credits granted to a partnership, limited liability company, or electing small business corporation (S corporation) shall be allocated to the individual partners, members, or shareholders, respectively, in proportion to their ownership interests in such business entities.

2011, cc. 831, 872; 2012, cc. 846, 849; 2013, c. 744; 2014, c. 423; 2016, c. 69.

§ 58.1-439.12:11. Major research and development expenses tax credit

A. As used in this section, unless the context requires a different meaning:

"Virginia qualified research" means qualified research, as defined in § 41(d) of the Internal Revenue Code, as amended, that is conducted in the Commonwealth.

"Virginia qualified research and development expenses" means qualified research expenses, as defined in § 41(b) of the Internal Revenue Code, as amended, incurred for Virginia qualified research.

B. For taxable years beginning on or after January 1, 2016, but before January 1, 2022, a taxpayer with Virginia qualified research and development expenses for the taxable year in excess of $5 million shall be allowed a credit against the tax levied pursuant to § 58.1-320 or 58.1-400 in an amount equal to 10 percent of the difference between (i) the Virginia qualified research and development expenses paid or incurred by the taxpayer during the taxable year and (ii) 50 percent of the average Virginia qualified research and development expenses paid or incurred by the taxpayer for the three taxable years immediately preceding the taxable year for which the credit is being determined. If the taxpayer did not pay or incur Virginia qualified research and development expenses in any one of the three taxable years immediately preceding the taxable year for which the credit is being determined, the tax credit shall equal five percent of the Virginia qualified research and development expenses paid or incurred by the taxpayer during the relevant taxable year.

C. The aggregate amount of credits granted for each fiscal year of the Commonwealth pursuant to this section shall not exceed $20 million.

D. In the event approved applications for the tax credits allowed under this section exceed $20 million for any taxable year, the Department shall apportion the credits by dividing $20 million by the total amount of tax credits approved, to determine the percentage of allowed tax credits each taxpayer shall receive.

E. The amount of the credit claimed for the taxable year shall not exceed 75 percent of the total amount of tax imposed by this chapter upon the taxpayer for the taxable year. Any credit not usable for the taxable year for which the credit was first allowed may be carried over for credit

against the income taxes of the taxpayer in the next 10 succeeding taxable years or until the total amount of the tax credit has been taken, whichever is sooner.

F. Any taxpayer who claims the tax credit for Virginia qualified research and development expenses pursuant to this section shall not use such expenses as the basis for claiming any other credit provided under the Code of Virginia.

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

H. The Department shall develop and publish guidelines under this section including guidelines for applying for the tax credit. Such guidelines shall be exempt from the Administrative Process Act (§ 2.2-4000 et seq.). Applications for the tax credit must be received by the Department no later than July 1 of the calendar year following the close of the taxable year in which the expenses were paid or incurred.

The Department shall also adopt guidelines to prescribe standards for determining when research and development is considered conducted in the Commonwealth for purposes of allowing the credit under this section. In adopting guidelines, the Department may consider (i) the location where the research and development is performed; (ii) the residence or business location of the taxpayer or taxpayers conducting the research and development; (iii) the location where supplies used in the research and development are consumed; and (iv) any other factors that the Department deems to be relevant.

I. No tax credit shall be allowed pursuant to this section, if the otherwise qualified research and development expenses are paid for or incurred by a taxpayer for research conducted in the Commonwealth on human cells or tissue derived from induced abortions or from stem cells obtained from human embryos. The foregoing provision shall not apply to research conducted using stem cells other than embryonic stem cells.

2016, cc. 300, 661.

§ 58.1-439.12:12. Food crop donation tax credit

A. As used in this section, unless the context requires a different meaning:

"Food crops" means grains, fruits, nuts, or vegetables.

"Nonprofit food bank" means an entity located in the Commonwealth that is exempt from taxation under § 501(c)(3) of the Internal Revenue Code, as amended or renumbered, and organized with a principal purpose of providing food to the needy.

B. For taxable years beginning on or after January 1, 2016, but before January 1, 2022, any person engaged in the business of farming as defined under 26 C.F.R. §1.175-3 that donates food crops grown by the person in the Commonwealth to a nonprofit food bank shall be allowed a credit

against the tax levied pursuant to § 58.1-320 or 58.1-400 for the taxable year of the donation. The person shall be allowed a credit in an amount equal to 30 percent of the fair market value of such food crops donated by the person to a nonprofit food bank during the taxable year but not to exceed an aggregate credit of $5,000 for all such donations made by the person during such year.

C. Credit shall be allowed under this section only if (i) the use of the donated food crops by the donee nonprofit food bank is related to providing food to the needy, (ii) the donated food crops are not transferred for use outside the Commonwealth or used by the donee nonprofit food bank as consideration for services performed or personal property purchased, and (iii) the donated food crops, if sold by the donee nonprofit food bank, are sold to the needy, other nonprofit food banks, or organizations that intend to use the food crops to provide food to the needy.

D. The Tax Commissioner shall issue tax credits under this section, and in no case shall the Tax Commissioner issue more than $250,000 in tax credits pursuant to this section in any fiscal year of the Commonwealth. For every taxable year for which a person seeks the tax credit under this section, the person shall submit an application to the Department in accordance with the forms, instructions, dates, and procedures prescribed by the Department. In order to claim any credit, for each donation made that is approved by the Department for tax credit, the person making the donation shall attach to the person's income tax return a written certification prepared by the donee nonprofit food bank. The written certification prepared by the donee nonprofit food bank shall identify the donee nonprofit food bank, the person donating food crops to it, the date of the donation, the number of pounds of food crops donated, and the fair market value of the food crops donated. The certification shall also include a statement by the donee nonprofit food bank that its use and disposition of the food crops complies with the requirements under subsection C.

E. The amount of the credit claimed shall not exceed the total amount of tax imposed by this chapter upon the person for the taxable year. Any credit not usable for the taxable year for which the credit was first allowed may be carried over for credit against the income taxes of the person in the next five succeeding taxable years or until the total amount of the tax credit has been taken, whichever is sooner.

F. Credits granted to a partnership, limited liability company, or electing small business corporation (S corporation) shall be allocated to the individual partners, members, or shareholders, respectively, in proportion to their ownership or interest in such business entities.

G. The Tax Commissioner shall develop guidelines implementing the provisions of this section. The guidelines shall include procedures for the allocation of tax credits among participating taxpayers. Such guidelines shall be exempt from the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

2016, cc. 304, 391.

Article 13.1 - GRANTS FOR INVESTMENT AND RESEARCH AND DEVELOPMENT IN TOBACCO-DEPENDENT LOCALITIES

§§ 58.1-439.13 through 58.1-439.16. Repealed

Repealed by Acts 2016, c. 305, cl. 2.

§ 58.1-439.14. Tax credit for research and development activity occurring in tobacco-dependent localities

A. As used in this section:

"Eligible research and development activity" means qualified research expenses as defined in § 41 of the Internal Revenue Code of 1986, 26 U.S.C. § 41, as in effect on June 30, 1992, in the fields of advanced computing, advanced materials, biotechnology, electronic device technology, environmental technology, or medical device technology, or other technology field, when such expenses are paid or incurred by a taxpayer for such activity occurring at the taxpayer's place of business in a tobacco-dependent locality of the Commonwealth.

"Tobacco-dependent locality" means those Virginia localities that have traditionally economically depended on tobacco and shall be identified by the Tobacco Region Revitalization Commission.

B. For taxable years beginning on and after January 1, 2000, but before January 1, 2010, a taxpayer shall be allowed a credit against the taxes imposed by Articles 2 (§ 58.1-320 et seq.), 6 (§ 58.1-360 et seq.), and 10 (§ 58.1-400 et seq.) of this chapter as set forth in this section. The amount of credit allowed pursuant to this section shall be equal to fifty percent of the amount paid or incurred by a taxpayer for an eligible research and development activity during the taxable year.

C. A taxpayer may claim the credit for the taxable year in which the eligible research and development activity occurred. No taxpayer shall be eligible to claim a credit of more than $500,000 per taxable year. The amount of credit allowed shall not exceed the tax imposed for the taxable year. Any credit not usable for the taxable year because of such limitation may be, to the extent usable and subject to subsections D and E, carried over for the next ten succeeding taxable years. No credit shall be carried back to a preceding taxable year. If a taxpayer that is subject to the tax limitation imposed pursuant to this subsection is allowed another credit pursuant to any other section of the Code of Virginia, or has a credit carryover from a preceding taxable year, such taxpayer shall be considered to have first utilized any credit allowed that does not have a carryover provision, and then any credit that is carried forward from a preceding taxable year, prior to the utilization of any credit allowed pursuant to this section.

D. The tax credit established in this section may be claimed to the extent moneys from the Tobacco Indemnification and Community Revitalization Fund, created in § 3.2-3106, are deposited into the Technology Initiative in Tobacco-Dependent Localities Fund, established under § 58.1-439.15, for the purpose of funding this credit. If the amount of credits otherwise allowable

under this section exceed the amount deposited in the Fund for a fiscal year, such credits shall be allocated to taxpayers on a pro rata basis by the Department of Taxation.

E. Tax credit redemption and transfer.

If the taxpayer has no state tax liability for two consecutive taxable years for which credit is otherwise allowable, the credit amount applicable to such taxable years may be redeemable by the Tax Commissioner on behalf of the Commonwealth for seventy-five percent of the face value within ninety days after the taxpayer has filed the applicable income tax return for the second such taxable year. If the Commonwealth does not redeem the tax credit or upon the taxpayer's election, such tax credit shall be transferable by sale.

F. For purposes of this section, the amount of any credit attributable to a partnership, electing small business corporation (S corporation), or limited liability company shall be allocated to the individual partners, shareholders or members, respectively, in proportion to their ownership or interest in such business entities.

G. A taxpayer who claims the credit for eligible research and development activity under this section may not use such research and development activity as the basis for claiming any other credit provided under the Code of Virginia.

2000, c. 1042.

§ 58.1-439.15. Technology Initiative in Tobacco-Dependent Localities Fund

There is hereby created in the Department of the Treasury a special fund that shall be known as the Technology Initiative in Tobacco-Dependent Localities Fund (the Fund). The Fund shall be composed of those moneys deposited from the Tobacco Indemnification and Community Revitalization Fund as provided in § 3.2-3106. The Department of the Treasury shall administer and manage the Fund. Moneys in the Fund shall be made available to reimburse the general fund for providing tax credits under this article, including redeeming tax credits pursuant to § 58.1-439.14 and pursuant to subsection I of § 58.1-439.12:06, and shall be used to reimburse the general fund for the administrative costs incurred by the Department of Taxation in implementing the provisions of this article. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. After all eligible tax credits have been claimed through all taxable years beginning before January 1, 2013, any moneys left in the Fund shall revert to the Tobacco Indemnification and Community Revitalization Fund.

2000, c. 1042; 2011, c. 49.

§ 58.1-439.15:01. Tax incentives for use of domestic tobacco

A. Definitions. -- As used in this section, unless the context requires a different meaning:

"Domestic tobacco" means tobacco grown, produced, and processed entirely within the United States of America.

"Master Settlement Agreement" means the same as that term is defined in § 3.2-4200.

"Small tobacco product manufacturer" means an entity making an assignment pursuant to § 3.2-4202 that directly (and not exclusively through any affiliate) manufactures fewer than 5 billion cigarettes in the calendar year in which the assignment is made, whose manufactured cigarettes contain a minimum of 75 percent domestic tobacco, who is not participating in the Master Settlement Agreement, who is in compliance with all obligations imposed pursuant to Article 1 (§ 3.2-4200 et seq.) and Article 3 (§ 3.2-4204 et seq.) of Chapter 42 of Title 3.2, and who has executed an assignment and payment to the Commonwealth in accordance with Article 2 (§ 3.2-4202 et seq.) of Chapter 42 of Title 3.2.

B. Any small tobacco product manufacturer who intends to apply for incentive payments pursuant to this section shall, by January 31 of the applicable year, provide in a written certification to the Department such information as the Department may require to establish: (i) the percentage of domestic tobacco contained in cigarettes produced by such manufacturer; and (ii) the amount paid for domestic tobacco purchased by the manufacturer on or after January 1, 2005, which was used by the manufacturer in manufacturing cigarettes in the immediately preceding year. For all such certifications made by an eligible manufacturer that are approved by the Department, the Department shall cause incentive payments to be made to the small tobacco product manufacturer. Incentive payments shall first be made pursuant to this section in calendar year 2007 for calendar year 2006 manufacturing.

The Tax Commissioner shall, as soon as practicable but no later than 30 days after the manufacturer's certification, make a written certification to the Comptroller of the amount of the incentive payment to be made to the small tobacco product manufacturer. As soon as practicable after receipt of the Tax Commissioner's certification, but no later than 15 days after receipt of such certification, the Comptroller shall draw his warrant from funds in the appropriate escrow account pursuant to §§ 3.2-4201 and 3.2-4203 on the Treasurer of Virginia in the proper amount in favor of the small tobacco product manufacturer.

C. 1. For incentive payments made in 2007 for calendar year 2006, the incentive payments shall equal the amount paid by the small tobacco product manufacturer for domestic tobacco that was purchased by the manufacturer on or after January 1, 2005, and was used by the manufacturer in manufacturing cigarettes in 2006, provided that the aggregate incentive payments for which a small tobacco product manufacturer may be eligible for such purchases shall not exceed a total sum equal to 25 percent of the amount that the manufacturer paid in calendar year 2005 into a qualified escrow account established pursuant to Article 1 (§ 3.2-4200 et seq.) of Chapter 42 of Title 3.2 net of any escrow funds released and reverted back to the small tobacco product manufacturer that are attributable to calendar year 2005 escrow payments pursuant to subdivision B 2 of § 3.2-4201 as it was in effect on June 30, 2005. The amount paid into a qualified escrow account in calendar year 2005 shall also include the amount that the small tobacco product manufacturer paid into a qualified escrow account for all calendar years prior to 2005 net of any

escrow funds released and reverted back to the manufacturer for such years pursuant to subdivision B 2 of § 3.2-4201 as it was in effect on June 30, 2005.

The aggregate amount of incentive payments to all small tobacco product manufacturers pursuant to this subdivision shall not exceed $9 million. However, if the amount of the incentive payments computed by the Tax Commissioner pursuant to the provisions of this subdivision without regard to such $9 million limitation is in excess of $9 million, the share of the $9 million to be paid to each qualifying small tobacco product manufacturer shall be determined as provided in subsection D.

2. For incentive payments made in 2008 for calendar year 2007, the incentive payments shall equal the amount paid by the small tobacco product manufacturer for domestic tobacco that was purchased by the manufacturer on or after January 1, 2005, and was used by the manufacturer in manufacturing cigarettes in 2007, provided that the aggregate incentive payments for which a small tobacco product manufacturer may be eligible for such purchases shall not exceed a total sum equal to 20 percent of the amount that the manufacturer paid in calendar year 2006 into a qualified escrow account established pursuant to Article 1 (§ 3.2-4200 et seq.) of Chapter 42 of Title 3.2.

The aggregate amount of incentive payments to all small tobacco product manufacturers pursuant to this subdivision shall not exceed $8 million. However, if the amount of the incentive payments computed by the Tax Commissioner pursuant to the provisions of this subdivision without regard to such $8 million limitation is in excess of $8 million, the share of the $8 million to be paid to each qualifying small tobacco product manufacturer shall be determined as provided in subsection D.

3. For incentive payments made in 2009 for calendar year 2008, the incentive payments shall equal the amount paid by the small tobacco product manufacturer for domestic tobacco that was purchased by the manufacturer on or after January 1, 2005, and was used by the manufacturer in manufacturing cigarettes in 2008, provided that the aggregate incentive payments for which a small tobacco product manufacturer may be eligible for such purchases shall not exceed a total sum equal to 15 percent of the amount that the manufacturer paid in calendar year 2007 into a qualified escrow account established pursuant to Article 1 (§ 3.2-4200 et seq.) of Chapter 42 of Title 3.2.

The aggregate amount of incentive payments to all small tobacco product manufacturers pursuant to this subdivision shall not exceed $6 million. However, if the amount of the incentive payments computed by the Tax Commissioner pursuant to the provisions of this subdivision without regard to such $6 million limitation is in excess of $6 million, the share of the $6 million to be paid to each qualifying small tobacco product manufacturer shall be determined as provided in subsection D.

4. For incentive payments made in 2010 for calendar year 2009, the incentive payments shall equal the amount paid by the small tobacco product manufacturer for domestic tobacco that was purchased by the manufacturer on or after January 1, 2005, and was used by the manufacturer in manufacturing cigarettes in 2009, provided that the aggregate incentive payments for which a small tobacco product manufacturer may be eligible for such purchases shall not exceed a total sum equal to 10 percent of the amount that the manufacturer paid in calendar year 2008 into a qualified escrow account established pursuant to Article 1 (§ 3.2-4200 et seq.) of Chapter 42 of Title 3.2.

The aggregate amount of incentive payments to all small tobacco product manufacturers pursuant to this subdivision shall not exceed $4 million. However, if the amount of the incentive payments computed by the Tax Commissioner pursuant to the provisions of this subdivision without regard to such $4 million limitation is in excess of $4 million, the share of the $4 million to be paid to each qualifying small tobacco product manufacturer shall be determined as provided in subsection D.

5. For incentive payments made in 2011 for calendar year 2010, the incentive payments shall equal the amount paid by the small tobacco product manufacturer for domestic tobacco that was purchased by the manufacturer on or after January 1, 2005, and was used by the manufacturer in manufacturing cigarettes in 2010, provided that the aggregate incentive payments for which a small tobacco product manufacturer may be eligible for such purchases shall not exceed a total sum equal to five percent of the amount that the manufacturer paid in calendar year 2009 into a qualified escrow account established pursuant to Article 1 (§ 3.2-4200 et seq.) of Chapter 42 of Title 3.2.

The aggregate amount of incentive payments to all small tobacco product manufacturers pursuant to this subdivision shall not exceed $3 million. However, if the amount of the incentive payments computed by the Tax Commissioner pursuant to the provisions of this subdivision without regard to such $3 million limitation is in excess of $3 million, the share of the $3 million to be paid to each qualifying small tobacco product manufacturer shall be determined as provided in subsection D.

6. For incentive payments made in 2012 for calendar year 2011, the incentive payments shall equal the amount paid by the small tobacco product manufacturer for domestic tobacco that was purchased by the manufacturer on or after January 1, 2005, and was used by the manufacturer in manufacturing cigarettes in 2011, provided that the aggregate incentive payments for which a small tobacco product manufacturer may be eligible for such purchases shall not exceed a total sum equal to five percent of the amount that the manufacturer paid in calendar year 2010 into a qualified escrow account established pursuant to Article 1 (§ 3.2-4200 et seq.) of Chapter 42 of Title 3.2.

The aggregate amount of incentive payments to all small tobacco product manufacturers pursuant to this subdivision shall not exceed $3 million. However, if the amount of the incentive payments computed by the Tax Commissioner pursuant to the provisions of this subdivision without regard to such $3 million limitation is in excess of $3 million, the share of the $3 million to be paid to each qualifying small tobacco product manufacturer shall be determined as provided in subsection D.

7. No incentive payments shall be made in calendar years subsequent to 2012.

D. If the aggregate amount of the incentive payments to all small tobacco product manufacturers to be made in any calendar year exceeds the aggregate limitation for incentive payments for the year, the payment to each qualifying small tobacco product manufacturer for such year shall be a pro rata share of such aggregate limitation based upon the amount of the incentive payment that would have been made to each qualifying manufacturer for such year if there were no such aggregate limitation.

E. A small tobacco product manufacturer shall not be eligible for any incentive payment under this section for purchases of domestic tobacco that is grown by an agent or director of the small tobacco product manufacturer.

F. The provisions of Chapter 18 (§ 58.1-1800 et seq.) shall apply to the administration of this section, mutatis mutandis.

2005, cc. 899, 901.

§ 58.1-439.16. Tax Commissioner to promulgate regulations

Pursuant to the Administrative Process Act (§ 2.2-4000 et seq.), the Tax Commissioner shall promulgate regulations that are necessary or desirable to carry out the provisions of this article, including (i) computation, carryover, and rollover of the credits provided under this article and (ii) rules and procedures for redeeming and transferring tax credits under § 58.1-439.14.

2000, c. 1042.

§ 58.1-439.17. Grants in lieu of or in addition to tax credits

The Tobacco Region Revitalization Commission created under § 3.2-3101 may establish a grant program for purposes of encouraging qualified investments and eligible research and development activities in tobacco-dependent localities. If the Commission elects to establish such a program, the program may be in addition to the tax credit programs allowed under former §§ 58.1-439.13 and 58.1-439.14. The criteria to receive grants shall be the same as the criteria for the tax credits allowed under former §§ 58.1-439.13 and 58.1-439.14 as they were in effect on December 31, 2009. In any case where a grant is awarded for any investment or for eligible research and development activity, the person receiving the grant may not use such investment or research and development activity as the basis for claiming any credit provided under the Code of Virginia.

2000, c. 1042; 2016, c. 305.

Article 13.2 - NEIGHBORHOOD ASSISTANCE ACT TAX CREDIT

§ 58.1-439.18. Definitions

As used in this article:

"Affiliate" means with respect to any person, any other person directly or indirectly controlling, controlled by, or under common control with such person. For purposes of this definition, "control" (including controlled by and under common control with) shall mean the power, directly or indirectly, to direct or cause the direction of the management and policies of such person whether through ownership or voting securities or by contract or otherwise.

"Business firm" means any corporation, partnership, electing small business (Subchapter S) corporation, limited liability company, or sole proprietorship authorized to do business in this Commonwealth subject to tax imposed by Articles 2 (§ 58.1-320 et seq.) and 10 (§ 58.1-400 et seq.) of Chapter 3, Chapter 12 (§ 58.1-1200 et seq.), Article 1 (§ 58.1-2500 et seq.) of Chapter 25, or Article 2 (§ 58.1-2620 et seq.) of Chapter 26. "Business firm" also means any trust or fiduciary for a trust subject to tax imposed by Article 6 (§ 58.1-360 et seq.) of Chapter 3.

"Commissioner of Social Services" means the Commissioner of Social Services or his designee.

"Community services" means any type of counseling and advice, emergency assistance, medical care, provision of basic necessities, or services designed to minimize the effects of poverty, furnished primarily to low-income persons.

"Contracting services" means the provision, by a business firm licensed by the Commonwealth as a contractor under Chapter 11 (§ 54.1-1100 et seq.) of Title 54.1, of labor or technical advice to aid in the development, construction, renovation, or repair of (i) homes of low-income persons or (ii) buildings used by neighborhood organizations.

"Education" means any type of scholastic instruction or scholastic assistance to a low-income person or an eligible student with a disability.

"Eligible student with a disability" means a student (i) for whom an individualized educational program has been written and finalized in accordance with the federal Individuals with Disabilities Education Act (IDEA), regulations promulgated pursuant to IDEA, and regulations of the Board of Education and (ii) whose family's annual household income is not in excess of 400 percent of the current poverty guidelines.

"Housing assistance" means furnishing financial assistance, labor, material, or technical advice to aid the physical improvement of the homes of low-income persons.

"Job training" means any type of instruction to an individual who is a low-income person that enables him to acquire vocational skills so that he can become employable or able to seek a higher grade of employment.

"Low-income person" means an individual whose family's annual household income is not in excess of 300 percent of the current poverty guidelines.

"Neighborhood assistance" means providing community services, education, housing assistance, or job training.

"Neighborhood organization" means any local, regional or statewide organization whose primary function is providing neighborhood assistance and holding a ruling from the Internal Revenue Service of the United States Department of the Treasury that the organization is exempt from income taxation under the provisions of §§ 501(c)(3) and 501(c)(4) of the Internal Revenue Code of 1986, as amended from time to time, or any organization defined as a community action agency in the Economic Opportunity Act of 1964 (42 U.S.C. § 2701 et seq.), or any housing authority as defined in § 36-3.

"Poverty guidelines" means the poverty guidelines for the 48 contiguous states and the District of Columbia updated annually in the Federal Register by the U.S. Department of Health and Human Services under the authority of § 673(2) of the Omnibus Budget Reconciliation Act of 1981.

"Professional services" means any type of personal service to the public that requires as a condition precedent to the rendering of such service the obtaining of a license or other legal authorization and shall include, but shall not be limited to, the personal services rendered by medical doctors, dentists, architects, professional engineers, certified public accountants, attorneys-at-law, and veterinarians.

"Scholastic assistance" means (i) counseling or supportive services to elementary school, middle school, secondary school, or postsecondary school students or their parents in developing a postsecondary academic or vocational education plan, including college financing options for such students or their parents, or (ii) scholarships.

1981, c. 629, § 63.1-321; 1982, c. 178; 1984, c. 720; 1989, c. 310; 1996, c. 77; 1997, c. 640; 1999, cc. 890, 909; 2002, c. 747, § 63.2-2000; 2008, c. 585; 2009, cc. 10, 851; 2010, c. 164; 2011, cc. 312, 370; 2012, cc. 731, 842; 2016, c. 426.

§ 58.1-439.19. Public policy; business firms; donations

It is hereby declared to be public policy of the Commonwealth to encourage business firms to make donations to neighborhood organizations for the benefit of low-income persons.

1981, c. 629, § 63.1-322; 1997, c. 640; 2002, c. 747, § 63.2-2001; 2008, c. 585; 2012, cc. 731, 842.

§ 58.1-439.20. Proposals; regulations; tax credits authorized; amount for programs

A. Any neighborhood organization may submit a proposal, other than education proposals, to the Commissioner of Social Services requesting an allocation of tax credits for use by business firms making donations to the neighborhood organization. Neighborhood organizations may submit education proposals to the Superintendent of Public Instruction requesting an allocation of tax credits for use by business firms making donations to the neighborhood organization.

The proposal shall set forth the program to be conducted by the neighborhood organization, the low-income persons or eligible students with disabilities to be assisted, the estimated amount to be donated to the program, and the plans for implementing the program.

B. 1. The State Board of Social Services and the Department of Education are hereby authorized to adopt regulations (or, alternatively, guidelines in the case of the Department of Education) for the approval or disapproval of such proposals by neighborhood organizations and for determining the value of the donations. Such regulations or guidelines shall contain a requirement that a neighborhood organization shall have been in existence for at least one year. Also, such regulations or guidelines shall contain a requirement that as a prerequisite for approval, neighborhood organizations with total revenues (including the value of all donations)(i) in excess of $100,000 for the organization's most recent year ended provide to the State Board of Social Services or the Department of Education, as applicable, an audit or review for such year performed by an independent certified public accountant or (ii) of $100,000 or less for the organization's most recent year ended provide to the State Board of Social Services or the Department of Education, as applicable, a compilation for such year performed by an independent certified public accountant. No proposal for an allocation of tax credits shall be untimely filed solely because such audit, review, or compilation was not submitted by the neighborhood organization by the proposal filing deadline, provided that the audit, review, or compilation is submitted to the State Board of Social Services or the Department of Education, as applicable, within the 30-day period immediately following such deadline.

Such regulations or guidelines by the Department of Education shall provide that at least 50 percent of the persons served by the neighborhood organization be low-income persons or eligible students with disabilities and that at least 50 percent of the neighborhood organization's revenues be used to provide services to low-income persons or to eligible students with disabilities. Such regulations by the State Board of Social Services shall provide that at least 50 percent of the persons served by the neighborhood organization be low-income persons as defined in § 58.1-439.18.

In order for a proposal to be approved, the applicant neighborhood organization and any of its affiliates shall meet the requirements of the application regulations or guidelines.

2. The requirements for proposals submitted to the Superintendent of Public Instruction that (i) at least 50 percent of the persons served by the neighborhood organization and each of its affiliates be low-income persons or eligible students with disabilities and (ii) at least 50 percent of the revenues of the neighborhood organization and each of its affiliates be used to provide services to such persons shall not apply to any neighborhood organization for tax credit allocations beginning for fiscal year 2014-2015 and ending with tax credit allocations for fiscal year 2019-2020, provided that (a) the neighborhood organization received an allocation of tax credits for fiscal year 2011-2012 allocations, (b) at least 50 percent of the persons served by the neighborhood organization are low-income persons or eligible students with disabilities, (c) at least 50 percent of the neighborhood organization's revenues are used to provide services to such persons, and (d) none

of the affiliates of the neighborhood organization receives an allocation of tax credits for the program year of such five-year period.

3. Beginning with tax credit allocations for fiscal year 2016-2017 and thereafter, the requirements for a proposal submitted by a neighborhood organization to the Commissioner of Social Services that (i) at least 50 percent of the persons served by each affiliate of the neighborhood organization be low-income persons, (ii) at least 50 percent of the revenues of each affiliate of the neighborhood organization be used to provide services to such persons, (iii) each affiliate also meet the definition of "neighborhood organization" under § 58.1-439.18, and (iv) an audit, review, or compilation for each affiliate be furnished to the Commissioner of Social Services shall not apply in determining the eligibility of the neighborhood organization submitting a proposal, provided that (a) the neighborhood organization otherwise meets all statutory requirements and regulations, (b) the neighborhood organization received a fiscal year 2013-2014 allocation of neighborhood assistance tax credits, and (c) no affiliate of the neighborhood organization submits a proposal for or receives an allocation of tax credits pursuant to this article for the program year for which the neighborhood organization has submitted its proposal.

4. The regulations or guidelines shall provide for the equitable allocation of the available amount of tax credits among the approved proposals submitted by neighborhood organizations. The regulations or guidelines shall also provide that at least 10 percent of the available amount of tax credits each year shall be allocated to qualified programs proposed by neighborhood organizations not receiving allocations in the preceding year; however, if the amount of tax credits for qualified programs requested by such neighborhood organizations is less than 10 percent of the available amount of tax credits, the unallocated portion of such 10 percent of the available amount of tax credits shall be allocated to qualified programs proposed by other neighborhood organizations.

C. If the Commissioner of Social Services or the Superintendent of Public Instruction approves a proposal submitted by a neighborhood organization, the organization shall make the allocated tax credit amounts available to business firms making donations to the approved program. A neighborhood organization shall not assign or transfer an allocation of tax credits to another neighborhood organization without the approval of the Commissioner of Social Services or the Superintendent of Public Instruction, as applicable.

Notwithstanding any other provision of law, (i) no more than an aggregate of $0.825 million in tax credits shall be approved in a fiscal year to a neighborhood organization or to a grouping of neighborhood organization affiliates for all education proposals, and (ii) no more than an aggregate of $0.5 million in tax credits shall be approved in a fiscal year to a neighborhood organization or to a grouping of neighborhood organization affiliates for all other proposals combined. However, if the State Department of Social Services or the Department of Education after the initial allocation of tax credits to approved proposals has a balance of tax credits remaining for the fiscal year that can be used or allocated by a neighborhood organization for a proposal that had been approved for tax credits during the initial allocation by the State Department of Social

Services or the Department of Education, then (a) the Commissioner of Social Services or the Superintendent of Public Instruction, as applicable, shall reallocate the remaining balance of tax credits to such previously approved proposals to the extent that a neighborhood organization can use or allocate additional tax credits for the previously approved proposal and (b) the $0.825 and $0.5 million annual limitations for tax credits approved to a grouping of neighborhood organization affiliates shall be inapplicable to the extent of any balance of tax credits reallocated under clause (a). The balance of tax credits remaining for reallocation shall include the amount of any tax credits that have been granted for a proposal approved during the initial allocation but for which the Commissioner of Social Services or the Superintendent of Public Instruction has been provided notice by the neighborhood organization that it will not be able to use or allocate such amount for the approved proposal.

D. The total amount of tax credits granted for programs approved under this article for each fiscal year shall not exceed the following: for education proposals for approval by the Superintendent of Public Instruction, $8 million for fiscal year 2013-2014, $8.5 million for fiscal year 2014-2015, and $9 million for fiscal year 2015-2016 and each fiscal year thereafter; and for all other proposals for approval by the Commissioner of Social Services, $7 million for fiscal year 2013-2014, $7.5 million for fiscal year 2014-2015, and $8 million for fiscal year 2015-2016 and each fiscal year thereafter.

The Superintendent of Public Instruction and the Commissioner of Social Services shall work cooperatively for purposes of ensuring that neighborhood organization proposals are submitted to the proper state agency. The Superintendent of Public Instruction and the Commissioner of Social Services may request the assistance of the Department of Taxation for purposes of determining whether or not anticipated donations for which tax credits are requested by a neighborhood organization likely qualify as a charitable donation under federal tax laws and regulations.

E. Actions of (i) the State Department of Social Services, or the Commissioner of the same, or (ii) the Superintendent of Public Instruction or the Department of Education relating to the review of neighborhood organization proposals and the allocation of tax credits to proposals shall be exempt from the provisions of the Administrative Process Act (§ 2.2-4000 et seq.). Decisions of (a) the State Department of Social Services, or the Commissioner of the same, or (b) the Superintendent of Public Instruction or the Department of Education shall be final and not subject to review or appeal.

F. Notwithstanding the provisions of § 30-19.1:11, the issuance of tax credits under this article shall expire on July 1, 2028.

2008, c. 585; 2009, cc. 10, 502, 851; 2011, c. 317; 2012, cc. 731, 837, 842; 2013, cc. 713, 716, 802; 2014, cc. 47, 189, 416, 712; 2016, c. 426.

§ 58.1-439.21. Tax credit; amount; limitation; carry over

A. The Superintendent of Public Instruction and the Commissioner of Social Services shall certify to the Department of Taxation, or in the case of business firms subject to a tax under Article 1 (§ 58.1-2500 et seq.) of Chapter 25 or Article 2 (§ 58.1-2620 et seq.) of Chapter 26, to the State Corporation Commission, the applicability of the tax credit provided herein for a business firm.

B. A business firm shall be eligible for a credit against the taxes imposed by Articles 2 (§ 58.1-320 et seq.), 6 (§ 58.1-360 et seq.), and 10 (§ 58.1-400 et seq.) of Chapter 3, Chapter 12 (§ 58.1-1200 et seq.), Article 1 (§ 58.1-2500 et seq.) of Chapter 25, or Article 2 (§ 58.1-2620 et seq.) of Chapter 26, in an amount equal to 65 percent of the value of the money, property, professional services, and contracting services donated by the business firm during its taxable year to neighborhood organizations for programs approved pursuant to § 58.1-439.20. Notwithstanding any other law and for purposes of this article, the value of a motor vehicle donated by a business firm shall, in all cases, be such value as determined for federal income tax purposes using the laws and regulations of the United States relating to federal income taxes. No tax credit shall be granted for any donation made in the taxable year with a value of less than $616.

A business firm shall be eligible for a tax credit under this section only to the extent that sufficient tax credits allocated to the neighborhood organization for an approved project are available. Notwithstanding that this section establishes a tax credit of 65 percent of the value of the qualified donation, a business firm may by written agreement accept a lesser tax credit percentage from a neighborhood organization for any otherwise qualified donation it has made. No tax credit shall be granted to any business firm for donations to a neighborhood organization providing job training or education for individuals employed by the business firm. Any tax credit not usable for the taxable year the donation was made may be carried over to the extent usable for the next five succeeding taxable years or until the full credit has been utilized, whichever is sooner. Credits granted to a partnership, electing small business (Subchapter S) corporation, or limited liability company shall be allocated to their individual partners, shareholders, or members, respectively, in proportion to their ownership or interest in such business entities.

C. A tax credit shall be issued by the Superintendent of Public Instruction or the Commissioner of Social Services to a business firm upon receipt of a certification made by a neighborhood organization to whom tax credits were allocated for an approved program pursuant to § 58.1-439.20. The certification shall identify the type and value of the donation received, the business firm making the donation, and the tax credit percentage to be used in determining the amount of the tax credit. The certification shall also include any written agreement under which a business firm accepts a tax credit of less than 65 percent for a donation.

1981, c. 629, § 63.1-324; 1982, c. 178; 1984, c. 720; 1986, c. 407; 1989, c. 310; 1995, c. 279; 1996, c. 77; 1997, cc. 229, 640; 1999, cc. 890, 909; 2002, c. 747, § 63.2-2003; 2008, c. 585; 2009, c. 851; 2011, c. 370; 2012, cc. 731, 842; 2015, c. 56.

§ 58.1-439.22. Donations of professional services

A. A sole proprietor, partnership or limited liability company engaged in the business of providing professional services shall be eligible for a tax credit under this article based on the time spent by the proprietor or a partner or member, respectively, who renders professional services to a program that has received an allocation of tax credits from the Superintendent of Public Instruction or the Commissioner of Social Services. The value of the professional services, for purposes of determining the amount of the tax credit allowable, rendered by the proprietor or a partner or member to an approved program shall not exceed the lesser of (i) the reasonable cost for similar services from other providers or (ii) $125 per hour.

B. A business firm shall be eligible for a tax credit under this article for the time spent by a salaried employee who renders professional services to an approved program. The value of the professional services, for purposes of determining the amount of tax credit allowed to a business firm for time spent by its salaried employee in rendering professional services to an approved project, shall be equal to the salary that such employee was actually paid for the period of time that such employee rendered professional services to the approved program.

C. Notwithstanding any provision of this article limiting eligibility for tax credits to business firms, 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 licensed pursuant to Title 54.1 who provide health care services within the scope of their licensure, without charge, to patients of a clinic operated by an organization that has received an allocation of tax credits from the Commissioner of Social Services and such clinic is organized in whole or in part for the delivery of health care services without charge, or to a clinic operated not for profit providing health care services for charges not exceeding those set forth in a scale prescribed by the State Board of Health pursuant to § 32.1-11 for charges to be paid by persons based upon ability to pay, shall be eligible for a tax credit pursuant to § 58.1-439.21 based on the time spent in providing health care services to patients of such clinic, regardless of where the services are delivered.

Notwithstanding any provision of this article limiting eligibility for tax credits, a pharmacist who donates pharmaceutical services to patients of a free clinic, which clinic is an organization exempt from taxation under the provisions of § 501(c)(3) of the Internal Revenue Code, with such pharmaceutical services performed at the direction of an approved neighborhood organization that has received an allocation of tax credits from the Commissioner of Social Services, shall be eligible for tax credits under this article based on the time spent in providing such pharmaceutical services, regardless of where the services are delivered.

Notwithstanding any provision of this article limiting eligibility for tax credits, mediators certified pursuant to guidelines promulgated by the Judicial Council of Virginia who provide services within the scope of such certification, without charge, at the direction of an approved neighborhood organization that provides court-referred mediation services and that has received an allocation of tax credits from the Commissioner of Social Services shall be eligible for tax credits under this article

based on the time spent in providing such mediation services, regardless of where the services are delivered.

The value of such services, for purposes of determining the amount of the tax credit allowable, rendered by the physician, chiropractor, dentist, nurse, nurse practitioner, physician assistant, optometrist, dental hygienist, professional counselor, clinical social worker, clinical psychologist, marriage and family therapist, physical therapist, pharmacist, or mediator shall not exceed the lesser of (i) the reasonable cost for similar services from other providers or (ii) $125 per hour.

D. Notwithstanding any provision of this article limiting eligibility for tax credits and for tax credit allocations beginning with fiscal year 2015-2016, a physician specialist who donates specialty medical services to patients referred from an approved neighborhood organization (i) that has received an allocation of tax credits from the Commissioner of Social Services, (ii) whose sole purpose is to provide specialty medical referral services to patients of participating clinics or federally qualified health centers, and (iii) that is exempt from taxation under the provisions of § 501(c)(3) of the Internal Revenue Code shall be eligible for tax credits under this article issued to such organization regardless of where the specialty medical services are delivered.

The value of such services, for purposes of determining the amount of tax credit allowable, rendered by the physician specialist shall not exceed the lesser of (a) the reasonable cost for similar services from other providers or (b) $125 per hour.

1981, c. 629, § 63.1-325; 1982, c. 178; 1984, c. 720; 1997, cc. 229, 640; 1998, c. 432; 1999, cc. 894, 917; 2002, cc. 103, 747, § 63.2-2004; 2003, c. 186; 2004, cc. 183, 657, 725; 2008, c. 585; 2009, c. 851; 2011, c. 132; 2012, c. 596; 2015, c. 153.

§ 58.1-439.23. Donations of contracting services

A. A sole proprietor, partnership or limited liability company engaged in the business of providing contracting services shall be eligible for a tax credit under this article based on the time spent by the proprietor or a partner or member, respectively, who renders contracting services to a program that has received an allocation of tax credits from the Commissioner of Social Services. The value of the contracting services, for purposes of determining the amount of the tax credit allowable, rendered by the proprietor or a partner or member to an approved program shall not exceed the lesser of (i) the reasonable cost for similar services from other providers or (ii) $50 per hour.

B. A business firm shall be eligible for a tax credit under this article for the time spent by a salaried employee who renders contracting services to an approved program. The value of the contracting services, for purposes of determining the amount of tax credit allowed to a business firm for time spent by its salaried employee in rendering contracting services to an approved project, shall be equal to the salary that such employee was actually paid for the period of time that such employee rendered contracting services to the approved program.

1999, cc. 890, 909, § 63.1-325.1; 2002, c. 747, § 63.2-2005; 2008, c. 585.

§ 58.1-439.24. Donations by individuals

For purposes of this section, the term "individual" means the same as that term is defined in § 58.1-302, but excluding any individual included in the definition of a "business firm" as such term is defined in § 58.1-439.18.

A. Notwithstanding any provision of this article limiting eligibility for tax credits, an individual making a monetary donation or a donation of marketable securities to a neighborhood organization approved under this article shall be eligible for a credit against taxes imposed by § 58.1-320 as provided in this section.

B. Notwithstanding any provision of this article specifying the amount of a tax credit, a tax credit issued to an individual making a monetary donation or a donation of marketable securities to an approved project shall be equal to 65 percent of the value of such donation; however, tax credits (i) shall not be issued for any donation made in the taxable year with a value of less than $500 and (ii) shall be issued only for the first $125,000 in value of donations made by the individual during the taxable year. The maximum aggregate donations of $125,000 for the taxable year for which tax credits may be issued and the minimum required donation of $500 shall apply on an individual basis.

C. An individual shall be eligible for a tax credit under this section only to the extent that sufficient tax credits allocated to the neighborhood organization approved under this article are available. Notwithstanding that this section establishes a tax credit of 65 percent of the value of the qualified donation, an individual may by written agreement accept a lesser tax credit percentage from a neighborhood organization for any otherwise qualified donation he has made.

D. The amount of credit allowed pursuant to this section, if such credit has been issued by the Superintendent of Public Instruction or the Commissioner of Social Services, shall not exceed the tax imposed pursuant to § 58.1-320 for such taxable year. Any credit not usable for the taxable year may be carried over for credit against the individual's income taxes until the earlier of (i) the full amount of the credit is used or (ii) the expiration of the fifth taxable year after the taxable year in which the tax credit has been issued to such individual. If an individual that is subject to the tax limitation imposed pursuant to this subsection is allowed another credit pursuant to any other section of the Code of Virginia, or has a credit carryover from a preceding taxable year, such individual shall be considered to have first utilized any credit allowed that does not have a carryover provision, and then any credit that is carried forward from a preceding taxable year, prior to the utilization of any credit allowed pursuant to this section.

E. A tax credit shall be issued by the Superintendent of Public Instruction or the Commissioner of Social Services to an individual only upon receipt of a certification made by a neighborhood organization to whom tax credits were allocated for an approved program pursuant to § 58.1-439.20.

The certification shall identify the type and value of the donation received, the individual making the donation, and the tax credit percentage to be used in determining the amount of the tax

credit. The certification shall also include any written agreement under which an individual accepts a tax credit of less than 65 percent for a donation.

2000, c. 946, § 63.1-325.2; 2001, cc. 292, 300; 2002, cc. 563, 747, § 63.2-2006; 2005, c. 82; 2008, cc. 463, 585; 2009, c. 851; 2012, cc. 731, 842; 2013, cc. 713, 716; 2015, c. 56.

Article 13.3 - EDUCATION IMPROVEMENT SCHOLARSHIPS TAX CREDITS

§ 58.1-439.25. Definitions

As used in this article, unless the context requires a different meaning:

"Eligible student with a disability" means a student (i) for whom an individualized educational program has been written and finalized in accordance with the federal Individuals with Disabilities Education Act (IDEA), regulations promulgated pursuant to IDEA, and regulations of the Board of Education; (ii) whose family's annual household income is not in excess of 400 percent of the current poverty guidelines; and (iii) who otherwise is a student as defined in this section.

"Poverty guidelines" means the poverty guidelines for the 48 contiguous states and the District of Columbia updated annually in the Federal Register by the U.S. Department of Health and Human Services under the authority of § 673(2) of the Omnibus Budget Reconciliation Act of 1981.

"Qualified educational expenses" means school-related tuition and instructional fees and materials, including textbooks, workbooks, and supplies used solely for school-related work.

"Scholarship foundation" means a nonstock, nonprofit corporation that is (i) exempt from taxation under § 501(c)(3) of the Internal Revenue Code of 1954, as amended or renumbered; (ii) approved by the Department of Education in accordance with the provisions of § 58.1-439.27; and (iii) established to provide financial aid for the education of students residing in the Commonwealth.

"Student" means a child who is a resident of Virginia and (i) in the current school year has enrolled and attended a public school in the Commonwealth for at least one-half of the year, (ii) for the school year that immediately preceded his receipt of a scholarship foundation scholarship was enrolled and attended a public school in the Commonwealth for at least one-half of the year, (iii) is a prior recipient of a scholarship foundation scholarship, (iv) is eligible to enter kindergarten or first grade, or (v) for the school year that immediately preceded his receipt of a scholarship foundation scholarship was domiciled in a state other than the Commonwealth and did not attend a nonpublic school in the Commonwealth for more than one-half of the school year.

2012, cc. 731, 842; 2013, cc. 713, 716.

§ 58.1-439.26. Tax credit for donations to certain scholarship foundations

A. Notwithstanding the provisions of § 30-19.1:11, for taxable years beginning on or after January 1, 2013, but before January 1, 2028, a person shall be eligible to earn a credit against any tax due under Article 2 (§ 58.1-320 et seq.) or Article 10 (§ 58.1-400 et seq.), Chapter 12 (§ 58.1-1200 et seq.), Chapter 25 (§ 58.1-2500 et seq.), or Article 2 (§ 58.1-2620 et seq.) of Chapter 26 in an amount equal to 65 percent of the value of the monetary or marketable securities donation made

by the person to a scholarship foundation included on the list published annually by the Department of Education in accordance with the provisions of § 58.1-439.28.

No tax credit shall be allowed under this article if the value of the monetary or marketable securities donation made by an individual is less than $500. In addition, tax credits shall be issued only for the first $125,000 in value of donations made by the individual during the taxable year. The maximum aggregate donations of $125,000 for the taxable year for which tax credits may be issued and the minimum required donation of $500 shall apply on an individual basis. Such limitation on the maximum amount of tax credits issued to an individual shall not apply to credits issued to any business entity, including a sole proprietorship.

B. Tax credits shall be issued to persons making monetary or marketable securities donations to scholarship foundations by the Department of Education on a first-come, first-served basis in accordance with procedures established by the Department of Education under the following conditions:

1. The total amount of tax credits that may be issued each fiscal year under this article shall not exceed $25 million.

2. The amount of the credit shall not exceed the person's tax liability pursuant to Article 2 (§ 58.1-320 et seq.) or Article 10 (§ 58.1-400 et seq.), Chapter 12 (§ 58.1-1200 et seq.), Chapter 25 (§ 58.1-2500 et seq.), or Article 2 (§ 58.1-2620 et seq.) of Chapter 26, as applicable, for the taxable year for which the credit is claimed. Any credit not usable for the taxable year for which first allowed may be carried over for credit against the taxes imposed upon the person pursuant to Article 2 (§ 58.1-320 et seq.) or Article 10 (§ 58.1-400 et seq.), Chapter 12 (§ 58.1-1200 et seq.), Chapter 25 (§ 58.1-2500 et seq.), or Article 2 (§ 58.1-2620 et seq.) of Chapter 26, as applicable, in the next five succeeding taxable years or until the total amount of the tax credit has been taken, whichever is sooner.

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

C. In a form approved by the Department of Education, the person seeking to make a monetary or marketable securities donation to a scholarship foundation or a scholarship foundation on behalf of such person shall request preauthorization for a specified tax credit amount from the Superintendent of Public Instruction. The Department of Education's preauthorization notice shall accompany the monetary or marketable securities donation from the person to the scholarship foundation, which shall, within 40 days, return the notice to the Department of Education certifying the value and type of donation and date received. Upon receipt and approval by the Department of Education of the preauthorization notice with required supporting documentation and certification of the value and type of the donation by the scholarship foundation, the Superintendent of Public Instruction shall as soon as practicable, and in no case longer than 30 days,

issue a tax credit certificate to the person eligible for the tax credit. The person shall attach the tax credit certificate to the applicable tax return filed with the Department of Taxation or the State Corporation Commission, as applicable. The Department of Education shall provide a copy of the tax credit certificate to the scholarship foundation.

Preauthorization notices not acted upon by a donor within 180 days of issuance shall be void. No tax credit shall be approved by the Department of Education for activities that are a part of a person's normal course of business.

2012, cc. 731, 842; 2013, cc. 713, 716; 2014, c. 176; 2016, cc. 751, 767.

§ 58.1-439.27. Scholarship foundation eligibility and requirements; list of foundations receiving donations

A. Persons seeking to receive and administer tax-credit-approved funds shall submit information to the Department of Education, which shall determine whether an applicant is a scholarship foundation as defined in § 58.1-439.25. The Department of Education shall prescribe through guidelines what reasonable information shall be submitted by such persons. Notice of approval or denial, including reasons for denial, shall be issued by the Department of Education to the applicant within 60 days after the complete information is submitted. Any approval shall not be withheld unreasonably.

B. The Department of Education shall submit a list of all scholarship foundations that received donations for which tax credits were issued under this article to the Chairmen of the House and Senate Finance Committees no later than December 1 of each year. The list shall report such scholarships for the 12-month period ending on the immediately preceding June 30.

2012, cc. 731, 842; 2013, cc. 713, 716.

§ 58.1-439.28. Guidelines for scholarship foundations

A. As a condition for qualification by the Department of Education, a scholarship foundation, as defined in § 58.1-439.25 and included on the list published annually by the Department of Education pursuant to this section, shall disburse an amount at least equal to 90 percent of the value of the donations it receives (for which tax credits were issued under this article) during each 12-month period ending on June 30 by the immediately following June 30 for qualified educational expenses through scholarships to eligible students. Tax-credit-derived funds not used for such scholarships may only be used for the administrative expenses of the scholarship foundation. Any scholarship foundation that fails to meet such disbursal requirement shall, for the first offense, be required to pay a civil penalty equal to 200 percent of the difference between 90 percent of the value of the tax-credit-derived donations it received in the applicable 12-month period and the amount that was actually disbursed. Such civil penalty shall be remitted by the scholarship foundation to the Department of Education within 30 days after the end of the one-year period and deposited to the general fund. For a second offense within a five-year period, the scholarship foundation shall be removed from the annual list published pursuant to this section and shall not

be entitled to request preauthorization for additional tax credits, nor shall it be entitled to receive and administer additional tax-credit-derived funds for two years. After two years, the scholarship foundation shall be eligible to reapply to be included on the annual list to receive and administer tax-credit derived funds. If a scholarship foundation is authorized to be added to the annual list after such reapplication, the scholarship foundation shall not be considered to have any previous offenses for purposes of this subsection. The required disbursement under this section shall begin with donations received for the period January 1, 2013, through June 30, 2014.

B. By September 30 of each year beginning in 2016, the scholarship foundation shall provide the following information to the Department of Education: (i) the total number and value of donations received by the foundation during the 12-month period ending on June 30 of the prior calendar year for which tax credits were issued by the Superintendent of Public Instruction, (ii) the dates when such donations were received, and (iii) the total number and dollar amount of qualified educational expenses scholarships awarded from tax-credit-derived donations and disbursed by the scholarship foundation during the 24-month period ending on June 30 of the current calendar year. Any scholarship foundation that fails to provide this report by September 30 shall, for the first offense, be required to pay a $1,000 civil penalty. Such civil penalty shall be remitted by the scholarship foundation to the Department of Education by November 1 of the same year and deposited to the general fund. For a second offense within a five-year period, the scholarship foundation shall be removed from the annual list published pursuant to this section and shall not be entitled to request preauthorization for additional tax credits, nor shall it be entitled to receive and administer additional tax-credit-derived funds. After two years, the scholarship foundation shall be eligible to reapply to be included on the annual list to receive and administer tax-credit derived funds. If a scholarship foundation is authorized to be added to the annual list after such reapplication, the scholarship foundation shall not be considered to have any previous offenses for purposes of this subsection.

C. In awarding scholarships from tax-credit-derived funds, the scholarship foundation shall (i) provide scholarships for qualified educational expenses only to students whose family's annual household income is not in excess of 300 percent of the current poverty guidelines or eligible students with a disability, (ii) not limit scholarships to students of one school, and (iii) comply with Title VI of the Civil Rights Act of 1964, as amended. Payment of scholarships from tax-credit-derived funds by the eligible scholarship foundation shall be by individual warrant or check made payable to and mailed to the eligible school that the student's parent or legal guardian indicates. In mailing such scholarship payments, the eligible scholarship foundation shall include a written notice to the eligible school that the source of the scholarship was donations made by persons receiving tax credits for the same pursuant to this article.

D. Scholarship foundations shall ensure that schools selected by students to which tax-credit-derived funds may be paid (i) are in compliance with the Commonwealth's and locality's health and safety laws and codes; (ii) hold a valid occupancy permit as required by the locality; (iii)

comply with Title VI of the Civil Rights Act of 1964, as amended; and (iv) are nonpublic schools that comply with nonpublic school accreditation requirements as set forth in § 22.1-19 and administered by the Virginia Council for Private Education or nonpublic schools that maintain an assessment system that annually measures scholarship students' progress in reading and math using a national norm-referenced achievement test, including but not limited to the Stanford Achievement Test, California Achievement Test, and Iowa Test of Basic Skills.

Eligible schools shall compile the results of any national norm-referenced achievement test for each of its students receiving tax-credit-derived scholarships and shall provide the respective parents or legal guardians of such students with a copy of the results on an annual basis, beginning with the first year of testing of the student. Such schools also shall annually provide to the Department of Education for each such student the achievement test results, beginning with the first year of testing of the student, and student information that would allow the Department to aggregate the achievement test results by grade level, gender, family income level, number of years of participation in the scholarship program, and race. Beginning with the third year of testing of each such student and test-related data collection, the Department of Education shall ensure that the achievement test results and associated learning gains are published on the Department of Education's website in accordance with such classifications and in an aggregate form as to prevent the identification of any student. Eligible schools shall annually provide to the Superintendent of Public Instruction graduation rates of its students participating in the scholarship program in a manner consistent with nationally recognized standards. In publishing and disseminating achievement test results and other information, the Superintendent of Public Instruction and the Department of Education shall ensure compliance with all student privacy laws.

E. The aggregate amount of scholarships provided to each student for any single school year by all eligible scholarship foundations from eligible donations shall not exceed the lesser of (i) the actual qualified educational expenses of the student or (ii) 100 percent of the per-pupil amount distributed to the local school division (in which the student resides) as the state's share of the standards of quality costs using the composite index of ability to pay as defined in the general appropriation act.

F. Scholarship foundations shall develop procedures for disbursing scholarships in quarterly or semester payments throughout the school year to ensure scholarships are portable.

G. Scholarship foundations that receive donations of marketable securities for which tax credits were issued under this article shall be required to sell such securities and convert the donation into cash immediately, but in no case more than 21 days after receipt of the donation.

H. Each scholarship foundation with total revenues (including the value of all donations) (i) in excess of $100,000 for the foundation's most recent fiscal year ended shall have an audit or review performed by an independent certified public accountant of the foundation's donations received in such year for which tax credits were issued under this article or (ii) of $100,000 or less for the

foundation's most recent fiscal year ended shall have a compilation performed by an independent certified public accountant of the foundation's donations received in such year for which tax credits were issued under this article. A summary report of the audit, review, or compilation shall be made available to the public and the Department of Education upon request.

I. The Department of Education shall publish annually on its website a list of each scholarship foundation qualified under this article. Once a foundation has been qualified by the Department of Education, it shall remain qualified until the Department removes the foundation from its annual list. The Department of Education shall remove a foundation from the annual list if it no longer meets the requirements of this article. The Department of Education may periodically require a qualified foundation to submit updated or additional information for purposes of determining whether or not the foundation continues to meet the requirements of this article.

J. Actions of the Superintendent of Public Instruction or the Department of Education relating to the awarding of tax credits under this article and the qualification of scholarship foundations shall be exempt from the provisions of the Administrative Process Act (§ 2.2-4000 et seq.). Decisions of the Superintendent of Public Instruction or the Department of Education shall be final and not subject to review or appeal.

2012, cc. 731, 842; 2013, cc. 713, 716; 2016, cc. 751, 767.

Article 14 - ACCOUNTING, RETURNS, PROCEDURES FOR CORPORATIONS

§ 58.1-440. Accounting

A. A corporate taxpayer's taxable year under this chapter shall be the same as his taxable year for federal income tax purposes.

B. If a taxpayer's taxable year is changed for federal income tax purposes, his taxable year for purposes of this chapter shall be similarly changed. If a taxable year of less than twelve months results from a change of taxable year, the Virginia taxable income shall be prorated under regulations of the Department.

C. A taxpayer's method of accounting under this chapter shall be the same as his method of accounting for federal income tax purposes. In the absence of any method of accounting for federal income tax purposes, Virginia taxable income shall be computed under such method as in the opinion of the Tax Commissioner clearly reflects income.

D. If a taxpayer's method of accounting is changed for federal income tax purposes, his method of accounting for purposes of this chapter shall be similarly changed. If a taxpayer's method of accounting is changed, other than from an accrual to an installment method, any additional tax which results from adjustments determined to be necessary solely by reason of the change shall not be greater than if such adjustments were ratably allocated and included for the taxable year of the change and the preceding taxable years, not in excess of two, during which the taxpayer used the method of accounting from which the change is made. If a taxpayer's method of accounting is

changed from an accrual to an installment method, any additional tax for the year of such change of method and for any subsequent year which is attributable to the receipt of installment payments properly accrued in a prior year, shall be reduced by the portion of tax for any prior taxable year attributable to the accrual of such installment payments, in accordance with regulations of the Department.

E. In computing a taxpayer's Virginia taxable income for any taxable year under a method of accounting different from the method under which the taxpayer's Virginia taxable income was computed, there shall be taken into account those adjustments which are determined, under regulations prescribed by the Department of Taxation, to be necessary solely by reason of change in order to prevent amounts from being duplicated or omitted.

F. Notwithstanding any of the other provisions of this section, any accounting adjustments made for federal income tax purposes for any taxable year shall be applied in computing the taxpayer's taxable income for such year.

Code 1950, § 58-151.061; 1971, Ex. Sess., c. 171; 1984, c. 675.

§ 58.1-440.1. Accounting-deferred taxes

In the case of a pipeline distribution company, a gas utility, a gas supplier or an electric supplier, as defined in § 58.1-400.2, that was subject to the tax imposed under § 58.1-2626 with respect to its gross receipts received during the year commencing January 1, 2000, and that on or after January 1, 2001, becomes subject to the corporate income tax pursuant to Article 10 (§ 58.1-400 et seq.) of this chapter, net income shall be computed by taking into account the following adjustments:

In addition to the deductions for depreciation, amortization, or other cost recovery currently allowed by this Code, there shall be allowed deductions for the amortization of the Virginia tax basis of assets that are recoverable for financial accounting and/or income tax purposes placed in service prior to the adjustment date. For purposes of this section, (i) "Virginia tax basis" means the aggregate adjusted book basis less the aggregate adjusted tax basis of such assets as recorded on the company's books of accounts as of the last day of the tax year immediately preceding the adjustment date and (ii) "adjustment date" means the first day of the tax year in which such pipeline distribution company, gas utility, gas supplier or electric supplier becomes subject to the tax imposed by § 58.1-400.2 A. The amortization of the Virginia tax basis shall be computed using the straight-line method over a period of thirty years, beginning on the adjustment date. Gain or loss on the disposition or retirement of any such asset shall be computed using its adjusted federal tax basis, and the amortization of the Virginia tax basis shall continue thereafter without adjustment. The Department of Taxation shall promulgate regulations describing a reasonable method of allocating the Virginia tax basis in the event that a portion of the operations of a pipeline distribution company, gas utility, gas supplier or electric supplier are separated, spun-off, transferred to a separate company or otherwise disaggregated. For gas suppliers, pipeline

distribution companies or gas utilities which are required to file an income tax return for a short taxable year pursuant to subsection E of § 58.1-400.2, a portion of the amortized Virginia tax basis will be disallowed based on the proration in computing Virginia taxable income. Such portion will be recovered as a deduction in the first taxable year after which this deduction is no longer applicable.

For rate-making and accounting purposes, the State Corporation Commission shall not require a pipeline distribution company or gas utility to amortize these deferred taxes over a period other than the thirty-year period prescribed herein, nor shall the State Corporation Commission require the treatment of accelerated depreciation different from that allowed for federal income taxes.

1999, c. 971; 2000, cc. 691, 706.

§ 58.1-441. Reports by corporations

A. Every corporation organized under the laws of the Commonwealth, or having income from Virginia sources, other than a Subchapter S corporation subject to the return filing requirements of § 58.1-392, shall make a report to the Department on or before the fifteenth day of the fourth month following the close of its taxable year. Such reports shall be made on forms prescribed by the Department and shall contain such information, including the gross receipts from any business carried on in the Commonwealth and a depreciation schedule of property used in such trade or business, as may be necessary for the proper enforcement of this chapter and be accompanied by a copy of any federal tax return or report filed for such taxable year. The Department shall not require any nonprofit organization created exclusively to assist a law-enforcement official or agency in apprehending and convicting perpetrators of crimes, to report on such returns, or otherwise, the names of individuals or amounts paid to such individuals by the organization for providing information about certain crimes.

Receivers, trustees in dissolution, trustees in bankruptcy, and assignees, operating the property or business of corporations must make returns of income for such corporations. If a receiver has full custody of and control over the business or property of a corporation, he shall be deemed to be operating such business or property, whether he is engaged in carrying on the business for which the corporation was organized or only in marshaling, selling, or disposing of its assets for purposes of liquidation.

B. Notwithstanding the provisions of subsection A, every organization to whom subdivision 5 of § 58.1-401 applies, and having unrelated business taxable income or other taxable income, shall make a report to the Department on or before the fifteenth day of the sixth month following the close of the organization's taxable year.

Code 1950, §§ 58-151.062, 58-151.078; 1971, Ex. Sess., c. 171; 1972, cc. 465, 827; 1978, c. 796; 1984, c. 675; 1988, c. 444; 2003, c. 376; 2004, Sp. Sess. I, c. 3.

§ 58.1-442. Separate, combined or consolidated returns of affiliated corporations

A. Corporations which are affiliated within the meaning of § 58.1-302 may, for any taxable year, file separate returns, file a combined return or file a consolidated return of net income for the purpose of this chapter, and the taxes thereunder shall be computed and determined upon the basis of the type of return filed. Following an election to file on a separate, consolidated, or combined basis all returns thereafter filed shall be upon the same basis unless permission to change is granted by the Department.

B. For the purpose of subsection A:

1. A consolidated return shall mean a single return for a group of corporations affiliated within the meaning of § 58.1-302, prepared in accordance with the principles of § 1502 of the Internal Revenue Code and regulations promulgated thereunder. Permission to file a consolidated return shall not be denied to a group of affiliated corporations filing a consolidated federal return solely because two or more members of such affiliated group would be required to use different apportionment factors if separate returns were filed. The Tax Commissioner shall promulgate regulations setting forth the manner in which such an affiliated group shall compute its Virginia taxable income.

2. A combined return shall mean a single return for a group of corporations affiliated within the meaning of § 58.1-302, in which income or loss is separately determined in accordance with subdivisions a through d below:

a. Virginia taxable income or loss is computed separately for each corporation;

b. Allocable income is allocated to the state of commercial domicile separately for each corporation;

c. Apportionable income or loss is computed, utilizing separate apportionment factors for each corporation;

d. Income or loss computed in accordance with items a through c above is combined and reported on a single return for the affiliated group.

C. Notwithstanding subsection A, a group of corporations may apply to the Tax Commissioner for permission to change the basis of the type of return filed (i) from consolidated to separate or (ii) from separate or combined to consolidated, if such corporations are affiliated within the meaning of § 58.1-302 and the affiliated group of which they are members, as it has existed from time to time, has filed on the same basis for at least the preceding 20 years. Permission shall be granted if:

1. For the taxable year immediately preceding the taxable year for which the new election would be applicable, there would have been no decrease in tax liability computed under the proposed election as compared to the affiliated group's former filing method; and

2. The affiliated group agrees to file returns computing its Virginia income tax liability under both the new filing method and the former method and will pay the greater of the two amounts for the

taxable year in which the new election is effective and for the immediately succeeding taxable year.

Code 1950, § 58-151.079; 1971, Ex. Sess., c. 171; 1981, c. 402; 1984, c. 675; 1990, c. 619; 2003, c. 166.

§ 58.1-443. Prohibition of worldwide consolidation or combination

Notwithstanding any other provisions of this chapter, the Department shall not require, and no corporation may elect, that a consolidation or combination of an affiliated group include any controlled foreign corporation, the income of which is derived from sources without the United States.

Code 1950, § 58-151.079:1; 1981, c. 402; 1984, c. 675.

§ 58.1-444. Several liability of affiliated corporations

Each affiliated corporation which was included in the consolidated return for any part of the consolidated return year shall be jointly and severally liable for the tax for such year computed in accordance with § 58.1-442 and regulations prescribed by the Department for the filing of the consolidated return for such year.

No agreement entered into by one or more members of the affiliated group with any other member of such group or with any other person shall in any case have the effect of reducing the liability prescribed under this section.

Code 1950, § 58-151.080; 1971, Ex. Sess., c. 171; 1977, c. 243; 1984, c. 675.

§ 58.1-445. Consolidation of accounts

In any case of two or more related trades or businesses liable to taxation under this chapter owned or controlled directly or indirectly by the same interests, the Department may, and at the request of the taxpayer shall, if necessary in order to make an accurate distribution or apportionment of gains, profits, income, deductions or capital between or among such related trades or businesses, consolidate the accounts of such related trades or businesses.

Code 1950, § 58-151.082; 1971, Ex. Sess., c. 171; 1984, c. 675.

§ 58.1-445.1. Repealed

Repealed by Acts 1998, c. 253, effective December 31, 1998.

§ 58.1-446. Price manipulation; intercorporate transactions; parent corporations and subsidiaries

When any corporation liable to taxation under this chapter by agreement or otherwise conducts the business of such corporation in such manner as either directly or indirectly to benefit the members or stockholders of the corporation, or any of them, or any person or persons directly or indirectly interested in such business, by either buying or selling its products or the goods or commodities in which it deals at more or less than a fair price which might be obtained therefor, or when such a corporation sells its products, goods or commodities to another corporation or acquires and disposes of the products, goods or commodities of another corporation in such

manner as to create a loss or improper taxable income, and such other corporation by stock ownership, agreement or otherwise controls or is controlled by the corporation liable to taxation under this chapter, the Department may require such facts as it deems necessary for the proper computation provided by this chapter and may for the purpose determine the amount which shall be deemed to be the Virginia taxable income of the business of such corporation for the taxable year. In determining such income, the Department shall have regard to the fair profits which, but for any agreement, arrangement or understanding, might be, or could have been, obtained from dealing in such products, goods or commodities.

Any corporation liable to taxation under this chapter and either owned or controlled by or owning or controlling, either directly or indirectly, another corporation may be required by the Department to make a report consolidated with such other corporation showing the combined gross and net income and such other information as the Department may require, but excluding intercorporate stockholdings and the intercorporate accounts. In case it appears to the Department that any arrangements exist in such a manner as improperly to reflect the business done or the Virginia taxable income earned from business done in this Commonwealth, the Department may, in such manner as it may determine, equitably adjust the tax. In all cases mentioned in this paragraph, such other corporations not otherwise liable to taxation under this chapter shall, for the purposes of this chapter, be deemed to be doing business in Virginia through the agency of the corporation liable to taxation under this chapter.

Code 1950, § 58-151.083; 1971, Ex. Sess., c. 171; 1984, c. 675.

§ 58.1-447. Execution of returns of corporations

The return of a corporation with respect to income shall be signed by any officer duly authorized so to act. In the case of a return made for a corporation by a fiduciary, such fiduciary shall sign the return. The fact that an individual's name is signed on the return shall be prima facie evidence that such individual is authorized to sign the return on behalf of the corporation.

Code 1950, § 58-151.084; 1971, Ex. Sess., c. 171; 1984, c. 675.

§ 58.1-448. Forms to be furnished

Duplicate blank forms of reports shall be furnished by mail by the Department to the taxpayer at least thirty days before the time for filing returns, but failure to secure such a blank shall not release any corporation from the obligation of making any report herein required.

Code 1950, § 58-151.085; 1971, Ex. Sess., c. 171; 1984, c. 675.

§ 58.1-449. Supplemental reports

The Department may require a further or supplemental report under this chapter to contain further information and data necessary for the computation of the tax herein provided.

Code 1950, § 58-151.086; 1971, Ex. Sess., c. 171; 1984, c. 675.

§ 58.1-450. Failure of corporation to make report or return

Any corporation which fails to make any report or return required by this chapter within the time required shall be liable to a penalty equal to six percent of the amount of taxes assessable thereon if the failure is for not more than one month, with an additional six percent for each additional month or fraction thereof during which such failure to file continues, not exceeding thirty percent in the aggregate. In no case, however, shall the penalty be less than $100, and such minimum penalty shall apply whether or not any tax is due for the period for which the filing of a report or return is required. Such penalty is to be assessed and collected by the Department, in the manner provided for the assessment and collection of taxes under this chapter or in a civil action, at the instance of the Department. In addition such corporation shall be compellable by mandamus to make such report or return.

Code 1950, § 58-151.087; 1971, Ex. Sess., c. 171; 1984, c. 675; 1989, cc. 629, 642; 1991, cc. 316, 331 .

§ 58.1-451. Fraudulent returns, etc., of corporations; penalty

Any officer of any corporation who makes a fraudulent return or statement with intent to evade the payment of the taxes prescribed by this chapter shall be liable to a penalty of not more than $1,000, to be assessed and collected in the manner prescribed in § 58.1-450.

Code 1950, § 58-151.088; 1971, Ex. Sess., c. 171; 1984, c. 675.

§ 58.1-452. Fraudulent returns; criminal liability; penalty

In addition to other penalties provided by law, any officer of any corporation who makes a fraudulent return or statement with intent to evade the payment of the taxes prescribed by this chapter shall be guilty of a Class 6 felony. A prosecution under this section shall be commenced within five years next after the commission of the offense.

Code 1950, § 58-151.089; 1971, Ex. Sess., c. 171; 1984, c. 675; 2003, c. 180.

§ 58.1-453. Extension of time for filing returns by corporations

A. In accordance with procedures established by the Tax Commissioner, any corporation may elect an extension of time within which to file the income tax return required under this chapter to the date six months after such due date or 30 days after the extended date for filing the federal income tax return, whichever is later, provided that the estimated tax due is paid in accordance with the provisions of subsection B.

B. Any taxpayer desiring an extension of time in accordance with the provisions of subsection A shall, on or before the original due date for the filing of such return, in accordance with the procedures established by the Tax Commissioner pay the full amount properly estimated as the balance of the tax due for the taxable year after giving effect to any estimated tax payments under § 58.1-491 and any tax credit under § 58.1-499. If any amount of the balance of the tax due is underestimated, interest at the rate prescribed in § 58.1-15 will be assessed on such amount from the original due date for filing of the income tax return to the date of payment. In addition to interest, if the underestimation of the balance of tax due exceeds 10 percent of the actual tax

liability, there shall be added to the tax as a penalty an amount equal to two percent per month for each month or fraction thereof from the original due date for the filing of the income tax return to the date of payment.

C. If the return is not filed, or the full amount of the tax due is not paid, on or before the extended due date elected under subsection A, the penalty imposed by § 58.1-450 or 58.1-455 shall apply as if no extension had been granted.

Code 1950, § 58-151.090; 1971, Ex. Sess., c. 171; 1976, c. 720; 1984, c. 675; 1991, cc. 362, 456; 2005, c. 100.

§ 58.1-454. Department may estimate corporation's tax when no return filed

If any report or return required to be made by any corporation under this chapter is not made as herein required, the Department is authorized to make an estimate of the net income of such corporation and of the amount of tax due under this chapter, from any information in its possession, and to order and state an account according to such estimate for the taxes, penalties and interest due to the Commonwealth from such corporation.

Code 1950, § 58-151.091; 1971, Ex. Sess., c. 171; 1984, c. 675.

§ 58.1-455. Time of payment of corporation income taxes; penalty and interest for nonpayment

A. Every corporation liable for income tax shall pay the same to the Department at the time fixed by law for filing the return. The full amount of the tax payable as shown on the face of the return shall be so paid. A corporation may file its return and pay its tax in full in the closing days of its taxable year provided it is able to prepare a complete return.

If any payment is not made in full when due, there shall be added to the entire tax or to any unpaid balance of the tax, a penalty of six percent of the amount thereof, if the failure is for not more than one month, with an additional six percent for each additional month or fraction thereof during which such failure to pay continues, not exceeding thirty percent in the aggregate. The entire tax or any unpaid balance of the tax, together with such penalty, will immediately become collectible. Interest upon such tax or any unpaid balance of the tax, and on the accrued penalty, shall be added at a rate determined in accordance with § 58.1-15, from the date the tax or any unpaid balance of the tax was originally due until paid. In the case of an additional tax assessed by the Department, if the return was made in good faith and the understatement of the amount in the return was not due to any fault of the taxpayer, there shall be no penalty on the additional tax because of such understatement, but interest shall be added to the amount of the deficiency at a rate determined in accordance with § 58.1-15, from the time the return was required by law to be filed until paid.

The penalty under this subsection shall not be applicable to any month or fraction thereof for which the corporation is subject to the penalty imposed under § 58.1-450. In no event shall the

total amount of penalty assessed under this subsection and under § 58.1-450 exceed thirty percent in the aggregate.

B. If the understatement is false or fraudulent with intent to evade the tax, a penalty of 100 percent shall be added together with interest on the tax at a rate determined in accordance with § 58.1-15, from the time the return was required by law to be filed until paid.

Nothing contained in this section shall prevent the taxpayer from applying to the circuit court of the county or the city wherein the corporation is located for a correction of the assessment made by the Department, with right of appeal in the manner provided by law.

Code 1950, § 58-151.093; 1971, Ex. Sess., c. 171; 1977, c. 396; 1984, c. 675; 1989, cc. 629, 642; 1991, cc. 316, 331 .

Article 16 - INCOME TAX WITHHOLDING

§ 58.1-460. Definitions

For the purposes of this article:

"Employee" includes an individual, whether a resident or a nonresident of the Commonwealth, who performs or performed any service in the Commonwealth for wages, or a resident of the Commonwealth who performs or performed any service in the service outside the Commonwealth for wages. The word "employee" also includes an officer, employee, or elected official of the United States, the Commonwealth, or any other state or any territory, or any political subdivision thereof, or the District of Columbia, or any agency or instrumentality of any one or more of the foregoing or an officer of a corporation. The term shall not include the beneficial owner of an individual retirement account (IRA) or simplified employee pension plan (SEPP).

"Employer" means the Commonwealth, or any political subdivision thereof, the United States, or any agency or instrumentality of any one or more of the foregoing, or the person, whether a resident or a nonresident of the Commonwealth, for whom an individual performs or performed any service as an employee or from whom a person receives a prize in excess of $5,001 pursuant to the Virginia Lottery Law (§ 58.1-4000 et seq.), except that:

1. If the person, governmental unit, or agency thereof, for whom the individual performs or performed the service does not have control of the payment of the wages for such services, the term "employer" (except as used in the definition of "wages" herein) means the person having control of the payment of such wages, and

2. In the case of a person paying wages on behalf of a nonresident person not engaged in trade or business within the Commonwealth or on behalf of any governmental unit or agency thereof not located within the Commonwealth, the term, "employer" (except as used in the definition of "wages" herein) means such person. The term shall not include a financial institution, corporation, partnership or other person or entity with respect to benefits paid as custodian, trustee or depository for an individual retirement account (IRA) or simplified employee pension plan (SEPP).

"Miscellaneous payroll period" means a payroll period other than a daily, weekly, biweekly, semi-monthly, monthly, quarterly, semiannual, or annual payroll period.

"Payroll period" means a period for which a payment of wages is ordinarily made to the employee by his employer.

"Wages" means wages as defined under § 3401 (a) of the Internal Revenue Code, as well as any other amounts from which federal income tax is withheld under the provisions of §§ 3402 and 3405 of the Internal Revenue Code and also includes all prizes in excess of $5,001 paid by the Virginia Lottery; however, such term shall not include amounts paid pursuant to individual retirement plans and simplified employee pension plans as defined in §§ 7701 (a)(37) and 408 (c) of the Internal Revenue Code and shall not include remuneration paid for acting in or service as a member of the crew of a (i) motion picture feature film, (ii) television series or commercial, or (iii) promotional film filmed totally or partially in the Commonwealth by an individual or corporation which conducts business in the Commonwealth for less than 90 days of the tax year and when such film, series or commercial is processed, edited and marketed outside the Commonwealth. Every such individual or corporation shall, immediately subsequent to the filming of such portion of the film, series or commercial filmed in the Commonwealth, file with the Commissioner on forms furnished the Department, a list of the names and social security account numbers of each actor or crew member who is a resident of the Commonwealth and is compensated by such individual or corporation.

Code 1950, § 58-151.1; 1962, c. 612; 1980, c. 629; 1984, c. 675; 1987, c. 531; 1991, cc. 362, 456; 1992, c. 519; 1993, c. 54; 2014, c. 225.

§ 58.1-461. Requirement of withholding

Every employer making payment of wages shall deduct and withhold with respect to the wages of each employee for each payroll period an amount determined as follows: Such amount which, if an equal amount was collected for each similar payroll period with respect to a similar amount of wages for each payroll period during an entire calendar year, would aggregate or approximate the income tax liability of such employee under this chapter after making allowance for the personal exemptions to which such employee could be entitled on the basis of his status during such payroll period and after making allowance for withholding purposes for a standard deduction from wages in accordance with the laws of the United States relating to federal income taxes and after making an allowance for any credit available to the employee as provided by § 58.1-332, and without making allowance for any other deductions. In determining the amount to be deducted and withheld under this article, the wages may, at the election of the employer, be computed to the nearest dollar.

An employer shall not be required to deduct any amount upon a payment of wages to an employee if there is in effect with respect to such payment a withholding exemption certificate, in such form and containing such other information as the Tax Commissioner may prescribe,

furnished by the employee to the employer, certifying that the employee: (i) incurred no liability for income tax imposed by this chapter for his preceding taxable year; and (ii) anticipates that he will incur no liability for income tax imposed by this chapter for his current taxable year.

Code 1950, § 58-151.2; 1962, c. 612; 1971, Ex. Sess., c. 171; 1972, c. 827; 1984, cc. 675, 682.

§ 58.1-462. Withholding tables

The amount of tax to be withheld for each individual shall be based upon tables to be prepared and distributed by the Tax Commissioner. The tables shall be computed for the several permissible withholding periods and shall take account of the number of exemptions allowed under the laws of the United States relating to federal income taxes and the standard deduction as provided in § 58.1-461. The amounts computed for withholding shall be such that the amount withheld for any individual during his taxable year shall approximate in the aggregate as closely as practicable the tax which is levied and imposed under this chapter for that taxable year, upon his salary, wages or compensation for personal services of any kind for the employer.

Code 1950, § 58-151.3; 1962, c. 612; 1971, Ex. Sess., c. 171; 1984, c. 675.

§ 58.1-463. Other methods of withholding

The Tax Commissioner may grant permission to employers who do not desire to use the withholding tax tables provided in accordance with § 58.1-462, to determine the amount of tax to be withheld by use of a method of withholding other than withholding tax tables, provided such method will withhold from each employee substantially the same amount of tax as would be withheld by use of the withholding tax tables. Employers who desire to determine the amount of tax to be withheld by a method other than by use of the withholding tax tables shall obtain permission from the Tax Commissioner before the beginning of a payroll period for which the employer desires to withhold the tax by such other method. Applications to use such other method must be accompanied by evidence establishing the need for the use of such method.

Code 1950, § 58-151.4; 1962, c. 612; 1984, c. 675.

§ 58.1-464. Miscellaneous payroll period applicable to withholding in payment of certain wages; withholding on basis of average wages

A. If wages are paid with respect to a period which is not a payroll period, the amount to be deducted and withheld shall be that applicable in the case of a miscellaneous payroll period containing a number of days including Sundays and holidays, equal to the number of days in the period with respect to which such wages are paid.

B. In any case in which wages are paid by an employer without regard to any payroll period or other period, the amount to be deducted and withheld shall be that applicable in the case of a miscellaneous payroll period containing a number of days equal to the number of days, including Sundays and holidays, which have elapsed since the date of the last payment of such wages by such employer during the calendar year, or the date of commencement of employment with such employer during such year, or January 1 of such year, whichever is the later.

C. The Tax Commissioner may, by regulations, authorize employers:

1. To estimate the wages which will be paid to any employee in any quarter of the calendar year;

2. To determine the amount to be deducted and withheld upon each payment of wages to such employee during such quarter as if the appropriate average of the wages so estimated constituted the actual wages paid; and

3. To deduct and withhold upon any payment of wages to such employee during such quarter such amount as may be necessary to adjust the amount actually deducted and withheld upon the wages of such employee during such quarter to the amount that would be required to be deducted and withheld during such quarter without regard to this subsection C.

Code 1950, § 58-151.5; 1962, c. 612; 1984, c. 675.

§ 58.1-465. Overlapping pay periods, and payment by agent or fiduciary

The manner of withholding and the amount to be deducted and withheld under this article shall be determined in accordance with regulations prescribed by the Tax Commissioner under which the withholding exemption allowed to the employee in any calendar year shall approximate the withholding exemption allowable with respect to an annual payroll period, if a payment of wages is made to an employee by an employer:

1. With respect to a payroll period or other period, any part of which is included in a payroll period or other period with respect to which wages are also paid to such employee by such employer;

2. Without regard to any payroll period or other period, but on or prior to the expiration of a payroll period or other period with respect to which wages are also paid to such employee by such employer;

3. With respect to a period beginning in one and ending in another calendar year; or

4. Through an agent, fiduciary, or other person who also has the control, receipt, custody, or disposal of, or pays, the wages payable by another employer to such employee.

Code 1950, § 58-151.6; 1962, c. 612; 1984, c. 675.

§ 58.1-466. Additional withholding

The Tax Commissioner is authorized to provide by regulations, under such conditions and to such extent as he deems proper, for withholding in addition to that otherwise required under this article in cases in which the employer and the employee agree to such additional withholding. Such additional withholding shall for all purposes be considered tax required to be deducted and withheld under this article.

Code 1950, § 58-151.7; 1962, c. 612; 1984, c. 675.

§ 58.1-467. Failure of employer to withhold tax; payment by recipient of wages

If the employer, in violation of the provisions of this article, fails to deduct and withhold the tax under this article, and thereafter the tax against which such tax may be credited is paid, the tax so required to be deducted and withheld shall not be collected from the employer. This section shall in no case relieve the employer from liability for any penalties or additions to the tax otherwise applicable in respect of such failure to deduct and withhold.

Code 1950, § 58-151.8; 1962, c. 612; 1984, c. 675.

§ 58.1-468. Failure of employer to pay over tax withheld

In the event that any employer deducts and withholds taxes from the compensation of an employee but fails to pay over the money so deducted and withheld to the Commonwealth, such employee shall not be held liable for the payment of such taxes but shall be entitled to a credit for the moneys so deducted and withheld as if the same had legally been paid over by the employer as required by this chapter. The burden of proving that such an employer deducted and lawfully withheld state income tax shall rest upon the employee.

Code 1950, § 58-151.8:1; 1970, c. 369; 1984, c. 675.

§ 58.1-469. Included and excluded wages

If the remuneration paid by an employer to an employee for services performed during one-half or more of any payroll period of not more than thirty-one consecutive days constitutes wages, all the remuneration paid by such employer to such employee for such period shall be deemed to be wages; but if the remuneration paid by an employer to an employee for services performed during more than one-half of any such payroll period does not constitute wages, then none of the remuneration paid by such employer to such employee for such period shall be deemed to be wages.

Code 1950, § 58-151.9; 1962, c. 612; 1984, c. 675.

§ 58.1-470. Withholding exemption certificates

A. An employee receiving wages shall be entitled to the exemptions for which such employee qualifies under the laws of the United States relating to federal income taxes.

B. Every employee shall at the time of commencing employment furnish his employer with a signed withholding exemption certificate relating to the withholding exemptions which he claims, which in no event shall exceed the sum of exemptions to which he is entitled.

C. Withholding exemption certificates shall take effect as of the beginning of the first payroll period ending, or the first payment of wages made without regard to a payroll period, on or after the date on which such certificate is so furnished, provided that certificates furnished before January 1, 1983, shall be considered as furnished on that date.

D. A withholding exemption certificate which takes effect under this section shall continue in effect with respect to the employer until another such certificate takes effect under this section. If a withholding exemption certificate is furnished to take the place of an existing certificate, the employer at his option may continue the old certificate in force with respect to all wages paid on

or before the first status determination date, January 1 or July 1, which occurs at least thirty days after the date on which such new certificate is furnished.

E. If, on any day during the calendar year, the sum of withholding exemptions to which the employee will be, or may reasonably be expected to be, entitled at the beginning of his next taxable year is different from the sum of exemptions to which the employee is entitled on such day, the employee shall in such cases and at such times as the Tax Commissioner may prescribe, furnish the employer with a withholding exemption certificate relating to the exemptions which he claims with respect to such next taxable year, which shall in no event exceed the sum of exemptions to which he will be, or may reasonably be expected to be, so entitled. Exemption certificates furnished pursuant to this subsection shall not take effect with respect to any payment of wages made in the calendar year in which the certificate is furnished.

F. If, on any day during the calendar year, the sum of withholding exemptions to which the employee is entitled is less than the sum of withholding exemptions claimed by the employee on the withholding exemption certificate then in effect with respect to him, the employee shall, within ten days thereafter, furnish the employer with a new withholding exemption certificate relating to the withholding exemptions which the employee then claims, which shall in no event exceed the sum of exemptions to which he is entitled on such day. If, on any day during the calendar year, the sum of withholding exemptions to which the employee is entitled is greater than the sum of withholding exemptions claimed, the employee may furnish the employer with a new withholding exemption certificate relating to the withholding exemptions which the employee then claims, which shall in no event exceed the sum of exemptions to which he is entitled on such day.

G. Withholding exemption certificates shall be in such form and contain such information as the Tax Commissioner may prescribe.

Code 1950, § 58-151.11; 1962, c. 612; 1971, Ex. Sess., c. 171; 1984, c. 675.

§ 58.1-471. Fraudulent withholding exemption certificate or failure to supply information

Any individual required to supply information to his employer under this article who willfully supplies false or fraudulent information, or who willfully fails to supply information thereunder which would require an increase in the tax to be withheld under this article, shall be guilty of a Class 1 misdemeanor.

Code 1950, § 58-151.12; 1962, c. 612; 1984, c. 675.

§ 58.1-472. Employer's returns and payments of withheld taxes

Every employer required to deduct and withhold from an employee's wages under this article shall make return and pay over to the Tax Commissioner the amount required to be withheld hereunder as follows:

1. Every employer whose monthly liability is less than $100 or who is subject to subdivision 3 shall make return and pay over the required amount on or before the last day of the month following the close of each quarterly period;

2. Every employer whose average monthly liability can reasonably be expected to be $100 or more shall file a return and pay the tax monthly, on or before the twenty-fifth day of the following month;

3. Every employer 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 shall, in addition to the requirements of subdivision 1, file a form with the Tax Commissioner within three banking days following the close of any period for which the employer is required to deposit federal withholding tax and pay the amount so withheld, except when a payment is due within three days of the due date for the filing of the quarterly returns, then such payment shall be made with such return. Any employer otherwise required to file a return and pay the withholding tax pursuant to this subdivision that has no more than five employees subject to withholding under this article may request a waiver from the Tax Commissioner authorizing the employer to file the return and pay the withholding tax pursuant to subdivision 2.

The Tax Commissioner may authorize an employer to file seasonal returns when in his opinion the administration of the tax imposed under this article would be enhanced. Any employer making payment under subdivision 3 will be deemed to have met the requirements hereof if at least ninety percent of actual tax liability for such period is paid. Employers authorized to file seasonal returns under this paragraph shall file each return on or before the twentieth of the month following the close of the reporting period.

The returns and forms filed under this section shall be in such electronic medium and contain such information as the Tax Commissioner may prescribe.

Code 1950, § 58-151.13; 1962, c. 612; 1968, c. 12; 1970, c. 540; 1972, c. 827; 1973, c. 279; 1974, c. 636; 1975, c. 49; 1977, cc. 396, 663; 1981, c. 283; 1984, c. 675; 1988, c. 899; 1991, cc. 362, 456; 2007, c. 753; 2015, c. 156; 2016, cc. 660, 676.

§ 58.1-473. Jeopardy assessments

If the Tax Commissioner, in any case, has reason to believe that the collection of moneys, required by this article to be withheld by the employer, is in jeopardy, he may require the employer to make such return and pay to the Tax Commissioner such amounts required to be withheld at any time the Tax Commissioner may designate therefor subsequent to the time when such amounts should have been deducted from wages and withheld.

Code 1950, § 58-151.13; 1962, c. 612; 1968, c. 12; 1970, c. 540; 1972, c. 827; 1973, c. 279; 1974, c. 636; 1975, c. 49; 1977, cc. 396, 663; 1981, c. 283; 1984, c. 675.

§ 58.1-474. Liability of employer for failure to withhold

Every employer who fails to withhold or pay to the Tax Commissioner any sums required by this article to be withheld and paid shall be personally and individually liable therefor. Any sum or sums withheld in accordance with the provisions of this article shall be deemed to be held in trust for the Commonwealth.

Code 1950, § 58-151.13; 1962, c. 612; 1968, c. 12; 1970, c. 540; 1972, c. 827; 1973, c. 279; 1974, c. 636; 1975, c. 49; 1977, cc. 396, 663; 1981, c. 283; 1984, c. 675.

§ 58.1-475. Penalty for failure to withhold

A. Any employer required under the provisions of this article to deduct and withhold from wages and make returns and payments of amounts withheld to the Tax Commissioner, who fails to withhold such amounts or to make such returns, or who fails to remit amounts collected to the Tax Commissioner, or otherwise fails to remit to the Tax Commissioner as required by this article, shall be subject to a penalty equal to six percent of the amount that should have been properly withheld and paid over to the Tax Commissioner if the failure is for not more than one month, with an additional six percent for each additional month or fraction thereof during which such failure continues, not exceeding thirty percent in the aggregate. In no case however, shall the penalty be less than ten dollars and such minimum penalty shall apply whether or not any tax is due for the period for which the filing of such return was required.

Interest at a rate determined in accordance with § 58.1-15, shall accrue on the tax until paid, or until an assessment is made, after which interest shall accrue as provided in § 58.1-15. Such penalty and interest shall be assessed by the Tax Commissioner and shall be collected by him in the same manner as the collection of taxes may be enforced under this title.

B. Upon failure of any employer to pay over any amounts withheld or required to be withheld by the employer under this article, the Tax Commissioner may make assessments and enforce the collection of such amounts, including penalties, by any legal process provided for the enforcement of the collection of taxes under this title.

Code 1950, § 58-151.13; 1962, c. 612; 1968, c. 12; 1970, c. 540; 1972, c. 827; 1973, c. 279; 1974, c. 636; 1975, c. 49; 1977, cc. 396, 663; 1981, c. 283; 1984, c. 675; 1991, cc. 316, 331 .

§ 58.1-476. Continuation of employer liability until notice

Once an employer has become liable to a return of withholding, he must continue to file a return even though no tax has been withheld, until such time as he notifies the Tax Commissioner, in writing, that he no longer has employees or that he is no longer liable for such returns. If an employer requests in writing that he be permitted to change from a monthly return to a quarterly return on the ground that his withholding has become less than $300 for each quarter, such change shall be permitted only at the beginning of a calendar year.

Code 1950, § 58-151.13; 1962, c. 612; 1968, c. 12; 1970, c. 540; 1972, c. 827; 1973, c. 279; 1974, c. 636; 1975, c. 49; 1977, cc. 396, 663; 1981, c. 283; 1984, c. 675.

§ 58.1-477. Extensions

The Tax Commissioner may grant an employer a reasonable extension of time for filing any return under this article whenever in his judgment good cause exists. Whenever under the terms of such an extension the payment of any amount or amounts of money to the Tax Commissioner by the employer is postponed for a longer period than ten days from the time the same would be otherwise due and payable, such employer shall be charged with interest on such amount or amounts at a rate determined in accordance with § 58.1-15, from the time such amount or amounts were originally due and payable to the date of payment under the terms of the extension.

Code 1950, § 58-151.13; 1962, c. 612; 1968, c. 12; 1970, c. 540; 1972, c. 827; 1973, c. 279; 1974, c. 636; 1975, c. 49; 1977, cc. 396, 663; 1981, c. 283; 1984, c. 675.

§ 58.1-478. Withholding tax statements for employees; employers must file annual returns with Tax Commissioner; penalties

A. Every person required to deduct and withhold from an employee's wages under this article shall furnish to each such employee in respect to the remuneration paid by such person to such employee during the calendar year, on or before January 31 of the succeeding year, or if his employment is terminated before the close of such calendar year, on the day on which the last payment of remuneration is made, a written statement in duplicate showing the following: (i) the name of such person; (ii) the name of the employee and his social security account number; (iii) the total amount of wages; and (iv) the total amount deducted and withheld under this article by such employer.

B. The written statements required to be furnished pursuant to this section in respect of any remuneration shall be furnished at such other times, shall contain such other information, and shall be in such form as the Tax Commissioner may by regulations prescribe.

C.1. Every employer shall file an annual return with the Tax Commissioner, setting forth such information as the Tax Commissioner may require, not later than January 31 of the calendar year succeeding the calendar year in which wages were withheld from employees, and such annual return shall be accompanied by an additional copy of each of the written statements furnished to each employee under subsections A and B.

2. Every employer shall file the annual return and copies of written statements required under this subsection using an electronic medium using a format prescribed by the Tax Commissioner. Waivers shall be granted only if the Tax Commissioner finds that this requirement creates an unreasonable burden on the employer. All requests for waiver shall be submitted to the Tax Commissioner in writing.

D. The Tax Commissioner shall have the authority to require every employer to furnish the names and social security numbers of all employees whose wages or withholding amounts for the taxable year are below levels specified by the Tax Commissioner.

Code 1950, § 58-151.14; 1962, c. 612; 1971, Ex. Sess., c. 171; 1984, c. 675; 1987, c. 9; 1998, c. 335; 2001, cc. 297, 307; 2010, cc. 36, 151; 2016, cc. 660, 676.

§ 58.1-478.1. Information furnished to the Department of Taxation

No person required to deduct and withhold from another employee's wages and to file a return or report of the same, through use of an electronic medium, with the Department of Taxation as provided under this article, shall be required to provide his own social security number for purposes of fulfilling his duty in filing the return or report. However, nothing in this section shall relieve such person who is filing the return or report from including his name, social security number, wages, taxes deducted and withheld, and other information required under this article in any file, batch, return, report, or statement that incorporates the same information for all employees of the organization and that is required under this article to be submitted to the Department.

2007, c. 770.

§ 58.1-479. Refund to employer; time limitation; procedure

A. Where there has been an overpayment to the Tax Commissioner by the employer under this article, the Tax Commissioner shall order a refund or give credit to the employer only to the extent that the amount of such overpayment was not deducted and withheld from the employee's wages under this article. Every such refund shall be made out of the state treasury on the order of the Tax Commissioner upon the Comptroller.

B. Unless written application for refund or credit is received by the Tax Commissioner from the employer within two years from the date the overpayment was made, no refund or credit shall be allowed.

C. Any employer aggrieved by any action of the Tax Commissioner under this section may proceed in court under §§ 58.1-1825 through 58.1-1830 as though the case involved an assessment of income taxes, except that (i) the limitation shall be two years from the date the alleged overpayment was made, and (ii) the time which shall elapse from the filing of the written application with the Tax Commissioner under subsection B to the time when the Tax Commissioner takes final action with respect to such application shall be excluded from the computation of the period of two years.

Code 1950, § 58-151.16; 1962, c. 612; 1984, c. 675.

§ 58.1-480. Withheld amounts credited to individual taxpayer; withholding statement to be filed with return

The amount deducted and withheld under this article during any calendar year from the wages of any individual shall be allowed to the recipient of the income as a credit against the tax imposed by this chapter for the taxable year beginning in such calendar year. If more than one taxable year begins in a calendar year, such amount shall be allowed as a credit against the tax for the last taxable year so beginning. As a prerequisite to obtaining such credit the individual taxpayer must file with his income tax return one copy of the withholding statement provided for by § 58.1-478.

Code 1950, § 58-151.17; 1962, c. 612; 1984, c. 675.

§ 58.1-481. Withheld taxes not deductible in computing taxable income

The tax deducted and withheld under this article shall not be allowed as a deduction either to the employer or to the recipient of the income in computing taxable income under this chapter.

Code 1950, § 58-151.18; 1962, c. 612; 1984, c. 675.

§ 58.1-482. Certain nonresidents; reciprocity with other states

If the income tax law of another state of the United States or of the District of Columbia results in its residents being allowed a credit under § 58.1-332 sufficient to offset all taxes required by this article to be withheld from the wages of an employee, the Tax Commissioner may by regulation relieve the employers of such employees from the withholding requirements of this article with respect to such employees.

Code 1950, § 58-151.19; 1962, c. 612; 1971, Ex. Sess., c. 171; 1984, c. 675.

§ 58.1-483. Withholding state income taxes of federal employees by federal agencies

The Tax Commissioner is hereby designated as the proper official to make request for and to enter into agreements with the Secretary of the Treasury of the United States to provide for compliance with this article by the head of each department or agency of the United States in withholding state income taxes from wages of federal employees and paying the same to the Commonwealth. The Tax Commissioner is hereby authorized, empowered and directed to make request for and to enter into such agreements.

Code 1950, § 58-151.20; 1962, c. 612; 1984, c. 675.

§ 58.1-484. Liability of employer for payment of tax required to be withheld

The employer shall be liable for the payment to the Tax Commissioner of the amounts required to be deducted and withheld under this article and an employer who has withheld and paid such amounts to the Tax Commissioner shall not otherwise be liable to any person for the amount of any such payment.

Code 1950, § 58-151.10; 1962, c. 612; 1984, c. 675.

§ 58.1-485. Willful failure by employer to make return, to withhold tax, to pay it or to furnish employee with withholding statement; penalty

Willful failure by any employer to (i) make any return required by this article to the Tax Commissioner, (ii) withhold the required tax or to pay it to the Tax Commissioner as specified, or both, or (iii) furnish an employee the written statement required by § 58.1-478 shall be a Class 1 misdemeanor.

Code 1950, § 58-151.15; 1962, c. 612; 1984, c. 675.

§ 58.1-485.1. False claims of employment status; penalty

A. It shall be unlawful for any person to knowingly coerce or threaten an individual to falsely declare his employment status for the purpose of evading the withholding or payment of taxes required under this article.

B. It shall be unlawful for any person to knowingly and falsely claim an individual's employment status for the purpose of evading the withholding or payment of taxes required under this article.

C. In addition to any other penalties provided by law, any violation of this section is punishable as a Class 1 misdemeanor.

D. As used in this section "employment status" has the same meaning as defined by the United States Internal Revenue Code.

2006, c. 393.

§ 58.1-486. Bad checks

If any check tendered for any amount due under this chapter is not paid by the bank on which it is drawn and such person fails to pay the Commissioner the amount due the Commonwealth within five days after the Commissioner has given him written notice by registered or certified mail or in person by an agent that such check was returned unpaid, the person by whom such check was tendered shall be guilty of a violation of § 18.2-182.1.

1984, c. 675; 1992, c. 763 .

Article 16.1 - WITHHOLDING BY PASS-THROUGH ENTITIES

§ 58.1-486.1. Definitions

"Owner" means the same as that term is defined in § 58.1-390.1.

"Pass-through entity" means the same as that term is defined in § 58.1-390.1.

"Taxable year" when used in regard to pass-through entities means the taxable year of the pass-through entity for federal income tax purposes. If a pass-through entity does not have a taxable year for federal tax purposes, its tax year for purposes of this article shall be the calendar year.

2007, c. 796.

§ 58.1-486.2. Withholding tax on Virginia source income of nonresident owners

A. For the privilege of doing business in the Commonwealth, a pass-through entity that has taxable income for the taxable year derived from or connected with Virginia sources, any portion of which is allocable to a nonresident owner, shall pay a withholding tax under this section, except as provided in subsection C.

B.1. The amount of withholding tax payable by any pass-through entity under this article shall be equal to five percent of the nonresident owner's share of income from Virginia sources of all nonresident owners as determined under this chapter, which may lawfully be taxed by the Commonwealth and which is allocable to a nonresident owner.

2. When determining the amount of withholding tax due under this section, the pass-through entity may apply any tax credits allowable under the Code of Virginia to the pass-through entity that pass through to nonresident owners; provided that in no event may the application of any

credit or credits reduce the tax liability of any nonresident owner under this article to less than zero.

C. Withholding shall not be required:

1. For any nonresident owner, other than a nonresident corporation, who is exempt from the tax imposed by this article. An owner shall be exempt from the tax imposed by this article only if the owner is, by reason of the owner's purpose or activities, exempt from paying federal income taxes on the owner's Virginia source income. The pass-through entity may rely on the written statement of the owner claiming to be exempt from the tax imposed by this article provided the pass-through entity discloses the name and federal taxpayer identification number for all such owners in its return for the taxable year filed under § 58.1-392;

2. For any nonresident owner that is a corporation that is exempt from the tax imposed by Article 10 (§ 58.1-400 et seq.). For purposes of this subdivision, a corporation is exempt from the tax imposed by Article 10 only if the corporation, by reason of its purpose or activities, is exempt from paying federal income taxes on the corporation's Virginia source income. The pass-through entity may rely on the written statement of the person claiming to be exempt from the tax imposed by Article 10 provided the pass-through entity discloses the name and federal taxpayer identification number for all such corporations in its return for the taxable year filed under § 58.1-392;

3. When compliance will cause undue hardship on the pass-through entity. However, no pass-through entity shall be exempt under this subdivision from complying with the withholding requirements of this section unless the Tax Commissioner, in his discretion, approves in writing the pass-through entity's written petition for exemption from the withholding requirements of this section based on undue hardship. The Tax Commissioner may prescribe the form and contents of such a petition and specify standards for when a pass-through entity will not be required to comply with the withholding requirements of this section due to undue hardship. The standards for undue hardship, determined by the Tax Commissioner in his discretion, shall take into account (among other relevant factors) the ability of a pass-through entity to comply at reasonable cost with the withholding requirements of this section and the cost to the Commonwealth of collecting the tax directly from a nonresident owner who does not voluntarily file a return and pay the amount of tax due under this chapter with respect to his allocable Virginia taxable income; or

4. For any nonresident person of the Commonwealth when the pass-through entity owns and leases four or fewer dwelling units in the Commonwealth, provided the pass-through entity discloses the name and federal taxpayer identification number for all such owners in its return for the taxable year filed under § 58.1-392. For the purposes of this subdivision, the term "person" shall mean the same as that term is defined in § 55-248.4.

D.1. Each pass-through entity required to withhold tax under this section shall pay the amount required to be withheld to the Tax Commissioner at the same time that the return under Article 9 (§ 58.1-390.1 et seq.), if required, is to be filed.

2. An extension of time for filing the return under § 58.1-393.1 shall not extend the time for paying the amount of withholding tax due under this section. In cases of an extension of time for filing, the pass-through entity shall pay, by the due date specified in subsection A of § 58.1-392, at least 90 percent of the withholding tax due for the taxable year or 100 percent of the tax paid under this section for the prior taxable year, if that taxable year was a taxable year of 12 months and tax was paid under this section for that taxable year. The remaining portion of the tax due under this section, if any, shall be paid at the time the pass-through entity files the return required under § 58.1-392. If the balance due is paid by the last day of the extension period for filing such return and the amount of tax due with that return is 10 percent or less of the tax due under this section for the taxable year, no penalty shall be imposed with respect to the balance so remitted. In addition to interest, if the underestimation of the balance of tax due exceeds 10 percent of the actual tax liability, there shall be added to the tax as a penalty an amount equal to two percent per month of the balance of tax due for each month or fraction thereof from the original due date for the filing of the withholding tax return to the date of payment. If the amount of withholding tax due under this section for the taxable year is less than the estimated withholding taxes paid for the taxable year by the pass-through entity, the excess shall be refunded to the pass-through entity or, at its election, established as a credit against withholding tax due under this section for the then current taxable year.

3. The Tax Commissioner may, if he believes it necessary for the protection of trust fund moneys due the Commonwealth, require any pass-through entity to pay over to the Tax Commissioner the tax deducted and withheld under this section at any earlier time or times.

E.1. Each nonresident owner shall be allowed a credit for that owner's share of the tax withheld by the pass-through entity under this section; provided, that when the distribution is to a corporation taxable under Article 10 (§ 58.1-400 et seq.), the credit allowed by this subsection shall be applied against the corporation's liability for tax under this chapter.

2. A nonresident owner's share of any withholding tax paid by the pass-through entity shall be treated as distributed to such nonresident owner on the earlier of (i) the day on which such tax was paid to the Tax Commissioner by the pass-through entity or (ii) the last day of the taxable year for which such tax was paid by the pass-through entity.

F.1. Every pass-through entity required to deduct and withhold tax under this section shall furnish to each nonresident owner a written statement, as prescribed by the Tax Commissioner, showing (i) the amount of its allocable Virginia taxable income, whether or not distributed for federal income tax purposes by such pass-through entity to such nonresident owner; (ii) the amount

deducted and withheld as tax under this section; and (iii) such other information as the Tax Commissioner may require.

2. A copy of the written statements required by this subsection shall be filed with the Virginia return filed under § 58.1-392 by the pass-through entity for its taxable year to which the distribution relates. The written statement shall be furnished to each nonresident owner on or before the due date of the pass-through entity's return under § 58.1-392 for the taxable year, including extensions of time for filing such return, or a later date as may be allowed by the Tax Commissioner.

G. Every pass-through entity required to deduct and withhold tax under this section is hereby made liable for the payment of the tax due under this section for taxable years beginning on or after January 1, 2008. Any amount of tax withheld under this section shall be held in trust for the Tax Commissioner. No nonresident owner shall have a right of action against the pass-through entity in respect to any moneys withheld from such owner's distributive share and paid over to the Tax Commissioner in compliance with or in intended compliance with this section.

H. If any pass-through entity fails to deduct and withhold tax as required by this section, and thereafter the tax against which such tax may be credited is paid, the tax so required to be deducted and withheld under this section shall not be collected from the pass-through entity, but the pass-through entity shall not be relieved from liability for any penalties or interest or additions to tax otherwise applicable in respect of such failure to withhold.

2007, c. 796; 2010, c. 120; 2011, c. 766.

§ 58.1-486.3. Penalty

A. If any payment is not made in full when due, there shall be added to the entire tax or to any unpaid balance of the tax a penalty of six percent of the amount thereof, if the failure is for not more than one month, with an additional six percent for each additional month or fraction thereof during which such failure to pay continues, not exceeding 30 percent in the aggregate. The entire tax or any unpaid balance of the tax, together with such penalty and interest, shall immediately become collectible. Interest upon such tax or any unpaid balance of the tax and on the accrued penalty shall be added at a rate determined in accordance with § 58.1-15 from the date the tax or any unpaid balance of the tax was originally due until paid. In the case of an additional tax assessed by the Department, if the return was made in good faith and the understatement of the amount in the return was not due to any fault of the taxpayer, there shall be no penalty on the additional tax because of such understatement, but interest shall be added to the amount of the deficiency at a rate determined in accordance with § 58.1-15 from the time the return was required by law to be filed until paid.

B. In any month or fraction thereof for which the pass-through entity is subject to the penalty imposed under § 58.1-394.1 and the penalty under this section, the greater of the two penalties shall apply.

C. The penalty under this section shall not apply to any tax attributable to income that was included in a return filed pursuant to § 58.1-395.

2010, c. 120.

Article 19 - ESTIMATED TAX

§ 58.1-490. Declarations of estimated tax

A. Every resident and nonresident individual shall make a declaration of his estimated tax for every taxable year, if his Virginia tax liability can reasonably be expected to exceed an amount, to be determined under regulations promulgated by the Tax Commissioner, which takes into account the additions, subtractions and deductions set forth in § 58.1-322, the credits set forth in Articles 3 (§ 58.1-332 et seq.) and 13.2 (§ 58.1-439.18 et seq.), and the filing exclusions set forth in § 58.1-321. Every estate with respect to any taxable year ending two or more years after the date of death of the decedent and every trust shall make a declaration of its estimated tax for every taxable year, if its Virginia taxable income can reasonably be expected to exceed the amount specified by regulation for individuals as set forth above.

B. For purposes of this article, "estimated tax" means the amount which an individual estimates to be his income tax under this chapter for the taxable year, less the amount which he estimates to be the sum of any credits allowable against the tax.

C. For purposes of this section, the declaration shall be the first voucher.

D. In the case of a husband and wife, a single declaration under this section may be made by them jointly, in which case the liability with respect to the estimated tax shall be joint and several. No joint declaration may be made if either the husband or the wife is a nonresident of the Commonwealth unless both are required by this chapter to file a return, if they are separated under a decree of divorce or of separate maintenance, or if they have different taxable years. If a joint declaration is made but a joint return is not made for the taxable year, the estimated tax for such year may be treated as the estimated tax of either the husband or the wife, or may be divided between them.

E. A declaration of estimated tax of an individual other than a farmer, fisherman, or merchant seaman shall be filed on or before May 1 of the taxable year, except that if the requirements of subsection A are first met:

1. The declaration shall be filed on or before June 15, or

2. After June 1 and before September 2 of the taxable year, the declaration shall be filed on or before September 15, or

3. After September 1 of the taxable year, the declaration shall be filed on or before January 15 of the succeeding year.

F. A declaration of estimated tax of an individual having an estimated gross income from (i) farming (including oyster farming); (ii) fishing; or (iii) working as a merchant seaman for the taxable year, which is at least two-thirds of his total estimated gross income for the taxable year, may be filed at any time on or before January 15 of the succeeding year, in lieu of the time otherwise prescribed.

G. A declaration of estimated tax of an individual having a total estimated tax for the taxable year of $40 or less may be filed at any time on or before January 15 of the succeeding year under regulations of the Tax Commissioner.

H. An individual may amend a declaration under regulations of the Tax Commissioner.

I. If on or before March 1 of the succeeding taxable year an individual files his return for the taxable year for which the declaration is required, and pays therewith the full amount of the tax shown to be due on the return:

1. Such return shall be considered as his declaration if no declaration was required to be filed during the taxable year, but is otherwise required to be filed on or before January 15.

2. Such return shall be considered as the amendment permitted by subsection H to be filed on or before January 15 if the tax shown on the return is greater than the estimated tax shown in a declaration previously made.

J. This section shall apply to a taxable year other than a calendar year by the substitution of the months of such fiscal year for the corresponding months specified in this section.

K. An individual having a taxable year of less than 12 months shall make a declaration in accordance with regulations of the Tax Commissioner.

L. The declaration of estimated tax for an individual who is unable to make a declaration by reason of any disability shall be made and filed by his guardian, committee, fiduciary or other person charged with the care of his person or property (other than a receiver in possession of only a part of his property), or by his duly authorized agent.

M. The declaration of estimated tax for a trust or estate shall be made by the fiduciary. For purposes of the estimated tax imposed in this article, any reference to an "individual" shall be deemed to include the fiduciary required to file a declaration for a trust or estate. Any overpayment of estimated tax with respect to any trust or estate shall be refunded to the fiduciary. A beneficiary of a trust or estate shall not be entitled to a credit against the beneficiary's individual income tax for any overpayment of estimated tax by a trust or estate.

Code 1950, § 58-151.21; 1962, c. 612; 1970, c. 102; 1971, Ex. Sess., cc. 171, 261; 1978, c. 157; 1984, c. 675; 1985, c. 221; 1987, cc. 484, 599; 1988, c. 248; 1997, c. 257; 2000, c. 415; 2009, c. 34; 2011, c. 851.

§ 58.1-491. Payments of estimated tax

A. The estimated tax with respect to which a declaration is required shall be paid as follows:

1. If the declaration is filed on or before May 1 of the taxable year, the estimated tax shall be paid in four equal installments. The first installment shall be paid at the time of the filing of the declaration, and the second, third and fourth installments shall be paid on the following June 15, September 15, and January 15, respectively.

2. If the declaration is filed after May 1 and not after June 15 of the taxable year, and is not required to be filed on or before May 1 of the taxable year, the estimated tax shall be paid in three equal installments. The first installment shall be paid at the time of the filing of the declaration, and the second and third installments shall be paid on the following September 15 and January 15, respectively.

3. If the declaration is filed after June 15 and not after September 15 of the taxable year, and is not required to be filed on or before June 15 of the taxable year, the estimated tax shall be paid in two equal installments. The first installment shall be paid at the time of the filing of the declaration, and the second shall be paid on the following January 15.

4. If the declaration is filed after September 15 of the taxable year, and is not required to be filed on or before September 15 of the taxable year, the estimated tax shall be paid in full at the time of the filing of the declaration.

5. If the declaration is filed after the time prescribed therefor, or after the expiration of any extension of time therefor, subdivisions 2, 3, and 4 of this subsection shall not apply, and there shall be paid at the time of such filing all installments of estimated tax payable at or before such time, and the remaining installments shall be paid at the times at which, and in the amounts in which, they would have been payable if the declaration had been filed when due.

B. If an individual referred to in subsection F of § 58.1-490 (relating to income from farming or fishing) makes a declaration of estimated tax after September 15 of the taxable year and on or before the following January 15, the estimated tax shall be paid in full at the time of the filing of the declaration.

C. If any amendment of a declaration is filed, the remaining installments, if any, shall be ratably increased or decreased (as the case may be) to reflect any increase or decrease in the estimated tax by reason of such amendment, and if any amendment is made after September 15 of the taxable year, any increase in the estimated tax by reason thereof shall be paid at the time of making such amendment.

D. This section shall apply to a taxable year of less than twelve months in accordance with regulations of the Tax Commissioner.

E. This section shall apply to a taxable year other than a calendar year by the substitution of the months of such fiscal year for the corresponding months specified in this section.

F. An individual may elect to pay any installment of his estimated tax prior to the date prescribed for its payment. An individual may also elect to file a declaration of estimated tax in the closing

days of a calendar year for his taxable year about to begin, and may pay in full the amount of his estimated tax for such taxable year at the time he files the declaration.

G. Payment of the estimated tax, or any installment thereof, shall be considered payment on account of the tax for the taxable year.

H. The Tax Commissioner may grant a reasonable extension of time for payment of estimated tax (or any installment), or for filing any declaration pursuant to this article, on condition that the taxpayer shall pay interest on the amount involved at a rate determined in accordance with § 58.1-15, from the time the payment was due until the time of payment. Except for a taxpayer who is outside the United States, no such extension shall exceed six months.

Code 1950, § 58-151.22; 1962, c. 612; 1978, c. 157; 1984, c. 675.

§ 58.1-491.1. Payments estimated by certain members of the armed services

Notwithstanding any other provision of this article, estimated tax declarations and installment payments shall not be required of any individual qualifying for an extension under subdivision 1 or 2 of subsections F and G of § 58.1-344 during the period of such extension.

1991, cc. 346, 361; 1996, c. 401.

§ 58.1-492. Failure by individual, trust or estate to pay estimated tax

A. In the case of any underpayment of estimated tax by an individual, trust or estate, except as provided in subsection C, there shall be added to the tax under this chapter for the taxable year an amount determined at the rate established for interest, under § 58.1-15, upon the amount of the underpayment (determined below), for the period of the underpayment (determined under subsection B). The amount of such addition to the tax shall be reported and paid at the time of filing the individual income tax return or the fiduciary income tax return for the taxable year.

The amount of the underpayment shall be the excess of:

1. The amount of the installment which would be required to be paid if the estimated tax were equal to ninety percent (sixty-six and two-thirds percent in the case of an individual referred to in § 58.1-490 F, relating to income from farming) of the tax shown on the return for the taxable year, or if no return was filed, ninety percent (sixty-six and two-thirds percent in the case of individuals referred to in § 58.1-490 F, relating to income from farming) of the tax for such year; or 100 percent of the tax shown on the return of the taxpayer for the preceding taxable year, whichever is less, over

2. The amount, if any, of the installment paid on or before the last date prescribed for such payment.

B. The period of the underpayment shall run from the date the installment was required to be paid to whichever of the following dates is the earlier:

1. May 1, if a calendar year, or the fifteenth day of the fourth month following the close of the taxable year, if a fiscal year.

2. With respect to any portion of the underpayment, the date on which such portion is paid. For purposes of this subdivision a payment of estimated tax on any installment date shall be considered a payment of any previous underpayment only to the extent such payment exceeds the amount of the installment determined under subdivision A 1 for such installment date.

C. Notwithstanding the provisions of subsections A and B, the addition to the tax with respect to any underpayment of any installment shall not be imposed if the total amount of all payments of estimated tax made on or before the last date prescribed for the payment of such installment equals or exceeds whichever of the following is the lesser:

1. The amount which would have been required to be paid on or before such date if estimated tax were whichever of the following is the least:

a. The tax shown on the return of the individual, trust or estate for the preceding taxable year, if a return showing a liability for tax was filed by the individual, trust or estate for the preceding taxable year and such preceding year was a taxable year of twelve months;

b. An amount equal to the tax computed, at the rates applicable to the taxable year, on the basis of the taxpayer's status with respect to personal exemptions for the taxable year, otherwise on the basis of the facts shown on his return for, and the law applicable to, the preceding year; or

c. An amount equal to ninety percent (sixty-six and two-thirds percent in the case of individuals referred to in § 58.1-490 F, relating to income from farming) of the tax for the taxable year computed by placing on an annualized basis the taxable income for the months in the taxable year ending before the month in which the installment is required to be paid. For purposes of this paragraph the taxable income shall be placed on an annualized basis by:

(i) Multiplying by twelve (or, in the case of a taxable year of less than twelve months, the number of months in the taxable year) the taxable income (computed without deduction of personal exemptions) for the months in the taxable year ending before the month in which the installment is required to be paid, or, for a trust or estate, the months in the taxable year ending before the date that is one month before the month in which the installment is required to be paid;

(ii) Dividing the resulting amount by the number of months in the taxable year ending before the month in which such installment date falls, or, for a trust or estate, the months in the taxable year ending before the date that is one month before the month in which the installment is required to be paid; and

(iii) Deducting from such amount the deductions for personal exemptions allowable for the taxable year (such personal exemptions being determined as of the last date prescribed for payment of the installment); or

2. An amount equal to ninety percent of the tax computed, at the rates applicable to the taxable year, on the basis of the actual taxable income for the months in the taxable year ending before the month in which the installment is required to be paid.

D. For purposes of applying this section:

1. The estimated tax shall be computed without any reduction for the amount which the individual estimates as his credit under § 58.1-480 (relating to tax withheld at source on wages);

2. The amount of the credit allowed under § 58.1-480 for the taxable year shall be deemed a payment of estimated tax, and an equal part of such amount shall be deemed paid on each installment date (determined under § 58.1-491) for such taxable year, unless the taxpayer establishes the dates on which all amounts were actually withheld, in which case the amounts so withheld shall be deemed payments of estimated tax on the dates on which such amounts were actually withheld; and

3. There shall be no addition to tax imposed for underpayment of estimated tax of $150 or less for the taxable year.

E. The application of this section to taxable years of less than twelve months shall be in accordance with regulations prescribed by the Tax Commissioner.

Code 1950, § 58-151.23; 1962, c. 612; 1972, c. 827; 1977, c. 396; 1983, c. 575; 1984, c. 675; 1985, c. 221; 1987, cc. 484, 599, 611; 1990, c. 335; 1991, cc. 362, 456; 2000, c. 388.

§ 58.1-493. Declarations of estimated tax to be filed with commissioner of revenue of county or city

A. Every resident individual who is required by this article to file a declaration of estimated tax shall file his declaration with the commissioner of the revenue for the county or city in which he resides, and every nonresident individual who is required by this article to file a declaration of estimated tax shall file his declaration with the commissioner of the revenue for the county or city in which all or a part of his income from sources within the Commonwealth was derived. Forms for use by taxpayers in preparing their declarations of estimated tax shall be supplied by the Department to the commissioners of the revenue, who shall mail or deliver them to the taxpayers needing them so far as ascertainable not later than January 15 of each year. Failure of any taxpayer to receive any such form shall not relieve him of his obligation to file a declaration of estimated tax.

B. Every trust or estate which is required by this article to file a declaration of estimated tax shall file the declaration with the commissioner of the revenue for the county or city in which the fiduciary qualified or, if there has been no qualification in this state, in the city or county in which the fiduciary resides, does business or has an office or wherein the beneficiaries or any of them may reside.

Code 1950, § 58-151.24; 1962, c. 612; 1984, c. 675; 1987, c. 484.

§ 58.1-494. Sheets or forms for recording declarations of estimated tax; recording

The commissioner of the revenue shall, for recording declarations of estimated tax, make out assessment sheets or forms daily as and when declarations are received, and shall continue so to

make out such sheets or forms daily until all declarations so received by him have been entered on such sheets or forms. The commissioner of the revenue shall each day deliver the original and, if the Department so prescribes, one copy of each such sheet or form so made out that day to the treasurer of the county or city.

Code 1950, § 58-151.25; 1962, c. 612; 1968, c. 343; 1981, c. 96; 1984, c. 675.

§ 58.1-495. Payment of estimated tax; notice of installment due; information to be transmitted to Department

The estimated tax with respect to which a declaration is required by this article shall be paid as specified in § 58.1-491 to the treasurer of the county or city with whose commissioner of the revenue the taxpayer files his declaration of estimated tax.

In every case the taxpayer may make his first payment to the treasurer of the county or city by attaching such payment to his declaration when he files it with the commissioner of the revenue. The commissioner of the revenue shall transmit all such payments to the treasurer at the time he delivers to the treasurer the sheets or forms mentioned in § 58.1-494 or, if memorandum assessments are made, at the time such memorandum assessments are certified to the treasurer.

Within ten days after the close of each month each county and city treasurer shall transmit to the Department in such form as the Department may prescribe such information and data as may be required by the Department with respect to all collections of estimated tax throughout the next preceding month.

Code 1950, § 58-151.26; 1962, c. 612; 1977, c. 396; 1979, c. 33; 1981, c. 96; 1982, c. 530; 1984, c. 675.

§ 58.1-496. Willful failure or refusal to file declaration of estimated tax, or making false and fraudulent statement, a misdemeanor

Any person required under this article to file a declaration of estimated tax who willfully fails or refuses to file such declaration, at the time or times required by this article, and any person who, with intent to defraud the Commonwealth, makes any false statement in any such declaration, shall be guilty of a Class 1 misdemeanor.

Code 1950, § 58-151.27; 1962, c. 612; 1984, c. 675.

§ 58.1-497. Section 58.1-306 applicable to declaration of estimated tax

Section 58.1-306 (relating to special instances in which an individual taxpayer may file an income tax return with the Department of Taxation) shall also apply to a declaration of estimated tax.

Code 1950, § 58-151.28; 1962, c. 612; 1971, Ex. Sess., c. 171; 1972, c. 565; 1984, c. 675.

§ 58.1-498. Oaths or affirmations unnecessary on returns, declarations and reports; misdemeanor to file false return, declaration or report

No return, declaration, or report filed under this article need be verified by the oath or affirmation of the person or persons who are required by law to file the same. Any such person who willfully

files any such return, declaration or report which he does not believe to be true and correct as to every material matter shall be guilty of a Class 1 misdemeanor.

Code 1950, § 58-151.30; 1962, c. 612; 1984, c. 675; 1996, c. 315.

§ 58.1-499. Refunds to individual taxpayers; crediting overpayment against estimated tax for ensuing year

A. In the case of any overpayment of any tax, addition to tax, interest or penalties imposed on an individual income taxpayer by this chapter, whether by reason of excessive withholding, overestimating and overpaying estimated tax, error on the part of the taxpayer, or an erroneous assessment of tax, the Tax Commissioner shall order a refund of the amount of the overpayment to the taxpayer. The overpayment shall be refunded out of the state treasury on the order of the Tax Commissioner upon the Comptroller.

B. If a refund of an overpayment of individual income tax payments is made payable jointly to a husband and wife who receive a final divorce decree after filing a joint income tax return, separate income tax returns on a single form, an amendment thereto, or other claim resulting in the issuance of a refund, the Tax Commissioner shall order the reissuance of the refund in separate checks to the husband and to the wife if the unnegotiated joint refund check is returned to Department with a certification, in a form satisfactory to the Department, made by one spouse that the other spouse refuses to endorse the joint refund check or cannot be located. In making such certification, the spouse returning the check shall agree to indemnify the Commonwealth for any amounts that the Commonwealth may be required to pay to the other spouse with respect to such refund. A certified copy of the final divorce decree, including any agreement with respect to the division of property between the spouses, shall be provided with the certification. If the final divorce decree addresses the apportionment or ownership of the refunded amount, the refund shall be apportioned and separate payments ordered as provided therein. If the final divorce decree does not address the apportionment or ownership of the refunded amount, the amount of the refund shall be divided equally between the husband and wife. The reissuance of refund payments pursuant to this subsection shall not affect the joint and several liability of the husband and wife for tax liabilities for the period for which the return or returns were filed.

C. Whenever the annual income tax return of an individual income taxpayer indicates in the place provided thereon that the taxpayer has overpaid his tax for the taxable year by reason of excessive withholding or overestimating and overpaying estimated tax, or both, the amount of the overpayment as shown on his return, subject to correction for error, may be credited against the estimated income tax for the ensuing year at the taxpayer's election and according to regulations prescribed by the Department and such overpayments by either a husband or wife on a separate return may be credited to the tax for the ensuing year of either of them or may be credited to their joint tax at the election of the person to whom the overpayment is payable; or otherwise such amount shall be refunded to him as soon as practicable. Interest on such refund shall be allowed and computed in accordance with § 58.1-1833. The making of any refund shall not absolve any

taxpayer of any income tax liability which may in fact exist and the Tax Commissioner may make an assessment for any deficiency in the manner provided by law.

D. No refund under this section, however, shall be made for any overpayment of less than one dollar except on special written application of the taxpayer, nor shall any refund of any amount under this section be made, whether on discovery by the Department or on written application of the taxpayer, if such discovery is not made or such written application is not received within three years from the last day prescribed by law for the timely filing of the return, or within sixty days from the final determination of any change or correction in the liability of the taxpayer for any federal tax upon which the state tax is based, whichever is later.

E. Notwithstanding the provisions of the Setoff Debt Collection Act, Article 21 (§ 58.1-520 et seq.) of this chapter, whenever any taxpayer is entitled to a refund under this section, or under § 58.1-309 or §§ 58.1-1821 through 58.1-1830 and such taxpayer owes the Commonwealth a past due income tax, or balance thereof, for any year, the amount of such refund may be credited on such past due income tax or balance, to the extent indicated.

Code 1950, § 58-151.31; 1962, c. 612; 1966, c. 244; 1971, Ex. Sess., c. 171; 1977, c. 250; 1984, c. 675; 1997, c. 355.

Article 20 - ESTIMATED TAXES OF CORPORATIONS

§ 58.1-500. Declarations of estimated income tax required; contents, etc

A. Every corporation subject to taxation under this chapter shall make a declaration of estimated tax for the taxable year if its income tax imposed by this chapter, for such taxable year, reduced by any credits allowable against the tax, can reasonably be expected to exceed $1,000.

B. For purposes of this article, "estimated tax" means the amount which the corporation estimates as the amount of the income tax imposed by this chapter for the taxable year less the amount which the corporation estimates as the sum of any credits allowable against the tax.

C. The declaration shall contain such pertinent information as the Commissioner may by forms or regulations prescribe.

D. A corporation may make amendments of a declaration filed during the taxable year under regulations prescribed by the Tax Commissioner, not exceeding the number specified in § 58.1-501.

E. A corporation with a taxable year of less than twelve months shall make a declaration in accordance with regulations prescribed by the Tax Commissioner.

Code 1950, § 58-151.36; 1968, c. 14; 1970, c. 588; 1984, c. 675.

§ 58.1-501. Time for filing declarations of estimated income tax

A. The declaration of estimated tax shall be filed as follows:

If the requirements of subsection A of § 58.1-500 are first met:

1. Before the first day of the fourth month of the taxable year, the declaration shall be filed on or before the fifteenth day of the fourth month of the taxable year.

2. After the last day of the third month and before the first day of the sixth month of the taxable year, the declaration shall be filed on or before the fifteenth day of the sixth month of the taxable year.

3. After the last day of the fifth month and before the first day of the ninth month of the taxable year, the declaration shall be filed on or before the fifteenth day of the ninth month of the taxable year.

4. After the last day of the eighth month and before the first day of the twelfth month of the taxable year, the declaration shall be filed on or before the fifteenth day of the twelfth month of the taxable year.

B. An amendment of a declaration may be filed in any interval between installment dates prescribed for the taxable year, but only one amendment may be filed in each such interval.

C. The application of this section to taxable years of less than twelve months shall be in accordance with regulations prescribed by the Tax Commissioner.

Code 1950, § 58-151.37; 1968, c. 14; 1984, c. 675.

§ 58.1-502. Installment payment of estimated income tax

A. The amount of estimated tax with respect to which a declaration is required under § 58.1-500 shall be paid in installments as follows:

1. If the declaration is required to be filed by the fifteenth day of the fourth month of the taxable year, twenty-five percent of the estimated tax shall be paid on the fifteenth day of the fourth, sixth, ninth and twelfth month of the taxable year.

2. If the declaration is required to be filed by the fifteenth day of the sixth month of the taxable year, one-third of the estimated tax shall be paid on the fifteenth day of the sixth, ninth and twelfth month of the taxable year.

3. If the declaration is required to be filed by the fifteenth day of the ninth month of the taxable year, one-half of the estimated tax shall be paid on the fifteenth day of the ninth and twelfth month of the taxable year.

4. If the declaration is required to be filed by the fifteenth day of the twelfth month of the taxable year, 100 percent of the estimated tax shall be paid on the fifteenth day of the twelfth month of the taxable year.

B. A declaration is timely filed if it is not required by § 58.1-501 A to be filed on a date (determined without regard to any extension of time for filing the declaration) before the date it is actually filed.

C. If the declaration is filed after the time prescribed in § 58.1-501 A (determined without regard to any extension of time for filing the declaration), there shall be paid at the time of such filing all installments of estimated tax which would have been payable on or before such time if the declaration had been filed within such prescribed time, and the remaining installments shall be paid at the times at which, and in the amounts in which, they would have been payable if the declaration had been so filed.

D. If any amendment of a declaration is filed, the amount of each remaining installment (if any) shall be the amount which would have been payable if the new estimate had been made when the first estimate for the taxable year was made, increased or decreased (as the case may be), by the amount computed by dividing: 1. the difference between (i) the amount of estimated tax required to be paid before the date on which the amendment is made, and (ii) the amount of estimated tax which would have been required to be paid before such date if the new estimate had been made when the first estimate was made, by 2. the number of installments remaining to be paid on or after the date on which the amendment is made.

E. The application of this section to taxable years of less than twelve months shall be in accordance with regulations prescribed by the Tax Commissioner.

F. Payment of the estimated income tax, or any installment thereof, shall be considered payment on account of the income tax imposed by this chapter for the taxable year.

G. The Tax Commissioner may grant a reasonable extension of time for payment of estimated tax (or any installment), or for filing any declaration pursuant to this article, on condition that the taxpayer shall pay interest on the amount involved at a rate determined in accordance with § 58.1-15, from the time the payment was due until the time of payment. No such extension shall exceed six months.

Code 1950, § 58-151.38; 1968, c. 14; 1977, c. 396; 1984, c. 675.

§ 58.1-503. Where declarations filed and how payments made; crediting or refunding overpayments

Every corporation required by this article to file a declaration of estimated income tax shall file the same with and make payment to the Department.

Code 1950, § 58-151.39; 1968, c. 14; 1971, Ex. Sess., c. 171; 1984, c. 675.

§ 58.1-504. Failure to pay estimated income tax

A. In case of any underpayment of estimated tax by a corporation, except as provided in subsection D, there shall be added to the tax for the taxable year an amount determined at the rate established for interest under § 58.1-15, upon the amount of the underpayment (determined under subsection B) for the period of the underpayment (determined under subsection C).

B. For purposes of subsection A, the amount of the underpayment shall be the excess of:

1. The amount of the installment which would be required to be paid if the estimated tax were equal to ninety percent of the tax shown on the return for the taxable year or, if no return was filed, ninety percent of the tax for such year, over

2. The amount, if any, of the installment paid on or before the last date prescribed for payment.

C. The period of the underpayment shall run from the date the installment was required to be paid to whichever of the following dates is the earlier:

1. The fifteenth day of the fourth month following the close of the taxable year.

2. With respect to any portion of the underpayment, the date on which such portion is paid. For purposes of this subdivision, a payment of estimated tax on any installment date shall be considered a payment of any previous underpayment only to the extent such payment exceeds the amount of the installment determined under subdivision B 1 for such installment date.

D. Notwithstanding the provisions of subsections A, B and C, the addition to the tax with respect to any underpayment of any installment shall not be imposed if the total amount of all payments of estimated tax made on or before the last date prescribed for the payment of such installment equals or exceeds the amount which would have been required to be paid on or before such date if the estimated tax were whichever of the following is the lesser:

1. The tax shown on the return of the corporation for the preceding taxable year, if a return showing a liability for tax was filed by the corporation for the preceding taxable year and such preceding year was a taxable year of twelve months.

2. An amount equal to the tax computed at the rate applicable to the taxable year but otherwise on the basis of the facts shown on the return of the corporation for, and the law applicable to, the preceding taxable year.

3. An amount equal to ninety percent of the tax for the taxable year computed by placing on an annualized basis the taxable income:

a. For the first three months of the taxable year, in the case of the installment required to be paid in the fourth month,

b. For the first three months or for the first five months of the taxable year, in the case of the installment required to be paid in the sixth month,

c. For the first six months or for the first eight months of the taxable year, in the case of the installment required to be paid in the ninth month, and

d. For the first nine months or for the first eleven months of the taxable year, in the case of the installment required to be paid in the twelfth month of the taxable year. For purposes of this subdivision, the taxable income shall be placed on an annualized basis by (i) multiplying by twelve the taxable income referred to in subdivision D 3 and (ii) dividing the resulting amount by the

number of months in the taxable year (three, five, six, eight, nine, or eleven, as the case may be) referred to in subsection A.

E. For purposes of subsection B, subdivisions D 2 and D 3, the term "tax" means the excess of the tax imposed by this chapter over the sum of any credits allowable against the tax.

F. The application of this to taxable years of less than twelve months shall be in accordance with regulations prescribed by the Commissioner.

G. Pipeline distribution companies as defined in § 58.1-2600 and gas utilities, gas suppliers and electric suppliers as defined in § 58.1-400.2 that become subject to taxation under this chapter and prior thereto paid the annual license tax based on gross receipts, shall make estimated tax payments during the first year, or short taxable year under subsection E of § 58.1-400.2, they are so subject, and notwithstanding subsection D, any excesses described in subsection B shall constitute an underpayment for such year.

Code 1950, § 58-151.40; 1968, c. 14; 1977, c. 396; 1983, c. 575; 1984, c. 675; 1999, c. 971; 2000, cc. 691, 706.

Article 20.1 - VIRGINIA LAND CONSERVATION INCENTIVES ACT OF 1999

§ 58.1-510. Purpose

The purpose of this act is to supplement existing land conservation programs to further encourage the preservation and sustainability of Virginia's unique natural resources, wildlife habitats, open spaces and forested resources.

1999, cc. 968, 983.

§ 58.1-511. Definitions

For the purposes of the article:

"Interest in real property" means any right in real property, including access thereto or improvements thereon, or water, including but not limited to an open-space easement or conservation easement, provided such interest complies with the requirements of the U.S. Internal Revenue Code § 170 (h), partial interest, mineral right, remainder or future interest, or other interest or right in real property.

"Land" or "lands" means real property, with or without improvements thereon; rights-of-way, water and riparian rights; easements; privileges and all other rights or interests of any land or description in, relating to or connected with real property.

"Public or Private Conservation Agency" means any Virginia governmental body, or any private not-for-profit charitable corporation or trust authorized to do business in the Commonwealth and organized and operated for natural resources, land conservation or historic preservation purposes, and having tax-exempt status as a public charity under the U.S. Internal Revenue Code of 1986, as

amended, and having the power to acquire, hold and maintain land and/or interests in land for such purposes.

1999, cc. 968, 983; 2005, c. 940.

§ 58.1-512. Land preservation tax credits for individuals and corporations

A. For taxable years beginning on or after January 1, 2000, there shall be allowed as a credit against the tax liability imposed by §§ 58.1-320 and 58.1-400, an amount equal to 50 percent of the fair market value of any land or interest in land located in Virginia which is conveyed for the purpose of agricultural and forestal use, open space, natural resource, and/or biodiversity conservation, or land, agricultural, watershed and/or historic preservation, as an unconditional donation by the landowner/taxpayer to a public or private conservation agency eligible to hold such land and interests therein for conservation or preservation purposes. For such conveyances made on or after January 1, 2007, the tax credit shall be 40 percent of the fair market value of the land or interest in land so conveyed.

B. The fair market value of qualified donations made under this section shall be determined in accordance with § 58.1-512.1 and substantiated by a "qualified appraisal" prepared by a "qualified appraiser," as those terms are defined under applicable federal law and regulations governing charitable contributions. The value of the donated interest in land that qualifies for credit under this section, as determined according to appropriate federal law and regulations, shall be subject to the limits established by United States Internal Revenue Code § 170(e). In order to qualify for a tax credit under this section, the qualified appraisal shall be signed by the qualified appraiser, who must be licensed in the Commonwealth of Virginia as provided in § 54.1-2011, and a copy of the appraisal shall be submitted to the Department. In the event that any appraiser falsely or fraudulently overstates the value of the contributed property in an appraisal that the appraiser has signed, the Department may disallow further appraisals signed by the appraiser and shall refer the appraiser to the Real Estate Appraiser Board for appropriate disciplinary action pursuant to § 54.1-2013, which may include, but need not be limited to, revocation of the appraiser's license. Any appraisal that, upon audit by the Department, is determined to be false or fraudulent, may be disregarded by the Department in determining the fair market value of the property and the amount of tax credit to be allowed under this section.

C. 1. The amount of the credit that may be claimed by each taxpayer, including credit claimed by applying unused credits as provided under subsection C of § 58.1-513, shall not exceed $50,000 for 2000 taxable years; $75,000 for 2001 taxable years; $100,000 for each of 2002 through 2008 taxable years; $50,000 for each of 2009, 2010, and 2011 taxable years; $100,000 for each of 2012, 2013, and 2014 taxable years; $20,000 for each of 2015 and 2016 taxable years; and $50,000 for 2017 taxable years and for each taxable year thereafter. However, for any fee simple donation of land conveyed to the Commonwealth on or after January 1, 2015, the amount of the credit claimed shall not exceed $100,000 for each taxable year, provided that no part of the charitable contributions deduction under § 170 of the Internal Revenue Code related to such fee simple

donation is allowable by reason of a sale or exchange of property. In addition, for each taxpayer, in any one taxable year the credit used may not exceed the amount of individual, fiduciary or corporate income tax otherwise due. Any portion of the credit that is unused in any one taxable year may be carried over for a maximum of 10 consecutive taxable years following the taxable year in which the credit originated until fully expended. A 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. For taxpayers affected by the credit reduction for taxable years 2009, 2010, 2011, and 2015 and thereafter, any portion of the credit that is unused in any one taxable year may be carried over for a maximum of 13 consecutive taxable years following the taxable year in which the credit originated until fully expended.

2. Qualified donations shall include the conveyance of a fee interest in real property or the conveyance in perpetuity of a less-than-fee interest in real property, such as a conservation restriction, preservation restriction, agricultural preservation restriction, or watershed preservation restriction, provided that such less-than-fee interest qualifies as a charitable deduction under § 170(h) of the United States Internal Revenue Code of 1986, as amended.

The Department of Conservation and Recreation shall compile an annual report on qualified donations of less-than-fee interests accepted by any public or private conservation agency in the respective calendar year and shall submit the report by December 1 of each year to the Chairmen of the House Committee on Appropriations, House Committee on Finance, and the Senate Committee on Finance. In preparing such report, the Department of Conservation and Recreation shall consult and coordinate with the Department of Taxation and the Departments of Forestry and Agriculture and Consumer Services to provide an estimate of the number of acres of land currently being used for "production agriculture and silviculture" as defined in § 3.2-300 that have been protected by qualified donations of less-than-fee interests. This report shall include information, when available, 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. In addition, the report shall include information, when available, on riparian buffers, both vegetated/forested buffers and no-plow buffers, required by deed restriction on land qualifying for credits in order to protect water quality. This information shall be reported in summary fashion as appropriate to preserve confidentiality of information. Qualified donations shall not include the conveyance of a fee interest, or a less-than-fee interest, in real property by a charitable organization that (i) meets the definition of "holder" in § 10.1-1009 and (ii) holds one or more conservation easements acquired pursuant to the authority conferred on a "holder" by § 10.1-1010.

3. Any fee interest, or a less-than-fee interest, in real property that has been dedicated as open space within, or as part of, a residential subdivision or any other type of residential or commercial development; dedicated as open space in, or as part of, any real estate development plan; or ded-

icated for the purpose of fulfilling density requirements to obtain approvals for zoning, subdivision, site plan, or building permits shall not be a qualified donation under this article.

4. Qualified donations shall be eligible for the tax credit herein described if such donations are made to the Commonwealth of Virginia, an instrumentality thereof, or a charitable organization described in § 501(c)(3) of the United States Internal Revenue Code of 1986, as amended, if such charitable organization (i) meets the requirements of § 509(a)(2) or (ii) meets the requirements of § 509(a)(3) and is controlled by an organization described in § 509(a)(2).

5. The preservation, agricultural preservation, historic preservation or similar use and purpose of such property shall be assured in perpetuity. In the case of conveyances of a fee interest to a charitable organization that is a "holder" as defined in § 10.1-1009, the credit shall not be allowed until the charitable organization agrees that subsequent conveyances of the fee interest in the property will be (i) subject to a previous conveyance in perpetuity of a conservation easement, as that term is defined in § 10.1-1009, or subject to the conveyance in perpetuity of an open-space easement, as that term is defined in § 10.1-1700, or (ii) conveyed to the Commonwealth of Virginia or to a federal conservation agency. No credit shall be allowed with respect to any subsequent conveyances by the charitable organization.

D. The issuance of tax credits under this article for donations made on and after January 1, 2007, shall be in accordance with procedures and deadlines established by the Department and shall be administered under the following conditions:

1. The taxpayer shall apply for a credit after completing the donation by submitting a form or forms prescribed by the Department in consultation with the Department of Conservation and Recreation. If the application requests a credit of $1 million or more or if the donation meets the conditions of subdivision 3 c, then a copy of the application shall also be filed with the Department of Conservation and Recreation by the taxpayer. The application shall include, but not be limited to:

a. A description of the conservation purpose or purposes being served by the donation;

b. The fair market value of land being donated in the absence of any easement or other restriction;

c. The public benefit derived from the donation;

d. The extent to which water quality best management practices will be implemented on the property; and

e. Whether the property is fully or partially forested and a forest management plan is included in the terms of the donation.

2. Applications for otherwise qualified donations of a less-than-fee interest shall be accompanied by an affidavit describing how the donated interest in land meets the requirements of § 170(h) of the United States Internal Revenue Code of 1986, as amended, and the regulations adopted there-

under. The application with accompanying affidavit shall be submitted to the Department of Taxation, with a copy also provided to the Department of Conservation and Recreation.

3. a. No credit in the amount of $1 million or more shall be issued with respect to a donation unless the conservation value of the donation has been verified by the Director of the Department of Conservation and Recreation, based on the criteria adopted by the Virginia Land Conservation Foundation for this purpose. Such criteria and subsequent amendments shall be exempt from the Administrative Process Act (§ 2.2-4000 et seq.), but the Virginia Land Conservation Foundation shall provide for adequate public participation, including adequate notice and opportunity to provide comments on the proposed criteria. The Director shall act on applications within 90 days of his receipt of a complete application and shall notify the taxpayer and the Department of Taxation of his action.

b. For purposes of determining whether a credit requires verification of the conservation value, the credits allowed under this article with respect to donations of any other portion of a recorded parcel of land within the preceding 11 years shall be aggregated with the credit claimed for the current donation. This subdivision shall not apply if (i) all owners of the parcel who have been allowed credit for a qualified donation are not affiliated with the person or entity seeking credit for the current donation of a different portion of the parcel and (ii) in the case of an individual seeking credit, the individual has not previously made a qualified donation for any portion of the parcel and is not an immediate family member of any such owners.

c. If (i) the real property that is the subject of the donation was partitioned from or part of another parcel of land and any other portion of such parcel, or any land partitioned from such parcel of land, has been allowed a tax credit under this article (or an application for tax credit is pending) within three years of such donation and (ii) the tax credit that would otherwise be allowed to the donor for such donation is at least $250,000, then no credit under this article shall be issued with respect to such donation described in clause (i) unless the conservation value of the donation has been verified by the Director of the Department of Conservation and Recreation. The Director shall act on applications within 90 days of his receipt of a complete application and shall notify the taxpayer and the Department of Taxation of his action. Nothing in this subdivision shall be construed or interpreted (a) as allowing additional tax credit for any land or interest in land previously conveyed for which tax credit has already been allowed under this article or (b) affecting the validity of any tax credit allowed under this article for a prior conveyance of any land or interest in land.

4. a. Tax credits shall be issued on a calendar year basis, and in no case shall the Department issue more than the maximum allowed for the calendar year. The maximum amount of credits that may be issued in a calendar year shall be $100 million plus any credits previously issued under this article but subsequently disallowed or invalidated by the Department. Credits previously issued but subsequently disallowed or invalidated shall be reissued in a subsequent calendar year. All credits shall be issued in the order that each complete application is filed. For filings by mail or a recognized commercial delivery service, the postmark or confirmation of shipment shall determine the

date of filing. If within 30 days after an application for credits has been filed the Tax Commissioner provides written notice to the donor that he has determined that the preparation of a second qualified appraisal is warranted, the application shall not be deemed complete until the fair market value of the donation has been finally determined by the Tax Commissioner. The Tax Commissioner shall make a final determination within 180 days of notifying the donor, unless the donor has filed an appeal. The donor shall have the right to appeal any decision of the Department in accordance with the provisions of Chapter 18 (§ 58.1-1800 et seq.). If more than one complete application is filed at the same time, the credits with respect to those applications shall be issued in the order that the conveyances were recorded in the appropriate circuit court of the Commonwealth. In the event that a credit requires verification of the conservation value by the Department of Conservation and Recreation and such verification has not been received at the time the maximum $100 million allowed is reached for the calendar year of the donation, such credit shall not be issued for that calendar year but shall be issued in the calendar year that the conservation value of the credit is verified by the Department of Conservation and Recreation.

No credit shall be allowed for any land or interest in land conveyed on or after July 1, 2015, unless a complete application for tax credit with regard to the conveyance has been filed with the Department by December 31 of the year following the calendar year of the conveyance. For filings by mail or a recognized commercial delivery service, the postmark or confirmation of shipment shall determine the date of filing. Solely for purposes of this condition, any application for which the Tax Commissioner has given written notice to the donor that the preparation of a second qualified appraisal is warranted shall be deemed timely filed, provided that the application was otherwise complete as of such filing deadline.

b. Beginning with calendar year 2008, the $100 million amount contained in subdivision 4 a shall be increased by an amount equal to $100 million multiplied by the percentage by which the consumer price index for all-urban consumers published by the United States Department of Labor (CPI-U) for the 12-month period ending August 31 of the preceding year exceeds the CPI-U for the 12-month period ending August 31, 2006.

c. Beginning with calendar year 2015, the maximum amount of credits that may be issued in a calendar year shall not exceed $75 million. In no case shall the Department issue any tax credit for a donation from any allocation or pool of tax credits attributable to a calendar year prior to the year in which the complete tax credit application for the donation was filed.

Beginning with the submission due on or before December 20, 2015, and in each year thereafter, the Governor shall include in "The Budget Bill" submitted pursuant to subsection A of § 2.2-1509 or in his amendments to the general appropriation act in effect submitted pursuant to subsection E of § 2.2-1509 a recommended appropriation from the general fund equal to the difference between the amount calculated pursuant to subdivision b and $75 million, but not more than $20 million, to be allocated as follows: 80 percent to the Virginia Land Conservation Fund to be used in accordance with § 10.1-1020, with no less than 50 percent of such appropriation to be used for

fee simple acquisitions with public access or acquisitions of easements with public access; 10 percent to the Virginia Battlefield Preservation Fund to be used in accordance with § 10.1-2202.4; and 10 percent to the Virginia Farmland Preservation Fund to be used in accordance with § 3.2-201.

5. a. Any taxpayer that has been issued a tax credit by the Department shall be allowed to use such credit for his or its taxable year that begins in the calendar year for which such credit was issued and for succeeding taxable years in accordance with the 10 consecutive taxable year carryforward provisions of this article, except for any taxpayer affected by the credit limitation for taxable years 2009, 2010, 2011, and 2015 and taxable years thereafter. Such a taxpayer shall be allowed to use such credit for his or its taxable year that begins in the calendar year for which such credit was issued and for succeeding taxable years in accordance with the 13 consecutive taxable year carryforward provisions of this article.

b. Any taxpayer to whom a credit has been transferred may use such credit for the taxable year in which the transfer occurred and unused amounts may be carried forward to succeeding taxable years, but in no event may such transferred credit be used more than 11 years after it was originally issued by the Department or in any taxable year of such taxpayer that ended prior to the date of transfer, except for any taxpayer affected by the credit limitation for taxable years 2009, 2010, 2011, and 2015 and taxable years thereafter. Such a taxpayer may use such credit for the taxable year in which the transfer occurred and unused amounts may be carried forward to succeeding taxable years, but in no event may such transferred credit be used more than 14 years after it was originally issued by the Department or in any taxable year of such taxpayer that ended prior to the date of transfer.

6. Neither the verification of conservation value by the Department of Conservation and Recreation nor the issuance of a credit by the Department of Taxation shall in any way be construed or interpreted as prohibiting the Department of Taxation or the Tax Commissioner from auditing any credit claimed pursuant to the provisions of this article or from assessing tax relating to the claiming of any credit under this article.

E. In any review or appeal before the Tax Commissioner or in any court in the Commonwealth the burden of proof shall be on the taxpayer to show that the fair market value and conservation value at the time of the qualified donation is consistent with this section and that all requirements of this article have been satisfied.

1999, cc. 968, 983; 2005, c. 940; 2006, Sp. Sess. I, cc. 4, 5; 2009, cc. 12, 510; 2010, cc. 246, 265, 321, 384; 2011, cc. 212, 296, 377, 672; 2013, c. 798; 2015, cc. 235, 467, 680.

§ 58.1-512.1. Determination of fair market value of donation

A. Each appraisal estimating the value of any donation upon which credits are to be based shall employ proper methodology and be appropriately supported by market evidence. The Department of Taxation shall establish and make publicly available guidelines that incorporate, as applicable

(without limitation), requirements under § 170(h) of the United States Internal Revenue Code of 1986, as amended, and the Uniform Standards of Professional Appraisal Practice (USPAP). The Department shall update the guidelines as necessary as determined by the Tax Commissioner. Such guidelines shall be exempt from the Administrative Process Act (§ 2.2-4000 et seq.) but the Department shall provide for adequate public participation, including adequate notice and opportunity to provide comments on the proposed guidelines.

B. For purposes of any appraisal for a conveyance under the provisions of this article, the value for any structures or other improvements to land shall be determined in accordance with law. For any otherwise qualified donation of a less-than-fee interest under this article, however, no more than 25% of the total credit allowed shall be for reductions in value to any structures and other improvements to land.

C. The fair market value of any property with respect to a qualified donation shall not exceed the value for the highest and best use (i) that is consistent with existing zoning requirements; (ii) for which the property was adaptable and needed or likely to be needed in the reasonably near future in the immediate area in which the property is located; (iii) that considers factors such as, by way of illustration and not limitation, slopes, flood plains, and soil conditions of the property; and (iv) for which existing roads serving the property are sufficient to support commercial or residential development in the event that is the highest and best use proposed for the property. Any appraisal submitted in support of an application for a credit under this article shall include an affidavit by the appraiser that to the best of his knowledge and belief the valuation complies with this section and shall set forth in the affidavit or refer to the specific portion of the appraisal setting forth the facts and basis for this knowledge and belief.

2006, Sp. Sess. I, cc. 4, 5.

§ 58.1-513. Limitations; transfer of credit; gain or loss from tax credit

A. Any taxpayer claiming a tax credit under this article shall not claim a credit under any similar Virginia law for costs related to the same project. To the extent a credit is taken in accordance with this article, no subtraction allowed for the gain on the sale of (i) land dedicated to open-space use or (ii) an easement dedicated to open-space use under subsection C of § 58.1-322 shall be allowed for three years following the year in which the credit is taken. Any building which serves as the basis, in whole or in part, of a tax credit under this article shall not serve as the basis of the tax credit allowed under § 58.1-339.2 for a period of five years following the donation on which the credit is based; and any building which serves as the basis for the tax credit allowed under § 58.1-339.2 shall not serve as the basis, in whole or in part, for a tax credit under this article for a period of five years following the completion of the rehabilitation project on which the credit is based.

B. Any tax credits that arise under this article from the donation of land or an interest in land made by a pass-through tax entity such as a trust, estate, partnership, limited liability company or

partnership, limited partnership, subchapter S corporation or other fiduciary shall be used either by such entity if it is the taxpayer on behalf of such entity or by the member, manager, partner, shareholder or beneficiary, as the case may be, in proportion to their interest in such entity in the event that income, deductions and tax liability pass through such entity to such member, manager, partner, shareholder or beneficiary or as set forth in the agreement of said entity. Such tax credits shall not be claimed by both the entity and the member, manager, partner, shareholder or beneficiary for the same donation.

C. 1. Any taxpayer holding a credit under this article may transfer unused but otherwise allowable credit for use by another taxpayer on Virginia income tax returns. A taxpayer who transfers any amount of credit under this article shall file a notification of such transfer to the Department in accordance with procedures and forms prescribed by the Tax Commissioner.

2. A fee of two percent of the value of the donated interest shall be imposed upon any transfer arising from the sale by any taxpayer of credits under this article and upon the distribution of a portion of credits under this article to a member, manager, partner, shareholder or beneficiary pursuant to subsection B. Revenues generated by such fees first shall be used by the Department of Taxation and the Department of Conservation and Recreation for their costs in implementing this article but in no event shall such amount exceed 50 percent of the total revenue generated by the fee on an annual basis. The remainder of such revenues shall be transferred to the Virginia Land Conservation Fund for distribution to the public or private conservation agencies or organizations, excluding federal governmental entities, that are responsible for enforcing the conservation and preservation purposes of the donated interests. Distribution of such revenues shall be made annually by the Virginia Land Conservation Foundation proportionally based on a three-year average of the number of donated interests accepted by the public or private conservation agencies or organizations, excluding federal governmental entities, during the immediately preceding three-year period.

D. To the extent included in and not otherwise subtracted from federal adjusted gross income pursuant to § 58.1-322 or federal taxable income pursuant to § 58.1-402, there shall be subtracted any amount of gain or income recognized by a taxpayer on the application of a tax credit under this article against a Virginia income tax liability.

E. The transfer of the credit and its application against a tax liability shall not create gain or loss for the transferor or the transferee of such credit.

F. A pass-through tax entity, such as a partnership, limited liability company or Subchapter S corporation, may appoint a tax matters representative, who shall be a general partner, member/manager or shareholder, and register that representative with the Tax Commissioner. The Tax Commissioner shall be entitled to deal with the tax matters representative as representative of the taxpayers to whom credits have been allocated or transferred by the entity under this article with respect to those credits. In the event a pass-through tax entity allocates or transfers tax credits

arising under this article to its partners, members or shareholders and the allocated or transferred credits shall be disallowed, in whole or in part, such that an assessment of additional tax against a taxpayer shall be made, the Tax Commissioner shall first make written demand for payment of any additional tax, together with interest and penalties, from the tax matters representative. In the event such payment demand is not satisfied, the Tax Commissioner shall proceed to collection against the taxpayers in accordance with the provisions of Chapter 18 (§ 58.1-1800 et seq.).

1999, cc. 968, 983; 2002, c. 347; 2004, c. 635; 2005, c. 255; 2006, Sp. Sess. I, cc. 4, 5; 2010, cc. 229, 248; 2012, c. 232.

Article 21 - SETOFF DEBT COLLECTION ACT

§ 58.1-520. (Contingent expiration) Definitions
As used in this article:

"Claimant agency" means any administrative unit of state, county, city or town government, including department, institution, commission, authority, or the office of Executive Secretary of the Supreme Court, any circuit or district court and the Internal Revenue Service. All state agencies and institutions shall participate in the setoff program.

"Debtor" means any individual having a delinquent debt or account with any claimant agency which obligation has not been satisfied by court order, set aside by court order, or discharged in bankruptcy.

"Delinquent debt" means any liquidated sum due and owing any claimant agency, or any restitution ordered paid to a clerk of the court pursuant to Title 19.2, including any amount of court costs or fines which have accrued through contract, subrogation, tort, operation of law, or any other legal theory regardless of whether there is an outstanding judgment for that sum which is legally collectible and for which a collection effort has been or is being made.

"Mailing date of notice" means the date of notice appearing thereon.

"Refund" means any individual's Virginia state or local income tax refund payable pursuant to § 58.1-309. This term also includes any refund belonging to a debtor resulting from the filing of a joint income tax return or a refund belonging to a debtor resulting from the filing of a return where husband and wife have elected to file a combined return and separately state their Virginia taxable incomes under the provisions of § 58.1-324 B 2.

Code 1950, § 58-19.7; 1981, c. 408; 1982, c. 621; 1983, c. 545; 1984, cc. 269, 675; 1986, c. 322; 1988, c. 544; 1989, cc. 77, 245; 1994, c. 197; 1996, cc. 363, 413; 2013, c. 766.

§ 58.1-520. (Contingent effective date) Definitions
As used in this article:

"Claimant agency" means any administrative unit of state, county, city or town government, including department, institution, commission, authority, or the office of Executive Secretary of

the Supreme Court, any circuit or district court and the Internal Revenue Service. All state agencies and institutions shall participate in the setoff program.

"Debtor" means any individual having a delinquent debt or account with any claimant agency which obligation has not been satisfied by court order, set aside by court order, or discharged in bankruptcy.

"Delinquent debt" means any liquidated sum due and owing any claimant agency, or any restitution ordered paid to a clerk of the court pursuant to Title 19.2, including any amount of court costs or fines which have accrued through contract, subrogation, tort, operation of law, or any other legal theory regardless of whether there is an outstanding judgment for that sum which is legally collectible and for which a collection effort has been or is being made.

"Mailing date of notice" means the date of notice appearing thereon.

"Refund" means any individual's (i) Virginia state or local income tax refund payable pursuant to § 58.1-309 or (ii) federal income tax refund payable pursuant to § 6402 of the Internal Revenue Code . This term also includes any refund belonging to a debtor resulting from the filing of a joint income tax return or a refund belonging to a debtor resulting from the filing of a return where husband and wife have elected to file a combined return and separately state their Virginia taxable incomes under the provisions of § 58.1-324 B 2.

Code 1950, § 58-19.7; 1981, c. 408; 1982, c. 621; 1983, c. 545; 1984, cc. 269, 675; 1986, c. 322; 1988, c. 544; 1989, cc. 77, 245; 1994, c. 197; 1996, cc. 363, 413; 2009, cc. 571, 787; 2013, c. 766.

§ 58.1-520.1. Recovery of administrative costs

Any county, city or town may collect, in addition to the amount of delinquent debt collected pursuant to the provisions of this article, the administrative costs associated with collection of the debt in an amount not to exceed twenty-five dollars per claim.

1994, c. 484.

§ 58.1-521. Remedy additional; mandatory usage; obtaining identifying information

A. The collection remedy under this article is in addition to and not in substitution for any other remedy available by law.

B. Except for county, city or town governments, which may utilize the provisions of this article, all claimant agencies shall submit, for collection under the procedure established by this article, all delinquent debts which they are owed.

C. All claimant agencies, whenever possible, shall obtain the full name, social security number, address, and any other identifying information, required by rules promulgated by the Tax Commissioner for implementation of this article, from any person for whom the agencies provide any service or transact any business and who the claimant agencies can foresee may become a debtor under the terms of this article.

Code 1950, § 58-19.8; 1981, c. 408; 1983, c. 258; 1984, cc. 675, 720; 1986, c. 322.

§ 58.1-522. Participation in setoff program not permitted where debt below certain levels
If the claimant agency determines that the administrative cost, as defined in the rules promulgated by the Tax Commissioner, of utilizing this article will exceed the amount of the delinquent debt, then such claimant agency shall not participate in the setoff program below such levels determined economically infeasible.

Code 1950, § 58-19.9; 1981, c. 408; 1982, c. 621; 1984, cc. 675, 720.

§ 58.1-523. Department to aid in collection of sums due claimant agencies through setoff
Subject to the limitations contained in this article, the Department, upon request, shall render assistance in the collection of any delinquent account or debt owing to any claimant agency. This assistance shall be provided by setting off any refunds belonging to the debtor from the Department by the sum certified by the claimant agency as due and owing.

Code 1950, § 58-19.10; 1981, c. 408; 1982, c. 621; 1984, c. 675.

§ 58.1-524. Notification of Department by claimant agency; action of Department
A. A claimant agency seeking to attempt collection of a delinquent debt through setoff shall notify the Department and supply information necessary to identify the debtor whose refund is sought to be setoff. Notification to the Department and the furnishing of identifying information must occur on or before a date specified by the Department. The claimant agency shall verify that the delinquent debt is valid before notifying the Department requesting setoff, and shall promptly notify the Department when subsequent payments or other events render all or a portion of the debt invalid.

B. The Department, upon receipt of notification, shall determine whether the debtor to the claimant agency is entitled to a refund from the Department. Upon determination by the Department that a debtor specified by the claimant agency qualifies for such a refund, the Department shall notify the claimant agency that a refund is pending, specify its sum, and indicate the debtor's address as listed on the tax return.

C. The Department, upon certification as hereinafter provided in this article, shall set off the certified debt against the refund to which the debtor would otherwise be entitled.

Code 1950, § 58-19.11; 1981, c. 408; 1982, c. 621; 1984, c. 675; 1996, cc. 363, 413.

§ 58.1-525. Notification of intention to set off and right to hearing
A. The claimant agency, upon receipt of notification from the Department that a debtor is entitled to a refund, within ten days shall mail a written notification to the debtor at his or her last known address and shall send evidence of same in the manner required by rules promulgated by the Tax Commissioner to the Department of its assertion of rights to the refund or any part thereof. The notification shall inform the debtor of the claimant agency's intention to direct the Department to apply the refund or any portion thereof against the debt certified as due and owing.

B. The contents of the written notification to the debtor and the Department's notification of the setoff claim shall clearly set forth the basis for the claim to the refund, the intention to apply the refund against the debt to the claimant agency, the debtor's opportunity to give written notice of intent to contest the validity of the claim before the claimant agency within thirty days of the date of the mailing of the notice, the mailing address to which the application for a hearing must be sent, and the fact that failure to apply for a hearing in writing within the thirty-day period will be deemed a waiver of the opportunity to contest the claim causing final setoff by default.

C. The written application by the debtor for a hearing shall be effective upon mailing the application postage prepaid and properly addressed to the claimant agency.

Code 1950, § 58-19.12; 1981, c. 408; 1982, c. 621; 1984, c. 675; 1986, c. 322; 1996, cc. 363, 413.

§ 58.1-526. Hearing procedure

A. If a claimant agency other than the Internal Revenue Service receives written application of the debtor's intention to contest at a hearing the claim upon which the intended setoff is based, it shall grant a hearing according to procedures established by that agency under its operating statutes to determine whether the claim is valid. Additionally, it shall be determined at the hearing whether the claimed sum asserted as due and owing is correct, and if not, an adjustment to the claim shall be made. A debtor of the Internal Revenue Service shall contest the claim only in accordance with federal law and procedures.

B. Pending final determination at the hearing of the validity of the debt asserted by the claimant agency, no action shall be taken in furtherance of collection through the setoff procedure allowed under this article.

C. No person hearing the debtor's application contesting the claimant agency's claim shall have been involved in the prior circumstances which have culminated in such dispute.

D. No issue may be considered at the hearing which has been previously litigated.

E. In the case of setoff arising out of delinquent local taxes, the scope of the hearing shall be limited to determining whether the setoff is a tax obligation that remains due and owing to the locality, and shall not address the underlying basis of the tax obligation.

Code 1950, § 58-19.13; 1981, c. 408; 1982, c. 621; 1984, cc. 675, 720; 1996, cc. 363, 413; 1997, c. 496.

§ 58.1-527. Appeals from hearings

A. Within thirty days after the decision of the claimant agency upon a hearing pursuant to § 58.1-526 has become final, the debtor aggrieved thereby may secure judicial review thereof by commencing an action in the circuit court of the county or of the city, or if the city has no circuit court, then in the circuit court of the county in which such city is geographically located, in which the debtor resides or in which the principal office of the claimant agency is geographically located. In such action against the claimant agency for review of its decision, the claimant agency shall be

named a defendant in a petition for judicial review. This section shall not be construed to confer jurisdiction on the circuit court to review questions of federal income tax law when the claimant agency is the Internal Revenue Service.

B. Such petition shall also state the grounds upon which review is sought and shall be served upon the head of the claimant agency or upon such person as the claimant agency may designate. With its answer, the claimant agency shall certify and file with the court all documents and papers and a transcript of all testimony taken in the matter, together with its findings of fact and decision therein. In any judicial proceedings under this article, the findings of the claimant agency as to the facts shall be sustained if supported by the evidence. Such actions and the questions so certified shall be heard in a summary manner at the earliest possible date. An appeal may be taken from the decision of such court to the Supreme Court in conformity with the general law governing appeals in equity cases.

C. It shall not be necessary in any proceeding under this section to enter exceptions to the rulings of the claimant agency, and no bond shall be required upon an appeal to any court.

D. Notwithstanding the other provisions of this section, if the claimant agency is otherwise subject to the Administrative Process Act (§ 2.2-4000 et seq.), appeals of such agency's decision as it relates to the debtor shall be held in accordance with Article 5 (§ 2.2-4025 et seq.) of the Administrative Process Act.

Code 1950, § 58-19.14; 1981, c. 408; 1982, c. 621; 1984, c. 675; 1996, cc. 363, 413, 573.

§ 58.1-528. Certification of debt by claimant agency; finalization of setoff

A. Upon final determination of the debt due and owing the claimant agency or upon the debtor's default for failure to comply with § 58.1-525, the claimant agency shall within twenty days notify the Department to setoff the refund against the debt. If the claimant agency fails to notify the Department within twenty days, the Department shall no longer be obligated to hold the refund for setoff.

B. Upon receipt by the Department of a notification of final determination and setoff from the claimant agency, the Department shall finalize the setoff by transferring the proceeds collected for credit or payment in accordance with the provisions of § 58.1-532 and by refunding any remaining balance to the debtor as if setoff had not occurred.

Code 1950, § 58-19.15; 1981, c. 408; 1982, c. 621; 1984, c. 675; 1996, cc. 363, 413.

§ 58.1-529. Notice of final setoff

Upon the finalization of setoff under the provisions of this article, the Department shall notify the debtor in writing of the action taken along with an accounting of the action taken on any refund. If there is an outstanding balance after setoff, the notice under this section shall accompany the balance when disbursed.

Code 1950, § 58-19.16; 1981, c. 408; 1984, c. 675.

§ 58.1-530. (Contingent expiration -- see Editor's note) Priorities in claims to be setoff
Priority in multiple claims to refunds allowed to be setoff under the provisions of this article shall be in the order in time which a claimant agency has filed a written notice with the Department of its intention to effect collection through setoff under this article. However, claims filed by any court or administrative unit of state government shall have priority over claims filed by any county, city or town; and claims filed by any court, administrative unit of state government, county, city or town shall have priority over claims filed by the Internal Revenue Service. Notwithstanding the priority set forth above according to time of filing, the Department has priority over all other claimant agencies for collection by setoff whenever it is a competing agency for a refund.

Code 1950, § 58-19.17; 1981, c. 408; 1983, c. 545; 1984, c. 675; 1996, cc. 363, 413.

§ 58.1-530. (Contingent effective date -- see Editor's note) Priorities in claims to be setoff
Priority in multiple claims to refunds allowed to be setoff under the provisions of this article shall be determined by the following classifications and in priority order as follows:

1. Claims of the Department;

2. Claims filed by the Department of Social Services, Division of Child Support Enforcement;

3. Claims filed by any court or other administrative unit of state government;

4. Claims filed by any county, city, or town; and

5. Claims filed by the Internal Revenue Service.

Priority for claims within the same classification shall be determined by the order in time in which the claimant agency filed a written notice with the Department of its intention to effect collection through setoff under this article. Claims filed by counties, cities and towns for an offset of the federal income tax refund shall be limited to claims for delinquent local taxes.

Code 1950, § 58-19.17; 1981, c. 408; 1983, c. 545; 1984, c. 675; 1996, cc. 363, 413; 2009, cc. 571, 787.

§ 58.1-531. Disposition of proceeds collected; Department's annual statement of costs
A. Upon effecting final setoffs, the Department shall periodically pay to the respective claimant agencies the proceeds collected on their behalf. However, with respect to amounts collected under this article for any county, city or town, the Department is authorized to deduct a sum, not in excess of twenty-five percent of the amount collected, to offset the cost of making such collection.

B. The Department shall provide the Governor and the chairmen of the House and Senate Finance Committees and the House Appropriations Committee with an annual statement setting forth the Department's cost of administering this article.

Code 1950, § 58-19.18; 1981, c. 408; 1982, c. 621; 1983, c. 545; 1984, cc. 675, 720; 1988, c. 331; 1989, c. 77 .

§ 58.1-531.1. Errors in setoff program

If as a result of an error by the Department of Taxation or the claimant agency a taxpayer has his refund set off erroneously and is denied all or a portion of his income tax refund, interest shall be paid to the taxpayer at the rate provided in § 58.1-15 and shall accrue in the manner provided in § 58.1-1833.

1988, c. 331; 1989, c. 77 .

§ 58.1-532. Accounting to claimant agency; confidentiality; credit to debtor's obligation

A. Simultaneously with the transmittal of proceeds collected to a claimant agency, the Department shall provide the agency with an accounting of the setoffs finalized for which payment is being made. The accounting, whenever possible, shall include the full names of the debtors and the debtors' social security numbers. No federal tax return information shall be divulged by the Department under any circumstances.

B. Upon receipt by a claimant agency of proceeds collected on a claimant agency's behalf by the Department and an accounting of the proceeds as specified under this section, the claimant agency shall credit the debtor's obligation.

Code 1950, § 58-19.19; 1981, c. 408; 1982, c. 621; 1984, c. 675.

§ 58.1-533. Confidentiality exemption; use of information obtained

A. Notwithstanding § 58.1-3 or any other provision of law prohibiting disclosure by the Department of the contents of taxpayer records or information and notwithstanding any confidentiality statute of any claimant agency, all information exchanged among the Department, claimant agency, and the debtor necessary to accomplish and effectuate the intent of this article shall be lawful.

B. The information obtained by a claimant agency from the Department in accordance with the exemption allowed by subsection A shall only be used by a claimant agency in the pursuit of its debt collection duties and practices and any person employed by, or formerly employed by, a claimant agency who discloses any such information for any other purpose, except as otherwise allowed by § 58.1-3, shall be penalized in accordance with the terms of that section.

Code 1950, § 58-19.20; 1981, c. 408; 1982, c. 621; 1984, c. 675.

§ 58.1-534. Rules and regulations

The Tax Commissioner shall promulgate all rules which he deems necessary in order to implement the intent of this article.

Code 1950, § 58-19.21; 1981, c. 408; 1984, cc. 675, 720.

§ 58.1-535. Application of funds on deposit

A. In addition to the collection remedy provided in this article, if a claimant agency has on deposit any funds which are due to the debtor, the claimant agency may apply such funds to the payment of any delinquent debt which the debtor owes to the claimant agency, provided that the

claimant agency first provides written notification to the debtor of its intent to apply the funds against the debt.

B. The contents of the written notification to the debtor shall clearly set forth the basis for the claim to the funds on deposit, the intention to apply the funds against the debt to the claimant agency, and the right of the debtor to contest the validity of the claim before the claimant agency.

C. If as the result of an error by the claimant agency a debtor is denied all or a portion of his funds under the provisions of this section, interest shall be paid by the claimant agency to the debtor at the overpayment rate provided in § 58.1-15 for the time such funds were denied, except that a county, city or town shall pay interest in the manner prescribed in § 58.1-3916 or § 58.1-3918.

D. As used in this section:

"Debtor" means any individual, business or group having a delinquent debt or account with any claimant agency which obligation has not been satisfied by court order, set aside by court order, or discharged in bankruptcy.

"Funds on deposit" means any funds of a debtor that a claimant agency may have in its possession, including overpayments of taxes and any funds due to a debtor arising from a contractual agreement with a claimant agency.

1988, cc. 563, 768; 1989, c. 77; 1999, c. 631.

Article 22 - LOCAL INCOME TAX

§§ 58.1-540 through 58.1-549. Repealed

Repealed by Acts 2013, c. 766, cl. 4.

Chapter 6 - RETAIL SALES AND USE TAX

§ 58.1-600. Short title

This chapter shall be known and may be cited as the "Virginia Retail Sales and Use Tax Act."

Code 1950, § 58-441.1; 1966, c. 151; 1984, c. 675.

§ 58.1-601. (Contingent expiration date -- see note*) Administration of chapter

A. The Tax Commissioner shall administer and enforce the assessment and collection of the taxes and penalties imposed by this chapter.

B. For purposes of evaluating the fiscal, economic and policy impact of sales and use tax exemptions, the Tax Commissioner may require from any person information relating to the evaluation of exempt purchases or sales, information relating to the qualification for exempt purchases, and information relating to direct or indirect government financial assistance which the person receives. Such information shall be filed on forms prescribed by the Tax Commissioner.

Code 1950, § 58-441.40; 1966, c. 151; 1984, c. 675; 1988, c. 457.

§ 58.1-601. (Contingent effective date -- see note*) Administration of chapter

A. The Tax Commissioner shall administer and enforce the assessment and collection of the taxes and penalties imposed by this chapter, including the collection and administration of all state and local sales and use taxes imposed on remote sellers.

B. To comply with any provisions in any legislation enacted by the Congress of the United States that require states to simplify the administration of their sales and use taxes as a condition to require remote sellers to collect and remit their state and local sales taxes, the Tax Commissioner shall take all administrative actions he deems necessary to facilitate the Commonwealth's compliance with the minimum simplification requirements, including but not limited to: (i) providing adequate software and services to remote sellers and single and consolidated providers that identify the applicable destination rate, including the state and local sales tax rate (if any), to be applied on sales on which the Commonwealth imposes sales and use tax; (ii) providing certification procedures for both single providers and consolidated providers to make software and services available to remote sellers; (iii) ensuring that no more than one audit be performed or required for all state and local taxing jurisdictions within the Commonwealth; and (iv) requiring that no more than one sales and use tax return per month be filed with the Department of Taxation by any remote seller or any single or consolidated provider on behalf of such remote seller.

C. For purposes of evaluating the fiscal, economic and policy impact of sales and use tax exemptions, the Tax Commissioner may require from any person information relating to the evaluation of exempt purchases or sales, information relating to the qualification for exempt purchases, and information relating to direct or indirect government financial assistance that the person receives. Such information shall be filed on forms prescribed by the Tax Commissioner.

Code 1950, § 58-441.40; 1966, c. 151; 1984, c. 675; 1988, c. 457; 2013, c. 766.

*This section is set out twice because the 14th enactment of Chapter 766 of the Acts of Assembly of 2013 states: "That the provisions of this act that generate additional revenue through state taxes or fees for transportation (i) throughout the Commonwealth and in Planning District 8 and Planning District 23 or (ii) in any other Planning District that becomes subject to the state taxes or fees imposed solely in Planning Districts pursuant to this act shall expire on December 31 of any year in which the General Assembly appropriates any of such additional revenues for any non-transportation-related purpose or transfers any of such additional revenues that are to be deposited into the Commonwealth Transportation Fund or any subfund thereof pursuant to general law for a non-transportation-related purpose. In the event a local government of any county or city wherein the additional taxes and fees are levied appropriates or allocates any of such additional revenues to a non-transportation purpose, such locality shall not be the direct beneficiary of any of the revenues generated by the taxes or fees in the year immediately succeeding the year in which revenues were appropriated or allocated to a non-transportation purpose."

§ 58.1-602. (Contingent expiration date -- see note*) Definitions

As used in this chapter, unless the context clearly shows otherwise, the term or phrase:

"Advertising" means the planning, creating, or placing of advertising in newspapers, magazines, billboards, broadcasting and other media, including, without limitation, the providing of concept, writing, graphic design, mechanical art, photography and production supervision. Any person providing advertising as defined herein shall be deemed to be the user or consumer of all tangible personal property purchased for use in such advertising.

"Amplification, transmission and distribution equipment" means, but is not limited to, production, distribution, and other equipment used to provide Internet-access services, such as computer and communications equipment and software used for storing, processing and retrieving end-user subscribers' requests.

"Business" includes any activity engaged in by any person, or caused to be engaged in by him, with the object of gain, benefit or advantage, either directly or indirectly.

"Cost price" means the actual cost of an item or article of tangible personal property computed in the same manner as the sales price as defined in this section without any deductions therefrom on account of the cost of materials used, labor, or service costs, transportation charges, or any expenses whatsoever.

"Custom program" means a computer program which is specifically designed and developed only for one customer. The combining of two or more prewritten programs does not constitute a custom computer program. A prewritten program that is modified to any degree remains a prewritten program and does not become custom.

"Distribution" means the transfer or delivery of tangible personal property for use, consumption, or storage by the distributee, and the use, consumption, or storage of tangible personal property by a person who has processed, manufactured, refined, or converted such property, but does not include the transfer or delivery of tangible personal property for resale or any use, consumption, or storage otherwise exempt under this chapter.

"Gross proceeds" means the charges made or voluntary contributions received for the lease or rental of tangible personal property or for furnishing services, computed with the same deductions, where applicable, as for sales price as defined in this section over the term of the lease, rental, service, or use, but not less frequently than monthly. "Gross proceeds" does not include finance charges, carrying charges, service charges, or interest from credit extended on the lease or rental of tangible personal property under conditional lease or rental contracts or other conditional contracts providing for the deferred payments of the lease or rental price.

"Gross sales" means the sum total of all retail sales of tangible personal property or services as defined in this chapter, without any deduction, except as provided in this chapter. "Gross sales" shall not include the federal retailers' excise tax or the federal diesel fuel excise tax imposed in § 4091 of the Internal Revenue Code if the excise tax is billed to the purchaser separately from the selling price of the article, or the Virginia retail sales or use tax, or any sales or use tax imposed by any county or city under § 58.1-605 or 58.1-606.

"Import" and "imported" are words applicable to tangible personal property imported into the Commonwealth from other states as well as from foreign countries, and "export" and "exported" are words applicable to tangible personal property exported from the Commonwealth to other states as well as to foreign countries.

"In this Commonwealth" or "in the Commonwealth" means within the limits of the Commonwealth of Virginia and includes all territory within these limits owned by or ceded to the United States of America.

"Integrated process," when used in relation to semiconductor manufacturing, means a process that begins with the research or development of semiconductor products, equipment, or processes, includes the handling and storage of raw materials at a plant site, and continues to the point that the product is packaged for final sale and either shipped or conveyed to a warehouse. Without limiting the foregoing, any semiconductor equipment, fuel, power, energy, supplies, or other tangible personal property shall be deemed used as part of the integrated process if its use contributes, before, during, or after production, to higher product quality, production yields, or process efficiencies. Except as otherwise provided by law, such term shall not mean general maintenance or administration.

"Internet" means collectively, the myriad of computer and telecommunications facilities, which comprise the interconnected world-wide network of computer networks.

"Internet service" means a service that enables users to access proprietary and other content, information electronic mail, and the Internet as part of a package of services sold to end-user subscribers.

"Lease or rental" means the leasing or renting of tangible personal property and the possession or use thereof by the lessee or renter for a consideration, without transfer of the title to such property.

"Manufacturing, processing, refining, or conversion" includes the production line of the plant starting with the handling and storage of raw materials at the plant site and continuing through the last step of production where the product is finished or completed for sale and conveyed to a warehouse at the production site, and also includes equipment and supplies used for production line testing and quality control. The term "manufacturing" shall also include the necessary ancillary activities of newspaper and magazine printing when such activities are performed by the publisher of any newspaper or magazine for sale daily or regularly at average intervals not exceeding three months.

The determination whether any manufacturing, mining, processing, refining or conversion activity is industrial in nature shall be made without regard to plant size, existence or size of finished product inventory, degree of mechanization, amount of capital investment, number of employees or other factors relating principally to the size of the business. Further, "industrial in nature" shall include, but not be limited to, those businesses classified in codes 10 through 14 and 20 through

39 published in the Standard Industrial Classification Manual for 1972 and any supplements issued thereafter.

"Modular building" means, but shall not be limited to, single and multifamily houses, apartment units, commercial buildings, and permanent additions thereof, comprised of one or more sections that are intended to become real property, primarily constructed at a location other than the permanent site, built to comply with the Virginia Industrialized Building Safety Law (§ 36-70 et seq.) as regulated by the Virginia Department of Housing and Community Development, and shipped with most permanent components in place to the site of final assembly. For purposes of this chapter, a modular building shall not include a mobile office as defined in § 58.1-2401 or any manufactured building subject to and certified under the provisions of the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. § 5401 et seq.).

"Modular building manufacturer" means a person or corporation who owns or operates a manufacturing facility and is engaged in the fabrication, construction and assembling of building supplies and materials into modular buildings, as defined in this section, at a location other than at the site where the modular building will be assembled on the permanent foundation and may or may not be engaged in the process of affixing the modules to the foundation at the permanent site.

"Modular building retailer" means any person who purchases or acquires a modular building from a modular building manufacturer, or from another person, for subsequent sale to a customer residing within or outside of the Commonwealth, with or without installation of the modular building to the foundation at the permanent site.

"Motor vehicle" means a "motor vehicle" as defined in § 58.1-2401, taxable under the provisions of the Virginia Motor Vehicles Sales and Use Tax Act (§ 58.1-2400 et seq.) and upon the sale of which all applicable motor vehicle sales and use taxes have been paid. "Motor vehicle" does not include any all-terrain vehicle, moped, or off-road motorcycle all as defined in § 46.2-100. The taxes under this chapter or pursuant to the authority granted under this chapter shall apply to such all-terrain vehicles, mopeds, and off-road motorcycles.

"Occasional sale" means a sale of tangible personal property not held or used by a seller in the course of an activity for which he is required to hold a certificate of registration, including the sale or exchange of all or substantially all the assets of any business and the reorganization or liquidation of any business, provided such sale or exchange is not one of a series of sales and exchanges sufficient in number, scope and character to constitute an activity requiring the holding of a certificate of registration.

"Open video system" means an open video system authorized pursuant to 47 U.S.C. § 573 and, for purposes of this chapter only, shall also include Internet service regardless of whether the provider of such service is also a telephone common carrier.

"Person" includes any individual, firm, copartnership, cooperative, nonprofit membership corporation, joint venture, association, corporation, estate, trust, business trust, trustee in bankruptcy, receiver, auctioneer, syndicate, assignee, club, society, or other group or combination acting as a unit, body politic or political subdivision, whether public or private, or quasi-public, and the plural of such term shall mean the same as the singular.

"Prewritten program" means a computer program that is prepared, held or existing for general or repeated sale or lease, including a computer program developed for in-house use and subsequently sold or leased to unrelated third parties.

"Railroad rolling stock" means locomotives, of whatever motive power, autocars, railroad cars of every kind and description, and all other equipment determined by the Tax Commissioner to constitute railroad rolling stock.

"Retail sale" or a "sale at retail" means a sale to any person for any purpose other than for resale in the form of tangible personal property or services taxable under this chapter, and shall include any such transaction as the Tax Commissioner upon investigation finds to be in lieu of a sale. All sales for resale must be made in strict compliance with regulations applicable to this chapter. Any dealer making a sale for resale which is not in strict compliance with such regulations shall be personally liable for payment of the tax.

The terms "retail sale" and a "sale at retail" shall specifically include the following: (i) the sale or charges for any room or rooms, lodgings, or accommodations furnished to transients for less than 90 continuous days by any hotel, motel, inn, tourist camp, tourist cabin, camping grounds, club, or any other place in which rooms, lodging, space, or accommodations are regularly furnished to transients for a consideration; (ii) sales of tangible personal property to persons for resale when because of the operation of the business, or its very nature, or the lack of a place of business in which to display a certificate of registration, or the lack of a place of business in which to keep records, or the lack of adequate records, or because such persons are minors or transients, or because such persons are engaged in essentially service businesses, or for any other reason there is likelihood that the Commonwealth will lose tax funds due to the difficulty of policing such business operations; (iii) the separately stated charge made for automotive refinish repair materials that are permanently applied to or affixed to a motor vehicle during its repair; and (iv) the separately stated charge for equipment available for lease or purchase by a provider of satellite television programming to the customer of such programming. Equipment sold to a provider of satellite television programming for subsequent lease or purchase by the customer of such programming shall be deemed a sale for resale. The Tax Commissioner is authorized to promulgate regulations requiring vendors of or sellers to such persons to collect the tax imposed by this chapter on the cost price of such tangible personal property to such persons and may refuse to issue certificates of registration to such persons.

The term "transient" shall not include a purchaser of camping memberships, time-shares, condominiums, or other similar contracts or interests that permit the use of, or constitute an interest in, real estate, however created or sold and whether registered with the Commonwealth or not. Further, a purchaser of a right or license which entitles the purchaser to use the amenities and facilities of a specific real estate project on an ongoing basis throughout its term shall not be deemed a transient; provided, however, that the term or time period involved is for seven years or more.

The terms "retail sale" and "sale at retail" shall not include a transfer of title to tangible personal property after its use as tools, tooling, machinery or equipment, including dies, molds, and patterns, if (i) at the time of purchase, the purchaser is obligated, under the terms of a written contract, to make the transfer and (ii) the transfer is made for the same or a greater consideration to the person for whom the purchaser manufactures goods.

"Retailer" means every person engaged in the business of making sales at retail, or for distribution, use, consumption, or storage to be used or consumed in the Commonwealth.

"Sale" means any transfer of title or possession, or both, exchange, barter, lease or rental, conditional or otherwise, in any manner or by any means whatsoever, of tangible personal property and any rendition of a taxable service for a consideration, and includes the fabrication of tangible personal property for consumers who furnish, either directly or indirectly, the materials used in fabrication, and the furnishing, preparing, or serving for a consideration of any tangible personal property consumed on the premises of the person furnishing, preparing, or serving such tangible personal property. A transaction whereby the possession of property is transferred but the seller retains title as security for the payment of the price shall be deemed a sale.

"Sales price" means the total amount for which tangible personal property or services are sold, including any services that are a part of the sale, valued in money, whether paid in money or otherwise, and includes any amount for which credit is given to the purchaser, consumer, or lessee by the dealer, without any deduction therefrom on account of the cost of the property sold, the cost of materials used, labor or service costs, losses or any other expenses whatsoever. "Sales price" shall not include (i) any cash discount allowed and taken; (ii) finance charges, carrying charges, service charges or interest from credit extended on sales of tangible personal property under conditional sale contracts or other conditional contracts providing for deferred payments of the purchase price; (iii) separately stated local property taxes collected; (iv) that portion of the amount paid by the purchaser as a discretionary gratuity added to the price of a meal; or (v) that portion of the amount paid by the purchaser as a mandatory gratuity or service charge added by a restaurant to the price of a meal, but only to the extent that such mandatory gratuity or service charge does not exceed 20% of the price of the meal. Where used articles are taken in trade, or in a series of trades as a credit or part payment on the sale of new or used articles, the tax levied by this chapter shall be paid on the net difference between the sales price of the new or used articles and the credit for the used articles.

"Semiconductor cleanrooms" means the integrated systems, fixtures, piping, partitions, flooring, lighting, equipment, and all other property used to reduce contamination or to control airflow, temperature, humidity, vibration, or other environmental conditions required for the integrated process of semiconductor manufacturing.

"Semiconductor equipment" means (i) machinery or tools or repair parts or replacements thereof; (ii) the related accessories, components, pedestals, bases, or foundations used in connection with the operation of the equipment, without regard to the proximity to the equipment, the method of attachment, or whether the equipment or accessories are affixed to the realty; (iii) semiconductor wafers and other property or supplies used to install, test, calibrate or recalibrate, characterize, condition, measure, or maintain the equipment and settings thereof; and (iv) equipment and supplies used for quality control testing of product, materials, equipment, or processes; or the measurement of equipment performance or production parameters regardless of where or when the quality control, testing, or measuring activity takes place, how the activity affects the operation of equipment, or whether the equipment and supplies come into contact with the product.

"Storage" means any keeping or retention of tangible personal property for use, consumption or distribution in the Commonwealth, or for any purpose other than sale at retail in the regular course of business.

"Tangible personal property" means personal property which may be seen, weighed, measured, felt, or touched, or is in any other manner perceptible to the senses. The term "tangible personal property" shall not include stocks, bonds, notes, insurance or other obligations or securities. The term "tangible personal property" shall include (i) telephone calling cards upon their initial sale, which shall be exempt from all other state and local utility taxes, and (ii) manufactured signs.

"Use" means the exercise of any right or power over tangible personal property incident to the ownership thereof, except that it does not include the sale at retail of that property in the regular course of business. The term does not include the exercise of any right or power, including use, distribution, or storage, over any tangible personal property sold to a nonresident donor for delivery outside of the Commonwealth to a nonresident recipient pursuant to an order placed by the donor from outside the Commonwealth via mail or telephone. The term does not include any sale determined to be a gift transaction, subject to tax under § 58.1-604.6.

"Use tax" refers to the tax imposed upon the use, consumption, distribution, and storage as herein defined.

"Used directly," when used in relation to manufacturing, processing, refining, or conversion, refers to those activities which are an integral part of the production of a product, including all steps of an integrated manufacturing or mining process, but not including ancillary activities such as general maintenance or administration. When used in relation to mining, it shall refer to the activities specified above, and in addition, any reclamation activity of the land previously mined by the mining company required by state or federal law.

"Video programmer" means a person or entity that provides video programming to end-user subscribers.

"Video programming" means video and/or information programming provided by or generally considered comparable to programming provided by a cable operator including, but not limited to, Internet service.

Code 1950, §§ 58-441.2, 58-441.3, 58-441.6; 1966, c. 151; 1972, c. 680; 1973, c. 313; 1974, c. 431; 1976, cc. 375, 489, 666, 712, 764, 770; 1977, cc. 247, 504; 1978, cc. 50, 82, 181, 505, 656, 665, 706, 784, 819; 1979, cc. 148, 205, 555, 556, 557, 558, 561, 562, 564, 572, 575; 1980, cc. 81, 610, 611, 617, 618, 621, 631, 753, 756; 1981, cc. 398, 400, 405, 409, 416, 599; 1982, cc. 533, 546, 547, 636, 649; 1983, cc. 100, 184, 384, 414, 557, 565, 599; 1984, cc. 419, 522, 675, 683, 690, 693; 1985, c. 473; 1986, c. 22; 1988, c. 899; 1989, cc. 581, 739; 1995, c. 96; 1999, cc. 138, 187, 723, 981; 2000, c. 425; 2004, c. 60; 2005, cc. 121, 122, 355; 2006, cc. 519, 541, 568, 602; 2007, c. 751; 2013, c. 783; 2014, c. 359; 2015, c. 252.

§ 58.1-602. (Contingent effective date -- see note*) Definitions

A. As used in this chapter, unless the context clearly shows otherwise:

"Advertising" means the planning, creating, or placing of advertising in newspapers, magazines, billboards, broadcasting and other media, including, without limitation, the providing of concept, writing, graphic design, mechanical art, photography and production supervision. Any person providing advertising as defined herein shall be deemed to be the user or consumer of all tangible personal property purchased for use in such advertising.

"Amplification, transmission and distribution equipment" means, but is not limited to, production, distribution, and other equipment used to provide Internet-access services, such as computer and communications equipment and software used for storing, processing and retrieving end-user subscribers' requests.

"Business" includes any activity engaged in by any person, or caused to be engaged in by him, with the object of gain, benefit or advantage, either directly or indirectly.

"Cost price" means the actual cost of an item or article of tangible personal property computed in the same manner as the sales price as defined in this section without any deductions therefrom on account of the cost of materials used, labor, or service costs, transportation charges, or any expenses whatsoever.

"Custom program" means a computer program which is specifically designed and developed only for one customer. The combining of two or more prewritten programs does not constitute a custom computer program. A prewritten program that is modified to any degree remains a prewritten program and does not become custom.

"Distribution" means the transfer or delivery of tangible personal property for use, consumption, or storage by the distributee, and the use, consumption, or storage of tangible personal property

by a person who has processed, manufactured, refined, or converted such property, but does not include the transfer or delivery of tangible personal property for resale or any use, consumption, or storage otherwise exempt under this chapter.

"Gross proceeds" means the charges made or voluntary contributions received for the lease or rental of tangible personal property or for furnishing services, computed with the same deductions, where applicable, as for sales price as defined in this section over the term of the lease, rental, service, or use, but not less frequently than monthly. "Gross proceeds" does not include finance charges, carrying charges, service charges, or interest from credit extended on the lease or rental of tangible personal property under conditional lease or rental contracts or other conditional contracts providing for the deferred payments of the lease or rental price.

"Gross sales" means the sum total of all retail sales of tangible personal property or services as defined in this chapter, without any deduction, except as provided in this chapter. "Gross sales" shall not include the federal retailers' excise tax or the federal diesel fuel excise tax imposed in § 4091 of the Internal Revenue Code if the excise tax is billed to the purchaser separately from the selling price of the article, or the Virginia retail sales or use tax, or any sales or use tax imposed by any county or city under § 58.1-605 or 58.1-606.

"Import" and "imported" are words applicable to tangible personal property imported into the Commonwealth from other states as well as from foreign countries, and "export" and "exported" are words applicable to tangible personal property exported from the Commonwealth to other states as well as to foreign countries.

"In this Commonwealth" or "in the Commonwealth" means within the limits of the Commonwealth of Virginia and includes all territory within these limits owned by or ceded to the United States of America.

"Integrated process," when used in relation to semiconductor manufacturing, means a process that begins with the research or development of semiconductor products, equipment, or processes, includes the handling and storage of raw materials at a plant site, and continues to the point that the product is packaged for final sale and either shipped or conveyed to a warehouse. Without limiting the foregoing, any semiconductor equipment, fuel, power, energy, supplies, or other tangible personal property shall be deemed used as part of the integrated process if its use contributes, before, during, or after production, to higher product quality, production yields, or process efficiencies. Except as otherwise provided by law, such term shall not mean general maintenance or administration.

"Internet" means collectively, the myriad of computer and telecommunications facilities, which comprise the interconnected world-wide network of computer networks.

"Internet service" means a service that enables users to access proprietary and other content, information electronic mail, and the Internet as part of a package of services sold to end-user subscribers.

"Lease or rental" means the leasing or renting of tangible personal property and the possession or use thereof by the lessee or renter for a consideration, without transfer of the title to such property.

"Manufacturing, processing, refining, or conversion" includes the production line of the plant starting with the handling and storage of raw materials at the plant site and continuing through the last step of production where the product is finished or completed for sale and conveyed to a warehouse at the production site, and also includes equipment and supplies used for production line testing and quality control. The term "manufacturing" shall also include the necessary ancillary activities of newspaper and magazine printing when such activities are performed by the publisher of any newspaper or magazine for sale daily or regularly at average intervals not exceeding three months.

The determination whether any manufacturing, mining, processing, refining or conversion activity is industrial in nature shall be made without regard to plant size, existence or size of finished product inventory, degree of mechanization, amount of capital investment, number of employees or other factors relating principally to the size of the business. Further, "industrial in nature" shall include, but not be limited to, those businesses classified in codes 10 through 14 and 20 through 39 published in the Standard Industrial Classification Manual for 1972 and any supplements issued thereafter.

"Modular building" means, but shall not be limited to, single and multifamily houses, apartment units, commercial buildings, and permanent additions thereof, comprised of one or more sections that are intended to become real property, primarily constructed at a location other than the permanent site, built to comply with the Virginia Industrialized Building Safety Law (§ 36-70 et seq.) as regulated by the Virginia Department of Housing and Community Development, and shipped with most permanent components in place to the site of final assembly. For purposes of this chapter, a modular building shall not include a mobile office as defined in § 58.1-2401 or any manufactured building subject to and certified under the provisions of the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. § 5401 et seq.).

"Modular building manufacturer" means a person or corporation who owns or operates a manufacturing facility and is engaged in the fabrication, construction and assembling of building supplies and materials into modular buildings, as defined in this section, at a location other than at the site where the modular building will be assembled on the permanent foundation and may or may not be engaged in the process of affixing the modules to the foundation at the permanent site.

"Modular building retailer" means any person who purchases or acquires a modular building from a modular building manufacturer, or from another person, for subsequent sale to a customer residing within or outside of the Commonwealth, with or without installation of the modular building to the foundation at the permanent site.

"Motor vehicle" means a "motor vehicle" as defined in § 58.1-2401, taxable under the provisions of the Virginia Motor Vehicles Sales and Use Tax Act (§ 58.1-2400 et seq.) and upon the sale of which all applicable motor vehicle sales and use taxes have been paid. "Motor vehicle" does not include any all-terrain vehicle, moped, or off-road motorcycle all as defined in § 46.2-100. The taxes under this chapter or pursuant to the authority granted under this chapter shall apply to such all-terrain vehicles, mopeds, and off-road motorcycles.

"Occasional sale" means a sale of tangible personal property not held or used by a seller in the course of an activity for which he is required to hold a certificate of registration, including the sale or exchange of all or substantially all the assets of any business and the reorganization or liquidation of any business, provided such sale or exchange is not one of a series of sales and exchanges sufficient in number, scope and character to constitute an activity requiring the holding of a certificate of registration.

"Open video system" means an open video system authorized pursuant to 47 U.S.C. § 573 and, for purposes of this chapter only, shall also include Internet service regardless of whether the provider of such service is also a telephone common carrier.

"Person" includes any individual, firm, copartnership, cooperative, nonprofit membership corporation, joint venture, association, corporation, estate, trust, business trust, trustee in bankruptcy, receiver, auctioneer, syndicate, assignee, club, society, or other group or combination acting as a unit, body politic or political subdivision, whether public or private, or quasi-public, and the plural of such term shall mean the same as the singular.

"Prewritten program" means a computer program that is prepared, held or existing for general or repeated sale or lease, including a computer program developed for in-house use and subsequently sold or leased to unrelated third parties.

"Railroad rolling stock" means locomotives, of whatever motive power, autocars, railroad cars of every kind and description, and all other equipment determined by the Tax Commissioner to constitute railroad rolling stock.

"Retail sale" or a "sale at retail" means a sale to any person for any purpose other than for resale in the form of tangible personal property or services taxable under this chapter, and shall include any such transaction as the Tax Commissioner upon investigation finds to be in lieu of a sale. All sales for resale must be made in strict compliance with regulations applicable to this chapter. Any dealer making a sale for resale which is not in strict compliance with such regulations shall be personally liable for payment of the tax.

The terms "retail sale" and a "sale at retail" shall specifically include the following: (i) the sale or charges for any room or rooms, lodgings, or accommodations furnished to transients for less than 90 continuous days by any hotel, motel, inn, tourist camp, tourist cabin, camping grounds, club, or any other place in which rooms, lodging, space, or accommodations are regularly furnished to transients for a consideration; (ii) sales of tangible personal property to persons for resale when

because of the operation of the business, or its very nature, or the lack of a place of business in which to display a certificate of registration, or the lack of a place of business in which to keep records, or the lack of adequate records, or because such persons are minors or transients, or because such persons are engaged in essentially service businesses, or for any other reason there is likelihood that the Commonwealth will lose tax funds due to the difficulty of policing such business operations; (iii) the separately stated charge made for automotive refinish repair materials that are permanently applied to or affixed to a motor vehicle during its repair; and (iv) the separately stated charge for equipment available for lease or purchase by a provider of satellite television programming to the customer of such programming. Equipment sold to a provider of satellite television programming for subsequent lease or purchase by the customer of such programming shall be deemed a sale for resale. The Tax Commissioner is authorized to promulgate regulations requiring vendors of or sellers to such persons to collect the tax imposed by this chapter on the cost price of such tangible personal property to such persons and may refuse to issue certificates of registration to such persons.

The term "transient" shall not include a purchaser of camping memberships, time-shares, condominiums, or other similar contracts or interests that permit the use of, or constitute an interest in, real estate, however created or sold and whether registered with the Commonwealth or not. Further, a purchaser of a right or license which entitles the purchaser to use the amenities and facilities of a specific real estate project on an ongoing basis throughout its term shall not be deemed a transient; provided, however, that the term or time period involved is for seven years or more.

The terms "retail sale" and "sale at retail" shall not include a transfer of title to tangible personal property after its use as tools, tooling, machinery or equipment, including dies, molds, and patterns, if (i) at the time of purchase, the purchaser is obligated, under the terms of a written contract, to make the transfer and (ii) the transfer is made for the same or a greater consideration to the person for whom the purchaser manufactures goods.

"Retailer" means every person engaged in the business of making sales at retail, or for distribution, use, consumption, or storage to be used or consumed in the Commonwealth.

"Sale" means any transfer of title or possession, or both, exchange, barter, lease or rental, conditional or otherwise, in any manner or by any means whatsoever, of tangible personal property and any rendition of a taxable service for a consideration, and includes the fabrication of tangible personal property for consumers who furnish, either directly or indirectly, the materials used in fabrication, and the furnishing, preparing, or serving for a consideration of any tangible personal property consumed on the premises of the person furnishing, preparing, or serving such tangible personal property. A transaction whereby the possession of property is transferred but the seller retains title as security for the payment of the price shall be deemed a sale.

"Sales price" means the total amount for which tangible personal property or services are sold, including any services that are a part of the sale, valued in money, whether paid in money or otherwise, and includes any amount for which credit is given to the purchaser, consumer, or lessee by the dealer, without any deduction therefrom on account of the cost of the property sold, the cost of materials used, labor or service costs, losses or any other expenses whatsoever. "Sales price" shall not include (i) any cash discount allowed and taken; (ii) finance charges, carrying charges, service charges or interest from credit extended on sales of tangible personal property under conditional sale contracts or other conditional contracts providing for deferred payments of the purchase price; (iii) separately stated local property taxes collected; (iv) that portion of the amount paid by the purchaser as a discretionary gratuity added to the price of a meal; or (v) that portion of the amount paid by the purchaser as a mandatory gratuity or service charge added by a restaurant to the price of a meal, but only to the extent that such mandatory gratuity or service charge does not exceed 20 percent of the price of the meal. Where used articles are taken in trade, or in a series of trades as a credit or part payment on the sale of new or used articles, the tax levied by this chapter shall be paid on the net difference between the sales price of the new or used articles and the credit for the used articles.

"Semiconductor cleanrooms" means the integrated systems, fixtures, piping, partitions, flooring, lighting, equipment, and all other property used to reduce contamination or to control airflow, temperature, humidity, vibration, or other environmental conditions required for the integrated process of semiconductor manufacturing.

"Semiconductor equipment" means (i) machinery or tools or repair parts or replacements thereof; (ii) the related accessories, components, pedestals, bases, or foundations used in connection with the operation of the equipment, without regard to the proximity to the equipment, the method of attachment, or whether the equipment or accessories are affixed to the realty; (iii) semiconductor wafers and other property or supplies used to install, test, calibrate or recalibrate, characterize, condition, measure, or maintain the equipment and settings thereof; and (iv) equipment and supplies used for quality control testing of product, materials, equipment, or processes; or the measurement of equipment performance or production parameters regardless of where or when the quality control, testing, or measuring activity takes place, how the activity affects the operation of equipment, or whether the equipment and supplies come into contact with the product.

"Storage" means any keeping or retention of tangible personal property for use, consumption or distribution in the Commonwealth, or for any purpose other than sale at retail in the regular course of business.

"Tangible personal property" means personal property which may be seen, weighed, measured, felt, or touched, or is in any other manner perceptible to the senses. The term "tangible personal property" shall not include stocks, bonds, notes, insurance or other obligations or securities. The term "tangible personal property" shall include (i) telephone calling cards upon their initial sale, which shall be exempt from all other state and local utility taxes, and (ii) manufactured signs.

"Use" means the exercise of any right or power over tangible personal property incident to the ownership thereof, except that it does not include the sale at retail of that property in the regular course of business. The term does not include the exercise of any right or power, including use, distribution, or storage, over any tangible personal property sold to a nonresident donor for delivery outside of the Commonwealth to a nonresident recipient pursuant to an order placed by the donor from outside the Commonwealth via mail or telephone. The term does not include any sale determined to be a gift transaction, subject to tax under § 58.1-604.6.

"Use tax" refers to the tax imposed upon the use, consumption, distribution, and storage as herein defined.

"Used directly," when used in relation to manufacturing, processing, refining, or conversion, refers to those activities which are an integral part of the production of a product, including all steps of an integrated manufacturing or mining process, but not including ancillary activities such as general maintenance or administration. When used in relation to mining, it shall refer to the activities specified above, and in addition, any reclamation activity of the land previously mined by the mining company required by state or federal law.

"Video programmer" means a person or entity that provides video programming to end-user subscribers.

"Video programming" means video and/or information programming provided by or generally considered comparable to programming provided by a cable operator including, but not limited to, Internet service.

B. Notwithstanding the definitions in subsection A, to the extent that conformity to any remote collection authority legislation enacted by the Congress of the United States shall so require, the words and terms used in this chapter related to the minimum simplification requirements shall have the same meaning as provided in such federal legislation.

Code 1950, §§ 58-441.2, 58-441.3, 58-441.6; 1966, c. 151; 1972, c. 680; 1973, c. 313; 1974, c. 431; 1976, cc. 375, 489, 666, 712, 764, 770; 1977, cc. 247, 504; 1978, cc. 50, 82, 181, 505, 656, 665, 706, 784, 819; 1979, cc. 148, 205, 555, 556, 557, 558, 561, 562, 564, 572, 575; 1980, cc. 81, 610, 611, 617, 618, 621, 631, 753, 756; 1981, cc. 398, 400, 405, 409, 416, 599; 1982, cc. 533, 546, 547, 636, 649; 1983, cc. 100, 184, 384, 414, 557, 565, 599; 1984, cc. 419, 522, 675, 683, 690, 693; 1985, c. 473; 1986, c. 22; 1988, c. 899; 1989, cc. 581, 739; 1995, c. 96; 1999, cc. 138, 187, 723, 981; 2000, c. 425; 2004, c. 60; 2005, cc. 121, 122, 355; 2006, cc. 519, 541, 568, 602; 2007, c. 751; 2013, cc. 766, 783; 2014, c. 359; 2015, c. 252.

§ 58.1-602.1. Repealed

Repealed by Acts 1995, c. 200.

§ 58.1-603. (Contingent expiration date -- see note) Imposition of sales tax

There is hereby levied and imposed, in addition to all other taxes and fees of every kind now imposed by law, a license or privilege tax upon every person who engages in the business of

selling at retail or distributing tangible personal property in this Commonwealth, or who rents or furnishes any of the things or services taxable under this chapter, or who stores for use or consumption in this Commonwealth any item or article of tangible personal property as defined in this chapter, or who leases or rents such property within this Commonwealth, in the amount of 4.3 percent:

1. Of the gross sales price of each item or article of tangible personal property when sold at retail or distributed in this Commonwealth.

2. Of the gross proceeds derived from the lease or rental of tangible personal property, where the lease or rental of such property is an established business, or part of an established business, or the same is incidental or germane to such business.

3. Of the cost price of each item or article of tangible personal property stored in this Commonwealth for use or consumption in this Commonwealth.

4. Of the gross proceeds derived from the sale or charges for rooms, lodgings or accommodations furnished to transients as set out in the definition of "retail sale" in § 58.1-602.

5. Of the gross sales of any services that are expressly stated as taxable within this chapter.

Code 1950, § 58-441.4; 1966, c. 151; 1984, c. 675; 1986, Sp. Sess., c. 12; 2004, Sp. Sess. I, c. 3; 2013, c. 766.

§ 58.1-603. (Contingent effective date -- see note) Imposition of sales tax

There is hereby levied and imposed, in addition to all other taxes and fees of every kind now imposed by law, a license or privilege tax upon every person who engages in the business of selling at retail or distributing tangible personal property in this Commonwealth, or who rents or furnishes any of the things or services taxable under this chapter, or who stores for use or consumption in this Commonwealth any item or article of tangible personal property as defined in this chapter, or who leases or rents such property within this Commonwealth, in the amount of three and one-half percent through midnight on July 31, 2004, and four percent beginning on and after August 1, 2004:

1. Of the gross sales price of each item or article of tangible personal property when sold at retail or distributed in this Commonwealth.

2. Of the gross proceeds derived from the lease or rental of tangible personal property, where the lease or rental of such property is an established business, or part of an established business, or the same is incidental or germane to such business.

3. Of the cost price of each item or article of tangible personal property stored in this Commonwealth for use or consumption in this Commonwealth.

4. Of the gross proceeds derived from the sale or charges for rooms, lodgings or accommodations furnished to transients as set out in the definition of "retail sale" in § 58.1-602.

5. Of the gross sales of any services which are expressly stated as taxable within this chapter.

Code 1950, § 58-441.4; 1966, c. 151; 1984, c. 675; 1986, Sp. Sess., c. 12; 2004, Sp. Sess. I, c. 3.

§ 58.1-603.1. (Contingent expiration date) Additional state sales tax in certain counties and cities

In addition to the sales tax imposed pursuant to § 58.1-603, there is hereby levied and imposed in each county and city located in a Planning District established pursuant to Chapter 42 (§ 15.2-4200 et seq.) of Title 15.2 that (i) as of January 1, 2013, has a population of 1.5 million or more as shown by the most recent United States Census, has not less than 1.2 million motor vehicles registered therein, and has a total transit ridership of not less than 15 million riders per year across all transit systems within the Planning District or (ii) as shown by the most recent United States Census meets the population criteria set forth in clause (i) and also meets the vehicle registration and ridership criteria set forth in clause (i), a retail sales tax at the rate of 0.70 percent. In any case in which the tax is imposed pursuant to clause (ii) such tax shall be effective beginning on the July 1 immediately following the calendar year in which all of the criteria have been met. Such tax shall not be levied upon food purchased for human consumption as defined in § 58.1-611.1. Such tax shall be added to the rate of the state sales tax imposed pursuant to § 58.1-603 in each such county and city and shall be subject to all the provisions of this chapter and the rules and regulations published with respect thereto. No discount under § 58.1-622 shall be allowed for the tax imposed under this section. Such tax shall be administered and collected by the Tax Commissioner in the same manner and subject to the same penalties as provided for the state sales tax under § 58.1-603.

The revenue generated and collected pursuant to the tax authorized under this section, less the applicable portion of any refunds to taxpayers, shall be deposited by the Comptroller into special funds established by law. In the case of Planning District 8, the revenue generated and collected therein shall be deposited into the fund established in § 33.2-2509. In the case of Planning District 23, the revenue generated and collected therein shall be deposited into the fund established in § 33.2-2600. For additional Planning Districts that may become subject to this section, funds shall be established by appropriate legislation.

2013, c. 766; 2016, c. 305.

§ 58.1-604. (Contingent expiration date -- see note*) Imposition of use tax

There is hereby levied and imposed, in addition to all other taxes and fees now imposed by law, a tax upon the use or consumption of tangible personal property in this Commonwealth, or the storage of such property outside the Commonwealth for use or consumption in this Commonwealth, in the amount of 4.3 percent:

1. Of the cost price of each item or article of tangible personal property used or consumed in this Commonwealth. Tangible personal property that has been acquired for use outside this Commonwealth and subsequently becomes subject to the tax imposed hereunder shall be taxed on the basis of its cost price if such property is brought within this Commonwealth for use within six months of its acquisition; but if so brought within this Commonwealth six months or more after

its acquisition, such property shall be taxed on the basis of the current market value (but not in excess of its cost price) of such property at the time of its first use within this Commonwealth. Such tax shall be based on such proportion of the cost price or current market value as the duration of time of use within this Commonwealth bears to the total useful life of such property (but it shall be presumed in all cases that such property will remain within this Commonwealth for the remainder of its useful life unless convincing evidence is provided to the contrary).

2. Of the cost price of each item or article of tangible personal property stored outside this Commonwealth for use or consumption in this Commonwealth.

3. A transaction taxed under § 58.1-603 shall not also be taxed under this section, nor shall the same transaction be taxed more than once under either section.

4. The use tax shall not apply with respect to the use of any article of tangible personal property brought into this Commonwealth by a nonresident individual, visiting in Virginia, for his personal use, while within this Commonwealth.

5. (Contingent repeal date -- see note) The use tax shall not apply to out-of-state mail order catalog purchases totaling $100 or less during any calendar year.

Code 1950, §§ 58-441.5, 58-441.9; 1966, c. 151; 1984, c. 675; 1986, Sp. Sess., c. 12; 1995, c. 385; 2004, Sp. Sess. I, c. 3; 2013, c. 766.

§ 58.1-604. (Contingent effective date -- see note*) Imposition of use tax

There is hereby levied and imposed, in addition to all other taxes and fees now imposed by law, a tax upon the use or consumption of tangible personal property in this Commonwealth, or the storage of such property outside the Commonwealth for use or consumption in this Commonwealth, in the amount of three and one-half percent through midnight on July 31, 2004, and four percent beginning on and after August 1, 2004:

1. Of the cost price of each item or article of tangible personal property used or consumed in this Commonwealth. Tangible personal property which has been acquired for use outside this Commonwealth and subsequently becomes subject to the tax imposed hereunder shall be taxed on the basis of its cost price if such property is brought within this Commonwealth for use within six months of its acquisition; but if so brought within this Commonwealth six months or more after its acquisition, such property shall be taxed on the basis of the current market value (but not in excess of its cost price) of such property at the time of its first use within this Commonwealth. Such tax shall be based on such proportion of the cost price or current market value as the duration of time of use within this Commonwealth bears to the total useful life of such property (but it shall be presumed in all cases that such property will remain within this Commonwealth for the remainder of its useful life unless convincing evidence is provided to the contrary).

2. Of the cost price of each item or article of tangible personal property stored outside this Commonwealth for use or consumption in this Commonwealth.

3. A transaction taxed under § 58.1-603 shall not also be taxed under this section, nor shall the same transaction be taxed more than once under either section.

4. The use tax shall not apply with respect to the use of any article of tangible personal property brought into this Commonwealth by a nonresident individual, visiting in Virginia, for his personal use, while within this Commonwealth.

5. The use tax shall not apply to out-of-state mail order catalog purchases totaling $100 or less during any calendar year.

Code 1950, §§ 58-441.5, 58-441.9; 1966, c. 151; 1984, c. 675; 1986, Sp. Sess., c. 12; 1995, c. 385; 2004, Sp. Sess. I, c. 3.

*This section is set out twice because the 14th enactment of Chapter 766 of the Acts of Assembly of 2013 states: "That the provisions of this act that generate additional revenue through state taxes or fees for transportation (i) throughout the Commonwealth and in Planning District 8 and Planning District 23 or (ii) in any other Planning District that becomes subject to the state taxes or fees imposed solely in Planning Districts pursuant to this act shall expire on December 31 of any year in which the General Assembly appropriates any of such additional revenues for any non-transportation-related purpose or transfers any of such additional revenues that are to be deposited into the Commonwealth Transportation Fund or any subfund thereof pursuant to general law for a non-transportation-related purpose. In the event a local government of any county or city wherein the additional taxes and fees are levied appropriates or allocates any of such additional revenues to a non-transportation purpose, such locality shall not be the direct beneficiary of any of the revenues generated by the taxes or fees in the year immediately succeeding the year in which revenues were appropriated or allocated to a non-transportation purpose."

§ 58.1-604.01. (Contingent expiration date) Additional state use tax in certain counties and cities

In addition to the use tax imposed pursuant to § 58.1-604, there is hereby levied and imposed in each county and city located in a Planning District established pursuant to Chapter 42 (§ 15.2-4200 et seq.) of Title 15.2 that (i) as of January 1, 2013, has a population of 1.5 million or more, as shown by the most recent United States Census, has not less than 1.2 million motor vehicles registered therein, and has a total transit ridership of not less than 15 million riders per year across all transit systems within the Planning District or (ii) as shown by the most recent United States Census meets the population criteria set forth in clause (i) and also meets the vehicle registration and ridership criteria set forth in clause (i), a retail use tax at the rate of 0.70 percent. In any case in which the tax is imposed pursuant to clause (ii) such tax shall be effective beginning on the July 1 immediately following the calendar year in which all of the criteria have been met. Such tax shall not be levied upon food purchased for human consumption as defined in § 58.1-611.1. Such tax shall be added to the rate of the state use tax imposed pursuant to § 58.1-604 in such county and city and shall be subject to all the provisions of this chapter and the rules and

regulations published with respect thereto. No discount under § 58.1-622 shall be allowed for the tax described under this section. Such tax shall be administered and collected by the Tax Commissioner in the same manner and subject to the same penalties as provided for the state use tax under § 58.1-604.

The revenue generated and collected pursuant to the tax authorized under this section, less the applicable portion of any refunds to taxpayers, shall be deposited by the Comptroller into special funds established by law. In the case of Planning District 8, the revenue generated and collected therein shall be deposited into the fund established in § 33.2-2509. In the case of Planning District 23, the revenue generated and collected therein shall be deposited into the fund established in § 33.2-2600. For any additional Planning Districts that may become subject to this section, funds shall be established by appropriate legislation.

2013, c. 766; 2016, c. 305.

§ 58.1-604.1. (Contingent expiration date -- see note*) Use tax on motor vehicles, machinery, tools and equipment brought into Virginia for use in performing contracts

In addition to the use tax levied pursuant to § 58.1-604 and notwithstanding the provisions of § 58.1-611, a use tax is levied upon the storage or use of all motor vehicles, machines, machinery, tools or other equipment brought, imported or caused to be brought into this Commonwealth for use in constructing, building or repairing any building, highway, street, sidewalk, bridge, culvert, sewer or water system, drainage or dredging system, railway system, reservoir or dam, hydraulic or power plant, transmission line, tower, dock, wharf, excavation, grading, or other improvement or structure, or any part thereof. The rate of tax is 4.3 percent on all tangible personal property except motor vehicles, which shall be taxed at the rate set forth in § 58.1-2402; aircraft, which shall be taxed at the rate of two percent; and watercraft, which shall be taxed at the rate of two percent with a maximum tax of $1,000. However, the total rate of the state use tax in any county or city for which the tax under § 58.1-604.01 is imposed shall be 5.0 percent on all tangible personal property except motor vehicles, which shall be taxed at the rate set forth in § 58.1-2402; aircraft, which shall be taxed at the rate of two percent; and watercraft, which shall be taxed at the rate of two percent with a maximum tax of $1,000.

For purposes of this section, "motor vehicle" means any vehicle which is self-propelled and designed primarily for use upon the highways, any vehicle which is propelled by electric power obtained from trolley wires but not operated upon rails, and any vehicle designed to run upon the highways which is pulled by a self-propelled vehicle, but shall not include any implement of husbandry, farm tractor, road construction or maintenance machinery or equipment, special mobile equipment or any vehicle designed primarily for use in work off the highway.

The tax shall be computed on the basis of such proportion of the original purchase price of such property as the duration of time of use in this Commonwealth bears to the total useful life thereof. For purposes of this section, "use" means use, storage, consumption and "stand-by" time

occasioned by weather conditions, controversies or other causes. The tax shall be computed upon the basis of the relative time each item of equipment is in this Commonwealth rather than upon the basis of actual use. In the absence of satisfactory evidence as to the period of use intended in this Commonwealth, it will be presumed that such property will remain in this Commonwealth for the remainder of its useful life, which shall be determined in accordance with the experiences and practices of the building and construction trades.

A transaction taxed under § 58.1-604, 58.1-605, 58.1-1402, 58.1-1502, 58.1-1736, or 58.1-2402 shall not also be taxed under this section, nor shall the same transaction be taxed more than once under any section.

1988, c. 379; 2004, Sp. Sess. I, c. 3; 2011, cc. 405, 639; 2013, c. 766.

§ 58.1-604.1. (Contingent effective date -- see note*) Use tax on motor vehicles, machinery, tools and equipment brought into Virginia for use in performing contracts

In addition to the use tax levied pursuant to § 58.1-604 and notwithstanding the provisions of § 58.1-611, a use tax is levied upon the storage or use of all motor vehicles, machines, machinery, tools or other equipment brought, imported or caused to be brought into this Commonwealth for use in constructing, building or repairing any building, highway, street, sidewalk, bridge, culvert, sewer or water system, drainage or dredging system, railway system, reservoir or dam, hydraulic or power plant, transmission line, tower, dock, wharf, excavation, grading, or other improvement or structure, or any part thereof. The rate of tax is three and one-half percent through midnight on July 31, 2004, and four percent beginning on and after August 1, 2004, on all tangible personal property except motor vehicles, which shall be taxed at the rate of three percent; aircraft, which shall be taxed at the rate of two percent; and watercraft, which shall be taxed at the rate of two percent with a maximum tax of $1,000.

For purposes of this section, the words "motor vehicle" mean any vehicle which is self-propelled and designed primarily for use upon the highways, any vehicle which is propelled by electric power obtained from trolley wires but not operated upon rails, and any vehicle designed to run upon the highways which is pulled by a self-propelled vehicle, but shall not include any implement of husbandry, farm tractor, road construction or maintenance machinery or equipment, special mobile equipment or any vehicle designed primarily for use in work off the highway.

The tax shall be computed on the basis of such proportion of the original purchase price of such property as the duration of time of use in this Commonwealth bears to the total useful life thereof. For purposes of this section, the word "use" means use, storage, consumption and "stand-by" time occasioned by weather conditions, controversies or other causes. The tax shall be computed upon the basis of the relative time each item of equipment is in this Commonwealth rather than upon the basis of actual use. In the absence of satisfactory evidence as to the period of use intended in this Commonwealth, it will be presumed that such property will remain in this Commonwealth for

the remainder of its useful life, which shall be determined in accordance with the experiences and practices of the building and construction trades.

A transaction taxed under § 58.1-604, 58.1-605, 58.1-1402, 58.1-1502, 58.1-1736 or 58.1-2402 shall not also be taxed under this section, nor shall the same transaction be taxed more than once under any section.

1988, c. 379; 2004, Sp. Sess. I, c. 3; 2011, cc. 405, 639.

*This section is set out twice because the 14th enactment of Chapter 766 of the Acts of Assembly of 2013 states: "That the provisions of this act that generate additional revenue through state taxes or fees for transportation (i) throughout the Commonwealth and in Planning District 8 and Planning District 23 or (ii) in any other Planning District that becomes subject to the state taxes or fees imposed solely in Planning Districts pursuant to this act shall expire on December 31 of any year in which the General Assembly appropriates any of such additional revenues for any non-transportation-related purpose or transfers any of such additional revenues that are to be deposited into the Commonwealth Transportation Fund or any subfund thereof pursuant to general law for a non-transportation-related purpose. In the event a local government of any county or city wherein the additional taxes and fees are levied appropriates or allocates any of such additional revenues to a non-transportation purpose, such locality shall not be the direct beneficiary of any of the revenues generated by the taxes or fees in the year immediately succeeding the year in which revenues were appropriated or allocated to a non-transportation purpose."

§ 58.1-604.2. Filing return; payment of tax

Before any property subject to the use tax is brought into this Commonwealth for use as provided in § 58.1-604.1, the owner, or, if the property is leased, the lessee shall register with the Tax Commissioner or the local commissioner of the revenue, if the local commissioner elects to provide such service.

After registration, the taxpayer shall file quarterly reports on forms furnished by the Tax Commissioner reporting such property brought, imported or caused to be brought into this Commonwealth during the preceding quarter together with remittance of the amount of tax due. Such reports are to be filed on or before the fifteenth of the month following the quarter in which such property was brought into this Commonwealth.

1988, c. 379; 2011, cc. 663, 674.

§ 58.1-604.3. Exemptions

The use tax imposed by this section shall not apply to any property brought into this Commonwealth by a resident of another state, if such state does not impose a similar use tax on Virginia contractors, nor shall the tax apply to the use in this Commonwealth of any motor vehicle, machine or machinery previously purchased at retail for use in another state and actually placed into substantial use in another state before being brought, imported or caused to be brought into

this Commonwealth by the owner thereof for use in constructing or repairing its own buildings, structures or other property.

1988, c. 379.

§§ 58.1-604.4, 58.1-604.5. Not effective

Not effective.

§ 58.1-604.6. Gift transactions

A. For purposes of this section, a gift transaction means a retail sale resulting from an order for tangible personal property placed by any means by any person that is for delivery to a recipient, other than the purchaser, located in another state. A gift transaction does not include a business transaction between the purchaser and recipient or a transaction whereby the purchaser is contractually obligated to provide the tangible personal property to the recipient.

B. In cases involving a sale qualifying as a gift transaction, a dealer registered for the collection of the tax in the state of the recipient may, upon approval by the Tax Commissioner, elect to collect the tax imposed by the state of the recipient or the tax imposed under this chapter. If the dealer elected to collect the tax imposed by the state of the recipient, the dealer shall provide notice of such election to the Tax Department on a form prescribed by the Tax Department which must be approved by the Tax Commissioner. In the event that the dealer is not registered for the collection of the tax in the state of the recipient, and such dealer holds a valid certificate of registration for the collection of the tax imposed under this chapter, such dealer shall collect the tax imposed under this chapter.

2005, c. 355.

§ 58.1-605. (Contingent expiration date) To what extent and under what conditions cities and counties may levy local sales taxes; collection thereof by Commonwealth and return of revenue to each city or county entitled thereto

A. No county, city or town shall impose any local general sales or use tax or any local general retail sales or use tax except as authorized by this section.

B. The council of any city and the governing body of any county may levy a general retail sales tax at the rate of one percent to provide revenue for the general fund of such city or county. Such tax shall be added to the rate of the state sales tax imposed by §§ 58.1-603 and 58.1-604 and shall be subject to all the provisions of this chapter and the rules and regulations published with respect thereto. No discount under § 58.1-622 shall be allowed on a local sales tax.

C. The council of any city and the governing body of any county desiring to impose a local sales tax under this section may do so by the adoption of an ordinance stating its purpose and referring to this section, and providing that such ordinance shall be effective on the first day of a month at least 60 days after its adoption. A certified copy of such ordinance shall be forwarded to the Tax Commissioner so that it will be received within five days after its adoption.

D. Any local sales tax levied under this section shall be administered and collected by the Tax Commissioner in the same manner and subject to the same penalties as provided for the state sales tax.

E. All local sales tax moneys collected by the Tax Commissioner under this section shall be paid into the state treasury to the credit of a special fund which is hereby created on the Comptroller's books under the name "Collections of Local Sales Taxes." Such local sales tax moneys shall be credited to the account of each particular city or county levying a local sales tax under this section. The basis of such credit shall be the city or county in which the sales were made as shown by the records of the Department and certified by it monthly to the Comptroller, namely, the city or county of location of each place of business of every dealer paying the tax to the Commonwealth without regard to the city or county of possible use by the purchasers. If a dealer has any place of business located in more than one political subdivision by reason of the boundary line or lines passing through such place of business, the amount of sales tax paid by such a dealer with respect to such place of business shall be treated for the purposes of this section as follows: one-half shall be assignable to each political subdivision where two are involved, one-third where three are involved, and one-fourth where four are involved.

F. As soon as practicable after the local sales tax moneys have been paid into the state treasury in any month for the preceding month, the Comptroller shall draw his warrant on the Treasurer of Virginia in the proper amount in favor of each city or county entitled to the monthly return of its local sales tax moneys, and such payments shall be charged to the account of each such city or county under the special fund created by this section. If errors are made in any such payment, or adjustments are otherwise necessary, whether attributable to refunds to taxpayers, or to some other fact, the errors shall be corrected and adjustments made in the payments for the next two months as follows: one-half of the total adjustment shall be included in the payments for the next two months. In addition, the payment shall include a refund of amounts erroneously not paid to the city or county and not previously refunded during the three years preceding the discovery of the error. A correction and adjustment in payments described in this subsection due to the misallocation of funds by the dealer shall be made within three years of the date of the payment error.

G. Such payments to counties are subject to the qualification that in any county wherein is situated any incorporated town constituting a special school district and operated as a separate school district under a town school board of three members appointed by the town council, the county treasurer shall pay into the town treasury for general governmental purposes the proper proportionate amount received by him in the ratio that the school age population of such town bears to the school age population of the entire county. If the school age population of any town constituting a separate school district is increased by the annexation of territory since the last estimate of school age population provided by the Weldon Cooper Center for Public Service, such increase shall, for the purposes of this section, be added to the school age population of such town

as shown by the last such estimate and a proper reduction made in the school age population of the county or counties from which the annexed territory was acquired.

H. One-half of such payments to counties are subject to the further qualification, other than as set out in subsection G above, that in any county wherein is situated any incorporated town not constituting a separate special school district which has complied with its charter provisions providing for the election of its council and mayor for a period of at least four years immediately prior to the adoption of the sales tax ordinance, the county treasurer shall pay into the town treasury of each such town for general governmental purposes the proper proportionate amount received by him in the ratio that the school age population of each such town bears to the school age population of the entire county, based on the latest estimate provided by the Weldon Cooper Center for Public Service. The preceding requirement pertaining to the time interval between compliance with election provisions and adoption of the sales tax ordinance shall not apply to a tier-city. If the school age population of any such town not constituting a separate special school district is increased by the annexation of territory or otherwise since the last estimate of school age population provided by the Weldon Cooper Center for Public Service, such increase shall, for the purposes of this section, be added to the school age population of such town as shown by the last such estimate and a proper reduction made in the school age population of the county or counties from which the annexed territory was acquired.

I. Notwithstanding the provisions of subsection H, the board of supervisors of a county may, in its discretion, appropriate funds to any incorporated town not constituting a separate school district within such county which has not complied with the provisions of its charter relating to the elections of its council and mayor, an amount not to exceed the amount it would have received from the tax imposed by this chapter if such election had been held.

J. It is further provided that if any incorporated town which would otherwise be eligible to receive funds from the county treasurer under subsection G or H of this section be located in a county which does not levy a general retail sales tax under the provisions of this law, such town may levy a general retail sales tax at the rate of one percent to provide revenue for the general fund of the town, subject to all the provisions of this section generally applicable to cities and counties. Any tax levied under the authority of this subsection shall in no case continue to be levied on or after the effective date of a county ordinance imposing a general retail sales tax in the county within which such town is located.

Code 1950, §§ 58-441.49, 58-441.49:2; 1966, c. 151; 1968, c. 638; 1982, c. 555; 1984, cc. 675, 695; 1997, cc. 245, 725; 2004, Sp. Sess. I, c. 3; 2007, c. 896; 2008, cc. 484, 488; 2010, cc. 386, 629; 2012, c. 831.

§ 58.1-605. (Contingent effective date -- see note) To what extent and under what conditions cities and counties may levy local sales taxes; collection thereof by Commonwealth and return of revenue to each city or county entitled thereto

A. No county, city or town shall impose any local general sales or use tax or any local general retail sales or use tax except as authorized by this section.

B. The council of any city and the governing body of any county may levy a general retail sales tax at the rate of one percent to provide revenue for the general fund of such city or county. Such tax shall be added to the rate of the state sales tax imposed by §§ 58.1-603 and 58.1-604 and shall be subject to all the provisions of this chapter and the rules and regulations published with respect thereto. No discount under § 58.1-622 shall be allowed on a local sales tax.

C. The council of any city and the governing body of any county desiring to impose a local sales tax under this section may do so by the adoption of an ordinance stating its purpose and referring to this section, and providing that such ordinance shall be effective on the first day of a month at least 60 days after its adoption. A certified copy of such ordinance shall be forwarded to the Tax Commissioner so that it will be received within five days after its adoption.

D. Prior to any change in the rate of the local sales and use tax, the Tax Commissioner shall provide remote sellers and single and consolidated providers with at least 30 days' notice. Any change in the rate of local sales and use tax shall only become effective on the first day of a calendar quarter. Failure to provide notice pursuant to this section shall require the Commonwealth and the locality to hold the remote seller or single or consolidated provider harmless for collecting the tax at the immediately preceding effective rate for any period of time prior to 30 days after notification is provided.

E. Any local sales tax levied under this section shall be administered and collected by the Tax Commissioner in the same manner and subject to the same penalties as provided for the state sales tax.

F. All local sales tax moneys collected by the Tax Commissioner under this section shall be paid into the state treasury to the credit of a special fund which is hereby created on the Comptroller's books under the name "Collections of Local Sales Taxes." Such local sales tax moneys shall be credited to the account of each particular city or county levying a local sales tax under this section. The basis of such credit shall be the city or county in which the sales were made as shown by the records of the Department and certified by it monthly to the Comptroller, namely, the city or county of location of each place of business of every dealer paying the tax to the Commonwealth without regard to the city or county of possible use by the purchasers. If a dealer has any place of business located in more than one political subdivision by reason of the boundary line or lines passing through such place of business, the amount of sales tax paid by such a dealer with respect to such place of business shall be treated for the purposes of this section as follows: one-half shall be assignable to each political subdivision where two are involved, one-third where three are involved, and one-fourth where four are involved.

G. As soon as practicable after the local sales tax moneys have been paid into the state treasury in any month for the preceding month, the Comptroller shall draw his warrant on the Treasurer of

Virginia in the proper amount in favor of each city or county entitled to the monthly return of its local sales tax moneys, and such payments shall be charged to the account of each such city or county under the special fund created by this section. If errors are made in any such payment, or adjustments are otherwise necessary, whether attributable to refunds to taxpayers, or to some other fact, the errors shall be corrected and adjustments made in the payments for the next two months as follows: one-half of the total adjustment shall be included in the payments for the next two months. In addition, the payment shall include a refund of amounts erroneously not paid to the city or county and not previously refunded during the three years preceding the discovery of the error. A correction and adjustment in payments described in this subsection due to the misallocation of funds by the dealer shall be made within three years of the date of the payment error.

H. Such payments to counties are subject to the qualification that in any county wherein is situated any incorporated town constituting a special school district and operated as a separate school district under a town school board of three members appointed by the town council, the county treasurer shall pay into the town treasury for general governmental purposes the proper proportionate amount received by him in the ratio that the school age population of such town bears to the school age population of the entire county. If the school age population of any town constituting a separate school district is increased by the annexation of territory since the last estimate of school age population provided by the Weldon Cooper Center for Public Service, such increase shall, for the purposes of this section, be added to the school age population of such town as shown by the last such estimate and a proper reduction made in the school age population of the county or counties from which the annexed territory was acquired.

I. One-half of such payments to counties are subject to the further qualification, other than as set out in subsection H, that in any county wherein is situated any incorporated town not constituting a separate special school district which has complied with its charter provisions providing for the election of its council and mayor for a period of at least four years immediately prior to the adoption of the sales tax ordinance, the county treasurer shall pay into the town treasury of each such town for general governmental purposes the proper proportionate amount received by him in the ratio that the school age population of each such town bears to the school age population of the entire county, based on the latest estimate provided by the Weldon Cooper Center for Public Service. The preceding requirement pertaining to the time interval between compliance with election provisions and adoption of the sales tax ordinance shall not apply to a tier-city. If the school age population of any such town not constituting a separate special school district is increased by the annexation of territory or otherwise since the last estimate of school age population provided by the Weldon Cooper Center for Public Service, such increase shall, for the purposes of this section, be added to the school age population of such town as shown by the last such estimate and a proper reduction made in the school age population of the county or counties from which the annexed territory was acquired.

J. Notwithstanding the provisions of subsection I, the board of supervisors of a county may, in its discretion, appropriate funds to any incorporated town not constituting a separate school district within such county which has not complied with the provisions of its charter relating to the elections of its council and mayor, an amount not to exceed the amount it would have received from the tax imposed by this chapter if such election had been held.

K. It is further provided that if any incorporated town which would otherwise be eligible to receive funds from the county treasurer under subsection H or I be located in a county which does not levy a general retail sales tax under the provisions of this law, such town may levy a general retail sales tax at the rate of one percent to provide revenue for the general fund of the town, subject to all the provisions of this section generally applicable to cities and counties. Any tax levied under the authority of this subsection shall in no case continue to be levied on or after the effective date of a county ordinance imposing a general retail sales tax in the county within which such town is located.

Code 1950, §§ 58-441.49, 58-441.49:2; 1966, c. 151; 1968, c. 638; 1982, c. 555; 1984, cc. 675, 695; 1997, cc. 245, 725; 2004, Sp. Sess. I, c. 3; 2007, c. 896; 2008, cc. 484, 488; 2010, cc. 386, 629; 2012, c. 831; 2013, c. 766.

§ 58.1-606. (Contingent expiration date -- see note*) To what extent and under what conditions cities and counties may levy local use tax; collection thereof by Commonwealth and return of revenues to the cities and counties

A. The council of any city and the governing body of any county which has levied or may hereafter levy a city or county sales tax under § 58.1-605 may levy a city or county use tax at the rate of one percent to provide revenue for the general fund of such city or county. Such tax shall be added to the rate of the state use tax imposed by this chapter and shall be subject to all the provisions of this chapter, and all amendments thereof, and the rules and regulations published with respect thereto, except that no discount under § 58.1-622 shall be allowed on a local use tax.

B. The council of any city and the governing body of any county desiring to impose a local use tax under this section may do so in the manner following:

1. If the city or county has previously imposed the local sales tax authorized by § 58.1-605, the local use tax may be imposed by the council or governing body by the adoption of a resolution by a majority of all the members thereof, by a recorded yea and nay vote, stating its purpose and referring to this section, and providing that the local use tax shall become effective on the first day of a month at least 60 days after the adoption of the resolution. A certified copy of such resolution shall be forwarded to the Tax Commissioner so that it will be received within five days after its adoption. The resolution authorized by this paragraph may be adopted in the manner stated notwithstanding any other provision of law, including any charter provision.

2. If the city or county has not imposed the local sales tax authorized by § 58.1-605, the local use tax may be imposed by ordinance together with the local sales tax in the manner set out in subsections B and C of § 58.1-605.

C. Any local use tax levied under this section shall be administered and collected by the Tax Commissioner in the same manner and subject to the same penalties as provided for the state use tax.

D. The local use tax authorized by this section shall not apply to transactions to which the sales tax applies, the situs of which for state and local sales tax purposes is the city or county of location of each place of business of every dealer paying the tax to the Commonwealth without regard to the city or county of possible use by the purchasers. However, the local use tax authorized by this section shall apply to tangible personal property purchased without this Commonwealth for use or consumption within the city or county imposing the local use tax, or stored within the city or county for use or consumption, where the property would have been subject to the sales tax if it had been purchased within this Commonwealth. The local use tax shall also apply to leases or rentals of tangible personal property where the place of business of the lessor is without this Commonwealth and such leases or rentals are subject to the state tax. Moreover, the local use tax shall apply in all cases in which the state use tax applies.

E. Out-of-state dealers who hold certificates of registration to collect the use tax from their customers for remittance to this Commonwealth shall, to the extent reasonably practicable, in filing their monthly use tax returns with the Tax Commissioner, break down their shipments into this Commonwealth by cities and counties so as to show the city or county of destination. If, however, the out-of-state dealer is unable accurately to assign any shipment to a particular city or county, the local use tax on the tangible personal property involved shall be remitted to the Commonwealth by such dealer without attempting to assign the shipment to any city or county.

F. Local use tax revenue shall be distributed among the cities and counties for which it is collected, respectively, as shown by the records of the Department, and the procedure shall be the same as that prescribed for distribution of local sales tax revenue under § 58.1-605. The local use tax revenue that is not accurately assignable to a particular city or county shall be distributed monthly by the appropriate state authorities among the cities and counties in this Commonwealth imposing the local use tax upon the basis of taxable retail sales in the respective cities and counties in which the local sales and use tax was in effect in the taxable month involved, as shown by the records of the Department, and computed with respect to taxable retail sales as reflected by the amounts of the local sales tax revenue distributed among such cities and counties, respectively, in the month of distribution. Notwithstanding any other provision of this section, the Tax Commissioner shall develop a uniform method to distribute local use tax. Any significant changes to the method of local use tax distribution shall be phased in over a five-year period. Distribution information shall be shared with the affected localities prior to implementation of the changes.

G. All local use tax revenue shall be used, applied or disbursed by the cities and counties as provided in § 58.1-605 with respect to local sales tax revenue.

Code 1950, § 58-441.49:1; 1968, c. 191; 1984, c. 675; 1999, c. 156; 2004, Sp. Sess. I, c. 3; 2007, c. 896; 2008, cc. 484, 488.

§ 58.1-606. (Contingent effective date -- see note*) To what extent and under what conditions cities and counties may levy local use tax; collection thereof by Commonwealth and return of revenues to the cities and counties

A. The council of any city and the governing body of any county which has levied or may hereafter levy a city or county sales tax under § 58.1-605 may levy a city or county use tax at the rate of one percent to provide revenue for the general fund of such city or county. Such tax shall be added to the rate of the state use tax imposed by this chapter and shall be subject to all the provisions of this chapter, and all amendments thereof, and the rules and regulations published with respect thereto, except that no discount under § 58.1-622 shall be allowed on a local use tax.

B. The council of any city and the governing body of any county desiring to impose a local use tax under this section may do so in the manner following:

1. If the city or county has previously imposed the local sales tax authorized by § 58.1-605, the local use tax may be imposed by the council or governing body by the adoption of a resolution by a majority of all the members thereof, by a recorded yea and nay vote, stating its purpose and referring to this section, and providing that the local use tax shall become effective on the first day of a month at least 60 days after the adoption of the resolution. A certified copy of such resolution shall be forwarded to the Tax Commissioner so that it will be received within five days after its adoption. The resolution authorized by this paragraph may be adopted in the manner stated notwithstanding any other provision of law, including any charter provision.

2. If the city or county has not imposed the local sales tax authorized by § 58.1-605, the local use tax may be imposed by ordinance together with the local sales tax in the manner set out in subsections B and C of § 58.1-605.

C. Any local use tax levied under this section shall be administered and collected by the Tax Commissioner in the same manner and subject to the same penalties as provided for the state use tax.

D. Prior to any change in the rate of the local sales and use tax, the Tax Commissioner shall provide remote sellers and single and consolidated providers with at least 30 days' notice. Any change in the rate of local sales and use tax shall only become effective on the first day of a calendar quarter. Failure to provide notice pursuant to this section shall require the Commonwealth and the locality to hold the remote seller or single or consolidated provider harmless for collecting the tax at the immediately preceding effective rate for any period of time prior to 30 days after notification is provided.

E. The local use tax authorized by this section shall not apply to transactions to which the sales tax applies, the situs of which for state and local sales tax purposes is the city or county of location of each place of business of every dealer paying the tax to the Commonwealth without regard to the city or county of possible use by the purchasers. However, the local use tax authorized by this section shall apply to tangible personal property purchased without this Commonwealth for use or consumption within the city or county imposing the local use tax, or stored within the city or county for use or consumption, where the property would have been subject to the sales tax if it had been purchased within this Commonwealth. The local use tax shall also apply to leases or rentals of tangible personal property where the place of business of the lessor is without this Commonwealth and such leases or rentals are subject to the state tax. Moreover, the local use tax shall apply in all cases in which the state use tax applies.

F. Out-of-state dealers who hold certificates of registration to collect the use tax from their customers for remittance to this Commonwealth shall, to the extent reasonably practicable, in filing their monthly use tax returns with the Tax Commissioner, break down their shipments into this Commonwealth by cities and counties so as to show the city or county of destination. If, however, the out-of-state dealer is unable accurately to assign any shipment to a particular city or county, the local use tax on the tangible personal property involved shall be remitted to the Commonwealth by such dealer without attempting to assign the shipment to any city or county.

G. Local use tax revenue shall be distributed among the cities and counties for which it is collected, respectively, as shown by the records of the Department, and the procedure shall be the same as that prescribed for distribution of local sales tax revenue under § 58.1-605. The local use tax revenue that is not accurately assignable to a particular city or county shall be distributed monthly by the appropriate state authorities among the cities and counties in this Commonwealth imposing the local use tax upon the basis of taxable retail sales in the respective cities and counties in which the local sales and use tax was in effect in the taxable month involved, as shown by the records of the Department, and computed with respect to taxable retail sales as reflected by the amounts of the local sales tax revenue distributed among such cities and counties, respectively, in the month of distribution. Notwithstanding any other provision of this section, the Tax Commissioner shall develop a uniform method to distribute local use tax. Any significant changes to the method of local use tax distribution shall be phased in over a five-year period. Distribution information shall be shared with the affected localities prior to implementation of the changes.

H. All local use tax revenue shall be used, applied or disbursed by the cities and counties as provided in § 58.1-605 with respect to local sales tax revenue.

Code 1950, § 58-441.49:1; 1968, c. 191; 1984, c. 675; 1999, c. 156; 2004, Sp. Sess. I, c. 3; 2007, c. 896; 2008, cc. 484, 488; 2013, c. 766.

*This section is set out twice because the 14th enactment of Chapter 766 of the Acts of

Assembly of 2013 states: "That the provisions of this act that generate additional revenue through state taxes or fees for transportation (i) throughout the Commonwealth and in Planning District 8 and Planning District 23 or (ii) in any other Planning District that becomes subject to the state taxes or fees imposed solely in Planning Districts pursuant to this act shall expire on December 31 of any year in which the General Assembly appropriates any of such additional revenues for any non-transportation-related purpose or transfers any of such additional revenues that are to be deposited into the Commonwealth Transportation Fund or any subfund thereof pursuant to general law for a non-transportation-related purpose. In the event a local government of any county or city wherein the additional taxes and fees are levied appropriates or allocates any of such additional revenues to a non-transportation purpose, such locality shall not be the direct beneficiary of any of the revenues generated by the taxes or fees in the year immediately succeeding the year in which revenues were appropriated or allocated to a non-transportation purpose."

§ 58.1-607. Moving residence or business into Commonwealth

The use tax shall not apply to tangible personal property purchased outside this Commonwealth for use outside this Commonwealth by a then nonresident natural person or a business entity not actually doing business within this Commonwealth, who later brings such tangible personal property into this Commonwealth in connection with his establishment of a permanent residence or business in this Commonwealth, provided that such property was purchased more than six months prior to the date it was first brought into this Commonwealth or prior to the establishment of such residence or business, whichever first occurs. This section shall not apply to tangible personal property temporarily brought into this Commonwealth for the performance of contracts for the construction, reconstruction, installation, repair, or for any other service with respect to real estate or fixtures thereon.

Code 1950, § 58-441.10; 1966, c. 151; 1984, c. 675.

§ 58.1-608. Repealed

Repealed by Acts 1993, c. 310 .

§ 58.1-608.1. Refund authorized for certain building materials

A. From July 1, 1993, through June 30, 2004, any organization meeting the following conditions and criteria may apply to the Department of Taxation for a refund of any taxes paid on tangible personal property pursuant to this chapter:

1. The organization is exempt from taxation under § 501(c)(3) of the Internal Revenue Code;

2. The organization is organized and operated primarily to acquire land and purchase materials to erect or rehabilitate low-cost homes on such land; and

3. The homes are sold at cost on a nondiscriminatory basis to persons who otherwise would be unable to afford to buy a home through conventional means.

B. Notwithstanding the provisions of subsection A, an organization exempt from taxation under § 501(c)(3) of the Internal Revenue Code may apply for a refund of any sales and use tax paid on tangible personal property used to repair or rehabilitate homes owned and occupied by low-income persons who could not otherwise afford to finance the rehabilitation or repair of their homes.

C. The Department of Taxation may require that any organization submit sales tax receipts along with the refund application to qualify for the refund authorized pursuant to this section.

D. The provisions of this section do not apply to any organization to the extent that the organization already is exempt from taxes imposed on tangible personal property by this chapter pursuant to § 58.1-609.11.

1989, c. 739; 1990, c. 349; 1993, c. 647; 1994, c. 728; 1999, cc. 12, 334; 2000, c. 493.

§ 58.1-608.2. Repealed

Repealed by Acts 2003, cc. 757 and 758, effective July 1, 2004.

§ 58.1-608.3. Entitlement to certain sales tax revenues

A. As used in this section, the following words and terms have the following meanings, unless some other meaning is plainly intended:

"Bonds" means any obligations of a municipality for the payment of money.

"Cost," as applied to any public facility or to extensions or additions to any public facility, includes: (i) the purchase price of any public facility acquired by the municipality or the cost of acquiring all of the capital stock of the corporation owning the public facility and the amount to be paid to discharge any obligations in order to vest title to the public facility or any part of it in the municipality; (ii) expenses incident to determining the feasibility or practicability of the public facility; (iii) the cost of plans and specifications, surveys and estimates of costs and of revenues; (iv) the cost of all land, property, rights, easements and franchises acquired; (v) the cost of improvements, property or equipment; (vi) the cost of engineering, legal and other professional services; (vii) the cost of construction or reconstruction; (viii) the cost of all labor, materials, machinery and equipment; (ix) financing charges; (x) interest before and during construction and for up to one year after completion of construction; (xi) start-up costs and operating capital; (xii) payments by a municipality of its share of the cost of any multijurisdictional public facility; (xiii) administrative expense; (xiv) any amounts to be deposited to reserve or replacement funds; and (xv) other expenses as may be necessary or incident to the financing of the public facility. Any obligation or expense incurred by the public facility in connection with any of the foregoing items of cost may be regarded as a part of the cost.

"Municipality" means any county, city, town, authority, commission, or other public entity.

"Public facility" means (i) any auditorium, coliseum, convention center, or conference center, which is owned by a Virginia county, city, town, authority, or other public entity and where exhibits, meetings, conferences, conventions, seminars, or similar public events may be conducted; (ii)

any hotel which is owned by a foundation whose sole purpose is to benefit a state-supported university and which is attached to and is an integral part of such facility, together with any lands reasonably necessary for the conduct of the operation of such events; (iii) any hotel which is attached to and is an integral part of such facility; (iv) any hotel that is adjacent to a convention center owned by a public entity and where the hotel owner enters into a public-private partnership whereby the locality contributes infrastructure, real property, or conference space; or (v) a sports complex consisting of a minor league baseball stadium and related tournament, training, and parking facilities, where a municipality owns a component of the sports complex. However, such public facility must be located in the City of Fredericksburg, City of Hampton, City of Lynchburg, City of Newport News, City of Norfolk, City of Portsmouth, City of Richmond, City of Roanoke, City of Salem, City of Staunton, City of Suffolk, City of Virginia Beach, City of Winchester, or Town of Wise. Any property, real, personal, or mixed, which is necessary or desirable in connection with any such auditorium, coliseum, convention center, sports complex, or conference center, including, without limitation, facilities for food preparation and serving, parking facilities, and administration offices, is encompassed within this definition. However, structures commonly referred to as "shopping centers" or "malls" shall not constitute a public facility hereunder. A public facility shall not include residential condominiums, townhomes, or other residential units. In addition, only a new public facility, or a public facility which will undergo a substantial and significant renovation or expansion, shall be eligible under subsection C. A new public facility is one whose construction began after December 31, 1991. A substantial and significant renovation entails a project whose cost is at least 50 percent of the original cost of the facility being renovated and shall have begun after December 31, 1991. A substantial and significant expansion entails an increase in floor space of at least 50 percent over that existing in the preexisting facility and shall have begun after December 31, 1991; or an increase in floor space of at least 10 percent over that existing in a public facility that qualified as such under this section and was constructed after December 31, 1991.

"Sales tax revenues" means such tax collections realized under the Virginia Retail Sales and Use Tax Act (§ 58.1-600 et seq.), as limited herein. "Sales tax revenues" does not include the revenue generated by (i) the 0.5 percent sales and use tax increase enacted by the 1986 Special Session of the General Assembly which shall be paid to the Transportation Trust Fund as defined in § 33.2-1524, (ii) the 1.0 percent of the state sales and use tax revenue distributed among the counties and cities of the Commonwealth pursuant to subsection D of § 58.1-638 on the basis of school age population, or (iii) any sales and use tax revenues generated by increases or allocation changes imposed by the 2013 Session of the General Assembly.

B. Notwithstanding the definition of "public facility" in subsection A, a development project that meets the requirements for a "development of regional impact" set forth herein shall be deemed to be a public facility under the provisions of this section. The locality in which the public facility is located shall be entitled to all sales tax revenues generated by transactions taking place at such

public facility solely to pay the cost of any bonds issued to pay the cost, or portion thereof, of such public facility pursuant to subsection C. For purposes of this subsection, the development of regional impact must be located in the City of Bristol.

For purposes of this subsection, a "development of regional impact" means a development project (i) towards which the locality contributes infrastructure or real property as part of a public-private partnership with the developer that is equal to at least 20 percent of the aggregate cost of development, (ii) that is reasonably expected to require a capital investment of at least $50 million, (iii) that is reasonably expected to generate at least $5 million annually in state sales and use tax revenue from sales within the development, (iv) that is reasonably expected to attract at least one million visitors annually, (v) that is reasonably expected to create at least 2,000 permanent jobs, (vi) that is located in a locality that had a rate of unemployment at least three percentage points higher than the statewide average in November 2011, and (vii) that is located in a locality that is adjacent to a state that has adopted a Border Region Retail Tourism Development District Act. Within 30 days from the date of notification by a locality that it intends to contribute infrastructure or real property as part of a public-private partnership with the developer of a development of regional impact, the Department of Taxation shall review the findings of the locality with respect to clauses (i) through (vi) and shall file a written report with the Chairmen of the House Committee on Finance, the House Committee on Appropriations, and the Senate Committee on Finance.

C. Any municipality which has issued bonds (i) after December 31, 1991, but before January 1, 1996, (ii) on or after January 1, 1998, but before July 1, 1999, (iii) on or after January 1, 1999, but before July 1, 2001, (iv) on or after July 1, 2000, but before July 1, 2003, (v) on or after July 1, 2001, but before July 1, 2005, (vi) on or after July 1, 2004, but before July 1, 2007, (vii) on or after July 1, 2009, but before July 1, 2012, (viii) on or after January 1, 2011, but prior to July 1, 2015, or (ix) on or after January 1, 2013, but prior to July 1, 2017, to pay the cost, or portion thereof, of any public facility shall be entitled to all sales tax revenues generated by transactions taking place in such public facility. In the case of a public facility described in clause (v) of the definition of public facility, all such sales tax revenues shall be applied solely to repayment of the bonds issued to pay the cost, or portion thereof, of the municipality-owned component of the sports complex. Such entitlement shall continue for the lifetime of such bonds, or any refinancing or refunding thereof, but in no event shall such entitlement exceed 35 years from the initial date that any bonds were issued to pay the cost, or a portion thereof, of any public facility, and all such sales tax revenues shall be applied to repayment of the bonds. The State Comptroller shall remit such sales tax revenues to the municipality on a quarterly basis, subject to such reasonable processing delays as may be required by the Department of Taxation to calculate the actual net sales tax revenues derived from the public facility. The State Comptroller shall make such remittances to eligible municipalities, as provided herein, notwithstanding any provisions to the contrary in the Virginia Retail Sales and Use Tax Act (§ 58.1-600 et seq.). No such remittances shall be made until

construction is completed and, in the case of a renovation or expansion, until the governing body of the municipality has certified that the renovation or expansion is completed; however, in the case of any public facility consisting of more than one building or structure, such remittances shall be made on a quarterly basis beginning with the first quarter in which any sales tax revenue is generated by transactions taking place at any building or structure within such public facility, whether or not construction of all or any portion, phase, building, or structure of such public facility has been completed.

D. Nothing in this section shall be construed as authorizing the pledging of the faith and credit of the Commonwealth of Virginia, or any of its revenues, for the payment of any bonds. Any appropriation made pursuant to this section shall be made only from sales tax revenues derived from the public facility for which bonds may have been issued to pay the cost, in whole or in part, of such public facility.

1995, c. 173; 1996, cc. 105, 819; 1998, cc. 492, 497; 1999, cc. 141, 184; 2000, c. 474; 2001, c. 522; 2004, cc. 506, 566, 568; 2006, cc. 581, 608; 2009, cc. 7, 47, 93, 499, 836; 2011, c. 274; 2012, cc. 678, 789, 830; 2013, cc. 568, 724, 766; 2014, cc. 551, 718.

§ 58.1-608.4. Suspension of exemption

Any organization or entity exempt from the tax imposed by this chapter, or imposed pursuant to the authority granted in § 58.1-605 or § 58.1-606, that knows or should have known that an associate, employee, volunteer, other individual or entity has used its tax exemption certificate/letter to make unlawful purchases in the aggregate in excess of $1,000 in any calendar year, shall have its tax exemption suspended in accordance with § 58.1-623.1.

2002, c. 775.

§ 58.1-609. Repealed

Repealed by Acts 1993, c. 310 .

§ 58.1-609.1. Governmental and commodities exemptions

The tax imposed by this chapter or pursuant to the authority granted in §§ 58.1-605 and 58.1-606 shall not apply to the following:

1. Fuels which are subject to the tax imposed by Chapter 22 (§ 58.1-2200 et seq.). Persons who are refunded any such fuel tax shall, however, be subject to the tax imposed by this chapter, unless such taxes would be specifically exempted pursuant to any provision of this section.

2. Motor vehicles, trailers, semitrailers, mobile homes and travel trailers.

3. Gas, electricity, or water when delivered to consumers through mains, lines, or pipes.

4. Tangible personal property for use or consumption by the Commonwealth, any political subdivision of the Commonwealth, or the United States. This exclusion shall not apply to sales and leases to privately owned financial and other privately owned corporations chartered by the United States. Further, this exemption shall not apply to tangible personal property which is

acquired by the Commonwealth or any of its political subdivisions and then transferred to private businesses for their use in a facility or real property improvement to be used by a private entity or for nongovernmental purposes other than tangible personal property acquired by the Herbert H. Bateman Advanced Shipbuilding and Carrier Integration Center and transferred to a Qualified Shipbuilder as defined in the third enactment of Chapter 790 of the 1998 Acts of the General Assembly.

5. Aircraft subject to tax under Chapter 15 (§ 58.1-1500 et seq.).

6. a. Motor fuels and alternative fuels for use in a commercial watercraft, as defined in § 58.1-2201, upon which a fuel tax is refunded pursuant to § 58.1-2259.

b. Fuels transactions upon which a fuel tax is refunded pursuant to subdivision A 22 of § 58.1-2259.

7. Sales by a government agency of the official flags of the United States, the Commonwealth of Virginia, or of any county, city or town.

8. Materials furnished by the State Board of Elections pursuant to §§ 24.2-404 through 24.2-407.

9. Watercraft as defined in § 58.1-1401.

10. Tangible personal property used in and about a marine terminal under the supervision of the Virginia Port Authority for handling cargo, merchandise, freight and equipment. This exemption shall apply to agents, lessees, sublessees or users of tangible personal property owned by or leased to the Virginia Port Authority and to property acquired or used by the Authority or by a nonstock, nonprofit corporation that operates a marine terminal or terminals on behalf of the Authority.

11. Sales by prisoners confined in state correctional facilities of artistic products personally made by the prisoners as authorized by § 53.1-46.

12. Tangible personal property for use or consumption by the Virginia Department for the Blind and Vision Impaired or any nominee, as defined in § 51.5-60, of such Department.

13. [Expired.]

14. Tangible personal property sold to residents and patients of the Virginia Veterans Care Center at a canteen operated by the Department of Veterans Services.

15. Tangible personal property for use or consumption by any nonprofit organization whose members include the Commonwealth and other states and which is organized for the purpose of fostering interstate cooperation and excellence in government.

16. Tangible personal property purchased for use or consumption by any soil and conservation district which is organized in accordance with the provisions of Article 3 (§ 10.1-506 et seq.) of Chapter 5 of Title 10.1.

17. Tangible personal property sold or leased to Alexandria Transit Company, Greater Lynchburg Transit Company, GRTC Transit System, or Greater Roanoke Transit Company, or to any other transit company that is owned, operated, or controlled by any county, city, or town, or any combination thereof, that provides public transportation services, and/or tangible personal property sold or leased to any county, city, or town, or any combination thereof, that is transferred to any of the companies set forth in this subdivision owned, operated, or controlled by any county, city, or town, or any combination thereof, that provides public transportation services.

18. (Effective until July 1, 2017) Qualified products designated as Energy Star or WaterSense with a sales price of $2,500 or less per product purchased for noncommercial home or personal use. The exemption provided by this subdivision shall apply only to sales occurring during the three-day period that begins each year on the first Friday in August and ends at 11:59 p.m. on the following Sunday.

For the purposes of this exemption, an Energy Star qualified product is any dishwasher, clothes washer, air conditioner, ceiling fan, light bulb, dehumidifier, programmable thermostat, or refrigerator, the energy efficiency of which has been designated by the United States Environmental Protection Agency and the United States Department of Energy as meeting or exceeding each such agency's requirements under the Energy Star program. For the purposes of this exemption, WaterSense qualified products are those that have been recognized as being water efficient by the WaterSense program sponsored by the U.S. Environmental Protection Agency as indicated by a WaterSense label.

19. On or after July 1, 2015, but before January 1, 2019, gold, silver, or platinum bullion whose sales price exceeds $1,000. Each piece of gold, silver, or platinum need not exceed $1,000, provided that the sales price of one entire transaction of such pieces exceeds $1,000. "Gold, silver, or platinum bullion" means gold, silver, or platinum, and any combination thereof, that has gone through a refining process and is in a state or condition such that its value depends on its mass and purity and not on its form, numismatic value, or other value. Gold, silver, or platinum bullion may contain other metals or substances, provided that the other substances by themselves have minimal value compared with the value of the gold, silver, or platinum. "Gold, silver, or platinum bullion" does not include jewelry or works of art.

20. Tangible personal property sold by a sheriff at a correctional facility pursuant to § 53.1-127.1 and sales of prepared food within such correctional facility.

1993, c. 310; 1995, cc. 617, 664; 1998, c. 812; 1999, cc. 401, 471, 762, 776; 2000, cc. 487, 493, 729, 758; 2002, c. 877; 2003, cc. 657, 670; 2005, cc. 46, 116; 2007, cc. 176, 817; 2008, c. 554; 2011, c. 165; 2012, cc. 95, 276; 2015, cc. 42, 382, 620, 629; 2016, cc. 34, 392.

§ 58.1-609.2. Agricultural exemptions

The tax imposed by this chapter or pursuant to the authority granted in §§ 58.1-605 and 58.1-606 shall not apply to the following:

1. Commercial feeds; seeds; plants; fertilizers; liming materials; breeding and other livestock; semen; breeding fees; baby chicks; turkey poults; rabbits; quail; llamas; bees; agricultural chemicals; fuel for drying or curing crops; baler twine; containers for fruit and vegetables; farm machinery; medicines and drugs sold to a veterinarian provided they are used or consumed directly in the care, medication, and treatment of agricultural production animals or for resale to a farmer for direct use in producing an agricultural product for market; tangible personal property, except for structural construction materials to be affixed to real property owned or leased by a farmer, necessary for use in agricultural production for market and sold to or purchased by a farmer or contractor; and agricultural supplies provided the same are sold to and purchased by farmers for use in agricultural production, which also includes beekeeping and fish, quail, rabbit and worm farming for market.

2. Every agricultural commodity or kind of seafood sold or distributed by any person to any other person who purchases not for direct consumption but for the purpose of acquiring raw products for use or consumption in the process of preparing, finishing, or manufacturing such agricultural or seafood commodity for the ultimate retail consumer trade, except when such agricultural or seafood commodity is actually sold or distributed as a marketable or finished product to the ultimate consumer. "Agricultural commodity," for the purposes of this subdivision, means horticultural, poultry, and farm products, livestock and livestock products, and products derived from bees and beekeeping.

3. Livestock and livestock products, poultry and poultry products, and farm and agricultural products, when produced by the farmer and used or consumed by him and the members of his family.

4. Machinery, tools, equipment, materials or repair parts therefor or replacement thereof; fuel or supplies; and fishing boats, marine engines installed thereon or outboard motors used thereon, and all replacement or repair parts in connection therewith; provided the same are sold to and purchased by watermen for use by them in extracting fish, bivalves or crustaceans from waters for commercial purposes.

5. Machinery or tools or repair parts therefor or replacements thereof, fuel, power, energy or supplies, and cereal grains and other feed ingredients, including, but not limited to, drugs, vitamins, minerals, nonprotein nitrogen, and other supplements or additives, used directly in making feed for sale or resale. Making of feed shall include the mixing of liquid ingredients.

6. Machinery or tools and repair parts therefor or replacements thereof, fuel, power, energy or supplies, used directly in the harvesting of forest products for sale or for use as a component part of a product to be sold. Harvesting of forest products shall include all operations prior to the transport of the harvested product used for (i) removing timber or other forest products from the harvesting site, (ii) complying with environmental protection and safety requirements applicable to the har-

vesting of forest products, (iii) obtaining access to the harvesting site, and (iv) loading cut timber or other forest products onto highway vehicles for transportation to storage or processing facilities.

7. Agricultural produce, as defined in § 3.2-4738, and eggs, as described in § 3.2-5305, raised and sold by an individual at local farmers markets and roadside stands, when such individual's annual income from such sales does not exceed $1,000.

1993, c. 310; 1994, cc. 365, 381; 1999, c. 229; 2006, cc. 331, 361; 2011, c. 466; 2013, c. 223.

§ 58.1-609.3. Commercial and industrial exemptions

The tax imposed by this chapter or pursuant to the authority granted in §§ 58.1-605 and 58.1-606 shall not apply to the following:

1. Personal property purchased by a contractor which is used solely in another state or in a foreign country, which could be purchased by such contractor for such use free from sales tax in such other state or foreign country, and which is stored temporarily in Virginia pending shipment to such state or country.

2. (i) (Effective until January 1, 2017) Industrial materials for future processing, manufacturing, refining, or conversion into articles of tangible personal property for resale where such industrial materials either enter into the production of or become a component part of the finished product; (ii) industrial materials that are coated upon or impregnated into the product at any stage of its being processed, manufactured, refined, or converted for resale; (iii) machinery or tools or repair parts therefor or replacements thereof, fuel, power, energy, or supplies, used directly in processing, manufacturing, refining, mining or converting products for sale or resale; (iv) materials, containers, labels, sacks, cans, boxes, drums or bags for future use for packaging tangible personal property for shipment or sale; or (v) equipment, printing or supplies used directly to produce a publication described in subdivision 3 of § 58.1-609.6 whether it is ultimately sold at retail or for resale or distribution at no cost. Machinery, tools and equipment, or repair parts therefor or replacements thereof, shall be exempt if the preponderance of their use is directly in processing, manufacturing, refining, mining or converting products for sale or resale. The provisions of this subsection do not apply to the drilling or extraction of oil, gas, natural gas and coalbed methane gas. In addition, the exemption provided herein shall not be applicable to any machinery, tools, and equipment, or any other tangible personal property used by a public service corporation in the generation of electric power, except for raw materials that are inputs to production of electricity, including fuel.

2. (i) (Effective January 1, 2017) Industrial materials for future processing, manufacturing, refining, or conversion into articles of tangible personal property for resale where such industrial materials either enter into the production of or become a component part of the finished product; (ii) industrial materials that are coated upon or impregnated into the product at any stage of its being processed, manufactured, refined, or converted for resale; (iii) machinery or tools or repair parts therefor or replacements thereof, fuel, power, energy, or supplies, used directly in processing,

manufacturing, refining, mining or converting products for sale or resale; (iv) materials, containers, labels, sacks, cans, boxes, drums or bags for future use for packaging tangible personal property for shipment or sale; or (v) equipment, printing or supplies used directly to produce a publication described in subdivision 3 of § 58.1-609.6 whether it is ultimately sold at retail or for resale or distribution at no cost. Machinery, tools and equipment, or repair parts therefor or replacements thereof, shall be exempt if the preponderance of their use is directly in processing, manufacturing, refining, mining or converting products for sale or resale. The provisions of this subsection do not apply to the drilling or extraction of oil, gas, natural gas and coalbed methane gas. In addition, the exemption provided herein shall not be applicable to any machinery, tools, and equipment, or any other tangible personal property used by a public service corporation in the generation of electric power, except for raw materials that are inputs to production of electricity, including fuel, or for machinery, tools, and equipment used to generate energy derived from sunlight or wind. The exemption for machinery, tools, and equipment used to generate energy derived from sunlight or wind shall expire June 30, 2027.

3. Tangible personal property sold or leased to a public service corporation engaged in business as a common carrier of property or passengers by railway, for use or consumption by such common carrier directly in the rendition of its public service.

4. Ships or vessels, or repairs and alterations thereof, used or to be used exclusively or principally in interstate or foreign commerce; fuel and supplies for use or consumption aboard ships or vessels plying the high seas, either in intercoastal trade between ports in the Commonwealth and ports in other states of the United States or its territories or possessions, or in foreign commerce between ports in the Commonwealth and ports in foreign countries, when delivered directly to such ships or vessels; or tangible personal property used directly in the building, conversion or repair of the ships or vessels covered by this subdivision. This exemption shall include dredges, their supporting equipment, attendant vessels, and fuel and supplies for use or consumption aboard such vessels, provided the dredges are used exclusively or principally in interstate or foreign commerce.

5. Tangible personal property purchased for use or consumption directly and exclusively in basic research or research and development in the experimental or laboratory sense.

6. Tangible personal property sold or leased to an airline operating in intrastate, interstate or foreign commerce as a common carrier providing scheduled air service on a continuing basis to one or more Virginia airports at least one day per week, for use or consumption by such airline directly in the rendition of its common carrier service.

7. Meals furnished by restaurants or food service operators to employees as a part of wages.

8. Tangible personal property including machinery and tools, repair parts or replacements thereof, and supplies and materials used directly in maintaining and preparing textile products for rental

or leasing by an industrial processor engaged in the commercial leasing or renting of laundered textile products.

9. Certified pollution control equipment and facilities as defined in § 58.1-3660, except for any equipment that has not been certified to the Department of Taxation by a state certifying authority pursuant to such section.

10. Parts, tires, meters and dispatch radios sold or leased to taxicab operators for use or consumption directly in the rendition of their services.

11. High speed electrostatic duplicators or any other duplicators which have a printing capacity of 4,000 impressions or more per hour purchased or leased by persons engaged primarily in the printing or photocopying of products for sale or resale.

12. From July 1, 1994, and ending July 1, 2022, raw materials, fuel, power, energy, supplies, machinery or tools or repair parts therefor or replacements thereof, used directly in the drilling, extraction, or processing of natural gas or oil and the reclamation of the well area. For the purposes of this section, the term "natural gas" shall mean "gas, " "natural gas, " and "coalbed methane gas" as defined in § 45.1-361.1. For the purposes of this section, "drilling, " "extraction, " and "processing" shall include production, inspection, testing, dewatering, dehydration, or distillation of raw natural gas into a usable condition consistent with commercial practices, and the gathering and transportation of raw natural gas to a facility wherein the gas is converted into such a usable condition. Machinery, tools and equipment, or repair parts therefor or replacements thereof, shall be exempt 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.

13. Beginning July 1, 1997, (i) the sale, lease, use, storage, consumption, or distribution of an orbital or suborbital space facility, space propulsion system, space vehicle, satellite, or space station of any kind possessing space flight capability, including the components thereof, irrespective of whether such facility, system, vehicle, satellite, or station is returned to this Commonwealth for subsequent use, storage or consumption in any manner when used to conduct spaceport activities; (ii) the sale, lease, use, storage, consumption or distribution of tangible personal property placed on or used aboard any orbital or suborbital space facility, space propulsion system, space vehicle, satellite or space station of any kind, irrespective of whether such tangible personal property is returned to this Commonwealth for subsequent use, storage or consumption in any manner when used to conduct spaceport activities; (iii) fuels of such quality not adapted for use in ordinary vehicles, being produced for, sold and exclusively used for space flight when used to conduct spaceport activities; (iv) the sale, lease, use, storage, consumption or distribution of machinery and equipment purchased, sold, leased, rented or used exclusively for spaceport activities and the sale of goods and services provided to operate and maintain launch facilities, launch equipment, payload processing facilities and payload processing equipment used to conduct spaceport activities.

For purposes of this subdivision, "spaceport activities" means activities directed or sponsored at a facility owned, leased, or operated by or on behalf of the Virginia Commercial Space Flight Authority.

The exemptions provided by this subdivision shall not be denied by reason of a failure, postponement or cancellation of a launch of any orbital or suborbital space facility, space propulsion system, space vehicle, satellite or space station of any kind or the destruction of any launch vehicle or any components thereof.

14. Semiconductor cleanrooms or equipment, fuel, power, energy, supplies, or other tangible personal property used primarily in the integrated process of designing, developing, manufacturing, or testing a semiconductor product, a semiconductor manufacturing process or subprocess, or semiconductor equipment without regard to whether the property is actually contained in or used in a cleanroom environment, touches the product, is used before or after production, or is affixed to or incorporated into real estate.

15. Semiconductor wafers for use or consumption by a semiconductor manufacturer.

16. Railroad rolling stock when sold or leased by the manufacturer thereof.

17. Computer equipment purchased or leased on or before June 30, 2011, used in data centers located in a Virginia locality having an unemployment rate above 4.9 percent for the calendar quarter ending November 2007, for the processing, storage, retrieval, or communication of data, including but not limited to servers, routers, connections, and other enabling hardware when part of a new investment of at least $75 million in such exempt property, when such investment results in the creation of at least 100 new jobs paying at least twice the prevailing average wage in that locality, so long as such investment was made in accordance with a memorandum of understanding with the Virginia Economic Development Partnership Authority entered into or amended between January 1, 2008, and December 31, 2008. The exemption shall also apply to any such computer equipment purchased or leased to upgrade, add to, or replace computer equipment purchased or leased in the initial investment. The exemption shall not apply to any computer software sold separately from the computer equipment, nor shall it apply to general building improvements or fixtures.

18. Beginning July 1, 2010, and ending June 30, 2035, computer equipment or enabling software purchased or leased for the processing, storage, retrieval, or communication of data, including but not limited to servers, routers, connections, and other enabling hardware, including chillers and backup generators used or to be used in the operation of the equipment exempted in this paragraph, provided that such computer equipment or enabling software is purchased or leased for use in a data center that (i) is located in a Virginia locality, (ii) results in a new capital investment on or after January 1, 2009, of at least $150 million, and (iii) results in the creation on or after July 1, 2009, of at least 50 new jobs by the data center operator and the tenants of the data center, collectively, associated with the operation or maintenance of the data center provided that such jobs pay at least one and one-half times the prevailing average wage in that locality. The requirement

of at least 50 new jobs is reduced to 25 new jobs if the data center is located in a locality that has an unemployment rate for the preceding year of at least 150 percent of the average statewide unemployment rate for such year as determined by the Virginia Economic Development Partnership or is located in an enterprise zone. This exemption applies to the data center operator and the tenants of the data center if they collectively meet the requirements listed in this section. Prior to claiming such exemption, any qualifying person claiming the exemption, including a data center operator on behalf of itself and its tenants, must enter into a memorandum of understanding with the Virginia Economic Development Partnership Authority that at a minimum provides the details for determining the amount of capital investment made and the number of new jobs created, the timeline for achieving the capital investment and new job goals, the repayment obligations should those goals not be achieved, and any conditions under which repayment by the qualifying data center or data center tenant claiming the exemption may be required. In addition, the exemption shall apply to any such computer equipment or enabling software purchased or leased to upgrade, supplement, or replace computer equipment or enabling software purchased or leased in the initial investment. The exemption shall not apply to any other computer software otherwise taxable under Chapter 6 of Title 58.1 that is sold or leased separately from the computer equipment, nor shall it apply to general building improvements or other fixtures.

19. If the preponderance of their use is in the manufacture of beer by a brewer licensed pursuant to subdivision 1 or 2 of § 4.1-208, (i) machinery, tools, and equipment, or repair parts therefor or replacements thereof, fuel, power, energy, or supplies; (ii) materials for future processing, manufacturing, or conversion into beer where such materials either enter into the production of or become a component part of the beer; and (iii) materials, including containers, labels, sacks, cans, bottles, kegs, boxes, drums, or bags for future use, for packaging the beer for shipment or sale.

1993, c. 310; 1994, cc. 365, 381; 1995, cc. 101, 204, 719; 1996, c. 816; 1997, c. 834; 2001, cc. 429, 468, 769; 2003, c. 859; 2004, Sp. Sess. I, c. 3; 2006, cc. 385, 519, 524, 541, 618; 2007, c. 751; 2008, cc. 558, 764; 2010, cc. 784, 826; 2011, cc. 183, 286; 2012, cc. 613, 655; 2013, c. 10; 2016, cc. 343, 346, 673, 709, 712.

§ 58.1-609.4. Repealed

Repealed by Acts 2003, cc. 757 and 758, effective July 1, 2004.

§ 58.1-609.5. Service exemptions

The tax imposed by this chapter or pursuant to the authority granted in § 58.1-605 or 58.1-606 shall not apply to the following:

1. Professional, insurance, or personal service transactions which involve sales as inconsequential elements for which no separate charges are made; services rendered by repairmen for which a separate charge is made; and services not involving an exchange of tangible personal property which provide access to or use of the Internet and any other related electronic communication service, including software, data, content and other information services delivered electronically via the Internet.

2. An amount separately charged for labor or services rendered in installing, applying, remodeling, or repairing property sold or rented.

3. Transportation charges separately stated.

4. Separately stated charges for alterations to apparel, clothing and garments.

5. Charges for gift wrapping services performed by a nonprofit organization.

6. An amount separately charged for labor or services rendered in connection with the modification of prewritten programs as defined in § 58.1-602.

7. Custom programs as defined in § 58.1-602.

8. The sale or charges for any room or rooms, lodgings, or accommodations furnished to transients for more than 90 continuous days by any hotel, motel, inn, tourist camp, tourist cabin, camping grounds, club, or any other place in which rooms, lodging, space or accommodations are regularly furnished to transients for a consideration.

9. Beginning January 1, 1996, maintenance contracts, the terms of which provide for both repair or replacement parts and repair labor, shall be subject to tax upon one-half of the total charge for such contracts only. Persons providing maintenance pursuant to such a contract may purchase repair or replacement parts under a resale certificate of exemption. Warranty plans issued by an insurance company, which constitute insurance transactions, are subject to the provisions of subdivision 1 above.

1993, c. 310; 1994, c. 595; 1998, c. 481; 2004, c. 607; 2006, c. 474; 2013, c. 90.

§ 58.1-609.6. Media-related exemptions

The tax imposed by this chapter or pursuant to the authority granted in §§ 58.1-605 and 58.1-606 shall not apply to the following:

1. Leasing, renting or licensing of copyright audio or video tapes, and films for public exhibition at motion picture theaters or by licensed radio and television stations.

2. Broadcasting equipment and parts and accessories thereto and towers used or to be used by commercial radio and television companies, wired or land based wireless cable television systems, common carriers or video programmers using an open video system or other video platform provided by telephone common carriers, or concerns which are under the regulation and supervision of the Federal Communications Commission and amplification, transmission and distribution equipment used or to be used by wired or land based wireless cable television systems, or open video systems or other video systems provided by telephone common carriers.

3. Any publication issued daily, or regularly at average intervals not exceeding three months, and advertising supplements and any other printed matter ultimately distributed with or as part of such publications; however, newsstand sales of the same are taxable. As used in this subdivision,

the term "newsstand sales" shall not include sales of back copies of publications by the publisher or his agent.

4. Catalogs, letters, brochures, reports, and similar printed materials, except administrative supplies, the envelopes, containers and labels used for packaging and mailing same, and paper furnished to a printer for fabrication into such printed materials, when stored for 12 months or less in the Commonwealth and distributed for use without the Commonwealth. As used in this subdivision, "administrative supplies" includes, but is not limited to, letterhead, envelopes, and other stationery; and invoices, billing forms, payroll forms, price lists, time cards, computer cards, and similar supplies. Notwithstanding the provisions of subdivision 5 or the definition of "advertising" contained in § 58.1-602, (i) any advertising business located outside the Commonwealth which purchases printing from a printer within the Commonwealth shall not be deemed the user or consumer of the printed materials when such purchases would have been exempt under this subdivision, and (ii) from July 1, 1995, through June 30, 2002, and beginning July 1, 2002, and ending July 1, 2017, any advertising business which purchases printing from a printer within the Commonwealth shall not be deemed the user or consumer of the printed materials when such purchases would have been exempt under subdivision 3 or this subdivision, provided that the advertising agency shall certify to the Tax Commissioner, upon request, that such printed material was distributed outside the Commonwealth and such certification shall be retained as a part of the transaction record and shall be subject to further review by the Tax Commissioner.

5. Advertising as defined in § 58.1-602.

6. Beginning July 1, 1995, and ending July 1, 2019:

a. (i) The lease, rental, license, sale, other transfer, or use of any audio or video tape, film or other audiovisual work where the transferee or user acquires or has acquired the work for the purpose of licensing, distributing, broadcasting, commercially exhibiting or reproducing the work or using or incorporating the work into another such work; (ii) the provision of production services or fabrication in connection with the production of any portion of such audiovisual work, including, but not limited to, scriptwriting, photography, sound, musical composition, special effects, animation, adaptation, dubbing, mixing, editing, cutting and provision of production facilities or equipment; or (iii) the transfer or use of tangible personal property, including, but not limited to, scripts, musical scores, storyboards, artwork, film, tapes and other media, incident to the performance of such services or fabrication; however, audiovisual works and incidental tangible personal property described in clauses (i) and (iii) shall be subject to tax as otherwise provided in this chapter to the extent of the value of their tangible components prior to their use in the production of any audiovisual work and prior to their enhancement by any production service; and

b. Equipment and parts and accessories thereto used or to be used in the production of such audiovisual works.

7. Beginning July 1, 1998, and ending July 1, 2017, textbooks and other educational materials withdrawn from inventory at book-publishing distribution facilities for free distribution to professors and other individuals who have an educational focus.

1993, c. 310; 1994, c. 446; 1995, cc. 101, 171, 719; 1997, cc. 307, 717, 822, 824; 1998, cc. 645, 812; 2002, cc. 183, 228, 777; 2003, cc. 911, 916; 2004, cc. 63, 101, 590, 606, 821; 2007, cc. 58, 604; 2008, cc. 138, 545; 2012, cc. 275, 411, 477.

§§ 58.1-609.7 through 58.1-609.9. Repealed

Repealed by Acts 2003, cc. 757 and 758, effective July 1, 2004.

§ 58.1-609.10. Miscellaneous exemptions

The tax imposed by this chapter or pursuant to the authority granted in §§ 58.1-605 and 58.1-606 shall not apply to the following:

1. Artificial or propane gas, firewood, coal or home heating oil used for domestic consumption. "Domestic consumption" means the use of artificial or propane gas, firewood, coal or home heating oil by an individual purchaser for other than business, commercial or industrial purposes. The Tax Commissioner shall establish by regulation a system for use by dealers in classifying individual purchases for domestic or nondomestic use based on the principal usage of such gas, wood, coal or oil. Any person making a nondomestic purchase and paying the tax pursuant to this chapter who uses any portion of such purchase for domestic use may, between the first day of the first month and the fifteenth day of the fourth month following the year of purchase, apply for a refund of the tax paid on the domestic use portion.

2. An occasional sale, as defined in § 58.1-602. A nonprofit organization that is eligible to be granted an exemption on its purchases pursuant to § 58.1-609.11, and that is otherwise eligible for the exemption pursuant to this subdivision, shall be exempt pursuant to this subdivision on its sales of (i) food, prepared food and meals and (ii) tickets to events that include the provision of food, prepared food and meals, so long as such sales take place on fewer than 24 occasions in a calendar year.

3. Tangible personal property for future use by a person for taxable lease or rental as an established business or part of an established business, or incidental or germane to such business, including a simultaneous purchase and taxable leaseback.

4. Delivery of tangible personal property outside the Commonwealth for use or consumption outside of the Commonwealth. Delivery of goods destined for foreign export to a factor or export agent shall be deemed to be delivery of goods for use or consumption outside of the Commonwealth.

5. Tangible personal property purchased with food coupons issued by the United States Department of Agriculture under the Food Stamp Program or drafts issued through the Virginia Special Supplemental Food Program for Women, Infants, and Children.

6. Tangible personal property purchased for use or consumption in the performance of maintenance and repair services at Nuclear Regulatory Commission-licensed nuclear power plants located outside the Commonwealth.

7. Beginning July 1, 1997, and ending July 1, 2006, a professional's provision of original, revised, edited, reformatted or copied documents, including but not limited to documents stored on or transmitted by electronic media, to its client or to third parties in the course of the professional's rendition of services to its clientele.

8. School lunches sold and served to pupils and employees of schools and subsidized by government; school textbooks sold by a local board or authorized agency thereof; and school textbooks sold for use by students attending a college or other institution of learning, when sold (i) by such institution of learning or (ii) by any other dealer, when such textbooks have been certified by a department or instructor of such institution of learning as required textbooks for students attending courses at such institution.

9. Medicines, drugs, hypodermic syringes, artificial eyes, contact lenses, eyeglasses, eyeglass cases, and contact lens storage containers when distributed free of charge, all solutions or sterilization kits or other devices applicable to the wearing or maintenance of contact lenses or eyeglasses when distributed free of charge, and hearing aids dispensed by or sold on prescriptions or work orders of licensed physicians, dentists, optometrists, ophthalmologists, opticians, audiologists, hearing aid dealers and fitters, nurse practitioners, physician assistants, and veterinarians; controlled drugs purchased for use by a licensed physician, optometrist, licensed nurse practitioner, or licensed physician assistant in his professional practice, regardless of whether such practice is organized as a sole proprietorship, partnership, or professional corporation, or any other type of corporation in which the shareholders and operators are all licensed physicians, optometrists, licensed nurse practitioners, or licensed physician assistants engaged in the practice of medicine, optometry, or nursing; medicines and drugs purchased for use or consumption by a licensed hospital, nursing home, clinic, or similar corporation not otherwise exempt under this section; and samples of prescription drugs and medicines and their packaging distributed free of charge to authorized recipients in accordance with the federal Food, Drug, and Cosmetic Act (21 U.S.C.A. § 301 et seq., as amended). With the exceptions of those medicines and drugs used for agricultural production animals that are exempt to veterinarians under subdivision 1 of § 58.1-609.2, any veterinarian dispensing or selling medicines or drugs on prescription shall be deemed to be the user or consumer of all such medicines and drugs.

10. Wheelchairs and parts therefor, braces, crutches, prosthetic devices, orthopedic appliances, catheters, urinary accessories, other durable medical equipment and devices, and related parts and supplies specifically designed for those products; and insulin and insulin syringes, and equipment, devices or chemical reagents that may be used by a diabetic to test or monitor blood or urine, when such items or parts are purchased by or on behalf of an individual for use by such individual. Durable medical equipment is equipment that (i) can withstand repeated use, (ii) is primarily and

customarily used to serve a medical purpose, (iii) generally is not useful to a person in the absence of illness or injury, and (iv) is appropriate for use in the home.

11. Drugs and supplies used in hemodialysis and peritoneal dialysis.

12. Special equipment installed on a motor vehicle when purchased by a handicapped person to enable such person to operate the motor vehicle.

13. Special typewriters and computers and related parts and supplies specifically designed for those products used by handicapped persons to communicate when such equipment is prescribed by a licensed physician.

14. a. (i) Any nonprescription drugs and proprietary medicines purchased for the cure, mitigation, treatment, or prevention of disease in human beings and (ii) any samples of nonprescription drugs and proprietary medicines distributed free of charge by the manufacturer, including packaging materials and constituent elements and ingredients.

b. The terms "nonprescription drugs" and "proprietary medicines" shall be defined pursuant to regulations promulgated by the Department of Taxation. The exemption authorized in this subdivision shall not apply to cosmetics.

15. Tangible personal property withdrawn from inventory and donated to (i) an organization exempt from taxation under § 501(c)(3) of the Internal Revenue Code or (ii) the Commonwealth, any political subdivision of the Commonwealth, or any school, agency, or instrumentality thereof.

16. Tangible personal property purchased by nonprofit churches that are exempt from taxation under § 501(c)(3) of the Internal Revenue Code, or whose real property is exempt from local taxation pursuant to the provisions of § 58.1-3606, for use (i) in religious worship services by a congregation or church membership while meeting together in a single location and (ii) in the libraries, offices, meeting or counseling rooms or other rooms in the public church buildings used in carrying out the work of the church and its related ministries, including kindergarten, elementary and secondary schools. The exemption for such churches shall also include baptistries; bulletins, programs, newspapers and newsletters that do not contain paid advertising and are used in carrying out the work of the church; gifts including food for distribution outside the public church building; food, disposable serving items, cleaning supplies and teaching materials used in the operation of camps or conference centers by the church or an organization composed of churches that are exempt under this subdivision and which are used in carrying out the work of the church or churches; and property used in caring for or maintaining property owned by the church including, but not limited to, mowing equipment; and building materials installed by the church, and for which the church does not contract with a person or entity to have installed, in the public church buildings used in carrying out the work of the church and its related ministries, including, but not limited to worship services; administrative rooms; and kindergarten, elementary, and secondary schools.

17. Medical products and supplies, which are otherwise taxable, such as bandages, gauze dressings, incontinence products and wound-care products, when purchased by a Medicaid recipient through a Department of Medical Assistance Services provider agreement.

18. Beginning July 1, 2007, and ending July 1, 2012, multifuel heating stoves used for heating an individual purchaser's residence. "Multifuel heating stoves" are stoves that are capable of burning a wide variety of alternative fuels, including, but not limited to, shelled corn, wood pellets, cherry pits, and olive pits.

19. Fabrication of animal meat, grains, vegetables, or other foodstuffs when the purchaser (i) supplies the foodstuffs and they are consumed by the purchaser or his family, (ii) is an organization exempt from taxation under § 501(c)(3) or (c)(4) of the Internal Revenue Code, or (iii) donates the foodstuffs to an organization exempt from taxation under § 501(c)(3) or (c)(4) of the Internal Revenue Code.

1993, c. 310; 1995, cc. 617, 719; 1997, cc. 631, 822; 1998, c. 812; 1999, cc. 762, 776, 1040; 2000, cc. 346, 493, 505; 2001, c. 860; 2003, cc. 757, 758; 2004, cc. 515, 536; 2006, cc. 217, 331, 338, 361; 2007, cc. 84, 758; 2008, c. 569; 2009, cc. 36, 338, 833; 2010, cc. 784, 826, 866.

§ 58.1-609.11. Exemptions for nonprofit entities

A. Any nonprofit organization that holds a valid certificate of exemption from the Department of Taxation, or any nonprofit church that holds a valid self-executing certificate of exemption, that exempts it from collecting or paying state and local retail sales or use taxes as of June 30, 2003, pursuant to § 58.1-609.4, 58.1-609.7, 58.1-609.8, 58.1-609.9, or 58.1-609.10, as such sections are in effect on June 30, 2003, shall remain exempt from the collection or payment of such taxes under the same terms and conditions as provided under such sections as such sections existed on June 30, 2003, until: (i) July 1, 2007, for such entities that were exempt under § 58.1-609.4; (ii) July 1, 2008, for such entities that were exempt under § 58.1-609.7; (iii) July 1, 2004, for the first one-half of such entities that were exempt under § 58.1-609.8, except churches, which will remain exempt under the same criteria and procedures in effect for churches on June 30, 2003; (iv) July 1, 2005, for the second one-half of such entities that were exempt under § 58.1-609.8; and (v) July 1, 2006, for such entities that were exempt under § 58.1-609.9 or under § 58.1-609.10. At the end of the applicable period of such exemptions, to maintain or renew an exemption for the period of time set forth in subsection E, each entity must follow the procedures set forth in subsection B and meet the criteria set forth in subsection C. Provided, however, that any entity that was exempt from collecting sales and use tax shall continue to be exempt from such collection, and any entity that was exempt from paying sales and use tax for the purchase of services, as of June 30, 2003, shall continue to be exempt from such payment, provided that it follows the other procedures set forth in subsection B and meets the criteria set forth in subsection C. Provided further, however, that an educational institution doing business in the Commonwealth which provides a face-to-face educational experience in American government and was exempt pursuant to subdivision 4 of § 58.1-609.4 from paying sales and use tax for the purchase of services, as of June 30,

2003, shall continue to be exempt from such payment, provided that it follows the other procedures set forth in subsection B and meets the criteria set forth in subsection C.

B.1. On and after July 1, 2004, in addition to the organizations described in subsection A, and except as restricted in subdivision 2, the tax imposed by this chapter or pursuant to the authority granted in §§ 58.1-605 and 58.1-606 shall not apply to purchases of tangible personal property for use or consumption by any nonprofit entity that, pursuant to this section, (i) files an appropriate application with the Department of Taxation, (ii) meets the applicable criteria, and (iii) is issued a certificate of exemption from the Department of Taxation for the period of time covered by the certificate.

2. If the entity that is exempt under this section is exempt from federal income tax under § 501(c)(19) of the Internal Revenue Code, or has annual gross receipts less than $5,000 and is organized for at least one of the purposes set forth in § 501(c)(19) of the Internal Revenue Code, then the exemption under this section for such entity shall not apply to purchases of tangible personal property that are used primarily (i) for social and recreational activities for members or (ii) for providing insurance benefits to members or members' dependents.

C. To qualify for the exemption under subsection B, a nonprofit entity must meet the applicable criteria under this subsection as follows:

1. a. The entity is exempt from federal income taxation (i) under § 501(c)(3) of the Internal Revenue Code; (ii) under § 501(c)(4) of the Internal Revenue Code and is organized for a charitable purpose; or (iii) under § 501(c)(19) of the Internal Revenue Code; or

b. The entity has annual gross receipts less than $5,000, and the entity is organized for at least one of the purposes set forth in § 501(c)(3) of the Internal Revenue Code, one of the charitable purposes set forth in § 501(c)(4) of the Internal Revenue Code, or one of the purposes set forth in § 501(c)(19) of the Internal Revenue Code; and

2. The entity is in compliance with all applicable state solicitation laws, and where applicable, provides appropriate verification of such compliance; and

3. The entity's annual general administrative costs, including salaries and fundraising, relative to its annual gross revenue, under generally accepted accounting principles, is not greater than 40 percent; and

4. If the entity's gross annual revenue was at least $750,000 in the previous year, then the entity must provide a financial review performed by an independent certified public accountant. However, for any entity with gross annual revenue of at least $1 million in the previous year, the Department may require that the entity provide a financial audit performed by an independent certified public accountant. If the Department specifically requires an entity with gross annual revenue of at least $1 million in the previous year to provide a financial audit performed by an independent certified public accountant, then the entity shall provide such audit in order to

qualify for the exemption under this section, which audit shall be in lieu of the financial review; and

5. If the entity filed a federal 990 or 990 EZ tax form, or the successor forms to such forms, with the Internal Revenue Service, then it must provide a copy of such form to the Department of Taxation; and

6. If the entity did not file a federal 990 or 990 EZ tax form, or the successor forms to such forms, with the Internal Revenue Service, then the entity must provide the following information:

a. A list of the Board of Directors or other responsible agents of the entity, composed of at least two individuals, with names and addresses where the individuals physically can be found; and

b. The location where the financial records of the entity are available for public inspection.

D. On and after July 1, 2004, in addition to the criteria set forth in subsection C, the Department of Taxation shall ask each entity for the total taxable purchases made in the preceding year, unless such records are not available through no fault of the entity. If the records are not available through no fault of the entity, then the entity must provide such information to the Department the following year. No information provided pursuant to this subsection (except the failure to provide available information) shall be a basis for the Department of Taxation to refuse to exempt an entity.

E. Any entity that is determined under subsections B, C, and D by the Department of Taxation to be exempt from paying sales and use tax shall also be exempt from collecting sales and use tax, at its election, if (i) the entity is within the same class of organization of any entity that was exempt from collecting sales and use tax on June 30, 2003, or (ii) the entity is organized exclusively to foster, sponsor, and promote physical education, athletic programs, and contests for youths in the Commonwealth.

F. The duration of each exemption granted by the Department of Taxation shall be no less than five years and no greater than seven years. During the period of such exemption, the failure of an exempt entity to maintain compliance with the applicable criteria set forth in subsection C shall constitute grounds for revocation of the exemption by the Department. At the end of the period of such exemption, to maintain or renew the exemption, each entity must provide the Department of Taxation the same information as required upon initial exemption and meet the same criteria.

G. For purposes of this section, the Department of Taxation and the Department of Agriculture and Consumer Services shall be allowed to share information when necessary to supplement the information required.

2003, cc. 757, 758; 2004, cc. 515, 536; 2005, cc. 42, 89; 2007, cc. 698, 704, 709; 2009, cc. 24, 106, 526; 2016, c. 487.

§ 58.1-609.12. Reports to General Assembly on tax exemptions studies

A. The Tax Commissioner shall determine the fiscal, economic and policy impact of each sales and use tax exemption set out in §§ 58.1-609.10 and 58.1-609.11 and report such findings to the chairmen of the House and Senate Finance Committees and the chairman of the House Appropriations Committee no later than December 1 of each year. Subgroups of the exemptions shall be reviewed in periodic cycles and reports issued on a rotating basis in accordance with a schedule determined by the Tax Commissioner, excluding the sales and use tax exemptions for nonprofit entities provided by § 58.1-609.11, which shall be reviewed and reported on annually. When such reports have been completed for each subgroup of the sales and use tax exemptions, the Tax Commissioner shall repeat the process beginning with the subgroup of exemptions for which a report was made in 2007. No exemption shall be analyzed under the provisions of this section more frequently than once every five years, excluding the annual fiscal impact of the sales and use tax exemptions for nonprofit entities, which shall be studied each year.

B. When the Tax Commissioner investigates and analyzes the tax exemptions in § 58.1-609.10, the following information shall be considered and included in the report:

1. Estimate of foregone state and local revenues as a direct result of the exemption;

2. Beneficiaries of the exemption;

3. Direct or indirect local, state, or federal government assistance received by the persons or entities granted the exemption, to the extent such information is reasonably available;

4. The extent to which the comparable person, entity, property, service, or industry is exempt from the retail sales and use tax in other states, particularly states contiguous to the Commonwealth;

5. Any external statutory, constitutional, or judicial mandates supporting the exemption;

6. Other Virginia taxes to which the person, entity, property, service, or industry is subject;

7. Similar taxpayers who are not entitled to a retail sales and use tax exemption; and

8. Other criteria, facts or circumstances that may be relevant to the exemption.

C. When the Tax Commissioner investigates and analyzes the tax exemptions in § 58.1-609.11, he shall report on the extent to which the person, entity, property, service, or industry is exempt from the retail sales and use tax in other states, particularly states contiguous to the Commonwealth.

D. For purposes of this section, the Department of Taxation and the Department of Agriculture and Consumer Services shall be allowed to share information when necessary to supplement the information required to be reported under this section.

2005, c. 853; 2006, c. 559; 2009, c. 24.

§ 58.1-609.13. (Contingent repeal -- see note) Exceptions to § 58.1-609.10

Notwithstanding the provisions of subdivision 1 of § 58.1-609.10, the tax imposed by a county, city or town pursuant to §§ 58.1-605 and 58.1-606 shall apply to artificial or propane gas, firewood, coal or home heating oil used for domestic consumption as defined in subdivision 1 of § 58.1-609.10, unless exempted by a duly adopted ordinance of the local governing body of a county, city or town. The provisions of this section shall not apply to fuel for domestic consumption purchased by churches organized not for profit and (i) which are exempt from taxation under § 501(c)(3) of the Internal Revenue Code or (ii) whose real property is exempt from local taxation pursuant to the provisions of § 58.1-3606.

1993, c. 310 .

§ 58.1-610. Contractors

A. Any person who contracts orally, in writing, or by purchase order, to perform construction, reconstruction, installation, repair, or any other service with respect to real estate or fixtures thereon, and in connection therewith to furnish tangible personal property, shall be deemed to have purchased such tangible personal property for use or consumption. Any sale, distribution, or lease to or storage for such person shall be deemed a sale, distribution, or lease to or storage for the ultimate consumer and not for resale, and the dealer making the sale, distribution, or lease to or storage for such person shall be obligated to collect the tax to the extent required by this chapter.

B. Any person who contracts to perform services in this Commonwealth and is furnished tangible personal property for use under the contract by the person, or his agent or representative, for whom the contract is performed, and a sales or use tax has not been paid to this Commonwealth by the person supplying the tangible personal property, shall be deemed to be the consumer of the tangible personal property so used, and shall pay a use tax based on the fair market value of the tangible personal property so used, irrespective of whether or not any right, title or interest in the tangible personal property becomes vested in the contractor. This subsection, however, shall not apply to the industrial materials exclusion or the other industrial exclusions set out in § 58.1-609.3, including those set out in subdivisions 2, 3 and 4 thereof; the media-related exemptions set out in subdivision 2 of § 58.1-609.6; the governmental exclusions set out in subdivision 4 of § 58.1-609.1; the agricultural exclusions set forth in subdivision 1 of § 58.1-609.2; or the exclusion for baptistries set forth in § 58.1-609.10.

C. Any person who contracts orally, in writing, or by purchase order to perform any service in the nature of equipment rental, and the principal part of that service is the furnishing of equipment or machinery which will not be under the exclusive control of the contractor, shall be liable for the sales or use tax on the gross proceeds from such contract to the same extent as the lessor of tangible personal property.

D. Tangible personal property incorporated in real property construction which loses its identity as tangible personal property shall be deemed to be tangible personal property used or consumed

within the meaning of this section. Any person selling fences, venetian blinds, window shades, awnings, storm windows and doors, locks and locking devices, floor coverings (as distinguished from the floors themselves), cabinets, countertops, kitchen equipment, window air conditioning units or other like or comparable items, shall be deemed to be a retailer of such items and not a using or consuming contractor with respect to them, whether he sells to and installs such items for contractors or other customers and whether or not such retailer fabricates such items.

E. Nothing in this section shall be construed to (i) affect or limit the resale exclusion provided for in this chapter, or the industrial materials and other industrial exclusions set out in § 58.1-609.3, the exclusion for baptistries set out in § 58.1-609.10, or the partial exclusion for the sale of modular buildings as set out in § 58.1-610.1, or (ii) impose any sales or use tax with respect to the use in the performance of contracts with the United States, this Commonwealth, or any political subdivision thereof, of tangible personal property owned by a governmental body which actually is not used or consumed in the performance thereof.

F. Notwithstanding the other provisions of this section, any person engaged in the business of furnishing and installing locks and locking devices shall be deemed a retailer of such items and not a using or consuming contractor with respect to them.

G. Notwithstanding the other provisions of this section, any person or entity primarily engaged in the business of furnishing and installing tangible personal property that provides electronic or physical security on real property for the use of a financial institution, shall be deemed a retailer of such personal property, including when such personal property is installed on real property not for the use of a financial institution.

Code 1950, § 58-441.15; 1966, c. 151; 1973, c. 224; 1977, c. 591; 1978, c. 207; 1980, cc. 611, 627; 1984, c. 675; 1986, c. 605; 1989, c. 739; 1992, cc. 404, 415; 1993, c. 310; 2000, c. 425; 2003, cc. 757, 758; 2010, c. 119; 2011, cc. 360, 851.

§ 58.1-610.1. Modular building manufacturers and retailers

The retail sale of a modular building, as defined by § 58.1-602, by a modular building manufacturer or modular building retailer, as defined by § 58.1-602, shall be subject to the tax authorized by this chapter upon sixty percent of the retail sales price. If the modular building manufacturer has paid such tax on the cost price of materials incorporated in a modular building that has been constructed for sale without installation, it may credit against the tax shown to be due on the return the amount of sales or use tax paid on the cost of materials used in fabricating such a modular building.

2000, c. 425.

§ 58.1-611. Credit for taxes paid in another state

A credit shall be granted against the taxes imposed by this chapter with respect to a person's use in this Commonwealth of tangible personal property purchased by him in another state. The amount of the credit shall be equal to the tax paid by him to another state or political subdivision

thereof by reason of the imposition of a similar tax on his purchase or use of the property. The amount of the credit shall not exceed the tax imposed by this chapter.

Code 1950, § 58-441.8; 1966, c. 151; 1984, c. 675.

§ 58.1-611.1. Rate of tax on sales of food purchased for human consumption

A. The tax imposed by §§ 58.1-603 and 58.1-604 on food purchased for human consumption shall be levied and distributed as follows:

1. From January 1, 2000, through midnight on June 30, 2005, the tax rate on such food shall be three percent of the gross sales price. The revenue from the tax shall be distributed as follows: (i) the revenue from the tax at the rate of one-half percent shall be distributed as provided in subsection A of § 58.1-638, (ii) the revenue from the tax at the rate of one percent shall be distributed as provided in subsections B, C and D of § 58.1-638, and (iii) the revenue from the tax at the rate of one and one-half percent shall be used for general fund purposes.

2. On and after July 1, 2005, the tax rate on such food shall be one and one-half percent of the gross sales price. The revenue from the tax shall be distributed as follows: (i) the revenue from the tax at the rate of one-half percent shall be distributed as provided in subsection A of § 58.1-638 and (ii) the revenue from the tax at the rate of one percent shall be distributed as provided in subsections B, C and D of § 58.1-638.

B. The provisions of this section shall not affect the imposition of tax on food purchased for human consumption pursuant to §§ 58.1-605 and 58.1-606.

C. As used in this section, "food purchased for human consumption" has the same meaning as "food" defined in the Food Stamp Act of 1977, 7 U.S.C. § 2012, as amended, and federal regulations adopted pursuant to that Act, except it shall not include seeds and plants which produce food for human consumption. For the purpose of this section, "food purchased for human consumption" shall not include food sold by any retail establishment where the gross receipts derived from the sale of food prepared by such retail establishment for immediate consumption on or off the premises of the retail establishment constitutes more than 80 percent of the total gross receipts of that retail establishment, including but not limited to motor fuel purchases, regardless of whether such prepared food is consumed on the premises of that retail establishment. For purposes of this section, "retail establishment" means each place of business for which any "dealer," as defined in § 58.1-612, is required to apply for and receive a certificate of registration pursuant to § 58.1-613.

1999, cc. 366, 466; 2002, c. 13; 2003, c. 806; 2004, Sp. Sess. I, c. 3; 2005, cc. 487, 521.

§ 58.1-611.2. Limited exemption for certain school supplies, clothing, and footwear

Beginning in 2015, and ending July 1, 2017, for a three-day period that begins each year on the first Friday in August and ends at 11:59 p.m. on the following Sunday, the tax imposed by this chapter or pursuant to the authority granted in § 58.1-605 or 58.1-606 shall not apply to certain (i) school supplies, including, but not limited to, dictionaries, notebooks, pens, pencils, notebook

paper, and calculators, and (ii) clothing and footwear designed to be worn on or about the human body. The tax exemption shall apply to each article of school supplies with a selling price of $20 or less, and each article of clothing or footwear with a selling price of $100 or less. Any discount, coupon, or other credit offered either by the retailer or by a vendor of the retailer to reduce the final price to the customer shall be taken into account in determining the selling price for purposes of this exemption.

The Department shall develop guidelines that describe the items of merchandise that qualify for the exemption and make such guidelines available, both electronically and in hard copy, no later than July 15 of each year.

2006, cc. 579, 593; 2015, c. 382.

§ 58.1-611.3. (Expires July 1, 2017) Limited exemption for certain hurricane preparedness equipment

Beginning in 2015, for a three-day period that begins each year on the first Friday in August and ends at 11:59 p.m. on the following Sunday, the tax imposed by this chapter or pursuant to the authority granted in § 58.1-605 or 58.1-606 shall not apply to (i) portable generators used to provide light or communications or preserve food in the event of a power outage and; (ii) certain other hurricane preparedness equipment, including, but not limited to, blue ice, carbon monoxide detectors, cell phone batteries, cell phone chargers, gas or diesel fuel tanks, nonelectric food storage coolers, portable self-powered light sources, portable self-powered radios, two-way radios, weather band radios, storm shutter devices, tarpaulins or other flexible waterproof sheeting, ground anchor systems or tie down kits, gas-powered chain saws and chain saw accessories, and packages of AAA cell, AA cell, C cell, D cell, 6 volt, or 9 volt batteries, excluding automobile and boat batteries. As used in this section, "storm shutter" means materials and products manufactured, rated, and marketed specifically for the purpose of preventing window damage from storms. The tax exemption shall apply to each portable generator with a selling price of $1,000 or less, each gas-powered chainsaw with a selling price of $350 or less, and each article of other hurricane preparedness equipment with a selling price of $60 or less. Any discount, coupon, or other credit offered either by the retailer or by a vendor of the retailer to reduce the final price to the customer shall be taken into account in determining the selling price for purposes of this exemption.

The Department shall develop guidelines that describe the items of merchandise that qualify for the exemption and make such guidelines available, both electronically and in hard copy, no later than July 15 of each year.

2007, c. 608; 2013, c. 325; 2015, c. 382.

§ 58.1-612. Tax collectible from dealers; "dealer" defined; jurisdiction

A. The tax levied by §§ 58.1-603 and 58.1-604 shall be collectible from all persons who are dealers, as hereinafter defined, and who have sufficient contact with the Commonwealth to qualify under subsections (i) B and C or (ii) B and D.

B. The term "dealer," as used in this chapter, shall include every person who:

1. Manufactures or produces tangible personal property for sale at retail, for use, consumption, or distribution, or for storage to be used or consumed in this Commonwealth;

2. Imports or causes to be imported into this Commonwealth tangible personal property from any state or foreign country, for sale at retail, for use, consumption, or distribution, or for storage to be used or consumed in this Commonwealth;

3. Sells at retail, or who offers for sale at retail, or who has in his possession for sale at retail, or for use, consumption, or distribution, or for storage to be used or consumed in this Commonwealth, tangible personal property;

4. Has sold at retail, used, consumed, distributed, or stored for use or consumption in this Commonwealth, tangible personal property and who cannot prove that the tax levied by this chapter has been paid on the sale at retail, the use, consumption, distribution, or storage of such tangible personal property;

5. Leases or rents tangible personal property for a consideration, permitting the use or possession of such property without transferring title thereto;

6. Is the lessee or rentee of tangible personal property and who pays to the owner of such property a consideration for the use or possession of such property without acquiring title thereto;

7. As a representative, agent, or solicitor, of an out-of-state principal, solicits, receives and accepts orders from persons in this Commonwealth for future delivery and whose principal refuses to register as a dealer under § 58.1-613; or

8. Becomes liable to and owes this Commonwealth any amount of tax imposed by this chapter, whether he holds, or is required to hold, a certificate of registration under § 58.1-613.

C. A dealer shall be deemed to have sufficient activity within the Commonwealth to require registration under § 58.1-613 if he:

1. Maintains or has within this Commonwealth, directly or through an agent or subsidiary, an office, warehouse, or place of business of any nature;

2. Solicits business in this Commonwealth by employees, independent contractors, agents or other representatives;

3. Advertises in newspapers or other periodicals printed and published within this Commonwealth, on billboards or posters located in this Commonwealth, or through materials distributed in this Commonwealth by means other than the United States mail;

4. Makes regular deliveries of tangible personal property within this Commonwealth by means other than common carrier. A person shall be deemed to be making regular deliveries hereunder if vehicles other than those operated by a common carrier enter this Commonwealth more than 12 times during a calendar year to deliver goods sold by him;

5. Solicits business in this Commonwealth on a continuous, regular, seasonal, or systematic basis by means of advertising that is broadcast or relayed from a transmitter within this Commonwealth or distributed from a location within this Commonwealth;

6. Solicits business in this Commonwealth by mail, if the solicitations are continuous, regular, seasonal, or systematic and if the dealer benefits from any banking, financing, debt collection, or marketing activities occurring in this Commonwealth or benefits from the location in this Commonwealth of authorized installation, servicing, or repair facilities;

7. Is owned or controlled by the same interests which own or control a business located within this Commonwealth;

8. Has a franchisee or licensee operating under the same trade name in this Commonwealth if the franchisee or licensee is required to obtain a certificate of registration under § 58.1-613; or

9. Owns tangible personal property that is rented or leased to a consumer in this Commonwealth, or offers tangible personal property, on approval, to consumers in this Commonwealth.

D. A dealer is presumed to have sufficient activity within the Commonwealth to require registration under § 58.1-613 (unless the presumption is rebutted as provided herein) if any commonly controlled person maintains a distribution center, warehouse, fulfillment center, office, or similar location within the Commonwealth that facilitates the delivery of tangible personal property sold by the dealer to its customers. The presumption in this subsection may be rebutted by demonstrating that the activities conducted by the commonly controlled person in the Commonwealth are not significantly associated with the dealer's ability to establish or maintain a market in the Commonwealth for the dealer's sales. For purposes of this subsection, a "commonly controlled person" means any person that is a member of the same "controlled group of corporations," as defined in § 1563(a) of the Internal Revenue Code of 1954, as amended or renumbered, as the dealer or any other entity that, notwithstanding its form of organization, bears the same ownership relationship to the dealer as a corporation that is a member of the same "controlled group of corporations," as defined in § 1563(a) of the Internal Revenue Code of 1954, as amended or renumbered.

E. Notwithstanding any other provision of this section, the following shall not be considered to determine whether a person who has contracted with a commercial printer for printing in the Commonwealth is a "dealer" and whether such person has sufficient contact with the Commonwealth to be required to register under § 58.1-613 :

1. The ownership or leasing by that person of tangible or intangible property located at the Virginia premises of the commercial printer which is used solely in connection with the printing contract with the person;

2. The sale by that person of property of any kind printed at and shipped or distributed from the Virginia premises of the commercial printer;

3. Activities in connection with the printing contract with the person performed by or on behalf of that person at the Virginia premises of the commercial printer; and

4. Activities in connection with the printing contract with the person performed by the commercial printer within Virginia for or on behalf of that person.

F. In addition to the jurisdictional standards contained in subsections C and D, nothing contained herein (other than subsection E) shall limit any authority which this Commonwealth may enjoy under the provisions of federal law or an opinion of the United States Supreme Court to require the collection of sales and use taxes by any dealer who regularly or systematically solicits sales within this Commonwealth. Furthermore, nothing contained in subsection C shall require any broadcaster, printer, outdoor advertising firm, advertising distributor, or publisher which broadcasts, publishes, or displays or distributes paid commercial advertising in this Commonwealth which is intended to be disseminated primarily to consumers located in this Commonwealth to report or impose any liability to pay any tax imposed under this chapter solely because such broadcaster, printer, outdoor advertising firm, advertising distributor, or publisher accepted such advertising contracts from out-of-state advertisers or sellers.

G. (Contingent effective date -- see note*) Pursuant to any federal legislation that grants states the authority to require remote sellers to collect sales and use tax, the Commonwealth is authorized, as permitted by such federal legislation, to require collection of sales and use tax by any remote seller, or a single or consolidated provider acting on behalf of a remote seller. If the federal legislation has an exemption for sellers whose sales are less than a minimum amount, then in determining such amount, the sales made by all persons related within the meanings of subsections (b) and (c) of § 267 or § 707(b)(1) of the Internal Revenue Code of 1986 shall be aggregated.

Code 1950, § 58-441.12; 1966, c. 151; 1979, c. 573; 1984, c. 675; 1991, cc. 544, 565; 1995, c. 27; 2012, c. 590; 2013, c. 766.

*Subsection G has a contingent effective date because the 14th enactment of Chapter 766 of the Acts of Assembly of 2013 states: "That the provisions of this act that generate additional revenue through state taxes or fees for transportation (i) throughout the Commonwealth and in Planning District 8 and Planning District 23 or (ii) in any other Planning District that becomes subject to the state taxes or fees imposed solely in Planning Districts pursuant to this act shall expire on December 31 of any year in which the General Assembly appropriates any of such additional revenues for any non-transportation-related purpose or transfers any of such additional revenues that are to be deposited into the Commonwealth Transportation Fund or any subfund thereof pursuant to general law for a non-transportation-related purpose. In the event a local government of any county or city wherein the additional taxes and fees are levied appropriates or allocates any of such additional revenues to a non-transportation purpose, such locality shall not be the direct beneficiary of any of the revenues generated by the taxes or fees in the year immediately succeeding the year in which revenues were appropriated or allocated to a non-

transportation purpose."

§ 58.1-613. Dealers' certificates of registration

A. Every person desiring to engage in or conduct business as a dealer in this Commonwealth shall file with the Tax Commissioner or the local commissioner of the revenue, if the local commissioner elects to provide the services authorized under this section, an application for a certificate of registration for each place of business in this Commonwealth.

B. Every application for a certificate of registration shall set forth the name under which the applicant transacts or intends to transact business, the location of his place or places of business, and such other information as the Tax Commissioner may require.

C. When the required application has been made, the Tax Commissioner shall issue to each applicant a separate certificate of registration for each place of business within this Commonwealth. A certificate of registration is not assignable and is valid only for the person in whose name it is issued and for the transaction of business at the place designated therein. It shall be at all times conspicuously displayed at the place for which issued.

D. Whenever any person fails to comply with any provision of this chapter or any rule or regulation relating thereto, the Tax Commissioner, upon hearing after giving such person 10 days' notice in writing, specifying the time and place of hearing and requiring him to show cause why his certificate of registration should not be revoked or suspended, may revoke or suspend any one or more of the certificates of registration held by such person. The notice may be personally served or served by registered mail directed to the last known address of such person.

E. Any person who engages in business as a dealer in this Commonwealth without obtaining a certificate of registration, or after a certificate of registration has been suspended or revoked, and each officer of any corporation which so engages in business shall be guilty of a Class 2 misdemeanor. Each day's continuance in business in violation of this section shall constitute a separate offense.

F. If the holder of a certificate of registration ceases to conduct his business at the place specified in his certificate, the certificate shall thereupon expire, and such holder shall inform the Tax Commissioner in writing within 30 days after he has ceased to conduct such business at such place that he has so ceased. If the holder of a certificate of registration desires to change his place of business to another place in this Commonwealth, he shall so inform the Tax Commissioner in writing and his certificate shall be revised accordingly. The holder of a certificate of registration alternatively may complete the transactions required under this subsection with any local commissioner of the revenue electing to provide the services authorized under this section.

G. This section shall also apply to any person who engages in the business of furnishing any of the things or services taxable under this chapter. Moreover, it shall apply to any person who is liable only for the collection of the use tax.

H. At the request of a local commissioner of revenue, the Tax Commissioner shall provide, on a quarterly basis, a listing of new businesses in the locality which obtained a certificate of registration.

I. A commissioner of the revenue electing to provide the services authorized under this section shall follow the guidelines, rules, or procedures set forth by the Tax Commissioner for providing such services and shall provide the Tax Commissioner on a quarterly basis a list of each certificate of registration he has issued or revised.

Code 1950, § 58-441.16; 1966, c. 151; 1981, cc. 420, 438; 1984, c. 675; 2001, cc. 343, 362; 2011, cc. 663, 674.

§ 58.1-614. (Contingent expiration date -- see note*) Vending machine sales

A. Notwithstanding the provisions of §§ 58.1-603 and 58.1-604, whenever a dealer makes sales of tangible personal property through vending machines, or in any other manner making collection of the tax impractical, as determined by the Tax Commissioner, such dealer shall be required to report his wholesale purchases for sale at retail from vending machines and shall be required to remit an amount based on 5.3 percent of such wholesale purchases. However, any dealer located in any county or city for which the taxes under §§ 58.1-603.1 and 58.1-604.01 are imposed shall be required to remit an amount based on 6.0 percent of such wholesale purchases.

B. Notwithstanding the provisions of §§ 58.1-605 and 58.1-606, dealers making sales of tangible personal property through vending machines shall report and remit the one percent local sales and use tax computed as provided in subsection A.

C. The provisions of subsections A and B shall not be applicable to vending machine operators all of whose machines are under contract to nonprofit organizations. Such operators shall report only the gross receipts from machines selling items for more than 10 cents and shall be required to remit an amount based on a percentage of their remaining gross sales established by the Tax Commissioner to take into account the inclusion of sales tax.

D. Notwithstanding any other provisions in this section, when the Tax Commissioner determines that it is impractical to collect the tax in the manner provided by those sections, such dealer shall be required to remit an amount based on a percentage of gross receipts which takes into account the inclusion of the sales tax.

E. The provisions of this section shall not be applicable to any dealer who fails to maintain records satisfactory to the Tax Commissioner. A dealer making sales of tangible personal property through vending machines shall obtain a certificate of registration under § 58.1-613 in relevant form for each county or city in which he has machines.

Code 1950, § 58-441.34; 1966, c. 151; 1974, c. 389; 1980, c. 755; 1982, c. 219; 1984, c. 675; 1986, Sp. Sess., c. 12; 2004, Sp. Sess. I, c. 3; 2013, c. 766.

§ 58.1-614. (Contingent effective date -- see note*) Vending machine sales

A. Notwithstanding the provisions of §§ 58.1-603 and 58.1-604, whenever a dealer makes sales of tangible personal property through vending machines, or in any other manner making collection of the tax impractical, as determined by the Tax Commissioner, such dealer shall be required to report his wholesale purchases for sale at retail from vending machines and shall be required to remit an amount based on four and one-half percent through midnight on July 31, 2004, and five percent beginning on and after August 1, 2004, of such wholesale purchases.

B. Notwithstanding the provisions of §§ 58.1-605 and 58.1-606, dealers making sales of tangible personal property through vending machines shall report and remit the one percent local sales and use tax computed as provided in subsection A of this section.

C. The provisions of subsections A and B of this section shall not be applicable to vending machine operators all of whose machines are under contract to nonprofit organizations. Such operators shall report only the gross receipts from machines selling items for more than 10 cents and shall be required to remit an amount based on a percentage of their remaining gross sales established by the Tax Commissioner to take into account the inclusion of sales tax.

D. Notwithstanding any other provisions in this section, when the Tax Commissioner determines that it is impractical to collect the tax in the manner provided by those sections, such dealer shall be required to remit an amount based on a percentage of gross receipts which takes into account the inclusion of the sales tax.

E. The provisions of this section shall not be applicable to any dealer who fails to maintain records satisfactory to the Tax Commissioner. A dealer making sales of tangible personal property through vending machines shall obtain a certificate of registration under § 58.1-613 in relevant form for each county or city in which he has machines.

Code 1950, § 58-441.34; 1966, c. 151; 1974, c. 389; 1980, c. 755; 1982, c. 219; 1984, c. 675; 1986, Sp. Sess., c. 12; 2004, Sp. Sess. I, c. 3.

*This section is set out twice because the 14th enactment of Chapter 766 of the Acts of Assembly of 2013 states: "That the provisions of this act that generate additional revenue through state taxes or fees for transportation (i) throughout the Commonwealth and in Planning District 8 and Planning District 23 or (ii) in any other Planning District that becomes subject to the state taxes or fees imposed solely in Planning Districts pursuant to this act shall expire on December 31 of any year in which the General Assembly appropriates any of such additional revenues for any non-transportation-related purpose or transfers any of such additional revenues that are to be deposited into the Commonwealth Transportation Fund or any subfund thereof pursuant to general law for a non-transportation-related purpose. In the event a local government of any county or city wherein the additional taxes and fees are levied appropriates or allocates any of such additional revenues to a non-transportation purpose, such locality shall not be the direct beneficiary of any of the revenues generated by the taxes or fees in the year immediately succeeding the year in which revenues were appropriated or allocated to a non-

transportation purpose."

§ 58.1-615. (Contingent expiration date -- see note*) Returns by dealers

A. Every dealer required to collect or pay the sales or use tax shall, on or before the twentieth day of the month following the month in which the tax shall become effective, transmit to the Tax Commissioner a return showing the gross sales, gross proceeds, or cost price, as the case may be, arising from all transactions taxable under this chapter during the preceding calendar month, and thereafter a like return shall be prepared and transmitted to the Tax Commissioner by every dealer on or before the twentieth day of each month, for the preceding calendar month. In the case of dealers regularly keeping books and accounts on the basis of an annual period which varies 52 to 53 weeks, the Tax Commissioner may make rules and regulations for reporting consistent with such accounting period.

Notwithstanding any other provision of this chapter, a dealer may be required by the Tax Commissioner to file sales or use tax returns on an accounting period less frequent than monthly when, in the opinion of the Tax Commissioner, the administration of the taxes imposed by this chapter would be enhanced. If a dealer is required to file other than monthly, each such return shall be due on or before the twentieth day of the month following the close of the period. Each such return shall contain all information required for monthly returns.

A sales or use tax return shall be filed by each registered dealer even though the dealer is not liable to remit to the Tax Commissioner any tax for the period covered by the return.

B. [Expired.]

C. Any return required to be filed with the Tax Commissioner under this section shall be deemed to have been filed with the Tax Commissioner on the date that such return is delivered by the dealer to the commissioner of the revenue or the treasurer for the locality in which the dealer is located and receipt is acknowledged by the commissioner of the revenue or treasurer. The commissioner of the revenue or the treasurer shall stamp such date on the return, and shall mail the return to the Tax Commissioner no later than the following business day. The commissioner of the revenue or the treasurer may collect from the dealer the cost of postage for such mailing.

D. Every dealer who elects to file a consolidated sales tax return for any taxable period and who is required to remit payment by electronic funds transfer pursuant to subsection B of § 58.1-202.1 beginning on and after July 1, 2010, shall file his monthly return using an electronic medium prescribed by the Tax Commissioner. A waiver of this requirement may be granted if the Tax Commissioner determines that it creates an unreasonable burden on the dealer.

Code 1950, § 58-441.20; 1966, c. 151; 1972, c. 355; 1984, c. 675; 2003, c. 1042; 2004, c. 567; 2004, Sp. Sess. I, c. 4; 2005, c. 951; 2006, Sp. Sess. I, c. 2; 2010, cc. 36, 151.

§ 58.1-615. (Contingent effective date -- see note*) Returns by dealers

A. Every dealer required to collect or pay the sales or use tax shall, on or before the twentieth day of the month following the month in which the tax shall become effective, transmit to the Tax

Commissioner a return showing the gross sales, gross proceeds, or cost price, as the case may be, arising from all transactions taxable under this chapter during the preceding calendar month, and thereafter a like return shall be prepared and transmitted to the Tax Commissioner by every dealer on or before the twentieth day of each month, for the preceding calendar month. In the case of dealers regularly keeping books and accounts on the basis of an annual period which varies 52 to 53 weeks, the Tax Commissioner may make rules and regulations for reporting consistent with such accounting period. The Tax Commissioner shall not require that more than one return per month be used or filed by any remote seller, single provider, or consolidated provider subject to the sales or use tax.

Notwithstanding any other provision of this chapter, a dealer may be required by the Tax Commissioner to file sales or use tax returns on an accounting period less frequent than monthly when, in the opinion of the Tax Commissioner, the administration of the taxes imposed by this chapter would be enhanced. If a dealer is required to file other than monthly, each such return shall be due on or before the twentieth day of the month following the close of the period. Each such return shall contain all information required for monthly returns.

A sales or use tax return shall be filed by each registered dealer even though the dealer is not liable to remit to the Tax Commissioner any tax for the period covered by the return.

B. [Expired.]

C. Any return required to be filed with the Tax Commissioner under this section shall be deemed to have been filed with the Tax Commissioner on the date that such return is delivered by the dealer to the commissioner of the revenue or the treasurer for the locality in which the dealer is located and receipt is acknowledged by the commissioner of the revenue or treasurer. The commissioner of the revenue or the treasurer shall stamp such date on the return, and shall mail the return to the Tax Commissioner no later than the following business day. The commissioner of the revenue or the treasurer may collect from the dealer the cost of postage for such mailing.

D. Every dealer who elects to file a consolidated sales tax return for any taxable period and who is required to remit payment by electronic funds transfer pursuant to subsection B of § 58.1-202.1 beginning on and after July 1, 2010, shall file his monthly return using an electronic medium prescribed by the Tax Commissioner. A waiver of this requirement may be granted if the Tax Commissioner determines that it creates an unreasonable burden on the dealer.

Code 1950, § 58-441.20; 1966, c. 151; 1972, c. 355; 1984, c. 675; 2003, c. 1042; 2004, c. 567; 2004, Sp. Sess. I, c. 4; 2005, c. 951; 2006, Sp. Sess. I, c. 2; 2010, cc. 36, 151; 2013, c. 766.

*This section is set out twice because the 14th enactment of Chapter 766 of the Acts of Assembly of 2013 states: "That the provisions of this act that generate additional revenue through state taxes or fees for transportation (i) throughout the Commonwealth and in Planning District 8 and Planning District 23 or (ii) in any other Planning District that becomes subject to the state taxes or fees imposed solely in Planning Districts pursuant to this act shall expire on

December 31 of any year in which the General Assembly appropriates any of such additional revenues for any non-transportation-related purpose or transfers any of such additional revenues that are to be deposited into the Commonwealth Transportation Fund or any subfund thereof pursuant to general law for a non-transportation-related purpose. In the event a local government of any county or city wherein the additional taxes and fees are levied appropriates or allocates any of such additional revenues to a non-transportation purpose, such locality shall not be the direct beneficiary of any of the revenues generated by the taxes or fees in the year immediately succeeding the year in which revenues were appropriated or allocated to a non-transportation purpose."

§ 58.1-615.1. Repealed

Repealed by Acts 2009, c. 781, as amended by Acts 2010, c. 872, cl. 5, and Acts 2010, c. 874, cl. 7, as amended by Acts 2011, c. 890.

§ 58.1-616. Payment to accompany dealer's return

At the time of transmitting the return required under § 58.1-615, the dealer shall remit to the Tax Commissioner the amount of tax due after making appropriate adjustments for purchases returned, repossessions, and accounts uncollectible and charged off as provided in §§ 58.1-619, 58.1-620 and 58.1-621. The tax imposed by this chapter shall for each period become delinquent on the twenty-first day of the succeeding month if not paid.

Code 1950, § 58-441.21; 1966, c. 151; 1972, c. 355; 1984, c. 675.

§ 58.1-617. Extensions

The Tax Commissioner for good cause may grant an extension upon written application therefor to the end of the calendar month in which any tax return is due hereunder, or for a period not exceeding thirty days, and no interest or penalty shall be charged, assessed or collected by reason of the granting of any such extension. Where any such extension is granted beyond the end of the calendar month in which any tax return is due hereunder, interest on the tax at a rate determined in accordance with § 58.1-15 shall be charged.

Code 1950, § 58-441.26; 1966, c. 151; 1977, c. 396; 1984, c. 675.

§ 58.1-618. Assessment based on estimate

A. If any dealer fails to make a return as provided by this chapter, or a return that is false or fraudulent, it shall be the duty of the Tax Commissioner to make an estimate for the taxable period of the retail sales or distributions of such dealer, or of the gross proceeds from leases of tangible personal property, or taxable services by such dealer, or the cost price of all articles of tangible personal property imported by such dealer for use or consumption in the Commonwealth, or storage by such dealer of tangible personal property to be used or consumed in the Commonwealth, and assess the tax, plus such penalties as are provided in this chapter. The Tax Commissioner shall give such dealer ten days' notice in writing requiring such dealer to appear before him with such books, records, and papers as he may require relating to the business of such dealer for such taxable period. The Tax Commissioner may require such dealer or the agents and employees of such

dealer to give testimony or to answer interrogatories under oath administered by the Tax Commissioner respecting such sale, distribution, lease, use, consumption, or storage of tangible personal property, or taxable services, or the failure to make a return thereof as provided in this chapter. If any dealer fails to make any such return or refuses to permit an examination of his books, records, or papers, or to appear and answer questions within the scope of such investigation, the Tax Commissioner is hereby authorized to make the assessment based upon such information as may be available to him and to issue a memorandum of lien under § 58.1-1805 for the collection of any such taxes and penalties so found to be due. The assessment so made shall be deemed prima facie correct.

B. If the dealer has imported tangible personal property and fails to produce an invoice showing the sales price of the articles, or the invoice does not reflect the true or actual sales price as defined in this chapter, then the Tax Commissioner shall ascertain, in any manner feasible, the true sales price and assess and collect the tax, with penalties, to the extent such have accrued, on the true sales price as ascertained by him. The assessment so made shall be deemed prima facie correct.

C. In the case of the lease of tangible personal property, if the consideration given or reported by the dealer, in the judgment of the Tax Commissioner, does not represent the true or actual consideration, then the Tax Commissioner is authorized to fix the same and assess and collect the tax thereon in the same manner as above provided, with penalties to the extent such have accrued. The assessment so made shall be deemed prima facie correct.

Code 1950, § 58-441.28; 1966, c. 151; 1984, c. 675; 1985, c. 221.

§ 58.1-619. Returned goods

In the event purchases are returned to the dealer by the purchaser or consumer after the tax imposed by this chapter has been collected or charged to the account of the purchaser, the dealer shall be entitled to reimbursement of the amount of tax so collected or charged by him, in the manner prescribed by the Tax Commissioner. The amount of tax so reimbursed to the dealer shall not, however, include the tax paid upon any cash retained by the dealer after such return of merchandise. In case the tax has not been remitted by the dealer, the dealer may deduct the same in submitting his return. The dealer shall be issued an official credit memorandum by the Tax Commissioner equal to the net amount remitted by the dealer for such tax collected. Such memorandum shall be accepted at full face value from the dealer to whom it is issued when such dealer remits subsequent taxes under the provisions of this chapter. In case the dealer has retired from business and has filed a final return, a refund of tax may be made if the dealer can establish that the tax was not due.

Code 1950, § 58-441.22; 1966, c. 151; 1984, c. 675.

§ 58.1-620. Repossessions

A dealer who has paid the tax on tangible personal property sold under a retained title, conditional sale, or similar contract, may take credit for the tax paid by him upon the unpaid balance due him when he repossesses the property, such credit to be reflected in the same manner as the credit for returned purchases under § 58.1-619. When such repossessed property is resold, such sale is subject in all respects to this chapter.

Code 1950, § 58-441.23; 1966, c. 151; 1984, c. 675.

§ 58.1-621. Bad debts

A. In any return filed under the provisions of this chapter, the dealer may credit, against the tax shown to be due on the return, the amount of sales or use tax previously returned and paid on accounts which are owed to the dealer and which have been found to be worthless within the period covered by the return. The credit, however, shall not exceed the amount of the uncollected sales price determined by treating prior payments on each debt as consisting of the same proportion of sales price, sales tax and other nontaxable charges as in the total debt originally owed to the dealer. The amount of accounts for which a credit has been taken that are thereafter in whole or in part paid to the dealer shall be included in the first return filed after such collection.

B. Notwithstanding any other provision of this section, a dealer whose volume and character of uncollectible accounts, including checks returned for insufficient funds, renders it impractical to substantiate the credit on an account-by-account basis, may, subject to the approval of the Department, utilize an alternative method of substantiating the credit.

Code 1950, § 58-441.24; 1966, c. 151; 1974, c. 202; 1984, c. 675; 2005, c. 355.

§ 58.1-622. Discount

For the purpose of compensating a dealer holding a certificate of registration under § 58.1-613 for accounting for and remitting the tax levied by this chapter, such dealer shall be allowed the following percentages of the first three percent of the tax levied by §§ 58.1-603 and 58.1-604 and accounted for in the form of a deduction in submitting his return and paying the amount due by him if the amount due was not delinquent at the time of payment.

Monthly Taxable Sales	Percentage
$0 to $62,500	4%
$62,501 to $208,000	3%
$208,001 and above	2%

The discount allowed by this section shall be computed according to the schedule provided, regardless of the number of certificates of registration held by a dealer.

Code 1950, § 58.441.25; 1966, c. 151; 1984, c. 675; 1986, Sp. Sess., c. 12; 1989, c. 469; 2008, c. 488.

§ 58.1-623. Sales or leases presumed subject to tax; exemption certificates

A. All sales or leases are subject to the tax until the contrary is established. The burden of proving that a sale, distribution, lease, or storage of tangible personal property is not taxable is upon the dealer unless he takes from the taxpayer a certificate to the effect that the property is exempt under this chapter.

B. The certificate mentioned in this section shall relieve the person who takes such certificate from any liability for the payment or collection of the tax, except upon notice from the Tax Commissioner that such certificate is no longer acceptable. Such certificate shall be signed by and bear the name and address of the taxpayer; shall indicate the number of the certificate of registration, if any, issued to the taxpayer; shall indicate the general character of the tangible personal property sold, distributed, leased, or stored, or to be sold, distributed, leased, or stored under a blanket exemption certificate; and shall be substantially in such form as the Tax Commissioner may prescribe. If an exemption pertains to a nonprofit organization, other than a nonprofit church, that has qualified for a sales and use tax exemption under § 58.1-609.11, the exemption certificate shall be valid until the scheduled expiration date stated on the exemption certificate.

C. If a taxpayer who gives a certificate under this section makes any use of the property other than an exempt use or retention, demonstration, or display while holding the property for resale, distribution, or lease in the regular course of business, such use shall be deemed a taxable sale by the taxpayer as of the time the property or service is first used by him, and the cost of the property to him shall be deemed the sales price of such retail sale. If the sole use of the property other than retention, demonstration, or display in the regular course of business is the rental of the property while holding it for sale, distribution, or lease, the taxpayer may elect to pay the tax on the amount of the rental charged, rather than the cost of the property to him.

D. If a taxpayer gives a certificate under this section with respect to the purchase of fungible goods and thereafter commingles these goods with other fungible goods not so purchased, but of such similarity that the identity of the constituent goods in the commingled mass cannot be determined, sales or distributions from the mass of commingled goods shall be deemed to be sales or distributions of the goods so purchased until a quantity of commingled goods equal to the quantity of purchased goods so commingled has been sold or distributed.

E. If a taxpayer fails to give the dealer at the time of purchase an exemption certificate previously issued by the Department, no interest shall be paid on a subsequent refund claim for any period prior to the date the taxpayer makes a complete refund claim with the Department. This subsection shall not apply to transactions exempted under self-executing certificates of exemption not issued to a specific taxpayer by the Department.

Code 1950, § 58-441.17; 1966, c. 151; 1984, c. 675; 1999, cc. 762, 776; 2003, cc. 757, 758; 2016, cc. 303, 484.

§ 58.1-623.1. Misuse of exemption certificates; suspension of exemptions; penalties

A. Whenever the Tax Commissioner determines that any person has misused an exemption certificate, the Tax Commissioner, after giving such person 10-days' notice in writing specifying the time and place of hearing and requiring him to show cause why the exemption should not be suspended, may suspend the exemption held by such person. The notice may be personally served or served by registered mail directed to the last known address of such person.

B. Any person who knowingly uses or gives an exemption certificate during a period of suspension of an exemption under this section shall be guilty of a Class 1 misdemeanor.

C. It shall be the duty of any person whose exemption is suspended under the provisions of this section to notify each dealer from whom purchases or leases of tangible personal property are made, of the suspension of its exemption, and of the invalidity of any exemption certificates filed with such dealers.

D. In lieu of the suspension of a person's exemption under subsection A, the Tax Commissioner may assess a penalty of up to $1,000 for the misuse of an exemption certificate by that person or by any other person who, with the consent or knowledge of the exemption holder, has misused the certificate. The penalty shall be assessed and collected as a part of the tax, and the person so assessed may appeal the penalty pursuant to the provisions of Article 2 (§ 58.1-1820 et seq.) of Chapter 18 of this title.

E. In any instance in which the Tax Commissioner determines that there has been any misuse of an exemption certificate, the person holding the exemption shall be liable for the full amount of tax, and any interest thereon, applicable to any purchase improperly made with his exemption certificate.

F. The suspension of the exemption shall require that the person pay the full amount of the tax at the time of purchase and apply for a refund of the tax so paid. No interest shall be paid on any such refund. Upon application of the person whose certificate has been suspended, the Tax Commissioner, for good cause shown, may reinstate the person's certificate; however, any such suspension period shall run for at least one year.

G. Notwithstanding § 58.1-3, the Tax Commissioner may report any gross misuses of exemption certificates to the Secretary of Finance and the chairmen of the money committees, for their confidential use, prior to the beginning of the following session of the General Assembly.

1989, c. 12; 1999, cc. 762, 776; 2002, c. 775; 2003, cc. 757, 758.

§ 58.1-624. Direct payment permits

A. Notwithstanding any other provision of this chapter, the Tax Commissioner may authorize a manufacturer, mine operator, or public service corporation that is a user, consumer, distributor, or lessee to which sales, distributions, leases, or storage of tangible personal property are made under circumstances which normally make it impossible at the time thereof to determine the manner in which such property will be used by such person, or any person who stores tangible

personal property in this Commonwealth for use both within and outside this Commonwealth, to pay any tax levied by this chapter directly to this Commonwealth and waive the collection of the tax by the dealer. No such authority shall be granted or exercised except upon application to the Tax Commissioner and the issuance by the Tax Commissioner of a direct payment permit. If a direct payment permit is granted, then payment of the tax on all sales, distributions, and leases, including sales, distributions, leases, and storage of tangible personal property and sales of taxable services for use known at the time thereof, shall be made directly to the Tax Commissioner by the permit holder.

B. On or before the twentieth day of each month every permit holder shall make and file with the Tax Commissioner a return for the preceding month in the form prescribed by the Tax Commissioner showing the total value of the tangible personal property so used, the amount of tax due from the permit holder, which amount shall be paid to the Tax Commissioner with such return, and such other information as the Tax Commissioner deems necessary. The Tax Commissioner, upon written request by the permit holder, may grant a reasonable extension of time for making and filing returns and paying the tax. Interest on such tax shall be chargeable on every such extended payment at the rate determined in accordance with § 58.1-15.

C. A permit granted pursuant to this section shall continue to be valid until surrendered by the holder or cancelled for cause by the Tax Commissioner.

D. Persons who hold a direct payment permit which has not been cancelled shall not be required to pay the tax to the dealer as otherwise herein provided. Such persons shall notify each dealer from whom purchases or leases of tangible personal property are made of their direct payment permit number and that the tax is being paid directly to the Tax Commissioner. Upon receipt of such notice, such dealer shall be absolved from all duties and liabilities imposed by this chapter for the collection and remittance of the tax with respect to sales, distributions, leases, or storage of tangible personal property to such permit holder. Dealers who make sales upon which the tax is not collected by reason of the provisions of this section shall maintain records in such manner that the amount involved and identity of each such purchaser may be ascertained.

E. Upon the cancellation or surrender of a direct payment permit, the provisions of this chapter, without regard to this section, shall thereafter apply to the person who previously held such permit, and such person shall promptly so notify in writing dealers from whom purchases, leases, and storage of tangible personal property are made of such cancellation or surrender. Upon receipt of such notice, the dealer shall be subject to the provisions of this chapter, without regard to this section, with respect to all sales, distributions, leases, or storage of tangible personal property thereafter made to such person.

Code 1950, § 58-441.33; 1966, c. 151; 1981, c. 95; 1984, c. 675.

§ 58.1-625. (Effective until July 1, 2017) Collection of tax

A. The tax levied by this chapter shall be paid by the dealer, but the dealer shall separately state the amount of the tax and add such tax to the sales price or charge. Thereafter, such tax shall be a debt from the purchaser, consumer, or lessee to the dealer until paid and shall be recoverable at law in the same manner as other debts. No action at law or suit in equity under this chapter may be maintained in this Commonwealth by any dealer who is not registered under § 58.1-613 or is delinquent in the payment of the taxes imposed under this chapter.

B. Notwithstanding any exemption from taxes which any dealer now or hereafter may enjoy under the Constitution or laws of this or any other state, or of the United States, such dealer shall collect such tax from the purchaser, consumer, or lessee and shall pay the same over to the Tax Commissioner as herein provided.

C. Any dealer collecting the sales or use tax on transactions exempt or not taxable under this chapter shall transmit to the Tax Commissioner such erroneously or illegally collected tax unless or until he can affirmatively show that the tax has since been refunded to the purchaser or credited to his account.

D. Any dealer who neglects, fails, or refuses to collect such tax upon every taxable sale, distribution, lease, or storage of tangible personal property made by him, his agents, or employees shall be liable for and pay the tax himself, and such dealer shall not thereafter be entitled to sue for or recover in this Commonwealth any part of the purchase price or rental from the purchaser until such tax is paid. Moreover, any dealer who neglects, fails, or refuses to pay or collect the tax herein provided, either by himself or through his agents or employees, shall be guilty of a Class 1 misdemeanor.

E. (Contingent effective date -- see note*) Notwithstanding subsection D, any remote seller, single provider, or consolidated provider who has collected an incorrect amount of sales or use tax shall be relieved from liability for such additional amount, including any penalty or interest, if collection of the improper amount is a result of the remote seller, single provider, or consolidated provider's reasonable reliance upon information provided by the Commonwealth, including, but not limited to, any information obtained from software provided by the Department of Taxation pursuant to subsection B of § 58.1-601.

F. All sums collected by a dealer as required by this chapter shall be deemed to be held in trust for the Commonwealth.

Notwithstanding the foregoing provisions of this section, any dealer is authorized during the period of time set forth in §§ 58.1-611.2 and 58.1-611.3 or subdivision 18 of § 58.1-609.1 not to collect the tax levied by this chapter or levied under the authority granted in §§ 58.1-605 and 58.1-606 from the purchaser, and to absorb such tax himself. A dealer electing to absorb such taxes shall be liable for payment of such taxes to the Tax Commissioner in the same manner as he is for tax collected from a purchaser pursuant to this section.

Code 1950, § 58-441.18; 1966, c. 151; 1972, c. 355; 1979, c. 198; 1984, c. 675; 2006, cc. 579, 593; 2007, cc. 176, 608, 817; 2013, c. 766.

§ 58.1-625. (Effective July 1, 2017) Collection of tax

A. The tax levied by this chapter shall be paid by the dealer, but the dealer shall separately state the amount of the tax and add such tax to the sales price or charge. Thereafter, such tax shall be a debt from the purchaser, consumer, or lessee to the dealer until paid and shall be recoverable at law in the same manner as other debts. No action at law or suit in equity under this chapter may be maintained in this Commonwealth by any dealer who is not registered under § 58.1-613 or is delinquent in the payment of the taxes imposed under this chapter.

B. Notwithstanding any exemption from taxes which any dealer now or hereafter may enjoy under the Constitution or laws of this or any other state, or of the United States, such dealer shall collect such tax from the purchaser, consumer, or lessee and shall pay the same over to the Tax Commissioner as herein provided.

C. Any dealer collecting the sales or use tax on transactions exempt or not taxable under this chapter shall transmit to the Tax Commissioner such erroneously or illegally collected tax unless or until he can affirmatively show that the tax has since been refunded to the purchaser or credited to his account.

D. Any dealer who neglects, fails, or refuses to collect such tax upon every taxable sale, distribution, lease, or storage of tangible personal property made by him, his agents, or employees shall be liable for and pay the tax himself, and such dealer shall not thereafter be entitled to sue for or recover in this Commonwealth any part of the purchase price or rental from the purchaser until such tax is paid. Moreover, any dealer who neglects, fails, or refuses to pay or collect the tax herein provided, either by himself or through his agents or employees, shall be guilty of a Class 1 misdemeanor.

E. (Contingent effective date -- see note*) Notwithstanding subsection D, any remote seller, single provider, or consolidated provider who has collected an incorrect amount of sales or use tax shall be relieved from liability for such additional amount, including any penalty or interest, if collection of the improper amount is a result of the remote seller, single provider, or consolidated provider's reasonable reliance upon information provided by the Commonwealth, including, but not limited to, any information obtained from software provided by the Department of Taxation pursuant to subsection B of § 58.1-601.

F. All sums collected by a dealer as required by this chapter shall be deemed to be held in trust for the Commonwealth.

Notwithstanding the foregoing provisions of this section, any dealer is authorized during the period of time set forth in § 58.1-611.2 not to collect the tax levied by this chapter or levied under the authority granted in §§ 58.1-605 and 58.1-606 from the purchaser, and to absorb such tax himself. A dealer electing to absorb such taxes shall be liable for payment of such taxes to the Tax

Commissioner in the same manner as he is for tax collected from a purchaser pursuant to this section.

Code 1950, § 58-441.18; 1966, c. 151; 1972, c. 355; 1979, c. 198; 1984, c. 675; 2006, cc. 579, 593; 2013, c. 766.

§ 58.1-625.1. Repealed

Repealed by Acts 2009, cc. 864 and 871, cl. 5.

§ 58.1-626. (Effective until July 1, 2017) Absorption of tax prohibited

No person shall advertise or hold out to the public, directly or indirectly, that he will absorb all or any part of the sales or use tax, or that he will relieve the purchaser, consumer, or lessee of the payment of all or any part of such tax. Any person who violates this section shall be guilty of a Class 2 misdemeanor. The prohibitions contained in this section shall not apply (i) during the time period set out in § 58.1-611.2 or subdivision 18 of § 58.1-609.1 or during the 14 days immediately preceding such time period for advertisements relating to sales to be made during the time period set out in § 58.1-611.2 or subdivision 18 of § 58.1-609.1; and (ii) during the time period set out in § 58.1-611.3 or during the 14 days immediately preceding such time period for advertisements relating to sales to be made during the time period set out in § 58.1-611.3.

Code 1950, § 58-441.19; 1966, c. 151; 1984, c. 675; 2004, Sp. Sess. I, c. 3; 2006, cc. 579, 593; 2007, cc. 176, 608, 817.

§ 58.1-626. (Effective July 1, 2017) Absorption of tax prohibited

No person shall advertise or hold out to the public, directly or indirectly, that he will absorb all or any part of the sales or use tax, or that he will relieve the purchaser, consumer, or lessee of the payment of all or any part of such tax. Any person who violates this section shall be guilty of a Class 2 misdemeanor. The prohibitions contained in this section shall not apply during the time period set out in § 58.1-611.2 or during the 14 days immediately preceding such time period for advertisements relating to sales to be made during the time period set out in § 58.1-611.2.

Code 1950, § 58-441.19; 1966, c. 151; 1984, c. 675; 2004, Sp. Sess. I, c. 3; 2006, cc. 579, 593.

§§ 58.1-627, 58.1-628. Repealed

Repealed by Acts 2004, Sp. Sess. I, c. 3, effective September 1, 2004.

§ 58.1-628.1. Not effective

Not effective.

§ 58.1-628.2. Adjustment to the rate of tax imposed under this chapter

If a dealer can show to the satisfaction of the Tax Commissioner that more than 85 percent of the total dollar volume of his gross taxable sales during the taxable month was from individual sales at prices of 10 cents or less each and that he was unable to adjust his prices in such manner as to prevent the economic incidence of the sales tax from falling on him, the Tax Commissioner shall

determine the proper tax liability of the dealer based on that portion of the dealer's gross taxable sales that was from sales at prices of 11 cents or more.

2004, Sp. Sess. I, c. 3.

§ 58.1-629. Sale of business

If any dealer liable for any tax, penalty, or interest levied hereunder sells out his business or stock of goods or quits the business, he shall make a final return and payment within fifteen days after the date of selling or quitting the business. His successors or assigns, if any, shall withhold sufficient of the purchase money to cover the amount of such taxes, penalties, and interest due and unpaid until such former owner produces a receipt from the Tax Commissioner showing that they have been paid or a certificate stating that no taxes, penalties, or interest is due. If the purchaser of a business or stock of goods fails to withhold the purchase money as above provided, he shall be personally liable for the payment of the taxes, penalties, and interest due and unpaid on account of the operation of the business by any former owner. Nothing herein shall be deemed to qualify or limit the exemption as to such a sale as is covered by subdivision 2 of § 58.1-609.10.

Code 1950, § 58-441.30; 1966, c. 151; 1984, c. 675; 1993, c. 310 .

§ 58.1-630. Bond

The Tax Commissioner may, when in his judgment it is necessary and advisable so to do in order to secure the collection of the tax levied by this chapter, require any person subject to such tax to file with him a bond, with such surety as the Tax Commissioner determines is necessary to secure the payment of any tax, penalty or interest due or which may become due from such person. In lieu of such bond, securities approved by the Tax Commissioner may be deposited with the State Treasurer, which securities shall be kept in the custody of the State Treasurer, and shall be sold by him, at the request of the Tax Commissioner, at public or private sale if it becomes necessary so to do in order to recover any tax, penalty or interest due the Commonwealth under this chapter. Upon any such sale, the surplus, if any, above the amounts due under this chapter shall be returned to the person who deposited the securities.

Code 1950, § 58-441.31; 1966, c. 151; 1984, c. 675.

§ 58.1-631. Jeopardy assessment

If the Tax Commissioner is of the opinion that the collection of any tax or any amount of tax required to be collected and paid under this chapter will be jeopardized by delay, he shall make an assessment of the tax or amount of tax required to be collected and shall mail or issue a notice of such assessment to the taxpayer together with a demand for immediate payment of the tax or of the deficiency in tax declared to be in jeopardy including penalties. In the case of a tax for a current period, the Tax Commissioner may declare the taxable period of the taxpayer immediately terminated and shall cause notice of such finding and declaration to be mailed or issued to the taxpayer together with a demand for immediate payment of the tax based on the period declared terminated and such tax shall be immediately due and payable, whether or not the time otherwise

allowed by law for filing a return and paying the tax has expired. Assessments provided for in this section shall become immediately due and payable, and if any such tax, penalty or interest is not paid upon demand of the Tax Commissioner, he shall proceed to collect the same by legal process, or, in his discretion, he may require the taxpayer to file such bond as in his judgment may be sufficient to protect the interest of the Commonwealth.

Code 1950, § 58-441.32; 1966, c. 151; 1984, c. 675.

§ 58.1-632. Memorandum of lien

The Tax Commissioner is empowered, when any tax becomes delinquent under this chapter, to issue a memorandum of lien for the collection of the tax, penalty and interest from each delinquent taxpayer. Section 58.1-1805 shall apply to such memorandum, except that the same may be issued as soon as the tax becomes delinquent.

Code 1950, § 58-441.36; 1966, c. 151; 1984, c. 675.

§ 58.1-633. Records

A. Every dealer required to make a return and pay or collect any tax under this chapter shall keep and preserve suitable records of the sales, leases, or purchases, as the case may be, taxable under this chapter, and such other books of account as may be necessary to determine the amount of tax due hereunder, and such other pertinent information as may be required by the Tax Commissioner.

B. In order to aid in the administration and enforcement of the provisions of this chapter, all wholesalers and jobbers in this Commonwealth shall keep a record of all sales of tangible personal property, whether such sales be for cash or on terms of credit. Such records shall include the name and address of the purchaser, the number of the certificate of registration issued to the purchaser, the date of the purchase, the article purchased, and the price at which the article is sold to the purchaser. Any wholesaler or jobber failing to keep such records shall be guilty of a Class 1 misdemeanor. Any person who is both a retailer and a wholesaler or jobber and who fails to keep proper records showing wholesale sales and retail sales separately shall pay the tax as a retailer on both classes of his business.

C. For the purpose of enforcing the collection of the tax levied by this chapter, the Tax Commissioner is authorized to examine the books, records, and other documents of all transportation companies, agencies, firms, or persons as defined herein that conduct their business by truck, rail, water, airplane, or otherwise, in order to determine what dealers are importing or otherwise are shipping articles of tangible personal property which are liable for the tax. If such transportation company, agency, firm or person as defined herein refuses to permit such examination of its or his books, records, and other documents by the Tax Commissioner, as aforesaid, it or he shall be guilty of a Class 1 misdemeanor. The Tax Commissioner may proceed by petitioning the appropriate circuit court to require the transportation company, agency, firm, or person to show cause as to why such books, records, and other documents should not be examined pursuant to the

injunction of the court, and as to why a bond should not be required with proper security in the penalty of not more than $2,000 conditioned upon compliance with the provisions hereof for a period of not more than 1 year.

Code 1950, § 58-441.29; 1966, c. 151; 1984, c. 675.

§ 58.1-634. Period of limitations

The taxes imposed by this chapter shall be assessed within three years from the date on which such taxes became due and payable. In the case of a false or fraudulent return with intent to evade payment of the taxes imposed by this chapter, or a failure to file a return, the taxes may be assessed, or a proceeding in court for the collection of such taxes may be begun without assessment, at any time within six years from such date. The Tax Commissioner shall not examine any person's records beyond the three-year period of limitations unless he has reasonable evidence of fraud, or reasonable cause to believe that such person was required by law to file a return and failed to do so.

Code 1950, § 58-441.38; 1966, c. 151; 1980, c. 633; 1983, c. 104; 1984, c. 675.

§ 58.1-635. (Contingent expiration date -- see note*) Failure to file return; fraudulent return; civil penalties

A. When any dealer fails to make any return and pay the full amount of the tax required by this chapter, there shall be imposed, in addition to other penalties provided herein, a specific penalty to be added to the tax in the amount of six percent if the failure is for not more than one month, with an additional six percent for each additional month, or fraction thereof, during which the failure continues, not to exceed thirty percent in the aggregate. In no case, however, shall the penalty be less than ten dollars and such minimum penalty shall apply whether or not any tax is due for the period for which such return was required. If such failure is due to providential or other good cause shown to the satisfaction of the Tax Commissioner, such return with or without remittance may be accepted exclusive of penalties. In the case of a false or fraudulent return where willful intent exists to defraud the Commonwealth of any tax due under this chapter, or in the case of a willful failure to file a return with the intent to defraud the Commonwealth of any such tax, a specific penalty of fifty percent of the amount of the proper tax shall be assessed. All penalties and interest imposed by this chapter shall be payable by the dealer and collectible by the Tax Commissioner in the same manner as if they were a part of the tax imposed.

B. It shall be prima facie evidence of intent to defraud the Commonwealth of any tax due under this chapter when any dealer reports his gross sales, gross proceeds or cost price, as the case may be, at fifty percent or less of the actual amount.

C. Interest at a rate determined in accordance with § 58.1-15, shall accrue on the tax until the same is paid, or until an assessment is made, pursuant to § 58.1-15, after which interest shall accrue as provided therein.

Code 1950, § 58-441.27; 1966, c. 151; 1972, c. 355; 1973, c. 269; 1975, c. 52; 1977, c. 396; 1984, c. 675; 1991, cc. 316, 331 .

§ 58.1-635. (Contingent effective date -- see note*) Failure to file return; fraudulent return; civil penalties

A. When any dealer fails to make any return and pay the full amount of the tax required by this chapter, there shall be imposed, in addition to other penalties provided herein, a specific penalty to be added to the tax in the amount of six percent if the failure is for not more than one month, with an additional six percent for each additional month, or fraction thereof, during which the failure continues, not to exceed 30 percent in the aggregate. In no case, however, shall the penalty be less than $10 and such minimum penalty shall apply whether or not any tax is due for the period for which such return was required. If such failure is due to providential or other good cause shown to the satisfaction of the Tax Commissioner, such return with or without remittance may be accepted exclusive of penalties. In the case of a false or fraudulent return where willful intent exists to defraud the Commonwealth of any tax due under this chapter, or in the case of a willful failure to file a return with the intent to defraud the Commonwealth of any such tax, a specific penalty of 50 percent of the amount of the proper tax shall be assessed. All penalties and interest imposed by this chapter shall be payable by the dealer and collectible by the Tax Commissioner in the same manner as if they were a part of the tax imposed.

B. It shall be prima facie evidence of intent to defraud the Commonwealth of any tax due under this chapter when any dealer reports his gross sales, gross proceeds or cost price, as the case may be, at 50 percent or less of the actual amount.

C. Interest at a rate determined in accordance with § 58.1-15, shall accrue on the tax until the same is paid, or until an assessment is made, pursuant to § 58.1-15, after which interest shall accrue as provided therein.

D. Notwithstanding any other provision of this section, any remote seller, single provider, or consolidated provider who collects an incorrect amount of sales or use tax shall be relieved of any liability, including penalties and interest, if collection of the improper amount is the result of the remote seller, single provider, or consolidated provider's reasonable reliance on information that has been provided by the Commonwealth.

Code 1950, § 58-441.27; 1966, c. 151; 1972, c. 355; 1973, c. 269; 1975, c. 52; 1977, c. 396; 1984, c. 675; 1991, cc. 316, 331; 2013, c. 766.

*This section is set out twice because the 14th enactment of Chapter 766 of the Acts of Assembly of 2013 states: "That the provisions of this act that generate additional revenue through state taxes or fees for transportation (i) throughout the Commonwealth and in Planning District 8 and Planning District 23 or (ii) in any other Planning District that becomes subject to the state taxes or fees imposed solely in Planning Districts pursuant to this act shall expire on December 31 of any year in which the General Assembly appropriates any of such additional rev-

enues for any non-transportation-related purpose or transfers any of such additional revenues that are to be deposited into the Commonwealth Transportation Fund or any subfund thereof pursuant to general law for a non-transportation-related purpose. In the event a local government of any county or city wherein the additional taxes and fees are levied appropriates or allocates any of such additional revenues to a non-transportation purpose, such locality shall not be the direct beneficiary of any of the revenues generated by the taxes or fees in the year immediately succeeding the year in which revenues were appropriated or allocated to a non-transportation purpose."

§ 58.1-636. Penalty for failure to file return or making false return

Any dealer subject to the provisions of this chapter failing or refusing to file a return herein required to be made, or failing or refusing to file a supplemental return or other data required by the Tax Commissioner, or who makes a false or fraudulent return with intent to evade the tax hereby levied, or who makes a false or fraudulent claim for refund, or who gives or knowingly receives a false or fraudulent exemption certificate, or who violates any other provision of this chapter, punishment for which is not otherwise herein provided, shall be guilty of a Class 1 misdemeanor.

Code 1950, § 58-441.39; 1966, c. 151; 1984, c. 675.

§ 58.1-637. Bad checks

If any check tendered for any amount due under this chapter is not paid by the bank on which it is drawn and such person fails to pay the Commissioner the amount due the Commonwealth within five days after the Commissioner has given him written notice by registered or certified mail or in person by an agent that such check was returned unpaid, the person by whom such check was tendered shall be guilty of a violation of § 18.2-182.1.

Code 1950, § 58-441.35; 1966, c. 151; 1984, c. 675; 1992, c. 763 .

§ 58.1-638. Disposition of state sales and use tax revenue

A. The Comptroller shall designate a specific revenue code number for all the state sales and use tax revenue collected under the preceding sections of this chapter.

1. The sales and use tax revenue generated by the one-half percent sales and use tax increase enacted by the 1986 Special Session of the General Assembly shall be paid, in the manner hereinafter provided in this section, to the Transportation Trust Fund as defined in § 33.2-1524. Of the funds paid to the Transportation Trust Fund, an aggregate of 4.2 percent shall be set aside as the Commonwealth Port Fund as provided in this section; an aggregate of 2.4 percent shall be set aside as the Commonwealth Airport Fund as provided in this section; and an aggregate of 14.7 percent shall be set aside as the Commonwealth Mass Transit Fund as provided in this section. The Fund's share of such net revenue shall be computed as an estimate of the net revenue to be received into the state treasury each month, and such estimated payment shall be adjusted for the actual net revenue received in the preceding month. All payments shall be made to the Fund on the last day of each month.

2. There is hereby created in the Department of the Treasury a special nonreverting fund which shall be a part of the Transportation Trust Fund and which shall be known as the Commonwealth Port Fund.

a. The Commonwealth Port Fund shall be established on the books of the Comptroller and the funds remaining in such Fund at the end of a biennium shall not revert to the general fund but shall remain in the Fund. Interest earned on such funds shall remain in the Fund and be credited to it. Funds may be paid to any authority, locality or commission for the purposes hereinafter specified.

b. The amounts allocated pursuant to this section shall be allocated by the Commonwealth Transportation Board to the Board of Commissioners of the Virginia Port Authority to be used to support port capital needs and the preservation of existing capital needs of all ocean, river, or tributary ports within the Commonwealth. Expenditures for such capital needs are restricted to those capital projects specified in subsection B of § 62.1-132.1.

c. Commonwealth Port Fund revenue shall be allocated by the Board of Commissioners to the Virginia Port Authority in order to foster and stimulate the flow of maritime commerce through the ports of Virginia, including but not limited to the ports of Richmond, Hopewell, and Alexandria.

3. There is hereby created in the Department of the Treasury a special nonreverting fund which shall be part of the Transportation Trust Fund and which shall be known as the Commonwealth Airport Fund. The Commonwealth Airport Fund shall be established on the books of the Comptroller and any funds remaining in such Fund at the end of a biennium shall not revert to the general fund but shall remain in the Fund. Interest earned on the funds shall be credited to the Fund. The funds so allocated shall be allocated by the Commonwealth Transportation Board to the Virginia Aviation Board. The funds shall be allocated by the Virginia Aviation Board to any Virginia airport which is owned by the Commonwealth, a governmental subdivision thereof, or a private entity to which the public has access for the purposes enumerated in § 5.1-2.16, or is owned or leased by the Metropolitan Washington Airports Authority (MWAA), as follows:

Any new funds in excess of $12.1 million which are available for allocation by the Virginia Aviation Board from the Commonwealth Transportation Fund, shall be allocated as follows: 60 percent to MWAA, up to a maximum annual amount of $2 million, and 40 percent to air carrier airports as provided in subdivision A 3 a. Except for adjustments due to changes in enplaned passengers, no air carrier airport sponsor, excluding MWAA, shall receive less funds identified under subdivision A 3 a than it received in fiscal year 1994-1995.

Of the remaining amount:

a. Forty percent of the funds shall be allocated to air carrier airports, except airports owned or leased by MWAA, based upon the percentage of enplanements for each airport to total enplanements at all air carrier airports, except airports owned or leased by MWAA. No air carrier airport

sponsor, however, shall receive less than $50,000 nor more than $2 million per year from this provision.

b. Forty percent of the funds shall be allocated by the Aviation Board for air carrier and reliever airports on a discretionary basis, except airports owned or leased by MWAA.

c. Twenty percent of the funds shall be allocated by the Aviation Board for general aviation airports on a discretionary basis.

3a. There is hereby created in the Department of the Treasury a special nonreverting fund that shall be a part of the Transportation Trust Fund and that shall be known as the Commonwealth Space Flight Fund. The Commonwealth Space Flight Fund shall be established on the books of the Comptroller and the funds remaining in such Fund at the end of a biennium shall not revert to the general fund but shall remain in the Fund. Interest earned on such funds shall remain in the Fund and be credited to it.

a. The amounts allocated to the Commonwealth Space Flight Fund pursuant to § 33.2-1526 shall be allocated by the Commonwealth Transportation Board to the Board of Directors of the Virginia Commercial Space Flight Authority to be used to support the capital needs, maintenance, and operating costs of any and all facilities owned and operated by the Virginia Commercial Space Flight Authority.

b. Commonwealth Space Flight Fund revenue shall be allocated by the Board of Directors to the Virginia Commercial Space Flight Authority in order to foster and stimulate the growth of the commercial space flight industry in Virginia.

4. There is hereby created in the Department of the Treasury a special nonreverting fund which shall be a part of the Transportation Trust Fund and which shall be known as the Commonwealth Mass Transit Fund.

a. The Commonwealth Mass Transit Fund shall be established on the books of the Comptroller and any funds remaining in such Fund at the end of the biennium shall not revert to the general fund but shall remain in the Fund. Interest earned on such funds shall be credited to the Fund. If funds in subdivision 4 b (1)(c) or 4 b (2)(d) are allocated to the construction of a new fixed rail project, such project shall be evaluated according to the process established pursuant to subsection B of § 33.2-214.1. Funds may be paid to any local governing body, transportation district commission, or public service corporation for the purposes hereinafter specified.

b. The amounts allocated pursuant to this section shall be used to support the operating, capital, and administrative costs of public transportation at a state share determined by the Commonwealth Transportation Board, and these amounts may be used to support the capital project costs of public transportation and ridesharing equipment, facilities, and associated costs at a state share determined by the Commonwealth Transportation Board. Capital costs may include debt service payments on local or agency transit bonds. In making these determinations, the

Commonwealth Transportation Board shall confer with the Director of the Department of Rail and Public Transportation. In development of the Director's recommendation and subsequent allocation of funds by the Commonwealth Transportation Board, the Director of the Department of Rail and Public Transportation and the Commonwealth Transportation Board shall adhere to the following:

(1) For the distribution of revenues from the Commonwealth Mass Transit Fund, of those revenues generated in 2014 and thereafter, the first $160 million in revenues or the maximum available revenues if less than $160 million shall be distributed by the Commonwealth Transportation Board as follows:

(a) Funds for special programs, which shall include ridesharing, transportation demand management programs, experimental transit, public transportation promotion, operation studies, and technical assistance, shall not exceed 3 percent of the funds pursuant to this section and may be allocated to any local governing body, planning district commission, transportation district commission, or public transit corporation, or may be used directly by the Department of Rail and Public Transportation for the following purposes and aid of public transportation services:

(i) To finance a program administered by the Department of Rail and Public Transportation designed to promote the use of public transportation and ridesharing throughout Virginia.

(ii) To finance up to 80 percent of the cost of the development and implementation of projects where the purpose of such project is to enhance the provision and use of public transportation services.

(b) At least 72 percent of the funds shall be distributed to each transit property in the same proportion as its operating expenses bear to the total statewide operating expenses and shall be spent for the purposes specified in subdivision 4 b.

(c) Twenty-five percent of the funds shall be allocated and distributed utilizing a tiered approach evaluated by the Transit Service Delivery Advisory Committee along with the Director of the Department of Rail and Public Transportation and established by the Commonwealth Transportation Board for capital purposes based on asset need and anticipated state participation level and revenues. The tier distribution measures may be evaluated by the Transit Service Delivery Advisory Committee along with the Director of the Department of Rail and Public Transportation every three years and, if redefined by the Board, shall be published at least one year in advance of being applied. Funds allocated for debt service payments will be included in the tier that applies to the capital asset that is leveraged.

(d) Transfer of funds from funding categories in subdivisions 4 b (1)(a) and 4 b (1)(c) to 4 b (1)(b) shall be considered by the Commonwealth Transportation Board in times of statewide economic distress or statewide special need.

(2) The Commonwealth Transportation Board shall allocate the remaining revenues after the application of the provisions set forth in subdivision 4 b (1) generated for the Commonwealth Mass Transit Fund for 2014 and succeeding years as follows:

(a) Funds pursuant to this section shall be distributed among operating, capital, and special projects in order to respond to the needs of the transit community.

(b) Of the funds pursuant to this section, at least 72 percent shall be allocated to support operating costs of transit providers and distributed by the Commonwealth Transportation Board based on service delivery factors, based on effectiveness and efficiency, as established by the Commonwealth Transportation Board. These measures and their relative weight shall be evaluated every three years and, if redefined by the Commonwealth Transportation Board, shall be published and made available for public comment at least one year in advance of being applied. In developing the service delivery factors, the Commonwealth Transportation Board shall create for the Department of Rail and Public Transportation a Transit Service Delivery Advisory Committee, consisting of two members appointed by the Virginia Transit Association, one member appointed by the Community Transportation Association of Virginia, one member appointed by the Virginia Municipal League, one member appointed by the Virginia Association of Counties, and three members appointed by the Director of the Department of Rail and Public Transportation, to advise the Department of Rail and Public Transportation in the development of a distribution process for the funds allocated pursuant to this subdivision 4 b (2)(b) and how transit systems can incorporate these metrics in their transit development plans. The Transit Service Delivery Advisory Committee shall elect a Chair. The Department of Rail and Public Transportation shall provide administrative support to the committee. Effective July 1, 2013, the Transit Service Delivery Advisory Committee shall meet at least annually and consult with interested stakeholders and hold at least one public hearing and report its findings to the Director of the Department of Rail and Public Transportation. Prior to the Commonwealth Transportation Board approving the service delivery factors, the Director of the Department of Rail and Public Transportation along with the Chair of the Transit Service Delivery Advisory Committee shall brief the Senate Committee on Finance, the House Appropriations Committee, and the Senate and House Committees on Transportation on the findings of the Transit Service Delivery Advisory Committee and the Department's recommendation. Before redefining any component of the service delivery factors, the Commonwealth Transportation Board shall consult with the Director of the Department of Rail and Public Transportation, Transit Service Delivery Advisory Committee, and interested stakeholders and provide for a 45-day public comment period. Prior to approval of any amendment to the service delivery measures, the Board shall notify the aforementioned committees of the pending amendment to the service delivery factors and its content.

(c) Funds for special programs, which shall include ridesharing, transportation demand management programs, experimental transit, public transportation promotion, operation studies, and technical assistance, shall not exceed 3 percent of the funds pursuant to this section and may be

allocated to any local governing body, planning district commission, transportation district commission, or public transit corporation, or may be used directly by the Department of Rail and Public Transportation for the following purposes and aid of public transportation services:

(i) To finance a program administered by the Department of Rail and Public Transportation designed to promote the use of public transportation and ridesharing throughout Virginia.

(ii) To finance up to 80 percent of the cost of the development and implementation of projects where the purpose of such project is to enhance the provision and use of public transportation services.

(d) Of the funds pursuant to this section, 25 percent shall be allocated and distributed utilizing a tiered approach evaluated by the Transit Service Delivery Advisory Committee along with the Director of Rail and Public Transportation and established by the Commonwealth Transportation Board for capital purposes based on asset need and anticipated state participation level and revenues. The tier distribution measures may be evaluated by the Transit Service Delivery Advisory Committee along with the Director of Rail and Public Transportation every three years and, if redefined by the Board, shall be published at least one year in advance of being applied. Funds allocated for debt service payments shall be included in the tier that applies to the capital asset that is leveraged.

(e) Transfer of funds from funding categories in subdivisions 4 b (2)(c) and 4 b (2)(d) to 4 b (2)(b) shall be considered by the Commonwealth Transportation Board in times of statewide economic distress or statewide special need.

(f) The Department of Rail and Public Transportation may reserve a balance of up to five percent of the Commonwealth Mass Transit Fund revenues under this subsection in order to assure better stability in providing operating and capital funding to transit entities from year to year.

(3) The Commonwealth Mass Transit Fund shall not be allocated without requiring a local match from the recipient.

c. There is hereby created in the Department of the Treasury a special nonreverting fund known as the Commonwealth Transit Capital Fund. The Commonwealth Transit Capital Fund shall be part of the Commonwealth Mass Transit Fund. The Commonwealth Transit Capital Fund subaccount shall be established on the books of the Comptroller and consist of such moneys as are appropriated to it by the General Assembly and of all donations, gifts, bequests, grants, endowments, and other moneys given, bequeathed, granted, or otherwise made available to the Commonwealth Transit Capital Fund. Any funds remaining in the Commonwealth Transit Capital Fund at the end of the biennium shall not revert to the general fund, but shall remain in the Commonwealth Transit Capital Fund. Interest earned on funds within the Commonwealth Transit Capital Fund shall remain in and be credited to the Commonwealth Transit Capital Fund. Proceeds of the Commonwealth Transit Capital Fund may be paid to any political subdivision, another public entity created by an act of the General Assembly, or a private entity as defined in § 33.2-1800 and for

purposes as enumerated in subdivision 7 of § 33.2-1701 or expended by the Department of Rail and Public Transportation for the purposes specified in this subdivision. Revenues of the Commonwealth Transit Capital Fund shall be used to support capital expenditures involving the establishment, improvement, or expansion of public transportation services through specific projects approved by the Commonwealth Transportation Board. If revenues of the Commonwealth Transit Capital Fund are allocated to the construction of a new fixed rail project, such project shall be evaluated according to the process established pursuant to subsection B of § 33.2-214.1. The Commonwealth Transit Capital Fund shall not be allocated without requiring a local match from the recipient.

d. The Commonwealth Transportation Board may allocate up to three and one-half percent of the funds set aside for the Commonwealth Mass Transit Fund to support costs of project development, project administration, and project compliance incurred by the Department of Rail and Public Transportation in implementing rail, public transportation, and congestion management grants and programs.

5. Funds for Metro shall be paid by the Northern Virginia Transportation Commission (NVTC) to the Washington Metropolitan Area Transit Authority (WMATA) and be a credit to the Counties of Arlington and Fairfax and the Cities of Alexandria, Falls Church, and Fairfax in the following manner:

a. Local obligations for debt service for WMATA rail transit bonds apportioned to each locality using WMATA's capital formula shall be paid first by NVTC. NVTC shall use 95 percent state aid for these payments.

b. The remaining funds shall be apportioned to reflect WMATA's allocation formulas by using the related WMATA-allocated subsidies and relative shares of local transit subsidies. Capital costs shall include 20 percent of annual local bus capital expenses. Hold harmless protections and obligations for NVTC's jurisdictions agreed to by NVTC on November 5, 1998, shall remain in effect.

Appropriations from the Commonwealth Mass Transit Fund are intended to provide a stable and reliable source of revenue as defined by Public Law 96-184.

6. Notwithstanding any other provision of law, funds allocated to Metro may be disbursed by the Department of Rail and Public Transportation directly to Metro or to any other transportation entity that has an agreement to provide funding to Metro.

B. The sales and use tax revenue generated by a one percent sales and use tax shall be distributed among the counties and cities of the Commonwealth in the manner provided in subsections C and D.

C. The localities' share of the net revenue distributable under this section among the counties and cities shall be apportioned by the Comptroller and distributed among them by warrants of the Comptroller drawn on the Treasurer of Virginia as soon as practicable after the close of each

month during which the net revenue was received into the state treasury. The distribution of the localities' share of such net revenue shall be computed with respect to the net revenue received into the state treasury during each month, and such distribution shall be made as soon as practicable after the close of each such month.

D. The net revenue so distributable among the counties and cities shall be apportioned and distributed upon the basis of the latest yearly estimate of the population of cities and counties ages five to 19, provided by the Weldon Cooper Center for Public Service of the University of Virginia. Such population estimate produced by the Weldon Cooper Center for Public Service of the University of Virginia shall account for persons who are domiciled in orphanages or charitable institutions or who are dependents living on any federal military or naval reservation or other federal property within the school division in which the institutions or federal military or naval reservation or other federal property is located. Such population estimate produced by the Weldon Cooper Center for Public Service of the University of Virginia shall account for members of the military services who are under 20 years of age within the school division in which the parents or guardians of such persons legally reside. Such population estimate produced by the Weldon Cooper Center for Public Service of the University of Virginia shall account for individuals receiving services in state hospitals, state training centers, or mental health facilities, persons who are confined in state or federal correctional institutions, or persons who attend the Virginia School for the Deaf and the Blind within the school division in which the parents or guardians of such persons legally reside. Such population estimate produced by the Weldon Cooper Center for Public Service of the University of Virginia shall account for persons who attend institutions of higher education within the school division in which the student's parents or guardians legally reside. To such estimate, the Department of Education shall add the population of students with disabilities, ages two through four and 20 through 21, as provided to the Department of Education by school divisions. The revenue so apportionable and distributable is hereby appropriated to the several counties and cities for maintenance, operation, capital outlays, debt and interest payments, or other expenses incurred in the operation of the public schools, which shall be considered as funds raised from local resources. In any county, however, wherein is situated any incorporated town constituting a school division, the county treasurer shall pay into the town treasury for maintenance, operation, capital outlays, debt and interest payments, or other expenses incurred in the operation of the public schools, the proper proportionate amount received by him in the ratio that the school population of such town bears to the school population of the entire county. If the school population of any city or of any town constituting a school division is increased by the annexation of territory since the last estimate of school population provided by the Weldon Cooper Center for Public Service, such increase shall, for the purposes of this section, be added to the school population of such city or town as shown by the last such estimate and a proper reduction made in the school population of the county or counties from which the annexed territory was acquired.

E. Beginning July 1, 2000, of the remaining sales and use tax revenue, the revenue generated by a two percent sales and use tax, up to an annual amount of $13 million, collected from the sales of hunting equipment, auxiliary hunting equipment, fishing equipment, auxiliary fishing equipment, wildlife-watching equipment, and auxiliary wildlife-watching equipment in Virginia, as estimated by the most recent U.S. Department of the Interior, Fish and Wildlife Service and U.S. Department of Commerce, Bureau of the Census National Survey of Fishing, Hunting, and Wildlife-Associated Recreation, shall be paid into the Game Protection Fund established under § 29.1-101 and shall be used, in part, to defray the cost of law enforcement. Not later than 30 days after the close of each quarter, the Comptroller shall transfer to the Game Protection Fund the appropriate amount of collections to be dedicated to such Fund. At any time that the balance in the Capital Improvement Fund, established under § 29.1-101.01, is equal to or in excess of $35 million, any portion of sales and use tax revenues that would have been transferred to the Game Protection Fund, established under § 29.1-101, in excess of the net operating expenses of the Board, after deduction of other amounts which accrue to the Board and are set aside for the Game Protection Fund, shall remain in the general fund until such time as the balance in the Capital Improvement Fund is less than $35 million.

F.1. Of the net revenue generated from the one-half percent increase in the rate of the state sales and use tax effective August 1, 2004, pursuant to enactments of the 2004 Special Session I of the General Assembly, the Comptroller shall transfer from the general fund of the state treasury to the Public Education Standards of Quality/Local Real Estate Property Tax Relief Fund established under § 58.1-638.1 an amount equivalent to one-half of the net revenue generated from such one-half percent increase as provided in this subdivision. The transfers to the Public Education Standards of Quality/Local Real Estate Property Tax Relief Fund under this subdivision shall be for one-half of the net revenue generated (and collected in the succeeding month) from such one-half percent increase for the month of August 2004 and for each month thereafter.

2. Beginning July 1, 2013, of the remaining sales and use tax revenue, an amount equal to the revenue generated by a 0.125 percent sales and use tax shall be distributed to the Public Education Standards of Quality/Local Real Estate Property Tax Relief Fund established under § 58.1-638.1, and be used for the state's share of Standards of Quality basic aid payments.

3. For the purposes of the Comptroller making the required transfers under subdivision 1 and 2, the Tax Commissioner shall make a written certification to the Comptroller no later than the twenty-fifth of each month certifying the sales and use tax revenues generated in the preceding month. Within three calendar days of receiving such certification, the Comptroller shall make the required transfers to the Public Education Standards of Quality/Local Real Estate Property Tax Relief Fund.

G. (Contingent expiration date -- see note) Beginning July 1, 2013, of the remaining sales and use tax revenue, an amount equal to the following percentages of the revenue generated by a one-half percent sales and use tax, such as that paid to the Transportation Trust Fund as provided in

subdivision A 1, shall be paid to the Highway Maintenance and Operating Fund established pursuant to § 33.2-1530:

1. For fiscal year 2014, an amount equal to 10 percent;

2. For fiscal year 2015, an amount equal to 20 percent;

3. For fiscal year 2016, an amount equal to 30 percent; and

4. For fiscal year 2017 and thereafter, an amount equal to 35 percent.

The Highway Maintenance and Operating Fund's share of the net revenue distributable under this subsection shall be computed as an estimate of the net revenue to be received into the state treasury each month, and such estimated payment shall be adjusted for the actual net revenue received in the preceding month. All payments shall be made to the Fund on the last day of each month.

H. (Contingent expiration date -- see note) 1. The additional revenue generated by increases in the state sales and use tax from Planning District 8 pursuant to §§ 58.1-603.1, 58.1-604.01, 58.1-604.1, and 58.1-614 shall be deposited by the Comptroller in the fund established under § 33.2-2509.

2. The additional revenue generated by increases in the state sales and use tax from Planning District 23 pursuant to §§ 58.1-603.1, 58.1-604.01, 58.1-604.1, and 58.1-614 shall be deposited by the Comptroller in the fund established under § 33.2-2600.

3. The additional revenue generated by increases in the state sales and use tax in any other Planning District pursuant to §§ 58.1-603.1, 58.1-604.01, 58.1-604.1, and 58.1-614 shall be deposited into special funds that shall be established by appropriate legislation.

4. The net revenues distributable under this subsection shall be computed as an estimate of the net revenue to be received by the state treasury each month, and such estimated payment shall be adjusted for the actual net revenue received in the preceding month. All payments shall be made to the appropriate funds on the last day of each month.

I. If errors are made in any distribution, or adjustments are otherwise necessary, the errors shall be corrected and adjustments made in the distribution for the next quarter or for subsequent quarters.

J. The term "net revenue, " as used in this section, means the gross revenue received into the general fund or the Transportation Trust Fund of the state treasury under the preceding sections of this chapter, less refunds to taxpayers.

Code 1950, § 58-441.48; 1966, c. 151; 1976, c. 680; 1978, c. 773; 1980, c. 559; 1984, c. 675; 1986, Sp. Sess., c. 12; 1991, cc. 666, 713; 1992, c. 167; 1993, c. 793; 1995, cc. 539, 542; 1998, cc. 320, 905, 907; 1999, cc. 281, 397, 898; 2000, cc. 694, 707; 2001, c. 171; 2004, Sp. Sess. I, c. 3; 2010, cc. 113, 386, 629; 2012, cc. 476, 507, 779, 817; 2013, cc. 639, 766; 2015, cc. 609, 684.

§ 58.1-638.1. Public Education Standards of Quality/Local Real Estate Property Tax Relief Fund established

There is hereby created in the state treasury a special permanent, nonreverting, interest-bearing fund to be known as the Public Education Standards of Quality/Local Real Estate Property Tax Relief Fund, hereinafter referred to as "the Fund." The Fund shall be established on the books of the Comptroller. The Fund shall consist of (i) any sales and use tax revenues transferred pursuant to subsection F of § 58.1-638; (ii) any other moneys appropriated to it by the General Assembly; and (iii) such other sums as may be made available to it from any other source, public or private, all of which shall be credited to the Fund. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall remain in the Fund and shall not revert to the general fund.

All amounts credited to the Fund shall be paid to localities in accordance with the general appropriation act to meet the Commonwealth's responsibility for the Standards of Quality prescribed pursuant to Article VIII, Section 2 of the Constitution of Virginia. Any amount paid to a county, city, or town from the Fund shall be taken into account by the governing body of the county, city, or town in setting real estate tax rates.

2004, Sp. Sess. I, c. 3.

§ 58.1-638.2. (Contingent effective date -- see note) Disposition of state and local sales tax revenue collected pursuant to federal legislation granting remote collection authority

Notwithstanding any provisions of § 58.1-638 to the contrary, any state and local sales and use tax revenue collected pursuant to federal legislation granting the Commonwealth authority to compel remote sellers to collect the tax for sales made into the Commonwealth shall be paid in the manner provided in this section:

1. The sales and use tax revenue generated by a one percent sales and use tax shall be distributed among the counties and cities of the Commonwealth in the manner provided in subsections F and G of §§ 58.1-605 and 58.1-606. Each locality shall be required to designate an amount equal to 50 percent of the local sales and use tax distribution to transportation needs.

2. The sales and use tax revenue generated by a one percent sales and use tax shall be distributed among the counties and cities of the Commonwealth in the manner provided in subsections C and D of § 58.1-638.

3. The sales and use tax revenue generated by a 0.25 percent sales and use tax shall be distributed among the counties and cities of the Commonwealth in the manner provided in § 58.1-638.1.

4. The Comptroller shall transfer annually to each locality that levied the local tax on fuels for domestic consumption pursuant to the former § 58.1-609.13 an amount to compensate the locality for the locality's revenue loss resulting from cessation of the local authority to impose tax on the sale of fuel for domestic consumption due to the repeal of § 58.1-609.13. The amount paid to the locality shall be an amount equal to the locality's revenue from its tax on fuels for domestic

consumption in the calendar year prior to the repeal of § 58.1-609.13, but the aggregate amount of such revenue paid to all localities shall not exceed $7.5 million per year. If the total aggregate amount exceeds $7.5 million, then each locality shall receive a pro rata portion based on the proportion that the locality's revenue from its tax on fuels for domestic consumption in the calendar year preceding the repeal of § 58.1-609.13 is to the total amount of such revenue in all localities that levied such tax.

5. Notwithstanding §§ 58.1-605, 58.1-606, and 58.1-638, all remaining revenue collected pursuant to this section, as estimated by the Department, shall be transferred to the Transportation Trust Fund to be allocated pursuant to § 33.2-1526.

2013, c. 766.

*This section is set out twice because the 14th enactment of Chapter 766 of the Acts of Assembly of 2013 states: "That the provisions of this act that generate additional revenue through state taxes or fees for transportation (i) throughout the Commonwealth and in Planning District 8 and Planning District 23 or (ii) in any other Planning District that becomes subject to the state taxes or fees imposed solely in Planning Districts pursuant to this act shall expire on December 31 of any year in which the General Assembly appropriates any of such additional revenues for any non-transportation-related purpose or transfers any of such additional revenues that are to be deposited into the Commonwealth Transportation Fund or any subfund thereof pursuant to general law for a non-transportation-related purpose. In the event a local government of any county or city wherein the additional taxes and fees are levied appropriates or allocates any of such additional revenues to a non-transportation purpose, such locality shall not be the direct beneficiary of any of the revenues generated by the taxes or fees in the year immediately succeeding the year in which revenues were appropriated or allocated to a non-transportation purpose."

§ 58.1-638.3. (Contingent expiration date -- see note) Disposition of 0.3 percent state and local sales tax for transportation

A. The sales and use tax revenue generated by the 0.3 percent sales and use tax increase enacted by the 2013 Session of the General Assembly shall be allocated as follows:

1. An amount equal to a 0.175 percent sales and use tax shall be deposited into the Highway Maintenance and Operating Fund established pursuant to § 33.2-1530;

2. An amount equal to a 0.05 percent sales and use tax shall be deposited into the Intercity Passenger Rail Operating and Capital Fund established under § 33.2-1603; and

3. An amount equal to a 0.075 percent sales and use tax shall be deposited into the Commonwealth Mass Transit Fund.

B. The net revenues distributable under this section shall be computed as an estimate of the net revenue to be received by the state treasury each month, and such estimated payment shall be

adjusted for the actual net revenue received in the preceding month. All payments shall be made to the funds set forth in subsection A on the last day of each month.

2013, c. 766.

*This section is set out twice because the 14th enactment of Chapter 766 of the Acts of Assembly of 2013 states: "That the provisions of this act that generate additional revenue through state taxes or fees for transportation (i) throughout the Commonwealth and in Planning District 8 and Planning District 23 or (ii) in any other Planning District that becomes subject to the state taxes or fees imposed solely in Planning Districts pursuant to this act shall expire on December 31 of any year in which the General Assembly appropriates any of such additional revenues for any non-transportation-related purpose or transfers any of such additional revenues that are to be deposited into the Commonwealth Transportation Fund or any subfund thereof pursuant to general law for a non-transportation-related purpose. In the event a local government of any county or city wherein the additional taxes and fees are levied appropriates or allocates any of such additional revenues to a non-transportation purpose, such locality shall not be the direct beneficiary of any of the revenues generated by the taxes or fees in the year immediately succeeding the year in which revenues were appropriated or allocated to a non-transportation purpose."

§ 58.1-639. Repealed

Repealed by Acts 2016, c. 305, cl. 2.

Chapter 6.1 - VIRGINIA TIRE RECYCLING FEE

§ 58.1-640. Definitions

As used in this chapter, unless the context requires a different meaning:

"Fund" means the Waste Tire Trust Fund.

"Retailer of tires" means any person engaged in the business of making retail sales of tires, whether new or used, within this Commonwealth, and also includes any person who installs tires in the Commonwealth pursuant to an agreement with a person who makes a retail sale of such tires, but does not collect the tax under this Chapter.

"Retail sales" do not include the sale of tires to a person solely for the purpose of resale, provided the subsequent retail sale in this Commonwealth is subject to the tax levied by the provisions of this chapter.

"Tire" means a continuous solid or pneumatic rubber covering encircling the wheel of a vehicle used for transportation purposes.

1989, c. 630; 2011, c. 649.

§ 58.1-641. Imposition of tire recycling fee

Beginning July 1, 2008, there is hereby levied and imposed upon every retailer of tires in the Commonwealth, in addition to all other taxes and fees of every kind now imposed by law, a tire

recycling fee of $1.00 for each new tire sold by a retailer. Beginning July 1, 2011, the fee shall be levied and imposed at a rate of $.50 for each new tire sold by a retailer.

1989, c. 630; 2003, c. 101; 2006, c. 407; 2008, cc. 32, 158.

§ 58.1-642. Collection of tire recycling fee; deductions; exemptions

A. The tire recycling fee levied under this chapter shall be collected by the Tax Commissioner in the same manner as is the retail sales and use tax, pursuant to Chapter 6 (§ 58.1-600 et seq.) of this title.

B. The fee imposed under § 58.1-641 shall not apply to new tires for:

1. Any device moved exclusively by human power;

2. Any device used exclusively upon stationary rails or tracks; or

3. Any device used exclusively for farming purposes, except a farm truck.

C. For the purpose of compensating a retailer of tires for accounting for and remitting the fee levied by this chapter, such retailer shall be allowed five percent of the amount of fee due and accounted for in the form of a deduction in submitting his return and paying the amount due by him if the amount due was not delinquent at the time of payment.

1989, c. 630; 2003, c. 101.

§ 58.1-643. Repealed

Repealed by Acts 1993, c. 211 .

§ 58.1-644. Provisions of Chapter 6 of this title to apply, mutatis mutandis

The provisions in Chapter 6 (§ 58.1-600 et seq.) of this title shall apply to this chapter, mutatis mutandis, except as herein provided and except that replacement truck tires shall be subject to the tax imposed pursuant to this chapter.

1989, c. 630 .

Chapter 6.2 - VIRGINIA COMMUNICATIONS SALES AND USE TAX

§ 58.1-645. Short title

This chapter shall be known and may be cited as the "Virginia Communications Sales and Use Tax Act."

2006, c. 780.

§ 58.1-646. Administration of chapter

The Tax Commissioner shall administer and enforce the collection of the taxes and penalties imposed by this chapter.

2006, c. 780.

§ 58.1-647. Definitions

Terms used in this chapter shall have the same meanings as those used in Chapter 6 of this title, unless defined otherwise, as follows:

"Cable service" means the one-way transmission to subscribers of (i) video programming as defined in 47 U.S.C. § 522 (20) or (ii) other programming service, and subscriber interaction, if any, which is required for the selection of such video programming or other programming service. Cable service does not include any video programming provided by a commercial mobile service provider as defined in 47 U.S.C. § 332 (d) and any direct-to-home satellite service as defined in 47 U.S.C. § 303 (v).

"Call-by-call basis" means any method of charging for telecommunications services where the price is measured by individual calls.

"Coin-operated communications service" means a communications service paid for by means of inserting coins in a coin-operated telephone.

"Communications services" means the electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals, including cable services, to a point or between or among points, by or through any electronic, radio, satellite, cable, optical, microwave, or other medium or method now in existence or hereafter devised, regardless of the protocol used for the transmission or conveyance. The term includes, but is not limited to, (i) the connection, movement, change, or termination of communications services; (ii) detailed billing of communications services; (iii) sale of directory listings in connection with a communications service; (iv) central office and custom calling features; (v) voice mail and other messaging services; and (vi) directory assistance.

"Communications services provider" means every person who provides communications services to customers in the Commonwealth and is or should be registered with the Department as a provider.

"Cost price" means the actual cost of the purchased communications service computed in the same manner as the sales price.

"Customer" means the person who contracts with the seller of communications services. If the person who utilizes the communications services is not the contracting party, the person who utilizes the services on his own behalf or on behalf of an entity is the customer of such service. "Customer" does not include a reseller of communications services or the mobile communications services of a serving carrier under an agreement to serve the customer outside the communications service provider's licensed service area.

"Customer channel termination point" means the location where the customer either inputs or receives the private communications service.

"Information service" means the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, using, or making available information via communications services for purposes other than the electronic transmission, conveyance, or routing.

"Internet access service" means a service that enables users to access content, information, electronic mail, or other services offered over the Internet, and may also include access to proprietary content, information, and other services as part of a package of services offered to users. "Internet access service" does not include telecommunications services, except to the extent telecommunications services are purchased, used, or sold by a provider of Internet access to provide Internet access.

"Place of primary use" means the street address representative of where the customer's use of the communications services primarily occurs, which must be the residential street address or the primary business street address of the customer. In the case of mobile communications services, the place of primary use shall be within the licensed service area of the home service provider.

"Postpaid calling service" means the communications service obtained by making a payment on a call-by-call basis either through the use of a credit card or payment mechanism such as a bank card, travel card, debit card, or by a charge made to a telephone number that is not associated with the origination or termination of the communications service.

"Prepaid calling service" means the right to access exclusively communications services, which must be paid for in advance and which enables the origination of calls using an access number or authorization code, whether manually or electronically dialed, and that is sold in predetermined units or dollars that decrease in number with use.

"Private communications service" means a communications service that entitles the customer or user to exclusive or priority use of a communications channel or group of channels between or among channel termination points, regardless of the manner in which such channel or channels are connected, and includes switching capacity, extension lines, stations, and any other associated services that are provided in connection with the use of such channel or channels.

"Retail sale" or a "sale at retail" means a sale of communications services for any purpose other than for resale or for use as a component part of or for the integration into communications services to be resold in the ordinary course of business.

"Sales price" means the total amount charged in money or other consideration by a communications services provider for the sale of the right or privilege of using communications services in the Commonwealth, including any property or other services that are part of the sale. The sales price of communications services shall not be reduced by any separately identified components of the charge that constitute expenses of the communications services provider, including but not limited to, sales taxes on goods or services purchased by the communications services provider, property taxes, taxes measured by net income, and universal-service fund fees.

"Service address" means, (i) the location of the telecommunications equipment to which a customer's call is charged and from which the call originates or terminates, regardless of where the call is billed or paid. If the location is not known in clause (i), "service address" means (ii) the origination point of the signal of the telecommunications system or in information received by the

seller from its service provider, where the system used to transport such signals is not that of the seller. If the location is not known in clauses (i) and (ii), the service address means (iii) the location of the customer's place of primary use.

2006, c. 780.

§ 58.1-648. Imposition of sales tax; exemptions

A. Beginning January 1, 2007, there is levied and imposed, in addition to all other taxes and fees of every kind imposed by law, a sales or use tax on the customers of communications services in the amount of 5% of the sales price of each communications service that is sourced to the Commonwealth in accordance with § 58.1-649.

B. The sales price on which the tax is levied shall not include charges for any of the following: (i) an excise, sales, or similar tax levied by the United States or any state or local government on the purchase, sale, use, or consumption of any communications service that is permitted or required to be added to the sales price of such service, if the tax is stated separately; (ii) a fee or assessment levied by the United States or any state or local government, including but not limited to, regulatory fees and emergency telephone surcharges, that is required to be added to the price of service if the fee or assessment is separately stated; (iii) coin-operated communications services; (iv) sale or recharge of a prepaid calling service; (v) provision of air-to-ground radiotelephone services, as that term is defined in 47 C.F.R. § 22.99; (vi) a communications services provider's internal use of communications services in connection with its business of providing communications services; (vii) charges for property or other services that are not part of the sale of communications services, if the charges are stated separately from the charges for communications services; (viii) sales for resale; (ix) charges for communications services to the Commonwealth, any political subdivision of the Commonwealth, and the federal government and any agency or instrumentality of the federal government; and (x) charges for communications services to any customers on any federal military bases or installations when a franchise fee or similar fee for access is payable to the federal government, or any agency or instrumentality thereof, with respect to the same communications services.

C. Communications services on which the tax is hereby levied shall not include the following: (i) information services; (ii) installation or maintenance of wiring or equipment on a customer's premises; (iii) the sale or rental of tangible personal property; (iv) the sale of advertising, including but not limited to, directory advertising; (v) bad check charges; (vi) billing and collection services; (vii) Internet access service, electronic mail service, electronic bulletin board service, or similar services that are incidental to Internet access, such as voice-capable e-mail or instant messaging; (viii) digital products delivered electronically, such as software, downloaded music, ring tones, and reading materials; and (ix) over-the-air radio and television service broadcast without charge by an entity licensed for such purposes by the Federal Communications Commission. Also, those entities exempt from the tax imposed in accordance with the provisions of Article 4 (§ 58.1-

3812 et seq.) of Chapter 38 of Title 58.1, in effect on January 1, 2006, shall continue to be exempt from the tax imposed in accordance with the provisions of this chapter.

2006, c. 780; 2007, c. 811.

§ 58.1-649. Sourcing rules for communication services

A. Except for the defined communication services in subsection C, the sale of communications service sold on a call-by-call basis shall be sourced to the Commonwealth when the call (i) originates and terminates in the Commonwealth or (ii) either originates or terminates in the Commonwealth and the service address is also located in the Commonwealth.

B. Except for the defined communication services in subsection C, a sale of communication services sold on a basis other than a call-by-call basis, shall be sourced to the customer's place of primary use.

C. The sale of the following communication services shall be sourced to the Commonwealth as follows:

1. Subject to the definitions and exclusions of the federal Mobile Telecommunications Sourcing Act, 4 U.S.C. § 116, a sale of mobile communication services shall be sourced to the customer's place of primary use.

2. A sale of postpaid calling service shall be sourced to the origination point of the communications signal as first identified by either (i) the seller's communications system, or (ii) information received by the seller from its service provider, where the system used to transport such signals is not that of the seller.

3. A sale of a private communications service shall be sourced as follows:

a. Service for a separate charge related to a customer channel termination point shall be sourced to each jurisdiction in which such customer channel termination point is located;

b. Service where all customer termination points are located entirely within one jurisdiction shall be sourced to such jurisdiction in which the customer channel termination points are located;

c. Service for segments of a channel between two customer channel termination points located in different jurisdictions and which segments of a channel are separately charged shall be sourced 50% to each jurisdiction in which the customer channel termination points are located; and

d. Service for segments of a channel located in more than one jurisdiction and which segments are not separately billed shall be sourced in each jurisdiction based on a percentage determined by dividing the number of customer channel termination points in each jurisdiction by the total number of customer channel termination points.

2006, c. 780.

§ 58.1-650. Bundled transaction of communications services

A. For purposes of this chapter, a bundled transaction of communications services includes communications services taxed under this chapter and consists of distinct and identifiable properties, services, or both, sold for one nonitemized charge for which the tax treatment of the distinct properties and services is different.

B. In the case of a bundled transaction described in subsection A, if the charge is attributable to services that are taxable and services that are nontaxable, the portion of the charge attributable to the nontaxable services shall be subject to tax unless the communications services provider can reasonably identify the nontaxable portion from its books and records kept in the regular course of business.

2006, c. 780.

§ 58.1-651. Tax collectible by communication service providers; jurisdiction

A. The tax levied by § 58.1-648 shall be collectible by all persons who are communications services providers, who have sufficient contact with the Commonwealth to qualify under subsection B, and who are required to be registered under § 58.1-653. However, the communications services provider shall separately state the amount of the tax and add that tax to the sales price of the service. Thereafter, the tax shall be a debt from the customer to the communications services provider until paid and shall be recoverable at law in the same manner as other debts.

B. A communications services provider shall be deemed to have sufficient activity within the Commonwealth to require registration if he does any of the activities listed in § 58.1-612.

C. Nothing contained in this chapter shall limit any authority that the Commonwealth may enjoy under the provisions of federal law or an opinion of the United States Supreme Court to require the collection of communications sales and use taxes by any communications services provider.

2006, c. 780.

§ 58.1-652. Customer remedy procedures for billing errors

If a customer believes that an amount of tax, or an assignment of place of primary use or taxing jurisdiction included on a billing is erroneous, the customer shall notify the communications service provider in writing. The customer shall include in this written notification the street address for the customer's place of primary use, the account name and number for which the customer seeks a correction, a description of the error asserted by the customer, and any other information that the communications service provider reasonably requires to process the request. Within 15 days of receiving a notice under this section in the provider's billing dispute office, the communications service provider shall review its records, within an additional 15 days, to determine the customer's taxing jurisdiction. If this review shows that the amount of tax or assignment of place of primary use or taxing jurisdiction is in error, the communications service provider shall correct the error and refund or credit the amount of tax erroneously collected from the customer for a period of up to two years. If this review shows that the amount of tax or assignment of place of primary use or taxing jurisdiction is correct, the communications service provider shall provide

a written explanation to the customer. The procedures in this section shall be the first course of remedy available to customers seeking correction of assignment of place of primary use or taxing jurisdiction, or a refund of or other compensation for taxes erroneously collected by the communications service provider, and no cause of action based upon a dispute arising from such taxes shall accrue until a customer has reasonably exercised the rights and procedures set forth in this subsection.

2006, c. 780.

§ 58.1-653. Communications services providers' certificates of registration; penalty

A. Every person desiring to engage in or conduct business as a communications services provider in the Commonwealth shall file with the Tax Commissioner an application for a certificate of registration.

B. Every application for a certificate of registration shall set forth the name under which the applicant transacts or intends to transact business, the location of his place of business, and such other information as the Tax Commissioner may reasonably require.

C. When the required application has been made, the Tax Commissioner shall issue to each applicant a certificate of registration. A certificate of registration is not assignable and is valid only for the person in whose name it is issued and for the transaction of the business designated therein.

D. Whenever a person fails to comply with any provision of this chapter or any rule or regulation relating thereto, the Tax Commissioner, upon a hearing after giving the noncompliant person 30 days' notice in writing, specifying the time and place of the hearing and requiring him to show cause why his certificate of registration should not be revoked or suspended, may revoke or suspend the certificate of registration held by that person. The notice may be personally served or served by registered mail directed to the last known address of the noncompliant person.

E. Any person who engages in business as a communications services provider in the Commonwealth without obtaining a certificate of registration, or after a certificate of registration has been suspended or revoked, shall be guilty of a Class 2 misdemeanor as shall each officer of a corporation that so engages in business as an unregistered communications services provider. Each day's continuance in business in violation of this section shall constitute a separate offense.

F. If the holder of a certificate of registration ceases to conduct his business, the certificate shall expire upon cessation of business, and the certificate holder shall inform the Tax Commissioner in writing within 30 days after he has ceased to conduct business. If the holder of a certificate of registration desires to change his place of business, he shall so inform the Tax Commissioner in writing and his certificate shall be revised accordingly.

G. This section shall also apply to any person who engages in the business of furnishing any of the things or services taxable under this chapter. Moreover, it shall apply to any person who is liable only for the collection of the use tax.

2006, c. 780.

§ 58.1-654. Returns by communications services providers; payment to accompany return

A. Every communications services provider required to collect or pay the sales or use tax shall, on or before the twentieth day of the month following the month in which the tax is billed, transmit to the Tax Commissioner a return showing the sales price, or cost price, as the case may be, and the tax collected or accrued arising from all transactions taxable under this chapter. In the case of communications services providers regularly keeping books and accounts on the basis of an annual period that varies from 52 to 53 weeks, the Tax Commissioner may make rules and regulations for reporting consistent with such accounting period.

A sales or use tax return shall be filed by each registered communications services provider even though the communications services provider is not liable to remit to the Tax Commissioner any tax for the period covered by the return.

B. At the time of transmitting the return required under subsection A, the communications services provider shall remit to the Tax Commissioner the amount of tax due after making appropriate adjustments for accounts uncollectible and charged off as provided in § 58.1-655. The tax imposed by this chapter shall, for each period, become delinquent on the twenty-first day of the succeeding month if not paid.

2006, c. 780.

§ 58.1-655. Bad debts

In any return filed under the provisions of this chapter, the communications services provider may credit, against the tax shown to be due on the return, the amount of sales or use tax previously returned and paid on accounts that are owed to the communications services provider and that have been found to be worthless within the period covered by the return. The credit, however, shall not exceed the amount of the uncollected payment determined by treating prior payments on each debt as consisting of the same proportion of payment, sales tax, and other nontaxable charges as in the total debt originally owed to the communications services provider. The amount of accounts for which a credit has been taken that are thereafter in whole or in part paid to the communications services provider shall be included in the first return filed after such collection.

2006, c. 780.

§ 58.1-656. Discount

For the purpose of compensating a communications services provider holding a certificate of registration under § 58.1-653 for accounting for and remitting the tax levied by this chapter, a communications services provider shall be allowed the following percentages of the first 3% of the tax levied by § 58.1-648 and accounted for in the form of a deduction in submitting his return and paying the amount due by him if the amount due was not delinquent at the time of payment.

Monthly Taxable SalesPercentage

$0 to $62,5004%

$62,501 to $208,0003%

$208,001 and above2%

The discount allowed by this section shall be computed according to the schedule provided, regardless of the number of certificates of registration held by a communications services provider.

2006, c. 780.

§ 58.1-657. Sales presumed subject to tax; exemption certificates; Internet access service providers

A. All sales are subject to the tax until the contrary is established. The burden of proving that a sale of communications services is not taxable is upon the communications services provider unless he takes from the taxpayer a certificate to the effect that the service is exempt under this chapter.

B. The exemption certificate mentioned in this section shall relieve the person who obtains such a certificate from any liability for the payment or collection of the tax, except upon notice from the Tax Commissioner that the certificate is no longer acceptable. The exemption certificate shall be signed, manually or electronically, by and bear the name and address of the taxpayer; shall indicate the number of the certificate of registration, if any, issued to the taxpayer; shall indicate the general character of the communications services sold or to be sold under a blanket exemption certificate; and shall be substantially in the form as the Tax Commissioner may prescribe.

C. In the case of a provider of Internet access service that purchases a telecommunications service to provide Internet access, the Internet access provider shall give the communications service provider a certificate of use containing its name, address and signature, manually or electronically, of an officer of the Internet access service provider. The certificate of use shall state that the purchase of telecommunications service is being made in its capacity as a provider of Internet access in order to provide such access. Upon receipt of the certificate of use, the communications service provider shall be relieved of any liability for the communications sales and use tax related to the sale of telecommunications service to the Internet access service provider named in the certificate. In the event the provider of Internet access uses the telecommunications service for any taxable purpose, that provider shall be liable for and pay the communications sales and use tax directly to the Commonwealth in accordance with § 58.1-658.

D. If a taxpayer who holds a certificate under this section and makes any use of the service other than an exempt use or retention, demonstration, or display while holding the communications service for resale in the regular course of business, such use shall be deemed a taxable sale by the taxpayer as of the time the service is first used by him, and the cost of the property to him shall be deemed the sales price of such retail sale.

2006, c. 780.

§ 58.1-658. Direct payment permits

A. Notwithstanding any other provision of this chapter, the Tax Commissioner shall authorize a person who uses taxable communications services within the Commonwealth to pay any tax levied

by this chapter directly to the Commonwealth and waive the collection of the tax by the communications services provider. No such authority shall be granted or exercised except upon application to the Tax Commissioner and issuance by the Tax Commissioner of a direct payment permit. If a direct payment permit is issued, then payment of the communications sales and use tax on taxable communications services shall be made directly to the Tax Commissioner by the permit holder.

B. On or before the twentieth day of each month every permit holder shall file with the Tax Commissioner a return for the preceding month, in a form prescribed by the Tax Commissioner, showing the total value of the taxable communications services so used, the amount of tax due from the permit holder, which amount shall be paid to the Tax Commissioner with the submitted return, and other information as the Tax Commissioner deems reasonably necessary. The Tax Commissioner, upon written request by the permit holder, may grant a reasonable extension of time for filing returns and paying the tax. Interest on the tax shall be chargeable on every extended payment at the rate determined in accordance with § 58.1-15.

C. A permit granted pursuant to this section shall continue to be valid until surrendered by the holder or cancelled for cause by the Tax Commissioner.

D. A person holding a direct payment permit that has not been cancelled shall not be required to pay the tax to the communications services provider as otherwise required by this chapter. Such persons shall notify each communications services provider from whom purchases of taxable communications services are made of their direct payment permit number and that the tax is being paid directly to the Tax Commissioner. Upon receipt of notice, a communications services provider shall be absolved from all duties and liabilities imposed by this chapter for the collection and remittance of the tax with respect to sales of taxable communications services to the direct payment permit holder. Communications services providers who make sales upon which the tax is not collected by reason of the provisions of this section shall maintain records in a manner that the amount involved and identity of each purchaser may be ascertained.

E. Upon the cancellation or surrender of a direct payment permit, the provisions of this chapter, without regard to this section, shall thereafter apply to the person who previously held the direct payment permit, and that person shall promptly notify in writing communications services providers from whom purchases of taxable communications services are made of such cancellation or surrender. Upon receipt of notice, the communications services provider shall be subject to the provisions of this chapter, without regard to this section, with respect to all sales of taxable communications services thereafter made to the former direct payment permit holder.

2006, c. 780.

§ 58.1-659. Collection of tax; penalty

A. The tax levied by this chapter shall be collected and remitted by the communications services provider, but the communications services provider shall separately state the amount of the tax

and add such tax to the sales price or charge. Thereafter, the tax shall be a debt from the customer to the communications services provider until paid and shall be recoverable at law in the same manner as other debts.

B. Notwithstanding any exemption from taxes that any communications services provider now or hereafter may enjoy under the Constitution or laws of the Commonwealth, or any other state, or of the United States, a communications services provider shall collect the tax from the customer of taxable communications services and shall remit the same to the Tax Commissioner as provided by this chapter.

C. Any communications services provider collecting the communications sales or use tax on transactions exempt or not taxable under this chapter shall remit to the Tax Commissioner such erroneously or illegally collected tax unless or until he can affirmatively show that the tax has been refunded to the customer or credited to his account.

D. Any communications services provider who intentionally neglects, fails, or refuses to collect the tax upon every taxable sale of communications services made by him, or his agents or employees on his behalf, shall be liable for and pay the tax himself. Moreover, any communications services provider who intentionally neglects, fails, or refuses to pay or collect the tax herein provided, either by himself or through his agents or employees, shall be guilty of a Class 1 misdemeanor.

All sums collected by a communications services provider as required by this chapter shall be deemed to be held in trust for the Commonwealth.

2006, c. 780.

§ 58.1-660. Sale of business

If any communications services provider liable for any tax, penalty, or interest levied by this chapter sells his business or stock of goods or quits the business, he shall make a final return and payment within 15 days after the date of selling or quitting the business. His successors or assigns, if any, shall withhold a sufficient amount of the purchase money to cover taxes, penalties, and interest due and unpaid until the former owner produces a receipt from the Tax Commissioner showing that all taxes, penalties, and interest have been paid or a certificate stating that no taxes, penalties, or interest are due. If the purchaser of a business or stock of goods fails to withhold the purchase money as required above, he shall be personally liable for the payment of the taxes, penalties, and interest due and unpaid that were incurred by the business operation of the former owner. In no event, however, shall the tax, penalties, and interest due by the purchaser be more than the purchase price paid for the business or stock of goods.

2006, c. 780.

§ 58.1-661. Certain provisions in Chapter 6 of this title to apply, mutatis mutandis

The provisions in §§ 58.1-630 through 58.1-637 of this title shall apply to this chapter, mutatis mutandis, except as herein provided and except that whenever the term "dealer" is used in these sections, the term "communications services provider" shall be substituted. The Tax Commissioner

shall promulgate regulations to interpret and clarify the applicability of §§ 58.1-630 through 58.1-637 to this chapter.

2006, c. 780.

§ 58.1-662. Disposition of communications sales and use tax revenue; Communications Sales and Use Tax Trust Fund; localities' share

A. There is hereby created in the Department of the Treasury a special nonreverting fund which shall be known as the Communications Sales and Use Tax Trust Fund (the Fund). The Fund shall be established on the books of the Comptroller and any funds remaining in the Fund at the end of a biennium shall not revert to the general fund but shall remain in the Fund. Interest earned on the funds shall be credited to the Fund. After transferring moneys from the Fund to the Department of Taxation to pay for the direct costs of administering this chapter, the moneys in the Fund shall be allocated to the Commonwealth's counties, cities, and towns, and distributed in accordance with subsection C, after the payment (i) for the telephone relay service center is made to the Department for the Deaf and Hard-of-Hearing in accordance with the provisions of § 51.5-115 and (ii) of any franchise fee amount due to localities in accordance with any cable franchise in effect as of January 1, 2007.

B. The localities' share of the net revenue distributable under this section among the counties, cities, and towns shall be apportioned by the Tax Commissioner and distributed as soon as practicable after the close of each month during which the net revenue was received into the Fund. The distribution of the localities' share of such net revenue shall be computed with respect to the net revenue received in the state treasury during each month.

C. The net revenue distributable among the counties, cities, and towns shall be apportioned and distributed monthly according to each county's, city's, and town's pro rata distribution from the Fund in fiscal year 2010. Beginning July 1, 2011, the percentage share of the distribution due to Lancaster County shall be adjusted as if, in addition to the revenues Lancaster County received from telecommunications and television cable taxes in fiscal year 2006, it received $270,497 in local consumer utility taxes on telephone service in fiscal year 2006.

An amount equal to the total franchise fee paid to each locality with a cable franchise existing on the effective date of this section at the rate in existence on January 1, 2007, shall be subtracted from the amount owed to such locality prior to the distribution of moneys from the Fund.

The Department of Taxation shall adjust the percentage share of distribution from the Fund due to each locality entitled to a distribution from the Fund upon a ruling by the Tax Commissioner in favor of a county, city, or town, provided that any such ruling in favor of a county, city, or town shall not result in more than an aggregate of $100,000 being redistributed from all other counties, cities, and towns. Counties, cities, and towns are authorized to request such ruling. The Tax Commissioner shall issue no such ruling changing the current distribution in favor of a county, city, or town unless the county, city, or town provides evidence to the Tax Commissioner that it had

collected telecommunications and television cable funds (local consumer utility tax on landlines and wireless, E-911, business license tax in excess of 0.5 percent, cable franchise fee, video programming excise tax, local consumer utility tax on cable television) in fiscal year 2006 from local tax rates adopted on or before January 1, 2006.

D. For the purposes of the Comptroller making the required transfers, the Tax Commissioner shall make a written certification to the Comptroller no later than the twenty-fifth of each month certifying the communications sales and use tax revenues generated in the preceding month. Within three calendar days of receiving such certification, the Comptroller shall make the required transfers to the Communications Sales and Use Tax Trust Fund.

E. If errors are made in any distribution, or adjustments are otherwise necessary, the errors shall be corrected and adjustments made in the distribution for the next month or for subsequent months.

2006, c. 780; 2008, cc. 25, 148; 2009, cc. 680, 683; 2010, cc. 285, 365, 385; 2011, c. 364.

Chapter 7 - BEER AND BEVERAGE EXCISE TAX [Repealed]

§§ 58.1-700 through 58.1-718. Repealed

Repealed by Acts 1988, c. 261.

Chapter 8 - STATE RECORDATION TAX

§ 58.1-800. Title

This chapter shall be known and may be cited as the "Virginia Recordation Tax Act."

1984, c. 675.

§ 58.1-801. Deeds generally; charter amendments

A. On every deed admitted to record, except a deed exempt from taxation by law, there is hereby levied a state recordation tax. The rate of the tax shall be 25 cents on every $100 or fraction thereof of the consideration of the deed or the actual value of the property conveyed, whichever is greater.

Upon deeds conveying property lying partly within the Commonwealth and partly without the Commonwealth, the tax herein imposed shall apply only to the value of so much of the property conveyed as is situated within the Commonwealth.

B. When the charter of a corporation is amended, and the only effect of such amendment is to change the corporate name of such corporation, the tax upon the recordation of a deed conveying to, or vesting in, such corporation under its changed name, the title to any or all of the real or personal property of such corporation held in its name as it existed immediately prior to such amendment, shall be 50 cents.

Code 1950, § 58-54; 1968, c. 778; 1970, c. 772; 1984, c. 675; 2004, Sp. Sess. I, c. 3.

§ 58.1-802. Additional tax paid by grantor; collection

A. In addition to any other tax imposed under the provisions of this chapter, a tax is hereby imposed on each deed, instrument, or writing by which lands, tenements, or other realty sold is granted, assigned, transferred, or otherwise conveyed to, or vested in the purchaser, or any other person, by such purchaser's direction. The rate of the tax, when the consideration or value of the interest, whichever is greater, exceeds $100, shall be 50 cents for each $500 or fraction thereof, exclusive of the value of any lien or encumbrance remaining thereon at the time of the sale, whether such lien is assumed or the realty is sold subject to such lien or encumbrance. No increase in the city or county recordation tax authorized by § 58.1-814 shall be deemed authorized by this section.

The tax imposed by this section shall be paid by the grantor, or any person who signs on behalf of the grantor, of any deed, instrument, or writing subject to the tax imposed by this section. No tax shall be imposed pursuant to this section if the grantor is a locality at a judicial sale of tax-delinquent property conducted pursuant to Article 4 (§ 58.1-3965 et seq.) of Chapter 39.

No such deed, instrument, or other writing shall be admitted to record unless (i) the amount of the consideration is stated on the first page of the document to be admitted to record and (ii) certification of the clerk of the court wherein first recorded has been affixed thereto that the tax imposed by this section has been paid. The clerk shall include within the certificate the amount of such tax collected thereon.

B. Taxes imposed by this section shall be collected as provided in § 58.1-812 and the clerk shall return taxes collected hereunder one-half into the state treasury and one-half into the treasury of the locality.

The local portion of the tax imposed by this section on property that is located in more than one jurisdiction shall be collected by the clerk in proportion to the value of the property located in each such locality when recorded therein.

Every clerk of court collecting taxes under this section for the county or city that he serves shall be entitled to compensation for such service at five percent of the amount so collected and paid.

Code 1950, § 58-54.1; 1970, c. 772; 1972, c. 186; 1976, c. 558; 1982, c. 630; 1984, cc. 397, 675; 1988, c. 200; 2007, cc. 748, 768; 2012, c. 513; 2016, c. 662.

§ 58.1-802.1. Repealed

Repealed by Acts 2009, cc. 864 and 871, cl. 5.

. (Contingent expiration date -- see note) Regional congestion relief fee

In addition to any other tax or fee imposed under the provisions of this chapter, a fee, delineated as the "regional congestion relief fee," is hereby imposed on each deed, instrument, or writing by which lands, tenements, or other realty located in any county or city in a Planning District described in this section is sold and is granted, assigned, transferred, or otherwise conveyed to or vested in the purchaser or any other person, by such purchaser's direction. The fee shall be imposed in a Planning District established pursuant to Chapter 42 (§ 15.2-4200 et seq.) of Title

15.2 that (i) as of January 1, 2013, has a population of two million or more, as shown by the most recent United States Census, has not less than 1.7 million motor vehicles registered therein, and has a total transit ridership of not less than 50 million riders per year across all transit systems within the Planning District or (ii) as shown by the most recent United States Census meets the population criteria set forth in clause (i) and also meets the vehicle registration and ridership criteria set forth in clause (i). The rate of the fee, when the consideration or value of the interest, whichever is greater, equals or exceeds $100, shall be $0.15 for each $100 or fraction thereof, exclusive of the value of any lien or encumbrance remaining thereon at the time of the sale, whether such lien is assumed or the realty is sold subject to such lien or encumbrance. In any case in which the fee is imposed pursuant to clause (ii) such fee shall be effective beginning on the July 1 immediately following the calendar year in which all of the criteria under such clause have been met.

The fee imposed by this section shall be paid by the grantor, or any person who signs on behalf of the grantor, of any deed, instrument, or writing subject to the fee imposed by this section.

No such deed, instrument, or other writing shall be admitted to record unless certification of the clerk wherein first recorded has been affixed thereto that the fee imposed pursuant to this section has been paid.

Fees imposed by this section shall be collected by the clerk of the court and deposited into the state treasury as soon as practicable. Such fees shall then be deposited into special funds established by law. In the case of Planning District 8, the revenue generated and collected therein shall be deposited into the fund established in § 33.2-2509. For additional Planning Districts that may become subject to this section, funds shall be established by appropriate legislation.

2013, c. 766.

*This section is set out twice because the 14th enactment of Chapter 766 of the Acts of Assembly of 2013 states: "That the provisions of this act that generate additional revenue through state taxes or fees for transportation (i) throughout the Commonwealth and in Planning District 8 and Planning District 23 or (ii) in any other Planning District that becomes subject to the state taxes or fees imposed solely in Planning Districts pursuant to this act shall expire on December 31 of any year in which the General Assembly appropriates any of such additional revenues for any non-transportation-related purpose or transfers any of such additional revenues that are to be deposited into the Commonwealth Transportation Fund or any subfund thereof pursuant to general law for a non-transportation-related purpose. In the event a local government of any county or city wherein the additional taxes and fees are levied appropriates or allocates any of such additional revenues to a non-transportation purpose, such locality shall not be the direct beneficiary of any of the revenues generated by the taxes or fees in the year immediately succeeding the year in which revenues were appropriated or allocated to a non-transportation purpose."

§ 58.1-803. Deeds of trust or mortgages; maximum tax

A. 1. Except as provided in this section, a recordation tax on deeds of trust or mortgages is hereby imposed at a rate of 25 cents on every $100 or portion thereof of the amount of bonds or other obligations secured thereby. In the event of an open, credit line, or revolving deed of trust, the amount of the obligation for purposes of this section shall be the maximum amount secured that may be outstanding at any one time, regardless of the amount owed or outstanding at the time the instrument is recorded.

2. In any case in which the amount which may be secured under a deed of trust or mortgage is not ascertainable, or in which the obligations described are not fully secured because they exceed the fair market value of the property conveyed, the tax shall be based upon the fair market value of the property conveyed, determined as of the date of the deed of trust or mortgage. The fair market value of the property shall include the value of any realty required by the terms of the deed of trust or mortgage to be constructed thereon.

B. On deeds of trust or mortgages upon the works and property of a railroad lying partly within the Commonwealth and partly without the Commonwealth, the tax shall be only upon such proportion of the amount of bonds, or other obligations secured thereby, as the number of miles of the line of such company in the Commonwealth bears to the whole number of miles of the line of such company conveyed by such deed of trust or mortgage.

On deeds of trust or mortgages conveying (i) property lying partly within the Commonwealth and partly outside the Commonwealth or (ii) property within the Commonwealth to secure bonds or obligations secured by deeds of trust or mortgages on property outside the Commonwealth, the tax herein imposed shall be only upon such proportion of the bonds or obligations as the actual value of the property located within the Commonwealth, or which may be brought into the Commonwealth, bears to the actual value of the entire amount of property conveyed by such deed of trust or mortgage or to the entire amount of property conveyed by all of such deeds of trust or mortgages to secure the bonds or obligations, as applicable, subject to the limitations set forth in subdivision A 2.

C. On deeds of trust or mortgages, which provide for an initial issue of bonds, to be followed thereafter by additional bonds, unlimited in amount, if such deed of trust or mortgage provides that as and when such additional bonds are issued a supplemental indenture shall be recorded in the office in which the original deed of trust or mortgage is first recorded, which supplement shall contain a statement as to the amount of the additional bonds to be issued, then the tax shall be paid upon the initial amount of bonds when the original deed of trust is recorded and thereafter on each additional amount of bonds when the supplemental indenture relating to such additional bonds is recorded.

D. 1. On deeds of trust, mortgages, or other instruments that are supplemental to, wrap around, or modify the terms of an existing deed of trust or mortgage, on which the tax imposed hereunder has already been paid, the tax shall be paid only on that portion of the face amount of the bond or

obligation secured thereby which is in addition to the amount of the original debt or obligation secured by the deed of trust or mortgage on which tax has been paid. The tax shall be calculated using the rate scale in subsection F, starting at the point on the scale that applies to the first dollar in excess of the amount of the original debt or obligation secured by the prior instrument. In the event of an open, credit line, or revolving deed of trust, the additional amount secured shall be the amount by which the original obligation secured by the supplemental instrument exceeds the maximum obligation secured by the prior instrument, regardless of the amount owed or outstanding at the time those instruments were recorded. The instrument shall certify the amount of the original debt or obligation secured, subject to the limitation set forth in subdivision A 2.

2. If the principal amount of the obligation secured by the prior instrument is increased by the supplemental instrument, the tax imposed under this section shall be paid only on the amount of the increase over the original amount secured by the prior instrument. If the bonds or other obligations secured by a prior instrument were not fully secured because they exceeded the fair market value of the property conveyed and the tax paid on the prior instrument was based upon the fair market value of the property conveyed pursuant to subdivision A 2, then the foregoing tax shall be paid on the increase, if any, in the value of such property since the recordation of the prior instrument.

3. The supplemental instrument, or any cover sheet submitted with the supplemental instrument, shall include the original principal amount of the bonds or other obligations secured by the prior instrument, the deed book and page number or instrument number, as applicable, of the prior instrument, and, if applicable with regard to the calculation of the tax paid on the prior instrument, any increase in the fair market value of the property conveyed.

E. 1. On deeds of trust or mortgages, the purpose of which is to secure the refinancing of an existing debt, which debt is secured by a deed of trust or mortgage on which the tax imposed hereunder has been paid, the tax shall be paid on the amount of the bond or other obligation secured thereby, subject to the limitation set forth in subdivision A 2, in accordance with the following schedule:

On the first $10 million of value as determined pursuant to this section, 18 cents ($0.18) upon every $100 or portion thereof;

On the next $10 million of value as determined pursuant to this section, 16 cents ($0.16) upon every $100 or portion thereof;

On the next $10 million of value as determined pursuant to this section, 14 cents ($0.14) upon every $100 or portion thereof;

On the next $10 million of value as determined pursuant to this section, 12 cents ($0.12) upon every $100 or portion thereof; and

On all over $40 million of value as determined pursuant to this section, 10 cents ($0.10) upon every $100 or portion thereof, incorporated into this section.

2. The instrument shall certify the deed book and page number or instrument number, as applicable, of the recorded instrument on which the tax for the original debt was paid. For purposes of this subsection, the term "value" means the amount of the bond or other obligation secured by the refinancing deed of trust.

F. The maximum tax on the recordation of any deed of trust or mortgage or on any indenture supplemental thereto, other than instruments subject to subdivision E 1, shall be determined in accordance with the following schedule:

On the first $10 million of value as determined pursuant to this section, 25 cents ($0.25) upon every $100 or portion thereof;

On the next $10 million of value as determined pursuant to this section, 22 cents ($0.22) upon every $100 or portion thereof;

On the next $10 million of value as determined pursuant to this section, 19 cents ($0.19) upon every $100 or portion thereof;

On the next $10 million of value as determined pursuant to this section, 16 cents ($0.16) upon every $100 or portion thereof; and

On all over $40 million of value as determined pursuant to this section, 13 cents ($0.13) upon every $100 or portion thereof, incorporated into this section.

Code 1950, § 58-55; 1972, c. 186; 1977, c. 611; 1978, cc. 68, 805; 1982, c. 630; 1983, c. 553; 1984, c. 675; 1998, c. 349; 2004, Sp. Sess. I, c. 3; 2012, cc. 505, 820; 2015, cc. 434, 488.

§ 58.1-804. Construction loan deeds of trust or mortgages

A. As used in this section, the term "construction loan deed of trust or mortgage" means a deed of trust or mortgage upon real estate, which states therein that it is given to secure a loan for real estate construction, and the terms of which provide that the principal sum owing under the instrument giving rise to the deed of trust or mortgage shall become due and payable on demand or three years or less from the date of such instrument. The term "permanent loan deed of trust or mortgage" means a deed of trust or mortgage upon real estate, the terms of which provide that the principal sum owing under the instrument giving rise to the deed of trust or mortgage shall become due and payable more than three years from the date of such instrument, and such deed of trust or mortgage secures an instrument made by the same persons who made the instrument which the construction loan deed of trust or mortgage secured and substantially the same real estate is conveyed thereby.

B. The tax provided by § 58.1-803 shall apply to construction loan deeds of trust or mortgages.

C. The tax provided by § 58.1-803 shall not be imposed upon a permanent loan deed of trust or mortgage, as defined herein, if such deed of trust or mortgage is recorded within three years of the date of the recordation of the construction loan deed of trust or mortgage, as defined herein, and the tax on the construction loan deed of trust or mortgage has been paid. However, if the permanent loan deed of trust or mortgage, as defined herein, secures an instrument, the principal amount of which is more than the construction loan deed of trust or mortgage, the tax shall be imposed and calculated on the additional amount. Such permanent loan deed of trust or mortgage shall contain a reference to the construction loan deed of trust or mortgage and the book and page where recorded.

Code 1950, § 58-55.1; 1970, c. 313; 1973, c. 139; 1977, c. 398; 1984, c. 675.

§ 58.1-805. Deeds of release

The recordation tax levied on a deed of release shall be fifty cents.

Code 1950, § 58-56; 1984, c. 675.

§ 58.1-806. Repealed

Repealed by Acts 2016, c. 37, cl. 2.

§ 58.1-807. Contracts generally; leases

A. Except as hereinafter provided, on every contract or memorandum thereof relating to real or personal property admitted to record, a recordation tax is hereby levied at the rate of 25 cents on every $100 or fraction thereof of the consideration or value contracted for.

B. The recordation of a deed of lease for a term of years, or assignment of the lessee's interest therein, or memorandum thereof, shall be taxed according to the provisions of this section, unless provided otherwise in § 58.1-809 or unless the annual rental, multiplied by the term for which the lease runs, or remainder thereof, equals or exceeds the actual value of the property leased. In such cases the tax for recording the deed of lease shall be based upon the actual value of the property at the date of lease, including the value of any realty required by the terms of the lease to be constructed thereon by the lessor.

C. The recordation of an assignment of the lessor's interest in a lease, or memorandum thereof, shall be taxed according to the provisions of this section, unless the assignment of the lessor's interest in the lease is to provide additional security for an obligation of the lessor on which the tax has been previously paid, or the assignment of the lessor's interest is made to the person who owns the property which is subject to the lease. In such cases there shall be no tax for recording the lessor's assignment of the lease.

D. Notwithstanding the other provisions of this section, the tax on the recordation of leases of oil and gas rights shall be $25. The tax on the recordation of leases of coal and other mineral rights shall be $50.

E. Notwithstanding the other provisions of this section, the tax on the recordation of leases of outdoor advertising signs owned by a person engaged in the business of outdoor advertising licensed by the Virginia Department of Transportation pursuant to § 33.2-1209 shall be $25.

F. Notwithstanding the other provisions of this section, the tax on the recordation of a lease of a communications tower or a communications tower site shall be $75; the tax on the recordation of each lease to affix any communications equipment or antenna to any such tower or other structure shall be $15.

Code 1950, § 58-58; 1972, c. 186; 1981, c. 443; 1982, cc. 436, 630; 1983, c. 89; 1984, c. 675; 2001, c. 586; 2002, c. 14; 2004, c. 974; 2004, Sp. Sess. I, c. 3.

§ 58.1-808. Sales contracts for the sale of rolling stock or equipment

On every contract or agreement admitted to record relating to the sale of rolling stock or equipment, whether the title is reserved in the vendor or not, with a railroad corporation or other corporation or with a person, firm or company, the tax shall be 25 cents on every $100 or fraction thereof of the amount contracted for in such contract or agreement. When such contract or agreement is with a railroad corporation lying partly within the Commonwealth and partly without the Commonwealth, the tax shall be upon such proportion of the amount contracted for as the number of miles of the line of such railroad corporation in the Commonwealth bears to the whole number of miles of line of such railroad corporation.

Code 1950, § 58-59; 1984, c. 675; 2004, Sp. Sess. I, c. 3.

§ 58.1-809. When supplemental writings not taxable

Sections 58.1-803, 58.1-807, and 58.1-808 are not to be construed as requiring the payment of any tax for the recordation of any deed of trust, deed of subordination, mortgage, contract, agreement, modification, addendum, or other writing that is supplemental to any deed of trust, mortgage, contract, agreement, modification, addendum, or other writing theretofore admitted to record upon which the tax herein imposed has been paid, or which is exempt from the tax herein imposed by reason of subsection C of § 58.1-804, when the sole purpose and effect of the supplemental instrument is to wrap around a prior instrument, to convey property, in addition to or in substitution, in whole or in part, of the property conveyed in a prior instrument, to secure or to better secure the payment of the amount contracted for in a prior instrument, to alter the priority of a prior instrument, or to modify the terms, conditions, parties, or provisions of a prior instrument, other than to increase the amount of the principal obligation secured thereby.

The assumption of a deed of trust shall not be separately taxable under § 58.1-801, 58.1-803 or 58.1-807, whether such assumption is by a separate instrument or included in the deed of conveyance.

Code 1950, § 58-60; 1977, c. 153; 1981, c. 621; 1984, c. 675; 2015, cc. 434, 488.

§ 58.1-810. What other deeds not taxable

When the tax has been paid at the time of the recordation of the original deed, no additional recordation tax shall be required for admitting to record:

1. A deed of confirmation;

2. A deed of correction;

3. A deed to which a husband and wife are the only parties;

4. A deed arising out of a contract to purchase real estate; if the tax already paid is less than a proper tax based upon the full amount of consideration or actual value of the property involved in the transaction, an additional tax shall be paid based on the difference between the full amount of such consideration or actual value and the amount on which the tax has been paid; or

5. A notice of assignment of a note secured by a deed of trust or mortgage.

Code 1950, § 58-61; 1952, c. 461; 1964, cc. 19, 361; 1970, c. 420; 1971, Ex. Sess., c. 60; 1972, c. 250; 1977, c. 418; 1979, cc. 559, 566; 1982, c. 651; 1984, c. 675.

§ 58.1-811. (Contingent expiration date) Exemptions

A. The taxes imposed by §§ 58.1-801 and 58.1-807 shall not apply to any deed conveying real estate or lease of real estate:

1. To an incorporated college or other incorporated institution of learning not conducted for profit, where such real estate is intended to be used for educational purposes and not as a source of revenue or profit;

2. To an incorporated church or religious body or to the trustee or trustees of any church or religious body, or a corporation mentioned in § 57-16.1, where such real estate is intended to be used exclusively for religious purposes, or for the residence of the minister of any such church or religious body;

3. To the United States, the Commonwealth, or to any county, city, town, district, or other political subdivision of the Commonwealth;

4. To the Virginia Division of the United Daughters of the Confederacy;

5. To any nonstock corporation organized exclusively for the purpose of owning or operating a hospital or hospitals not for pecuniary profit;

6. To a corporation upon its organization by persons in control of the corporation in a transaction which qualifies for nonrecognition of gain or loss pursuant to § 351 of the Internal Revenue Code as it exists at the time of the conveyance;

7. From a corporation to its stockholders upon complete or partial liquidation of the corporation in a transaction which qualifies for income tax treatment pursuant to § 331, 332, 333, or 337 of the Internal Revenue Code as it exists at the time of liquidation;

8. To the surviving or new corporation, partnership, limited partnership, business trust, or limited liability company upon a merger or consolidation to which two or more such entities are parties, or in a reorganization within the meaning of § 368(a)(1)(C) and (F) of the Internal Revenue Code as amended;

9. To a subsidiary corporation from its parent corporation, or from a subsidiary corporation to a parent corporation, if the transaction qualifies for nonrecognition of gain or loss under the Internal Revenue Code as amended;

10. To a partnership or limited liability company, when the grantors are entitled to receive not less than 50 percent of the profits and surplus of such partnership or limited liability company, provided that the transfer to a limited liability company is not a precursor to a transfer of control of the assets of the company to avoid recordation taxes;

11. From a partnership or limited liability company, when the grantees are entitled to receive not less than 50 percent of the profits and surplus of such partnership or limited liability company, provided that the transfer from a limited liability company is not subsequent to a transfer of control of the assets of the company to avoid recordation taxes;

12. To trustees of a revocable inter vivos trust, when the grantors in the deed and the beneficiaries of the trust are the same persons, regardless of whether other beneficiaries may also be named in the trust instrument, when no consideration has passed between the grantor and the beneficiaries; and to the original beneficiaries of a trust from the trustees holding title under a deed in trust;

13. When the grantor is the personal representative of a decedent's estate or trustee under a will or inter vivos trust of which the decedent was the settlor, other than a deed of trust conveying property to secure the payment of money or the performance of an obligation, and the sole purpose of such transfer is to comply with a devise or bequest in the decedent's will or to transfer title to one or more beneficiaries after the death of the settlor in accordance with a dispositive provision in the trust instrument;

14. When the grantor is an organization exempt from taxation under § 501(c)(3) of the Internal Revenue Code that is organized and operated primarily to acquire land and purchase materials to erect or rehabilitate low-cost homes on such land, which homes are sold at cost to persons who otherwise would be unable to afford to buy a home through conventional means;

15. When it is a deed of partition, or any combination of deeds simultaneously executed and having the effect of a deed of partition, among joint tenants, tenants in common, or coparceners; or

16. When it is a deed transferring property pursuant to a decree of divorce or of separate maintenance or pursuant to a written instrument incident to such divorce or separation.

B. The taxes imposed by §§ 58.1-803 and 58.1-804 shall not apply to any deed of trust or mortgage:

1. Given by an incorporated college or other incorporated institution of learning not conducted for profit;

2. Given by the trustee or trustees of a church or religious body or given by an incorporated church or religious body, or given by a corporation mentioned in § 57-16.1;

3. Given by any nonstock corporation organized exclusively for the purpose of owning and/or operating a hospital or hospitals not for pecuniary profit;

4. Given by any local governmental entity or political subdivision of the Commonwealth to secure a debt payable to any other local governmental entity or political subdivision;

5. Securing a loan made by an organization described in subdivision A 14; or

6. Securing a loan made by a county, city, or town, or an agency of such a locality, to a borrower whose household income does not exceed 80 percent of the area median household income established by the U.S. Department of Housing and Urban Development, for the purpose of erecting or rehabilitating a home for such borrower, including the purchase of land for such home.

C. The tax imposed by § 58.1-802 and the fee imposed by § 58.1-802.2 shall not apply to any:

1. Transaction described in subdivisions A 6 through 13, 15, and 16;

2. Instrument or writing given to secure a debt;

3. Deed conveying real estate from an incorporated college or other incorporated institution of learning not conducted for profit;

4. Deed conveying real estate from the United States, the Commonwealth or any county, city, town, district, or other political subdivision thereof;

5. Conveyance of real estate to the Commonwealth or any county, city, town, district, or other political subdivision thereof, if such political unit is required by law to reimburse the parties taxable pursuant to § 58.1-802 or subject to the fee under § 58.1-802.2; or

6. Deed conveying real estate from the trustee or trustees of a church or religious body or from an incorporated church or religious body, or from a corporation mentioned in § 57-16.1.

D. No recordation tax shall be required for the recordation of any deed of gift between a grantor or grantors and a grantee or grantees when no consideration has passed between the parties. Such deed shall state therein that it is a deed of gift.

E. The tax imposed by § 58.1-807 shall not apply to any lease to the United States, the Commonwealth, or any county, city, town, district, or other political subdivision of the Commonwealth.

F. The taxes and fees imposed by §§ 58.1-801, 58.1-802, 58.1-802.2, 58.1-807, 58.1-808, and 58.1-814 shall not apply to (i) any deed of gift conveying real estate or any interest therein to The Nature Conservancy or (ii) any lease of real property or any interest therein to The Nature

Conservancy, where such deed of gift or lease of real estate is intended to be used exclusively for the purpose of preserving wilderness, natural, or open space areas.

G. The words "trustee" or "trustees, " as used in subdivisions A 2, B 2, and C 6, include the trustees mentioned in § 57-8 and the ecclesiastical officers mentioned in § 57-16.

H. No recordation tax levied pursuant to this chapter shall be levied on the release of a contractual right, if the release is contained within a single deed that performs more than one function, and at least one of the other functions performed by the deed is subject to the recordation tax.

I. No recordation tax levied pursuant to this chapter shall be levied on a deed, lease, easement, release, or other document recorded in connection with a concession pursuant to the Public-Private Transportation Act of 1995 (§ 33.2-1800 et seq.) or similar federal law.

J. No recordation tax shall be required for the recordation of any transfer on death deed or any revocation of transfer on death deed made pursuant to the Uniform Real Property Transfer on Death Act (§ 64.2-621 et seq.) when no consideration has passed between the parties.

Code 1950, §§ 58-54.1, 58-55.1, 58-58, 58-61, 58-64, 58-64.1; 1952, cc. 191, 461; 1956, c. 377; 1964, cc. 19, 361; 1970, cc. 313, 420, 772; 1971, Ex. Sess., c. 60; 1972, cc. 186, 250; 1973, cc. 139, 336; 1975, c. 249; 1976, c. 558; 1977, cc. 398, 418; 1978, c. 714; 1979, cc. 559, 566; 1980, c. 652; 1981, cc. 267, 443; 1982, cc. 436, 630, 633, 651; 1983, c. 89; 1984, cc. 397, 428, 675; 1985, c. 134; 1988, cc. 429, 738; 1990, c. 289; 1992, cc. 574, 575; 1994, c. 429; 1995, cc. 127, 303; 1998, c. 333; 1999, c. 400; 2000, cc. 393, 602; 2004, cc. 492, 626; 2005, cc. 93, 928; 2006, c. 922; 2007, cc. 233, 639, 813, 896; 2009, cc. 574, 864, 871; 2013, cc. 390, 766; 2014, c. 338; 2016, cc. 37, 662.

§ 58.1-811. (Contingent effective date) Exemptions

A. The taxes imposed by §§ 58.1-801 and 58.1-807 shall not apply to any deed conveying real estate or lease of real estate:

1. To an incorporated college or other incorporated institution of learning not conducted for profit, where such real estate is intended to be used for educational purposes and not as a source of revenue or profit;

2. To an incorporated church or religious body or to the trustee or trustees of any church or religious body, or a corporation mentioned in § 57-16.1, where such real estate is intended to be used exclusively for religious purposes, or for the residence of the minister of any such church or religious body;

3. To the United States, the Commonwealth, or to any county, city, town, district, or other political subdivision of the Commonwealth;

4. To the Virginia Division of the United Daughters of the Confederacy;

5. To any nonstock corporation organized exclusively for the purpose of owning or operating a hospital or hospitals not for pecuniary profit;

6. To a corporation upon its organization by persons in control of the corporation in a transaction which qualifies for nonrecognition of gain or loss pursuant to § 351 of the Internal Revenue Code as it exists at the time of the conveyance;

7. From a corporation to its stockholders upon complete or partial liquidation of the corporation in a transaction which qualifies for income tax treatment pursuant to § 331, 332, 333, or 337 of the Internal Revenue Code as it exists at the time of liquidation;

8. To the surviving or new corporation, partnership, limited partnership, business trust, or limited liability company upon a merger or consolidation to which two or more such entities are parties, or in a reorganization within the meaning of § 368(a)(1)(C) and (F) of the Internal Revenue Code as amended;

9. To a subsidiary corporation from its parent corporation, or from a subsidiary corporation to a parent corporation, if the transaction qualifies for nonrecognition of gain or loss under the Internal Revenue Code as amended;

10. To a partnership or limited liability company, when the grantors are entitled to receive not less than 50 percent of the profits and surplus of such partnership or limited liability company, provided that the transfer to a limited liability company is not a precursor to a transfer of control of the assets of the company to avoid recordation taxes;

11. From a partnership or limited liability company, when the grantees are entitled to receive not less than 50 percent of the profits and surplus of such partnership or limited liability company, provided that the transfer from a limited liability company is not subsequent to a transfer of control of the assets of the company to avoid recordation taxes;

12. To trustees of a revocable inter vivos trust, when the grantors in the deed and the beneficiaries of the trust are the same persons, regardless of whether other beneficiaries may also be named in the trust instrument, when no consideration has passed between the grantor and the beneficiaries; and to the original beneficiaries of a trust from the trustees holding title under a deed in trust;

13. When the grantor is the personal representative of a decedent's estate or trustee under a will or inter vivos trust of which the decedent was the settlor, other than a deed of trust conveying property to secure the payment of money or the performance of an obligation, and the sole purpose of such transfer is to comply with a devise or bequest in the decedent's will or to transfer title to one or more beneficiaries after the death of the settlor in accordance with a dispositive provision in the trust instrument;

14. When the grantor is an organization exempt from taxation under § 501(c)(3) of the Internal Revenue Code that is organized and operated primarily to acquire land and purchase materials to

erect or rehabilitate low-cost homes on such land, which homes are sold at cost to persons who otherwise would be unable to afford to buy a home through conventional means;

15. Pursuant to any deed of partition, or any combination of deeds simultaneously executed and having the effect of a deed of partition, among joint tenants, tenants in common, or coparceners; or

16. Pursuant to any deed transferring property pursuant to a decree of divorce or of separate maintenance or pursuant to a written instrument incident to such divorce or separation.

B. The taxes imposed by §§ 58.1-803 and 58.1-804 shall not apply to any deed of trust or mortgage:

1. Given by an incorporated college or other incorporated institution of learning not conducted for profit;

2. Given by the trustee or trustees of a church or religious body or given by an incorporated church or religious body, or given by a corporation mentioned in § 57-16.1;

3. Given by any nonstock corporation organized exclusively for the purpose of owning and/or operating a hospital or hospitals not for pecuniary profit;

4. Given by any local governmental entity or political subdivision of the Commonwealth to secure a debt payable to any other local governmental entity or political subdivision;

5. Securing a loan made by an organization described in subdivision A 14; or

6. Securing a loan made by a county, city, or town, or an agency of such a locality, to a borrower whose household income does not exceed 80 percent of the area median household income established by the U.S. Department of Housing and Urban Development, for the purpose of erecting or rehabilitating a home for such borrower, including the purchase of land for such home.

C. The tax imposed by § 58.1-802 shall not apply to any:

1. Transaction described in subdivisions A 6 through 13, 15, and 16;

2. Instrument or writing given to secure a debt;

3. Deed conveying real estate from an incorporated college or other incorporated institution of learning not conducted for profit;

4. Deed conveying real estate from the United States, the Commonwealth or any county, city, town, district, or other political subdivision thereof;

5. Conveyance of real estate to the Commonwealth or any county, city, town, district, or other political subdivision thereof, if such political unit is required by law to reimburse the parties taxable pursuant to § 58.1-802; or

6. Deed conveying real estate from the trustee or trustees of a church or religious body or from an incorporated church or religious body, or from a corporation mentioned in § 57-16.1.

D. No recordation tax shall be required for the recordation of any deed of gift between a grantor or grantors and a grantee or grantees when no consideration has passed between the parties. Such deed shall state therein that it is a deed of gift.

E. The tax imposed by § 58.1-807 shall not apply to any lease to the United States, the Commonwealth, or any county, city, town, district, or other political subdivision of the Commonwealth.

F. The taxes and fees imposed by §§ 58.1-801, 58.1-802, 58.1-807, 58.1-808, and 58.1-814 shall not apply to (i) any deed of gift conveying real estate or any interest therein to The Nature Conservancy or (ii) any lease of real property or any interest therein to The Nature Conservancy, where such deed of gift or lease of real estate is intended to be used exclusively for the purpose of preserving wilderness, natural, or open space areas.

G. The words "trustee" or "trustees, " as used in subdivisions A 2, B 2, and C 6, include the trustees mentioned in § 57-8 and the ecclesiastical officers mentioned in § 57-16.

H. No recordation tax levied pursuant to this chapter shall be levied on the release of a contractual right, if the release is contained within a single deed that performs more than one function, and at least one of the other functions performed by the deed is subject to the recordation tax.

I. No recordation tax levied pursuant to this chapter shall be levied on a deed, lease, easement, release, or other document recorded in connection with a concession pursuant to the Public-Private Transportation Act of 1995 (§ 33.2-1800 et seq.) or similar federal law.

J. No recordation tax shall be required for the recordation of any transfer on death deed or any revocation of transfer on death deed made pursuant to the Uniform Real Property Transfer on Death Act (§ 64.2-621 et seq.) when no consideration has passed between the parties.

Code 1950, §§ 58-54.1, 58-55.1, 58-58, 58-61, 58-64, 58-64.1; 1952, cc. 191, 461; 1956, c. 377; 1964, cc. 19, 361; 1970, cc. 313, 420, 772; 1971, Ex. Sess., c. 60; 1972, cc. 186, 250; 1973, cc. 139, 336; 1975, c. 249; 1976, c. 558; 1977, cc. 398, 418; 1978, c. 714; 1979, cc. 559, 566; 1980, c. 652; 1981, cc. 267, 443; 1982, cc. 436, 630, 633, 651; 1983, c. 89; 1984, cc. 397, 428, 675; 1985, c. 134; 1988, cc. 429, 738; 1990, c. 289; 1992, cc. 574, 575; 1994, c. 429; 1995, cc. 127, 303; 1998, c. 333; 1999, c. 400; 2000, cc. 393, 602; 2004, cc. 492, 626; 2005, cc. 93, 928; 2006, c. 922; 2007, cc. 233, 639, 813, 896; 2009, cc. 574, 864, 871; 2013, c. 390; 2014, c. 338; 2016, cc. 37, 662.

§ 58.1-812. Payment prerequisite to recordation; exceptions; assessment and collection of tax; penalty for misrepresentation

A. Except as otherwise provided in this chapter, no deed, deed of trust, contract or other instrument shall be admitted to record without the payment of the tax imposed thereon by law and the fee pursuant to § 58.1-817, as applicable. However, after payment of the tax imposed by this chapter, when an instrument is first offered for recordation, such instrument may thereafter be recorded in the office of any other clerk without the payment of any tax except any local

recordation tax as provided in Article 1 (§ 58.1-3800 et seq.) of Chapter 38. Any instrument may also be recorded free of tax and fee in the office of the clerk where such instrument was originally recorded when the record containing such instrument has been destroyed.

B. The tax on every deed, deed of trust, contract or other instrument shall be determined and collected by the clerk in whose office the instrument is first offered for recordation. The clerk may ascertain the consideration of the deed or of the instrument, the actual value of the property conveyed, and the qualification of the deed or instrument for any exemption claimed by inquiry, affidavit, declaration or other extrinsic evidence acceptable to the clerk. The fee shall be $1 on every recorded deed pursuant to § 58.1-817 and shall be collected by the clerk in whose office the deed is offered for recordation.

C. Any person who knowingly misrepresents the consideration for the interest in property conveyed by a deed or other instrument or any of the other information requested by the clerk of court pursuant to this section shall be guilty of a Class 1 misdemeanor. If an understatement of the consideration is false or fraudulent with intent to evade a tax, a penalty equal to 100 percent of the tax due on the understatement shall be added to the amount of the tax due, plus interest on the tax at a rate determined in accordance with § 58.1-15 from the time the tax was required by law to be filed until paid.

D. Except as otherwise specifically provided, nothing contained in this chapter shall limit the right of the parties to any deed, deed of trust, contract, lease, or other instrument to allocate responsibility for the payment of the recordation taxes and fees imposed under this chapter among themselves in any manner they determine. A clerk who in good faith collects such taxes and fees upon recordation of a deed, deed of trust, contract, lease, or other instrument in reliance upon information provided by the person submitting such deed, deed of trust, contract, lease, or other instrument for recordation shall have no personal liability for any deficiency in the amount of such taxes or fees collected that is later determined to be due and payable.

Code 1950, §§ 58-63, 58-65; 1978, c. 693; 1984, c. 675; 1988, cc. 421, 738; 2004, c. 990; 2009, cc. 95, 686; 2015, cc. 434, 488.

§ 58.1-813. Collection of tax by Department

The Department may assess and collect any tax imposed by this chapter which has remained uncollected for thirty days. The Department, prior to collecting such tax, shall give notice to the clerk of court in whose office the tax was to be collected. The Department may then proceed to assess and collect the unpaid tax in the same manner and by the same methods used for the collection of any state tax administered by the Department.

Any local tax collected hereunder in conjunction with the collection of a state tax by the Department shall be deposited into the state treasury. The Comptroller shall, by warrant drawn on the Treasurer of Virginia, remit to the proper city or county any amounts due to such city or county.

Code 1950, § 58-65; 1978, c. 693; 1984, c. 675.

§ 58.1-814. City or county recordation tax

In addition to the state recordation tax imposed by this chapter, the council of any city and the governing body of any county may, pursuant to Chapter 38 (§ 58.1-3800 et seq.) of this title, impose a city or county recordation tax in an amount equal to one-third of the amount of state recordation tax.

Code 1950, § 58-65.1; 1958, c. 590; 1972, c. 186; 1984, c. 675.

§§ 58.1-815, 58.1-815.1. Repealed

Repealed by Acts 2014, c. 805, cl. 11, effective October 1, 2014.

§ 58.1-815.2. Repealed

Repealed by Acts 1995, c. 354.

§ 58.1-815.3. U.S. Route 29 Corridor Development Fund [Not set out]

(2000, c. 681, cl. 1.)

§ 58.1-815.4. (Contingent expiration dates - see notes) Distribution of recordation tax for certain transportation-related purposes

Of the state recordation taxes imposed pursuant to §§ 58.1-801 and 58.1-803, the revenues collected each fiscal year from $0.03 of the total tax imposed under each section shall be deposited by the Comptroller as follows:

1. The revenues collected from $0.02 of the total tax shall be deposited into the Commonwealth Mass Transit Fund pursuant to subdivision A 4 b (1)(b) of § 58.1-638; and

2. The revenues collected from $0.01 of the total tax shall be deposited into the Commonwealth Transit Capital Fund established pursuant to subdivision A 4 c of § 58.1-638.

2007, c. 896; 2013, c. 639; 2015, c. 684.

§ 58.1-815.4. (Contingent effective date, and contingent expiration date) Distribution of recordation tax for certain transportation-related purposes

Effective July 1, 2008, of the state recordation taxes imposed pursuant to §§ 58.1-801 and 58.1-803, the revenues collected each fiscal year from $0.03 of the total tax imposed under each section shall be deposited by the Comptroller as follows:

1. The revenues collected from $0.02 of the total tax shall be deposited into the Commonwealth Mass Transit Fund pursuant to subdivision A 4 b (1)(b) of § 58.1-638; and

2. The revenues collected from $0.01 of the total tax shall be deposited into the Highway Maintenance and Operating Fund established pursuant to § 33.2-1530.

2007, c. 896; 2013, c. 639.

§ 58.1-816. Distribution of recordation tax to cities and counties

A. Effective October 1, 1993, twenty million dollars of the taxes imposed under §§ 58.1-801 through 58.1-809 which are actually paid into the state treasury, shall be distributed among the

counties and cities of this Commonwealth in the manner provided in subsection B of this section. Effective July 1, 1994, such annual distribution shall increase to forty million dollars.

B. Subject to any transfers required under §§ 33.2-2400 and 58.1-816.1, the share of the state taxes distributable under this section among the counties and cities shall be apportioned and distributed quarterly to each county or city by the Comptroller by multiplying the amount to be distributed by a fraction in which the numerator is the amount of the taxes imposed under §§ 58.1-801 through 58.1-809 and actually paid into the state treasury which are attributable to deeds and other instruments recorded in the county or city and the denominator is the amount of taxes imposed under §§ 58.1-801 through 58.1-809 actually paid into the state treasury. All distributions pursuant to this section shall be made on a quarterly basis within thirty days of the end of the quarter. Such quarterly distribution shall equal ten million dollars. Each clerk of the court shall certify to the Comptroller, within fifteen days after the end of the quarter, all amounts collected under §§ 58.1-801 through 58.1-809 and actually paid into the state treasury which are attributable to deeds and other instruments recorded in such county or city.

C. All moneys distributed to counties and cities pursuant to this section shall be used for (i) transportation purposes, including, without limitation, construction, administration, operation, improvement, maintenance and financing of transportation facilities, or (ii) public education.

As used in this section, the term "transportation facilities" shall include all transportation-related facilities including, but not limited to, all highway systems, public transportation or mass transit systems as defined in § 33.2-100, airports as defined in § 5.1-1, and port facilities as defined in § 62.1-140. Such term shall be liberally construed for purposes of this section.

D. If any revenues distributed to a county or city under subsection C of this section are applied or expended for any transportation facilities under the control and jurisdiction of any state agency, board, commission or authority, such transportation facilities shall be constructed, operated, administered, improved and maintained in accordance with laws, rules, regulations, policies and procedures governing such state agency, board, commission or authority; however, in the event these revenues, or a portion thereof, are expended for improving or constructing highways in a county which is subject to the provisions of § 33.2-338, such expenditures shall be undertaken in the manner prescribed in that statute.

E. In the case of any distribution to a county or city in which an office sharing agreement pursuant to §§ 15.2-1637 and 15.2-3822 is in effect, the Comptroller shall divide the distribution among the office sharing counties and cities. Each clerk of the court acting pursuant to an office sharing agreement shall certify to the Comptroller, within fifteen days after the end of the quarter, all amounts collected under §§ 58.1-801 through 58.1-809 and actually paid into the state treasury which are attributable to deeds and other instruments recorded on behalf of each county and city.

1989, c. 713; 1990, c. 821; 1993, c. 391 .

§ 58.1-816.1. Transportation Improvement Program Set-aside Fund

There is hereby created in the Department of the Treasury a special nonreverting fund which shall be a part of the Transportation Trust Fund established pursuant to § 33.2-1524 and which shall be known as the Transportation Improvement Program Set-aside Fund ("Set-aside Fund"), consisting of transfers pursuant to § 58.1-816 of annual collections of the state recordation taxes attributable to any local jurisdiction which adopts an ordinance to dedicate and use its share of state recordation tax distributions for transportation purposes; however, this dedication shall not affect the local recordation taxes under §§ 58.1-802 B and 58.1-814. Any local jurisdiction making such an election shall transmit a copy of its ordinance to the State Treasurer at least ninety days before transfers to the Set-aside Fund are to take effect. The State Treasurer is hereby authorized to commingle the funds of the various local jurisdictions in the Set-aside Fund, subject to the establishment of an accounting system which allows for the separate tracking of each local jurisdiction's share. The election to participate in the Set-aside Fund shall be revocable by the passage of an ordinance to that effect; however, if debt has been issued or other obligations incurred on the local jurisdiction's behalf, the election to participate shall be irrevocable so long as such bonds, or other obligations, are outstanding. A permitted revocation shall entitle the local jurisdiction to receive its remaining share, plus earnings and less the Treasurer's investment charges.

The Set-aside Fund shall also include such other funds as may be appropriated by the General Assembly from time to time and designated for the Set-aside Fund and all interest, dividends and appreciation which may accrue thereto. Any moneys remaining in the Set-aside Fund at the end of a biennium shall not revert to the general fund, but shall remain in the Set-aside Fund. Allocations from the Set-aside Fund may be paid to any authority, locality or commission for the purposes of paying the costs of any Transportation Improvement Program in which the local jurisdiction elects to participate.

1993, c. 391 .

§ 58.1-817. Fee for open-space preservation

In addition to all other taxes and fees imposed by this chapter, beginning July 1, 2004, there is hereby imposed a $1 fee on every deed admitted to record in those jurisdictions in which open-space easements are held by the Virginia Outdoors Foundation. The fee shall be collected as provided in § 58.1-812 and the clerk shall deposit all fees collected hereunder into a special fund within the state treasury which shall be created on the books of the Comptroller for this revenue. On a monthly basis, the Comptroller shall distribute all revenue collected from such fee to the Virginia Outdoors Foundation, which shall accept, hold and administer such funds in accordance with its purpose and powers as set forth in Chapter 18 (§ 10.1-1800 et seq.) of Title 10.1.

2004, c. 990.

Chapter 9 - VIRGINIA ESTATE TAX

Article 1 - SUBSTANTIVE PROVISIONS GENERALLY

§ 58.1-900. Title

This chapter shall be known and may be cited as the "Virginia Estate Tax Act."

Code 1950, § 58-238.1; 1978, c. 838; 1984, c. 675.

§ 58.1-901. Definitions

As used in this chapter, unless the context clearly shows otherwise, the term or phrase:

"Decedent" means a deceased person.

"Federal credit" means the maximum amount of the credit for state death taxes allowable by § 2011 of the United States Internal Revenue Code of 1954, as amended or renumbered, or successor provision, in respect to a decedent's taxable estate. The term "maximum amount" shall be construed as to take full advantage of such credit as the laws of the United States may allow.

"Gross estate" means "gross estate" as defined in § 2031 of the United States Internal Revenue Code of 1954, as amended or renumbered, or the successor provision of the laws of the United States.

"Nonresident" means a decedent who was domiciled outside of the Commonwealth of Virginia at his death.

"Personal representative" means the personal representative of the estate of the decedent, appointed, qualified and acting within the Commonwealth, or, if there is no personal representative appointed, qualified and acting within the Commonwealth, then any person in actual or constructive possession of the Virginia gross estate of the decedent.

"Resident" means a decedent who was domiciled in the Commonwealth of Virginia at his death.

"State" means any state, territory or possession of the United States and the District of Columbia.

"Taxable estate" means "taxable estate" as defined in § 2051 of the United States Internal Revenue Code of 1954, as amended or renumbered, or the successor provision of the laws of the United States.

"Value" means "value" as finally determined for federal estate tax purposes under the laws of the United States relating to federal estate taxes.

Any reference in this chapter to the laws of the United States relating to federal estate and gift taxes means the provisions of the Internal Revenue Code of 1954, and amendments thereto, and other provisions of the laws of the United States relating to federal estate and gift taxes, as the same may be or become effective at any time or from time to time.

Code 1950, § 58-238.2; 1978, c. 838; 1981, c. 94; 1984, c. 675; 2006, Sp. Sess. I, cc. 4, 5.

§ 58.1-902. Tax on transfer of taxable estate of residents; amounts; credit; property of resident defined

A. A tax in the amount of the federal credit is imposed on the transfer of the taxable estate of every resident, subject, where applicable, to the credit provided for in subsection B.

B. If the real and tangible personal property of a resident is located outside of the Commonwealth and is subject to a death tax imposed by another state for which a credit is allowed under § 2011 of the Internal Revenue Code of 1954, as amended or renumbered, or the successor provision of the laws of the United States relating to federal estate taxes, the amount of tax due under this section shall be credited with the lesser of:

1. The amount of the death tax paid the other state and credited against the federal estate tax; or

2. An amount computed by multiplying the federal credit by a fraction, the numerator of which is the value of that part of the gross estate over which another state or states have jurisdiction to the same extent to which Virginia would exert jurisdiction under this chapter with respect to the residents of such other state or states and the denominator of which is the value of the decedent's gross estate.

C. Property of a resident includes:

1. Real property situated in the Commonwealth of Virginia;

2. Tangible personal property having an actual situs in the Commonwealth of Virginia; and

3. Intangible personal property owned by the resident regardless of where it is located.

Code 1950, § 58-238.3; 1978, c. 838; 1984, c. 675.

§ 58.1-903. Tax on transfer of taxable estate of nonresidents; property of nonresident defined

A. A tax in an amount computed as provided in this section is imposed on the transfer of every nonresident's taxable estate located in the Commonwealth of Virginia.

The tax shall be an amount computed by multiplying the federal credit by a fraction, the numerator of which is the value of that part of the gross estate over which Virginia has jurisdiction for estate tax purposes and the denominator of which is the value of the decedent's gross estate.

B. For purposes of this section, property located in the Commonwealth of Virginia which is taxable to a nonresident shall include:

1. Real property and real property interests located in the Commonwealth of Virginia including mineral interests, royalties, production payments, leasehold interests, or working interests in oil, gas, coal, or any other minerals; and

2. Tangible personal property having an actual situs in the Commonwealth of Virginia.

Code 1950, § 58-238.4; 1978, c. 838; 1984, c. 675.

§ 58.1-904. Tax upon estates of alien decedents

A. A tax in an amount computed as provided in this section is imposed upon the transfer of real property and tangible personal property having an actual situs in the Commonwealth of Virginia and upon intangible personal property physically present within the Commonwealth of every person who at the time of death was not a resident of the United States.

The tax shall be an amount computed by multiplying the federal credit by a fraction, the numerator of which is the value of that part of the gross estate over which Virginia has jurisdiction for estate tax purposes and the denominator of which is the decedent's gross estate taxable by the United States wherever situated.

B. Resident aliens of the United States shall be subject to the tax imposed by this chapter under § 58.1-903 when the decedent, at the time of death, was not a resident of Virginia but was a resident of the United States. A resident alien who, at the time of death, was a resident of Virginia and a resident of the United States shall be subject to the tax imposed by this chapter under § 58.1-902.

C. For purposes of this section, stock in a corporation organized under the laws of the Commonwealth shall be deemed physically present within the Commonwealth.

Code 1950, § 58-238.5; 1978, c. 838; 1984, c. 675.

§ 58.1-905. Filing returns; payment of tax due thereon

A. The personal representative of every estate subject to the tax imposed by this chapter who is required by the laws of the United States to file a federal estate tax return shall file with the Department, on or before the date the federal estate tax return is required to be filed: (i) a return for the tax due under this chapter; and (ii) a copy of the federal estate tax return.

B. If the personal representative has obtained an extension of time for filing the federal estate tax return or paying the federal estate tax or any portion thereof, the filing required by subsection A or payment required by subsection C shall be similarly extended until the end of the time period granted in the federal extension. Upon obtaining an extension of time for filing the federal estate tax return, or paying the federal estate tax or any portion thereof, the personal representative shall provide the Department with a true copy of the instrument providing for this extension.

C. The tax due under this chapter shall be paid by the personal representative to the Department not later than the date specified under subsection A or B. If such tax is paid pursuant to subsection B, interest, at a rate equal to the rate of interest established pursuant to § 58.1-15, shall be added for the period between the date when such tax would have been due had no extension been granted and the date of full payment.

D. Notwithstanding any other provision of this section, the extensions provided to individual taxpayers under subdivisions 1 and 2 of subsections F and G of § 58.1-344 shall be applicable in the same manner to the tax imposed by this chapter.

Code 1950, § 58-238.6; 1978, c. 838; 1984, c. 675; 1990, c. 700; 1991, cc. 346, 361; 1996, c. 401.

§ 58.1-906. Amended returns

A. If the personal representative files an amended federal estate tax return, he shall immediately file with the Department an amended return covering the tax imposed by this chapter, accompanying the same with a copy of the amended federal estate tax return. If the personal

representative is required to pay an additional tax under this chapter pursuant to such amended return, he shall pay such tax, together with interest as provided in § 58.1-15, at the time of filing the amended return.

B. If, upon final determination of the federal estate tax due, a deficiency is assessed, the personal representative shall within ninety days after this determination give written notice of such deficiency to the Department. If any additional tax is due under this chapter by reason of this determination, the personal representative shall file an amended return, or such other form as the Department may prescribe, and pay such additional tax, together with interest as provided in § 58.1-15, at the same time he files the notice; however, if the department has sufficient information from which to compute the proper additional tax and the taxpayer has paid such tax, then the taxpayer is not required to file an amended estate tax return.

Code 1950, § 58-238.7; 1978, c. 838; 1984, c. 675; 1992, c. 678 .

§ 58.1-907. Certification of payment by Department

Upon the payment of the estate tax, or if no tax is due pursuant to a filing under § 58.1-905 or § 58.1-906, upon the ascertainment of that fact, the Department shall certify such fact to the personal representative.

Code 1950, § 58-238.8; 1978, c. 838; 1984, c. 675.

§ 58.1-908. Nonpayment of tax; lien for unpaid taxes; certificate of release from lien

A. A lien shall arise as follows upon all property, real or personal, located in the Commonwealth of Virginia, of every decedent having a taxable estate who fails to pay the tax imposed by this chapter:

1. In the case of a nonresident decedent having a taxable estate a lien shall not arise automatically upon the death of the decedent.

2. In the case of a resident or nonresident decedent, such lien shall attach to the personal estate of the decedent only upon the Department's filing a memorandum in the clerk's office of the county or city wherein the decedent resided, and to the real estate only upon the filing of a memorandum in the clerk's office of the county or city wherein such real estate is located.

Such lien, once it attaches, shall be enforceable for a period not to exceed ten years from the date of death of the decedent.

B. Such part of the property of a decedent as may at the time be subject to the lien provided for under subsection A shall be divested of such lien to the extent used for payment of charges against the estate or expenses of its administration allowed by the court having jurisdiction thereof.

C. Such part of the personal property of a decedent as may at the time be subject to the lien provided for under subsection A shall be divested of such lien upon the conveyance or transfer of such property to a purchaser or holder of a security interest for an adequate and full consideration and such lien shall then attach to the proceeds received for such property from such purchaser or

holder of a security interest. Real property shall not be divested of such lien except as provided in subsections B and D of this section.

D. When any lien under this section has attached and the Department is satisfied that the tax liability, if any, of the estate has been fully discharged, the Department shall issue a certificate releasing all property of such estate from the lien herein imposed; or, if the Department is satisfied that the tax liability of the estate has been provided for, it shall issue a certificate releasing any surplus property of such estate from the lien herein imposed.

Code 1950, § 58-238.9; 1978, c. 838; 1979, c. 567; 1984, c. 675; 1987, c. 373.

§ 58.1-909. Liability of personal representative

The tax and interest imposed by this chapter shall be paid by the personal representative. If any personal representative distributes either in whole or in part any of the property of an estate to the heirs, next of kin, distributees, legatees or devisees without having paid or secured the tax due pursuant to this chapter, he shall be personally liable for the tax so due, or so much thereof as may remain due and unpaid, to the full extent of any property belonging to such person or estate which may come into his custody or control.

Code 1950, § 58-238.10; 1978, c. 838; 1984, c. 675.

§ 58.1-910. Duty of resident representative of a nonresident decedent

A resident personal representative holding personal property of a deceased nonresident subject to the tax shall deduct the tax or collect it from the personal representative in the state of the decedent's domicile and shall not deliver such property to him or any other person until he has collected the tax and paid the same into the state treasury. When the transfer of such personal property is subject to a tax under the provisions of this chapter and the personal representative in the state of domicile neglects or refuses to pay the tax upon demand or if for any reason the tax is not paid within nine months after the decedent's death, the resident personal representative may, upon such notice as the circuit court of the county or city where such resident personal representative qualified may direct, be authorized to sell such property or, if the same can be divided, such portion as may be necessary. He shall then deduct the tax from the proceeds of such sale and account for the balance, if any, in lieu of the property.

Code 1950, § 58-238.11; 1978, c. 838; 1984, c. 675.

§ 58.1-911. Final account

No final account of a personal representative shall be approved by a commissioner of accounts unless the commissioner finds that all state, county or city taxes assessed and chargeable upon property in the hands of a personal representative have been paid. No final account of a personal representative who is required to file a federal estate tax return shall be approved by the commissioner of accounts unless the commissioner finds that the tax imposed on the property by this chapter, including applicable interest, has been paid in full or that no such tax is due.

Code 1950, § 58-238.12; 1978, c. 838; 1984, c. 675; 2002, c. 35.

§ 58.1-912. Deposit of funds

All moneys collected pursuant to this chapter shall be paid into the general fund of the state treasury.

Code 1950, § 58-238.15; 1978, c. 838; 1984, c. 675.

Article 2 - PAYMENT OF DEATH TAXES DUE BY NONRESIDENT DECEDENTS TO OTHER STATES

§ 58.1-913. Proof of payment of death taxes to state of domicile

At any time before the expiration of eighteen months after the qualification in this Commonwealth of any executor of the will or administrator of the estate of any nonresident decedent, such executor or administrator shall file with the clerk of the court in which he qualified proof that all death taxes, together with interest or penalties thereon, which are due to the state of domicile of such decedent, or to any political subdivision thereof, have been paid or secured or that no such taxes, interest or penalties are due, unless it appears that letters have been issued in the state of domicile. Such proof may be in the form of a certificate issued by the official or body charged with the administration of the death tax laws of the domiciliary state.

Code 1950, §§ 58-238.17, 58-238.18; 1978, c. 838; 1984, c. 675.

§ 58.1-914. Notice to domiciliary state if proof not filed

If such proof is not filed within the time limit set out in § 58.1-913, then the clerk of the court shall forthwith notify by mail the official or body of the domiciliary state charged with the administration of the death tax laws thereof with respect to such estate and shall state in such notice so far as is known to him:

1. The name, date of death and last domicile of such decedent;

2. The name and address of each executor or administrator;

3. A summary of the values of the real estate, tangible personalty and intangible personalty, wherever situated, belonging to such decedent at the time of his death; and

4. The fact that such executor or administrator has not filed the proof required in § 58.1-913.

The clerk shall attach to such notice a plain copy of the will and codicils of the decedent, if he died testate, or, if he died intestate, a list of his heirs and next of kin, so far as is known to the clerk.

Code 1950, § 58-238.19; 1978, c. 838; 1979, c. 559; 1984, c. 675.

§ 58.1-915. Petition of domiciliary state for accounting

Within sixty days after the mailing of such notice, the official or body charged with the administration of the death tax laws of the domiciliary state may file with such court in this Commonwealth a petition for an accounting in such estate. Such official body of the domiciliary state shall, for the purpose of this article, be a party interested for the purpose of petitioning the court for such accounting. If such petition be filed within the period of sixty days, the court shall decree

such accounting and upon such accounting being filed and approved shall decree the remission of the fiduciary appointed by the domiciliary probate court of the balance of the intangible personalty after the payment of creditors and expenses of administration in the Commonwealth.

Code 1950, § 58-238.20; 1978, c. 838; 1984, c. 675.

§ 58.1-916. Final accounting not granted without compliance

Unless the provisions of either § 58.1-914 or § 58.1-915 have been complied with, no such executor or administrator shall be entitled to a final accounting or discharge in any court in this Commonwealth.

Code 1950, § 58-238.21; 1978, c. 838; 1984, c. 675.

§ 58.1-917. To what nonresident estates article applies

The provisions of this article shall apply to the estate of any nonresident decedent if the laws of the state of his domicile contain a provision, of any nature or however expressed, whereby this Commonwealth is given reasonable assurance of the collection of its inheritance or death taxes, interest and penalties, from the estates of decedents dying domiciled in this Commonwealth when the estates of such decedents are being administered by the probate courts of such other state, or if the state of domicile does not grant letters in nonresident estates until after letters have been issued by the state of domicile.

Code 1950, § 58-238.22; 1978, c. 838; 1984, c. 675.

§ 58.1-918. How article construed

The provisions of this article shall be liberally construed in order to ensure that the state of domicile of any decedent shall receive any death taxes, together with interest and penalties thereon, due to it.

Code 1950, § 58-238.23; 1978, c. 838; 1984, c. 675.

§ 58.1-919. Meaning of "state."

For the purpose of this article the word "state" shall be construed to include any territory of the United States, the District of Columbia and any foreign country.

Code 1950, § 58-238.24; 1978, c. 838; 1984, c. 675.

Article 3 - INTERSTATE COMPROMISE AND ARBITRATION OF DEATH TAXES

§ 58.1-920. Title of article

This article shall be known and may be cited as the "Uniform Act on Interstate Compromise and Arbitration of Death Taxes."

Code 1950, § 58-238.25; 1978, c. 838; 1984, c. 675.

§ 58.1-921. Interpretation

This article shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

Code 1950, § 58-238.26; 1978, c. 838; 1984, c. 675.

§ 58.1-922. Dispute as to domicile; compromise agreement

When the Tax Commissioner claims that a decedent was domiciled in this Commonwealth at the time of his death and the taxing authorities of other states make a like claim on behalf of their states, the Commissioner may make a written agreement of compromise with the other taxing authorities and the executor or administrator of such decedent that a certain sum shall be accepted in full satisfaction of any death taxes imposed by this Commonwealth, including any interest or penalties to the date of signing of the agreement. The agreement shall also fix the amount to be accepted by the other states in full satisfaction of death taxes. The executor or administrator of such decedent is hereby authorized to make such agreement. Unless the tax so agreed upon is paid within sixty days after the signing of such agreement, interest or penalties shall accrue upon the amount fixed in the agreement, but the time between the decedent's death and the signing of such agreement shall not be included in computing the interest or penalties.

Code 1950, § 58-238.27; 1978, c. 838; 1984, c. 675.

§ 58.1-923. Arbitration agreement; board of arbitrators

When the Tax Commissioner claims that a decedent was domiciled in this Commonwealth at the time of his death and the taxing authorities of another state make a like claim on behalf of their state, the Commissioner may with the approval of the Attorney General make a written agreement with the other taxing authorities and with the executor or administrator of the decedent to submit the controversy to the decision of a board consisting of one or any uneven number of arbitrators. The executor or administrator of such decedent is hereby authorized to make the agreement. The parties to the agreement shall select the arbitrator or arbitrators.

Code 1950, § 58-238.28; 1978, c. 838; 1984, c. 675.

§ 58.1-924. Hearings by board; testimony and witnesses; production of documents

The board shall hold hearings at such times and places as it may determine, upon reasonable notice to the parties to the agreement, all of whom shall be entitled to be heard, to present evidence and to examine and cross-examine witnesses.

The board shall have power to administer oaths, take testimony, subpoena and require the attendance of witnesses and the production of books, papers and documents, and issue commissions to take testimony. Subpoenas may be signed by any member of the board. In case of failure to obey a subpoena, any judge of a court of record of this Commonwealth, upon application by the board, may make an order requiring compliance with the subpoena, and the court may punish failure to obey the order as a contempt. All questions arising in the course of the proceedings, other than the issuance of subpoenas, shall be decided by a majority vote of the board.

Code 1950, §§ 58-238.19, 58-238.31; 1978, c. 838; 1984, c. 675.

§ 58.1-925. Determination of domicile of decedent

The board shall determine the domicile of the decedent at the time of his death. This determination shall be final for purposes of imposing and collecting death taxes but for no other purpose.

Code 1950, § 58-238.30; 1978, c. 838; 1984, c. 675.

§ 58.1-926. Record of proceedings, agreement, etc., to be filed with taxing authorities

The Tax Commissioner, the board or the executor or administrator of such decedent shall file the determination of the board as to domicile, the record of the board's proceedings, and the agreement or a duplicate, made pursuant to § 58.1-923, with the authority having jurisdiction to assess or determine the death taxes in the state determined by the board to be the domicile of the decedent and shall file copies of such documents with the authorities that would have been empowered to assess or determine the death taxes in each of the other states involved.

Code 1950, § 58-238.32; 1978, c. 838; 1984, c. 675.

§ 58.1-927. When penalties and interest not imposed

In any case where it is determined by the board that the decedent died domiciled in Virginia, interest or penalties, if otherwise imposed by law, for nonpayment of death taxes shall not be imposed between the date of the agreement and of filing the determination of the board as to domicile.

Code 1950, § 58-238.33; 1978, c. 838; 1984, c. 675.

§ 58.1-928. Nothing in article to prevent compromise

Nothing contained in this article shall prevent at any time a written compromise, if otherwise lawful, by all parties to the agreement made pursuant to § 58.1-923 fixing the amounts to be accepted by this and any other state involved, in full satisfaction of death taxes.

Code 1950, § 58-238.34; 1978, c. 838; 1984, c. 675.

§ 58.1-929. Compensation and expenses of board members and employees

The compensation and expenses of the members of the board and its employees may be agreed upon by such members and the executor or administrator and if they cannot agree shall be fixed by any court having jurisdiction over probate matters of the state determined by the board to be the domicile of the decedent. The amounts so agreed upon or fixed shall be deemed an administration expense and shall be payable by the executor or administrator.

Code 1950, § 58-238.35; 1978, c. 838; 1984, c. 675.

§ 58.1-930. Reciprocal application of arbitration provisions

The provisions of this article relative to arbitration shall apply only to cases in which and so far as each of the states involved has a law identical or substantially similar to this article.

Code 1950, § 58-238.36; 1978, c. 838; 1984, c. 675.

Article 4 - RECAPTURE TAX ON CERTAIN USE-VALUATIONS

§ 58.1-931. Imposition of tax

A. When the gross estate of a decedent at the date of death is of such value as to require filing a federal estate tax return and such estate contains certain farm or business real property which qualified for valuation under § 2032A of the Internal Revenue Code, and such property has been valued in the manner provided in § 2032A for the tax imposed under this chapter, a copy of the election made at the time of filing the federal estate tax return shall be attached to the Virginia estate tax return when filed. Such return shall also include an agreement signed by each person in being having an interest, whether or not in possession, in such property and consent to the application of § 2032A of the Internal Revenue Code .

B. If, within fifteen years after the decedent's death and before the death of the qualified heir, as defined in § 2032A(e)(1) of the Internal Revenue Code, a qualified heir disposes of any interest in the property, other than to a member of his family, as defined in subsection (e)(2) of such section, or ceases to use such property for qualified uses as defined in subsection (b) (2) of such section, there is hereby imposed an additional Virginia estate tax, computed as provided in subsection (c) of § 2032A of the Internal Revenue Code .

Code 1950, § 58-238.38; 1981, c. 399; 1984, c. 675.

§ 58.1-932. Qualified heir personally liable

The qualified heir shall be personally liable for the additional tax imposed under § 58.1-931. The amount of the adjusted tax difference attributable to an interest in any qualified property, computed in the same manner as provided in subsection (c)(2)(C) of § 2032A of the Internal Revenue Code, shall be a lien on such interest in the property in favor of the Commonwealth. Such lien shall arise at the time the election is filed hereunder and shall continue until:

1. The liability for tax under § 58.1-931 attributable to such interest has been satisfied or has become unenforceable by lapse of time; or

2. It is established to the satisfaction of the Commissioner that no further tax liability attributable to such interest may arise under § 58.1-931.

Code 1950, § 58-238.38; 1981, c. 399; 1984, c. 675.

§ 58.1-933. Notice of disposition or change in use of property

Any qualified heir is required to notify the Commissioner, on a form prescribed by the Commissioner, of any disposition or change in use of the property and pay any additional Virginia estate tax resulting from such disposition or change, within six months of such disposition or change. Notwithstanding any other provision of law prescribing limitations, any tax imposed under § 58.1-931 may be assessed until the expiration of three years from the date of such notification.

Code 1950, § 58-238.38; 1981, c. 399; 1984, c. 675.

§ 58.1-934. Purpose

The purpose of this article is to recapture the excess of the estate tax liability which would have been incurred had the special use valuation procedure not been used; in other words, the maximum additional recapture tax is the amount that the special valuation has saved the estate.

Code 1950, § 58-238.38; 1981, c. 399; 1984, c. 675.

Article 5 - GENERATION SKIPPING TRANSFERS

§ 58.1-935. Definitions

A. Terms, phrases, and words used in this article, except for those defined in subsection B of this section, shall be defined as they are defined under Chapter 13 of subchapter B of the Internal Revenue Code of 1954, as amended.

B. As used in this article the term or phrase:

"Federal generation skipping transfer tax" means the tax imposed by Chapter 13 of subchapter A of the Internal Revenue Code of 1954, as amended.

"Generation skipping transfer" includes every transfer subject to the tax imposed under Chapter 13 of subchapter A of the Internal Revenue Code of 1954, as amended, where the original transferor is a resident of the Commonwealth of Virginia at the date of original transfer, or the property transferred is real or personal property having a situs in Virginia.

"Original transferor" means any grantor, donor, trustor, or testator who by grant, gift, trust or will makes a transfer of real or personal property that results in a federal generation skipping transfer tax under applicable provisions of the Internal Revenue Code.

Code 1950, § 58-238.37; 1979, c. 559; 1984, c. 675.

§ 58.1-936. Imposition of tax

A. A tax is hereby imposed upon every generation skipping transfer, where the original transferor is a resident of the Commonwealth of Virginia at the date of original transfer, in an amount equal to the amount allowable as credit for state legacy taxes under § 2604 of the Internal Revenue Code, to the extent such credit exceeds the aggregate amount of all taxes on the same transfer actually paid to the several states of the United States, other than the Commonwealth of Virginia.

B. A tax is hereby imposed upon every generation skipping transfer where the original transferor is not a resident of Virginia at the date of the original transfer, but where the generation skipping transfer includes real or personal property having a situs in Virginia, in an amount equal to the amount allowable as a credit for state legacy taxes under § 2604 of the Internal Revenue Code, reduced by an amount which bears the same ratio to the total state tax credit allowable for federal generation skipping transfer tax purposes as the value of the transferred property taxable by all other states bears to the value of the gross generation skipping transfer for federal generation skipping transfer tax purposes. In any case in which a tax is imposed on a generation skipping transfer by Virginia and by one or more other states or the District of Columbia, the Commissioner shall negotiate with the taxing authorities of such other state, states, or District of Columbia so that the

aggregate amount of taxes imposed by Virginia and such other state, states or the District of Columbia on a generation skipping transfer does not exceed 100 percent of the amount allowable as credit for state legacy taxes under § 2604 of the Internal Revenue Code .

Code 1950, § 58-238.37; 1979, c. 559; 1984, c. 675; 1987, c. 484.

§ 58.1-937. Filing of return; payment of tax

A. Every person required to file a return reporting a generation skipping transfer under applicable federal statutes and regulations shall file a return with the Department on or before the last day prescribed for filing the federal return. For purposes of this article the requirements for filing a return shall be satisfied by filing a duplicate copy of the federal return.

B. The tax imposed by this section shall be due upon a taxable distribution or taxable termination as determined under applicable provisions of the federal generation skipping transfer tax. The person liable for payment of the federal generation skipping transfer tax shall be liable for the tax imposed by this article. Such tax shall be paid to the Department on or before the last day allowed for filing a return hereunder. Interest computed as provided in § 58.1-15 shall accrue on the amount of unpaid tax from the day after such last day until paid.

Code 1950, § 58-238.37; 1979, c. 559; 1984, c. 675.

§ 58.1-938. Amended return; additional tax

If, after the filing of a duplicate federal generation skipping tax return, the federal authorities increase or decrease the amount of the federal generation skipping transfer tax, an amended return shall be filed with the Department showing all changes made in the original return and the amount of increase or decrease in the federal generation skipping transfer tax.

If, based upon such deficiency and the ground therefor, it appears that the amount of tax previously paid is less than the amount of tax owing, the difference together with interest, as computed under § 58.1-15, shall be paid upon notice and demand by the Department. In the event that the person required to file a return and pay such tax fails to file the return required by this section, any additional tax which is owing may be assessed, or a proceeding in court for such tax may be begun without assessment, at any time prior to the filing of such return or within thirty days after the delinquent filing of such return, notwithstanding any other provision of law.

Code 1950, § 58-238.37; 1979, c. 559; 1984, c. 675.

Chapter 10 - CIGARETTE TAX

Article 1 - EXCISE TAX

§ 58.1-1000. Definitions

As used in this chapter, unless the context clearly shows otherwise, the term or phrase:

"Authorized holder" means (i) a manufacturer; (ii) a wholesale dealer; (iii) a stamping agent; (iv) a retail dealer; (v) an exclusive distributor; (vi) an officer, employee, or other agent of the United

States or a state, or any department, agency, or instrumentality of the United States, a state, or a political subdivision of a state, having possession of cigarettes in connection with the performance of official duties; (vii) a person properly holding cigarettes that do not require stamps or tax payment pursuant to § 58.1-1010; or (viii) a common or contract carrier transporting cigarettes under a proper bill of lading or other documentation indicating the true name and address of the consignor or seller and the consignee or purchaser of the brands and the quantities being transported. Any person convicted of (a) a violation of § 58.1-1017 or 58.1-1017.1; (b) any offense involving the forgery of any documents, forms, invoices, or receipts related to the purchase or sale of cigarettes or the purchase or sale of tobacco products as defined in § 58.1-1021.01; (c) any offense involving evasion or failure to pay a cigarette or tobacco product excise tax; or (d) any similar violation of an ordinance of any county, city, or town in the Commonwealth or the laws of any other state or of the United States is ineligible to be an authorized holder.

"Carton" means 10 packs of cigarettes, each containing 20 cigarettes or eight packs, each containing 25 cigarettes.

"Cigarette" means any product that contains nicotine, is intended to be burned or heated under ordinary conditions of use, and consists of or contains (i) any roll of tobacco wrapped in paper or in any substance not containing tobacco; (ii) tobacco, in any form, that is functional in the product, which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette; or (iii) any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in clause (i) of this definition. The term "cigarette" includes "roll-your-own" tobacco, which means any tobacco which, because of its appearance, type, packaging, or labeling is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes. For purposes of this definition of "cigarette," 0.09 ounces of "roll-your-own" tobacco shall constitute one individual "cigarette."

"Exclusive distributor" means any individual, corporation, limited liability company, or limited liability partnership with its principal place of business in the Commonwealth that has the sole and exclusive rights to sell to wholesale dealers in the Commonwealth a brand family of cigarettes manufactured by a tobacco product manufacturer as defined in § 3.2-4200.

"Manufacturer" means any tobacco product manufacturer as defined in § 3.2-4200.

"Pack" means a package containing either 20 or 25 cigarettes.

"Retail dealer" includes every person other than a wholesale dealer, as defined in this section, who sells or offers for sale any cigarettes and who is properly registered as a retail trade with the Commonwealth in accordance with the Virginia Department of Taxation Business Registration Application (Form R-1).

"Retail sale" or "sale at retail" includes all sales except sales by wholesale dealers to retail dealers or other wholesale dealers for resale.

"Stamping agent" shall have the same meaning as provided in § 3.2-4204. For the purposes of provisions relating to "roll-your-own" tobacco, "stamping agent" shall include "distributor" as that term is defined in § 58.1-1021.01.

"Stamps" means the stamp or stamps by the use of which the tax levied under this chapter is paid and shall be officially designated as Virginia revenue stamps. The Department is hereby authorized to provide for the use of any type of stamp which will effectuate the purposes of this chapter including but not limited to decalcomania and metering devices.

"Storage" means any keeping or retention in the Commonwealth of cigarettes for any purpose except sale in the regular course of business or subsequent use solely outside the Commonwealth.

"Tax-paid cigarettes" means cigarettes that (i) bear valid Virginia stamps to evidence payment of excise taxes or (ii) were purchased outside of the Commonwealth and either (a) bear a valid tax stamp for the state in which the cigarettes were purchased or (b) when no tax stamp is required by the state, proper evidence can be provided to establish that applicable excise taxes have been paid.

"Use" means the exercise of any right or power over cigarettes incident to the ownership thereof or by any transaction where possession is given, except that it shall not include the sale of cigarettes in the regular course of business.

"Wholesale dealer" includes persons who are properly registered as tobacco product merchant wholesalers with the Commonwealth in accordance with the Virginia Department of Taxation Business Registration Application (Form R-1) and who (i) sell cigarettes at wholesale only to retail dealers for the purpose of resale only or (ii) sell at wholesale to institutional, commercial, or industrial users. "Wholesale dealer" also includes chain store distribution centers or houses which distribute cigarettes to their stores for sale at retail.

Code 1950, §§ 58-757.10, 58-757.18; 1960, c. 392, §§ 10, 18; 1984, c. 675; 2004, c. 1029; 2005, cc. 28, 856; 2006, c. 768; 2012, cc. 362, 472; 2014, cc. 422, 457; 2015, cc. 738, 754.

§ 58.1-1001. Tax levied; rate

A. Except as provided in subsection B, in addition to all other taxes now imposed by law, every person within this Commonwealth who sells, stores or receives cigarettes made of tobacco or any substitute thereof, for the purpose of distribution to any person within this Commonwealth, shall pay to this Commonwealth an excise tax of one and one-quarter mills on each such cigarette sold, stored or received before August 1, 2004; an excise tax of one cent on each such cigarette sold, stored or received on and after August 1, 2004, through midnight on June 30, 2005; and an excise tax of 1.5 cents on each such cigarette sold, stored or received on and after July 1, 2005.

B. In addition to all other taxes now imposed by law, every person within the Commonwealth who sells, stores, or receives roll-your-own tobacco, for the purpose of distribution within the

Commonwealth, shall pay to the Commonwealth a cigarette excise tax at the rate of 10% of the manufacturer's sales price of such roll-your-own tobacco.

C. The revenues generated by the taxes imposed under this section on and after August 1, 2004, shall be collected by the Department and deposited into the Virginia Health Care Fund established under § 32.1-366.

D. The provisions of this section shall not apply to members of federal, state, county, city, or town law-enforcement agencies when possession of unstamped cigarettes is necessary in the performance of investigatory duties.

Code 1950, § 58-757.1; 1960, c. 392, § 1; 1980, c. 633; 1984, c. 675; 2004, Sp. Sess. I, c. 3; 2006, c. 768; 2014, cc. 422, 458.

§ 58.1-1002. Exemptions

The tax levied shall not apply to free distribution of sample cigarettes in packages containing five or fewer cigarettes or to any package of cigarettes customarily donated free of charge by manufacturers of cigarettes to employees in factories where cigarettes are manufactured in this Commonwealth, when such packages of cigarettes are not taxed by the federal government.

Code 1950, § 58-757.1; 1960, c. 392, § 1; 1980, c. 633; 1984, c. 675.

§ 58.1-1003. How paid; affixing of stamps; records of stamping agents; civil penalties

A. Except as otherwise specifically provided pursuant to § 58.1-1003.2, the taxes imposed by this chapter shall be paid by affixing stamps equaling the amount of the tax in the manner set forth. The stamps shall be affixed to each individual package, bag, box or can in such a manner that their removal will require continued application of water or steam. Every stamping agent in the Commonwealth shall affix to any unstamped cigarettes the requisite denominations and amount of stamp or stamps that represent the proper tax levied by this chapter prior to shipping to other wholesale dealers or retail outlets.

B. Every wholesale dealer shall at the time of shipping or delivering any cigarettes make and retain a true duplicate invoice of the same which shall show full and complete details of the sale or delivery of the taxable article. All stamping agents shall also keep a record of purchases of all cigarettes, and retain all books, records, and memoranda pertaining to the purchase and sale of such cigarettes for a period of five years, and such records shall be subject to examination by the Department upon request.

C. Every stamping agent shall be required to file a report between the first and twentieth of each month, covering all revenue stamps the stamping agent affixed to cigarettes during the preceding month. The report shall (i) list all brands of cigarettes to which the Virginia revenue stamp was affixed and the quantity, measured in packs, of all such brands to which the Virginia revenue stamp was affixed; (ii) list the name and address of both the manufacturer of the cigarettes and the entity from which the cigarettes were obtained; and (iii) include the required documentation for

and detail the amount and source of any bad debt deductions being taken pursuant to § 58.1-1003.1. The Department may allow such reports to be filed electronically.

D.1. For the purpose of compensating stamping agents for accounting for the tax imposed under this article on roll-your-own tobacco, such stamping agents shall be allowed when filing a monthly return and paying the tax to deduct 2 percent of the tax otherwise due if the amount due was not delinquent at the time of payment.

2. The Tax Commissioner shall prepare for each fiscal year an estimate of the total amount of all discounts allowed to stamping agents pursuant to this subsection and such amount shall be taken into consideration in preparing the official estimate of the total revenues to be collected during the fiscal year by the Virginia Health Care Fund established under § 32.1-366. Any reduction in funding available for programs financed by the Virginia Health Care Fund as a result of such discounts shall be made up by the general fund.

E. Any stamping agent who fails or refuses to comply with any of the above provisions shall have such agent's permit to affix revenue stamps revoked by the Commissioner. Additionally, a stamping agent may be subject to a civil penalty of $500 for each day after the due date that an agent fails or refuses to file a report required under subsection C. The penalty shall be assessed and collected by the Department as other taxes are collected.

Code 1950, §§ 58-757.1, 58-757.2; 1960, c. 392, §§ 1, 2; 1962, c. 473; 1980, c. 633; 1984, c. 675; 2004, c. 1029; 2005, c. 28; 2006, cc. 64, 229, 768; 2010, c. 701; 2013, c. 381.

§ 58.1-1003.1. Bad debt; deduction; definition

A. Any stamping agent may deduct the amount of bad debts from the tax imposed by this chapter. The amount deducted shall be charged off as uncollectible on the books of the stamping agent. If a person pays all or part of a bad debt that a stamping agent claimed as a deduction under this section, the stamping agent shall be liable for the amount of taxes deducted in connection with that portion of the debt for which payment is received and shall remit these taxes together with its next report to the Department pursuant to subsection C of § 58.1-1003.

B. Any claim for a bad debt deduction under this section shall be supported by all of the following:

1. A copy of the original invoice;

2. Evidence that the cigarettes described in the invoice were delivered to the person who ordered them; and

3. Evidence that the person who ordered and received the cigarettes did not pay the stamping agent for the cigarettes and that the stamping agent used reasonable collection practices in attempting to collect the debt.

C. As used in this section, "bad debt" means the taxes under this chapter attributable to any portion of a debt that is related to a sale of cigarettes subject to tax under this chapter that is not otherwise deductible or excludable, that has become worthless or uncollectible in the time period

between the date when taxes accrue to the Department for the stamping agents' preceding tax return and the date when taxes accrue to the Department for the present return, and that is eligible to be claimed, or could be eligible to be claimed if the stamping agent kept accounts on an accrual basis, as a deduction pursuant to § 166 of the Internal Revenue Code . A bad debt shall not include (i) any interest on the wholesale price of cigarettes, (ii) uncollectible amounts on property that remains in the possession of the stamping agent until the full purchase price is paid, (iii) expenses incurred in attempting to collect any account receivable or any portion of the debt recovered, (iv) any accounts receivable that have been sold to a third party for collection, and (v) repossessed property.

2006, cc. 64, 229.

§ 58.1-1003.2. Roll-your-own tobacco cigarette excise tax; how paid; stamping process; records of stamping agents

A. The taxes imposed by subsection B of § 58.1-1001 shall be paid by the stamping agent at the time he files the return required pursuant to this section. Upon payment of the tax and production and transmission of the documentation required by this section, the subject roll-your-own tobacco shall be deemed to bear the Virginia revenue stamp otherwise required by this article.

B. Unless specifically provided otherwise in this section, the requirements for paying tax and filing returns relating to roll-your-own tobacco with the Department shall be as provided in Article 2.1 (§ 58.1-1021.01 et seq.) of this chapter.

C. Any manufacturer of roll-your-own tobacco who ships, delivers, or otherwise causes roll-your-own tobacco to be transported to a wholesale dealer, retail dealer, or stamping agent located within the Commonwealth shall include on an invoice accompanying each such shipment a listing of all roll-your-own tobacco included in the shipment by manufacturer, brand family, and brand style and the total weight in ounces of each such brand style. The manufacturer shall also include on the invoice the manufacturer's sales price, as that term is defined in § 58.1-1021.01, for all roll-your-own tobacco included in the shipment by manufacturer, brand family, and brand style.

D. Any stamping agent who pays the cigarette excise tax imposed by this article on roll-your-own tobacco shall include, on an invoice accompanying each shipment he initiates that includes roll-your-own tobacco, a listing of all roll-your-own tobacco included in the shipment by manufacturer, brand family, and brand style and the total weight in ounces of each such brand style. In addition, the stamping agent shall note on each such invoice that he has paid or will pay the cigarette excise tax imposed by this article. An invoice prepared in accordance with this subsection shall be deemed the cigarette revenue stamp otherwise required by this article. Any wholesaler, distributor, or entity of any kind that subsequently ships the roll-your-own tobacco, or some portion of it, shall (i) cause a copy of the invoice to accompany such subsequent shipment, and (ii) indicate on an invoice prepared by the subsequent shipper any changes in quantity from that reflected in the initial invoice.

2006, c. 768.

§ 58.1-1003.3. Roll-your-own cigarette machines

Any person who maintains, operates, or rents a machine at a retail establishment for use by a consumer that enables any person to process at the establishment a product that is made or derived from tobacco into a roll or tube shall be deemed to be a manufacturer of cigarettes, and the resulting product produced at such establishment shall be deemed to be manufactured cigarettes sold to a consumer for purposes of this title, Chapter 42 (§ 3.2-4200 et seq.) of Title 3.2, and Chapter 2.1 (§ 9.1-209 et seq.) of Title 9.1. A retail establishment may purchase tobacco that has not been subject to tax pursuant to this title or the requirements of Chapter 42 of Title 3.2, provided that (i) such tobacco may only be sold to consumers for the purpose of making cigarettes on the machines described herein in the establishment, (ii) the retail establishment pays the taxes due on such cigarettes pursuant to this title, and (iii) the retail establishment maintains compliance with the requirements of Chapter 42 of Title 3.2 with respect to such cigarettes. The provisions of this section shall not apply to the sale and use of cigarette rolling machines purchased for personal use by an individual consumer to make cigarettes for personal consumption and not for rental or use by other consumers.

2012, cc. 48, 68; 2014, cc. 370, 418.

§§ 58.1-1004, 58.1-1005. Repealed

Repealed by Acts 2004, c. 1029.

§ 58.1-1006. Forms and kinds of containers, methods of breaking packages, and methods of affixing stamps; penalty for interfering with enforcement of article

The Department shall provide by rules and regulations forms and kinds of containers, the methods of breaking packages and methods of affixing stamps that shall be employed by persons subject to the cigarette tax, thereby making possible the enforcement of payment of the cigarette tax by inspection. Any person subject to this tax engaging in or permitting such practices as are prohibited by rules and regulations of the Department or any person who upon demand of the Department or any of its officers or agents refuses to allow full inspection of the premises or any part thereof, or in any way interferes with any agent of the Department in the performance of his duties in enforcing this chapter, shall be guilty of a Class 2 misdemeanor. Further, a stamping agent shall have such agent's stamping permit suspended and be subject to a penalty of $1,000 for each day the stamping agent engages in or permits practices that are prohibited by rules and regulations of the Department or refuses to allow full inspection of the premises or any part thereof, or in any way interferes with any agent of the Department in the performance of his duties in enforcing this chapter. Such penalty shall be assessed and collected by the Department as other taxes are collected.

Code 1950, § 58-757.5; 1960, c. 392, § 5; 1984, c. 675; 2005, c. 28.

§ 58.1-1007. Documents touching purchase, sale, etc., of cigarettes to be kept for three years, subject to inspection; penalty

It shall be the duty of every person receiving, storing, selling, handling or transporting cigarettes in any manner whatsoever, to preserve all invoices, books, papers, cancelled checks, or other documents relating to the purchase, sale, exchange, receipt or transportation of all cigarettes for a period of three years. All such invoices, books, papers, cancelled checks or other memoranda and records shall be subject to audit and inspection at all times by any duly authorized representative of the Department, the Office of the Attorney General, or the Department of Alcoholic Beverage Control or by a local cigarette tax administrative or enforcement official. Any person who fails or refuses to keep and preserve the records as required in this section shall be guilty of a Class 2 misdemeanor. Any person who, upon request by a duly authorized agent who is entitled to audit and inspect such records, fails or refuses to allow an audit or inspection of records as provided in this section shall have his stamping permit suspended until such time as the audit or inspection is allowed. The Department may impose a penalty of $1,000 for each day that the person fails or refuses to allow an audit or inspection of the records. The penalty shall be assessed and collected by the Department as other taxes are collected.

Code 1950, §§ 58-757.4, 58-757.6; 1960, c. 392, §§ 4, 6; 1984, c. 675; 2005, c. 28; 2015, cc. 738, 754.

§ 58.1-1008. Monthly reports of stamping agents; penalty

In addition to the reporting requirements imposed by § 58.1-1003, every stamping agent qualifying as such with the Department shall be required to file a report between the first and twentieth of each month, covering the purchase or receipt by them of all cigarettes during the preceding month. The report shall give in detail the different kinds and quantities of cigarettes so purchased or received by them during the preceding month. The report shall also list all orders for cigarettes purchased through such wholesale dealer from without this Commonwealth on a drop shipment and consigned direct to the person ordering such cigarettes through such stamping agent. The Department may allow such reports to be filed electronically. If, upon examination of invoices of any stamping agent, such agent is unable to furnish evidence to the Department of sufficient stamp purchases to cover unstamped cigarettes purchased by him, the prima facie presumption shall arise that such cigarettes were sold without the proper stamps affixed thereto in violation of § 58.1-1003. The Department may impose a penalty of $250, to be assessed and collected by the Department as other taxes are collected, on any stamping agent for each failure or refusal to file the report, or portion thereof, required by this section or by § 3.2-4209 in the manner and time allowed. The Department may revoke a stamping permit for up to one year if the stamping agent fails to file more than one of the required reports in a timely manner in any calendar year. After such time, the stamping agent must reapply to the Department for a stamping permit. The Department may also impose a penalty, to be assessed and collected by the Department as other taxes are collected, of $250 per pack of cigarettes on any person found to be selling cigarettes in Virginia after his stamping permit has been revoked. Each pack of cigarettes sold shall be considered a

separate offense. Where willful intent exists, as defined in § 58.1-1013, the penalty shall be $2,500 per pack.

Code 1950, §§ 58-757.2, 58-757.7; 1960, c. 392, §§ 2, 7; 1962, c. 473; 1984, c. 675; 1992, c. 763; 2005, c. 28; 2013, c. 381.

§ 58.1-1008.1. Monthly reports of tobacco product manufacturers

Every manufacturer producing cigarettes in or shipping cigarettes into or within the Commonwealth shall file a report with the Department between the first and tenth day of each month identifying all purchasers of cigarettes by name and address with the quantities and brands of cigarettes purchased during the preceding month, and shall provide any other information the Department deems appropriate for the administration of this title or Article 1 (§ 3.2-4200 et seq.) of Chapter 42 of Title 3.2. The Department may allow such reports to be filed electronically. The Department shall have the power to enter upon the premises of any such manufacturer during its regular business hours to examine or cause to be examined, by any agent or representative designated by the Department for that purpose, any books, papers, records, invoices, or memoranda, etc., relating to (i) the information required in such report, or (ii) the manufacturer's compliance with this section.

Any manufacturer subject to the provisions of this section who fails or refuses to file the report required by this section, or who upon request by a duly authorized agent or representative of the Department fails or refuses to allow an audit or inspection of records as provided herein, is guilty of a Class 2 misdemeanor. In addition, the Department may impose a civil penalty not to exceed $5,000 against any manufacturer subject to the provisions of this section for such failure or refusal. Each failure or refusal shall constitute a separate violation.

For the purposes of this section:

"Manufacturer" means tobacco product manufacturer, as that term is defined in § 3.2-4200.

"Purchasers" means any person or persons purchasing or receiving cigarettes for resale, including wholesalers and retailers, or any other person or persons purchasing cigarettes directly from a manufacturer within the Commonwealth.

2002, cc. 683, 722; 2013, c. 381.

§ 58.1-1008.2. Materially false statements in reports

Any tobacco product manufacturer, stamping agent, or importer of cigarettes, or any officer, employee, or agent of any such entity, who knowingly and with the intent to defraud, mislead, or deceive makes any materially false statement in any record required by this article or Article 2.1 (§ 58.1-1021.01 et seq.) of this chapter to be kept, or in any report or return required by this article or Article 2.1 of this chapter to be filed with the Department is guilty of a violation of § 18.2-498.3. Each record kept and each report or return filed containing one or more false statements shall constitute a separate offense.

2009, c. 847.

§ 58.1-1009. Preparation, design, and sale of stamps; unlawful sale or purchase of stamps a felony; penalty

A. The Department is hereby authorized and directed to have prepared and to sell stamps suitable for denoting the tax on all cigarettes. The Department shall design, adopt and promulgate the form and kind of stamps to be used and may allow for electronic purchase and payment when selling such stamps. Stamps so adopted and promulgated shall be known as and termed "Virginia revenue stamps," and in any information or indictment, it shall be sufficient to describe the stamps as "Virginia revenue stamps."

Any person other than the Department who sells such revenue stamps, not affixed to cigarettes sold and delivered by them, whether the said stamps be genuine or counterfeit, shall be guilty of a Class 6 felony. Any person who purchases revenue stamps from anyone other than the Department, unless such stamps are already affixed to cigarettes being purchased by and delivered to him, or who uses or affixes, or causes to be used or affixed, any revenue stamps not purchased from the Department by the owner of the cigarettes being handled or stamped, whether such stamps are genuine or counterfeit, shall be guilty of a Class 6 felony. When stamping agents have qualified as such with the Department, as provided in § 58.1-1011, and purchase stamps as prescribed herein for use on taxable cigarettes sold and delivered by them, the Department shall allow to each stamping agent on such sales of revenue stamps a discount equal to two percent of the total charged to the stamping agent by the Department for the purchase of the revenue stamps. The Tax Commissioner shall prepare for each fiscal year an estimate of the total amount of all discounts allowed to stamping agents pursuant to this subsection and such amount shall be taken into consideration in preparing the official estimate of the total revenues to be collected during the fiscal year by the Virginia Health Care Fund established under § 32.1-366. Any reduction in funding available for programs financed by the Virginia Health Care Fund as a result of such discounts shall be made up by the general fund.

All stamps prescribed by the Department shall be designed and furnished in such a fashion as to permit identification of the wholesale dealer or retail dealer that affixed the stamp to the particular package of cigarettes, by means of a serial number or other mark on the stamp. The Department shall maintain for not less than three years information identifying which wholesale dealer or retail dealer affixed the revenue stamp to each package of cigarettes.

B. 1. The Department shall provide Virginia revenue stamps to certain wholesale dealers holding a current permit issued pursuant to § 58.1-1011 prior to collecting the tax imposed under this chapter from such wholesale dealer. Such wholesale dealers shall be allowed to obtain the stamps from the Department without concurrent payment of the tax only if the conditions of this subsection are satisfied.

In order to obtain Virginia revenue stamps without concurrent payment of the tax imposed under this chapter, a wholesale dealer shall (i) file a bond with a corporate surety licensed to do business in Virginia, or (ii) file an irrevocable letter of credit satisfactory to the Tax Commissioner as to the

bank or savings institution, the form and substance, and payable to the Commonwealth in a face amount determined by the Tax Commissioner to be satisfactory to cover possible losses resulting from the failure to remit taxes due but not exceeding two times the anticipated average monthly amount in purchases of Virginia revenue stamps by the wholesale dealer as determined by the Commissioner. The letter of credit shall be from a bank incorporated or authorized to conduct banking business under the laws of the Commonwealth or authorized to do business in the Commonwealth under the banking laws of the United States, or a federally insured savings institution located in the Commonwealth. Such bond or irrevocable letter of credit shall be conditioned upon payment of the tax imposed by this chapter relating to Virginia revenue stamps obtained by the wholesale dealer from the Department (without concurrent payment of the tax) for which such tax, net of any applicable discount described in subsection A, shall be paid within the 30 days immediately following the date that the related revenue stamp or stamps were provided by the Department to such wholesale dealer. Any such bond shall be so written that, on timely payment of the premium thereon, it shall continue in force from year to year unless sooner terminated.

2. Any surety on a bond filed by any wholesale dealer shall be released and discharged from any and all liability to the Commonwealth accruing on such bond after the expiration of 60 days from the date upon which such surety shall have lodged with the Commissioner written request to be released and discharged. But such request shall not operate to relieve, release or discharge such surety from any liability already accrued or which shall accrue before the expiration of such 60-day period. The Commissioner shall, promptly on receipt of such notice, notify the wholesale dealer who furnished such bond. Unless such dealer on or before the expiration of such 60 days' notice files with the Commissioner a new bond or letter of credit that meets all the conditions described in subdivision 1, the Commissioner shall forthwith require the wholesale dealer to pay the tax imposed under this chapter concurrent with obtaining revenue stamps from the Department.

In the event that liability upon the bond or letter of credit filed by the wholesale dealer with the Commissioner shall be discharged or reduced, whether by judgment rendered, payment made or otherwise, or if in the opinion of the Commissioner any surety on the bond becomes unsatisfactory or unacceptable, then the Commissioner may require the filing of a new bond or letter of credit. Unless such new bond or letter of credit meets all the conditions described in subdivision 1, the Commissioner shall forthwith require the wholesale dealer to pay the tax imposed under this chapter concurrent with obtaining revenue stamps from the Department.

3. Notwithstanding any other provision in this subsection, the Tax Commissioner, for good cause, shall require a wholesale dealer to pay the tax imposed under this chapter concurrent with obtaining revenue stamps from the Department, regardless of whether or not such dealer has filed or agreed to file the bond or letter of credit described in this subsection.

C. In addition to any other penalties provided by law, the Department may revoke the permit issued, in accordance with § 58.1-1011, to any person who violates any provision of this section.

Code 1950, §§ 58-757.8, 58-757.10; 1960, c. 392, §§ 8, 10; 1973, c. 3; 1984, c. 675; 2000, cc. 880, 901; 2002, cc. 683, 722, 821; 2004, c. 1029; 2004, Sp. Sess. I, c. 3; 2005, c. 925; 2013, cc. 311, 381, 389.

§ 58.1-1010. Sale of unstamped cigarettes by wholesale dealers; penalty

A. A wholesale dealer who is duly qualified as a wholesale dealer stamping agent under § 58.1-1011 may sell cigarettes without the Virginia revenue stamps affixed thereto, provided such cigarettes are sold and shipped or delivered in interstate commerce to a person outside this Commonwealth. Such wholesale dealer shall have on file a record of such sale, the original purchase order, a copy of the invoice therefor, and a receipt from a common carrier, contract carrier, or post office showing shipment for delivery in such other state, or, if delivered by such wholesale dealer to the purchaser at a point outside of this Commonwealth, a receipt showing such delivery in addition to the record, original purchase order and copy of the invoice relating to such sale.

B. Such duly qualified wholesale dealer may sell cigarettes without the Virginia revenue stamps affixed thereto, provided:

1. Such cigarettes are sold to a person who is engaged in business as a dealer in cigarettes in another state;

2. Such cigarettes are purchased exclusively for resale in the other state; and

3. Such cigarettes are at the time of sale properly stamped by the Virginia wholesale dealer with revenue stamps authorized and issued by the other state for use upon such cigarettes. A wholesale dealer shall have on file a record of each such sale, the original purchase order, a copy of the invoice therefor, a receipt from the purchaser showing that such purchase was made exclusively for resale in the other state, and a record showing the purchase and use of such revenue stamps of the other state, and shall set forth in his or its monthly report to the Department the quantity of cigarettes, measured in packs, so set aside for sale outside of the Commonwealth. If upon examination of invoices of any wholesale dealer, such dealer is unable to furnish evidence to the Department of sufficient stamp purchases from such other state to cover unstamped cigarettes set aside for sale in such other state, the prima facie presumption shall arise that such cigarettes were sold without the proper stamps affixed thereto in violation of § 58.1-1003.

C. Cigarettes may be sold by duly qualified wholesale dealers, without revenue stamps affixed thereto, when sold to the United States or to any instrumentality thereof for resale to or for the use or consumption by members of the armed services of the United States, or when sold to the Veterans Canteen Service of the U.S. Department of Veterans Affairs for resale to veterans of the armed services of the United States who are hospitalized or domiciled in hospitals and homes of the U.S. Department of Veterans Affairs, provided the books and records, including original purchase orders and copies of invoices showing such sales, are kept on file and shall set forth in his or its monthly report to the Department the quantity of cigarettes, measured in packs, so sold.

D. Cigarettes may be sold by duly qualified wholesale dealers, without revenue stamps affixed thereto, when sold and delivered to ships regularly engaged in foreign commerce or coastwise shipping between points in this Commonwealth and points outside of this Commonwealth for resale to or for use or consumption upon such ship or in foreign commerce.

E. The Department is authorized to adopt rules and regulations with respect to the enforcement of the provisions of this section to prevent any evasion of the tax herein imposed.

A failure to comply with any provision of this section with respect to any sale of unstamped cigarettes shall subject the wholesale dealer to the payment of the tax thereon imposed by this chapter. The Department may impose a penalty, to be assessed and collected by the Department as other taxes are collected, of up to $500 per pack of cigarettes on any stamping agent it finds not in compliance with any provision of this section with respect to the sale of unstamped cigarettes. The Department may also suspend the stamping permit of such stamping agent until the tax and penalties have been paid to the Department. Any person who violates any of the provisions of this section shall be guilty of a Class 2 misdemeanor.

Code 1950, § 58-757.9; 1960, c. 392, § 9; 1962, c. 473; 1984, c. 675; 2004, c. 1029; 2005, c. 28.

§ 58.1-1011. Qualification for permit to affix Virginia revenue stamps; penalty

A. Only manufacturers, wholesale dealers and retail dealers may be permitted as stamping agents. It shall be unlawful for any person to purchase, possess or affix Virginia revenue stamps without first obtaining a permit to do so from the Department. Every manufacturer, wholesale dealer or retail dealer who desires to qualify as a stamping agent with the Department shall make application to the Department on forms prescribed for this purpose, which shall be supplied upon request. The application forms will require such information relative to the nature of business engaged in by the applicant as the Department deems necessary to the qualifying of the applicant as a stamping agent. The Department shall conduct a background investigation, to include a Virginia Criminal History Records search, and fingerprints of the applicant, or its responsible principals, managers, and other persons engaged in handling and stamping cigarettes at the licensable locations, that shall be submitted to the Federal Bureau of Investigation if the Department determines a National Criminal Records search is necessary, on applicants for licensure as cigarette tax stamping agents. The Department may refuse to issue a stamping permit or may suspend, revoke or refuse to renew a stamping permit issued to any person, partnership, corporation, limited liability company or business trust, if it determines that any principal, manager, or other persons engaged in handling and stamping cigarettes at the licensable location of the applicant has been (i) found guilty of any fraud or misrepresentation in any connection, (ii) convicted of robbery, extortion, burglary, larceny, embezzlement, fraudulent conversion, gambling, perjury, bribery, treason, or racketeering, or (iii) convicted of a felony. Anyone who knowingly and willfully falsifies, conceals or misrepresents a material fact or knowingly and willfully makes a false, fictitious or fraudulent statement or representation in any application for a stamping permit to the Department is guilty of a Class 1 misdemeanor. The Department may establish an application or renewal

fee not to exceed $750 to be retained by the Department to be applied to the administrative and other costs of processing stamping agent applications, conducting background investigations and issuing stamping permits. Any application or renewal fees collected pursuant to this section in excess of such costs as of June 30 in even-numbered years shall be reported to the State Treasurer and deposited into the state treasury. If the Department after review of his application believes the manufacturer, wholesale dealer or retail dealer is qualified, the Department shall issue to the applicant a permit qualifying him as a stamping agent, as defined in this chapter, and he shall be allowed the discount on purchases of Virginia revenue stamps as set out herein for stamping agents purchasing stamps for their individual use. Such stamping agent shall be authorized to affix Virginia revenue stamps, and in addition, if the applicant qualifies as a wholesale dealer, that shall be so noted on the permit issued by the Department. Permits issued pursuant to this section shall be valid for a period of three years from the date of issue unless revoked by the Department in the manner provided herein. The Department shall not sell Virginia revenue stamps to any person or entity unless and until the Department has issued that person or entity a permit to affix Virginia revenue stamps. The Department may promulgate regulations governing the issuance, suspension and revocation of stamping agent permits. The Department may at any time revoke the permit issued to any stamping agent as herein provided who is not in compliance with any of the provisions of this chapter or any of the rules of the Department adopted and promulgated under authority of this chapter.

B. The Department shall compile and maintain a list of licensed cigarette stamping agents. The list shall be updated monthly and shall be available upon request to any federal, state, or local law-enforcement agency.

Code 1950, § 58-757.10; 1960, c. 392, § 10; 1984, c. 675; 2004, c. 1029; 2005, c. 28; 2016, cc. 227, 344.

§ 58.1-1012. Duties of wholesale dealer, manufacturer and exclusive distributor on shipping, delivering or sending out cigarettes

A. Every wholesale dealer in the Commonwealth shall, before shipping, delivering or sending out any cigarettes to any dealer in the Commonwealth or for sale in the Commonwealth, cause the same to have the requisite denominations and amount of stamps to represent the tax affixed as stated herein, and every other wholesale dealer shall at the time of shipping or delivering any cigarettes make a true duplicate invoice of the same, showing the date, amount and value of each class of articles shipped or delivered, and retain a duplicate thereof. Wholesale dealers in the Commonwealth who ship, deliver, or send any cigarettes to the United States government for sale or distribution to any military, naval or marine reservation owned by the United States government within the Commonwealth shall be required to carry out the provisions set out in this chapter for such sales or deliveries.

B. Any manufacturer or exclusive distributor shall not be required to affix Virginia revenue stamps as required by subsection A, if such manufacturer or exclusive distributor is shipping, sending,

selling, or delivering the cigarettes to a wholesale dealer in the Commonwealth who is a duly qualified wholesale dealer stamping agent in accordance with § 58.1-1011 or to a law-enforcement agency for use in the performance of its duties. The manufacturer or exclusive distributor who qualifies under this section and ships, sends, sells, or delivers cigarettes to a wholesale dealer shall keep on file a record of each such shipment, sale, or delivery and shall maintain such record for a period of three years.

Code 1950, § 58-757.11; 1960, c. 392, § 11; 1984, c. 675; 2005, c. 856; 2014, cc. 422, 458.

§ 58.1-1013. Penalty for failing to affix stamps; subsequent violations of article

Any person who has been issued a permit to affix revenue stamps by the Department and fails to properly affix the required stamps to any cigarettes pursuant to the provisions of this chapter shall be required to pay as part of the tax imposed hereunder, a civil penalty, to be assessed and collected by the Department as other taxes are collected, of (i) $2.50 per pack, up to $500, for the first violation by a legal entity within a 36-month period; (ii) $5.00 per pack, up to $1,000, for the second violation by the legal entity within a 36-month period; and (iii) $10 per pack, up to $50,000, for the third and any subsequent violation by the legal entity within a 36-month period. Where willful intent exists to defraud the Commonwealth of the tax levied under this chapter, such person shall be required to pay a civil penalty of $25 per pack, up to $250,000. It shall be prima facie evidence of intent to defraud when the number of such unstamped cigarettes exceeds either 30 packs or five percent of the cigarettes in the place of business of such person, whichever is greater. Notwithstanding the immediately preceding threshold limits, if the number of unstamped packs exceeds 500 packs, it shall be prima facie evidence of intent to defraud.

Any cigarettes in the place of business of any person required by the provisions of this chapter to stamp the same shall be prima facie evidence that they are intended for sale.

No civil penalty shall be imposed under this section for any unstamped cigarettes if a civil penalty under § 58.1-1017 has been paid for such unstamped cigarettes.

Code 1950, § 58-757.12; 1960, c. 392, § 12; 1984, c. 675; 2004, c. 1029; 2006, c. 409; 2010, cc. 35, 471.

§ 58.1-1014. Repealed

Repealed by Acts 2004, c. 1029.

§ 58.1-1015. Removal, reuse, unauthorized sale, etc., of stamps; counterfeit stamps; seizure and forfeiture; penalties

A. Whoever removes or otherwise prepares any Virginia revenue stamp with intent to use, or cause the same to be used, after it has already been used, or buys, sells, offers for sale, or gives away any such washed or removed or restored stamps to any person for using or who used the same, or has in his possession any washed or restored or removed or altered stamp that has been removed from the article to which it has been previously affixed, or whoever for the purpose of indicating the payment of any tax hereunder reuses any stamp which has heretofore been used for the purpose of

paying any tax provided in this article, or whoever manufactures, buys, sells, offers for sale, or has in his possession any reproduction or counterfeit of the Virginia revenue stamps provided for in this article, or whoever sells any Virginia revenue stamps not affixed to taxable cigarettes shall be subject to the penalty provided for in this section.

B. It shall be unlawful to sell or possess cigarettes that are affixed with a reproduction or counterfeit of Virginia revenue stamps. Such cigarettes and stamps shall be subject to seizure, forfeiture and destruction by the Department or any law-enforcement officer of the Commonwealth. All fixtures, equipment, materials and personal property used in substantial connection with the sale or possession of cigarettes that are affixed with a reproduction or counterfeit of Virginia revenue stamps in a knowing and intentional violation of this article shall be subject to seizure and forfeiture according to the procedures contained in Chapter 22.1 (§ 19.2-386.1 et seq.) of Title 19.2, applied mutatis mutandis.

C. Any person who knowingly violates subsection A with a total quantity of less than 40 revenue stamps shall be punished by a civil penalty of no more than $1,000. Any person who knowingly violates subsection B shall, for a second or subsequent offense involving a total quantity of less than 40 revenue stamps, be punished by a civil penalty of no more than $5,000 and, if applicable, the revocation by the Department of Taxation of his wholesale dealer license.

D. Any person who knowingly violates subsection B with a total quantity of 40 or more revenue stamps shall be punished by a civil penalty of no more than $2,000. Any person who knowingly violates subsection B shall, for a second or subsequent offense involving a total quantity of 40 or more revenue stamps, be punished by a civil penalty of no more than $50,000 and, if applicable, the revocation by the Department of Taxation of his wholesale dealer license.

The Attorney General is authorized to enforce the provisions of this section.

Code 1950, § 58-757.14; 1960, c. 392, § 14; 1984, c. 675; 2003, c. 1010.

§ 58.1-1016. Administration and enforcement of tax

The Department shall administer and enforce the tax imposed by this article. It shall have the power to enter upon the premises of any person and to examine, or cause to be examined, by any agent or representative designated by it for that purpose, any books, papers, records, invoices, or memoranda, etc., bearing upon the amount of taxes payable, and to secure other information directly or indirectly concerned in the enforcement of this chapter.

Code 1950, § 58-757.15; 1960, c. 392, § 15; 1984, c. 675.

§ 58.1-1017. Sale, purchase, possession, etc., of cigarettes for purpose of evading tax; penalties

A. Any person, except as otherwise provided by law, who sells, purchases, transports, receives, or possesses unstamped cigarettes shall be required to pay any tax owed pursuant to this chapter. In addition, such person shall be required to pay a civil penalty of (i) $2.50 per pack, up to $500, for the first violation by a legal entity within a 36-month period; (ii) $5 per pack, up to $1,000, for

the second violation by the legal entity within a 36-month period; and (iii) $10 per pack, up to $50,000, for the third and any subsequent violation by the legal entity within a 36-month period, to be assessed and collected by the Department as other taxes are collected. In addition, where willful intent exists to defraud the Commonwealth of the tax levied under this chapter, such person shall be required to pay a civil penalty of $25 per pack, up to $250,000.

B. It shall be unlawful for any person, except as otherwise provided by law, to sell, purchase, transport, receive or possess less than 500 packages of cigarettes unless the same have been stamped in the manner required by law, for the purpose of evading the payment of the taxes on such products. Any person violating the provisions of this subsection is guilty of a Class 1 misdemeanor. Any person who is convicted of a second or subsequent violation of this subsection is guilty of a Class 6 felony, provided that the accused was at liberty as defined in § 53.1-151 between each conviction and it is admitted, or found by the jury or judge before whom the person is tried, that the accused was previously convicted of a violation of this subsection.

C. It shall be unlawful for any person, except as otherwise provided by law, to sell, purchase, transport, receive or possess 500 or more packages of cigarettes unless the same have been stamped in the manner required by law, for the purpose of evading the payment of the taxes on such products. Any person violating the provisions of this subsection shall be guilty of a Class 6 felony. Any person who is convicted of a second or subsequent violation of this subsection is guilty of a Class 5 felony, provided that the accused was at liberty as defined in § 53.1-151 between each conviction and it is admitted, or found by the jury or judge before whom the person is tried, that the accused was previously convicted of a violation of this subsection.

D. If a person who (i) has not been issued a permit to affix revenue stamps by the Department, as provided in § 58.1-1011, or (ii) is not a retail dealer who has lawfully purchased cigarettes from such permit holder has in his possession within the Commonwealth more than 30 packages of unstamped cigarettes, such possession shall be presumed to be for the purpose of evading the payment of the taxes due thereon. No civil penalty shall be imposed under this section for any unstamped cigarettes if a civil penalty under § 58.1-1013 has been paid for such unstamped cigarettes.

Code 1950, § 58-757.17; 1960, c. 392, § 17; 1984, c. 675; 1992, c. 763; 2004, cc. 883, 996; 2005, c. 28; 2006, c. 409; 2010, cc. 35, 471; 2013, cc. 570, 624.

§ 58.1-1017.1. Possession with intent to distribute tax-paid, contraband cigarettes; penalties

Any person who possesses, with intent to distribute, more than 5,000 (25 cartons) but fewer than 40,000 (200 cartons) tax-paid cigarettes is guilty of a Class 1 misdemeanor for a first offense and is guilty of a Class 6 felony for any second or subsequent offense. Any person who possesses, with intent to distribute, 40,000 (200 cartons) or more tax-paid cigarettes is guilty of a Class 6 felony for a first offense and is guilty of a Class 5 felony for a second or subsequent offense. Additionally, any person who violates the provisions of this section shall be assessed a civil penalty of (i) $2.50

per pack, but no less than $5,000, for a first offense; (ii) $5 per pack, but no less than $10,000, for a second such offense committed within a 36-month period; and (iii) $10 per pack, but no less than $50,000, for a third or subsequent such offense committed within a 36-month period. The civil penalties shall be assessed and collected by the Department as other taxes are collected.

The provisions of this section shall not apply to an authorized holder.

2012, cc. 362, 472; 2013, cc. 567, 623; 2014, cc. 422, 463, 751; 2015, cc. 273, 290.

§ 58.1-1017.2. Sealed pack labeled as cigarettes; prima facie evidence of cigarettes

In any prosecution for violations of this title, where a sealed pack is labeled as containing cigarettes, such labeling shall be prima facie evidence that the contents of the pack meet the definition of "cigarette" as defined by § 58.1-1000. Nothing shall preclude the introduction of other relevant evidence to establish the contents of a pack, whether sealed or not.

2014, cc. 301, 422.

§ 58.1-1017.3. Fraudulent purchase of cigarettes; penalties

Any person who purchases 5,000 (25 cartons) cigarettes or fewer using a forged business license, a business license obtained under false pretenses, a forged or invalid Virginia sales and use tax exemption certificate, or a Virginia sales and use tax exemption certificate obtained under false pretenses is guilty of a Class 1 misdemeanor for a first offense and a Class 6 felony for a second or subsequent offense. Any person who purchases more than 5,000 (25 cartons) cigarettes using a forged business license, a business license obtained under false pretenses, a forged or invalid Virginia sales and use tax exemption certificate, or a Virginia sales and use tax exemption certificate obtained under false pretenses is guilty of a Class 6 felony for a first offense and a Class 5 felony for a second or subsequent offense. Additionally, any person who violates the provisions of this section shall be assessed a civil penalty of (i) $2.50 per pack, but no less than $5,000, for a first offense; (ii) $5 per pack, but no less than $10,000, for a second such offense committed within a 36-month period; and (iii) $10 per pack, but no less than $50,000, for a third or subsequent such offense committed within a 36-month period. The civil penalties shall be assessed and collected by the Department as other taxes are collected.

The provisions of this section shall not preclude prosecution under any other statute.

2015, cc. 273, 290.

Article 2 - USE TAX

§ 58.1-1018. Tax imposed on storage, use or consumption of cigarettes; exemption of products on which sales tax has been paid

An excise tax is hereby imposed on the storage, use or other consumption in this Commonwealth of cigarettes purchased at retail in an amount equal to that set out in § 58.1-1001. Every person storing, using or otherwise consuming in this Commonwealth cigarettes purchased at retail shall be liable for the tax imposed by this article, and the liability shall not be extinguished until the

tax has been paid to this Commonwealth; however, if such cigarettes have attached thereto the requisite stamps or if the excise tax imposed by Article 1 (§ 58.1-1000 et seq.) has been paid by the seller of such cigarettes, then the tax imposed by this article shall not be due.

The revenues generated by the tax imposed under this section on and after August 1, 2004, shall be collected by the Department and deposited into the Virginia Health Care Fund established under § 32.1-366.

Code 1950, § 58-757.19; 1960, c. 392, § 19; 1984, c. 675; 2004, Sp. Sess. I, c. 3.

§ 58.1-1019. Monthly returns and payment of tax

Every person owning or having in his possession or custody cigarettes, the storage, use or other consumption of which is subject to the tax imposed by this article, shall, on or before the tenth day of the month following, file with the Department a return for the preceding month in such form as may be prescribed by the Department showing the cigarettes purchased by such person, and such other information as the Department may deem necessary for the proper administration of this article. The return shall be accompanied by a remittance of the amount of tax herein imposed.

Code 1950, § 58-757.20; 1960, c. 392, § 20; 1984, c. 675.

§ 58.1-1020. Assessment of tax by Department

In case any person subject to the tax imposed by this article fails to make such a return, or makes an incorrect return, the Department, from the best information available to it, shall assess the amount of tax due from such person and mail notice thereof to the taxpayer. Collection of such assessment may be enforced by legal process.

Code 1950, § 58-757.21; 1960, c. 392, § 21; 1984, c. 675.

§ 58.1-1021. Documents touching purchase, sale, etc., of cigarettes to be kept for three years, subject to inspection; penalty

It shall be the duty of every person storing, using or otherwise consuming in this Commonwealth cigarettes subject to the provisions of this article to keep and preserve all invoices, books, papers, cancelled checks, or other memoranda touching the purchase, sale, exchange, receipt, ownership, storage, use or other consumption of such cigarettes for a period of three years. All such invoices, books, papers, cancelled checks, or other memoranda shall be subject to audit and inspection by any duly authorized representative of the Department at any reasonable time. Any person who fails or refuses to keep and preserve the records as herein required shall be guilty of a Class 2 misdemeanor. Any person who fails or refuses to allow an audit or inspection of the records as herein provided, shall be assessed a penalty of $1,000 for each day he fails or refuses to allow an audit or inspection of the records, to be assessed and collected by the Department as other taxes are collected.

Code 1950, § 58-757.22; 1960, c. 392, § 22; 1984, c. 675; 2005, c. 28.

Article 2.1 - TOBACCO PRODUCTS TAX

§ 58.1-1021.01. Definitions

As used in this article, unless the context clearly shows otherwise, the term or phrase:

"Distributor" means (i) any person engaged in the business of selling tobacco products in the Commonwealth who brings, or causes to be brought, into the Commonwealth from outside the Commonwealth any tobacco products for sale; (ii) any person who makes, manufactures, fabricates, or stores tobacco products in the Commonwealth for sale in the Commonwealth; (iii) any person engaged in the business of selling tobacco products outside the Commonwealth who ships or transports tobacco products to any person in the business of selling tobacco products in the Commonwealth; or (iv) any retail dealer in possession of untaxed tobacco products in the Commonwealth.

"Loose leaf tobacco" means any leaf tobacco that is not intended to be smoked, but shall not include moist snuff. Loose leaf tobacco weight unit categories shall be as follows:

1. "Loose leaf tobacco half pound-unit" means a consumer sized unit, pouch, or package containing at least 4 ounces but not more than 8 ounces of loose leaf tobacco, by net weight, produced by the manufacturer to be sold to consumers as a single unit and not produced to be divided or sold separately and containing one individual package.

2. "Loose leaf tobacco pound-unit" means a consumer sized unit, pouch, or package containing more than 8 ounces of loose leaf tobacco, by net weight, produced by the manufacturer to be sold to consumers as a single unit and not produced to be divided or sold separately and containing one individual package.

3. "Loose leaf tobacco single-unit" means a consumer sized unit, pouch, or package containing less than 4 ounces of loose leaf tobacco, by net weight, produced by the manufacturer to be sold to consumers as a single unit and not produced to be divided or sold separately and containing one individual package.

"Manufacturer" means a person who manufactures or produces tobacco products and sells tobacco products to a distributor.

"Manufacturer's representative" means a person employed by a manufacturer to sell or distribute the manufacturer's tobacco products.

"Manufacturer's sales price" means the actual price for which a manufacturer, manufacturer's representative, or any other person sells tobacco products to an unaffiliated distributor.

"Moist snuff" means a tobacco product consisting of finely cut, ground, or powdered tobacco that is not intended to be smoked but shall not include any finely cut, ground, or powdered tobacco that is intended to be placed in the nasal cavity.

"Person" means any individual, corporation, partnership, association, company, business, trust, joint venture, or other legal entity.

"Retail dealer" means every person who sells or offers for sale any tobacco product to consumers.

"Tobacco product" or "tobacco products" means (i) "cigar" as defined in § 5702(a) of the Internal Revenue Code, and as such section may be amended; (ii) "smokeless tobacco" as defined in § 5702 (m) of the Internal Revenue Code, and as such section may be amended; or (iii) "pipe tobacco" as defined in § 5702(n) of the Internal Revenue Code, and as such section may be amended. "Tobacco products" shall also include loose leaf tobacco.

2004, Sp. Sess. I, c. 3; 2005, c. 71; 2006, c. 768; 2010, cc. 191, 804.

§ 58.1-1021.02. Tax on tobacco products

A. In addition to all other taxes now imposed by law, there is hereby imposed a tax upon the privilege of selling or dealing in tobacco products in the Commonwealth by any person engaged in business as a distributor thereof, at the following rates:

1. Upon each package of moist snuff, at the rate of $0.18 per ounce with a proportionate tax at the same rate on all fractional parts of an ounce. The tax shall be computed based on the net weight as listed by the manufacturer on the package in accordance with federal law.

2. For purposes of the tax under this article, loose leaf tobacco shall be classified as loose leaf tobacco single-units, loose leaf tobacco half pound-units, and loose leaf tobacco pound-units. Such tax shall be imposed on the distributor for loose leaf tobacco as follows:

a. $0.21 for each loose leaf tobacco single-unit;

b. $0.40 for each loose leaf tobacco half pound-unit;

c. $0.70 for each loose leaf tobacco pound-unit; and

d. For any other unit, pouch, or package of loose leaf tobacco, the tax shall be by net weight and shall be $0.21 per unit, pouch, or package plus $0.21 for each increment of 4 ounces or portion thereof that the loose leaf tobacco exceeds 16 ounces.

The tax for each unit, pouch, or package of loose leaf tobacco shall be in accordance with the provisions of subdivisions a. through d. only and regardless of sales price.

3. Upon tobacco products other than moist snuff or loose leaf tobacco, at the rate of 10 percent of the manufacturer's sales price of such tobacco products.

Such tax shall be imposed at the time the distributor (i) brings or causes to be brought into the Commonwealth from outside the Commonwealth tobacco products for sale; (ii) makes, manufactures, or fabricates tobacco products in the Commonwealth for sale in the Commonwealth; or (iii) ships or transports tobacco products to retailers in the Commonwealth to be sold by those retailers. It is the intent and purpose of this article that the distributor who first possesses the tobacco product subject to this tax in the Commonwealth shall be the distributor liable for the tax.

It is further the intent and purpose of this article to impose the tax once, and only once on all tobacco products for sale in the Commonwealth.

B. No tax shall be imposed pursuant to this section upon tobacco products not within the taxing power of the Commonwealth under the Commerce Clause of the United States Constitution.

C. A distributor that calculates and pays the tax pursuant to subdivision A 1 or A 2 in good faith reliance on the net weight listed by the manufacturer on the package or on the manufacturer's invoice shall not be liable for additional tax, or for interest or penalties, solely by reason of a subsequent determination that such weight information was incorrect.

2004, Sp. Sess. I, c. 3; 2005, c. 71; 2010, cc. 191, 804.

§ 58.1-1021.02:1. Reports by manufacturers of tobacco products

Each manufacturer that ships tobacco products to any person located in the Commonwealth shall file a report with the Department no later than the twentieth of each month identifying all such shipments made by the manufacturer during the preceding month. The Department may allow such reports to be filed electronically. Such reports shall identify the names and addresses of the persons within the Commonwealth to whom the shipments were made and the quantities of tobacco products shipped, by type of product and brand. The Tax Commissioner may authorize any manufacturer to file such reports for a period less frequently than monthly when, in the opinion of the Tax Commissioner, doing so would improve the efficiency of the administration of the tax imposed by this article. If a manufacturer is allowed to file other than on a monthly basis, each such report shall be due no later than the twentieth day of the month that immediately follows the close of the reporting period. Each such report shall contain the same information as required herein for monthly reporting.

2010, cc. 191, 804; 2013, c. 381.

§ 58.1-1021.03. Monthly return and payments of tax

A. Every distributor subject to the tax imposed under this article shall file a monthly return no later than the twentieth of each month on a form prescribed by the Department, covering the purchase of tobacco products by such distributor during the preceding month, for which tax is imposed pursuant to subsection A of § 58.1-1021.02, during the preceding month. Each return shall show the quantity and manufacturer's sales price of each tobacco product (i) brought, or caused to be brought, into the Commonwealth for sale; and (ii) made, manufactured, or fabricated in the Commonwealth for sale in the Commonwealth during the preceding calendar month. Every licensed distributor outside the Commonwealth shall in a like manner file a return showing the quantity and manufacturer's sales price of each tobacco product shipped or transported to retailers in the Commonwealth to be sold by those retailers, during the preceding calendar month. The return shall be made on forms furnished or prescribed by the Department and shall contain or be accompanied by such further information as the Department shall require. The distributor, at the time of filing the return, shall pay to the Department the tax imposed under subsection A of §

58.1-1021.02 for each such package of tobacco product purchased in the preceding month on which tax is due.

B. For the purpose of compensating dealers for accounting for the tax imposed under this article, a retail dealer or wholesale dealer shall be allowed when filing a monthly return and paying the tax to deduct two percent of the tax otherwise due if the amount due was not delinquent at the time of payment.

The Tax Commissioner shall prepare for each fiscal year an estimate of the total amount of all discounts allowed to retail or wholesale dealers pursuant to this subsection and such amount shall be taken into consideration in preparing the official estimate of the total revenues to be collected during the fiscal year by the Virginia Health Care Fund established under § 32.1-366. Any reduction in funding available for programs financed by the Virginia Health Care Fund as a result of such discounts shall be made up by the general fund.

2004, Sp. Sess. I, c. 3; 2005, cc. 71, 925; 2010, cc. 191, 804.

§ 58.1-1021.04. Failure to file return; fraudulent return; penalties; interest; overpayment of tax

A. When any distributor fails to make any return or pay the full amount of the tax required by this article, there shall be imposed a specific penalty to be added to the tax in the amount of five percent if the failure is for not more than one month, with an additional two percent for each additional month, or fraction thereof, during which the failure continues, not to exceed 20 percent in the aggregate. In no case, however, shall the penalty be less than $10 and such minimum penalty shall apply whether or not any tax is due for the period for which such return was required. If such failure is due to providential or other good cause shown to the satisfaction of the Tax Commissioner, such return with or without remittance may be accepted exclusive of penalties. In the case of a false or fraudulent return where willful intent exists to defraud the Commonwealth of any tax due under this article, or in the case of a willful failure to file a return with the intent to defraud the Commonwealth of any such tax, a specific penalty of 50 percent of the amount of the proper tax shall be assessed. All penalties and interest imposed by this article shall be payable by the distributor and collectible by the Department in the same manner as if they were a part of the tax imposed.

B. It shall be prima facie evidence of intent to defraud the Commonwealth of any tax due under this article when any distributor reports his purchases at 50 percent or less of the actual amount.

C. Interest at a rate determined in accordance with § 58.1-15 shall accrue on the tax until the same is paid.

No deficiency, interest or penalty shall be assessed for any month after the expiration of three years from the date set for the filing of the return for such month, except in cases of fraud, or where no return has been filed for such month.

D. If the Tax Commissioner determines that the amount paid the Commonwealth under this article in regard to any monthly return was greater than the amount of tax due the Commonwealth, the excess may be taken as a credit by the distributor against a subsequent month's tax imposed under this article. However, if such distributor requests a refund, such excess shall be refunded to the distributor within 45 days of the request. The refund shall include interest at the rate provided in § 58.1-15. Interest on such refunds shall accrue from the due date of the return to which such excess is attributable to or the date such excess was paid to the Department, whichever is later, and shall end on a date determined by the Department preceding the date of the refund check by not more than seven days.

2004, Sp. Sess. I, c. 3; 2005, c. 71.

§ 58.1-1021.04:1. Distributor's license; penalty

A. No person shall engage in the business of selling or dealing in tobacco products as a distributor in the Commonwealth without first having received a separate license from the Department for each location or place of business. Each application for a distributor's license shall be accompanied by a fee to be prescribed by the Department. Every application for such license shall be made on a form prescribed by the Department and the following information shall be provided on the application:

1. The name and address of the applicant. If the applicant is a firm, partnership or association, the name and address of each of its members shall be provided. If the applicant is a corporation, the name and address of each of its principal officers shall be provided;

2. The address of the applicant's principal place of business;

3. The place or places where the business to be licensed is to be conducted; and

4. Such other information as the Department may require for the purpose of the administration of this article.

B. A person outside the Commonwealth who ships or transports tobacco products to retailers in the Commonwealth, to be sold by those retailers, may make application for license as a distributor, be granted such a license by the Department, and thereafter be subject to all the provisions of this article. Once a license is granted pursuant to this section, such person shall be entitled to act as a licensed distributor and, unless such person maintains a registered agent pursuant to Chapter 9, 10, 12 or 14 of Title 13.1 or Chapter 2.1 or 2.2 of Title 50, shall be deemed to have appointed the Clerk of the State Corporation Commission as the person's agent for the purpose of service of process relating to any matter or issue involving the person and arising under the provisions of this article.

The Department shall conduct a background investigation, to include a Virginia Criminal History Records search, and fingerprints of the applicant, or the responsible principals, managers, and other persons engaged in handling tobacco products at the licensable locations, that shall be

submitted to the Federal Bureau of Investigation if the Department deems a National Criminal Records search necessary, on applicants for licensure as tobacco products distributors. The Department may refuse to issue a distributor's license or may suspend, revoke or refuse to renew a distributor's license issued to any person, partnership, corporation, limited liability company or business trust, if it determines that the principals, managers, and other persons engaged in handling tobacco products at the licensable location of the applicant have been (i) found guilty of any fraud or misrepresentation in any connection; (ii) convicted of robbery, extortion, burglary, larceny, embezzlement, fraudulent conversion, gambling, perjury, bribery, treason, or racketeering; or (iii) convicted of a felony. Anyone who knowingly and willfully falsifies, conceals or misrepresents a material fact or knowingly and willfully makes a false, fictitious or fraudulent statement or representation in any application for a distributor's license to the Department, shall be guilty of a Class 1 misdemeanor. The Department may establish an application or renewal fee not to exceed $750 to be retained by the Department to be applied to the administrative and other costs of processing distributor's license applications, conducting background investigations and issuing distributor's licenses. Any amount collected pursuant to this section in excess of such costs as of June 30 in even numbered years shall be reported to the State Treasurer and deposited into the state treasury.

C. Upon receipt of an application in proper form and payment of the required license fee, the Department shall, unless otherwise provided by this article, issue to the applicant a license, which shall permit the licensee to engage in business as a distributor at the place of business shown on the license. Each license, or a copy thereof, shall be prominently displayed on the premises covered by the license. No license shall be transferable to any other person. Distributor's licenses issued pursuant to this section shall be valid for a period of three years from the date of issue unless revoked by the Department in the manner provided herein. The Department may at any time revoke the license issued to any distributor who is found guilty of violating or noncompliance with any of the provisions of this chapter, or any of the rules of the Department adopted and promulgated under authority of this chapter.

D. The Department shall compile and maintain a current list of licensed distributors. The list shall be updated on a monthly basis, and published on the Department's official Internet website, available to any interested party.

2005, c. 71.

§ 58.1-1021.04:2. Certain records required of distributor; access to premises

A. Each distributor shall keep in each licensed place of business complete and accurate records for that place of business, including itemized invoices of: (i) tobacco products held, purchased, manufactured, brought in or caused to be brought in from outside the Commonwealth or shipped or transported to retailers in the Commonwealth; (ii) all sales of tobacco products made; (iii) all tobacco products transferred to other retail outlets owned or controlled by that licensed distributor; and (iv) any records required by the Department.

All books, records and other papers and documents required by this subsection to be kept shall be preserved, in a form prescribed by the Department, for a period of at least three years after the date of the documents or the date of the entries thereof appearing in the records, unless the Department authorizes, in writing, their destruction or disposal at an earlier date.

B. At any time during usual business hours, duly authorized agents or employees of the Department may enter any place of business of a distributor and inspect the premises, the records required to be kept under this article and the tobacco products contained therein, to determine whether all the provisions of this article are being complied with fully. Refusal to permit such inspection by a duly authorized agent or employee of the Department shall be grounds for revocation of the license.

C. Each person who sells tobacco products to persons other than an ultimate consumer shall render with each sale itemized invoices showing the seller's name and address, the purchaser's name and address, the date of sale and all prices. Such person shall preserve legible copies of all such invoices for three years after the date of sale.

D. Each distributor shall procure itemized invoices of all tobacco products purchased. The invoices shall show the name and address of the seller and the date of purchase. The distributor shall preserve a legible copy of each invoice for three years after the date of purchase. Invoices shall be available for inspection by authorized agents or employees of the Department at the distributor's place of business.

E. Any violation of § 58.1-1021.04:1, 58.1-1021.04:2, 58.1-1021.04:3, or 58.1-1021.04:4 of this article shall be grounds for revocation of the license.

2005, c. 71.

§ 58.1-1021.04:3. Unlawful importation, transportation, or possession of tobacco products; civil penalty

A. It shall be unlawful for any person who is not a licensed distributor in the Commonwealth pursuant to this article to import, transport, or possess, for resale, any tobacco products in the Commonwealth, or under circumstances and conditions that indicate that tobacco products are being imported, transported, or possessed in a manner as to knowingly and intentionally evade or attempt to evade the tax imposed by this article. Such tobacco products shall be subject to seizure, forfeiture, and destruction by any law-enforcement officer of the Commonwealth. All fixtures, equipment, materials, and personal property used in substantial connection with the sale or possession of tobacco products involved in a knowing and intentional violation of this article shall be subject to seizure and forfeiture according to the procedures contained in Chapter 22.1 (§ 19.2-386.1 et seq.) of Title 19.2, applied mutatis mutandis.

B. Any person, except as otherwise provided by law, who imports, transports, or possesses for resale tobacco products upon which the tax imposed by this article has not been paid shall be required to pay any tax owed pursuant to this article. In addition, if such person imports,

transports, or possesses such tobacco products in such a manner as to knowingly and intentionally evade or attempt to evade the tax imposed by this article, he shall be required to pay a civil penalty of (i) $2.50 per tobacco product, up to $500, for the first violation by the person within a 36-month period; (ii) $5 per tobacco product, up to $1,000, for the second violation by the person within a 36-month period; and (iii) $10 per tobacco product, up to $50,000, for the third or subsequent violation by the person within a 36-month period, to be assessed and collected by the Department as other taxes are collected. In addition, where willful intent exists to defraud the Commonwealth of the tax levied under this article, such person shall be required to pay a civil penalty of $25 per tobacco product, up to $250,000.

2005, c. 71; 2014, cc. 38, 177.

§ 58.1-1021.04:4. Purchase of tobacco products for resale

No retail dealer shall purchase tobacco products, for resale to consumers, from any person within or outside the Commonwealth of Virginia, except as follows:

1. A retail dealer purchases from a distributor licensed by the Commonwealth of Virginia.

2. A retail dealer applies for and is granted a license as a distributor, and files returns and maintains records as required of licensed distributors under this article.

2005, c. 71.

§ 58.1-1021.04:5. Tax Commissioner to establish guidelines and rules

The Tax Commissioner shall establish guidelines and rules, including record keeping requirements, for implementation of the tax on tobacco products under Article 2.1 (§ 58.1-1021.01 et seq.) of Chapter 10 of Title 58.1 of the Code of Virginia. The establishment of the guidelines and rules by the Tax Commissioner shall be exempt from the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

2005, c. 71.

§ 58.1-1021.05. Use of revenues

The revenues generated by the taxes imposed under this article shall be collected by the Department and deposited into the Virginia Health Care Fund established under § 32.1-366.

2004, Sp. Sess. I, c. 3.

Article 3 - GENERAL PROVISIONS

§ 58.1-1022. Correction of erroneous assessments

Erroneous assessments under this chapter may be corrected and refunds ordered as provided in Article 2 (§ 58.1-1820 et seq.), Chapter 18 of this title.

Code 1950, § 58-757.23; 1960, c. 392, § 23; 1980, c. 633; 1984, c. 675.

§§ 58.1-1023 through 58.1-1030. Reserved

Reserved.

Chapter 10.1 - ENFORCEMENT OF ILLEGAL SALE OR DISTRIBUTION OF CIGARETTES ACT

§ 58.1-1031. Definitions

As used in this chapter, unless the context requires a different meaning:

"Cigarette" means any product that contains nicotine, is intended to be burned or heated under ordinary conditions of use, and consists of or contains (i) any roll of tobacco wrapped in paper or in any substance not containing tobacco; (ii) tobacco, in any form, that is functional in the product, which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette; or (iii) any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in clause (i) of this definition.

"Department" means the Department of Taxation.

"Importer" means the same as that term is defined in 26 U.S.C. § 5702 (k).

"Package" means the same as that term is defined in 15 U.S.C. § 1332 (4).

2000, cc. 880, 901.

§ 58.1-1032. Applicability

The provisions of this chapter shall not apply to (i) cigarettes allowed to be imported or brought into the United States for personal use or (ii) cigarettes sold or intended to be sold as duty-free merchandise by a duty-free sales enterprise in accordance with the provisions of 19 U.S.C. § 1555 (b) and any implementing regulations. This section, however, shall apply to cigarettes described in clause (ii) that are brought back into the customs territory for resale within the customs territory.

2000, cc. 880, 901.

§ 58.1-1033. Prohibited acts

It shall be unlawful for any person to:

1. Sell or distribute in the Commonwealth, acquire, hold, own, possess, or transport, for sale or distribution in the Commonwealth, or import, or cause to be imported, into the Commonwealth for sale or distribution in the Commonwealth (i) any cigarettes the package of which bears any statement, label, stamp, sticker, or notice indicating that the manufacturer did not intend the cigarettes to be sold, distributed, or used in the United States, including but not limited to labels stating "For Export Only," "U.S. Tax-Exempt," "For Use Outside U.S.," or similar wording; (ii) any cigarettes the package of which does not comply with (a) all requirements imposed by or pursuant to federal law regarding warnings and other information on packages of cigarettes manufactured, packaged, or imported for sale, distribution, or use in the United States, including but not limited to the precise warning labels specified in the Federal Cigarette Labeling and Advertising Act, 15

U.S.C. § 1333, or (b) all federal trademark and copyright laws; (iii) any cigarettes imported into the United States in violation of 26 U.S.C. § 5754 or 19 U.S.C. § 1681 -1681b, or any other federal law or regulations; (iv) any cigarettes that such person otherwise knows or has reason to know the manufacturer did not intend to be sold, distributed, or used in the United States; or (v) any cigarettes for which there has not been submitted to the Secretary of the U.S. Department of Health and Human Services the list or lists of the ingredients added to tobacco in the manufacture of such cigarettes required by the Federal Cigarette Labeling and Advertising Act, 15 U.S.C. § 1335a;

2. Alter the package of any cigarettes, prior to sale or distribution to the ultimate consumer, so as to remove, conceal or obscure (i) any statement, label, stamp, sticker, or notice described in clause (i) of subdivision 1 or (ii) any health warning that is not specified in, or does not conform with the requirements of, the Federal Cigarette Labeling and Advertising Act, 15 U.S.C. § 1333; or

3. Affix any stamp required pursuant to Chapter 10 (§ 58.1-1000 et seq.) of this title to the package of any cigarettes described in subdivision 1 of this section or altered in violation of subdivision 2 of this section.

2000, cc. 880, 901; 2002, c. 821.

§ 58.1-1034. Records to be kept; filing with Department

A. Any person who acquires, holds, owns, possesses, transports in or imports into the Commonwealth cigarettes which are subject to this chapter shall, with respect to such cigarettes, maintain and keep all records required pursuant to Chapter 10 (§ 58.1-1000 et seq.) of this title.

B. Between the first and tenth business day of each month, each person licensed to affix the state tax stamp to cigarettes shall file with the Department, for all cigarettes imported into the United States to which such person has affixed the tax stamp in the preceding month, (i) a copy of the permit issued pursuant to the Internal Revenue Code, 26 U.S.C. § 5713, to the person importing such cigarettes into the United States allowing such person to import such cigarettes, and the customs form containing, with respect to such cigarettes, the internal revenue tax information required by the U.S. Bureau of Alcohol, Tobacco and Firearms; (ii) a statement, signed by such person under the penalty of perjury, which shall be treated as confidential by the Department and shall be exempt from disclosure under the Virginia Freedom of Information Act (§ 2.2-3700 et seq.), identifying the brand and brand styles of all such cigarettes, the quantity of each brand style of such cigarettes, the supplier of such cigarettes, and the person or persons, if any, to whom such cigarettes have been conveyed for resale; however, if such licensed person has already provided to the Department the identical information required by this clause as part of its monthly reporting required by Chapter 10 (§ 58.1-1000 et seq.) of this title, then such monthly reporting shall be deemed to have also been made simultaneously under the provisions of this clause, and duplicate copies need not be provided to the Department; and (iii) a statement, signed by an officer of the manufacturer or importer under penalty of perjury, certifying that the manufacturer or importer has complied with the package health warning and ingredient reporting requirements of the

Federal Cigarette Labeling and Advertising Act, 15 U.S.C. §§ 1333 and 1335a, with respect to such cigarettes and §§ 3.2-4200 and 3.2-4201 of the Code of Virginia, including a statement indicating whether the manufacturer is, or is not, a participating tobacco manufacturer within the meaning of § 3.2-4200.

2000, cc. 880, 901; 2002, c. 821.

§ 58.1-1035. Revocation or suspension of permit by Department; civil penalties; sharing of information

A. The Department may revoke or suspend the permit of any wholesale dealer, as defined in § 58.1-1000, for a violation of this chapter or any rule adopted by the Department as provided in § 58.1-1011.

B. In addition, the Department may impose a civil penalty in an amount not to exceed the greater of 500 percent of the retail value of the cigarettes involved or $5,000 upon finding a violation of this chapter and may assess the tax due and any interest on the product acquired, possessed, sold, or offered for sale in violation of this chapter.

C. For the purpose of enforcing this chapter, the Department may request or share information with any federal, state or local agency, including any agency of another state or local agency thereof.

2000, cc. 880, 901.

§ 58.1-1036. Other penalties for violation; civil actions

A. Any violation of § 58.1-1033 or § 58.1-1034 shall constitute a prohibited practice as provided in § 59.1-200, and, in addition to any remedies or penalties set forth in this chapter, shall be subject to any remedies or penalties available for a violation of that section.

B. Any person who commits any of the acts prohibited by § 58.1-1033, either knowingly or having reason to know he is doing so, or who fails to comply with any of the requirements of § 58.1-1034, shall be guilty of a Class 5 felony.

C. In addition to any other remedy provided by law, any person may bring an action for appropriate injunctive or other equitable relief for a violation of this chapter, for actual damages, if any, sustained by reason of the violation, and, as determined by the court, interest on the damages from the date of the complaint, and taxable costs. If the court finds that the violation was willful, it may increase damages to an amount not exceeding three times the actual damages sustained by reason of the violation.

2000, cc. 880, 901.

§ 58.1-1037. Seizure

Cigarettes that are acquired, held, owned, possessed, transported in, imported into, or sold or distributed in the Commonwealth in violation of this chapter shall be deemed contraband and shall be subject to seizure, forfeiture, destruction, or court-ordered assignment for use by a law-

enforcement undercover operation. Such cigarettes shall be deemed contraband whether or not the violation of this chapter is with knowledge.

2000, cc. 880, 901; 2012, cc. 362, 472.

Chapter 11 - INTANGIBLE PERSONAL PROPERTY TAX

§ 58.1-1100. Intangible personal property; segregated for state taxation

Intangible personal property, including capital of a trade or business of any person, firm or corporation, except for merchants' capital as defined in § 58.1-3510 which shall be subject to local taxation, is hereby segregated for state taxation only.

Code 1950, § 58-405; 1981, c. 145; 1982, c. 633; 1983, cc. 552, 555; 1984, cc. 680, 729.

§ 58.1-1101. Classification

A. The subjects of taxation classified by this section are hereby defined as intangible personal property:

1. Capital which is inventory, except wine while in the hands of a farm winery producer as defined in § 4.1-100, merchandise located in a foreign trade zone as defined in subdivision 7 of this subsection and any agricultural product held in this Commonwealth by any manufacturer for manufacturing or processing which is of such nature as customarily requires storage and processing for periods of more than one year in order to age or condition such product for manufacture. Such agricultural product shall be includible in inventory for one tax year only and after being taxed for one year shall thereafter be excluded for all succeeding tax years;

2. Capital which is personal property, tangible in fact, used in manufacturing (including, but not limited to, furniture, fixtures, office equipment and computer equipment used in corporate headquarters), mining, water well drilling, radio or television broadcasting, dairy, dry cleaning or laundry businesses. Machinery and tools, motor vehicles and delivery equipment of such businesses shall not be defined as intangible personal property for purposes of this chapter and shall be taxed locally as tangible personal property according to the applicable provisions of law relative to such property;

2a. Personal property, tangible in fact, used in cable television businesses. Machines and tools, motor vehicles, delivery equipment, trunk and feeder cables, studio equipment, antennae and office furniture and equipment of such businesses shall not be defined as intangible personal property for purposes of this chapter and shall be taxed locally as tangible personal property according to the applicable provisions of law relative to such property;

3. Money;

4. Bonds, notes, and other evidences of debt; demands and claims;

5. Shares of stock;

6. Accounts receivable;

7. All imported and exported foreign merchandise or domestic merchandise scheduled for export while in inventory located in a foreign trade zone within the Commonwealth;

8. Computer application software, except computer application software which is inventory as defined in subdivision 1 of this subsection, is defined as computer instructions, in any form, which are designed to be read by a computer and to enable it to perform specific operations with data or information stored by the computer; and

9. Capital which is personal property, tangible in fact, used in commercial fishing businesses, and used in the water to catch or harvest seafood, including but not limited to crab pots, nets, tongs, and dredge equipment. Fishing vessels and property permanently attached to such vessels shall not be defined as intangible personal property for purposes of this chapter and shall be taxed locally as tangible personal property according to the applicable provisions of law relative to such property.

B. [Repealed.]

C. The subjects of intangible personal property set forth in subdivisions 1 through 9 of subsection A shall be exempt from taxation as provided in Article X, Section 6 (a) (5) of the Constitution of Virginia.

Code 1950, § 58-405; 1981, c. 145; 1982, c. 633; 1983, cc. 552, 555; 1984, cc. 150, 171, 675, 680, 692, 729; 1993, c. 866; 1996, c. 622; 1999, c. 396; 2000, c. 472.

§ 58.1-1102. Intangible personal property of certain poultry and livestock producers

A. Any person, firm or corporation who or which enters into contracts with farmers for the production of poultry or livestock under which contracts such person, firm or corporation furnishes the poultry or livestock and feed and other supplies therefor and assumes all financial risks, including all losses in the growing and marketing of such poultry or livestock, shall be subject to the intangible personal property tax under § 58.1-1100 and not as a merchant. Such poultry and livestock shall not be included in such intangible personal property but shall be assessable locally as tangible personal property.

B. Any person, firm or corporation who or which processes poultry to a product ready for human consumption, except for cooking, in a process in which machinery or mechanical devices, or both, play a material or significant part, and who or which sells such products to customers, subject to wholesale merchants' license taxation shall be taxable under § 58.1-1100.

Code 1950, §§ 58-412.1, 58-412.2; 1952, c. 679; 1956, c. 618; 1982, c. 633; 1984, c. 675.

§ 58.1-1103. Exempt professions and businesses; how property used therein taxable

Section 58.1-1100 shall not be construed to apply (i) to any profession which the Commonwealth regulates by law, (ii) to industrial development corporations organized pursuant to the terms of §§ 13.1-981 through 13.1-998, or (iii) to the business of farming, which includes propagating, growing, selling and planting, as an incident to the sale, of evergreens, shade trees, shrubs and all

other nursery products, ornamental and otherwise, grown by the seller. Property used or employed in such exempt activities shall be taxable in the actual form in which it exists and not as intangible personal property.

Code 1950, § 58-413; 1956, c. 241; 1962, c. 131; 1982, c. 633; 1984, c. 675.

§ 58.1-1104. To what extent dairies taxable on intangible personal property

That part of the dairy business which consists of the purchase, pasteurization and sale of milk and cream and the production and sale of buttermilk, as well as that part of the dairy business which consists of the manufacture of butter, condensed milk, evaporated milk, ice cream mix, ice cream, milk powder and cheese, is hereby declared to be subject to the intangible personal property tax under § 58.1-1100 and shall therefore not be taxable as a merchant under state or local law.

Code 1950, § 58-416; 1982, c. 633; 1984, c. 675.

§ 58.1-1105. Suppliers of pulpwood, veneer logs, mine props and railroad crossties

Suppliers of pulpwood, veneer logs, mine props and railroad crossties who furnish the same to manufacturers, mine operators and railway companies shall be subject to the intangible personal property tax under § 58.1-1100 and shall not be subject to license taxation as merchants, commission merchants or brokers. The word "suppliers" as used in this section means any person, firm or corporation who or which procures such pulpwood, veneer logs, mine props or railroad crossties for such users on a commission basis whether the commission is measured by a percentage of value or of volume.

Code 1950, § 58-417; 1982, c. 633; 1984, c. 675.

§ 58.1-1106. Situs; nonresidents, branches outside of Commonwealth

A. Every nonresident person, every foreign corporation and every partnership consisting in whole or in part of nonresident persons doing business in this Commonwealth is hereby declared to have a business domicile within this Commonwealth and so much of the intangible personal property of any such person, firm or corporation as may have acquired or may hereafter acquire a business situs within this Commonwealth shall be reported by and taxed to such person, firm or corporation in the same manner and to the same extent as if such person, firm or corporation were a resident or composed entirely of resident individuals or a domestic corporation.

B. When any person, firm or corporation domiciled and doing business in this Commonwealth maintains a branch of such business outside of this Commonwealth, no part of the intangible personal property of such person, firm or corporation having acquired a business situs at any such branch outside of this Commonwealth shall be considered as situated in this Commonwealth for the purpose of taxation or be assessed with taxes in this Commonwealth.

Code 1950, §§ 58-414, 58-415; 1982, c. 633; 1984, c. 675.

§ 58.1-1107. Date as of which intangible personal property must be returned

Intangible personal property shall be returned for taxation as of January 1 of every year. The status of all persons, firms, corporations and other taxpayers liable to taxation on intangible personal property shall be fixed and the value of all intangible personal property returned for taxation shall be taken as of such date in each year.

Notwithstanding the other provisions of this section, a taxpayer may at his option make return of the average amount of intangible personal property employed in business on such date and August 1 next preceding.

Code 1950, § 58-423; 1982, c. 633; 1984, c. 675.

§ 58.1-1108. Time for filing returns; payment of tax

All returns of intangible personal property shall be made by the taxpayer on or before May 1 in each year, and the full amount of the tax payable as shown on the face of the return shall be so paid.

Code 1950, §§ 58-424, 58-428, 58-441; 1960, c. 508; 1977, c. 396; 1984, c. 675.

§ 58.1-1109. Extension of time for filing returns

The Tax Commissioner may grant a reasonable extension of time for filing intangible returns whenever in his judgment good cause exists. Except in the case of a taxpayer who is abroad, no such extension shall be granted for more than six months. Whenever the time for filing a return is extended, interest at a rate determined in accordance with § 58.1-15, from the time the return was originally required to be filed to the time of payment, shall be charged and collected. If any taxpayer who has been granted an extension of time for filing his return fails to file his return within the extended time and to pay the full amount of the tax as shown on the face of the return at the time of filing, and the accrued interest, his case shall be treated the same as if no extension had been granted.

Code 1950, § 58-425; 1960, c. 508; 1977, c. 396; 1984, c. 675.

§ 58.1-1110. Where to file return; duty of the commissioner of revenue; audit and assessment

A. Every person subject to taxation pursuant to this chapter shall file his return with the commissioner of the revenue for the county or city in which he maintains his domicile, if he is domiciled in this Commonwealth. If he is not domiciled in this Commonwealth, he shall file the return with the commissioner of the revenue for the county or city in which his business, or the major part thereof, is conducted. An unincorporated company subject to such taxation shall file a return with the commissioner of the revenue for the county or city in which its business, or the major part thereof, is conducted. A corporation owning taxable intangible personal property shall file a return with the commissioner of the revenue for the county or city in which the registered office of the corporation is located. It shall be the duty of each commissioner of the revenue to obtain a return of intangible personal property from every such taxpayer within his jurisdiction who is liable to file a return with him.

B. Each commissioner of the revenue shall audit returns of taxpayers as soon as practicable after they are made to him and shall assess the amount of taxes, or the amount of additional taxes, as the case may be, which appears to be due. The auditing of such returns shall not be done in any manner or at a time that will result in a delay on the part of the commissioner of the revenue in complying with §§ 58.1-1116 and 58.1-1117.

Code 1950, §§ 58-427, 58-429, 58-430, 58-431; 1956, c. 439; 1960, c. 508; 1984, c. 675.

§ 58.1-1111. Application to fiduciaries generally

Fiduciaries shall be subject to all the provisions of this chapter which apply to other taxpayers, except as otherwise specifically provided herein. Any fiduciary for a taxpayer shall file a return of intangible personal property in the county or city wherein the taxpayer would have been required to file.

Code 1950, §§ 58-432, 58-433, 58-437; 1984, c. 675.

§ 58.1-1112. Forwarding to and audit of returns by Department

As soon as the returns of intangible personal property have been received by the commissioner of the revenue and entered upon the assessment sheets or forms, the commissioner of the revenue shall forward such returns to the Department of Taxation. The Department may, however, authorize the commissioner of the revenue to retain such returns for such length of time as may be necessary to enable him to properly review the returns.

Code 1950, § 58-434; 1960, c. 508; 1984, c. 675.

§ 58.1-1113. Penalty for failure to file returns of intangible personal property in time; delinquents; assessments on estimates

The commissioner of the revenue shall assess a penalty equal to ten percent of the amount of taxes assessable thereon upon any return filed with the commissioner of the revenue after the time prescribed for the filing of returns. In no case shall such penalty be less than ten dollars, and such penalty when so assessed shall become a part of the tax and shall be collected in the same manner as is provided by law for the collection of other taxes.

At any time after the time required by law for filing such returns the commissioner of the revenue shall secure a return from every delinquent taxpayer within his jurisdiction or, if any such taxpayer refuses to make a return or fails to make such return for fifteen days after the commissioner of the revenue calls upon him to do so, the commissioner of the revenue shall from the best information he can obtain make an estimate of the intangible personal property of such taxpayer.

The commissioner of the revenue shall have authority to assess taxes, penalties and interest upon such estimate and such taxes, penalties and interest shall be collected in like manner as is provided by law for the collection of other state taxes.

Code 1950, § 58-438; 1984, c. 675.

§ 58.1-1114. Assessment and payment of deficiency; penalties; application for correction

If the amount of tax computed by the Department is greater than the amount theretofore assessed, the excess shall be assessed by the Tax Commissioner and notice of the same shall be mailed to the taxpayer. The taxpayer shall remit such additional tax to the Department within thirty days from the date of such notice. In such case, if the return was made in good faith and the understatement of the amount in the return was not due to any fault of the taxpayer, there shall be no penalty on the additional tax because of such understatement, but interest shall be added to the amount of the deficiency at a rate determined in accordance with § 58.1-15, from the time the return was required by law to be filed until paid. If the understatement is false or fraudulent with intent to evade the tax a penalty of 100 percent shall be added together with interest on the tax at a rate determined in accordance with § 58.1-15, from the time the return was required by law to be filed until paid. Nothing contained in this section shall prevent the taxpayer from applying for a correction of any assessment as provided in Chapter 18, Article 2 (§ 58.1-1820 et seq.) of this title.

The taxes imposed by this chapter shall be assessed within three years from the date on which such taxes became due and payable, except that in the case of a false or fraudulent return with intent to evade payment of such taxes, or a failure to file a return, the taxes may be assessed at any time within six years from such date.

Code 1950, § 58-435; 1960, c. 508; 1976, c. 422; 1977, c. 396; 1980, c. 633; 1984, c. 675.

§ 58.1-1115. Refund of overpayment

If the amount of tax as computed is less than the amount theretofore paid, the excess shall be refunded out of the state treasury on the order of the Tax Commissioner upon the Comptroller.

Code 1950, § 58-436; 1984, c. 675.

§ 58.1-1116. Failure to pay tax when due; civil penalties

If any tax or part thereof is not paid in full when due, there shall be added to the amount unpaid a penalty of five percent of the amount thereof. The entire tax or any unpaid balance thereof, together with penalty, shall immediately become collectible. Interest upon such unpaid balance and the penalty provided by this section shall be added at a rate determined in accordance with § 58.1-15, from one month after the tax was originally due until paid. In the case of an additional tax assessed by the commissioner of the revenue, if the return was made in good faith and the understatement of the amount in the return was not due to any fault of the taxpayer, there shall be no penalty on the additional tax because of such understatement, but interest shall be added to the amount of the deficiency at a rate determined in accordance with § 58.1-15, from the time the said return was required by law to be filed until paid.

Code 1950, § 58-441; 1960, c. 508; 1977, c. 396; 1984, c. 675.

§ 58.1-1117. How intangible personal property tax collectible

Each county and city treasurer shall proceed promptly to collect all intangible personal property taxes for the tax year that have been assessed by the commissioner of the revenue and remain

unpaid after the time fixed by law for payment and shall continue his efforts so to collect until the close of the then current calendar year. The collection of such taxes shall be enforced by legal process to the extent collection cannot be accomplished otherwise, and all remedies available to the county or city treasurer for the collection of other taxes shall apply to the collection of intangible personal property taxes.

Within thirty-one days after the close of each calendar year, the treasurer shall transmit to the Department in the form it may prescribe, such information as the Department may require with respect to all assessments that the commissioner of the revenue made during such calendar year and that the treasurer was unable to collect. The Department, upon receiving and examining the same, shall certify to the Comptroller the necessary information to enable the Comptroller to give such treasurer proper credit on the Comptroller's books for all unpaid items, and such treasurer shall not receive any of such taxes after he has transmitted such information to the Department, but the same shall be paid directly into the state treasury. Section 58.1-1800 shall not apply with respect to the intangible property taxes covered by this paragraph.

The Department shall have power to issue a memorandum of lien under § 58.1-1805 for the collection of such taxes in the same manner and with the same effect as in the case of a memorandum of lien issued for the collection of taxes assessed by such Department; and all provisions of law applicable to such memorandum of lien shall be applicable to each memorandum of lien issued for the collection of taxes under this section. The Department shall also have power to collect the taxes as aforesaid by other legal process.

Code 1950, § 58-441; 1960, c. 508; 1977, c. 396; 1984, c. 675; 1985, c. 221.

§ 58.1-1118. Intangible personal property assessment sheets or forms

The Department shall prescribe and furnish assessment sheets or forms for the use of every commissioner of the revenue in making assessments of intangible personal property. These assessment sheets or forms shall be made out in as many copies as may be prescribed by the Department. The original and, if the Department so prescribes, one copy of each such sheet or form shall be delivered to the treasurer of the county or city; one copy shall be sent the Department, and one copy shall be retained by the commissioner of the revenue. The commissioner of the revenue shall make out an assessment sheet or form daily as and when returns are received, or in the case of additional assessments, as and when made, and shall continue so to make out such sheets or forms daily until all returns so received by him have been assessed. The commissioner of the revenue shall each day deliver the original and, if the Department so prescribes, one copy of each such sheet or form so made out that day to the treasurer of the county or city. Within ten days after the close of each month the commissioner of the revenue shall transmit to the Department its copy of the assessment sheets or forms showing assessments made throughout such month. Intangible personal property shall not be entered on the personal property book.

Code 1950, § 58-440; 1960, c. 508; 1984, c. 675.

Chapter 12 - BANK FRANCHISE TAX

§ 58.1-1200. Title

This chapter shall be known and may be cited as the "Virginia Bank Franchise Tax Act."

1984, c. 675.

§ 58.1-1201. Definitions

As used in this chapter, unless the context clearly shows otherwise, the term or phrase:

"Bank" means any incorporated bank, banking association, savings bank that is a member of the Federal Reserve System, or trust company organized by or under the authority of the laws of the Commonwealth and any bank or banking association organized by or under the authority of the laws of the United States, doing business or having an office in the Commonwealth or having a charter which designates any place within the Commonwealth as the place of its principal office, and any bank which establishes and maintains a branch in this Commonwealth under Article 6 (§ 6.2-836 et seq.) of Title 6.2 or Article 7 (§ 6.2-849 et seq.) of Title 6.2, whether such bank or banking association is authorized to transact business as a trust company or not, and any joint stock land bank or any other bank organized by or under the authority of the laws of the United States upon which the Commonwealth is authorized to impose a tax. The term shall exclude all corporations organized under the laws of other states and doing business in the Commonwealth, corporations organized not as banks under the laws of the Commonwealth and all natural persons and partnerships.

"Bank holding company" means any corporation that is organized under the laws of Virginia, is doing business in the Commonwealth, and is a bank holding company under the provisions of the Federal Bank Holding Company Act of 1956.

Code 1950, §§ 58-485.01, 58-485.02; 1980, c. 578; 1984, c. 675; 1995, c. 301; 2002, c. 29.

§ 58.1-1202. Bank capital assessable

Every bank or trust company shall pay an annual franchise tax measured by its net capital as defined in § 58.1-1205. Such tax shall be in lieu of all other taxes whatsoever for state, county or local purposes except the real estate and tangible personal property taxes enumerated in § 58.1-1203, retail sales and use taxes under Chapter 6 (§ 58.1-600 et seq.) of this title, recordation taxes under § 58.1-800 et seq., motor vehicle sales and use taxes under Chapter 24 (§ 58.1-2400 et seq.) of this title, watercraft sales and use taxes under Chapter 14 (§ 58.1-1400 et seq.) of this title, aircraft sales and use taxes under Chapter 15 (§ 58.1-1500 et seq.) of this title, taxes properly assessable upon users of utility services, and local license taxes in connection with the sale of tangible personal property sold by banks in connection with promotions or otherwise.

Code 1950, § 58-485.04; 1980, c. 578; 1981, c. 432; 1984, c. 675.

§ 58.1-1203. Real and leased tangible personal property of banks to be assessed as other real and personal property

A. The real estate of all banks shall be assessed on the land books with the same taxes with which other real estate is assessed.

B. The tangible personal property of all banks which is leased for a consideration to customers or other lessees shall be assessed on the personal property books with the same taxes with which other tangible personal property held for lease is assessed.

Code 1950, § 58-485.05; 1980, c. 578; 1984, c. 675.

§ 58.1-1204. Rate of tax

The franchise tax imposed under this chapter shall be at the rate of $1 on each $100 of net capital as hereinafter defined. The total tax liability per taxpayer under this chapter shall not exceed $18 million annually. If at least five banks pay such maximum amount of franchise tax for three consecutive calendar years, beginning in 2017, as determined by the Department of Taxation, then such maximum amount shall increase to $20 million beginning in the calendar year immediately following the third consecutive year. After two years at $20 million, such maximum amount shall increase by three percent annually. There shall be no deduction in respect to shares owned by exempt institutions.

The Department of Taxation shall notify all bank and trust companies in the Commonwealth of the increase in the maximum annual tax liability no later than August 15 of the year immediately prior to the year of such increase.

Code 1950, § 58-485.06; 1980, c. 578; 1981, c. 432; 1984, c. 675; 2016, cc. 325, 755.

§ 58.1-1204.1. Proration for new banks

Notwithstanding § 58.1-1204, any bank which did not operate for the entire twelve-month period preceding the January 1 assessment date provided for under § 58.1-1207 shall be entitled to a prorated tax rate as follows:

1. Transacting business as of March 31 of the preceding year, no proration shall be available and the tax rate shall be $1 on each $100 of net capital.

2. Transacting business as of June 30 of the preceding year but not before April 1, the tax rate shall be 75 cent(s) on each $100 of net capital.

3. Transacting business as of September 30 of the preceding year but not before July 1, the tax rate shall be 50 cent(s) on each $100 of net capital.

4. Transacting business as of December 31 of the preceding year but not before October 1, the tax rate shall be 25 cent(s) on each $100 of net capital.

For purposes of this section, "transacting business" shall mean accepting deposits from customers in the regular course of doing business. A bank shall be eligible for the prorated tax rate provided for hereunder with respect to the first return it is required to file after accepting deposits; provided, that a bank shall not be eligible for the prorated tax rate if it was organized or created as part of a reorganization within the meaning of § 368(a) of the Internal Revenue Code .

1989, c. 64 .

§ 58.1-1205. Computation of net capital

The net capital of any bank shall be ascertained by adding together its capital, surplus, undivided profits, and one half of any reserve for loan losses net of applicable deferred tax to obtain gross capital and deducting therefrom (i) the assessed value of real estate as provided in § 58.1-1206, (ii) the book value of tangible personal property under § 58.1-1206, (iii) the pro rata share of government obligations as set forth in § 58.1-1206, (iv) the capital accounts of any bank subsidiaries under § 58.1-1206, (v) the amount of any reserve for marketable securities valuation which is included in capital, surplus and undivided profits as defined hereinabove to the extent that such reserve reflects the difference between the book value and the market value of such marketable securities on December 31 next preceding the date for filing the bank's return under § 58.1-1207, and (vi) the value of goodwill described under subdivision A 5 of § 58.1-1206.

Code 1950, § 58-485.07; 1980, c. 578; 1984, c. 675; 1999, c. 84; 2002, c. 667.

§ 58.1-1206. Deductions from gross capital

A. There shall be deducted from the gross capital otherwise ascertainable under § 58.1-1205:

1. The assessed value of real estate if otherwise taxed in this Commonwealth which is owned by such bank, or is used or occupied by such bank, if held in the name of a majority-owned subsidiary of the bank or of a bank holding company which owns a majority of the capital stock of such bank or of any wholly-owned subsidiary of the bank holding company which owns the majority of the capital stock of such bank and the assessed value, up to the amount of the unencumbered equity, of real estate in the nature of improvements which are owned by the bank, or used or occupied by the bank and held by a majority-owned subsidiary or a bank holding company or a wholly-owned subsidiary of a bank holding company, even if assessed in the name of some other person because of the ownership of the underlying land by such person. Real estate used or occupied by a subsidiary or originally conveyed as collateral for loans made by a subsidiary of the bank and reacquired upon foreclosure of mortgage loans will be deemed to be used or occupied by the bank. The deduction for assessed value of real estate shall be the most recent assessment made prior to January 1 of the current bank franchise tax year for real estate owned by the bank or affiliate on January 1 of the current year.

2. The book value of tangible personal property which shall be held for lease and is otherwise taxed which is owned by such bank or in the name of a majority-owned subsidiary of the bank. If the bank does not own all the stock of such subsidiary, it shall be entitled to deduct only such portion of the assessed value of the real estate and the value of such tangible personal property as the common stock it owns in such subsidiary bears to the whole issue of common stock of such corporation.

3. An amount which shall equal the same percentage of the gross capital account, defined as its capital, surplus and undivided profits as set forth in § 58.1-1205 at December 31 next preceding as

the obligations of the United States bear to the total assets of the bank. Such percentage of U.S. obligations shall be determined as of the four most recent (or less in case of a new bank) Reports of Condition and the percentage obtained shall be averaged. For purposes of computing such percentage, total assets shall not include the goodwill described in subdivision 5. The obligations of the United States as used herein shall include all obligations of the United States exempt from taxation under 31 U.S.C. § 3124, of the United States Constitution or any other statute, or any instrumentality or agency of the United States which obligations shall be exempt from state or local taxation under the United States Constitution or any statute of the United States.

4. The amount of retained earnings and surplus of subsidiaries to the extent included in the gross capital of the bank. In addition, any portion of the amount added to federal taxable income pursuant to subdivision B 9 of § 58.1-402 by a corporation that is for interest expenses and costs paid to the bank for a loan or other obligation made by the bank to such corporation shall be deducted from the gross capital of the bank provided that (i) at the time of payment of such portion to the bank, the bank was a related member of the corporation, and (ii) such portion has not otherwise been deducted from gross capital. For purposes of this subdivision, the terms "interest expenses and costs" and "related member" mean the same as those terms are defined in § 58.1-302.

5. Any amount equal to 90 percent of goodwill created in connection with any acquisition or merger occurring on or after July 1, 2001.

B. For purposes of this section, "goodwill" shall be determined using generally accepted accounting principles.

Code 1950, § 58-485.08; 1980, c. 578; 1981, c. 432; 1984, c. 675; 2002, c. 667; 2004, Sp. Sess. I, c. 3.

§ 58.1-1207. Filing of return and payment of tax

Each bank as defined in § 58.1-1201 as of January 1 of each year shall prepare and file with the commissioner of the revenue or comparable assessing officer of the county, city or town where the principal office of the bank is located on or before March 1, a return in duplicate which shall set forth the tax on net capital as computed under this chapter. The return shall be in a form prescribed by the Department of Taxation. The commissioner of the revenue or comparable assessing officer shall certify a copy of the bank's return and schedules and shall forthwith transmit such certified copy to the Department of Taxation. Additionally, a copy of the real estate deduction schedules and the apportionment under § 58.1-1211 shall be filed with the appropriate assessing officer of each political subdivision imposing a tax on the filing bank. Such return shall set forth the tax on net capital owing to each such political subdivision as computed under this chapter and shall include the listing of the real estate, as assessed for the prior year, as well as a description of the total of the obligations of the United States and the average percentage thereof on the four dates prescribed in subdivision 3 of § 58.1-1206. Every bank, on or before June 1 of each year, shall pay

into the state treasury the state taxes assessed under this chapter and into the treasurer's office or other official of the local political subdivisions all taxes assessed by such political subdivision.

Code 1950, § 58-485.013; 1980, c. 578; 1984, c. 675.

§ 58.1-1208. City tax

Any city in this Commonwealth in which is located any bank may, by ordinance, impose a tax not to exceed 80 percent of the state rate of taxation on each $100 of the net capital of such bank located in such city. If such bank also has offices that are located outside the corporate limits of such city, the tax shall be apportioned as provided in § 58.1-1211.

Code 1950, § 58-485.09; 1980, c. 578; 1984, c. 675.

§ 58.1-1209. Town tax

Any incorporated town in this Commonwealth in which is located a bank may, by ordinance, impose a tax not to exceed 80 percent of the state rate of taxation for each $100 of the net capital of a bank located in such town. If such bank also has offices that are located outside the corporate limits of such town, the tax shall be apportioned as provided in § 58.1-1211.

Code 1950, § 58-485.010; 1980, c. 578; 1984, c. 675.

§ 58.1-1210. County tax

Any county of this Commonwealth in which is located any bank outside any incorporated town therein may, by ordinance, impose a tax not to exceed 80 percent of the state rate of taxation for each $100 of the net capital of the bank so located in such county outside the corporate limits of any town therein. If such bank also has offices that are located outside such county or within the corporate limits of any town therein, the tax shall be apportioned as provided in § 58.1-1211.

Code 1950, § 58-485.011; 1980, c. 578; 1984, c. 675.

§ 58.1-1211. Branch banks

If any bank has offices located in two or more political subdivisions, which includes cities, towns and counties, the tax which may be imposed by any subdivision under §§ 58.1-1208, 58.1-1209 or § 58.1-1210 shall be imposed upon only such proportion of the taxable value of the net capital under § 58.1-1204 as the total deposits of such bank, or offices located inside the taxing subdivision, bears to total deposits as of the end of the preceding year. For the purposes of this section, offices located within an incorporated town shall be deemed not within the county where such banks are located.

Code 1950, § 58-485.012; 1980, c. 578; 1984, c. 675.

§ 58.1-1212. Record of deposits through branches required

Each bank in this Commonwealth that has as of the beginning of any tax year a bank located in any county, incorporated town or city other than the county, incorporated town or city wherein such bank's principal office is located, shall maintain a record of the deposits through each such branch as of the beginning of the tax year. Each bank shall also submit to the commissioner of the

revenue or other assessing officer of the locality wherein such principal office is located a report of such deposits with the return required under § 58.1-1207.

Code 1950, § 58-485.014; 1980, c. 578; 1984, c. 675.

§ 58.1-1213. Credit against state tax for amounts paid cities, towns and counties

Any bank paying any tax assessed by any city, incorporated town, or county within this Commonwealth shall be entitled to credit upon the state tax assessed against it for that year on account of any city, town or county franchise tax paid by such bank for that year. In no event, however, shall the credit exceed the amount of such city, incorporated town or county levies authorized by this chapter.

Code 1950, § 58-485.015; 1980, c. 578; 1984, c. 675; 1994, c. 186.

§ 58.1-1214. Auditing of returns

The Department of Taxation may audit returns as the Commissioner deems necessary for the proper enforcement of the tax levied by this chapter. The Department shall correct all errors discovered by such audit and notify the bank concerned in each case. In case of an adjustment, it shall also notify every political subdivision imposing a tax against the bank for which the bank claimed a credit against the state tax under § 58.1-1213.

Code 1950, § 58-485.016; 1980, c. 578; 1984, c. 675.

§ 58.1-1215. Banks in liquidation

When the affairs of any bank are being wound up under §§ 6.2-913, 6.2-916, and 6.2-1038 or the comparable sections of the National Banking Act, such bank will not be subject to tax under this chapter, except as provided in this section. Returns of such assets on January 1 of each year shall be made by those having custody or control thereof. If any surplus remains after payment of all creditors and depositors, the liquidating officer shall ascertain the net capital of such bank, just prior to each year-end during the period of liquidation and cause to be paid an appropriate tax thereon before any distribution of any such surplus, but any such tax on the bank, even though paid late, shall not be subject to penalty.

Code 1950, § 58-485.017; 1980, c. 578; 1984, c. 675.

§ 58.1-1216. Penalty upon bank for failure to comply with chapter

Any bank which fails to file a return or pay the state tax required by this chapter or fails to comply with any other provision of this chapter shall be subject to a penalty of five percent of the tax due. If the Commissioner is satisfied that such failure is due to providential or other good cause, such return and payment of tax shall be accepted exclusive of such penalty, but with interest determined in accordance with § 58.1-15.

Code 1950, § 58-485.018; 1980, c. 578; 1984, c. 675.

§ 58.1-1217. State banks and national banks treated the same in matter of taxation

In the event that any state or local tax is held by a court of competent jurisdiction to be invalid in its application to national banks, as a class, such tax shall not thereafter be assessed against state banks.

Code 1950, § 58-485.03; 1980, c. 578; 1984, c. 675.

Chapter 14 - VIRGINIA WATERCRAFT SALES AND USE TAX

§ 58.1-1400. Title

This chapter shall be known and may be cited as the "Virginia Watercraft Sales and Use Tax Act."

Code 1950, § 58-685.39; 1981, c. 405; 1984, c. 675.

§ 58.1-1401. Definitions

As used in this chapter, unless the context clearly shows otherwise, the term or phrase:

"Dealer" means any watercraft dealer as defined in § 29.1-801.

"Gross receipts" means the amount received for the lease, charter, or other use of any watercraft. The term shall include hourly rental, maintenance, and all other charges for use of any watercraft and charges for pilots crew, or other services, unless separately stated on the invoice. The term shall also include the amount by which the price estimated under § 58.1-1403 exceeds the charge actually made.

"Sale" means any transfer of ownership or possession of a watercraft by exchange or barter, conditional or otherwise, in any manner. The term shall also include (i) a transaction whereby possession is transferred but title is retained by the seller as security, (ii) any lease or rental for a period of time substantially equal to the remaining life of the watercraft, and (iii) any lease or rental requiring total payments by the lessee during the lease or rental period which substantially equals the value of the watercraft. The term shall not include a transfer of ownership or possession made to secure the payment of an obligation.

"Sale price" means the total price paid for a watercraft and all attachments thereon and accessories thereto, exclusive of any federal manufacturer's excise tax, without any allowance or deduction for trade-ins or unpaid liens or encumbrances.

"Watercraft" means any vessel propelled by machinery whether or not the machinery is the principal source of propulsion. The term shall also include any sail-powered vessel which is in excess of eighteen feet in length measured along the centerline. The term shall not include a seaplane on the water or a watercraft which has a valid marine titling document issued by the United States Coast Guard.

Code 1950, § 58-685.40; 1981, c. 405; 1984, cc. 418, 675; 1997, c. 877.

§ 58.1-1401.1. When motor deemed a watercraft

Any motor used to power a watercraft as defined in § 58.1-1401 and sold separately from such watercraft shall be deemed a watercraft for purposes of this chapter.

1994, c. 443.

§ 58.1-1402. Tax levied

There is hereby levied and imposed, in addition to all other taxes and fees of every kind now imposed by law, a tax upon the sale of every watercraft sold in this Commonwealth, upon the use in this Commonwealth of any watercraft and upon the gross receipts from the lease, charter or other use of any watercraft by a registered dealer in this Commonwealth. The amount of the tax to be collected shall be determined by applying the following rate against the sale price, market value or gross receipts:

1. Two percent of the sale price of each watercraft sold in the Commonwealth.

2. Two percent of the sale price of each watercraft not sold in the Commonwealth but required to be titled in the Commonwealth. However, if the watercraft is first required to be titled in the Commonwealth six months or more after its acquisition, the tax shall be two percent of the market value of such watercraft at the time it is titled.

3. Two percent of the gross receipts from the lease, charter or other use of any watercraft by a registered dealer.

The maximum tax levied under subdivisions 1 and 2 of this section shall be $2,000. A transaction taxed under subdivision 1 shall not be taxed under subdivision 2 or 3, nor shall the same transaction be taxed more than once under either subdivision 1, 2 or 3. Use of any watercraft by a registered dealer resulting in taxation under subdivision 3 shall not exempt any subsequent sale or use of such watercraft from being taxed under subdivision 1 or 2 if applicable.

Code 1950, §§ 58-685.41, 58-685.44; 1981, c. 405; 1984, c. 675; 1987, c. 516; 1990, c. 666 .

§ 58.1-1403. Basis of tax; estimate of tax; penalty for misrepresentation

A. The Tax Commissioner shall assess and collect the tax for the use or sale of a watercraft pursuant to subdivisions 1 and 2 of § 58.1-1402 upon the basis of the sale price of such watercraft.

Any person who sells a watercraft in this Commonwealth shall supply the buyer with an invoice, signed by the seller or his representative, which shall state the sale price of the watercraft. The buyer shall present such invoice to the Tax Commissioner with his return and payment of the tax.

B. The Tax Commissioner shall assess and collect the tax on the lease or charter of a watercraft by a registered dealer on the basis of the gross receipts arising from all transactions pertaining to the lease, charter or other use of such watercraft during the preceding calendar month. The dealer shall submit a return to the Tax Commissioner showing the gross receipts arising from such transactions. The dealer shall remit with such return the amount of tax due.

C. In any case where (i) the invoice is not available, (ii) the Tax Commissioner has reason to believe that an invoice or return does not reflect the true sales price, or (iii) the watercraft was purchased more than six months prior to its use or storage in the Commonwealth, the Tax Commissioner may assess the tax in accordance with such publications or other data as are customarily

employed in ascertaining the maximum sale price of watercraft. Where the Tax Commissioner finds that a charge for the rental, lease, charter or use of watercraft has been lower than the fair market value of such use, the Tax Commissioner may estimate a fair price in accordance with the cost of the watercraft, the cost of maintenance, the normal rental value as shown in similar transactions, or other relevant data.

Any person who knowingly misrepresents the value of a watercraft or the amount of tax due to the Tax Commissioner or any return or invoice shall be guilty of a Class 1 misdemeanor.

Code 1950, §§ 58-685.44, 58-685.47; 1981, c. 405; 1984, c. 675.

§ 58.1-1404. Exemptions

A. Any watercraft sold to or used by the United States or any of the governmental agencies thereof or the Commonwealth of Virginia or any political subdivision thereof or sold to an insurance company for the sole purpose of disposition when such insurance company has paid the registered owner of such watercraft on a total loss claim shall be exempt from the tax imposed by this chapter.

B. Any person who was the owner of a watercraft that was not required to be titled prior to January 1, 1998, shall apply for a title for such watercraft without incurring liability for the tax imposed under this chapter.

C. Any watercraft constructed by a commercial waterman for his own use shall be exempt from the tax imposed under this chapter.

D. Any registered dealer in watercraft shall be exempt from the tax imposed by subdivisions 1 and 2 of § 58.1-1402. Such dealer shall also be exempt from titling requirements as provided in § 29.1-733.6.

E. Any watercraft purchased by and for the use of a volunteer fire department or volunteer emergency medical services agency not conducted for profit shall be exempt from the tax imposed under this chapter.

F. Any watercraft transferred to trustees of a revocable inter vivos trust, when the owners of the watercraft and the beneficiaries of the trust are the same persons, regardless of whether other beneficiaries may also be named in the trust instrument, or transferred by trustees of such a trust to beneficiaries of the trust following the death of the grantor, when no consideration has passed between the grantor and the beneficiaries in either case, shall be exempt from the tax imposed under this chapter.

Code 1950, §§ 58-685.44 to 58-685.46; 1981, c. 405; 1984, c. 675; 1986, c. 545; 1988, c. 314; 1997, c. 877; 2000, c. 602; 2013, c. 787; 2015, cc. 502, 503.

§ 58.1-1405. Time for payment of tax

A. Except as provided in paragraph B of this section, the tax levied pursuant to this chapter shall be paid by the purchaser or user of such watercraft and collected by the Tax Commissioner at the

time the owner is required to apply to the Department of Game and Inland Fisheries for a title. Except as otherwise provided in § 58.1-1404, no title shall be issued unless the applicant for title shows to the satisfaction of the Department of Game and Inland Fisheries that such tax has been paid.

B. The tax on the gross receipts from the lease or charter of watercraft shall be paid by the registered dealer collecting such receipts to the Commissioner on or before the twentieth day of each month following the month in which such receipts were collected.

Code 1950, §§ 58-685.44, 58-685.46; 1981, c. 405; 1984, c. 675; 1997, c. 877.

§ 58.1-1406. Dealers' certificates of registration

A. Every person who qualifies as a dealer under Chapter 8 (§ 29.1-800 et seq.) of Title 29.1 and desires to transfer ownership in watercraft without obtaining a certificate of title shall file with the Tax Commissioner an application for a certificate of registration for each place of business in this Commonwealth.

B. Every application for a certificate of registration shall be made upon a form prescribed by the Commissioner and shall set forth (i) the name under which the applicant transacts or intends to transact business, (ii) the location of his place or places of business, and (iii) such other information as the Commissioner may require. The application shall be signed by the owner if a natural person; in the case of an association or partnership, by a member or partner; and, in the case of a corporation, by an executive officer or some person specifically authorized by the corporation to sign the application.

C. When the required application has been made the Commissioner shall issue to each applicant a separate certificate of registration for each place of business within this Commonwealth. A certificate of registration is not assignable and is valid only for the person in whose name it is issued and for the transaction of business at the place designated therein. It shall be at all times conspicuously displayed at the place for which issued.

D. Whenever any person fails to comply with any provision of this chapter or any rule or regulation of the Tax Commissioner relating thereto, the Commissioner, upon hearing after giving such person ten days' notice in writing, specifying the time and place of hearing and requiring him to show cause why his certificate of registration should not be revoked or suspended, may revoke or suspend any one or more of the certificates of registration held by such person. The notice may be personally served or served by registered mail directed to the last known address of such person.

E. Only those dealers who hold a current certificate of registration hereunder shall be authorized to transfer ownership of a watercraft without obtaining a certificate of title therein, and paying the tax imposed by this chapter.

F. If the holder of a certificate of registration ceases to conduct his business at the place specified in his certificate, the certificate shall thereupon expire. The holder of such certificate shall inform the Commissioner in writing within thirty days after he has ceased to conduct business at such place that he has so ceased. However, if the holder of a certificate of registration desires to change his place of business to another place in this Commonwealth, he shall so inform the Commissioner in writing and his certificate shall be revised accordingly without charge.

Code 1950, § 58-685.43; 1981, c. 405; 1984, c. 675.

§ 58.1-1407. Retention of documents

Any person who sells a watercraft in this Commonwealth shall retain a copy of the invoice required by § 58.1-1403 for three years following such sale. Any person taxed as a dealer under § 58.1-1402 shall retain a copy of all invoices for lease, charter or other usage of watercraft for three years following such transaction. Each invoice shall give an accurate description of the watercraft sold, leased or used.

Code 1950, § 58-685.48; 1981, c. 405; 1984, c. 675.

§ 58.1-1408. Civil penalties and interest

When any person fails to make any return or pay the full amount of tax required by § 58.1-1402 within thirty days of the required filing and payment date, there shall be imposed, in addition to other penalties provided herein, a penalty to be added to the tax in the amount of six percent of the unpaid tax. An additional six percent of the tax due shall be charged for each additional thirty-day period, or fraction thereof, after sixty days, during which the failure to make any return or pay the full amount of tax continues. Such additional penalty shall not exceed thirty percent in the aggregate.

If any such failure is due to providential or other good cause, shown to the satisfaction of the Commissioner, the return, with remittance, shall be accepted exclusive of such penalties, but with interest determined in accordance with § 58.1-15.

In the case of a false or fraudulent return, where willful intent exists to defraud the Commonwealth of any tax due under this chapter, or in the case of willful failure to file a return with the intent to defraud the Commonwealth of any such tax, a penalty of fifty percent of the amount of the proper tax shall be assessed. It shall be prima facie evidence of intent to defraud the Commonwealth of any tax due under this chapter when any purchaser or user of a watercraft reports the sale price or current market value of his watercraft, as the case may be, at fifty percent or less of the actual amount. It shall also be prima facie evidence of intent to defraud the Commonwealth of any tax due under this chapter when any dealer reports the gross receipts collected from the lease, charter or other use of watercraft at fifty percent or less of the actual amount received for such lease, charter or use.

All penalties and interest imposed by this chapter shall be payable by the purchaser or user of the watercraft and collectible by the Commissioner in the same manner as if they were a part of the tax imposed.

Interest, at a rate determined in accordance with § 58.1-15, on the unpaid amount of the tax from the day after the last day for timely filing and payment of the tax shall accrue until the same is paid.

Code 1950, §§ 58-685.42, 58-685.44; 1981, c. 405; 1984, c. 675; 1991, cc. 316, 331 .

§ 58.1-1409. Credit against tax

A credit shall be granted against the tax imposed by this chapter with respect to a person's use in this Commonwealth of a watercraft purchased by him in another state, or purchased by him in this Commonwealth if the state sales tax was paid thereon. The amount of the credit shall be equal to the tax paid by him to another state by reason of the imposition of a similar tax on his purchase or use of the property, or the sales tax paid to this Commonwealth. The amount of the credit shall not exceed the tax imposed by this chapter.

Code 1950, § 58-685.49; 1981, c. 405; 1984, c. 675.

§ 58.1-1410. Disposition of funds

Funds collected hereunder by the Tax Commissioner shall be paid into the general fund of the state treasury and allocated to the game protection fund in the following manner:

For Fiscal Year	Percentage of Collections
1996	50%
1997	50%
1998	50%
1999	75%
2000 and thereafter	100%

Not later than thirty days after the close of each quarter, the Comptroller shall transfer to the game protection fund the appropriate percentage of collections to be dedicated to such fund. The Comptroller may make such adjustments as necessary in subsequent quarters subject to the audit report of the Auditor of Public Accounts.

Such funds shall be made available only to the Department of Game and Inland Fisheries for the following: boating-related activities and expenses, and to enhance and improve recreation opportunities for boaters, including but not limited to land acquisition, capital projects, maintenance, and facilities for boating access to the waters of the Commonwealth; boating safety law enforcement, including salaries, benefits, equipment and overtime expenses for conservation police officers so assigned; boating and other aquatic resource educational activities, including personnel, and education and safety materials; boating-related expenses for required reporting to federal and state officials; information management costs, including personnel, hardware, and software needed to better serve boating customers; and related administrative costs for boating-

related activities, including human resources, accounting, public relations, administration and facilities to support and house necessary boating-related personnel and equipment.

Code 1950, § 58-685.50; 1981, c. 405; 1984, c. 675; 1994, c. 322; 1997, c. 877.

Chapter 15 - VIRGINIA AIRCRAFT SALES AND USE TAX

§ 58.1-1500. Title

This chapter shall be known and may be cited as the "Virginia Aircraft Sales and Use Tax Act."

Code 1950, § 58-685.27; 1974, c. 431; 1984, c. 675.

§ 58.1-1501. Definitions

As used in this chapter, unless the context clearly shows otherwise, the term or phrase:

"Aircraft" means any contrivance used or designed for untethered navigation or flight in the air by one or more persons at an altitude greater than twenty-four inches above the ground. Such term shall not include parachutes.

"Dealer" means any person owning five or more aircraft during the calendar year who the Commissioner finds is in the regular business of selling aircraft.

"Gross receipts" means the charges made or voluntary contributions received for the hourly rental and maintenance of an aircraft, all other charges for the use of an aircraft and, unless separately stated on the invoice, all charges for services of pilots or instructors in such aircraft. The term shall also include any amount by which the price estimated under § 58.1-1503 exceeds the charge actually made.

"Retail sale" means a sale to a consumer or to any person for any purpose other than for resale. The term shall include any transaction the Commissioner, upon investigation, finds to be in lieu of a sale. Sales for resale must be made in strict compliance with any rules and regulations promulgated pursuant to this chapter.

"Sale" means any transfer of ownership or possession of an aircraft by exchange or barter, lease or rental, conditional or otherwise, in any manner or by any means whatsoever. The term shall also include a transaction whereby possession is transferred but title is retained by the seller as security. The term shall not include a transfer of ownership or possession (i) made to secure payment of an obligation, (ii) incidental to repossession under a lien and under which ownership is transferred to the repossessor, his nominee or a trustee, pending ultimate disposition or sale of the collateral, (iii) as part of the sale of all or substantially all the assets of any business, or (iv) to trustees of a revocable inter vivos trust, when the owners of the aircraft and the beneficiaries of the trust are the same persons, regardless of whether other beneficiaries may also be named in the trust instrument, or transferred by trustees of such a trust to beneficiaries of the trust following the death of the grantor, when no consideration has passed between the grantor and the beneficiaries in either case.

"Sale price" means the total price paid for an aircraft and all attachments thereon and accessories thereto, exclusive of any federal manufacturer's excise tax, without any allowance or deduction for trade-ins or unpaid liens or encumbrances.

"Scheduled air service" means any scheduled service provided by an air carrier or foreign air carrier operating pursuant to authority issued by the U.S. Department of Transportation and under Federal Aviation Regulations, Parts 121, 129 or 135.

Code 1950, §§ 58-685.28, 58-685.30; 1974, c. 431; 1975, c. 424; 1977, c. 396; 1984, c. 675; 1995, c. 204; 2000, c. 602.

§ 58.1-1502. Tax levied

There is hereby levied and imposed, in addition to all other taxes and fees of every kind now imposed by law, a tax upon the retail sale of every aircraft sold in the Commonwealth and upon the use in the Commonwealth of any aircraft required to be licensed by the Department of Aviation pursuant to § 5.1-5. The amount of the tax to be collected shall be determined by the application of the following rate against the sale price or gross receipts:

1. Two percent of the sale price of each aircraft sold in the Commonwealth.

2. Two percent of the sale price of each aircraft not sold in the Commonwealth but required to be licensed for use in the Commonwealth. However, if the aircraft is licensed in the Commonwealth six months or more after its acquisition, the tax shall be two percent of the market value of such aircraft at the time it is licensed or two percent of the purchase price thereof, whichever is lower.

3. Two percent of the monthly gross receipts from the lease, charter or other use of any aircraft licensed for commercial use pursuant to § 5.1-5 (b) and held for sale by a dealer who has elected to be taxed under this paragraph as provided in § 58.1-1507.

A transaction taxed under subdivision 1 shall not be taxed under subdivision 2, nor shall the same transaction be taxed more than once under either subdivision.

An aircraft subject to the tax under subdivision 3 shall be subject to the tax under subdivision 1 or 2 immediately upon the revocation of the commercial use license for such aircraft.

Code 1950, §§ 58-685.29, 58-685.30, 58-685.32; 1974, c. 431; 1975, c. 424; 1977, c. 396; 1980, cc. 109, 367; 1984, cc. 370, 675.

§ 58.1-1503. Basis of tax; estimate of tax; penalty for misrepresentation

A. The Tax Commissioner shall levy and collect the tax for the use or sale of an aircraft pursuant to subdivisions 1 and 2 of § 58.1-1502 upon the basis of the sale price of such aircraft.

Any person who sells an aircraft in the Commonwealth shall supply the buyer with an invoice, signed by the seller or his representative, which shall state the sale price of the aircraft. The buyer shall present such invoice to the Tax Commissioner with his return and payment of the tax.

B. The Tax Commissioner shall levy and collect the tax on an aircraft licensed for commercial use and held by a dealer who has elected to be taxed under subdivision 3 of § 58.1-1502 on the basis of the gross receipts arising from all transactions involving the rental or use of such aircraft during the preceding calendar month. The dealer shall submit a return to the Commissioner on a form prescribed by him, showing the gross receipts from such transactions at the time that the dealer remits his tax payment.

C. In any case where (i) the invoice is not available, (ii) the Tax Commissioner has reason to believe that an invoice or return does not reflect the true sales price or gross receipts, or (iii) the aircraft was purchased more than six months prior to its use or storage in this Commonwealth, the Commissioner may assess the tax in accordance with such publications or other data as are customarily employed in ascertaining the maximum sale price of aircraft. Where the Commissioner finds that a charge for the rental or use of aircraft has been lower than the fair market value of such rental or use, the Commissioner may estimate a fair price in accordance with the cost of the aircraft, the cost of maintenance, the normal rental value as shown in similar transactions, or other relevant data.

Any person who knowingly misrepresents the value of an aircraft or the amount of tax due to the Commissioner or on any return or invoice shall be guilty of a Class 1 misdemeanor.

Code 1950, §§ 58-685.30, 58-685.33; 1974, c. 431; 1975, c. 424; 1977, c. 396; 1984, c. 675.

§ 58.1-1504. Credit against tax

A credit shall be granted against the tax imposed by this chapter with respect to a person's use in this Commonwealth of an aircraft purchased by him in another state, or assembled by him from component parts on which Virginia retail sales or use tax was paid. The amount of the credit shall be equal to the tax paid by him to another state by reason of the imposition of a similar tax on his purchase or use of the property or the amount of Virginia retail sales and use tax paid on the component parts of such assembled aircraft. The amount of the credit shall not exceed the tax imposed by this chapter.

Code 1950, § 58-685.37; 1974, c. 431; 1984, cc. 547, 675.

§ 58.1-1505. Exemptions

A. Any aircraft sold to or used by (i) the United States or any of the governmental agencies thereof, (ii) the Commonwealth of Virginia or any political subdivision thereof, (iii) any air carrier operating in intrastate, interstate or foreign commerce providing scheduled air service as defined in § 58.1-1501, (iv) any nonprofit charitable organization that is exempt from taxation under § 501(c)(3) of the Internal Revenue Code and that is organized and operated exclusively for the purpose of providing charitable, long-distance, advanced life-support, air transportation services using an emergency medical services vehicle for low-income medical patients in the Commonwealth, or (v) an organization that is exempt from taxation under § 501(c)(3) of the Internal Revenue Code and that is organized for the primary purpose of distributing food, clothing,

medicines and other necessities of life to, and providing shelter for, needy persons in the United States and throughout the world shall be exempt from the tax imposed by this chapter.

B. Aircraft that are (i) considered Warbirds, manufactured and intended for military use, excluding those manufactured after 1954, and (ii) used only for (a) exhibit or display to the general public and otherwise used for educational purposes (including such flights as are necessary for testing, maintaining, or preparing such aircraft for safe operation), or (b) airshow and flight demonstrations (including such flights necessary for testing, maintaining, or preparing such aircraft for safe operation), but not including any aircraft used for commercial purposes, including transportation and other services for a fee, shall be exempt from the tax imposed by this chapter.

C. Beginning July 1, 2011, and ending December 31, 2014, any aircraft purchased or used by a qualified company shall be exempt from the tax imposed by this chapter. For purposes of this subsection, a qualified company shall be an aviation-related company, limited liability company, partnership, or a combination of such entities that have a common ownership interest through a parent, as a direct or indirect subsidiary of a parent, or as affiliated brother-sister entities that (i) is headquartered in the Commonwealth, (ii) between January 1, 2010, and December 31, 2014, makes a new capital investment of at least $4 million in aviation-related real estate and real estate improvements in the Commonwealth on publicly-owned, public-use airports, (iii) between January 1, 2010, and December 31, 2014, creates in the Commonwealth at least 50 new jobs that pay at least one and a half times the prevailing average wage in the locality in which the jobs are located, (iv) owns or uses aircraft that are used primarily for intrastate, interstate, or foreign commerce, and (v) has entered into a memorandum of understanding with the Virginia Economic Development Partnership, after consultation with the Virginia Department of Aviation, on or before December 31, 2014, that at a minimum provides the details for determining the amount of capital investment made and the number of new jobs created, the timeline for achieving the capital investment and new job goals, the repayment obligations should those goals not be achieved, and any conditions under which repayment by the qualifying person claiming the exemption may be required.

D. Any aircraft sold in the Commonwealth as evidenced by Federal Aviation Administration Bill of Sale AC Form 8050-2 and registered outside of the Commonwealth as evidenced by Federal Aviation Administration Aircraft Registration AC Form 8050-1 shall be exempt from the sales tax imposed by this chapter, 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 from the Commonwealth within 60 days of the date of purchase, the time between the date of purchase and the removal of the aircraft shall not be counted for purposes of determining whether the aircraft is subject to the use tax imposed by this chapter on aircraft that are based in the Commonwealth for over 60 days in any 12-month period.

Code 1950, §§ 58-685.31, 58-685.32; 1974, c. 431; 1980, cc. 109, 618; 1984, cc. 370, 675; 1995, cc. 204, 723, 786; 2007, c. 610; 2011, cc. 443, 492; 2015, cc. 502, 503.

§ 58.1-1506. Time for payment of tax

A. Except as provided in subsection B, the tax on the sale or use of an aircraft required to be licensed by this Commonwealth shall be paid by the purchaser or user of such aircraft and collected by the Commissioner prior to the time the owner applies to the Department of Aviation for, and obtains, a license therefor.

B. The tax on the gross receipts from each aircraft licensed for commercial use shall be paid by the dealer to the Commissioner on or before the twentieth day of each month.

Code 1950, §§ 58-685.30, 58-685.32; 1974, c. 431; 1975, c. 424; 1977, c. 396; 1980, c. 109; 1984, cc. 370, 675.

§ 58.1-1507. Election by commercial dealer; revocation; eligibility

Any person holding a commercial dealer's license issued by the Department of Aviation who desires to be subject to the tax imposed by subdivision 3 of § 58.1-1502 shall notify the Commissioner in writing of such election. The election may be made at or before the time for filing a return as required by § 58.1-1506.

An election shall be revocable only by permission of the Commissioner. Upon revocation of an election, the tax imposed under subdivisions 1 and 2 of § 58.1-1502 shall immediately become due and payable. Any person who so revokes an election shall be ineligible to make an election under this section for two years following such revocation.

Code 1950, § 58-685.30; 1974, c. 431; 1975, c. 424; 1977, c. 396; 1984, c. 675.

§ 58.1-1508. Retention of documents; examination by Commissioner

Any person who sells, leases or charters an aircraft in this Commonwealth shall retain a copy of the invoice and other financial data pertaining to the transaction required by § 58.1-1503 for three years following such transaction. Each invoice shall give an accurate description of the aircraft sold, leased or used.

Code 1950, § 58-685.36; 1974, c. 431; 1984, c. 675.

§ 58.1-1509. Disposition of funds

All funds collected hereunder by the Commissioner shall be forthwith paid into the state treasury. The revenue so derived, after deducting refunds, is hereby credited to the special fund created pursuant to the provisions of § 5.1-51.

Code 1950, § 58-685.38; 1974, c. 431; 1984, c. 675.

§ 58.1-1510. Civil penalties

When any person fails to make any return or pay the full amount of tax required by § 58.1-1502 within thirty days of the required filing and payment date, there shall be imposed, in addition to other penalties provided herein, a penalty to be added to the tax, in the amount of six percent of the unpaid tax. An additional six percent of the tax due shall be charged for each additional thirty-

day period, or fraction thereof during which the failure to make any return or pay the full amount of tax continues. Such additional penalty shall not exceed thirty percent, in the aggregate.

If any such failure is due to providential or other good cause, shown to the satisfaction of the Commissioner, the return, with remittance, may be accepted exclusive of such penalties but with interest charged at a rate equal to that established pursuant to § 58.1-15.

In the case of a false or fraudulent return, where willful intent exists to defraud this Commonwealth of any tax due under this chapter, or in the case of willful failure to file a return with the intent to defraud this Commonwealth of any such tax, a penalty of fifty percent of the amount of the proper tax shall be assessed. It shall be prima facie evidence of intent to defraud this Commonwealth of any tax due under this chapter when any purchaser or user of an aircraft reports the sale price or current market value of his aircraft, as the case may be, at fifty percent or less of the actual amount. It shall also be prima facie evidence of intent to defraud the Commonwealth of any tax due under this chapter when any dealer reports the gross receipts collected from the lease, charter or other use of aircraft at fifty percent or less of the actual amount received for such lease, charter or use.

All penalties and interest imposed by this chapter shall be payable by the dealer, purchaser or user of the aircraft and shall be collected by the Commissioner in the same manner as if they were a part of the tax imposed.

Interest, at a rate determined in accordance with § 58.1-15, on the unpaid amount of the tax from the day after the last day for timely filing and payment of the tax shall accrue until the same is paid.

Code 1950, §§ 58-685.29:1, 58-685.30; 1974, c. 431; 1975, c. 424; 1977, cc. 245, 396; 1984, c. 675; 1991, cc. 316, 331 .

Chapter 16 - FOREST PRODUCTS TAX

§ 58.1-1600. Short title

This chapter shall be known and may be cited as the "Forest Products Tax Act."

1984, c. 675.

§ 58.1-1601. Definitions

As used in this chapter, unless the context clearly shows otherwise:

"Fixed place of business" means a mill, plant, yard, or other location at which occurs a regular and continuous course of dealing. The use of portable machinery or equipment alone at the place of severance of forest products does not constitute a fixed place of business.

"F.o.b. loading out point" means loaded on a railroad car, loaded on a barge or boat, or delivered to place of use by truck.

"Forest product" means wood, derived from trees severed in Virginia for commercial purposes, of any type or form, including but not limited to logs, timber, pulpwood, excelsior wood, chemical wood, woodchips, biomass chips, fuel chips, mulch, bolts, billets, crossties, switch ties, poles, piles, fuel wood, posts, all cooperage products, tanbark, mine ties, mine props, and all other types of forest products used in mines.

"Manufacturer" means any person that for commercial purposes at a fixed place of business (i) processes forest products into various sizes and forms, including chips; (ii) processes forest products into other products; (iii) uses or consumes forest products; or (iv) stores forest products for sale or shipment out of state.

"Shipper" means any person in this Commonwealth that sells or ships outside the Commonwealth by railroad, truck, barge, boat, or any other means of transportation any forest product in an unmanufactured condition, whether as owner, lessee, woodyard operator, agent, or contractor.

"Severer" means any person in this Commonwealth that fells, cuts, or otherwise separates timber or any other such forest product from the soil.

Code 1950, § 58-838.1; 1970, c. 770; 1984, c. 675; 2015, c. 170.

§ 58.1-1602. Levy of tax for forest conservation

A. To provide further for the conservation of the natural resources of the Commonwealth by the protection and development of forest resources and reforestation of forest lands, there is hereby levied, in addition to all other taxes imposed, a forest products tax on all forest products. The tax shall be paid once on any forest product. Unless the tax has previously been paid by a severer, the tax shall be paid by the first manufacturer using, consuming, processing, or storing the forest products for sale or shipment out-of-state. No manufacturer shall be liable for the tax if the manufacturer has received proper documentation from a severer that the tax has been paid as provided in subsection B. A severer that sells or delivers forest products to any person that is not a manufacturer registered for the forest products tax shall be liable for the tax. A signed agreement, bill of sale, or invoice between the severer and a manufacturer stating that the manufacturer is registered and liable for the tax on any forest products sold or delivered to the manufacturer shall relieve the severer of liability for the tax on such forest products.

B. Each manufacturer purchasing or receiving forest products upon which the tax imposed by this chapter has been paid shall obtain written documentation of the payment, such as a signed agreement, bill of sale, or invoice, from the severer showing or including (i) the severer's name, address, and Virginia forest products tax registration number; (ii) the date of sale or delivery; (iii) a description of the products sold or delivered; and (iv) a statement that the Virginia forest products tax has been paid with regard to the forest products sold or delivered.

C. Any out-of-state manufacturer may register to pay the forest products tax and shall be liable for the tax until, upon his request or otherwise, his registration is terminated by the Department.

Code 1950, § 58-838.2; 1970, c. 770; 1984, c. 675; 2015, c. 170.

§ 58.1-1603. Lien

Such tax, together with interest and penalties imposed by this chapter, shall be a lien upon the forest products so severed or assembled for shipment, and upon the product manufactured therefrom, until the tax shall have been paid, or until such forest product or the product manufactured therefrom shall have been sold by the manufacturer thereof.

Code 1950, § 58-838.4; 1970, c. 770; 1984, c. 675.

§ 58.1-1604. Tax rates

The tax hereby imposed shall be assessed at the following rates:

1. On pine lumber in its various sizes and forms, including railroad switch ties, bridge timber, and dimension stock, the rate per 1000 board feet measure shall be $1.15; or at the election of the taxpayer, 20 cents per ton of logs received.

2. On hardwood, cypress and all other species of lumber the rate per 1000 board feet measure shall be 22 1/2 cents; or at the election of the taxpayer, 4 cents per ton of logs received.

3. On timber sold as logs and not converted into lumber or other products in the Commonwealth, the rate per 1000 feet log scale, International 1/4" Kerf Rule, shall be $1.15 on pine; and 22 1/2 cents on other species; or at the election of the taxpayer, 20 cents per ton of pine logs received; and 4 cents per ton of logs of other species received.

4. On logs to be converted into veneer the rate per 1000 board feet log scale, International 1/4" Kerf Rule, shall be $1.15 for pine and 22 1/2 cents for other species; or at the election of the taxpayer, 20 cents per ton of pine logs received; and 4 cents per ton of logs of other species received.

5. On pulpwood, excelsior wood, chemical wood, bolts or billets, fuel wood, tanbark, and other products customarily sold by the cord, the rate per standard cord of 128 cubic feet shall be 47 1/2 cents for pine, 11 1/4 cents per cord on all other species; or at the election of the taxpayer, 20 cents per ton of pine logs received; and 4 cents per ton of logs of other species received.

6. On chips and mulch, including products such as biomass chips and fuel chips, the rate shall be $0.20 per ton for pine, $0.04 per ton for other species, and $0.10 per ton for loads consisting of both pine and other species.

7. On railroad crossties the rate per piece shall be 3 8/10 cents on pine, and one cent on all other species; or at the election of the taxpayer, 20 cents per ton of pine logs received; and 4 cents per ton of logs of other species received.

8. On posts, mine ties, mine props, round mine collars, and other types of timber used in connection with mining and ordinarily sold by the piece, the rate per 100 pieces shall be as follows: 38 cents for pine, and 9 cents for other species, where each piece is 4' or less in length; 61 3/4 cents for pine and 14 1/4 cents for other species, where each piece is more than 4' but not over 8' in length; and 76 cents for pine and 18 cents for other species, where each piece is more than 8' in length. If the taxpayer so elects, he may pay the taxes due on the above forest products at the

rate of $1.045 for pine and 24 3/4 cents for other species, per 1000 lineal feet; or at the election of the taxpayer, 20 cents per ton of pine logs received; and 4 cents per ton of logs of other species received.

9. On piling and poles of all types the rate shall equal 2.31 percent of invoice value f.o.b. loading out point; or at the election of the taxpayer, 20 cents per ton of pine logs received; and 4 cents per ton of logs of other species received.

10. On keg staves the rate per standard 400-inch bundle shall be 3 8/10 cents for pine and 1 1/2 cents for other species; the rate per 100 keg heads shall be 11 5/10 cents on pine and 4 1/2 cents for other species; and on tight cooperage, 4 1/2 cents per 100 staves and 9 cents per 100 heads; or at the election of the taxpayer, 20 cents per ton of pine logs received; and 4 cents per ton of logs of other species received.

11. On any other type of forest product not herein enumerated, severed or separated from the soil, the Commissioner shall determine a fair unit tax rate, based on the cubic foot wood volume relationship between the product and the cubic foot volume of 1000 feet board measure of pine when the product is pine, or on the unit rate of cedar or hardwood lumber when the product is a species other than pine.

Code 1950, § 58-838.5:2; 1971, Ex. Sess., c. 179; 1978, c. 72; 1981, c. 372; 1984, cc. 675, 715; 1998, c. 420; 2015, c. 170.

§ 58.1-1605. Alternative for rates

On or before November 1, in the last year of each biennium, the State Forester shall submit to the Governor a report of the total revenues collected from the forest products tax for the immediately preceding two years. If the General Assembly fails to appropriate for such next biennium from the general fund for the reforestation of timberland activity a sum which equals or exceeds such revenues, the tax hereby imposed shall, beginning on July 1 of such next biennium, be at the rates set forth below. Such rates shall remain in effect until an appropriation from the general fund for any biennium equals or exceeds the revenues actually collected from this tax for the immediately preceding biennium at the rates imposed by § 58.1-1604.

1. On pine lumber in its various sizes and forms, including railroad switch ties, bridge timber, and dimension stock the rate per 1000 board feet measure shall be 15 cents; or at the election of the taxpayer, 2 6/10 cents per ton of pine logs received.

2. On hardwood, cypress, and all other species of lumber the rate per 1000 board feet measure shall be 22 1/2 cents; or at the election of the taxpayer, 4 cents per ton of logs received.

3. On timber sold as logs and not converted into lumber or other products in this Commonwealth, the rate per 1000 log feet scale, International 1/4" Kerf Rule, shall be 15 cents on pine and 22 1/2 cents on other species; or at the election of the taxpayer, 2 6/10 cents per ton of pine logs received; and 4 cents per ton of logs of other species received.

4. On logs to be converted into veneer the rate per 1000 board feet log scale, International 1/4" Kerf Rule, shall be 15 cents for pine, and 22 1/2 cents for other species; or at the election of the taxpayer, 2 6/10 cents per ton of pine logs received; and 4 cents per ton of logs of other species received.

5. On pulpwood, excelsior wood, chemical wood, bolts or billets, fuel wood, tanbark, and other products customarily sold by the cord, the rate per standard cord of 128 cubic feet shall be 7 1/2 cents for pine and 11 1/4 cents per cord on all other species; or at the election of the taxpayer, 2 6/10 cents per ton of pine logs received; and 4 cents per ton of logs of other species received.

6. On chips and mulch, including products such as biomass chips and fuel chips, the rate shall be $0.026 per ton for pine, $0.04 per ton for other species, and $0.03 per ton for loads consisting of both pine and other species.

7. On railroad crossties, the rate shall be one-half cent per piece on species of pine and one cent per piece on all other species; or at the election of the taxpayer, 2 6/10 cents per ton of pine logs received; and 4 cents per ton of logs of other species received.

8. On posts, mine ties, mine props, round mine collars, and other types of timber used in connection with mining and ordinarily sold by the piece, the rate per 100 pieces shall be as follows: 6 cents for pine and 9 cents for other species, where each piece is 4' or less in length; 9 3/4 cents for pine and 14 1/4 cents for other species, where each piece is more than 4' in length but not over 8' in length; and 12 cents for pine and 18 cents for other species, where each piece is more than 8' in length. If the taxpayer so elects, he may pay the taxes due on the abovementioned forest products at the rate of 16 1/2 cents per 1000 lineal feet for pine and 24 3/4 cents for other species; or at the election of the taxpayer, 2 6/10 cents per ton of pine logs received; and 4 cents per ton of logs of other species received.

9. On piling and poles of all types the rate shall equal two-sevenths of one percent of invoice value f.o.b. loading out point; or at the election of the taxpayer, 2 6/10 cents per ton of pine logs received; and 4 cents per ton of logs of other species received.

10. On keg staves the rate per standard 400-inch bundle shall be 1 1/2 cents; the rate per 100 keg heads shall be 4 1/2 cents; and on tight cooperage, 4 1/2 cents per 100 staves and 9 cents per 100 heads; or at the election of the taxpayer, 2 6/10 cents per ton of pine logs received; and 4 cents per ton of logs of other species received.

11. On any other type of forest product not herein enumerated, severed or separated from the soil the Commissioner shall determine a fair unit tax rate, based on the cubic foot wood volume relationship between the product and the cubic foot volume of 1000 board feet measure of pine lumber when the product is pine or on the unit rate of hardwood lumber when the product is a species other than pine.

Code 1950, § 58-838.5:2; 1971, Ex. Sess., c. 179; 1978, c. 72; 1981, c. 372; 1984, cc. 675, 715; 1998, c. 420; 2015, c. 170.

§ 58.1-1606. Optional rates for certain manufacturers and severers

Notwithstanding the provisions of §§ 58.1-1604 and 58.1-1605, any manufacturer of rough lumber who during any one calendar year, manufactures 500,000 or less board feet may elect to pay a flat tax of $460 when the amount cut is between 500,000' and 300,000', and a flat tax of $230 when the amount cut is 300,000 board feet or less. The tax shall be payable to the Department within thirty days after December 31 of each year and the manufacturer shall submit to the Department with said tax, forms prescribed by the Department, certifying that he had actually manufactured a quantity of rough lumber in accordance with the foregoing schedule during the preceding calendar year.

Any person who severs for sale 100 or less cords of fuel wood, or 500 or less posts for fish net poles, during any one calendar year may elect to pay the tax due within the thirty days after December 31 of each year and submit to the Department with said tax, forms prescribed by the Department, certifying the quantity of product severed during the preceding calendar year.

Such manufacturer or severers shall not be required to keep and preserve such records as are required in § 58.1-1617.

Code 1950, § 58-838.8; 1956, c. 61; 1970, c. 770; 1972, c. 316; 1983, c. 109; 1984, c. 675.

§ 58.1-1607. Limitation on tax for certain manufacturers taxable under § 58.1-1605

Manufacturers taxed pursuant to the provisions of § 58.1-1605 shall not in any one calendar year of a biennium be liable for a tax under this chapter in excess of sixty dollars when the amount of rough lumber manufactured is 500,000 board feet or less, or in excess of thirty dollars when the amount of rough lumber manufactured is 300,000 board feet or less. Any tax collected in excess of such amounts shall be promptly refunded by the Tax Commissioner to the taxpayer who has paid such excess.

Code 1950, § 58-838.8; 1956, c. 61; 1970, c. 770; 1972, c. 316; 1983, c. 109; 1984, c. 675.

§ 58.1-1608. Exemptions

A. The tax levied by this chapter shall not apply to individual owners of timber who occasionally sever or cut such timber from their own premises. Such owners, however, in order to qualify for the exemption must use the timber in the construction or repair of their own structures, buildings, or improvements, or for their home consumption, or in the processing of their own farm products.

B. The tax imposed by this chapter shall apply to any forest products severed from land owned either by this Commonwealth or the United States, where the forest products severed enter commercial channels of trade for competitive markets. Such tax shall not apply to forest products severed from land owned by this Commonwealth and used by state educational institutions for experimentation in and teaching of forestry where severance is necessary for or incidental to such experimentation and teaching.

Code 1950, §§ 58-838.6, 58-838.19; 1952, c. 462; 1984, c. 675.

§ 58.1-1609. Payment, collection, and disposition of tax

A. All taxes collected by the Department pursuant to § 58.1-1604 shall be paid into the state treasury. The Comptroller shall credit as special revenues, to the "Reforestation of Timberlands State Fund" of the Department of Forestry the following amounts on forest products of pine:

1. One dollar per 1,000 board feet measure on lumber; or at the election of the taxpayer, 17 4/10 cent(s) per ton of logs received;

2. One dollar per 1,000 board feet log scale, International 1/4" Kerf Rule, on logs not converted into lumber or other products in this Commonwealth; or at the election of the taxpayer, 17 4/10 cent(s) per ton of logs received;

3. One dollar per 1,000 board feet log scale, International 1/4" Kerf Rule, on logs to be converted into veneer; or at the election of the taxpayer, 17 4/10 cent(s) per ton of logs received;

4. Forty cents per standard cord on pulpwood, excelsior wood, chemical wood, bolts or billets, fuel wood, tanbark, and other products customarily sold by the standard cord; or at the election of the taxpayer, 17 4/10 cent(s) per ton of logs received;

5. Eighty-three hundredths cent per 100 pounds of chips manufactured from roundwood;

6. Three and three-tenths cents per piece on railroad crossties; or at the election of the taxpayer, 17 4/10 cent(s) per ton of logs received;

7. On posts, mine ties, mine props, round mine collars, and other types of timber used with mining and ordinarily sold by the piece:

a. Thirty-two cents where each piece is four feet or less in length;

b. Fifty-two cents where each piece is more than four feet but not over eight feet in length;

c. Sixty-four cents where each piece is more than eight feet in length;

d. Eighty-eight cents per 1,000 lineal feet where sold on the lineal feet basis; or

e. At the election of the taxpayer, 17 4/10 cent(s) per ton of logs received;

8. Two and two-hundredths percent of invoice value f.o.b. loading out point on piling and poles; or at the election of the taxpayer, 17 4/10 cent(s) per ton of logs received;

9. Three and three-tenths cents per standard 400-inch bundle of keg staves; or 17 4/10 cent(s) per ton when the taxpayer has elected to pay tax on the basis of weight of logs received;

10. Ten cents per 100 on keg heads; or at the election of the taxpayer, 17 4/10 cent(s) per ton of logs received; and

11. A proportionate amount between total tax paid per item as specified in § 58.1-1604 and the rate per item above set forth on any other type of forest product not herein enumerated.

B. All special revenues deposited into the "Reforestation of Timberlands State Fund" shall be used for the sole purpose of reforesting privately owned timberlands in the Commonwealth as provided in Article 10 (§ 10.1-1170 et seq.) of Chapter 11 of Title 10.1. No portion of the revenues shall revert to the general fund of the Commonwealth at the end of any fiscal year.

C. The remainder of the tax shall be cited by the Comptroller, as special revenues, to the "Protection and Development of Forest Resources of the State Fund" of the Department of Forestry for expenditure for the protection and development of the forest resources in accordance with law. Such funds shall be used for the sole purpose of raising, planting, and propagating seedling trees, both hardwood and softwood, forest fire protection, forestry education of the public in the use of forest harvesting methods, and rendering forestry service to the timber landowners of the Commonwealth. No portion of such special revenues shall revert to the general fund of the Commonwealth at the end of any fiscal year.

D. The Tax Commissioner shall apportion the cost of collecting taxes deposited in the "Reforestation of Timberlands State Fund" and the "Protection and Development of Forest Resources State Fund" based on the proportion of the tax deposited in each fund. Each fund shall pay to the Department of Taxation its apportioned collection cost.

Code 1950, § 58-838.7:1; 1971, Ex. Sess., c. 179; 1978, c. 72; 1981, c. 372; 1984, cc. 675, 750; 1986, c. 567; 1998, c. 420.

§ 58.1-1610. Alternative payment, collection and disposition of tax

A. All taxes collected by the Department of Taxation pursuant to § 58.1-1605 shall be paid into the state treasury. The Comptroller shall credit such taxes as special revenues to the "Protection and Development of Forest Resources of the State Fund" of the Department of Forestry for expenditure solely for the protection and development of the forest resources of the Commonwealth, to be used for raising, planting, and propagating seedling trees, both hardwood and softwood, forest fire protection, forestry education of the public in the use of forest harvesting methods, and rendering forestry service to timber landowners of the Commonwealth. No portion of such special revenues shall revert to the general fund of the Commonwealth at the end of any fiscal year.

B. The costs of collecting the taxes levied hereby shall be paid out of the special fund created by this section to the Department.

Code 1950, § 58-838.7:1; 1971, Ex. Sess., c. 179; 1978, c. 72; 1981, c. 372; 1984, cc. 675, 750; 1990, c. 196 .

§ 58.1-1611. Allocation of tax to localities

Notwithstanding the provisions of §§ 58.1-1609 and 58.1-1610, fifty percent of tax collected within any county or city shall be allocated for expenditure within such county or city. Such sums shall be used within such county or city for the same purposes for which the tax was levied. Any

sums not so expended within a two-year period shall revert to the "Reforestation of Timberlands State Fund" for expenditure on a statewide basis at the end of each fiscal year.

Code 1950, § 58-838.7:1; 1971, Ex. Sess., c. 179; 1978, c. 72; 1981, c. 372; 1984, cc. 675, 750.

§ 58.1-1612. Returns to be filed by manufacturer and severers; time of payment of tax

Every manufacturer or severer liable for the forest products tax, within 30 days after the expiration of each quarter, expiring respectively on the last day of March, June, September, and December of each year, shall file with the Department a return on forms prescribed by the Department showing:

1. The kinds and gross quantity of forest products severed, used, consumed, processed, or stored during the preceding quarter upon which the person is liable for the tax;

2. The county or counties in which such products were severed from the soil;

3. The gross quantity of forest products severed from soil outside this Commonwealth; and

4. Other reasonable and necessary information pertaining thereto as the Department may require for the proper enforcement of the provisions of this chapter.

At the time of rendering such quarterly returns, the manufacturer or severer liable for the tax shall pay to the Department the forest products tax on all forest products severed from the soil in this Commonwealth and embraced in such return.

Code 1950, § 58-838.8; 1956, c. 61; 1970, c. 770; 1972, c. 316; 1983, c. 109; 1984, c. 675; 2015, c. 170.

§§ 58.1-1613, 58.1-1614. Repealed

Repealed by Acts 2015, c. 170, cl. 2.

§ 58.1-1615. When Department may make return for delinquent taxpayer; penalty

If any person fails to make any return herein required, the Department may issue written notice, by registered mail, to such person to make such return forthwith. If such person fails or refuses to make such return, within thirty days from the date of such notice, then the Department may make such return upon such information as it may reasonably obtain, and shall assess the taxes due thereon, and add a penalty equalling twenty-five percent of such tax due and interest determined in accordance with § 58.1-15 from the date such taxes were due.

Code 1950, § 58-838.15; 1977, c. 396; 1984, c. 675.

§ 58.1-1616. Absconding taxpayer

If the Department finds that a person liable for tax under any provision of this chapter designs quickly to depart from the Commonwealth or to remove his property therefrom, or to conceal himself or his property therein, or to do any other act tending to prejudice or to render wholly or partly ineffectual proceedings to collect such tax unless such proceeding be brought without delay, the Department shall cause notice of such finding to be given such person together with a demand for an immediate return and immediate payment of such tax. Thereupon such tax shall become

immediately due and payable. If such person is not in default of making such return or paying any tax prescribed by this chapter, and furnishes evidence satisfactory to the Department in accordance with regulations which shall be prescribed by the Department, that he will duly return and pay the tax to which the Department's findings relate, then such tax shall not be payable prior to the time otherwise fixed for payment.

Code 1950, § 58-838.18; 1984, c. 675.

§ 58.1-1617. Records to be kept

It shall be the duty of every manufacturer and severer to keep and preserve records and other such books or accounts as may be necessary to determine the amount of tax for which it is liable, under the provisions of this chapter. Such records shall be organized so that the forest products handled are grouped into classifications that conform to the various tax rates levied by this chapter. Such records and books shall be kept and preserved for a period of three years and shall be open for examination at any time by the Department or its duly authorized agents.

Code 1950, § 58-838.10; 1970, c. 770; 1984, c. 675; 2015, c. 170.

§ 58.1-1618. Penalty for failure to make return, keep records, or permit examination of records

Any person subject to the provisions of this chapter who fails to make the returns, refuses to permit examination of his records by the Department or its duly authorized agents, or fails to keep the records as required herein shall be guilty, upon conviction, of a Class 2 misdemeanor. Each month of failure to make such returns or keep such records and each refusal of a written demand of the Department to examine, inspect or audit such records shall constitute a separate offense.

Code 1950, §§ 58-838.11, 58-838.12; 1984, c. 675; 1992, c. 763 .

§ 58.1-1619. Penalty and interest for failure to pay tax when due

Any person who fails to pay the tax herein levied within the time required by this chapter shall pay, in addition to the tax a penalty of five percent of the amount of tax due. Six months from the date at which the tax herein levied became due and payable, interest shall be assessed upon the entire amount due in accordance with § 58.1-15. Such penalty and interest shall be assessed and collected as a part of the tax.

Code 1950, § 58-838.14; 1977, c. 396; 1984, c. 675.

§ 58.1-1620. Refunds and deficiency payments; penalty for deficiency

As soon as practicable after the return is filed, the Department shall examine it and ascertain the proper amount of the tax due as shown by the return. If the amount paid is greater than the amount due, as shown by the return, the excess shall be refunded to the taxpayer, or credited on any deficiency previously due by the taxpayer, under such rules and regulations as the Department shall adopt and promulgate. All refunds made under this section, or under any other section of this chapter, shall be paid out of the special funds created by §§ 58.1-1609 and 58.1-1610. If the amount paid is less than the amount due, as shown by the return, the Department shall

immediately notify the taxpayer of such deficiency and shall add thereto such penalty and interest as required by § 58.1-1619.

Code 1950, § 58-838.13; 1984, c. 675.

§ 58.1-1621. Proceedings in case of previous incorrect payments

Whenever the Department, in examining and auditing the records of any taxpayer, or from other information, shall ascertain that the amount, or amounts, previously paid by any taxpayer for any period, is incorrect, the Department shall compute the correct amount of tax due. If it appears that the amount paid by the taxpayer is in excess of the correct amount due, such excess shall be refunded to the taxpayer under the rules and regulations of the Department. If it appears that the amount paid by such taxpayer is less than the amount due, the Department shall compute the amount of such deficiency and shall notify the taxpayer, and shall demand payment therefor. If such deficiency is not paid within thirty days from the date of such demand, the Department shall make an assessment against the taxpayer of the amount due and shall add a penalty of one-half of one percent per month from the date such taxes, or any part thereof, became due; provided, however, that if the Department be of the opinion that there was a wilful or fraudulent intent by the taxpayer to evade the tax due, it may assess a penalty of twenty-five percent of the tax.

Code 1950, § 58-838.16; 1984, c. 675.

§ 58.1-1622. Repealed

Repealed by Acts 2015, c. 170, cl. 2.

Chapter 17 - MISCELLANEOUS TAXES

Article 1 - SOFT DRINK EXCISE TAX

§ 58.1-1700. Title

This article shall be known and may be cited as the "Virginia Soft Drink Excise Tax Act."

Code 1950, § 58-404.02; 1977, c. 616; 1979, c. 134; 1984, c. 675.

§ 58.1-1701. Definition

As used in this article, unless the context clearly shows otherwise, "wholesaler or distributor" means any person, firm or corporation who manufactures or sells at wholesale carbonated soft drinks to retail dealers for the purpose of resale only or who sells at wholesale to institutional, commercial or industrial users or who distributes such drinks to chain stores.

Code 1950, § 58-404.02; 1977, c. 616; 1979, c. 134; 1984, c. 675.

§ 58.1-1702. Tax levied

There is hereby levied, in addition to all other taxes now imposed by law, a state excise tax on every wholesaler or distributor of carbonated soft drinks. The tax shall be based upon the gross receipts of each wholesaler or distributor from the sale of such soft drinks and shall be determined according to the following schedule:

1. The tax shall be $50 if gross receipts do not exceed $100,000;

2. The tax shall be $100 if gross receipts exceed $100,000 but do not exceed $250,000;

3. The tax shall be $250 if gross receipts exceed $250,000 but do not exceed $500,000;

4. The tax shall be $750 if gross receipts exceed $500,000 but do not exceed $1,000,000;

5. The tax shall be $1,500 if gross receipts exceed $1,000,000 but do not exceed $3,000,000;

6. The tax shall be $3,000 if gross receipts exceed $3,000,000 but do not exceed $5,000,000;

7. The tax shall be $4,500 if gross receipts exceed $5,000,000 but do not exceed $10,000,000;

8. The tax shall be $7,200 if gross receipts exceed $10,000,000 but do not exceed $25,000,000;

9. The tax shall be $18,000 if gross receipts exceed $25,000,000 but do not exceed $50,000,000; and

10. The tax shall be $33,000 if the gross receipts exceed $50,000,000.

Code 1950, § 58-404.02; 1977, c. 616; 1979, c. 134; 1984, c. 675; 2002, c. 15.

§ 58.1-1703. Collection

The excise tax levied by this article shall be collected annually by the Department of Taxation in the same manner as the income tax imposed under Chapter 3 (§ 58.1-300 et seq.) of this title, as provided by rules and regulations promulgated by the Tax Commissioner.

Code 1950, § 58-404.02; 1977, c. 616; 1979, c. 134; 1984, c. 675.

§ 58.1-1704. Tax segregated for state taxation

The excise tax levied by this article is hereby segregated for state taxation only and no county, city, town or political subdivision of this Commonwealth shall impose a tax on such wholesalers or distributors measured by gross receipts, except as provided in Chapter 37 (§ 58.1-3700 et seq.) of this title.

Code 1950, § 58-404.02; 1977, c. 616; 1979, c. 134; 1984, c. 675.

§ 58.1-1705. Disposition of proceeds

All moneys collected pursuant to this article, minus the necessary expenses of the Department of Taxation for the administration of this tax, as certified by the Commissioner, shall be deposited into the Litter Control and Recycling Fund established pursuant to § 10.1-1422.01.

1995, c. 417.

Article 2 - LITTER TAX

§ 58.1-1706. Title

This article shall be known and may be cited as the "Virginia Litter Tax Act."

Code 1950, § 10-201.1; 1976, c. 757; 1977, c. 616; 1981, c. 173; 1984, c. 675.

§ 58.1-1707. Tax levied

A. There is hereby levied and imposed upon every person in the Commonwealth engaged in business as a manufacturer, wholesaler, distributor or retailer of products enumerated in § 58.1-1708 an annual litter tax of $10 for each establishment from which such business is conducted. However, the tax under this subsection shall not be imposed on an individual who raises and sells agricultural produce, as defined in § 3.2-4738, and an individual who sells eggs, as described in § 3.2-5305, in local farmers markets or at roadside stands provided that his annual income from such sales does not exceed $1,000, and that any container he provides to hold purchased items has been previously used.

B. In addition to the tax levied in subsection A, each person engaged in business as a manufacturer, wholesaler, distributor or retailer of products enumerated in category 2, 4 or 5 of § 58.1-1708 shall pay an additional annual litter tax of $15 for each establishment from which such business is conducted. However, the tax under this subsection shall not be imposed on an individual who raises and sells agricultural produce, as defined in § 3.2-4738, and an individual who sells eggs, as described in § 3.2-5305, in local farmers markets or at roadside stands provided that his annual income from such sales does not exceed $1,000, and that any container he provides to hold purchased items has been previously used.

C. For purposes of the tax levied in this section, a vending machine shall not be deemed a separate establishment. Any person engaged in the business of selling goods, wares and merchandise through the use of coin-operated vending machines shall pay an annual litter tax only with respect to each establishment from which goods, wares or merchandise are stored, kept or assembled for purposes of supplying such vending machines.

Code 1950, § 10-201.1; 1976, c. 757; 1977, c. 616; 1981, c. 173; 1984, c. 675; 2011, c. 466.

§ 58.1-1708. Products

Manufacturers, wholesalers, distributors or retailers of the following products shall be subject to the tax imposed in § 58.1-1707 :

1. Food for human or pet consumption;

2. Groceries;

3. Cigarettes and tobacco products;

4. Soft drinks and carbonated waters;

5. Beer and other malt beverages;

6. Wine;

7. Newspapers and magazines;

8. Paper products and household paper;

9. Glass containers;

10. Metal containers;

11. Plastic or fiber containers made of synthetic material;

12. Cleaning agents and toiletries;

13. Nondrug drugstore sundry products;

14. Distilled spirits; and

15. Motor vehicle parts.

Code 1950, § 10-201; 1976, c. 757; 1977, c. 609; 1978, c. 571; 1984, c. 675.

§ 58.1-1709. Penalty

A penalty of an amount equal to the taxes due, including all delinquent taxes due under this article, and the amount that the Department of Taxation has expended in collecting these delinquent taxes, shall be added to the tax levied in § 58.1-1707 for failure to pay the tax within the time limits established by regulations.

Code 1950, § 10-201.1; 1976, c. 757; 1977, c. 616; 1981, c. 173; 1984, c. 675; 2006, c. 6.

§ 58.1-1710. Disposition of proceeds

All moneys collected pursuant to this article, minus the necessary expenses of the Department of Taxation for the administration of this tax, as certified by the Commissioner, shall be deposited into the Litter Control and Recycling Fund established pursuant to § 10.1-1422.01.

1985, c. 221; 1995, c. 417.

Article 3 - TAX ON WILLS AND ADMINISTRATIONS

§ 58.1-1711. Title

This article shall be known and may be cited as the "Virginia Tax on Wills and Administrations Act".

1984, c. 675.

§ 58.1-1712. Levy; rate of tax

A tax is hereby imposed on the probate of every will or grant of administration not exempt by law. The tax shall be based on the value of the estate as determined in § 58.1-1713. For every $100 of value, or fraction of $100, a tax of 10 cent(s) is imposed. However, the tax imposed by this section shall not apply to decedents' estates of $15,000 or less in value.

Code 1950, § 58-66; 1973, c. 282; 1984, c. 675; 1985, c. 474; 1988, c. 292; 1989, c. 387; 1998, c. 117; 2003, c. 195.

§ 58.1-1713. Value of the estate; time of valuation

A. The tax imposed by this article shall be based upon the value of all property, real and personal, within the jurisdiction of the Commonwealth, which shall pass from the decedent to each beneficiary by will or intestacy. The value of all real estate shall be included although the real estate does not come into the control or possession of the personal representative for intestate

administration purposes and whether or not the personal representative under a will is charged with any duty with respect to such real estate. However, in no event shall the value of real estate owned by the decedent and situated outside of the Commonwealth be considered in computing the value of the estate.

B. The value of the estate shall be determined at the time of death of the decedent, or if an alternate time of valuation has been chosen under § 2032 of the Internal Revenue Code for purposes of federal taxation, at such time.

Code 1950, §§ 58-66, 58-67; 1973, c. 282; 1984, c. 675.

§ 58.1-1714. Filing of return

When the value of an estate exceeds $15,000, a return shall be made and filed with the clerk of court at the time the will is offered for probate or the grant of administration is sought in such court. Such return shall state, to the best of the knowledge and belief of the persons submitting the will for probate or requesting the grant of administration, (i) the value of the decedent's real estate as set forth in § 58.1-1713 based on the actual value, if known, or if actual value is not known, the appraised value of such property for local real estate tax purposes, and (ii) the estimated value of the decedent's personal property as of the date of the decedent's death. Such return shall be subject to the provisions of § 58.1-11, and the information set forth therein shall be entitled to the privilege accorded by § 58.1-3. For the purpose of § 58.1-3, the information set forth in such return shall not be deemed to be required by law to be entered on any public assessment roll or book.

Code 1950, § 58-66.1; 1974, c. 593; 1976, c. 439; 1984, c. 675; 1989, c. 387; 1998, c. 117; 2003, c. 195.

§ 58.1-1715. Payment of tax prerequisite to qualification

No one shall be permitted to qualify and act as executor or administrator until the tax imposed by § 58.1-1712 has been paid.

Code 1950, § 58-68; 1984, c. 675.

§ 58.1-1716. Estates committed to court-appointed administrator

When an estate is committed by order of the appropriate circuit court, or clerk thereof, to any person on the motion of a creditor or other person pursuant to § 64.2-610, the tax due under this article for such administration shall be paid by the party upon whose motion the estate was committed. The amount of tax paid by such creditor or other person shall be repaid to him by the administrator so appointed out of the first funds received by him from the sale of such estate. If an estate is committed to a person without motion the person shall be required to pay such tax as soon as assets of the estate, sufficient to cover the tax due, have come into his hands.

Code 1950, § 58-69; 1971, Ex. Sess., c. 155; 1984, c. 675.

§ 58.1-1717. Undervaluation of estate; collection of additional tax; minimum additional tax or refund payable

The clerk of the court wherein the probate or administration tax has been paid by an estate shall thereafter compare the total value of the probate estate as shown on the probate tax return with the total value shown on the inventory of such estate to determine whether the estate has been undervalued for tax purposes. If such clerk finds that such estate has been undervalued, he shall thereupon collect such additional tax as may be due. In the event of an overpayment of such tax, the personal representative may apply to the Department of Taxation and, if a local probate tax was paid, to the treasurer of the city or county for a refund. No additional tax shall be payable or no refund made if the payment or refund due would be less than twenty-five dollars.

Code 1950, § 58-70; 1973, c. 446; 1978, c. 838; 1983, c. 140; 1984, c. 675; 1989, c. 223 .

§ 58.1-1717.1. Tax in lieu of probate tax

A $25 fee is hereby charged on the recordation of a list of heirs pursuant to § 64.2-509 or an affidavit pursuant to § 64.2-510 unless a will has been probated for the decedent or there has been a grant of administration on the decedent's estate.

2010, c. 266.

§ 58.1-1718. City or county probate tax

In addition to the state tax and fee imposed by §§ 58.1-1712 and 58.1-1717.1, the governing body of any county and the council of any city may, as provided in § 58.1-3805, (i) impose a county or city tax in an amount equal to one-third of the amount of the state tax on the probate of a will or grant of administration on the probate of every such will or grant of administration and (ii) charge a $25 fee for the recordation of a list of heirs pursuant to § 64.2-509 or an affidavit pursuant to § 64.2-510, as provided in § 58.1-1717.1.

Code 1950, § 58-67.1; 1960, c. 60; 1984, c. 675; 2010, c. 266.

Article 4 - MOTOR VEHICLE FUEL SALES TAX IN CERTAIN TRANSPORTATION DISTRICTS

§§ 58.1-1718.1 through 58.1-1720. Repealed

Repealed by Acts 2012, cc. 217 and 225, cl. 2, effective July 1, 2013.

§ 58.1-1721. Repealed

Repealed by Acts 2009, c. 532, cl. 2, effective January 1, 2010.

§ 58.1-1722. Repealed

Repealed by Acts 2012, cc. 217 and 225, cl. 2, effective July 1, 2013.

§ 58.1-1723. Repealed

Repealed by Acts 2009, c. 532, cl. 2, effective January 1, 2010.

§§ 58.1-1724, 58.1-1724.1. Repealed

Repealed by Acts 2012, cc. 217 and 225, cl. 2, effective July 1, 2013.

Article 4.1 - MOTOR VEHICLE FUEL SALES TAX IN CERTAIN LOCALITIES

§ 58.1-1724.2. Repealed

Repealed by Acts 2012, cc. 217 and 225, cl. 2, effective July 1, 2013.

§ 58.1-1724.3. Repealed

Repealed by Acts 2009, cc. 864 and 871, cl. 5.

§ 58.1-1724.4. Repealed

Repealed by Acts 2012, cc. 217 and 225, cl. 2, effective July 1, 2013.

§§ 58.1-1724.5 through 58.1-1724.7. Repealed

Repealed by Acts 2009, cc. 864 and 871, cl. 5.

Article 5 - TAX ON SEALS

§ 58.1-1725. Levy of tax

When the seal of the Commonwealth is affixed to any paper, except in the cases exempted by law, the tax shall be two dollars, which shall be paid to the Secretary of the Commonwealth or his successor.

Code 1950, § 58-52; 1984, c. 675.

§ 58.1-1726. When no tax on a seal to be charged

No tax shall be charged when a seal is annexed to any paper or document to be used in obtaining the benefit of a pension, revolutionary claim, money due on account of military services or land bounty, under any act of Congress, or under a law of this or any other state.

Code 1950, § 58-53; 1984, c. 675.

Article 6 - TAXES ON SUITS AND OTHER JUDICIAL PROCEEDINGS

§ 58.1-1727. Taxes on suits or writ taxes generally

A tax of $5 is hereby imposed upon (i) the commencement of every civil action in a court of record, whether commenced by petition or notice, ejectment or attachment, other than a summons to answer a suggestion; (ii) the removal or appeal of a cause of action from a district court to a court of record; (iii) the appeal from the decision of the governing body of a county, city or town to a court of record, including the appeal of any decision of a board of zoning appeals; (iv) an attachment returnable to a court of record; and (v) a writ of mandamus sued out of any court, except the Supreme Court of Virginia. However, when the debt or demand for damages exceeds $49,999 but does not exceed $100,000, the tax shall be $15; and when the debt or demand for damages exceeds $100,000, the tax shall be $25.

This section shall not be applicable to any original jurisdiction proceeding filed in the Supreme Court of Virginia.

Code 1950, §§ 58-71 to 58-73, 58.1-3809; 1956, c. 599; 1970, c. 364; 1977, c. 449; 1984, c. 675; 1985, c. 221; 2005, c. 681; 2014, cc. 360, 589.

§ 58.1-1728. Payment of tax

The taxes on suits or other judicial proceedings shall be paid to the clerk of court wherein the suit or other judicial proceeding is commenced.

Code 1950, § 58-75, 58.1-3810; 1984, c. 675; 1985, c. 221.

§ 58.1-1729. Payment prerequisite to issue of writ, etc.; effect of failure to collect

No clerk shall issue any writ, or docket any removed or appealed warrant, or any notice mentioned in this article until the tax imposed under this article has been paid; however, his failure to collect the tax shall not invalidate the proceeding.

Code 1950, §§ 58-76, 58.1-3811; 1964, c. 290; 1984, c. 675; 1985, c. 221.

Article 7 - E-911 TAX

§ 58.1-1730. Tax for enhanced 911 service; definitions

A. As used in this section, unless the context requires a different meaning:

"Access lines" are defined to include residence and business telephone lines and other switched (packet or circuit) lines connecting the customer premises to the public switched telephone network for the transmission of outgoing voice-grade-capable telecommunications services. Centrex, PBX or other multistation telecommunications services will incur an E-911 tax charge on every line or trunk (Network Access Registrar or PBX trunk) that allows simultaneous unrestricted outward dialing to the public switched telephone network. ISDN Primary Rate Interface services will be charged five E-911 tax charges for every ISDN Primary Rate Interface network facility established by the customer. Other channelized services in which each voice-grade channel is controlled by the telecommunications provider shall be charged one tax for each line that allows simultaneous unrestricted outward dialing to the public switched telephone network. Access lines do not include local, state, and federal government lines; access lines used to provide service to users as part of the Virginia Universal Service Plan; interstate and intrastate dedicated WATS lines; special access lines; off-premises extensions; official lines internally provided and used by providers of telecommunications services for administrative, testing, intercept, coin, and verification purposes; and commercial mobile radio service.

"Automatic location identification" or "ALI" means a telephone network capability that enables the automatic display of information defining the geographical location of the telephone used to place a wireline 9-1-1 call.

"Automatic number identification" or "ANI" means a telephone network capability that enables the automatic display of the telephone number used to place a wireline 9-1-1 call.

"Centrex" means a business telephone service offered by a local exchange company from a local central office; a normal single line telephone service with added custom calling features including but not limited to intercom, call forwarding, and call transfer.

"Communications services provider" means the same as provided in § 58.1-647.

"Enhanced 9-1-1 service" or "E-911" means a service consisting of telephone network features and PSAPs provided for users of telephone systems enabling users to reach a PSAP by dialing the digits "9-1-1." Such service automatically directs 9-1-1 emergency telephone calls to the appropriate PSAPs by selective routing based on the geographical location from which the emergency call originated, and provides the capability for ANI and ALI features.

"ISDN Primary Rate Interface" means 24 bearer channels, each of which is a full 64,000 bits per second. One of the channels is generally used to carry signaling information for the 23 other channels.

"Network Access Register" means a central office register associated with Centrex service that is required in order to complete a call involving access to the public switched telephone network outside the confines of that Centrex company. Network Access Register may be incoming, outgoing, or two-way.

"PBX" means public branch exchange and is telephone switching equipment owned by the customer and located on the customer's premises.

"PBX trunk" means a connection of the customer's PBX switch to the central office.

"Public safety answering point" or "PSAP" means a communications facility equipped and staffed on a 24-hour basis to receive and process 911 calls.

B. There is hereby imposed a monthly tax of $0.75 on the end user of each access line of the telephone service or services provided by a communications services provider. However, no such tax shall be imposed on federal, state, and local government agencies or on consumers of CMRS, as that term is defined in § 56-484.12. The revenues shall be collected and remitted monthly by the communications services provider to the Department and deposited into the Communications Sales and Use Tax Trust Fund. This tax shall be subject to the notification and jurisdictional provisions of subsection C.

C. If a customer believes that an amount of tax or an assignment of place of primary use or taxing jurisdiction included on a billing is erroneous, the customer shall notify the communications services provider in writing. The customer shall include in this written notification the street address for the customer's place of primary use or taxing jurisdiction, the account name and number for which the customer seeks a correction, a description of the error asserted by the customer, and any other information that the communications services provider reasonably requires to process the request. Within 15 days of receiving a notice under this section, the communications services provider shall review its records within an additional 15 days to determine the customer's taxing

jurisdiction. If this review shows that the amount of tax or assignment of place of primary use or taxing jurisdiction is in error, the communications services provider shall correct the error and refund or credit the amount of tax erroneously collected from the customer for a period of up to two years. If this review shows that the amount of tax or assignment of place of primary use or taxing jurisdiction is correct, the communications services provider shall provide a written explanation to the customer. The procedures in this section shall be the first course of remedy available to customers seeking correction of assignment of place of primary use or taxing jurisdiction, or a refund of or other compensation for taxes erroneously collected by the communications services provider, and no cause of action based upon a dispute arising from such taxes shall accrue until a customer has reasonably exercised the rights and procedures set forth in this subsection.

For the purposes of this subsection, the terms "customer" and "place of primary use" shall have the same meanings provided in § 58.1-647.

D. For the purpose of compensating a communications services provider for accounting for and remitting the tax levied by this section, each communications services provider shall be allowed 3% of the amount of tax revenues due and accounted for in the form of a deduction in submitting the return and remitting the amount due.

2006, c. 780.

Article 8 - DIGITAL MEDIA FEE

§ 58.1-1731. Fee for digital media purchase or rental

There is hereby imposed a fee equal to 10 percent of the price of all in-room purchases or rentals of digital media in hotels, motels, bed and breakfast establishments, inns, and other facilities offering guest rooms rented out for continuous occupancy for fewer than 90 consecutive days. As used in this section, "digital media" means any audio-visual work received through the in-room television for a separate charge, including, but not limited to, any motion picture, television or audio programming, or game, regardless if it is transmitted in an analog or digital format. "Digital media" shall not include Internet access or telephone service.

2009, c. 531.

§ 58.1-1732. Collection

The fee imposed by this article shall be collected monthly by the Department of Taxation in the same manner as the sales and use tax imposed under Chapter 6 (§ 58.1-600 et seq.), as provided by rules and regulations promulgated by the Tax Commissioner.

2009, c. 531.

§ 58.1-1733. Disposition of proceeds

After the administrative costs for collecting the fees are recovered by the Department of Taxation, the remaining revenues shall be divided as follows:

1. Fifty percent shall be deposited into the state's general fund; and

2. Fifty percent shall be deposited into the Governor's Motion Picture Opportunity Fund established under § 2.2-2320. All revenues deposited to the Fund shall be used for film incentive programs established by the Virginia Film Office.

2009, c. 531.

Article 9 - VIRGINIA MOTOR VEHICLE RENTAL TAX

§ 58.1-1734. Title

This article shall be known and may be cited as the "Virginia Motor Vehicle Rental Tax Act."

2011, cc. 405, 639.

§ 58.1-1735. Definitions

As used in this article, unless the context requires a different meaning:

"Daily rental vehicle" means a motor vehicle, except a motorcycle or a manufactured home as defined in § 46.2-100, used for rental as defined in this section and for the transportation of persons or property, whether on its own structure or by drawing another vehicle or vehicles.

"Gross proceeds" means the charges made or voluntary contributions received for the rental of a motor vehicle where the rental or lease agreement is for a period of less than 12 months. The term "gross proceeds" shall not include:

1. Cash discounts allowed and actually taken on a rental contract;

2. Finance charges, carrying charges, service charges, or interest from credit given on a rental contract;

3. Charges for motor fuels;

4. Charges for optional accidental death insurance;

5. Taxes or fees levied or imposed pursuant to Chapter 24 (§ 58.1-2400 et seq.);

6. Any violations, citations, or fines and related penalties and fees;

7. Delivery charges, pickup charges, recovery charges, or drop charges;

8. Pass-through charges;

9. Transportation charges;

10. Third-party service charges; or

11. Refueling surcharges.

"Mobile office" means an industrialized building unit not subject to federal regulation, which may be constructed on a chassis for the purpose of towing to the point of use and designed to be used with or without a permanent foundation, for commercial use and not for residential use; or two or more such units separately towable but designed to be joined together at the point of use to form

a single commercial structure, and which may be designed for removal to, and installation or erection on, other sites.

"Motor vehicle" means every vehicle, except for a mobile office as herein defined, that is self-propelled or designed for self-propulsion and every vehicle drawn by or designed to be drawn by a motor vehicle, including manufactured homes as defined in § 46.2-100 and every device in, upon, and by which any person or property is, or can be, transported or drawn upon a highway, but excepting devices moved by human or animal power, devices used exclusively upon stationary rails or tracks, and vehicles, other than manufactured homes, used in the Commonwealth but not required to be licensed by the Commonwealth.

"Rental" means the transfer of the possession or use of a motor vehicle, whether or not the motor vehicle is required to be licensed by the Commonwealth, by a person for a consideration, without the transfer of the ownership of such motor vehicle, for a period of less than 12 months. Any fee arrangement between the holder of a permit issued by the Department of Motor Vehicles for taxicab services and the driver or drivers of such taxicabs shall not be deemed a rental under this section. Any fee arrangement between a licensed driver training school and a student in that school, whereby the student may use a vehicle owned or leased by the school to perform a road skills test administered by the Department of Motor Vehicles, shall not be deemed a rental under this section.

"Rental in the Commonwealth" means any rental where a person received delivery of a motor vehicle within the Commonwealth. The term "Commonwealth" shall include all land or interest in land within the Commonwealth owned by or conveyed to the United States of America.

"Rentor" means a person engaged in the rental of motor vehicles for consideration as defined in this section.

2011, cc. 405, 639; 2013, c. 84.

§ 58.1-1736. Levy

A. There is hereby levied, in addition to all other taxes and fees of every kind now imposed by law, a tax upon the rental of a motor vehicle in Virginia, without regard to whether such vehicle is required to be licensed by the Commonwealth. However, such tax shall not be levied upon a rental to a person for re-rental as an established business or part of an established business, or incidental or germane to such business.

The amount of the tax to be collected shall be determined by the Tax Commissioner by the application of the following rates against the gross proceeds:

1. Four percent of the gross proceeds from the rental in Virginia of any motor vehicle, except those with a gross vehicle weight rating or gross combination weight rating of 26,001 pounds or more.

2. In addition to the tax levied pursuant to subdivision A 1, a tax of four percent of the gross proceeds shall be levied on the rental in Virginia of any daily rental vehicle, whether or not such vehicle is required to be licensed in the Commonwealth.

3. In addition to all other applicable taxes and fees, a fee of two percent of the gross proceeds shall be imposed on the rental in Virginia of any daily rental vehicle, whether or not such vehicle is required to be licensed in the Commonwealth. For purposes of this article, the rental fee shall be implemented, enforced, and collected in the same manner that rental taxes are implemented, enforced, and collected.

B. A motor vehicle subject to the tax imposed under subdivision A 1 of this section shall be subject to the tax under subdivision A 1 or A 2 of § 58.1-2402 when it ceases to be used for rental as an established business or part of an established business, or incidental or germane to such business.

C. Any motor vehicle, trailer, or semitrailer exempt from this tax under subdivision 1 or 2 of § 58.1-1737 shall be subject to the tax when such vehicle is no longer rented by the United States government or any governmental agency thereof, or the Commonwealth of Virginia or any political subdivision thereof, unless at such time the vehicle is sold or its ownership is otherwise transferred, in which case the tax imposed by § 58.1-2402 shall apply, subject to the exemptions provided for in § 58.1-2403.

2011, cc. 405, 639.

§ 58.1-1737. Exemptions

No tax shall be imposed as provided in § 58.1-1736 if the vehicle is:

1. Rented by the United States government or any governmental agency thereof;

2. Rented by the Commonwealth of Virginia or any political subdivision thereof;

3. A self-contained mobile computerized axial tomography scanner rented by a nonprofit hospital or a cooperative hospital service organization as described in § 501(e) of the Internal Revenue Code;

4. A self-contained mobile unit designed exclusively for human diagnostic or therapeutic service, rented to a nonprofit hospital or a cooperative hospital service organization as described in § 501 (e) of the Internal Revenue Code, or a nonprofit corporation as defined in § 501(c)(3) of the Internal Revenue Code, established for research in, diagnosis of, or therapy for human ailments; or

5. A truck, tractor truck, trailer, or semitrailer, as severally defined in § 46.2-100, except trailers and semitrailers not designed or used to carry property and vehicles registered under § 46.2-700, with a gross vehicle weight rating or gross combination weight rating of 26,001 pounds or more, in which case no tax shall be imposed pursuant to subdivision A 1 of § 58.1-1736.

2011, cc. 405, 639.

§ 58.1-1738. Administration of the tax

The tax on the rental of a motor vehicle shall be paid by the person renting such motor vehicle, collected by the rentor of such motor vehicle, and remitted to the Tax Commissioner on or before the twentieth day of the month following the month in which the gross proceeds from such rental were due. All of the responsibilities imposed on dealers in Chapter 6 (§ 58.1-600 et seq.) of this title shall apply to rentors for purposes of this article. The tax on rental transactions in the Commonwealth shall apply regardless of the state for which a certificate of title is required.

The provisions of Chapter 6 (§ 58.1-600 et seq.) of this title shall apply to this article, mutatis mutandis, except as herein provided.

2011, cc. 405, 639.

§ 58.1-1739. Forwarding of tax information to law-enforcement officials

The Tax Commissioner may, in his discretion, upon request duly received from the official charged with the duty of enforcement of motor vehicle tax laws of any other state, forward to such official any information that he may have in his possession relative to the registration and payment of any tax collected pursuant to this article.

2011, cc. 405, 639.

§ 58.1-1740. Credits against tax

Credit shall be granted any rentor subject to the additional tax on the rental of a daily rental passenger car for a portion of the tangible personal property tax assessed by a Virginia locality on such car for a tax year ending after June 30, 1981. The amount of such credit shall be equal to the ratio of the number of months in such tax year after June 30 to the total number of months in the tax year. Any such credit may be carried over from month to month for a period of up to six months or until fully absorbed, whichever occurs first. To the extent any credit is claimed hereunder as to any tangible personal property tax properly assessed and not actually paid when due, such credit shall be subject to collection as an underpayment of the additional tax imposed under subdivision A 2 of § 58.1-1736 as of the date the credit was claimed, with penalties and interest as provided in § 58.1-2411, mutatis mutandis.

2011, cc. 405, 639.

. (Contingent expiration date, see note) Disposition of revenues

A. After the direct costs of administering this article are recovered by the Department of Taxation, the remaining revenues collected hereunder by the Tax Commissioner shall be forthwith paid into the state treasury. Except as otherwise provided in this section, these funds shall constitute special funds within the Commonwealth Transportation Fund. Any balances remaining in these funds at the end of the year shall be available for use in subsequent years for the purposes set forth in this article, and any interest income on such funds shall accrue to these funds. The revenue so derived, after refunds have been deducted, is hereby allocated for the construction, reconstruction, and maintenance of highways and the regulation of traffic thereon and for no other purpose. However,

(i) all funds collected from the additional tax imposed by subdivision A 2 of § 58.1-1736 on the rental of daily rental vehicles shall be distributed quarterly to the county, city, or town wherein such vehicle was delivered to the rentee; (ii) except as provided in clause (iii), an amount equivalent to the net additional revenues from the motor vehicle rental tax generated by enactments of the 1986 Special Session of the Virginia General Assembly which amended §§ 46.2-694, 46.2-697, and by §§ 58.1-1735, 58.1-1736 and this section, shall be distributed to and paid into the Transportation Trust Fund established pursuant to § 33.2-1524, a special fund within the Commonwealth Transportation Fund, and are hereby appropriated to the Commonwealth Transportation Board for transportation needs; (iii) all moneys collected from the tax on the gross proceeds from the rental in Virginia of any motor vehicle pursuant to subdivision A 1 of § 58.1-1736 at the tax rate in effect on December 31, 1986, shall be paid by the Tax Commissioner into the state treasury and two-thirds of which shall be paid into the Rail Enhancement Fund established by § 33.2-1601 and one-third of which shall be deposited into the Transportation Trust Fund established pursuant to § 33.2-1524 and set aside for state of good repair purposes pursuant to § 33.2-369; and (iv) all additional revenues resulting from the fee imposed under subdivision A 3 of § 58.1-1736 shall be used to pay the debt service on the bonds issued by the Virginia Public Building Authority for the Statewide Agencies Radio System (STARS) for the Department of State Police pursuant to the authority granted by the 2004 Session of the General Assembly.

B. As provided in subsection A of § 58.1-638, of the funds becoming part of the Transportation Trust Fund pursuant to clause (ii) of subsection A, an aggregate of 4.2 percent shall be set aside as the Commonwealth Port Fund; an aggregate of 2.4 percent shall be set aside as the Commonwealth Airport Fund; and an aggregate of 14.7 percent shall be set aside as the Commonwealth Mass Transit Fund.

2011, cc. 405, 639; 2015, c. 684.

. (For contingent effective date, see note) Disposition of revenues

A. After the direct costs of administering this article are recovered by the Department of Taxation, the remaining revenues collected hereunder by the Tax Commissioner shall be forthwith paid into the state treasury. Except as otherwise provided in this section, these funds shall constitute special funds within the Commonwealth Transportation Fund. Any balances remaining in these funds at the end of the year shall be available for use in subsequent years for the purposes set forth in this article, and any interest income on such funds shall accrue to these funds. The revenue so derived, after refunds have been deducted, is hereby allocated for the construction, reconstruction, and maintenance of highways and the regulation of traffic thereon and for no other purpose. However, (i) all funds collected from the additional tax imposed by subdivision A 2 of § 58.1-1736 on the rental of daily rental vehicles shall be distributed quarterly to the county, city, or town wherein such vehicle was delivered to the rentee; (ii) except as provided in clause (iii) of this sentence, an amount equivalent to the net additional revenues from the motor vehicle rental tax generated by enactments of the 1986 Special Session of the Virginia General Assembly which amended §§ 46.2-

694, 46.2-697, and by §§ 58.1-1735, 58.1-1736 and this section, shall be distributed to and paid into the Transportation Trust Fund established pursuant to § 33.2-1524, a special fund within the Commonwealth Transportation Fund, and are hereby appropriated to the Commonwealth Transportation Board for transportation needs; (iii) all moneys collected from the tax on the gross proceeds from the rental in Virginia of any motor vehicle pursuant to subdivision A 1 of § 58.1-1736 at the tax rate in effect on December 31, 1986, shall be paid by the Tax Commissioner into the state treasury and shall be paid into the Rail Enhancement Fund established by § 33.2-1601; and (iv) all additional revenues resulting from the fee imposed under subdivision A 3 of § 58.1-1736 shall be used to pay the debt service on the bonds issued by the Virginia Public Building Authority for the Statewide Agencies Radio System (STARS) for the Department of State Police pursuant to the authority granted by the 2004 Session of the General Assembly.

B. As provided in subsection A of § 58.1-638, of the funds becoming part of the Transportation Trust Fund pursuant to clause (ii) of subsection A of this section, an aggregate of 4.2 percent shall be set aside as the Commonwealth Port Fund; an aggregate of 2.4 percent shall be set aside as the Commonwealth Airport Fund; and an aggregate of 14.7 percent shall be set aside as the Commonwealth Mass Transit Fund.

2011, cc. 405, 639.

Article 10 - REGIONAL TRANSIENT OCCUPANCY TAX

. (Contingent expiration date -- see note) Regional transient occupancy tax

In addition all other fees and taxes imposed under law, there is hereby imposed an additional transient occupancy tax at the rate of two percent of the amount of the charge for the occupancy of any room or space occupied in any county or city located in a Planning District established pursuant to Chapter 42 (§ 15.2-4200 et seq.) of Title 15.2 that (i) as of January 1, 2013, has a population of two million or more, as shown by the most recent United States Census, has not less than 1.7 million motor vehicles registered therein, and has a total transit ridership of not less than 50 million riders per year across all transit systems within the Planning District or (ii) as shown by the most recent United States Census meets the population criteria set forth in clause (i) and also meets the vehicle registration and ridership criteria set forth in clause (i). In any case in which the tax is imposed pursuant to clause (ii) such tax shall be effective beginning on the July 1 immediately following the calendar year in which all of the criteria have been met.

The tax imposed under this section shall be imposed only for the occupancy of any room or space that is suitable or intended for occupancy by transients for dwelling, lodging, or sleeping purposes.

The tax imposed under this section shall be administered by the locality in which the room or space is located in the same manner as it administers the tax authorized by § 58.1-3819 or 58.1-3840, mutatis mutandis, except as herein provided. The revenue generated and collected from the tax shall be deposited by the local treasurer into the state treasury pursuant to § 2.2-806 and

transferred by the Comptroller into special funds established by law. In the case of Planning District 8, the revenue generated and collected therein shall be deposited into the fund established in § 33.2-2509. For additional Planning Districts that may become subject to this section, funds shall be established by appropriate legislation.

2013, c. 766.

*This section is set out twice because the 14th enactment of Chapter 766 of the Acts of Assembly of 2013 states: "That the provisions of this act that generate additional revenue through state taxes or fees for transportation (i) throughout the Commonwealth and in Planning District 8 and Planning District 23 or (ii) in any other Planning District that becomes subject to the state taxes or fees imposed solely in Planning Districts pursuant to this act shall expire on December 31 of any year in which the General Assembly appropriates any of such additional revenues for any non-transportation-related purpose or transfers any of such additional revenues that are to be deposited into the Commonwealth Transportation Fund or any subfund thereof pursuant to general law for a non-transportation-related purpose. In the event a local government of any county or city wherein the additional taxes and fees are levied appropriates or allocates any of such additional revenues to a non-transportation purpose, such locality shall not be the direct beneficiary of any of the revenues generated by the taxes or fees in the year immediately succeeding the year in which revenues were appropriated or allocated to a non-transportation purpose."

Chapter 18 - ENFORCEMENT, COLLECTION, REFUND, REMEDIES AND REVIEW OF STATE TAXES

Article 1 - COLLECTION OF STATE TAXES

§ 58.1-1800. Local treasurer to receive state taxes; list of delinquent taxes

The treasurer of each county and city shall receive the state revenue payable into the treasury of his locality. Taxpayers shall make checks payable to "Treasurer (or title of other officer or employee who performs the duties of a treasurer) of (name of political subdivision)" or "(name of political subdivision)". The treasurer of each county and city shall, not later than August 1 of each year, make a list of the intangible personal property taxes which he is unable to collect. Such list shall conform to the facts as they existed on June 30 of the year, and shall be in the form, and accompanied by the oath, prescribed by the Department of Taxation.

Code 1950, §§ 58-958, 58-978, 58-979; 1956, c. 69; 1971, Ex. Sess., c. 12; 1974, c. 80; 1977, c. 507; 1979, c. 240; 1984, c. 675; 2002, c. 139.

§ 58.1-1801. Delinquent lists involving state taxes to be transmitted to the Department of Taxation; crediting treasurer; collections

A copy of the list of delinquent intangible personal property shall be transmitted by the treasurer to the Department of Taxation. Upon the receipt and auditing of the list, the Department of

Taxation shall certify to the Comptroller the necessary information to enable him to give such treasurer proper credit therefor on his books, and such treasurer shall not receive any of such taxes thereafter, but the same shall be paid directly into the state treasury.

The Department of Taxation shall have power to collect such intangible personal property taxes by any process authorized for the collection of state taxes.

Code 1950, § 58-988; 1950, p. 945; 1971, Ex. Sess., c. 12; 1984, c. 675.

§ 58.1-1802. When delinquent state taxes charged off; notification and record of charge-off

The Comptroller and the Department of Taxation shall keep delinquent state taxes on the books until the Tax Commissioner determines that they should be charged off, except that taxes and registration fees assessed by the State Corporation Commission shall be charged off upon advice from the Commission. The Tax Commissioner shall notify the Comptroller periodically of the taxes, penalties and interest so charged off in such detail and at such times as the Comptroller may require, and shall maintain records which indicate the reason for the charge-off for a period of three years.

Code 1950, § 58-996; 1975, c. 146; 1984, c. 675.

§ 58.1-1802.1. Period of limitations on collection; accrual of interest and penalty

A. Where the assessment of any tax imposed by this subtitle has been made within the period of limitation properly applicable thereto, such tax may be collected by levy, by a proceeding in court, or by any other means available to the Tax Commissioner under the laws of the Commonwealth, but only if such collection effort is made or instituted within seven years from the date of the assessment of such tax. Except as otherwise provided in this section, effective for assessments made on and after July 1, 2016, all collection efforts shall cease after such seven-year period even if initiated during the seven-year period. Prior to the expiration of any period for collection, the period may be extended by a written agreement between the Tax Commissioner and the taxpayer, and subsequent written agreements may likewise extend the period previously agreed upon. The period of limitations provided in this subsection during which a tax may be collected shall not apply to executions, levy or other actions to enforce a lien created before the expiration of the period of limitations by the docketing of a judgment or the filing of a memorandum of lien pursuant to § 58.1-1805; nor shall the period of limitations apply to the provisions of §§ 8.01-251 and 8.01-458.

B. The running of the period of limitations on collection shall be suspended for the period the assets of the taxpayer are in the control or custody of any state or federal court, including the United States Bankruptcy Court; for the period during which a taxpayer is outside the Commonwealth if such period of absence is for a continuous period of at least six months; or during the period that an installment agreement entered into by the taxpayer pursuant to § 58.1-1817 is in effect.

C. If the Department of Taxation has no contact with the delinquent taxpayer for a period of six years and no memorandum of lien has been appropriately filed in a jurisdiction in which such taxpayer owns real estate, interest and penalty shall no longer be added to the delinquent tax liability. The mailing of notices by the Department to the taxpayer's last known address shall constitute contact with the taxpayer.

D. For purposes of this section, the "last known address" of the taxpayer means the address shown on the most recent return filed by or on behalf of the taxpayer or the address provided in correspondence by or on behalf of the taxpayer indicating that it is a change of the taxpayer's address.

1990, c. 659; 2010, c. 30; 2012, c. 840; 2016, c. 634.

§ 58.1-1803. Department of Taxation may appoint collectors of delinquent state taxes; Contract Collector Fund established

A. The Department of Taxation may appoint a collector in any county or city, including the treasurer thereof, to collect delinquent state taxes that were assessed at least 90 days previously therein, or elsewhere in the Commonwealth, and may allow him a reasonable compensation, to be agreed on before the service is commenced. Where the appointed collector is a local government treasurer, any actions taken pursuant to this section shall be considered part of the official duties of such treasurer.

B. The Department of Taxation may appoint collectors or contract with collection agencies to collect delinquent state taxes that were assessed at least 90 days previously and allow reasonable compensation for such services, to be agreed on before the service is commenced. Delinquent claims for state taxes may be assigned to collectors or collection agencies so designated for the purpose of litigation in the Department of Taxation's name and at the Department of Taxation's expense.

C. Such collectors who are attorneys-at-law shall have authority to institute actions at law or suits in equity for the recovery of state taxes. For the purpose of this section, the term "state taxes" shall include any penalty and interest and shall also include the local sales and use tax imposed under the authority of §§ 58.1-605 and 58.1-606 and any penalty and interest applicable thereto. Each collector so appointed or collection agency so contracted with shall give bond to the Commonwealth for the faithful performance of the duties placed upon him by this section, in a penalty to be fixed by the Tax Commissioner, in whose office the bond shall be filed. Notwithstanding any other provision of law, any local government treasurer so appointed may collect any delinquent state taxes pursuant to the provisions of Article 2 (§ 58.1-3910 et seq.) of Chapter 39 of this title. Any county or city treasurer turning over delinquent tax tickets to any such collector in pursuance of orders issued by the Department of Taxation shall receive credit on the Comptroller's books for the amount so turned over.

D. There is hereby established a special fund in the state treasury to be known as the Contract Collector Fund, hereinafter referred to as the Fund. All moneys collected by collectors and collection

agencies appointed by or under contract with the Department of Taxation pursuant to this section shall be placed in the Fund. Compensation of such collectors and collection agencies shall be paid out of the Fund on warrant of the Comptroller. The Comptroller shall transfer to the appropriate general, nongeneral, or local fund all moneys in the Fund in excess of that required to be paid to persons under contract, as determined by the Department, no later than June 30 each year.

Code 1950, § 58-997; 1984, c. 675; 1985, c. 464; 1994, c. 932; 1996, cc. 362, 391; 2004, c. 546; 2007, c. 750.

§ 58.1-1804. Collection out of estate in hands of or debts due by third party

The Tax Commissioner may apply in writing to any person indebted to or having in his hands estate of a taxpayer for payment of any taxes assessed under § 58.1-313 or § 58.1-631, or of any taxes more than thirty days delinquent, out of such debt or estate. Payment by such person of such taxes, penalties and interest, either in whole or in part, shall entitle him to a credit against such debt or estate. The taxes, penalties and interest shall constitute a lien on the debt or estate due the taxpayer from the time the application is received. For each application served, the person applied to shall be entitled to a fee of twenty dollars which shall constitute a charge or credit against the debt to or estate of the taxpayer.

The Tax Commissioner shall send a copy of the application to the taxpayer, with a notice informing him of the remedies provided in this chapter.

If the person applied to does not pay so much as ought to be recovered out of such debt or estate, the Tax Commissioner shall procure a summons directing such person to appear before the appropriate court, where the proper payment may be enforced. Any person so summoned shall have the same rights of removal and appeal as are applicable to disputes among individuals.

Code 1950, § 58-1010; 1960, c. 573; 1983, c. 481; 1984, c. 675.

§ 58.1-1805. Memorandum of lien for collection of taxes; release of lien

A. If any taxes or fees, including penalties and interest, assessed by the Department of Taxation in pursuance of law against any person, are not paid within thirty days after the same become due, the Tax Commissioner may file a memorandum of lien in the circuit court clerk's office of the county or city in which the taxpayer's place of business is located, or in which the taxpayer resides. If the taxpayer has no place of business or residence within the Commonwealth, such memorandum may be filed in the Circuit Court of the City of Richmond. A copy of such memorandum may also be filed in the clerk's office of all counties and cities in which the taxpayer owns real estate. Such memorandum shall be recorded in the judgment docket book and shall have the effect of a judgment in favor of the Commonwealth, to be enforced as provided in Article 19 (§ 8.01-196 et seq.) of Chapter 3 of Title 8.01, except that a writ of fieri facias may issue at any time after the memorandum is filed. The lien on real estate shall become effective at the time the memorandum is filed in the jurisdiction in which the real estate is located. No memorandum of lien shall be filed unless the taxpayer is first given ten or more days' prior notice of intent to file a lien;

however, in those instances where the Tax Commissioner determines that the collection of any tax, penalties or interest required to be paid pursuant to law will be jeopardized by the provision of such notice, notification may be provided to the taxpayer concurrent with the filing of the memorandum of lien. Such notice shall be given to the taxpayer at his last known address. For purposes of this section, "last known address" means the address shown on the most recent return filed by or on behalf of the taxpayer or the address provided in correspondence by or on behalf of the taxpayer indicating that it is a change of the taxpayer's address.

B. Recordation of a memorandum of lien hereunder shall not affect the right to a refund or exoneration under this chapter, nor shall an application for correction of an erroneous assessment affect the power of the Tax Commissioner to collect the tax, except as specifically provided in this title.

C. If after filing a memorandum of lien as required by subsection A, the Tax Commissioner determines that it is in the best interest of the Commonwealth, the Tax Commissioner may place padlocks on the doors of any business enterprise that is delinquent in either filing or paying any tax owed to the Commonwealth, or both. He shall also post notices of distraint on each of the doors so padlocked. If after three business days, the tax deficiency has not been satisfied or satisfactory arrangements for payment made, the Tax Commissioner may cause a writ of fieri facias to be issued.

It shall be a Class 1 misdemeanor for anyone to enter the padlocked premises without prior approval of the Tax Commissioner.

In the event that the taxpayer against whom the distraint has been applied subsequently makes application for correction of the assessment under § 58.1-1821, the taxpayer shall have the right to post bond equaling the amount of the tax liability in lieu of payment until the application is acted upon.

The provisions of subsection C shall be enforceable only after the promulgation, by the Tax Commissioner, of regulations under the Administrative Process Act (§ 2.2-4000 et seq.) setting forth the circumstances under which this subsection can be used.

D. A taxpayer may appeal to the Tax Commissioner after a memorandum of lien has been filed under this section if the taxpayer alleges an error in the filing of the lien. The Tax Commissioner shall make a determination of such an appeal within fourteen days. If the Tax Commissioner determines that the filing was erroneous, he shall issue a certificate of release of the lien within seven days after such determination is made.

Code 1950, §§ 58-41 to 58-43; 1971, Ex. Sess., c. 155; 1984, c. 675; 1985, c. 221; 1989, cc. 629, 642; 1993, c. 384; 1996, c. 634.

§ 58.1-1806. Additional proceedings for the collection of taxes; jurisdiction and venue

The payment of any state taxes and the filing of returns may, in addition to the remedies provided in this chapter be enforced by action at law, suit in equity or by attachment in the same manner, to the same extent and with the same rights of appeal as now exist or may hereafter be provided by law for the enforcement of demands between individuals. The venue for any such proceeding under this section shall be as specified in subdivision 13 a of § 8.01-261. Such proceedings shall be instituted and conducted in the name of the Commonwealth of Virginia.

Code 1950, §§ 58-44, 58-1014, 58-1016; 1954, c. 333; 1977, c. 624; 1981, c. 421; 1984, c. 675.

§ 58.1-1807. Judgment or decree; effect thereof; enforcement

In any proceeding under § 58.1-1806 the court shall have the power to determine the proper taxes, and to enter an order requiring the taxpayer to file all returns and pay all taxes, penalties and interest with which upon a correct assessment he is chargeable for any year or years not barred by the statute of limitations at the time the proceedings were instituted. If any taxes of which collection is sought have been erroneously charged, the court may order exoneration thereof. Payment of any judgment or decree shall be enforced against the taxpayer in the same manner that it could be enforced in a proceeding between individuals.

Code 1950, §§ 58-44, 58-1017; 1984, c. 675.

§ 58.1-1808. Collection in foreign jurisdiction

When after the rendition of such a judgment or decree against a defendant it seems to the attorney having charge thereof that there may not be found within the Commonwealth sufficient property of the defendant out of which the same may be enforced, but that the same could be enforced in some other jurisdiction, he shall, with the concurrence of the Attorney General, institute in such foreign jurisdiction appropriate proceedings to enforce therein the payment of such judgment.

Code 1950, § 58-1018; 1984, c. 675.

§ 58.1-1809. Jurisdiction over Commonwealth for purpose of determining validity, amount and priority of tax lien

Any court having jurisdiction over a creditor's bill, partition suit, condemnation suit, interpleader or other cause or action in which it is necessary to make the Commonwealth a party in order to determine the respective rights of two or more other adverse parties, shall have jurisdiction over the Commonwealth for the limited purposes of determining the validity of a tax lien of the Commonwealth, the amount of such lien, and the priority of such lien vis-a-vis other liens. Such court shall have no jurisdiction to determine the validity of the assessment secured by the lien. This section shall apply only if the pleadings clearly set forth the nature of the tax lien and service is properly made upon the Attorney General.

Code 1950, § 58-1010.1; 1972, c. 478; 1984, c. 675.

§§ 58.1-1810, 58.1-1811. Reserved

Reserved.

§ 58.1-1812. Assessment of omitted taxes by the Department of Taxation

A. If the Tax Commissioner ascertains that any person has failed to make a proper return or to pay in full any proper tax he shall assess the taxes prescribed by law, adding to the taxes so assessed the penalty prescribed by law, if any, for the failure to file a return (if a return was required by law but not filed within the time prescribed by law) and the penalty or penalties prescribed by law for the failure to pay the taxes and penalty or penalties within the time prescribed by law. If no penalty is so prescribed, he shall assess a penalty of 5 percent of the tax due, or if the failure to pay in full was fraudulent, a penalty of 100 percent of the tax due. In addition thereto, interest on the outstanding tax and penalty shall be charged at the rate established under § 58.1-15 for the period between the due date and the date of full payment.

Except as otherwise provided by law, the amount of tax shall be assessed within three years after the return was filed, whether such return was filed on or after the date prescribed, and no proceeding in court without assessment shall be begun for the collection of such tax after the expiration of such period. A return of tax filed before the last day prescribed by law for the timely filing thereof shall be considered as filed on the last day. A return of recordation tax shall be considered as having been filed on the date of recordation. If no return is filed, the tax may be assessed within six years of the date such return was due. If a false or fraudulent return is filed with intent to evade the payment of tax, an assessment may be made at any time.

Upon such assessment, the Department of Taxation shall send a bill therefor to the taxpayer and the taxes, penalties and interest shall be remitted to the Department of Taxation within thirty days from the date of such bill. If such taxes, penalties and interest are not paid within such thirty days, interest at the rate provided herein shall accrue thereon from the date of such assessment until payment.

B. The Department of Taxation shall not assess penalty or interest on any assessment of tax for the recovery of an erroneous refund, as defined in this section, provided that the tax is paid to the Department within thirty days from the date of the bill. If the tax is not remitted to the Department within thirty days from the date of such bill, interest at the rate provided herein shall accrue thereon from the date of such assessment until payment.

As used in this section "erroneous refund" means any refund of tax resulting solely from an error by the Department of Taxation which results in the taxpayer receiving a refund to which the taxpayer is not entitled.

Code 1950, §§ 58-1160, 58-1161, 58-1162; 1971, Ex. Sess., c. 13; 1972, c. 721; 1973, c. 446; 1976, c. 456; 1977, c. 396; 1980, c. 663; 1984, c. 675; 1986, c. 39.

§ 58.1-1813. Liability of corporate officer or employee, or member, manager or employee of partnership or limited liability company, for failure to pay tax, etc

A. Any corporate, partnership or limited liability officer who willfully fails to pay, collect or truthfully account for and pay over any tax administered by the Department of Taxation, or willfully

attempts in any manner to evade or defeat any such tax or the payment thereof, shall, in addition to other penalties provided by law, be liable to a penalty of the amount of the tax evaded, or not paid, collected or accounted for and paid over, to be assessed and collected in the same manner as such taxes are assessed and collected.

B. The term "corporate, partnership or limited liability officer" as used in this section means an officer or employee of a corporation, or a member, manager or employee of a partnership or limited liability company, who as such officer, employee, member or manager is under a duty to perform on behalf of the corporation, partnership or limited liability company the act in respect of which the violation occurs and who (1) had knowledge of the failure or attempt as set forth herein and (2) had authority to prevent such failure or attempt.

Code 1950, § 58-44.1; 1972, c. 363; 1984, c. 675; 1994, c. 800; 1998, c. 432.

§ 58.1-1814. Criminal liability for failure to file returns or keep records

A. Any corporate or partnership officer, as defined in § 58.1-1813, and any other person required by law or regulations made under authority thereof to make a return, keep any records or supply any information, for the purpose of the computation, assessment or collection of any state tax administered by the Department of Taxation, who willfully fails to make such returns, keep such records or supply such information, at the time or times required by law or regulations, shall, in addition to any other penalties provided by law, be guilty of a Class 1 misdemeanor.

B. Any person who willfully utilizes a device or software to falsify the electronic records of cash registers or other point-of-sale systems or otherwise manipulates transaction records that affect any state tax liability shall, in addition to any other penalties provided by law, be guilty of a Class 1 misdemeanor.

C. In addition to the criminal penalty provided in subsection B and any other civil or criminal penalty provided in this title, any person violating subsection B shall pay a civil penalty of $20,000, to be assessed and collected by the Department as other taxes are collected and deposited into the general fund.

Code 1950, § 58-44.1; 1972, c. 363; 1984, c. 675; 2014, cc. 723, 785.

§ 58.1-1815. Willful failure to collect and account for tax

Any corporate or partnership officer as defined in § 58.1-1813, or any other person required to collect, account for and pay over any sales, use or withholding tax, who willfully fails to collect or truthfully account for and pay over such tax, and any such officer or person who willfully evades or attempts to evade any such tax or the payment thereof, shall, in addition to any other penalties provided by law, be guilty of a Class 1 misdemeanor.

Code 1950, § 58-44.1; 1972, c. 363; 1984, c. 675.

§ 58.1-1816. Conversion of trust taxes; penalty; limitation of prosecutions

Any corporate or partnership officer as defined in § 58.1-1813, or any other person owning and operating a business, or a fiduciary operating or liquidating a business, who through two or more acts or omissions within a period of ninety days willfully fails to truthfully account for any state sales use or withholding tax totaling $1,000 or more collected from others with the intent not to pay over, shall, in addition to any other penalties provided by law, be guilty of a Class 6 felony. A prosecution under this section shall be commenced within five years next after the commission of the offense.

1992, c. 763 .

§ 58.1-1817. Installment agreements for the payment of taxes

A. The Tax Commissioner is authorized to enter into a written agreement with any taxpayer under which such taxpayer is allowed to satisfy his tax liability in installment payments, if the Tax Commissioner determines such an agreement will facilitate collection.

B. Except as otherwise provided in this section, any agreement entered into by the Tax Commissioner under subsection A shall remain in effect for the term of the agreement.

The Tax Commissioner may terminate any installment agreement if:

1. Information which the taxpayer provided prior to the date such agreement was entered into was inaccurate or incomplete; or

2. The Tax Commissioner determines that the collection of any tax to which an agreement relates is in jeopardy.

C. If the Tax Commissioner makes a determination that the financial condition of a taxpayer who has entered into an installment agreement under this section has significantly changed, the Tax Commissioner may alter, modify, or terminate such agreement. Such action may be taken only if (i) notice of the action is provided to the taxpayer no later than thirty days prior to the date of such action and (ii) such notice includes the reasons why the Tax Commissioner believes a significant change in the financial condition of the taxpayer has occurred.

D. The Tax Commissioner may alter, modify, or terminate an installment agreement in the case of the failure of the taxpayer:

1. To pay any installment at the time it is due;

2. To pay any other tax liability at the time it is due;

3. To provide a financial condition update as requested by the Tax Commissioner; or

4. To file with the Department any required tax or information return during the time period such agreement is in effect.

E. The Tax Commissioner may alter, modify, or terminate an installment agreement under other exceptional circumstances as he deems appropriate.

1996, c. 634.

§ 58.1-1818. Taxpayer problem resolution program; taxpayer assistance orders

A taxpayer problem resolution program shall be available to taxpayers to facilitate the prompt review and resolution of taxpayer complaints and problems which have not been addressed or remedied through normal administrative proceedings or operational procedures and to assure that taxpayer rights are safeguarded and protected during the tax determination and collection processes.

The Tax Commissioner shall designate a taxpayers' rights advocate and adequate staff to administer the taxpayer problem resolution program.

The taxpayers' rights advocate may issue a taxpayer assistance order that suspends or stays actions or proposed actions by the Department when a taxpayer suffers or is about to suffer a significant hardship as a result of a tax determination, collection, or enforcement process. When determined to be necessary by the taxpayers' rights advocate, he may require a formal written request to be submitted by the taxpayer.

Relief or remedy may be granted by a taxpayer assistance order only as an extraordinary measure. The process shall not be used to contest the merits of a tax liability, or as a substitute for informal protest procedures, or normal administrative or judicial proceedings for the review of a tax assessment or collection action, or denial of refund.

The running of the period of limitations on an assessment shall be tolled from the date of a taxpayer's request for a taxpayer assistance order until either the date the request is denied or the date specified in the taxpayer assistance order, whichever is applicable.

1996, c. 634.

§ 58.1-1819. Reserved

Reserved.

Article 2 - CORRECTIONS OF ERRONEOUS ASSESSMENTS; REFUNDS

§ 58.1-1820. Definitions

The following words, terms and phrases when used in this article shall have the meanings ascribed to them in this section.

1."Person assessed with any tax," with standing to contest such assessment, shall include the person in whose name such assessment is made, a consumer of goods who, pursuant to law or contract, has paid any sales or use tax assessed against a dealer, a consumer of real estate construction who has by contract specifically agreed to pay the taxes assessed on the contractor, and any dealer who agrees to pass on to his customers the amount of any refund (net after expenses of the refund proceeding) to the extent such tax has been passed on to such customers.

2. "Assessment," as used in this subtitle, shall include an assessment made pursuant to notice by the Department of Taxation and self-assessments made by a taxpayer upon the filing of a return or otherwise not pursuant to notice. Assessments made by the Department of Taxation shall be

deemed to be made when a written notice of assessment is delivered to the taxpayer by an employee of the Department of Taxation, or mailed to the taxpayer at his last known address. Upon approval of the use of the specific medium by the taxpayer, an assessment shall also be deemed to be made when a notice of assessment is transmitted by the Department of Taxation to the taxpayer by either facsimile transmission or electronic mail to a facsimile machine or electronic mail address, respectively, as designated by the taxpayer in writing. Self-assessments shall be deemed made when the tax is paid or, in the case of taxes requiring an annual or monthly return, when the return is filed. A return filed or tax paid before the last day prescribed by law or by regulations pursuant to law for the filing or payment thereof, shall be deemed to be filed or paid on such last day.

3. "Person aggrieved by an action with respect to a transferred credit or other tax attribute" with standing to contest such action shall include the person who earned a credit or other tax attribute transferable under law and who has transferred such credit or other tax attribute and any subsequent transferor and transferee of such credit or other tax attribute who is affected directly or indirectly by an assessment based upon an adjustment to such credit or other tax attribute or by a formal notice of the Department's intent to adjust such credit or other tax attribute.

Code 1950, § 58-1117.20; 1980, c. 633; 1984, c. 675; 2000, cc. 369, 402; 2008, c. 549.

§ 58.1-1821. Application to Tax Commissioner for correction

Any person assessed with any tax administered by the Department of Taxation may, within ninety days from the date of such assessment, apply for relief to the Tax Commissioner. Such application shall be in the form prescribed by the Department, and shall fully set forth the grounds upon which the taxpayer relies and all facts relevant to the taxpayer's contention. The Tax Commissioner may also require such additional information, testimony or documentary evidence as he deems necessary to a fair determination of the application. Any person aggrieved by an action by the Department with respect to a transferred credit or other tax attribute may apply for relief under this section or request to join an application already filed by another person assessed with tax or aggrieved by an action with respect to the same credit or other tax attribute. Notwithstanding the provisions of § 58.1-3, the Tax Commissioner shall have the discretion to permit the joinder of a party or consolidate proceedings on applications filed by different taxpayers if the interest of the party or the applications involve adjustments to credits or other tax attributes arising from the same transaction or occurrence, provided that no interests are prejudiced and the joinder or consolidation advances administrative economy.

On receipt of a notice of intent to file under this section, the Tax Commissioner shall refrain from collecting the tax until the time for filing hereunder has expired, unless he determines that collection is in jeopardy.

Any person whose tax assessment has been improperly collected by the Department may apply hereunder to assert a claim that any amount so collected was exempt from process.

The initial assessment of any tax administered by the Department of Taxation shall include a notice to the taxpayer that specifies all of the taxpayer's rights under this section, including but not limited to the right to have the Tax Commissioner refrain from collecting the tax upon the Commissioner's receipt from the taxpayer of a notice of intent to file for relief under this section.

Code 1950, § 58-1118; 1950, p. 597; 1956, c. 502; 1971, Ex. Sess., c. 13; 1972, c. 721; 1973, c. 446; 1980, c. 633; 1984, c. 675; 2007, c. 750; 2008, c. 549.

§ 58.1-1822. Action of Tax Commissioner on application for correction

If the Tax Commissioner is satisfied, by evidence submitted to him or otherwise, that an applicant is erroneously or improperly assessed with any tax administered by the Department of Taxation, or that an action with respect to a transferred credit or other tax attribute is erroneous, the Tax Commissioner may order that such assessment or action be corrected. If the assessment exceeds the proper amount, the Tax Commissioner shall order that the applicant be exonerated from the payment of so much as is erroneously or improperly charged, if not already paid into the state treasury, and, if paid, that it be refunded to him. If the assessment is less than the proper amount, the Tax Commissioner shall order that the applicant pay the proper taxes. He shall refund to the taxpayer any exempt funds which have been improperly collected. The Tax Commissioner shall refrain from collecting a contested assessment until he has made a final determination under this section unless he determines that collection is in jeopardy. In any action on an application for correction, the Tax Commissioner shall state in writing the facts and law supporting the action on such application.

For all outstanding liabilities upon which an application for correction has been filed, interest shall accrue on the outstanding liability at the rate prescribed by § 58.1-15 until nine months from the date of assessment. From nine months after the date of the related assessment until the Tax Commissioner issues a determination under this section, interest shall accrue at the "Federal short-term rate" established pursuant to § 6621(b) of the Internal Revenue Code . If the Tax Commissioner determines that any portion of the assessment is correct after considering the application for correction, accrual of interest at the rate prescribed in § 58.1-15 shall resume 30 days after the date of the Tax Commissioner's action on the application for correction. If the Tax Commissioner issues a determination within nine months from the date of assessment, interest shall accrue on the outstanding liability solely at the rate prescribed by § 58.1-15.

Code 1950, § 58-1119; 1972, c. 721; 1980, c. 633; 1984, c. 675; 1997, c. 428; 2008, c. 549; 2011, c. 295.

§ 58.1-1823. Reassessment and refund upon the filing of amended return or the payment of an assessment

A. Any person filing a tax return or paying an assessment required for any tax administered by the Department of Taxation may file an amended return with the Department within the later of: (i) three years from the last day prescribed by law for the timely filing of the return; (ii) one year from the final determination of any change or correction in the liability of the taxpayer for any federal

tax upon which the state tax is based, provided that the refund does not exceed the amount of the decrease in Virginia tax attributable to such federal change or correction; (iii) two years from the filing of an amended Virginia return resulting in the payment of additional tax, provided that the amended return raises issues relating solely to such prior amended return and that the refund does not exceed the amount of the payment with such prior amended return; (iv) two years from the payment of an assessment, provided that the amended return raises issues relating solely to such assessment and that the refund does not exceed the amount of such payment; or (v) one year from the final determination of any change or correction in the income tax of the taxpayer for any other state, provided that the refund does not exceed the amount of the decrease in Virginia tax attributable to such change or correction. If the Department is satisfied, by evidence submitted to it or otherwise, that the tax assessed and paid upon the original return exceeds the proper amount, the Department may reassess the taxpayer and order that any amount excessively paid be refunded to him. The Department may reduce such refund by the amount of any taxes, penalties and interest which are due for the period covered by the amended return, or any past-due taxes, penalties and interest which have been assessed within the appropriate period of limitations. Any order of the Department denying such reassessment and refund, or the failure of the Department to act thereon within three months shall, as to matters first raised by the amended return, be deemed an assessment for the purpose of enabling the taxpayer to pursue the remedies allowed under this chapter.

B. Notwithstanding the statute of limitations established in this section, any retired employee of a political subdivision of the Commonwealth, established pursuant to Chapter 627 of the 1958 Acts of Assembly, may file an amended individual income tax return until May 1, 1990, for taxable years beginning on and after January 1, 1985, and before January 1, 1986, for taxes paid on retirement income exempt pursuant to § 58.1-322.

C. Notwithstanding the statute of limitations contained in subsection A, any individual who claimed an age subtraction on his 1990 individual income tax return may file an amended individual income tax return on July 1, 1994, for taxable years beginning on and after January 1, 1990, and ending before January 1, 1991, to claim an income deduction as provided in § 58.1-322 D 5 in lieu of the income subtraction originally claimed.

Code 1950, § 58-1118.1; 1972, c. 721; 1973, c. 446; 1979, c. 690; 1980, c. 633; 1984, c. 675; 1989, Sp. Sess., cc. 1, 2, 6; 1992, c. 678; 1994, c. 488; 1994, 1st Sp. Sess., cc. 2, 5; 1996, cc. 637, 654; 1998, cc. 358, 374; 2006, c. 234; 2010, c. 228.

§ 58.1-1824. Protective claim for refund

Any person who has paid an assessment of taxes administered by the Department of Taxation may preserve his judicial remedies by filing a claim for refund with the Tax Commissioner on forms prescribed by the Department within three years of the date such tax was assessed. Such taxpayer may, at any time before the end of one year after the date of the Tax Commissioner's decision on such claim, seek redress from the circuit court under § 58.1-1825. The Tax Commissioner may

decide such claim on the merits in the manner provided in § 58.1-1822 for appeals under § 58.1-1821, or may, in his discretion, hold such claim without decision pending the conclusion of litigation affecting such claim. The fact that such claim is pending shall not be a bar to any other action under this chapter.

Code 1950, § 58-1119.1; 1980, c. 633; 1984, c. 675.

§ 58.1-1825. Application to court for correction of erroneous or improper assessments of state taxes generally

A. Any person assessed with any tax administered by the Department of Taxation and aggrieved by any such assessment, or aggrieved by an action by the Department with respect to a transferred credit or other tax attribute, may, unless otherwise specifically provided by law, within (i) three years from the date such assessment is made or (ii) one year from the date of the Tax Commissioner's determination under § 58.1-1822, whichever is later, apply to a circuit court for relief. The venue for such proceeding shall be as specified in subdivision 13 b of § 8.01-261. The application shall be before the court when it is filed in the clerk's office.

B. Except as provided in subsection C, the court shall require the applicant to pay the assessment before proceeding with its application upon granting a motion by the Tax Commissioner seeking to compel such payment and showing to the satisfaction of the court that the Department is likely to prevail on the merits of the case, that the application is (i) not well grounded in fact; (ii) not warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; (iii) interposed for an improper purpose, such as to harass, to cause unnecessary delay in the collection of the revenue, or to create needless cost to the Commonwealth from the litigation; or (iv) otherwise frivolous.

C. In lieu of the payment required in subsection B, the taxpayer may, within 60 days of the court's ruling, (i) post a bond pursuant to the provisions of § 16.1-107, with a corporate surety licensed to do business in Virginia, or (ii) file an irrevocable letter of credit satisfactory to the Tax Commissioner as to the bank or savings institution, the form and substance, and payable to the Commonwealth in the face amount of the contested assessment increased by twice the interest rate for underpayments published by the Department and in effect at the time the application is filed. The letter of credit shall be from a bank incorporated or authorized to conduct banking business under the laws of this Commonwealth or authorized to do business in this Commonwealth under the banking laws of the United States, or a federally insured savings institution located in this Commonwealth. Such bond or irrevocable letter of credit shall be conditioned upon payment by the applicant of the amount of the taxes, penalty and interest ordered by the court pursuant to § 58.1-1826, if any.

D. Any person whose assessment has been improperly collected from property exempt from process may within three years from the date such assessment is made, or if later, within one year of the Tax Commissioner's decision on a process exemption claim under § 58.1-1821 apply to a

circuit court for relief. The venue for such proceeding shall be as specified in subdivision 13 b of § 8.01-261.

The Department shall be named as defendant, and the proceedings shall be conducted as an action at law before the court sitting without a jury. It shall be the burden of the applicant in any such proceeding to show that the assessment or collection or action on a transferred credit or other tax attribute complained of is erroneous or otherwise improper. The court's order shall be entered pursuant to § 58.1-1826.

E. Nothing in this section shall prevent the Tax Commissioner from collecting the assessment if he determines that collection is in jeopardy.

Code 1950, § 58-1130; 1950, p. 598; 1973, c. 280; 1976, c. 311; 1977, c. 624; 1980, c. 633; 1984, c. 675; 1985, c. 221; 1991, c. 714; 1998, c. 529; 2003, c. 908; 2008, c. 549.

§ 58.1-1826. Action of court

If the court is satisfied that the applicant is erroneously or improperly assessed with any taxes, or that an action with respect to a transferred credit or other tax attribute is erroneous, and that the erroneous assessment or action was not caused by the willful failure or refusal of the applicant to furnish the Department with the necessary information, as required by law, the court may order that the assessment or action be corrected. If the assessment exceeds the proper amount, the court may order that the applicant be exonerated from the payment of so much as is erroneously or improperly charged, if not already paid and, if paid, that it be refunded to him. If the assessment is less than the proper amount, the court shall order that the applicant pay the proper taxes and to this end the court shall be clothed with all the powers and duties of the authority which made the assessment complained of as of the time when such assessment was made and all the powers and duties conferred by law upon such authority between the time such assessment was made and the time such application is heard. The court may order that any amount which has been improperly collected be refunded to such applicant. A copy of any order made under this section or § 58.1-1827 correcting an erroneous or improper assessment shall be certified by the clerk of the court to the Tax Commissioner.

Code 1950, § 58-1134; 1972, c. 721; 1980, c. 633; 1984, c. 675; 1985, c. 221; 2006, c. 342; 2008, c. 549.

§ 58.1-1827. Correction of double assessments

Irrespective of the foregoing provisions, when it is shown to the satisfaction of the court that there has been a double assessment in any case, one of which assessments is proper and the other erroneous, and that a proper single tax has been paid thereon, the court may order that such erroneous assessment be corrected, whether the erroneous tax has been paid or not and even though the application was not made within the period of limitation, as hereinbefore required.

Code 1950, § 58-1132; 1950, p. 598; 1972, c. 721; 1984, c. 675.

§ 58.1-1828. Appeal

The Tax Commissioner or the taxpayer may take an appeal from any final order of the court to the Supreme Court.

Code 1950, § 58-1138; 1972, c. 721; 1984, c. 675.

§ 58.1-1829. Costs in proceedings under §§ 58.1-1825 through 58.1-1828

If the final order of the court in any proceeding under §§ 58.1-1825 through 58.1-1828 grants the relief prayed for, no costs shall be taxed against the applicant; but in no event shall any costs be taxed against the Commonwealth in any proceeding under such sections.

Code 1950, §§ 58-1139, 58-1157; 1984, c. 675.

§ 58.1-1830. Effect of order

An order of exoneration under §§ 58.1-1826, 58.1-1827 or § 58.1-1828, when delivered to the Tax Commissioner, shall restrain him from collecting so much as is thus erroneously charged. If what was so erroneously charged has been paid, the order of the court under §§ 58.1-1826, 58.1-1827 or § 58.1-1828, when presented to the appropriate state or local official, shall serve as the only direction necessary to obtain refund of the amount so ordered.

Code 1950, § 58-1136; 1980, c. 633; 1984, c. 675.

§ 58.1-1831. No injunctions against assessment or collection of taxes

No suit for the purpose of restraining the assessment or collection of any tax, state or local, shall be maintained in any court of this Commonwealth, except when the party has no adequate remedy at law.

Code 1950, § 58-1158; 1984, c. 675.

§ 58.1-1832. Chapter includes taxes, levies, penalties and interest

This chapter shall be construed to include taxes, levies, penalties and interest, or all of them.

Code 1950, § 58-1159; 1984, c. 675.

§ 58.1-1833. Interest on overpayments or improper collection

A. Interest shall be allowed and paid upon the overpayment of any tax administered by the Department, the refund of which is permitted or required under the provisions of this article, or on moneys improperly collected from the taxpayer and refunded pursuant to § 58.1-1822, at a rate equal to the rate of interest established pursuant to § 58.1-15. Such interest shall accrue from a date sixty days after payment of the tax, or sixty days after the last day prescribed by law for such payment, whichever is later, and shall end on a date determined by the Department preceding the date of the refund check by not more than thirty days. Notwithstanding the above, any tax refunded pursuant to a court order or otherwise as a result of an erroneous assessment shall bear interest from the date the assessment was paid. No interest will be paid on sales taxes refunded to a dealer unless the dealer agrees to pass such interest on to the purchaser.

B. 1. Notwithstanding the provisions of subsection A, if an individual overpays his individual income tax, the overpayment was for individual income taxes for the immediately preceding

taxable year, and the overpayment has not been refunded, then interest shall accrue on the amount of the overpayment, beginning:

(i) thirty days after payment of such tax if the individual filed his individual income tax return via electronic means; or

(ii) sixty days after payment of such tax if the individual filed his individual income tax return using a method other than electronic means.

In no case shall interest be paid for the overpayment of the same tax pursuant to this subsection and subsection A.

2. For the purposes of this subsection, interest shall accrue at a rate equal to the rate of interest established pursuant to § 58.1-15. Such interest shall end on a date determined by the Department preceding the date of the refund check by not more than seven days.

C. For purposes of this section:

1. Any individual income tax deducted and withheld at the source and paid to the Department, and any amount paid as estimated tax, shall be deemed to have been paid on the day on which the return for such year's income was filed;

2. Any corporate or estate and trust income tax deducted and withheld at the source and paid to the Department, and any amount paid as estimated tax, shall be deemed to have been paid on the day on which the return for such year's income was filed, or the last day prescribed by law for filing such return, whichever is later; and

3. Any overpayment of tax resulting from the carry-back of a net operating loss or net capital loss shall be deemed to have been made on the day on which the return for the year in which the loss occurred was filed, or the last day prescribed by law for such filing, whichever is later.

D. The Tax Commissioner and the State Comptroller shall implement procedures to allow an individual requesting a refund of the overpayment of individual income tax when filing his individual income tax return to elect on such return to have the refund paid by check mailed to the address provided on his return. The ability of the individual to elect such refund check shall be in addition to other methods utilized by the State Comptroller for the payment of such refund, including but not limited to direct deposits or other electronic means.

Code 1950, § 58-1140.1; 1973, c. 446; 1974, c. 425; 1976, c. 456; 1980, c. 663; 1984, c. 675; 2002, cc. 184, 462; 2015, cc. 76, 229.

§ 58.1-1834. Taxpayer meetings; representation; recording meetings

A. At or before an initial meeting relating to the determination of a tax, the Department shall provide the taxpayer a written explanation of the audit process and the taxpayer's rights in the process. At or before an initial meeting relating to the collection of a tax, the Department shall

provide the taxpayer a written explanation of the collection process and the taxpayer's rights in the process.

B. A taxpayer may authorize a person, through a power of attorney filed with the Department, to represent the taxpayer at his cost. Once a taxpayer files a power of attorney with the Department in accordance with procedures developed by the Department and while the power of attorney is in effect, at the same time that the Department mails, issues, or otherwise provides to the taxpayer any written correspondence, documentation, or other written materials that relate to the tax matter for which the power of attorney has been filed, the Department shall provide a copy of the same to the person named as power of attorney. The copy shall be furnished to the person named as power of attorney under the same delivery method used for providing the written correspondence, documentation, or other written materials to the taxpayer.

The Department may not require a taxpayer to accompany the taxpayer's representative to the meeting unless the Tax Commissioner has summoned the taxpayer pursuant to § 58.1-216.

C. The Department shall suspend a meeting relating to the determination of a tax if, at any time during the meeting, the taxpayer expresses the desire to consult with an attorney, accountant, or other person who, through a power of attorney, may represent the taxpayer before the Department. However, after one such suspension has been granted and upon a finding that a taxpayer's request for suspension is frivolous or groundless, the Department may terminate the meeting and issue an assessment, if appropriate.

D. The Department shall allow a taxpayer to make an audio recording of a meeting relating to the determination of a tax at the taxpayer's expense and using the taxpayer's equipment. The Department may make an audio recording of such meetings at its own expense and using its own equipment. The Department shall, upon request of the taxpayer, provide the taxpayer a transcript of a meeting recorded by the Department. The Department may charge the taxpayer for the cost of the requested transcription and reproduction of the transcript. Receipts from the charges for the transcripts shall be credited to the Department for reimbursement of transcription expenses.

1996, c. 634; 2009, c. 503.

§ 58.1-1835. Abatement of any tax, interest, and penalty attributable to erroneous written advice by the Department

The Tax Commissioner shall abate any portion of any tax, interest, and penalty attributable to erroneous advice furnished to the taxpayer in writing by an employee of the Department acting in his official capacity if:

1. The written advice was reasonably relied upon by the taxpayer and was in response to a specific written request by the taxpayer;

2. The portion of the penalty or tax did not result from a failure by the taxpayer to provide adequate or accurate information; and

3. The facts of the case described in the written advice and the request therefor are the same, and the taxpayer's business or personal operations have not changed since the advice was rendered.

1996, c. 634.

§§ 58.1-1836 through 58.1-1839. Reserved
Reserved.

Article 3 - VIRGINIA TAX AMNESTY PROGRAM

§ 58.1-1840. Repealed
Repealed by Acts 1997, c. 63.

§ 58.1-1840.1. Repealed
Repealed by Acts 2016, c. 305, cl. 2.

Article 4 - VIRGINIA TAXPAYER BILL OF RIGHTS

§ 58.1-1845. Virginia Taxpayer Bill of Rights
There is created the Virginia Taxpayer Bill of Rights to guarantee that (i) the rights, privacy, and property of Virginia taxpayers are adequately safeguarded and protected during tax assessment, collection, and enforcement processes administered under the revenue laws of the Commonwealth and (ii) the taxpayer is treated with dignity and respect. The Taxpayer Bill of Rights compiles, in one document, brief but comprehensive statements which explain, in simple, nontechnical terms, the rights and obligations of the Department and taxpayers. The rights afforded taxpayers to assure that their privacy and property are safeguarded and protected during tax assessment and collections are available only insofar as they are implemented in other sections of the Code of Virginia or rules of the Department. The rights so guaranteed Virginia taxpayers in the Code of Virginia and the Department's rules and regulations are:

1. The right to available information and prompt, courteous, accurate responses to questions and requests for tax assistance.

2. The right to request assistance from a taxpayers' rights advocate of the Department, in accordance with § 58.1-1818, who shall be responsible for facilitating the resolution of taxpayer complaints and problems not resolved through the normal administrative channels within the Department.

3. The right to be represented or advised by counsel or other qualified representatives at any time in administrative interactions with the Department; the right to procedural safeguards with respect to recording of meetings during tax determination or collection processes conducted by the Department in accordance with § 58.1-1834; and the right to have audits, inspections of records, and meetings conducted at a reasonable time and place except in criminal and internal investigations, in accordance with § 58.1-307.

4. The right to abatement of tax, interest, and penalties, in accordance with § 58.1-1835, attributable to any taxes administered by the Department, when the taxpayer reasonably relies upon binding written advice furnished to the taxpayer by the Department through authorized representatives in response to the taxpayer's specific written request which provided adequate and accurate information.

5. The right to obtain simple, nontechnical statements which explain the procedures, remedies, and rights available during audit, appeals, and collection proceedings, including, but not limited to, the rights pursuant to this Taxpayer Bill of Rights and the right to be provided with an explanation for denials of refunds as well as the basis of the audit, assessments, and denials of refunds which identify any amount of tax, interest, or penalty due and which explain the consequences of the taxpayer's failure to comply with the notice, in accordance with § 58.1-1805.

6. The right to be informed of impending collection actions which require sale or seizure of property or freezing of assets, except jeopardy assessments, and the right to at least fourteen days' notice in which to pay the liability or seek further review.

7. After a jeopardy assessment, the right to have an immediate review of the jeopardy assessment, in accordance with § 58.1-313.

8. The right to seek review, through formal or informal proceedings, of any adverse decisions relating to determinations in the audit or collections processes.

9. The right to have the taxpayer's tax information kept confidential unless otherwise specified by law, in accordance with § 58.1-3.

10. The right to procedures for retirement of tax obligations by installment payment agreements, in accordance with § 58.1-1817, which recognize both the taxpayer's financial condition and the best interests of the Commonwealth, provided that the taxpayer gives accurate, current information and meets all other tax obligations on schedule.

11. The right to procedures, in accordance with § 58.1-1805, for requesting release of liens filed by the Department and for requesting that any lien which is filed in error be so noted on the lien cancellation filed by the Department and in a notice to any credit agency at the taxpayer's request, provided such request is made within three years of the release of the lien by the Department.

12. The right to procedures which assure that the individual employees of the Department are not paid, evaluated, or promoted on the basis of the amount of assessments or collections from taxpayers, in accordance with subdivision 13 of § 58.1-202.

13. The right to have the Department begin and complete its audits in a timely and expeditious manner after notification of intent to audit.

1996, c. 634.

Subtitle II - TAXES ADMINISTERED BY OTHER AGENCIES

Chapter 20 - GENERAL PROVISIONS

Article 2 - COLLECTIONS AND REFUNDS

§ 58.1-2020. Collection out of estate in hands of or debts due by third party

Any state officer charged with the duty of collecting taxes may apply in writing to any person indebted to or having in his hands estate of a taxpayer for payment of any taxes more than thirty days delinquent, out of such debt or estate. Payment by such person of such taxes, penalties and interest, either in whole or in part, shall entitle him to a credit against such debt or estate. The taxes, penalties and interest shall constitute a lien on the debt or estate due the taxpayer from the time the application is received. For each application served, the person applied to shall be entitled to a fee of twenty dollars which shall constitute a charge or credit against the debt to or estate of the taxpayer.

The collecting officer shall send a copy of the application to the taxpayer, with a notice informing him of the remedies provided in this chapter.

If the person applied to does not pay so much as ought to be recovered out of such debt or estate, the collecting officer shall procure a summons directing such person to appear before the appropriate court, where the proper payment may be enforced. Any person so summoned shall have the same rights of removal and appeal as are applicable to disputes among individuals.

Code 1950, § 58-1010; 1960, c. 573; 1983, c. 481; 1984, c. 675.

§ 58.1-2021. Memorandum of lien for collection of taxes

A. If any taxes or fees, including penalties and interest, assessed by the State Corporation Commission in pursuance of law against any person, are not paid within thirty days after the same become due, the State Corporation Commission may file a memorandum of lien in the circuit court clerk's office of the county or city in which the taxpayer's place of business is located, or in which the taxpayer resides. If the taxpayer has no place of business or residence within the Commonwealth, such memorandum may be filed in the Circuit Court of the City of Richmond. A copy of such memorandum may also be filed in the clerk's office of all counties and cities in which the taxpayer owns real estate. Such memorandum shall be recorded in the judgment docket book and shall have the effect of a judgment in favor of the Commonwealth, to be enforced as provided in Article 19 (§ 8.01-196 et seq.) of Chapter 3 of Title 8.01, except that a writ of fieri facias may issue at any time after the memorandum is filed. The lien on real estate shall become effective at the time the memorandum is filed in the jurisdiction in which the real estate is located.

B. Recordation of a memorandum of lien hereunder shall not affect the right to a refund or exoneration under this subtitle, nor shall an application for correction of an erroneous assessment affect the power of the State Corporation Commission to collect the tax, except as specifically provided in this title.

Code 1950, §§ 58-41 to 58-43; 1971, Ex. Sess., c. 155; 1984, c. 675; 1985, c. 528.

§ 58.1-2022. Additional proceedings for the collection of taxes; jurisdiction and venue

The payment of any state taxes and the filing of returns may, in addition to the remedies provided in this chapter be enforced by action at law, suit in equity or by attachment in the same manner, to the same extent and with the same rights of appeal as now exist or may hereafter be provided by law for the enforcement of demands between individuals. The venue for any such proceeding under this section shall be as specified in subdivision 13 a of § 8.01-261. Such proceedings shall be instituted and conducted in the name of the Commonwealth of Virginia.

Code 1950, §§ 58-44, 58-1014, 58-1016; 1954, c. 333; 1977, c. 624; 1981, c. 421; 1984, c. 675.

§ 58.1-2023. Judgment or decree; effect thereof; enforcement

In any proceeding under § 58.1-2022 the court shall have the power to determine the proper taxes, and to enter an order requiring the taxpayer to file all returns and pay all taxes, penalties and interest with which upon a correct assessment he is chargeable for any year or years not barred by the statute of limitations at the time the proceedings were instituted. If any taxes of which collection is sought have been erroneously charged, the court may order exoneration thereof. Payment of any judgment or decree shall be enforced against the taxpayer in the same manner that it could be enforced in a proceeding between individuals.

Code 1950, §§ 58-44, 58-1017; 1984, c. 675.

§ 58.1-2024. Collection in foreign jurisdiction

When after the rendition of such a judgment or decree against a defendant it seems to the attorney having charge thereof that there may not be found within the Commonwealth sufficient property of the defendant out of which the same may be enforced, but that the same could be enforced in some other jurisdiction, he shall, with the concurrence of the Attorney General, institute in such foreign jurisdiction appropriate proceedings to enforce therein the payment of such judgment.

Code 1950, § 58-1018; 1984, c. 675.

§ 58.1-2025. Omitted taxes

If any tax-assessing officer or body authorized by law to assess taxes on any subject of taxation pursuant to this subtitle, ascertains that any property, or any other subject of state taxation which such tax-assessing officer or body would have been authorized to assess during any current tax year has not been assessed for any tax year of the three years last past, or that the same has been assessed at less than the law required for any one or more of such years, or that the taxes thereon, for any cause, have not been realized, such tax-assessing officer or body shall list and assess the same with taxes at the rate prescribed for that year, adding thereto a penalty of ten percent, unless otherwise specifically provided by law, and interest at the rate established pursuant to § 58.1-15 which shall be computed upon the taxes and penalty from December 15 of the year in which such taxes should have been paid to the date of the assessment. If the assessment is not

paid within thirty days after its date, interest at the rate established in § 58.1-15 shall accrue thereon from the date of such assessment until payment.

1985, c. 221.

§§ 58.1-2026 through 58.1-2029. Reserved

Reserved.

§ 58.1-2030. Petition for correction of taxes, etc., assessed by State Corporation Commission

Any person or corporation feeling aggrieved by reason of any registration fee, franchise tax, charter tax, entrance fee, license tax, fee or charge assessed or imposed by or under authority of the State Corporation Commission against and collected from any corporation, domestic or foreign, or any fee paid under the provisions of Chapter 5 (§ 13.1-501 et seq.) of Title 13.1, may, unless and except as otherwise specifically provided, within one year from the date of the payment of any such tax, fee or charge, apply to the State Corporation Commission for a correction of such assessment or charge and for a refund, in whole or in part, of the tax, fee or charge so assessed or imposed and paid. No payment shall be recovered after a formal adjudication in a proceeding in which the right of appeal existed and was not taken. Such application shall be by written petition, in duplicate and verified by affidavit. Such application shall be filed with the Commission and shall set forth the names and addresses of every party in interest.

Code 1950, § 58-1122; 1976, c. 563; 1984, c. 675.

§ 58.1-2031. Hearing; notice

As soon as practicable after the filing of the petition, the State Corporation Commission shall set a date for the hearing. At least fifteen days' notice of such hearing shall be given by the Commission to the petitioner and to every party in interest, but such notice to the petitioner shall be sufficient in the form of an attested copy of the order fixing such hearing sent by ordinary mail, to the address furnished by the petitioner, or to the attorney of the petitioner, if any, provided it is certified in the record, by the clerk of the Commission, that such notice was deposited in the mail at least fifteen days prior to the date set for the hearing. Otherwise such notice may be served by an officer or may be served by registered mail, return receipt requested, and, except in the case of the petitioner shall be accompanied by a copy of the petition. The petitioner shall furnish the requisite number of copies of the petition for the giving of such notices herein required.

Code 1950, § 58-1123; 1978, c. 457; 1984, c. 675.

§ 58.1-2032. Determination by State Corporation Commission

In determining the issue the State Corporation Commission shall sit in its capacity as a court and shall consider all matters of law and fact involved. If of the opinion that the petitioner is entitled to relief, in whole or in part, the Commission shall certify to the Comptroller its findings and judgment and the Comptroller shall draw his warrant on the State Treasurer in favor of the person or corporation for the erroneous or excessive amount so certified to have been paid.

Code 1950, § 58-1124; 1984, c. 675.

§ 58.1-2033. Appeal

Any person in interest, including the Commonwealth, who considers himself aggrieved by any action of the State Corporation Commission under § 58.1-2032, irrespective of the amount involved, may appeal such action to the Supreme Court.

Code 1950, § 58-1126; 1984, c. 675.

§ 58.1-2034. Correction of other erroneous assessments made by the State Corporation Commission

If any assessment is made by the State Corporation Commission of the real or personal property or of the franchises of any corporation in any case for which a remedy for the redress and correction of any such assessment is not otherwise expressly provided by law, any such corporation or the Commonwealth or any county or city, may, within sixty days after receiving a certified copy of the assessment of such taxes by the State Corporation Commission, apply to the Supreme Court in the manner and upon the terms prescribed by such court.

Code 1950, § 58-1129; 1984, c. 675.

§ 58.1-2035. Correction of mere clerical errors

Without formal hearing or notice to the Attorney General the State Corporation Commission shall have the authority of its own motion to correct assessments; correct the names, addresses and gross receipts of telecommunications companies certified to the Department of Taxation pursuant to § 58.1-400.1 for eighteen months from the date of the certification; or certify to the Comptroller directing refund in any case in which there has been an erroneous assessment or erroneous payment involving or resulting from mere clerical error on the part of the Commission made in copying or typing or in arithmetic. No refund shall be ordered under the authority conferred by this section more than two years after the date of the erroneous payment.

Code 1950, § 58-1127; 1972, c. 776; 1984, c. 675; 2000, c. 368.

Chapter 21 - FUELS TAX [Repealed]

§§ 58.1-2100 through 58.1-2147. Repealed

Repealed by Acts 2000, cc. 729 and 758, cl. 3, effective January 1, 2001.

Chapter 22 - VIRGINIA FUELS TAX ACT

Article 1 - GENERAL PROVISIONS

§ 58.1-2200. Title; nature of tax

A. This chapter shall be known and may be cited as the "Virginia Fuels Tax Act."

B. All taxes levied under this chapter are imposed upon the ultimate consumer but are precollected as prescribed in this chapter. The levies and assessments imposed on licensees as provided in this chapter are imposed on them as agents of the Commonwealth for the precollection of the tax. The

taxes levied under this chapter shall be collected and paid at those times, in the manner, and by those persons specified in this chapter.

2000, cc. 729, 758.

§ 58.1-2201. Definitions

As used in this chapter, unless the context requires otherwise:

"Alternative fuel" means a combustible gas, liquid or other energy source that can be used to generate power to operate a highway vehicle and that is neither a motor fuel nor electricity used to recharge an electric motor vehicle or a hybrid electric motor vehicle.

"Alternative fuel vehicle" means a vehicle equipped to be powered by a combustible gas, liquid, or other source of energy that can be used to generate power to operate a highway vehicle and that is neither a motor fuel nor electricity used to recharge an electric motor vehicle or a hybrid electric motor vehicle.

"Assessment" means a written determination by the Department of the amount of taxes owed by a taxpayer. Assessments made by the Department shall be deemed to be made when a written notice of assessment is delivered to the taxpayer by the Department or is mailed to the taxpayer at the last known address appearing in the Commissioner's files.

"Aviation consumer" means any person who uses in excess of 100,000 gallons of aviation jet fuel in any fiscal year and is licensed pursuant to Article 2 (§ 58.1-2204 et seq.) of this chapter.

"Aviation fuel" means aviation gasoline or aviation jet fuel.

"Aviation gasoline" means fuel designed for use in the operation of aircraft other than jet aircraft, and sold or used for that purpose.

"Aviation jet fuel" means fuel designed for use in the operation of jet or turbo-prop aircraft, and sold or used for that purpose.

"Blended fuel" means a mixture composed of gasoline or diesel fuel and another liquid, other than a de minimis amount of a product such as carburetor detergent or oxidation inhibitor, that can be used as a fuel in a highway vehicle.

"Blender" means a person who produces blended fuel outside the terminal transfer system.

"Bonded aviation jet fuel" means aviation jet fuel held in bonded storage under United States Customs Law and delivered into a fuel tank of aircraft operated by certificated air carriers on international flights.

"Bonded importer" means a person, other than a supplier, who imports, by transport truck or another means of transfer outside the terminal transfer system, motor fuel removed from a terminal located in another state in which (i) the state from which the fuel is imported does not require the seller of the fuel to collect motor fuel tax on the removal either at that state's rate or

the rate of the destination state; (ii) the supplier of the fuel is not an elective supplier; or (iii) the supplier of the fuel is not a permissive supplier.

"Bulk plant" means a motor fuel storage and distribution facility that is not a terminal and from which motor fuel may be removed at a rack.

"Bulk user" means a person who maintains storage facilities for motor fuel and uses part or all of the stored fuel to operate a highway vehicle, watercraft, or aircraft.

"Bulk user of alternative fuel" means a person who maintains storage facilities for alternative fuel and uses part or all of the stored fuel to operate a highway vehicle.

"Commercial watercraft" means a 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 definition shall include a 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.

"Commissioner" means the Commissioner of the Department of Motor Vehicles.

"Corporate or partnership officer" means an officer or director of a corporation, partner of a partnership, or member of a limited liability company, who as such officer, director, partner or member is under a duty to perform on behalf of the corporation, partnership, or limited liability company the tax collection, accounting, or remitting obligations.

"Department" means the Department of Motor Vehicles, acting directly or through its duly authorized officers and agents.

"Designated inspection site" means any state highway inspection station, weigh station, agricultural inspection station, mobile station, or other location designated by the Commissioner or his designee to be used as a fuel inspection site.

"Destination state" means the state, territory, or foreign country to which motor fuel is directed for delivery into a storage facility, a receptacle, a container, or a type of transportation equipment for the purpose of resale or use. The term shall not include a tribal reservation of any recognized Native American tribe.

"Diesel fuel" means any liquid that is suitable for use as a fuel in a diesel-powered highway vehicle or watercraft. The term shall include undyed #1 fuel oil and undyed #2 fuel oil, but shall not include gasoline or aviation jet fuel.

"Distributor" means a person who acquires motor fuel from a supplier or from another distributor for subsequent sale.

"Dyed diesel fuel" means diesel fuel that meets the dyeing and marking requirements of 26 U.S.C. § 4082.

"Elective supplier" means a supplier who (i) is required to be licensed in the Commonwealth and (ii) elects to collect the tax due the Commonwealth on motor fuel that is removed at a terminal located in another state and has Virginia as its destination state.

"Electric motor vehicle" means a motor vehicle that uses electricity as its only source of motive power.

"End seller" means the person who sells fuel to the ultimate user of the fuel.

"Export" means to obtain motor fuel in Virginia for sale or distribution in another state, territory, or foreign country. Motor fuel delivered out-of-state by or for the seller constitutes an export by the seller, and motor fuel delivered out-of-state by or for the purchaser constitutes an export by the purchaser.

"Exporter" means a person who obtains motor fuel in Virginia for sale or distribution in another state, territory, or foreign country.

"Fuel" includes motor fuel and alternative fuel.

"Fuel alcohol" means methanol or fuel grade ethanol.

"Fuel alcohol provider" means a person who (i) produces fuel alcohol or (ii) imports fuel alcohol outside the terminal transfer system by means of a marine vessel, a transport truck, a tank wagon, or a railroad tank car.

"Gasohol" means a blended fuel composed of gasoline and fuel grade ethanol.

"Gasoline" means (i) all products that are commonly or commercially known or sold as gasoline and are suitable for use as a fuel in a highway vehicle, aircraft, or watercraft, other than products that have an American Society for Testing Materials octane number of less than 75 as determined by the motor method; (ii) a petroleum product component of gasoline, such as naphtha, reformate, or toluene; (iii) gasohol; and (iv) fuel grade ethanol. The term does not include aviation gasoline sold for use in an aircraft engine.

"Governmental entity" means (i) the Commonwealth or any political subdivision thereof or (ii) the United States or its departments, agencies, and instrumentalities.

"Gross gallons" means an amount of motor fuel measured in gallons, exclusive of any temperature, pressure, or other adjustments.

"Heating oil" means any combustible liquid, including but not limited to dyed #1 fuel oil, dyed #2 fuel oil, and kerosene, that is burned in a boiler, furnace, or stove for heating or for industrial processing purposes.

"Highway" means every way or place of whatever nature open to the use of the public for purposes of vehicular travel in the Commonwealth, including the streets and alleys in towns and cities.

"Highway vehicle" means a self-propelled vehicle designed for use on a highway.

"Hybrid electric motor vehicle" means a motor vehicle that uses electricity and another source of motive power.

"Import" means to bring motor fuel into Virginia by any means of conveyance other than in the fuel supply tank of a highway vehicle. Motor fuel delivered into Virginia from out-of-state by or for the seller constitutes an import by the seller, and motor fuel delivered into Virginia from out-of-state by or for the purchaser constitutes an import by the purchaser.

"Importer" means a person who obtains motor fuel outside of Virginia and brings that motor fuel into Virginia by any means of conveyance other than in the fuel tank of a highway vehicle. For purposes of this chapter, a motor fuel transporter shall not be considered an importer.

"In-state-only supplier" means (i) a supplier who is required to have a license and who elects not to collect the tax due the Commonwealth on motor fuel that is removed by that supplier at a terminal located in another state and has Virginia as its destination state or (ii) a supplier who does business only in Virginia.

"Licensee" means any person licensed by the Commissioner pursuant to Article 2 (§ 58.1-2204 et seq.) of this chapter or § 58.1-2244.

"Liquid" means any substance that is liquid above its freezing point.

"Motor fuel" means gasoline, diesel fuel, blended fuel, and aviation fuel.

"Motor fuel transporter" means a person who transports motor fuel for hire by means of a pipeline, a tank wagon, a transport truck, a railroad tank car, or a marine vessel.

"Net gallons" means the amount of motor fuel measured in gallons when adjusted to a temperature of 60 degrees Fahrenheit and a pressure of 14.7 pounds per square inch.

"Occasional importer" means any person who (i) imports motor fuel by any means outside the terminal transfer system and (ii) is not required to be licensed as a bonded importer.

"Permissive supplier" means an out-of-state supplier who elects, but is not required, to have a supplier's license under this chapter.

"Person" means any individual; firm; cooperative; association; corporation; limited liability company; trust; business trust; syndicate; partnership; limited liability partnership; joint venture; receiver; trustee in bankruptcy; club, society or other group or combination acting as a unit; or public body, including but not limited to the Commonwealth, any other state, and any agency, department, institution, political subdivision or instrumentality of the Commonwealth or any other state.

"Position holder" means a person who holds an inventory position of motor fuel in a terminal, as reflected on the records of the terminal operator. A person holds an "inventory position of motor fuel" when he has a contract with the terminal operator for the use of storage facilities and ter-

minaling services for fuel at the terminal. The term includes a terminal operator who owns fuel in the terminal.

"Principal" means (i) if a partnership, all its partners; (ii) if a corporation, all its officers, directors, and controlling direct or indirect owners; (iii) if a limited liability company, all its members; and (iv) or an individual.

"Provider of alternative fuel" means a person who (i) acquires alternative fuel for sale or delivery to a bulk user or a retailer; (ii) maintains storage facilities for alternative fuel, part or all of which the person sells to someone other than a bulk user or a retailer to operate a highway vehicle; (iii) sells alternative fuel and uses part of the fuel acquired for sale to operate a highway vehicle by means of a fuel supply line from the cargo tank of the vehicle to the engine of the vehicle; or (iv) imports alternative fuel into Virginia, by a means other than the usual tank or receptacle connected with the engine of a highway vehicle, for sale or use by that person to operate a highway vehicle.

"Rack" means a facility that contains a mechanism for delivering motor fuel from a refinery, terminal, or bulk plant into a transport truck, railroad tank car, or other means of transfer that is outside the terminal transfer system.

"Refiner" means any person who owns, operates, or otherwise controls a refinery.

"Refinery" means a facility for the manufacture or reprocessing of finished or unfinished petroleum products usable as motor fuel and from which motor fuel may be removed by pipeline or marine vessel or at a rack.

"Removal" means a physical transfer other than by evaporation, loss, or destruction. A physical transfer to a transport truck or other means of conveyance outside the terminal transfer system is complete upon delivery into the means of conveyance.

"Retailer" means a person who (i) maintains storage facilities for motor fuel and (ii) sells the fuel at retail or dispenses the fuel at a retail location.

"Retailer of alternative fuel" means a person who (i) maintains storage facilities for alternative fuel and (ii) sells or dispenses the fuel at retail, to be used to generate power to operate a highway vehicle.

"Supplier" means (i) a position holder, or (ii) a person who receives motor fuel pursuant to a two-party exchange. A licensed supplier includes a licensed elective supplier and licensed permissive supplier.

"System transfer" means a transfer (i) of motor fuel within the terminal transfer system or (ii) of fuel grade ethanol by transport truck or railroad tank car.

"Tank wagon" means a straight truck or straight truck/trailer combination designed or used to carry fuel and having a capacity of less than 6,000 gallons.

"Terminal" means a motor fuel storage and distribution facility (i) to which a terminal control number has been assigned by the Internal Revenue Service, (ii) to which motor fuel is supplied by pipeline or marine vessel, and (iii) from which motor fuel may be removed at a rack.

"Terminal operator" means a person who owns, operates, or otherwise controls a terminal.

"Terminal transfer system" means a motor fuel distribution system consisting of refineries, pipelines, marine vessels, and terminals, and which is a "bulk transfer/terminal system" under 26 C.F.R. Part 48.4081-1.

"Transmix" means (i) the buffer or interface between two different products in a pipeline shipment or (ii) a mix of two different products within a refinery or terminal that results in an off-grade mixture.

"Transport truck" means a tractor truck/semitrailer combination designed or used to transport cargoes of motor fuel over a highway.

"Trustee" means a person who (i) is licensed as a supplier, an elective supplier, or a permissive supplier and receives tax payments from and on behalf of a licensed or unlicensed distributor, or other person pursuant to § 58.1-2231 or (ii) is licensed as a provider of alternative fuel and receives tax payments from and on behalf of a bulk user of alternative fuel, retailer of alternative fuel or other person pursuant to § 58.1-2252.

"Two-party exchange" means a transaction in which fuel is transferred from one licensed supplier to another licensed supplier pursuant to an exchange agreement, which transaction (i) includes a transfer from the person who holds the inventory position in taxable motor fuel in the terminal as reflected on the records of the terminal operator and (ii) is completed prior to removal of the product from the terminal by the receiving exchange partner.

"Undyed diesel fuel" means diesel fuel that is not subject to the United States Environmental Protection Agency or Internal Revenue Service fuel-dyeing requirements.

"Use" means the actual consumption or receipt of motor fuel by any person into a highway vehicle, aircraft, or watercraft.

"Watercraft" means any vehicle used on waterways.

"Wholesale price" means the price at the rack.

2000, cc. 729, 758; 2001, c. 802; 2002, cc. 4, 7; 2003, c. 781; 2004, c. 340; 2006, cc. 594, 912; 2011, c. 165; 2012, cc. 729, 733; 2013, c. 766.

§ 58.1-2202. Regulations; forms

The Commissioner may promulgate regulations and shall prescribe forms as shall be necessary to effectuate and enforce this chapter.

2000, cc. 729, 758.

§ 58.1-2203. Exchange of information; penalties

A. The Commissioner may, upon request from the officials entrusted with enforcing the fuels tax laws of any other state, forward to such officials any information that the Commissioner may have relative to the production, manufacture, refining, compounding, receipt, sale, use, transportation, or shipment by any person of such fuel.

B. The Commissioner may enter into written agreements with duly constituted tax officials of other states and of the United States for the inspection of tax returns, the making of audits, and the exchange of information relating to taxes administered by the Department pursuant to this chapter.

C. The Commissioner may divulge tax information to the Tax Commissioner, any commissioner of the revenue, director of finance or other authorized collector of county, city, or town taxes who, for the performance of his official duties, requests the same in writing setting forth the reasons for such request.

D. Any person to whom tax information is divulged pursuant to this section shall be subject to the prohibitions and penalties prescribed in § 58.1-3 as though that person were a tax official as defined in that section.

2000, cc. 729, 758.

Article 2 - MOTOR FUEL LICENSING

§ 58.1-2204. Persons required to be licensed

A. A person shall obtain a license issued by the Commissioner before conducting the activities of:

1. A refiner, who shall be licensed as a supplier;

2. A supplier;

3. A terminal operator;

4. An importer;

5. An exporter;

6. A blender;

7. A motor fuel transporter;

8. An aviation consumer;

9. A bonded importer;

10. An elective supplier; or

11. A fuel alcohol provider.

B. A person who is engaged in more than one activity for which a license is required shall have a separate license for each activity, except as provided in subsection C.

C.1. A person who is licensed as a supplier shall not be required to obtain a separate license for any other activity for which a license is required and shall be considered to have a license as a distributor.

2. A person who is licensed as an occasional importer shall not be required to obtain a license as a distributor.

3. A person who is licensed as a distributor shall not be required to obtain a separate license as an importer if the distributor acquires fuel for import only from an elective supplier or permissive supplier. Such licensed distributor shall not be required to obtain a separate license as an exporter.

4. A person who is licensed as a distributor or a blender shall not be required to obtain a separate license as a motor fuel transporter if he does not transport motor fuel for others for hire.

2000, cc. 729, 758; 2003, c. 781; 2004, c. 340; 2012, c. 363.

§ 58.1-2205. Types of importers; qualification for license as an importer

A. An applicant for a license as an importer shall indicate whether he is applying for a license as a bonded importer or an occasional importer.

B. A person shall not be licensed as more than one type of importer. A bulk user who imports motor fuel from a terminal of a supplier who is not an elective or a permissive supplier shall be licensed as a bonded importer. A bulk user who imports motor fuel from a bulk plant and is not required to be licensed as a bonded importer shall be licensed as an occasional importer. A bulk user who imports motor fuel only from a terminal of an elective or a permissive supplier shall not be required to be licensed as an importer.

2000, cc. 729, 758.

§ 58.1-2206. Persons who may obtain a license

A person who conducts the activities of a distributor or a permissive supplier may obtain a license issued by the Commissioner for that activity.

2000, cc. 729, 758.

§ 58.1-2207. Restrictions on qualification for license as a distributor

A bulk user of motor fuel shall not be licensed as a distributor.

2000, cc. 729, 758.

§ 58.1-2208. License application procedure

A. To obtain a license under this article, an applicant shall file an application with the Commissioner on a form provided by the Commissioner. An application shall include the applicant's name, address, federal employer identification number, and any other information required by the Commissioner.

B. An applicant for a license as a motor fuel transporter, supplier, terminal operator, importer, blender, distributor, or aviation consumer shall satisfy the following requirements:

1. If the applicant is a corporation, the applicant shall either be incorporated in the Commonwealth or authorized to transact business in the Commonwealth;

2. If the applicant is a limited liability company, the applicant shall be organized in the Commonwealth or authorized to transact business in the Commonwealth;

3. If the applicant is a limited liability partnership, the applicant shall either be formed in the Commonwealth or authorized to transact business in the Commonwealth; or

4. If the applicant is an individual or a general partnership, the applicant shall designate an agent for service of process and provide the agent's name and address.

C. An applicant for a license as a supplier, terminal operator, blender, or permissive supplier shall have a federal certificate of registry issued under 26 U.S.C. § 4101 that authorizes the applicant to enter into federal tax-free transactions in taxable motor fuel in the terminal transfer system. An applicant who is required to have a federal certificate of registry shall include the registration number of the certificate on the application for a license under this section. An applicant for a license as an importer, an exporter, or a distributor who has a federal certificate of registry issued under 26 U.S.C. § 4101 shall include the registration number of the certificate on the application for a license under this section.

D. An applicant for a license as an importer or distributor shall list on the application each state from which the applicant intends to import motor fuel and, if required by a state listed, shall be licensed or registered for motor fuel tax purposes in that state. If a state listed requires the applicant to be licensed or registered, the applicant shall provide the applicant's license or registration number of that state. A licensee who intends to import motor fuel from a state not listed on his application for an importer's license or a distributor's license shall provide the Commissioner written notice of such action before importing motor fuel from that state. The notice shall include the information that is required on the license application.

E. An applicant for a license as an exporter shall designate an agent located in Virginia for service of process and provide the agent's name and address. An applicant for a license as an exporter or distributor shall list on the application each state to which the applicant intends to export motor fuel received in Virginia by means of a transfer that is outside the terminal transfer system and, if required by a state listed, shall be licensed or registered for motor fuel tax purposes in that state. If a state listed requires the applicant to be licensed or registered, the applicant shall provide the applicant's license or registration number of that state. A licensee who intends to export motor fuel to a state not listed on his application for an exporter's license or a distributor's license shall provide the Commissioner written notice of such action before exporting motor fuel to that state. The notice shall include the information required on the license application.

2000, cc. 729, 758; 2002, c. 7; 2012, c. 363.

§ 58.1-2209. Supplier election to collect tax on out-of-state removals

A. An applicant for a license as a supplier may elect on the application to collect the tax due the Commonwealth on motor fuel that is removed at a terminal located in another state and has Virginia as its destination state. The Commissioner shall provide for this election on the application form. A supplier who makes the election allowed by this section shall be an elective supplier. A supplier who does not make the election allowed by this section shall be an in-state-only supplier. A supplier who does not make the election on the application for a supplier's license may make the election later by completing an election form provided by the Commissioner. A supplier who has not made the election shall not act as an elective supplier for purposes of this chapter.

B. A supplier who makes the election allowed by this section shall comply with all of the following with respect to motor fuel that is removed at a terminal located in another state and has Virginia as its destination state:

1. Collect the tax due the Commonwealth on the fuel;

2. Waive any defense that the Commonwealth lacks jurisdiction to require the supplier to collect the tax due the Commonwealth on the fuel under this chapter;

3. Report and pay the tax due on the fuel in the same manner as if the removal had occurred at a terminal located in Virginia;

4. Keep records of the removal of the fuel and submit to audits concerning the fuel as if the removal had occurred at a terminal located in Virginia; and

5. Report sales by the supplier to a person who is not licensed in the state where the removal occurred if the destination state is Virginia.

C. A supplier who makes the election allowed by this section (i) acknowledges that the Commonwealth imposes the requirements listed in subsection B of this section on the supplier under its general police power and (ii) submits to the jurisdiction of the Commonwealth only for purposes related to the administration of this chapter.

2000, cc. 729, 758.

§ 58.1-2210. Permissive supplier election to collect tax on out-of-state removals

A. An out-of-state supplier who is not required to be licensed under this chapter may elect to obtain a license and thereby become a permissive supplier. An out-of-state supplier who does not make this election shall not act as a permissive supplier for motor fuel that is removed at a terminal in another state and has Virginia as its destination state.

B. An out-of-state supplier who elects to be licensed as a permissive supplier shall comply with (i) the same requirements imposed on a supplier and (ii) all of the following with respect to motor fuel that is removed by the permissive supplier at a terminal located in another state and has Virginia as its destination state:

1. Collect the tax due the Commonwealth on the fuel;

2. Waive any defense that the Commonwealth lacks jurisdiction to require the supplier to collect the tax due the Commonwealth on the motor fuel under this chapter;

3. Report and pay the tax due on the fuel in the same manner as if the removal had occurred at a terminal located in Virginia;

4. Keep records of the removal of the fuel and submit to audits concerning the fuel as if the removal had occurred at a terminal located in Virginia; and

5. Report sales by the supplier to a person who is not licensed in the state where the removal occurred if the destination state is Virginia.

C. An out-of-state supplier who makes the election allowed by this section (i) acknowledges that the Commonwealth imposes the requirements listed in subsection B on the supplier under its general police power and (ii) submits to the jurisdiction of the Commonwealth only for purposes related to the administration of this chapter.

2000, cc. 729, 758.

§ 58.1-2211. Bond or certificate of deposit requirements

A. An applicant for a license as a terminal operator, supplier, importer, blender, permissive supplier, distributor, or aviation consumer shall file with the Commissioner a bond or certificate of deposit. The bond or certificate of deposit shall be conditioned upon compliance with the requirements of this chapter, be payable to the Commonwealth, and be in the form required by the Commissioner. The amount of the bond or certificate of deposit shall be as follows:

1. For an applicant for a license as a (i) terminal operator, (ii) supplier who is a position holder or a person who receives motor fuel pursuant to a two-party exchange, (iii) bonded importer, or (iv) permissive supplier, the amount shall be $2,000,000; and

2. For an applicant for a license as (i) a supplier who is a fuel alcohol provider but is neither a position holder nor a person who receives motor fuel pursuant to a two-party exchange; (ii) an occasional importer; (iii) a distributor; (iv) a blender; or (v) an aviation consumer, the amount shall be three times the applicant's average expected monthly tax liability under this chapter, as determined by the Commissioner. The amount shall not be less than $2,000 nor more than $300,000.

B. An applicant for a license both as a distributor and as a bonded importer shall file only the bond or certificate of deposit required of a bonded importer. An applicant for two or more of the licenses listed in subdivision A 2 may file one bond or certificate of deposit that covers the combined liabilities of the applicant under all the activities, in which event the amount of the bond or certificate of deposit for the combined activities shall not exceed $300,000.

C. When notified to do so by the Commissioner, a person who has filed a bond or certificate of deposit and who holds a license listed in subdivision A 2 shall file an additional bond or certificate of deposit in the amount required by the Commissioner. The person shall file the additional bond or certificate of deposit within thirty days after receiving the notice from the

Commissioner. However, the amount of the initial bond or certificate of deposit and any additional bond or certificate of deposit filed by the licensee shall not exceed $300,000.

Any licensee who disagrees with the Commissioner's decision requiring new or additional security shall be entitled to a hearing. Such matter shall, within thirty days, be scheduled for a prompt hearing before the Commissioner after written request for such hearing is received by the Commissioner.

2000, cc. 729, 758; 2006, c. 594.

§ 58.1-2212. Grounds for denial of license

A. The Commissioner may refuse to issue a license under this article to an applicant if (i) the applicant or (ii) any principal of the applicant has:

1. Had a license or registration issued under prior law or this chapter canceled by the Commissioner for cause;

2. Had a motor fuel license or registration issued by another state canceled for cause;

3. Had a federal Certificate of Registry issued under § 4101 of the Internal Revenue Code, or a similar federal authorization, revoked;

4. Been convicted of any offense involving fraud or misrepresentation; or

5. Been convicted of any other offense that indicates that the applicant may not comply with this chapter if issued a license.

B. For purposes of subdivisions 1, 2 and 3 of subsection A, it shall be sufficient cause for the Commissioner to refuse to issue a license if the canceled or revoked license, registration or Certificate of Registry was held by a business entity of which the applicant, or any principal of the applicant, was a principal.

2000, cc. 729, 758; 2003, c. 781.

§ 58.1-2213. Issuance of license

Upon approval of an application, the Commissioner shall issue to the applicant a license and a duplicate copy of the license for each place of business of the applicant. A supplier's license shall indicate the category of the supplier. A licensee shall display the license issued under this chapter in a conspicuous place at each place of business of the licensee. A license shall not be transferable and shall remain in effect until surrendered or canceled.

2000, cc. 729, 758.

§ 58.1-2214. Notice of discontinuance, sale or transfer of business

A. A licensee who discontinues in the Commonwealth the business for which the license was issued shall notify the Commissioner in writing of such discontinuance and shall surrender the license to the Commissioner. The notice shall state the effective date of the discontinuance and, if the licensee has transferred the business or otherwise relinquished control to another person by

sale or otherwise, the date of the sale or transfer and the name and address of the person to whom the business is transferred or relinquished. The notice shall also include any other information required by the Commissioner.

B. If the licensee is a supplier, all taxes for which the supplier is liable under this chapter but are not yet due shall be due on the date of the discontinuance. If the supplier has transferred the business to another person and does not give the notice required by this section, the person to whom the business was transferred shall be liable for the amount of any tax owed by the supplier to the Commonwealth on the date the business was transferred. The liability of the person to whom the business was transferred shall not exceed the value of the property acquired from the supplier.

2000, cc. 729, 758.

§ 58.1-2215. License cancellation

A. The Commissioner may cancel the license of any person licensed under this article, upon written notice sent by certified mail to the licensee's last known address appearing in the Commissioner's files, for any of the following reasons:

1. Filing by the licensee of a false report of the data or information required by this chapter;

2. Failure, refusal, or neglect of the licensee to file a report required by this chapter;

3. Failure of the licensee to pay the full amount of the tax due or pay any penalties or interest due as required by this chapter;

4. Failure of the licensee to keep accurate records of the quantities of motor fuel received, produced, refined, manufactured, compounded, sold, or used in Virginia;

5. Failure to file a new or additional bond or certificate of deposit upon request of the Commissioner pursuant to § 58.1-2211;

6. Conviction of the licensee or a principal of the licensee for any act prohibited under this chapter;

7. Failure, refusal, or neglect of a licensee to comply with any other provision of this chapter or any regulation promulgated pursuant to this chapter; or

8. A change in the ownership or control of the business.

B. Upon cancellation of any license for any cause listed in subsection A, the tax levied under this chapter shall become due and payable on (i) all untaxed motor fuel held in storage or otherwise in the possession of the licensee and (ii) all motor fuel sold, delivered, or used prior to the cancellation on which the tax has not been paid.

C. The Commissioner may cancel any license upon the written request of the licensee.

D. Upon cancellation of any license and payment by the licensee of all taxes due, including all penalties accruing due to any failure by the licensee to comply with the provisions of this chapter, the Commissioner shall cancel and surrender the bond or certificate of deposit filed by such licensee.

2000, cc. 729, 758; 2006, c. 594.

§ 58.1-2216. Records and lists of license applicants and licensees

A. The Commissioner shall keep a record of (i) applicants for a license under this chapter; (ii) persons to whom a license has been issued under this chapter; and (iii) persons holding a current license issued under this chapter, by license category.

B. The Commissioner shall provide a list of licensees to any licensee, as well as to any unlicensed distributor who requests a copy. The list shall state the name and business address of each licensee on the list and may include other information determined appropriate by the Commissioner.

2000, cc. 729, 758; 2004, c. 340.

Article 3 - MOTOR FUEL TAX; LIABILITY

§ 58.1-2217. (Contingent expiration date -- see notes) Taxes levied; rate

A. There is hereby levied a tax at the rate of seventeen and one-half cents per gallon on gasoline and gasohol. Beginning January 1, 2015, the tax rate shall be 5.1 percent of the statewide average wholesale price of a gallon of unleaded regular gasoline for the applicable base period, excluding federal and state excise taxes, as determined by the Commissioner.

In computing the average wholesale price of a gallon of gasoline, the Commissioner shall use the period from December 1 through May 31 as the base period for such determination for the immediately following period beginning July 1 and ending December 31, inclusive. The period from June 1 through November 30 shall be the next base period for the immediately following period beginning January 1 and ending June 30, inclusive. In no case shall the average wholesale price computed for purposes of this section be less than the statewide average wholesale price of a gallon of unleaded regular gasoline on February 20, 2013.

B. There is hereby levied a tax at the rate of seventeen and one-half cents per gallon on diesel fuel. Beginning January 1, 2015, the tax rate shall be six percent of the statewide average wholesale price of a gallon of diesel fuel for the applicable base period, excluding federal and state excise taxes, as determined by the Commissioner.

In computing the average wholesale price of a gallon of diesel fuel, the Commissioner shall use the period from December 1 through May 31 as the base period for such determination for the immediately following period beginning July 1 and ending December 31, inclusive. The period from June 1 through November 30 shall be the next base period for the immediately following period beginning January 1 and ending June 30, inclusive. In no case shall the average wholesale price

computed for purposes of this section be less than the statewide average wholesale price of a gallon of diesel fuel on February 20, 2013.

C. Blended fuel that contains gasoline shall be taxed at the rate levied on gasoline. Blended fuel that contains diesel fuel shall be taxed at the rate levied on diesel fuel.

D. There is hereby levied a tax at the rate of five cents per gallon on aviation gasoline. Any person, whether or not licensed under this chapter, who uses, acquires for use, sells or delivers for use in highway vehicles any aviation gasoline shall be liable for the tax at the rate levied on gasoline and gasohol, along with any penalties and interest that may accrue.

E. There is hereby levied a tax at the rate of five cents per gallon on aviation jet fuel purchased or acquired for use by a user of aviation fuel other than an aviation consumer. There is hereby levied a tax at the rate of five cents per gallon upon the first 100,000 gallons of aviation jet fuel, excluding bonded aviation jet fuel, purchased or acquired for use by any aviation consumer in any fiscal year. There is hereby levied a tax at the rate of one-half cent per gallon on all aviation jet fuel, excluding bonded aviation jet fuel, purchased or acquired for use by an aviation consumer in excess of 100,000 gallons in any fiscal year. Any person, whether or not licensed under this chapter, who uses, acquires for use, sells or delivers for use in highway vehicles any aviation jet fuel taxable under this chapter shall be liable for the tax imposed at the rate levied on diesel fuel, along with any penalties and interest that may accrue.

F. In accordance with § 62.1-44.34:13, a storage tank fee is imposed on each gallon of gasoline, aviation gasoline, diesel fuel (including dyed diesel fuel), blended fuel, and heating oil sold and delivered or used in the Commonwealth.

2000, cc. 729, 758; 2007, c. 896; 2013, c. 766.

§ 58.1-2217. (Contingent effective date -- see notes) Taxes levied; rate

A. There is hereby levied a tax at the rate of seventeen and one-half cents per gallon on gasoline and gasohol. Beginning July 1, 2013, the seventeen and one-half cents per gallon tax shall be replaced with a tax at a rate of 3.5 percent of the statewide average wholesale price of a gallon of unleaded regular gasoline for the applicable base period, excluding federal and state excise taxes, as determined by the Commissioner.

In computing the average wholesale price of a gallon of unleaded regular gasoline, the Commissioner shall use the period from December 1 through May 31 as the base period for such determination for the immediately following period beginning July 1 and ending December 31, inclusive. The period from June 1 through November 30 shall be the next base period for the immediately following period beginning January 1 and ending June 30, inclusive. In no case shall the average wholesale price computed for purposes of this section be less than the statewide average wholesale price of a gallon of unleaded regular gasoline on February 20, 2013.

B. There is hereby levied a tax at the rate of seventeen and one-half cents per gallon on diesel fuel. Beginning July 1, 2013, the seventeen and one-half cents per gallon tax shall be replaced with a tax at a rate of six percent of the statewide average wholesale price of a gallon of diesel fuel for the applicable base period, excluding federal and state excise taxes, as determined by the Commissioner.

In computing the average wholesale price of a gallon of diesel fuel the Commissioner shall use the period from December 1 through May 31 as the base period for such determination for the immediately following period beginning July 1 and ending December 31, inclusive. The period from June 1 through November 30 shall be the next base period for the immediately following period beginning January 1 and ending June 30, inclusive. In no case shall the average wholesale price computed for purposes of this section be less than the statewide average wholesale price of a gallon of diesel fuel on February 20, 2013.

C. Blended fuel that contains gasoline shall be taxed at the rate levied on gasoline. Blended fuel that contains diesel fuel shall be taxed at the rate levied on diesel fuel.

D. There is hereby levied a tax at the rate of five cents per gallon on aviation gasoline. Any person, whether or not licensed under this chapter, who uses, acquires for use, sells or delivers for use in highway vehicles any aviation gasoline shall be liable for the tax at the rate levied on gasoline and gasohol, along with any penalties and interest that may accrue.

E. There is hereby levied a tax at the rate of five cents per gallon on aviation jet fuel purchased or acquired for use by a user of aviation fuel other than an aviation consumer. There is hereby levied a tax at the rate of five cents per gallon upon the first 100,000 gallons of aviation jet fuel, excluding bonded aviation jet fuel, purchased or acquired for use by any aviation consumer in any fiscal year. There is hereby levied a tax at the rate of one-half cent per gallon on all aviation jet fuel, excluding bonded aviation jet fuel, purchased or acquired for use by an aviation consumer in excess of 100,000 gallons in any fiscal year. Any person, whether or not licensed under this chapter, who uses, acquires for use, sells or delivers for use in highway vehicles any aviation jet fuel taxable under this chapter shall be liable for the tax imposed at the rate levied on diesel fuel, along with any penalties and interest that may accrue.

F. In accordance with § 62.1-44.34:13, a storage tank fee is imposed on each gallon of gasoline, aviation gasoline, diesel fuel (including dyed diesel fuel), blended fuel, and heating oil sold and delivered or used in the Commonwealth.

2000, cc. 729, 758; 2007, c. 896; 2013, c. 766.

§ 58.1-2218. Point of imposition of motor fuels tax

The tax levied pursuant to § 58.1-2217 is imposed at the point that the motor fuel is:

1. Removed from a refinery or a terminal and, upon removal, is subject to the federal excise tax imposed by 26 U.S.C. § 4081;

2. Imported by a system transfer to a refinery or a terminal and, upon importation, is subject to the federal excise tax imposed by 26 U.S.C. § 4081;

3. Imported by a means of transfer outside the terminal transfer system for sale, use, or storage in Virginia and would have been subject to the federal excise tax imposed by 26 U.S.C. § 4081 if it had been removed at a terminal or bulk plant rack in Virginia instead of being imported;

4. If the motor fuel is gasohol, (i) removed from a terminal or distribution facility, unless the removed fuel is received by a supplier for subsequent sale or (ii) imported into Virginia outside the terminal transfer system by a means other than a marine vessel, a transport truck, or a railroad tank car;

5. If the motor fuel is blended fuel, made within Virginia or imported into Virginia; or

6. Transferred within the terminal transfer system and, upon transfer, is subject to the federal excise tax imposed by 26 U.S.C. § 4081.

2000, cc. 729, 758; 2003, c. 781.

§ 58.1-2219. Liability for tax on removals from a terminal

A. The tax imposed pursuant to § 58.1-2217 at the point that motor fuel is removed by a system transfer from a terminal in Virginia shall be paid by the position holder of the fuel; however, if the position holder is not the terminal operator, the terminal operator and position holder shall be jointly and severally liable for the tax.

B. The tax imposed pursuant to § 58.1-2217 at the point that motor fuel is removed at a terminal rack in Virginia shall be payable by the person that first receives the fuel upon its removal from the terminal. If the motor fuel is first received by an unlicensed distributor, the supplier of the fuel shall be liable for payment of the tax due on the fuel. If the motor fuel is sold by a person who is not licensed as a supplier, then (i) the terminal operator and (ii) the person selling the fuel shall be jointly and severally liable for payment of the tax due on the fuel. If the motor fuel removed is not dyed diesel fuel but the shipping document issued for the fuel states that the fuel is dyed diesel fuel, the terminal operator, the supplier, and the person removing the fuel shall be jointly and severally liable for payment of the tax due on the fuel.

2000, cc. 729, 758.

§ 58.1-2220. Liability for tax on imports

A. The tax imposed pursuant to § 58.1-2217 at the point that motor fuel is imported by a system transfer (i) to a refinery shall be payable by the refiner or (ii) to a terminal shall be jointly and severally payable by the person importing the fuel and by the terminal operator.

B. The tax imposed pursuant to § 58.1-2217 at the point that motor fuel is removed from a terminal rack located in another state and has Virginia as its destination state shall be payable:

1. If the importer of the fuel is a licensed supplier in Virginia and the fuel is removed for the supplier's own account for use in Virginia, by the supplier;

2. If the supplier of the fuel is licensed in Virginia as an elective supplier or a permissive supplier, by the importer of the fuel to the supplier as trustee; or

3. If subdivisions 1 and 2 do not apply, by the importer of the fuel when filing a return with the Commissioner.

C. The tax imposed pursuant to § 58.1-2217 at the point that motor fuel is removed from a bulk plant located in another state shall be payable by the person that imports the fuel.

2000, cc. 729, 758.

§ 58.1-2221. Repealed

Repealed by Acts 2003, c. 781, cl. 2.

§ 58.1-2222. Liability for tax on blended fuel

A. The tax imposed pursuant to § 58.1-2217 at the point that blended fuel is made in Virginia shall be payable by the blender. The number of gallons of blended fuel on which the tax is payable is the difference between the number of gallons of blended fuel made and the number of gallons of previously taxed motor fuel used to make the blended fuel.

B. The tax imposed pursuant to § 58.1-2217 at the point that blended fuel is imported to Virginia shall be payable by the importer.

C. The following blended fuel shall be considered to have been made by the supplier of gasoline or undyed diesel fuel used in the blend:

1. An in-line-blend made by combining a liquid with gasoline or undyed diesel fuel as the fuel is delivered at a terminal rack into the motor fuel storage compartment of a transport truck or a tank wagon; and

2. A kerosene splash-blend made when kerosene is delivered into a motor fuel storage compartment of a transport truck or a tank wagon and undyed diesel fuel is also delivered into the same storage compartment, if the buyer of the kerosene notified the supplier before or at the time of delivery that the kerosene would be used to make a splash-blend.

2000, cc. 729, 758.

§ 58.1-2223. Liability for tax on fuel transferred within terminal transfer system

The tax imposed pursuant to § 58.1-2217 at the point that motor fuel is transferred within the terminal transfer system shall be jointly and severally payable by the supplier of the fuel, the person receiving the fuel, and the terminal operator of the terminal at which the fuel was transferred.

2000, cc. 729, 758.

§ 58.1-2224. Tax on unaccounted for motor fuel losses; liability

A. There is hereby levied a tax at the rate specified by § 58.1-2217 annually on taxable unaccounted for motor fuel losses at a terminal. "Taxable unaccounted for motor fuel losses" means the number of gallons of unaccounted for motor fuel losses that exceed one-half of one percent of the

number of net gallons removed from the terminal during the year by a system transfer or at the terminal rack. "Unaccounted for motor fuel losses" means the difference between (i) the amount of motor fuel in inventory at the terminal at the beginning of the year plus the amount of motor fuel received by the terminal during the year and (ii) the amount of motor fuel in inventory at the terminal at the end of the year plus the amount of motor fuel removed from the terminal during the year. Accounted for motor fuel losses which have been approved by the Commissioner or motor fuel losses constituting part of a transmix shall not constitute unaccounted for motor fuel losses.

B. The terminal operator whose motor fuel is unaccounted for shall be liable for the tax imposed by this section, together with a penalty equal to the amount of tax payable. Motor fuel received by a terminal operator and not shown on an informational return filed by the terminal operator with the Commissioner as having been removed from the terminal shall be presumed to be unaccounted for motor fuel losses. A terminal operator may rebut this presumption by establishing that motor fuel received at a terminal, but not shown on an informational return as having been removed from the terminal, was an accounted for loss or constitutes part of a transmix.

2000, cc. 729, 758.

§ 58.1-2225. Backup tax; liability

A. There is hereby levied a tax at the rate specified in § 58.1-2217 on the following:

1. Dyed diesel fuel that is used to operate a highway vehicle for a taxable use other than a use allowed under 26 U.S.C. § 4082;

2. Motor fuel that was allowed an exemption from the motor fuel tax and was then used for a taxable purpose; and

3. Motor fuel that is used to operate a highway vehicle after an application for a refund of tax paid on the motor fuel is made or allowed on the basis that the motor fuel was used for an off-highway purpose.

B. The operator of a highway vehicle that uses motor fuel that is taxable under this section is liable for the tax. If the highway vehicle that uses the fuel is owned by or leased to a motor carrier, the operator of the highway vehicle and the motor carrier shall be jointly and severally liable for the tax. If the end seller of motor fuel taxable under this section knew or had reason to know that the motor fuel would be used for a purpose that is taxable under this section, the operator of the highway vehicle and the end seller shall be jointly and severally liable for the tax.

C. The tax liability imposed by this section shall be in addition to any other penalty imposed pursuant to this chapter.

D. Persons diverting motor fuel into Virginia that had an original destination outside of Virginia shall incur liability for the tax levied for such motor fuel, as specified in § 58.1-2217, and shall be subject to the reporting and payment requirements set forth in subsection E of § 58.1-2230.

2000, cc. 729, 758; 2003, c. 781.

§ 58.1-2226. Exemptions from tax

No tax shall be levied or collected pursuant to this chapter on:

1. Motor fuel sold and delivered to a governmental entity for the exclusive use by the governmental entity. This exemption shall not apply with respect to fuel sold or delivered to any person operating under contract with the governmental entity;

2. Motor fuel sold and delivered to a nonprofit charitable organization that is exempt from taxation under § 501(c)(3) of the Internal Revenue Code and which is organized and operated exclusively for the purpose of providing charitable, long-distance, advanced life-support, air transportation services using emergency medical services vehicles for low-income medical patients in the Commonwealth, for the exclusive use of such organization in the operation of an aircraft;

3. Bonded aviation jet fuel;

4. Dyed diesel fuel, except as provided in subdivision A 1 of § 58.1-2225;

5. Motor fuel removed, by transport truck or another means of transfer outside the terminal transfer system, from a terminal for export, if the supplier of the motor fuel collects tax on the fuel at the rate of the motor fuel's destination state; or

6. Heating oil, as defined in § 58.1-2201.

2000, cc. 729, 758; 2015, cc. 502, 503.

§ 58.1-2227. Sales of aviation jet fuel to licensed aviation consumers

A licensed aviation consumer required to file a monthly return and remit taxes to the Department pursuant to § 58.1-2230 shall not be required to remit tax to a supplier or distributor for purchases of aviation jet fuel.

2000, cc. 729, 758.

§ 58.1-2228. Exempt access cards; exempt access codes

A. A licensed distributor, licensed importer or, in the case of aviation jet fuel, a licensed aviation consumer shall only remove motor fuel from a terminal by means of a supplier-issued exempt access card or exempt access code if (i) the motor fuel will be resold to a governmental entity or an organization exempt from tax under subdivision 2 of § 58.1-2226 for a purpose that is exempt from the tax or (ii) the aviation jet fuel will be used by the aviation consumer or resold to a licensed aviation consumer. The use of such exempt access card or exempt access code shall constitute a representation by the licensed distributor, licensed importer or licensed aviation consumer that the removal of the motor fuel is permitted. A supplier shall be authorized to rely on this representation. A licensed distributor or licensed importer who does not resell motor fuel removed from a terminal by means of an exempt access card or exempt access code to an exempt governmental unit or an organization exempt from tax under subdivision 2 of § 58.1-2226 is liable for any tax due on the fuel. A licensed distributor or licensed importer who does not resell

aviation jet fuel removed from a terminal by means of an exempt access card or exempt access code to a licensed aviation consumer is liable for any tax due on the aviation jet fuel.

B. A supplier who issues to, or authorizes another person to issue to, another person an exempt access card or an exempt access code that enables the person to buy motor fuel without paying the tax on the fuel shall determine if the person is exempt from the tax or, in the case of aviation jet fuel, is a licensed aviation consumer allowed to purchase aviation jet fuel without payment of tax. A supplier is liable for tax due on motor fuel purchased at retail by use of an exempt access card or an exempt access code issued to a person who is not exempt from the tax or, in the case of aviation jet fuel, is not a licensed aviation consumer allowed to purchase aviation jet fuel without payment of tax.

C. A person to whom an exempt access card or exempt access code is issued for use at a terminal is liable for any tax due on fuel purchased with the exempt access card or exempt access code for a purpose that is not exempt. A person who misuses an exempt access card or exempt access code by purchasing fuel with the card or code for a purpose that is not exempt is liable for the tax due on the fuel. The provisions of this subsection shall apply to the misuse of a card or code that allows a person to purchase aviation jet fuel without paying the tax.

D. The tax liability imposed by this section shall be in addition to any other penalty imposed pursuant to this chapter.

2000, cc. 729, 758.

§ 58.1-2229. Removals by out-of-state bulk user

An out-of-state bulk user shall not remove motor fuel from a terminal in the Commonwealth for use in the state in which the bulk user is located unless the bulk user is licensed under this chapter as an exporter.

2000, cc. 729, 758.

Article 4 - PAYMENT AND REPORTING OF TAX ON MOTOR FUEL

§ 58.1-2230. When tax return and payment are due

A. A return for the tax on motor fuel and gasohol levied by this chapter shall be filed with the Commissioner and be in the form and contain the information required by the Commissioner. The return and the payment for the tax on motor fuel levied by this chapter shall be due for each full month in a calendar year. Any return and payment required under this section shall be deemed timely filed if received by the Commissioner by midnight of the twentieth day of the second month succeeding the month for which the return and payment are due. Each return shall report tax liabilities that accrue in the month for which the return is due.

B. Returns and payments shall be (i) postmarked on or before the fifteenth day of the second month succeeding the month for which the return and payment are due or (ii) received by the Department by the twentieth day of the second month succeeding the month for which the return

and payment are due. However, a monthly return of the tax for the month of May shall be (i) postmarked by June 25 or (ii) received by the Commissioner by the last business day the Department is open for business in June.

If a tax return and payment due date falls on a Saturday, Sunday, or a state or banking holiday, the return shall be postmarked on or before the fifteenth day of the second month succeeding the month for which the return and payment are due or received by the Department by midnight of the next business day the Department is open for business. This provision shall not apply to a return of the tax for the month of May.

A return and payment shall be deemed postmarked if it carries the official cancellation mark of the United States Postal Service or other postal or delivery services.

C. The following shall file a monthly return as required by this section:

1. A refiner;

2. A terminal operator;

3. A supplier;

4. A distributor;

5. An importer to include a bonded importer;

6. A blender;

7. An aviation consumer;

8. An elective supplier; and

9. A fuel alcohol provider.

D. Notwithstanding the provisions of any other section in this chapter, the Commissioner may require all or certain licensees to file tax returns and payments electronically.

E. Persons incurring liability under § 58.1-2225 for the backup tax on motor fuel shall file a return together with a payment of tax due within 30 calendar days of incurring such liability.

2000, cc. 729, 758; 2002, c. 7; 2003, c. 781.

§ 58.1-2231. Remittance of tax to supplier

A. A distributor shall remit tax due on motor fuel removed at a terminal rack to the supplier of the fuel. A licensed distributor shall not be required to remit the tax to the supplier until the date the supplier is required to pay the tax to the Commonwealth or to another state. All tax payments received by a supplier shall be held in trust by the supplier until the supplier remits the tax payment to the Commonwealth or to another state, and the supplier shall constitute the trustee for such tax payments. The date by which an unlicensed distributor is required to remit the tax to a supplier shall be governed by agreement between the supplier and the unlicensed distributor.

B. A licensed exporter shall remit tax due on motor fuel removed at a terminal rack to the supplier of the fuel. The date by which an exporter shall remit tax shall be governed by the law of the destination state of the exported motor fuel.

C. A licensed importer shall remit tax due on motor fuel removed at a terminal rack of a permissive or an elective supplier to the supplier of the fuel. A licensed importer who removes fuel from a terminal rack of a permissive or an elective supplier shall not be required to remit the tax to the supplier until the date the supplier is required to pay the tax to the Commonwealth.

D. The license of a licensed distributor, exporter or importer who fails to pay the full amount of tax required by this chapter is subject to cancellation as provided in § 58.1-2215.

2000, cc. 729, 758.

§ 58.1-2232. Notice of cancellation or reissuance of licenses; effect of notice

A. If the Commissioner cancels the license of a distributor, importer, or aviation consumer, the Commissioner shall notify all suppliers of the cancellation. If the Commissioner issues a license to a distributor, importer or aviation consumer whose license was previously canceled, the Commissioner shall notify all suppliers of the issuance.

B. A supplier who sells motor fuel to a distributor, importer or aviation consumer after receiving notice from the Commissioner that the Commissioner has canceled the distributor's, importer's or aviation consumer's license shall be jointly and severally liable with the distributor, importer or aviation consumer for any tax due on motor fuel the supplier sells to the distributor, importer or aviation consumer after receiving the notice; however, the supplier shall not be liable for tax due on motor fuel sold to a previously unlicensed distributor, importer or aviation consumer after the supplier receives notice from the Commissioner that the Commissioner has issued another license to the distributor, importer or aviation consumer.

C. If the Commissioner cancels the license of a supplier, the Commissioner shall notify all licensed distributors, exporters, importers and aviation consumers of the cancellation. If the Commissioner issues a license to a supplier whose license was previously canceled, the Commissioner shall notify all licensed distributors, exporters, importers and aviation consumers of the issuance.

D. A licensed distributor, exporter, importer, or aviation consumer who purchases motor fuel from a supplier after receiving notice from the Commissioner that the Commissioner has canceled the supplier's license shall be jointly and severally liable with the supplier for any tax due on motor fuel purchased from the supplier after receiving the notice; however, the licensed distributor, exporter, importer, or aviation consumer shall not be liable for tax due on motor fuel purchased from a previously unlicensed supplier after the licensee receives notice from the Commissioner that the Commissioner has issued another license to the supplier.

2000, cc. 729, 758; 2002, c. 7.

§ 58.1-2233. Deductions; percentage discount

A. A licensed importer who removes motor fuel from a terminal rack of a permissive or an elective supplier or licensed distributor may deduct from the amount of tax otherwise payable to a supplier the amount calculated on motor fuel that the licensee received from the supplier and resold to a governmental entity, or resold to an organization described in subdivision 2 of § 58.1-2226 for use in the operation of an aircraft if, when removing the fuel, the licensee used an exempt access card or exempt access code specified by the supplier to notify the supplier of the licensee's intent to resell the fuel in an exempt sale.

B. A licensed importer who removes motor fuel from a terminal rack of a permissive supplier, an elective supplier, or a licensed distributor may deduct from the amount of tax otherwise payable to a supplier the amount calculated on aviation jet fuel that the licensee received from the supplier and resold to a licensed aviation consumer if, when removing the fuel, the licensee used an exempt access card or exempt access code specified by the supplier to notify the supplier of the licensee's intent to resell the aviation jet fuel to a licensed aviation consumer.

C. A licensed distributor who pays the tax due a supplier by the date the supplier is required to remit the tax to this Commonwealth may deduct from the amount due a discount of one percent of the amount of tax payable. A licensed importer who (i) removes motor fuel from a terminal rack of a permissive or an elective supplier and (ii) pays the tax due to the supplier by the date the supplier is required to remit the tax to the Commonwealth may deduct from the amount due a discount of one percent of the amount of tax payable. A supplier shall not directly or indirectly deny this discount to a licensed distributor or licensed importer who pays the tax due the supplier by the date the supplier is required to remit the tax to the Commonwealth.

2000, cc. 729, 758.

§ 58.1-2234. Monthly reconciling returns

A. A licensed distributor or a licensed importer who deducts exempt sales under subsection A of § 58.1-2233 or sales of aviation jet fuel to a licensed aviation consumer under subsection B of § 58.1-2233 when paying tax to a supplier shall file a monthly reconciling return for the exempt sales and sales to a licensed aviation consumer. The return shall list the following information and any other information required by the Commissioner:

1. The number of gallons for which a deduction was taken during the month, by supplier;

2. The number of gallons sold in exempt sales during the month, by type of sale, and the purchasers of the fuel in the exempt sales; and

3. The number of gallons of aviation jet fuel sold without collection of the tax during the month, and the purchasers of the fuel.

B. If the number of gallons for which a licensed distributor or licensed importer takes a deduction during a month exceeds the number of exempt gallons sold or, in the case of aviation jet fuel, the number of gallons sold without collection of the tax, the licensed distributor or licensed importer

shall pay tax on the difference at the rate imposed by § 58.1-2217. The licensed distributor or licensed importer shall not be allowed a percentage discount on any tax payable under this subsection.

C. If the number of gallons for which a licensed distributor or licensed importer takes a deduction during a month is less than the number of exempt gallons sold or, in the case of aviation jet fuel, is less than the number of gallons sold without collection of the tax, the Commissioner shall refund the amount of tax paid on the difference. The Commissioner shall reduce the amount of the refund by the amount of the percentage discount received on the fuel.

2000, cc. 729, 758.

§ 58.1-2235. Information required on return filed by supplier

A. A return of a supplier shall list all of the following information and any other information required by the Commissioner:

1. The number of gallons of tax-paid motor fuel received by the supplier during the month, sorted by type of fuel, seller, point of origin, destination state, and carrier;

2. The number of gallons of motor fuel removed at a terminal rack during the month from the account of the supplier, sorted by type of fuel, person receiving the fuel, terminal code, and carrier;

3. The number of gallons of motor fuel removed during the month for export, sorted by type of fuel, person receiving the fuel, terminal code, destination state, and carrier;

4. The number of gallons of motor fuel removed during the month from a terminal located in another state for conveyance to Virginia, as indicated on the shipping document for the fuel, sorted by type of fuel, person receiving the fuel, terminal code, and carrier;

5. The number of gallons of motor fuel the supplier sold during the month to the following, sorted by type of fuel, exempt entity, person receiving the fuel, terminal code, and carrier:

a. A governmental entity whose use of fuel is exempt from the tax;

b. A licensed aviation consumer purchasing aviation jet fuel;

c. A licensed distributor or importer who resold the motor fuel to a governmental unit whose use of fuel is exempt from the tax, as indicated by the distributor or importer;

d. A licensed distributor or importer who resold aviation jet fuel to a licensed aviation consumer as indicated by the distributor or importer;

e. A licensed exporter who resold the motor fuel to a person whose use of the fuel is exempt from tax in the destination state, as indicated by the exporter;

f. A nonprofit charitable organization which is exempt from taxation under § 501(c)(3) of the Internal Revenue Code and which is organized and operated exclusively for the purpose of

providing charitable, long-distance, advanced life-support, air transportation services using emergency medical services vehicles for low-income medical patients in the Commonwealth, for the exclusive use of such organization in the operation of an aircraft; and

g. A licensed distributor or importer who resold the motor fuel to a nonprofit charitable organization which is exempt from taxation under § 501(c)(3) of the Internal Revenue Code and which is organized and operated exclusively for the purpose of providing charitable, long-distance, advanced life-support, air transportation services using emergency medical services vehicles for low-income medical patients in the Commonwealth, for the exclusive use of such organization in the operation of an aircraft; and

6. The amount of discounts allowed under subsection C of § 58.1-2233 on motor fuel sold during the month to licensed distributors or licensed importers.

B. Suppliers shall not require information identifying who purchased exempt fuel from persons licensed under this chapter.

2000, cc. 729, 758; 2015, cc. 502, 503.

§ 58.1-2236. Deductions and discounts allowed a supplier when filing a return

A. The supplier may deduct from the next monthly return those tax payments that were not remitted for the previous month to the supplier by (i) a licensed distributor or (ii) a licensed importer who removed the motor fuel on which the tax is due from a terminal of an elective or a permissive supplier. A supplier shall not be liable for the tax such a licensee owes the supplier but fails to pay. If such licensee pays the tax owed to a supplier after the supplier deducts the amount of such tax on a return, the supplier shall remit the payment to the Commissioner with the next monthly return filed subsequent to receipt of the tax.

B. A supplier who timely files a return with the payment due may deduct, from the amount of tax payable with the return, an administrative discount of one-tenth of one percent of the amount of tax payable to the Commonwealth, not to exceed $5,000 per month.

C. A supplier who sells motor fuel directly to an unlicensed distributor or to a bulk user, retailer, or user of the fuel may take one-half of the same percentage discount on the fuel that a licensed distributor may take under subsection C of § 58.1-2233 when making deferred payments of tax to the supplier.

D. When filing a return, a supplier who issues or authorizes the issuance of an exempt access card or an exempt access code to a person that enables the person to buy motor fuel at retail without paying tax on the fuel may deduct the amount of tax imposed on fuel purchased with the exempt access card or exempt access code. The amount of tax imposed on fuel purchased at retail with an exempt access card or exempt access code is the amount that was imposed on the fuel when it was delivered to the retailer of the fuel.

2000, cc. 729, 758.

§ 58.1-2237. Duties of supplier as trustee

A. All tax payments due to the Commonwealth received by a supplier pursuant to § 58.1-2231 shall be held by the supplier as trustee in trust for the Commonwealth, and a supplier has a fiduciary duty to remit to the Commissioner the amount of tax received by the supplier. A supplier shall be liable for the taxes paid to him.

B. A supplier shall notify a licensed distributor, licensed exporter, or licensed importer who received motor fuel from the supplier during a reporting period of the number of taxable gallons received. The supplier shall give this notice after the end of each reporting period and before the licensee is required to remit to the supplier the amount of tax due on the fuel.

C. A supplier of motor fuel at a terminal shall notify the Commissioner within 10 business days after a return is due of any licensed distributor or licensed importer who did not pay the tax due the supplier when the supplier filed his return. The notice shall be transmitted to the Commissioner in the form required by the Commissioner.

D. A supplier who receives a payment of tax shall not apply the payment to a debt that the person making the payment owes the supplier for motor fuel purchased from the supplier.

2000, cc. 729, 758; 2004, c. 340.

§ 58.1-2238. Returns and discounts of importers

A. A monthly return of a bonded importer or an occasional importer shall contain the following information concerning motor fuel imported during the period covered by the return and any other information required by the Commissioner:

1. The number of gallons of imported motor fuel acquired from a supplier who collected the tax due the Commonwealth on the fuel;

2. The number of gallons of imported motor fuel acquired from a supplier who did not collect the tax due the Commonwealth on the fuel, listed by source state, supplier, and terminal; and

3. If he is an occasional importer, the number of gallons of imported motor fuel acquired from a bulk plant, listed by bulk plant.

B. An importer shall not deduct an administrative discount under subsection C of § 58.1-2233 from the amount remitted with a return. An importer who imports motor fuel received from an elective supplier or a permissive supplier may deduct the percentage discount allowed by subsection C of § 58.1-2233 when remitting tax to the supplier, as trustee, for payment to the Commonwealth. An importer who imports motor fuel received from a supplier who is not an elective supplier or a permissive supplier shall not deduct the percentage discount allowed by subsection C of § 58.1-2233 when filing a return for the tax due.

2000, cc. 729, 758; 2003, c. 781.

§ 58.1-2239. Returns and discounts of aviation consumers

A. A monthly return of an aviation consumer shall state the number of gallons of aviation jet fuel acquired from a supplier or distributor who did not collect the tax due the Commonwealth on the fuel, listed by source state, supplier or distributor, and terminal or other source, with respect to aviation jet fuel purchased during the period covered by the return and any other information required by the Commissioner.

B. An aviation consumer shall be allowed a credit for aviation jet fuel purchased, on which tax has already been paid. The amount of such credit shall not exceed the amount of fuel taxes due from such aviation consumer, nor shall the credit be carried forward to the next fiscal year.

2000, cc. 729, 758.

§ 58.1-2240. Informational returns of terminal operators

A terminal operator shall file a monthly informational return with the Commissioner that shows the amount of motor fuel received or removed from the terminal during the month. The return is due by the twentieth day of the second month following the month covered by the return. The return shall contain the following information and any other information required by the Commissioner:

1. The number of gallons of motor fuel received in inventory at the terminal during the month and each position holder for the fuel;

2. The number of gallons of motor fuel removed from inventory at the terminal during the month and, for each removal, the position holder for the fuel and the destination state of the fuel; and

3. The number of gallons of motor fuel gained or lost at the terminal during the month.

2000, cc. 729, 758.

§ 58.1-2241. Informational returns of motor fuel transporters

A motor fuel transporter shall file a monthly informational return with the Commissioner.

The return required by this section is due by the twentieth day of the second month following the month covered by the return. The return shall contain the following information and any other information required by the Commissioner:

1. The name and address of each person from whom the transporter received motor fuel outside Virginia for delivery in Virginia, the amount of motor fuel received, the date the motor fuel was received, and the destination state of the fuel; and

2. The name and address of each person from whom the transporter received motor fuel in Virginia for delivery outside Virginia, the amount of motor fuel delivered, the date the motor fuel was delivered, and the destination state of the fuel.

2000, cc. 729, 758; 2006, c. 594.

§ 58.1-2242. Return of distributors and certain other licensees; exports

A. A distributor or any other licensee required to make monthly reports who exports motor fuel from a bulk plant located in Virginia shall file a monthly return with the Commissioner identifying the exports. The return is due by the twentieth day of the second month following the month covered by the return. The return shall serve as a claim for a refund by the distributor or such other licensee for tax paid to the Commonwealth on the exported motor fuel.

B. The return shall contain the following information and any other information required by the Commissioner:

1. The number of gallons of motor fuel exported during the month;

2. The destination state of the motor fuel exported during the month; and

3. A certification that the distributor or such other licensee has paid to the destination state of the motor fuel exported during the month, or will timely pay, the amount of tax due that state on the fuel.

2000, cc. 729, 758; 2003, c. 781.

§ 58.1-2243. Use of name and account number on return

When a transaction with a person licensed under this chapter is required to be reported on a return, the return must state the licensee's name and account number as stated on the lists compiled by the Commissioner under § 58.1-2216.

2000, cc. 729, 758.

Article 5 - PROVISIONS APPLICABLE TO ALTERNATIVE FUELS

§ 58.1-2244. Persons required to be licensed

A person shall obtain a license before conducting the activities of:

1. A provider of alternative fuel;

2. A bulk user of alternative fuel;

3. A retailer of alternative fuel; or

4. A person who fuels his highway vehicle from his private source, if the alternative fuels tax on alternative fuel used in the vehicle has not been paid.

2000, cc. 729, 758.

§ 58.1-2245. License application procedure

To obtain a license under this article, an applicant shall file an application with the Commissioner on a form provided by the Commissioner. The application shall include the applicant's name, address, federal employer identification number, and any other information required by the Commissioner.

2000, cc. 729, 758.

§ 58.1-2246. Bond or certificate of deposit requirements

A. An applicant for a license as a (i) provider of alternative fuel, (ii) retailer of alternative fuel or bulk user of alternative fuel who stores highway and nonhighway alternative fuel in the same storage tank, or (iii) retailer of alternative fuel or a bulk user of alternative fuel who wishes to defer the remittance of tax to the provider until the date the provider of alternative fuel is required to pay the tax to the Commonwealth, shall file with the Commissioner a bond or certificate of deposit.

B. The amount of the bond or certificate of deposit shall be three times the applicant's average expected monthly tax liability under this article, as determined by the Commissioner. The amount shall not be less than $2,000 nor more than $300,000. An applicant who is also required to file a bond or a certificate of deposit under § 58.1-2211 to obtain a license as a distributor of motor fuel may file a single bond or certificate of deposit under § 58.1-2211 for the combined amount and shall not be required to file a bond or certificate of deposit for more than $300,000 for the combined amount.

C. A bond or certificate of deposit filed under this section shall be conditioned upon compliance with this chapter, be payable to the Commonwealth, and be in the form required by the Commissioner. The Commissioner may require a bond or a certificate of deposit issued under this section to be adjusted in accordance with the procedure set out in subsection C of § 58.1-2211 for adjusting a bond or certificate of deposit filed by a distributor of motor fuel.

2000, cc. 729, 758; 2006, c. 594.

§ 58.1-2247. Issuance, denial or cancellation of license

A. The Commissioner shall issue a license to each applicant whose application is approved. A license shall not be transferable and remains in effect until surrendered or canceled.

B. The Commissioner may refuse to issue a license under this article to an applicant if (i) the applicant or (ii) any principal of the applicant that is a business entity has:

1. Had a license or registration issued under prior law or this chapter canceled by the Commissioner for cause;

2. Had an alternative fuel license or registration issued by another state canceled for cause;

3. Had a federal Certificate of Registry issued under § 4101 of the Internal Revenue Code, or a similar federal authorization, revoked;

4. Been convicted of any offense involving fraud or misrepresentation; or

5. Been convicted of any other offense that indicates that the applicant may not comply with this chapter if issued a license.

C. The Commissioner may cancel the license of any person licensed under this article, upon written notice sent by certified mail to the licensee's last known address appearing in the Commissioner's files, for any of the following reasons:

1. Filing by the licensee of a false report of the data or information required by this article;

2. Failure, refusal, or neglect of the licensee to comply with any provision of this chapter or any regulation promulgated pursuant to this chapter;

3. Failure of the licensee to pay the full amount of the tax required by this article;

4. Failure of the licensee to keep accurate records of the quantities of alternative fuel received, produced, refined, manufactured, compounded, sold, or used in the Commonwealth;

5. Failure to file a new or additional bond or certificate of deposit upon request of the Commissioner pursuant to § 58.1-2246; or

6. Conviction of the licensee or a principal of the licensee for any prohibited act listed under this article.

D. Upon cancellation of any license for any cause listed in subsection C, the tax levied under this chapter shall become due and payable on (i) all untaxed alternative fuel held in storage or otherwise in the possession of the licensee and (ii) all alternative fuel sold, delivered, or used prior to the cancellation on which the tax has not been paid.

E. The Commissioner may cancel any license upon the written request of the licensee.

F. Upon cancellation of any license and payment by the licensee of all taxes due, including all penalties accruing due to any failure by the licensee to comply with the provisions of this article, the Commissioner shall cancel and surrender the bond or certificate of deposit filed by such licensee.

2000, cc. 729, 758; 2006, c. 594.

§ 58.1-2248. Notice of discontinuance, sale or transfer of business

A. A licensee who discontinues in the Commonwealth the business for which the license was issued shall notify the Commissioner in writing of such discontinuance and shall surrender the license to the Commissioner. The notice shall state the effective date of the discontinuance and, if the license holder has transferred the business or otherwise relinquished control to another person by sale or otherwise, the date of the sale or transfer and the name and address of the person to whom the business is transferred or relinquished. The notice shall also include any other information required by the Commissioner.

B. All taxes for which the license holder is liable under this article but are not yet due shall be due on the date of the discontinuance. If the license holder has transferred the business to another person and does not give the notice required by this section, the person to whom the business was transferred shall be liable for the amount of any tax owed by the license holder to the Commonwealth on the date the business was transferred. The liability of the person to whom the business was transferred shall not exceed the value of the property acquired from the license holder.

2000, cc. 729, 758.

§ 58.1-2249. Tax on alternative fuel

A. There is hereby levied a tax at the rate levied on gasoline and gasohol on liquid alternative fuel used to operate a highway vehicle by means of a vehicle supply tank that stores fuel only for the purpose of supplying fuel to operate the vehicle. There is hereby levied a tax at a rate equivalent to that levied on gasoline and gasohol on all other alternative fuel used to operate a highway vehicle. The Commissioner shall determine the equivalent rate applicable to such other alternative fuels.

B. (Contingent expiration date -- see note*) In addition to any tax imposed by this article, there is hereby levied an annual license tax of $64 per vehicle on each highway vehicle registered in Virginia that is an electric motor vehicle or an alternative fuel vehicle. However, no license tax shall be levied on any vehicle that (i) is subject to the tax on fuels levied pursuant to subsection A, (ii) is subject to the federal excise tax levied under § 4041 of the Internal Revenue Code, (iii) is a moped as defined in § 46.2-100, or (iv) is registered under the International Registration Plan. If such a highway vehicle is registered for a period other than one year as provided under § 46.2-646, the license tax shall be multiplied by the number of years or fraction thereof that the vehicle will be registered. The revenues generated by this subsection shall be deposited in the Highway Maintenance and Operating Fund established pursuant to § 33.2-1530.

B. (Contingent effective date -- see note*) In addition to any tax imposed by this article, there is hereby levied an annual license tax of $50 per vehicle on each highway vehicle registered in Virginia that is an electric motor vehicle. If such a highway vehicle is registered for a period other than one year as provided under § 46.2-646, the license tax shall be multiplied by the number of years or fraction thereof that the vehicle will be registered.

2000, cc. 729, 758; 2007, c. 896; 2012, cc. 729, 733; 2013, c. 766; 2014, cc. 14, 43.

*Subsection B is set out twice because the 14th enactment of Chapter 766 of the Acts of Assembly of 2013 states: "That the provisions of this act that generate additional revenue through state taxes or fees for transportation (i) throughout the Commonwealth and in Planning District 8 and Planning District 23 or (ii) in any other Planning District that becomes subject to the state taxes or fees imposed solely in Planning Districts pursuant to this act shall expire on December 31 of any year in which the General Assembly appropriates any of such additional revenues for any non-transportation-related purpose or transfers any of such additional revenues that are to be deposited into the Commonwealth Transportation Fund or any subfund thereof pursuant to general law for a non-transportation-related purpose. In the event a local government of any county or city wherein the additional taxes and fees are levied appropriates or allocates any of such additional revenues to a non-transportation purpose, such locality shall not be the direct beneficiary of any of the revenues generated by the taxes or fees in the year immediately succeeding the year in which revenues were appropriated or allocated to a non-transportation purpose."

§ 58.1-2250. Exemptions from tax

No tax shall be levied or collected pursuant to this article on:

1. Alternative fuel sold and delivered to a governmental entity for the exclusive use by the governmental entity. This exemption shall not apply with respect to alternative fuel sold or delivered to any person operating under contract with the governmental entity;

2. Alternative fuel sold and delivered to a nonprofit charitable organization that is exempt from taxation under § 501(c)(3) of the Internal Revenue Code and that is organized and operated exclusively for the purpose of providing charitable, long-distance, advanced life-support, air transportation services using emergency medical services vehicles for low-income medical patients in the Commonwealth, for the exclusive use of such organization in the operation of an aircraft; or

3. Alternative fuel produced by the owner or lessee of an agricultural operation, as defined in § 3.2-300, and used (i) exclusively for farm use by the owner or lessee or (ii) in any motor vehicles operated by the producer of such fuel.

2000, cc. 729, 758; 2009, c. 530; 2015, cc. 502, 503.

§ 58.1-2251. Liability for tax; filing returns; payment of tax

A. A bulk user of alternative fuel or retailer of alternative fuel who stores highway and nonhighway alternative fuel in the same storage tank shall be liable for the tax imposed by this article, and shall file tax returns and remit taxes in accordance with subsection D. The tax payable by a bulk user of alternative fuel or retailer of alternative fuel is imposed at the point that alternative fuel is withdrawn from the storage tank.

B. A provider of alternative fuel who sells or delivers alternative fuel shall be liable for the tax imposed by this article (i) on sales to a bulk user of alternative fuel or retailer of alternative fuel who stores highway product in a separate storage tank or (ii) if the alternative fuel is sold or used by the provider of alternative fuel for highway use.

C. The owner of a highway vehicle subject to an annual license tax pursuant to subsection B of § 58.1-2249 shall be liable for such annual license tax. The annual license tax shall be due when the highway vehicle is first registered in Virginia and upon each subsequent renewal of registration.

D.1. Each (i) bulk user of alternative fuel or retailer of alternative fuel liable for tax pursuant to subsection A and (ii) provider of alternative fuel liable for the tax pursuant to subsection B shall file a monthly tax return with the Department. The tax on alternative fuel levied by this article, except for the annual license tax imposed under subsection B of § 58.1-2249, that is required to be remitted to the Commonwealth shall be payable to the Commonwealth not later than the date on which the return is due. A return and payment shall be (i) postmarked on or before the fifteenth day of the second month succeeding the month for which the return and payment are due or (ii) received by the Department by the twentieth day of the second month succeeding the month for which the return and payment are due. However, a monthly return of the tax for the month of May shall be (i) postmarked by June 25 or (ii) received by the Commissioner by the last business day the Department is open for business in June.

2. If a tax return and payment due date falls on a Saturday, Sunday, or a state or banking holiday, the return shall be postmarked on or before the fifteenth day of the second month succeeding the month for which the return and payment are due or received by the Department by midnight of the next business day the Department is open for business. This provision shall not apply to a return of the tax for the month of May.

3. A return and payment shall be deemed postmarked if it carries the official cancellation mark of the United States Postal Service or other postal or delivery service.

4. A return shall be filed with the Commissioner and shall be in the form and contain the information required by the Commissioner.

2000, cc. 729, 758; 2002, c. 7; 2013, c. 766.

§ 58.1-2252. Remittance of tax to provider of alternative fuel

A purchaser of alternative fuel, other than a bulk user of alternative fuel or a retailer of alternative fuel who is liable for the tax pursuant to subsection A of § 58.1-2251, shall remit the tax due on the fuel to the provider of the fuel. A bulk user of alternative fuel or retailer of alternative fuel who has posted a bond in accordance with § 58.1-2246 shall not be required to remit the tax to the provider until the date the provider is required to pay the tax to the Commonwealth. All tax payments received by a provider of alternative fuel from a bulk user of alternative fuel or retailer of alternative fuel shall be held in trust by the provider until the provider remits the tax payments to the Commonwealth, and the provider shall constitute the trustee for such tax payments. The date by which other purchasers of alternative fuel are required to remit tax to a provider shall be determined by agreement between the provider and the purchaser.

2000, cc. 729, 758.

§ 58.1-2253. Notice to providers of alternative fuel of cancellation or reissuance of certain licenses; effect of notice

A. If the Commissioner cancels the license of a bulk user of alternative fuel or retailer of alternative fuel who has posted a bond in accordance with § 58.1-2246, the Commissioner shall notify all providers of alternative fuel of the cancellation. If the Commissioner issues a license to a bulk user of alternative fuel or retailer of alternative fuel whose license was previously canceled, the Commissioner shall notify all providers of alternative fuel of the issuance.

B. A provider of alternative fuel who sells alternative fuel to a bulk user of alternative fuel or retailer of alternative fuel who has posted a bond in accordance with § 58.1-2246, after receiving notice from the Commissioner that the Commissioner has canceled the license of a bulk user of alternative fuel or of a retailer of alternative fuel, is jointly and severally liable with the bulk user of alternative fuel or retailer of alternative fuel for any tax due on the alternative fuel that the provider of alternative fuel sells to the bulk user of alternative fuel or retailer of alternative fuel after receiving the notice; however, the provider of alternative fuel shall not be liable for tax due on alternative fuel sold to a previously unlicensed bulk user of alternative fuel or retailer of

alternative fuel after the provider of alternative fuel receives notice from the Commissioner that the Commissioner has issued another license to the bulk user of alternative fuel or retailer of alternative fuel.

2000, cc. 729, 758.

§ 58.1-2254. Exempt sale deduction

A licensed retailer of alternative fuel who has posted a bond in accordance with § 58.1-2246 may deduct from the amount of tax otherwise payable to a provider of alternative fuel the amount calculated on alternative fuel that the licensee received from the provider and resold to a governmental entity, or resold to an organization described in subdivision 2 of § 58.1-2250 for use in the operation of an aircraft, whose purchases of alternative fuel are exempt from the tax under such section if, when purchasing the fuel, the retailer notified the provider of the retailer's intent to resell the fuel in an exempt sale.

2000, cc. 729, 758.

§ 58.1-2255. Returns and payments by bulk users and retailers of alternative fuel; storage

A. Each bulk user of alternative fuel and retailer of alternative fuel shall file a monthly informational return with the Commissioner. A monthly return covers a calendar month and is due by the twentieth day of the second month that follows such month.

The return shall include the following information and any other information required by the Commissioner:

1. The amount of alternative fuel received during the month;

2. The amount of alternative fuel sold or used during the month;

3. The number of gallons for which a deduction was taken during the month pursuant to § 58.1-2254, by provider, if applicable; and

4. The number of gallons sold in exempt sales during the month, by type of sale, and the purchaser of the fuel in the exempt sales, if applicable.

B. If the number of gallons for which an eligible retailer of alternative fuel takes a deduction during a month exceeds the number of exempt gallons or gallon equivalent sold, the retailer of alternative fuel shall pay tax on the difference at the rate imposed by subsection A of § 58.1-2249. The tax shall be payable when the informational return is due.

C. A bulk user of alternative fuel or a retailer of alternative fuel may store highway and nonhighway alternative fuel in separate storage tanks or in the same storage tank. If highway and nonhighway alternative fuel are stored in separate storage tanks, the tank for the nonhighway fuel shall be marked in accordance with the requirements set by § 58.1-2279 for dyed diesel storage facilities. If highway and nonhighway alternative fuel are stored in the same storage tank, the storage tank shall be equipped with separate metering devices for the highway fuel and the nonhighway fuel. If the Commissioner determines that a bulk user of alternative fuel or retailer of

alternative fuel used or sold alternative fuel to operate a highway vehicle when the fuel was dispensed from a storage tank or through a meter marked for nonhighway use, all fuel delivered into that storage tank shall be presumed to have been used to operate a highway vehicle.

2000, cc. 729, 758; 2002, c. 7.

§ 58.1-2256. Deductions and discounts for providers of alternative fuel filing returns

A. When a provider of alternative fuel files a return, the provider of alternative fuel may deduct from the amount of tax payable with the return the amount of tax any of the following licensees owes the provider of alternative fuel but failed to remit to the provider of alternative fuel:

1. A licensed bulk user of alternative fuel who has posted a bond in accordance with § 58.1-2246; and

2. A licensed retailer of alternative fuel who has posted a bond in accordance with § 58.1-2246.

A provider of alternative fuel shall not be liable for tax that such a licensee owes the provider of alternative fuel but fails to pay. If such licensee pays the tax owed to a provider of alternative fuel after the provider of alternative fuel deducts the amount of such tax on a return, the provider of alternative fuel shall remit the payment to the Commissioner with the next monthly return filed subsequent to receipt of the tax.

B. A provider of alternative fuel who timely files a return with the payment due may deduct, from the amount of tax payable with the return, an administrative discount of one-tenth of one percent of the amount of tax payable to this Commonwealth, not to exceed a total of $5,000 per month. The administrative discount allowed a provider of alternative fuel who is also licensed as a supplier under Article 2 (§ 58.1-2204 et seq.) of this chapter shall not exceed $5,000 per month for both licenses.

2000, cc. 729, 758.

§ 58.1-2257. Duties of provider of alternative fuel as trustee

A. All tax payments due to the Commonwealth received by a provider of alternative fuel pursuant to § 58.1-2252 shall be held by the provider of alternative fuel as trustee in trust for the Commonwealth, and a provider of alternative fuel has a fiduciary duty to remit to the Commissioner the amount of tax received by the provider of alternative fuel. A provider of alternative fuel shall be liable for the taxes paid to him.

B. A provider of alternative fuel shall notify a bulk user of alternative fuel or retailer of alternative fuel who has posted a bond in accordance with § 58.1-2246 and who received alternative fuel from the provider of alternative fuel during a reporting period of the number of taxable gallons or equivalent taxable gallons received. The provider of alternative fuel shall give this notice after the end of each reporting period and before the licensee is required to remit to the provider of alternative fuel the amount of tax due on the fuel.

C. A provider of alternative fuel shall notify the Commissioner within ten business days after a return is due of any licensed bulk user of alternative fuel or retailer of alternative fuel who (i) has posted a bond in accordance with § 58.1-2246 and (ii) did not pay the tax due the provider of alternative fuel when the provider filed his return. The notice shall be transmitted to the Commissioner in the form required by the Commissioner.

D. A provider of alternative fuel who receives a payment of tax shall not apply the payment to a debt that the person making the tax payment owes to the provider of alternative fuel for alternative fuel purchased from the provider of alternative fuel.

2000, cc. 729, 758.

§ 58.1-2258. Use of name and account number on return

When a transaction with a person licensed under this article is required to be reported on a return, the return shall state the licensee's name and account number as stated on the lists compiled by the Commissioner under § 58.1-2216.

2000, cc. 729, 758.

Article 6 - REFUNDS

§ 58.1-2259. Fuel uses eligible for refund of taxes paid for motor fuels

A. A refund of the tax paid for the purchase of fuel in quantities of five gallons or more at any time shall be granted in accordance with the provisions of § 58.1-2261 to any person who establishes to the satisfaction of the Commissioner that such person has paid the tax levied pursuant to this chapter upon any fuel:

1. Sold and delivered to a governmental entity for its exclusive use;

2. Used by a governmental entity, provided persons operating under contract with a governmental entity shall not be eligible for such refund;

3. Sold and delivered to an organization described in subdivision 2 of § 58.1-2226 or subdivision 2 of § 58.1-2250 for its exclusive use in the operation of an aircraft;

4. Used by an organization described in subdivision 2 of § 58.1-2226 or subdivision 2 of § 58.1-2250 for its exclusive use in the operation of an aircraft, provided persons operating under contract with such an organization shall not be eligible for such refund;

5. Purchased by a licensed exporter and subsequently transported and delivered by such licensed exporter to another state for sales or use outside the boundaries of the Commonwealth if the tax applicable in the destination state has been paid, provided a refund shall not be granted pursuant to this section on any fuel which is transported and delivered outside of the Commonwealth in the fuel supply tank of a highway vehicle or an aircraft;

6. Used by any person performing transportation under contract or lease with any transportation district for use in a highway vehicle controlled by a transportation district created under the

Transportation District Act of 1964 (§ 33.2-1900 et seq.) and used in providing transit service by the transportation district by contract or lease, provided the refund shall be paid to the person performing such transportation;

7. Used by any private, nonprofit agency on aging, designated by the Department for Aging and Rehabilitative Services, providing transportation services to citizens in highway vehicles owned, operated or under contract with such agency;

8. Used in operating or propelling highway vehicles owned by a nonprofit organization that provides specialized transportation to various locations for elderly or disabled individuals to secure essential services and to participate in community life according to the individual's interest and abilities;

9. Used in operating or propelling buses owned and operated by a county or the school board thereof while being used to transport children to and from public school or from school to and from educational or athletic activities;

10. Used by buses owned or solely used by a private, nonprofit, nonreligious school while being used to transport children to and from such school or from such school to and from educational or athletic activities;

11. Used by any county or city school board or any private, nonprofit, nonreligious school contracting with a private carrier to transport children to and from public schools or any private, nonprofit, nonreligious school, provided the tax shall be refunded to the private carrier performing such transportation;

12. Used in operating or propelling the equipment of volunteer firefighting companies and of volunteer emergency medical services agencies within the Commonwealth used actually and necessarily for firefighting and emergency medical services purposes;

13. Used in operating or propelling motor equipment belonging to counties, cities and towns, if actually used in public activities;

14. Used for a purpose other than in operating or propelling highway vehicles, watercraft or aircraft;

15. Used off-highway in self-propelled equipment manufactured for a specific off-road purpose, which is used on a job site and the movement of which on any highway is incidental to the purpose for which it was designed and manufactured;

16. Proven to be lost by accident, including the accidental mixing of (i) dyed diesel fuel with tax-paid motor fuel, (ii) gasoline with diesel fuel, or (iii) undyed diesel fuel with dyed kerosene, but excluding fuel lost through personal negligence or theft;

17. Used in operating or propelling vehicles used solely for racing other vehicles on a racetrack;

18. Used in operating or propelling unlicensed highway vehicles and other unlicensed equipment used exclusively for agricultural or horticultural purposes on lands owned or leased by the owner or lessee of such vehicles and not operated on or over any highway for any purpose other than to move it in the manner and for the purpose mentioned. The amount of refund shall be equal to the amount of the taxes paid less one-half cent per gallon on such fuel so used which shall be paid by the Commissioner into the state treasury to the credit of the Virginia Agricultural Foundation Fund;

19. Used in operating or propelling commercial watercraft. The amount of refund shall be equal to the amount of the taxes paid less one and one-half cents per gallon on such fuel so used which shall be paid by the Commissioner into the state treasury to be credited as provided in subsection D of § 58.1-2289. If any applicant so requests, the Commissioner shall pay into the state treasury, to the credit of the Game Protection Fund, the entire tax paid by such applicant for the purposes specified in subsection D of § 58.1-2289. If any applicant who is an operator of commercial watercraft so requests, the Commissioner shall pay into the state treasury, to the credit of the Marine Fishing Improvement Fund, the entire tax paid by such applicant for the purposes specified in § 28.2-208;

20. Used in operating stationary engines, or pumping or mixing equipment on a highway vehicle if the fuel used to operate such equipment is stored in an auxiliary tank separate from the fuel tank used to propel the highway vehicle, and the highway vehicle is mechanically incapable of self-propulsion while fuel is being used from the auxiliary tank;

21. Used in operating or propelling recreational and pleasure watercraft; or

22. Used in operating or propelling highway vehicles owned by any entity that is exempt from taxation under § 501(c)(3) of the Internal Revenue Code, as amended or renumbered, and organized with a principal purpose of providing hunger relief services or food to the needy, if such vehicle is used solely for the purpose of providing hunger relief services or food to the needy.

B.1. Any person purchasing fuel for consumption in a solid waste compacting or ready-mix concrete highway vehicle, or a bulk feed delivery truck, where the vehicle's equipment is mechanically or hydraulically driven by an internal combustion engine that propels the vehicle, is entitled to a refund in an amount equal to 35 percent of the tax paid on such fuel. For purposes of this section, a "bulk feed delivery truck" means bulk animal feed delivery trucks utilizing power take-off (PTO) driven auger or air feed discharge systems for off-road deliveries of animal feed.

2. Any person purchasing fuel for consumption in a vehicle designed or permanently adapted solely and exclusively for bulk spreading or spraying of agricultural liming materials, chemicals, or fertilizer, where the vehicle's equipment is mechanically or hydraulically driven by an internal combustion engine that propels the vehicle, is entitled to a refund in an amount equal to 55 percent of the tax paid on such fuel.

C. Any person purchasing any fuel on which tax imposed pursuant to this chapter has been paid may apply for a refund of the tax if such fuel was consumed by a highway vehicle used in operating an urban or suburban bus line or a taxicab service. This refund also applies to a common carrier of passengers which has been issued a certificate pursuant to § 46.2-2075 or 46.2-2099.4 providing regular route service over the highways of the Commonwealth. No refund shall be granted unless the majority of the passengers using such bus line, taxicab service or common carrier of passengers do so for travel of a distance of not more than 40 miles, one way, in a single day between their place of abode and their place of employment, shopping areas or schools.

If the applicant for a refund is a taxicab service, he shall hold a valid permit from the Department to engage in the business of a taxicab service. No applicant shall be denied a refund by reason of the fee arrangement between the holder of the permit and the driver or drivers, if all other conditions of this section have been met.

Under no circumstances shall a refund be granted more than once for the same fuel. The amount of refund under this subsection shall be equal to the amount of the taxes paid, except refunds granted on the tax paid on fuel used by a taxicab service shall be in an amount equal to the tax paid less $0.01 per gallon on the fuel used.

Any refunds made under this subsection shall be deducted from the urban highway funds allocated to the highway construction district, pursuant to Article 5 (§ 33.2-351 et seq.) of Chapter 3 of Title 33.2, in which the recipient has its principal place of business.

Except as otherwise provided in this chapter, all provisions of law applicable to the refund of fuel taxes by the Commissioner generally shall apply to the refunds authorized by this subsection. Any county having withdrawn its roads from the secondary system of state highways under provisions of § 11 of Chapter 415 of the Acts of 1932 shall receive its proportionate share of such special funds as is now provided by law with respect to other fuel tax receipts.

D. Any person purchasing fuel for consumption in a vehicle designed or permanently adapted solely and exclusively for bulk spreading or spraying of agricultural liming materials, chemicals, or fertilizer, where the vehicle's equipment is mechanically or hydraulically driven by an internal combustion engine that propels the vehicle, is entitled to a refund in an amount equal to 55 percent of the tax paid on such fuel.

E. Any person purchasing diesel fuel used in operating or propelling a passenger car, a pickup or panel truck, or a truck having a gross vehicle weight rating of 10,000 pounds or less is entitled to a refund of a portion of the taxes paid in an amount equal to the difference between the rate of tax on diesel fuel and the rate of tax on gasoline and gasohol pursuant to § 58.1-2217. For purposes of this subsection, "passenger car, " "pickup or panel truck, " and "truck" shall have the meaning given in § 46.2-100. Notwithstanding any other provision of law, diesel fuel used in a vehicle upon which the fuels tax has been refunded pursuant to this subsection shall be exempt from the tax imposed under Chapter 6 (§ 58.1-600 et seq.).

F. Refunds resulting from any fuel shipments diverted from Virginia shall be based on the amount of tax paid for the fuel less discounts allowed by § 58.1-2233.

G. Any person who is required to be licensed under this chapter and is applying for a refund shall not be eligible for such refund if the applicant was not licensed at the time the refundable transaction was conducted.

2000, cc. 247, 347, 729, 758; 2001, c. 167; 2003, c. 781; 2005, cc. 243, 782, 928; 2011, cc. 881, 889; 2012, cc. 803, 835; 2013, c. 766; 2015, cc. 502, 503; 2016, c. 34.

§ 58.1-2260. Refund of taxes erroneously or illegally collected

If it appears to the satisfaction of the Commissioner that any taxes or penalties imposed by this chapter have been erroneously or illegally collected from any person, such person shall be entitled to a refund upon proper application to the Commissioner. No refund shall be made under the provisions of this section unless a written statement, setting forth the circumstances and reasons why such refund is claimed, is filed with the Commissioner within one year of the date of payment of the tax for which the refund is claimed. The claim shall be in such form as the Commissioner shall prescribe and shall be sworn to by the claimant.

2000, cc. 729, 758.

§ 58.1-2261. Refund procedure; investigations

A. Any person entitled to a refund pursuant to § 58.1-2259 shall file with the Commissioner an application on a form prepared and furnished by the Commissioner. Such application shall contain the information and certifications required by the Commissioner. The applicant shall set forth the basis for the claimed refund, the total amount of such fuel purchased and used by such applicant, and how such fuel was used. The applicant shall retain the paid ticket, invoice, or other document from the seller documenting the purchase of the fuel on which a refund is claimed for a period of time to be determined by the Commissioner. The Commissioner, upon the presentation of such application shall refund to the claimant the proper amount of the tax paid as provided in this chapter, subject to the provisions of subsection D. A ticket issued to the holder of a credit card as evidence of the delivery to such holder of tax-paid fuel shall, for the purpose of this section, be a paid ticket or invoice. Tickets or invoices marked "duplicate" shall not be acceptable.

B. The application for a refund shall be filed within one year from the date of the sale as shown on the paid ticket or invoice. For those that pay the motor fuels tax in accordance with § 58.1-2200, if the refund amount certified by the Commissioner is different from the amount requested by the applicant, the Commissioner shall provide an explanation to the applicant of why the refund amount differs from the amount requested.

C. In the event an assessment is rendered for failure to report and pay the tax imposed as provided in § 58.1-2217 or § 58.1-2249 and such fuel is subject to refund under the provisions of § 58.1-2259, the application for a refund shall be filed with the Commissioner by the person

entitled to such refund within one year from the date such assessment is paid and shall be accompanied by invoices covering the sale of the fuel and billing of tax to such person.

D. The Department may make any investigation it considers necessary before refunding the fuels tax to a person, and may investigate a refund after the refund has been issued and within the time frame for adjusting tax under this chapter. As a part of such investigation, the Department may require that the person provide the paid ticket, invoice, or other document from the seller documenting the purchase of the fuel on which a refund is claimed. Failure to provide a ticket, invoice, or other document evidencing the purchase of such fuel on which a refund is requested or was previously granted will result in the denial or reversal of that refund.

E. In accordance with § 58.1-609.1, any person who is refunded tax pursuant to § 58.1-2259 shall be subject to the taxes imposed by Chapter 6 (§ 58.1-600 et seq.) of this title, unless such transaction is specifically exempted pursuant to § 58.1-609.1.

2000, cc. 729, 758; 2003, c. 325; 2009, c. 419.

§ 58.1-2262. Payment of refund

Whenever it appears to the satisfaction of the Commissioner that any person is entitled to a refund for taxes paid pursuant to this chapter, the Commissioner shall forthwith certify the amount of the refund to the Comptroller and shall send to the applicant an explanation of the basis of such refund. The amount of the refund shall be paid by check issued by the State Treasurer on warrant of the Comptroller.

2000, cc. 729, 758; 2003, c. 325.

Article 7 - ENFORCEMENT AND ADMINISTRATION

§ 58.1-2263. Shipping documents; transportation of motor fuel loaded at a terminal rack or bulk plant rack; civil penalty

A. A person shall not transport motor fuel loaded at a terminal rack or bulk plant rack unless the person has a shipping document for its transportation that complies with this section. A terminal operator or operator of a bulk plant shall give a shipping document to the person who operates the means of conveyance into which motor fuel is loaded at the terminal rack or bulk plant rack.

B. The shipping document issued by the terminal operator shall be machine-printed and that issued by the operator of a bulk plant shall be on a printed form and both shall contain the following information and any other information required by the Commissioner:

1. Identification, including address, of the terminal or bulk plant from which the motor fuel was received;

2. Date the motor fuel was loaded;

3. Gross gallons loaded;

4. Destination state of the motor fuel, as represented by the purchaser of the motor fuel or the purchaser's agent;

5. In the case of aviation jet fuel sold to an aviation consumer, the shipping document shall be marked with the phrase "Aviation Jet Fuel, Not for On-road Use" or a similar phrase; and

6. If the document is issued by a terminal operator, (i) net gallons loaded and (ii) tax responsibility statement indicating the name of the supplier who is responsible for the tax due on the motor fuel.

C. A terminal operator or bulk plant operator may rely on the representation made by the purchaser of motor fuel or the purchaser's agent concerning the destination state of the motor fuel. A purchaser shall be liable for any tax due as a result of the purchaser's diversion of fuel from the represented destination state.

D. A person to whom a shipping document was issued shall:

1. Carry the shipping document in the means of conveyance for which it was issued when transporting the motor fuel described;

2. Show the shipping document to a law-enforcement officer upon request when transporting the motor fuel described;

3. Deliver motor fuel described in the shipping document to the destination state printed on it unless the person:

a. Notifies the Commissioner before transporting the motor fuel into a state other than the printed destination state that the person has received instructions after the shipping document was issued to deliver the motor fuel to a different destination state;

b. Receives from the Commissioner a confirmation number authorizing the diversion; and

c. Writes on the shipping document the change in destination state and the confirmation number for the diversion; and

4. Give a copy of the shipping document to the distributor or other person to whom the motor fuel is delivered.

E. The person to whom motor fuel is delivered shall not accept delivery of the motor fuel if the destination state shown on the shipping document for the motor fuel is a state other than Virginia. To determine if the shipping document shows Virginia as the destination state, the person to whom the fuel is delivered shall examine the shipping document and keep a copy of the shipping document (i) at the place of business where the motor fuel was delivered for 90 days following the date of delivery and (ii) at such place or another place for at least three years following the date of delivery. The person who accepts delivery of motor fuel in violation of this subsection and any person liable for the tax on the motor fuel pursuant to Article 3 (§ 58.1-2217 et seq.) shall be jointly and severally liable for any tax due on the fuel.

F. Any person who (i) transports motor fuel loaded at a terminal rack or bulk plant rack without a shipping document or with a false or an incomplete shipping document or (ii) delivers motor fuel to a destination state other than that shown on the shipping document, shall be subject to a civil penalty. If the fuel is transported in a railroad tank car, the civil penalty imposed under this subsection shall be payable by the person responsible for the movement of the motor fuel in the railroad tank car. If the fuel is transported by any other means of conveyance, the civil penalty imposed under this subsection shall be payable by the person in whose name the means of conveyance is registered. The amount of the civil penalty assessed against a person for his first violation shall be $5,000. The amount of the civil penalty assessed against a person for his second or subsequent violation shall be $10,000.

2000, cc. 729, 758; 2001, c. 167; 2012, c. 363.

§ 58.1-2264. Repealed

Repealed by Acts 2003, c. 781, cl. 2.

§ 58.1-2265. Improper sale or use of untaxed fuel; civil penalty

A. Any person committing any of the following acts shall be subject to the civil penalty specified in subsection B:

1. Selling or storing any dyed diesel fuel for use in a highway vehicle that is licensed or required to be licensed, unless that use is allowed under 26 U.S.C. § 4082;

2. Willfully altering or attempting to alter the strength or composition of any dye or marker in any dyed diesel fuel;

3. Using dyed diesel fuel in a highway vehicle unless that use is allowed under 26 U.S.C. § 4082;

4. Acquiring, selling or storing any fuel for use in a watercraft, aircraft, or highway vehicle that is licensed or required to be licensed unless the tax levied by this chapter has been paid; or

5. Using any fuel in a watercraft, aircraft, or highway vehicle that is licensed or required to be licensed unless the tax levied by this chapter has been paid.

B. The amount of the civil penalty for any act described in subsection A shall be the greater of $1,000 or ten dollars per gallon of fuel, based on the maximum storage capacity of the storage tank, container or storage tank of the highway vehicle, watercraft or aircraft.

C. The Commissioner is authorized to reduce or waive any civil penalties under this section if the violation is due to a reasonable or good cause shown to the satisfaction of the Commissioner.

2000, cc. 729, 758.

§ 58.1-2266. Late filing or payment; civil penalty

A. Any person committing any of the following acts shall be subject to the civil penalty specified in subsections B and C:

1. Failure to submit a report required by this chapter on a timely basis;

2. Failure to submit the data required by this chapter; or

3. Failure to pay to the Commissioner or to a trustee on a timely basis the amount of taxes due under this chapter.

B. The amount of the civil penalty for any act described in subdivision A 1 or 2 shall be as follows:

1. $50 for the first violation;

2. $200 for the second violation;

3. $500 for the third violation; and

4. $1,000 for the fourth and subsequent violations.

After imposition of the penalty under this subsection, the amount of the penalty, if not paid within 30 days of receipt of notice of such penalty, shall bear interest at the rate of one percent per month until the penalty is paid.

C. The amount of the civil penalty for any act described in subdivision A 3 shall be equal to 10 percent of the tax due or $50, whichever is greater; however, penalties resulting from an audit shall be equal to 10 percent of the tax due. After imposition of the penalty under this subsection, the amount of the tax and the penalty, if not paid within 30 days of receipt of notice of such penalty, shall bear interest at the rate of one percent per month until the tax and penalty are paid.

D. The Commissioner is authorized to reduce or waive any penalties under this section if the violation is due to a reasonable or good cause shown to the satisfaction of the Commissioner.

2000, cc. 729, 758; 2004, c. 340.

§ 58.1-2267. Refusal to allow inspection or taking of fuel sample; civil penalty

Any person who refuses to allow an inspection or allow the taking of a fuel sample authorized by § 58.1-2276 or § 58.1-2277 shall be subject to a civil penalty of $5,000 for each refusal. If the refusal is for a sample to be taken from a vehicle, the penalty shall be payable by the person in whose name the vehicle is registered. If the refusal is for a sample to be taken from any other storage tank or container, the penalty shall be payable by the owner of such storage tank or container.

2000, cc. 729, 758.

§ 58.1-2268. Engaging in business without a license; civil penalty

Any person who engages in any business activity within the Commonwealth for which a license is required by this chapter without a valid license shall be subject to a civil penalty. The amount of the civil penalty assessed against a person for his first violation shall be $5,000. The amount of the civil penalty assessed against a person for his second or subsequent violation shall be $10,000.

2000, cc. 729, 758.

§ 58.1-2268.1. Preventing a person from obtaining a license; civil penalty

Any terminal operator, supplier, or position holder in the terminal who, by use of coercion, threat, intimidation or any other means of interference, intentionally prevents any person from applying for and obtaining a license issued under this chapter shall be subject to a civil penalty. The amount of the civil penalty assessed against a person for his (i) first violation shall be $5,000 and (ii) second and subsequent violations shall be $10,000.

2000, cc. 729, 758.

§ 58.1-2269. False or fraudulent return; civil penalty

Any person liable for a tax levied under this chapter who files a false or fraudulent return with the intent to evade the tax shall be subject to a civil penalty. The amount of the civil penalty shall be equal to fifty percent of the amount of the tax intended to be evaded by the filing of such return. The civil penalty shall be in addition to the amount of the tax intended to be evaded.

2000, cc. 729, 758.

§ 58.1-2270. Failure to keep or retain records; civil penalty

Any person who fails to keep or retain records as required by this chapter shall be subject to a civil penalty. The amount of the civil penalty assessed against a person for his first violation shall be $1,000. The amount of the civil penalty assessed against a person for each subsequent violation shall be $1,000 more than the amount of the civil penalty for the preceding violation.

2000, cc. 729, 758.

§ 58.1-2271. Payment of civil penalties; disposition; waiver

Any civil penalty assessed pursuant to this chapter shall be payable to the Department, shall be in addition to any other penalty or tax that may be imposed as provided in this chapter, and shall be collectible by the Commissioner in the same manner as if it were part of the tax levied. The amount of any civil penalty imposed under this chapter shall bear interest at the rate of one percent per month until paid. All civil penalties imposed under this chapter shall be deposited as provided in § 58.1-2289. Notwithstanding any other provisions of this chapter, the Commissioner is authorized to reduce or waive any civil penalties under this chapter if the violation is due to a reasonable or good cause shown to the satisfaction of the Commissioner.

2000, cc. 729, 758; 2004, c. 340.

§ 58.1-2272. Prohibited acts; criminal penalties

A. Any person who commits any of the following acts shall be guilty of a Class 1 misdemeanor:

1. Failing to obtain a license required by this chapter;

2. Failing to file a return required by this chapter;

3. Failing to pay a tax when due under this chapter;

4. Failing to pay a tax collected on behalf of a destination state to that state when it is due;

5. Making a false statement in an application, return, ticket, invoice, statement, or any other document required under this chapter;

6. Making a false statement in an application for a refund;

7. Failing to keep records as required under this chapter;

8. Refusing to allow the Commissioner or a representative of the Commissioner to examine the person's books and records concerning fuel;

9. Failing to make a required disclosure of the correct amount of fuel sold or used in the Commonwealth;

10. Failing to file a replacement or additional bond or certificate of deposit as required under this chapter;

11. Failing to show or give a shipping document as required under this chapter;

12. Refusing to allow a licensed distributor, licensed exporter, or licensed importer to defer payment of tax to the supplier, as required by § 58.1-2231;

13. Refusing to allow a bulk user of alternative fuel or a retailer of alternative fuel who has posted a bond in accordance with § 58.1-2246 to defer payment of tax to the provider of alternative fuel, as required by § 58.1-2252;

14. Refusing to allow a licensed distributor or a licensed importer to take a deduction or discount allowed by § 58.1-2233 when remitting the tax to the supplier, or to allow a licensed retailer of alternative fuel to take a deduction or discount allowed by § 58.1-2254 when remitting the tax to the provider of alternative fuel;

15. Using, delivering, or selling any aviation fuel for use or intended for use in highway vehicles or watercraft;

16. Violating the provisions of § 58.1-2278;

17. Interfering with or refusing to permit seizures authorized under § 58.1-2274; or

18. Delivering fuel from a transport truck or tank wagon to the fuel tank of a highway vehicle, except in an emergency.

B. A person who knowingly commits any of the following acts shall be guilty of a Class 1 misdemeanor:

1. Dispenses any fuel on which tax levied pursuant to this chapter has not been paid into the supply tank of a highway vehicle, watercraft, or aircraft; or

2. Allows any fuel on which tax levied pursuant to this chapter has not been paid to be dispensed into the supply tank of a highway vehicle, watercraft, or aircraft.

2000, cc. 729, 758; 2006, c. 594.

§ 58.1-2273. Willful commission of prohibited acts; criminal penalties

Any person who willfully commits any of the following acts, with the intent to (i) evade or circumvent the Commonwealth's fuels tax laws or (ii) assist any other person in efforts to evade or circumvent such laws, shall be guilty of a Class 6 felony, if he:

1. Alters, manipulates, replaces, or in any other manner tampers or interferes with, or causes to be altered, manipulated, replaced, tampered or interfered with, a totalizer attached to fuel pumps to measure the dispensing of fuel;

2. Does not pay fuels taxes and diverts such tax proceeds for other purposes;

3. Is a licensee or the agent or representative of a licensee, converts or attempts to convert fuel tax proceeds for the use of the licensee or the licensee's agent or representative, with the intent to defraud the Commonwealth;

4. Illegally collects fuel taxes when not authorized or licensed by the Commissioner to do so;

5. Illegally imports fuel into the Commonwealth;

6. Conspires with any other person or persons to engage in an act, plan, or scheme to defraud the Commonwealth of fuels tax proceeds;

7. Uses any dyed diesel fuel for a use that the user knows or has reason to know is a taxable use of the fuel, or sells any dyed diesel fuel to a person who the seller knows or has reason to know will use the fuel for a taxable purpose; however, if the amount of fuel involved is not more than twenty gallons, such person shall be guilty of a Class 1 misdemeanor;

8. Alters or attempts to alter the strength or composition of any dye or marker in any dyed diesel fuel intended to be used for a taxable purpose;

9. Fails to remit to the Commissioner any tax levied pursuant to this chapter, if he (i) has added, or represented that he has added, the tax to the sales price for the fuel and (ii) has collected the amount of the tax;

10. Applies for or collects from the Department a refund for fuels tax when the person knows or has reason to know that fuel for which the refund is claimed has been or will be used for a taxable purpose; however, if the amount of fuel involved is not more than 20 gallons, such person shall be guilty of a Class 1 misdemeanor; or

11. Uses any fuel for a taxable purpose for which the person knows or has reason to know that a refund of fuels tax has been issued; however, if the amount of fuel involved is not more than 20 gallons, such person shall be guilty of a Class 1 misdemeanor.

2000, cc. 729, 758; 2006, c. 594.

§ 58.1-2274. Unlawful importing, transportation, delivery, storage, acquiring or sale of fuel; sale to enforce assessment

A. Upon the discovery of any fuel illegally imported into, or illegally transported, delivered, stored, acquired, or sold in, the Commonwealth, the Commissioner may order the tank or other storage receptacle in which the fuel is located to be seized and locked or sealed until the tax, penalties and interest levied under this chapter are assessed and paid.

B. If the assessment for such tax is not paid within 30 days, the Commissioner is hereby authorized, in addition to the other remedies authorized in this chapter, to sell such fuel and use the proceeds of such sale to satisfy the assessment due, with any funds which exceed the assessment and costs of the sale being returned to the owner of the fuel.

C. All fuel and any property, tangible or intangible, which may be found upon the person or in any vehicle which such person is using, including the vehicle itself, to aid the person in the transportation or sale of illegally transported, delivered, stored, sold, imported or acquired fuel, and any property found in the immediate vicinity of any place where such illegally transported, delivered, stored, sold, imported or acquired fuel may be located, including motor vehicles, tanks, and other storage devices, used to aid in the illegal transportation or sale of such fuel, shall be deemed contraband and shall be forfeited to the Commonwealth.

D. Any efforts by the Department to effect the forfeiture allowed under the authority of this section shall be governed by Chapter 22.1 (§ 19.2-386.1 et seq.) of Title 19.2, mutatis mutandis. However, such procedures shall not be applicable to the Department's tax collection powers and the use of such powers to enforce a tax liability against the illegally transported, delivered, stored, sold, imported or acquired fuel.

2000, cc. 729, 758; 2012, cc. 283, 363, 756.

§ 58.1-2275. Record-keeping requirements

Each (i) person required or electing to be licensed under Article 2 (§ 58.1-2204 et seq.) of this chapter, (ii) distributor, retailer and bulk user not licensed under this chapter, and (iii) person required to be licensed under § 58.1-2244, shall keep and maintain all records pertaining to fuel received, produced, manufactured, refined, compounded, used, sold or delivered, together with delivery tickets, invoices, bills of lading, and such other pertinent records and papers as may be required by the Commissioner for the reasonable administration of this chapter. Such records shall be kept and maintained for a period to include the Department's current fiscal year and the previous three fiscal years.

2000, cc. 729, 758; 2002, c. 7.

§ 58.1-2276. Inspection of records

A. The Commissioner or any deputy, employee or agent authorized by the Commissioner may examine, during the usual business hours of the day, records, books, papers, storage tanks and any other equipment of any person required to maintain records as provided in § 58.1-2275 for the purpose of ascertaining the quantity of fuel received, produced, manufactured, refined, com-

pounded, used, sold, shipped, or delivered, to verify the truth and accuracy of any statement, report or return or to ascertain whether or not the tax levied by this chapter has been paid.

B. If a person required to maintain records as provided in § 58.1-2275 is open for business during hours of the day which might not be considered usual business hours for the Department, the Commissioner may examine the person's books and records during the person's normal business hours, which shall be those hours when the person is open for business.

2000, cc. 729, 758; 2001, c. 167.

§ 58.1-2277. Administrative authority

A. Employees of the Department designated by the Commissioner, upon presenting appropriate credentials and a written notice to the owner, operator, or agent in charge, are authorized to enter any place and to conduct inspections in accordance with this section. Inspections shall be performed in a reasonable manner and at times that are reasonable under the circumstances, taking into consideration the normal business hours of the place to be inspected.

B. Inspections may be conducted at any place where taxable fuel or fuel dyes or markers are, or may be, produced, altered, or stored, or at any inspection site where evidence of production, alteration, or storage may be discovered. These places may include, but shall not be limited to any: (i) terminal, (ii) fuel storage facility that is not a terminal, (iii) retail fuel facility, and (iv) designated inspection site.

C. Employees of the Department designated by the Commissioner may physically inspect, examine, and otherwise search any tank, reservoir, or other container that can or may be used for the production, storage, or transportation of fuel, fuel dyes or markers. Inspection may also be made of any equipment used for, or in connection with, the production, storage, or transportation of fuel, fuel dyes or markers, including equipment used for the dyeing or marking of fuel. Such employees may also inspect the books and records kept to determine fuel tax liability under this chapter.

D. Employees of the Department designated by the Commissioner may, on the premises or at a designated inspection site, take and remove samples of fuel in such reasonable quantities as are necessary to determine its composition.

2000, cc. 729, 758.

§ 58.1-2278. Equipment requirements

A. All fuel dispensed at retail shall be dispensed from metered pumps that indicate the total amount of fuel measured through the pumps. Each pump shall be marked to indicate the type of fuel dispensed.

B. A highway vehicle that transports fuel in a tank that is separate from the fuel supply tank of the vehicle shall not have a connection from the transporting tank to the motor or to the supply tank of the vehicle.

2000, cc. 729, 758.

§ 58.1-2279. Marking requirements for dyed diesel fuel storage facilities

A. A person who is a retailer of dyed diesel fuel or who stores dyed diesel fuel for use by that person or another person shall mark, with the phrase "Dyed Diesel Fuel, Nontaxable Use Only, Penalty for Taxable Use," or a similar phrase that clearly indicates that the diesel fuel is not to be used to operate a highway vehicle, each storage facility or pump from which dyed diesel fuel is dispensed, as follows:

1. The storage tank of the storage facility, if the storage tank is visible; and

2. The dispensing device that serves the storage facility.

B. The marking requirements of this section shall not apply to a storage facility that contains fuel used only in a heating, crop-drying, or manufacturing process, and is installed in a manner that makes use of the fuel for any other purpose improbable.

2000, cc. 729, 758.

Article 8 - ASSESSMENTS AND COLLECTIONS

§ 58.1-2280. Estimates of fuel subject to tax; assessments; notice of assessment

When any licensee neglects, fails or refuses to make and file any report as required by this chapter or files an incorrect or fraudulent report, the Commissioner shall determine, from any information obtainable, the number of gallons of fuel with respect to which the licensee has incurred liability under this chapter. The Commissioner is authorized to make an assessment for the tax and any penalty and interest properly due against such licensee. The notice of assessment shall be sent to the licensee or delivered by the Department to the last known address appearing in the Commissioner's files. Such notice, when sent or delivered in accordance with these requirements, shall be sufficient regardless of whether or not it was ever received.

2000, cc. 729, 758; 2006, c. 594.

§ 58.1-2281. Application to Commissioner for correction

A. Any person assessed with any tax administered by the Department may, within thirty days from the date of such assessment, apply for relief to the Commissioner. Such application shall be in the form prescribed by the Department, and shall fully set forth the grounds upon which the taxpayer relies and all facts relevant to the taxpayer's contention. The Commissioner may also require such additional information, testimony or documentary evidence as he deems necessary to a fair determination of the application.

B. On receipt of a written notice of intent to file under this section, the Commissioner shall refrain from collecting the tax until the time for filing hereunder has expired, unless he determines that collection is in jeopardy.

2000, cc. 729, 758.

§ 58.1-2282. Appeal of Commissioner's decisions

A. Any person against whom an assessment, order or decision of the Commissioner has been adversely rendered, which assessment, order, or decision relates to the collection of unreported, incorrectly or fraudulently reported taxes, the granting or canceling of a license, the filing of a bond, an increase in the amount of a bond, a change of surety on a bond, the filing of reports, the examination of records, or any other matter wherein the findings are in the discretion of the Commissioner, may, within thirty days from the date thereof, file a petition of appeal from such assessment, order, or decision, in the circuit court in the city or county wherein such person resides, provided that any petition for a refund for taxes timely paid shall be filed within one year of the date of payment. A copy of the petition shall be sent to the Commissioner at the time of the filing with the court. The original shall show, by certificate, the date of mailing such copy to the Commissioner.

B. In any proceeding under this section, the assessments by the Commissioner shall be presumed correct. The burden of proof shall be upon the petitioner to show that the assessment was incorrect and contrary to law. The circuit court is authorized to enter judgment against such person for the taxes, penalty, and interest due. The failure by any such person to appeal under the provisions of this section within the time period specified shall render the assessment, order, or decision of the Commissioner conclusively valid and binding upon such person. Such person or the Commissioner may petition the Court of Appeals from the final decision of the circuit court.

2000, cc. 729, 758.

§ 58.1-2283. Jeopardy assessment

If the Commissioner (i) receives notice from a supplier pursuant to subsection C of § 58.1-2237 of any licensed distributor or licensed importer who did not pay the tax due the supplier, or (ii) is of the opinion that the collection of any tax or any amount of tax required to be collected and paid under this chapter will be jeopardized by delay, the Commissioner shall make an assessment of the tax or amount of tax required to be collected and shall mail or issue a notice of such assessment to the taxpayer with a demand for immediate payment of the tax or of the deficiency in tax declared to be in jeopardy, including penalties and interest. In the case of a tax for a current period, the Commissioner may declare the taxable period of the taxpayer immediately terminated and shall mail or issue the notice of such finding and declaration to the taxpayer with a demand for immediate payment of the tax based on the period declared terminated, and such tax shall be immediately due and payable. Assessments provided for in this section shall become immediately due and payable. If any such tax, penalty or interest is not paid upon demand, the Commissioner may proceed to (i) collect the same by legal process, including but not limited to filing a memorandum of lien pursuant to § 58.1-2284 or (ii) accept a surety bond or other security deemed to sufficiently ensure full payment of the amount of tax, penalty and interest assessed against the taxpayer.

2000, cc. 729, 758; 2004, c. 340.

§ 58.1-2284. Memorandum of lien for collection of taxes

A. If any taxes or fees, including penalties and interest, due under this chapter become delinquent or are past due, the Commissioner may file a memorandum of lien in the circuit court clerk's office of the county or city in which the taxpayer's place of business is located, or in which the taxpayer resides. If the taxpayer has no place of business or residence within the Commonwealth, such memorandum may be filed in the Circuit Court of the City of Richmond. A copy of such memorandum may also be filed in the clerk's office of all counties and cities in which the taxpayer owns real estate. Such memorandum shall be recorded in the judgment docket book and shall have the effect of a judgment in favor of the Commonwealth, to be enforced as provided in Article 19 (§ 8.01-196 et seq.) of Chapter 3 of Title 8.01, mutatis mutandis, except that a writ of fieri facias may be issued any time after the memorandum is filed. The lien on real estate shall become effective at the time the memorandum is filed in the jurisdiction in which the real estate is located.

B. Recordation of a memorandum of lien hereunder shall not affect the right to a refund or exoneration under this chapter nor shall an application for correction pursuant to § 58.1-2281 affect the power of the Commissioner to collect the tax, except as specifically provided in this chapter.

2000, cc. 729, 758.

§ 58.1-2285. Period of limitations

The taxes imposed by this chapter shall be assessed within three years from the date on which such taxes became due and payable. In the case of a false or fraudulent return with intent to evade payment of the taxes imposed by this chapter, or a failure to file a return, the taxes may be assessed, or a proceeding in court for the collection of such taxes may be begun without assessment, at any time. The Commissioner shall not examine any person's records beyond the three-year period of limitations unless he has reasonable evidence of fraud, or reasonable cause to believe that such person was required by law to file a return and failed to do so.

2000, cc. 729, 758.

§ 58.1-2286. Waiver of time limitation on assessment of taxes

If, before the expiration of the time prescribed for assessment of any tax levied pursuant to this title and assessable by the Department, both the Commissioner and the taxpayer have consented in writing to its assessment after such time, the tax may be assessed any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

2000, cc. 729, 758.

§ 58.1-2287. Suits to recover taxes

If any person fails to pay the tax or any civil penalty levied under this chapter, including accrued penalties and interest, when due, the Attorney General or the Commissioner may bring an appropriate action for the recovery of such tax, penalty and interest, provided that if it is found that

such failure to pay was willful, judgment shall be rendered for double the amount of the tax or civil penalty found to be due, with costs.

2000, cc. 729, 758.

§ 58.1-2288. Liability of corporate or partnership officer; penalty

Any corporate or partnership officer who directs or causes the business of which he is a corporate or partnership officer to fail to pay, collect, or truthfully account for and pay over any fuels tax for which the business is liable to the Commonwealth or to a trustee, shall, in addition to other penalties provided by law, be liable for a penalty in the amount of the tax evaded, or not paid, collected, or accounted for and paid over. The penalty shall be assessed and collected in the same manner as such taxes are assessed and collected. However, this penalty shall be dischargeable in bankruptcy proceedings.

2000, cc. 729, 758.

Article 9 - DISPOSITION OF TAX REVENUES

. (For contingent expiration, see note) Disposition of tax revenue generally

A. Unless otherwise provided in this section, all taxes and fees, including civil penalties, collected by the Commissioner pursuant to this chapter, less a reasonable amount to be allocated for refunds, shall be promptly paid into the state treasury and shall constitute special funds within the Commonwealth Transportation Fund. Any balances remaining in these funds at the end of the year shall be available for use in subsequent years for the purposes set forth in this chapter, and any interest income on such funds shall accrue to these funds.

The Governor is hereby authorized to transfer out of such fund an amount necessary for the inspection of gasoline and motor grease measuring and distributing equipment, and for the inspection and analysis of gasoline for purity.

B. The tax collected on each gallon of aviation fuel sold and delivered or used in this Commonwealth, less refunds, shall be paid into a special fund of the state treasury. Proceeds of this special fund within the Commonwealth Transportation Fund shall be disbursed upon order of the Department of Aviation, on warrants of the Comptroller, to defray the cost of the administration of the laws of this Commonwealth relating to aviation, for the construction, maintenance and improvement of airports and landing fields to which the public now has or which it is proposed shall have access, and for the promotion of aviation in the interest of operators and the public generally.

C. One-half cent of the tax collected on each gallon of fuel on which a refund has been paid for gasoline, gasohol, diesel fuel, blended fuel, or alternative fuel, for fuel consumed in tractors and unlicensed equipment used for agricultural purposes shall be paid into a special fund of the state treasury, known as the Virginia Agricultural Foundation Fund, to be disbursed to make certain refunds and defray the costs of the research and educational phases of the agricultural program,

including supplemental salary payments to certain employees at Virginia Polytechnic Institute and State University, the Department of Agriculture and Consumer Services and the Virginia Truck and Ornamentals Research Station, including reasonable expenses of the Virginia Agricultural Council.

D. One and one-half cents of the tax collected on each gallon of fuel used to propel a commercial watercraft upon which a refund has been paid shall be paid to the credit of the Game Protection Fund of the state treasury to be made available to the Board of Game and Inland Fisheries until expended for the purposes provided generally in subsection C of § 29.1-701, including acquisition, construction, improvement and maintenance of public boating access areas on the public waters of this Commonwealth and for other activities and purposes of direct benefit and interest to the boating public and for no other purpose. However, one and one-half cents per gallon on fuel used by commercial fishing, oystering, clamming, and crabbing boats shall be paid to the Department of Transportation to be used for the construction, repair, improvement and maintenance of the public docks of this Commonwealth used by said commercial watercraft. Any expenditures for the acquisition, construction, improvement and maintenance of the public docks shall be made according to a plan developed by the Virginia Marine Resources Commission.

From the tax collected pursuant to the provisions of this chapter from the sales of gasoline used for the propelling of watercraft, after deduction for lawful refunds, there shall be paid into the state treasury for use by the Marine Resources Commission, the Virginia Soil and Water Conservation Board, the State Water Control Board, and the Commonwealth Transportation Board to (i) improve the public docks as specified in this section, (ii) improve commercial and sports fisheries in Virginia's tidal waters, (iii) make environmental improvements including, without limitation, fisheries management and habitat enhancement in the Chesapeake and its tributaries, and (iv) further the purposes set forth in § 33.2-1510, a sum as established by the General Assembly.

E. Of the remaining revenues deposited into the Commonwealth Transportation Fund pursuant to this chapter less refunds authorized by this chapter: (i) 80 percent shall be deposited into the Highway Maintenance and Operating Fund established pursuant to § 33.2-1530, (ii) 11.3 percent shall be deposited into the Transportation Trust Fund established pursuant to § 33.2-1524, (iii) four percent shall be deposited into the Priority Transportation Fund, (iv) 3.11 percent shall be deposited into the Commonwealth Transit Capital Fund established pursuant to subdivision A 4 c of § 58.1-638, (v) one percent shall be transferred to a special fund within the Commonwealth Transportation Fund in the state treasury, to be used to meet the necessary expenses of the Department of Motor Vehicles, (vi) 0.35 of one percent shall be deposited into the Commonwealth Mass Transit Fund established pursuant to subdivision A 4 of § 58.1-638 and allocated to subdivision A 4 b (1)(b), and (vii) 0.24 of one percent shall be deposited into the Commonwealth Mass Transit Fund established pursuant to subdivision A 4 of § 58.1-638 and allocated to subdivision A 4 b (1)(a).

2000, cc. 729, 758; 2007, c. 896; 2013, c. 766; 2015, c. 684.

. (For contingent effective date, see note) Disposition of tax revenue generally

A. Unless otherwise provided in this section, all taxes and fees, including civil penalties, collected by the Commissioner pursuant to this chapter, less a reasonable amount to be allocated for refunds, shall be promptly paid into the state treasury and shall constitute special funds within the Commonwealth Transportation Fund. Any balances remaining in these funds at the end of the year shall be available for use in subsequent years for the purposes set forth in this chapter, and any interest income on such funds shall accrue to these funds.

The Governor is hereby authorized to transfer out of such fund an amount necessary for the inspection of gasoline and motor grease measuring and distributing equipment, and for the inspection and analysis of gasoline for purity.

B. The tax collected on each gallon of aviation fuel sold and delivered or used in this Commonwealth, less refunds, shall be paid into a special fund of the state treasury. Proceeds of this special fund within the Commonwealth Transportation Fund shall be disbursed upon order of the Department of Aviation, on warrants of the Comptroller, to defray the cost of the administration of the laws of this Commonwealth relating to aviation, for the construction, maintenance and improvement of airports and landing fields to which the public now has or which it is proposed shall have access, and for the promotion of aviation in the interest of operators and the public generally.

C. One-half cent of the tax collected on each gallon of fuel on which a refund has been paid for gasoline, gasohol, diesel fuel, blended fuel, or alternative fuel, for fuel consumed in tractors and unlicensed equipment used for agricultural purposes shall be paid into a special fund of the state treasury, known as the Virginia Agricultural Foundation Fund, to be disbursed to make certain refunds and defray the costs of the research and educational phases of the agricultural program, including supplemental salary payments to certain employees at Virginia Polytechnic Institute and State University, the Department of Agriculture and Consumer Services and the Virginia Truck and Ornamentals Research Station, including reasonable expenses of the Virginia Agricultural Council.

D. One and one-half cents of the tax collected on each gallon of fuel used to propel a commercial watercraft upon which a refund has been paid shall be paid to the credit of the Game Protection Fund of the state treasury to be made available to the Board of Game and Inland Fisheries until expended for the purposes provided generally in subsection C of § 29.1-701, including acquisition, construction, improvement and maintenance of public boating access areas on the public waters of this Commonwealth and for other activities and purposes of direct benefit and interest to the boating public and for no other purpose. However, one and one-half cents per gallon on fuel used by commercial fishing, oystering, clamming, and crabbing boats shall be paid to the Department of Transportation to be used for the construction, repair, improvement and maintenance of the public docks of this Commonwealth used by said commercial watercraft. Any expenditures for the

acquisition, construction, improvement and maintenance of the public docks shall be made according to a plan developed by the Virginia Marine Resources Commission.

From the tax collected pursuant to the provisions of this chapter from the sales of gasoline used for the propelling of watercraft, after deduction for lawful refunds, there shall be paid into the state treasury for use by the Marine Resources Commission, the Virginia Soil and Water Conservation Board, the State Water Control Board, and the Commonwealth Transportation Board to (i) improve the public docks as specified in this section, (ii) improve commercial and sports fisheries in Virginia's tidal waters, (iii) make environmental improvements including, without limitation, fisheries management and habitat enhancement in the Chesapeake and its tributaries, and (iv) further the purposes set forth in § 33.2-1510, a sum as established by the General Assembly.

E. Of the remaining revenues deposited into the Commonwealth Transportation Fund pursuant to this chapter less refunds authorized by this chapter: (i) 80 percent shall be deposited into the Highway Maintenance and Operating Fund established pursuant to § 33.2-1530, (ii) 15 percent shall be deposited into the Transportation Trust Fund established pursuant to § 33.2-1524, (iii) four percent shall be deposited into the Priority Transportation Fund, and (iv) one percent shall be transferred to a special fund within the Commonwealth Transportation Fund in the state treasury, to be used to meet the necessary expenses of the Department of Motor Vehicles.

2000, cc. 729, 758; 2007, c. 896; 2013, c. 766.

Article 10 - TAX ON FUEL IN INVENTORY

§ 58.1-2290. Repealed

Repealed by Acts 2013, c. 766, cl. 4.

§ 58.1-2290.1. Repealed

Repealed by Acts 2016, c. 305, cl. 2.

Chapter 22.1 - MOTOR VEHICLE FUELS SALES TAX IN CERTAIN TRANSPORTATION DISTRICTS

§ 58.1-2291. Title

This chapter shall be known and may be cited as the "Motor Vehicle Fuels Sales Tax Act."

2012, cc. 217, 225.

§ 58.1-2292. Definitions

As used in this chapter unless the context requires a different meaning:

"Commissioner" means the Commissioner of the Department of Motor Vehicles.

"Cost price" means the same as that term is defined in § 58.1-602, and also includes all federal and state excise taxes and storage tank fees paid by the distributor. "Cost price" does not include

separately stated federal diesel fuel excise taxes, unless the distributor fails to exclude the federal diesel excise tax when collecting the tax imposed pursuant to this chapter.

"Department" means the Department of Motor Vehicles, acting directly or through its duly authorized officers and agents.

"Distributor" means (i) any person engaged in the business of selling fuels in the Commonwealth who brings, or causes to be brought, into the Commonwealth from outside the Commonwealth any fuels for sale, or any other person engaged in the business of selling fuels in the Commonwealth; (ii) any person who makes, manufactures, fabricates, processes, or stores fuels in the Commonwealth for sale in the Commonwealth; or (iii) any person engaged in the business of selling fuels outside the Commonwealth who ships or transports fuels to any person in the business of selling fuels in the Commonwealth.

"Fuel" means any fuel subject to tax under Chapter 22 (§ 58.1-2200 et seq.).

"Gross sales" means the same as that term is defined in § 58.1-602.

"Retail dealer" means any person, including a distributor, who sells fuels to a consumer or to any person for any purpose other than resale.

"Sale" means the same as that term is defined in § 58.1-602 and also includes the distribution of fuel by a distributor to itself as a retail dealer.

"Sales price" means the same as that term is defined in § 58.1-602 and also includes all transportation and delivery charges, regardless of whether the charges are separately stated on the invoice. Sales price does not include separately stated federal diesel fuel excise taxes, unless the distributor fails to exclude the federal diesel excise tax when collecting the tax imposed pursuant to this chapter.

2012, cc. 217, 225.

§ 58.1-2293. Regulation; forms

The Commissioner may promulgate regulations and shall prescribe such forms as shall be necessary to effectuate and enforce this chapter.

2012, cc. 217, 225.

§ 58.1-2294. Disclosure of information; penalties

A. The Commissioner may divulge tax information collected in administering this chapter to the Tax Commissioner, or to any director of finance or other authorized collector of county, city, or town taxes who, for the performance of his official duties, requests the same in writing setting forth the reasons for such request. The Commissioner may also divulge to the executive directors of the Northern Virginia Transportation Commission and the Potomac and Rappahannock Transportation Commission for their confidential use such tax information as may be necessary to facilitate the collection of the taxes levied under this chapter.

B. Any person to whom tax information is divulged pursuant to this section shall be subject to the prohibitions and penalties prescribed in § 58.1-3 as though that person were a tax official as defined in that section.

2012, cc. 217, 225.

. (Contingent expiration date -- see note*) Levy; payment of tax

A. 1. In addition to all other taxes now imposed by law, there is hereby imposed a tax upon every distributor who engages in the business of selling fuels at wholesale to retail dealers for retail sale in any county or city that is a member of (i) any transportation district in which a rapid heavy rail commuter mass transportation system operating on an exclusive right-of-way and a bus commuter mass transportation system are owned, operated, or controlled by an agency or commission as defined in § 33.2-1901 or (ii) any transportation district that is subject to subsection C of § 33.2-1915 and that is contiguous to the Northern Virginia Transportation District.

2. In addition to all other taxes now imposed by law, there is hereby imposed a tax upon every distributor who engages in the business of selling fuels at wholesale to retail dealers for retail sale in any county or city that is located in a Planning District established pursuant to Chapter 42 (§ 15.2-4200 et seq.) of Title 15.2 that (i) as of January 1, 2013, has a population of not less than 1.5 million but fewer than two million, as shown by the most recent United States Census, has not less than 1.2 million but fewer than 1.7 million motor vehicles registered therein, and has a total transit ridership of not less than 15 million but fewer than 50 million riders per year across all transit systems within the Planning District or (ii) as shown by the most recent United States Census meets the population criteria set forth in clause (i) and also meets the vehicle registration and ridership criteria set forth in clause (i). In any case in which the tax is imposed pursuant to clause (ii) such tax shall be effective beginning on the July 1 immediately following the calendar year in which all of the criteria have been met.

B. The tax shall be imposed at a rate of 2.1 percent of the sales price charged by a distributor for fuels sold to a retail dealer for retail sale in any such county or city. In any such sale to a retail dealer in which the distributor and the retail dealer are the same person, the sales price charged by the distributor shall be the cost price to the distributor of the fuel.

The tax levied under this section shall be imposed at the time of sale by the distributor to the retail dealer.

C. The tax imposed by this section shall be paid by the distributor, but the distributor shall separately state the amount of the tax and add such tax to the sales price or charge. Thereafter, such tax shall be a debt from the retail dealer to the distributor until paid and shall be recoverable at law in the same manner as other debts. No action at law or suit in equity under this chapter shall be maintained in the Commonwealth by any distributor who is not registered under § 58.1-2299.2 or is delinquent in the payment of taxes imposed under this chapter.

2012, cc. 217, 225; 2013, c. 766.

. (Contingent effective date -- see note*) Levy; payment of tax

A. In addition to all other taxes now imposed by law, there is hereby imposed a tax upon every distributor who engages in the business of selling fuels at wholesale to retail dealers for retail sale in any county or city that is a member of (i) any transportation district in which a rapid heavy rail commuter mass transportation system operating on an exclusive right-of-way and a bus commuter mass transportation system are owned, operated, or controlled by an agency or commission as defined in § 33.2-1901 or (ii) any transportation district that is subject to subsection C of § 33.2-1915 and that is contiguous to the Northern Virginia Transportation District.

The tax shall be imposed at a rate of 2.1 percent of the sales price charged by a distributor for fuels sold to a retail dealer for retail sale in any such county or city. In any such sale to a retail dealer in which the distributor and the retail dealer are the same person, the sales price charged by the distributor shall be the cost price to the distributor of the fuel.

The tax levied under this section shall be imposed at the time of sale by the distributor to the retail dealer.

B. The tax imposed by this section shall be paid by the distributor, but the distributor shall separately state the amount of the tax and add such tax to the sales price or charge. Thereafter, such tax shall be a debt from the retail dealer to the distributor until paid and shall be recoverable at law in the same manner as other debts. No action at law or suit in equity under this chapter shall be maintained in the Commonwealth by any distributor who is not registered under § 58.1-2299.2 or is delinquent in the payment of taxes imposed under this chapter.

2012, cc. 217, 225.

*This section is set out twice because the 14th enactment of Chapter 766 of the Acts of Assembly of 2013 states: "That the provisions of this act that generate additional revenue through state taxes or fees for transportation (i) throughout the Commonwealth and in Planning District 8 and Planning District 23 or (ii) in any other Planning District that becomes subject to the state taxes or fees imposed solely in Planning Districts pursuant to this act shall expire on December 31 of any year in which the General Assembly appropriates any of such additional revenues for any non-transportation-related purpose or transfers any of such additional revenues that are to be deposited into the Commonwealth Transportation Fund or any subfund thereof pursuant to general law for a non-transportation-related purpose. In the event a local government of any county or city wherein the additional taxes and fees are levied appropriates or allocates any of such additional revenues to a non-transportation purpose, such locality shall not be the direct beneficiary of any of the revenues generated by the taxes or fees in the year immediately succeeding the year in which revenues were appropriated or allocated to a non-transportation purpose."

§ 58.1-2296. Backup tax; liability

A. There is hereby imposed a tax at the rate specified by § 58.1-2295 on fuel not subject to the tax imposed under that section at the time of sale by the distributor to the retail dealer, but subsequently sold or used in such a manner that the previous sale should have been taxed under that section.

B. The person selling or using fuel that is subject to the tax imposed by this section shall be liable for the tax.

C. The tax liability imposed by this section shall be in addition to any other penalty imposed pursuant to this chapter.

2012, cc. 217, 225.

§ 58.1-2297. When tax return and payment are due; credits for overpayment

A. Every distributor required to collect the taxes imposed under this chapter shall file a return with the Commissioner. Such return shall be in the form specified by the Commissioner and contain the information required by the Commissioner. The return and the payment for the taxes levied pursuant to this chapter shall be due for each full month in a calendar year. Any return and payment required under this section shall be deemed timely filed if received by the Commissioner by midnight of the twentieth day of the second month succeeding the month for which the return and payment are due. Each return shall report tax liabilities that accrue in the month for which the return is due.

B. Returns and payments shall be (i) postmarked on or before the fifteenth day of the second month succeeding the month for which the return and payment are due or (ii) received by the Department by the twentieth day of the second month succeeding the month for which the return and payment are due. However, a monthly return of the tax for the month of May shall be (a) postmarked by June 25 or (b) received by the Commissioner by the last business day the Department is open for business in June.

If a tax return and payment due date falls on a Saturday, Sunday, or a state or banking holiday, the return shall be postmarked on or before the fifteenth day of the second month succeeding the month for which the return and payment are due or received by the Department by midnight of the next business day the Department is open for business. This provision shall not apply to a return of the tax for the month of May.

A return and payment shall be deemed postmarked if it carries the official cancellation mark of the United States Postal Service or other postal or delivery service.

C. Notwithstanding the provisions of any other section in this chapter, the Commissioner may require all or certain distributors to file tax returns and payments electronically.

D. Persons incurring liability under § 58.1-2296 for the backup tax on fuel shall file a return together with a payment of tax due within 30 calendar days of incurring such liability.

E. Any person entitled to a credit for overpayment of a tax levied under this chapter shall claim such credit on his monthly return no later than one year following the date of the overpayment.

2012, cc. 217, 225.

§ 58.1-2298. Deductions

For purposes of compensating a distributor for accounting for and remitting the tax levied by this chapter, such distributor shall be allowed to deduct two percent of the tax otherwise due in submitting his return and paying the amount due by him if the amount was not delinquent at the time of payment.

2012, cc. 217, 225.

§ 58.1-2299. Bad debts

A. In any return filed under the provisions of this chapter, a distributor may credit, against the tax shown to be due on the return, the amount of tax previously returned and paid on accounts which are owed to the distributor and which have been found to be worthless within the period covered by the return. The credit, however, shall not exceed the amount of the uncollected sales price determined by treating prior payments on each debt as consisting of the same proportion of the sales price, tax levied under this chapter, and other nontaxable charges as the total debt originally owed to the distributor. The amount of accounts for which a credit has been taken that are thereafter in whole or in part paid to the dealer shall be included in the first return filed after such collection.

B. Notwithstanding any other provision of this section, a distributor whose volume and character of uncollectible accounts, including checks returned for insufficient funds, renders it impractical to substantiate the credit on an account-by-account basis may, subject to the approval of the Department, utilize an alternative method of substantiating the credit.

2012, cc. 217, 225.

§ 58.1-2299.1. Exclusion from professional license tax

The amount of the tax imposed by this chapter and collected by a distributor in any taxable year shall be excluded from gross receipts for purposes of any tax imposed under Chapter 37 (§ 58.1-3700 et seq.).

2012, cc. 217, 225.

§ 58.1-2299.2. Certificates of registration; issuance; civil penalty

A. Every person desiring to engage in the business of a distributor and to sell fuel to a retail dealer for retail sale within any county or city that is a member of (i) any transportation district in which a rapid heavy rail commuter mass transportation system operating on an exclusive right-of-way and a bus commuter mass transportation system are owned, operated, or controlled by an agency or commission as defined in § 33.2-1901 or (ii) any transportation district that is subject to subsection C of § 33.2-1915 and that is contiguous to the Northern Virginia Transportation District

shall file an application for a certificate of registration with the Commissioner for collection and payment of the tax imposed pursuant to this chapter.

B. The application for certificate of registration shall be on a form prescribed by the Commissioner and shall set forth the name under which the applicant intends to transact the business for which registration is required under subsection A, the principal location of the place of business, and such other information as the Commissioner may require.

Each applicant shall sign the application as owner of the business. If the business is owned by an association, partnership, or corporation, the application shall be signed by a member, partner, executive officer, or other person specifically authorized by the association, partnership, or corporation to sign.

C. Upon approval of the application by the Commissioner, a certificate of registration shall be issued. The certificate is not assignable but shall be valid only for the person in whose name it is issued.

D. If the holder of a certificate of registration issued under this section ceases to conduct his business in the Commonwealth at the principal place of business designated in the certificate, the certificate shall automatically expire. The holder shall notify the Commissioner, in writing, within 30 days after he has ceased to conduct the business. If the holder of the certificate desires to continue in the business for which he was registered but at a different location, he shall so inform the Commissioner, in writing, at least 30 days prior to the contemplated relocation. The Commissioner shall then issue an amended certificate designating the new principal place of business. The amended certificate shall become effective on the date that the certificate for the previous place of business expires. There shall be no charge for obtaining an amended certificate.

E. The holder of the certificate of registration issued under this chapter who discontinues in the Commonwealth the business for which the certificate was issued, whether by transferring his business to another person, by selling out his business or stock of goods, or by quitting the business, shall notify the Commissioner in writing within 15 days of such discontinuance and shall surrender the certificate to the Commissioner. The notice shall state the effective date of the discontinuance and, if the certificate holder has transferred the business or otherwise relinquished control to another person by sale or otherwise, the date of the sale or transfer and the name and address of the person to whom the business is transferred or relinquished. The notice shall also include any other information required by the Commissioner.

F. Whenever a person fails to comply with any provision of this chapter or any rule or regulation relating thereto, the Commissioner, after giving such person 10 days' notice in writing, may revoke or suspend the certificate of registration held by such person. The notice may be personally served or served by registered mail directed to the last known address of such person.

G. Any person required to obtain a certificate of registration under this chapter who engages in business in the Commonwealth without obtaining such certificate, or after such certificate has

been suspended or revoked, and each officer of any corporation which so engages in business, shall be subject to a civil penalty. The amount of the civil penalty assessed against a person for his (i) first violation shall be $5,000 and (ii) second and subsequent violations shall be $10,000. Each day's continuance in business in violation of this section shall constitute a separate offense.

2012, cc. 217, 225.

§ 58.1-2299.3. Collection of tax

Any distributor collecting the tax on transactions exempt or not taxable under this chapter shall transmit to the Commissioner such erroneously or illegally collected tax unless or until he can affirmatively show that the tax has since been refunded to the purchaser or credited to his account.

Any distributor who neglects, fails, or refuses to collect such tax upon every taxable sale made by him, his agents, or his employees shall be liable for and pay the tax himself, and such distributor shall not thereafter be entitled to sue for or recover in the Commonwealth any part of the purchase price from the purchaser until such tax is paid. Moreover, any distributor who neglects, fails, or refuses to pay or collect the tax herein provided, either by himself or through his agents or employees, is guilty of a Class 1 misdemeanor.

All sums collected by a distributor as required by this chapter shall be deemed to be held in trust for the Commonwealth.

2012, cc. 217, 225.

§ 58.1-2299.4. Absorption of tax prohibited

No person shall advertise or hold out to the public, directly or indirectly, that he will absorb all or any part of the tax levied under this chapter, or that he will relieve the purchaser of the payment of all or any part of such tax. Any person who violates this section shall be guilty of a Class 2 misdemeanor.

2012, cc. 217, 225.

§ 58.1-2299.5. Sale of business

If any distributor liable for any tax, penalty, or interest levied under this chapter sells out his business or stock of goods or quits the business, he shall make a final return and payment within 15 days after the date of selling or quitting the business. His successors or assigns, if any, shall withhold sufficient of the purchase money to cover the amount of such taxes, penalties, and interest due and unpaid until such former owner produces a receipt from the Commissioner showing that they have been paid or a certificate stating that no taxes, penalties, or interest are due. If the purchaser of a business or stock of goods fails to withhold the purchase money as provided in this section, he shall be personally liable for the payment of the taxes, penalties, and interest due and unpaid on account of the operation of the business by any former owner.

2012, cc. 217, 225.

§ 58.1-2299.6. Late filing or payment; civil penalty

A. Any person who fails to file a return required by this chapter on a timely basis shall be subject to a civil penalty. The amount of the civil penalty shall be as follows:

1. $50 for the first violation;

2. $200 for the second violation;

3. $500 for the third violation; and

4. $1,000 for the fourth and subsequent violations.

After imposition of the penalty under this subsection, the amount of the penalty, if not paid within 30 days of receipt of notice of such penalty, shall bear interest at the rate of one percent per month or fraction thereof until the penalty has been paid.

B. Interest at the rate of one percent per month or fraction thereof shall accrue on the amount of any taxes due under this chapter that have not been paid to the Commissioner on a timely basis. Such interest shall continue to accrue until such taxes have been paid.

Any person who fails to pay the Commissioner on a timely basis the amount of taxes due under this chapter shall also be subject to a civil penalty. The amount of the civil penalty shall be equal to 10 percent of the tax due or $50, whichever is greater; however, penalties resulting from an audit shall be equal to 10 percent of the tax due.

After imposition of the civil penalty under this subsection, the amount of the penalty, if not paid within 30 days of receipt of notice of such penalty, shall bear interest at the rate of one percent per month until both tax and penalty have been paid.

C. The Commissioner is authorized to reduce or waive any penalties under this section if the violation is due to a reasonable or good cause shown to the satisfaction of the Commissioner.

2012, cc. 217, 225.

§ 58.1-2299.7. False or fraudulent return; civil penalty

Any person liable for a tax levied under this chapter who files a false or fraudulent return with the intent to evade the tax shall be subject to a civil penalty. The amount of the civil penalty shall be equal to 50 percent of the amount of the tax intended to be evaded by the filing of such return. The civil penalty shall be in addition to the amount of the tax intended to be evaded.

2012, cc. 217, 225.

§ 58.1-2299.8. Payment of civil penalty; disposition; waiver

Any civil penalty assessed pursuant to this chapter shall be payable to the Department, shall be in addition to any other penalty or tax that may be imposed as provided in this chapter, and shall be collectible by the Commissioner in the same manner as if it were part of the tax levied. The amount of any civil penalty imposed under this chapter shall bear interest at the rate of one percent per month until paid. All civil penalties imposed under this chapter shall be deposited as provided in § 58.1-2299.20. Notwithstanding any other provisions of this chapter, the

Commissioner is authorized to reduce or waive any civil penalties under this chapter if the violation is due to a reasonable or good cause shown to the satisfaction of the Commissioner.

2012, cc. 217, 225.

§ 58.1-2299.9. Prohibited acts; criminal penalties

A. Any person who commits any of the following acts is guilty of a Class 1 misdemeanor:

1. Failing to obtain a certificate of registration required by this chapter;

2. Failing to file a return required by this chapter;

3. Failing to pay a tax when due under this chapter;

4. Making a false statement in an application, return, ticket, invoice, statement, or any other document required under this chapter;

5. Failing to keep records as required under this chapter; or

6. Refusing to allow the Commissioner or a representative of the Commissioner to examine the person's books and records concerning transactions taxable under this chapter.

B. A person who knowingly commits any of the following acts is guilty of a Class 1 misdemeanor:

1. Dispenses into the supply tank of a highway vehicle, watercraft, or aircraft any fuel on which a tax required to be levied under this chapter has not been paid; or

2. Allows to be dispensed into the supply tank of a highway vehicle, watercraft, or aircraft any fuel on which a tax required to be levied under this chapter has not been paid.

2012, cc. 217, 225.

§ 58.1-2299.10. Willful commission of prohibited acts; criminal penalties

Any person who willfully commits any of the following acts with the intent to (i) evade or circumvent the taxes imposed under this chapter or (ii) assist any other person in efforts to evade or circumvent such taxes is guilty of a Class 6 felony, if he:

1. Does not pay the taxes imposed under this chapter and diverts the proceeds from such taxes for other purposes;

2. Is a distributor required to be registered under the provisions of this chapter, or the agent or representative of such a distributor, and converts or attempts to convert proceeds from taxes imposed under this chapter for the use of the distributor or the distributor's agent or representative, with the intent to defraud the Commonwealth;

3. Illegally collects taxes imposed under this chapter when not authorized or licensed by the Commissioner to do so;

4. Conspires with any other person or persons to engage in an act, plan, or scheme to defraud the Commonwealth of proceeds from taxes levied under this chapter;

5. Fails to remit to the Commissioner any tax levied pursuant to this chapter, if he (i) has added, or represented that he has added, the tax to the sales price for the fuel and (ii) has collected the amount of the tax; or

6. Applies for or collects from the Department a tax credit when the person knows or has reason to know that fuel for which the credit is claimed has been or will be used for a taxable purpose; however, if the amount of fuel involved is not more than 20 gallons, such person is guilty of a Class 1 misdemeanor.

2012, cc. 217, 225.

§ 58.1-2299.11. Bond

The Commissioner may, when in his judgment it is necessary and advisable so to do in order to secure the collection of the tax levied by this chapter, require any person subject to such tax to file with him a bond, with such surety as the Commissioner determines is necessary to secure the payment of any tax, penalty, or interest due or which may become due from such person. In lieu of such bond, securities approved by the Commissioner may be deposited with the State Treasurer, which securities shall be kept in the custody of the State Treasurer and shall be sold by him, at the request of the Commissioner, at public or private sale if it becomes necessary to do so in order to recover any tax, penalty, or interest due the Commonwealth under this chapter. Upon any such sale, the surplus, if any, above the amounts due under this chapter shall be returned to the person who deposited the securities.

2012, cc. 217, 225.

§ 58.1-2299.12. Jeopardy assessment

If the Commissioner is of the opinion that the collection of any tax or any amount of tax required to be collected and paid under this chapter will be jeopardized by delay, he shall make an assessment of the tax or amount of tax required to be collected and shall mail or issue a notice of such assessment to the taxpayer together with a demand for immediate payment of the tax or of the deficiency in tax declared to be in jeopardy including penalties. In the case of a tax for a current period, the Commissioner may declare the taxable period of the taxpayer immediately terminated and shall cause notice of such finding and declaration to be mailed or issued to the taxpayer together with a demand for immediate payment of the tax based on the period declared terminated and such tax shall be immediately due and payable, whether or not the time otherwise allowed by law for filing a return and paying the tax has expired. Assessments provided for in this section shall become immediately due and payable, and if any such tax, penalty, or interest is not paid upon demand of the Commissioner, he shall proceed to collect the same by legal process, or, in his discretion, he may require the taxpayer to file such bond as in his judgment may be sufficient to protect the interest of the Commonwealth.

2012, cc. 217, 225.

§ 58.1-2299.13. Memorandum of lien for collection of taxes

A. If any taxes or fees, including penalties and interest, due under this chapter become delinquent or are past due, the Commissioner may file a memorandum of lien in the circuit court clerk's office of the county or city in which the taxpayer's place of business is located or in which the taxpayer resides. If the taxpayer has no place of business or residence within the Commonwealth, such memorandum may be filed in the Circuit Court of the City of Richmond. A copy of such memorandum may also be filed in the clerk's office of all counties and cities in which the taxpayer owns real estate. Such memorandum shall be recorded in the judgment docket book and shall have the effect of a judgment in favor of the Commonwealth, to be enforced as provided in Article 19 (§ 8.01-196 et seq.) of Chapter 3 of Title 8.01, mutatis mutandis, except that a writ of fieri facias may be issued any time after the memorandum is filed. The lien on real estate shall become effective at the time the memorandum is filed in the jurisdiction in which the real estate is located.

B. Recordation of a memorandum of lien hereunder shall not affect the right to exoneration under this chapter nor shall an application for correction pursuant to § 58.1-2299.15 affect the power of the Commissioner to collect the tax, except as specifically provided in this chapter.

2012, cc. 217, 225.

§ 58.1-2299.14. Recordkeeping requirements; inspection of records; civil penalties

A. Every distributor required to make a return and pay or collect any tax under this chapter shall keep and preserve suitable records of the sales taxable under this chapter, and such other books of account as may be necessary to determine the amount of tax due hereunder, and such other pertinent information as may be required by the Commissioner. Such records shall be kept and maintained for a period to include the Department's current fiscal year and the previous three fiscal years.

B. The Commissioner or any agent authorized by him may examine during the usual business hours all records, books, papers, or other documents of any distributor required to be registered under this chapter relating to the sales price of any fuel subject to taxation under this chapter to verify the truth and accuracy of any statement or any other information as to a particular sale.

C. Any person who fails to keep or retain records as required by this section shall be subject to a civil penalty. The amount of the civil penalty assessed against a person for his first violation shall be $1,000. The amount of the civil penalty assessed against a person for each subsequent violation shall be $1,000 more than the amount of the civil penalty for the preceding violation.

D. Any person who refuses to allow an inspection authorized under this section shall be subject to a civil penalty of $5,000 for each refusal.

2012, cc. 217, 225.

§ 58.1-2299.15. Application to Commissioner for correction; appeal

A. Any person assessed with any tax administered by the Department pursuant to this chapter or against whom an order or decision of the Commissioner has been adversely rendered relating to the provisions of this chapter may, within 30 days from the date of such assessment, order, or

decision apply for relief to the Commissioner. Such application shall be in the form prescribed by the Department and shall fully set forth the grounds upon which the applicant relies and all facts relevant to the applicant's contention. The Commissioner may also require such additional information, testimony, or documentary evidence as he deems necessary to make a fair determination of the application.

B. On receipt of a written notice of intent to file under subsection A for relief from a tax assessment, the Commissioner shall refrain from collecting the tax until the time for filing hereunder has expired, unless he determines that collection is in jeopardy.

C. Any person against whom an order or decision of the Commissioner has been adversely rendered relating to the provisions of this chapter may, within 15 days of such order or decision, appeal from such order or decision to the Circuit Court of the City of Richmond.

2012, cc. 217, 225.

§ 58.1-2299.16. Period of limitations

The taxes imposed by this chapter shall be assessed within three years from the date on which such taxes became due and payable. In the case of a false or fraudulent return with intent to evade payment of the taxes imposed by this chapter, or a failure to file a return, the taxes may be assessed, or a proceeding in court for the collection of such taxes may be begun without assessment, at any time. The Commissioner shall not examine any person's records beyond the three-year period of limitations unless he has reasonable evidence of fraud or reasonable cause to believe that such person was required by law to file a return and failed to do so.

2012, cc. 217, 225.

§ 58.1-2299.17. Waiver of time limitation on assessment of taxes

If, before the expiration of the time prescribed for assessment of any tax levied pursuant to this chapter and assessable by the Department, both the Commissioner and the taxpayer have consented in writing to its assessment after such time, the tax may be assessed any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

2012, cc. 217, 225.

§ 58.1-2299.18. Suits to recover taxes

If any person fails to pay the tax or any civil penalty levied under this chapter, including accrued penalties and interest, when due, the Attorney General or the Commissioner may bring an appropriate action for the recovery of such tax, penalty, and interest, provided that if it is found that such failure to pay was willful, judgment shall be rendered for double the amount of the tax or civil penalty found to be due, with costs.

2012, cc. 217, 225.

§ 58.1-2299.19. Liability of corporate or partnership officer; penalty

Any corporate or partnership officer who directs or causes the business of which he is a corporate or partnership officer to fail to pay, collect, or truthfully account for and pay over any fuels tax for which the business is liable to the Commonwealth or to a trustee shall, in addition to other penalties provided by law, be liable for a penalty in the amount of the tax evaded or not paid, collected, or accounted for and paid over. The penalty shall be assessed and collected in the same manner as such taxes are assessed and collected. However, this penalty shall be dischargeable in bankruptcy proceedings.

2012, cc. 217, 225.

. (Contingent expiration date -- see note*) Disposition of tax revenues

A. All taxes, interest, and civil penalties paid to the Commissioner pursuant to this chapter for the sale of fuels at wholesale to retail dealers for retail sale in any county or city set forth in subdivision A 1 of § 58.1-2295, after subtraction of the direct costs of administration by the Department, shall be deposited in a special fund entitled the "Special Fund Account of the Transportation District of ....." The amounts deposited in the special fund shall be distributed monthly to the applicable transportation district commission of which the county or city is a member to be applied to the operating deficit, capital, and debt service of the mass transit system of such district or, in the case of a transportation district subject to the provisions of subsection C of § 33.2-1915, to be applied to and expended for any transportation purpose of such district. In the case of a jurisdiction which, after July 1, 1989, joins a transportation district which was established on or before January 1, 1986, and is also subject to subsection C of § 33.2-1915, the funds collected from that jurisdiction shall be applied to and expended for any transportation purpose of such jurisdiction. The direct costs of administration shall be credited to the funds appropriated to the Department.

B. All taxes, interest, and civil penalties paid to the Commissioner pursuant to this chapter for the sale of fuels at wholesale to retail dealers for retail sale in any county or city set forth in subdivision A 2 of § 58.1-2295, after subtraction of the direct costs of administration by the Department, shall be deposited into special funds established by law. In the case of Planning District 23, the revenue generated and collected therein shall be deposited into the fund established in § 33.2-2600. For additional Planning Districts that may become subject to this section, funds shall be established by appropriate legislation. The direct cost of administration shall be credited to the funds appropriated to the Department.

2012, cc. 217, 225; 2013, c. 766.

. (Contingent effective date -- see note*) Disposition of tax revenues

All taxes, interest, and civil penalties paid to the Commissioner pursuant to this chapter, after subtraction of the direct costs of administration by the Department, shall be deposited in a special fund entitled the "Special
Fund Account of the Transportation District of..... " The amounts deposited in the special fund shall be distributed monthly to the applicable transportation district commission of which the

county or city is a member to be applied to the operating deficit, capital, and debt service of the mass transit system of such district or, in the case of a transportation district subject to the provisions of subsection C of § 33.2-1915, to be applied to and expended for any transportation purpose of such district. In the case of a jurisdiction which, after July 1, 1989, joins a transportation district which was established on or before January 1, 1986, and is also subject to subsection C of § 33.2-1915, the funds collected from that jurisdiction shall be applied to and expended for any transportation purpose of such jurisdiction. The direct costs of administration shall be credited to the funds appropriated to the Department.

2012, cc. 217, 225.

*This section is set out twice because the 14th enactment of Chapter 766 of the Acts of Assembly of 2013 states: "That the provisions of this act that generate additional revenue through state taxes or fees for transportation (i) throughout the Commonwealth and in Planning District 8 and Planning District 23 or (ii) in any other Planning District that becomes subject to the state taxes or fees imposed solely in Planning Districts pursuant to this act shall expire on December 31 of any year in which the General Assembly appropriates any of such additional revenues for any non-transportation-related purpose or transfers any of such additional revenues that are to be deposited into the Commonwealth Transportation Fund or any subfund thereof pursuant to general law for a non-transportation-related purpose. In the event a local government of any county or city wherein the additional taxes and fees are levied appropriates or allocates any of such additional revenues to a non-transportation purpose, such locality shall not be the direct beneficiary of any of the revenues generated by the taxes or fees in the year immediately succeeding the year in which revenues were appropriated or allocated to a non-transportation purpose."

Chapter 23 - OIL COMPANY EXCISE TAX [Repealed]

§§ 58.1-2300 through 58.1-2311. Repealed

Repealed by Acts 1986, c. 553.

Chapter 24 - VIRGINIA MOTOR VEHICLE SALES AND USE TAX

§ 58.1-2400. Title

This chapter shall be known and may be cited as the "Virginia Motor Vehicle Sales and Use Tax Act."

Code 1950, § 58-685.10; 1966, c. 587; 1984, c. 675.

§ 58.1-2401. Definitions

As used in this chapter, unless the context clearly shows otherwise, the term or phrase:

"Commissioner" shall mean the Commissioner of the Department of Motor Vehicles of the Commonwealth.

"Department" shall mean the Department of Motor Vehicles of this Commonwealth, acting through its duly authorized officers and agents.

"Mobile office" shall mean an industrialized building unit not subject to the federal regulation, which may be constructed on a chassis for the purpose of towing to the point of use and designed to be used with or without a permanent foundation, for commercial use and not for residential use; or two or more such units separately towable, but designed to be joined together at the point of use to form a single commercial structure, and which may be designed for removal to, and installation or erection on other sites.

"Motor vehicle" shall mean every vehicle, except for mobile office as herein defined, which is self-propelled or designed for self-propulsion and every vehicle drawn by or designed to be drawn by a motor vehicle, including manufactured homes as defined in § 46.2-100 and every device in, upon and by which any person or property is, or can be, transported or drawn upon a highway, but excepting devices moved by human or animal power, devices used exclusively upon stationary rails or tracks and vehicles, other than manufactured homes, used in this Commonwealth but not required to be licensed by the Commonwealth.

"Sale" shall mean any transfer of ownership or possession, by exchange or barter, conditional or otherwise, in any manner or by any means whatsoever, of a motor vehicle. The term shall also include a transaction whereby possession is transferred but title is retained by the seller as security. The term shall not include a transfer of ownership or possession made to secure payment of an obligation, nor shall it include a refund for, or replacement of, a motor vehicle of equivalent or lesser value pursuant to the Virginia Motor Vehicle Warranty Enforcement Act (§ 59.1-207.9 et seq.). Where the replacement motor vehicle is of greater value than the motor vehicle replaced, only the difference in value shall constitute a sale.

"Sale price" shall mean the total price paid for a motor vehicle and all attachments thereon and accessories thereto, as determined by the Commissioner, exclusive of any federal manufacturers' excise tax, without any allowance or deduction for trade-ins or unpaid liens or encumbrances. However, "sale price" shall not include (i) any manufacturer rebate or manufacturer incentive payment applied to the transaction by the customer or dealer whether as a reduction in the sales price or as payment for the vehicle and (ii) the cost of controls, lifts, automatic transmission, power steering, power brakes or any other equipment installed in or added to a motor vehicle which is required by law or regulation as a condition for operation of a motor vehicle by a handicapped person.

Code 1950, §§ 58-685.11, 58-685.13, 58-685.13:2; 1966, c. 587; 1968, c. 321; 1970, cc. 409, 489; 1972, cc. 302, 680; 1973, c. 207; 1974, c. 477; 1976, cc. 567, 610; 1977, c. 537; 1978, cc. 656, 758, 766; 1979, cc. 310, 436; 1982, c. 541; 1983, c. 386; 1984, c. 675; 1986, Sp. Sess., c. 11; 1995, c. 50; 1997, cc. 283, 853; 1999, c. 77; 2011, cc. 405, 639; 2013, c. 766.

. (Contingent expiration date -- see note*) Levy

A. There is hereby levied, in addition to all other taxes and fees of every kind now imposed by law, a tax upon the sale or use of motor vehicles in Virginia, other than a sale to or use by a person for rental as an established business or part of an established business or incidental or germane to such business.

The amount of the tax to be collected shall be determined by the Commissioner by the application of the following rates against the gross sales price:

1. Three percent through midnight on June 30, 2013, four percent (4.0%) beginning July 1, 2013, through midnight on June 30, 2014, four and five-hundredths of a percent (4.05%) beginning July 1, 2014, through midnight on June 30, 2015, four and one tenth of a percent (4.1%) beginning July 1, 2015, through midnight on June 30, 2016, and four and fifteen-hundredths (4.15%) of a percent beginning on and after July 1, 2016, of the sale price of each motor vehicle sold in Virginia. If such motor vehicle is a manufactured home as defined in § 36-85.3, the tax shall be three percent of the sale price of each such manufactured home sold in the Commonwealth; if such vehicle is a mobile office as defined in § 58.1-2401, the tax shall be two percent of the sale price of each mobile office sold in the Commonwealth; if such vehicle has a gross vehicle weight rating or gross combination weight rating of 26,001 pounds or more and is neither (i) a manufactured home as defined in § 36-85.3, (ii) a mobile office as defined in § 58.1-2401, (iii) a trailer or semitrailer as severally defined in § 46.2-100 that is not designed or used to carry property, nor (iv) a vehicle registered under § 46.2-700, the tax shall be zero percent of the sale price of each such vehicle sold in the Commonwealth.

2. Three percent through midnight on June 30, 2013, four percent (4.0%) beginning July 1, 2013, through midnight on June 30, 2014, four and five-hundredths of a percent (4.05%) beginning July 1, 2014, through midnight on June 30, 2015, four and one tenth of a percent (4.1%) beginning July 1, 2015, through midnight on June 30, 2016, and four and fifteen-hundredths (4.15%) of a percent beginning on and after July 1, 2016, of the sale price of each motor vehicle, not sold in Virginia but used or stored for use in the Commonwealth; or three percent of the sale price of each manufactured home as defined in § 36-85.3, or two percent of the sale price of each mobile office as defined in § 58.1-2401, not sold in Virginia but used or stored for use in this Commonwealth. If such vehicle has a gross vehicle weight rating or gross combination weight rating of 26,001 pounds or more and is neither (i) a manufactured home as defined in § 36-85.3, (ii) a mobile office as defined in § 58.1-2401, (iii) a trailer or semitrailer as severally defined in § 46.2-100 that is not designed or used to carry property, nor (iv) a vehicle registered under § 46.2-700, the tax shall be zero percent of the sale price of each such vehicle not sold in the Commonwealth but used or stored for use in the Commonwealth. When any motor vehicle or manufactured home not sold in the Commonwealth is first used or stored for use in Virginia six months or more after its acquisition, the tax shall be based on its current market value.

3. The minimum tax levied on the sale of any motor vehicle in the Commonwealth that is subject to taxation at a rate exceeding zero percent shall be $75, except as provided by those exemptions defined in § 58.1-2403.

4 through 7. [Repealed.]

B. A transaction taxed under subdivision A 1 shall not also be taxed under subdivision A 2, nor shall the same transaction be taxed more than once under either subdivision.

C. Any motor vehicle, trailer or semitrailer exempt from this tax under subdivision 1 or 2 of § 58.1-2403 shall be subject to the tax, based on the current market value when such vehicle is no longer owned or used by the United States government or any governmental agency, or the Commonwealth of Virginia or any political subdivision thereof, unless such vehicle is then rented, in which case the tax imposed by § 58.1-1736 shall apply, subject to the exemptions provided in § 58.1-1737. Further, any motor vehicle, trailer or semitrailer exempt from the tax imposed by this chapter under subdivision 11 of § 58.1-2403 or §§ 46.2-663 through 46.2-674 shall be subject to the tax, based on the current market value, when such vehicle is subsequently licensed to operate on the highways of the Commonwealth.

D. Any person who with intent to evade or to aid another person to evade the tax provided for herein, falsely states the selling price of a vehicle on a bill of sale, assignment of title, application for title, or any other document or paper submitted to the Commissioner pursuant to any provisions of this title or Title 46.2, shall be guilty of a Class 3 misdemeanor.

E. Effective January 1, 1997, any amount designated as a "processing fee" and any amount charged by a dealer for processing a transaction, which is required to be included on a buyer's order pursuant to subdivision A 10 of § 46.2-1530, shall be subject to the tax.

Code 1950, §§ 58-685.12, 58-685.12:1; 1966, c. 587; 1970, c. 675; 1974, c. 477; 1976, cc. 567, 610; 1977, c. 537; 1981, c. 145; 1984, c. 675; 1985, c. 123; 1986, Sp. Sess., cc. 10, 11; 1988, c. 372; 1992, c. 384; 1993, c. 159; 1994, c. 527; 1996, c. 1047; 1997, cc. 283, 853; 2004, c. 522; 2005, c. 449; 2011, cc. 405, 639, 881, 889; 2012, cc. 22, 111; 2013, c. 766.

. (Contingent effective date -- see note*) Levy

A. There is hereby levied, in addition to all other taxes and fees of every kind now imposed by law, a tax upon the sale or use of motor vehicles in Virginia, other than a sale to or use by a person for rental as an established business or part of an established business or incidental or germane to such business.

The amount of the tax to be collected shall be determined by the Commissioner by the application of the following rates against the gross sales price:

1. Three percent of the sale price of each motor vehicle sold in Virginia. If such motor vehicle is a manufactured home as defined in § 36-85.3, the tax shall be three percent of the sale price of each such manufactured home sold in the Commonwealth; if such vehicle is a mobile office as defined

in § 58.1-2401, the tax shall be two percent of the sale price of each mobile office sold in the Commonwealth; if such vehicle has a gross vehicle weight rating or gross combination weight rating of 26,001 pounds or more and is neither (i) a manufactured home as defined in § 36-85.3, (ii) a mobile office as defined in § 58.1-2401, (iii) a trailer or semitrailer as severally defined in § 46.2-100 that is not designed or used to carry property, nor (iv) a vehicle registered under § 46.2-700, the tax shall be zero percent of the sale price of each such vehicle sold in the Commonwealth.

2. Three percent of the sale price of each motor vehicle, or three percent of the sale price of each manufactured home as defined in § 36-85.3, or two percent of the sale price of each mobile office as defined in § 58.1-2401, not sold in Virginia but used or stored for use in the Commonwealth. If such vehicle has a gross vehicle weight rating or gross combination weight rating of 26,001 pounds or more and is neither (i) a manufactured home as defined in § 36-85.3, (ii) a mobile office as defined in § 58.1-2401, (iii) a trailer or semitrailer as severally defined in § 46.2-100 that is not designed or used to carry property, nor (iv) a vehicle registered under § 46.2-700, the tax shall be zero percent of the sale price of each such vehicle not sold in the Commonwealth but used or stored for use in the Commonwealth. When any motor vehicle or manufactured home not sold in the Commonwealth is first used or stored for use in Virginia six months or more after its acquisition, the tax shall be based on its current market value.

3. The minimum tax levied on the sale of any motor vehicle in the Commonwealth that is subject to taxation at a rate exceeding zero percent shall be $35, except as provided by those exemptions defined in § 58.1-2403.

4 through 7. [Repealed.]

B. A transaction taxed under subdivision A 1 shall not also be taxed under subdivision A 2, nor shall the same transaction be taxed more than once under either subdivision.

C. Any motor vehicle, trailer or semitrailer exempt from this tax under subdivision 1 or 2 of § 58.1-2403 shall be subject to the tax, based on the current market value when such vehicle is no longer owned or used by the United States government or any governmental agency, or the Commonwealth of Virginia or any political subdivision thereof, unless such vehicle is then rented, in which case the tax imposed by § 58.1-1736 shall apply, subject to the exemptions provided in § 58.1-1737. Further, any motor vehicle, trailer or semitrailer exempt from the tax imposed by this chapter under subdivision 11 of § 58.1-2403 or §§ 46.2-663 through 46.2-674 shall be subject to the tax, based on the current market value, when such vehicle is subsequently licensed to operate on the highways of the Commonwealth.

D. Any person who with intent to evade or to aid another person to evade the tax provided for herein, falsely states the selling price of a vehicle on a bill of sale, assignment of title, application for title, or any other document or paper submitted to the Commissioner pursuant to any provisions of this title or Title 46.2, shall be guilty of a Class 3 misdemeanor.

E. Effective January 1, 1997, any amount designated as a "processing fee" and any amount charged by a dealer for processing a transaction, which is required to be included on a buyer's order pursuant to subdivision A 10 of § 46.2-1530, shall be subject to the tax.

Code 1950, §§ 58-685.12, 58-685.12:1; 1966, c. 587; 1970, c. 675; 1974, c. 477; 1976, cc. 567, 610; 1977, c. 537; 1981, c. 145; 1984, c. 675; 1985, c. 123; 1986, Sp. Sess., cc. 10, 11; 1988, c. 372; 1992, c. 384; 1993, c. 159; 1994, c. 527; 1996, c. 1047; 1997, cc. 283, 853; 2004, c. 522; 2005, c. 449; 2011, cc. 405, 639, 881, 889; 2012, cc. 22, 111.

*This section is set out twice because the 14th enactment of Chapter 766 of the Acts of Assembly of 2013 states: "That the provisions of this act that generate additional revenue through state taxes or fees for transportation (i) throughout the Commonwealth and in Planning District 8 and Planning District 23 or (ii) in any other Planning District that becomes subject to the state taxes or fees imposed solely in Planning Districts pursuant to this act shall expire on December 31 of any year in which the General Assembly appropriates any of such additional revenues for any non-transportation-related purpose or transfers any of such additional revenues that are to be deposited into the Commonwealth Transportation Fund or any subfund thereof pursuant to general law for a non-transportation-related purpose. In the event a local government of any county or city wherein the additional taxes and fees are levied appropriates or allocates any of such additional revenues to a non-transportation purpose, such locality shall not be the direct beneficiary of any of the revenues generated by the taxes or fees in the year immediately succeeding the year in which revenues were appropriated or allocated to a non-transportation purpose."

§ 58.1-2402.1. Repealed

Repealed by Acts 2009, cc. 864 and 871, cl. 5.

§ 58.1-2403. Exemptions

No tax shall be imposed as provided in § 58.1-2402 if the vehicle is:

1. Sold to or used by the United States government or any governmental agency thereof;

2. Sold to or used by the Commonwealth of Virginia or any political subdivision thereof;

3. Registered in the name of a volunteer fire department or volunteer emergency medical services agency not operated for profit;

4. Registered to any member of the Mattaponi, Pamunkey, or Chickahominy Indian tribes or any other recognized Indian tribe of the Commonwealth living on the tribal reservation;

5. Transferred incidental to repossession under a recorded lien and ownership is transferred to the lienholder;

6. A manufactured home permanently attached to real estate and included in the sale of real estate;

7. A gift to the spouse, son, daughter, or parent of the transferor. With the exception of a gift to a spouse, this exemption shall not apply to any unpaid obligation assumed by the transferee incidental to the transfer;

8. Transferred from an individual or partnership to a corporation or limited liability company or from a corporation or limited liability company to an individual or partnership if the transfer is incidental to the formation, organization or dissolution of a corporation or limited liability company in which the individual or partnership holds the majority interest;

9. Transferred from a wholly owned subsidiary to the parent corporation or from the parent corporation to a wholly owned subsidiary;

10. Being registered for the first time in the Commonwealth and the applicant holds a valid, assignable title or registration issued to him by another state or a branch of the United States Armed Forces and (i) has owned the vehicle for longer than 12 months or (ii) has owned the vehicle for less than 12 months and provides evidence of a sales tax paid to another state. However, when a vehicle has been purchased by the applicant within the last 12 months and the applicant is unable to provide evidence of a sales tax paid to another state, the applicant shall pay the Virginia sales tax based on the fair market value of the vehicle at the time of registration in Virginia;

11. a. Titled in a Virginia or non-Virginia motor vehicle dealer's name for resale; or

b. Titled in the name of an automotive manufacturer having its headquarters in Virginia, except for any commercially leased vehicle that is not described under subdivision 3 of § 46.2-602.2. For purposes of this subdivision, "automotive manufacturer" and "headquarters" means the same as such terms are defined in § 46.2-602.2;

12. A motor vehicle having seats for more than seven passengers and sold to an urban or suburban bus line the majority of whose passengers use the buses for traveling a distance of less than 40 miles, one way, on the same day;

13. Purchased in the Commonwealth by a nonresident and a Virginia title is issued for the sole purpose of recording a lien against the vehicle if the vehicle will be registered in a state other than Virginia;

14. A motor vehicle designed for the transportation of 10 or more passengers, purchased by and for the use of a church conducted not for profit;

15. Loaned or leased to a private nonprofit institution of learning, for the sole purpose of use in the instruction of driver's education when such education is a part of such school's curriculum for full-time students;

16. Sold to an insurance company or local government group self-insurance pool, created pursuant to § 15.2-2703, for the sole purpose of disposition when such company or pool has paid the registered owner of such vehicle a total loss claim;

17. Owned and used for personal or official purposes by accredited consular or diplomatic officers of foreign governments, their employees or agents, and members of their families, if such persons are nationals of the state by which they are appointed and are not citizens of the United States;

18. A self-contained mobile computerized axial tomography scanner sold to, rented or used by a nonprofit hospital or a cooperative hospital service organization as described in § 501(e) of the United States Internal Revenue Code;

19. A motor vehicle having seats for more than seven passengers and sold to a restricted common carrier or common carrier of passengers;

20. Beginning July 1, 1989, a self-contained mobile unit designed exclusively for human diagnostic or therapeutic service, sold to, rented to, or used by a nonprofit hospital, or a cooperative hospital service organization as described in § 501(e) of the United States Internal Revenue Code, or a nonprofit corporation as defined in § 501(c)(3) of the Internal Revenue Code, established for research in, diagnosis of, or therapy for human ailments;

21. Transferred, as a gift or through a sale to an organization exempt from taxation under § 501(c)(3) of the Internal Revenue Code, provided the motor vehicle is not titled and tagged for use by such organization;

22. A motor vehicle sold to an organization which is exempt from taxation under § 501(c)(3) of the Internal Revenue Code and which is organized for the primary purpose of distributing food, clothing, medicines, and other necessities of life to, and providing shelter for, needy persons in the United States and throughout the world;

23. Transferred to the trustees of a revocable inter vivos trust, when the individual titleholder of a Virginia titled motor vehicle and the beneficiaries of the trust are the same persons, regardless of whether other beneficiaries of the trust may also be named in the trust instrument, when no consideration has passed between the titleholder and the beneficiaries; and transferred to the original titleholder from the trustees holding title to the motor vehicle;

24. Transferred to trustees of a revocable inter vivos trust, when the owners of the vehicle and the beneficiaries of the trust are the same persons, regardless of whether other beneficiaries may also be named in the trust instrument, or transferred by trustees of such a trust to beneficiaries of the trust following the death of the grantor, when no consideration has passed between the grantor and the beneficiaries in either case;

25. Sold by a vehicle's lessor to its lessee upon the expiration of the term of the vehicle's lease, if the lessee is a natural person and this natural person has paid the tax levied pursuant to this chapter with respect to the vehicle when he leased it from the lessor, and if the lessee presents an original copy of the lease upon request of the Department of Motor Vehicles or other evidence that the sales tax has been paid to the Commonwealth by the lessee purchasing the vehicle;

26. Titled in the name of a deceased person and transferred to the spouse or heir, or under the will, of such deceased person;

27. An all-terrain vehicle, moped, or off-road motorcycle all as defined in § 46.2-100. Such all-terrain vehicles, mopeds, or off-road motorcycles shall not be deemed a motor vehicle or other vehicle subject to the tax imposed under this chapter; or

28. A motor vehicle that is sold to an organization that is exempt from taxation under § 501(c)(3) of the Internal Revenue Code and that is primarily used by the organization to transport to markets for sale produce that is (i) produced by local farmers and (ii) sold by such farmers to the organization.

Code 1950, §§ 58-685.13, 58-685.13:1; 1966, c. 587; 1970, c. 409; 1972, cc. 302, 680; 1973, c. 457; 1974, c. 477; 1976, c. 610; 1977, c. 537; 1978, cc. 758, 766; 1982, c. 541; 1984, c. 675; 1988, c. 372; 1990, cc. 40, 849; 1995, cc. 27, 247, 786; 1997, c. 283; 1998, c. 322; 1999, c. 77; 2000, cc. 576, 602, 1027; 2002, c. 513; 2003, c. 278; 2005, cc. 246, 274; 2006, c. 604; 2007, c. 896; 2008, cc. 304, 753; 2009, cc. 864, 871; 2011, cc. 405, 639; 2012, cc. 22, 111; 2013, c. 783; 2014, c. 243; 2015, cc. 159, 502, 503.

§ 58.1-2404. Time for payment of tax on sale or use of a motor vehicle

The tax on the sale or use of a motor vehicle shall be paid by the purchaser or user of such motor vehicle and collected by the Commissioner at the time the owner applies to the Department of Motor Vehicles for, and obtains, a certificate of title. No tax shall be levied or collected under this chapter upon the sale or use of a motor vehicle for which no certificate of title is required by this Commonwealth.

Code 1950, § 58-685.14; 1966, c. 587; 1974, c. 477; 1984, c. 675; 2011, cc. 405, 639.

§ 58.1-2405. Basis of tax

A. In the case of the sale or use of a motor vehicle upon which the pricing information is required by federal law to be posted, the Commissioner may collect the tax upon the basis of the total sale price shown on such document; however, if the Commissioner is satisfied that the purchaser has paid less than such price, by such evidence as the Commissioner may require, he may assess and collect the tax upon the basis of the sale price so found by him. In no case shall such lesser price include credits for trade-in or any other transaction of such nature.

B. In the case of the sale or use of a motor vehicle which is not a new motor vehicle, the Commissioner may employ such publications, sources of information, and other data as are customarily employed in ascertaining the maximum sale price of such used motor vehicles but in no case shall any credit be allowed for trade-in, prior rental or any other transaction of like nature.

C. In the case of the sale or use of a motor vehicle, which is not a new motor vehicle, between individuals who are not required to be licensed as dealers or salespersons under the provisions of § 46.2-1508, the Commissioner may collect the tax upon the basis of the total sale price as established by such evidence as the Commissioner may require; provided that if such motor vehicle is

no more than five years old and is listed in a recognized pricing guide, the total sale price shall not be less than the value listed in such pricing guide for such vehicle, less an allowance of $1,500, unless the purchaser shall execute an affidavit under penalty of perjury stating a lesser total sale price and declaring such sale or use to be a bona fide transaction for full value. In using a recognized pricing guide, the Commissioner shall use the trade-in value specified in such guide, with no additions for optional equipment or subtractions for mileage, so long as uniformly applied for all types of motor vehicles. In no case shall any credit be allowed for trade-in, prior rental, or any other transaction of like nature.

Code 1950, § 58-685.15; 1966, c. 587; 1974, c. 477; 1984, c. 675; 2003, c. 328; 2015, c. 615.

§ 58.1-2406. Collection of tax; estimate of tax

In the event any person submits with his application for a certificate of title a sum insufficient to pay the sale or use tax as determined by the Commissioner, it shall be the duty of the Commissioner or his authorized agent to make an estimate of the tax due the Commonwealth and to assess such tax. The notice of assessment shall be forthwith sent to such person by certified mail at the address of the person as it appears on the records of the Division. Such notice, when sent in accordance with these requirements, shall be sufficient regardless of whether or not it was ever received.

If any person fails to pay such tax, the Commissioner shall bring an appropriate action for the recovery of such tax plus interest. Judgment shall be rendered for the amount of the tax found to be due together with interest and costs.

Code 1950, § 58-685.17; 1966, c. 587; 1974, c. 477; 1984, c. 675.

§§ 58.1-2407 through 58.1-2410. Repealed

Repealed by Acts 2011, cc. 405 and 639, cl. 2, effective July 1, 2012.

§ 58.1-2411. Civil penalties upon failure to pay tax, etc

When any person fails to pay the full amount of the tax required by this chapter, there shall be imposed, in addition to other penalties provided herein, a penalty to be added to the tax in the amount of ten percent or ten dollars, whichever is greater; however, if the failure is due to providential or other good cause, shown to the satisfaction of the Commissioner, the tax may be accepted exclusive of penalties. The $10 minimum penalty levied herein shall be applied only in cases where the payment of tax is not received within the time prescribed in this chapter and shall not be considered for audit purposes.

In the case of a false or fraudulent application, where willful intent exists to defraud the Commonwealth of any tax due under this chapter, a specific penalty of 50 percent of the amount of the proper tax shall be assessed. It shall be prima facie evidence of intent to defraud the Commonwealth of any tax due under this chapter when any person reports the sale price of a motor vehicle at 50 percent or less of the actual amount.

Interest at the rate of one and one-half of one percent per month, or a fraction thereof, shall accrue on both tax and penalty until paid.

Code 1950, § 58-685.17:2; 1974, c. 477; 1982, c. 141; 1984, c. 675; 2011, cc. 405, 639.

§§ 58.1-2412 through 58.1-2417. Repealed

Repealed by Acts 2011, cc. 405 and 639, cl. 2, effective July 1, 2012.

§ 58.1-2418. Local sales and use taxes prohibited

No city, town or county shall impose or continue to impose any local sales or use tax on motor vehicles.

Code 1950, § 58-685.25; 1966, c. 587; 1974, c. 477; 1981, c. 145; 1984, c. 675.

§ 58.1-2419. Tax on sale to be separately stated

In every transaction subject to the provisions of this chapter, the tax imposed by this chapter shall be separately stated from the sale price of such motor vehicle and shall be paid by the purchaser in accordance with the provisions of this chapter.

Code 1950, § 58-685.24; 1966, c. 587; 1974, c. 477; 1984, c. 675; 2011, cc. 405, 639.

§ 58.1-2420. Examination of dealer's records, etc

The Commissioner or any agent authorized by him may examine during the usual business hours all records, books, papers or other documents of any dealer in motor vehicles relating to the sales price of any motor vehicle to verify the truth and accuracy of any statement or any other information as to a particular sale.

Code 1950, § 58-685.18; 1966, c. 587; 1974, c. 477; 1984, c. 675; 2011, cc. 405, 639.

§ 58.1-2421. Rules and regulations

The Commissioner shall have the power to make and publish reasonable rules and regulations consistent with this chapter, other applicable laws, and the Constitutions of Virginia and the United States, for the enforcement of the provisions of this chapter and the collection of the revenues hereunder.

Such rules and regulations shall not be subject to Chapter 40 (§ 2.2-4000 et seq.) of Title 2.2.

Code 1950, § 58-685.16; 1966, c. 587; 1974, c. 477; 1984, c. 675; 2011, cc. 405, 639.

§ 58.1-2422. Forwarding of tax information to law-enforcement officials

The Commissioner may, in his discretion, upon request duly received from the official charged with the duty of enforcement of motor vehicle tax laws of any other state, forward to such official any information which he may have in his possession relative to the registration and payment of any tax collected pursuant to this chapter.

Code 1950, § 58-685.21; 1966, c. 587; 1984, c. 675.

§ 58.1-2423. Refunds generally; to foreign nationals

In the event it shall appear to the satisfaction of the Commissioner that any tax imposed by this chapter has been erroneously or illegally collected from any person or paid by any person, the Commissioner shall certify the amount thereof to the Comptroller, who shall thereupon draw his warrant for such certified amount on the State Treasurer. Such refund shall be paid by the State Treasurer. A claimant who pays the tax, either for the claimant or for the benefit of another on whose behalf the tax is paid, shall make a sufficient showing that the tax was erroneously collected by providing an affidavit stating that (i) the vehicle identification information provided on the Application for Certificate of Title and Registration, the certificate of origin, manufacturer's statement of origin, or title, as the case may be, forwarded to the Department of Motor Vehicles by any means generally allowed was incorrect, or (ii) the transaction would have been exempt from taxation had the titling documents been correct when submitted to the Department of Motor Vehicles and the tax was paid in error. In the event of such a showing, the refund shall be paid to the claimant.

In the event that it shall appear to the satisfaction of the Commissioner that the tax imposed by this chapter was upon a motor vehicle purchased by a foreign national and that within six months after the date of purchase the motor vehicle has been exported to a foreign country, the Commissioner shall certify the amount to the Comptroller who shall thereupon draw his warrant for such certified amount on the State Treasurer. Such refund shall be paid by the State Treasurer.

No refund shall be made under the provisions of this section unless a written statement is filed with the Commissioner setting forth the reason such refund is claimed. The claim shall be in such form as the Commissioner shall prescribe. It shall be filed with the Commissioner within three years from the date of the payment of the tax.

Code 1950, § 58-685.19; 1966, c. 587; 1972, c. 207; 1973, c. 174; 1974, c. 477; 1981, c. 440; 1984, c. 675; 2003, c. 837.

§ 58.1-2423.1. Expired

Expired.

§ 58.1-2424. Credits against tax

Credit shall be granted for the amount of tax paid to another state on a motor vehicle purchased in another state at the time such vehicle is first registered in the Commonwealth, provided the purchaser provides proof of payment of such tax. However, no credit shall be granted for any tax paid to another state if that state exempts from the tax vehicles sold to residents of a state which does not give credit for the tax. Credit for taxes collected under the Virginia retail sales and use tax (§ 58.1-600 et seq.) shall be allowed against the tax levied for specially constructed or reconstructed vehicles and other motor vehicles subject to such tax.

Code 1950, § 58-685.20; 1966, c. 587; 1974, c. 477; 1976, c. 610; 1981, c. 145; 1984, c. 675; 1990, c. 163; 2011, cc. 405, 639.

. (Contingent expiration date -- see note*) Disposition of revenues

A. Funds collected hereunder by the Commissioner shall be forthwith paid into the state treasury. Except as otherwise provided in this section, these funds shall constitute special funds within the Commonwealth Transportation Fund. Any balances remaining in these funds at the end of the year shall be available for use in subsequent years for the purposes set forth in this chapter, and any interest income on such funds shall accrue to these funds. The revenue so derived, after refunds have been deducted, is hereby allocated for the construction, reconstruction and maintenance of highways and the regulation of traffic thereon and for no other purpose. However, (i) all funds collected pursuant to the provisions of this chapter from manufactured homes, as defined in § 46.2-100, shall be distributed to the city, town, or county wherein such manufactured home is to be situated as a dwelling; (ii) effective January 1, 1987, an amount equivalent to the net additional revenues from the sales and use tax on motor vehicles generated by enactments of the 1986 Special Session of the Virginia General Assembly which amended §§ 46.2-694, 46.2-697, 58.1-2401, 58.1-2402, and this section shall be distributed to and paid into the Transportation Trust Fund established pursuant to § 33.2-1524, a special fund within the Commonwealth Transportation Fund, and are hereby appropriated to the Commonwealth Transportation Board for transportation needs; and (iii) the net additional revenues generated by increases in the rates of taxes under subdivisions A 1 and A 2 of § 58.1-2402 and generated by the increase in the minimum tax under subdivision A 3 of § 58.1-2402 pursuant to enactments of a Session of the General Assembly held in 2013 shall be deposited by the Comptroller into the Highway Maintenance and Operating Fund established pursuant to § 33.2-1530.

B. As provided in subsection A of § 58.1-638, of the funds becoming part of the Transportation Trust Fund pursuant to clause (ii) of subsection A, an aggregate of 4.2 percent shall be set aside as the Commonwealth Port Fund; an aggregate of 2.4 percent shall be set aside as the Commonwealth Airport Fund; and an aggregate of 14.5 percent in fiscal year 1998-1999 and 14.7 percent in fiscal year 1999-2000 and thereafter shall be set aside as the Commonwealth Mass Transit Fund.

Code 1950, § 58-685.23; 1966, c. 587; 1976, c. 567; 1981, c. 145; 1984, c. 675; 1986, Sp. Sess., c. 11; 1987, c. 696; 1991, c. 323; 1997, cc. 283, 423, 853; 1998, cc. 905, 907; 1999, c. 77; 2004, c. 522; 2005, c. 323; 2007, c. 896; 2009, cc. 864, 871; 2011, cc. 405, 639; 2013, c. 766.

. (Contingent effective date -- see note*) Disposition of revenues

A. Funds collected hereunder by the Commissioner shall be forthwith paid into the state treasury. Except as otherwise provided in this section, these funds shall constitute special funds within the Commonwealth Transportation Fund. Any balances remaining in these funds at the end of the year shall be available for use in subsequent years for the purposes set forth in this chapter, and any interest income on such funds shall accrue to these funds. The revenue so derived, after refunds have been deducted, is hereby allocated for the construction, reconstruction and maintenance of highways and the regulation of traffic thereon and for no other purpose. However, (i) all funds collected pursuant to the provisions of this chapter from manufactured homes, as defined in

§ 46.2-100, shall be distributed to the city, town, or county wherein such manufactured home is to be situated as a dwelling; and (ii) effective January 1, 1987, an amount equivalent to the net additional revenues from the sales and use tax on motor vehicles generated by enactments of the 1986 Special Session of the Virginia General Assembly which amended §§ 46.2-694, 46.2-697, 58.1-2401, 58.1-2402 and this section shall be distributed to and paid into the Transportation Trust Fund established pursuant to § 33.2-1524, a special fund within the Commonwealth Transportation Fund, and are hereby appropriated to the Commonwealth Transportation Board for transportation needs.

B. As provided in subsection A of § 58.1-638, of the funds becoming part of the Transportation Trust Fund pursuant to clause (ii) of subsection A of this section, an aggregate of 4.2 percent shall be set aside as the Commonwealth Port Fund; an aggregate of 2.4 percent shall be set aside as the Commonwealth Airport Fund; and an aggregate of 14.5 percent in fiscal year 1998-1999 and 14.7 percent in fiscal year 1999-2000 and thereafter shall be set aside as the Commonwealth Mass Transit Fund.

Code 1950, § 58-685.23; 1966, c. 587; 1976, c. 567; 1981, c. 145; 1984, c. 675; 1986, Sp. Sess., c. 11; 1987, c. 696; 1991, c. 323; 1997, cc. 283, 423, 853; 1998, cc. 905, 907; 1999, c. 77; 2004, c. 522; 2005, c. 323; 2007, c. 896; 2009, cc. 864, 871; 2011, cc. 405, 639.

*This section is set out twice because the 14th enactment of Chapter 766 of the Acts of Assembly of 2013 states: "That the provisions of this act that generate additional revenue through state taxes or fees for transportation (i) throughout the Commonwealth and in Planning District 8 and Planning District 23 or (ii) in any other Planning District that becomes subject to the state taxes or fees imposed solely in Planning Districts pursuant to this act shall expire on December 31 of any year in which the General Assembly appropriates any of such additional revenues for any non-transportation-related purpose or transfers any of such additional revenues that are to be deposited into the Commonwealth Transportation Fund or any subfund thereof pursuant to general law for a non-transportation-related purpose. In the event a local government of any county or city wherein the additional taxes and fees are levied appropriates or allocates any of such additional revenues to a non-transportation purpose, such locality shall not be the direct beneficiary of any of the revenues generated by the taxes or fees in the year immediately succeeding the year in which revenues were appropriated or allocated to a non-transportation purpose."

§ 58.1-2426. Application to Commissioner for correction; appeal

A. Any person assessed with any tax administered by the Department pursuant to this chapter may, within 30 days from the date of such assessment, apply for relief to the Commissioner. Such application shall be in the form prescribed by the Department, and shall fully set forth the grounds upon which the taxpayer relies and all facts relevant to the taxpayer's contention. The Commissioner may also require such additional information, testimony, or documentary evidence as he deems necessary to a fair determination of the application.

B. On receipt of a written notice of intent to file under subsection A, the Commissioner shall refrain from collecting the tax until the time for filing hereunder has expired, unless he determines that collection is in jeopardy.

C. Any person against whom an order or decision of the Commissioner has been adversely rendered relating to the tax imposed by this chapter may, within fifteen days of such order or decision, appeal from such order or decision to the Circuit Court of the City of Richmond.

Code 1950, § 58-685.22; 1966, c. 587; 1984, c. 675; 2011, cc. 881, 889.

Chapter 25 - LICENSE TAX ON CERTAIN INSURANCE COMPANIES

Article 1 - LEVY

§ 58.1-2500. Definitions

As used in this chapter the term or phrase:

"Commission" means the State Corporation Commission.

"Company" means any association, aggregation of individuals, business, corporation, individual, joint-stock company, Lloyds type of organization, organization, partnership, receiver, reciprocal or inter-insurance exchange, trustee or society.

"Department" means the Department of Taxation.

"Direct gross premium income" means the gross amount of all premiums, assessments, dues and fees collected, received or derived, or obligations taken therefor, from business in this Commonwealth during each year ending December 31, excluding premiums received for reinsurance assumed from licensed insurance companies, without any deduction for dividends paid or deduction on any other account except for premiums returned on cancelled policies, or on account of reduction in rates or reduction in the amount insured, and excluding premiums received or derived to provide insurance of the kinds classified in §§ 38.2-102 and 38.2-109 issued on a group basis by an insurance company insuring its employees, agents and representatives. In computing direct gross premium income on insurance issued by mutual insurance companies other than life insurance companies, refunds or returns made to policyholders otherwise than for losses may be deducted.

"Estimated tax" means the amount which the insurance company estimates as the amount of the tax imposed by this chapter for the license year, measured by direct gross premium income received or derived in the taxable year.

"Insurance company" means any company engaged in the business of making contracts of insurance.

"License year" means the 12-month period beginning on July 1 next succeeding the taxable year and ending on June 30 of the subsequent year.

"Preceding year's tax" means the tax as ascertained on the preceding year's tax report.

"Subscriber fee income" means the gross premium or deposit income collected, received or derived from and credited to the accounts of subscribers from business in the Commonwealth during the preceding year ending December 31, decreased by all returns for cancellation and all amounts returned to subscribers or credited to their accounts as savings.

"Tax" means the amount derived by multiplying the direct gross premium income in the taxable year by the tax rate.

"Taxable year" means the calendar year preceding the license year upon the basis of which direct gross premium income is computed. The term includes, in the case of direct gross premium income for a fractional part of a calendar year, the period in which such direct gross premium income is received or derived from business in this Commonwealth.

Code 1950, §§ 58-486, 58-502, 58-502.1, 58-502.2; 1952, c. 190; 1954, c. 207; 1966, c. 264; 1968, c. 13; 1978, c. 4; 1984, c. 675; 1998, c. 365; 2003, c. 372; 2011, c. 850.

§ 58.1-2501. Levy of license tax

A. For the privilege of doing business in the Commonwealth, there is hereby levied on every insurance company defined in § 38.2-100 which issues policies or contracts for any kind of insurance classified and defined in §§ 38.2-102 through 38.2-134 and on every corporation which issues subscription contracts for any kind of plan classified and defined in §§ 38.2-4201 and 38.2-4501, an annual license tax as follows:

1. For any kind of insurance classified and defined in §§ 38.2-109 through 38.2-134 or Chapters 44 (§ 38.2-4400 et seq.) and 61 (§ 38.2-6100 et seq.) of Title 38.2, except workers' compensation insurance on which a premium tax is imposed under the provisions of § 65.2-1000, such company shall pay a tax of two and three-fourths percent of its subscriber fee income or direct gross premium income on such insurance for each taxable year through 1988. For taxable year 1989 and each taxable year thereafter, such company shall pay a tax of two and one-fourth percent of its subscriber fee income or direct gross premium income on such insurance;

2. For policies or contracts for life insurance as defined in § 38.2-102, such company shall pay a tax of two and one-fourth percent of its direct gross premium income on such insurance. However, with respect to premiums paid for additional benefits in the event of death, dismemberment or loss of sight by accident or accidental means, or to provide a special surrender value, special benefit or an annuity in the event of total and permanent disability, the rate of tax shall be two and three-fourths percent for each taxable year beginning January 1, 1987, through December 31, 1988, and two and one-fourth percent for taxable year beginning January 1, 1989, and each taxable year thereafter;

3. For policies or contracts providing industrial sick benefit insurance as defined in § 38.2-3544, such company shall pay a tax of one percent of its direct gross premium income on such insurance. No company, however, doing business on the legal reserve plan, shall be required to pay any licenses, fees or other taxes in excess of those required by this section on such part of its business

as is industrial sick benefit insurance as defined in § 38.2-3544; but any such company doing business on the legal reserve plan shall pay on all industrial sick benefit policies or contracts on which the sick benefit portion has been cancelled as provided in § 38.2-3546, or which provide a greater death benefit than $250 or a greater weekly indemnity than $10, and on all other life, accident and sickness insurance, the same license or other taxes as are required by this section; and

4. For subscription contracts for any kind of plan classified and defined in § 38.2-4201 or § 38.2-4501, such corporation shall pay a tax of two and one-fourth percent of its direct gross subscriber fee income derived from subscription contracts issued to primary small groups as defined in § 38.2-3431 and three-fourths of one percent of its direct gross subscriber fee income derived from other subscription contracts for taxable year 1997. For each of taxable years 1998 through 2013, such corporation shall pay a tax of three-fourths of one percent of its direct gross subscriber fee income derived from subscription contracts issued to individuals and from open enrollment contracts as defined in § 38.2-4216.1, and two and one-fourth percent of its direct gross subscriber fee income derived from other subscription contracts. For each taxable year thereafter, such corporation shall pay a tax of two and one-fourth percent of its direct gross subscriber fee income derived from all subscription contracts. The declaration of estimated tax pursuant to this subsection shall commence on or before April 15, 1988.

B. Notwithstanding any other provisions of this section, any domestic insurance company doing business solely in the Commonwealth which is purely mutual, has no capital stock and is not designed to accumulate profits for the benefit of or pay dividends to its members, and any domestic insurance company doing business solely in the Commonwealth, with a capital stock not exceeding $25,000 and which pays losses with assessments against its policyholders or members, shall pay an annual license tax of one percent of its direct gross premium income.

Code 1950, §§ 58-490, 58-491, 58-492, 58-501; 1952, c. 190; 1968, c. 13; 1978, c. 658; 1984, c. 675; 1987, cc. 565, 655; 1997, cc. 807, 913; 2004, c. 668; 2013, cc. 136, 210.

§ 58.1-2502. Exemptions and exclusions

Nothing in this chapter shall be construed to require any tax, other than taxes imposed upon property and the license tax imposed by § 38.2-4127 :

1. Upon fraternal benefit societies as defined in § 38.2-4100.

2. Upon any mutual assessment fire insurance company as defined in §§ 38.2-2501 and 38.2-2503 which (i) confines its business to not more than four contiguous counties and cities located therein and wholly surrounded thereby in the Commonwealth, if any such city has a population of not more than 30,000, or (ii) confines its business to more than four contiguous counties in the Commonwealth if such counties together have a population not in excess of 100,000.

3. Upon premiums derived from workers' compensation insurance on which a premium tax is imposed under the provisions of § 65.2-1000.

4. Upon consideration for contracts for annuities as defined in § 38.2-106.

Code 1950, §§ 58-493, 58-494; 1952, c. 190; 1956, c. 527; 1960, c. 452; 1977, c. 248; 1984, c. 675.

§ 58.1-2503. When tax payable

The annual license tax shall be transmitted to the Department on or before March 1 of each year for deposit into the state treasury.

Code 1950, § 58-489; 1952, c. 190; 1968, c. 13; 1978, c. 4; 1984, c. 675; 2011, c. 850.

§ 58.1-2504. Companies commencing business

A. The license tax on a company commencing business in the Commonwealth shall be paid to the Department before the license is issued. If a payment is made in an amount subsequently found to be in error, the Department shall, if an additional amount is due, notify the taxpayer of the additional amount due and the company shall pay such amount within 30 days of the date of the notice, and, if an overpayment is made, issue a refund as provided for in § 58.1-2505.

B. No license to transact the business of insurance shall be issued by the Commission for less than a year except to a company when it first commences business in the Commonwealth, in which case the initial license shall be issued for that part of the year from the date of the issuance of the license to June 30 following.

Code 1950, §§ 58-487, 58-489; 1952, c. 190; 1968, c. 13; 1978, c. 4; 1984, c. 675; 2011, c. 850; 2013, cc. 29, 163.

§ 58.1-2505. Amount of license tax for company commencing business

The license tax on a company commencing business in the Commonwealth shall be measured by an estimate of direct gross premium income reasonably expected to be derived from such business in the Commonwealth from the time of commencing business to December 31 following. Every estimate made under this section shall be subject to review by the Department after the close of the year for which the estimate is made and, if there is any variance between the estimate and the actual direct gross premium income, the Department shall issue a refund or provide notice of the assessment of additional license tax depending on whether such estimate was in excess of or less than the actual direct gross premium income of such company for such year.

Code 1950, § 58-488; 1952, c. 190; 1968, c. 13; 1984, c. 675; 2011, c. 850; 2013, cc. 29, 163.

§ 58.1-2506. Reports to the Department

Every company subject to the provisions of this chapter shall, on or before March 1 of each year, report under oath to the Department, upon forms to be furnished or approved by and in such detail as may be prescribed by the Department, the direct gross premium income derived from its business in the Commonwealth during the preceding year ending December 31.

Code 1950, § 58-497; 1952, c. 190; 1978, c. 4; 1984, c. 675; 1997, c. 419; 2011, c. 850.

§ 58.1-2507. Penalties for failure to make report or pay tax; revocation of license; recovery by suit

A. Every company failing to make the report required by § 58.1-2506 shall be fined $50 for each day's failure to make the report.

B. Upon the failure of any such company to pay the license tax within the time required by this chapter, there shall be added to such tax a penalty of 10 percent of the amount of the tax and interest at a rate equal to the rate of interest established pursuant to § 58.1-15 for the period between the due date and the date of full payment. The Department shall notify the taxpayer of all additional amounts owed, and the taxpayer shall pay such amounts within 30 days of the date of the notice. If an overpayment is made, the Department shall issue a refund of the amount of the overpayment to the taxpayer pursuant to subsection B of § 58.1-2526. The Commission may suspend or revoke the company's license to do business in this Commonwealth pursuant to § 38.2-1040 upon notification by the Department that the additional amounts due are not paid. The Department shall proceed to recover the tax, penalty and interest (i) in the same manner as is done for any other tax administered by the Department or (ii) by proceedings brought to subject any bonds or other securities deposited by such company with the Treasurer.

C. If such failure is due to providential or other good cause shown to the satisfaction of the Department, such return or payment or return and payment may be accepted exclusive of penalties; however, such company shall pay interest on such tax as prescribed in subsection B.

Code 1950, § 58-498; 1952, c. 190; 1968, c. 13; 1978, c. 4; 1984, c. 675; 2003, c. 372; 2011, c. 850; 2013, cc. 29, 163.

§ 58.1-2508. Taxes applicable to insurance companies

A. The real estate and tangible personal property, situated or located in the Commonwealth, of every such company and every fraternal benefit society transacting insurance in the Commonwealth shall be listed and assessed on the land and property books of the commissioner of the revenue in the same manner as other real estate and tangible personal property are assessed, and shall be taxed at the same rates as other like property is taxed.

B. The license tax provided in this chapter, the tax on real estate and tangible personal property provided for in subsection A, the fee assessed by the Commission for the administration of the insurance laws pursuant to Chapter 4 (§ 38.2-400 et seq.) of Title 38.2, the fee assessed by the Commission for the Fire Programs Fund pursuant to § 38.2-401, the fee assessed by the Commission for the Dam Safety, Flood Prevention and Protection Assistance Fund pursuant to § 38.2-401.1, the fee assessed by the Commission to fund the program to reduce losses from motor vehicle thefts pursuant to § 38.2-414, the fee assessed by the Commission to fund the program to reduce losses from insurance fraud pursuant to § 38.2-415, and the retaliatory amounts assessed by the Department pursuant to § 38.2-1026 shall be in lieu of all fees, licenses, taxes and levies whatsoever, state, county, city or town; however, nothing in this section shall be construed to exempt insurance companies from the tax levied in Chapter 6 (§ 58.1-600 et seq.) of this title. No additional fee or license tax shall be applicable to an agent of an insurance company other than

the annual license fee on agents required pursuant to Article 3 (§ 38.2-1819 et seq.) of Chapter 18 of Title 38.2.

Code 1950, §§ 58-499, 58-500; 1952, c. 190; 1984, c. 675; 1985, c. 545; 1992, c. 678; 1996, c. 22; 1998, c. 590; 2001, c. 706; 2006, cc. 648, 765; 2011, c. 850.

§ 58.1-2509. Certain other provisions not affected by chapter

Nothing in this chapter shall be construed to affect or apply to the law providing that the expenses of maintaining the division or bureau of the Commission which administers the insurance laws of the Commonwealth shall be paid by the insurance companies doing business therein, and the law providing that the expense of keeping the bonds deposited with the State Treasurer shall be paid by the insurance company depositing such bonds.

Code 1950, § 58-495; 1952, c. 190; 1984, c. 675.

§ 58.1-2510. Tax credit for retaliatory costs paid to other states

A. For license years beginning on and after July 1, 1998, every qualified company shall be allowed a credit against the tax imposed by § 58.1-2501 in an amount equal to the retaliatory costs incurred during the corresponding taxable year as a result of the difference between other states' lower premium tax rates and other costs and the tax rates and costs imposed by the Commonwealth of Virginia. For license years beginning on and after July 1, 2006, and taxable years ending on and after December 31, 2006, the amount of the credit for those qualified companies not receiving a credit for the taxable year 2000 shall be limited to 60 percent of the retaliatory costs paid to other states for those companies.

B. As used in this section:

"Affiliate" of a specific company or a company "affiliated" with a specific company means a company that directly or indirectly through one or more intermediaries controls, is controlled by, or is under common control with the company specified. A company shall be deemed to control, be controlled by, or be under common control with the company specified if their relationship to each other is such that one company owns at least 80 percent of the voting power of the other company or at least 80 percent of the voting power of all companies is owned by the same interests.

"Affiliated insurance group" means two or more affiliated companies (i) at least one of which is a domestic insurance company and (ii) each of which is in the business of insurance, leasing, financial services, or providing administrative or other support for other members of the group, or is a holding company for the other members of the group.

"Domestic insurance company" means any insurance company incorporated or organized under the laws of this Commonwealth and headquartered within this Commonwealth.

"Permanent full-time position" means a position of an indefinite duration in this Commonwealth requiring a minimum of 35 hours of an employee's time a week for the entire normal year of the company's operations, which "normal year" shall consist of at least 48 weeks. Seasonal or

temporary positions and positions in building and grounds maintenance, security, and other such positions which are ancillary to the principal business of the employer shall not qualify as new, permanent full-time positions.

"Qualified company" means a domestic insurance company that (i) has made a qualified investment in this Commonwealth and (ii) for license years beginning on or after July 1, 1998, maintained the employment level required for a qualified investment, such level to be measured as of December 31 of the corresponding taxable year. The foregoing requirements may be satisfied by either the domestic insurance company or collectively by all the members of the affiliated insurance group of which the qualified company is a member.

"Qualified full-time employee" means an employee filling a permanent full-time position with a domestic insurance company or member of an affiliated insurance group.

"Qualified investment" means an investment in this Commonwealth by a domestic insurance company or any one or more members of an affiliated insurance group that results in (i) an increase as of December 31, 1997, of at least 325 qualified full-time employees above such company's or group's total combined employment level in this Commonwealth on December 31, 1996, or (ii) during any taxable year beginning on or after January 1, 2001, such company or group having more than 100 qualified full-time employees in this Commonwealth during that entire taxable year.

"Retaliatory cost" means the additional regulatory costs, including any taxes or fees exacted for the privilege of doing business, paid by a Virginia-domiciled insurer to another state pursuant to a law of such state requiring, when an insurer domiciled in such other state is subject to regulatory costs in this Commonwealth that are greater than those imposed by such other state on insurers domiciled in this Commonwealth, the Virginia-domiciled insurer to pay additional regulatory costs to equal the regulatory costs imposed by this Commonwealth on an insurer domiciled in such other state. Such term, however, shall not include penalties or interest for late payment of taxes, fees or other charges, fines or penalties assessed as the result of the violation of laws of such other state, or sums paid in settlement or compromise of alleged violations of such laws.

C. Applications for a credit and for a refund of excess taxes may be submitted by a qualified company individually or on behalf of the members of an affiliated insurance group on or before March 1 next succeeding the end of the taxable year. Any payment of the tax imposed under § 58.1-2501, including any credit claimed under this section, shall be deemed to have been made with the return filed on March 1 reporting such tax and claiming any credits or on the last day prescribed for the timely filing of such return or, if later, the actual date of payment or notice of denial of any credits claimed hereunder. An amended application or return may be filed, and a credit claimed under this section, within one year of the payment of the tax for such year. Applications shall be submitted with a form approved by the Department and signed by an independent certified public

accountant licensed by the Commonwealth who states that the domestic insurance company or affiliated insurance group, as applicable, is eligible for the credit claimed.

D. Any credit provided pursuant to this section shall be taken after all other applicable credits. Any credit not taken by a domestic insurance company may be taken by other members of an affiliated insurance group. Any credit not used to offset tax for the taxable year in which the credit was allowed may be, to the extent not so used, carried forward to future taxable years until the entire credit amount is used. Unused credits, including credits carried forward from previous years, exclusive of refunds due to overpayment or other sources, per domestic insurance company or affiliated insurance group, as applicable, shall be refunded to such company, or to the members of such group as they may agree, upon filing a refund application with the Department, in an amount not exceeding $800,000 annually, except for those qualified companies receiving a credit in taxable year 2000, which may file a refund application with the Department for taxable years beginning on and after January 1, 2011, for an amount not exceeding $7 million, annually. Refunds for unused credits shall first be applied to reduce the oldest unused credits. Refunds, including refunds based on the application of credits and overpayments of estimated taxes, shall be made after July 1 following the filing of the refund application and paid out of the state treasury.

E. If two or more domestic insurance companies paying retaliatory costs in any year are members of an affiliated insurance group, the total of the retaliatory costs paid may be combined and apportioned among the members of the affiliated insurance group as the members may agree.

F. The failure of a domestic insurance company or members of an affiliated insurance group to qualify for a new credit under this section in any year shall not affect its ability to use credits carried over from previous years.

1998, c. 365; 2009, c. 567; 2011, cc. 817, 850, 863.

§§ 58.1-2511 through 58.1-2519. Reserved

Reserved.

Article 2 - ESTIMATED TAX

§ 58.1-2520. Requirement of declaration

A. Every insurance company and nonstock corporation licensed pursuant to Chapters 42 and 45 of Title 38.2 subject to the state license tax imposed by § 58.1-2501 shall make a declaration of estimated tax if the tax imposed by this chapter, for the license year, measured by direct gross premium income, can reasonably be expected to exceed $3,000.

Such declaration shall contain such pertinent information as the Department may by forms or guidelines prescribe.

B. Any such insurance company or nonstock corporation with a taxable year of less than 12 months shall make a declaration in accordance with guidelines prescribed by the Department.

Code 1950, § 58-502.2; 1968, c. 13; 1978, c. 4; 1984, c. 675; 1987, cc. 565, 655; 2011, c. 850.

§ 58.1-2521. Time for filing declarations of estimated tax

A. The declaration of estimated tax shall be filed as follows:

If the requirements of subsection A of § 58.1-2520 are first met:

1. Before April 1 of the taxable year, the declaration shall be filed on or before April 15 of the taxable year.

2. After March 31 but before June 1 of the taxable year, the declaration shall be filed on or before June 15 of the taxable year.

3. After May 31, but before September 1 of the taxable year, the declaration shall be filed on or before September 15 of the taxable year.

4. After August 31, but before December 1 of the taxable year, the declaration shall be filed on or before December 15 of the taxable year.

B. The application of this section to taxable years of less than 12 months shall be in accordance with guidelines prescribed by the Department.

Code 1950, § 58-502.3; 1968, c. 13; 1984, c. 675; 2011, c. 850.

§ 58.1-2522. Amendments to declaration

An amendment of a declaration may be filed in any interval between installment dates prescribed for the taxable year, but only one amendment may be filed in each such interval. Such amendments shall be filed pursuant to guidelines prescribed by the Department.

Code 1950, §§ 58-502.2, 58-502.3; 1968, c. 13; 1978, c. 4; 1984, c. 675; 2011, c. 850.

§ 58.1-2523. Payment of estimated tax

A. The amount of estimated tax with respect to which a declaration is required under § 58.1-2520 shall be paid in installments as follows:

1. If the declaration is required to be filed by April 15 of the taxable year, twenty-five percent of the estimated tax shall be paid on April, June, September and December 15 of said taxable year.

2. If the declaration is required to be filed by June 15 of the taxable year, one-third of the estimated tax shall be paid on June, September and December 15 of said taxable year.

3. If the declaration is required to be filed by September 15 of the taxable year, one-half of the estimated tax shall be paid on September and December 15 of said taxable year.

4. If the declaration is required to be filed by December 15 of the taxable year, 100 percent of the estimated tax shall be paid on the same date such declaration is filed.

B. If any amendment to a declaration is filed, the amount of any remaining installments shall be the amount which would have been payable if the new estimate had been made when the first estimate for the taxable year was made, increased or decreased, as the case may be, by the amount computed by dividing: (1) The difference between (a) the amount of estimated tax required to be

paid before the date on which the amendment is made, and (b) the amount of estimated tax which would have been required to be paid before such date if the new estimate had been made when the first estimate was made, by (2) the number of installments remaining to be paid on or after the date on which the amendment is made.

C. At the election of the insurance company, any installment of the estimated tax may be paid before the date prescribed for its payment.

Code 1950, § 58-502.4; 1968, c. 13; 1972, c. 153; 1984, c. 675.

§ 58.1-2524. Payments are on account of tax for license year

Payment of the estimated tax or any installment thereof shall be considered payment on account of the license tax imposed by this chapter for the license year.

Code 1950, § 58-502.4; 1968, c. 13; 1972, c. 153; 1984, c. 675.

§ 58.1-2525. Extensions of time

The Department may grant a reasonable extension of time for payment of estimated tax, or any installment, or for filing any declaration pursuant to this article, on condition that the taxpayer shall pay interest on the amount involved at the rate set forth in § 58.1-15 until the time of payment.

Code 1950, § 58-502.4; 1968, c. 13; 1972, c. 153; 1984, c. 675; 2011, c. 850; 2013, cc. 29, 163.

§ 58.1-2526. Where declarations filed and how payments made; refunding overpayments

A. Every insurance company required by this article to file a declaration and make payment of the estimated tax shall file and pay the same with the Department. All such payments shall be deposited by the Department into the state treasury.

B. If any insurance company overestimates and overpays estimated tax or overpays as a result of increased regulatory costs imposed pursuant to § 38.2-1026, the Department shall issue a refund of the amount of the overpayment to the taxpayer. The overpayment shall be refunded out of the state treasury. No interest shall be paid on the refund of any overpayment.

Code 1950, § 58-502.5; 1968, c. 13; 1984, c. 675; 1985, c. 221; 1999, c. 571; 2011, c. 850; 2013, cc. 29, 163.

§ 58.1-2527. Failure to pay estimated tax

A. In case of any underpayment of estimated tax by an insurance company, there shall be added to the tax for the license year interest determined at the rate set forth in § 58.1-15 upon the amount of the underpayment for the period of the underpayment.

B. For purposes of subsection A, the amount of the underpayment shall be the excess of:

1. The amount of the installment which would be required to be paid if the estimated tax were equal to 90 percent of the tax shown on the report for the license year, over

2. The amount, if any, of the installment paid on or before the last date prescribed for payment.

C. The period of the underpayment shall run from the date the installment was required to be paid to whichever of the following dates is the earlier:

1. The first day of the third month following the close of the taxable year.

2. With respect to any portion of the underpayment, the date on which such portion is paid. For purposes of this paragraph, a payment of estimated tax on any installment date shall be considered a payment of any previous underpayment only to the extent such payment exceeds the amount of the installment determined under subdivision B 1 for such installment date.

Code 1950, § 58-502.6; 1968, c. 13; 1984, c. 675; 2013, cc. 29, 163.

§ 58.1-2528. Exception to § 58.1-2527

A. Notwithstanding the provisions of § 58.1-2527, the addition to the tax with respect to any underpayment of any installment shall not be imposed if the total amount of all payments of estimated tax made on or before the last date prescribed for the payment of such installment equals or exceeds the amount which would have been required to be paid on or before such date if the estimated tax were whichever of the following is the lesser:

1. The tax as ascertained for the preceding license year, and the tax for such preceding license year was computed on the basis of a taxable year of 12 months.

2. An amount equal to the tax computed at the rate applicable to the license year but otherwise on the basis of the facts shown on the report of the insurance company for, and the law applicable to, the preceding license year.

3. An amount equal to 90 percent of the tax measured by direct gross premium income received or derived in the taxable year computed by placing on an annualized basis the taxable direct gross premium income:

a. For the first three months of the taxable year, in the case of the installment required to be paid in the fourth month,

b. For the first three months or for the first five months of the taxable year, in the case of the installment required to be paid in the sixth month,

c. For the first six months or for the first eight months of the taxable year, in the case of the installment required to be paid in the ninth month, and

d. For the first nine months or for the first 11 months of the taxable year, in the case of the installment required to be paid in the twelfth month of the taxable year.

B. For purposes of subdivision A 3, the taxable direct gross premium income shall be placed on an annualized basis by multiplying by twelve the taxable direct gross premium income referred to in subdivision A 3, and dividing the resulting amount by the number of months in the taxable year (three, five, six, eight, nine, or 11, as the case may be) referred to in subdivision A 3.

C. The application of this section to taxable years of less than 12 months shall be in accordance with guidelines prescribed by the Department.

Code 1950, § 58-502.6; 1968, c. 13; 1984, c. 675; 2011, c. 850.

§ 58.1-2529. Other provisions of this chapter not affected by this article; insurance companies going out of business

Nothing in this article shall be construed as affecting other provisions of this chapter except to the extent required to give this article full effect. If an insurance company goes out of business or ceases to be an insurance company in this Commonwealth in any taxable or license year, such an event shall not relieve the company of the payment of the tax measured by direct gross premium income for the period in which the company operated as an insurance company and received or derived direct gross premium income from business in this Commonwealth.

Code 1950, § 58-502.7; 1968, c. 13; 1984, c. 675.

§ 58.1-2530. Double taxation respecting same direct gross premium income negated

This chapter shall not be construed as requiring the inclusion in the base for measuring the tax imposed by this chapter for any year any direct gross premium income which had been previously included in the base for measuring the tax imposed by this chapter respecting any license year or part thereof, and the tax paid thereon.

Code 1950, § 58-502.9; 1968, c. 13; 1984, c. 675.

§ 58.1-2531. Distribution of certain revenue

A. Beginning with the Commonwealth's fiscal year beginning on July 1, 2008 and for each fiscal year thereafter, an amount equal to one-third of all revenues collected by the Department in the most recently ended fiscal year from the tax imposed under this chapter, less one-third of the total amount of such tax refunded in the most recently ended fiscal year, shall be deposited by the Comptroller to the Priority Transportation Fund established under § 33.2-1527.

B. For purposes of the Comptroller's deposits under this section, the Tax Commissioner shall, no later than July 15 of each year, provide a written certification to the Comptroller that reports the amount to be deposited pursuant to subsection A. After the required amount has been deposited as provided in subsection A, all remaining revenues from the tax imposed under this chapter shall be deposited into the general fund of the state treasury. The Comptroller shall make all deposits under this section as soon as practicable.

2007, c. 896; 2011, c. 850.

§ 58.1-2532. Exchange of information

The Department and the Commission may exchange information for purposes of enforcing the provisions of this title.

2011, c. 850.

§ 58.1-2533. Reimbursement for certain costs

Any costs related to the insurance premiums tax that are incurred by the Department shall be recovered from the assessment for expenses under §§ 38.2-400 and 38.2-403.

2011, c. 850.

Chapter 26 - TAXATION OF PUBLIC SERVICE CORPORATIONS

Article 1 - GENERAL PROVISIONS

§ 58.1-2600. Definitions

A. As used in this chapter:

"Certificated motor vehicle carrier" means a common carrier by motor vehicle, as defined in § 46.2-2000, operating over regular routes under a certificate of public convenience and necessity issued by the Commission or issued on or after July 1, 1995, by the Department of Motor Vehicles. A transit company or bus company that is owned or operated directly or indirectly by a political subdivision of this Commonwealth shall not be deemed a "certificated motor vehicle carrier" for the purposes of this chapter and shall not be subject to the imposition of the tax imposed in § 58.1-2652, nor shall such transit company or bus company thereby be subject to the imposition of local property levies. A common carrier of property by motor vehicle shall not be deemed a "certificated motor vehicle carrier" for the purposes of this chapter and shall not be subject to the imposition of the tax imposed in § 58.1-2652, but shall be subject to the imposition of local property taxes.

"Cogenerator" means a qualifying cogenerator or qualifying small power producer within the meaning of regulations adopted by the Federal Energy Regulatory Commission in implementation of the Public Utility Regulatory Policies Act of 1978 (P.L. 95-617).

"Commission" means the State Corporation Commission which is hereby designated pursuant to Article X, Section 2 of the Constitution of Virginia as the central state agency responsible for the assessment of the real and personal property of all public service corporations, except those public service corporations for which the Department of Taxation is so designated, upon which the Commonwealth levies a license tax measured by the gross receipts of such corporations. The State Corporation Commission shall also assess the property of each telephone or telegraph company, every public service corporation in the Commonwealth in the business of furnishing heat, light and power by means of electricity, and each electric supplier, as provided by this chapter.

"Department" means the Department of Taxation which is hereby designated pursuant to Article X, Section 2 of the Constitution of Virginia as the central state agency to assess the real and personal property of railroads and pipeline transmission companies as defined herein.

"Electric supplier" means any person owning or operating facilities for the generation, transmission or distribution of electricity for sales, except any person owning or operating facilities with a designed generation capacity of twenty-five megawatts or less.

"Estimated tax" means the amount of tax which a taxpayer estimates as being imposed by Article 2 (§ 58.1-2620 et seq.) of this chapter for the tax year as measured by the gross receipts received in the taxable year.

"Freight car company" includes every car trust, mercantile or other company or person not domiciled in this Commonwealth owning stock cars, furniture cars, fruit cars, tank cars or other similar cars. Such term shall not include a company operating a line as a railroad.

"Gross receipts" means the total of all revenue derived in the Commonwealth, including but not limited to income from the provision or performance of a service or the performance of incidental operations not necessarily associated with the particular service performed, without deductions for expenses or other adjustments. Such term shall not, however, include interest, dividends, investment income or receipts from the sale of real property or other assets except inventory of goods held for sale or resale.

"Pipeline distribution company" means a corporation, other than a pipeline transmission company, which transmits, by means of a pipeline, natural gas, manufactured gas or crude petroleum and the products or by-products thereof to a purchaser for purposes of furnishing heat or light.

"Pipeline transmission company" means a corporation authorized to transmit natural gas, manufactured gas or crude petroleum and the products or by-products thereof in the public service by means of a pipeline or pipelines from one point to another when such gas or petroleum is not for sale to an ultimate consumer for purposes of furnishing heat or light.

"Tax Commissioner" means the chief executive officer of the Department of Taxation or his designee.

"Tax year" means the twelve-month period beginning on January 1 and ending on December 31 of the same calendar year, such year also being the tax assessment year or the year in which the tax levied under this chapter shall be paid.

"Taxable year" means the calendar year preceding the tax year, upon which the gross receipts are computed as a basis for the payment of the tax levied pursuant to this chapter.

"Telegraph company" means a corporation or person operating the apparatus necessary to communicate by telegraph.

"Telephone company" means a person holding a certificate of convenience and necessity granted by the State Corporation Commission authorizing telephone service; or a person authorized by the Federal Communications Commission to provide commercial mobile service as defined in § 332(d)(1) of the Communications Act of 1934, as amended, where such service includes cellular mobile radio communications services or broadband personal communications services; or a person holding a certificate issued pursuant to § 214 of the Communications Act of 1934, as amended, authorizing domestic telephone service and belonging to an affiliated group including a person holding a

certificate of convenience and necessity granted by the State Corporation Commission authorizing telephone service. The term "affiliated group" has the meaning given in § 58.1-3700.1.

B. For purposes of this chapter the terms "license tax" and "franchise tax" shall be synonymous.

Code 1950, §§ 58-503, 58-503.1, 58-503.2, 58-508, 58-514.3, 58-514.4, 58-556, 58-626.1, 58-627; 1950, p. 660; 1954, c. 341; 1956, cc. 69, 475; 1968, c. 15; 1970, c. 32; 1971, Ex. Sess., c. 45; 1974, c. 397; 1978, c. 62; 1979, c. 153; 1980, c. 649; 1982, c. 671; 1983, c. 570; 1984, c. 675; 1988, cc. 730, 899; 1995, c. 507; 1996, c. 381; 1998, c. 897; 1999, c. 971; 2002, cc. 443, 444.

§ 58.1-2601. Boundaries of certain political units to be furnished company, Commission and Department

A. The commissioner of the revenue in each county and city in which a public service corporation or other person with property assessed pursuant to this chapter does business or owns property shall furnish, on or before January 1 in each year, to each such corporation or person, the boundaries of each city and the magisterial district of the county and of each town therein in which any part of the property of such corporation or person is situated. A copy of such boundaries shall also be forwarded to the clerk of the Commission and the Tax Commissioner.

B. Whenever any commissioner of the revenue shall fail to furnish to such corporation or other person, the clerk of the Commission and the Tax Commissioner, such boundaries required in subsection A, the clerk of the Commission and the Tax Commissioner shall notify the judge of the circuit court of the county and city of such commissioner of the revenue, and the judge shall instruct the grand jury at the next term of the circuit court to ascertain whether such boundaries have been furnished as required in this section. Should the grand jury ascertain that such boundaries have not been furnished, they shall find an indictment against the commissioner of the revenue. Upon conviction thereof, such commissioner of the revenue shall be guilty of a Class 4 misdemeanor, each magisterial district and town boundary so omitted being a separate offense.

C. Notwithstanding the provisions of subsection A, whenever the boundaries have once been furnished to any public service corporation or other person with property assessed pursuant to this chapter, the Commission and the Tax Commissioner, the commissioner of the revenue shall thereafter not be required to furnish the boundaries except as shall be necessary to show subsequent changes in such boundaries.

Code 1950, § 58-510; 1972, c. 548; 1980, c. 84; 1983, c. 570; 1984, c. 675; 1999, c. 971.

§ 58.1-2602. Local authorities to examine assessments and inform Department or Commission whether correct

The governing body of each county, city and town, receiving a copy of any assessment made by the Commission or the Department against property of a public service corporation or other person with property assessed pursuant to this chapter located in such county, city or town, shall forthwith review such assessments and determine whether they are accurate and notify the clerk of the Commission or the Department of any corrections thereto. Such governing bodies at their own

expense may, when there is reason to doubt the correctness of the assessed length of any line, retain any surveyor in order to verify the assessment of the Commission or the Department.

Code 1950, § 58-511; 1972, c. 549; 1983, c. 570; 1984, c. 675; 1999, c. 971.

§ 58.1-2603. Local levies to be extended by commissioners of the revenue; copies; forms

All county, district and city levies on the property of public service corporations or other persons with property assessed pursuant to this chapter shall be extended by the commissioner of the revenue for the county or city, and a copy of such extensions shall be certified and transmitted by the commissioner of the revenue to the treasurer of his county or city for collection. In each city which has a collector of city taxes, such copy shall be certified and transmitted to such collector of city taxes. Forms for use by the commissioners of the revenue under this section shall be prescribed and furnished by the Department.

Code 1950, § 58-512; 1984, c. 675; 1999, c. 971.

§ 58.1-2604. Assessed valuation

A. Except as otherwise provided in § 58.1-2609, the equalized assessed valuation of the property of any public service corporation or other person with property assessed pursuant to this chapter in any taxing district shall be made by application of the local assessment ratio prevailing in such taxing district for other real estate as most recently determined and published by the Department of Taxation.

B. On request of any local taxing district in connection with any reassessment of property, representatives of the State Corporation Commission and the Department shall consult with representatives of the district with regard to ascertainment and equalization of values to help assure uniformity of appraisals and assessments in accordance with the provisions of this section.

C. The Department of Taxation shall furnish to each county, city or town in which the property of public service corporations or other persons with property assessed pursuant to this chapter represents twenty-five percent or more of the total assessed value of real estate in such county, city or town, the local assessment ratio to be applied within that county, city or town no later than April 1 of the year for which it is applicable.

D. The Department of Taxation shall furnish to each county, city or town, by April 1 of each year, a description of the manner in which the local assessment ratio applicable to the county, city or town for the year was determined. The description furnished by the Department shall include, but not be limited to, a description of the parcels used, the time period from which sales transactions were drawn, the classification applied by the Department to any parcel or transaction, and any mathematical formulas used in calculating the local assessment ratio.

Code 1950, § 58-512.1; 1966, c. 541; 1975, c. 620; 1976, c. 687; 1977, c. 210; 1979, c. 160; 1983, c. 570; 1984, c. 675; 1993, c. 529; 1999, c. 971.

§ 58.1-2605. Repealed

Repealed by Acts 2002, c. 502, effective January 1, 2003.

§ 58.1-2606. Local taxation of real and tangible personal property of public service corporations; other persons

A. Notwithstanding the provisions of this section and §§ 58.1-2607 and 58.1-2690, all local taxes on the real estate and tangible personal property of public service corporations referred to in such sections and other persons with property assessed pursuant to this chapter shall be at the real estate rate applicable in the respective locality.

B. Notwithstanding any of the foregoing provisions, all aircraft, automobiles and trucks of such corporations and other persons shall be taxed at the same rate or rates applicable to other aircraft, automobiles and trucks in the respective locality.

C. Notwithstanding any of the foregoing provisions, generating equipment that is reported to the Commission by electric suppliers shall be taxed at a rate determined by the locality but shall not exceed the real estate rate applicable in the respective localities. However, generating equipment that is reported to the Commission by electric suppliers utilizing wind turbines may be taxed by the locality at a rate that exceeds the real estate rate, but that does not exceed the general class of personal property tax rate applicable in the respective localities.

D. Notwithstanding the provisions of any of the foregoing provisions, no additional tax otherwise authorized under § 58.1-3221.3 shall be imposed by the counties of Isle of Wight, James City, and York and the cities of Chesapeake, Hampton, Newport News, Norfolk, Poquoson, Portsmouth, Suffolk, Virginia Beach, and Williamsburg upon any real or tangible personal property of a public service corporation or electric supplier unless a final certificate of occupancy for a commercial or industrial use has been issued and remains in effect.

Code 1950, §§ 58-514.2, 58-605; 1966, c. 539; 1972, c. 813; 1975, c. 620; 1976, c. 687; 1984, c. 675; 1999, cc. 866, 971; 2004, c. 504; 2006, c. 517; 2008, c. 642.

§ 58.1-2607. Local taxation of real and tangible personal property of railroads

A. Notwithstanding the provisions of §§ 58.1-2604 and 58.1-2606, and beginning with assessments initially effective January 1, 1980, all assessments of real estate and tangible personal property of railroads shall be made by application of the local assessment ratio prevailing in such taxing district for other real estate as determined or published by the Department, except that land and noncarrier property shall be assessed as provided in § 58.1-2609.

B. The real estate and tangible personal property (other than the rolling stock) of every railway company, but not its franchise, shall be assessed on the valuation fixed by the Department and shall be taxed by a county, city, town, and magisterial district at the real estate tax rate applicable in such respective locality.

Code 1950, §§ 58-514.2:2, 58-522; 1972, c. 813; 1978, c. 784; 1979, c. 160; 1983, c. 570; 1984, c. 675.

§ 58.1-2608. State taxation of railroads, telecommunications companies

Every railway company or telecommunications company as defined in § 58.1-400.1 shall pay to the Commonwealth the income tax imposed by Chapter 3 of this title.

Nothing herein contained shall exempt such corporations from the intangible personal property tax levied under Chapter 11, the annual fee and the annual state registration fee on domestic corporations, both levied under § 13.1-775.1 or from assessment for street and other local improvements which shall be authorized by law, or from the county, city, town, or magisterial district levies hereinafter provided for.

Code 1950, § 58-519; 1964, c. 425; 1971, Ex. Sess., c. 41; 1972, c. 813; 1976, c. 777; 1978, c. 784; 1984, c. 675; 1988, c. 899.

§ 58.1-2609. Local taxation of land and nonutility and noncarrier improvements of public service corporations; other persons

Whenever land and noncarrier and nonutility improvements of public service corporations and other persons with property assessed pursuant to this chapter are appraised for local taxation by comparison to the appraised values placed by local assessors on similar properties in the taxing district, they shall be assessed by application of the local stated ratio of assessments to appraisals, and taxed at the rate applicable to other real property in the taxing district. Such property is hereby defined as a separate item of taxation for such purpose and shall be identified as a separate class of property for local taxation.

Code 1950, § 58-514.2:3; 1979, c. 160; 1984, c. 675; 1999, c. 971.

§ 58.1-2610. Penalty for failure to file timely report

Any person failing to make a report required under the provisions of this chapter within the time prescribed shall be liable to a penalty of $100 for each day such taxpayer is late in making such report. The State Corporation Commission or Tax Commissioner, as the case may be, may waive all or a part of such penalty for good cause.

Code 1950, §§ 58-514, 58-539, 58-625; 1978, c. 784; 1983, c. 570; 1984, c. 675; 1999, c. 971.

§ 58.1-2611. Penalty for failure to pay tax

A. Any person failing to pay the tax levied pursuant to this chapter into the state treasury within the time prescribed by law shall incur a penalty thereon of ten percent, which shall be added to the amount of the tax due.

B. Notwithstanding the provisions of subsection A, such penalty shall not accrue in any case unless the State Corporation Commission or the Department, as the case may be, mails the person a certified copy of the assessment on or before May 15 preceding. In the event such copy is not mailed on or before May 15 preceding, the penalty for nonpayment in time shall not accrue until the close of the fifteenth day next following the mailing of such certified copy of the assessment.

Code 1950, §§ 58-514.1, 58-537, 58-561, 58-587, 58-601, 58-614, 58-626; 1956, c. 495; 1972, c. 813; 1983, c. 570; 1984, c. 675; 1999, c. 971.

§ 58.1-2612. Lien of taxes

All the taxes and levies provided for in this chapter shall, until paid, be a lien upon the property within the Commonwealth of the corporation owning the same and take precedence over all other liens or encumbrances.

Code 1950, §§ 58-536, 58-599, 58-615; 1984, c. 675.

Article 2 - LICENSE TAX ON TELEGRAPH, TELEPHONE, WATER, HEAT, LIGHT, POWER AND PIPELINE COMPANIES

§ 58.1-2620. Basis of tax

The license tax levied pursuant to this article shall be paid annually for each tax year based upon the gross receipts received during the taxable year.

Code 1950, § 58-503.2; 1979, c. 153; 1984, c. 675.

§§ 58.1-2621 through 58.1-2625. Repealed

Repealed by 1988, c. 899, effective for tax years 1990 and after.

§ 58.1-2626. Annual state license tax on companies furnishing water, heat, light or power

A. Every corporation doing in the Commonwealth the business of furnishing water, heat, light or power, whether by means of gas or steam, except (i) a pipeline transmission company taxed pursuant to § 58.1-2627.1, (ii) a pipeline distribution company as defined in § 58.1-2600 and a gas utility and a gas supplier as defined in § 58.1-400.2, or (iii) an electric supplier as defined in § 58.1-400.2, shall, for the privilege of doing business within the Commonwealth, pay to the Commonwealth for each tax year an annual license tax equal to two percent of its gross receipts, actually received, from all sources.

B. The state license tax provided in subsection A shall be (i) in lieu of all other state license or franchise taxes on such corporation, and (ii) in lieu of any tax upon the shares of stock issued by it.

C. Nothing herein contained shall exempt such corporation from motor vehicle license taxes, motor vehicle fuel taxes, fees required by § 13.1-775.1 or from assessments for street and other local improvements, which shall be authorized by law, nor from the county, city, town, district or road levies.

D. Nothing herein contained shall annul or interfere with any contract or agreement by ordinance between such corporations and cities and towns as to compensation for the use of the streets or alleys by such corporations.

Code 1950, § 58-603; 1971, Ex. Sess., c. 41; 1972, c. 858; 1976, c. 778; 1978, c. 786; 1980, c. 668; 1982, c. 633; 1984, c. 675; 1985, c. 31; 1987, cc. 320, 364; 1999, c. 971; 2000, cc. 691, 706.

§ 58.1-2626.1. The Virginia Coal Employment and Production Incentive Tax Credit

A. For the tax years beginning on and after January 1, 1988, every corporation in the Commonwealth doing the business of furnishing water, heat, light or power to the Commonwealth or its citizens, whether by means of electricity, gas or steam shall be allowed a credit against the tax imposed by § 58.1-2626 in the following amount: one dollar per ton for each ton of coal purchased and consumed by such corporation in excess of the number of tons of Virginia coal purchased by such corporation in 1985, provided such coal was mined in Virginia as certified by the producer of such coal. This credit shall be prorated equally against the corporation's estimated payments made in September and December and the final payment.

B. For tax years beginning on and after January 1, 1989, every corporation in the Commonwealth doing the business of furnishing water, heat, light or power to the Commonwealth or its citizens, whether by means of electricity, gas or steam shall be allowed additional credit against the tax imposed by § 58.1-2626 in the following amount: one dollar per ton for each ton of coal purchased and consumed by such corporation, provided such coal was mined in Virginia as certified by such seller. The credit shall be prorated equally against the corporation's estimated payments made in September and December and the final payment.

C. [Expired.]

1986, c. 450; 1989, c. 429; 2000, c. 929.

§ 58.1-2627. Exemptions

There shall be deducted from the gross receipts of any corporation engaged in the business of furnishing heat, light or power by means of gas, revenues billed on behalf of another person to the extent such revenues are later paid over to or settled with that person.

Code 1950, § 58-603; 1971, Ex. Sess., c. 41; 1972, c. 858; 1976, c. 778; 1978, c. 786; 1980, c. 668; 1982, c. 633; 1984, c. 675; 1986, c. 243; 1993, c. 522; 1998, c. 197; 1999, c. 971.

§ 58.1-2627.1. Taxation of pipeline companies

A. Every pipeline transmission company shall pay to the Department on its allocated and apportioned net taxable income, in lieu of a license tax, the tax levied pursuant to Chapter 3 (§ 58.1-300 et seq.) (State Income Tax) of this title. There shall be deducted from such allocated and apportioned net income an amount equal to the percentage that gross profit (operating revenues less cost of purchased gas) derived from sales in this Commonwealth for consumption by the purchaser of natural or manufactured gas is of the total gross profit in the Commonwealth of the taxpayer.

B. The annual report of such company required pursuant to § 58.1-2628 shall be made to the Department, on forms prepared and furnished by the Department, if the company is a pipeline transmission company or to the Commission if a pipeline distribution company. The Department shall assess the value of the property of each pipeline transmission company and the Commission shall assess the value of the property of each pipeline distribution company. The applicable county, city, town and magisterial district property levies shall attach thereto. The powers and

duties granted to the Commission by §§ 58.1-2633 B and C and 58.1-2634 shall apply mutatis mutandis to the Department.

C. A company liable for the license tax under subsection A shall not be liable for the tax imposed by Chapter 28 (§ 58.1-2814 et seq.) of this title.

D. When a company qualifies as both a pipeline transmission company and a pipeline distribution company, it shall for property tax valuation purposes be considered a pipeline distribution company.

Code 1950, §§ 58-588, 58-590, 58-597; 1956, c. 69; 1964, c. 217; 1968, c. 637; 1971, Ex. Sess., c. 1; 1972, c. 813; 1980, cc. 82, 371; 1983, c. 570; 1984, c. 675; 2000, cc. 691, 706.

§ 58.1-2628. Annual report

A. Each telegraph company and telephone company shall report annually, on April 15, to the Commission all real and tangible personal property of every description in the Commonwealth, owned, operated or used by it, except leased automobiles, leased trucks or leased real estate, as of January 1 preceding, showing particularly the county, city, town or magisterial district wherein such property is located.

The report shall also show the total gross receipts for the 12 months ending December 31 next preceding and the interstate revenue, if any, attributable to the Commonwealth. Such revenue shall include all interstate revenue from business originating and terminating within the Commonwealth and a proportion of interstate revenue from all interstate business passing through, into or out of the Commonwealth.

B. Every corporation doing in the Commonwealth the business of furnishing water, heat, light and power, whether by means of gas or steam, except (i) pipeline transmission companies taxed pursuant to § 58.1-2627.1 or (ii) an electric supplier as defined in § 58.1-400.2, shall report annually, on April 15, to the Commission all real and tangible personal property of every description in the Commonwealth, belonging to it as of January 1 preceding, showing particularly, as to property owned by it, the county, city, town or magisterial district wherein such property is located. The report shall also show the total gross receipts for the 12 months ending December 31 next preceding.

C. Every corporation in the Commonwealth in the business of furnishing heat, light and power by means of electricity shall report annually, on April 15, to the Commission all real and tangible personal property of every description in the Commonwealth, belonging to such corporation, leased by such corporation for a term greater than one year, or operated by such corporation as of the preceding January 1, showing particularly the county, city, town or magisterial district in which such property is located, unless reported to the Commission by another corporation or electric supplier in the Commonwealth in the business of furnishing heat, light and power by means of electricity. Real and tangible personal property of every description in the Commonwealth leased by such corporation for a term greater than one year or operated by such corporation shall mean only those

assets directly associated with production facilities and shall not mean real estate or vehicles. The report shall also show the total gross receipts less sales to federal, state and local governments for their own use. Electric suppliers organized as cooperatives shall report annually their gross receipts received from nonmembers.

D. Every electric supplier as defined in § 58.1-2600 shall report annually, on April 15, to the Commission all real and tangible personal property owned by such electric supplier, leased by such electric supplier for a term greater than one year, or operated by such electric supplier in the Commonwealth and used directly for the generation, transmission or distribution of electricity for sale as of the preceding January 1, showing particularly the county, city, town or magisterial district in which such property is located, unless reported to the Commission by another corporation or electric supplier in the Commonwealth in the business of furnishing heat, light and power by means of electricity. Real and tangible personal property of every description in the Commonwealth leased by such electric supplier for a term greater than one year or operated by such electric supplier shall mean only those assets directly associated with production facilities and shall not mean real estate or vehicles. The report shall also show the total gross receipts less sales to federal, state and local governments for their own use. Electric suppliers organized as cooperatives shall report annually their gross receipts received from nonmembers.

E. Every pipeline transmission company shall report annually, on April 15, to the Department all of its real and tangible personal property of every description as of the beginning of January 1 preceding, showing particularly in what city, town or county and magisterial district therein the property is located.

F. The report required by subsections A through E shall be completed on forms prepared and furnished by the Commission. The Commission shall include on such forms such information as the Commission deems necessary for the proper administration of this chapter.

G. The report required by this section shall be certified by the oath of the president or other designated official of the corporation or person.

Code 1950, §§ 58-581, 58-607 through 58-609; 1956, c. 69; 1968, c. 637; 1972, c. 813; 1979, c. 284; 1984, c. 675; 1987, c. 376; 1988, c. 899; 1998, c. 197; 1999, c. 971; 2002, cc. 444, 502; 2004, cc. 661, 716.

§ 58.1-2629. License taxes of corporations commencing business

A. Companies or persons otherwise taxable under § 58.1-2626 but that begin business on or after the beginning of the tax year shall pay a license tax, the measure of which shall be an estimate of the gross receipts of such company or person for the year or for that part of the year in which it begins business. Such estimate shall be reported to the Commission on forms furnished by the Commission within thirty days after beginning business and the license tax measured thereby and assessed by the Commission shall be paid into the state treasury within thirty days after such

assessment is made or by June 1 of the year if such assessment is made more than thirty days prior to June 1.

B. Any company or person subject to the provisions of subsection A shall, for the immediately following tax year, pay the license tax measured by an estimate of the gross receipts for the year beginning January 1 of the year following the year in which it began business. Such estimate of gross receipts shall be reported to the Commission within the time requirements prescribed by § 58.1-2628.

C. Every estimate made under this section shall be subject to review by the Commission after the close of the year for which such estimate is made and any variance between the estimate and the actual gross receipts shall be adjusted by the Commission by order of refund or the assessment of additional license tax depending upon whether such estimate was in excess of or less than the actual gross receipts of such taxpayer for such year.

Code 1950, §§ 58-504, 58-505; 1956, c. 69; 1984, c. 675; 1988, c. 899; 2002, c. 502.

§ 58.1-2630. Gross receipts in cases of acquisition of business

A. Any taxpayer liable for a license tax required by this chapter or liable for the special regulatory revenue tax required by Article 6 (§ 58.1-2660 et seq.) of this chapter that acquires, by purchase or otherwise, the business or any part thereof of another taxpayer also liable for such taxes but which would not be otherwise subject to the taxes following such sale or disposition shall, for the purpose of determining the amount of its taxes for the year following the year in which such business was so acquired, include as a part of its gross receipts for the taxable years, the gross receipts of the business so acquired for that portion of the taxable year as such business was not operated by the acquiring taxpayer.

B. The provisions of subsection A shall not apply to any taxpayer whose license tax for the year involved is measured by an estimate of gross receipts for such year as prescribed in § 58.1-2629.

Code 1950, § 58-506; 1984, c. 675; 2002, c. 502.

§ 58.1-2631. Gross receipts in cases of consolidation or merger

Whenever there is a consolidation or merger of corporations taxable under § 58.1-2626 or taxable under Article 6 (§ 58.1-2660 et seq.) of this chapter, liability for the taxes shall attach to the corporation thus formed and the gross receipts which shall be used for measuring the license tax or special regulatory revenue tax of the corporation thus formed shall include the gross receipts of the corporations which were consolidated or merged.

Code 1950, § 58-507; 1984, c. 675; 1988, c. 899; 2002, c. 502.

§ 58.1-2632. Applicability of other provisions to corporations commencing business, acquiring other business, or consolidated or merged

All provisions of this article applicable to the license tax of any corporation subject to §§ 58.1-2629, 58.1-2630 or § 58.1-2631, including such provisions relating to the assessment, payment

and collection of the tax and the method and time of reporting, except as may be otherwise provided, shall be applicable to the license tax of such corporation for the year covered by such sections.

Code 1950, § 58-509; 1984, c. 675.

§ 58.1-2633. Assessment by Commission

A. The Commission shall assess the value of the reported property subject to local taxation of each telegraph, telephone, water, heat, light and power company and electric supplier, except a pipeline transmission company taxed pursuant to § 58.1-2627.1, and shall assess the license tax levied hereon if such company is subject to the license tax under this article.

B. Should any such person fail to make the reports required by this article on or before April 15 of each year, the Commission shall assess the value of the property of such person, and its gross receipts upon the best and most reliable information that can be obtained by the Commission.

C. In making such assessment, the Commission may require such person or its officers and employees to appear with such documents and papers as the Commission deems necessary.

Code 1950, §§ 58-582, 58-610; 1956, c. 69; 1968, c. 637; 1972, c. 813; 1984, c. 675; 1988, c. 899; 1999, c. 971.

§ 58.1-2634. Copies of assessment forwarded to interested parties

A certified copy of the assessment made pursuant to § 58.1-2633, when made, shall be immediately forwarded by the clerk of the Commission to the Comptroller and to the president or other proper officer of each company, and to the governing body of each county, city and town wherein any property belonging to such company is situated and to each commissioner of the revenue.

The assessment shall show the type of property and its value and location.

Code 1950, §§ 58-583, 58-584, 58-592, 58-611, 58-612; 1968, c. 637; 1972, c. 813; 1983, c. 570; 1984, c. 675.

§ 58.1-2635. Date of payment of taxes

Every taxpayer assessed a license tax under any of the provisions of this article shall pay such tax into the state treasury by June 1 of each year.

Code 1950, §§ 58-586, 58-591, 58-613; 1956, c. 69; 1984, c. 675.

Article 4 - ESTIMATED TAX

§ 58.1-2640. Declarations of estimated tax required; contents, etc

A. Every taxpayer that is subject to a state license tax imposed by § 58.1-2626 shall make a declaration of estimated tax for the taxable year if the tax imposed by this chapter, for the tax year, can reasonably be expected to exceed $5,000.

Such declaration shall contain such pertinent information as the Commission may by forms or regulations prescribe.

B. A taxpayer with a taxable year of less than twelve months shall make a declaration in accordance with regulations prescribed by the Commission.

Code 1950, § 58-514.4; 1968, c. 15; 1984, c. 675; 1988, c. 899; 2002, c. 502.

§ 58.1-2641. Time for filing declarations of estimated tax

A. The declaration of estimated tax shall be filed as follows:

If the requirements of subsection A of § 58.1-2640 are first met:

1. Before April 1 of the taxable year, the declaration shall be filed on or before April 15 of the taxable year.

2. After March 31 and before June 1 of the taxable year, the declaration shall be filed on or before June 15 of the taxable year.

3. After May 31 and before September 1 of the taxable year, the declaration shall be filed on or before September 15 of the taxable year.

4. After August 31 and before December 1 of the taxable year, the declaration shall be filed on or before December 15 of the taxable year.

B. The application of this section to taxable years of less than twelve months shall be in accordance with regulations prescribed by the Commission.

Code 1950, § 58-514.5; 1968, c. 15; 1984, c. 675.

§ 58.1-2642. Amendments to declaration

An amendment to a declaration may be filed in any interval between installment dates prescribed for the taxable year, but only one amendment may be filed in each such interval. Such amendments shall be filed pursuant to regulations prescribed by the Commission.

Code 1950, §§ 58-514.4, 58-514.5; 1968, c. 15; 1984, c. 675.

§ 58.1-2643. Payment of estimated tax

A. The amount of estimated tax with respect to which a declaration is required under § 58.1-2640 shall be paid in installments as follows:

1. If the declaration is required to be filed by April 15 of the taxable year, twenty-five percent of the estimated tax shall be paid on the fifteenth day of April, June, September and December of said taxable year.

2. If the declaration is required to be filed by June 15 of the taxable year, one-third of the estimated tax shall be paid on the fifteenth day of June, September and December of said taxable year.

3. If the declaration is required to be filed by September 15 of the taxable year, one-half of the estimated tax shall be paid on the fifteenth day of September and December of said taxable year.

4. If the declaration is required to be filed by December 15 of the taxable year, 100 percent of the estimated tax shall be paid on December 15 of said taxable year.

B. If any amendment to a declaration is filed, the amount of any remaining installments shall be the amount which would have been payable if the new estimate had been made when the first estimate for the taxable year was made, increased or decreased, as the case may be, by the amount computed by dividing: (1) The difference between (a) the amount of estimated tax required to be paid before the date on which the amendment is made, and (b) the amount of estimated tax which would have been required to be paid before such date if the new estimate had been made when the first estimate was made, by (2) the number of installments remaining to be paid on or after the date on which the amendment is made.

Code 1950, § 58-514.6; 1968, c. 15; 1972, c. 152; 1984, c. 675.

§ 58.1-2644. Payments are on account of tax for tax year

Payment of the estimated tax or any installment thereof shall be considered payment on account of the license tax imposed by this chapter for the tax year.

Code 1950, § 58-514.6; 1968, c. 15; 1972, c. 152; 1984, c. 675.

§ 58.1-2645. Late filing

If the declaration is filed after the time prescribed by § 58.1-2641 (determined without regard to any extension of time for filing the declaration), there shall be paid at the time of such filing all installments of estimated tax which would have been payable on or before such time if the declaration had been filed timely and the remaining installment shall be paid at the time at which, and in the amounts in which, they would have been payable if the declaration had been so filed.

Code 1950, § 58-514.6; 1968, c. 15; 1972, c. 152; 1984, c. 675.

§ 58.1-2646. Extensions of time

The Commission may grant a reasonable extension of time for payment of estimated tax or any installment, or for filing any declaration on condition that the taxpayer shall pay interest on the amount involved at the rate of three-fourths of one percent per month or fraction thereof from the time the payment was due until the time of payment. Whenever the taxpayer, without having been granted an extension, fails to make payment of estimated tax or any installment, or file any declaration, it shall pay interest on the amount involved at the rate prescribed in § 58.1-15 from the time payment was due until the time of payment.

Code 1950, § 58-514.6; 1968, c. 15; 1972, c. 152; 1984, c. 675.

§ 58.1-2647. Where declarations filed and how payments made; refunding overpayments

A. Every taxpayer required to file a declaration and make payment of the estimated tax shall file and pay the same with the Commission. All such payments shall be deposited by the Commission into the state treasury.

B. If any taxpayer overestimates and overpays estimated tax, the Commission shall order a refund of the amount of the overpayment to the taxpayer. The overpayment shall be refunded out of the state treasury on the order of the Commission upon the Comptroller. The Commission may act

under this subsection within two years from December 31 of the year in which such overpayment was made.

Code 1950, § 58-514.7; 1968, c. 15; 1984, c. 675; 1988, c. 899.

§ 58.1-2648. Failure to pay estimated tax

A. In case of any underpayment of estimated tax by a taxpayer, there shall be added to the tax for the tax year an amount determined at the rate provided in § 58.1-15 upon the amount of the underpayment for the period of the underpayment (determined under subsection C).

B. For purposes of subsection A, the amount of the underpayment shall be the excess of:

1. The amount of the installment which would be required to be paid if the estimated tax were equal to ninety percent of the tax ascertained for the tax year, over

2. The amount, if any, of the installment paid on or before the last date prescribed for payment.

C. The period of the underpayment shall run from the date the installment was required to be paid to whichever of the following dates is the earlier:

1. June 1 following the close of the taxable year.

2. With respect to any portion of the underpayment, the date on which such portion is paid. For purposes of this subdivision, a payment of estimated tax on any installment date shall be considered a payment of any previous underpayment only to the extent such payment exceeds the amount of the installment determined under subdivision B 1 of this section for such installment date.

Code 1950, § 58-514.8; 1968, c. 15; 1984, c. 675; 1988, c. 899.

§ 58.1-2649. Exception to § 58.1-2648

A. Notwithstanding the provisions of § 58.1-2648, the addition to the tax with respect to any underpayment of any installment shall not be imposed if the total amount of all payments of estimated tax made on or before the last date prescribed for the payment of such installment equals or exceeds the amount which would have been required to be paid on or before such date if the estimated tax were whichever of the following is the lesser:

1. The tax as ascertained for the preceding tax year, and the tax for such preceding tax year was computed on the basis of a taxable year of twelve months.

2. An amount equal to the tax computed at the rate applicable to the tax year but otherwise on the basis of the facts shown on the report of the public service corporation for, and the law applicable to, the preceding tax year.

3. An amount equal to ninety percent of the license tax received in the taxable year computed by placing on an annualized basis the taxable gross receipts:

a. For the first three months of the taxable year, in the case of the installment required to be paid in the fourth month,

b. For the first three months or for the first five months of the taxable year, in the case of the installment required to be paid in the sixth month,

c. For the first six months or for the first eight months of the taxable year, in the case of the installment required to be paid in the ninth month, and

d. For the first nine months or for the first eleven months of the taxable year, in the case of the installment required to be paid in the twelfth month of the taxable year.

B. For purposes of subdivision 3 of subsection A, the taxable gross receipts shall be placed on an annualized basis by multiplying by twelve the taxable gross receipts referred to in subdivision 3, and dividing the resulting amount by the number of months in the taxable year (three, five, six, eight, nine, or eleven, as the case may be) referred to in subdivision 3.

C. The application of this section to taxable years of less than twelve months shall be in accordance with regulations prescribed by the Commission.

Code 1950, § 58-514.8; 1968, c. 15; 1984, c. 675.

§ 58.1-2650. Other provisions of this chapter not affected by this article; taxpayers beginning or going out of business

Nothing in the preceding sections relative to the payment of estimated tax payments shall be construed as affecting other provisions of this chapter except to the extent required to ensure the collection of estimated taxes. To the extent there is inconsistency between a section relating to the payment of estimated taxes and § 58.1-2629, relating to taxpayers beginning business, those sections relating to the payment of estimated taxes shall control. Moreover, if a taxpayer goes out of business or ceases to be subject to the license tax in any taxable or tax year, such an event shall not defeat the payment of the license tax for the period in which the corporation was subject to the license tax and received gross receipts.

Code 1950, § 58-514.9; 1968, c. 15; 1984, c. 675; 1988, c. 899.

§ 58.1-2651. Certain sections not applicable to special revenue taxes imposed by Article 6

The provisions of §§ 58.1-2640 through 58.1-2650 shall not apply to the special revenue taxes imposed by Article 6 (§ 58.1-2660 et seq.) of this chapter.

Code 1950, § 58-514.12; 1968, c. 15; 1984, c. 675; 1988, c. 899.

Article 5 - ROLLING STOCK TAX ON RAILROADS, FREIGHT CAR COMPANIES AND MOTOR VEHICLE CARRIERS AND PROPERTY VALUATION OF RAILROADS

§ 58.1-2652. State tax on rolling stock; date of payment

A. The state tax on the rolling stock of a railroad, a freight car company and a certificated motor vehicle carrier, doing business in this Commonwealth shall be at the rate of $1 on each $100 of the assessed value thereof.

Rolling stock of a railroad or a freight car company shall include all locomotives, of whatever motive power, autocars, cars of every kind and description, and all other equipment determined by the Tax Commissioner to constitute rolling stock.

B. Such tax shall be paid by such company into the state treasury on or before June 1 of each year and shall be distributed in accordance with the provisions of §§ 58.1-2658 and 58.1-2658.1.

Code 1950, §§ 58-515, 58-530, 58-560, 58-622; 1956, c. 69; 1972, c. 813; 1978, c. 784; 1983, c. 570; 1984, c. 675; 1985, c. 557.

§ 58.1-2653. Annual report of railroads and freight car companies

A. Every railroad shall report on or before April 15, to the Department, its real and tangible personal property, including real property used for common carrier purposes, of every description as of December 31 preceding and the county, city, town or magisterial district in which it is located. The lien of the Commonwealth or political subdivision thereof for taxes levied on such property for all purposes shall attach to such property on December 31 next preceding. The Department shall furnish each county, city, town or magisterial district a copy of the report of nonoperating (noncarrier) property pertaining to such locality.

B. Every freight car company shall, on or before April 15, report to the Department the aggregate number of miles traveled by its cars in the Commonwealth during the year ending December 31 next preceding and the average number of miles traveled per day by each class of car as established by the Tax Commissioner. Each railroad owning a line in the Commonwealth over which cars of a freight car company travel shall on its annual report show the total number of miles made by such cars during the year ending December 31 next preceding, the company name and aggregate number of miles traveled by cars thereof and the average number of miles traveled per day by each class of car during the year.

C. Each report shall be made on forms prescribed and furnished by the Tax Commissioner. Such forms may require any information necessary to enable the Department to properly ascertain the value of and assess such property.

D. Each report shall be verified by the oath of the president or other proper officer of such company.

Code 1950, §§ 58-524, 58-525, 58-528, 58-556, 58-557; 1956, c. 69; 1960, c. 346; 1964, c. 425; 1972, c. 813; 1983, c. 570; 1984, c. 675; 1985, c. 30; 1992, c. 388 .

§ 58.1-2654. Annual report of motor vehicle carriers

A. Every certificated motor vehicle carrier operating in the Commonwealth shall report annually on or before March 1 to the Commission:

1. All of its rolling stock, owned or operated as of January 1 next preceding,

2. The total vehicle miles traveled by the rolling stock of such carriers in the Commonwealth during the twelve months ending December 31 next preceding, and the

3. Total vehicle miles traveled by the rolling stock of such carriers both within and without the Commonwealth during the twelve months ending December 31 next preceding.

B. The report shall be made on forms prescribed and furnished by the Commission. Such forms may require any information necessary to enable the Commission to properly ascertain the value of and assess such property and to aid in the compliance and enforcement of this chapter.

C. The report shall be verified by the oath of the president or other proper officer of such company.

Code 1950, §§ 58-618, 58-619; 1984, c. 675; 1990, c. 483 .

§ 58.1-2654.1. Penalty for failure to properly file annual reports

Every motor vehicle carrier failing to comply with § 58.1-2654 shall be subject to the imposition of a monetary penalty by the Commission as provided in § 58.1-2610.

In addition to imposing such monetary penalty, or without imposing such monetary penalty, the Commission may, in any such case, after notice and hearing, suspend or revoke any certificate, warrant, exemption card, registration card, stamp, classification plate, identification marker, or identifying number issued pursuant to Title 56.

1990, c. 483 .

§ 58.1-2655. Assessment by Department and Commission

A. The Tax Commissioner shall annually assess for local taxation the value of the real and tangible personal property, including real property used for common carrier purposes, of each railroad, except for nonoperating (noncarrier) property which shall be assessed pursuant to § 58.1-3201, upon the best and most reliable information that can be procured, and to this end shall be authorized and empowered to send for persons and papers. The Tax Commissioner shall also assess upon the rolling stock of such railroads the taxes imposed by § 58.1-2652.

B. The Commission shall assess the average value of the rolling stock of each motor vehicle carrier used in the Commonwealth.

In the case of an interstate carrier, the rolling stock used in the Commonwealth shall be deemed to be that portion of the total rolling stock, owned or operated on the public highways of the Commonwealth, multiplied by a fraction wherein the numerator is the total vehicle miles traveled by such rolling stock in the Commonwealth and the denominator is the total vehicle miles traveled both within and without the Commonwealth on such operations as are related to the Commonwealth.

C. The Tax Commissioner shall assess, from the best and most reliable information that can be obtained, upon the rolling stock of a freight car company the taxes imposed by § 58.1-2652.

D. No local property taxes shall be imposed upon the rolling stock of a railroad or a freight car company.

Code 1950, §§ 58-529, 58-558, 58-620; 1972, c. 813; 1978, c. 784; 1983, c. 570; 1984, c. 675; 1985, c. 30; 1992, c. 388 .

§ 58.1-2656. Valuation of sidetracks, double tracks, etc

In making report of and assessment of the property included in the class described in § 58.1-2655, there shall be found for each railroad, for its main line or lines and for each branch line, for single and, where existing, double, triple and quadruple track and for sidetrack, the average value per mile in this Commonwealth of its track, track appurtenances and track structures, including cuts, fills, track surfacing, excavation, ballast, bridges, trestles and tunnels, but not including right-of-way lands or buildings or structures thereon other than track structures, or improvements required to be reported in other classes, and in any county, corporation or school district, the assessment of all property of such railroad included in the calculation of such average, as above provided, shall be the number of miles of its single, double, triple, quadruple or sidetrack therein, as the case may be, multiplied by the assessed average value thereof per mile. The assessed value of a railroad's track, track appurtenances and track structures in this Commonwealth shall be determined by multiplying the average of (i) the cost of such property recorded in the applicable Interstate Commerce Commission road accounts, less accumulated depreciation, and (ii) the depreciated basis of such property for federal income tax purposes by a fraction determined by dividing the railroad's track miles within the Commonwealth by its total track miles. Notwithstanding the foregoing sentence, in each of the tax years 1993, 1994, 1995 and 1996, the assessed value of a railroad's track, track appurtenances, and track structure in any county, city or town shall not be less than the 1992 assessed value therein of such property, excluding retirements.

Code 1950, § 58-532; 1984, c. 675; 1993, c. 22 .

§ 58.1-2657. Copies of assessments to be furnished to taxpayer and local officials

The Tax Commissioner shall furnish to the governing body of every county, city or town, to the commissioner of the revenue of every county and city wherein any property belonging to any railroad is situated and to the president of such railroad, a certified copy of the assessment of such company's property, which assessment shall show the type of property, and its value and location. The Tax Commissioner shall send a copy of the assessment made on each freight car company to the president thereof. A copy of the assessment made by the Commission on a certificated motor vehicle carrier shall be forwarded to the president of such carrier so assessed.

Code 1950, §§ 58-530, 58-538, 58-559, 58-621, 58-624, 58-681; 1954, c. 278; 1956, c. 69; 1971, Ex. Sess., c. 192; 1972, c. 813; 1978, c. 784; 1980, c. 385; 1983, c. 570; 1984, c. 675.

§ 58.1-2658. Distribution of certain taxes collected; prohibition of certain local taxes

The rolling stock tax of certificated motor vehicle carriers as provided in § 58.1-2652 shall be distributed to the counties, cities and incorporated towns of the Commonwealth in the following manner:

The Commission shall determine the proportion of the total vehicle miles operated by each carrier in this Commonwealth for each county, city and incorporated town. The fraction thus derived for each county, city and incorporated town shall be the measure of the total rolling stock tax assessed against such carrier to which the respective county, city and incorporated town shall be entitled.

The clerk of the Commission shall certify to the Comptroller the respective sums so allocated to the respective county, city and town and the Comptroller shall thereupon make payment to the treasurer or other proper fiscal officer of the locality the amount due them as certified by the Commission. When received by the respective local political subdivisions, these payments shall constitute and be regarded as receipts for the general purposes of local government.

No local property taxes shall be imposed upon the rolling stock of a certificated motor vehicle carrier.

Code 1950, § 58-623; 1984, c. 675.

§ 58.1-2658.1. Distribution of certain taxes collected

The taxes assessed upon the rolling stock of railroads and freight car companies as provided in § 58.1-2652 shall be distributed in the following manner:

1. One-half shall be distributed to the counties, cities and incorporated towns of the Commonwealth in such percentage as the fair market value of roadway and track located in such county, city or town bears to the total fair market value of roadway and track in the Commonwealth.

2. One-half shall be distributed to the counties, cities and incorporated towns of the Commonwealth in such percentage as the miles of track located in such county, city or town bears to the total miles of track in the Commonwealth.

The Department shall determine the percentage of fair market value and of miles of track in the Commonwealth for each county, city and incorporated town to which it shall be entitled using the latest available information.

After ascertaining the amount of tax payable to each county, city and incorporated town, the Department shall certify to the Comptroller the respective sums to be paid and the Comptroller shall thereupon make payment to the treasurer or other proper fiscal officer of the localities the amounts respectively due them as certified by the Department. When received by the respective local political subdivisions, these payments shall constitute and be regarded as receipts for the general purpose of local government.

1985, c. 557.

§ 58.1-2659. Article not applicable to companies exempt by federal laws

No provision of this article shall have any application to any railway company doing business in this Commonwealth if such company is exempt by virtue of any provision of federal law from the payment of state and local taxes.

Code 1950, § 58-541.1; 1982, c. 62; 1984, c. 675.

Article 6 - REGULATORY REVENUE TAXES OF PUBLIC SERVICE CORPORATIONS

§ 58.1-2660. Special revenue tax; levy

A. In addition to any other taxes upon the subjects of taxation listed herein, there is hereby levied, subject to the provisions of § 58.1-2664, a special regulatory revenue tax equal to two-tenths of one percent of the gross receipts such person receives from business done within the Commonwealth upon:

1. Corporations furnishing water, heat, light or power, by means of gas or steam, except for electric suppliers, gas utilities, and gas suppliers as defined in § 58.1-400.2 and pipeline distribution companies as defined in § 58.1-2600;

2. Telegraph companies owning and operating a telegraph line apparatus necessary to communicate by telecommunications in the Commonwealth;

3. Telephone companies whose gross receipts from business done within the Commonwealth exceed $50,000 or a company, the majority of stock or other property of which is owned or controlled by another telephone company, whose gross receipts exceed the amount set forth herein;

4. The Virginia Pilots' Association;

5. Railroads, except those exempt by virtue of federal law from the payment of state taxes, subject to the provisions of § 58.1-2661;

6. Common carriers of passengers by motor vehicle, except urban and suburban bus lines, a majority of whose passengers use the buses for traveling a daily distance of not more than 40 miles measured one way between their place of work, school or recreation and their place of abode; and

7. Any county, city or town that obtains a certificate pursuant to § 56-265.4:4.

B. Notwithstanding the rate specified in subsection A, the maximum rate of the special regulatory revenue tax shall be increased above such specified rate to the extent necessary to permit the Commission to recover the additional costs incurred by the Commission in implementing subdivision B 4 of § 56-265.4:4 that cannot be recovered through the specified rate.

Code 1950, §§ 58-660 through 58-667; 1958, c. 157; 1970, c. 773; 1979, c. 443; 1980, c. 282; 1982, c. 62; 1983, c. 547; 1984, c. 675; 1988, c. 899; 1990, c. 146; 1996, c. 381; 1999, c. 971; 2000, cc. 691, 706; 2002, cc. 479, 489; 2003, c. 720.

§ 58.1-2661. Exceptions

The amount of the regulatory revenue tax levied pursuant to § 58.1-2660 on railroads shall not exceed an estimate of the expenses to be incurred by the Commission and the Department reasonably attributable to the regulation and assessment for taxation of railroads, including a reasonable margin in the nature of a reserve fund.

Code 1950, § 58-664; 1970, c. 773; 1979, c. 443; 1980, c. 282; 1982, c. 62; 1983, c. 547; 1984, c. 675.

§ 58.1-2662. Computation of revenue tax on railroads

The special regulatory revenue tax levied pursuant to § 58.1-2660 shall be based upon the gross transportation receipts of each railroad for the year ending December 31 preceding, to be ascertained in the following manner:

1. When the road of the corporation lies wholly within the Commonwealth, the tax shall be based upon the entire gross transportation receipts of such corporation.

2. When the road of the corporation lies partly within and partly without the Commonwealth, or is operated as a part of a line or system extending beyond the Commonwealth, the tax shall be based upon the gross transportation receipts earned within the Commonwealth, to be determined by ascertaining the average gross transportation receipts per mile over its whole extent within and without the Commonwealth and multiplying the result by the number of miles operated within the Commonwealth. From the sum so ascertained there may be deducted a reasonable sum due to any excess of value of the terminal facilities or other similar advantages situated in other states over similar facilities or advantages situated in the Commonwealth.

Code 1950, § 58-664; 1970, c. 773; 1979, c. 443; 1980, c. 282; 1982, c. 62; 1983, c. 547; 1984, c. 675.

§ 58.1-2662.1. Gross receipts of telephone and telegraph companies

The special regulatory revenue tax on telephone and telegraph companies levied pursuant to § 58.1-2660 shall be based on gross receipts with the following deductions:

1. Revenue billed on behalf of another such telephone company or person to the extent such revenues are later paid over to or settled with that company or person;

2. Revenues received from a telephone company for providing to the company any of the following: (i) unbundled network facilities; (ii) completion, origination or interconnection of telephone calls with the taxpayer's network; (iii) transport of telephone calls over the taxpayer's network; or (iv) taxpayer's telephone services for resale;

3. Revenue received as the proportionate part of interstate revenue attributable to the Commonwealth;

4. Revenue received from a person providing video programming for the transport of video programming to an end-user subscriber's premises or for access to a video dialtone network; and

5. Revenue, other than from line charges, received from pay telephone service.

1988, c. 727; 1995, c. 751; 1998, c. 897.

§ 58.1-2662.2. Gross receipts of companies furnishing water, heat, light or power

The special regulatory revenue tax on companies furnishing water, heat, light or power levied pursuant to § 58.1-2660 shall be based on gross receipts with the exemptions allowed under § 58.1-2627.

1988, c. 727.

§ 58.1-2663. How taxes assessed, collected and paid

The taxes provided for by this article shall be assessed, determined and collected by the State Corporation Commission in the same manner and on such same dates as other state taxes on the same subjects of taxation are assessed, determined and collected under this chapter. Such taxes shall be paid into the state treasury for use in accordance with § 58.1-2665.

The regulatory revenue tax on the Virginia Pilots' Association shall be assessed, determined and collected by the Commission in the same manner in which the license taxes provided in Article 2 (§ 58.1-2620 et seq.) are assessed and collected on certain public utility companies.

Code 1950, §§ 58-667, 58-668; 1983, c. 570; 1984, c. 675.

§ 58.1-2664. When taxes not to be assessed or assessed only in part

The Commission shall, in the performance of its function and duty in assessing and levying the special regulatory revenue taxes provided for by this article, omit the assessment and levy of any portion of such taxes as are unnecessary within the Commission's sole discretion for the accomplishment of the objects for which the regulatory revenue taxes are imposed including a reasonable margin in the nature of a reserve fund. The Tax Commissioner shall annually certify to the Commission the amount needed to sufficiently compensate that department for its estimated incremental costs to be incurred in the discharge of its statutory duties to assess and collect state and local taxes against railroad corporations. The persons and corporations upon whom such taxes are imposed are relieved from liability for the payment of such regulatory revenue taxes, except when, and to the extent that, the same have been assessed and levied by the Commission, in accordance with the provisions of this article.

Code 1950, § 58-669; 1983, c. 570; 1984, c. 675.

§ 58.1-2665. Use of taxes collected under this article

The taxes paid into the state treasury under this article shall be deposited in a special fund to be used only by the Commission and by the Department of Taxation as provided in § 58.1-2664, for the purpose of making appraisals, assessments and collections against public service companies, and for the further purposes of the Commission in investigating and inspecting the properties or the service or services of such public service companies, and for the supervision and administration of all laws relative to such public service companies, whenever the same shall be deemed necessary by the Commission.

Code 1950, § 58-670; 1983, c. 570; 1984, c. 675.

Article 7 - ADMINISTRATIVE AND JUDICIAL REVIEW OF ASSESSMENT AND TAX

§ 58.1-2670. Application to Commission or Department for review

Any taxpayer, the Commonwealth or any county, city or town aggrieved by any action of the Commission in the ascertainment of, or the assessment for taxation of, the value of any property of any corporation or company assessed by the Commission, or in the ascertainment of any tax upon any company or corporation of its property, at any time within three months after receiving a certified copy of such assessment of value or tax, may apply to the Commission for a review and correction of any specified item or items thereof after which date the Commission shall have no authority under this section or any other provision of law to receive any application or complaint concerning the assessment of value or tax. Such application shall be in a form prescribed by the Commission and shall set forth with reasonable certainty the item or items, of which a review and correction are sought, and the grounds of the complaint. The application shall also be verified by affidavit.

Any company or governmental entity aggrieved by any assessment for taxation of the value of any property by the Department of Taxation may apply to the Department or the Circuit Court of the City of Richmond, Division I, for correction of any such tax valuation or assessment, under Chapter 18 (§ 58.1-1800 et seq.) of this title. The Department and the court are hereby empowered to correct the valuation or assessment, and the requirement of such sections shall apply to corrections hereunder, mutatis mutandis.

Code 1950, § 58-672; 1971, Ex. Sess., c. 46; 1983, c. 570; 1984, c. 675; 1990, c. 146; 2000, c. 368; 2005, c. 21.

§ 58.1-2670.1. Application to court to correct erroneous local assessment ratio

A. Subject to the limitations provided herein, any county, city, or town or public service corporation or other entity whose property is assessed by the State Corporation Commission or the Department of Taxation aggrieved by the Department of Taxation's ascertainment of the applicable local assessment ratio prevailing for such taxing district as specified in subsection A of § 58.1-2604, may petition to the Circuit Court for the City of Richmond for correction of such ratio. Such petition must be filed within three months after the Department of Taxation gives notice of the applicable prevailing local assessment ratios to all counties, cities, towns, and to the Commission pursuant to subsection A of § 58.1-2604. This section shall apply only to counties, cities and towns in which a public service corporation's property represents twenty-five percent or more of the total assessed value of real estate in such county, city or town.

B. Any proceeding maintained under this section shall name the Department of Taxation and the applicable public service corporation, other entity whose property is assessed by the State Corporation Commission or the Department of Taxation, and the county, city or town which is the

taxing district, as respondents. The action shall be conducted in accordance with the Rules of the Supreme Court of Virginia applicable to suits in equity, and no trial by jury will be permitted.

C. If the Circuit Court finds the local assessment ratio as ascertained by the Department of Taxation to be erroneous, it shall determine the correct local assessment ratio and shall order the Department of Taxation to adopt the corrected ratio as its prevailing local assessment ratio and provide such corrected ratio to the Commission in accordance with subsection A of § 58.1-2604.

D. If a suit is commenced by any party under this section, the period of time for any county, city, town or public service corporation or other entity whose property is assessed by the State Corporation Commission in which to file a petition with the Commission, pursuant to § 58.1-2670, challenging the ascertainment of, or the assessment for taxation of, the value of any property of any public service corporation assessed by the Commission, shall commence to run on the date of the final order entered by the Circuit Court or, in the event of an appeal, on the date of the final order of the Supreme Court of Virginia.

1993, c. 528 .

§ 58.1-2671. Setting for hearing and notice to adverse parties

Upon the filing of any such application, the Commission shall fix a time and place at which it will hear such testimony with reference thereto as any of the parties may desire to introduce and the applicant shall cause a copy of the application and notice of the time and place of the hearing to be served upon the company or corporation or the Commonwealth and each county, city and town whose revenue is, or may be, affected thereby, at least ten days prior to the day set for the hearing.

Code 1950, § 58-673; 1984, c. 675.

§ 58.1-2672. Review on motion of Commission

At any time within three months after a taxpayer receives the certified copy of any such assessment of value or tax, the Commission may of its own motion, after not less than ten days' notice to the taxpayer and to the Commonwealth and each county, city and town whose revenue is affected by the item or items to be reviewed and an opportunity given to such parties to introduce testimony with reference thereto, review and correct any specified item or items of such assessment of value or tax, as to which it may have cause to believe that an error may have been made.

Code 1950, § 58-674; 1984, c. 675.

§ 58.1-2673. Correction after hearing or investigation; proceedings for enforcement

If, from the evidence introduced at such hearing or its own investigations, the Commission is of opinion that the assessment or tax is excessive, it shall reduce the same or if it is insufficient, it shall increase the same. If the decision of the Commission is in favor of the taxpayer, in whole or in part, appropriate relief shall be granted, including the right to recover from the Commonwealth or local authorities, or both, as the case may be, any excess of taxes that may have been paid. The

order of the Commission shall be enforced by mandamus, or other proper process, issuing from the Commission.

Code 1950, § 58-675; 1984, c. 675.

§ 58.1-2674. Notice to Commonwealth

Notice of hearing before the Commission required to be served under this article upon the Commonwealth shall be served upon the officer of the Commonwealth charged with the duty of the collection of the state tax affected by the assessment of which correction is sought. It shall, however, only be necessary to serve notice upon the Commonwealth if the state revenue is affected by the assessment of which a correction is sought.

Code 1950, § 58-678; 1983, c. 570; 1984, c. 675.

§ 58.1-2674.1. Application for correction of certification to Department of Taxation

Any telecommunications company or electric supplier aggrieved by any action of the Commission in the certification of gross receipts to the Department of Taxation as required by § 58.1-400.1 or § 58.1-400.3 may apply to the Commission for review and correction of any specified item or items of a certification. Such application shall be in a form prescribed by the Commission and shall be filed within 18 months of the date of the certification to the Department of Taxation after which date the Commission shall have no authority under this section or any other provision of law to receive any application or complaint concerning the certification. The Commission shall provide for notice to the Department of Taxation of any application. If, from the evidence introduced at any hearing on the application or its own investigation, the Commission finds that the certification is incorrect, it shall correct the certification to the Department of Taxation.

2000, c. 368; 2004, c. 716.

§ 58.1-2675. Appeals to Supreme Court

Any taxpayer, the Commonwealth or any county, city, or town aggrieved by any assessment or ascertainment of taxes by the Commission, after having proceeded before the Commission as provided in this article, may appeal from any final order or action of the Commission to the Supreme Court, as a matter of right, within the time and in the manner provided by law for appeals generally from the Commission to the Supreme Court.

Code 1950, § 58-679; 1971, Ex. Sess., c. 46; 1983, c. 570; 1984, c. 675.

§ 58.1-2676. Action of Supreme Court thereon

If the Supreme Court determines that the assessment or tax is excessive, it shall reduce the same or if it is insufficient, it shall increase the same. Unless the taxes so assessed or ascertained were paid under protest, when due, the Court, if it disallows the claim, on the appeal of the taxpayer, shall, in upholding the assessment, give judgment against such taxpayer for the taxes so assessed and ascertained and for a sum, by way of damages, equal to interest at the rate of one percent a month upon the amount of the taxes from the time the same were payable.

If the decision is in favor of the taxpayer, in whole or in part, appropriate relief shall be granted, including the right to recover any excess of taxes that have been paid, with legal interest thereon and with the costs incurred by such taxpayer, from the Commonwealth or local authorities, or both, as the case may be, the judgment to be enforceable by mandamus or other proper process issuing from the Court.

If the decision be in favor of the Commonwealth or of any county, city or town, appropriate relief shall be granted and enforced by mandamus or other proper process issuing from the Court.

The Court may, when deemed proper so to do, return the case to the Commission for further proceedings, either by way of hearing or for appropriate remedy.

Code 1950, § 58-680; 1984, c. 675.

Article 8 - SPECIAL PROVISIONS FOR ASSESSMENTS IN COUNTIES HAVING COUNTY EXECUTIVE OR COUNTY MANAGER GOVERNMENTS

§ 58.1-2680. Reports to include location by districts, etc

Every public service corporation as defined in § 56-1 required to report to the Commission or the Department for the assessment of real or personal property in any county which has either a county executive form of county organization and government or a county manager form of county organization and government provided for in Chapter 5 (§ 15.2-500 et seq.) through Chapter 6 (§ 15.2-600 et seq.), or in Prince William, Augusta, or Gloucester County, whenever such property is subject to local taxation, shall include in such report a statement showing the character of the property and its value and particularly in what district or districts within, or partly within, such county such property is located.

For purposes of this section, "district" shall include a sanitary district, fire district and fire zone.

Code 1950, §§ 58-681, 58-684; 1954, c. 278; 1971, Ex. Sess., cc. 1, 192; 1980, c. 385; 1983, c. 570; 1984, c. 675.

§ 58.1-2681. Copies of assessment for local officials; contents

When any such property is assessed by the Commission or the Department under the provisions of this article, the Commission or the Department, as the case may be, shall furnish to the board of supervisors or other governing body and to the commissioners of the revenue or person performing the duty of such officer, of each such county wherein such property is situated, a certified copy of the assessment made by such agency of such property or a certified copy of a statement of such assessment. The assessment, or statement thereof, shall definitely show the character of the property and its value and location for purposes of taxation in each district within, or partly within, such county, so that the proper district levies may be laid upon the same.

Code 1950, § 58-682; 1983, c. 570; 1984, c. 675.

§ 58.1-2682. District boundaries to be furnished company and Commission

The commissioner of the revenue, or person performing the duties of such officer, of any county set forth in § 58.1-2680 in which a public service corporation or other person with property assessed pursuant to this chapter owns property, shall furnish, in like manner as is provided in this chapter to the Commission, the Department and to each public service corporation or other person with property assessed pursuant to this chapter owning property in such county subject to local taxation, the boundaries of each district in such county in which any local tax is or may be levied.

Code 1950, § 58-683; 1983, c. 570; 1984, c. 675; 1999, c. 971.

§ 58.1-2683. Article does not affect other duties

The provisions of this article shall not affect any duties imposed upon public service corporations, the Commonwealth, Commission, Department, or any commissioner of the revenue, by any other provision of this chapter.

Code 1950, § 58-685; 1983, c. 570; 1984, c. 675.

Article 9 - MISCELLANEOUS PROVISIONS RELATIVE TO OTHER FORMS OF TAXATION APPLICABLE TO PUBLIC SERVICE CORPORATIONS

§ 58.1-2690. No state or local tax on intangible personal property or money; local levies and license taxes

A. Except as provided in this chapter, there shall be no state or local taxes assessed on the intangible personal property, gross receipts or other such money or income owned by telephone or telegraph companies, railroads, pipeline companies, or corporations furnishing water, heat, light and power by means of electricity, gas or steam.

B. On the real estate and tangible personal property of every incorporated telegraph and telephone company owning or operating telegraph or telephone lines in Virginia and of railroads, pipeline companies, or corporations furnishing water, heat, light and power by means of electricity, gas or steam, there shall be local levies at the rates prescribed by § 58.1-2606.

C. Notwithstanding the provisions of subsection A, any county, city or town may impose a license tax under § 58.1-3703 upon a corporation owning or operating telegraph or telephone lines in Virginia for the privilege of doing business therein, which shall not exceed one-half of one percent of the gross receipts of such business accruing to such corporation from such business in such county, city or town; however, charges for long distance telephone calls shall not be considered receipts of business in such county, city or town.

D. Notwithstanding the provisions of subsection A, any county, city or town may impose an excise tax under § 58.1-3818.3 upon a corporation owning or operating telegraph or telephone lines in Virginia, at a rate that shall not exceed the rate lawfully imposed by § 58.1-3818.3, on such corporation's gross receipts from sales of video programming or access to video programming directly to end-user subscribers who are located within such county, city or town.

Code 1950, §§ 58-518, 58-523, 58-578, 58-593, 58-596, 58-602, 58-606; 1968, c. 637; 1972, cc. 813, 858; 1978, c. 784; 1984, c. 675; 1995, c. 751.

Chapter 27 - ROAD TAX ON MOTOR CARRIERS

§ 58.1-2700. Definitions

Whenever used in this chapter, the term:

"Carrier" means a person who operates or causes to be operated a commercial highway vehicle on any highway in the Commonwealth.

"Department" means the Department of Motor Vehicles, acting through its officers and agents.

"Identification marker" means a decal issued by the Department to show that a vehicle operated by a carrier is properly registered with the Department for the payment of the road tax.

"IFTA" means the International Fuel Tax Agreement, as entered into by the Department, and as amended by the International Fuel Tax Association, Inc.

"Licensee" means a carrier who holds an uncancelled IFTA license issued by the Commonwealth.

"Motor carrier" means every person, firm or corporation who owns or operates or causes to be operated on any highway in this Commonwealth any qualified highway vehicle.

"Operations" means the physical activities of all such vehicles, whether loaded or empty, whether for compensation or not for compensation, and whether owned by or leased to the motor carrier who operates them or causes them to be operated.

"Qualified highway vehicle" means a highway vehicle used, designed, or maintained for transportation of persons or property that (i) has two axles and a gross vehicle weight or registered gross vehicle weight exceeding 26,000 pounds or 11,797 kilograms, (ii) has three or more axles regardless of weight, or (iii) is used in combination, when the weight of such combination exceeds 26,000 pounds or 11,797 kilograms gross vehicle or registered gross vehicle weight. "Qualified highway vehicle" does not include recreational vehicles.

"Tractor truck" means every motor vehicle designed and used primarily for drawing other vehicles and not so constructed as to carry a load other than a part of the load and weight of the vehicle attached thereto.

"Truck" means every motor vehicle designed to transport property on its own structure independent of any other vehicle and having a registered gross weight in excess of 7,500 pounds.

Code 1950, § 58-627; 1954, c. 341; 1956, c. 475; 1970, c. 32; 1978, c. 62; 1980, c. 649; 1982, c. 671; 1984, c. 675; 1995, cc. 744, 803; 1996, c. 575; 1997, c. 283.

§ 58.1-2700.1. Interstate motor carrier road tax

In accordance with the provisions of IFTA, as amended, all motor carriers that operate or cause to be operated one or more qualified highway vehicles in the Commonwealth and at least one other

jurisdiction participating in IFTA shall apply to the Department for an IFTA license and identification markers. The Department shall issue a license and vehicle identification markers to each carrier that operates qualified highway vehicles in the Commonwealth and at least one other jurisdiction participating in IFTA so as to report its road tax liabilities. The Department may issue vehicle identification markers to carriers that operate qualified highway vehicles in the Commonwealth and at least one other jurisdiction not participating in IFTA. Each application shall contain the name and address of the carrier, and such other information as may be required by the Department.

The Department shall issue to the motor carrier identification markers for each vehicle in the carrier's fleet that will be operated within the Commonwealth.

The identification markers issued to the vehicles of the IFTA-licensed carriers shall expire on December 31 of each year. All other identification markers issued to carriers shall expire on June 30 of each year. The identification markers may be renewed prior to expiration provided (i) the carrier's privilege to operate vehicles in the Commonwealth has not been revoked or canceled, (ii) all required tax reports have been filed, and (iii) all road taxes, penalties, and interest due have been paid.

The cost of the identification markers issued to each vehicle in the carrier's fleet shall be $10 per vehicle.

The Department may, by letter, telegram, or other electronic means, authorize a vehicle to be operated without identification markers for not more than 10 days. Before sending such authorization, the Department shall collect from the carrier a fee of $20 for each vehicle so operated.

1995, cc. 744, 803; 1996, c. 575; 2002, c. 265; 2012, cc. 22, 111.

§ 58.1-2700.2. Motor carriers subject to terms of the International Fuel Tax Agreement; placement of identification markers

All motor carriers that operate one or more qualified highway vehicles on an interstate basis are subject to and shall abide by all terms and conditions of IFTA that are applicable to motor carriers or operators of qualified highway vehicles. All carriers licensed by the Department pursuant to this chapter or IFTA shall place any required identification markers issued by the Department on each vehicle in the carrier's fleet in the place prescribed by the Department.

1995, cc. 744, 803; 2012, cc. 22, 111.

§ 58.1-2700.3. Waiver in emergency situations

The Department shall have the authority to waive the requirements of this title for vehicles under emergency conditions.

1995, cc. 744, 803.

§ 58.1-2701. Amount of tax

A. Except as provided in subsection B, every motor carrier shall pay a road tax per gallon equivalent to the cents per gallon credit for diesel fuel as determined under subsection A of § 58.1-2706 for the relevant period plus an additional $0.035 per gallon calculated on the amount of motor fuel, diesel fuel or liquefied gases (which would not exist as liquids at a temperature of 60 degrees Fahrenheit and a pressure of 14.7 pounds per square inch absolute), used in its operations within the Commonwealth.

The tax imposed by this chapter shall be in addition to all other taxes of whatever character imposed on a motor carrier by any other provision of law.

B. In lieu of the tax imposed in subsection A, motor carriers registering qualified highway vehicles that are not registered under the International Registration Plan shall pay a fee of $150 per year for each qualified highway vehicle regardless of whether such vehicle will be included on the motor carrier's IFTA return. The fee is due and payable when the vehicle registration fees are paid pursuant to the provisions of Article 7 (§ 46.2-685 et seq.) of Chapter 6 of Title 46.2.

If a vehicle becomes a qualified highway vehicle before the end of its registration period, the fee due at the time the vehicle becomes a qualified highway vehicle shall be prorated monthly to the registration expiration month. Fees paid under this subsection shall not be refunded unless a full refund of the registration fee paid is authorized by law.

C. All taxes and fees paid under the provisions of this chapter shall be credited to the Highway Maintenance and Operating Fund established pursuant to § 33.2-1530, a special fund within the Commonwealth Transportation Fund.

Code 1950, §§ 58-628, 58-631, 58-637; 1956, c. 475; 1960, c. 603; 1964, c. 255; 1972, cc. 490, 862; 1973, c. 331; 1978, c. 673; 1979, c. 709; 1980, c. 227; 1982, c. 671; 1984, c. 675; 1986, c. 553; 1986, Sp. Sess., c. 15; 1996, c. 575; 1997, c. 423; 2000, cc. 729, 758; 2002, c. 265; 2007, c. 896; 2011, cc. 881, 889; 2013, c. 766.

§ 58.1-2702. Exemptions and exceptions

The provisions of this chapter shall not apply to a person, firm or corporation owning or operating:

1. Recreational vehicles, as defined in the provisions of the International Fuel Tax Agreement (IFTA);

2. The first two Virginia-licensed trucks and tractor trucks, if used exclusively for farm use as defined in § 46.2-698 and if not licensed in any other state;

3. Qualified highway vehicles of a licensed highway vehicle dealer when operated without compensation for purposes incident to a sale or for demonstration; or

4. Any highway vehicle owned and operated by the United States, the District of Columbia, the Commonwealth of Virginia or any municipality or any other political subdivision of the Commonwealth, or any other state.

Code 1950, §§ 58-627, 58-633; 1954, c. 341; 1956, c. 475; 1970, c. 32; 1976, c. 440; 1978, c. 62; 1980, c. 649; 1982, c. 671; 1984, c. 675; 1988, cc. 514, 725; 1993, c. 40; 1995, cc. 744, 803; 1996, c. 575; 1997, c. 283; 2000, cc. 729, 758.

§ 58.1-2703. Payment of tax

The tax imposed under § 58.1-2701 shall be paid by each motor carrier quarterly to the State Treasurer on or before the last day of April, July, October and January of each year and calculated upon the amount of gasoline or other motor fuel used in its operations within the Commonwealth by each such carrier during the quarter ending with the last day of the preceding month.

Code 1950, § 58-630; 1984, c. 675.

§ 58.1-2704. How amount of fuel used in the Commonwealth ascertained

On and after October 1, 1992, the amount of gasoline or other motor fuel used in the operations of any motor carrier in the Commonwealth shall be determined by dividing the total number of miles traveled within the Commonwealth by such carrier's vehicles during a calendar quarter by a consumption factor, such factor being comprised of the total number of miles traveled by all vehicles of the motor carrier during the quarter divided by the total amount of gasoline or other motor fuel used in its entire operations during such quarter.

Code 1950, § 58-632; 1956, c. 475; 1984, c. 675; 1990, c. 216; 1992, c. 309 .

§ 58.1-2705. Reports of carriers

Every motor carrier subject to the tax imposed by this chapter or filing under the terms of the International Fuel Tax Agreement shall, on or before the last day of April, July, October and January of every year, make to the Department or proper agency pursuant to the International Fuel Tax Agreement such reports of its operations during the quarter ending the last day of the preceding month as the Department may require and such other reports from time to time as the Department may deem necessary.

Code 1950, § 58-633; 1976, c. 440; 1984, c. 675; 1995, cc. 744, 803.

§ 58.1-2706. Credit for payment of motor fuel, diesel fuel or liquefied gases tax

A. Every motor carrier subject to the road tax shall be entitled to a credit on such tax on every gallon of motor fuel, diesel fuel and liquefied gases purchased by such carrier within the Commonwealth for use in its operations either within or without the Commonwealth and upon which the motor fuel, diesel fuel or liquefied gases tax imposed by the laws of the Commonwealth has been paid by such carrier. Evidence of the payment of such tax in such form as may be required by, or is satisfactory to, the Department shall be furnished by each carrier claiming the credit herein allowed. The credit for diesel fuel shall be at a cents per gallon rate equivalent to the tax imposed under subsection B of § 58.1-2217 for the relevant period as converted by the Commissioner to a cents per gallon tax for purposes of this credit. The credit for all other motor fuels and liquefied gases shall be at a cents per gallon rate equivalent to the tax imposed under subsection A of §

58.1-2217 for the relevant period as converted by the Commissioner to a cents per gallon tax for purposes of this credit.

B. When the amount of the credit to which any motor carrier is entitled for any quarter exceeds the amount of the tax for which such carrier is liable for the same quarter, the excess may: (i) be allowed as a credit on the tax for which such carrier would be otherwise liable for any of the eight succeeding quarters or (ii) be refunded, upon application, duly verified and presented and supported by such evidence as may be satisfactory to the Department.

C. The Department may allow a refund upon receipt of proper application and review. It shall be at the discretion of the Department to determine whether an audit is required.

D. The refund may be allowed without a formal hearing if the amount of refund is agreed to by the applicant. Otherwise, a formal hearing on the application shall be held by the Department after notice of not less than 10 days to the applicant and the Attorney General.

E. Whenever any refund is ordered it shall be paid out of the Highway Maintenance and Operating Fund established pursuant to § 33.2-1530.

F. Whenever a person operating under lease to a motor carrier to perform transport services on behalf of the carrier purchases motor fuel, diesel fuel or liquefied gases relating to such services, such payments or purchases may, at the discretion of the Department, be considered payment or purchases by the carrier.

Code 1950, § 58-629; 1952, c. 281; 1956, c. 475; 1960, c. 603; 1972, c. 490; 1980, c. 227; 1982, c. 671; 1984, c. 675; 1986, c. 553; 1986, Sp. Sess., c. 15; 1988, c. 381; 1990, c. 245; 1992, c. 309; 1995, cc. 744, 803; 1996, c. 575; 1999, c. 94; 2007, c. 896; 2013, c. 766.

§ 58.1-2707. Refunds to motor carriers who give bond

A motor carrier not operating as an IFTA licensee may be required to give a surety company bond in the amount of not less than $2,000, as shall appear sufficient in the discretion of the Department, payable to the Commonwealth and conditioned that the carrier will pay all taxes due and to become due under this chapter from the date of the bond to the date when either the carrier or the bonding company notifies the Department that the bond has been canceled. The surety shall be a corporation authorized to write surety bonds in Virginia. So long as the bond remains in force the Department may order refunds to the motor carrier in the amounts appearing to be due on applications duly filed by the carrier under this chapter (§ 58.1-2700 et seq.) without first auditing the records of the carrier. The surety shall be liable for all omitted taxes assessed pursuant to § 58.1-2025 against the carrier, including the penalties and interest provided in such section, even though the assessment is made after cancellation of the bond, but only for taxes due and payable while the bond was in force and penalties and interest on the taxes.

Code 1950, § 58-629.1; 1952, c. 281; 1962, c. 586; 1984, c. 675; 1986, c. 339; 1992, c. 309; 1993, c. 101; 1995, cc. 744, 803.

§ 58.1-2708. Inspection of books and records

The Department and its authorized agents and representatives shall have the right at any reasonable time to inspect the books and records of any motor carrier subject to the tax imposed by this chapter.

Code 1950, § 58-634; 1984, c. 675; 1995, cc. 744, 803.

§ 58.1-2709. Penalties

The Department may, after a hearing had upon notice, duly served not less than ten days prior to the date set for such hearing, impose a penalty, which shall be in addition to any other penalty imposed by this chapter, not exceeding $2,500, upon any licensed motor carrier violating any provision of this chapter or the IFTA, or failing to comply with IFTA or any regulation of the Department promulgated pursuant to this chapter. Each such failure or violation shall constitute a separate offense. The penalty shall be collectible by the process of the Department as provided by law. Any person against whom an order or decision of the Commissioner has been adversely rendered relating to the tax imposed by this chapter may, within fifteen days of such order or decision, appeal from such an order or decision to the Circuit Court of the City of Richmond. In addition to imposing such penalty, or without imposing any penalty, the Department may suspend or revoke any certificate, permit or other evidence of right issued by the Department which the motor carrier holds.

Code 1950, §§ 58-635, 58-636; 1984, c. 675; 1993, c. 42; 1995, cc. 744, 803; 2002, c. 265.

§ 58.1-2710. Penalty for false statements

Any person who willfully and knowingly makes a false statement orally, or in writing, or in the form of a receipt for the sale of motor fuel, for the purpose of obtaining or attempting to obtain or to assist any other person, partnership or corporation to obtain or attempt to obtain a credit or refund or reduction of liability for taxes under this chapter shall be guilty of a Class 1 misdemeanor.

Code 1950, § 58-629.2; 1952, c. 281; 1984, c. 675.

§ 58.1-2711. Assistance of Department of Taxation

At the request of the Department, the Department of Taxation shall furnish the Department the amount of deduction from income taken by any person conducting business as a motor carrier as defined in § 58.1-2700 on account of the purchase of motor fuel, diesel fuel or liquefied gases.

Code 1950, § 58-634.1; 1956, c. 475; 1984, c. 675; 1990, c. 245; 1995, cc. 744, 803; 1996, c. 575.

§ 58.1-2712. Repealed

Repealed by Acts 1995, cc. 744 and 803, effective January 1, 1996.

§ 58.1-2712.1. International Fuel Tax Agreement

The Department may, with the approval of the Governor, enter into IFTA for interstate motor carriers and abide by the requirements set forth in IFTA. All motor carriers that operate one or more qualified highway vehicles on an interstate basis are subject to and shall abide by all terms and

conditions of IFTA that are applicable to motor carriers or operators of qualified highway vehicles. All requirements of IFTA shall also apply to motor carriers operating in intrastate commerce unless specific requirements are determined by the Department to be not in the best interest of the motor carrier industry.

1995, cc. 744, 803; 2012, cc. 22, 111.

§ 58.1-2712.2. Exchange of information; penalties

A. The Commissioner of the Department is authorized to enter into written agreements with (i) duly constituted tax officials and motor vehicle agencies of other states and countries or provinces of any country that are member jurisdictions of the International Fuel Tax Agreement and (ii) any entity formed by the member jurisdictions of the International Fuel Tax Agreement to administer and conduct the business of such Agreement, to permit the exchange of information in order to facilitate the collection of taxes under such Agreement.

B. Any person to whom tax information is divulged pursuant to this section shall be subject to the prohibitions and penalties prescribed in § 58.1-3.

2001, c. 84.

Chapter 28 - CORPORATION CHARTER AND RELATED FEES, AND FRANCHISE TAXES

§ 58.1-2800. Repealed

Repealed by Acts 1985, c. 470.

§§ 58.1-2801 through 58.1-2807. Repealed

Repealed by Acts 1988, c. 405.

§§ 58.1-2808 through 58.1-2811. Repealed

Repealed by Acts 1986, c. 1.

§ 58.1-2812. Repealed

Repealed by Acts 1985, c. 470.

§ 58.1-2813. Repealed

Repealed by Acts 1988, c. 405.

§ 58.1-2814. Collection of unpaid bills for registration fees and franchise taxes by local treasurers

The Comptroller may deliver a copy of any past-due bill for a registration fee or franchise tax, plus penalties and interest, to the treasurer of any county or city in which the corporation may have any property belonging to it and such copy of such bill shall have the force and effect of an execution in favor of the Commonwealth. The treasurer may distrain or levy upon and sell any real or personal property of such corporation and shall pay the amount of the bill into the state treasury within ten days after he has collected the same. The compensation of such treasurer for collecting

and paying into the treasury such bill shall be five percent of the aggregate of the bill, which compensation shall be added to the bill by the treasurer, collected by him from such corporation and paid into the state treasury and then repaid to the treasurer on warrant of the Comptroller.

Code 1950, § 58-464; 1984, c. 675.

Chapter 29 - ELECTRIC UTILITY CONSUMPTION TAX

§ 58.1-2900. Imposition of tax

A. Effective January 1, 2001, there is hereby imposed, in addition to the local consumer utility tax of Article 4 (§ 58.1-3812 et seq.) of Chapter 38 and subject to the adjustments authorized by subdivision A 5 and by § 58.1-2902, a tax on the consumers of electricity in the Commonwealth based on kilowatt hours delivered by the incumbent distribution utility and used per month as follows:

1. Each consumer of electricity in the Commonwealth shall pay electric utility consumption tax on all electricity consumed per month not in excess of 2,500 kWh at the rate of $0.00155 per kWh, as follows:

State consumption tax rate	Special regulatory tax rate	Local consumption tax rate
$0.00102/kWh	$0.00015/kWh	$0.00038/kWh

2. Each consumer of electricity in the Commonwealth shall pay electric utility consumption tax on all electricity consumed per month in excess of 2,500 kWh but not in excess of 50,000 kWh at the rate of $0.00099 per kWh, as follows:

State consumption tax rate	Special regulatory tax rate	Local consumption tax rate
$0.00065/kWh	$0.00010/kWh	$0.00024/kWh

3. Each consumer of electricity in the Commonwealth shall pay electric utility consumption tax on all electricity consumed per month in excess of 50,000 kWh at the rate of $0.00075 per kWh, as follows:

State consumption tax rate	Special regulatory tax rate	Local consumption tax rate
$0.00050/kWh	$0.00007/kWh	$0.00018/kWh

4. The tax rates set forth in subdivisions 1, 2, and 3 are in lieu of and replace the state gross receipts tax (§ 58.1-2626), the special regulatory revenue tax (§ 58.1-2660), and the local license tax (§ 58.1-3731) levied on corporations furnishing heat, light or power by means of electricity.

5. The tax on consumers under this section shall not be imposed on consumers served by an electric utility owned or operated by a municipality if such municipal electric utility elects to have an amount equivalent to the tax added on the bill such utility (or an association or agency of which it is a member) pays for bundled or unbundled transmission service as a separate item. Such

amount, equivalent to the tax, shall be calculated under the tax rate schedule as if the municipal electric utility were selling and collecting the tax from its consumers, adjusted to exclude the amount which represents the local consumption tax if the locality in which a consumer is located does not impose a license fee rate pursuant to § 58.1-3731, and shall be remitted to the Commission pursuant to § 58.1-2901. Municipal electric utilities may bundle the tax in the rates charged to their retail customers. Notwithstanding anything contained herein to the contrary, the election permitted under this subdivision shall not be exercised by any municipal electric utility if the entity to whom the municipal electric utility (or an association or agency of which it is a member) pays for transmission service is not subject to the taxing jurisdiction of the Commonwealth, unless such entity agrees to remit to the Commonwealth all amounts equivalent to the tax pursuant to § 58.1-2901.

6. The tax on consumers set forth in subdivisions 1, 2, and 3 shall only be imposed in accordance with this subdivision on consumers of electricity purchased from a utility consumer services cooperative to the extent that such cooperative purchases, for the purpose of resale within the Commonwealth, electricity from a federal entity that made payments in accordance with federal law (i) in lieu of taxes during such taxable period to the Commonwealth and (ii) on the basis of such federal entity's gross proceeds resulting from the sale of such electricity. Such tax shall instead be calculated by deducting from each of the respective tax amounts calculated in accordance with subdivisions 1, 2, and 3 an amount equal to the calculated tax amount multiplied by the ratio of the total cost of power supplied by the federal entity, including facilities rental, during the taxable period to the utility consumer services cooperative's total operating revenue within the Commonwealth during the taxable period. The State Corporation Commission may audit the records and books of any utility consumer services cooperative that determines the tax on consumers in accordance with this subdivision to verify that the tax imposed has been correctly determined and properly remitted.

B. The tax authorized by this chapter shall not apply to municipalities' own use or to use by divisions or agencies of federal, state and local governments.

C. For purposes of this section, "kilowatt hours delivered" shall mean in the case of eligible customer-generators, as defined in § 56-594, those kilowatt hours supplied from the electric grid to such customer-generators, minus the kilowatt hours generated and fed back to the electric grid by such customer-generators.

1999, c. 971; 2000, cc. 427, 614.

§ 58.1-2901. Collection and remittance of tax

A. The provider of billing services shall collect the tax from the consumer by adding it as a separate charge to the consumer's monthly statement. Until the consumer pays the tax to such provider of billing services, the tax shall constitute a debt of the consumer to the Commonwealth, localities, and the State Corporation Commission. If any consumer receives and pays for electricity

but refuses to pay the tax on the bill that is imposed by § 58.1-2900, the provider of billing services shall notify the State Corporation Commission of the name and address of such consumer. If any consumer fails to pay a bill issued by a provider of billing services including the tax that is imposed by § 58.1-2900, the provider of billing services shall follow its normal collection procedures with respect to the charge for electric service and the tax, and upon collection of the bill or any part thereof shall (i) apportion the net amount collected between the charge for electric service and the tax and (ii) remit the tax portion to the State Corporation Commission and the appropriate locality. After the consumer pays the tax to the provider of billing services, the taxes collected shall be deemed to be held in trust by such provider until remitted to the State Corporation Commission and the appropriate locality.

When determining the amount of tax to collect from consumers of an electric utility that is a cooperative which purchases, for the purpose of resale within the Commonwealth, electricity from a federal entity that made payments during such taxable period to the Commonwealth in lieu of taxes in accordance with a federal law requiring such payments to be calculated on the basis of such federal entity's gross proceeds from the sale of electricity, the provider of billing services shall deduct from each of the respective tax amounts calculated in accordance with § 58.1-2900 an amount equal to the calculated tax amounts multiplied by the ratio that the total cost of the power, including facilities rental, supplied by said federal entity to said cooperative for resale within the Commonwealth bears to said cooperative's total operating revenue within the Commonwealth for the taxable period. The State Corporation Commission may audit the records and books of said cooperative to verify that the tax imposed by this chapter has been correctly determined and properly remitted.

B. A provider of billing services shall remit monthly to the Commission the amount of tax paid during the preceding month by the provider of billing services' consumers, except for (i) amounts added on the bills to utilities owned and operated by municipalities which are collected by the entity providing transmission directly to such utilities (or an association or agency of which the municipality is a member), which they shall remit directly to the Commission and (ii) the portion which represents the local consumption tax, which portion shall be remitted to the locality in which the electricity was consumed and shall be based on such locality's license fee rate which it imposed. Amounts of the tax that are added on the bills to utilities owned and operated by municipalities, which are collected by the entity providing transmission directly to such utilities (or an association or agency of which the municipality is a member), shall be remitted monthly by such entity to the Commission, except that the portion which represents the local consumption tax shall be remitted to the locality in which the electricity was consumed and shall be based on such locality's license fee rate which it imposed.

C. The electric utility consumption tax shall be remitted monthly, on or before the last day of the succeeding month of collection. Those portions of the electric utility consumption tax that relate to the state consumption tax and the special regulatory tax shall be remitted to the Commission;

the portion that relates to the local consumption tax shall be remitted to the localities. Failure to remit timely will result in a ten percent penalty.

D. Taxes on electricity sales in the year ending December 31, 2000, relating to the local license tax, shall be paid in accordance with § 58.1-3731. Monthly payments in accordance with subsection C shall commence on February 28, 2001.

E. For purposes of this section, "service provider" means the person who delivers electricity to the consumer and "provider of billing services" means the person who bills a consumer for electric services rendered. If both the service provider and another person separately and directly bill a consumer for electricity service, then the service provider shall be considered the "provider of billing services."

F. The portion of the electric utility consumption tax relating to the local consumption tax replaces and precludes localities from imposing a license tax in accordance with § 58.1-3731 and the business, professional, occupation and license tax in accordance with Chapter 37 (§ 58.1-3700 et seq.) on electric suppliers subsequent to December 31, 2000, except as provided in subsection D. If the license fee rate imposed by a locality is less than the equivalent of the local consumption tax rate component of the consumption tax paid under subsection A of § 58.1-2900, the excess collected by the Commission shall constitute additional state consumption tax revenue and shall be remitted by the Commission to the state treasury. However, effective January 1, 2003, any locality that failed to comply with the requirements of this subsection by December 31, 2000, regarding the local license tax, shall receive the revenues generated on or after January 1, 2003, by the local consumption tax component paid under subsection A by the citizens of such locality. Such locality shall be entitled to the maximum amount as if the locality had imposed the license tax, in accordance with the provisions of § 58.1-3731 at the maximum rate allowed, provided that the governing body of such locality adopts an ordinance electing to receive such amounts.

G. The Department of Taxation may audit the books and records of any electric utility owned and operated by a municipality (or an association or agency of which the municipality is a member) to verify that the tax imposed by this chapter has been correctly determined and properly remitted to the Commission.

H. The State Corporation Commission may audit the books and records of any service provider or provider of billing services, except as provided in subsection G, to verify that the tax imposed by this chapter has been correctly determined and properly remitted to the Commission.

1999, c. 971; 2000, cc. 427, 614; 2001, cc. 748, 829, 861; 2002, cc. 339, 502.

§ 58.1-2902. Electric utility consumption tax relating to the special regulatory tax; when not assessed or assessed only in part

A. The Commission may in the performance of its function and duty in levying the electric utility consumption tax relating to the special regulatory tax, omit the levy on any portion of the tax fixed in § 58.1-2900 as is unnecessary within the Commission's sole discretion for the

accomplishment of the objects for which the tax is imposed, including a reasonable margin in the nature of a reserve fund.

B. The Commission shall notify each provider of billing services, as defined in subsection E of § 58.1-2901, collecting the tax on consumers of electricity of any change in the electric utility consumption tax relating to the special regulatory tax not later than the first day of the second month preceding the month in which the revised rate is to take effect.

1999, c. 971; 2001, c. 748.

§ 58.1-2903. Use of electric utility consumption tax relating to special regulatory tax

The electric utility consumption tax relating to the special regulatory tax paid into the treasury under this chapter shall be deposited into a special fund used only by the Commission for the purpose of making appraisals, assessments and collections against electric suppliers as defined in §§ 58.1-400.2 and 58.1-2600 and public service corporations furnishing heat, light and power by means of electricity and for the further purposes of the Commission in investigating and inspecting the properties or the service or services of such electric suppliers and public service corporations, and for the supervision and administration of all laws relative to such electric suppliers and public service corporations, whenever the same shall be deemed necessary by the Commission.

1999, c. 971.

Chapter 29.1 - NATURAL GAS CONSUMPTION TAX

§ 58.1-2904. Imposition of tax

A. Effective January 1, 2001, there is hereby imposed, in addition to the local consumer utility tax of Article 4 (§ 58.1-3812 et seq.) of Chapter 38 of this title, a tax on the consumers of natural gas in the Commonwealth based on volume of gas at standard pressure and temperature in units of 100 cubic feet (CCF) delivered by the pipeline distribution company or gas utility and used per month. Each consumer of natural gas in the Commonwealth shall pay tax on the consumption of all natural gas consumed per month not in excess of 500 CCF at the following rates: (i) state consumption tax rate of $0.0135 per CCF, (ii) local consumption tax rate of $0.004 per CCF, and (iii) a special regulatory tax rate of up to $0.002 per CCF.

B. The tax rates set forth in subsection A are in lieu of and replace the state gross receipts tax pursuant to § 58.1-2626, the special regulatory revenue tax pursuant to § 58.1-2660, and the local license tax pursuant to § 58.1-3731 levied on corporations furnishing heat, light or power by means of natural gas.

C. The tax of consumers under this section shall not be imposed on consumers served by a gas utility owned or operated by a municipality.

D. The tax authorized by this chapter shall not apply to use by divisions or agencies of federal, state and local governments.

2000, cc. 691, 706.

§ 58.1-2905. Collection and remittance of tax

A. A pipeline distribution company or gas utility shall collect the tax from the consumer by adding it as a separate charge to the consumer's monthly statement. Until the consumer pays the tax to such company, the tax shall constitute a debt of the consumer to the Commonwealth. If any consumer receives and pays for gas but refuses to pay the tax that is imposed by the Commonwealth, the pipeline distribution company or gas utility shall notify the Commission of the names and addresses of such consumers. If any consumer fails to pay a bill issued by a pipeline distribution company or gas utility, including the tax imposed by the Commonwealth, the pipeline distribution company or gas utility shall follow its normal collection procedures with regard to the charge for the gas and the tax and upon collection of the bill or any part thereof shall (i) apportion the net amount collected between the charge for gas service and the tax and (ii) remit the tax portion to the Commission. After the consumer pays the tax to the pipeline distribution company or gas utility, the taxes shall be deemed to be held in trust by such pipeline distribution company or gas utility until remitted to the Commission.

B. A pipeline distribution company or gas utility shall remit monthly to the Commission the amount of tax paid during the preceding month by the pipeline distribution company's consumers, except for the portion which represents the local consumption tax, which portion shall be remitted to the locality in which the natural gas was consumed and shall be based on such locality's license fee rate which it imposed.

C. The natural gas consumption tax shall be remitted monthly, on or before the last day of the succeeding month of collection. Those portions of the natural gas consumption tax that related to the state consumption tax and the special regulatory tax shall be remitted to the Commission; the portion that relates to the local consumption tax shall be remitted to the appropriate localities. Failure to remit timely will result in a ten percent penalty.

D. Taxes on natural gas sales in the year ending December 31, 2000, relating to the local license tax, shall be paid in accordance with § 58.1-3731. Monthly payments in accordance with subsection C shall commence on February 28, 2001.

E. The portion of the natural gas consumption tax relating to the local license tax replaces and precludes localities from imposing a license tax in accordance with § 58.1-3731 and the business, professional, occupation and license tax in accordance with Chapter 37 (§ 58.1-3700 et seq.) of this title on gas suppliers subsequent to December 31, 2000, except as provided in subsection D. If the license fee rate imposed by a locality is less than the equivalent of the local consumption tax rate component of the consumption tax paid under subsection A of § 58.1-2904, the excess collected by the Commission shall constitute additional state consumption tax revenue and shall be remitted by the Commission to the state treasury.

F. Nothing in this section shall prohibit a locality from enacting an ordinance or other local law to allow such locality to receive that portion of the natural gas consumption tax that represents the local consumption tax beginning at such time that natural gas service is first made available in such locality. The amount of such local consumption tax to be distributed to the locality shall be determined in accordance with the provisions of subsection B, assuming that the maximum license tax rate allowed pursuant to § 58.1-3731 was imposed.

2000, cc. 691, 706; 2001, c. 737.

§ 58.1-2906. Natural gas consumption tax relating to the special regulatory tax; notification of changes

A. The Commission may in the performance of its function and duty in levying the natural gas utility consumption tax relating to the special regulatory tax, omit the levy on any portion of the tax fixed in § 58.1-2904 as is unnecessary within the Commission's sole discretion for the accomplishment of the objects for which the tax is imposed, including a reasonable margin in the nature of a reserve fund.

B. The Commission shall notify all pipeline distribution companies and gas utilities collecting the tax on consumers of natural gas of any change in the natural gas consumption tax relating to the special regulatory tax not later than the first day of the second month preceding the month in which the revised rate is to take effect.

2000, cc. 691, 706.

§ 58.1-2907. Use of natural gas consumption tax relating to special regulatory tax

The natural gas consumption tax relating to the special regulatory tax paid into the treasury under this chapter shall be deposited into a special fund used only by the Commission for the purpose of making appraisals, assessments and collections against natural gas suppliers and public service corporations furnishing heat, light and power by means of natural gas and for the further purposes of the Commission in investigating and inspecting the properties or the services of such natural gas suppliers and public service corporations, and for the supervision and administration of all laws relative to such natural gas suppliers and public service corporations, whenever the same shall be deemed necessary by the Commission.

2000, cc. 691, 706.

Subtitle III - LOCAL TAXES

Chapter 30 - GENERAL PROVISIONS

§ 58.1-3000. Real estate, mineral lands, tangible personal property and merchants' capital subject to local taxation only

All taxable real estate, all taxable coal and other mineral lands, and all taxable tangible personal property and the tangible personal property of public service corporations, except rolling stock of

corporations operating railroads, and also the capital of merchants are hereby segregated and made subject to local taxation only.

Code 1950, § 58-9; 1971, Ex. Sess., c. 33; 1984, c. 675.

§ 58.1-3001. When boards of supervisors to fix and order county and district taxes; funds not available, allocated, etc., until appropriated

The governing body of each county shall, at its regular meeting in the month of January in each year, or as soon thereafter as practicable not later than a regular or called meeting in June, fix the amount of the county and district taxes for the current year. Any such governing body may provide that if any taxpayer owns tangible personal property of such small value that the local levies thereon for the year result in a tax of less than fifteen dollars, such tax may be collected as provided by ordinance or such property may be omitted from the personal property book and no assessment made thereon.

The imposition of taxes or the collection of such taxes shall not constitute an appropriation nor an obligation or duty to appropriate any funds for any purpose, expenditure or contemplated expenditure. No part of the funds raised by the general county taxes shall be considered available, allocated or expended for any purpose until there has been an appropriation of funds for that expenditure or purpose by the governing body either annually, semiannually, quarterly, or monthly. There shall be no mandatory duty upon the governing body of any county to appropriate any funds raised by general county taxes except to pay the principal and interest on bonds and other legal obligations of the county or district and to pay obligations of the county or its agencies and departments arising under contracts executed or approved by the governing body, unless otherwise specifically provided by statute. Any funds collected and not expended in any fiscal year shall be carried over to the succeeding fiscal years and shall be available for appropriation for any governmental purposes in those years.

Code 1950, § 58-839; 1950, p. 416; 1952, c. 423; 1958, c. 35; 1959, Ex. Sess., c. 52; 1984, c. 675; 1988, c. 430; 1989, c. 81; 1994, c. 252.

§ 58.1-3002. Levy by board for court allowances

The clerks of the circuit courts shall furnish to the governing bodies of their counties, on or before the day on which they meet to set county taxes, copies of all orders and allowances made by their respective courts, payable out of the county treasury; and the supervisors shall provide for the payment of all such orders and allowances as the courts may be authorized to make.

Code 1950, § 58-840; 1984, c. 675.

§ 58.1-3003. Appeal from order of levy

If the attorney for the Commonwealth of any county is of the opinion that an order for imposition of taxes made by his governing body is illegal or if he receives a petition of one per centum of the registered voters of the county, but no fewer than fifty such voters, demanding that he appeal such order, such attorney shall appeal therefrom, within thirty days after such order is made, to the

circuit court of the county and such appeal shall operate as a supersedeas. Without waiting the final decision of the appeal the governing body may rescind its order and impose taxes according to law. If the court, on the hearing of the appeal, is of the opinion that the order is contrary to law, it shall reverse the same and direct the governing body to enter such order as to the court may seem right. If money be collected under any such order, which is afterward rescinded or reversed, the treasurer shall forthwith repay such money to the person from whom it was collected. If he fails so to do, a motion may be made and judgment obtained, in like manner as in cases provided in § 58.1-3140.

Code 1950, § 58-841; 1980, c. 501; 1984, c. 675.

§ 58.1-3004. Duty of clerk of board in case of appeal; how appeal tried

The clerk of the governing body, upon any appeal being taken, shall immediately give notice thereof to the governing body and make out a brief return of the proceedings in the case before the governing body, with its decision thereon, and file the same, together with the bond and all the papers in the case in his possession with the clerk of the court to which the appeal is taken. Such appeal shall be entered, tried and determined as appeals of right, on such record with any other pleadings and evidence that the court in its discretion may permit.

Code 1950, § 58-842; 1984, c. 675.

§ 58.1-3005. Cities and towns to make city and town levies; funds not available, allocated, etc., until appropriated

The council of every city and town shall annually cause to be made up and entered on its journals an account of all sums lawfully chargeable on the city or town which ought to be paid within one year and order the imposition of taxes in such amount as in their opinion is necessary to be raised. Any such governing body may provide that if any taxpayer owns tangible personal property of such small value that the local levies thereon for the year result in a tax of less than fifteen dollars, such tax may be collected as provided by ordinance or such property may be omitted from the personal property book and no assessment made thereon.

The imposition of taxes or the collection of such taxes shall not constitute an appropriation nor an obligation or duty to appropriate any funds by the council of any city or town for any purpose, expenditure, or contemplated expenditure. No part of the funds raised by the general city or town taxes shall be considered available, allocated, or expended for any purpose until there has been an appropriation of funds for that expenditure or purpose by the council either annually, semi-annually, quarterly, or monthly. There shall be no mandatory duty upon the council of any city or town to appropriate any funds raised by general city or town taxes except to pay the principal and interest on bonds and other legal obligations of the city or town and to pay obligations of the city or town or its agencies and departments arising under contracts executed or approved by the council, unless otherwise specifically provided by statute. Any funds collected and not expended in any fiscal year shall be carried over to the succeeding fiscal years and shall be available for appropriation for any governmental purposes in those years. This section shall be applicable to all cities

and towns in the Commonwealth and the provisions of any charter of any city or town inconsistent or in conflict with this section shall be inoperative to the extent of such inconsistency or conflict.

Code 1950, § 58-844; 1950, p. 317; 1959, Ex. Sess., c. 52; 1971, Ex. Sess., c. 11; 1972, c. 340; 1984, c. 675; 1988, c. 430; 1989, c. 81; 1994, c. 252.

§ 58.1-3006. Additional tax to pay interest and retire bonds

The cities and towns of this Commonwealth, by their duly constituted authorities, are hereby authorized annually to levy, in addition to any other levies authorized by law, a special levy upon such taxable property in such cities and towns as is not, by law, segregated to the Commonwealth for taxation, or withheld from city or town taxation, at a rate not in conflict with general law, for the purpose of providing a sinking fund or to pay the principal and interest of their bonded indebtedness, as and when the same become due and payable. All charters of any city or town are hereby repealed insofar as they are in conflict herewith.

Code 1950, § 58-846; 1984, c. 675.

§ 58.1-3007. Notice prior to increase of local tax levy; hearing

Before any local tax levy shall be increased in any county, city, town, or district, such proposed increase shall be published in a newspaper having general circulation in the locality affected at least seven days before the increased levy is made and the citizens of the locality shall be given an opportunity to appear before, and be heard by, the local governing body on the subject of such increase.

Code 1950, §§ 58-846.1, 58-851; 1954, c. 465; 1959, Ex. Sess., c. 52; 1966, c. 231; 1970, c. 325; 1975, cc. 47, 48, 541; 1976, c. 567; 1979, c. 576; 1981, c. 143; 1984, c. 675.

§ 58.1-3008. Different rates of levy on different classes of property

The governing body of any county, city or town in laying levies on taxable real estate, tangible personal property and merchants' capital may impose different rates of levy on real estate, merchants' capital, tangible personal property or any separate class thereof authorized under Chapter 35 (§ 58.1-3500 et seq.), and machinery and tools, or it may impose the same rate of levy on any or all of these subjects of taxation. Such rates shall conform to the requirements set forth in such Chapter 35.

Code 1950, § 58-851.2; 1952, c. 507; 1970, c. 748; 1984, c. 675.

§ 58.1-3009. Tax on payrolls prohibited

No political subdivision of this Commonwealth shall impose, levy or collect, directly or indirectly, any tax on payrolls or occupations.

The provisions of this section shall not be deemed to prohibit or limit the withholding from an employee's salary of any sums required by the Social Security Act, the Unemployment Compensation Act, federal or state income tax statutes, deductions for retirement systems, or other

deductions authorized by the employee or made pursuant to any assignment or execution, nor shall this section be deemed to prohibit or limit the imposition, levy or collection of any tax authorized to be imposed by Chapter 37 (§ 58.1-3700 et seq.) of this title.

Code 1950, § 58-851.2; 1952, c. 507; 1970, c. 748; 1984, c. 675.

§ 58.1-3010. Counties, cities and towns may levy taxes on fiscal year basis of July 1 through June 30, and change rate of levy during fiscal year

Notwithstanding any other provision of law, special or general, to the contrary, the governing body of any county, city or town may by ordinance provide that taxes on real estate, tangible personal property and machinery and tools be levied and imposed on a fiscal year basis of July 1 to June 30. Such locality is authorized and empowered to change the rate of any such levy during any fiscal year.

As to any locality which has adopted such ordinance all provisions of this Code specifying a date or month relative to the levy, payment or collection of such taxes shall be interpreted to specify the corresponding date or month of the fiscal year, except that all property shall be assessed as of January 1 prior to such fiscal year unless otherwise specifically provided under § 58.1-3011.

In order to effect a change to a fiscal tax year pursuant to this section, any locality may have a short calendar year from January 1 through June 30, or a short fiscal year from January 1 through June 30. All provisions of law applicable to the assessment of property, levy, payment and collection of taxes for a calendar year shall apply to such short tax year. If such short year is a fiscal year, the locality may borrow beginning January 1 pursuant to §§ 15.2-2629 and 15.2-2631 as if it had been on such fiscal year from the prior July 1. If such short year is a calendar year, borrowing pursuant to §§ 15.2-2629 and 15.2-2631 must be repaid at the time specified in § 15.2-2631 for fiscal year borrowings.

Any locality which levies taxes on a fiscal year basis, as authorized by general law or special act, shall exonerate or refund its personal property tax for that portion of the tax year for which the property was properly assessed by another jurisdiction in the Commonwealth and the tax paid.

Code 1950, § 58-851.6; 1966, c. 374; 1974, c. 294; 1981, c. 437; 1984, c. 675.

§ 58.1-3011. Use of July 1 as effective date of assessment

The governing body of any county, city or town may provide by ordinance that all taxable real estate or personal property and machinery and tools therein be assessed as of July 1 of each year, any other provision of law, general and special, including the provisions of the charter of any city or town, to the contrary notwithstanding. In any such locality, public service corporation property shall continue to be assessed at its value as of January 1, prior to such assessment date. Any ordinance adopting a July 1 tax day for personal property as authorized hereunder shall require that a prorated refund or credit of personal property tax be given for that portion of the tax year during which the property was legally assessed by another jurisdiction in the Commonwealth and the tax paid. Any locality providing for the taxation of certain property on a proportional monthly or

quarterly basis as authorized by general law or special act shall provide for a refund or credit of personal property tax for any tax year or portion thereof during which the property was legally assessed by another jurisdiction in the Commonwealth and the tax paid.

Code 1950, § 58-851.7; 1966, c. 380; 1974, c. 294; 1978, c. 692; 1979, c. 576; 1984, c. 675.

§ 58.1-3012. Counties, cities and towns may change rate of tax during calendar year

The governing body of any county, city or town which levies taxes on real estate, tangible personal property and machinery and tools on a calendar-year basis is authorized and empowered to change the rate of its tax on real estate, tangible personal property and machinery and tools during any calendar year, provided such change is made prior to the date on which the personal property and land books are delivered to the treasurer of the applicable county, city or town.

Code 1950, § 58-851.8; 1974, c. 293; 1984, c. 675; 1996, c. 354.

§ 58.1-3013. Repealed

Repealed by Acts 2002, c. 719.

§ 58.1-3014. Relief from taxes in cases of disaster

All taxpayers of the Commonwealth whose lands, improvements thereon, or personal property, or any portion thereof, shall be in any year destroyed in any manner by common disaster, if declared such by the Governor of Virginia, may on application therefor be relieved from the payment of taxes and levies to any county, city or town upon such land, improvements thereon, or personal property as shall be so taken and which are uncompensated for by insurance or otherwise. Such relief shall be for that year in which such property is taken from and after the date upon which such disaster occurred, if so provided by resolution adopted by the governing body of such locality. Any such taxpayer who has not paid the taxes or levies on any such land, improvements thereon, or personal property so taken shall also be relieved of interest and penalties therefor; provided, he shall make payment for his proportion, if any, of the taxes and levies for the year during which the land, improvements thereon, or personal property was so taken, on or before July 1 of the year following.

Any taxpayer entitled to such relief may apply within one year of such disaster to the commissioner of the revenue or other assessing officer of such locality, who shall determine the amount by which the assessment on such property should be reduced by reason of such loss. If such tax has not been paid, the assessing officer shall exonerate the applicant from the payment of so much of the tax as is allocable to such loss. If such tax has been paid, the assessing officer shall certify the amount of such reduction to the treasurer of such locality, who shall issue a refund therefor.

Code 1950, § 58-27.2; 1970, c. 762; 1973, c. 140; 1978, c. 654; 1984, c. 675.

§ 58.1-3015. To whom property generally shall be taxed and by whom listed

If property is owned by a person sui juris, it shall be taxed to him.

If property is owned by a minor, it shall be listed by and taxed to his guardian or trustee, if any he has; if he has no guardian or trustee, it shall be listed by and taxed to the person in possession.

If the property is the estate of a deceased person, it shall be listed by the personal representative or person in possession and taxed to the estate of such deceased person.

If the property is owned by an incapacitated person as that term is defined in § 64.2-2000, it shall be listed by and taxed to his conservator or guardian, if any; if none has been appointed, then such property shall be listed by and taxed to the person in possession.

If the property is held in trust for the benefit of another, it shall be listed by and taxed to the trustee, if there is any in this Commonwealth, and if there is no trustee in this Commonwealth, it shall be listed by and taxed to the beneficiary.

If the property belongs to a corporation or firm, it shall be listed by and taxed to the corporation or firm.

Code 1950, § 58-20; 1972, c. 825; 1984, c. 675; 1997, c. 921.

§ 58.1-3016. Retention of property for payment of taxes

If property be listed by and taxed to any person other than the owner, it shall not be delivered to the owner until the taxes thereon are paid or indemnity given to the person in possession for the payment thereof.

Code 1950, § 58-22; 1984, c. 675.

§ 58.1-3017. Disclosure of social security account numbers for local tax administration purposes

Notwithstanding any other provision of law, a tax official of any county, city or town may require disclosure of the social security account number of a taxpayer for any purpose relating to local taxes administered by such official, including verification of the identity of any individual. Such numbers shall be regarded as confidential tax information.

1993, c. 103 .

§ 58.1-3018. Payment of local taxes on behalf of taxpayer by third party; tax payment agreements

A. For the purposes of this section, "third-party tax payment agreement" means any agreement whereby a third party contracts with a taxpayer to pay to a county, city or town on behalf of that taxpayer the local taxes, charges, fees or other obligations due and owing to the county, city or town. Such agreement may have as its subject current taxes, charges, fees and obligations, delinquent taxes, penalties and interest, or any combination of the foregoing.

B. The treasurer of any county, city or town may enter into agreements authorizing third parties to offer to taxpayers within such locality third-party tax payment agreements, provided that such agreements meet the following requirements:

1. Every third-party tax payment agreement shall be in writing, in a form approved by the treasurer of the locality, and shall provide for the payment of the taxes which are the subject of such agreement by the third party directly to the treasurer of the county, city or town within ten days of the acceptance of a duly executed agreement by the third party.

2. Third-party tax payment agreements shall provide for the reimbursement of the third party by the taxpayer on whose behalf taxes were paid in installments over a period not to exceed ninety-six months, and may provide for interest, exclusive of any origination fee, at an annual rate approved by the treasurer which shall not exceed sixteen percent. Such agreements may provide for the payment by the taxpayer of an origination fee at a rate approved by the treasurer which shall not exceed ten percent of the amount paid by the third party. No interest, excluding any origination fee paid by the taxpayer, shall accrue during the six-month period commencing on the date of the payment. This subdivision shall not be construed to permit the treasurer to authorize a third party to make a "mortgage loan" as that term is defined in § 6.2-1600.

3. No fee may be charged to or collected from the treasurer or the locality with respect to any third-party tax payment agreement.

4. The third party shall provide to the treasurer monthly status reports regarding third-party tax payment agreements entered into by taxpayers of the locality. Such reports shall include, at a minimum, a listing of all active accounts, and with respect to each account, total charges, total taxpayer payments, total amounts paid to the treasurer, and total amounts subject to recourse. A summary of the monthly report, deleting any information that would identify any taxpayer and any other confidential taxpayer information, shall be retained as a public record in the treasurer's office.

C. In the event that a taxpayer who is a party to a third-party tax payment agreement fails in his obligations arising under such agreement to reimburse the third party:

1. The third party shall be entitled to receive from the treasurer a reimbursement payment equal to all taxes paid on behalf of such taxpayer pursuant to the tax payment agreement, less all payments received by the third party from the taxpayer, exclusive of interest and fees charged by the third party to the taxpayer pursuant to the agreement. No payment may be requested pursuant to this subsection unless the third party has demonstrated to the satisfaction of the treasurer that good-faith efforts to collect the obligations arising under the tax payment agreement have been made and that, notwithstanding these efforts, the taxpayer is more than thirty days delinquent in his obligations arising under the agreement.

2. Any treasurer who reimburses a third party pursuant to this subsection shall reinstate the amount of such reimbursement upon the appropriate tax rolls of the locality as delinquent taxes or current taxes, as the case may be, and shall send the taxpayer written notice of such action by first-class mail to the taxpayer's last known address within five business days of such reinstatement.

3. If the taxpayer fails to pay in full any sum reinstated pursuant to this section by the ordinary due date of the tax, the treasurer may apply penalties and interest in accordance with general law from the due date of the tax.

4. Any right of the third party to payment arising under a third-party tax payment agreement shall terminate upon the receipt by the third party of a reimbursement payment from the treasurer in accordance with the terms of this subsection.

D. With respect to each third-party tax payment agreement which has as its subject, in whole or in part, real property taxes, the third party shall cause to be recorded among the land records of the circuit court in each locality within which the real property is situated a copy of the applicable tax payment agreement. Such agreement shall be indexed by the clerk under the name of the taxpayer or taxpayers as grantor and the name of the third party as grantee. Upon the satisfaction of all obligations arising under a tax payment agreement so recorded, the third party, within ninety days of satisfaction, shall cause to be recorded a certificate of release, setting forth the names of the taxpayer and the third party, the date of the third-party tax payment agreement, and the book and page at which the agreement is recorded. Any such certificate of release shall be indexed by the clerk under the name of the third party as grantor and the taxpayer as grantee. The clerk may charge a fee not to exceed thirteen dollars for the recordation of any tax payment agreement or certificate of release.

E. Upon the payment of any tax by a third party pursuant to a tax payment agreement, the applicable period of limitation for the enforcement of each tax which is the subject of the agreement shall be tolled during any period in which outstanding obligations remain unsatisfied pursuant to the agreement.

1996, c. 896; 1997, cc. 180, 846; 2015, c. 257.

Chapter 31 - LOCAL OFFICERS

Article 1 - COMMISSIONERS OF THE REVENUE

§ 58.1-3100. Interpretation of "commissioner."

As used in this chapter, unless the context clearly indicates otherwise, the terms "commissioner" and "commissioner of the revenue" shall be interpreted to include both city and county commissioners of the revenue. The term shall also include the director of finance and any other officer of any county or city if such officer performs any or all of the duties of the commissioner of the revenue described herein.

1984, c. 675.

§ 58.1-3101. County commissioner of the revenue to keep an office at county seat; removal to other place

Each county commissioner of the revenue shall keep an office at the county seat of his county or at such other point in the county as the governing body of the county deems to be more convenient to a majority of its citizens.

Code 1950, § 58-853; 1984, c. 675.

§ 58.1-3102. Jurisdiction of commissioners

The jurisdiction, powers and duties of commissioners shall not extend beyond the bounds of their respective counties or cities.

Code 1950, § 58-854; 1984, c. 675.

§ 58.1-3103. When commissioners begin work; commissioners to make assessments

Each commissioner shall begin annually, on the first day of January, to discharge the duties prescribed by law. As part of his duties each commissioner of the revenue shall ascertain and assess, at fair market value, all subjects of taxation in his county or city on the first day of January in each year, except as otherwise provided by law. For each such assessment of local mobile property tax as defined in § 58.1-3983.1, prior to the time that any tax with respect to such assessment is due, the commissioner or other local tax official shall provide in writing to each applicable taxpayer: (i) the amount of the assessment and a description of the property; (ii) the valuation method used; (iii) the date the applicable taxes will be due; and (iv) a description of the procedures available to the taxpayer and the records required should he wish to appeal the assessment.

Code 1950, §§ 58-855, 58-864; 1971, Ex. Sess., c. 4; 1984, c. 675; 2004, c. 534.

§ 58.1-3104. Commissioner of the revenue entitled to books and papers of predecessor

The commissioner shall apply for and be entitled to the official books and papers of his predecessor. The person in possession of such materials shall deliver them upon application.

Code 1950, § 58-856; 1984, c. 675.

§ 58.1-3105. Tax Commissioner to instruct commissioners of the revenue

The Tax Commissioner shall provide instructions to the commissioners of the revenue in respect to their duties.

Code 1950, § 58-857; 1984, c. 675.

§ 58.1-3106. How compensation of commissioners paid; when compensation withheld

A. All compensation payable to a commissioner of the revenue shall be paid pursuant to § 15.2-1636.13.

B. The compensation allowed to a commissioner shall not be paid unless he has punctually performed his duties in reference to the assessment of property and licenses and has made all reports required within the time prescribed by law or can show to the satisfaction of the Department of Taxation a sufficient reason for his delay.

Code 1950, §§ 58-890, 58-891; 1984, c. 675.

§ 58.1-3107. Commissioner of the revenue to obtain returns from taxpayers

Each commissioner of the revenue shall obtain full and complete tax returns from every taxpayer within his jurisdiction who is liable under the law to file such return with him for all taxes assessed by his office. This duty of the commissioner of the revenue to obtain such returns shall in no manner diminish the obligation of the taxpayer to file the required returns without being called upon to do so by the commissioner of the revenue or any other officer.

Code 1950, § 58-859; 1984, c. 675.

§ 58.1-3108. Commissioner to render taxpayer assistance and may go to convenient places to receive returns; advertisement by commissioner

A. Each commissioner of the revenue shall render such taxpayer assistance as may be necessary for the preparation of any return required by law to be filed with his office. Such commissioners may go to convenient public places within the county or city for the purpose of receiving state and local tax returns. Compliance by the commissioner of the revenue with this section shall not relieve him of the duty to obtain tax returns as required by § 58.1-3107.

B. Each commissioner shall advertise, in some newspaper of general circulation in the city or county, at least once during the thirty days prior to the time fixed by law for filing returns without penalty, the location of the commissioner's office, the location of such branch offices as he may establish, and the hours of the day, not less than eight hours each day, during which such office or offices shall be open for business. Such advertisement shall state the time when returns of taxpayers must be filed.

Code 1950, §§ 58-861, 58-862; 1982, cc. 114, 466; 1984, c. 675.

§ 58.1-3109. Duties of commissioners as to personal property, income and licenses

Each commissioner of the revenue shall:

1. Review the lists of all persons licensed by the commissioner of the revenue and assess, for the current license year, additional license taxes for any person who has reported less than the law requires;

2. Upon investigation, assess the proper license taxes for any person who has without a license conducted any business for which a license is required;

3. Review, in regard to intangible personal property and income, such returns of taxpayers as may be referred to him by the Department of Taxation and report to the Department, for assessment, any additional intangible personal property and income when his review or investigation discloses that such property or income has not been reported for taxation or has been reported for taxation at less than the law requires;

4. Examine causes pending in the courts of his county or city and the records thereof and ascertain and assess all property and income subject to assessment by his office;

5. Require every taxpayer who may not have properly returned to the commissioner of the revenue all of his tangible and intangible personal property, and licenses for the current tax year and the three preceding tax years to make the proper and complete return;

6. Require taxpayers or their agents or any person, firm or officer of a company or corporation to furnish information relating to tangible or intangible personal property, income or license taxes of any and all taxpayers; and require such persons to furnish access to books of account or other papers and records for the purpose of verifying the tax returns of such taxpayers and procuring the information necessary to make a complete assessment of any taxpayer's tangible and intangible personal property, and license taxes for the current tax year and the three preceding tax years;

7. Make such reports to the Department of Taxation as may be required by law or as the rules and regulations adopted by the Tax Commissioner may require;

8. Upon written request of any town treasurer or director of finance or other officer who performs the duties of a treasurer and whose locality is located within such commissioner's jurisdiction, provide the name, address and social security number of any taxpayer who has filed a personal property tax return with such commissioner of the revenue, as long as such town treasurer or director of finance or other officer who performs the duties of a treasurer shall certify that such information is sought in the performance of official duties. Any town official to whom information is furnished pursuant to this provision shall be bound by the provisions and penalties of § 58.1-3; and

9. Notify the animal control officer of the presence of any commercial dog breeder, as defined in § 3.2-6500, operating within the locality.

Code 1950, §§ 58-865, 58-874; 1980, c. 317; 1984, c. 675; 1991, cc. 8, 448; 2008, c. 852.

§ 58.1-3110. Power to summon taxpayers and other persons

A. The commissioner may, for the purpose of assessing all taxes assessable by his office, summon the taxpayer or any other person to appear before him at his office, to answer, under oath, questions touching the tax liability of any and all specifically identified taxpayers and to produce documents relating to such tax liability, either or both. For the purposes of administering this section, commissioners and their deputies may administer oaths. The commissioner shall not, however, summon a taxpayer or other person for the tax liability of the taxpayer which is the subject of litigation.

B. Any court of competent jurisdiction may, upon the application of the commissioner or his deputy, compel the compliance of a taxpayer summoned or required to produce documents as required by this section.

C. Every writ, warrant, notice, summons, or other process the commissioner is authorized to issue pursuant to general or local law may be served by the commissioner, or his deputy, or may be dir-

ected to the sheriff to be served pursuant to § 8.01-292 and executed and returned in like manner as the civil process of a court of competent jurisdiction.

Code 1950, §§ 58-860, 58-874; 1980, c. 317; 1982, c. 536; 1984, c. 675; 1986, c. 35; 1987, c. 377; 2015, c. 378.

§ 58.1-3111. Penalties

Any person who refuses to (i) furnish to the commissioner of the revenue access to books of account or other papers and records, (ii) furnish information to the commissioner of the revenue relating to the assessment of taxes, (iii) answer under oath questions touching any person's tax liability, or (iv) exhibit to the commissioner of the revenue any subject of taxation liable to assessment by the commissioner of the revenue, shall be deemed guilty of a Class 3 misdemeanor. Each day's refusal to furnish such access or information shall constitute a separate offense. No person other than the taxpayer shall be convicted under this section unless he has willfully failed to comply with a summons properly issued under § 58.1-3110.

Code 1950, § 58-875; 1980, c. 317; 1984, c. 675; 1990, c. 162; 2002, c. 363.

§ 58.1-3112. Commissioner to preserve returns; destruction of returns; penalty

A. The commissioner of the revenue shall preserve in a permanent file in his office all returns of tangible personal property, machinery and tools, and merchants' capital.

B. The commissioner may, in his discretion, subject to the requirements of the Virginia Public Records Act (§ 42.1-76 et seq.), destroy any returns, collected by the commissioner of the revenue, which have been on file in his office for at least six years after the tax assessment year. Any commissioner who fails to comply with the provisions of this subsection shall be guilty of a Class 2 misdemeanor.

C. In lieu of retaining the original returns in his office for at least six years after the tax assessment year, the commissioner, with the consent of the local governing body, may have the original returns copied. Any such copies shall be on a durable medium that complies with the requirements of the Virginia Public Records Act. After copying, the original returns may be destroyed in accordance with the provisions of § 15.2-1412, and the copies shall be retained in accordance with the provisions of subsections A and B of this section, mutatis mutandis. Any such copy may be used in any legal proceeding if the copy is authenticated in accordance with applicable law.

Code 1950, §§ 58-876, 58-877; 1968, c. 627; 1984, c. 675; 1996, c. 323.

§ 58.1-3113. Returns of intangible personal property forwarded to Department

All returns which are used for the assessment of intangible personal property shall be transmitted by the commissioner of the revenue to the Department of Taxation at its office in Richmond, after the commissioner of the revenue has recorded the assessments on such property in his assessment books.

Code 1950, § 58-878; 1956, c. 69; 1984, c. 675.

§ 58.1-3114. Books and certain forms of returns to be furnished by Department

The Department of Taxation shall prescribe the form of the personal property book to be used by the commissioner of the revenue and shall furnish each commissioner of the revenue with three copies of blank personal property books prepared in the form so prescribed. The Department of Taxation shall also prepare and forward to the commissioners of the revenue (i) the printed forms of land or other tax books required by law and (ii) the blank forms of returns to be filed by taxpayers.

Code 1950, §§ 58-858, 58-879; 1981, c. 158; 1984, c. 675.

§ 58.1-3115. Arrangement and contents of books

In making out assessment books, the commissioner of the revenue shall arrange them alphabetically to show the persons chargeable with taxes. When there are two or more persons of the same name, he shall use some distinguishing sign by which the taxpayer may be identified. The address of each taxpayer shall be given.

The commissioner of the revenue shall, in making out the original personal property book and the two copies thereof, follow strictly the form prescribed by the Department of Taxation.

All taxable tangible personal property and all other subjects of taxation not required by law to be assessed on some other book or form shall be entered in the personal property book.

Code 1950, § 58-881; 1971, Ex. Sess., c. 4; 1984, c. 675.

§ 58.1-3116. Department may prescribe separate books for state and local levies

Nothing herein contained shall be construed as prohibiting the Department of Taxation from prescribing a separate personal property book for the assessment of state taxes and a separate personal property book for the assessment of local levies.

Code 1950, § 58-882; 1984, c. 675.

§ 58.1-3117. Disposition of supplemental assessment sheets

All supplemental assessment sheets prescribed by the Department of Taxation and used for the assessment of taxes and levies during any current tax year, after the regular assessment books have been completed, shall be disposed of in the same manner as are the regular assessment books.

Code 1950, § 58-883; 1984, c. 675.

§ 58.1-3118. Commissioner to retain original personal property book; reproduction of book; disposition of copies

Each commissioner of the revenue shall retain in his office the original personal property book. Each commissioner of the revenue shall deliver one certified copy of the personal property book to the treasurer of his county or city and, if requested by the Department in writing, to the Department of Taxation. The personal property books may be produced in the form of microfilm, microfiche, any other similar microphotographic process, or by electronic means and shall be

distributed as designated in that form so long as such process complies with standards adopted pursuant to regulations issued under § 42.1-82 for microfilm, microfiche, other similar micro-photographic process, or electronic means and is acceptable to and meets the requirement of the recipients of copies of the personal property book as designated by this section. For failure to deliver the copies in the manner herein provided by September 1 of each year, or within 90 days from the date the rate of tax on personal property has been determined, whichever date shall occur last, the commissioner of the revenue shall be fined not less than $50 nor more than $200 and he shall not be paid any compensation which he may be due, payable out of the state treasury, for making out such books. But the Department of Taxation may, for good cause and upon written notice to the county or city treasurer and local governing body, extend the time of delivery for such books.

The treasurer and the commissioner of the revenue need not preserve copies of the personal property book for a period of longer than six years following the tax year to which such book relates.

Code 1950, § 58-884; 1960, c. 49; 1962, c. 281; 1975, c. 45; 1980, c. 343; 1981, c. 158; 1984, c. 675; 1997, c. 701; 1999, c. 52; 2003, c. 8.

§ 58.1-3119. Personal property book not to be altered after delivery to treasurer

After the commissioner of the revenue has delivered a copy of his personal property book to the county or city treasurer, no alteration shall be made therein which affects the taxes or levies of that year.

Code 1950, § 58-885; 1984, c. 675.

§ 58.1-3120. If books for preceding year not made out, how supplied

A. If no land book or personal property book was made out for the year immediately preceding the year in which a commissioner takes office, the commissioner of the revenue for such county or city shall proceed to complete books for such year, according to the rate of tax which then existed.

B. All proceedings required by this article in regard to assessment books shall be had with and under the books of such year and the sums charged therein shall be collected and accounted for in like manner.

Code 1950, §§ 58-887, 58-888; 1984, c. 675.

§ 58.1-3121. Penalty for false entry in books

If any commissioner knowingly makes a false entry on any of his books, he shall be guilty of malfeasance in office.

Code 1950, § 58-889; 1984, c. 675.

§ 58.1-3122. Tax Commissioner may report misconduct or incapacity of commissioner of the revenue

The Tax Commissioner may communicate any instances of misconduct or neglect of any commissioner, or any evidence of his incapacity, in a letter to the clerk of the circuit court of the

county or city wherein such commissioner was elected. The clerk shall promptly present such letter to the circuit court.

Code 1950, §§ 58-892, 58-893; 1984, c. 675.

§ 58.1-3122.1. Photocopying fees imposed by commissioners of the revenue

The commissioner of the revenue may charge a photocopying fee, to a maximum amount of fifty cents per page, for photocopying any papers or records upon a taxpayer's request for information.

1990, c. 42 .

§ 58.1-3122.2. Remote access to nonconfidential public records maintained by commissioner

The commissioner of the revenue may provide remote access, including access through the Internet, to all nonconfidential public records maintained by his office, subject to such limitations as may be imposed by applicable law. Any system of remote access created or maintained pursuant to this section shall include security measures that preclude remote access users from (i) obtaining any data that is required to be maintained as confidential pursuant to § 58.1-3, the Government Data Collection and Dissemination Practices Act (§ 2.2-3800 et seq.), the Virginia Public Records Act (§ 42.1-76 et seq.), or other applicable law, and (ii) modifying or destroying any record or data in any manner.

1998, c. 235; 2006, c. 474.

Article 2 - TREASURERS

§ 58.1-3123. Interpretation of "treasurer."

A. As used in this chapter, unless the context clearly shows otherwise, the term "treasurer" shall be interpreted to include both city and county treasurers. The term shall also include the director of finance and any other officer of any county or city where such officer performs any or all of the duties of the treasurer described herein.

B. For the purposes of collection of taxes and other charges, unless the context indicates otherwise, the term "treasurer" under this title includes town treasurers, town directors of finance, and any other town officer or employee who performs any of the duties of a town treasurer or town director of finance.

1984, c. 675; 1999, cc. 90, 777.

§ 58.1-3124. Where office of county treasurer to be maintained; providing suitable space

The office of the county treasurer shall be maintained at the county seat or at such other point in the county as the board of supervisors or other governing body of the county may deem to be more convenient to a majority of the citizens of the county.

Code 1950, § 58-916; 1954, c. 652; 1984, c. 675.

§ 58.1-3125. Examination of treasurer's bond; when court to require new bond

Each circuit court shall enter an order in each year requiring the commissioner of accounts of such court or, if it is improper for such commissioner to act or if there is no commissioner of accounts of such court, then the commissioner of accounts of some other court to be designated in the order, to examine the official bond of the treasurer of such county or city, except when the surety upon the bond is such a surety company as is provided for in § 49-15. Such commissioner shall report to the court at its next term thereafter whether the bond is sufficient in all respects and at the same time certify a copy of such report to the Comptroller. If the bond is reported as insufficient, the court shall make an order requiring the treasurer, within thirty days after he has been served with a copy of the order as a notice, to execute a new bond, which may be given before the court. If such new bond is not given within the time prescribed, the office shall be deemed vacant. The commissioner's fees shall be paid out of the county or city funds.

Code 1950, § 58-917; 1984, c. 675.

§ 58.1-3126. Bond of deputy; liability thereon

The treasurer may require from any deputy such bond with surety as he shall deem necessary for his indemnity. If any deputy fails to collect or, having collected, fails to pay over to his principal, any taxes, levies or funds which he ought to have collected or may have received, such deputy and his sureties shall be liable to such principal, upon motion, for the amount of the deficiency in such taxes, levies or funds, together with damages thereon at the rate of ten percent per month from the time each payment should have been made. They shall also be liable to such principal for all damages sustained by him by reason of any other default or misconduct in office by such deputy.

Code 1950, § 58-918; 1984, c. 675.

§ 58.1-3127. Treasurer to collect and pay over taxes and levies; keep account of receipts and disbursements; books open for inspection

A. Each treasurer shall receive the state revenue and the levies and other amounts payable into the treasury of the political subdivision of the Commonwealth served by the treasurer. Such treasurer shall account for and pay over the revenue received in the manner provided by law.

B. The treasurer shall keep a correct account of all moneys received and disbursed by him. The treasurer shall keep subject to the provisions of § 58.1-3, the books, papers and moneys pertaining to his office at all times ready for inspection of the attorney for the Commonwealth or governing body or any taxpayer of the county and shall, when required by such attorney, governing body or any judge of a court of record, exhibit a statement of his accounts and the books containing a list of the warrants drawn upon him.

Code 1950, §§ 58-919, 58-958; 1984, c. 675.

§ 58.1-3127.1. Treasurer to collect all amounts to be received by any department or agency of political subdivision

All amounts to be received or expended by any department or agency, or department or agency head, of a political subdivision of the Commonwealth by virtue of a federal grant, gift, or forfeiture

or other disposition of federal funds shall be made payable to the treasury or treasurer of the political subdivision and shall not be made payable to such department or agency, or department or agency head. Accounting and disbursement provisions of § 58.1-3127 shall apply to such amounts.

1989, c. 167 .

§ 58.1-3128. Power to summon taxpayers and other persons; penalty

A. The treasurer may, for the purpose of collecting all taxes due, summon the taxpayer or any other person to appear before him at his office, to answer, under oath, questions touching the tax liability of any and all taxpayers and to produce documents relating to such tax liability, either or both. For the purposes of administering this section, treasurers and their deputies may administer oaths.

B. Any person who refuses to answer, under oath, questions touching any person's tax liability shall be deemed guilty of a Class 4 misdemeanor. Each days' refusal to answer such questions shall constitute a separate offense. Any court of competent jurisdiction may, upon the application of the treasurer or his deputy, compel the compliance of a taxpayer summoned or required to produce documents as required by this section.

C. Every writ, warrant, notice, summons or other process the treasurer is authorized to issue pursuant to general or local law may be served by the treasurer, or his deputy or designee, or may be directed to the sheriff to be served pursuant to § 8.01-292 and executed and returned in like manner as the civil process of a court of competent jurisdiction.

1984, c. 675; 1997, c. 496; 1998, c. 648; 1999, c. 192; 2000, c. 453.

§ 58.1-3128.1. Authority to require production of sales and use tax information

A. Notwithstanding any other provision of law, the governing body of any town may, by local ordinance, require that any dealer registered for the collection of the retail sales and use tax, and located within the town annually provide the town treasurer with the amount of sales and use tax collected or assessed and attributable to the sale or use of property within the town.

B. The town treasurer shall transmit all such data to the Auditor of Public Accounts. The data shall be published in the Comparative Report of Local Government Revenues and Expenditures.

1988, c. 456.

§ 58.1-3129. Destruction of paid tax tickets; other tax tickets; records

A. The treasurer may, with the consent of the governing body, destroy all paid tax tickets at any time after five years from the end of the fiscal year during which taxes represented by such tickets were paid, in accordance with retention regulations pursuant to the Virginia Public Records Act (§ 42.1-76 et seq.).

B. The treasurer may, at any time after the expiration of three years from the date he certifies the lists mentioned in § 58.1-1801 and subdivisions 2 and 4 of § 58.1-3921, and after the expiration of five years from the date he certifies the list mentioned in subdivision 3 of § 58.1-3921, destroy

the tax tickets made out by him for the taxes and levies included therein, provided the certification of the Auditor of Public Accounts is obtained to the effect that these tickets are no longer needed for audit purposes.

C. The treasurer may cause records to be destroyed after audit, with the consent of the Auditor of Public Accounts and the Librarian of Virginia, in accordance with retention regulations for records maintained by the treasurer established under the Virginia Public Records Act (§ 42.1-76 et seq.).

D. In lieu of retaining the original tax tickets for at least five years after the end of the fiscal year during which taxes represented by such tickets were paid, the treasurer, with the consent of the Auditor of Public Accounts and the local governing body, may have the original tax tickets copied. Any such copies shall be on a durable medium that complies with the requirements of the Virginia Public Records Act. After copying, the original tax tickets may be destroyed in accordance with the provisions of § 15.2-1412 and the copies shall be retained in accordance with the provisions of subsections A, B and C of this section, mutatis mutandis. Any such copy may be used in any legal proceeding if the copy is authenticated in accordance with applicable law.

Code 1950, §§ 58-919.1, 58-919.2, 58-987; 1956, cc. 372, 634; 1962, c. 502; 1968, c. 442; 1971, Ex. Sess., c. 12; 1972, c. 14; 1975, c. 151; 1981, c. 436; 1982, c. 493; 1984, c. 675; 1996, c. 323; 1998, c. 427.

§ 58.1-3130. Authority to destroy bonds and bond coupons which have been paid; procedure for destruction; certification

The governing body of any county, city or town, upon petition of the treasurer, may authorize by resolution the destruction of all bonds and bond coupons paid by such fiscal officer or his predecessors after a period of five years from the end of the fiscal year in which such bonds and bond coupons were paid.

The resolution of the governing body shall designate a committee of three persons, one of whom shall be the treasurer, to supervise and witness the destruction of such bonds and bond coupons. The committee shall prepare and execute a certificate setting forth the means by which such paid instruments were destroyed, the issue, series, number and maturity date of the paid bonds so destroyed and the fiscal year in which paid.

Every such certification shall be in such form as shall be prescribed by the governing body and shall be acknowledged in the manner prescribed by law for the acknowledgment of deeds. The certification shall be prepared in duplicate, the original of which shall be made a part of the minutes of the governing body, and the copy thereof shall be retained as a permanent record of the office of the treasurer.

Code 1950, § 58-919.3; 1964, c. 629; 1968, c. 442; 1984, c. 675.

§ 58.1-3131. Warrant book; release of information

The treasurer shall provide and keep a well-bound book, in which he shall make an entry of all warrants legally drawn upon him by the governing body and presented for payment, stating

correctly the amount, number, in whose favor drawn and the date such warrant was issued. All such warrants shall be paid, in the order presented, out of the fund drawn upon.

No information contained in the list of warrants, including any invoice that has been presented to a locality for payment, and the locality has attempted to pay it, but the payment has not been completed because electronic payment has failed or a check was mailed but not cashed, shall be released for any purpose except (i) that the local governing body may publish aggregated information relating to warrants paid, as classified by expenditure item, recipient, date, or disbursement, or (ii) as a means of establishing 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. In no case, however, shall the governing body of any county, city, or town publish any information that is prohibited from release under federal or state law, including but not limited to confidential records held pursuant to § 58.1-3.

Code 1950, § 58-920; 1984, c. 675; 2003, c. 931; 2011, cc. 485, 597; 2012, c. 88.

§ 58.1-3132. How warrants paid; receivable for levies

No treasurer shall refuse to pay any warrant legally drawn upon him and presented for payment for the reason that a warrant of prior presentation has not been paid, when there is appropriated money in the treasury belonging to the fund drawn upon available and sufficient to pay such prior warrant and also the warrant so presented. However, such treasurer shall, as he may receive money into the treasury belonging to the fund so drawn upon, set such money apart for the payment of warrants previously presented and in the order presented. He shall receive, in payment of the county or city levy, any county or city warrant drawn in favor of any taxpayer, whether such warrant has been entered in the treasurer's book or not. However, if the warrant has been transferred it shall be subject to any county or city levy owing by the taxpayer in whose favor the warrant was issued. When the warrant is for a larger sum than such levy due from the payee or transferee of the warrant, the treasurer shall endorse on the warrant a credit for the amount of the levy so due and such payee or transferee shall execute to the treasurer a receipt for such amount, specifying the number and date of the warrant on which it was credited. The residue of the warrant shall be paid according to the order of its entry in the treasurer's book. Copies of all appropriations, and ordinances and resolutions appropriating funds by the governing body, shall be delivered to the treasurer by the clerk of the governing body.

Code 1950, § 58-921; 1959, Ex. Sess., c. 51; 1984, c. 675.

§ 58.1-3133. Treasurers may deduct any taxes due from party in whose favor the warrant is drawn; compacts

A. In the payment of any warrants lawfully drawn, the treasurer paying such warrants may first deduct all taxes and other charges due from the party in whose favor the warrant is drawn. If such warrant is insufficient to pay the entire amount due, then such treasurer shall credit the bill for such taxes or other charges by the amount of the warrant.

B. The governing bodies of any two or more localities may enter into compacts by which the treasurer paying such warrants may first deduct taxes and other charges owed to any participating locality that are due from the party in whose favor the warrant is drawn. The governing body of each participating locality shall designate an official to provide notice and an opportunity for a hearing to the party in whose favor the warrant is drawn in a manner that substantially conforms with Article 21 (§ 58.1-520 et seq.) of Chapter 3 of this title prior to applying the warrant to the outstanding debt. Any such compact shall conform substantially to the provisions of the Setoff Debt Collection Act (§ 58.1-520 et seq.). The treasurer deducting moneys from the warrant in accordance with this subsection shall hold such funds and not make payment to the claimant jurisdiction until such jurisdiction certifies that it is entitled to such funds.

Code 1950, § 58-922; 1984, c. 675; 2001, cc. 470, 801; 2002, c. 64.

§ 58.1-3134. Warrants must be presented within two years

No warrant or order drawn on any treasurer by the governing body, school board, local board of social services or circuit court shall be paid by the treasurer, unless the warrant or order is presented to be paid and registered in the warrant book within two years from the date of the drawing of the warrant.

Code 1950, § 58-923; 1972, c. 73; 1984, c. 675; 2002, c. 747.

§ 58.1-3135. Statement of accounts of treasurer

Each treasurer shall furnish an account of his receipts and expenditures and a statement of his account as treasurer as often and in such manner as may be required by the governing body of his county or city, or any court of record of such county or city.

Code 1950, § 58-924; 1984, c. 675.

§ 58.1-3136. Audits of treasurers upon termination of office

Notwithstanding any other provision of law, upon the death, resignation, removal, retirement or other termination of a treasurer, an audit of all accounts of his office pertaining to state funds shall be performed by the Auditor of Public Accounts at no cost to the county or city. An audit of all such accounts pertaining to local and other funds shall be performed by the Auditor of Public Accounts or an independent certified public accountant, at the option of the local governing body, and the cost thereof shall be paid by such governing body. Audits not performed by the Auditor of Public Accounts shall be performed according to his specifications and a copy of the audit report shall be filed with the Auditor for his approval.

Code 1950, § 58-924.1; 1982, c. 241; 1984, c. 675.

§ 58.1-3137. County treasurer's annual settlement; final settlement

The treasurer shall receive the county levy in the manner prescribed for the receipt of the state revenue and shall, at the August meeting of the governing body of the county, or within thirty days thereafter, settle with the governing body his accounts for that year. Out of the balance shown to be in his hands upon the settlement he shall at once pay all warrants drawn on the appropriations

for that year not previously paid, in the order of their presentation. When the treasurer's term of office expires or if he dies, resigns or is removed from office, the treasurer, upon the expiration of his term of office, resignation, or removal, or his personal representative, upon his death, shall immediately make such settlement, showing the amount in his hands to be accounted for and the fund to which such funds belong and deliver to his successor all securities belonging to his office and all money belonging to the county.

Code 1950, § 58-925; 1959, Ex. Sess., c. 51; 1984, c. 675.

§ 58.1-3138. Delivery of books, tax tickets, and other materials to successor treasurer or court clerk

Whenever a vacancy in the office of treasurer is filled by appointment, the court or judge making the appointment shall, at the time the appointment is made, if the vacancy exists by reason of the death, resignation or removal from office of the treasurer, order such treasurer or his personal representative, as the case may be, to deliver all books and papers in his possession as treasurer, including all tax tickets for taxes and levies for the current year for which he has not accounted and paid into the treasury, to the officer so appointed. The appointed officer shall prepare and issue a receipt to such treasurer or his personal representative for the material received. When no appointment is made or the officer appointed fails to qualify, the court shall order the deposit of such materials to be made with the clerk of the circuit court, who shall give a receipt therefor and hold such materials subject to the order of the court.

When the term of office of a treasurer expires by limitation he shall deliver forthwith to his successor in office all the books and papers in his possession, including all tax tickets for taxes and levies for the current year for which he has not accounted and paid into the treasury, and take a receipt therefor. The receipt so furnished to any treasurer or his representative shall be allowed as a credit for the amount thereof in the settlement of his account and the amount of tax tickets and levies covered by such receipt shall be charged against his successor in office.

Code 1950, § 58-926; 1984, c. 675.

§ 58.1-3139. Treasurer not to deal in warrants

No treasurer, or any of his deputies, shall, either directly or indirectly, obtain by contract, purchase, barter or exchange, either for himself or any other person, or become the owner, in whole or in part, of any warrant drawn upon the treasury of his county or city or payable out of such treasury, other than a warrant lawfully payable to such treasurer or deputy. If any treasurer or deputy shall so contract for or purchase any such warrant, such treasurer shall not be allowed in his settlement the amount of the warrant, or any part thereof. This disallowance shall be in addition to the penalties prescribed in § 58.1-3144.

Code 1950, § 58-927; 1984, c. 675.

§ 58.1-3140. Remedy for failure to pay such warrants

If any such treasurer (i) fails to pay, upon presentation, any legal warrant listed in § 58.1-3131, for which he has at the time funds appropriated by the governing body of his jurisdiction out of which such warrant ought to be paid, or (ii) fails to set apart necessary funds, when such funds are appropriated and come into his hands, for the payment of such warrant or (iii) fails to pay over the amount due upon such warrant as soon thereafter as the same may be again presented, the holder thereof may, on motion in his own name, in the circuit court of the treasurer's county or city, recover from him and his sureties the amount of such warrant, together with damages at the rate of ten percent per month on the amount from the time such treasurer should have paid the warrant and the costs of such motion, including reasonable attorney's fees.

Code 1950, § 58-928; 1959, Ex. Sess., c. 51; 1984, c. 675.

§ 58.1-3141. Treasurer or other person shall not use public money except as provided by law

No treasurer or any other person handling public money shall knowingly apply, disburse or use any part of the public money held by him in any manner or for any purpose other than the manner and purposes provided by law. Any violation of this section, when amount so applied, disbursed or used exceeds fifty dollars, shall constitute embezzlement.

Code 1950, § 58-929; 1984, c. 675.

§ 58.1-3142. Interest on a fund belongs to the fund; exception

Whenever the treasurer receives interest on funds belonging to the Commonwealth or to any political subdivision thereof, such interest shall become a part of the principal of the particular fund on which such interest accrued and shall be accounted for by the treasurer in the same manner as he is required by law to account for the principal. However, the governing body of any county or city may direct that the interest received from general obligation bond proceeds invested be credited to the general fund of such county or city. Any treasurer violating this section shall be deemed guilty of a Class 1 misdemeanor.

Code 1950, § 58-930; 1970, c. 582; 1984, c. 675.

§ 58.1-3143. Reserved

Reserved.

§ 58.1-3144. Penalties

Any treasurer who knowingly violates any provision of this article relating to the county or city levy, for which a specific penalty is not otherwise provided, shall be deemed guilty of a Class 2 misdemeanor and, upon conviction thereof, shall be removed from office. In addition, he and the sureties on his official bond shall be liable to the party aggrieved thereby for double damages for the injury sustained.

Code 1950, § 58-932; 1984, c. 675.

§ 58.1-3145. How treasurer may secure final discharge from liability

Any treasurer or, if he has died, his personal representative, at any time after the expiration of his term shall produce before the circuit court of the county or city of which he is treasurer the respective certificates of the Comptroller, of the governing body of such county or city and of the school board of such county or city. These certificates shall show the final settlement of his account as treasurer and the proper accounting for and turning over of all the moneys or other property, including the tax tickets for the current year, that had or should have come into his hands as such treasurer during the term and the receipt of his successor in office, provided for in § 58.1-3138. The court shall then enter an order requiring the clerk of the court to publish, once a week, for four successive weeks, in some newspaper to be designated in the order and by posting at the front door of the courthouse of the county or city, a notice that such treasurer will, on the day to be named in the order, move the court to enter an order of final discharge to such treasurer. These provisions shall not apply to treasurers who retain their office at the end of the term.

Code 1950, § 58-933; 1984, c. 675.

§ 58.1-3146. Rule to show cause in such case; notice and hearing thereon

Prior to the final discharge of any treasurer the clerk shall issue a rule, as directed by the appropriate circuit court, against the Comptroller, the governing body and the school board of the county or city, to show cause, if any they can, why the treasurer should not be discharged. When the notice has been published and posted as aforesaid and the rule executed, then the court, on the day named in the notice, shall, if no cause be shown to the contrary, enter an order, finally discharging such treasurer. If an objection is made, the court shall hear such matter with or without formal pleadings, on oral testimony, or the court may refer any question that may arise in the proceedings to a commissioner in chancery to make a report thereon and may enter, upon final hearing, such order as it may deem proper. A copy of the order herein required, served upon the Comptroller, the chairman of the governing body, and the mayor of the city or superintendent of schools, respectively, shall be a sufficient service of the rule.

Code 1950, § 58-934; 1984, c. 675.

§ 58.1-3147. Appeal

An appeal may be allowed to the Supreme Court from any order entered either discharging or declining to discharge any treasurer.

Code 1950, § 58-935; 1984, c. 675.

§ 58.1-3148. City charters not affected by particular provisions

Nothing contained in this chapter in conflict with any special provision of the charter of any city, dealing specifically with the subject, shall be construed to supercede or repeal such provision.

Code 1950, §§ 58-936, 58-937; 1984, c. 675.

§ 58.1-3149. Money received to be deposited

All money received by a treasurer for the account of either the Commonwealth or the treasurer's county or city shall be deposited intact by the treasurer as promptly as practical after its receipt in

a bank or savings institution authorized to act as depository therefor. All deposits made pursuant to this provision shall be made in the name of the treasurer's county or city. The treasurer may designate any bank or savings and loan association authorized to act as a depository to receive any payments due to the county or city directly, either through a processing facility or through a branch office.

Code 1950, § 58-939; 1975, c. 20; 1984, c. 675; 1992, c. 683; 1996, c. 77.

§ 58.1-3150. Duties of depository officers

No treasurer or executive officer of any depository shall permit any public deposit to remain in any depository which is not a "qualified public depository" as defined in § 2.2-4401 and which is not secured pursuant to the Virginia Security for Public Deposits Act (§ 2.2-4400 et seq.).

Code 1950, § 58-948; 1984, c. 675; 1996, cc. 364, 390.

§ 58.1-3151. County finance board

Each county of the Commonwealth may establish a county finance board, which shall consist of the chairman of the governing body of the county, the treasurer of the county and a citizen of the county of proven integrity and business ability. The citizen member shall be appointed by the circuit court of the county. However, in any county adjoining any county having a population of more than 500 per square mile the county finance board shall consist of the chairman of the governing body, the treasurer, the attorney for the Commonwealth and a citizen of the county of proven integrity and business ability. The citizen member thereof shall be appointed by the circuit court of the county or by the judge thereof in vacation. The term of the citizen member shall be four years, but the circuit court of the county may remove for cause any such member and appoint some other qualified citizen of the county in his stead for the unexpired portion of his term.

The governing body of any county which has a county finance board established under the provisions of this section may by ordinance duly adopted abolish the finance board, whereupon all authority, powers, and duties of the finance board shall vest in the governing body.

Code 1950, § 58-940; 1954, c. 587; 1984, c. 675.

§ 58.1-3152. Organization and procedure of board

The chairman of the governing body of the county shall be the chairman of the county finance board and the clerk of the governing body shall be ex officio clerk thereof. The board shall meet at such times and at such places as the chairman or a majority of the members of the board may decide. The clerk shall record the activities and proceedings of such board in a suitable record book which shall be provided for such purpose by the governing body.

Code 1950, § 58-941; 1984, c. 675.

§ 58.1-3153. Compensation for the citizen member of the county finance board

The citizen member of the county finance board may in the discretion of the governing body of the county receive for each day's attendance as a member of the board a sum not less than twenty

dollars and such reimbursement for his daily mileage as prescribed in § 2.2-2823. The allowance made under this section shall be paid by the governing body out of county funds, on a certificate of attendance from the chairman of the county finance board, verified by the written statement of the citizen member as to mileage traveled in going to and returning from the meeting. The total compensation paid under this section shall not exceed $360, in addition to the mileage allowance, in any one year.

Code 1950, § 58-942; 1952, c. 630; 1974, c. 6; 1976, c. 308; 1984, c. 675.

§ 58.1-3154. Selection and approval of depositories

The depository or depositories for the money received by a county treasurer shall be selected pursuant to the provisions of the Virginia Security for Public Deposits Act (§ 2.2-4400 et seq.).

Code 1950, § 58-943; 1984, c. 675.

§ 58.1-3155. Deposit of local funds in banking institutions outside of the Commonwealth to meet obligations payable outside of the Commonwealth

Notwithstanding other provisions of this article the treasurer of any county, city or town may if the State Commission on Local Debt gives prior approval, deposit local funds in banking institutions outside of the Commonwealth. Such institutions, which shall be designated by the Commission, shall give such security as the Commission deems proper and shall meet such other conditions as the Commission prescribes. All such deposits shall be limited to the sums reasonably necessary to pay principal or interest on obligations of the county, city or town which are payable at some place outside the Commonwealth and where any such banking institution is located.

Code 1950, § 58-943.1; 1950, p. 410; 1984, c. 675.

§ 58.1-3156. County finance boards may direct treasurer to invest under certain circumstances

Notwithstanding other provisions of this article, whenever the county finance board determines that county or district funds would otherwise draw no interest or draw a lesser rate of interest, the finance board may direct the county treasurer to invest such funds in accordance with guidelines issued by the State Treasurer.

Code 1950, § 58-943.2; 1954, c. 498; 1974, c. 224; 1984, c. 675; 1988, c. 834.

§ 58.1-3157. Repealed

Repealed by Acts 1988, c. 834.

§ 58.1-3158. Duties of treasurers

No treasurer shall permit any public deposit to be deposited with any depository unless it is a "qualified public depository" as defined in § 2.2-4401. All such deposits shall be secured pursuant to the Virginia Security for Public Deposits Act (§ 2.2-4400 et seq.).

Code 1950, § 58-944; 1956, c. 84; 1958, c. 442; 1966, c. 498; 1984, c. 675; 1996, cc. 364, 390.

§ 58.1-3159. Reserved

Reserved.

§ 58.1-3160. Monthly report of treasurer to board

At the end of each month each county treasurer shall report to the county finance board the amount of money on deposit with each depository.

Code 1950, § 58-949; 1984, c. 675.

§ 58.1-3161. Interest on deposits

Each depository of each county shall, in the discretion of the county finance board, pay interest on money deposited under the provisions of this article. The rate of such interest shall be agreed upon by the treasurer and the depository subject to the approval of the county finance board if it so desires.

Code 1950, § 58-950; 1984, c. 675.

§ 58.1-3162. Disbursement of money deposited

A. Money deposited under the provisions of this article shall be disbursed only upon checks signed by the county treasurer and drawn in payment of lawfully issued and properly drawn orders or warrants and lawfully issued and properly drawn and matured bonds, notes or other obligations of the county, for the payment of which funds are available.

B. This section shall not be construed as preventing any county treasurer or his duly authorized deputy from (i) transferring, by check or wire transfer, money from one approved depository to another, (ii) from settling with the Commonwealth, without an order from the governing body of his county, for state revenues or other items collected and remittable by him to the State Treasurer, or (iii) from paying to the State Treasurer without an order from the board of supervisors or other governing body of his county, any amount or amounts pursuant to provisions of law.

C. Any governing body may require that checks issued pursuant to the provisions of this section be countersigned and may appoint such person or persons as it may desire for the purpose.

D. This section shall not be construed as imposing upon any depository any obligation to determine whether any check issued pursuant to the provisions of this section was issued for any purpose or purposes other than those specified herein or as imposing any liability upon any such depository for paying any check so issued.

E. The treasurer may, with the approval of the governing body, by resolution entered of record on the minute book of the board, authorize one or more of his deputies to sign any such checks whenever the necessity therefor shall arise by reason of the sickness or unavoidable absence of the treasurer or his inability to sign such checks for any other reason.

Code 1950, § 58-951; 1960, c. 526; 1978, c. 25; 1984, c. 675.

§ 58.1-3163. No liability for loss of funds deposited in accordance with article

No treasurer shall be held liable for any loss of public money, deposited as provided by this article, due to the default, failure or insolvency of a depository.

Code 1950, § 58-952; 1984, c. 675.

§ 58.1-3164. Institution of proceedings

Whenever the Governor has reason to believe that the treasurer of any county or city of the Commonwealth or any other officer charged with the collection of the public revenues has failed to execute and perform the duties required of such officer by the laws of the Commonwealth with reference to the collection and disposition of, and accounting for, the revenue, he may institute an ouster proceeding against such officer under §§ 24.2-230 to 24.2-238. In such proceeding the Commonwealth shall be represented by the Attorney General or by special counsel selected by the Governor should the Governor so direct.

Code 1950, § 58-953; 1971, Ex. Sess., c. 1; 1984, c. 675.

§ 58.1-3165. Suspension of officer proceeded against, appointment of substitute

Upon the institution of the proceeding authorized in § 58.1-3168 the Governor may suspend such officer from collecting the revenues of the Commonwealth and of the county or city and from performing any of the other duties of his office. The Governor may also appoint a person to act in the place of such suspended officer in the performance of the duties of the office. Such appointee, after having qualified and given bond according to law, shall discharge all the duties of the office to which he is appointed during the time of the suspension of his predecessor, shall be entitled to the compensation provided for such officer and shall be amenable to all the rules, regulations, requirements and responsibilities declared by the laws of this Commonwealth pertaining to the collection and disposition of, and accounting for, the public revenue.

The suspension of the officer shall continue, unless sooner removed by the Governor, until the ouster proceedings so instituted have been finally determined.

Code 1950, § 58-954; 1984, c. 675.

§ 58.1-3166. Substitute officer continues in office upon removal of predecessor

The substitute officer, appointed pursuant to § 58.1-3169, shall, upon the ouster of his predecessor, unless sooner removed by the Governor or under the provisions of §§ 24.2-230 to 24.2-238, continue to serve in such capacity during the remainder of the term of his predecessor and until his successor be elected or appointed and qualified.

Code 1950, § 58-956; 1971, Ex. Sess., c. 1; 1984, c. 675.

§ 58.1-3167. Reserved

Reserved.

§ 58.1-3168. When treasurers to pay state revenue into state treasury

Each treasurer, pursuant to § 2.2-806, shall deposit promptly upon receipt all state moneys collected or received from all sources directly into the account of the state treasury without any

deduction and make up a statement of all state revenue collected by him since such treasurer filed with the Comptroller his last preceding report. The Comptroller may call upon any treasurer, at any time he thinks proper, to pay into the state treasury any and all money in his hands belonging to the Commonwealth and such treasurer shall, within five days from the receipt of such call, make the payment. Should any treasurer wilfully fail to make any statement or payment required by this section, within the time prescribed, such failure shall be deemed a sufficient cause for his removal from office under the provisions of §§ 24.2-230 to 24.2-238.

Code 1950, § 58-973; 1971, Ex. Sess., c. 1; 1982, c. 292; 1984, c. 675.

§ 58.1-3169. Interest chargeable against treasurer for failure to pay over revenue

Every treasurer who wilfully fails to pay the revenue into the treasury at the time prescribed by law shall be charged with interest thereon at the rate of fifteen percent per annum from the time such revenue was so payable.

Code 1950, § 58-974; 1984, c. 675.

§ 58.1-3170. Reserved

Reserved.

§ 58.1-3171. Attorney General to proceed against delinquent treasurers and their sureties; recordation of notice

The Attorney General shall proceed against all treasurers who are in default and against their sureties for the recovery of the amounts due from such treasurers, respectively, upon receiving from the Comptroller information of such default. The proceedings may be by motion in the appropriate circuit court. Copies of such motion, certified by the clerk of the court, shall be forthwith sent by the Attorney General to any of the clerks of the circuit courts of the counties and cities wherein it is ascertained that such treasurer or his sureties have any estate. The clerk to whom any such copy is so sent shall record it in the same manner required by law for recordation of a deed and index the copy in the name of the Commonwealth.

Code 1950, § 58-976; 1984, c. 675.

§ 58.1-3172. Lien of judgment and execution in such proceeding

A judgment obtained pursuant to § 58.1-3171, against the treasurer or against the treasurer and his sureties, jointly or severally, shall be a lien on all real estate owned by such treasurer or surety in any county or city of the Commonwealth. Such lien shall arise at the time the motion provided for in § 58.1-3171 is recorded and indexed in such county or city. An execution on such judgment shall bind all the personal estate of such treasurer and sureties, jointly and severally, respectively, at the time such motion is recorded and indexed before the return day of such execution. However such execution shall not be binding as against (i) an assignee for valuable consideration of any of such personal estate which is not capable of being levied on under an execution or (ii) a person making a payment to such treasurer. The lien of the execution by virtue of this section shall not

affect such assignee or person making payment unless he had notice of the execution or of the pendency of the proceeding at the time of the assignment or payment, as the case may be.

Code 1950, § 58-977; 1984, c. 675.

§ 58.1-3172.1. Remote access to nonconfidential public records maintained by treasurer; fees

The treasurer may provide remote access, including access through the Internet, to all nonconfidential public records maintained by his office, subject to such limitations as may be imposed by applicable law. Any system of remote access created or maintained pursuant to this section shall include security measures that preclude remote access users from (i) obtaining any data that is required to be maintained as confidential pursuant to § 58.1-3, the Government Data Collection and Dissemination Practices Act (§ 2.2-3800 et seq.), the Virginia Public Records Act (§ 42.1-76 et seq.), or other applicable law, and (ii) modifying or destroying any record or data in any manner.

Any treasurer who provides such electronic access pursuant to this section may charge a fee. Such fee may be assessed based upon: (i) a subscription not to exceed $100 per month, or (ii) a cost per page, not to exceed $1 for the first page and $.25 for each additional page. If charged, the fee shall be charged each user, paid to the treasurer's office, and deposited by the treasurer into a special nonreverting local fund to be used to cover the operational expenses of such electronic access.

1998, c. 235; 2004, c. 223.

Article 3 - CLERKS OF COURT

§ 58.1-3173. System of accounting

A. The Comptroller shall approve for the clerk of each court of record in the Commonwealth the books, sheets and forms comprising a system of accounting, maintained and supplied by the Supreme Court of Virginia, in which shall be entered all taxes and other money belonging to the Commonwealth, together with all fees, collected or which should be collected by the clerk. Such books and sheets shall be a permanent record of the court of which he is clerk. There shall be shown on and in appropriate sheets and columns the taxes received by the clerk upon subjects which he is authorized and directed by law to collect the tax and in separate columns the fees received by him upon such subjects, together with all other fees, commissions, salaries and allowances received or which should have been received by him and the proper summaries, expenses and other items in connection therewith. The Comptroller shall prescribe the method of making the entries and keeping the record herein provided for.

B. The accounting system provided for in subsection A shall not be adopted until the Auditor of Public Accounts has determined that such system is adequate for purposes of audit and internal control.

Code 1950, § 58-969; 1984, c. 675.

§ 58.1-3174. Entries

The clerk at the time he collects, or is required by statute to collect, any public money shall enter such amounts upon the record required in § 58.1-3173, together with the fees received in connection for such collection, and shall also enter upon the record all other fees, commissions, salaries and allowances received or which should have been received by him.

Code 1950, § 58-970; 1984, c. 675.

§ 58.1-3175. Statement and payment of amounts collected

Each clerk, monthly, or oftener if called upon by the Comptroller, shall make out a statement, upon forms prepared by the Comptroller, of all taxes and other money belonging to the Commonwealth collected by him during the preceding month. The statement shall be signed by the clerk and sent to the Comptroller, and the clerk shall at the same time pay into the state treasury the amount of taxes collected by him.

Code 1950, § 58-971; 1984, c. 675.

§ 58.1-3176. Commissions on collections

Each clerk shall be entitled to a commission of five percent of the amount of state revenue collected by him. However, if the aggregate amount of state revenue collected for six months' collections reported exceeds the sum of $50,000, the clerk shall be entitled to a three percent commission on the amount in excess of $50,000. Such commissions shall not be deducted by any such clerk, but shall be paid out of the state treasury. Commissions shall not be allowed on costs collected pursuant to § 19.2-368.18.

Code 1950, § 58-972; 1978, c. 49; 1979, c. 487; 1984, c. 675.

§ 58.1-3177. Duties of the clerk; deposit of funds; investment of funds; failure to pay out

A. The clerk shall have the duty, unless it is otherwise specially ordered, to receive, take charge of and hold all moneys paid into the court and to pay out or dispose of these moneys as the court orders or decrees. To this end, the clerk is authorized to verify, receive, and give acquittances for all such moneys.

B. All moneys received by the clerk shall be deposited intact as soon as practical and secured in accordance with the Virginia Security for Public Deposits Act (§ 2.2-4400 et seq.).

C. The clerk may invest all moneys paid into the court in certificates of deposit, time deposits or in accordance with the provisions of Chapter 45 (§ 2.2-4500 et seq.) of Title 2.2. Unless otherwise provided by law or court order, all interest or investment income shall become income of the person or entity that paid the moneys to the clerk.

D. Except as otherwise ordered by the court, for good cause shown, the clerk shall be liable for any loss of income which results from his failure to pay out any money so ordered by the court within sixty days of the court order.

1991, c. 635 .

Chapter 32 - REAL PROPERTY TAX

Article 1 - TAXABLE REAL ESTATE

§ 58.1-3200. Real estate subject to local taxation; taxable real estate defined; leaseholds

All taxable real estate, having been segregated for and made subject to local taxation only by Article X, Section 4 of the Constitution of Virginia, shall be assessed for local taxation in accordance with the provisions of this chapter and other provisions of law. For purposes of the assessment of real estate for taxation, the term "taxable real estate" shall include a leasehold interest in every case in which the land or improvements, or both, as the case may be, are exempt from assessment for taxation to the owner. The provisions of this chapter relating to the assessment of real estate shall not apply to property required by law to be assessed by the State Corporation Commission or the Department of Taxation.

Code 1950, § 58-758; 1954, c. 317; 1984, c. 675; 1985, c. 221.

§ 58.1-3201. What real estate to be taxed; amount of assessment; public service corporation property

All real estate, except that exempted by law, shall be subject to such annual taxation as may be prescribed by law.

All general reassessments or annual assessments in those localities which have annual assessments of real estate, except as otherwise provided in § 58.1-2604, shall be made at 100 percent fair market value and, except as provided in § 58.1-2608, the State Corporation Commission and the Department of Taxation shall certify public service corporation property to such county or city, with the exception of the nonoperating (noncarrier) property of railroads, on the basis of the assessment ratio as most recently determined and published by the Department of Taxation. The Department of Taxation shall, ten days after determining the assessment ratio, notify the locality of that determination and the basis on which the determination was made. Nonoperating (noncarrier) property of railroads shall be valued for assessment by the city or county in which it is located uniformly with similarly situated real estate in the same jurisdiction upon the best and most reliable information that can be procured. The Tax Commissioner shall determine which property is part of the operating unit of the railroads and which is nonoperating (noncarrier) property for purposes of the report described in § 58.1-2653. Such determination shall be made in accordance with the meaning of such terms in the Interstate Commerce Commission's Uniform System of Accounts. The inclusion, or failure to include, property in such report described in § 58.1-2653 may be reviewed and redetermined by the Tax Commissioner at the request of any railroad, county, city, town or magisterial district.

Code 1950, § 58-760; 1982, c. 619; 1983, cc. 556, 570; 1984, c. 675; 1985, c. 30.

§ 58.1-3202. Taxation of certain multi-unit real estate

Beginning with assessments effective on January 1, 1984, the fair market value of multi-unit real estate leased primarily to residential tenants shall be determined without regard to its potential for conversion to condominium or cooperative ownership. A sale of apartment property shall not be presumed to be for such conversion unless overt action which is a prerequisite to conversion by the buyer has been taken within three months from the recordation of the deed.

Code 1950, § 58-760; 1982, c. 619; 1983, cc. 556, 570; 1984, c. 675.

§ 58.1-3203. Taxation of certain leasehold interests; concessions

All leasehold interests in real property which is exempt from assessment for taxation from the owner shall be assessed for local taxation to the lessee. If the remaining term of the lease is fifty years or more, or the lease permits the lessee to acquire the real property for a nominal sum at the completion of the term, such leasehold interest shall be assessed as if the lessee were the owner. Otherwise, such assessment shall be reduced two percent for each year that the remainder of such term is less than fifty years; however, no such assessment shall be reduced more than eighty-five percent. If the lessee has a right to renew without the consent of the lessor, the term of such lease shall be the sum of the original lease term plus all such renewal terms.

When any real property is exempt from taxation under Section 6 (a)(1) or (2) or by designation under Section 6 (a)(6) of Article X of the Constitution of Virginia, the leasehold interest in such property may also be exempt from taxation, provided that the property is leased to a lessee that is exempt from taxation pursuant to § 501(c) of the Internal Revenue Code or to a lessee that is entitled to or has received federal rehabilitation tax credits relating to the property pursuant to 26 U.S.C. § 47 or any successor thereto, and is used exclusively by such lessee primarily for charitable, literary, scientific, cultural, or educational purposes. No leasehold interest or concession, as defined in § 33.2-1800, of tax exempt property of a governmental agency shall be subject to assessment for local property tax purposes where the property is leased to a public service corporation or subsidiary thereof or a nonstock, nonprofit corporation whose occupation, use or operation of the tax exempt property is in aid of or promotes the governmental purposes set out in Chapter 10 (§ 62.1-128 et seq.) of Title 62.1 or to a private entity that is party to a concession agreement with a responsible public entity pursuant to the Public-Private Transportation Act of 1995 (§ 33.2-1800 et seq.) or to similar federal law. The provisions of this section shall not apply to any leasehold interests exempted or partially exempted by other provisions of law.

Code 1950, § 58-758.1; 1975, c. 374; 1976, c. 418; 1979, c. 359; 1981, c. 431; 1983, c. 549; 1984, c. 675; 1992, c. 842; 1996, c. 478; 2006, c. 922; 2015, cc. 87, 234.

§ 58.1-3204. Lands acquired from United States, etc., when beneficial ownership held prior to January 1

All persons or corporations who receive deeds from the United States or its agencies for lands in the Commonwealth of Virginia by virtue of contracts therefor by which the beneficial ownership was held prior to January 1 of that year shall be assessable by the commissioners of the revenue

for taxes and levies on such lands for the then current year, as if the deed for the lands had been recorded on or before January 1 of that year.

Code 1950, § 58-761; 1984, c. 675.

§ 58.1-3205. Assessment of real property where interest less than fee is held by public body; exemption of interest of public body from taxation

Where an interest in real property less than the fee is held by a public body for the purposes of the Open-Space Land Act (§ 10.1-1700 et seq.), the Virginia Conservation Easement Act (§ 10.1-1009 et seq.), or Chapters 22 and 24 of Title 10.1, assessments for local taxation on the property shall conform to the requirements of § 10.1-1011. The value of the interest held by the public body shall be exempt from property taxation to the same extent as other property owned by the public body.

1984, c. 675; 1998, c. 487.

Article 2 - EXEMPTIONS FOR ELDERLY AND HANDICAPPED

§ 58.1-3210. Exemption or deferral of taxes on property of certain elderly and handicapped persons

A. The governing body of any county, city or town may, by ordinance, provide for the exemption from, deferral of, or a combination program of exemptions from and deferrals of taxation of real estate and manufactured homes as defined in § 36-85.3, or any portion thereof, and upon such conditions and in such amount as the ordinance may prescribe. Such real estate shall be owned by, and be occupied as the sole dwelling of anyone at least 65 years of age or if provided in the ordinance, anyone found to be permanently and totally disabled as defined in § 58.1-3217. Such ordinance may provide for the exemption from or deferral of that portion of the tax which represents the increase in tax liability since the year such taxpayer reached the age of 65 or became disabled, or the year such ordinance became effective, whichever is later. A dwelling jointly held by a husband and wife, with no other joint owners, may qualify if either spouse is 65 or over or is permanently and totally disabled, and the proration of the exemption or deferral under § 58.1-3211.1 shall not apply for such dwelling.

B. For purposes of this section, "eligible person" means a person who is at least age 65 or, if provided in the ordinance pursuant to subsection A, permanently and totally disabled. Under subsection A, real property owned and occupied as the sole dwelling of an eligible person includes real property (i) held by the eligible person alone or in conjunction with his spouse as tenant or tenants for life or joint lives, (ii) held in a revocable inter vivos trust over which the eligible person or the eligible person and his spouse hold the power of revocation, or (iii) held in an irrevocable trust under which an eligible person alone or in conjunction with his spouse possesses a life estate or an estate for joint lives or enjoys a continuing right of use or support. The term "eligible person" does not include any interest held under a leasehold or term of years.

C. For purposes of this article, any reference to real estate shall include manufactured homes.

Code 1950, § 58-760.1; 1971, Ex. Sess., c. 169; 1972, cc. 315, 616; 1973, c. 496; 1974, c. 427; 1976, c. 543; 1977, cc. 48, 453, 456; 1978, cc. 774, 776, 777, 780, 788, 790; 1979, cc. 543, 544, 545, 563; 1980, cc. 656, 666, 673; 1981, c. 434; 1982, cc. 123, 457; 1984, cc. 267, 675; 1993, c. 911; 2007, c. 357; 2014, c. 767.

§ 58.1-3211. Repealed

Repealed by Acts 2011, cc. 438 and 496, cl. 4, effective March 24, 2011, and applicable to tax years beginning on or after January 1, 2011.

§ 58.1-3211.1. Prorated tax exemption or deferral of tax

A. The governing body of the county, city, or town may, by ordinance, also provide for an exemption from or deferral of (or combination program thereof) real estate taxes for dwellings jointly held by two or more individuals not all of whom are at least age 65 or (if provided in the ordinance) permanently and totally disabled, provided that the dwelling is occupied as the sole dwelling by all such joint owners.

The tax exemption or deferral for the dwelling that otherwise would have been provided under the local ordinance shall be prorated by multiplying the amount of the exemption or deferral by a fraction that has as a numerator the percentage of ownership interest in the dwelling held by all such joint owners who are at least age 65 or (if provided in the ordinance) permanently and totally disabled, and as a denominator, 100%. As a condition of eligibility for such tax exemption or deferral, the joint owners of the dwelling shall be required to furnish to the relevant local officer sufficient evidence of each joint owner's ownership interest in the dwelling.

B. For purposes of this subsection, "eligible person" means a person who is at least age 65 or, if provided in the ordinance pursuant to subsection A, permanently and totally disabled. For purposes of the tax exemption pursuant to subsection A, real property that is a dwelling jointly held by two or more individuals includes real property (i) held by an eligible person in conjunction with one or more other people as tenant or tenants for life or joint lives, (ii) held in a revocable inter vivos trust over which an eligible person with one or more other people hold the power of revocation, or (iii) held in an irrevocable trust under which an eligible person in conjunction with one or more other people possesses a life estate or an estate for joint lives or enjoys a continuing right of use or support. The term "eligible person" does not include any interest held under a leasehold or term of years.

C. The provisions of this section shall not apply to dwellings jointly held by a husband and wife, with no other joint owners.

D. Nothing in this section shall be interpreted or construed to provide for an exemption from or deferral of tax for any dwelling jointly held by nonindividuals.

2007, c. 357; 2008, cc. 298, 695; 2011, cc. 438, 496; 2014, c. 767.

§ 58.1-3212. Local restrictions and exemptions

Pursuant to Article X, Section 6 (b) of the Constitution of Virginia, the General Assembly hereby authorizes the governing body of a county, city or town to establish by ordinance net financial worth or annual income limitations as a condition of eligibility for any exemption or deferral of tax allowed pursuant to this article. If the governing body establishes an annual income limitation, the computation of annual income shall be based on adding together the income received during the preceding calendar year, without regard to whether a tax return is actually filed, by (i) owners of the dwelling who use it as their principal residence, (ii) owners' relatives who live in the dwelling, except for those relatives living in the dwelling and providing bona fide caregiving services to the owner whether such relatives are compensated or not, and (iii) at the option of each locality, nonrelatives of the owner who live in the dwelling except for bona fide tenants or bona fide caregivers of the owner, whether compensated or not. If the governing body establishes a net financial worth limitation, net financial worth shall be based on adding together the net financial worth, including the present value of 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.

Nothing in this section shall be construed or interpreted as to preclude or prohibit the governing body of a county, city or town from excluding certain sources of income, or a portion of the same, for purposes of its annual income limitation or excluding certain assets, or a portion of the same, for purposes of its net financial worth limitation.

Any county, city, or town that pursuant to this article provides for the exemption from, deferral of, or a combination program of exemptions from and deferrals of real property taxes may exempt or defer the real property taxes of the qualifying dwelling and the land, not exceeding ten acres, upon which it is situated.

No local ordinance shall require that a citizen reside in the jurisdiction for a designated period of time as a condition for qualifying for any real estate tax exemption or deferral program established pursuant to § 58.1-3210.

Code 1950, § 58-760.1; 1971, Ex. Sess., c. 169; 1972, cc. 315, 616; 1973, c. 496; 1974, c. 427; 1976, c. 543; 1977, cc. 48, 453, 456; 1978, cc. 774, 776, 777, 780, 788, 790; 1979, cc. 543, 544, 545, 563; 1980, cc. 656, 666, 673; 1981, c. 434; 1982, cc. 123, 457; 1984, cc. 267, 675; 1989, c. 568; 2011, cc. 438, 496; 2012, c. 299; 2014, c. 767.

§ 58.1-3213. Application for exemption

A. The person claiming such exemption shall file annually with the commissioner of the revenue of the county, city or town assessing officer or such other officer as may be designated by the governing body in which such dwelling lies, on forms to be supplied by the county, city or town concerned, an affidavit or written statement setting forth (i) the names of the related persons occupying such real estate and (ii) that the total combined net worth including equitable interests and the combined income from all sources, of the persons specified in § 58.1-3212, does not exceed the limits, if any, prescribed in the local ordinance.

B. In lieu of the annual affidavit or written statement filing requirement, a county, city or town may prescribe by ordinance for the filing of the affidavit or written statement on a three-year cycle with an annual certification by the taxpayer that no information contained on the last preceding affidavit or written statement filed has changed to violate the limitations and conditions provided herein.

C. Notwithstanding the provisions of subsections A, B, and E, any county, city or town may, by local ordinance, prescribe the content of the affidavit or written statement described in subsection A, subject to the requirements established in §§ 58.1-3210, 58.1-3211.1, and 58.1-3212, and the local ordinance; the frequency with which an affidavit, written statement or certification as described in subsection B of this section must be filed; and a procedure for late filing of affidavits or written statements.

D. If such person is under 65 years of age, such form shall have attached thereto a certification by the Social Security Administration, the Department of Veterans Affairs or the Railroad Retirement Board, or if such person is not eligible for certification by any of these agencies, a sworn affidavit by two medical doctors who are either licensed to practice medicine in the Commonwealth or are military officers on active duty who practice medicine with the United States Armed Forces, to the effect that the person is permanently and totally disabled, as defined in § 58.1-3217; however, a certification pursuant to 42 U.S.C. § 423 (d) by the Social Security Administration so long as the person remains eligible for such social security benefits shall be deemed to satisfy such definition in § 58.1-3217. The affidavit of at least one of the doctors shall be based upon a physical examination of the person by such doctor. The affidavit of one of the doctors may be based upon medical information contained in the records of the Civil Service Commission which is relevant to the standards for determining permanent and total disability as defined in § 58.1-3217.

E. Such affidavit, written statement or certification shall be filed after January 1 of each year, but before April 1, or such later date as may be fixed by ordinance. Such ordinance may include a procedure for late filing by first-time applicants or for hardship cases.

F. The commissioner of the revenue or town assessing officer or another officer designated by the governing body of the county, city or town shall also make any other reasonably necessary inquiry of persons seeking such exemption, requiring answers under oath, to determine qualifications as specified herein, including qualification as permanently and totally disabled as defined in § 58.1-3217 and qualification for the exclusion of life insurance benefits paid upon the death of an owner of a dwelling, or as specified by county, city or town ordinance. The local governing body may, in addition, require the production of certified tax returns to establish the income or financial worth of any applicant for tax relief or deferral.

Code 1950, § 58-760.1; 1971, Ex. Sess., c. 169; 1972, cc. 315, 616; 1973, c. 496; 1974, c. 427; 1976, c. 543; 1977, cc. 48, 453, 456; 1978, cc. 774, 776, 777,780, 788, 790; 1979, cc. 543, 544, 545, 563; 1980, cc. 656, 666, 673; 1981, c. 434; 1982, cc. 123, 457; 1984, cc. 267, 675; 1986, c.

214; 1988, c. 334; 1990, c. 158; 1991, c. 286; 1996, c. 480; 1997, c. 710; 2007, c. 357; 2011, cc. 438, 496.

§ 58.1-3213.1. Notice of local real estate tax exemption or deferral program for the elderly and handicapped

The treasurer of any county, city or town shall enclose written notice, in each real estate tax bill, of the terms and conditions of any local real estate tax exemption or deferral program established in the jurisdiction pursuant to § 58.1-3210. The treasurer shall also employ any other reasonable means necessary to notify residents of the county, city or town about the terms and conditions of the real estate tax exemption or deferral program for elderly and handicapped residents of the county, city or town.

1989, c. 568 .

§ 58.1-3214. Absence from residence

The fact that persons who are otherwise qualified for tax exemption or deferral by an ordinance promulgated pursuant to this article are residing in hospitals, nursing homes, convalescent homes or other facilities for physical or mental health care for extended periods of time shall not be construed to mean that the real estate for which tax exemption or deferral is sought does not continue to be the sole dwelling of such persons during such extended periods of other residence so long as such real estate is not used by or leased to others for consideration.

Code 1950, § 58-760.1; 1971, Ex. Sess., c. 169; 1972, cc. 315, 616; 1973, c. 496; 1974, c. 427; 1976, c. 543; 1977, cc. 48, 453, 456; 1978, cc. 774, 776, 777, 780, 788, 790; 1979, cc. 543, 544, 545, 563; 1980, cc. 656, 666, 673; 1981, c. 434; 1982, cc. 123, 457; 1984, cc. 267, 675; 2012, cc. 476, 507.

§ 58.1-3215. Effective date; change in circumstances

A. An exemption or deferral enacted pursuant to § 58.1-3210 or 58.1-3211.1 may be granted for any year following the date that the qualifying individual occupying such dwelling and owning title or partial title thereto reaches the age of 65 years or for any year following the date the disability occurred. Changes in income, financial worth, ownership of property or other factors occurring during the taxable year for which an affidavit is filed and having the effect of exceeding or violating the limitations and conditions provided by county, city or town ordinance shall nullify any exemption or deferral for the remainder of the current taxable year and the taxable year immediately following. However, any locality may by ordinance provide a prorated exemption or deferral for the portion of the taxable year during which the taxpayer qualified for such exemption or deferral.

B. An ordinance enacted pursuant to this article may provide that a change in ownership to a spouse or a nonqualifying individual, when such change resulted solely from the death of the qualifying individual, or a sale of such property shall result in a prorated exemption or deferral for the then current taxable year. The proceeds of the sale which would result in the prorated exemption

or deferral shall not be included in the computation of net worth or income as provided in subsection A. Such prorated portion shall be determined by multiplying the amount of the exemption or deferral by a fraction wherein the number of complete months of the year such property was properly eligible for such exemption or deferral is the numerator and the number 12 is the denominator.

C. An ordinance enacted pursuant to this article may provide that an individual who does not qualify for the exemption or deferral under this article based upon the previous year's income limitations and financial worth limitations, may nonetheless qualify for the current year by filing an affidavit that clearly shows a substantial change of circumstances, that was not volitional on the part of the individual to become eligible for the exemption or deferral, and will result in income and financial worth levels that are within the limitations of the ordinance. The ordinance may impose additional conditions and require other information under this subsection. The locality may prorate the exemption or deferral from the date the affidavit is submitted or any other date.

Any exemption or deferral under this subsection must be conditioned upon the individual filing another affidavit after the end of the year in which the exemption or deferral was granted, within a period of time specified by the locality, showing that the actual income and financial worth levels were within the limitations set by the ordinance. If the actual income and financial worth levels exceeded the limitations any exemption or deferral shall be nullified for the current taxable year and the taxable year immediately following.

Code 1950, § 58-760.1; 1971, Ex. Sess., c. 169; 1972, cc. 315, 616; 1973, c. 496; 1974, c. 427; 1976, c. 543; 1977, cc. 48, 453, 456; 1978, cc. 774, 776, 777, 780, 788, 790; 1979, cc. 543, 544, 545, 563; 1980, cc. 656, 666, 673; 1981, c. 434; 1982, cc. 123, 457; 1984, cc. 267, 675; 1987, cc. 525, 534; 1989, c. 40; 2007, c. 357; 2008, c. 208; 2011, cc. 438, 496.

§ 58.1-3216. Deferral programs; taxes to be lien on property

In the event of a deferral of real estate taxes granted by ordinance, the accumulated amount of taxes deferred shall be paid to the county, city or town concerned by the vendor upon the sale of the dwelling, or from the estate of the decedent within one year after the death of the last owner thereof who qualifies for tax deferral by the provisions of this section and by the county, city or town ordinance. Such deferred real estate taxes shall be paid without penalty, except that any ordinance establishing a combined program of exemptions and deferrals, or deferrals only, may provide for interest not to exceed eight percent per annum on any amount so deferred, and such taxes and interest, if applicable, shall constitute a lien upon the said real estate as if it had been assessed without regard to the deferral permitted by this article. Any such lien shall, to the extent that it exceeds in the aggregate ten percent of the price for which such real estate may be sold, be inferior to all other liens of record.

Code 1950, § 58-760.1; 1971, Ex. Sess., c. 169; 1972, cc. 315, 616; 1973, c. 496; 1974, c. 427; 1976, c. 543; 1977, cc. 48, 453, 456; 1978, cc. 774, 776, 777, 780, 788, 790; 1979, cc. 543, 544, 545, 563; 1980, cc. 656, 666, 673; 1981, c. 434; 1982, cc. 123, 457; 1984, cc. 267, 675.

§ 58.1-3217. Permanently and totally disabled defined

For purposes of this article, the term "permanently and totally disabled" shall mean unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment or deformity which can be expected to result in death or can be expected to last for the duration of such person's life.

Code 1950, § 58-760.1; 1971, Ex. Sess., c. 169; 1972, cc. 315, 616; 1973, c. 496; 1974, c. 427; 1976, c. 543; 1977, cc. 48, 453, 456; 1978, cc. 774, 776, 777, 780, 788, 790; 1979, cc. 543, 544, 545, 563; 1980, cc. 656, 666, 673; 1981, c. 434; 1982, cc. 123, 457; 1984, cc. 267, 675.

§ 58.1-3218. Repealed

Repealed by Acts 2011, cc. 438 and 496, cl. 4, effective March 24, 2011, and applicable to tax years beginning on or after January 1, 2011.

Article 2.1 - LOCAL DEFERRAL OF REAL ESTATE TAX

§ 58.1-3219. Deferral of portion of real estate tax increases

Any county, city, or town may adopt, by ordinance, a deferral program for real estate taxes, in such amount as the ordinance may prescribe, subject to the limitations and conditions of this article. The local governing body shall adopt, by ordinance, the terms and conditions of the program and whether the deferral program shall apply only to real estate owned by and occupied as the sole dwelling of the taxpayer or whether the program shall apply to all property.

1990, cc. 858, 871 .

§ 58.1-3219.1. Conditions of deferral; payment of deferred amounts

The deferral program provided in this article shall allow the taxpayer the option of deferring all or any portion of the real estate tax that exceeds 105 percent of the real estate tax on such property owned by the taxpayer in the previous tax year. The governing body may adopt a higher minimum percentage increase figure.

The deferred amount shall be subject to interest computed at a rate established by the governing body, not to exceed the rate established pursuant to § 6621 of the Internal Revenue Code . The accumulated amount of taxes deferred and interest shall be paid to the county, city, or town by the owner upon the sale or transfer of the property, or from the estate of the decedent within one year after the death of the owner. If the real estate is owned jointly and all such owners applied and qualified for the deferral program established by ordinance, the death of one of the joint owners shall not disqualify the survivor or survivors from participating in the deferral program. All accumulated deferred taxes and interest shall be paid within one year of the date of death of the

last qualifying owner. The accumulated amount of tax deferred and interest shall constitute a lien upon the real estate.

1990, cc. 858, 871; 1991, cc. 316, 331; 2005, cc. 502, 561.

§ 58.1-3219.2. Repealed

Repealed by Acts 2006, c. 356, cl. 1.

§ 58.1-3219.3. Limitations

The deferral program provided under this article shall not apply to the following:

1. Real estate which participates in the real estate tax relief or deferral program for the elderly or permanently or totally disabled pursuant to Article 2 (§ 58.1-3210 et seq.) of Chapter 32 of this title;

2. Persons who are delinquent on any portion of real estate taxes for which deferral is sought;

3. Real estate assessed on the basis of use value pursuant to Article 4 (§ 58.1-3230 et seq.) of Chapter 32 of this title.

1990, cc. 858, 871 .

Article 2.2 - PARTIAL TAX EXEMPTION IN REDEVELOPMENT OR CONSERVATION AREAS OR REHABILITATION DISTRICTS

§ 58.1-3219.4. Partial exemption for structures in redevelopment or conservation areas or rehabilitation districts

For purposes of this section, unless the context requires otherwise:

"Redevelopment or conservation area or rehabilitation district" means a redevelopment or conservation area or a rehabilitation district established in accordance with law.

A. The governing body of any county, city, or town may, by ordinance, provide for the partial exemption from taxation of (i) new structures located in a redevelopment or conservation area or rehabilitation district or (ii) other improvements to real estate located in a redevelopment or conservation area or rehabilitation district. The governing body of a county, city, or town may (a) establish criteria for determining whether real estate qualifies for the partial exemption authorized by this section, (b) establish requirements for the square footage of new structures that would qualify for the partial exemption, and (c) place such other restrictions and conditions on such new structures or improvements as may be prescribed by ordinance.

B. The partial exemption provided by the local governing body shall be provided in the local ordinance and shall be either (i) an amount equal to the increase in assessed value or a percentage of such increase resulting from the construction of the new structure or other improvement to the real estate as determined by the commissioner of the revenue or other local assessing officer, or (ii) an amount up to 50 percent of the cost of such construction or improvement, as determined by ordinance. The exemption may commence upon completion of the new construction or

improvement or on January 1 of the year following completion of the new construction or improvement and shall run with the real estate for a period of no longer than 15 years. The governing body of a county, city, or town may place a shorter time limitation on the length of such exemption, or reduce the amount of the exemption in annual steps over the entire period or a portion thereof, in such manner as the ordinance may prescribe.

C. The local governing body or its designee shall 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. Such exempt amount shall be a covenant that runs with the land for the period of the exemption and shall not be reduced by the local governing body or its designee during the period of the exemption, unless the local governing body or its designee by written notice has advised the property owner at the initial time of approval of the exemption that the exempt amount may be decreased during the period of such exemption. In no event, however, shall such partial exemption result in totally exempting the value of the structure.

D. Nothing in this section shall be construed so as to permit the commissioner of the revenue to list upon the land book any reduced value due to the exemption provided in subsection B.

E. The governing body of any county, city, or town may assess a fee not to exceed $125 for residential properties, or $250 for commercial, industrial, and/or apartment properties of six units or more, for processing an application requesting the exemption provided by this section. No property shall be eligible for such exemption unless the appropriate building permits have been acquired and the commissioner of the revenue or assessing officer has verified that the new structures or other improvements have been completed.

F. Where the construction of a new structure is achieved through demolition and replacement of an existing structure, the exemption provided in subsection A shall not apply when any structure demolished is a registered Virginia landmark or is determined by the Department of Historic Resources to contribute to the significance of a registered historic district.

2006, c. 572; 2011, cc. 423, 460.

Article 2.3 - EXEMPTION FOR DISABLED VETERANS

§ 58.1-3219.5. Exemption from taxes on property for disabled veterans

A. Pursuant to subdivision (a) of Section 6-A of Article X of the Constitution of Virginia, and for tax years beginning on or after January 1, 2011, the General Assembly hereby exempts from taxation the real property, including the joint real property of husband and wife, of any veteran who has been rated by the U.S. Department of Veterans Affairs or its successor agency pursuant to federal law to have a 100 percent service-connected, permanent, and total disability, and who occupies the real property as his principal place of residence. If the veteran's disability rating occurs after January 1, 2011, and he has a qualified primary residence on the date of the rating, then the exemption for him under this section begins on the date of such rating. However, no county, city,

or town shall be liable for any interest on any refund due to the veteran for taxes paid prior to the veteran's filing of the affidavit or written statement required by § 58.1-3219.6. If the qualified veteran acquires the property after January 1, 2011, then the exemption shall begin on the date of acquisition, and the previous owner may be entitled to a refund for a pro rata portion of real property taxes paid pursuant to § 58.1-3360.

B. The surviving spouse of a veteran eligible for the exemption set forth in this article shall also qualify 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.

C. (Effective for tax years beginning before January 1, 2017) A county, city, or town shall provide for the exemption from real property taxes the qualifying dwelling pursuant to this section, and shall provide for the exemption from real property taxes the land, not exceeding one acre, upon which it is situated. However, if a county, city, or town provides for an exemption from or deferral of real property taxes of more than one acre of land pursuant to Article 2 (§ 58.1-3210 et seq.), then the county, city, or town shall also provide an exemption for the same number of acres pursuant to this section. If the veteran owns a house that is his residence, including a manufactured home as defined in § 46.2-100 whether or not the wheels and other equipment previously used for mobility have been removed, such house or manufactured home shall be exempt even if the veteran does not own the land on which the house or manufactured home is located. If such land is not owned by the veteran, then the land is not exempt.

C. (Effective for tax years beginning on or after January 1, 2017) A county, city, or town shall provide for the exemption from real property taxes the qualifying dwelling pursuant to this section and shall provide for the exemption from real property taxes the land, not exceeding one acre, upon which it is situated. However, if a county, city, or town provides for an exemption from or deferral of real property taxes of more than one acre of land pursuant to Article 2 (§ 58.1-3210 et seq.), then the county, city, or town shall also provide an exemption for the same number of acres pursuant to this section. If the veteran owns a house that is his residence, including a manufactured home as defined in § 46.2-100 whether or not the wheels and other equipment previously used for mobility have been removed, such house or manufactured home shall be exempt even if the veteran does not own the land on which the house or manufactured home is located. If such land is not owned by the veteran, then the land is not exempt. A real property improvement other than a dwelling, including the land upon which such improvement is situated, made to such one acre or greater number of acres exempt from taxation pursuant to this subsection shall also be exempt from taxation so long as the principal use of the improvement is (i) to house or cover motor vehicles or household goods and personal effects as classified in subdivision A 14 of § 58.1-3503 and as listed in § 58.1-3504 and (ii) for other than a business purpose.

D. For purposes of this exemption, real property of any veteran includes real property (i) held by a veteran alone or in conjunction with the veteran's spouse as tenant or tenants for life or joint

lives, (ii) held in a revocable inter vivos trust over which the veteran or the veteran and his spouse hold the power of revocation, or (iii) held in an irrevocable trust under which a veteran alone or in conjunction with his spouse possesses a life estate or an estate for joint lives or enjoys a continuing right of use or support. The term does not include any interest held under a leasehold or term of years.

The exemption for a surviving spouse under subsection B includes real property (a) held by the veteran's spouse as tenant for life, (b) held in a revocable inter vivos trust over which the surviving spouse holds the power of revocation, or (c) held in an irrevocable trust under which the surviving spouse possesses a life estate or enjoys a continuing right of use or support. The exemption does not apply to any interest held under a leasehold or term of years.

E.1. In the event that (i) a person is entitled to an exemption under this section by virtue of holding the property in any of the three ways set forth in subsection D and (ii) one or more other persons have an ownership interest in the property that permits them to occupy the property, then the tax exemption for the property that otherwise would have been provided shall be prorated by multiplying the amount of the exemption by a fraction that has as a numerator the number of people who are qualified for the exemption pursuant to this section and has as a denominator the total number of all people having an ownership interest that permits them to occupy the property.

2. In the event that the primary residence is jointly owned by two or more individuals, not all of whom qualify for the exemption pursuant to subsection A or B, and no person is entitled to the exemption under this section by virtue of holding the property in any of the three ways set forth in subsection D, then the exemption shall be prorated by multiplying the amount of the exemption or deferral by a fraction that has as a numerator the percentage of ownership interest in the dwelling held by all such joint owners who qualify for the exemption pursuant to subsections A and B, and as a denominator, 100 percent.

2011, cc. 769, 840; 2012, cc. 75, 263, 782, 806; 2014, c. 757; 2016, cc. 349, 393, 485.

§ 58.1-3219.6. Application for exemption

The veteran or surviving spouse claiming the exemption under this article shall file with the commissioner of the revenue of the county, city, or town or such other officer as may be designated by the governing body in which the real property is located, on forms to be supplied by the county, city, or town, an affidavit or written statement (i) setting forth the name of the disabled veteran and the name of the spouse, if any, also occupying the real property, (ii) indicating whether the real property is jointly owned by a husband and wife, and (iii) certifying that the real property is occupied as the veteran's principal place of residence. The veteran shall also provide documentation from the U.S. Department of Veterans Affairs or its successor agency indicating that the veteran has a 100 percent service-connected, permanent, and total disability. The veteran shall be required to refile the information required by this section only if the veteran's principal place of residence changes. In the event of a surviving spouse of a veteran claiming the exemption,

the surviving spouse shall also provide documentation that the veteran's death occurred on or after January 1, 2011.

2011, cc. 769, 840.

. Commissioner of the Department of Veterans Services; rules and regulations; appeal

A. The Commissioner of the Department of Veterans Services shall promulgate rules and regulations governing the administration and implementation of the property tax exemption under this article. Such rules and regulations shall include, but not be limited to, written guidance for veterans residing in the Commonwealth and for commissioners of the revenue or other assessing officers relating to the determination of eligibility for the property tax exemption under this article and procedures for appealing a decision of the Commissioner of the Department of Veterans Services to a circuit court pursuant to subsection B. The Commissioner of the Department of Veterans Services may also provide written guidance to, and respond to requests for information from, veterans residing in the Commonwealth and commissioners of the revenue or other assessing officers regarding the exemption under this article, including interpretation of the provisions of subdivision (a) of Section 6-A of Article X of the Constitution of Virginia and this article.

B. The Commissioner of the Department of Veterans Services shall hear and decide appeals by veterans residing in the Commonwealth from a denial of their application pursuant to § 58.1-3219.6 by a commissioner of the revenue or other assessing officer. However, such appeal shall be limited to appeals based upon a finding of fact regarding eligibility criteria set forth in subdivision (a) of Section 6-A of Article X of the Constitution of Virginia and this article. The Commissioner of the Department of Veterans Services shall not be authorized to hear or decide appeals regarding a dispute over the assessed value of any property. Nothing in this section shall be construed to limit the appeal of a decision of the Commissioner of the Department of Veterans Services by either party to the circuit court in the locality in which the veteran resides.

2012, c. 594; 2014, c. 757.

§ 58.1-3219.8. Absence from residence

The fact that veterans or their spouses who are otherwise qualified for tax exemption pursuant to this article are residing in hospitals, nursing homes, convalescent homes, or other facilities for physical or mental care for extended periods of time shall not be construed to mean that the real estate for which tax exemption is sought does not continue to be the sole dwelling of such persons during such extended periods of other residence so long as such real estate is not used by or leased to others for consideration.

2012, c. 782.

Article 2.4 - EXEMPTION FOR SURVIVING SPOUSES OF MEMBERS OF THE ARMED FORCES KILLED IN ACTION

§ 58.1-3219.9. Exemption from taxes on property of surviving spouses of members of the armed forces killed in action

A. Pursuant to subdivision (b) of Section 6-A of Article X of the Constitution of Virginia, and for tax years beginning on or after January 1, 2015, the General Assembly hereby exempts from taxation the real property described in subsection B of the surviving spouse (i) of any member of the armed forces of the United States who was killed in action as determined by the U.S. Department of Defense and (ii) who occupies the real property as his principal place of residence. For purposes of this section, such determination of "killed in action" includes a determination by the U.S. Department of Defense of "died of wounds received in action." If such member of the armed forces of the United States is killed in action after January 1, 2015, and the surviving spouse has a qualified principal residence on the date that such member of the armed forces is killed in action, then the exemption for the surviving spouse shall begin on the date that such member of the armed forces is killed in action. However, no county, city, or town shall be liable for any interest on any refund due to the surviving spouse for taxes paid prior to the surviving spouse's filing of the affidavit or written statement required by § 58.1-3219.10. If the surviving spouse acquires the property after January 1, 2015, then the exemption shall begin on the date of acquisition, and the previous owner may be entitled to a refund for a pro rata portion of real property taxes paid pursuant to § 58.1-3360.

B. Those dwellings in the locality with assessed values in the most recently ended tax year that are not in excess of the average assessed value for such year of a dwelling situated on property that is zoned as single family residential shall qualify for a total exemption from real property taxes under this article. If the value of a dwelling is in excess of the average assessed value as described in this subsection, then only that portion of the assessed value in excess of the average assessed value shall be subject to real property taxes, and the portion of the assessed value that is not in excess of the average assessed value shall be exempt from real property taxes. Single family homes, condominiums, town homes, manufactured homes as defined in § 46.2-100 whether or not the wheels and other equipment previously used for mobility have been removed, and other types of dwellings of surviving spouses, whether or not the land on which the single family home, condominium, town home, manufactured home, or other type of dwelling of a surviving spouse is located is owned by someone other than the surviving spouse, that (i) meet this requirement and (ii) are occupied by such persons as their principal place of residence shall qualify for the real property tax exemption. If the land on which the single family home, condominium, town home, manufactured home, or other type of dwelling is located is not owned by the surviving spouse, then the land is not exempt.

For purposes of determining whether a dwelling, or a portion of its value, is exempt from county and town real property taxes, the average assessed value shall be such average for all dwellings located within the county that are situated on property zoned as single family residential.

C. The surviving spouse of a member of the armed forces killed in action shall qualify for the exemption so long as the surviving spouse does not remarry and continues to occupy the real property as his principal place of residence. The exemption applies without any restriction on the spouse's moving to a different principal place of residence.

D. (Effective for tax years beginning before January 1, 2017) A county, city, or town shall provide for the exemption from real property taxes (i) the qualifying dwelling, or the portion of the value of such dwelling and land that qualifies for the exemption pursuant to subsection B, and (ii) except land not owned by the surviving spouse, the land, not exceeding one acre, upon which it is situated. However, if a county, city, or town provides for an exemption from or deferral of real property taxes of more than one acre of land pursuant to Article 2 (§ 58.1-3210 et seq.), then the county, city, or town shall also provide an exemption for the same number of acres pursuant to this section.

D. (Effective for tax years beginning on or after January 1, 2017) A county, city, or town shall provide for the exemption from real property taxes (i) the qualifying dwelling, or the portion of the value of such dwelling and land that qualifies for the exemption pursuant to subsection B, and (ii) except land not owned by the surviving spouse, the land, not exceeding one acre, upon which it is situated. However, if a county, city, or town provides for an exemption from or deferral of real property taxes of more than one acre of land pursuant to Article 2 (§ 58.1-3210 et seq.), then the county, city, or town shall also provide an exemption for the same number of acres pursuant to this section. A real property improvement other than a dwelling, including the land upon which such improvement is situated, made to such one acre or greater number of acres exempt from taxation pursuant to this subsection shall also be exempt from taxation so long as the principal use of the improvement is (i) to house or cover motor vehicles or household goods and personal effects as classified in subdivision A 14 of § 58.1-3503 and as listed in § 58.1-3504 and (ii) for other than a business purpose.

E. For purposes of this exemption, real property of any surviving spouse of a member of the armed forces killed in action includes real property (i) held by a surviving spouse as a tenant for life, (ii) held in a revocable inter vivos trust over which the surviving spouse holds the power of revocation, or (iii) held in an irrevocable trust under which the surviving spouse possesses a life estate or enjoys a continuing right of use or support. The term does not include any interest held under a leasehold or term of years.

F.1. In the event that (i) a surviving spouse is entitled to an exemption under this section by virtue of holding the property in any of the three ways set forth in subsection E and (ii) one or more other persons have an ownership interest in the property that permits them to occupy the

property, then the tax exemption for the property that otherwise would have been provided shall be prorated by multiplying the amount of the exemption by a fraction that has 1 as a numerator and has as a denominator the total number of all people having an ownership interest that permits them to occupy the property.

2. In the event that the principal residence is jointly owned by two or more individuals including the surviving spouse, and no person is entitled to the exemption under this section by virtue of holding the property in any of the three ways set forth in subsection E, then the exemption shall be prorated by multiplying the amount of the exemption by a fraction that has as a numerator the percentage of ownership interest in the dwelling held by the surviving spouse, and as a denominator, 100 percent.

2014, c. 757; 2015, c. 577; 2016, cc. 347, 349, 393, 485, 539.

§ 58.1-3219.10. Application for exemption

A. The surviving spouse claiming the exemption under this article shall file with the commissioner of the revenue of the county, city, or town or such other officer as may be designated by the governing body in which the real property is located, on forms to be supplied by the county, city, or town, an affidavit or written statement (i) setting forth the surviving spouse's name, (ii) indicating any other joint owners of the real property, and (iii) certifying that the real property is occupied as the surviving spouse's principal place of residence. The surviving spouse shall also provide documentation from the United States Department of Defense or its successor agency indicating the date that the member of the armed forced of the United States was killed in action.

The surviving spouse shall be required to refile the information required by this section only if the surviving spouse's principal place of residence changes.

B. The surviving spouse shall promptly notify the commissioner of the revenue of any remarriage.

2014, c. 757.

§ 58.1-3219.11. Commissioner of the Department of Veterans Services; rules and regulations

The Commissioner of the Department of Veterans Services shall promulgate rules and regulations governing the administration and implementation of the property tax exemption under this article. Such rules and regulations shall include, but not be limited to, written guidance for surviving spouses residing in the Commonwealth and for commissioners of the revenue or other assessing officers relating to the determination of eligibility for the property tax exemption under this article. The Commissioner of the Department of Veterans Services may also provide written guidance to, and respond to requests for information from, surviving spouses residing in the Commonwealth and commissioners of the revenue or other assessing officers regarding the exemption under this article, including interpretation of the provisions of subdivision (b) of Section 6-A of Article X of the Constitution of Virginia and this article.

2014, c. 757.

. Absence from residence

The fact that surviving spouses who are otherwise qualified for tax exemption pursuant to this article are residing in hospitals, nursing homes, convalescent homes, or other facilities for physical or mental care for extended periods of time shall not be construed to mean that the real estate for which tax exemption is sought does not continue to be the sole dwelling of such persons during such extended periods of other residence so long as such real estate is not used by or leased to others for consideration.

2014, c. 757.

Article 3 - OTHER EXEMPTIONS, CREDITS, PARTIAL ABATEMENT, APPORTIONMENTS, CLASSIFICATIONS

§ 58.1-3220. Partial exemption for certain rehabilitated, renovated or replacement residential structures

A. The governing body of any county, city or town may, by ordinance, provide 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, subject to such conditions as the ordinance may prescribe. The ordinance may, in addition to any other restrictions hereinafter provided, restrict such exemptions to real property located within described zones or districts whose boundaries shall be determined by the governing body. The governing body of a county, city or town may (i) establish criteria for determining whether real estate qualifies for the partial exemption authorized by this provision, (ii) require such structures to be older than 15 years of age, (iii) establish requirements for the square footage of replacement structures, and (iv) place such other restrictions and conditions on such property as may be prescribed by ordinance. Such ordinance may also provide for the partial exemption from taxation of multifamily residential units that have been substantially rehabilitated by replacement for multifamily use.

B. The partial exemption provided by the local governing body may be an amount equal to the increase in assessed value or a percentage of such increase resulting from the rehabilitation, renovation or replacement of the structure as determined by the commissioner of revenue or other local assessing officer or an amount up to 50 percent of the cost of the rehabilitation, renovation or replacement, as determined by ordinance. The exemption may commence upon completion of the rehabilitation, renovation or replacement or on January 1 of the year following completion of the rehabilitation, renovation or replacement and shall run with the real estate for a period of no longer than 15 years. The governing body of a county, city or town may place a shorter time limitation on the length of such exemption, or reduce the amount of the exemption in annual steps over the entire period or a portion thereof, in such manner as the ordinance may prescribe.

C. The local governing body or its designee shall 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. Such exempt amount shall be a covenant that runs with

the land for the period of the exemption and shall not be reduced by the local governing body or its designee during the period of the exemption, unless the local governing body or its designee by written notice has advised the property owner at the initial time of approval of the exemption that the exempt amount may be decreased during the period of such exemption. In no event, however, shall such partial exemption result in totally exempting the value of the structure.

D. Nothing in this section shall be construed as to permit the commissioner of the revenue to list upon the land book any reduced value due to the exemption provided in subsection B.

E. The governing body of any county, city or town may assess a fee not to exceed $125 for residential properties, or $250 for commercial, industrial, and/or apartment properties of six units or more for processing an application requesting the exemption provided by this section. No property shall be eligible for such exemption unless the appropriate building permits have been acquired and the commissioner of the revenue or assessing officer has verified that the rehabilitation, renovation or replacement indicated on the application has been completed.

F. Where rehabilitation is achieved through demolition and replacement of an existing structure, the exemption provided in subsection A shall not apply when any structure demolished is a registered Virginia landmark or is determined by the Department of Historic Resources to contribute to the significance of a registered historic district.

Code 1950, § 58-760.2; 1979, c. 195; 1980, c. 417; 1981, c. 625; 1984, cc. 675, 750; 1986, c. 271; 1989, cc. 89, 656; 1994, cc. 424, 435; 1995, c. 673; 2001, c. 489; 2002, cc. 21, 144; 2011, cc. 423, 460.

§ 58.1-3220.01. Local real property tax credits on certain rehabilitated, renovated or replacement residential structures

A. The governing body of any county, city or town may, by ordinance, provide for a local real property tax credit equal to certain property tax liens owed on real estate on which any structure or other improvement no less than fifteen years of age has undergone substantial rehabilitation, renovation or replacement for residential use, subject to such conditions as the ordinance may prescribe. The credit shall be used by the owner of the property which has the real property tax liens and can be used to offset real property taxes assessed against such property. The governing body of a county, city or town may establish criteria for determining whether real estate qualifies for the credit authorized by this provision and may require such structures to be older than fifteen years of age, or place such other restrictions and conditions on such property as may be prescribed by ordinance. Such ordinance may also provide for a credit for multifamily residential units which have been substantially rehabilitated by replacement for multifamily use. Such replacement structures may exceed the total square footage of the replaced structures by no more than thirty percent.

B. The local tax credit shall be available only to those property owners who have purchased a structure which at the time of purchase contained property tax liens exceeding fifty percent of the

assessed value of the property. The tax credit granted by the locality shall not exceed the amount by which the property tax liens exceeded fifty percent of the assessed value of the property at the time of purchase. The credit may be applied upon completion of the rehabilitation, renovation or replacement or on January 1 of the year following completion of the rehabilitation, renovation or replacement and may be divided over a period of no longer than ten years.

C. The governing body of any county, city or town may assess a fee not to exceed one hundred twenty-five dollars for residential properties, or two hundred fifty dollars for commercial, industrial, and/or apartment properties of six units or more for processing an application requesting the credit provided by this section. No property shall be eligible for such credit unless the appropriate building permits have been acquired and the commissioner of the revenue or assessing officer has verified that the rehabilitation, renovation or replacement indicated on the application has been completed.

D. Where rehabilitation is achieved through demolition and replacement of an existing structure, the credit shall not apply when any structure demolished is a registered Virginia landmark or is determined by the Department of Historic Resources to contribute to the significance of a registered historic district.

1996, c. 765; 2001, c. 489.

§ 58.1-3220.1. Partial exemption for certain rehabilitated, renovated or replacement hotel or motel structures

A. The governing body of any county, city or town may, by ordinance, provide partial exemption from taxation of real estate on which a hotel or motel no less than thirty-five years of age has undergone substantial rehabilitation, renovation or replacement for residential use, subject to such conditions as the ordinance may prescribe. The ordinance may, in addition to any other restrictions hereinafter provided, restrict such exemptions to real property located within described zones or districts whose boundaries shall be determined by the governing body. The governing body of a county, city or town may establish criteria for determining whether real estate qualifies for the exemption authorized by this provision and may require such structures to be older than thirty-five years of age, or place such other restrictions and conditions on such property as may be prescribed by ordinance.

B. The "partial exemption" provided by the local governing body may not exceed either an amount equal to ninety percent of the total assessed value of the rehabilitated, renovated or replaced structure or an amount equal to the increase in assessed value resulting from the rehabilitation, renovation or replacement of the structure as determined by the commissioner of the revenue or other local assessing officer, as established by ordinance. The partial exemption may commence upon completion of the rehabilitation, renovation or replacement or on January 1 of the year following completion of the rehabilitation, renovation or replacement and shall run with the real estate for a period of no longer than twenty-five years. The governing body of a county, city or town may

place a shorter time limitation on the length of such exemption, or reduce the amount of the exemption in annual steps over the entire period or a portion thereof, in such manner as the ordinance may prescribe.

C. Nothing in this section shall be construed as to permit the commissioner of the revenue to list upon the land book any reduced value due to the exemption provided in subsection B.

D. The governing body of any county, city or town may assess a fee for processing an application requesting the exemption provided by this section. No property shall be eligible for such partial exemption unless the appropriate building permits have been acquired and the commissioner of the revenue or assessing officer has verified that the rehabilitation, renovation or replacement indicated on the application has been completed.

E. Where rehabilitation is achieved through demolition and replacement of an existing structure, the exemption provided in subsection A shall not apply when any structure demolished is a registered Virginia landmark or is determined by the Department of Historic Resources to contribute to the significance of a registered historic district.

1993, c. 157; 1994, cc. 424, 435.

§ 58.1-3221. Partial exemption for certain rehabilitated, renovated or replacement commercial or industrial structures

A. The governing body of any county, city or town may, by ordinance, provide for the partial exemption from taxation of real estate on which any structure or other improvement no less than twenty years of age, or fifteen years of age if the structure is located in an area designated as an enterprise zone by the Commonwealth, has undergone substantial rehabilitation, renovation or replacement for commercial or industrial use, subject to such conditions as the ordinance may prescribe. The ordinance may, in addition to any other restrictions hereinafter provided, restrict such exemptions to real property located within described zones or districts whose boundaries shall be determined by the governing body. The governing body of a county, city or town may establish criteria for determining whether real estate qualifies for the partial exemption authorized by this provision and may require the structure to be older than twenty years of age, or fifteen years of age if the structure is located in an area designated as an enterprise zone by the Commonwealth, or place such other restrictions and conditions on such property as may be prescribed by ordinance. Such ordinance may also provide for the partial exemption from taxation of real estate which has been substantially rehabilitated by complete replacement for commercial and industrial use.

B. The partial exemption provided by the local governing body may not exceed an amount equal to the increase in assessed value resulting from the rehabilitation, renovation or replacement of the commercial or industrial structure as determined by the commissioner of revenue or other local assessing officer or an amount up to fifty percent of the cost of rehabilitation, renovation or replacement as determined by ordinance. The exemption may commence upon completion of the rehabilitation, renovation or replacement, or on January 1 of the year following completion of the

rehabilitation, renovation or replacement and shall run with the real estate for a period of no longer than fifteen years. The governing body of a county, city or town may place a shorter time limitation on the length of such exemption, or reduce the amount of the exemption in annual steps over the entire period or a portion thereof, in such manner as the ordinance may prescribe.

C. Nothing in this section shall be construed as to permit the commissioner of the revenue to list upon the land book any reduced value due to the exemption provided in subsection B.

D. The governing body of any county, city or town may assess a fee not to exceed one hundred twenty-five dollars for residential properties, or two hundred fifty dollars for commercial, industrial, and/or apartment properties of six units or more for processing an application requesting the exemption provided by this section. No property shall be eligible for such exemption unless the appropriate building permits have been acquired and the commissioner of the revenue or assessing officer has verified that the rehabilitation, renovation or replacement indicated on the application has been completed.

E. Where rehabilitation is achieved through demolition and replacement of an existing structure, the exemption provided in subsection A shall not apply when any structure demolished is a registered Virginia landmark or is determined by the Department of Historic Resources to contribute to the significance of a registered historic landmark.

Code 1950, § 58-760.3; 1979, c. 195; 1980, c. 417; 1984, c. 675; 1986, c. 271; 1989, c. 89; 1994, cc. 424, 435, 608; 1995, c. 673; 2001, c. 489; 2002, cc. 8, 137.

§ 58.1-3221.1. Classification of land and improvements for tax purposes

A. In the Cities of Fairfax, Poquoson, and Roanoke improvements to real property are declared to be a separate class of property and shall constitute a separate classification for local taxation of real property.

B. The governing body of the City of Fairfax and the City of Roanoke, after giving public notice and an opportunity for the public to be heard in the manner provided in § 58.1-3007, may levy a tax on the property enumerated in subsection A at a different rate than the tax imposed upon the land on which it is located, provided that the rate of tax on the property described in subsection A shall not be zero and shall not exceed the rate of tax on the land on which it is located.

C. Nothing in this section shall be construed to permit the City of Fairfax, Poquoson, or Roanoke to alter in any way its valuation of real property covered by this section.

D. The governing body of the City of Poquoson, after giving public notice and an opportunity for the public to be heard in the manner provided in § 58.1-3007, may levy a tax on the property enumerated in subsection A at a different rate than the tax imposed upon the land on which it is located, provided that the rate of tax on the property described in subsection A shall not be zero.

2002, c. 16; 2003, c. 164; 2011, c. 146.

§ 58.1-3221.2. Classification of certain energy-efficient buildings for tax purposes

A. Energy-efficient buildings, not including the real estate or land on which they are located, are hereby declared to be a separate class of property and shall constitute a classification for local taxation separate from other classifications of real property. The governing body of any county, city, or town may, by ordinance, levy a tax on the value of such buildings at a different rate from that of tax levied on other real property. The rate of tax imposed by any county, city, or town on such buildings shall not exceed that applicable to the general class of real property.

B. For purposes of this section, an energy-efficient building is any building that exceeds the energy efficiency standards prescribed in the Virginia Uniform Statewide Building Code by 30 percent. Energy-efficient building certification for purposes of this subsection shall be determined by any qualified architect, professional engineer, or licensed contractor who is not related to the taxpayer and who shall certify to the taxpayer that he or she has qualifications to provide the certification.

C. Notwithstanding the provisions of subsection B, for purposes of this section, an energy-efficient building may also be any building that (i) meets or exceeds performance standards of the Green Globes Green Building Rating System of the Green Building Initiative, (ii) meets or exceeds performance standards of the Leadership in Energy and Environmental Design (LEED) Green Building Rating System of the U.S. Green Building Council, (iii) meets or exceeds performance standards or guidelines under the EarthCraft House Program, or (iv) is an Energy Star qualified home, the energy efficiency of which meets or exceeds performance guidelines for energy efficiency under the Energy Star program developed by the United States Environmental Protection Agency. Energy-efficient building certification for purposes of this subsection shall be determined by (a) the granting of a certification under one of the programs in clauses (i) through (iv) that certifies the building meets or exceeds the performance standards or guidelines of the program, or (b) a qualified architect or professional engineer designated by the county, city, or town who shall determine whether the building meets or exceeds the performance standards or guidelines under any program described in clauses (i) through (iv).

2007, cc. 328, 354; 2008, cc. 288, 401; 2009, c. 512.

§ 58.1-3221.3. Classification of certain commercial and industrial real property and taxation of such property by certain localities

A. Beginning January 1, 2008, and solely for the purposes of imposing the tax authorized pursuant to this section, in the counties and cities that are wholly embraced by the Northern Virginia Transportation Authority and the Hampton Roads metropolitan planning area as of January 1, 2008, pursuant to § 134 of Title 23 of the United States Code, all real property used for or zoned to permit commercial or industrial uses is hereby declared to be a separate class of real property for local taxation. Such classification of real property shall exclude all residential uses and all multifamily residential uses, including but not limited to single family residential units, cooperatives, condominiums, townhouses, apartments, or homes in a subdivision when leased on a unit by unit

basis even though these units may be part of a larger building or parcel of real estate containing more than four residential units.

B. In addition to all other taxes and fees permitted by law, (i) the governing body of any locality embraced by the Northern Virginia Transportation Authority may, by ordinance, annually impose on all real property in the locality specially classified in subsection A: an amount of real property tax, in addition to such amount otherwise authorized by law, at a rate not to exceed $0.125 per $100 of assessed value as the governing body may, by ordinance, impose upon the annual assessed value of all real property used for or zoned to permit commercial or industrial uses; and (ii) the governing body of any locality wholly embraced by the Hampton Roads metropolitan planning area as of January 1, 2008, pursuant to § 134 of Title 23 of the United States Code may, by ordinance, annually impose on all real property in the locality specially classified in subsection A: an amount of real property tax, in addition to such amount otherwise authorized by law, at a rate not to exceed $0.10 per $100 of assessed value as the governing body may, by ordinance, impose upon the annual assessed value of all real property used for or zoned to permit commercial or industrial uses. The authority granted in this subsection shall be subject to the following conditions:

(1) Upon appropriation, all revenues generated from the additional real property tax imposed shall be used to benefit the locality imposing the tax solely for (i) new road construction and associated planning, design, and right-of-way acquisition, including new additions to, expansions, or extensions of existing roads that add new capacity, service, or access, (ii) new public transit construction and associated planning, design, and right-of-way acquisition, including new additions to, expansions, or extensions of existing public transit projects that add new capacity, service, or access, (iii) other capital costs related to new transportation projects that add new capacity, service, or access and the operating costs directly related to the foregoing, or (iv) the issuance costs and debt service on bonds that may be issued to support the capital costs permitted in subdivisions (i), (ii), or (iii); and

(2) The additional real property tax imposed shall be levied, administered, enforced, and collected in the same manner as set forth in Subtitle III of Title 58.1 for the levy, administration, enforcement, and collection of local taxes. In addition, the local assessor shall separately assess and set forth upon the locality's land book the fair market value of that portion of property that is defined as a separate class of real property for local taxation in accordance with the provisions of this section.

C. Beginning January 1, 2008, in lieu of the authority set forth in subsections A and B above and solely for the purposes of imposing the tax authorized pursuant to this section, in the counties and cities wholly embraced by the Northern Virginia Transportation Authority and the Hampton Roads metropolitan planning area as of January 1, 2008, pursuant to § 134 of Title 23 of the United States Code, all real property used for or zoned to permit commercial or industrial uses is hereby declared to be a separate class of real property for local taxation. Such classification of real

property shall exclude all residential uses and all multifamily residential uses, including but not limited to single family residential units, cooperatives, condominiums, townhouses, apartments, or homes in a subdivision when leased on a unit by unit basis even though these units may be part of a larger building or parcel of real estate containing more than four residential units.

D. In addition to all other taxes and fees permitted by law, (i) the governing body of any locality embraced by the Northern Virginia Transportation Authority may, by ordinance, create within its boundaries, one or more special regional transportation tax districts and, thereafter, may, by ordinance, impose upon the real property located in special regional transportation tax districts specially classified in subsection C within such special regional transportation tax districts: an amount of real property tax, in addition to such amounts otherwise authorized by law, at a rate not to exceed $0.125 per $100 of assessed value as the governing body may, by ordinance, impose upon the annual assessed value of all real property used for or zoned to permit commercial or industrial uses; and, (ii) the governing body of any locality wholly embraced by the Hampton Roads metropolitan planning area as of January 1, 2008, pursuant to § 134 of Title 23 of the United States Code may, by ordinance, create within its boundaries, one or more special regional transportation tax districts and, thereafter, may, by ordinance, impose upon the real property specially classified in subsection C within such special regional transportation tax districts: an amount of real property tax, in addition to such amounts otherwise authorized by law, at a rate not to exceed $0.10 per $100 of assessed value as the governing body may, by ordinance, impose upon the annual assessed value of all real property used for or zoned to permit commercial or industrial uses. The authority granted in this subsection shall be subject to the following conditions:

(1) Notwithstanding any other provisions of law to the contrary, upon appropriation, all revenues generated from the additional real property taxes imposed in accordance with subsection C and this subsection shall be used for transportation purposes that benefit the special regional transportation tax district to which such revenue is attributable and solely for (i) new road construction and associated planning, design, and right-of-way acquisition, including new additions to, expansions, or extensions of existing roads that add new capacity, service, or access, (ii) new public transit construction and associated planning, design, and right-of-way acquisition, including new additions to, expansions, or extensions of existing public transit projects that add new capacity, service, or access, (iii) other capital costs related to new transportation projects that add new capacity, service, or access and the operating costs directly related to the foregoing, or (iv) the issuance costs and debt service on bonds that may be issued to support the capital costs permitted in subdivisions (i), (ii), or (iii);

(2) Any local ordinance adopted in accordance with the provisions of subsection C and this subsection shall include the requirement that the additional real property taxes so authorized are to be imposed annually in accordance with applicable law;

(3) Any locality that imposes the additional real property taxes set forth in subsections A and B shall not be permitted to also impose the additional real property taxes set forth in subsection C and this subsection. In addition, any locality electing to impose the additional real property taxes on all real property located in such locality that is specially classified in subsections A and B must do so in the manner prescribed in subsections A and B and not by creation of a special transportation tax district as set forth in subsection C and this subsection. The creation of such special regional transportation tax districts shall not, however, affect the authority of a locality to establish tax districts pursuant to other provisions of law;

(4) The total revenues generated from the additional real property taxes imposed in accordance with subsection C and this subsection shall not be less than 85% of the revenues estimated to be generated when imposing the additional real property taxes in accordance with subsections A and B at the rate of $0.125 per $100 of assessed value in any locality embraced by the Northern Virginia Transportation Authority and at the rate of $0.10 per $100 of assessed value in any locality wholly embraced by the Hampton Roads metropolitan planning area as of January 1, 2008, pursuant to § 134 of Title 23 of the United States Code; and

(5) The additional real property taxes imposed pursuant to subsection C and this subsection shall be levied, administered, enforced, and collected, in the same manner as set forth in Subtitle III of Title 58.1 for the levy, administration, enforcement, and collection of all local taxes. In addition, the local assessor shall separately assess and set forth upon the locality's land book the fair market value of that portion of property that is defined as separate class of real property for local taxation in accordance with the provisions of this section.

2007, c. 896; 2009, cc. 677, 822, 864, 871.

§ 58.1-3221.4. Classification of improvements to real property designed and used primarily for the manufacture of a renewable energy product for tax purposes

Improvements to real property designed and used primarily for the purpose of manufacturing a product from renewable energy, as defined in § 56-576, are hereby declared to be a separate class of property and shall constitute a classification for local taxation separate from other classifications of real property. The governing body of any county, city, or town may, by ordinance, levy a tax on the value of such improvements at a different rate from that of tax levied on other real property. The rate of tax imposed by any county, city, or town on such improvements shall not exceed that applicable to the general class of real property.

2010, cc. 264, 849.

§ 58.1-3221.5. Classification of certain historical buildings for tax purposes

Buildings that are individually listed on the Virginia Landmarks Register, not including the real estate or land on which they are located, are hereby declared to be a separate class of property and shall constitute a classification for local taxation separate from other classifications of real property. The governing body of any county, city, or town may, by ordinance, levy a tax on the value

of such buildings at a different rate from that of tax levied on other 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 Register. The rate of tax imposed by any county, city, or town on such buildings shall not exceed that applicable to the general class of real property.

2011, cc. 571, 581.

§ 58.1-3222. Abatement of levies on buildings razed, destroyed or damaged by fortuitous happenings

The governing body of any county or city may provide for the abatement of levies on buildings which are (i) razed, or (ii) destroyed or damaged by a fortuitous happening beyond the control of the owner. In any county or city wherein assessments are made as provided in § 58.1-3292 or § 58.1-3292.1, the governing body shall so provide. No such abatement, however, shall be allowed if the destruction or damage to such building shall decrease the value thereof by less than $500. Also, no such abatement shall be allowed unless the destruction or damage renders the building unfit for use and occupancy for thirty days or more during the calendar year. The tax on such razed, destroyed or damaged building is computed according to the ratio which the portion of the year the building was fit for use, occupancy and enjoyment bears to the entire year. Application for such abatement shall be made by or on behalf of the owner of the building within six months of the date on which the building was razed, destroyed or damaged.

Code 1950, § 58-811.2; 1958, c. 559; 1984, cc. 372, 675; 2000, c. 399.

§ 58.1-3223. Taxation of life tenant's interest when remainder held by United States

The life tenant of any property, a remainder interest in which has been acquired by the United States, shall receive a credit on his real estate tax each year for any amount paid to the county, city or town in such years under § 3 of Public Law 94-565 (31 U.S.C. § 1603) on behalf of such property. Such credit shall not exceed the amount of tax on such property.

Code 1950, § 58-761.1; 1980, c. 290; 1984, c. 675.

§ 58.1-3224. Apportionment of city taxes when part of real estate becomes separately owned

The circuit court of any city in which is situated real estate upon which city taxes have been assessed may, when any part of such real estate has become, since such assessment, the separate property of any of the original owners or of any other person in interest, determine the value, as of the date of the original assessment, of any portion of such real estate so separately owned. The court may also determine what part of the whole amount of the taxes, and of the penalties, if penalties have accrued upon the taxes, and of the expenses of the sale, if the property has been sold for the nonpayment of such taxes and purchased by such city or any person, may be paid by such owner of such separate part, his heirs or assigns, in order to release or redeem such part from the lien of the taxes originally assessed. The amount so fixed shall bear the same relation to the whole amount of such taxes, penalties and expenses as the value of such part of such real estate bore to

the value of the whole, as of the date of the original assessment. The city attorney of such city and the commissioner of revenue shall have at least five days' notice of such application, and the order of the court shall show that fact. Upon the payment of the amount so fixed, including all costs, the owner of any such part, his heirs or assigns, shall hold the same free from any lien for city taxes for the year or years in question. Upon such payment and the delivery to him of a copy of the order of the court, the officer whose duty it is to receive such payment of such taxes shall make an appropriate entry on the tax books showing what part of the land has been so released or redeemed. Any person, upon request and the payment of a seventy-five cent fee, shall receive a copy of the order.

The provisions of this section shall not apply to any city until the city council shall by ordinance or resolution provide for its application to such city.

Code 1950, § 58-825; 1984, c. 675.

§ 58.1-3225. Apportionment of taxes, etc., on partition

When there is a partition of any real estate owned by two or more persons as joint tenants, tenants in common or coparceners and taxes or taxes, penalty and interest or levies or assessments of any kind, whether state, county, city or town, are charged or chargeable against the joint estate, the circuit court of the county or the city in which such real estate is situated, shall, on the motion of any person to whom a portion of such real estate has been set off or allotted, or on the motion of any person who has the right to charge such portion or portions with a debt, ascertain and fix the pro rata of such amount aforesaid, which should be paid by such person on the portion or portions of such real estate set off or allotted to him. When the pro rata of such amount has been so ascertained and paid, he shall hold the portion or portions of such real estate set off or allotted to him or them, free from the residue of the tax, or tax, penalty and interest or levy or assessment charged on the tract before partition. And the portion or portions of such real estate set off or allotted to the person who shall not have paid their pro rata of the tax, or the tax, penalty and interest or levy or assessment, shall be charged with and held bound for the portion of such amount aforesaid remaining unpaid, in the same manner as if the partition had been made before the tax, or tax penalty and interest or levy or assessment had been assessed or accrued.

Code 1950, § 58-826; 1984, c. 675.

§ 58.1-3226. Procedure for such apportionment

Before such motion shall be made, five days' notice thereof shall be given to the commissioner of the revenue, treasurer, and county or city attorney, and if none, to the attorney for the Commonwealth. The county or city attorney, and if none, the attorney for the Commonwealth shall be present and defend the motion, and the order of the court shall show the fact.

When such order has been made, the proper clerk shall certify a copy thereof to the commissioner of the revenue and treasurer. Such officers shall make entry of such order in the proper books and the clerk shall make an entry of such order in the delinquent land books, if such land has been

returned delinquent, and shall furnish a copy thereof, for a fee of seventy-five cents to the person or persons making such motion.

Code 1950, § 58-827; 1984, c. 675.

§ 58.1-3226.1. Release of lien on portion of real estate upon payment of taxes

The local governing body of any county, city or town may adopt an ordinance providing that when an individual purchases or acquires a portion of a tract of real estate, the individual or treasurer may apply to the commissioner of the revenue, or the real estate assessor of the county, city or town in which the real estate is located to determine the amount of any tax or assessment that is properly chargeable against such portion of real estate. The treasurer shall release such portion of real estate from any lien for delinquent taxes, upon receipt of payment for the total amount of taxes and penalty and interest due on such portion of real estate.

1987, c. 245; 1988, c. 277.

§ 58.1-3227. Proration of delinquent taxes after purchase of part of tract

Any person who shall become the purchaser or in anywise acquire a portion of a tract of land or one or more lots, more than one of which are together assessed on one or more lines of the land assessment books, or any person having the right to charge a portion of a tract of land or one or more such lots with a debt, may petition the circuit court of the county or city wherein such real estate is situated to determine how much and what part of any delinquent tax, levy or assessment is properly chargeable against the land or lot or lots so purchased or acquired by such person or so liable to be charges for a debt. All persons interested in such real estate shall be summoned and made parties defendant to such petition and shall be entitled to ten days' notice thereof before a hearing may be held. The court may enter such order as may appear just and proper and, upon payment of the amount of the tax, levy or assessment due from the petitioners, the clerk of the court shall note the same on the margin of the delinquent tax books. Any person so paying part of any delinquent tax levy or assessment shall be entitled to sue and obtain judgment against any person primarily liable for such delinquent tax or who may have contracted for the payment of the same and failed to pay.

Code 1950, § 58-828; 1984, c. 675.

§ 58.1-3228. Release of delinquent tax lien to facilitate a conveyance of real property

The local governing body of any county, city, or town may adopt an ordinance authorizing the locality to release all liens for delinquent real estate taxes, or any portion thereof, including penalty and accumulated interest, in order to facilitate the conveyance of the property. Such liens may only be released under the following conditions:

1. The purchaser is unrelated by blood or marriage to the owner;

2. The purchaser has no business association with the owner;

3. The purchaser owes no delinquent real estate taxes for any real property; and

4. The property, including land and improvements, is valued at less than $50,000.

All such liens shall remain the personal obligation of the owner of the property at the time the liens were imposed.

2000, c. 756.

Article 4 - SPECIAL ASSESSMENT FOR LAND PRESERVATION

§ 58.1-3229. Declaration of policy [Not set out]

Not set out. (1950, § 58-769.4; 1971, Ex. Sess., c. 172; 1984, c. 675.)

§ 58.1-3230. Special classifications of real estate established and defined

For the purposes of this article the following special classifications of real estate are established and defined:

"Real estate devoted to agricultural use" shall mean real estate devoted to the bona fide production for sale of plants and animals useful to man under uniform standards prescribed by the Commissioner of Agriculture and Consumer Services in accordance with the Administrative Process Act (§ 2.2-4000 et seq.), or devoted to and meeting the requirements and qualifications for payments or other compensation pursuant to a soil conservation program under an agreement with an agency of the federal government. Prior, discontinued use of property shall not be considered in determining its current use. Real estate upon which recreational activities are conducted for a profit or otherwise shall be considered real estate devoted to agricultural use as long as the recreational activities conducted on such real estate do not change the character of the real estate so that it does not meet the uniform standards prescribed by the Commissioner. Real property that has been designated as devoted to agricultural use shall not lose such designation solely because a portion of the property is being used for a different purpose pursuant to a special use permit or otherwise allowed by zoning, provided that the property, excluding such portion, otherwise meets all the requirements for such designation. The portion of the property being used for a different purpose pursuant to a special use permit or otherwise allowed by zoning shall be deemed a separate piece of property from the remaining property for purposes of assessment. The presence of utility lines on real property shall not be considered in determining whether the property, including the portion where the utility lines are located, is devoted to agricultural use. In determining whether real property is devoted to agricultural use, zoning designations and special use permits for the property shall not be the sole considerations.

"Real estate devoted to horticultural use" shall mean real estate devoted to the bona fide production for sale of fruits of all kinds, including grapes, nuts, and berries; vegetables; and nursery and floral products under uniform standards prescribed by the Commissioner of Agriculture and Consumer Services in accordance with the Administrative Process Act (§ 2.2-4000 et seq.), or real estate devoted to and meeting the requirements and qualifications for payments or other compensation pursuant to a soil conservation program under an agreement with an agency of the federal government. Prior, discontinued use of property shall not be considered in determining its

current use. Real estate upon which recreational activities are conducted for profit or otherwise shall be considered real estate devoted to horticultural use as long as the recreational activities conducted on such real estate do not change the character of the real estate so that it does not meet the uniform standards prescribed by the Commissioner. Real property that has been designated as devoted to horticultural use shall not lose such designation solely because a portion of the property is being used for a different purpose pursuant to a special use permit or otherwise allowed by zoning, provided that the property, excluding such portion, otherwise meets all the requirements for such designation. The portion of the property being used for a different purpose pursuant to a special use permit or otherwise allowed by zoning shall be deemed a separate piece of property from the remaining property for purposes of assessment. The presence of utility lines on real property shall not be considered in determining whether the property, including the portion where the utility lines are located, is devoted to horticultural use. In determining whether real property is devoted to horticultural use, zoning designations and special use permits for the property shall not be the sole considerations.

"Real estate devoted to forest use" shall mean land, including the standing timber and trees thereon, devoted to tree growth in such quantity and so spaced and maintained as to constitute a forest area under standards prescribed by the State Forester pursuant to the authority set out in § 58.1-3240 and in accordance with the Administrative Process Act (§ 2.2-4000 et seq.). Prior, discontinued use of property shall not be considered in determining its current use. Real estate upon which recreational activities are conducted for profit, or otherwise, shall still be considered real estate devoted to forest use as long as the recreational activities conducted on such real estate do not change the character of the real estate so that it no longer constitutes a forest area under standards prescribed by the State Forester pursuant to the authority set out in § 58.1-3240. Real property that has been designated as devoted to forest use shall not lose such designation solely because a portion of the property is being used for a different purpose pursuant to a special use permit or is otherwise allowed by zoning, provided that the property, excluding such portion, otherwise meets all the requirements for such designation. The portion of the property being used for a different purpose pursuant to a special use permit or otherwise allowed by zoning shall be deemed a separate piece of property from the remaining property for purposes of assessment. The presence of utility lines on real property shall not be considered in determining whether the property, including the portion where the utility lines are located, is devoted to forest use. In determining whether real property is devoted to forest use, zoning designations and special use permits for the property shall not be the sole considerations.

"Real estate devoted to open-space use" shall mean real estate used as, or preserved for, (i) park or recreational purposes, including public or private golf courses, (ii) conservation of land or other natural resources, (iii) floodways, (iv) wetlands as defined in § 58.1-3666, (v) riparian buffers as defined in § 58.1-3666, (vi) historic or scenic purposes, or (vii) assisting in the shaping of the character, direction, and timing of community development or for the public interest and consistent

with the local land-use plan under uniform standards prescribed by the Director of the Department of Conservation and Recreation pursuant to the authority set out in § 58.1-3240 and in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) and the local ordinance. Prior, discontinued use of property shall not be considered in determining its current use. Real property that has been designated as devoted to open-space use shall not lose such designation solely because a portion of the property is being used for a different purpose pursuant to a special use permit or is otherwise allowed by zoning, provided that the property, excluding such portion, otherwise meets all the requirements for such designation. The portion of the property being used for a different purpose pursuant to a special use permit or otherwise allowed by zoning shall be deemed a separate piece of property from the remaining property for purposes of assessment. The presence of utility lines on real property shall not be considered in determining whether the property, including the portion where the utility lines are located, is devoted to open-space use. In determining whether real property is devoted to open-space use, zoning designations and special use permits for the property shall not be the sole considerations.

Code 1950, § 58-769.5; 1971, Ex. Sess., c. 172; 1973, c. 209; 1984, cc. 675, 739, 750; 1987, c. 550; 1988, c. 695; 1989, cc. 648, 656; 1996, c. 573; 1998, c. 516; 2006, c. 817; 2009, c. 800; 2012, c. 653.

§ 58.1-3231. Authority of counties, cities and towns to adopt ordinances; general reassessment following adoption of ordinance

Any county, city or town which has adopted a land-use plan may adopt an ordinance to provide for the use value assessment and taxation, in accord with the provisions of this article, of real estate classified in § 58.1-3230. The local governing body pursuant to § 58.1-3237.1 may provide in the ordinance that property located in specified zoning districts shall not be eligible for special assessment as provided in this article. The provisions of this article shall not be applicable in any county, city or town for any year unless such an ordinance is adopted by the governing body thereof not later than June 30 of the year previous to the year when such taxes are first assessed and levied under this article, or December 31 of such year for localities which have adopted a fiscal year assessment date of July 1, under Chapter 30 (§ 58.1-3000 et seq.) of this subtitle. The provisions of this article also shall not apply to the assessment of any real estate assessable pursuant to law by a central state agency.

Land used in agricultural and forestal production within an agricultural district, a forestal district or an agricultural and forestal district that has been established under Chapter 43 (§ 15.2-4300 et seq.) of Title 15.2, shall be eligible for the use value assessment and taxation whether or not a local land-use plan or local ordinance pursuant to this section has been adopted.

Such ordinance shall provide for the assessment and taxation in accordance with the provisions of this article of any or all of the four classes of real estate set forth in § 58.1-3230. If the uniform standards prescribed by the Commissioner of Agriculture and Consumer Services pursuant to § 58.1-3230 require real estate to have been used for a particular purpose for a minimum length of

time before qualifying as real estate devoted to agricultural use or horticultural use, then such ordinance may waive such prior use requirement for real estate devoted to the production of agricultural and horticultural crops that require more than two years from initial planting until commercially feasible harvesting.

In addition to but not to replace any other requirements of a land-use plan such ordinance may provide that the special assessment and taxation be established on a sliding scale which establishes a lower assessment for property held for longer periods of time within the classes of real estate set forth in § 58.1-3230. Any such sliding scale shall be set forth in the ordinance.

Notwithstanding any other provision of law, the governing body of any county, city or town shall be authorized to direct a general reassessment of real estate in the year following adoption of an ordinance pursuant to this article.

Code 1950, § 58-769.6; 1971, Ex. Sess., c. 172; 1973, c. 209; 1974, c. 34; 1975, c. 233; 1977, c. 681; 1978, c. 250; 1984, cc. 92, 675; 1987, c. 628; 1988, c. 695; 1999, c. 1026; 2000, c. 410; 2001, c. 705.

§ 58.1-3232. Authority of city to provide for assessment and taxation of real estate in newly annexed area

The council of any city may adopt an ordinance to provide for the assessment and taxation of only the real estate in an area newly annexed to such city in accord with the provisions of this article. All of the provisions of this article shall be applicable to such ordinance, except that if the county from which such area was annexed has in operation an ordinance hereunder, the ordinance of such city may be adopted at any time prior to April 1 of the year for which such ordinance will be effective, and applications from landowners may be received at any time within thirty days of the adoption of the ordinance in such year. If such ordinance is adopted after the date specified in § 58.1-3231, the ranges of suggested values made by the State Land Evaluation Advisory Council for the county from which such area was annexed are to be considered the value recommendations for such city. An ordinance adopted under the authority of this section shall be effective only for the tax year immediately following annexation.

Code 1950, § 58-769.6:1; 1976, c. 58; 1984, c. 675.

§ 58.1-3233. Determinations to be made by local officers before assessment of real estate under ordinance

Prior to the assessment of any parcel of real estate under any ordinance adopted pursuant to this article, the local assessing officer shall:

1. Determine that the real estate meets the criteria set forth in § 58.1-3230 and the standards prescribed thereunder to qualify for one of the classifications set forth therein, and he may request an opinion from the Director of the Department of Conservation and Recreation, the State Forester or the Commissioner of Agriculture and Consumer Services;

2. Determine further that real estate devoted solely to (i) agricultural or horticultural use consists of a minimum of five acres, except that for real estate used for agricultural purposes, for purposes of engaging in aquaculture as defined in § 3.2-2600, or for purposes of raising specialty crops as defined by local ordinance, the governing body may by ordinance prescribe that these uses consist of a minimum acreage of less than five acres; (ii) forest use consists of a minimum of 20 acres; and (iii) open-space use consists of a minimum of five acres or such greater minimum acreage as may be prescribed by local ordinance, except that for real estate adjacent to a scenic river, a scenic highway, a Virginia Byway or public property in the Virginia Outdoors Plan or for any real estate in any city, county or town having a density of population greater than 5,000 per square mile, for any real estate in any county operating under the urban county executive form of government, or the unincorporated Town of Yorktown chartered in 1691, the governing body may by ordinance prescribe that land devoted to open-space uses consist of a minimum of one quarter of an acre.

The minimum acreage requirements for special classifications of real estate shall be determined by adding together the total area of contiguous real estate excluding recorded subdivision lots recorded after July 1, 1983, titled in the same ownership. However, for purposes of adding together such total area of contiguous real estate, any noncontiguous parcel of real property included in an agricultural, forestal, or an agricultural and forestal district of local significance pursuant to subsection B of § 15.2-4405 shall be deemed to be contiguous to any other real property that is located in such district. For purposes of this section, properties separated only by a public right-of-way are considered contiguous; and

3. Determine further that real estate devoted to open-space use is (i) within an agricultural, a forestal, or an agricultural and forestal district entered into pursuant to Chapter 43 (§ 15.2-4300 et seq.) of Title 15.2, or (ii) subject to a recorded perpetual easement that is held by a public body, and promotes the open-space use classification, as defined in § 58.1-3230, or (iii) subject to a recorded commitment entered into by the landowners with the local governing body, or its authorized designee, not to change the use to a nonqualifying use for a time period stated in the commitment of not less than four years nor more than 10 years. Such commitment shall be subject to uniform standards prescribed by the Director of the Department of Conservation and Recreation pursuant to the authority set out in § 58.1-3240. Such commitment shall run with the land for the applicable period, and may be terminated in the manner provided in § 15.2-4314 for withdrawal of land from an agricultural, a forestal or an agricultural and forestal district.

Code 1950, § 58-769.7; 1971, Ex. Sess., c. 172; 1973, c. 209; 1980, c. 75; 1984, cc. 675, 739, 750; 1987, c. 550; 1988, cc. 462, 695; 1989, c. 656; 1990, c. 695; 1991, cc. 69, 490; 2002, c. 475; 2003, c. 356; 2010, c. 653; 2015, c. 485.

§ 58.1-3234. Application by property owners for assessment, etc., under ordinance; continuation of assessment, etc

Property owners must submit an application for taxation on the basis of a use assessment to the local assessing officer:

1. At least sixty days preceding the tax year for which such taxation is sought; or

2. In any year in which a general reassessment is being made, the property owner may submit such application until thirty days have elapsed after his notice of increase in assessment is mailed in accordance with § 58.1-3330, or sixty days preceding the tax year, whichever is later; or

3. In any locality which has adopted a fiscal tax year under Chapter 30 (§ 58.1-3000 et seq.) of this Subtitle III, but continues to assess as of January 1, such application must be submitted for any year at least sixty days preceding the effective date of the assessment for such year.

The governing body, by ordinance, may permit applications to be filed within no more than sixty days after the filing deadline specified herein, upon the payment of a late filing fee to be established by the governing body. In addition, a locality may, by ordinance, permit a further extension of the filing deadline specified herein, upon payment of an extension fee to be established by the governing body in an amount not to exceed the late filing fee, to a date not later than thirty days after notices of assessments are mailed. An individual who is owner of an undivided interest in a parcel may apply on behalf of himself and the other owners of such parcel upon submitting an affidavit that such other owners are minors or cannot be located. An application shall be submitted whenever the use or acreage of such land previously approved changes; however, no application fee may be required when a change in acreage occurs solely as a result of a conveyance necessitated by governmental action or condemnation of a portion of any land previously approved for taxation on the basis of use assessment. The governing body of any county, city or town may, however, require any such property owner to revalidate annually with such locality, on or before the date on which the last installment of property tax prior to the effective date of the assessment is due, on forms prepared by the locality, any applications previously approved. Each locality which has adopted an ordinance hereunder may provide for the imposition of a revalidation fee every sixth year. Such revalidation fee shall not, however, exceed the application fee currently charged by the locality. The governing body may also provide for late filing of revalidation forms on or before the effective date of the assessment, on payment of a late filing fee. Forms shall be prepared by the State Tax Commissioner and supplied to the locality for use of the applicants and applications shall be submitted on such forms. An application fee may be required to accompany all such applications.

In the event of a material misstatement of facts in the application or a material change in such facts prior to the date of assessment, such application for taxation based on use assessment granted thereunder shall be void and the tax for such year extended on the basis of value determined under § 58.1-3236 D. Except as provided by local ordinance, no application for assessment based on use shall be accepted or approved if, at the time the application is filed, the tax on the land affected is delinquent. Upon the payment of all delinquent taxes, including penalties and interest, the application shall be treated in accordance with the provisions of this section.

Continuation of valuation, assessment and taxation under an ordinance adopted pursuant to this article shall depend on continuance of the real estate in a qualifying use, continued payment of taxes as referred to in § 58.1-3235, and compliance with the other requirements of this article and the ordinance and not upon continuance in the same owner of title to the land.

In the event that the locality provides for a sliding scale under an ordinance, the property owner and the locality shall execute a written agreement which sets forth the period of time that the property shall remain within the classes of real estate set forth in § 58.1-3230. The term of the written agreement shall be for a period not exceeding twenty years, and the instrument shall be recorded in the office of the clerk of the circuit court for the locality in which the subject property is located.

Code 1950, § 58-769.8; 1971, Ex. Sess., c. 172; 1973, cc. 93, 209; 1974, c. 33; 1976, c. 478; 1977, c. 213; 1978, cc. 250, 644, 645; 1979, cc. 180, 632; 1980, cc. 493, 508; 1982, c. 624; 1984, cc. 92, 675; 1988, c. 695; 1993, c. 102; 1999, c. 1026; 2001, c. 50.

§ 58.1-3235. Removal of parcels from program if taxes delinquent

If on April 1 of any year the taxes for any prior year on any parcel of real property which has a special assessment as provided for in this article are delinquent, the appropriate county, city or town treasurer shall forthwith send notice of that fact and the general provisions of this section to the property owner by first-class mail. If, after the notice has been sent, such delinquent taxes remain unpaid on June 1, the treasurer shall notify the appropriate commissioner of the revenue who shall remove such parcel from the land use program. Such removal shall become effective for the current tax year.

Code 1950, § 58-769.8:1; 1980, c. 508; 1984, c. 675; 1994, c. 199.

§ 58.1-3236. Valuation of real estate under ordinance

A. In valuing real estate for purposes of taxation by any county, city or town which has adopted an ordinance pursuant to this article, the commissioner of the revenue or duly appointed assessor shall consider only those indicia of value which such real estate has for agricultural, horticultural, forest or open space use, and real estate taxes for such jurisdiction shall be extended upon the value so determined. In addition to use of his personal knowledge, judgment and experience as to the value of real estate in agricultural, horticultural, forest or open space use, he shall, in arriving at the value of such land, consider available evidence of agricultural, horticultural, forest or open space capability, and the recommendations of value of such real estate as made by the State Land Evaluation Advisory Council.

B. In determining the total area of real estate actively devoted to agricultural, horticultural, forest or open space use there shall be included the area of all real estate under barns, sheds, silos, cribs, greenhouses, public recreation facilities and like structures, lakes, dams, ponds, streams, irrigation ditches and like facilities; but real estate under, and such additional real estate as may be actually used in connection with, the farmhouse or home or any other structure not related to such special use, shall be excluded in determining such total area.

C. All structures which are located on real estate in agricultural, horticultural, forest or open space use and the farmhouse or home or any other structure not related to such special use and the real estate on which the farmhouse or home or such other structure is located, together with the additional real estate used in connection therewith, shall be valued, assessed and taxed by the same standards, methods and procedures as other taxable structures and other real estate in the locality.

D. In addition, such real estate in agricultural, horticultural, forest or open space use shall be evaluated on the basis of fair market value as applied to other real estate in the taxing jurisdiction, and land book records shall be maintained to show both the use value and the fair market value of such real estate.

Code 1950, § 58-769.9; 1971, Ex. Sess., c. 172; 1984, c. 675.

§ 58.1-3237. Change in use or zoning of real estate assessed under ordinance; roll-back taxes

A. When real estate qualifies for assessment and taxation on the basis of use under an ordinance adopted pursuant to this article, and the use by which it qualified changes to a nonqualifying use, or, except as provided by ordinance enacted pursuant to subsection G, the zoning of the real estate is changed to a more intensive use at the request of the owner or his agent, it shall be subject to additional taxes, hereinafter referred to as roll-back taxes. Such additional taxes shall only be assessed against that portion of such real estate which no longer qualifies for assessment and taxation on the basis of use or zoning. Liability for roll-back taxes shall attach and be paid to the treasurer only if the amount of tax due exceeds ten dollars.

B. In localities which have not adopted a sliding scale ordinance, the roll-back tax shall be equal to the sum of the deferred tax for each of the five most recent complete tax years including simple interest on such roll-back taxes at a rate set by the governing body, no greater than the rate applicable to delinquent taxes in such locality pursuant to § 58.1-3916 for each of the tax years. The deferred tax for each year shall be equal to the difference between the tax levied and the tax that would have been levied based on the fair market value assessment of the real estate for that year. In addition the taxes for the current year shall be extended on the basis of fair market value which may be accomplished by means of a supplemental assessment based upon the difference between the use value and the fair market value.

C. In localities which have adopted a sliding scale ordinance, the roll-back tax shall be equal to the sum of the deferred tax from the effective date of the written agreement including simple interest on such roll-back taxes at a rate set by the governing body, which shall not be greater than the rate applicable to delinquent taxes in such locality pursuant to § 58.1-3916, for each of the tax years. The deferred tax for each year shall be equal to the difference between the tax levied and the tax that would have been levied based on the fair market value assessment of the real estate for that year and based on the highest tax rate applicable to the real estate for that year, had it not been subject to special assessment. In addition the taxes for the current year shall be extended on

the basis of fair market value which may be accomplished by means of a supplemental assessment based upon the difference between the use value and the fair market value and based on the highest tax rate applicable to the real estate for that year.

D. Liability to the roll-back taxes shall attach when a change in use occurs, or, except as provided by ordinance enacted pursuant to subsection G, a change in zoning of the real estate to a more intensive use at the request of the owner or his agent occurs. Liability to the roll-back taxes shall not attach when a change in ownership of the title takes place if the new owner does not rezone the real estate to a more intensive use, unless otherwise provided by ordinance enacted pursuant to subsection G, and continues the real estate in the use for which it is classified under the conditions prescribed in this article and in the ordinance. The owner of any real estate which has been zoned to more intensive use at the request of the owner or his agent as provided in subsection E, or otherwise subject to or liable for roll-back taxes, shall, within sixty days following such change in use or zoning, report such change to the commissioner of the revenue or other assessing officer on such forms as may be prescribed. The commissioner shall forthwith determine and assess the roll-back tax, which shall be assessed against and paid by the owner of the property at the time the change in use which no longer qualifies occurs, or at the time of the zoning of the real estate to a more intensive use at the request of the owner or his agent occurs, and shall be paid to the treasurer within thirty days of the assessment. If the amount due is not paid by the due date, the treasurer shall impose a penalty and interest on the amount of the roll-back tax, including interest for prior years. Such penalty and interest shall be imposed in accordance with §§ 58.1-3915 and 58.1-3916.

E. Real property zoned to a more intensive use, at the request of the owner or his agent, shall be subject to and liable for the roll-back tax at the time such zoning is changed. The roll-back tax shall be levied and collected from the owner of the real estate in accordance with subsection D. Real property zoned to a more intensive use before July 1, 1988, at the request of the owner or his agent, shall be subject to and liable for the roll-back tax at the time the qualifying use is changed to a nonqualifying use. Real property zoned to a more intensive use at the request of the owner or his agent after July 1, 1988, shall be subject to and liable for the roll-back tax at the time of such zoning. Said roll-back tax, plus interest calculated in accordance with subsection B, shall be levied and collected at the time such property was rezoned. For property rezoned after July 1, 1988, but before July 1, 1992, no penalties or interest, except as provided in subsection B, shall be assessed, provided the said roll-back tax is paid on or before October 1, 1992. No real property rezoned to a more intensive use at the request of the owner or his agent shall be eligible for taxation and assessment under this article, provided that these provisions shall not be applicable to any rezoning which is required for the establishment, continuation, or expansion of a qualifying use. If the property is subsequently rezoned to agricultural, horticultural, or open space, it shall be eligible for consideration for assessment and taxation under this article only after three years have passed since the rezoning was effective.

However, the owner of any real property that qualified for assessment and taxation on the basis of use, and whose real property was rezoned to a more intensive use at the owner's request prior to 1980, may be eligible for taxation and assessment under this article provided the owner applies for rezoning to agricultural, horticultural, open-space or forest use. The real property shall be eligible for assessment and taxation on the basis of the qualifying use for the tax year following the effective date of the rezoning. If any such real property is subsequently rezoned to a more intensive use at the owner's request, within five years from the date the property was initially rezoned to a qualifying use under this section, the owner shall be liable for roll-back taxes when the property is rezoned to a more intensive use. Additionally, the owner shall be subject to a penalty equal to fifty percent of the roll-back taxes due as determined under subsection B of this section.

The roll-back taxes and penalty that otherwise would be imposed under this subsection shall not become due at the time the zoning is changed if the locality has enacted an ordinance pursuant to subsection G.

F. If real estate annexed by a city and granted use value assessment and taxation becomes subject to roll-back taxes, and such real estate likewise has been granted use value assessment and taxation by the county prior to annexation, the city shall collect roll-back taxes and interest for the maximum period allowed under this section and shall return to the county a share of such taxes and interest proportionate to the amount of such period, if any, for which the real estate was situated in the county.

G. A locality may enact an ordinance providing that (i) when a change in zoning of real estate to a more intensive use at the request of the owner or his agent occurs, roll-back taxes shall not become due solely because the change in zoning is for specific more intensive uses set forth in the ordinance, (ii) such real estate may remain eligible for use value assessment and taxation, in accordance with the provisions of this article, as long as the use by which it qualified does not change to a nonqualifying use, and (iii) no roll-back tax shall become due with respect to the real estate until such time as the use by which it qualified changes to a nonqualifying use.

Code 1950, § 58-769.10; 1971, Ex. Sess., c. 172; 1973, c. 209; 1974, c. 34; 1977, c. 323; 1979, c. 179; 1980, c. 363; 1984, cc. 92, 222, 675, 676, 681; 1985, c. 478; 1988, cc. 422, 695; 1990, c. 841; 1992, Sp. Sess., c. 3; 1998, c. 274; 1999, c. 1026; 2013, c. 269.

§ 58.1-3237.1. Authority of counties to enact additional provisions concerning zoning classifications

A. Albemarle County, Arlington County, Augusta County, James City County, Loudoun County, and Rockingham County may include the following additional provisions in any ordinance enacted under the authority of this article:

1. The governing body may exclude land lying in planned development, industrial or commercial zoning districts from assessment under the provisions of this article. As applied to zoning districts, this provision applies only to zoning districts established prior to January 1, 1981.

2. The governing body may provide that when the zoning of the property taxed under the provisions of this article is changed to allow a more intensive nonagricultural use at the request of the owner or his agent, such property shall not be eligible for assessment and taxation under this article. This shall not apply, however, to property that is zoned agricultural and is subsequently rezoned to a more intensive use that is complementary to agricultural use, provided such property continues to be owned by the same owner who owned the property prior to rezoning and continues to operate the agricultural activity on the property. Notwithstanding any other provision of law, such property shall be subject to and liable for roll-back taxes at the time the zoning is changed to allow any use more intensive than the use for which it qualifies for special assessment. The roll-back tax, plus interest, shall be calculated, levied and collected from the owner of the real estate in accordance with § 58.1-3237 at the time the property is rezoned.

B. Goochland County may include additional provisions specified in subdivisions A 1 and 2 in any ordinance enacted under the authority of this article, but only in service districts created after July 1, 2013, pursuant to Article 1 (§ 15.2-2400 et seq.) of Chapter 24 of Title 15.2.

1987, c. 628; 1992, Sp. Sess., c. 3; 1993, c. 584; 2007, c. 813; 2011, c. 12; 2013, c. 677.

§ 58.1-3238. Failure to report change in use; misstatements in applications

Any person failing to report properly any change in use of property for which an application for use value taxation had been filed shall be liable for all such taxes, in such amounts and at such times as if he had complied herewith and assessments had been properly made, and he shall be liable for such penalties and interest thereon as may be provided by ordinance. Any person making a material misstatement of fact in any such application shall be liable for all such taxes, in such amounts and at such times as if such property had been assessed on the basis of fair market value as applied to other real estate in the taxing jurisdiction, together with interest and penalties thereon. If such material misstatement was made with the intent to defraud the locality, he shall be further assessed with an additional penalty of 100 percent of such unpaid taxes.

For purposes of this section and § 58.1-3234, incorrect information on the following subjects will be considered material misstatements of fact:

1. The number and identities of the known owners of the property at the time of application;

2. The actual use of the property.

The intentional misrepresentation of the number of acres in the parcel or the number of acres to be taxed according to use shall also be considered a material misstatement of fact for the purposes of this section and § 58.1-3234.

Code 1950, § 58-769.10:1; 1971, Ex. Sess., c. 172; 1982, c. 624; 1984, cc. 675, 681.

§ 58.1-3239. State Land Evaluation Advisory Committee continued as State Land Evaluation Advisory Council; membership; duties; ordinances to be filed with Council

The State Land Evaluation Advisory Committee is continued and shall hereafter be known as the State Land Evaluation Advisory Council. The Advisory Council shall be composed of the Tax Commissioner, the dean of the College of Agriculture of Virginia Polytechnic Institute and State University, the State Forester, the Commissioner of Agriculture and Consumer Services and the Director of the Department of Conservation and Recreation.

The Advisory Council shall determine and publish a range of suggested values for each of the several soil conservation service land capability classifications for agricultural, horticultural, forest and open space uses in the various areas of the Commonwealth as needed to carry out the provisions of this article.

On or before October 1 of each year the Advisory Council shall submit recommended ranges of suggested values to be effective the following January 1 or July 1 in the case of localities with fiscal year assessment under the authority of Chapter 30 of this subtitle, within each locality which has adopted an ordinance pursuant to the provisions of this article based on the productive earning power of real estate devoted to agricultural, horticultural, forest and open space uses and make such recommended ranges available to the commissioner of the revenue or duly appointed assessor in each such locality.

The Advisory Council, in determining such ranges of values, shall base the determination on productive earning power to be determined by capitalization of warranted cash rents or by the capitalization of incomes of like real estate in the locality or a reasonable area of the locality.

Any locality adopting an ordinance pursuant to this article shall forthwith file a copy thereof with the Advisory Council.

Code 1950, § 58-769.11; 1971, Ex. Sess., c. 172; 1976, c. 55; 1979, c. 152; 1984, cc. 675, 739, 750; 1985, c. 448; 1987, c. 550; 1989, c. 656 .

§ 58.1-3240. Duties of Director of the Department of Conservation and Recreation, the State Forester and the Commissioner of Agriculture and Consumer Services; remedy of person aggrieved by action or nonaction of Director, State Forester or Commissioner

The Director of the Department of Conservation and Recreation, the State Forester, and the Commissioner of Agriculture and Consumer Services shall provide, after holding public hearings, to the commissioner of the revenue or duly appointed assessor of each locality adopting an ordinance pursuant to this article, a statement of the standards referred to in § 58.1-3230 and subdivision 1 of § 58.1-3233, which shall be applied uniformly throughout the Commonwealth in determining whether real estate is devoted to agricultural use, horticultural use, forest use or open-space use for the purposes of this article and the procedure to be followed by such official to obtain the opinion referenced in subdivision 1 of § 58.1-3233. Upon the refusal of the Commissioner of Agriculture and Consumer Services, the State Forester or the Director of the Department of Conservation and Recreation to issue an opinion or in the event of an unfavorable opinion which does not comport with standards set forth in the statements filed pursuant to this section, the

party aggrieved may seek relief in the circuit court of the county or city wherein the real estate in question is located, and in the event that the court finds in his favor, it may issue an order which shall serve in lieu of an opinion for the purposes of this article.

Code 1950, § 58-769.12; 1971, Ex. Sess., c. 172; 1973, c. 209; 1984, cc. 675, 739, 750; 1987, c. 550; 1989, c. 656 .

§ 58.1-3241. Separation of part of real estate assessed under ordinance; contiguous real estate located in more than one taxing locality

A. Separation or split-off of lots, pieces or parcels of land from the real estate which is being valued, assessed and taxed under an ordinance adopted pursuant to this article, either by conveyance or other action of the owner of such real estate, shall subject the real estate so separated to liability for the roll-back taxes applicable thereto, but shall not impair the right of each subdivided parcel of such real estate to qualify for such valuation, assessment and taxation in any and all future years, provided it meets the minimum acreage requirements and such other conditions of this article as may be applicable. Such separation or split-off of lots shall not impair the right of the remaining real estate to continuance of such valuation, assessment and taxation without liability for roll-back taxes, provided it meets the minimum acreage requirements and other applicable conditions of this article.

B.1. No subdivision, separation, or split-off of property which results in parcels that meet the minimum acreage requirements of this article, and that are used for one or more of the purposes set forth in § 58.1-3230, shall be subject to the provisions of subsection A.

2. The application of roll-back taxes pursuant to subsection A shall, at the option of the locality, also not apply to a subdivision, separation, or split-off of property made pursuant to a subdivision ordinance adopted under § 15.2-2244 that results in parcels that do not meet the minimum acreage requirements of this article, provided that title to the parcels subdivided, separated, or split-off is held in the name of an immediate family member for at least the first 60 months immediately following the subdivision, separation, or split-off.

For purposes of this subdivision, an "immediate family member" means any person defined as such in the locality's subdivision ordinance adopted pursuant to § 15.2-2244.

C. Where contiguous real estate in agricultural, horticultural, forest or open-space use in one ownership is located in more than one taxing locality, compliance with the minimum acreage shall be determined on the basis of the total area of such real estate and not the area which is located in the particular taxing locality.

Code 1950, § 58-769.13; 1971, Ex. Sess., c. 172; 1978, c. 385; 1984, c. 675; 1988, c. 695; 2006, c. 221.

§ 58.1-3242. Taking of real estate assessed under ordinance by right of eminent domain

The taking of real estate which is being valued, assessed and taxed under an ordinance adopted pursuant to this article by right of eminent domain shall not subject the real estate so taken to the roll-back taxes herein imposed.

Code 1950, § 58-769.14; 1971, Ex. Sess., c. 172; 1984, c. 675.

§ 58.1-3243. Application of other provisions of Title 58.1

The provisions of this title applicable to local levies and real estate assessment and taxation shall be applicable to assessments and taxation hereunder mutatis mutandis including, without limitation, provisions relating to tax liens, boards of equalization and the correction of erroneous assessments and for such purposes the roll-back taxes shall be considered to be deferred real estate taxes.

Code 1950, § 58-769.15; 1971, Ex. Sess., c. 172; 1980, c. 241; 1983, c. 304; 1984, c. 675.

§ 58.1-3244. Article not in conflict with requirements for preparation and use of true values

Nothing in this article shall be construed to be in conflict with the requirements for preparation and use of true values where prescribed by the General Assembly for use in any fund distribution formula.

Code 1950, § 58-769.15:1; 1971, Ex. Sess., c. 172; 1984, c. 675.

Article 4.1 - TAX INCREMENT FINANCING

§ 58.1-3245. Definitions

As used in this article, unless the context clearly shows otherwise, the term or phrase:

"Base assessed value" means the assessed value of real estate within a development project area as shown upon the land book records of the local assessing officer on January 1 of the year preceding the effective date of the ordinance creating the development project area.

"Blighted area" means any area within the borders of a development project area which impairs economic values and tax revenues, causes an increase in and spread of disease and crime, and is a menace to the health, safety, morals and welfare of the citizens of the Commonwealth; or any area which endangers the public health, safety and welfare because commercial, industrial and residential structures are subject to dilapidation, deterioration, obsolescence, inadequate ventilation, inadequate public utilities and violations of minimum health and safety standards; or any area previously designated as a blighted area pursuant to § 36-48; or any area adjacent to or in the immediate vicinity thereof which may be improved or enhanced in value by the placement of a proposed highway construction project.

"Current assessed value" means the annual assessed value of real estate in a development project area as recorded on the land book records of the local assessing officer.

"Development project area" means any area designated for development or redevelopment in an ordinance passed by the local governing body.

"Development project cost" has the same meaning as the term "cost" in the Public Finance Act (§ 15.2-2600 et seq.) and, in the case of blighted areas, includes amounts paid to carry out the purposes described in § 144(c)(3) of the Internal Revenue Code of 1986, as amended.

"Development project cost commitment" means a determination by the local governing body of payment of a sum specific of development project costs from the tax increment and other available funds in a development area.

"Governing body" means the board of supervisors, council or other legislative body of any county, city or town.

"Obligations" means bonds, general obligation bonds and revenue bonds as defined in § 15.2-2602 of the Public Finance Act (§ 15.2-2600 et seq.), and any other form of indebtedness which the county, city or town may incur.

"Tax increment" means the amount by which the current assessed value of real estate exceeds the base assessed value.

1988, c. 776; 1989, c. 418; 1990, c. 296; 1994, c. 667.

§ 58.1-3245.1. Blighted areas constitute public danger

It is hereby found and declared that blighted areas exist in the Commonwealth, and these areas impair and endanger the health, safety, morals and welfare of the citizens because commercial, residential and industrial structures or improvements are subject to dilapidation, deterioration, inadequate ventilation, and inadequate public utilities. It is a public purpose to provide public facilities including, but not limited to, roads, water, sewers, parks, and real estate devoted to open-space use as that term is defined in § 58.1-3230 within redevelopment and conservation areas to encourage the private development in such areas in order to eliminate blighted conditions. It is essential to the public interest that governing bodies have authority to finance development project costs by using real estate tax increments to encourage private investment in development project areas.

1988, c. 776; 1990, c. 296; 1999, cc. 162, 190; 2006, c. 784.

§ 58.1-3245.2. Tax increment financing

A. The governing body of any county, city or town may adopt tax increment financing by passing an ordinance designating a development project area and providing that real estate taxes in the development project area shall be assessed, collected and allocated in the following manner for so long as any obligations or development project cost commitments secured by the Tax Increment Financing Fund, hereinafter authorized, are outstanding and unpaid.

1. The local assessing officer shall record in the land book both the base assessed value and the current assessed value of the real estate in the development project area.

2. Real estate taxes attributable to the lower of the current assessed value or base assessed value of real estate located in a development project area shall be allocated by the treasurer or director of finance pursuant to the provisions of this chapter.

3. Real estate taxes attributable to the increased value between the current assessed value of any parcel of real estate and the base assessed value of such real estate shall be allocated by the treasurer or director of finance and paid into a special fund entitled the "Tax Increment Financing Fund" to pay the principal and interest on obligations issued or development project cost commitments entered into to finance the development project costs.

B. The governing body shall hold a public hearing on the need for tax increment financing in the county, city or town prior to adopting a tax increment financing ordinance. Notice of the public hearing shall be published once each week for three consecutive weeks immediately preceding the public hearing in each newspaper of general circulation in such county, city or town. The notice shall include the time, place and purpose of the public hearing, define tax increment financing, indicate the proposed boundaries of the development project area, and propose obligations to be issued to finance the development project area costs.

1988, c. 776; 1990, c. 296; 1994, c. 667.

§ 58.1-3245.3. Copies of tax increment financing ordinance to local assessing officer and treasurer or director of finance

The governing body shall transmit to the local assessing officer and treasurer or director of finance a copy of the tax increment financing ordinance, a description of all real estate located within the development project area, a map indicating the boundaries of the development project area and the manner of collecting and allocating real estate taxes pursuant to this article.

1988, c. 776.

§ 58.1-3245.4. Issuance of obligations for project costs

Any county, city or town which adopts tax increment financing may issue obligations and may make development project cost commitments secured by the Tax Increment Financing Fund established in § 58.1-3245.2 to finance the development project costs. All obligations issued pursuant to this section shall be subject to the requirements and limitations of the Public Finance Act (Chapter 26, § 15.2-2600 et seq., of Title 15.2) and the charter provisions of each county, city or town. The ordinance authorizing the issuance of obligations may pledge all or any part of the funds deposited in the Tax Increment Financing Fund for the payment of the development project costs and any obligations to be issued to finance them. Any revenues in the Tax Increment Financing Fund which are not pledged as security for the obligations issued or allocated for development project cost commitments shall be deemed "surplus funds." At the end of the tax year, all surplus funds may be paid into the general fund of the county, city or town in which the development project area is located. The local governing body may agree, in writing, to pay all or a por-

tion of any project development cost in annual installments from the tax increment and other available funds.

A county, city or town may also pledge any part or combination of the following revenues for a period not to exceed the term of the obligations:

1. Net revenues of all or part of any development project;

2. All real estate and tangible personal property taxes;

3. The full faith and credit of the locality;

4. Any other taxes or anticipated revenues that the county, city or town may lawfully pledge.

1988, c. 776; 1990, c. 296; 1994, c. 667.

§ 58.1-3245.4:1. No annual debt limits for certain cities

The Cities of Chesapeake and Virginia Beach, when issuing debt obligations pursuant to § 58.1-3245.4 shall not be subject to any annual debt limitations set forth in the charter provisions of such city.

1994, c. 667; 2005, c. 733.

§ 58.1-3245.5. Dissolving the Tax Increment Financing Fund

The governing body may pass an ordinance to dissolve the Tax Increment Financing Fund, and to terminate the existence of a development project area, upon the payment or defeasance of all obligations secured by the Tax Increment Financing Fund and payment or provision for payment of all development project cost commitments. When the Tax Increment Financing Fund is dissolved, any revenue remaining in the Fund after payment or provision for payment of all such obligations and commitments shall be paid into the general fund of the county, city or town.

Upon dissolving the Tax Increment Financing Fund, the real estate shall be assessed and taxes collected in the same manner as applicable in the year preceding the adoption of the tax increment financing ordinance, and pursuant to this chapter.

1988, c. 776; 1990, c. 296; 1994, c. 667.

Article 4.2 - LOCAL ENTERPRISE ZONE DEVELOPMENT TAXATION PROGRAM

§ 58.1-3245.6. Definitions

As used in this article, unless the context clearly shows otherwise, the term or phrase:

"Base assessed value" means the assessed value of real estate or machinery and tools within a local enterprise zone as shown upon the records of the local assessing officer on January 1 of the year preceding the effective date of the ordinance establishing the local enterprise zone development taxation.

"Current assessed value" means the annual assessed value of real estate or machinery and tools in a local enterprise zone as shown upon the records of the local assessing officer.

"Enterprise zone" means an area designated by the Governor as an enterprise zone pursuant to Chapter 49 (§ 59.1-538 et seq.) of Title 59.1.

"Local enterprise zone" means an enterprise zone designated as a local enterprise zone by an ordinance adopted pursuant to § 58.1-3245.8.

"Tax increment" means all or a portion of the amount by which the current assessed value of real estate or machinery and tools, or both, in a local enterprise zone exceeds the base assessed value.

1997, c. 314; 2005, cc. 863, 884.

§ 58.1-3245.7. Promotion of development of local enterprise zones

It is hereby found and declared that the health, safety, and welfare of the citizens of the Commonwealth are dependent upon the continual encouragement, development, growth, and expansion of the private sector within the Commonwealth and that there are certain areas in the Commonwealth that need the attention of local governments to attract private sector investment. Local government efforts to encourage private investment in areas designated by the Governor as enterprise zones will complement the efforts of the Commonwealth to stimulate business and industrial growth in such areas. It is essential to the public interest that governing bodies of counties, cities, and towns have authority to use tax increments to encourage private investment in local enterprise zones.

1997, c. 314.

§ 58.1-3245.8. Adoption of local enterprise zone development taxation program

A. The governing body of any county, city, or town may adopt a local enterprise zone development taxation program by passing an ordinance designating an enterprise zone located within its boundaries as a local enterprise zone; however, an ordinance may designate an area as a local enterprise zone contingent upon the designation of the area as an enterprise zone pursuant to Chapter 49 (§ 59.1-538 et seq.) of Title 59.1. If the county, city, or town contains more than one enterprise zone, such ordinance may designate one or more as a local enterprise zone. If an enterprise zone is located in more than one county, city, or town, the governing body may designate the portion of the enterprise zone located within its boundaries as a local enterprise zone. An ordinance designating a local enterprise zone shall provide that all or a specified percentage of the real estate taxes, machinery and tools taxes, or both, in the local enterprise zone shall be assessed, collected and allocated in the following manner:

1. The local assessing officer shall record in the appropriate books both the base assessed value and the current assessed value of the real estate or machinery and tools, or both, in the local enterprise zone.

2. Real estate taxes or machinery and tools taxes attributable to the lower of the current assessed value or base assessed value of real estate or machinery and tools located in a local enterprise zone shall be allocated by the treasurer or director of finance as they would be in the absence of such ordinance.

3. All or the specified percentage of the increase in real estate taxes or machinery and tools taxes, or both, attributable to the difference between (i) the current assessed value of such property and (ii) the base assessed value of such property shall be allocated by the treasurer or director of finance and paid into a special fund entitled the "Local Enterprise Zone Development Fund" to be used as provided in § 58.1-3245.10. Such amounts paid into the fund shall not include any additional revenues resulting from an increase in the tax rate on real estate or machinery and tools after the adoption of a local enterprise zone development taxation ordinance, nor shall it include any additional revenues merely resulting from an increase in the assessed value of real estate or machinery and tools which were located in the zone prior to the adoption of a local enterprise zone development taxation ordinance unless such property is improved or enhanced.

B. The governing body shall hold a public hearing on the need for a local enterprise zone development taxation program in the county, city, or town prior to adopting a local enterprise zone development taxation ordinance. Notice of the public hearing shall be published once each week for three consecutive weeks immediately preceding the public hearing in each newspaper of general circulation in such county, city, or town. The notice shall include the time, place and purpose of the public hearing; define local enterprise zone development taxation; indicate the proposed boundaries of the local enterprise zone; state whether all or a specified percentage of real property or machinery or tools, or both, will be subject to local enterprise zone development taxation; and describe the purposes for which funds in the Local Enterprise Zone Development Fund are authorized to be used.

1997, c. 314; 2005, cc. 863, 884.

§ 58.1-3245.9. Copies of local enterprise zone development taxation ordinance to local assessing officer and treasurer or director of finance

The governing body shall transmit to the local assessing officer and treasurer or director of finance a copy of the local enterprise zone development taxation ordinance, a description of all real estate or machinery and tools, or both, located within the local enterprise zone, a map indicating the boundaries of the local enterprise zone and the manner of collecting and allocating real estate taxes or machinery and tools taxes pursuant to this article.

1997, c. 314.

§ 58.1-3245.10. Use of funds deposited in the Local Enterprise Zone Development Fund

A. Any county, city, or town which adopts a local enterprise zone development taxation program may use funds in the Local Enterprise Zone Development Fund for any one or more of the following purposes:

1. To provide enhanced law-enforcement and other governmental services, including financing transportation projects, as may be appropriate to secure and promote private investment in the local enterprise zone;

2. To make grants to chambers of commerce and similar organizations within such county, city, or town in order to secure and promote economic development within the local enterprise zone; or

3. To make grants to any industrial development authority created by the governing body pursuant to Chapter 49 (§ 15.2-4900 et seq.) of Title 15.2, in order to secure and promote economic development within the local enterprise zone.

B. Any revenues in the Local Enterprise Zone Development Fund which are not used for a purpose authorized by subsection A shall be deemed "surplus funds." At the end of the tax year, all surplus funds may be paid into the general fund of the county, city, or town in which the local enterprise zone is located.

1997, c. 314.

§ 58.1-3245.11. Dissolving the Local Enterprise Zone Development Fund

The existence of a local enterprise zone shall terminate, and the Local Enterprise Zone Development Fund shall dissolve, upon the earliest to occur of (i) the passage by the governing body of an ordinance repealing the local enterprise zone taxation ordinance or (ii) the termination of designation of the area as an enterprise zone. When the Local Enterprise Zone Development Fund is dissolved, any revenue remaining in the Fund shall be paid into the general fund of the county, city, or town.

Upon dissolving the Local Enterprise Zone Development Fund, the real estate or machinery and tools, or both, shall be assessed and taxes collected in the same manner as applicable in the year preceding the adoption of the local enterprise zone development taxation ordinance.

1997, c. 314.

§ 58.1-3245.12. Local enterprise zone program for technology zones

The governing body of any county, city, or town may also adopt a local enterprise zone development taxation program for a technology zone, as described in § 58.1-3850, or a defense production and support services zone, as described in § 58.1-3853, located within its boundaries, regardless of whether such technology zone or defense production and support services zone has been designated by the Governor as an enterprise zone pursuant to Chapter 49 (§ 59.1-538 et seq.) of Title 59.1. Such program for a technology zone or defense production and support services zone shall be adopted by local ordinance. All other provisions in this article as they relate to a local enterprise zone development taxation program for enterprise zones shall apply to such program for technology or defense production and support services zones.

2002, c. 449; 2005, cc. 863, 884; 2011, cc. 875, 877; 2012, c. 91.

Article 5 - REASSESSMENT/ASSESSMENT CYCLES

§ 58.1-3250. General reassessment in cities

In each of the cities of this Commonwealth, there shall be a general reassessment of real estate every two years. Sections 58.1-3258, 58.1-3275, 58.1-3271, 58.1-3276, and 58.1-3278, and other

relevant provisions of law shall be applicable to general reassessments of real estate in cities. Any city which has a total population of 30,000 or less, may elect by majority vote of its council to conduct its general reassessments at four-year intervals.

No provision of this section shall affect the power of any city to use the annual or biennial assessment method in lieu of general assessments.

Code 1950, § 58-776; 1976, c. 717; 1979, c. 577; 1980, c. 569; 1984, c. 675.

§ 58.1-3251. Annual assessment and reassessment in cities having not more than 30,000 population

The governing body of any city having a population not in excess of 30,000 may, in lieu of the reassessment provided by general law, by ordinance provide for the annual assessment and reassessment and equalization of assessments of real estate therein, and to that end may appoint a professional real estate assessor certified by the Department, or a board of assessors, to assess and from time to time reassess for taxation in such city, and shall prescribe the duties and terms of office of the assessor or assessors.

Code 1950, § 58-776.1; 1950, p. 700; 1952, c. 164; 1976, c. 717; 1979, c. 577; 1983, c. 304; 1984, c. 675.

§ 58.1-3252. In counties

There shall be a general reassessment of real estate every four years. Any county which, however, has a total population of 50,000 or less may elect by majority vote of its board of supervisors to conduct its general reassessments at either five-year or six-year intervals. In addition, Augusta County may elect by majority vote of its board of supervisors to conduct its general reassessments at either five-year or six-year intervals.

Nothing in this section shall affect the power of any county to use the annual or biennial assessment method as authorized by law.

Code 1950, § 58-778; 1950, p. 10; 1976, c. 717; 1977, c. 419; 1979, cc. 574, 577; 1981, c. 439; 1984, cc. 273, 675; 2009, c. 529.

§ 58.1-3253. Biennial general reassessments; annual or biennial assessment

A. Notwithstanding any other provision of law, the governing body of any county or city having at least one full-time real estate appraiser or assessor qualified by the Tax Commissioner may provide by ordinance for the biennial assessment and equalization of real estate in lieu of the reassessments required under this chapter. Any county or city employing such method shall conduct a new reassessment of all real property biennially, but may complete such reassessment during an entire two-year period, employing the same standards of value for all appraisals made during such period.

B. In lieu of the method now prescribed by law, the governing body of any county or city may, by ordinance duly adopted, provide for the annual assessment and equalization of real estate for

local taxation, or the biennial assessment as authorized by subsection A. If so made, all real estate shall thereafter be assessed as of January 1 of each year, except as provided in Chapter 30 of this subtitle.

Code 1950, §§ 58-769.2, 58-778.1; 1966, c. 84; 1976, cc. 711, 717; 1979, c. 577; 1984, c. 675; 2008, c. 540.

§ 58.1-3254. Reassessment by direction of governing body

Notwithstanding any other provision of this article to the contrary, there may be a general reassessment of real estate in any county or city in any year if the governing body so directs by a majority of all the members thereof, by a recorded yea and nay vote. If such general reassessment is conducted, further general reassessments shall be required only every fourth year thereafter for counties, or every second year thereafter for cities notwithstanding the provisions of §§ 58.1-3250 and 58.1-3252 to the contrary.

Code 1950, § 58-784.3; 1950, p. 1267; 1976, c. 717; 1984, c. 675.

§ 58.1-3255. General reassessment every four years not required in certain counties

The governing body of any county which established a department of real estate assessments and provided for annual assessment and reassessment and equalization of assessments of real estate as provided in §§ 15.2-716 and 15.2-716.1 shall not be required to undertake general reassessments of real estate every four years as otherwise provided in this article.

Code 1950, § 58-784.5; 1973, c. 152; 1976, c. 717; 1984, c. 675; 2010, cc. 154, 199.

§ 58.1-3256. Reassessment in towns; appeals of assessments

In any incorporated town there may be for town taxation and debt limitation, a general reassessment of the real estate in any such town in the year designated, and every fourth year thereafter, that the council of such town shall declare by ordinance or resolution the necessity therefor. Every such general reassessment of real estate in any such town shall be made by a board of assessors consisting of three residents, a majority of whom shall be freeholders, who hold no official office or position with the town government, appointed by the council of such town for each general reassessment and the compensation of the person so designated shall be prescribed by the council and paid out of the town treasury. The assessors so designated shall assess the property in accordance with the general law and Constitution of Virginia. If for any cause the board is unable to complete an assessment within the year for which it is appointed, the council shall extend the time therefor for three months. Any vacancy in the membership of the board shall be filled by the council within 30 days after the occurrence thereof, but such vacancy shall not invalidate any assessment. The assessments so made shall be open for public inspection after notice of such inspection shall have been advertised in a newspaper of general circulation within the town at least five days prior to such date or dates of inspection. Within 30 days after the final date of inspection the assessors shall file the completed reassessments in the office of the town clerk and

at the same time forward to the Department of Taxation a copy of the recapitulation sheets of such assessments.

Any person, firm, or corporation claiming to be aggrieved by any assessment may, within 30 days after the filing of reassessments in the office of the town clerk, apply to the town board of equalization for a correction of such assessment by filing with the town clerk a written statement setting forth his grievances. The board of equalization of every such town shall, within 30 days of the filing of such complaint, fix a date for a hearing on such application and, after giving the applicant at least 10 days' notice of the time fixed, shall hear such evidence as may be introduced by interested parties and correct the assessment by increasing or reducing the same. The circuit court having jurisdiction within the town shall, in each tax year immediately following the year in which a general reassessment was conducted, appoint for such town a board of equalization of real estate assessments made up of three to five citizens of the town. Any such town board of equalization shall be subject to the same member composition requirements and limits on terms of service as provided for boards of equalization pursuant to § 58.1-3374. In addition, at least once in every four years of service on a town board of equalization, each member of such board shall take continuing education instruction provided by the Tax Commissioner pursuant to § 58.1-206. In equalizing real property tax assessments, such board of equalization shall hear complaints, including but not limited to, that real property is assessed at more than fair market value. In hearing complaints, the board shall establish the value of real property as provided in § 58.1-3378. The provisions of § 58.1-3379 shall apply to all complaints heard by any town board of equalization.

Town taxes for each year on real estate subject to reassessment shall be extended on the basis of the last general reassessment made prior to such year subject to such changes as may have been lawfully made. The town tax assessor shall make changes required by new construction, subdivision and disaster loss. The council of any town may provide by ordinance that it will have a general reassessment of real estate in the town in the year designated by the town council and every year thereafter. The town council may declare the necessity for such general reassessment by such ordinance, but in all other respects this section shall be controlling. No county or district levies shall be extended on any assessments made under the provisions of this section.

Any town which has failed to conduct a general reassessment within five years shall use only those assessed values assigned by the county.

Code 1950, § 58-795; 1956, c. 219; 1958, c. 428; 1962, c. 174; 1976, c. 717; 1983, c. 304; 1984, c. 675; 2003, c. 1036.

§ 58.1-3257. Completion of work; extensions

A. Except as provided in subsection B, in every city and county the person or officers making such reassessment shall complete the same and comply with the provisions of § 58.1-3300 not later than December 31 of the year of such reassessment. But the circuit court in such city or county may for good cause, extend the time for completing such reassessment and complying with such

section for a period not exceeding three months from December 31 of the year of such reassessment.

B. In Hanover County, the person or officers making such reassessment shall complete the same and comply with the provisions of § 58.1-3300 not later than three months after December 31 of the year of such reassessment.

Code 1950, § 58-792; 1968, c. 742; 1971, Ex. Sess., c. 221; 1976, c. 717; 1980, c. 2; 1984, c. 675; 2001, c. 449; 2007, c. 813.

§ 58.1-3258. Provisions for annual or biennial assessment not repealed; qualifications of supervisors, assessors and appraisers

A. Nothing contained in this article shall be construed as repealing or amending any provisions of law authorizing or permitting the annual or biennial assessment or reassessment of real estate in cities or counties, except as hereinafter expressly provided.

B. The supervisors, assessors and appraisers conducting assessments who are employees of the locality shall have the qualifications prescribed by the Department for the particular position held, which shall include such combination of education, training and experience as deemed necessary for the performance of their duties.

C. The supervisors, assessors and appraisers conducting assessments who have been contracted by the locality to conduct assessments shall hold a valid certification issued by the Department pursuant to § 58.1-3258.1.

Code 1950, § 58-785; 1950, p. 1267; 1983, c. 304; 1984, c. 675; 2008, c. 540.

§ 58.1-3258.1. Certification of supervisors, assessors and appraisers contracted by a locality to perform assessments

A. No supervisor, assessor or appraiser shall contract or offer to contract to perform the assessment or reassessment of real property for any locality unless he holds a valid certification issued by the Department.

B. The Department shall establish requirements for the certification of all supervisors, appraisers and personnel contracted by a locality to perform the assessment or reassessment of real property located in the locality. Such requirements shall prescribe qualifications for certification including (i) minimum education and training requirements, to include guidance for conducting appraisals of certain multi-unit real estate under § 58.1-3295 and guidance for following generally accepted appraisal practices; (ii) minimum levels of experience; and (iii) standards of conduct. All supervisors, appraisers, and personnel employed or contracted to perform general assessments shall be required to hold a valid certification issued by the Department.

C. The Department may establish requirements for continuing education as a prerequisite to renewal of any certificate issued under this section.

2008, c. 540; 2010, c. 552.

§ 58.1-3258.2. Grounds for denial or revocation of certification

The Department shall have the power to require remedial education, suspend, revoke, or deny renewal of the certificate of any supervisor, assessor or appraiser who is found to be in violation of the regulations established by the Department pursuant to § 58.1-3258.1.

The Department may suspend, revoke, or deny renewal of an existing certificate, or refuse to issue a certificate, to any supervisor, assessor or appraiser who is shown to have a substantial identity of interest with a supervisor, assessor or appraiser whose certificate has been revoked or not renewed by the Department.

2008, c. 540.

§ 58.1-3259. Failure of county or city to comply with law on general reassessment of real estate

If any county or city fails to comply with the provisions of this article requiring a general reassessment of real estate periodically in such county or city by omitting such general reassessment in the year required by this article, or by failing to comply with the provisions of § 58.1-3201 requiring assessment at 100 percent fair market value, the Department, on receiving proof of such delinquency, shall so notify the Comptroller, whereupon the Comptroller shall withhold from such county or city the payment of its share of the net profits of the operation of the alcoholic beverage control system as provided for by § 4.1-117 until such time as the provisions of § 58.1-3201 have been complied with in such county or city. Results of the Tax Department's official assessment sales ratio study showing such county or city to have a sales assessment ratio lower than 70 percent or higher than 130 percent for the year a general reassessment or annual assessment is effective shall be prima facie proof that such locality has failed to assess at 100 percent.

The Department shall notify the Comptroller to pay over the accumulated profits, less a penalty charge of eight percent annually, on receipt of the results of an official assessment sales ratio study showing such county or city to have a sales assessment ratio higher than 70 percent and less than 130 percent.

Code 1950, § 58-795.2; 1964, c. 281; 1979, c. 156; 1980, c. 125; 1983, c. 161; 1984, c. 675; 1993, c. 866; 2010, c. 552.

§ 58.1-3260. Acts authorizing, in certain cities and counties, provision for the annual general reassessment of real estate and equalization of assessments, by continuing assessors, conferring upon assessors certain duties of commissioners of the revenue, etc

The following acts are continued in effect as amended from time to time:

1. Chapter 261 of the Acts of Assembly of 1936, approved March 25, 1936, as amended by Chapter 64 of the Acts of Assembly of 1938, approved March 4, 1938, Chapter 234 of the Acts of Assembly of 1942, approved March 14, 1942, Chapter 422 of the Acts of Assembly of 1950, Chapter 339 of the Acts of Assembly of 1958, and Chapter 1036 of the Acts of Assembly of 2003, authorizing provision for the annual general reassessment of real estate and the election of assessors in cities of

more than 175,000; transferring to the assessors in such cities the duties in regard to the assessment of real estate formerly devolved upon the commissioners of the revenue; repealing all provisions of law relating to the equalization of real estate assessments insofar as they applied to such cities; and relating to other connected matters.

2. Chapter 29 of the Acts of Assembly of 1947, approved January 29, 1947, authorizing provision for the annual general reassessment of real estate, the appointment of assessors, and the appointment of boards of review, in cities of not less than 125,000 nor more than 190,000; conferring on such boards of review the powers exercised by boards of equalization; and relating to other connected matters.

3. Chapter 211 of the Acts of Assembly of 1944, amended by Chapter 167 of the Acts of Assembly of 1946 (Repealed by Acts of Assembly of 1952, Chapter 636).

4. Chapter 65 of the Acts of Assembly of 1944, approved February 26, 1944, as amended by Chapter 80 of the Acts of Assembly of 1954, and Chapter 624 of the Acts of Assembly of 1968, authorizing, in cities of not less than 40,000 nor more than 50,000, provision for the general reassessment of real estate and equalization of assessments every one, two, three or four years, and the appointment of assessors to perform these duties; conferring on the assessors certain duties formerly imposed upon commissioners of the revenue; and relating to other connected matters.

5. Chapter 17 of the Acts of Assembly of 1947, approved January 29, 1947, as amended by Chapter 29 of the Acts of Assembly of 1952, Ex. Sess., authorizing, in cities having a population of not less than 30,000 nor more than 31,000, provision for the annual general reassessment of real estate and equalization of assessments, and the appointment of assessors to perform these duties; conferring on the assessors certain duties formerly imposed upon commissioners of the revenue; and relating to other connected matters.

6. Chapter 146 of the Acts of Assembly of 1942, approved March 9, 1942, authorizing, in any city adjoining a county having a density of more than 1,000 per square mile, provision for the annual general reassessment of real estate and equalization of assessments, and the appointment of assessors to perform these duties; conferring on the assessors certain duties formerly imposed upon commissioners of the revenue; and relating to other connected matters.

7. Chapter 189 of the Acts of Assembly of 1946, approved March 15, 1946, as amended by Chapter 325 of the Acts of Assembly of 1950, authorizing, in any county adjoining a county having a population density of 1,000 or more per square mile, provision for the annual general reassessment of real estate and equalization of assessments, and the appointment of assessors to perform these duties; conferring on the assessors certain duties formerly imposed upon commissioners of the revenue; and relating to other connected matters.

8. Chapter 237 of the Acts of Assembly of 1942, amended by Chapter 44 of the Acts of Assembly of 1946 and Chapter 59 of the Acts of Assembly of 1948.

9. Chapter 345 of the Acts of Assembly of 1942, approved March 31, 1942, authorizing, in any county adjoining a city of more than 190,000, and any county with an area of less than 70 square miles of highland, provision for the annual general reassessment of real estate and the equalization of assessments, and the appointment of assessors to perform such duties; conferring upon the assessors certain duties imposed by general law on commissioners of the revenue; and relating to other connected matters.

10. Chapter 237 of the Acts of Assembly of 1946, approved March 25, 1946, authorizing, in counties having an area of more than 135 square miles but less than 152 square miles, and a population of more than 4,000 but less than 8,000, provision for boards for the annual general reassessment of real estate and equalization of assessments; conferring on the assessors certain duties imposed by general law upon commissioners of the revenue; and relating to other connected matters.

11. Chapter 85 of the Acts of Assembly of 1948, approved March 3, 1948, codified in Michie Supplement 1948 as Tax Code § 348b, as amended by Chapter 266 of the Acts of Assembly of 1952, providing, in counties of not more than 30,000 adjoining cities of not less than 100,000 and not more than 150,000, for continuing boards of assessors to meet annually and perform the duties imposed upon boards of assessors of real estate assessments by general law, and relating to other connected matters, is incorporated in this Code by this reference.

Code 1950, § 58-769; 1984, c. 675; 2003, c. 1036; 2011, c. 851.

§ 58.1-3261. Annual assessment of real estate in certain other cities and counties

The following acts are incorporated in this Code by this reference:

1. Chapter 32 of the Acts of Assembly of 1956, approved February 13, 1956, as amended by Chapter 33 of the Acts of Assembly of 1958, authorizing provision for annual assessments of real estate and equalization of assessments in cities of not less than 70,000 and not more than 125,000 inhabitants, but not in cities of not less than 90,000 and not more than 100,000 inhabitants.

2. Chapter 348 of the Acts of Assembly of 1956, approved March 14, 1956, authorizing provision for annual assessment of real estate in any county having a population of more than 99,000 and adjoining 3 or more cities lying entirely within the State.

3. Chapter 383 of the Acts of Assembly of 1956, approved March 14, 1956, authorizing provision for annual assessments of real estate and equalization thereof, in any county having a population of more than 22,000 but less than 23,000.

4. Chapter 56 of the Acts of Assembly of 1959, Ex. Sess., approved April 27, 1959, authorizing provision for annual assessments of real estate and equalization of assessments in any city having a population of more than 25,000 and less than 34,000.

5. Chapter 548 of the Acts of Assembly of 1964, approved March 31, 1964, providing for annual assessment and equalization of assessments in any county having a population of more than 20,000 but less than 50,000 and adjoining a county having a population of more than 200,000.

6. Chapter 584 of the Acts of Assembly of 1964, approved March 31, 1964, authorizing provision for annual assessment of real estate and equalization of assessments in any city having a population of more than 92,000 and less than 110,000.

7. Chapter 311 of the Acts of Assembly of 1966, authorizing provision for annual assessment and equalization of assessments of real estate in any county adjoining two cities of the first class and in which a military fort is located.

Code 1950, § 58-769.1; 1984, c. 675.

Article 6 - WHO PERFORMS REASSESSMENT/ASSESSMENT

§ 58.1-3270. Annual or biennial assessment and equalization by commissioner of revenue
The governing body of any county or city may, by resolution duly adopted, in lieu of the method now prescribed by law, provide for the annual assessment and equalization of real estate for local taxation, or the biennial assessment as authorized by § 58.1-3253, by the commissioner of the revenue. No commissioner of the revenue without his consent shall be required to make an annual or biennial assessment and equalization of real estate for local taxation as provided in § 58.1-3253 B, and if made, all costs incurred shall be borne by the county or city.

Code 1950, § 58-769.2; 1966, c. 84; 1979, c. 577; 1984, c. 675.

§ 58.1-3271. Appointment of board of assessors and real estate appraiser or board of equalization in counties and cities
A. In the event the commissioner of revenue, pursuant to the provisions of § 58.1-3270, will not consent to make an annual or biennial assessment and equalization of real estate for local taxation in any county or city, the governing body thereof may appoint a board of real estate assessors consisting of three members, who shall be initially appointed as follows: one for a term of one year, one for a term of two years and one for a term of three years. As the terms of the initial appointees expire, their successors shall be appointed for terms of three years each. The compensation of the members of the board shall be fixed by the governing body, who shall also provide necessary clerical and other assistance to the board. The board shall assess all real estate within the county or city on an annual or biennial basis and transfer such assessment to the commissioner of revenue. Prior to transferring the final assessment to the commissioner of the revenue, the board shall give any real property owner whose property has been assessed an opportunity to be heard.

B. The governing body of any such county or city may appoint a real estate appraiser either (i) an employee who qualified by the Department or (ii) an independent contractor who holds a valid certification issued by the Department to perform the actual function of determining value for real

estate in the county or city for use by the board of assessors. Such appraiser may serve in lieu of the board of assessors provided for in subsection A, in which event he shall assess all real estate within the county or city on an annual or biennial basis and transfer such assessment to the commissioner of the revenue. In the event such appraiser is in addition to the board of assessors, he shall assemble information concerning real property in the county or city at the request of such board of real estate assessors and prepare and preserve all records of the board including the minutes of its meetings. The appraiser's compensation shall be fixed by the governing body.

Code 1950, §§ 58-769.3, 58-776.3, 58-788; 1950, p. 701; 1968, c. 631; 1979, c. 577; 1984, c. 675; 2008, c. 540.

§ 58.1-3272. How assessments made by board or assessor

Assessments made by the board of real estate assessors or real estate assessor shall be made in the same manner and on the same basis as is provided by general law, and the members of any board so appointed shall have the same powers and be charged with the same duties as the persons appointed according to the provisions of § 58.1-3276.

Code 1950, § 58-776.2; 1950, p. 700; 1979, c. 577; 1984, c. 675.

§ 58.1-3273. Reserved

Reserved.

§ 58.1-3274. Establishment of department of real estate assessment; joint departments

A. Notwithstanding any other provision of law, Goochland, Powhatan, James City and Accomack Counties may, by resolution duly adopted, establish departments of real estate assessment. Any such department shall assess all real estate within such county on an annual or biennial basis as authorized by § 58.1-3270, and transfer such assessment to the commissioner of the revenue of such county. Prior to transferring the final assessment to the commissioner of the revenue, the department shall give any real property owner whose property has been assessed an opportunity to be heard.

The department shall consist of such members as the governing body of such county shall deem necessary.

The compensation and terms of office of department members shall be fixed by the governing body.

B. Upon establishment of a department of real estate assessment, James City and Powhatan Counties may, by resolution duly adopted, enter into an agreement with any contiguous county or city for the establishment of a joint department of real estate assessment. The joint department shall assess all real estate within such localities on an annual or biennial basis and transfer such assessment to the commissioner of the revenue pursuant to subsection A of this section. The membership, compensation, terms of office and office expenses of such members of the joint department shall be fixed by agreement by the governing body of James City County or Powhatan

County and such county or city with which it may establish a joint department of real estate assessment.

Code 1950, § 58-769.3:1; 1974, c. 656; 1979, c. 299; 1984, c. 675; 1987, cc. 318, 362; 2003, c. 474; 2004, c. 576.

§ 58.1-3275. By whom reassessment made in cities and counties

Every general reassessment of real estate in a city or county shall be made by (i) a professional assessor appointed by the governing body, who is either an employee qualified by the Department or an independent contractor holding valid certification issued by the Department; or (ii) a board of assessors of not fewer than three members, with not more than one member from each district for the election of a member of the governing body within such city or county appointed by the governing body. The assessors shall be designated on or after July 1 in the year immediately preceding the year in which the general reassessment of real estate is required to be made.

Code 1950, § 58-786; 1976, c. 676; 1979, c. 577; 1983, c. 304; 1984, c. 675; 1985, c. 221; 1988, c. 896; 1994, c. 210; 2008, c. 540.

§ 58.1-3276. Qualifications of assessors and appraisers; removal and appointment of substitute

A. Any persons appointed to a board of assessors under the authority of this article shall be freeholders in the county or city for which they serve and shall be appointed by the governing body from the citizens of the county or city. If at any time the governing body is satisfied that any such assessor appointed under this article will not, or from any cause cannot, perform the duties devolved on him, the governing body may wholly supersede him and appoint another in his place. In order to be eligible for appointment, each prospective member of such board may, at the discretion of the Department, be required to attend and participate in the basic course of instruction given by the Department under § 58.1-206.

B. All supervisors, appraisers, and personnel employed by the board of assessors to perform the general reassessment shall have the qualifications prescribed by the Department for the particular position held, which shall include such combinations of education, training and experience as are deemed necessary for the performance of their duties. The provisions of this article as to the appointment or removal of such assessors shall apply to any appointments heretofore or hereafter made.

C. All supervisors, assessors and appraisers who have been contracted by the board of assessors to perform the general reassessment shall hold a valid certification issued by the Department pursuant to § 58.1-3258.1.

Code 1950, § 58-789; 1979, c. 577; 1983, c. 304; 1984, c. 675; 2008, c. 540.

§ 58.1-3277. Forms for general reassessment of real estate in counties, cities and towns

The Department before January 1 of any year in which there is to be a general reassessment of real estate in any county, city or town under any provisions of this title shall prescribe, prepare and

furnish proper forms for the use of the cities and counties and towns making general reassessment of real estate under the provisions of this article. Any county, city or town desiring to avail itself of the benefits of this section shall notify the Department of such desire at least six months prior to January 1 of the year when there will be a general reassessment in such city or county or town. Nothing in this section shall be construed to prohibit any county, city or town from prescribing and preparing forms for its use in making such general reassessments, the cost thereof to be paid out of the county or city or town treasury.

Code 1950, § 58-793; 1956, c. 219; 1984, c. 675.

§ 58.1-3278. Department to render assistance

The Department, upon the request of the governing body of any county, city or town, shall render advisory aid and assistance in making any general reassessment of the real estate in such county, city or town.

Code 1950, § 58-794; 1956, c. 219; 1984, c. 675.

Article 7 - REASSESSMENT/ASSESSMENT (VALUATION) PROCEDURE AND PRACTICE

§ 58.1-3280. Assessment of values

Every assessor or appraiser so designated under this chapter shall, as soon as practicable after being so designated, proceed to ascertain and assess the fair market value of all lands and lots assessable by them, with the improvements and buildings thereon. They shall make a physical examination thereof if required by the taxpayer, and in all other cases where they deem it advisable.

Code 1950, § 58-790; 1975, cc. 51, 547; 1976, c. 676; 1983, c. 161; 1984, c. 675.

§ 58.1-3281. When commissioner of the revenue to ascertain ownership of real estate; tax year

Each commissioner of the revenue shall commence, annually, on January 1, and proceed without delay to ascertain all the real estate in his county or city, as the case may be, and the person to whom the same is chargeable with taxes on that day. The beginning of the tax year for the assessment of taxes on real estate shall be January 1 and the owner of real estate on that day shall be assessed for the taxes for the year beginning on that day.

The commissioner, before making out his land book, shall assess the value of any building and enclosure not previously assessed, found to be of the value of $100 and upwards. The value shall be added to the value at which the land was previously charged.

Code 1950, §§ 58-796, 58-810; 1984, c. 675.

§ 58.1-3282. When land and improvements owned separately; how assessed

When a public service corporation or a political subdivision of the Commonwealth does not own both a tract, piece or parcel of land and the improvements thereon, including leasehold improvements owned by the lessee which are to be removed by the lessee at the end of the lease term, the land and such improvements may be assessed separately.

Code 1950, § 58-773.1; 1952, c. 229; 1984, c. 675; 1988, c. 280.

§ 58.1-3283. Assessment of airspace owned separately from subjacent land surface

When airspace is owned by anyone other than the owner of the subjacent land surface, the airspace and the surface will be separately assessed to their respective owners.

Code 1950, § 58-773.2; 1979, c. 431; 1984, c. 675.

§ 58.1-3284. Assessment of standing timber trees owned by person who owns land surface; when owned separately

A. When the land surface and standing timber trees are owned by the same person, the value of the land, inclusive of the standing timber trees, shall be ascertained and assessed at such ascertained value.

B. In any case when the surface of the land is owned by one person and the standing timber trees thereon are owned by another, the relative value of each shall be determined and the owners shall be assessed with the value of their respective interests.

Code 1950, § 58-804; 1958, c. 314; 1970, c. 440; 1971, Ex. Sess., cc. 3, 172; 1975, c. 547; 1980, c. 360; 1984, c. 675.

§ 58.1-3284.1. Assessment of lots and open spaces in certain planned development subdivisions

A. Residential or commercial property, which is part of a planned development which contains open or common space, which includes the right by easement, covenant, deed or other interest in real estate, to the use of the open or common space, shall be assessed at a value which includes the proportional share of the value of such open or common space.

All real property used for open or common space pursuant to this section shall be construed as having no value in itself for assessment purposes. Its only value lies in the value that is attached to the residential or commercial property which has a right by easement, covenant, deed or other interest.

"Open or common space" shall, for purposes of this section, include parks, parking areas, private streets, walkways, recreational facilities, natural or improved areas, lakes, ponds, recreational, community service, or maintenance buildings or structures, or any other property used and owned by an automatic membership corporation or association. It shall also include such property that is part of a planned residential development initially recorded before January 1, 1985, that is exempt from the requirements of the Property Owners' Association Act pursuant to § 55-508 and did not include automatic membership in a membership corporation or association in its declaration.

B. No locality shall assess real estate taxes against a membership corporation or association for open or common space except as may be permitted pursuant to this section. Every locality shall reassess such open or common space, and the planned development of which it is part, as of the date of transfer of such open or common space to the association. The developer of such planned development shall pay all real estate taxes attributable to such open or common space at the time of transfer as provided in § 55-509.1.

1985, c. 550; 1993, c. 956; 2005, c. 218.

§ 58.1-3284.2. Reassessment of residential property containing defective drywall

A. As used in this section, "defective drywall" means the same as that term is defined in § 36-156.1.

B. An owner of residential property containing defective drywall may request the commissioner of the revenue or other assessing official where the property is located to reassess the property. After confirmation by the local building official of the presence of defective drywall in accordance with subsection C, the commissioner of the revenue or other assessing official shall (i) determine the amount by which the defective drywall has reduced the assessed value of the property, (ii) provide written notice to the owner of the reduction in value, and (iii) reassess the value of the property accordingly.

C. The local building official shall confirm the presence of defective drywall only after a review of the test results submitted to him from a testing agency that is approved by the building official and procured by the owner of the residential property.

D. The local governing body may, by ordinance, designate the residential property containing defective drywall as a rehabilitation district for purposes of granting the owner a partial real estate tax exemption pursuant to § 58.1-3219.4.

2011, cc. 34, 46.

§ 58.1-3284.3. Wetlands to be specially and separately assessed

A. Whenever real property is assessed or reassessed, the commissioner of the revenue or other assessing official shall consider, at the request of the property owner, specially and separately assessing at the fair market value all wetlands on such property, as defined in § 62.1-44.3. If the commissioner of the revenue or other assessing official disagrees with the property owner as to the presence of wetlands, then the commissioner of the revenue or other assessing official shall consider the National Wetlands Inventory Map prepared by U.S. Fish and Wildlife Services in making his determination, and such map also shall be considered in any administrative or judicial appeal.

B. When wetlands on property are specially and separately assessed, the commissioner of the revenue or other assessing official shall set forth upon the land book (i) the area and the fair market value of such portion of each tract consisting of wetlands and (ii) the area and the fair market value of the remaining portion of each tract.

C. Nothing in this section shall prohibit the commissioner of the revenue or other assessing official from specially and separately assessing at the fair market value wetlands, as well as any other type of lands, even if not requested by the property owner.

D. Under the provisions of this section, the actual physical use of the property shall be the only determining factor of its land use value.

2012, c. 742.

§ 58.1-3285. Assessment and reassessment of lots when subdivided or rezoned

Whenever a tract of land is subdivided into lots under the provisions of law and plats thereof are recorded, subsequent to any general reassessment of real estate in the city or county in which such real estate is situated, each lot in such subdivision shall be assessed and shown separately upon the land books, as required by law. The commissioner of the revenue, in assessing each such lot, shall assess the same at fair market value as of January 1 of the year next succeeding the year in which such plat is recorded, without regard to the value at which such tract of land was assessed as acreage but with regard to other assessments of lots in such city or county. Such assessment shall stand until the next general reassessment of real estate in such city or county. The commissioner of the revenue shall also assess or reassess, as required, any lot, tract, piece or parcel of land which has been rezoned, reclassified or as to which any exception has been made, by the zoning authorities of the county. Further, the commissioner of the revenue shall assess or reassess, as required, any lot, tract, piece or parcel of land upon or to which improvements have been made, such as hard surfacing of streets or roadways, or installation of curbs, gutters, sidewalks and utilities, any one or all of which may add to the fair market value. Such an assessment shall be made with regard to other assessments of lots, tracts, pieces or parcels of land in the city or county. To such end the commissioner of the revenue shall be supplied by the city or county with the necessary data and records to indicate any rezoning, reclassification, exception or improvement.

Code 1950, § 58-772.1; 1950, p. 1017; 1954, c. 515; 1984, c. 675.

§ 58.1-3286. Mineral lands to be specially and separately assessed; severance tax

The several commissioners of the revenue shall, as soon as practicable after January 1 of each year, specially and separately assess at the fair market value all mineral lands and the improvements thereon and shall enter the same on the land books of their respective counties separately from other lands charged thereon.

The commissioner, in assessing mineral lands, shall set forth upon the land book:

1. The area and the fair market value of such portion of each tract as is improved and under development;

2. The fair market value of the improvements upon each tract; and

3. The area and fair market value of such portion of each tract not under development.

Notwithstanding any other provision of law and subject to the approval of the Board of Supervisors of Buchanan County, the commissioner of the revenue of the county may reassess gas wells and related improvements on an annual basis, provided that such gas wells and related improvements shall be reassessed in the general reassessment for the locality, as required by § 58.1-3287, and provided further a settlement agreement between the County and a taxpayer may provide a methodology for determining fair market value.

In the alternative to the procedure outlined in subdivision 1 above, any county or city may impose by ordinance a severance tax on all coal and gases extracted from the land lying within its jurisdiction. The rate of such tax shall not exceed one percent of the gross receipts from such coal or gases. Any such county or city may further require any producer of such coal or gases and any common carrier to maintain records showing the quantities of coal and gases which they have produced or transported, respectively.

If the surface of the land is held by one person, and the coal, iron and other minerals, mineral waters, gas or oil under the surface are held by another person, the estate therein of each and the relative fair market value of their respective interests shall be ascertained by the commissioner. If the surface of the land and the coal, iron and other minerals, mineral waters, gas or oil under the surface are owned by the same person, the commissioner shall ascertain the fair market value of the land, exclusive of the coal, iron, other minerals, mineral waters, gas or oils. He shall also ascertain the fair market value of the coal, iron, other minerals, mineral waters, gas, and oils and shall assess each at such ascertained values, stating separately in every case the value of the surface of the land and the value of the coal, iron, other minerals, mineral waters, gas and oils under the surface.

The commissioner of the revenue of any county or city is authorized to enter into agreements with taxpayers pertaining to the fair market value of the property taxed under this section. All such agreements entered into on or after January 1, 2013, but prior to July 1, 2014, between the commissioner of the revenue of any county or city and any taxpayer are deemed to be bona fide and are valid and enforceable.

Code 1950, § 58-774; 1972, c. 715; 1976, c. 53; 1984, c. 675; 2009, c. 770; 2014, cc. 48, 179.

§ 58.1-3287. Mineral lands and minerals to be included in general reassessment of real estate

Notwithstanding § 58.1-3286, whenever there is a general reassessment of real estate in any county or city, mineral lands and minerals shall be included in the general reassessment, but shall be separately assessed from other real estate, and the assessor or assessors shall be governed by the provisions of § 58.1-3286 in making the assessment. Taxes for each year on the mineral lands and minerals assessed under this section shall be extended by the commissioner of the revenue on the basis of the last general reassessment made prior to such year, subject to such changes as may be made by him in performing his annual duties under § 58.1-3286. In performing such annual

duties he shall adjust the assessed values in such manner as to reflect such changes as may have occurred during the preceding year, especially such changes as may have operated to increase or decrease (i) the area and the value of such portion of each tract as is improved and under development, (ii) the value of the improvements upon each tract, and (iii) the area and value of such portion of each tract as shall not be under development.

Every county in which there are mineral lands shall have a general reassessment of real estate in the year prescribed by law, even though the greater part of the area of the county consists of mineral lands.

The Department shall render advisory aid and assistance of a technical nature to the assessor or assessors, in making a general reassessment of mineral lands and minerals, upon request of the governing body of the county or city, or to the commissioner of the revenue, upon his request, provided moneys are available to the Department to defray the cost thereof.

Code 1950, § 58-774.2; 1950, p. 1269; 1964, c. 296; 1983, c. 304; 1984, c. 675.

§ 58.1-3288. Assessment in name of "unknown owner."

When the owner of any parcel of real property is unknown and the commissioner of the revenue has exercised due diligence to ascertain the owner of such parcel, such commissioner of the revenue is empowered on January 1 of each year to assess for taxation such parcel of real property in his county or city in the name of "unknown owner." Before such property is first assessed in the name of "unknown owner" each commissioner of the revenue shall advertise the description of the property in a local newspaper of general circulation once a week for two consecutive weeks preceding the first day of the year in which such first assessment is made and at the same time he shall make affidavit that he has used due diligence to ascertain the owner of the property.

Code 1950, § 58-770.1; 1956, c. 581; 1958, c. 32; 1984, c. 675.

§ 58.1-3289. Reserved

Reserved.

§ 58.1-3290. How land divided among several owners to be assessed

When a tract or lot becomes the property of different owners in two or more parcels, subsequent to any general reassessment of real estate in the city or county in which such tract or lot is situated each of the two or more parcels shall be assessed and shown separately upon the land books, as required by law. The commissioner of the revenue, in assessing each lot or parcel, shall assess the same at its fair market value as of January 1 of the year next succeeding the year in which the tract or lot of land becomes the property of several owners, without regard to the value at which such tract of land was assessed as a whole, but with regard to other assessments of lots, pieces or parcels of land in the city or county. Such assessment shall stand until the next general reassessment of real estate in the city or county. Failure of the owner or person dividing and selling the land to record a plat thereof shall not relieve the commissioner of the revenue of the respons-

ibility for assessing or reassessing any such tract of land when divided as provided for in this section.

Code 1950, § 58-773; 1954, c. 655; 1984, c. 675.

§ 58.1-3291. Valuation of repairs, additions and new buildings

Any building and enclosure which may have been increased in value to $500 or upwards, by repairs or additions thereto, shall be assessed in the same manner as if they were new.

New buildings shall be assessed, whether entirely finished or not, at their actual value at the time of assessment.

Code 1950, §§ 58-811, 58-812; 1974, c. 133; 1983, c. 161; 1984, c. 675.

§ 58.1-3292. Assessment of new buildings substantially completed, etc.; extension of time for paying assessment

In any county, city or town that has not adopted an ordinance pursuant to § 58.1-3292.1, upon the adoption of an ordinance so providing, all new buildings substantially completed or fit for use and occupancy prior to November 1 of the year of completion shall be assessed when so completed or fit for use and occupancy, and the commissioner of the revenue of such county, city or town shall enter in the books the fair market value of such building. No partial assessment as provided herein shall become effective until information as to the date and amount of such assessment is recorded in the office of the official authorized to collect taxes on real property and made available for public inspection. The total tax on any such new building for that year shall be the sum of (i) the tax upon the assessment of the completed building, computed according to the ratio which the portion of the year such building is substantially completed or fit for use and occupancy bears to the entire year, and (ii) the tax upon the assessment of such new building as it existed on January 1 of that assessment year, computed according to the ratio which the portion of the year such building was not substantially complete or fit for use and occupancy bears to the entire year. With respect to any assessment made under this section after September 1 of any year, the penalty for nonpayment by December 5 shall be extended to February 5 of the succeeding year.

Code 1950, § 58-811.1; 1954, c. 250; 1958, c. 77; 1960, c. 414; 1964, c. 308; 1980, c. 497; 1984, c. 675; 1999, c. 760.

§ 58.1-3292.1. Assessment of new buildings substantially completed in a county operating under the urban county executive form of government, and in certain other cities and counties; extension of time for paying assessment

A. In the Counties of Arlington, Fairfax, Loudoun, and Prince William, and the Cities of Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park, upon the adoption of an ordinance so providing, all new buildings shall be assessed when substantially completed or fit for use and occupancy, regardless of the date of completion or fitness, and the commissioner of the revenue of such county, city or town shall enter in the books the fair market value of such building.

B. No partial assessment as provided herein shall become effective until information as to the date and amount of such assessment is recorded in the office of the official authorized to collect taxes on real property and made available for public inspection. The total tax on any such new building for that year shall be the sum of (i) the tax upon the assessment of the completed building, computed according to the ratio which the portion of the year such building is substantially completed or fit for use and occupancy bears to the entire year and (ii) the tax upon the assessment of such new building as it existed on January 1 of that assessment year, computed according to the ratio which the portion of the year such building was not substantially complete or fit for use and occupancy bears to the entire year.

C. With respect to any assessment made under this section after November 1 of any year, no penalty for nonpayment shall be imposed until the last to occur of (i) December 5 of such year or (ii) 30 days following the date of the official billing.

1999, c. 760; 2003, cc. 6, 581; 2007, c. 813.

§ 58.1-3293. Building, etc., when damaged or destroyed, value to be reduced

When from natural decay or other causes any previously assessed building and enclosure as aforesaid, is either wholly destroyed or reduced in value below $100, the commissioner shall deduct from the charge against the owner the value at which such building and enclosure may have been assessed; and if the value of the building has been impaired by violence to the extent of $100 or more, the commissioner shall assess the building in its present condition and reduce the charge for the same to the amount so assessed. When any timberland heretofore assessed, the owner of the timber on which is also the owner of the land, is reduced in value to the extent of $200 or more by the removal of the timber therefrom, the commissioner shall assess the land in its then present condition and reduce the charge for the same to the amount so assessed.

Code 1950, § 58-813; 1984, c. 675.

§ 58.1-3294. Reports of income data by owners of income-producing realty; certification; confidentiality

Any duly authorized real estate assessor, board of assessors, or department of real estate assessments may require that the owners of income-producing real estate in the county or city subject to local taxation, except property producing income solely from the rental of no more than four dwelling units, and except property being used exclusively as an owner-occupied property, not as a hotel, motel, or office building over 12,000 square feet, and not engaged in a retail or wholesale business where merchandise for sale is displayed, furnish to such assessor, board or department on or before a time specified, which time may be extended for not less than ninety days, upon application of the owner of such property statements of the income and expenses attributable over a specified period of time to each such parcel of real estate. Each such statement shall be certified as to its accuracy by an owner of the real estate for which the statement is furnished, or a duly authorized agent thereof. Any statement required by this section shall be kept confidential in accordance with the provisions of § 58.1-3. The failure of the owner of income-producing property,

except property producing income solely from the rental of no more than four dwelling units, and except property being used exclusively as an owner-occupied property, not as a hotel, motel, or office building over 12,000 square feet, and not engaged in a retail or wholesale business where merchandise for sale is displayed, to furnish a statement of income and expenses as required by this section shall bar such owner or his representative 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 brought under § 58.1-3984. Nothing in this section shall be construed to prohibit the use or consideration of any such statement of income and expense in a complaint before a board of equalization pursuant to § 58.1-3379, as long as it is submitted to the board no later than the appeal filing deadline of such board.

Code 1950, § 58-769.3:2; 1982, c. 619; 1984, c. 675; 1990, c. 671; 2000, c. 515; 2011, c. 200.

§ 58.1-3295. Assessment of real property; affordable housing

A. Notwithstanding any other provision of law, in determining the fair market value of real property operated in whole or in part as affordable rental housing, in accordance with the provisions of (i) 26 U.S.C. § 42, 26 U.S.C. § 142 (d), 24 CFR § 983, 24 CFR § 236, 24 CFR § 241(f), 24 CFR § 221 (d)(3), or any successors thereto; (ii) applicable state law; or (iii) local ordinances adopted by the locality wherein such real property is located, the duly authorized real estate assessor shall consider:

1. The contract rent and the impact of applicable rent restrictions;

2. Restrictions on the transfer of title or other restraints on alienation of the real property; and

3. The actual operating expenses and expenditures and the impact of any such additional expenses or expenditures. If an owner has two or more units of real property that (i) are operated in whole or in part as affordable rental housing and (ii) are controlled by a single restrictive use agreement regulating income and rent restrictions, and the owner has expenses and expenditures common to two or more such units, and such expenses and expenditures cannot practicably be attributed to a particular unit, then the owner has a right to have the assessor make a pro rata apportionment of such expenses and expenditures to each such unit based on each unit's assessed value as a percentage of the total assessed value of all such units. The provisions of this subdivision apply whether or not the units are in one tax parcel or multiple tax parcels.

B. The owner of real property that is operated in whole or in part as affordable rental housing in accordance with the definition of affordable rental housing established by ordinance or resolution of the locality in which the real property is located may make an application to the locality to have the real property assessed pursuant to this section. Notwithstanding the exception in § 58.1-3294 for an owner of four or fewer residential units, upon application by such an owner, the duly authorized real estate assessor may require the owner to furnish to such assessor, board, or department statements of the income and expenses attributable over a specified period of time to each such parcel of real estate in the manner required by § 58.1-3294 and to comply with all provisions

of § 58.1-3294 applicable to properties with more than four rental dwelling units. The application shall be granted by the locality if (i) the owner charges rents at levels that meet the locality's definition of affordable housing and (ii) the real property does not have any pending building code violations at the time of the application.

The duly authorized real estate assessor shall also consider evidence presented by the property owner of other restrictions imposed by law that impact the variables set forth in this subsection.

C. Federal or state income tax credits with respect to affordable housing rental property within the purview of subsection A shall not be considered real property or income attributable to real property.

D. For property where only a portion of the units are operated as affordable housing, as defined in § 42 of the Internal Revenue Code or as required by state law or applicable local ordinance, only the portion determined to be affordable housing shall be subject to this section.

E. Notwithstanding any other provision in this section or other law, the real property governed by this section that is generating income as affordable housing shall be assessed using the income approach based on: the property's current use, income restrictions, provisions of any arm's-length contract including but not limited to restrictions on the transfer of title or other restraints on alienation of the real property, the requirements of subsection B, and all other provisions of this section.

2006, c. 688; 2009, c. 264; 2010, cc. 552, 791, 824; 2011, c. 137; 2013, c. 249.

§ 58.1-3295.1. Assessment of real property; residential rental apartments

A. Notwithstanding any other provision of law, general or special, in any appeal of the real property assessment of real property defined below as residential rental apartments in excess of four units filed by a taxpayer pursuant to § 58.1-3379, the board of equalization shall consider:

1. The actual gross income generated from such real property and any resultant loss in income attributable to vacancies, collection losses, and rent concessions;

2. The actual operating expenses and expenditures and the impact of any additional expenses or expenditures; and

3. Any other evidence relevant to determining fair market value of such real property.

B. Real property subject to this section shall be limited to residential rental apartments containing more than four units. Individual attached or detached single-family dwelling units, regardless of whether such dwelling units are rented, shall not be subject to this section.

C. For real property governed by this section, where only a portion of the real property is operated as residential rental apartments, the portion of such real property not operated as residential rental apartments shall not be subject to this section.

D. The valuation of residential rental apartments governed by this section shall be made by the board using the income approach in accordance with this section, except when (i) such real property has been sold since the previous assessment, in which case the board may consider the sales price of such property; (ii) improvements on such real property are being constructed or renovated, in which case the board may consider the market value of such property; or (iii) the value arrived at by the income approach is not otherwise in accordance with generally accepted appraisal practices and standards prescribed by the International Association of Assessing Officers (IAAO), in which case the board may consider the market value of such property.

2012, cc. 536, 707.

Article 8 - REASSESSMENT RECORD/LAND BOOK, COMMUNICATION OF DOCUMENTS TO COMMISSIONER OF REVENUE

§ 58.1-3300. Reassessment record; original filed in clerk's office; copies to commissioner of the revenue and local board of equalization; recapitulation sheets to Department

As soon as the persons, or officers, designated under the provisions of Article 6 (§ 58.1-3270 et seq.) herein have completed the reassessment, they shall make two copies of such record, in the form in which the land books are made out, and shall certify on oath that no assessable real estate is omitted and that there is no error on the face of such record. Such persons, or officers, designated as aforesaid shall then file the original of such reassessment in the office of the circuit court clerk of the city or county, who shall preserve the same in his office; and he or they shall deliver one copy of such reassessment to the commissioner of the revenue of the city or county and one copy to the local board of equalization of such city or county. For cities having an additional court for the recordation of deeds, one extra copy of such reassessment, embracing real estate the conveyance of which is required to be recorded in the clerk's office of such additional court, shall be made and filed in such circuit court clerk's office.

Such persons or officers shall at the same time forward to the Department of Taxation a copy of the recapitulation sheets of such reassessment.

In lieu of complying with the foregoing provisions of this section, the person or persons appointed by the governing body to perform the annual or biennial reassessment of real estate set forth in §§ 58.1-3251 and 58.1-3253 shall sign the land book attesting to the valuations contained therein resulting from such assessment.

Code 1950, § 58-791; 1984, c. 675; 1985, c. 221.

§ 58.1-3301. Form of land book

A. The land books may be produced in one of the following forms: (i) paper; (ii) microfilm, microfiche, or any other microphotographic process; or (iii) electronic process. Such microfilm and microphotographic processes shall meet state archival microfilm standards and state electronic records guidelines pursuant to § 42.1-82. The Department of Taxation shall prescribe the form of

the land book to be used by the commissioner of the revenue and shall furnish each commissioner of the revenue with four copies of blank land books prepared in the form so prescribed. The land books may be produced in the form of microfilm, microfiche, or any other similar microphotographic process and shall be distributed as provided in § 58.1-3310 in the form of such process so long as such process complies with standards adopted pursuant to regulations issued under § 42.1-82 for microfilm, microfiche, or such other microphotographic process and is acceptable to and meets the requirement of the recipients of copies of the land book as designated by § 58.1-3310.

B. Tracts of lands in counties shall be entered in the land book by magisterial or school districts and town lots shall be entered upon sheets provided in the land book for that purpose. The governing body of any county having sanitary districts may provide by resolution that land books, personal property books and other tax assessment records be entered and arranged alphabetically to show the persons chargeable with taxes in each such district. The sanitary district in which the property is located shall be designated by an appropriate coding which shall provide for the means of recapitulation by sanitary districts, setting forth the total assessment and tax levy for each such district.

C. Nothing in this section shall be construed to prohibit any commissioner of the revenue of any city from using a land book in the form prescribed and furnished by or under the authority of the council of his city and at the cost of his city, provided that whether the land book is furnished by the city or the Tax Commissioner, it shall contain the name and street address of every owner of real property in the local jurisdiction. In cases where real property is owned by more than one person, the land book shall contain the name and street address of at least one of the owners.

D. In the event real estate is assessed at use value as provided in Article 4 (§ 58.1-3229 et seq.) of Chapter 32 of this title, the land book shall show both the use value and the fair market value.

Code 1950, § 58-804; 1958, c. 314; 1970, c. 440; 1971, Ex. Sess., cc. 3, 172; 1975, c. 547; 1980, c. 360; 1984, c. 675; 1995, c. 679; 2014, c. 330.

§ 58.1-3302. What the table of town or city lots to contain

In the table of town or city lots the commissioner of the revenue shall enter separately each lot and shall set forth in as many separate columns as may be necessary the name of the person, his residence and estate, as in the table of tracts of land. The commissioner shall set forth in other columns the number of each lot in the town or city, with the name of the town or city, if not previously placed in the caption or heading of the table, a description, when the person does not own the whole lot, of the part which he owns, the value of the buildings on the lot, the value of the lot including buildings, the amount of tax at the legal rate and like notice of the source of title and explanation of alteration as in the table of tracts of land. The commissioner of revenue of Pulaski County, however, when assessing or listing for taxation the town lots in the town of Pulaski for

such county, shall in addition set forth in other columns the number of each lot in the town and the number of the section or block in which it is located.

Code 1950, § 58-805; 1984, c. 675.

§ 58.1-3303. Clerks to forward copies of certain receipts and make certain reports regarding deeds and property transfers to local commissioners and Department

The clerk of every circuit court shall, before the fifteenth of each month, forward to the commissioner of revenue for his county or city and to the Department a copy of the recordation receipt for all deeds for the partition and conveyance of land, other than deeds of trust and mortgages, made to secure the payment of debts, which have been admitted to record in the clerk's office of such court within the month next preceding. In lieu of a printed paper copy of the recordation receipt, the Department shall accept the monthly electronic transfer of the recordation receipt copy on magnetic tape or other media acceptable to the Department. The receipt shall state the date of the deed, when admitted to record, the name of the grantor and grantee, the address of the grantee, given pursuant to § 17.1-223, and the description, quantity and specified value of land conveyed. Such clerk shall, at the same time, forward to the commissioner and the Department a list of all lands acquired in fee simple by the Commonwealth, through condemnation proceedings, and shall give the names of the persons from whom acquired, the dates of confirmation of the commissioners' reports in such proceedings, the quantity of land acquired in each case, the value thereof as specified in the reports and a description of each such tract.

The commissioner shall, upon receipt of any such receipt, promptly and carefully check the same against the records in the office of the clerk who furnished the same and, if he finds any errors in the receipt or list, he shall make proper correction thereof.

Code 1950, § 58-797; 1956, c. 34; 1962, c. 236; 1964, cc. 488, 644; 1972, c. 648; 1974, cc. 338, 352; 1975, c. 223; 1979, c. 527; 1984, c. 675; 1990, c. 46; 2006, c. 355.

§ 58.1-3304. Lists of judgments for partition or recovery of lands and of lands devised

The clerk of every court in which judgments are required to be docketed, except such clerks in cities having a population of more than 219,000 but not more than 300,000 and in cities having a population of more than 70,000 but not more than 86,000 and adjoining a city having a population of more than 200,000, shall make out a list of all judgments and decrees for the partition or recovery of lands which have been rendered and of all lands devised by will, which have been recorded in such court within the year ending on December 31 next preceding. The list shall state the date of the decree, the land which is the subject of the partition and between whom and in what proportion it is divided or, as the case may be, the date of the will containing the devise, when admitted to record, the names of the devisor and devisee and the description of the land devised. The clerk shall deliver the list to the commissioner for his county or city on or before January 15 in each year.

Upon receipt of any such list as hereinbefore provided for, the commissioner shall promptly and carefully check the list against the records in the office of the clerk who furnished the same and, if he finds any errors in the list, he shall make proper correction thereof.

Code 1950, § 58-798; 1956, c. 34; 1962, c. 236; 1964, c. 488; 1984, c. 675.

§ 58.1-3305. Penalty on clerks for failure to deliver such lists

If any clerk fails to perform the duties required of him by § 58.1-3303 or § 58.1-3304 he shall forfeit to the Commonwealth the sum of $100 and the judge of each circuit court shall ascertain at the term of his court next succeeding January 15 of each year whether the clerk of such court has performed such duties. If it appears that the clerk has failed to perform such duties, in the manner and within the time prescribed, the judge shall issue a rule against the clerk, returnable within five days, to show cause, if any, why judgment shall not be entered against him for the penalty herein imposed.

Code 1950, § 58-799; 1984, c. 675.

§ 58.1-3306. Librarian of Virginia to furnish abstracts of grants

An abstract shall be made out by the Librarian of Virginia on or before January 15 of each year, or as soon thereafter as practicable, for the commissioner of the revenue of each county or city, of all grants issued for lands therein from his office within the year ending December 31 next preceding. The Librarian of Virginia shall transmit every such abstract to the commissioner of the revenue for the proper county or city.

Code 1950, § 58-800; 1984, c. 675; 1998, c. 427.

§ 58.1-3307. Reserved

Reserved.

§ 58.1-3308. Commissioner to enter lands appearing on abstracts and assess their value

The commissioner of the revenue shall enter in the books and assess the fair market value of all lands in his county or city appearing by the abstracts to have been granted.

Code 1950, § 58-802; 1984, c. 675.

§ 58.1-3309. Lands on lists to be transferred and charged; apportionment of value of soil and standing timber

The lands and standing timber appearing on the lists or statements referenced in §§ 58.1-3303 through 58.1-3308 shall be transferred accordingly on the land book and charged to the person to whom the transfer is made or the grant has issued. When standing timber is so transferred the commissioner shall apportion the assessed value of the land on which the timber is standing between the owner of the soil and the owner of the timber.

Code 1950, § 58-803; 1984, c. 675.

§ 58.1-3310. Commissioner of the revenue to retain original land book; disposition of copies; penalties

Each commissioner of the revenue shall retain in his office the original land book. Each commissioner of the revenue shall deliver to the treasurer of his county or city and, if requested by the Department in writing, to the Department of Taxation one copy each of the land book on or before September 1 of each year or within ninety days from the date on which the rate of tax on real property has been determined, whichever is later. However, the Department may, for good cause, extend the time for delivery of such copies. Each commissioner of the revenue shall file a copy of the land book in the office of the clerk of the circuit court of his county or city. Such clerk shall preserve such copies in his office, but the commissioner of the revenue need not preserve the original nor the treasurer his copy for a longer period than six years following the tax year to which such books relate. The commissioner or the clerk may satisfy the requirements of this section by use of (i) paper; (ii) microfilm, microfiche, or any other microphotographic process; or (iii) electronic process.

Code 1950, § 58-806; 1962, c. 282; 1976, c. 532; 1984, c. 675; 1997, c. 701; 2014, c. 330.

§ 58.1-3311. Land book not to be altered after delivery to local treasurer

After the commissioner of the revenue shall have delivered a copy of his land book to the county or city treasurer, no alteration shall be made therein by him affecting the taxes or levies of that year.

Code 1950, § 58-807; 1984, c. 675.

§ 58.1-3312. Changes to be noted in land book by commissioner in making it out

Such changes as may happen within the county or city of any commissioner shall be noted by him in making out his land book.

Code 1950, § 58-808; 1984, c. 675.

§ 58.1-3313. Commissioners to correct mistakes in their land books

Every commissioner, in making out his land book, shall correct any mistake made in any entry therein. But land which has been correctly charged to one person shall not afterwards be charged to another without evidence of record that such charge is proper.

Code 1950, § 58-809; 1984, c. 675.

§ 58.1-3314. Transfer and entry fees

The fees for entering and transferring lands on commissioners' land books shall be as follows:

1. For making an entry and assessment under § 58.1-3308, one dollar for every parcel, to be paid by the owner;

2. For making an entry and assessment, when required by any owner, under the provisions of § 58.1-3290, one dollar and seventy-five cents and the parties among whom the land is divided shall be jointly and severally liable for such fee, unless the land is divided in a court proceeding, in which event the fee shall be paid by the plaintiff, or by such person or persons as the court may direct;

3. For making an entry transferring to one person lands before charged to another, one dollar, which shall be paid by the person to whom the transfer is made, and shall be a compensation for all tracts in the commissioner's county or city conveyed by the same deed; and

4. For an entry of land according to § 58.1-3352, one dollar, which shall be paid by the person for whom the entry is made.

Code 1950, § 58-816; 1984, c. 675.

§ 58.1-3315. Collection of fees

All the fees mentioned in § 58.1-3314 shall be collected by the clerks of the courts of record of the counties and cities at the time of recording the deed or will or upon the confirmation of a commissioner's report of partition, or at the time an entry is made by the commissioner under § 58.1-3308, which fee shall be paid by the vendee. In the case of lands acquired in fee simple by the Commonwealth, the quantity of land in each case shall be deducted from the land of the prior owner, but shall not be transferred to the Commonwealth, nor shall any transfer or other fee be charged or collected thereon.

Code 1950, § 58-817; 1973, c. 75; 1984, c. 675.

Article 9 - LEVY

§ 58.1-3320. Taxes to be extended on basis of assessment

Taxes for each year on real estate subject to assessment or reassessment shall be extended on the basis of the last general reassessment or biennial assessment made prior to such year, subject to such changes as may have been lawfully made.

Code 1950, § 58-759; 1984, c. 675.

§ 58.1-3321. Effect on rate when assessment results in tax increase; public hearings

A. When any annual assessment, biennial assessment or general reassessment of real property by a county, city or town would result in an increase of one percent or more in the total real property tax levied, such county, city, or town shall reduce its rate of levy for the forthcoming tax year so as to cause such rate of levy to produce no more than 101 percent of the previous year's real property tax levies, unless subsection B is complied with, which rate shall be determined by multiplying the previous year's total real property tax levies by 101 percent and dividing the product by the forthcoming tax year's total real property assessed value. An additional assessment or reassessment due to the construction of new or other improvements, including those improvements and changes set forth in § 58.1-3285, to the property shall not be an annual assessment or general reassessment within the meaning of this section, nor shall the assessed value of such improvements be included in calculating the new tax levy for purposes of this section. Special levies shall not be included in any calculations provided for under this section.

B. The governing body of a county, city, or town may, after conducting a public hearing, which shall not be held at the same time as the annual budget hearing, increase the rate above the

reduced rate required in subsection A if any such increase is deemed to be necessary by such governing body.

Notice of the public hearing shall be given at least 30 days before the date of such hearing by the publication of a notice in (i) at least one newspaper of general circulation in such county or city and (ii) a prominent public location at which notices are regularly posted in the building where the governing body of the county, city, or town regularly conducts its business, except that such notice shall be given at least 14 days before the date of such hearing in any year in which neither a general appropriation act nor amendments to a general appropriation act providing appropriations for the immediately following fiscal year have been enacted by April 30 of such year. Any such notice shall be at least the size of one-eighth page of a standard size or a tabloid size newspaper, and the headline in the advertisement shall be in a type no smaller than 18-point. The notice described in clause (i) shall not be placed in that portion, if any, of the newspaper reserved for legal notices and classified advertisements. The notice described in clauses (i) and (ii) shall be in the following form and contain the following information, in addition to such other information as the local governing body may elect to include:

NOTICE OF PROPOSED REAL PROPERTY TAX INCREASE

The (name of the county, city or town) proposes to increase property tax levies.

1. Assessment Increase: Total assessed value of real property, excluding additional assessments due to new construction or improvements to property, exceeds last year's total assessed value of real property by percent.

2. Lowered Rate Necessary to Offset Increased Assessment: The tax rate which would levy the same amount of real estate tax as last year, when multiplied by the new total assessed value of real estate with the exclusions mentioned above, would be $____ per $100 of assessed value. This rate will be known as the "lowered tax rate."

3. Effective Rate Increase: The (name of the county, city or town) proposes to adopt a tax rate of $____ per $100 of assessed value. The difference between the lowered tax rate and the proposed rate would be $____ per $100, or ____ percent. This difference will be known as the "effective tax rate increase."

Individual property taxes may, however, increase at a percentage greater than or less than the above percentage.

4. Proposed Total Budget Increase: Based on the proposed real property tax rate and changes in other revenues, the total budget of (name of county, city or town) will exceed last year's by percent.

A public hearing on the increase will be held on (date and time) at (meeting place).

C. All hearings shall be open to the public. The governing body shall permit persons desiring to be heard an opportunity to present oral testimony within such reasonable time limits as shall be determined by the governing body.

D. The provisions of this section shall not be applicable to the assessment of public service corporation property by the State Corporation Commission.

E. Notwithstanding other provisions of general or special law, the tax rate for taxes due on or before June 30 of each year may be fixed on or before May 15 of that tax year.

Code 1950, § 58-785.1; 1975, c. 622; 1979, c. 473; 1980, c. 396; 1981, c. 212; 1984, c. 675; 1990, c. 579; 2007, c. 948; 2009, cc. 30, 511; 2016, cc. 657, 663.

Article 10 - PUBLIC DISCLOSURE/ACCESS TO RECORDS

§ 58.1-3330. Notice of change in assessment

A. Whenever in any county, city or town there is a reassessment of real estate, or any change in the assessed value of any real estate, notice shall be given by mail directly to each property owner, as shown by the land books of the county, city or town whose assessment has been changed. Such notice shall be sent by postpaid mail at least fifteen days prior to the date of a hearing to protest such change to the address of the property owner as shown on such land books. The governing body of the county, city or town shall require the officer of such county, city or town charged with the assessment of real estate to send such notices or it shall provide funds or services to the persons making such reassessment so that such persons can send such notices.

B. Every notice shall, among other matters, show the magisterial or other district, if any, in which the real estate is located, the amount and the new and immediately prior two tax years' final assessed values of land, and the new and immediately prior two tax years' final assessed values of improvements. It shall further set out the time and place at which persons may appear before the officers making such reassessment or change and present objections thereto. The notice shall also inform each property owner of the right to view and make copies of records maintained by the local assessment office pursuant to §§ 58.1-3331 and 58.1-3332, and inform each property owner that the records available and the procedure for accessing them are set out in §§ 58.1-3331 and 58.1-3332. In counties that have elected by ordinance to prepare land and personal property books in alphabetical order as authorized by § 58.1-3301 B, such notice may omit reference to districts, as provided herein.

The following requirements shall apply to any notice of change in assessment other than one in which the change arises solely from the construction or addition of new improvements to the real estate. If the tax rate that will apply to the new assessed value has been established, then the notice shall set out such rate. In addition, whether or not the tax rate applicable to the new assessed value has been established, the notice shall set out the tax rates for the immediately prior two tax years, the total amount of the new tax levy, based on the current tax rate at the time the

notices are prepared, and the amounts of the total tax levies for the immediately prior two tax years, based on the final tax rates for those tax years multiplied by the final assessed values of land and improvements for those tax years, and the percentage changes in the new tax levy from the tax levies in the immediately prior two tax years.

If the tax rate that will apply to the new assessed value has not been established, then the notice shall set out the time and place of the next meeting of the local governing body at which public testimony will be accepted on any real estate tax rate changes. If this meeting will be more than 60 days from the date of the reassessment notice, then instead of the date of the meeting, the notice shall include information on when the date of the meeting will be set and where it will be publicized.

C. Any person other than the owner who receives such reassessment notice, shall transmit the notice to such owner, at his last known address, immediately on receipt thereof, and shall be liable to such owner in an action at law for liquidated damages in the amount of twenty-five dollars, in the event of a failure to so transmit the notice. Mailing such notice to the last known address of the property owner shall be deemed to satisfy the requirements of this section.

D. Notwithstanding the provisions of this section, if the address of the taxpayer as shown on the tax record is in care of a lender, the lender shall upon request furnish the county, city or town a list of such property owners, together with their current addresses as they appear on the books of the lender, or the parties may by agreement permit the lender to forward such notices to the property owner, with the cost of postage to be paid by the county, city or town.

Code 1950, § 58-792.01; 1973, c. 210; 1974, c. 179; 1975, c. 614; 1977, c. 594; 1984, c. 675; 2006, cc. 255, 509; 2007, cc. 344, 353; 2014, cc. 71, 802; 2015, cc. 151, 157.

§ 58.1-3331. Public disclosure of certain assessment records

A. All property appraisal cards or sheets within the custody of a county, city or town assessing officer, except those cards or sheets containing information made confidential by § 58.1-3, shall be open for inspection, after the notice of reassessment is mailed as provided in § 58.1-3330, the normal office hours of such official by any taxpayer, or his duly authorized representative, desiring to review such cards or sheets.

B. Any taxpayer, or his duly authorized representative, whose real property has been assessed for taxation shall, upon request, be allowed to examine the working papers used by any such assessing official in arriving at the appraised and assessed value of such person's land and any improvements thereon.

C. Upon request of any taxpayer or his duly authorized representative, the assessing officer of the governing body shall make available information regarding the methodology employed in the calculation of a property's assessed value to include the capitalization rate used to determine the property's value, a list of comparable properties or sales figures considered in the valuation, and any other market surveys, formulas, matrices, or other factors considered in determining the value

of the property. Upon request of a taxpayer, or his duly authorized representative, whose property has been assessed for taxation, the assessing officer shall provide a written explanation or justification for an increase in the property's assessed value. Nothing in this section shall be construed to require disclosure of information that is prohibited from disclosure pursuant to §§ 58.1-3 and 58.1-3294.

D. The assessing officer of the governing body may fix and promulgate a limited period within normal office hours when such records shall be available for inspection and copying, but such period of time may not be less than four hours per day on Monday through Friday, except on such days when the office is otherwise closed.

E. Notwithstanding any special or general laws to the contrary, in any appeal of the assessment of residential property filed by a taxpayer as an owner of real property containing less than four residential units (i) to the board of equalization pursuant to § 58.1-3379, or (ii) to circuit court pursuant to § 58.1-3984, the assessing officer shall send the taxpayer a written notice provided for in this subsection. Such notice shall be on the first page of such notice and be in bold type no smaller than fourteen points and mailed to, or posted at, the last known address of the taxpayer as shown on the current real estate tax assessment books or current real estate tax assessment records. Notice under this subsection shall satisfy the notice requirements of this section. In an appeal before the board of equalization, such written notice may be contained in the written notice of the hearing date before the board. For all applicable assessments on or after January 1, 2012, such written notice shall: (a) be given at least 45 days prior to the hearing of the taxpayer's appeal; (b) include a statement informing the taxpayer of his rights under this section to review and obtain copies of all of the assessment records pertaining to the assessing officer's determination of fair market value of such real property; and (c) advise the taxpayer of his right to request that the assessor make a physical examination of the subject property.

F. If, within at least five days prior to any action by a court under § 58.1-3984 or by a board of equalization under § 58.1-3379, the assessing officer fails to disclose or make available for inspection any information required to be disclosed or made available for inspection and copying under this section, then the assessing official and the applicable local government shall not be allowed to introduce such information or use it in any other manner in any such appeal.

Code 1950, § 58-792.02; 1975, c. 615; 1979, c. 577; 1980, c. 124; 1983, c. 161; 1984, c. 675; 2010, c. 552; 2011, c. 184, 232; 2015, c. 244.

§ 58.1-3332. Property appraisal cards or sheets

Each county, city or town assessing officer shall maintain current property appraisal cards or sheets for all parcels of real estate assessed and assessable by him. Any such assessing officer who maintains such property appraisal cards or sheets shall include thereon the appraised value of the property and improvements, if any, and the calculations and methodology used in determining the assessed value of such property and improvements.

Code 1950, § 58-817.1; 1975, c. 618; 1983, c. 161; 1984, c. 675.

Article 11 - TAX TO CONSTITUTE LIEN

§ 58.1-3340. Lien on real estate for taxes and levies assessed thereon; responsibility of purchaser or trustee at sale; lien on rents

There shall be a lien on real estate for the payment of taxes and levies assessed thereon prior to any other lien or encumbrance. The lien shall continue to be such prior lien until actual payment shall have been made to the proper officer of the taxing authority. The purchaser at a sale, or trustee in the event of a foreclosure sale, shall cause the proceeds to be applied to the payment of all taxes and levies assessed on real estate. In the case of the purchase of a portion of a tract of land, the purchaser shall cause the proceeds to be applied to the payment of taxes and levies assessed on the entire tract, prorated in accordance with the relationship that the purchase price bears to the most recent assessed value of the entire tract. If the cost per acre of the purchased parcel is less than the assessed value per acre of the entire tract, or if, in the reasonable opinion of the local commissioner of the revenue or other assessing officer, the purchase price is less than the fair market value of the purchased parcel, the local commissioner of the revenue or other assessing officer may require that an appraisal, prepared by a state-certified or state-licensed appraiser, of the purchased parcel be provided, and in such event the proration shall be made in accordance with the relationship that the greater of (i) the appraised value of the purchased parcel or (ii) the purchase price bears to the most recent assessed value of the entire tract. In the event a proration is necessary, the purchaser's portion of such tract of land shall be relieved of such lien to the extent the proceeds exceed the purchaser's pro rata share of taxes. It shall be the responsibility of the treasurer or other proper officer of the taxing authority to cause the release of the lien. The seller's liability for taxes and levies shall be effectively prorated contractually. The words "taxes" and "levies" as used in this section include the penalties and interest accruing on such taxes and levies in pursuance of law. The lien imposed hereby shall, in addition to existing remedies for the collection of taxes and levies, be enforceable by suit in equity under the provisions of Article 4 (§ 58.1-3965 et seq.) of Chapter 39.

There shall be a further lien upon the rents of such real estate whether the same be in money or in kind, for taxes of the current year.

Code 1950, §§ 58-762, 58-1023; 1973, c. 467; 1979, c. 12; 1984, c. 675; 1994, c. 386; 1995, c. 143; 2010, c. 417.

§ 58.1-3341. Liens for taxes delinquent twenty years or more released; lands purchased by Commonwealth; pending suits

No lien upon real estate for taxes and levies due and payable to the Commonwealth or any political subdivision thereof which has been, or shall hereafter become, delinquent for twenty or more years shall be enforced in any proceeding at law or in equity and such lien shall be deemed to have expired and to be barred and cancelled after such time. For purposes of this section, taxes deferred pursuant to an ordinance enacted in conformity with Article 2 (§ 58.1-3210 et seq.) or Article 2.1 (§ 58.1-3219 et seq.) of Chapter 32 of this title shall not be considered "delinquent"

during the pendency of any period of deferral, and the lien upon real property for taxes and levies shall remain valid for twenty years plus any period of deferral afforded pursuant to such ordinance.

The right, title and interest of the Commonwealth in and to all real estate sold for taxes and levies which have been, or hereafter become, delinquent for twenty or more years, when such real estate has been purchased by the Commonwealth and not resold, is hereby unconditionally released unto and vested by operation of law in the person or persons who owned the real estate at the time the Commonwealth so acquired title or persons claiming, or to claim, by, through or under them.

No clerk shall make a tax deed conveying to any person any real estate sold for delinquent taxes or levies which have been, or hereafter become, delinquent for twenty or more years.

Code 1950, § 58-767; 1962, c. 93; 1984, c. 675; 1994, c. 209.

§ 58.1-3342. Assessment upon owner's death; liability of personalty for tax

When an owner dies intestate, the commissioner of the revenue may ascertain who are the heirs of the intestate and charge the land to such heirs or he may charge the land to the decedent's estate until a transfer thereof. When the owner has devised the land, the commissioner may charge the same to such person as may be beneficially entitled thereto under the will. If, under the will, the land is to be sold, it shall continue charged to the decedent's estate until a transfer thereof and, while it continues so charged to the estate, the personal property shall be liable for the tax on all property so charged and subject to distress or other lawful process for the recovery of the same. Any assets in the hands of the personal representatives of the decedent shall be likewise liable therefor.

Code 1950, § 58-771; 1984, c. 675.

§ 58.1-3343. Effect of lien on certain real estate jointly owned

The lien on real estate owned by more than one person as tenants in common, joint tenants or otherwise for the payment of all prior, present and subsequent taxes and levies or assessments thereof, including any tax, levy, or assessment authorized under § 58.1-3712, 58.1-3713, 58.1-3713.4, or 58.1-3741, shall not be impaired if such real estate was or is assessed in the name of one of such owners with the notation, "and another," or "and others," or "and wife," or "and husband," or the appropriate abbreviations of such words, or their legal equivalents, so as to indicate that the real estate was or is owned by more than one person.

Code 1950, § 58-770; 1984, c. 675; 2001, c. 462; 2013, cc. 305, 618.

§ 58.1-3344. Taxes a lien on fee simple estate, not merely on interest of owner

In any city, county, district or town:

1. Taxes assessed against real estate subject to taxes shall be a lien on the property and the name of the person listed as owner shall be for convenience in the collection of the taxes. The lien for taxes shall not be limited to the interest of the person assessed but shall be on the entire fee

simple estate. There shall be no lien when for any year the same property is assessed to more than one person and all taxes assessed against the property in one of the names have been paid for that year.

2. When taxes are assessed against land in the name of a life tenant or other person owning less than the fee or owing no interest, the land may be sold under § 58.1-3965 et seq. for delinquent taxes provided the owner of record or his heirs be made parties to the proceeding for sale.

Code 1950, § 58-1024; 1958, c. 602; 1972, cc. 10, 592; 1973, c. 467; 1984, c. 675.

§ 58.1-3345. Tax liens on timber in certain counties

In any county in this Commonwealth which adjoins three cities lying wholly within this Commonwealth, one of which cities has a population of 190,000 or more, taxes and levies assessed against the land of a life tenant shall be a lien upon any matured timber growing upon such land, and in any suit brought for the purpose of enforcing such lien the court may decree a sale of such timber. The term "matured timber," as used in this section, shall mean any timber which may be selectively cut without damage to the estate of the remainder, and the certificate of the State Forester that timber is matured shall be accepted as prima facie evidence of that fact.

Code 1950, § 58-768.1; 1984, c. 675.

Article 12 - ADMINISTRATIVE AND JUDICIAL REVIEW

§ 58.1-3350. Review of assessment

Any person aggrieved by any assessment under this chapter may apply for relief to the board of assessors, or if none, to the board of equalization created under Article 14 (§ 58.1-3370 et seq.) of this chapter or may directly apply for relief to the appropriate circuit court of the county or city in those localities where application to the aforenamed board is not a prerequisite to the jurisdiction of the court.

1984, c. 675; 1985, c. 64.

§ 58.1-3351. How assessed value changed; improvements; correction by court or board of equalization

The value of real estate as ascertained at a general reassessment and the ascertained value of new grants which may hereafter be entered and assessed shall only be changed to allow the addition of the value of improvements, or a total or partial deduction of the value of such improvements or an addition to or total or partial deduction from the value of the real estate caused by any easement affecting the real estate, except so far as the same are directed to be corrected by a court of competent jurisdiction or by the local board of equalization in the exercise of powers expressly conferred by law. Routine maintenance shall not be considered as improvements.

Code 1950, § 58-763; 1968, c. 593; 1983, c. 161; 1984, c. 675.

§ 58.1-3352. When lands in one place are assessed in another; how error corrected

If land lying in one county or city be erroneously assessed in another, the commissioner on whose book it is erroneously assessed shall certify the owner's name and the quantity, description and value of the land to the proper commissioner, who shall enter the same on his book, and the commissioner on whose book it was erroneously entered shall strike the same therefrom upon being informed of the entry thereof by the proper commissioner.

Code 1950, § 58-814; 1984, c. 675.

§ 58.1-3353. Assessment not invalid unless rights prejudiced by error

No assessment of any real estate, whether heretofore or hereafter made, shall be held to be invalid because of any error, omission or irregularity by the commissioner of the revenue or other assessing officer in charging such real estate on the land book unless it be shown by the person or persons contesting any such assessment that such error, omission or irregularity has operated to the prejudice of his or their rights.

Code 1950, § 58-815; 1984, c. 675.

§ 58.1-3354. Change when easement acquired

In the case of any real estate upon which any easement has been acquired for the installation of public service, highway or street facilities, and which has not been reassessed by the commissioner of the revenue on request of the landowner as provided in § 58.1-3351, the owner thereof may apply for relief to the circuit court of such county or any city court of record wherein such property is located. If the governing body of any county is of the opinion that any real estate therein is assessed at less than its fair market value, it shall direct the attorney for the Commonwealth to apply to the circuit court of such county to have the assessment corrected. Proceedings upon any such application shall be as provided in §§ 58.1-3984 to 58.1-3989 and the court shall enter such order with respect to the assessment as is just and proper.

Code 1950, § 58-764; 1968, c. 593; 1976, c. 717; 1984, c. 675.

§ 58.1-3355. Notice to State Corporation Commission and Department of deduction from value of real estate for public service corporation easement

In the event any deduction has been made from the value of real estate for any public service corporation easement under either § 58.1-3351 or § 58.1-3354, the commissioner of revenue or director of finance shall, on request, send the State Corporation Commission, the Department of Taxation, and the public service corporation owning said easement the amount of the deduction so made.

Code 1950, § 58-764.1; 1968, c. 593; 1977, c. 49; 1983, c. 570; 1984, c. 675.

Article 13 - PUBLIC TAKING OF PRIVATE REAL ESTATE

. Credit on current year's taxes when land acquired by United States, the Commonwealth, a political subdivision, a church or religious body, a disabled veteran, or a surviving spouse of a member of the armed forces who was killed in action

Any taxpayer whose lands, or any portion thereof, are in any year acquired or taken in any manner by the United States; the Commonwealth; a political subdivision; a church or religious body, which is exempt from taxation by Article X, Section 6 of the Constitution of Virginia; a surviving spouse of a member of the armed forces of the United States who was killed in action for that portion of the property that is exempt under § 58.1-3219.9; or a disabled veteran for that portion of the property that is exempt from taxation pursuant to § 58.1-3219.5, shall be relieved from the payment of taxes and levies from the date of divestment of such land for that portion of the year in which the property was taken or acquired. The county treasurers as to land situated in counties and the city treasurers and city collectors as to lands situated in cities shall receive from and receipt to the original owner of the lands so taken, for his proportionate part of the taxes and levies for the year and credit the payment on the tax tickets and shall return at the same time he makes his return of lands and lots improperly assessed, as required by law, the proportional part of the taxes and levies exonerated from taxation for any such year, indicating the date on which the property was acquired by the government or religious body. Such list, when approved by the proper authorities, shall be considered as a credit to any such treasurer or collector in the settlement of the accounts for such year.

Code 1950, §§ 58-818, 58-822; 1960, c. 58; 1962, c. 149; 1971, Ex. Sess., c. 47; 1984, c. 675; 2012, c. 782; 2014, cc. 330, 757.

§ 58.1-3360.1. Clerk to furnish certificate of land acquired; contents of certificate; certificate as authority to receive and prorate taxes

The clerk of the court of the county or city in which is recorded the transfer of title to such property shall furnish a certificate to the county or city treasurer showing the quantity of land so taken or acquired, and whether by the Commonwealth or any political subdivision thereof; a church or religious body that is exempt from taxation by Article X, Section 6 of the Constitution of Virginia; a surviving spouse of a member of the armed forces of the United States who was killed in action for that portion of the property that is exempt from taxation pursuant to § 58.1-3219.9; or a disabled veteran for that portion of the property that is exempt from taxation pursuant to § 58.1-3219.5, the name of the former owner and a description of the property and the district or ward in which the property is situated, also the date of the recordation of the deed or order by which such property was taken or acquired by the Commonwealth or any political subdivision thereof or any such church or religious body, as shown by the records in his office. Such certificate shall be sufficient evidence to the county and city treasurers to authorize them to receive and prorate the taxes and levies as herein authorized.

Code 1950, § 58-823; 1958, c. 431; 1960, c. 58; 1971, Ex. Sess., c. 47; 1984, c. 675; 2012, c. 782; 2015, c. 577.

§ 58.1-3360.2. Proration by court; effect on interest and penalties

Any such taxpayer, or his heirs, successors or assigns, who shall fail to have his taxes prorated by the county or city treasurer, as above provided, shall be entitled to apply to the appropriate court

for proration of the taxes, as herein provided, in the same manner and within the same time as provided by law for the correction of erroneous assessments and refunding taxes erroneously charged; provided, however that in such proceedings such taxpayer shall be entitled to relief of interest and penalties only as to the proportionate part of the property so taken or acquired by the Commonwealth or any county or municipality thereof; a church or religious body that is exempt from taxation by Article X, Section 6 of the Constitution of Virginia; a surviving spouse of a member of the armed forces of the United States who was killed in action for that portion of the property that is exempt from taxation pursuant to § 58.1-3219.9; or a disabled veteran for that portion of the property that is exempt from taxation pursuant to § 58.1-3219.5.

Code 1950, § 58-824; 1960, c. 58; 1971, Ex. Sess., c. 1; 1984, c. 675; 2012, c. 782; 2015, c. 577.

§ 58.1-3361. Clerk to furnish lists of such lands

The clerk of the court of the county or city in which the lands described in § 58.1-3360 lie shall furnish a certificate to the Comptroller and to the county or city treasurer, showing the quantity of land taken or acquired by the government or religious body, the name of the former owner and a description of the date of the recordation of the deed by which such lands were so taken or acquired as shown by the records in his office. Such certificate shall be sufficient evidence to county and city treasurers and city collectors to authorize them to receive and prorate the taxes and levies as herein authorized.

Code 1950, § 58-819; 1984, c. 675.

§ 58.1-3362. Refund of taxes paid; effect on penalties and interest

Any taxpayer whose lands are taken and who has paid his taxes and levies for the whole year, shall be entitled to recover such portion of the taxes, as he would be relieved from paying under the terms of § 58.1-3360, on any lands that may have been taken or acquired by the government or religious body in the same manner as provided by law for the correction of erroneous assessments and reducing taxes erroneously charged. Any taxpayer, who has not paid the taxes or levies on any such lands so taken or acquired, shall also be relieved of interest and penalties therefor; however, he shall make payment for his proportion of the taxes and levies for the year during which the land was so taken or acquired, on or before July 1 of the year following.

Code 1950, §§ 58-820, 58-822; 1960, c. 58; 1962, c. 149; 1971, Ex. Sess., c. 47; 1984, c. 675.

§ 58.1-3363. Recovery of taxes paid while contesting condemnation

Any taxpayer whose lands are taken by condemnation, who appeals from the order or decree of the trial court vesting title in the lands in the United States and who, pending such appeal, pays the taxes and levies on such lands, accruing subsequent to such order or decree vesting title to such lands in the United States, shall, in the event the order or decree appealed from is affirmed, be entitled to recover the taxes and levies so paid from the date upon which the title in the lands was vested in, and the possession and control thereof exercised by, the United States, in the same manner as provided by law for the correction of erroneous assessments and refunding taxes

erroneously charged. Such right to recover such taxes and levies shall extend to September 1 of the year following the date of final determination of such appeal.

Code 1950, § 58-821; 1984, c. 675.

Article 14 - BOARDS OF EQUALIZATION

§ 58.1-3370. Appointment

A. The circuit court having jurisdiction within each city and each county other than those counties operating under § 58.1-3371 shall, in each tax year immediately following the year a general reassessment or annual or biennial assessment is conducted in such city or county, appoint for such city or county a board of equalization of real estate assessments, unless such county or city has a permanent board of equalization appointed according to law. In addition, at the request of the local governing body, the circuit court may appoint alternate members as provided in subsection B of § 58.1-3373, and the provisions of that subsection shall apply mutatis mutandis.

B. The term of any board of equalization appointed under the authority of this section shall expire one year after the effective date of the assessment for which they were appointed.

Code 1950, § 58-895; 1975, c. 575; 1979, c. 577; 1983, c. 304; 1984, cc. 273, 675; 1991, c. 240; 2014, c. 19.

§ 58.1-3371. Appointment in counties with county executive or county manager form of government

Unless the county has a permanent board of equalization appointed according to law, the board of supervisors or other governing body of any county operating under the county executive form of government, or the county manager form of organization and government provided for in Chapter 5 (§ 15.2-500 et seq.) or Chapter 6 (§ 15.2-600 et seq.) of Title 15.2, shall for the year following any year a general reassessment or annual or biennial assessment is conducted create and appoint for the county a board of equalization of real estate assessments. For any county operating under the county executive form of government, the board shall be composed of not less than three nor more than the number of districts for the election of members of the board of supervisors in the county. In addition to such members, at the request of the local governing body, the circuit court for the locality may appoint not more than two alternate members. The qualifications, terms, and compensation of alternate members shall be the same as those of regular members. A regular member when he knows he will be absent from or will have to abstain from any proceeding at a meeting shall notify the chairman of the board of equalization at least 24 hours prior to the meeting of such fact. The chairman may select an alternate to serve in the absent or abstaining member's place and the records of the board shall so note. Such alternate member may vote on any proceeding in which a regular member is absent or abstains. A regular member shall have the right to apply to the board of equalization for relief the same as any other taxpayer. If a regular member applies for relief, and one or more alternate members has been appointed pursuant to this section, then the chairman shall appoint an alternate member to hear and vote on such regular

member's application for relief. If the chairman applies for relief, then the vice chairman shall appoint an alternate member to hear and vote on the chairman's application for relief.

The terms of the regular and alternate members of any board so appointed shall expire on December 31 of the year in which they are appointed. Members of any board shall have the qualifications prescribed by § 58.1-3374 and shall conduct their business as required by § 58.1-3378.

Code 1950, § 58-897; 1950, p. 851; 1979, c. 577; 1983, c. 304; 1984, c. 675; 1995, c. 24; 2011, c. 10; 2014, c. 19.

§ 58.1-3372. Repealed

Repealed by Acts 1985, c. 62.

§ 58.1-3373. Permanent board of equalization

A. Any county or city which uses the annual assessment method or the biennial assessment method authorized under § 58.1-3253 in lieu of periodic general assessments, may elect to create a permanent board of equalization in lieu of the board of equalization required under §§ 58.1-3370 and 58.1-3371. Such board shall consist of three or five members to be appointed by the circuit court of such county or city, or the circuit court having jurisdiction within such city, as follows: In the case of a three-member board, one member shall be appointed for a term of one year, one member shall be appointed for a term of two years, and one member shall be appointed for a term of three years. In the case of a five-member board, one member shall be appointed for a one-year term, one member shall be appointed for a two-year term, and three members shall be appointed for a three-year term. However, for any county operating under the county executive form of government, the number of members of the permanent board of equalization shall be no less than three nor more than the number of districts for the election of members of the board of supervisors in the county, and the members of the permanent board of equalization shall be appointed by the circuit court of such county for three-year terms. As the terms of the initial appointees expire, their successors shall be appointed for terms of three years. Members of such boards shall have the qualifications prescribed by § 58.1-3374, and shall conduct their business as required by § 58.1-3378. The compensation of the members of any such boards shall be fixed by the governing body.

B. In addition to regular members appointed under subsection A, at the request of the local governing body, the circuit court for any locality 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. The qualifications and compensation of alternate members shall be the same as those of regular members. In the case of a three-member board, the alternate shall be appointed for a two-year term. In the case of a five-member board, one alternate shall be appointed for a term of one year and one alternate shall be appointed for a term of two years. Thereafter, the terms for alternate members of five-member boards shall be for three-year terms.

A regular member when he knows he will be absent from or will have to abstain from any proceeding at a meeting shall notify the chairman of the board of equalization at least 24 hours prior to the meeting of such fact. The chairman may select an alternate to serve in the absent or abstaining member's place and the records of the board shall so note. Such alternate member may vote on any proceeding in which a regular member is absent or abstains. A regular member shall have the right to apply to the board of equalization for relief the same as any other taxpayer. If a regular member applies for relief, and one or more alternate members has been appointed pursuant to this section, then the chairman shall appoint an alternate member to hear and vote on such regular member's application for relief. If the chairman applies for relief, then the vice chairman shall appoint an alternate member to hear and vote on the chairman's application for relief.

C. Notwithstanding the provisions of subsections A and B concerning appointment of members and alternate members by the circuit court, the board of supervisors of Loudoun County may elect to appoint the members and alternate members of its board of equalization of real estate assessments.

Code 1950, § 58-898.1; 1979, c. 577; 1984, c. 675; 1989, c. 390; 1995, c. 24; 2011, c. 10; 2013, c. 548; 2014, c. 19.

§ 58.1-3373.1. City may elect to provide for board of equalization

Notwithstanding any other provision of law, the City of Richmond may by ordinance elect to provide for a board of equalization or permanent board of equalization as provided in this article instead of a board of review.

2014, cc. 61, 607.

§ 58.1-3374. Qualifications of members; vacancies

Except as provided in § 58.1-3371 or 58.1-3373, every board of equalization shall be composed of not less than three members nor more than five members or the number of local election districts in the locality, whichever is greater. In addition to such regular members, at the request of the local governing body, the circuit court for any locality shall appoint one alternate member in the case of a board with less than five members, and two alternate members in the case of a board with five or more members. The qualifications, terms and compensation of alternate members shall be the same as those of regular members. A regular member when he knows he will be absent from or will have to abstain from any proceeding at a meeting shall notify the chairman of the board of equalization at least 24 hours prior to the meeting of such fact. The chairman may select an alternate to serve in the absent or abstaining member's place and the records of the board shall so note. Such alternate member may vote on any proceeding in which a regular member is absent or abstains.

All members of every board of equalization, including alternate members, shall be residents, a majority of whom shall be freeholders, in the county or city for which they are to serve and shall be selected from the citizens of the county or city. Appointments to the board of equalization

shall be broadly representative of the community. Thirty percent of the members of the board shall be commercial or residential real estate appraisers, other real estate professionals, builders, developers, or legal or financial professionals, and at least one such member shall sit in all cases involving commercial, industrial or multi-family residential property, unless waived by the taxpayer. No member of the board of assessors shall be eligible for appointment to the board of equalization for the same reassessment. In order to be eligible for appointment, each prospective member of such board shall attend and participate in the basic course of instruction given by the Department of Taxation under § 58.1-206. In addition, at least once in every four years of service on a board of equalization, each member of a board of equalization shall take continuing education instruction provided by the Tax Commissioner pursuant to § 58.1-206. Any vacancy occurring on any board of equalization shall be filled for the unexpired term by the authority making the original appointment.

On any board or panel thereof considering appeals of commercial or multi-family residential property in a locality with a population exceeding 100,000, 30 percent of the members of such board or panel shall be commercial or multi-family residential real estate appraisers who are licensed and certified by the Virginia Real Estate Appraiser Board to serve as general real estate appraisers, other commercial or multi-family real estate professionals or licensed commercial or multi-family real estate brokers, builders, developers, active or retired members of the Virginia State Bar, or other legal or financial professionals whose area of practice requires or required knowledge of the valuation of property, real estate transactions, building costs, accounting, finance, or statistics. For the purposes of this section, commercial or multi-family residential property shall be defined as any property that is either operated as or zoned for use as commercial, industrial or multi-family residential rental property.

Code 1950, § 58-899; 1979, c. 577; 1983, c. 304; 1984, c. 675; 1995, c. 24; 2003, c. 1036; 2009, c. 25; 2010, c. 552; 2011, c. 10; 2013, c. 197; 2016, c. 38.

§ 58.1-3375. Compensation of members

The members of every board of equalization shall receive compensation, for time actually engaged in the duties of the board, to be fixed by the governing body of the county or city and paid out of the local treasury. The governing body of every county and of every city may limit the compensation to such number of days as in its opinion is sufficient for the completion of the work of the board.

Code 1950, § 58-900; 1984, c. 675.

§ 58.1-3376. Organization and assistants; legal assistance

A. Every board of equalization shall elect one of its members as chairman and another as secretary, and may employ necessary clerical and other assistants and call in advisors and fix their compensation, subject to the approval of the governing body of the county or city, to be paid out of the local treasury.

B. In any city with a population of more than 100,000, when the board of equalization, in fulfilling its functions, desires legal advice, the board shall request such advice from the attorney for the city or county for which they were appointed.

Notwithstanding any contrary provision of law, general or special, such attorney shall in a timely manner give his advice to the board.

If there is no such attorney or the attorney has a conflict, the board shall make a written request to the city or county governing body to employ an attorney to advise the board. The governing body shall respond in writing within ten days from receipt of such request.

If the governing body refuses to honor the board's request, then the board shall apply to the circuit court that appointed it. The judge of such circuit court may authorize the employment of an attorney to advise the board and order that the attorney be paid out of the local treasury.

Code 1950, § 58-901; 1984, c. 675; 1994, c. 509.

§ 58.1-3377. Use of land books

Every board of equalization for a county not having a general reassessment of real estate shall procure for its use from the clerk of the circuit court of the county the copy of the land book on file in his office for the current year if available, otherwise for the preceding year, and the board shall return the land book to the clerk upon the completion of its work. Every board of equalization for a city having need of a copy of the land book for any year shall procure an existing copy if available for the purpose; otherwise the governing body of the city shall cause a new copy to be made and furnished the board at the expense of the city.

Code 1950, § 58-902; 1984, c. 675.

§ 58.1-3378. Sittings; notices thereof

Each board of equalization shall sit at and for such time or times as may be necessary to discharge the duties imposed and to exercise the powers conferred by this chapter. Of each sitting public notice shall be given at least 10 days beforehand by publication in a newspaper having general circulation in the county or city and, in a county, also by posting the notice at the courthouse and at each public library, voting precinct or both. Such posting shall be done by the sheriff or his deputy. Such notice shall inform the public that the board shall sit at the place or places and on the days named therein for the purpose of equalizing real estate assessments in such county or city and for the purpose of hearing complaints of inequalities wherein the property owners allege a lack of uniformity in assessment, or errors in acreage in such real estate assessments. The board also shall hear complaints that real property is assessed at more than fair market value. Except as otherwise provided by the Code of Virginia:

1. The fair market value of real property shall be established by the board as of January 1 of the applicable year; or

2. If a county or city has adopted July 1 as its tax day for real property pursuant to § 58.1-3011, then, for other than public service corporation property, the fair market value of real property shall be established by the board as of July 1 of the applicable year.

The governing body of any county or city may provide by ordinance the date by which applications must be made by property owners or lessees for relief. Such date shall not be earlier than 30 days after the termination of the date set by the assessing officer to hear objections to the assessments as provided in § 58.1-3330. If no applications for relief are received by such date, the board of equalization shall be deemed to have discharged its duties. Such governing body may also provide by ordinance the deadline by which all applications must be finally disposed of by the board of equalization. All such deadlines shall be clearly stated on the notice of assessment. The governing body may provide for applications for relief to be made electronically; however, taxpayers retain the right to file applications on traditional paper forms provided by the governing body as long as such forms are submitted prior to the established deadline. If such paper forms are mailed by the applicant, the postmark date shall be considered the date of receipt by the governing body. A hearing for relief before the board of equalization regarding an assessment on residential property shall not be denied on the basis of a lack of information on the application for relief, as long as the application includes the address, the parcel number, and the owner's proposed assessed value for the property. A hearing for relief before the board of equalization regarding an assessment on commercial, multi-family residential, or industrial property on the basis of fair market value shall not be denied on the basis of a lack of information on the application, as long as documentation of any applicable assessment methodologies is submitted with the application, and the application includes the address, the parcel number, and the owner's proposed assessed value for the property.

Code 1950, § 58-903; 1976, c. 679; 1983, c. 304; 1984, c. 675; 1989, c. 300; 2000, c. 383; 2003, c. 1036; 2013, c. 197.

§ 58.1-3379. Hearing complaints and equalizing assessments

A. The board shall hear and give consideration to such complaints and shall adjust and equalize such assessments and shall, moreover, be charged with the especial duty of increasing as well as decreasing assessments, whether specific complaint be laid or not, if in its judgment, the same be necessary to equalize and accomplish the end that the burden of taxation shall rest equally upon all citizens of such county or city.

B. In all cases brought before the board, there shall be a presumption that the valuation determined by the assessor is correct. The burden of proof on appeal to the board shall be on the taxpayer to rebut the presumption and show by a preponderance of the evidence that the property in question is valued at more than its fair market value or that the assessment is not uniform in its application and that it was not arrived at in accordance with generally accepted appraisal practices, procedures, rules, and standards as prescribed by nationally recognized professional appraisal organizations such as the International Association of Assessing Officers (IAAO) and applicable Virginia law relating to valuation of property. Mistakes of fact, including computation,

that affect the assessment shall be deemed not to be in accordance with generally accepted appraisal practice.

However, in any appeal of the assessment of residential property filed by a taxpayer as an owner of real property containing less than four residential units, the assessing officer shall give the required written notice to the taxpayer, or his duly authorized representative, under subsection E of § 58.1-3331, and, upon written request, shall provide the taxpayer or his duly authorized representative copies of the assessment records set out in subsections A, B, and C of § 58.1-3331 pertaining to the assessing officer's determination of fair market value of the property under appeal. The assessing officer shall provide such records within 15 days of a written request by the taxpayer or his duly authorized representative. If the assessing officer fails to do so, the assessing officer shall present the following into evidence prior to the presentation of evidence by the taxpayer at the hearing: (i) copies of the assessment records maintained by the assessing officer under § 58.1-3331, (ii) testimony that explains the methodologies employed by the assessing officer 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, procedures, rules, and standards as prescribed by nationally recognized professional appraisal organizations such as the International Association of Assessing Officers (IAAO) and applicable Virginia law regarding the valuation of property. Upon the conclusion of the presentation of the evidence of the assessing officer, the taxpayer shall have the burden of proof by a preponderance of the evidence to rebut such evidence presented by the assessing officer as otherwise provided in this section.

C. In considering complaints, nothing shall be construed to prohibit consideration of any statement of income and expense or market sales that occurred through December 31, prior to the effective date of the assessment, so long as such information is submitted to the board no later than the locality's deadline for the application for relief. No studies or analyses published after December 31 immediately preceding the effective date of the assessment shall be considered in an appeal filed relating to that assessment.

D. In any case before the board concerning a taxpayer's complaint in which the commissioner of the revenue or other local assessing officer requests the board to increase the assessment after the taxpayer files an appeal to the board on a commercial, multifamily residential, or industrial property, the commissioner or other officer shall provide the taxpayer notice of the request not less than 14 days prior to the hearing of the board. Except as provided herein, if the taxpayer contests the requested increase, the assessor shall either withdraw the request or shall provide the board an appraisal performed by an independent contractor who is licensed and certified by the Virginia Real Estate Appraiser Board to serve as a general real estate appraiser, which appraisal affirms that such increase in value represents the property's fair market value as of the date of the assessment in dispute. The provisions of this subsection that require that the assessor provide the board with an appraisal shall not apply if (i) the requested increase is based on mistakes of fact, including computation errors, or (ii) the information on which the commissioner or other officer bases the

requested increase was available to, but not provided by, the taxpayer in response to a request for information made by the commissioner or other officer at the time the challenged assessment was made.

E. The commissioner of the revenue or other local assessing officer of such county or city shall, when requested, attend the meetings of the board, without additional compensation, and shall call the attention of the board to such inequalities in real estate assessments in his county or city as may be known to him.

F. Every board of equalization may go upon and inspect any real estate subject to adjustment or equalization by it.

Code 1950, § 58-904; 1984, c. 675; 2003, c. 1036; 2010, c. 552; 2011, cc. 184, 232; 2013, c. 197.

§ 58.1-3380. Taxpayer or local authorities may apply for equalization

Any taxpayer or his duly appointed representative may apply to the board of equalization for the adjustment to fair market value and equalization of his assessment, including errors in acreage, and any county or city through its appointed representative or attorney may apply to the board of equalization to adjust an assessment of real property to its fair market value and to equalize the assessment of any taxpayer. An executed and properly notarized letter from the property owner designating an appointed representative for the taxpayer shall be presumed to be a valid designation from the taxpayer, and the person whose signature is notarized shall be presumed to have the authority to designate such representative on behalf of the taxpayer.

Code 1950, § 58-905; 1984, c. 675; 2003, c. 1036; 2013, c. 197.

§ 58.1-3381. Action of board; notice required before increase made

A. The board shall hear and determine any and all such petitions and, by order, may increase, decrease or affirm the assessment of which complaint is made; and, by order, it may increase or decrease any assessment, upon its own motion. No assessment shall be increased until after the owner of the property has been notified and given an opportunity to show cause against such increase. In addition, no assessment shall be increased on commercial, multi-family residential, or industrial property unless such increase is recommended by the assessor in compliance with the provisions of § 58.1-3379.

B. Any determination of the assessment by the board shall be deemed presumptively correct for the succeeding two years unless the assessor can demonstrate by clear and convincing evidence that a substantial change in value of the property has occurred. This subsection shall apply to the City of Virginia Beach.

Code 1950, § 58-906; 1984, c. 675; 1993, c. 136; 2007, c. 813; 2013, c. 197.

§ 58.1-3382. Appeal

The attorney for the county, city or town or any taxpayer, aggrieved by any such order, may apply to the circuit court of the county or city, for the correction and revision of such order, in the same

manner and within the same time as is provided by law for the correction of erroneous assessments of real estate by any person who is aggrieved thereby.

Code 1950, § 58-907; 1984, c. 675.

§ 58.1-3383. Omitted real estate and duplicate assessments

The board may direct the commissioner of the revenue to enter upon the land books real estate which is found to have been omitted, and to cancel duplicate assessments of real estate.

Code 1950, § 58-908; 1984, c. 675.

§ 58.1-3384. Minutes and copies of orders

The board shall keep minutes of its meetings and enter therein all orders made and transmit promptly copies of such orders as relate to the increase or decrease of assessments to the taxpayer and commissioner of the revenue. The orders shall be recorded on forms prepared by the Tax Commissioner and provided to localities by the Department of Taxation or on forms prepared by the board that contain, at a minimum, all the information required on the forms prepared by the Tax Commissioner.

Code 1950, § 58-909; 1984, c. 675; 2003, c. 1036.

§ 58.1-3385. Commissioner to make changes ordered; when order exonerates taxpayer

The commissioner of the revenue shall make on his land book the changes so ordered by the board and, if such changes affect the land book for the then current year and such land book has been then completed, the commissioner of the revenue may for that year make a supplemental assessment in case of an increase in valuation. In case of a decrease in valuation, the order of the board shall entitle the taxpayer to an exoneration from so much of the assessment as exceeds the proper amount, if the taxes have not been paid by him and, in case the taxes have been paid, to a refund of so much thereof as is erroneous.

Code 1950, § 58-910; 1984, c. 675.

§ 58.1-3386. Power of boards to send for persons and papers

Such board shall have authority to summon taxpayers or their agents, or any person: (1) to furnish information relating to the real estate of any and all taxpayers, (2) to answer, under oath, all questions touching the ownership and value of real estate of any and all taxpayers, and (3) to bring before it their books of account or other papers and records containing information with respect to the valuation of real estate of the taxpayer or any other real estate subject to taxation within the county or city under review by the board. Such summons may be served in person or by registered mail.

Code 1950, § 58-911; 1984, c. 675.

§ 58.1-3387. Penalty for failure to obey summons

Any person refusing to answer the summons of the board of equalization, to furnish information or to produce his books of account, papers and other records, as required by this chapter, shall be

deemed guilty of a Class 4 misdemeanor, and each day's failure to answer such summons, to furnish such information or to produce such books of account, papers and other records shall constitute a separate offense.

Code 1950, § 58-912; 1984, c. 675.

§ 58.1-3388. In counties not having general reassessment, or annual or biennial assessment, taxes to be extended on basis of last equalization made

In every county not having a general reassessment or an annual or biennial assessment of real estate, taxes for each year on real estate shall be extended on the basis of the last equalization made prior to such year, subject to such changes as may have been lawfully made.

Code 1950, § 58-913; 1979, c. 577; 1984, c. 675.

§ 58.1-3389. Article not applicable to real estate assessable by Corporation Commission or Department

This article shall not apply to any real estate which is assessable under the law by the State Corporation Commission or the Department of Taxation.

Code 1950, § 58-915; 1983, cc. 304, 570; 1984, c. 675.

Chapter 34 - PAYMENTS IN LIEU OF REAL PROPERTY TAXATION

§ 58.1-3400. Service charge on certain real property

Notwithstanding the provisions of Chapter 36 (§ 58.1-3600 et seq.) of this title relating to the exemption of property from taxation, the governing body of any county, city or town is authorized to impose and collect a service charge upon the owners of all real estate situated within its jurisdiction which is exempted from property taxation under subdivision A 1, except property owned by the Commonwealth, and subdivisions A 3, A 4 and A 7 of § 58.1-3606, subdivisions A 2 through A 7 of § 58.1-3607 and all sections in Articles 3 (§ 58.1-3609 et seq.), 4 (§ 58.1-3650 et seq.), and 4.1 (§ 58.1-3651) of Chapter 36 of this title.

The service charge may be imposed only if the commissioner of revenue or other assessing officer for such locality, prior to imposing the service charge, publishes and lists all exempt real estate in the land books of such locality, in the same manner as is taxable real estate.

Code 1950, § 58-16.2; 1971, Ex. Sess., c. 133; 1972, c. 770; 1973, c. 444; 1975, c. 646; 1976, c. 427; 1981, c. 602; 1982, c. 641; 1984, c. 675; 2004, c. 557.

§ 58.1-3401. Valuation of property; calculation of service charge

A. The service charge authorized in § 58.1-3400 shall be based on the assessed value of the tax exempt real estate and the amount which the county, city or town expended, in the year preceding the year in which such charge is assessed, for the purpose of furnishing police and fire protection and for collection and disposal of refuse. The cost of public school education shall be included in such amount in determining the service charge imposed on faculty and staff housing of an educational institution. Any amount received from federal or state grants specifically designated for

the above-mentioned purposes and assistance provided to localities pursuant to Article 8 (§ 9.1-165 et seq.) of Chapter 1 of Title 9.1 shall not be considered in determining the cost of providing such services for the real estate. The expenditures for services not provided for certain real estate shall not be considered in the calculation of the service charge for such real estate, nor shall such expenditures be considered when a service is currently funded by another service charge.

B. The service charge rate shall be determined by dividing the expenditures determined pursuant to subsection A of this section, by the assessed fair market value, expressed in hundreds of dollars, of all real estate located within the county, city or town imposing the service charge, including nontaxable property. The resulting rate shall then be applied to the assessed value of the tax exempt property.

Real estate owned by the United States government or any of its instrumentalities shall not be included in the assessed value of all property within the county, city or town.

For purposes of this section, artistic and historical significance shall not be taken into account in the valuation of exempt real estate.

C. In no event shall the service charge exceed twenty percent of the real estate tax rate of the county, city or town imposing the service charge or fifty percent in the case of faculty and staff housing of an educational institution.

Code 1950, § 58-16.2; 1971, Ex. Sess., c. 133; 1972, c. 770; 1973, c. 444; 1982, c. 641; 1984, c. 675.

§ 58.1-3402. Exemptions from service charge

A. Buildings with land they actually occupy, together with additional adjacent land reasonably necessary for the convenient use of any such building, located within any county, city or town imposing the service charge pursuant to § 58.1-3400 shall be exempt from such service charge if the buildings are: (i) lawfully owned and held by churches or religious bodies and wholly and exclusively used for religious worship or for the residence of the minister of any church or religious body or for use as a religious convent, nunnery, monastery, cloister or abbey or (ii) used or operated exclusively for nonprofit private educational or charitable purposes, other than faculty or staff housing of any such educational institution.

The service charge shall also not be applicable to public roadways or property held for future construction of such roadways.

B. The governing body of the county, city or town levying a service charge may exempt any class of organization set out in § 58.1-3600 et seq. from the service charge imposed pursuant to § 58.1-3400 or § 58.1-3403.

Code 1950, § 58-16.2; 1971, Ex. Sess., c. 133; 1972, c. 770; 1973, c. 444; 1982, c. 641; 1984, c. 675.

§ 58.1-3403. Property owned by the Commonwealth

A. Notwithstanding the provisions of § 58.1-3400, a service charge may be levied on real property owned by the Commonwealth if the value of all such property located within a county, city or town exceeds three percent of the value of all real property located within such county, city or town. For purposes of this section "real property owned by the Commonwealth" shall not include hospitals, educational institutions or public roadways or property held for the future construction of public highways.

Notwithstanding § 58.1-3400 and the provisions of the foregoing paragraph, a service charge may be levied on faculty and staff housing of state educational institutions, and on property of the Virginia Port Authority, regardless of the portion of state-owned property located within the county, city or town.

The service charge may be imposed only if the commissioner of revenue or other assessing officer for such locality, prior to imposing the service charge, publishes and lists all exempt real estate in the land books of such locality, in the same manner as is taxable real estate.

B. The service charge shall be based on the assessed value of the state-owned tax exempt real estate and the amount which the county, city or town expended, in the year preceding the year in which such charge is assessed, for the purpose of furnishing police and fire protection and for collection and disposal of refuse. The cost of public school education shall be included in such amount in determining the service charge imposed on faculty and staff housing of an educational institution. Any amount received from federal or state grants specifically designated for the above-mentioned purposes and assistance provided to localities pursuant to Article 8 (§ 9.1-165 et seq.) of Chapter 1 of Title 9.1 shall not be considered in determining the cost of providing such services for the real estate. The expenditures for services not provided for certain real estate shall not be considered in the calculation of the service charge for such real estate, nor shall such expenditures be considered when a service is currently funded by another service charge.

Provided, however, that any amount paid to any locality pursuant to subsection D shall be fully credited against the service charge payable by the Virginia Port Authority under this subsection and subsection A.

C. The service charge rate for state-owned property shall be determined by dividing the expenditures determined pursuant to subsection B of this section by the assessed fair market value, expressed in hundred dollars, of all real estate located within the county, city or town imposing the service charge, including nontaxable property. The resulting rate shall then be applied to the assessed value of the tax exempt property owned by the Commonwealth.

Real estate owned by the United States government or any of its instrumentalities, shall not be included in the assessed value of all property within the county, city or town. For purposes of this section, artistic and historical significance shall not be taken into account in the valuation of exempt real estate.

D. Notwithstanding the provisions of subsections B and C and from such funds as may be appropriated, the service charge for property owned by the Virginia Port Authority and its instrumentalities shall be based on the assessed value of such tax-exempt real estate and the amount of cargo tonnage shipped through such property in the year preceding the year in which such charge is assessed.

The service charge rate for each county, city or town shall be determined by adding:

1. The assessed value of the Virginia Port Authority real property in each county, city, or town divided by the total assessed value of real property owned by the Virginia Port Authority in all counties, cities, or towns; and

2. The Virginia Port Authority cargo tonnage shipped through each county, city, or town divided by the total Virginia Port Authority cargo tonnage shipped through all counties, cities, and towns.

Such service charge rate for each county, city, or town shall then be applied to the product of the total Virginia Port Authority cargo tonnage multiplied by $0.25.

E. In no event shall the service charge rate exceed the real estate tax rate of the county, city or town imposing the service charge.

Code 1950, § 58-16.2; 1971, Ex. Sess., c. 133; 1972, c. 770; 1973, c. 444; 1982, c. 641; 1984, c. 675; 2000, c. 737.

§ 58.1-3404. Notice to Governor; notice to educational institution

A. Any county, city or town which enacts an ordinance levying the service charge on state-owned property shall notify in writing the Governor and each state agency affected by such charge at least twelve months prior to the effective date of such local ordinance.

B. A county, city or town which enacts an ordinance levying a service charge on faculty and staff housing of a private college or university shall notify the chief executive officer of such institution at least twelve months prior to the effective date of such ordinance.

Code 1950, § 58-16.2; 1971, Ex. Sess., c. 133; 1972, c. 770; 1973, c. 444; 1982, c. 641; 1984, c. 675.

§ 58.1-3405. Service charge on real property exempted by international law or treaty, etc

The governing body of any county, city or town is hereby authorized to impose and collect a service charge on the owners of all real estate within its jurisdiction which is exempted from local real estate taxation by international law or by any treaty, international agreement or statute under the United States Constitution.

Such service charge shall be calculated as provided in § 58.1-3400, and shall be based on the assessed value of the real estate and the amount which the county, city or town expends for those services for which the applicable law, treaty, agreement or statute permits a charge to be imposed. The service charge shall be based on the amount expended in the fiscal year preceding the year

such charge is assessed. The governing body may impose a service charge of a lower amount than authorized or no service charge, as it may determine in the exercise of its legislative power.

Code 1950, § 58-16.2:1; 1979, c. 337; 1984, c. 675.

§ 58.1-3406. Apportionment of payments received from Tennessee Valley Authority in lieu of taxes

A. Notwithstanding any other provision of law, all of the total payments received annually by the Commonwealth from the Tennessee Valley Authority in lieu of taxes shall be apportioned among the cities and counties in which the Tennessee Valley Authority owns property or where Tennessee Valley Authority power is distributed. The Department of Accounts is hereby authorized and directed to make annual payments to the localities in the following manner: three-fourths of such payments shall be apportioned by paying to each locality its percentage of total sales in Virginia by distributors of Tennessee Valley Authority power during the preceding fiscal year as determined pursuant to subsection B of this section; the remaining one-fourth of such payment shall be apportioned by paying to each locality its percentage of the net book value of the power property held in Virginia by the Tennessee Valley Authority as determined pursuant to subsection C of this section.

B. The determination of each locality's percentage of sales in Virginia by distributors of Tennessee Valley Authority power shall be based upon reports filed by the distributors, which reports shall be filed with the Department of Taxation by September 1 of each year. Such reports shall contain the number of kilowatt hours of power sold by the distributor in each Virginia locality during the preceding year.

C. The determination of each locality's percentage of the net book value of the power property held in Virginia by the Tennessee Valley Authority shall be based upon the most recent figures provided by the Tennessee Valley Authority to the Department of Taxation.

Code 1950, § 58-16.2:2; 1982, c. 413; 1984, cc. 531, 675; 1990, c. 70 .

§ 58.1-3407. Erroneous assessments; appeal

Any person aggrieved by the assessment or the valuation of real estate for purposes of this chapter may apply to the commissioner of the revenue or other assessing officer for correction thereof pursuant to § 58.1-3981. Any person aggrieved by the decision of such officer may appeal to the appropriate circuit court of the county or city, as provided in § 58.1-3984.

Code 1950, § 58-16.2; 1971, Ex. Sess., c. 133; 1972, c. 770; 1973, c. 444; 1982, c. 641; 1984, c. 675.

Chapter 35 - TANGIBLE PERSONAL PROPERTY, MACHINERY AND TOOLS AND MERCHANTS' CAPITAL

Article 1 - TANGIBLE PERSONAL PROPERTY TAX

§ 58.1-3500. Defined and segregated for local taxation

Tangible personal property shall consist of all personal property not otherwise classified by (i) § 58.1-1100 as intangible personal property, (ii) § 58.1-3510 as merchants' capital, or (iii) § 58.1-3510.4 as short-term rental property. Such tangible personal property is hereby segregated for and made subject to local taxation only pursuant to Article X, Section 4 of the Constitution of Virginia.

Code 1950, §§ 58-829, 58-830; 1960, c. 418; 1970, c. 325; 1974, c. 445; 1975, cc. 47, 541; 1978, cc. 178, 656, 843; 1979, c. 576; 1980, c. 412; 1982, c. 633; 1984, cc. 675, 689; 2010, cc. 255, 295.

§ 58.1-3501. Tangible personal property leased to agency of federal, state or local government

The aggregate of all tangible personal property owned by any person, firm, association, unincorporated company, or corporation which is leased by such owner to any agency or political subdivision of the federal, state or local governments shall be subject to local taxation.

Code 1950, § 58-831.1; 1960, c. 239; 1975, c. 504; 1984, c. 675.

§ 58.1-3502. Tangible personal property leased, loaned, or otherwise made available to a private party from agency of federal, state or local government

Any person, firm, association, unincorporated company, or corporation engaged in business for profit who or which leases, borrows or otherwise has made available to it any tangible personal property to be used in such business from any agency or political subdivision of the federal, state or local governments shall be liable to local taxation, unless otherwise exempted or partially exempted by state or local laws, to the same extent, in the same manner, and on the same basis as if the lessee were the owner thereof. This section shall not apply to any such property owned by the Virginia Port Authority and leased in connection with the operation of piers and marine terminals and related facilities, or to property owned by any transportation district organized under the Transportation District Act of 1964 (§ 33.2-1900 et seq.) and leased to provide transportation services.

Code 1950, § 58-831.2; 1960, c. 239; 1975, c. 504; 1980, c. 382; 1981, c. 442; 1984, c. 675.

§ 58.1-3503. General classification of tangible personal property

A. Tangible personal property is classified for valuation purposes according to the following separate categories which are not to be considered separate classes for rate purposes:

1. Farm animals, except as exempted under § 58.1-3505.

2. Farm machinery, except as exempted under § 58.1-3505.

3. Automobiles, except those described in subdivisions 7, 8, and 9 of this subsection and in subdivision A 8 of § 58.1-3504, which shall be valued by means of a recognized pricing guide or if the model and year of the individual automobile are not listed in the recognized pricing guide, the individual vehicle may be valued on the basis of percentage or percentages of original cost. In using a recognized pricing guide, the commissioner shall use either of the following two methods. The commissioner may use all applicable adjustments in such guide to determine the value of each individual automobile, or alternatively, if the commissioner does not utilize all applicable adjustments in valuing each automobile, he shall use the base value specified in such guide which may be either average retail, wholesale, or loan value, so long as uniformly applied within classifications of property. If the model and year of the individual automobile are not listed in the recognized pricing guide, the taxpayer may present to the commissioner proof of the original cost, and the basis of the tax for purposes of the motor vehicle sales and use tax as described in § 58.1-2405 shall constitute proof of original cost. If such percentage or percentages of original cost do not accurately reflect fair market value, or if the taxpayer does not supply proof of original cost, then the commissioner may select another method which establishes fair market value.

4. Trucks of less than two tons, which may be valued by means of a recognized pricing guide or, if the model and year of the individual truck are not listed in the recognized pricing guide, on the basis of a percentage or percentages of original cost.

5. Trucks and other vehicles, as defined in § 46.2-100, except those described in subdivisions 4, and 6 through 10 of this subsection, which shall be valued by means of either a recognized pricing guide using the lowest value specified in such guide or a percentage or percentages of original cost.

6. Manufactured homes, as defined in § 36-85.3, which may be valued on the basis of square footage of living space.

7. Antique motor vehicles, as defined in § 46.2-100, which may be used for general transportation purposes as provided in subsection C of § 46.2-730.

8. Taxicabs.

9. Motor vehicles with specially designed equipment for use by the handicapped, which shall not be valued in relation to their initial cost, but by determining their actual market value if offered for sale on the open market.

10. Motorcycles, mopeds, all-terrain vehicles, and off-road motorcycles as defined in § 46.2-100, campers and other recreational vehicles, which shall be valued by means of a recognized pricing guide or a percentage or percentages of original cost.

11. Boats weighing under five tons and boat trailers, which shall be valued by means of a recognized pricing guide or a percentage or percentages of original cost.

12. Boats or watercraft weighing five tons or more, which shall be valued by means of a percentage or percentages of original cost.

13. Aircraft, which shall be valued by means of a recognized pricing guide or a percentage or percentages of original cost.

14. Household goods and personal effects, except as exempted under § 58.1-3504.

15. Tangible personal property used in a research and development business, which shall be valued by means of a percentage or percentages of original cost.

16. Programmable computer equipment and peripherals used in business which shall be valued by means of a percentage or percentages of original cost to the taxpayer, or by such other method as may reasonably be expected to determine the actual fair market value.

17. All tangible personal property employed in a trade or business other than that described in subdivisions 1 through 16 of this subsection, which shall be valued by means of a percentage or percentages of original cost.

18. Outdoor advertising signs regulated under Article 1 (§ 33.2-1200 et seq.) of Chapter 12 of Title 33.2.

19. All other tangible personal property.

B. Methods of valuing property may differ among the separate categories, so long as each method used is uniform within each category, is consistent with requirements of this section and may reasonably be expected to determine actual fair market value as determined by the commissioner of revenue or other assessing official; however, assessment ratios shall only be used with the concurrence of the local governing body. A commissioner of revenue shall upon request take into account the condition of the property. The term "condition of the property" includes, but is not limited to, technological obsolescence of property where technological obsolescence is an appropriate factor for valuing such property. The commissioner of revenue shall make available to taxpayers on request a reasonable description of his valuation methods. Such commissioner, or other assessing officer, or his authorized agent, when using a recognized pricing guide as provided for in this section, may automatically extend the assessment if the pricing information is stored in a computer.

Code 1950, §§ 58-829, 58-829.3, 58-829.5; 1960, c. 418; 1970, cc. 325, 655; 1974, c. 445; 1975, cc. 47, 541; 1976, c. 567; 1978, cc. 155, 178, 656, 843; 1979, c. 576; 1980, c. 412; 1981, c. 236; 1982, c. 633; 1984, cc. 675, 689; 1985, c. 105; 1987, c. 568; 1991, cc. 253, 255; 1994, c. 827; 1996, c. 529; 1997, cc. 192, 250, 433, 457; 2006, c. 896; 2013, cc. 287, 652, 783.

§ 58.1-3504. Classification of certain household goods and personal effects for taxation; governing body may exempt

A. Notwithstanding any provision of § 58.1-3503, household goods and personal effects are hereby defined as separate items of taxation and classified as follows:

1. Bicycles.

2. Household and kitchen furniture, including gold and silver plates, plated ware, watches and clocks, sewing machines, refrigerators, automatic refrigerating machinery of any type, vacuum cleaners and all other household machinery, books, firearms and weapons of all kinds.

3. Pianos, organs, and all other musical instruments; phonographs, record players, and records to be used therewith; and radio and television instruments and equipment.

4. Oil paintings, pictures, statuary, curios, articles of virtu and works of art.

5. Diamonds, cameos or other precious stones and all precious metals used as ornaments or jewelry.

6. Sporting and photographic equipment.

7. Clothing and objects of apparel.

8. Antique motor vehicles as defined in § 46.2-100 which may not be used for general transportation purposes.

9. All-terrain vehicles, mopeds, and off-road motorcycles as defined in § 46.2-100.

10. Electronic communications and processing devices and equipment, including but not limited to cell phones and tablet and personal computers, including peripheral equipment such as printers.

11. All other tangible personal property used by an individual or a family or household incident to maintaining an abode.

The classification above set forth shall apply only to such property owned and used by an individual or by a family or household primarily incident to maintaining an abode.

The governing body of any county, city or town may, by ordinance duly adopted, exempt from taxation all of the above classes of household goods and personal effects.

B. Notwithstanding any provision set forth above, household appliances in residential rental property used by an individual or by a family or household incident to maintaining an abode shall be deemed to be fixtures and shall be assessed as part of the real property in which they are located.

For purposes of this subsection, "household appliances" shall mean all major appliances customarily used in a residential home and which are the property of the owner of the real estate, including, without limitation, refrigerators, stoves, ranges, microwave ovens, dishwashers, trash compactors, clothes dryers, garbage disposals and air conditioning units.

Code 1950, § 58-829.1; 1958, c. 72; 1984, cc. 675, 768; 1997, c. 250; 2006, c. 896; 2013, c. 783; 2014, c. 279.

§ 58.1-3505. Classification of farm animals, certain grains, agricultural products, farm machinery, farm implements and equipment; governing body may exempt

A. Farm animals, grains and other feeds used for the nurture of farm animals, agricultural products, farm machinery and farm implements are hereby defined as separate items of taxation and classified as follows:

1. Horses, mules and other kindred animals.

2. Cattle.

3. Sheep and goats.

4. Hogs.

5. Poultry.

6. Grains and other feeds used for the nurture of farm animals.

7. Grain; tobacco; wine produced by farm wineries as defined in § 4.1-100 and other agricultural products in the hands of a producer.

8. Farm machinery other than the farm machinery described in subdivision 10, and farm implements, which shall include equipment and machinery used by farm wineries as defined in § 4.1-100 in the production of wine.

9. Equipment used by farmers or farm cooperatives qualifying under § 521 of the Internal Revenue Code to manufacture industrial ethanol, provided that the materials from which the ethanol is derived consist primarily of farm products.

10. Farm machinery designed solely for the planting, production or harvesting of a single product or commodity.

11. Privately owned trailers as defined in § 46.2-100 that are primarily used by farmers in their farming operations for the transportation of farm animals or other farm products as enumerated in subdivisions A 1 through A 7 of this section.

12. Motor vehicles that are used exclusively for agricultural purposes, for which the owner is not required to obtain a registration certificate, license plate, and decal or pay a registration fee pursuant to § 46.2-665, 46.2-666, or 46.2-670.

13. Trucks or tractor trucks as defined in § 46.2-100, that are exclusively used by farmers in their farming operations for the transportation of farm animals or other farm products as enumerated in subdivisions 1 through 7 or for the transport of farm-related machinery.

B. The governing body of any county, city or town may, by ordinance duly adopted, exempt in whole or in part from taxation, or provide a different rate of tax upon, all or any of the above classes of farm animals, grains and feeds used for the nurture of farm animals, farm vehicles, and farm machinery, implements or equipment set forth in subsection A.

C. Grain; tobacco; wine produced by farm wineries as defined in § 4.1-100 and other agricultural products shall be exempt from taxation while in the hands of a producer.

Code 1950, § 58-829.1:1; 1976, c. 560; 1979, c. 576; 1980, c. 314; 1984, cc. 150, 675; 1993, c. 866; 1998, c. 332; 2004, c. 556; 2012, c. 272.

§ 58.1-3506. Other classifications of tangible personal property for taxation

A. The items of property set forth below are each declared to be a separate class of property and shall constitute a classification for local taxation separate from other classifications of tangible personal property provided in this chapter:

1. a. Boats or watercraft weighing five tons or more, not used solely for business purposes;

b. Boats or watercraft weighing less than five tons, not used solely for business purposes;

2. Aircraft having a maximum passenger seating capacity of no more than 50 that are owned and operated by scheduled air carriers operating under certificates of public convenience and necessity issued by the State Corporation Commission or the Civil Aeronautics Board;

3. Aircraft having a registered empty gross weight equal to or greater than 20,000 pounds that are not owned or operated by scheduled air carriers recognized under federal law, but not including any aircraft described in subdivision 4;

4. Aircraft that are (i) considered Warbirds, manufactured and intended for military use, excluding those manufactured after 1954, and (ii) used only for (a) exhibit or display to the general public and otherwise used for educational purposes (including such flights as are necessary for testing, maintaining, or preparing such aircraft for safe operation), or (b) airshow and flight demonstrations (including such flights necessary for testing, maintaining, or preparing such aircraft for safe operation), shall constitute a new class of property. Such class of property shall not include any aircraft used for commercial purposes, including transportation and other services for a fee;

5. All other aircraft not included in subdivisions A 2, A 3, or A 4 and flight simulators;

6. Antique motor vehicles as defined in § 46.2-100 which may be used for general transportation purposes as provided in subsection C of § 46.2-730;

7. Tangible personal property used in a research and development business;

8. Heavy construction machinery not used for business purposes, including land movers, bulldozers, front-end loaders, graders, packers, power shovels, cranes, pile drivers, forest harvesting and silvicultural activity equipment and ditch and other types of diggers;

9. Generating equipment purchased after December 31, 1974, for the purpose of changing the energy source of a manufacturing plant from oil or natural gas to coal, wood, wood bark, wood residue, or any other alternative energy source for use in manufacturing and any cogeneration equipment purchased to achieve more efficient use of any energy source. Such generating equipment and cogeneration equipment shall include, without limitation, such equipment purchased by firms engaged in the business of generating electricity or steam, or both;

10. Vehicles without motive power, used or designed to be used as manufactured homes as defined in § 36-85.3;

11. Computer hardware used by businesses primarily engaged in providing data processing services to other nonrelated or nonaffiliated businesses;

12. Privately owned pleasure boats and watercraft, 18 feet and over, used for recreational purposes only;

13. Privately owned vans with a seating capacity of not less than seven nor more than 15 persons, including the driver, used exclusively pursuant to a ridesharing arrangement as defined in § 46.2-1400;

14. Motor vehicles specially equipped to provide transportation for physically handicapped individuals;

15. Motor vehicles (i) owned by members of a volunteer emergency medical services agency or a member of a volunteer fire department or (ii) leased by volunteer emergency medical services personnel or a member of a volunteer fire department if the volunteer is obligated by the terms of the lease to pay tangible personal property tax on the motor vehicle. One motor vehicle that is owned by each volunteer member who meets the definition of "emergency medical services personnel" in § 32.1-111.1 or volunteer fire department member, or leased by each volunteer member who meets the definition of "emergency medical services personnel" in § 32.1-111.1 or volunteer fire department member if the volunteer is obligated by the terms of the lease to pay tangible personal property tax on the motor vehicle, may be specially classified under this section, provided the volunteer regularly responds to emergency calls. The volunteer shall furnish the commissioner of revenue, or other assessing officer, with a certification by the chief of the volunteer emergency medical services agency or volunteer fire department, that the volunteer is an individual who meets the definition of "emergency medical services personnel" in § 32.1-111.1 or a member of the volunteer fire department who regularly responds to calls or regularly performs other duties for the emergency medical services agency or fire department, and the motor vehicle owned or leased by the volunteer is identified. The certification shall be submitted by January 31 of each year to the commissioner of revenue or other assessing officer; however, the commissioner of revenue or other assessing officer shall be authorized, in his discretion, and for good cause shown and without fault on the part of the volunteer, to accept a certification after the January 31 deadline. In any county that prorates the assessment of tangible personal property pursuant to § 58.1-3516, a replacement vehicle may be certified and classified pursuant to this subsection when the vehicle certified as of the immediately prior January date is transferred during the tax year;

16. Motor vehicles (i) owned by auxiliary members of a volunteer emergency medical services agency or volunteer fire department or (ii) leased by auxiliary members of a volunteer emergency medical services agency or volunteer fire department if the auxiliary member is obligated by the terms of the lease to pay tangible personal property tax on the motor vehicle. One motor vehicle

that is regularly used by each auxiliary volunteer fire department or emergency medical services agency member may be specially classified under this section. The auxiliary member shall furnish the commissioner of revenue, or other assessing officer, with a certification by the chief of the volunteer emergency medical services agency or volunteer fire department, that the volunteer is an auxiliary member of the volunteer emergency medical services agency or fire department who regularly performs duties for the emergency medical services agency or fire department, and the motor vehicle is identified as regularly used for such purpose; however, if a volunteer meets the definition of "emergency medical services personnel" in § 32.1-111.1 or volunteer fire department member and an auxiliary member are members of the same household, that household shall be allowed no more than two special classifications under this subdivision or subdivision 15. The certification shall be submitted by January 31 of each year to the commissioner of revenue or other assessing officer; however, the commissioner of revenue or other assessing officer shall be authorized, in his discretion, and for good cause shown and without fault on the part of the auxiliary member, to accept a certification after the January 31 deadline;

17. Motor vehicles owned by a nonprofit organization and used to deliver meals to homebound persons or provide transportation to senior or handicapped citizens in the community to carry out the purposes of the nonprofit organization;

18. Privately owned camping trailers as defined in § 46.2-100, and privately owned travel trailers as defined in § 46.2-1500, which are used for recreational purposes only, and privately owned trailers as defined in § 46.2-100, which are designed and used for the transportation of horses except those trailers described in subdivision A 11 of § 58.1-3505;

19. One motor vehicle owned and regularly used by a veteran who has either lost, or lost the use of, one or both legs, or an arm or a hand, or who is blind or who is permanently and totally disabled as certified by the Department of Veterans Services. In order to qualify, the veteran shall provide a written statement to the commissioner of revenue or other assessing officer from the Department of Veterans Services that the veteran has been so designated or classified by the Department of Veterans Services as to meet the requirements of this section, and that his disability is service-connected. For purposes of this section, a person is blind if he meets the provisions of § 46.2-100;

20. Motor vehicles (i) owned by persons who have been appointed to serve as auxiliary police officers pursuant to Article 3 (§ 15.2-1731 et seq.) of Chapter 17 of Title 15.2 or (ii) leased by persons who have been so appointed to serve as auxiliary police officers if the person is obligated by the terms of the lease to pay tangible personal property tax on the motor vehicle. One motor vehicle that is regularly used by each auxiliary police officer to respond to auxiliary police duties may be specially classified under this section. In order to qualify for such classification, any auxiliary police officer who applies for such classification shall identify the vehicle for which this classification is sought, and shall furnish the commissioner of revenue or other assessing officer with a certification from the governing body that has appointed such auxiliary police officer or from the

official who has appointed such auxiliary officers. That certification shall state that the applicant is an auxiliary police officer who regularly uses a motor vehicle to respond to auxiliary police duties, and it shall state that the vehicle for which the classification is sought is the vehicle that is regularly used for that purpose. The certification shall be submitted by January 31 of each year to the commissioner of revenue or other assessing officer; however, the commissioner of revenue or other assessing officer shall be authorized, in his discretion, and for good cause shown and without fault on the part of the member, to accept a certification after the January 31 deadline;

21. Until the first to occur of June 30, 2019, or the date that a special improvements tax is no longer levied under § 15.2-4607 on property within a Multicounty Transportation Improvement District created pursuant to Chapter 46 (§ 15.2-4600 et seq.) of Title 15.2, tangible personal property that is used in manufacturing, testing, or operating satellites within a Multicounty Transportation Improvement District, provided that such business personal property is put into service within the District on or after July 1, 1999;

22. Motor vehicles which use clean special fuels as defined in § 46.2-749.3, which shall not include any vehicle described in subdivision 38 or 40;

23. Wild or exotic animals kept for public exhibition in an indoor or outdoor facility that is properly licensed by the federal government, the Commonwealth, or both, and that is properly zoned for such use. "Wild animals" means any animals that are found in the wild, or in a wild state, within the boundaries of the United States, its territories or possessions. "Exotic animals" means any animals that are found in the wild, or in a wild state, and are native to a foreign country;

24. Furniture, office, and maintenance equipment, exclusive of motor vehicles, that are owned and used by an organization whose real property is assessed in accordance with § 58.1-3284.1 and that is used by that organization for the purpose of maintaining or using the open or common space within a residential development;

25. Motor vehicles, trailers, and semitrailers with a gross vehicle weight of 10,000 pounds or more used to transport property for hire by a motor carrier engaged in interstate commerce;

26. All tangible personal property employed in a trade or business other than that described in subdivisions A 1 through A 19, except for subdivision A 17, of § 58.1-3503;

27. Programmable computer equipment and peripherals employed in a trade or business;

28. Privately owned pleasure boats and watercraft, motorized and under 18 feet, used for recreational purposes only;

29. Privately owned pleasure boats and watercraft, nonmotorized and under 18 feet, used for recreational purposes only;

30. Privately owned motor homes as defined in § 46.2-100 that are used for recreational purposes only;

31. Tangible personal property used in the provision of Internet services. For purposes of this subdivision, "Internet service" means a service, including an Internet Web-hosting service, that enables users to access content, information, electronic mail, and the Internet as part of a package of services sold to customers;

32. Motor vehicles (i) owned by persons who serve as auxiliary, reserve, volunteer, or special deputy sheriffs or (ii) leased by persons who serve as auxiliary, reserve, volunteer, or special deputy sheriffs if the person is obligated by the terms of the lease to pay tangible personal property tax on the motor vehicle. For purposes of this subdivision, the term "auxiliary deputy sheriff" means auxiliary, reserve, volunteer, or special deputy sheriff. One motor vehicle that is regularly used by each auxiliary deputy sheriff to respond to auxiliary deputy sheriff duties may be specially classified under this section. In order to qualify for such classification, any auxiliary deputy sheriff who applies for such classification shall identify the vehicle for which this classification is sought, and shall furnish the commissioner of revenue or other assessing officer with a certification from the governing body that has appointed such auxiliary deputy sheriff or from the official who has appointed such auxiliary deputy sheriff. That certification shall state that the applicant is an auxiliary deputy sheriff who regularly uses a motor vehicle to respond to such auxiliary duties, and it shall state that the vehicle for which the classification is sought is the vehicle that is regularly used for that purpose. The certification shall be submitted by January 31 of each year to the commissioner of revenue or other assessing officer; however, the commissioner of revenue or other assessing officer shall be authorized, in his discretion, and for good cause shown and without fault on the part of the member, to accept a certification after the January 31 deadline;

33. Forest harvesting and silvicultural activity equipment;

34. Equipment used primarily for research, development, production, or provision of biotechnology for the purpose of developing or providing products or processes for specific commercial or public purposes, including medical, pharmaceutical, nutritional, and other health-related purposes; agricultural purposes; or environmental purposes but not for human cloning purposes as defined in § 32.1-162.21 or for products or purposes related to human embryo stem cells. For purposes of this section, biotechnology equipment means equipment directly used in activities associated with the science of living things;

35. Boats or watercraft weighing less than five tons, used for business purposes only;

36. Boats or watercraft weighing five tons or more, used for business purposes only;

37. Tangible personal property which is owned and operated by a service provider who is not a CMRS provider and is not licensed by the FCC used to provide, for a fee, wireless broadband Internet service. For purposes of this subdivision, "wireless broadband Internet service" means a service that enables customers to access, through a wireless connection at an upload or download bit rate of more than one megabyte per second, Internet service, as defined in § 58.1-602, as part of a package of services sold to customers;

38. Low-speed vehicles as defined in § 46.2-100;

39. Motor vehicles with a seating capacity of not less than 30 persons, including the driver;

40. Motor vehicles powered solely by electricity;

41. Tangible personal property designed and used primarily for the purpose of manufacturing a product from renewable energy as defined in § 56-576;

42. Motor vehicles leased by a county, city, town, or constitutional officer if the locality or constitutional officer is obligated by the terms of the lease to pay tangible personal property tax on the motor vehicle;

43. Computer equipment and peripherals used in a data center. For purposes of this subdivision, "data center" means a facility whose primary services are the storage, management, and processing of digital data and is used to house (i) computer and network systems, including associated components such as servers, network equipment and appliances, telecommunications, and data storage systems; (ii) systems for monitoring and managing infrastructure performance; (iii) equipment used for the transformation, transmission, distribution, or management of at least one megawatt of capacity of electrical power and cooling, including substations, uninterruptible power supply systems, all electrical plant equipment, and associated air handlers; (iv) Internet-related equipment and services; (v) data communications connections; (vi) environmental controls; (vii) fire protection systems; and (viii) security systems and services;

44. Motor vehicles (i) owned by persons who serve as uniformed members of the Virginia Defense Force pursuant to Article 4.2 (§ 44-54.4 et seq.) of Chapter 1 of Title 44 or (ii) leased by persons who serve as uniformed members of the Virginia Defense Force pursuant to Article 4.2 (§ 44-54.4 et seq.) of Chapter 1 of Title 44 if the person is obligated by the terms of the lease to pay tangible personal property tax on the motor vehicle. One motor vehicle that is regularly used by a uniformed member of the Virginia Defense Force to respond to his official duties may be specially classified under this section. In order to qualify for such classification, any person who applies for such classification shall identify the vehicle for which the classification is sought and shall furnish to the commissioner of the revenue or other assessing officer a certification from the Adjutant General of the Department of Military Affairs under § 44-11. That certification shall state that (a) the applicant is a uniformed member of the Virginia Defense Force who regularly uses a motor vehicle to respond to his official duties, and (b) the vehicle for which the classification is sought is the vehicle that is regularly used for that purpose. The certification shall be submitted by January 31 of each year to the commissioner of the revenue or other assessing officer; however, the commissioner of revenue or other assessing officer shall be authorized, in his discretion, and for good cause shown and without fault on the part of the member, to accept a certification after the January 31 deadline;

45. If a locality has adopted an ordinance pursuant to subsection D of § 58.1-3703, tangible personal property of a business that qualifies under such ordinance for the first two tax years in

which the business is subject to tax upon its personal property pursuant to this chapter. If a locality has not adopted such ordinance, this classification shall apply to the tangible personal property for such first two tax years of a business that otherwise meets the requirements of subsection D of § 58.1-3703; and

46. Miscellaneous and incidental tangible personal property employed in a trade or business that is not classified as machinery and tools pursuant to Article 2 (§ 58.1-3507 et seq.), merchants' capital pursuant to Article 3 (§ 58.1-3509 et seq.), or short-term rental property pursuant to Article 3.1 (§ 58.1-3510.4 et seq.), and has an original cost of less than $250. A county, city, or town may allow a taxpayer to provide an aggregate estimate of the total cost of all such property owned by the taxpayer that qualifies under this subdivision, in lieu of a specific, itemized list.

B. The governing body of any county, city or town may levy a tax on the property enumerated in subsection A at different rates from the tax levied on other tangible personal property. The rates of tax and the rates of assessment shall (i) for purposes of subdivisions A 1, 2, 3, 4, 5, 6, 8, 11 through 20, 22 through 24, and 26 through 46, not exceed that applicable to the general class of tangible personal property, (ii) for purposes of subdivisions A 7, 9, 21, and 25, not exceed that applicable to machinery and tools, and (iii) for purposes of subdivision A 10, equal that applicable to real property. If an item of personal property is included in multiple classifications under subsection A, then the rate of tax shall be the lowest rate assigned to such classifications.

C. Notwithstanding any other provision of this section, for any qualifying vehicle, as such term is defined in § 58.1-3523, (i) included in any separate class of property in subsection A and (ii) assessed for tangible personal property taxes by a county, city, or town receiving a payment from the Commonwealth under Chapter 35.1 (§ 58.1-3523 et seq.) for providing tangible personal property tax relief, the county, city, or town may levy the tangible personal property tax on such qualifying vehicle at a rate not to exceed the rates of tax and rates of assessment required under such chapter.

Code 1950, §§ 58-829.2:1, 58-829.3, 58-829.5 to 58-829.9, 58-831.01; 1960, c. 418; 1970, c. 655; 1976, c. 567; 1978, c. 155; 1979, cc. 351, 576; 1980, c. 412; 1981, cc. 236, 445; 1982, c. 633; 1984, c. 675; 1985, c. 220; 1986, c. 195; 1988, c. 822; 1989, cc. 80, 694; 1990, cc. 677, 693; 1991, cc. 247, 330, 478; 1992, cc. 642, 680; 1993, c. 100; 1994, cc. 171, 221, 266, 631; 1995, c. 142; 1996, cc. 537, 603, 605; 1997, cc. 244, 250, 433, 457; 1999, cc. 289, 358; 2000, cc. 409, 413, 441, 442, 604; 2001, cc. 41, 447; 2002, cc. 6, 63, 148, 337; 2003, cc. 657, 670; 2004, cc. 4, 556, 591; 2004, Sp. Sess. I, c. 1; 2005, cc. 271, 325, 357; 2006, cc. 200, 231, 400; 2007, cc. 88, 322, 609; 2008, cc. 26, 94, 143; 2009, cc. 40, 44; 2010, cc. 264, 849; 2012, cc. 97, 288; 2013, cc. 39, 271, 287, 393, 652; 2014, cc. 50, 409; 2015, cc. 487, 502, 503, 593, 615; 2016, c. 483.

Article 1.01 - ALTERNATIVE TAX RATES FOR ELDERLY AND HANDICAPPED

§ 58.1-3506.1. Other classification for taxation of certain tangible personal property owned by certain elderly and handicapped persons

The governing body of any county, city or town may, by ordinance, levy a tax on one motor vehicle owned and used primarily by or for anyone at least 65 years of age or anyone found to be permanently and totally disabled, as defined in § 58.1-3506.3, at a different rate from the tax levied on other tangible personal property, upon such conditions as the ordinance may prescribe. Such rate shall not exceed the tangible personal property tax on the general class of tangible personal property. For purposes of this article, the term motor vehicle shall include only automobiles and pickup trucks. Any such motor vehicle owned by a husband and wife may qualify if either spouse is 65 or over or if either spouse is permanently and totally disabled. Notwithstanding any other provision of this section or article, for any automobile or pickup truck that is (i) a qualifying vehicle, as such term is defined in § 58.1-3523, and (ii) assessed for tangible personal property taxes by a county, city, or town receiving a payment from the Commonwealth under Chapter 35.1 of this title for providing tangible personal property tax relief, the rate of tax levied pursuant to this article shall not exceed the rates of tax and rates of assessment required under such chapter.

1991, c. 646; 2004, Sp. Sess. I, c. 1.

§ 58.1-3506.2. Restrictions and conditions

Any difference in the rates for purposes of this section shall be subject to the following restrictions and conditions:

1. The total combined income received, excluding the first $7,500 of income, at the option of the local government, from all sources during the preceding calendar year by the owner of the motor vehicle shall not exceed the greater of $30,000 or the income limits based on family size for the respective metropolitan statistical area, annually published by the Department of Housing and Urban Development for qualifying for federal housing assistance pursuant to § 235 of the National Housing Act (12 U.S.C. § 1715z).

2. The owner's net financial worth, including the present value of all equitable interests, as of December 31 of the immediately preceding calendar year, excluding the value of the principal residence and the land, not exceeding one acre, upon which it is situated, shall not exceed $75,000. The local government may also exclude such furnishings as furniture, household appliances and other items typically used in a home.

3. Notwithstanding the provisions of subdivisions 1 and 2 of this section, in Fairfax County and any town adjacent thereto, Arlington County, Chesterfield County, Loudoun County, and Prince William County, or the Cities of Alexandria, Chesapeake, Fairfax, Falls Church, Manassas, Manassas Park, Portsmouth, Suffolk or Virginia Beach, or the Town of Leesburg, the board of supervisors or council may, by ordinance, raise the income and financial worth limitations for any reductions under this article to a maximum of the greater of $52,000 or the income limits based upon family size for the respective metropolitan statistical area, published annually by the Department of Housing and Urban Development for qualifying for federal housing assistance pursuant to § 235 of the National Housing Act (12 U.S.C. § 1715z), for the total combined income amount, and $195,000

for the maximum net financial worth amount which shall exclude the value of the principal residence and the land, not exceeding one acre, upon which it is located.

4. All income and net worth limitations shall be computed by aggregating the income and assets, as the case may be, of a husband and wife who reside in the same dwelling and shall be applied to any owner of the motor vehicle who seeks the benefit of the preferential tax rate permitted under this article, irrespective of how such motor vehicle may be titled.

1991, c. 646; 1998, c. 361; 2007, c. 813.

§ 58.1-3506.3. Permanently and totally disabled defined

For purposes of this article, the term "permanently and totally disabled" means unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment or deformity which can be expected to result in death or can be expected to last for the duration of such person's life; however, a certification pursuant to 42 U.S.C. § 423 (d) by the Social Security Administration, so long as the person remains eligible for such Social Security benefits, shall be deemed to satisfy such definition in this section.

1991, c. 646 .

§ 58.1-3506.4. Local restrictions and conditions; model ordinance

Notwithstanding the provisions of subdivisions 1, 2, and 3 of § 58.1-3506.2, the governing body of a county, city or town may by ordinance specify lower income and financial worth figures. The governing body also may prescribe by ordinance for a maximum amount of tax relief hereunder based on the assessed value of the motor vehicle or a formula which takes into account the income and financial worth levels of the individual seeking the benefit of the preferential tax rate. The Department of Taxation shall develop a model ordinance to assist local governments with the implementation and enforcement of this article.

1991, c. 646 .

§ 58.1-3506.5. Application

A. The person applying under this article shall file annually with the commissioner of the revenue of the county, city or town assessing officer, or such other officer as may be designated by the governing body, on forms to be supplied by the county, city or town concerned, an affidavit setting forth that the total combined net worth, including equitable interests and the combined income from all sources, of the persons specified in § 58.1-3506.2 does not exceed the limits prescribed in such ordinance.

B. In lieu of the annual affidavit filing requirement, a county, city or town may prescribe by ordinance for the filing of the affidavit on a three-year cycle with an annual certification by the taxpayer that no information contained on the last preceding affidavit filed has changed to violate the limitations and conditions provided herein.

C. Notwithstanding the provisions of subsections A, B, and E of this section, any county, city or town may, by local ordinance, prescribe (i) the content of the affidavit described in subsection A, subject to the requirements established in § 58.1-3506.2, and (ii) the frequency with which an affidavit, or certification as described in subsection B of this section must be filed, and may include a procedure for late filing of affidavits.

D. If such person is under sixty-five years of age, the form shall have attached thereto a certification by the Social Security Administration, the Department of Veterans Affairs or the Railroad Retirement Board or, if such person is not eligible for certification by any of these agencies, a sworn affidavit by two medical doctors who are either licensed to practice medicine in the Commonwealth or are military officers on active duty who practice medicine with the United States Armed Forces, to the effect that the person is permanently and totally disabled, as defined in § 58.1-3506.3. The affidavit of at least one of the doctors shall be based upon a physical examination of the person by the doctor. The affidavit of one of the doctors may be based upon medical information contained in the records of the Civil Service Commission which is relevant to the standards for determining permanent and total disability as defined in § 58.1-3506.3.

E. Such affidavit or certification shall be filed after January 1 of each year, but before April 1, or such later date as may be fixed by ordinance. Such ordinance may include a procedure for late filing by first-time applicants or for hardship cases.

F. The commissioner of the revenue or town assessing officer, or another officer designated by the governing body of the county, city or town, shall also make any other reasonably necessary inquiry of persons applying under this article, requiring answers under oath, to determine qualifications as specified herein, including qualification as permanently and totally disabled as defined in § 58.1-3506.3, or as specified by county, city or town ordinance. The local governing body may, in addition, require the production of certified tax returns to establish the income or financial worth of any applicant for tax relief.

1991, c. 646 .

§ 58.1-3506.6. Notice of local tangible personal property tax relief program for the elderly and handicapped

The treasurer of any county, city or town shall enclose written notice, in each tangible personal property tax bill, of the terms and conditions of any local tangible personal property tax relief program established in the jurisdiction pursuant to § 58.1-3506.1. The treasurer shall also employ any other reasonable means necessary to notify residents of the county, city or town about the terms and conditions of the tangible personal property tax relief program for elderly and handicapped residents of the county, city or town.

1991, c. 646 .

§ 58.1-3506.7. Effective date; change in circumstances

A reclassification enacted pursuant to § 58.1-3506.1 may be granted for any year following the date that the qualifying individual reaches the age of sixty-five years or for any year following the date the disability occurred. Changes in income, financial worth, ownership of property or other factors occurring during the taxable year for which an affidavit is filed and having the effect of exceeding or violating the limitations and conditions provided herein or by county, city or town ordinance shall nullify any preferential tax rate for the remainder of the current taxable year and the taxable year immediately following. However, any locality may by ordinance provide a pro-rated preferential tax rate for the portion of the taxable year during which the taxpayer qualified for such rate.

1991, c. 646 .

§ 58.1-3506.8. Designation by General Assembly [Not set out]
Not set out. (1991, c. 646 .)

Article 2 - MACHINERY AND TOOLS TAX

§ 58.1-3507. Certain machinery and tools segregated for local taxation only; notice prior to change in valuation, hearing
A. Machinery and tools, except idle machinery and tools as defined in subsection D and machinery and equipment used by farm wineries as defined in § 4.1-100, used in a manufacturing, mining, water well drilling, processing or reprocessing, radio or television broadcasting, dairy, dry cleaning or laundry business shall be listed and are hereby segregated as a class of tangible personal property separate from all other classes of property and shall be subject to local taxation only. The rate of tax imposed by a county, city or town on such machinery and tools shall not exceed the rate imposed upon the general class of tangible personal property. Idle machinery and tools are taxable as capital under § 58.1-1101.

B. Machinery and tools segregated for local taxation pursuant to subsection A, other than energy conservation equipment of manufacturers, shall be valued by means of depreciated cost or a percentage or percentages of original total capitalized cost excluding capitalized interest. In valuing machinery and tools, the commissioner of the revenue shall, upon the written request of the taxpayer, consider any bona fide, independent appraisal presented by the taxpayer.

Whenever the commissioner of the revenue proposes to change the means of valuing machinery and tools, such proposed change shall be published in a newspaper having general circulation in the affected locality at least 30 days before the proposed change would take effect and the citizens of the locality shall be allowed to submit written comments, during the 30-day period, to the commissioner of the revenue regarding the proposed change.

C. All motor vehicles which are registered pursuant to § 46.2-600 with the Department of Motor Vehicles and owned by persons engaged in those businesses set forth in subsection A shall be taxed as tangible personal property by the county, city or town in accordance with the provisions

of this chapter. All other motor vehicles and delivery equipment owned by persons engaged in those businesses set forth in subsection A shall be included in and taxed as machinery and tools.

D. "Idle machinery and tools" means machinery and tools that (i) (a) have been discontinued in use continuously for at least one year prior to any tax day or (b) on and after January 1, 2007, have been specifically identified in writing by the taxpayer to the commissioner of the revenue or other assessing official, on or before April 1 of such year, as machinery and tools that the taxpayer intends to withdraw from service not later than the next succeeding tax day and (ii) are not in use on the tax day and no reasonable prospect exists that such machinery and tools will be returned to use during the tax year.

E. In the event that any machinery and tools taken out of use subsequent to January 1, 2007, are returned to use after having been previously classified as idle machinery and tools pursuant to clause (i) (b) of subsection D, the taxpayer shall identify such machinery and tools to the commissioner of the revenue or other assessing official in writing on or before the next return due date without extension, and such machinery and tools shall be subject to tax in accordance with the procedures provided in § 58.1-3903 in the same manner as if such machinery and tools had been in use on the tax day of the year in which such return to use occurs. Any interest otherwise payable pursuant to applicable law or ordinance shall apply to taxes imposed pursuant to this subsection and paid after the due date, without regard to the fault of the taxpayer or lack thereof. Notwithstanding the provisions of § 58.1-3903, if the taxpayer has provided timely written notice of return to use in accordance with the provisions of this subsection, no penalty shall be levied with respect to any tax liability arising as a result of the return to use of machinery and tools classified as idle and actually idle prior to such return to use.

F. The Department of Taxation shall promulgate guidelines for the use of local governments in applying the provisions of this section related to idle machinery and tools. In preparing such guidelines, the Department shall not be subject to the provisions of the Administrative Process Act (§ 2.2-4000 et seq.) for guidelines promulgated on or before January 1, 2008, but shall cooperate with and seek the counsel of local officials and interested groups. After January 1, 2008, such guidelines shall be accorded the weight of a regulation under § 58.1-205 and any amendments to such guidelines shall be subject to the Administrative Process Act.

G. The Tax Commissioner shall have the authority to issue advisory written opinions in specific cases to interpret the provisions of this section related to idle machinery and tools and the guidelines issued pursuant to subsection F; however, the Tax Commissioner shall not be required to interpret any local ordinance. The guidelines and opinions issued pursuant to this section shall not be applicable as an interpretation of any other tax law.

Code 1950, §§ 58-405, 58-831; 1979, c. 351; 1980, c. 412; 1981, c. 145; 1982, c. 633; 1983, cc. 552, 555; 1984, cc. 150, 675, 679, 680; 1985, c. 221; 1992, c. 680; 1993, cc. 78, 866; 1999, c. 396; 2005, c. 108; 2007, cc. 159, 191.

§ 58.1-3508. Separate classification and exemption from state taxation of machinery, tools and supplies used in harvesting forest products

A. Machinery or tools and repair parts therefor or replacements thereof, used directly in the harvesting of forest products for sale or for use as a component part of a product to be sold, shall constitute a classification for local taxation separate from other such classifications of real or personal property or machinery and tools as defined in § 58.1-3507. The rate of assessment and the rate of tax shall not exceed that applicable generally to machinery and tools.

B. The provisions of this section shall be applicable only to taxpayers liable for payment of forest product taxes under Chapter 16 (§ 58.1-1600 et seq.) of this title.

Code 1950, § 58-838.21; 1972, c. 325; 1984, c. 675.

§ 58.1-3508.1. Separate classification of machinery and tools used in semiconductor manufacturing

Machinery and tools used in semiconductor manufacturing shall constitute a classification for local taxation separate from other classifications of machinery and tools as defined in § 58.1-3507. The governing body of any county, city or town may levy a tax on such classification of property at a different rate from the tax levied on other machinery and tools. The rate of tax and the rate of assessment shall not exceed that applicable generally to machinery and tools.

1996, c. 971; 1997, c. 77.

§ 58.1-3508.2. Separate classification of machinery and tools used in other businesses

Heavy construction machinery, including but not limited to land movers, bulldozers, front-end loaders, graders, packers, power shovels, cranes, pile drivers, forest harvesting and silvicultural activity equipment and ditch and other types of diggers owned by businesses other than those set forth in §§ 58.1-3507, 58.1-3508, and 58.1-3508.1 shall constitute a classification for local taxation separate from other classifications of tangible property. The rate of tax imposed by a county, city, or town on such machinery and tools shall not exceed the rate imposed upon the general class of tangible personal property.

2005, c. 357.

§ 58.1-3508.3. Separate classification of machinery and tools used directly in precision investment castings

Machinery and tools used directly in the manufacture of precision investment castings shall constitute a classification for local taxation separate from other classifications of machinery and tools, as defined in § 58.1-3507. The governing body of any county, city, or town may levy a tax on such classification of property at a different rate from the tax levied on other machinery and tools. The rate of tax and the rate of assessment shall not exceed that applicable generally to machinery and tools.

2009, c. 528.

§ 58.1-3508.4. Separate classification of machinery and tools used in manufacturing or processing materials, components, or equipment for national defense

Machinery and tools, including repair and replacement parts, designed and used directly in manufacturing or processing materials, components, or equipment for national defense are hereby declared to be a separate class of property and shall constitute a classification for local taxation separate from other classifications of machinery and tools as defined in § 58.1-3507. The governing body of any county, city, or town may levy a tax on such machinery and tools at a different rate from that levied on other machinery and tools. The rate of tax imposed by the county, city, or town on such machinery and tools shall not exceed that applicable to the general class of machinery and tools.

2011, cc. 875, 877.

§ 58.1-3508.5. Separate classification of machinery and tools used directly in cleaning motor vehicles

Machinery and tools, including repair and replacement parts, used directly in cleaning motor vehicles by a motor vehicle cleaning business shall constitute a classification for local taxation separate from other classifications of machinery and tools as defined in § 58.1-3507. The governing body of any county, city, or town may levy a tax on such classification of property at a different rate from the tax levied on other machinery and tools. The rate of tax and the rate of assessment shall not exceed that applicable to the general class of machinery and tools.

2012, c. 267.

§ 58.1-3508.6. Separate classification of machinery and tools used directly in producing or generating renewable energy

Machinery and tools, including repair and replacement parts, owned by a business and used directly in producing or generating renewable energy shall constitute a classification for local taxation separate from other classifications of machinery and tools as defined in § 58.1-3507. The governing body of any county, city, or town may levy a tax on such classification of property at a different rate from the tax levied on other machinery and tools. The rate of tax and the rate of assessment shall not exceed that applicable to the general class of machinery and tools.

The rate of tax and rate of assessment under this section shall not apply to machinery and tools owned by a business and used directly in producing or generating renewable energy covered under Chapter 26 (§ 58.1-2600 et seq.), unless the rate of tax and rate of assessment under this section would result in a lower property tax on such machinery and tools.

As used in this section, "renewable energy" means energy derived from sunlight, wind, falling water, biomass, sustainable or otherwise (the definitions of which shall be liberally construed), energy from waste, landfill gas, municipal solid waste, wave motion, tides, or geothermal power and does not include energy derived from coal, oil, natural gas, or nuclear power.

2015, c. 230.

Article 3 - MERCHANTS' CAPITAL TAX

§ 58.1-3509. Merchants' capital subject to local taxation; rate limit

The capital of merchants is segregated for local taxation only; however, no county, city or town shall be required to impose a tax on such capital. However, no rate or assessment ratio in any county, city or town for merchants' capital shall be greater than such rate and ratio as was in effect in such county, city or town on January 1, 1978.

Code 1950, §§ 58-266.1, 58-832; 1950, p. 155; 1956, c. 242; 1964, c. 424; 1968, c. 619; 1970, cc. 231, 547; 1974, cc. 196, 438; 1975, cc. 23, 621; 1976, cc. 521, 719; 1977, c. 320; 1978, cc. 772, 799, 817; 1979, cc. 565, 568, 570; 1980, cc. 318, 736; 1981, cc. 419, 636; 1982, cc. 348, 548, 552, 554, 558, 633; 1983, c. 554; 1984, cc. 247, 675, 695; 1999, c. 200.

§ 58.1-3510. Definition of merchants' capital

A. Merchants' capital is defined as follows: Inventory of stock on hand; daily rental vehicles as defined in § 58.1-1735; and all other taxable personal property of any kind whatsoever, except money on hand and on deposit and except tangible personal property not offered for sale as merchandise, which tangible personal property shall be reported and assessed as such.

B. For purposes of this section, a repair and service operation (i) carried on as an integral part of and in conjunction with a business that is primarily mercantile and (ii) the principal sales of such business are subject to the tax imposed by Article 9 (§ 58.1-1734 et seq.) of Chapter 17 or to the tax imposed by Chapter 24 (§ 58.1-2400 et seq.) of this title shall be deemed a mercantile business, and all capital, as defined herein, including all repair parts, materials and supplies associated with such repair and service operation shall be deemed merchants' capital.

C. For purposes of valuing lottery tickets as part of a dealer's inventory, cost shall include only the compensation payable to a licensed sales agent as provided by rules or regulations adopted by the Board consistent with the provisions of subdivision 11 of subsection A of § 58.1-4007. The value of lottery tickets shall not be based on the cost of the tickets to the merchant.

Code 1950, §§ 58-266.1, 58-833; 1950, p. 155; 1956, c. 242; 1964, cc. 424, 472; 1968, c. 619; 1970, cc. 231, 547; 1974, cc. 196, 438; 1975, cc. 23, 621; 1976, cc. 521, 719; 1977, cc. 56, 320; 1978, cc. 772, 799, 817; 1979, cc. 565, 568, 570; 1980, cc. 318, 736; 1981, cc. 145, 419, 636; 1982, cc. 348, 548, 552, 554, 558, 633; 1983, cc. 544, 554; 1984, cc. 247, 675, 695; 1987, cc. 572, 591; 1989, c. 589; 1990, c. 151; 1997, c. 853; 2009, cc. 480, 692; 2011, cc. 405, 639.

§ 58.1-3510.01. Separate classification of merchants' capital of pharmaceutical wholesalers

Merchants' capital reported as inventory of pharmaceutical wholesalers shall constitute a classification for local taxation separate from other classifications of merchants' capital as defined in § 58.1-3510. The governing body of any county, city or town may levy a tax on such inventory at different rates from the tax levied on other merchants' capital. The rates of tax and the rates of assessment shall not exceed that applicable generally to merchants' capital.

1997, c. 71.

§§ 58.1-3510.1 through 58.1-3510.3. Repealed

Repealed by Acts 2009, cc. 480 and 692, cl. 2, effective for tax years beginning on and after January 1, 2009.

Article 3.1 - SHORT-TERM RENTAL PROPERTY

§ 58.1-3510.4. Short-term rental property; short-term rental businesses

A. For purposes of this article, "short-term rental property" means all tangible personal property held for rental and owned by a person engaged in the short-term rental business as defined in subsection B, excluding (i) trailers as defined in § 46.2-100, and (ii) other tangible personal property required to be licensed or registered with the Department of Motor Vehicles, Department of Game and Inland Fisheries, or Department of Aviation.

Short-term rental property shall constitute a classification of merchants' capital that is separate from other classifications of merchants' capital. For local property taxation purposes, the governing body of any county, city, or town may tax short-term rental property pursuant to § 58.1-3509 or may impose the tax authorized under § 58.1-3510.6, but not both.

B. A person is engaged in the short-term rental business if:

1. Not less than 80 percent of the gross rental receipts of such business during the preceding year arose from transactions involving the rental of short-term rental property, other than heavy equipment property as defined in subdivision 2, for periods of 92 consecutive days or less, including all extensions and renewals to the same person or a person affiliated with the lessee; or

2. Not less than 60 percent of the gross rental receipts of such business during the preceding year arose from transactions involving the rental of heavy equipment property for periods of 270 consecutive days or less, including all extensions and renewals to the same person or a person affiliated with the lessee. For the purposes of this subdivision, "heavy equipment property" means rental property of an industry that is described under code 532412 or 532490 of the 2002 North American Industry Classification System as published by the United States Census Bureau, excluding office furniture, office equipment, and programmable computer equipment and peripherals as defined in § 58.1-3503 A 16.

C. For purposes of determining whether a person is engaged in the short-term rental business as defined in subsection B, (i) a person is "affiliated" with the lessee of rental property if such person is an officer, director, partner, member, shareholder, parent or subsidiary of the lessee, or if such person and the lessee have any common ownership interest in excess of five percent, (ii) any rental to a person affiliated with the lessee shall be treated as rental receipts but shall not qualify for purposes of the 80 percent requirement of subdivision 1 of subsection B or the 60 percent requirement of subdivision 2 of subsection B, and (iii) any rental of personal property which also involves the provision of personal services for the operation of the personal property rented shall not be treated as gross receipts from rental, provided however that the delivery and installation of tangible personal property shall not mean operation for the purposes of this subdivision.

D. A person who has not previously been engaged in the short-term rental business who applies for a certificate of registration pursuant to § 58.1-3510.5 shall be eligible for registration upon his certification that he anticipates meeting the requirements of a specific subdivision of subsection B, designated by the applicant at the time of application, during the year for which registration is sought.

E. In the event that the commissioner of the revenue makes a written determination that a rental business previously certified as short-term rental business pursuant to § 58.1-3510.5 has failed to meet either of the tests set forth in subsection B during a preceding tax year, such business shall lose its certification as a short-term rental business and shall be subject to the business personal property tax with respect to all rental property for the tax year in which such certification is lost and any subsequent tax years until such time as the rental business obtains recertification pursuant to § 58.1-3510.5. In the event that a rental business loses its certification as a short-term rental business pursuant to this subsection, such business shall not be required to refund to customers daily rental property taxes previously collected in good faith and shall not be subject to assessment for business personal property taxes with respect to rental property for tax years preceding the year in which the certification is lost unless the commissioner makes a written determination that the business obtained its certification by knowingly making materially false statements in its application, in which case the commissioner may assess the taxpayer the amount of the difference between short-term rental property taxes remitted by such business during the period in which the taxpayer wrongfully held certification and the business personal property taxes that would have been due during such period but for the certification obtained by the making of the materially false statements. Any such assessment, and any determination not to certify or to decertify a rental business as a short-term rental business as defined in this subsection, may be appealed pursuant to the procedures and requirements set forth in § 58.1-3983.1 for appeals of local business taxes, which shall apply mutatis mutandis to such assessments and certification decisions.

F. A rental business that has been decertified pursuant to the provisions of subsection E shall be eligible for recertification for a subsequent tax year upon a showing that it has met one of the tests provided in subsection B for at least ten months of operations during the present tax year.

2009, cc. 480, 692; 2010, cc. 255, 295.

§ 58.1-3510.5. Renter's certificate of registration

Every person engaging in the short-term rental business, as defined in § 58.1-3510.4, in a county, city or town which has enacted an ordinance imposing a short-term rental property tax pursuant to § 58.1-3510.6 shall file annually with the commissioner of the revenue of such county or city or the designated official of such town an application for a certificate of registration. The application shall be in a form prescribed by the commissioner of the revenue or designated town official and shall set forth the name under which the applicant operates or intends to operate the rental business, the location of the business, the subdivision of § 58.1-3510.4 B under which the business

asserts that it is qualified for certification as a short-term rental business, and such other information as the commissioner or designated town official may require.

Each applicant shall sign the application as owner of the rental business. If the rental business is owned by an association, partnership, limited liability company, or corporation, the application shall be signed by a member, partner, executive officer, or other person specifically authorized by the association, partnership, limited liability company, or corporation to sign.

Upon approval of the application by the commissioner, a certificate of registration shall be issued. The certificate shall be conspicuously displayed at all times at the place of business for which it is issued.

The certificate is not assignable and shall be valid only for the person in whose name it is issued and the place of business designated.

2009, cc. 480, 692.

§ 58.1-3510.6. Short-term rental property tax

A. The governing body of any county, city, or town may levy a tax in an amount not to exceed one percent, in addition to the tax levied pursuant to § 58.1-605, on the gross proceeds arising from rentals of any person engaged in the short-term rental business as defined in § 58.1-3510.4 B 1. "Gross proceeds" means the total amount charged to each person for the rental of short-term rental property, excluding any state and local sales tax paid under the provisions of Chapter 6 (§ 58.1-600 et seq.) of this title.

B. The governing body of any county, city, or town may levy a tax in an amount not to exceed one-and-one-half percent, in addition to the tax levied pursuant to § 58.1-605, on the gross proceeds arising from rentals of any person engaged in the short-term rental business as defined in § 58.1-3510.4 B 2. "Gross proceeds" means the total amount charged to each person for the rental of short-term rental property, excluding any state and local sales tax paid under the provisions of Chapter 6 (§ 58.1-600 et seq.) of this title.

C. Any person engaged in the short-term rental business, as defined in § 58.1-3510.4, in a city, county or town that has adopted an ordinance imposing a short-term rental property tax pursuant to this section shall collect such tax from each lessee of rental property at the time of rental and shall transmit a quarterly return, not later than the fifteenth day following the end of each calendar quarter, to the commissioner of the revenue of the county or city or the designated official of the town wherein the tax is collected, reporting the gross rental proceeds derived from the short-term rental business. The commissioner of the revenue shall assess the tax due, and the short-term rental business shall pay the tax so assessed to the treasurer or director of finance not later than the last day of the month following the end of the calendar quarter. Any failure to file a quarterly return required by this section or to pay short-term rental property tax when due shall be subject to the provisions of § 58.1-3510.7.

D. Notwithstanding the provisions of subsections A and B, no tax shall be collected or assessed on (i) rentals by the Commonwealth, any political subdivision of the Commonwealth or the United States or (ii) any rental of durable medical equipment as defined in subdivision 10 of § 58.1-609.10.

E. Except for daily rental vehicles pursuant to § 58.1-3510 and short-term rental property, rental property shall be classified, assessed and taxed as tangible personal property.

2009, cc. 480, 692; 2010, cc. 255, 295.

§ 58.1-3510.7. Exemptions; penalties

Provisions in §§ 58.1-609.1 through 58.1-609.11 of Chapter 6 relating to exemptions, §§ 58.1-635 and 58.1-636 relating to penalties, and § 58.1-625 relating to the manner of collecting the local retail sales and use tax applicable in Chapter 6 (§ 58.1-600 et seq.) of this title, shall apply mutatis mutandis to the short-term rental property tax, except that the commissioner of revenue shall assess the tax due, and the treasurer or director of finance shall collect the short-term rental property tax, instead of the Department of Taxation. Any other provision in Chapter 6 shall apply if adopted by local ordinance pursuant to § 58.1-3510.6.

2009, cc. 480, 692.

Article 4 - SITUS FOR TAXATION

§ 58.1-3511. Situs for assessment; nonresident exception; refund of tax paid to city or county; apportioned assessment

A. The situs for the assessment and taxation of tangible personal property, merchants' capital and machinery and tools shall in all cases be the county, district, town or city in which such property may be physically located on the tax day. However, the situs for purposes of assessment of motor vehicles, travel trailers, boats and airplanes as personal property shall be the county, district, town or city where the vehicle is normally garaged, docked or parked; except, (i) the situs for vehicles with a weight of 10,000 pounds or less registered in Virginia but normally garaged, docked or parked in another state shall be the locality in Virginia where registered; and (ii) if the owner of a business files a return pursuant to § 58.1-3518 for any vehicle with a weight of 10,000 pounds or less registered in Virginia and used in the business with the locality from which the use of such vehicle is directed or controlled and in which the owner's business has a definite place of business, as defined in § 58.1-3700.1, the situs for such vehicles shall be such locality, provided such owner has sufficient evidence that he has paid the personal property tax on the business vehicles to such locality. Any person domiciled in another state, whose motor vehicle is principally garaged or parked in this Commonwealth during the tax year, shall not be subject to a personal property tax on such vehicle upon a showing of sufficient evidence that such person has paid a personal property tax on the vehicle in the state in which he is domiciled. In the event it cannot be determined where such personal property, described herein, is normally garaged, stored or parked, the situs shall be the domicile of the owner of such personal property. However, in the event that

a motor vehicle is used by a full-time student attending an institution of higher education, and such use establishes that the motor vehicle is normally garaged at the location of the institution of higher education, the situs shall be the domicile of the owner of the motor vehicle, provided the owner presents sufficient evidence that he has paid a personal property tax on the motor vehicle in his domicile, upon request of the locality of the institution of higher education. Any person who shall pay a personal property tax on a motor vehicle to a county or city in this Commonwealth and a similar tax on the same vehicle in the state of his domicile, or in the state where such vehicle is normally garaged, docked, or parked, may apply to such county or city for a refund of such tax payment. Upon a showing of sufficient evidence that such person has paid the tax for the same year in the state in which he is domiciled, the county or city may refund the amount of such payment.

B. The assessment of motor vehicles, travel trailers, boats or airplanes operating over interstate routes, in the rendition of a common, contract or other private carrier service which are subject to property taxation in any other state on the basis of an apportioned assessment, shall be apportioned in the same percentage as the total number of miles traveled in the Commonwealth by such vehicle bears to the total number of miles traveled by such vehicle.

Code 1950, § 58-834; 1972, c. 185; 1974, c. 510; 1980, c. 105; 1981, c. 437; 1984, c. 675; 1985, c. 156; 1994, cc. 961, 962; 1995, c. 449; 1998, c. 894; 2003, cc. 34, 43; 2012, c. 651.

§ 58.1-3512. When vessels and containers used in interstate and foreign commerce not deemed to have acquired a situs for taxation

Vessels regularly engaged in interstate and foreign commerce, physically present in a county, city or town on the first day of the tax year for the purpose of taking on and discharging passengers and cargo, either or both, or for the purpose of repairs, or temporarily idle and laid up, and containers, boxes, cartons, crates, barges and similar receptacles used for the storage of cargo, merchandise or equipment to be transported by vessels to or from ports of the Commonwealth, temporarily located in a county, city or town, shall not thereby be deemed to have acquired or established situs for the purposes of assessment and taxation, under § 58.1-3511.

Code 1950, § 58-834.1; 1950, p. 224; 1976, c. 716; 1984, c. 675.

§ 58.1-3513. When imports deemed to acquire situs

Goods imported in foreign commerce shall not acquire a situs for property taxation in the Commonwealth or any county, city or town thereof until they lose their status as imports. Such goods shall be deemed to lose their status as imports when the original package or container in which they were imported is broken, or if such goods are not packaged, when such property has reached its second place of rest or storage after being unloaded from the airplane, vehicle or vessel in which it was imported, after initial sale, or after such goods have been committed by the importer to current operational needs.

Code 1950, § 58-834.2; 1976, c. 716; 1984, c. 675.

§ 58.1-3514. When cargo in transit not deemed to have acquired a situs for taxation

Cargo, merchandise and equipment in transit which is stored, located or housed temporarily in a marine or airport terminal prior to being transported by vessels or aircraft to a point outside the Commonwealth, shall not acquire a situs for property taxation by the Commonwealth or any of its counties, cities or towns.

Code 1950, § 58-834.3; 1983, c. 225; 1984, c. 675.

Article 5 - TAX DAY/FILING OF RETURNS

§ 58.1-3515. Tax day January 1

Except as provided under § 58.1-3010, and except as provided by ordinance or special act in localities authorized to tax certain property on a proportional monthly or quarterly basis, tangible personal property, machinery and tools and merchants' capital shall be returned for taxation as of January 1 of each year, which date shall be known as the effective date of assessment or the tax day. The status of all persons, firms, corporations and other taxpayers liable for taxation on any of such property shall be fixed as of the date aforesaid in each year and the value of all such property shall be taken as of such date, except that any county, city or town may permit a taxpayer to return as merchants' capital the average amount of capital employed in his business on such date and on the next preceding August first.

Code 1950, § 58-835; 1979, cc. 571, 576; 1982, c. 623; 1984, c. 675.

§ 58.1-3516. Proration of personal property tax

A. The governing body of any county, city or town may provide by ordinance for the levy and collection of personal property tax on motor vehicles, trailers, semitrailers, and boats which have acquired a situs within such locality after the tax day for the balance of the tax year. Such tax shall be prorated on a monthly basis. Such ordinance may exclude boats or motor vehicles, trailers, and semitrailers with a gross vehicle weight of 10,000 pounds or more used to transport property for hire by a motor carrier engaged in interstate commerce, or both, from the property subject to proration of the personal property tax. For purposes of proration, a period of more than one-half of a month shall be counted as a full month and a period of less than one-half of a month shall not be counted.

Such ordinance shall also provide for relief from tax and a refund of the appropriate amount of tax already paid, which shall be prorated on a monthly basis, where any motor vehicle, trailer, semitrailer, or boat loses its situs within such locality after the tax day or after the day on which it acquires a situs (hereafter "situs day"). No refund shall be made if the motor vehicle, trailer, semitrailer, or boat acquires a situs within the Commonwealth in a nonprorating locality. When any person sells or otherwise transfers title to a motor vehicle, trailer, semitrailer, or boat with a situs in the locality after the tax day or situs day, the tax shall be relieved, prorated on a monthly basis, and the appropriate amount of tax already paid shall be (i) refunded or (ii) credited against the tax due on any motor vehicle, trailer, semitrailer, or boat owned by the taxpayer during the

same tax year by the treasurer of such locality. Such refund shall be made within thirty days of the date such tax is relieved. No refund of less than five dollars shall be issued to a taxpayer, unless specifically requested by the taxpayer. When any person, after the tax day or situs day, acquires a motor vehicle, trailer, semitrailer, or boat with a situs in the locality, the tax shall be assessed on the motor vehicle, trailer, or boat for the portion of the tax year during which the new owner owns the motor vehicle, trailer, semitrailer, or boat and it has a situs within the locality.

Any person who moves from a nonprorating locality to a prorating locality in a single tax year shall be entitled to a property tax credit in the prorating jurisdiction if (a) the person was liable for personal property taxes on a motor vehicle and has paid those taxes to a nonprorating locality and (b) the owner replaces for any reason the original vehicle upon which taxes are due to the nonprorating locality for the same tax year. The prorating locality shall provide a credit against the total tax due on the replacement vehicle in an amount equal to the tax paid to the nonprorating locality for the period of time commencing with the disposition of the original vehicle and continuing through the close of the tax year in which the owner incurred tax liability to the nonprorating locality for the original vehicle.

B. Such ordinance shall provide for the filing of returns and payment of such tax. Such ordinance shall also exempt property from the levy of such personal property tax for any tax year or portion thereof during which the property was legally assessed by another jurisdiction in the Commonwealth and the tax paid. Such ordinance may provide that, notwithstanding any other date for billing and payment of local personal property tax, the locality may bill all personal property taxes assessed for a portion of the tax year less than the full year on or after December 15 of each year. The ordinance may further provide that such taxes shall be due not less than thirty days after the date of the tax bill. If the tax is not paid when due, the penalty and the interest otherwise provided for by § 58.1-3916 shall be imposed based on the established due date.

Code 1950, § 58-835.1; 1982, c. 433; 1983, cc. 36, 270, 273; 1984, cc. 276, 305, 471, 675; 1985, cc. 241, 258; 1986, cc. 51, 366, 541; 1987, cc. 212, 233; 1988, cc. 446, 726; 1989, cc. 29, 36, 329; 1990, c. 330; 1991, cc. 61, 624; 1992, cc. 602, 669; 1993, c. 557; 1996, c. 536; 2002, c. 550.

§ 58.1-3516.1. Payment of taxes prorated under § 58.1-3516

Notwithstanding the contrary language of §§ 58.1-3515, 58.1-3518, 58.1-3913, 58.1-3915, and 58.1-3916, or subdivision B of § 58.1-3516, relating to the tax day, or tax filing or payment dates, or dates on which penalty and interest are to be charged or added to delinquent tax returns or payments, or any other general provisions of law relating to such dates, the City of Winchester is authorized to provide, by ordinance, in combination with the adoption of proration of personal property taxes under § 58.1-3516, the following:

1. The payment of the personal property tax on any personal property subject to proration shall be due on the last day of the twelfth month after such personal property has acquired situs within the city; however, if the property loses situs in the City of Winchester, or if the taxpayer sells or

otherwise transfers title to the property, the tax shall be due on the last day of the month following the month of the loss of situs or of the sale or other transfer of title of the property.

2. The penalties for failure to pay the tax on such personal property shall begin the day following the due date for the tax on the property.

The provisions of Subtitle III (§ 58.1-3000 et seq.) of Title 58.1 which are not in conflict herewith shall apply, with the respective differences having been considered, to the imposition and collection of personal property taxes by the City of Winchester, and the tax credit and exemption provisions of § 58.1-3516 for the payment of taxes to other jurisdictions shall specifically apply to any ordinance adopted under the authority of this section.

1993, cc. 187, 324; 1995, cc. 131, 469.

§ 58.1-3516.2. Payment of taxes on leased property by lessee; information to be furnished by lessor

The lessor shall provide to every taxpayer that leases any motor vehicle pursuant to a contract that requires the lessee to pay the taxes thereon as provided for under this chapter, a written notice in bold print regarding the taxes to be paid by the lessee, and the lessor shall forward any such tax bill (or, in the case of a multi-vehicle tax bill issued to the lessor, a copy or facsimile of that portion of such bill that pertains to the lessee's vehicle) to the lessee within ten business days of receipt.

1997, c. 398.

§ 58.1-3517. Department of Taxation to prescribe and furnish forms of returns; use of local forms

Blank forms of returns for reporting the classes of property mentioned in this chapter shall be prescribed by the Department of Taxation and furnished to the commissioners of the revenue in ample time for their use. The commissioner of the revenue of any county or city may use a local form in lieu of that prescribed by the Department.

Code 1950, § 58-836; 1979, c. 576; 1984, c. 675.

§ 58.1-3518. Taxpayers to file returns

Every taxpayer owning any of the property subject to taxation under this chapter on January 1 of any year shall file a return thereof with the commissioner of the revenue for his county or city on the appropriate forms; however, the commissioner of the revenue may elect not to require such a return from any taxpayer who owns such property which does not have sufficient value to generate a tax assessment. Every person who leases any of such property from the owner thereof on such date shall file a return with the commissioner of the revenue of the county or city wherein such property is located giving the name and address of the owner, except any person leasing a motor vehicle which is subject to the tax imposed under § 58.1-2402. Such returns shall be filed on or before May 1 of each year, except as otherwise provided by ordinance authorized by § 58.1-3916.

Every fiduciary shall file the returns mentioned in this chapter with the commissioner of revenue having jurisdiction. Every taxpayer owning machinery and tools or business personal property, if requested by the commissioner of the revenue, shall include on his annual return of such property information as to the total of original cost by year of purchase. The cost should be the original capitalized cost or the cost that would have been capitalized if the expense deduction in lieu of depreciation was elected under § 179 of the Internal Revenue Code .

Code 1950, § 58-837; 1974, c. 387; 1976, c. 547; 1978, c. 393; 1980, c. 317; 1984, c. 675; 1990, c. 705; 1995, c. 29.

§ 58.1-3518.1. Alternative method of filing returns for motor vehicles, trailers and boats

A. Notwithstanding the provisions of § 58.1-3518, the governing body of any county, city or town may provide by ordinance for an alternative method of filing personal property tax returns for motor vehicles, trailers and boats. Any such ordinance adopted pursuant to this section may provide for the annual assessment and taxation of motor vehicles, trailers and boats based on a previous personal property tax return filed by the owner or owners of such property. For those whose name or address has not changed since a previous filing and whose personal property has had no change in status or situs, the assessment and taxation of property may be based on a personal property tax return previously filed with the jurisdiction adopting such an alternative method.

B. Any jurisdiction adopting such an alternative method may require the owner of a motor vehicle, trailer or boat to file a new personal property tax return whenever there is: (i) a change in the name or address of the person or persons owning taxable personal property; (ii) a change in the situs of personal property; (iii) any other change affecting the assessment or levy of the personal property tax on motor vehicles, trailers or boats for which a tax return has been filed previously; or (iv) any change in which a person acquires one or more motor vehicles, trailers or boats and for which no personal property tax return has been filed.

C. Nothing in this section shall preclude any jurisdiction from assessing taxable personal property in accordance with § 58.1-3519 or assessing penalties and interest in accordance with § 58.1-3916.

1994, c. 292; 1996, c. 322.

§ 58.1-3519. Commissioner to assess property if taxpayer fails to file return

If any taxpayer, liable to file a return of any of the subjects of taxation mentioned in this chapter, neglects or refuses to file such return for any year within the time prescribed, the commissioner of the revenue shall, from the best information he can obtain, enter the fair market value of such property and assess the same as if it had been reported to him.

Code 1950, § 58-838; 1952, c. 711; 1954, c. 488; 1962, c. 578; 1984, c. 675.

Article 6 - SPECIAL PROVISIONS FOR MOBILE HOMES

§ 58.1-3520. Local permits required before moving a manufactured home to the place where it is to be used as a place of residence; payment of property taxes before moving manufactured homes

No manufactured home, as defined in § 36-85.3, intended for use as a full-time place of residence shall be delivered to or located upon the lot or parcel of real estate where the manufactured home will be used as a place of residence until the necessary permits for connection to water and sewer outlets have been secured, or if there be no existing water and sewer outlets, until permits for a well and septic system have been acquired from the local health departments.

The owner of any manufactured home moving the manufactured home into a county, city or town for use rather than for sale shall within ten days after moving the manufactured home notify the commissioner of revenue or director of finance of the county, city or town of his name, address and description and location of the manufactured home. No manufactured home which has been in use as a place of residence shall be moved from the county, city or town wherein it has been in use, until the owner thereof has obtained a tax permit from the treasurer of the county or city. Such permits shall be supplied to the treasurers by the Department of Taxation. The treasurer shall not issue a tax permit until such owner has paid to the city or county and town all local property taxes assessed or assessable against the manufactured home. The permit shall expire in forty-five days and shall be conspicuously displayed on the left center of the rear of the manufactured home at all times when such manufactured home is being transported. The seller of a manufactured home subject to the provisions of this section shall deliver a copy of this section of the Code of Virginia to the purchaser at the time of the sale.

Any dealer in manufactured homes or any party having a secured interest in a particular manufactured home may use dealer plates as authorized in § 46.2-1550 in lieu of the tax permit required hereunder. Any such dealer or secured party who removes a manufactured home from a county or city on account of repossession or other operation of law shall notify the treasurer thereof before such removal.

The violation of this section shall constitute a Class 3 misdemeanor and be punishable as such.

Code 1950, § 58-766.3; 1974, c. 426; 1982, c. 617; 1984, c. 675; 1994, c. 152.

§ 58.1-3521. Manufactured homes; proration of tax

Notwithstanding any other provision of this chapter, any city or county wherein a manufactured home, as defined in § 36-85.3, is delivered or moved after January 1, and used as a place of full-time residence by any person, may quarterly prorate any property taxes which would have been collectible had such manufactured home been situated within such city or county on January 1 of that year.

Code 1950, § 58-829.3; 1960, c. 418; 1970, c. 655; 1976, c. 567; 1984, c. 675; 1994, c. 152.

§ 58.1-3522. Assessment method for manufactured homes

Manufactured homes installed according to the Uniform Statewide Building Code shall be assessed at the same time as the assessment of the real property on which the manufactured home is installed. Such homes shall be assessed in the same manner and using the same methods applied to improvements and buildings which are assessed in accordance with Article 7 (§ 58.1-3280 et seq.) of Chapter 32 of this title.

1994, c. 152.

Chapter 35.1 - PERSONAL PROPERTY TAX RELIEF

§ 58.1-3523. Definitions

As used in this chapter:

"Commissioner of the revenue" means the same as that set forth in § 58.1-3100. For purposes of this chapter, in a county or city which does not have an elected commissioner of the revenue, "commissioner of the revenue" means the officer who is primarily responsible for assessing motor vehicles for the purposes of tangible personal property taxation.

"Department" means the Department of Motor Vehicles.

"Effective tax rate" means the tax rate imposed by a locality on tangible personal property multiplied by any assessment ratio in effect.

"Leased" means leased by a natural person as lessee and used for nonbusiness purposes.

"Privately owned" means owned by a natural person and used for nonbusiness purposes.

"Qualifying vehicle" means any passenger car, motorcycle, autocycle, and pickup or panel truck, as those terms are defined in § 46.2-100, that is determined by the commissioner of the revenue of the county or city in which the vehicle has situs as provided by § 58.1-3511 to be (i) privately owned; (ii) leased pursuant to a contract requiring the lessee to pay the tangible personal property tax on such vehicle; or (iii) held in a private trust for nonbusiness purposes. In determining whether a vehicle is a qualifying vehicle, the commissioner of revenue must rely on the registration of such vehicle with the Department pursuant to Chapter 6 (§ 46.2-600 et seq.) of Title 46.2 or, for leased vehicles, the information of the Department pursuant to subsections B and C of § 46.2-623, unless the commissioner of the revenue has information that the Department's information is incorrect, or to the extent that the Department's information is incomplete. For purposes of this chapter, all-terrain vehicles and off-road motorcycles titled with the Department of Motor Vehicles and mopeds shall not be deemed qualifying vehicles.

"Tangible personal property tax" means the tax levied pursuant to Article 1 (§ 58.1-3500 et seq.) of Chapter 35 of Title 58.1.

"Tax year" means the 12-month period beginning in the calendar year for which tangible personal property taxes are imposed.

"Treasurer" means the same as that set forth in § 58.1-3123, when used herein with respect to a county or city. When used herein with respect to a town, "treasurer" means the officer who is primarily responsible for the billing and collection of tangible personal property taxes levied upon motor vehicles by such town, and means the treasurer of the county or counties in which such town is located if such functions are performed for the town by the county treasurer or treasurers.

"Used for nonbusiness purposes" means the preponderance of use is for other than business purposes. The preponderance of use for other than business purposes shall be deemed not to be satisfied if: (i) the motor vehicle is expensed on the taxpayer's federal income tax return pursuant to Internal Revenue Code § 179; (ii) more than 50 percent of the basis for depreciation of the motor vehicle is depreciated for federal income tax purposes; or (iii) the allowable expense of total annual mileage in excess of 50 percent is deductible for federal income tax purposes or reimbursed pursuant to an arrangement between an employer and employee.

"Value" means the fair market value determined by the method prescribed in § 58.1-3503 and used by the locality in valuing the qualifying vehicle.

1998, Sp. Sess. I, c. 2; 1999, c. 189; 2004, Sp. Sess. I, c. 1; 2006, c. 896; 2007, cc. 314, 815; 2010, c. 499; 2013, c. 783; 2015, cc. 96, 152.

§ 58.1-3524. Tangible personal property tax relief; local tax rates on vehicles qualifying for tangible personal property tax relief

A. For tax year 2006 and all tax years thereafter, counties, cities, and towns shall be reimbursed by the Commonwealth for providing the required tangible personal property tax relief as set forth herein.

B. For tax year 2006 and all tax years thereafter, the Commonwealth shall pay a total of $950 million for each such tax year in reimbursements to localities for providing the required tangible personal property tax relief on qualifying vehicles in subsection C. No other amount shall be paid to counties, cities, and towns for providing tangible personal property tax relief on qualifying vehicles. Each county's, city's, or town's share of the $950 million for each such tax year shall be determined pro rata based upon the actual payments to such county, city, or town pursuant to this chapter for tax year 2005 as compared to the actual payments to all counties, cities, and towns pursuant to this chapter for tax year 2005, as certified in writing by the Auditor of Public Accounts no later than March 1, 2006, to the Governor and to the chairmen of the Senate Committee on Finance and the House Committee on Appropriations. The amount reimbursed to a particular county, city, or town for tax year 2006 for providing tangible personal property tax relief shall be the same amount reimbursed to such county, city, or town for each subsequent tax year.

The reimbursement to each county, city, or town for tax year 2006 shall be paid by the Commonwealth over the 12-month period beginning with the month of July 2006 and ending with the month of June 2007, as provided in the general appropriation act. For all tax years subsequent to tax year 2006, reimbursements shall be paid over the same 12-month period. All reimbursement

payments shall be made by check issued by the State Treasurer to the respective treasurer of the county, city, or town on warrant of the Comptroller.

C. For tax year 2006 and all tax years thereafter, each county, city, or town that will receive a reimbursement from the Commonwealth pursuant to subsection B shall provide tangible personal property tax relief on qualifying vehicles by reducing its local tax rate on qualifying vehicles as follows:

1. The local governing body of each county, city, or town shall fix or establish its tangible personal property tax rate for its general class of tangible personal property, which rate shall also be applied to that portion of the value of each qualifying vehicle that is in excess of $20,000.

2. After fixing or establishing its tangible personal property tax rate for its general class of tangible personal property, the local governing body of the county, city, or town shall fix or establish one or more reduced tax rates (lower than the rate applied to the general class of tangible personal property) that shall be applied solely to that portion of the value of each qualifying vehicle that is not in excess of $20,000. No other tangible personal property tax rate shall be applied to that portion of the value of each qualifying vehicle that is not in excess of $20,000. Such reduced tax rate or rates shall be set at an effective tax rate or rates such that (i) the revenue to be received from such reduced tax rate or rates on that portion of the value of qualifying vehicles not in excess of $20,000 plus (ii) the revenue to be received on that portion of the value of qualifying vehicles in excess of $20,000 plus (iii) the Commonwealth's reimbursement is approximately equal to the total revenue that would have been received by the county, city, or town from its tangible personal property tax had the tax rate for its general class of tangible personal property been applied to 100 percent of the value of all qualifying vehicles.

3. Notwithstanding the provisions of subdivisions 1 and 2, beginning with tax year 2016, each county, city, and town that receives reimbursement shall ensure that the reimbursement pays for all of the tax attributable to the first $20,000 of value on each qualifying vehicle leased by an active duty member of the United States military, his spouse, or both, pursuant to a contract requiring him, his spouse, or both to pay the tangible personal property tax on such vehicle. The provisions of this subdivision apply only to a vehicle that would not be taxed in Virginia if the vehicle were owned by such military member, his spouse, or both.

D. On or before the date the certified personal property tax book is required by § 58.1-3118 to be provided to the treasurer, the commissioner of the revenue shall identify each qualifying vehicle and its value to the treasurer of the locality.

E. The provisions of this section are mandatory for any county, city, or town that will receive a reimbursement pursuant to subsection B.

1998, Sp. Sess. I, c. 2; 2004, Sp. Sess. I, c. 1; 2015, c. 266.

§§ 58.1-3525 through 58.1-3533. Repealed

Repealed by Acts 2004, Sp. Sess. I, c. 1, cl. 6, effective January 1, 2006.

§ 58.1-3534. Department to furnish information to commissioners of revenue

A. The Department shall provide to the commissioners of revenue such data or information it has available which is needed for the commissioners of revenue to comply with the provisions of this chapter. Such data or information shall be made available in a manner which will allow for compliance with the provisions of this chapter.

B. The Department shall include in the information furnished to commissioners of the revenue pursuant to subsection A regarding vehicles qualifying for personal property tax relief, whether the vehicle is held in a private trust for nonbusiness purposes by an individual beneficiary.

1998, Sp. Sess. I, c. 2; 2011, c. 13.

§ 58.1-3535. Commissioner of the revenue to furnish information to the treasurer
The commissioner of the revenue shall timely provide to the treasurer such data or information as may be required for the treasurer to comply with the provisions of this chapter.

1998, Sp. Sess. I, c. 2.

§ 58.1-3536. Repealed
Repealed by Acts 2004, Sp. Sess. I, c. 1, cl. 6, effective January 1, 2006.

Chapter 36 - TAX EXEMPT PROPERTY

Article 1 - EXEMPTIONS GENERALLY

§ 58.1-3600. Definitions
As used in this chapter the word "taxation" shall not be construed to include assessments for local improvements as provided for in Article 2 (§ 15.2-2404 et seq.) of Chapter 24 of Title 15.2, Article 2 (§ 15.2-2404 et seq.) of Chapter 24 of Title 15.2 or the charter of any city or town.

Code 1950, § 58-12.1; 1964, c. 470; 1984, c. 675.

§ 58.1-3601. Property becomes taxable immediately upon sale by tax-exempt owner
Any property exempt from taxation pursuant to this chapter which is subsequently sold to a person not having tax-exempt status shall immediately become subject to taxation and be assessed therefor. The tax levied for the current year shall be prorated for the remainder of the tax year.

Code 1950, § 58-16.1; 1964, c. 178; 1984, c. 675.

§ 58.1-3602. Exemptions not applicable to associations, etc., paying death, etc., benefits
Nothing contained in this chapter shall be construed to exempt from taxation the property of any person, firm, association or corporation who shall, expressly or impliedly, directly or indirectly, contract or promise to pay a sum of money or other benefit, on account of death, sickness or accident, to any of its members or other person.

Code 1950, § 58-13; 1984, c. 675.

§ 58.1-3603. Exemptions not applicable when building is source of revenue

A. Whenever any building or land, or part thereof, exempt from taxation pursuant to this chapter and not belonging to the Commonwealth is a source of revenue or profit, whether by lease or otherwise, all of such buildings and land shall be liable to taxation as other land and buildings in the same county, city or town. When a part but not all of any such building or land, however, is a source of revenue or profit, and the remainder of such building or land is used by any organization exempted from taxation pursuant to this chapter for its purposes, only such portion as is a source of profit or revenue shall be liable for taxation.

B. In assessing any building and the land it occupies pursuant to subsection A, the assessing officer shall only assess for taxation that portion of the property as is a source of profit or revenue and the tax shall be computed on the basis of the ratio of the space as is a source of profit or revenue to the entire property. When any such property is leased for portions of a year the tax shall be computed on the basis of the average use of such property for the preceding year.

C. In determining whether any building or land, or part thereof, is a source of revenue or profit, rent from the lease of the property applied to reduce indebtedness against the property by payment of the principal of an outstanding bond or note held by a political subdivision of the Commonwealth shall not constitute revenue or profit, provided that the property is leased to a lessee who is exempt from taxation pursuant to § 501(c)(3) of the Internal Revenue Code and is used by such lessee exclusively for charitable purposes.

Code 1950, §§ 58-14, 58-16; 1950, p. 659; 1984, c. 675; 1996, c. 534.

§ 58.1-3604. Tax exemption information

A. The appropriate county, city or town assessing officer shall make and maintain an inventory and assessment of all tax-exempt real property and all such property immune from real estate taxation within his county, city or town, excluding streets, highways and other roadways. Such official shall identify such property by a general site description indicating the owner thereof and report such information on the land book along with an assessment of the fair market value of such property, the total assessed valuation for each type of exemption and a computation of total tax which would be due if such property were not exempt. A total of such assessed valuations and a computation of the percentage such exempt and immune property represents in relation to all property assessed within the county, city or town shall be published annually by such local assessing officer and a copy thereof shall be filed with the Department of Taxation on forms prescribed by the Department. All costs incurred pursuant to this section shall be borne by the county, city or town.

B. The appropriate county, city or town assessing officer shall also cause to be published, on an annual basis, at the same time and in the same publication, or in the same manner, as notice of the local real estate tax rates is published or otherwise posted, a statement indicating the aggregate assessed value of all real property exempted from taxation under §§ 58.1-3607 and 58.1-3608,

and Articles 3, 4 and 5 of Chapter 36 of this title, and the total reduction in tax revenues resulting from such exemptions.

Code 1950, § 58-14.1; 1975, c. 612; 1976, c. 486; 1984, c. 675; 1989, c. 38 .

§ 58.1-3605. Triennial application for exemption; removal by local governing body

The governing body of any county, city or town, after giving sixty days' written notice, may require by local ordinance any entity, except the Commonwealth, any political subdivision of the Commonwealth, or the United States, which owns real and personal property exempt pursuant to this chapter to file triennially an application with the appropriate assessing officer as a requirement for retention of the exempt status of the property. Such application shall show the ownership and usage of such property and shall be filed within the next sixty days preceding the tax year for which such exemption, or the retention thereof, is sought.

The local governing body may submit to the General Assembly a list of those organizations whose property is designated as tax exempt under § 58.1-3650.1 et seq. which the local governing body wants to remove from its exempt property list. Legislation including such a list must be introduced no later than the first calendar day of any session of the General Assembly unless requested by the Governor.

Code 1950, § 58-14.2; 1975, c. 613; 1984, c. 675; 1995, c. 346.

§ 58.1-3605.1. Repealed

Repealed by Acts 2016, c. 305, cl. 2.

Article 2 - PROPERTY EXEMPTED BY CLASSIFICATION OR DESIGNATION

§ 58.1-3606. Property exempt from taxation by classification

A. Pursuant to the authority granted in Article X, Section 6 (a)(6) of the Constitution of Virginia to exempt property from taxation by classification, the following classes of real and personal property shall be exempt from taxation:

1. Property owned directly or indirectly by the Commonwealth, or any political subdivision thereof.

2. Real property and personal property owned by churches or religious bodies, including (i) an incorporated church or religious body and (ii) a corporation mentioned in § 57-16.1, and exclusively occupied or used for religious worship or for the residence of the minister of any church or religious body, and such additional adjacent land reasonably necessary for the convenient use of any such property. Real property exclusively used for religious worship shall also include the following: (a) property used for outdoor worship activities; (b) property used for ancillary and accessory purposes as allowed under the local zoning ordinance, the dominant purpose of which is to support or augment the principal religious worship use; and (c) property used as required by federal, state, or local law.

3. Nonprofit private or public burying grounds or cemeteries.

4. Property owned by public libraries, law libraries of local bar associations when the same are used or available for use by a state court or courts or the judge or judges thereof, medical libraries of local medical associations when the same are used or available for use by state health officials, incorporated colleges or other institutions of learning not conducted for profit. This paragraph shall apply only to property primarily used for literary, scientific or educational purposes or purposes incidental thereto and shall not apply to industrial schools which sell their products to other than their own employees or students.

5. Property belonging to and actually and exclusively occupied and used by the Young Men's Christian Associations and similar religious associations, including religious mission boards and associations, orphan or other asylums, reformatories, hospitals and nunneries, conducted not for profit but exclusively as charities (which shall include hospitals operated by nonstock corporations not organized or conducted for profit but which may charge persons able to pay in whole or in part for their care and treatment).

6. Parks or playgrounds held by trustees for the perpetual use of the general public.

7. Buildings with the land they actually occupy, and the furniture and furnishings therein belonging to any benevolent or charitable organization and used by it exclusively for lodge purposes or meeting rooms, together with such additional adjacent land as may be necessary for the convenient use of the buildings for such purposes.

8. Property of any nonprofit corporation organized to establish and maintain a museum.

B. Property, belonging in one of the classes listed in subsection A of this section, which was exempt from taxation on July 1, 1971, shall continue to be exempt from taxation under the rules of statutory construction applicable to exempt property prior to such date.

Code 1950, § 58-12; 1950, p. 61; 1952, c. 50; 1954, c. 65; 1956, c. 478; 1956, Ex. Sess., c. 16; 1958, c. 361; 1960, c. 396; 1962, c. 129; 1964, c. 198; 1966, c. 582; 1968, cc. 37, 807; 1969, Ex. Sess., c. 9; 1970, cc. 83, 562; 1972, c. 667; 1973, c. 438; 1974, c. 469; 1984, c. 675; 1985, c. 495; 2004, c. 492; 2005, c. 928; 2014, cc. 555, 615.

§ 58.1-3606.1. Property indirectly owned by government

Property indirectly owned by the Commonwealth or any political subdivision thereof or by the United States shall include, but not be limited to, a leasehold interest or other right pursuant to a concession, as defined in § 33.2-1800, in a transportation facility and real property acquired or constructed for the development and/or operation of the qualifying transportation facility when (i) the qualifying transportation facility is owned, or title to it is held, by the Commonwealth or any political subdivision thereof or by the United States and is being developed and/or operated pursuant to a concession under the Public-Private Transportation Act of 1995 (§ 33.2-1800 et seq.) or similar federal law and (ii) the property or leasehold interest is required to be dedicated to the Commonwealth, its political subdivision, or the United States upon the termination of the concession.

2006, c. 922.

§ 58.1-3607. Property exempt from taxation by designation

A. Pursuant to the authority granted in Article X, Section 6 (a) (6) of the Constitution of Virginia to exempt property from taxation by designation, and notwithstanding the provisions of § 58.1-3651, the real and personal property of the following organizations, corporations and associations shall be exempt from taxation:

1. Property of the Association for the Preservation of Virginia Antiquities, the Association for the Preservation of Petersburg Antiquities, Historic Richmond Foundation, the Confederate Memorial Literary Society, the Mount Vernon Ladies' Association of the Union, the Virginia Historical Society, the Thomas Jefferson Memorial Foundation, Incorporated, the Patrick Henry Memorial Foundation, Incorporated, the Stonewall Jackson Memorial, Incorporated, George Washington's Fredericksburg Foundation, Home Demonstration Clubs, 4-H Clubs, the Future Farmers of America, Incorporated, the posts of the American Legion, posts of United Spanish War Veterans, branches of the Fleet Reserve Association, posts of Veterans of Foreign Wars, posts of the Disabled American Veterans, Veterans of World War I, USA, Incorporated, the Society of the Cincinnati in the State of Virginia, the Manassas Battlefield Confederate Park, Incorporated, the Robert E. Lee Memorial Foundation, Incorporated, the Virginia Division of the United Daughters of the Confederacy, the General Organization of the United Daughters of the Confederacy, the Memorial Foundation of the Germanna Colonies in Virginia, Incorporated, the Lynchburg Fine Arts Centers, Incorporated, Norfolk Historic Foundation, National Trust for Historic Preservation in the United States, Historic Alexandria Foundation, and the Lynchburg Historical Foundation.

2. Property of Colonial Williamsburg, Incorporated, used for museum, historical, municipal, benevolent or charitable purposes, as long as such corporation continues to be organized and operated not for profit.

3. Property owned by the Virginia Home (previously Virginia Home for Incurables), incorporated by Chapter 533 of the Acts of Assembly of 1893-4, approved March 1, 1894.

4. The property owned by the Waterford Foundation, Incorporated, so long as it continues to be a nonprofit corporation to encourage and assist in restoration work in Waterford and to stimulate the revival of local arts and crafts.

5. Property of Historic Fredericksburg, Incorporated, and of the Clarke County Historical Association, used by such organizations for historical, benevolent or charitable purposes, as long as such corporation continues to be organized and operated not for profit.

6. Property of the Westmoreland Davis Foundation, Inc., so long as it continues to be a nonprofit corporation.

7. Property owned by the Women's Home Incorporated, in Arlington County and used for the rehabilitation of women with substance abuse, so long as it continues to be operated not for profit.

B. Property designated to be exempt from taxation in subsection A which was exempt on July 1, 1971, shall continue to be exempt under the rules of statutory construction applicable to exempt property prior to such date.

Code 1950, § 58-12; 1950, p. 61; 1952, c. 50; 1954, c. 65; 1956, c. 478; 1956, Ex. Sess., c. 16; 1958, c. 361; 1960, c. 396; 1962, c. 129; 1964, c. 198; 1966, c. 582; 1968, cc. 37, 807; 1969, Ex. Sess., c. 9; 1970, cc. 83, 562; 1972, c. 667; 1973, c. 438; 1974, c. 469; 1984, c. 675; 1985, c. 495; 1998, c. 172; 2000, c. 7; 2005, c. 716; 2011, c. 851.

§ 58.1-3608. Exempt organization's use of property owned by another

Any real or personal property, the legal title to which is held by any person, firm or corporation, subject to the sole use and occupancy of an organization or society exempted by the provisions of subdivision 1 of § 58.1-3607 is hereby exempt from taxation provided such organization or society has not agreed to surrender its interest in the property.

Code 1950, § 58-12; 1950, p. 61; 1952, c. 50; 1954, c. 65; 1956, c. 478; 1956, Ex. Sess., c. 16; 1958, c. 361; 1960, c. 396; 1962, c. 129; 1964, c. 198; 1966, c. 582; 1968, cc. 37, 807; 1969, Ex. Sess., c. 9; 1970, cc. 83, 562; 1972, c. 667; 1973, c. 438; 1974, c. 469; 1984, c. 675.

Article 3 - PROPERTY EXEMPTED BY CLASSIFICATION ON AND AFTER JULY 1, 1971

§ 58.1-3609. Post-1971 property exempt from taxation by classification

A. The real and personal property of an organization classified in §§ 58.1-3610 through 58.1-3621 and used by such organization for a religious, charitable, patriotic, historical, benevolent, cultural, or public park and playground purpose as set forth in Article X, Section 6 (a) (6) of the Constitution of Virginia, the particular purpose for which such organization is classified being specifically set forth within each section, shall be exempt from taxation, so long as such organization is operated not for profit and the property so exempt is used in accordance with the purpose for which the organization is classified. The real and personal property of an organization classified in § 58.1-3622 and used by such organization for charitable and benevolent purposes as set forth in Article X, Section 6 (a) (6) of the Constitution of Virginia shall be exempt from taxation so long as the local governing body in which the property is located passes a resolution approving such exemption and the organization satisfies the other requirements in this subsection.

B. Exemptions of property from taxation under this article shall be strictly construed in accordance with Article X, Section 6 (f) of the Constitution of Virginia.

1984, c. 675; 1989, c. 400; 2000, c. 441.

§ 58.1-3610. Volunteer fire departments and volunteer emergency medical services agencies

Volunteer fire departments and volunteer emergency medical services agencies that operate exclusively for the benefit of the general public without charge are hereby classified as charitable organizations.

Code 1950, § 58-12.2; 1971, Ex. Sess., c. 187; 1984, c. 675; 2015, cc. 502, 503.

§ 58.1-3611. Certain boys and girls clubs

Boys clubs affiliated with the Boys Clubs of America, Inc., and girls clubs affiliated with the Girls Club of America, Inc., are hereby classified as charitable organizations.

Code 1950, § 58-12.3; 1971, Ex. Sess., c. 232; 1984, c. 675.

§ 58.1-3612. Auxiliaries of the Veterans of World War I

Auxiliaries of the Veterans of World War I, USA, Incorporated, are hereby classified as patriotic, historical and benevolent organizations.

Code 1950, § 58-12.5; 1972, c. 667; 1973, c. 438; 1984, c. 675.

§ 58.1-3613. Societies for the Prevention of Cruelty to Animals

Societies for the Prevention of Cruelty to Animals are hereby classified as charitable organizations.

Code 1950, § 58-12.9; 1973, c. 438; 1984, c. 675.

§ 58.1-3614. Boy Scouts and Girl Scouts of America

The Boy Scouts of America, Girl Scouts of the United States of America, and their subsidiaries are hereby classified as charitable and benevolent organizations.

Code 1950, § 58-12.20; 1974, c. 469; 1984, c. 675.

§ 58.1-3615. Home Demonstration Clubs, 4-H Clubs and Future Farmers of America, Inc

The Home Demonstration Clubs, 4-H Clubs, and the Future Farmers of America, Incorporated, are hereby classified as patriotic and benevolent organizations.

Code 1950, § 58-12.21; 1974, c. 469; 1984, c. 675.

§ 58.1-3616. American National Red Cross

The American National Red Cross and local chapters thereof are hereby classified as charitable organizations.

Code 1950, § 58-12.22; 1974, c. 469; 1984, c. 675.

§ 58.1-3617. Churches and religious bodies

Any church, religious association or religious denomination operated exclusively on a nonprofit basis for charitable, religious or educational purposes is hereby classified as a religious and charitable organization. Notwithstanding § 58.1-3609, only property of such association or denomination used exclusively for charitable, religious or educational purposes shall be so exempt from taxation.

Motor vehicles owned or leased by churches and used predominantly for church purposes, are hereby classified as property used by its owner for religious purposes.

For purposes of this section, property of a church, religious association or religious denomination, or religious body owned or leased in the name of an incorporated church or religious body or corporation mentioned in § 57-16.1, a duly designated ecclesiastical officer, or a trustee of an unincorporated church or religious body shall be deemed to be owned by such church, association or denomination or religious body.

Code 1950, §§ 58-12.24, 58-12.86; 1974, c. 469; 1978, c. 216; 1984, c. 675; 1987, c. 533; 2000, c. 329; 2005, c. 928.

§ 58.1-3618. College alumni associations and foundations

Incorporated alumni associations operated exclusively on a nonprofit basis for the benefit of colleges or other institutions of learning located in Virginia, and incorporated charitable foundations conducted not for profit, the total income from which is used exclusively for literary, scientific or educational purposes, are hereby classified as charitable and cultural organizations.

Code 1950, § 58-12.25; 1974, c. 469; 1984, c. 675.

§ 58.1-3619. The State Future Farmers of America, Future Homemakers of America and Future Business Leaders of America

A. The Future Farmers of America, the Future Homemakers of America, and local affiliates or subsidiaries thereof, located throughout the Commonwealth, are hereby classified as benevolent organizations.

The tax exemption provided in this subsection shall be limited to the J. R. Thomas Camp, located in Chesterfield County and owned by the Future Farmers of America, the Future Homemakers of America and the local affiliates or subsidiaries thereof.

B. The Future Business Leaders of America, the Future Homemakers of America, and local affiliates or subsidiaries thereof, located throughout the Commonwealth, are hereby classified as benevolent organizations.

Except as otherwise may be provided by this article, the tax exemption provided herein shall be limited to property owned by either the Future Business Leaders of America or the Future Homemakers of America which is located in Fairfax County.

Code 1950, § 58-12.93; 1978, c. 821; 1984, c. 675; 1993, c. 559 .

§ 58.1-3620. Properties inundated by water

The governing body of any county, city or town may provide for the special assessment and valuation for purposes of taxation of all real property within its jurisdiction which is encumbered by a recorded perpetual easement permitting the inundation of such property by water.

Code 1950, § 58-12.79; 1977, c. 479; 1978, c. 848; 1984, c. 675.

§ 58.1-3621. Farm club associations

Incorporated associations operated for the purpose of sponsoring and operating a county fair for the display of agricultural products, the display and grading of farm animals and the enjoyment of the general public in Virginia are hereby classified as charitable associations.

1989, c. 400 .

§ 58.1-3622. Habitat for Humanity and local affiliates or subsidiaries thereof
Habitat for Humanity and local affiliates or subsidiaries thereof are hereby classified as charitable and benevolent organizations.

2000, c. 441.

Article 4 - PROPERTY EXEMPTED BY DESIGNATION ON AND AFTER JULY 1, 1971

§ 58.1-3650. Post-1971 property exempt from taxation by designation
A. The real and personal property of an organization designated by a section within this article and used by such organization exclusively for a religious, charitable, patriotic, historical, benevolent, cultural or public park and playground purpose as set forth in Article X, Section 6 (a) (6) of the Constitution of Virginia, the particular purpose for which such organization is classified being specifically set forth within each section, shall be exempt from taxation so long as such organization is operated not for profit and the property so exempt is used in accordance with the purpose for which the organization is classified. In addition, such exemption may be revoked in accordance with the provisions of § 58.1-3605.

B. Exemptions of property from taxation under this article shall be strictly construed in accordance with the provisions of Article X, Section 6 (f) of the Constitution of Virginia.

1984, c. 675; 1995, c. 346.

§§ 58.1-3650.1 through 58.1-3650.1001. Not Set Out
Not set out.

Article 4.1 - PROPERTY EXEMPTED BY LOCAL CLASSIFICATION OR DESIGNATION ON OR AFTER JANUARY 1, 2003

§ 58.1-3651. (Effective until July 1, 2018) Property exempt from taxation by classification or designation by ordinance adopted by local governing body on or after January 1, 2003
A. Pursuant to subsection 6 (a) (6) of Article X of the Constitution of Virginia, on and after January 1, 2003, any county, city, or town may by designation or classification exempt from real or personal property taxes, or both, by ordinance adopted by the local governing body, the real or personal property, or both, owned by a nonprofit organization that uses such property for religious, charitable, patriotic, historical, benevolent, cultural, or public park and playground purposes. The ordinance shall state the specific use on which the exemption is based, and continuance of the exemption shall be contingent on the continued use of the property in

accordance with the purpose for which the organization is classified or designated. No exemption shall be provided to any organization that has any rule, regulation, policy, or practice that unlawfully discriminates on the basis of religious conviction, race, color, sex, or national origin.

B. Any ordinance exempting property by designation pursuant to subsection A shall be adopted only after holding a public hearing with respect thereto, at which citizens shall have an opportunity to be heard. The local governing body shall publish notice of the hearing once in a newspaper of general circulation in the county, city, or town where the real property is located. The notice shall include the assessed value of the real and tangible personal property for which an exemption is requested as well as the property taxes assessed against such property. The public hearing shall not be held until at least five days after the notice is published in the newspaper. The local governing body shall collect the cost of publication from the organization requesting the property tax exemption. Before adopting any such ordinance the governing body shall consider the following questions:

1. Whether the organization is exempt from taxation pursuant to § 501(c) of the Internal Revenue Code of 1954;

2. Whether a current annual alcoholic beverage license for serving alcoholic beverages has been issued by the Virginia Alcoholic Beverage Control Board to such organization, for use on such property;

3. Whether any director, officer, or employee of the organization is paid compensation in excess of a reasonable allowance for salaries or other compensation for personal services which such director, officer, or employee actually renders;

4. Whether any part of the net earnings of such organization inures to the benefit of any individual, and whether any significant portion of the service provided by such organization is generated by funds received from donations, contributions, or local, state or federal grants. As used in this subsection, donations shall include the providing of personal services or the contribution of in-kind or other material services;

5. Whether the organization provides services for the common good of the public;

6. Whether a substantial part of the activities of the organization involves carrying on propaganda, or otherwise attempting to influence legislation and whether the organization participates in, or intervenes in, any political campaign on behalf of any candidate for public office;

7. The revenue impact to the locality and its taxpayers of exempting the property; and

8. Any other criteria, facts and circumstances that the governing body deems pertinent to the adoption of such ordinance.

C. Any ordinance exempting property by classification pursuant to subsection A shall be adopted only after holding a public hearing with respect thereto, at which citizens shall have an opportunity to be heard. The local governing body shall publish notice of the hearing once in a

newspaper of general circulation in the county, city, or town. The public hearing shall not be held until at least five days after the notice is published in the newspaper.

D. Exemptions of property from taxation under this article shall be strictly construed in accordance with Article X, Section 6 (f) of the Constitution of Virginia.

E. Nothing in this section or in any ordinance adopted pursuant to this section shall affect the validity of either a classification exemption or a designation exemption granted by the General Assembly prior to January 1, 2003, pursuant to Article 2 (§ 58.1-3606 et seq.), 3 (§ 58.1-3609 et seq.) or 4 (§ 58.1-3650 et seq.) of this chapter. An exemption granted pursuant to Article 4 (§ 58.1-3650 et seq.) of this chapter may be revoked in accordance with the provisions of § 58.1-3605.

2003, c. 1032; 2004, c. 557.

§ 58.1-3651. (Effective July 1, 2018) Property exempt from taxation by classification or designation by ordinance adopted by local governing body on or after January 1, 2003

A. Pursuant to subsection 6 (a)(6) of Article X of the Constitution of Virginia, on and after January 1, 2003, any county, city, or town may by designation or classification exempt from real or personal property taxes, or both, by ordinance adopted by the local governing body, the real or personal property, or both, owned by a nonprofit organization that uses such property for religious, charitable, patriotic, historical, benevolent, cultural, or public park and playground purposes. The ordinance shall state the specific use on which the exemption is based, and continuance of the exemption shall be contingent on the continued use of the property in accordance with the purpose for which the organization is classified or designated. No exemption shall be provided to any organization that has any rule, regulation, policy, or practice that unlawfully discriminates on the basis of religious conviction, race, color, sex, or national origin.

B. Any ordinance exempting property by designation pursuant to subsection A shall be adopted only after holding a public hearing with respect thereto, at which citizens shall have an opportunity to be heard. The local governing body shall publish notice of the hearing once in a newspaper of general circulation in the county, city, or town where the real property is located. The notice shall include the assessed value of the real and tangible personal property for which an exemption is requested as well as the property taxes assessed against such property. The public hearing shall not be held until at least five days after the notice is published in the newspaper. The local governing body shall collect the cost of publication from the organization requesting the property tax exemption. Before adopting any such ordinance the governing body shall consider the following questions:

1. Whether the organization is exempt from taxation pursuant to § 501(c) of the Internal Revenue Code of 1954;

2. Whether a current annual alcoholic beverage license for serving alcoholic beverages has been issued by the Board of Directors of the Virginia Alcoholic Beverage Control Authority to such organization, for use on such property;

3. Whether any director, officer, or employee of the organization is paid compensation in excess of a reasonable allowance for salaries or other compensation for personal services which such director, officer, or employee actually renders;

4. Whether any part of the net earnings of such organization inures to the benefit of any individual, and whether any significant portion of the service provided by such organization is generated by funds received from donations, contributions, or local, state or federal grants. As used in this subsection, donations shall include the providing of personal services or the contribution of in-kind or other material services;

5. Whether the organization provides services for the common good of the public;

6. Whether a substantial part of the activities of the organization involves carrying on propaganda, or otherwise attempting to influence legislation and whether the organization participates in, or intervenes in, any political campaign on behalf of any candidate for public office;

7. The revenue impact to the locality and its taxpayers of exempting the property; and

8. Any other criteria, facts and circumstances that the governing body deems pertinent to the adoption of such ordinance.

C. Any ordinance exempting property by classification pursuant to subsection A shall be adopted only after holding a public hearing with respect thereto, at which citizens shall have an opportunity to be heard. The local governing body shall publish notice of the hearing once in a newspaper of general circulation in the county, city, or town. The public hearing shall not be held until at least five days after the notice is published in the newspaper.

D. Exemptions of property from taxation under this article shall be strictly construed in accordance with Article X, Section 6 (f) of the Constitution of Virginia.

E. Nothing in this section or in any ordinance adopted pursuant to this section shall affect the validity of either a classification exemption or a designation exemption granted by the General Assembly prior to January 1, 2003, pursuant to Article 2 (§ 58.1-3606 et seq.), 3 (§ 58.1-3609 et seq.) or 4 (§ 58.1-3650 et seq.) of this chapter. An exemption granted pursuant to Article 4 (§ 58.1-3650 et seq.) of this chapter may be revoked in accordance with the provisions of § 58.1-3605.

2003, c. 1032; 2004, c. 557; 2015, cc. 38, 730.

§ 58.1-3652. Exempt organization's use of property owned by another

Any county, city, or town may exempt any real or personal property, the legal title to which is held by any person, firm, or corporation, subject to the sole use or occupancy by a nonprofit entity exempt from federal income taxation under § 501(c)(3) of the Internal Revenue Code, provided such nonprofit entity (i) has not agreed to surrender its interest in the property and (ii) uses such property solely to (a) exhibit or display Warbirds to the general public or otherwise use Warbirds for educational purposes, including such flights as are necessary for testing, maintaining, or preparing such aircraft for safe operation, or (b) demonstrate the performance of Warbirds at

airshows and flight demonstrations of Warbirds, including such flights as are necessary for testing, maintaining, or preparing such aircraft for safe operation.

For purposes of this section, "Warbirds" means airplanes that were manufactured prior to 1955 and intended for military use.

2014, cc. 60, 185.

Article 5 - OTHER EXEMPT PROPERTY

§ 58.1-3660. Certified pollution control equipment and facilities

A. Certified pollution control equipment and facilities, as defined herein, are hereby declared to be a separate class of property and shall constitute a classification for local taxation separate from other such classification of real or personal property and such property. Certified pollution control equipment and facilities shall be exempt from state and local taxation pursuant to Article X, Section 6 (d) of the Constitution of Virginia.

B. As used in this section:

(Effective until January 1, 2017) "Certified pollution control equipment and facilities" shall mean any property, including real or personal property, equipment, facilities, or devices, used primarily for the purpose of abating or preventing pollution of the atmosphere or waters of the Commonwealth and which the state certifying authority having jurisdiction with respect to such property has certified to the Department of Taxation as having been constructed, reconstructed, erected, or acquired in conformity with the state program or requirements for abatement or control of water or atmospheric pollution or contamination. Such property shall include, but is not limited to, any equipment used to grind, chip, or mulch trees, tree stumps, underbrush, and other vegetative cover for reuse as mulch, compost, landfill gas, synthetic or natural gas recovered from waste or other fuel, and equipment used in collecting, processing, and distributing, or generating electricity from, landfill gas or synthetic or natural gas recovered from waste, whether or not such property has been certified to the Department of Taxation by a state certifying authority. Such property shall also include solar energy equipment, facilities, or devices owned or operated by a business that collect, generate, transfer, or store thermal or electric energy whether or not such property has been certified to the Department of Taxation by a state certifying authority. For solar photovoltaic (electric energy) systems, this exemption applies only to projects equaling 20 megawatts or less, as measured in alternating current (AC) generation capacity. Such property shall not include the land on which such equipment or facilities are located.

(Effective January 1, 2017) "Certified pollution control equipment and facilities" shall mean any property, including real or personal property, equipment, facilities, or devices, used primarily for the purpose of abating or preventing pollution of the atmosphere or waters of the Commonwealth and which the state certifying authority having jurisdiction with respect to such property has certified to the Department of Taxation as having been constructed, reconstructed, erected, or

acquired in conformity with the state program or requirements for abatement or control of water or atmospheric pollution or contamination. Such property shall include, but is not limited to, any equipment used to grind, chip, or mulch trees, tree stumps, underbrush, and other vegetative cover for reuse as mulch, compost, landfill gas, synthetic or natural gas recovered from waste or other fuel, and equipment used in collecting, processing, and distributing, or generating electricity from, landfill gas or synthetic or natural gas recovered from waste, whether or not such property has been certified to the Department of Taxation by a state certifying authority. Such property shall also include solar energy equipment, facilities, or devices owned or operated by a business that collect, generate, transfer, or store thermal or electric energy whether or not such property has been certified to the Department of Taxation by a state certifying authority. For solar photovoltaic (electric energy) systems, this exemption applies only to (i) projects equaling 20 megawatts or less, as measured in alternating current (AC) generation capacity, for which an initial interconnection request form has been filed with an electric utility or a regional transmission organization on or before December 31, 2018; (ii) projects equaling 20 megawatts or less, as measured in alternating current (AC) generation capacity, that serve any of the public institutions of higher education listed in § 23.1-100 or private college as defined in § 23.1-105; (iii) 80 percent of the assessed value of projects for which an initial interconnection request form has been filed with an electric utility or a regional transmission organization after January 1, 2015, and greater than 20 megawatts, as measured in alternating current (AC) generation capacity, for projects first in service on or after January 1, 2017, (iv) projects equaling 5 megawatts or less, as measured in alternating current (AC) generation capacity, for which an initial interconnection request form has been filed with an electric utility or a regional transmission organization on or after January 1, 2019, and (v) 80 percent of the assessed value of all other projects equaling more than 5 megawatts, as measured in alternating current (AC) generation capacity for which an initial interconnection request form has been filed with an electric utility or a regional transmission organization on or after January 1, 2019. The exemption for solar photovoltaic (electric energy) projects greater than 20 megawatts, as measured in alternating current (AC) generation capacity, shall not apply to projects upon which construction begins after January 1, 2024. Such property shall not include the land on which such equipment or facilities are located.

"State certifying authority" shall mean the State Water Control Board, for water pollution; the State Air Pollution Control Board, for air pollution; the Department of Mines, Minerals and Energy, for solar energy projects and for coal, oil, and gas production, including gas, natural gas, and coalbed methane gas; and the Virginia Waste Management Board, for waste disposal facilities, natural gas recovered from waste facilities, and landfill gas production facilities, and shall include any interstate agency authorized to act in place of a certifying authority of the Commonwealth.

Code 1950, § 58-16.3; 1972, c. 694; 1984, c. 675; 1995, c. 229; 2003, c. 859; 2006, cc. 375, 939; 2009, c. 671; 2014, cc. 259, 737; 2016, cc. 346, 518.

§ 58.1-3660.1. Certified stormwater management developments and property

A. Certified stormwater management developments and property, as defined herein, are hereby declared to be a separate class of property and shall constitute a classification for local taxation separate from other such classifications of real property. The governing body of any county, city or town may, by ordinance, exempt or partially exempt such property from local taxation.

B. As used in this section, "certified stormwater management developments and property" means any real estate improvements constructed from permeable material, such as, but not limited to, roads, parking lots, patios, and driveways, which are otherwise constructed of impermeable materials, and which the Department of Environmental Quality has certified to be designed, constructed, or reconstructed for the primary purpose of abating or preventing pollution of the atmosphere or waters of the Commonwealth by minimizing stormwater runoff. Permeable material shall be used for at least 70 percent of the surface areas that would otherwise be covered by impermeable materials.

1996, cc. 581, 595; 2009, c. 350; 2013, cc. 756, 793.

§ 58.1-3661. Certified solar energy equipment, facilities, or devices and certified recycling equipment, facilities, or devices

A. Certified solar energy equipment, facilities, or devices and certified recycling equipment, facilities, or devices, as defined herein, are hereby declared to be a separate class of property and shall constitute a classification for local taxation separate from other classifications of real or personal property. The governing body of any county, city or town may, by ordinance, exempt or partially exempt such property from local taxation in the manner provided by subsection D.

B. As used in this section:

"Certified recycling equipment, facilities, or devices" means machinery and equipment which is certified by the Department of Environmental Quality as integral to the recycling process and for use primarily for the purpose of abating or preventing pollution of the atmosphere or waters of the Commonwealth, and used in manufacturing facilities or plant units which manufacture, process, compound, or produce for sale recyclable items of tangible personal property at fixed locations in the Commonwealth.

(Effective until January 1, 2017) "Certified solar energy equipment, facilities, or devices" means any property, including real or personal property, equipment, facilities, or devices, excluding any such property that is exempt under § 58.1-3660, certified by the local certifying authority to be designed and used primarily for the purpose of collecting, generating, transferring, or storing thermal or electric energy.

(Effective January 1, 2017) "Certified solar energy equipment, facilities, or devices" means any property, including real or personal property, equipment, facilities, or devices, excluding any portion of such property that is exempt under § 58.1-3660, certified by the local certifying authority to be designed and used primarily for the purpose of collecting, generating, transferring, or storing thermal or electric energy.

"Local certifying authority" means the local building departments or the Department of Environmental Quality. The State Board of Housing and Community Development shall promulgate regulations setting forth criteria for certifiable solar energy equipment. The Department of Environmental Quality shall promulgate regulations establishing criteria for recycling equipment, facilities, or devices.

C. Any person residing in a county, city or town which has adopted an ordinance pursuant to subsection A may proceed to have solar energy equipment, facilities, or devices certified as exempt, wholly or partially, from taxation by applying to the local building department. If, after examination of such equipment, facility, or device, the local building department determines that the unit primarily performs any of the functions set forth in subsection B and conforms to the requirements set by regulations of the Board of Housing and Community Development, such department shall approve and certify such application. The local department shall forthwith transmit to the local assessing officer those applications properly approved and certified by the local building department as meeting all requirements qualifying such equipment, facility, or device for exemption from taxation. Any person aggrieved by a decision of the local building department may appeal such decision to the local board of building code appeals, which may affirm or reverse such decision.

D. Upon receipt of the certificate from the local building department or the Department of Environmental Quality, the local assessing officer shall, if such local ordinance is in effect, proceed to determine the value of such qualifying solar energy equipment, facilities, or devices or certified recycling equipment, facilities, or devices. The exemption provided by this section shall be determined by applying the local tax rate to the value of such equipment, facilities, or devices and subtracting such amount, wholly or partially, either (i) from the total real property tax due on the real property to which such equipment, facilities, or devices are attached or (ii) if such equipment, facilities, or devices are taxable as machinery and tools under § 58.1-3507, from the total machinery and tools tax due on such equipment, facilities, or devices, at the election of the taxpayer. This exemption shall be effective beginning in the next succeeding tax year, and shall be permitted for a term of not less than five years. In the event the locality assesses real estate pursuant to § 58.1-3292, the exemption shall be first effective when such real estate is first assessed, but not prior to the date of such application for exemption.

E. It shall be presumed for purposes of the administration of ordinances pursuant to this section, and for no other purposes, that the value of such qualifying solar energy equipment, facilities, and devices is not less than the normal cost of purchasing and installing such equipment, facilities, and devices.

Code 1950, § 58-16.4; 1977, c. 561; 1984, c. 675; 1988, c. 253; 1990, c. 690; 1998, c. 606; 2014, cc. 259, 737; 2016, c. 346.

§ 58.1-3662. Generating and cogenerating equipment used for energy conversion

Generating equipment installed after December 31, 1974, for the purpose of converting from oil or natural gas to coal or to wood, wood bark, wood residue, or to any other alternate energy source for manufacturing, and any cogenerating equipment installed since such date for use in manufacturing, are hereby declared to be a separate class of property and shall constitute a classification for local taxation separate from other classifications of tangible personal property. The governing body of any county, city or town may, by ordinance, exempt or partially exempt such property from local taxation, and such ordinance shall become effective on January 1 of the year following the year of adoption.

Code 1950, § 58-16.5; 1980, c. 675; 1982, c. 58; 1984, c. 675.

§ 58.1-3663. Partial taxation by one political subdivision of utility property owned by another

A. In the event any land or buildings constituting any portion of any water system or other public utility owned directly or indirectly by any political subdivision of the Commonwealth is legally assessable for taxation by any political subdivision other than the owner of such public utility, such property located without the limits of such owner shall be assessed only for the portion of fair market value thereof in the proportion that the gross revenues of the utility derived from consumers outside of the limits of the owner bears to the gross revenues derived from the whole utility. Such proportion for each year shall be based on the gross revenues of the year next preceding. The commissioner of revenue shall each year so extend the assessment on his books.

B. The owner of such utility shall annually on or before April 1 report, to the commissioner of the revenue of the county in which any of such property is located, the gross revenues of the utility derived from consumers outside of the limits of the owner as well as the gross revenues derived from the whole utility. The books of the owner shall at all reasonable times be open to the inspection of the commissioner of the revenue of any such county for the ascertainment of such proportion of the revenues.

C. The provisions of this section shall not apply to any land or buildings acquired by any such political subdivision by condemnation, purchase or otherwise for any such public utility unless the same is actually used and necessary for such public utility.

Code 1950, § 58-19; 1984, c. 675.

§ 58.1-3664. Environmental restoration sites

Environmental restoration sites, as defined herein, are hereby declared to be a separate class of property and shall constitute a classification for local taxation separate from other such classification of real property. The governing body of any county, city or town may, by ordinance, exempt or partially exempt such property from local taxation annually for a period not in excess of five years.

"Environmental restoration site" means real estate which contains or did contain environmental contamination from the release of hazardous substances, hazardous wastes, solid waste or

petroleum, the restoration of which would abate or prevent pollution to the atmosphere or waters of the Commonwealth and which (i) is subject to voluntary remediation pursuant to § 10.1-1232 and (ii) receives a certificate of continued eligibility from the Virginia Waste Management Board during each year which it qualifies for the tax treatment described in this section.

1997, c. 849.

§ 58.1-3665. Partial exemption for erosion control improvements

A. Real estate that has been improved through the placement of rock or concrete breakwaters, bulkheads, gabions, revetments, or similar structural improvements installed to control erosion, and is used primarily for the purpose of abating or preventing pollution of the waters of the Commonwealth, is hereby declared to be a separate class of property and shall constitute a classification for local taxation separate from other classifications of real property. The governing body of any county, city or town may, by ordinance, provide for the partial exemption from local taxation of such real estate, subject to such conditions and restrictions as the ordinance may prescribe. The governing body of a county, city or town may establish criteria for determining whether real estate qualifies for the partial exemption authorized by this section.

B. The partial exemption authorized by this section shall not exceed (i) all or a portion of the increase in the assessed value of the real property resulting from the placement of the structural improvements described in subsection A, as determined by the commissioner of revenue or other local assessing officer, or (ii) fifty percent of the cost of such improvements, as determined by the governing body of the county, city or town. Any exemption (i) may commence upon completion of the improvements or on January 1 of the year following such completion and (ii) shall run with the real estate for a period not to exceed fifteen years. The governing body of the county, city or town may provide that the amount or percentage of an exemption shall decrease in annual steps over the entire fifteen-year exemption period or a portion thereof.

C. Nothing in this section shall be construed to permit the commissioner of revenue or other local assessing officer to list upon the land book any reduced value due to the exemption provided pursuant to subsection B.

D. The governing body of any county, city or town is authorized to assess a fee, not to exceed fifty dollars, for processing an application requesting the exemption authorized by this section. No property shall be eligible for such exemption unless any appropriate permits have been obtained and the commissioner of the revenue or other assessing officer has verified that the improvements described on the application have been completed.

1998, c. 272.

§ 58.1-3666. Wetlands and riparian buffers; living shorelines

Wetlands, as defined herein, that are subject to a perpetual easement permitting inundation by water, and riparian buffers, as defined herein, that are subject to a perpetual easement permitting inundation by water, are hereby declared to be a separate class of property and shall constitute a

classification for local taxation separate from other classifications of real property. The governing body of any county, city or town may, by ordinance, exempt or partially exempt such property from local taxation. In addition, any living shoreline project approved by the Virginia Marine Resources Commission or the applicable local wetlands board and not prohibited by local ordinance that satisfies the definition of a living shoreline consistent with § 28.2-104.1 shall qualify for full exemption from such taxation by local governments.

"Riparian buffer" means an area of trees, shrubs or other vegetation, subject to a perpetual easement permitting inundation by water, that is (i) at least thirty-five feet in width, (ii) adjacent to a body of water, and (iii) managed to maintain the integrity of stream channels and shorelines and reduce the effects of upland sources of pollution by trapping, filtering, and converting sediments, nutrients, and other chemicals.

"Wetlands" means an area that is inundated or saturated by surface or ground water at a frequency or duration sufficient to support, and that under normal conditions does support, a prevalence of vegetation typically adapted for life in saturated soil conditions, and that is subject to a perpetual easement permitting inundation by water.

1998, c. 516; 2016, c. 610.

§ 58.1-3667. Effective date of property tax exemption for certified property

Except as otherwise explicitly provided under this article, as to any real or personal property, machinery, equipment, facilities, devices, or real estate improvements required to be certified by a state or local certifying authority for tax exemption under this article, once the required certification is made such property shall be deemed exempt as of the date the property is placed in service. Nothing in this section shall be interpreted or construed as extending any limitations period under law for applying for correction of an assessment or otherwise appealing an assessment.

The provisions of this section shall not apply to § 58.1-3664.

2016, c. 35.

Chapter 37 - LICENSE TAXES

§ 58.1-3700. License requirement; requiring evidence of payment of business license, business personal property, meals and admissions taxes

Whenever a license is required by ordinance adopted pursuant to this chapter and whenever the local governing body shall impose a license fee or levy a license tax on any business, employment or profession, it shall be unlawful to engage in such business, employment or profession without first obtaining the required license. The governing body of any county, city or town may require that no business license under this chapter shall be issued until the applicant has produced satisfactory evidence that all delinquent business license, real estate, personal property, meals, transient occupancy, severance and admissions taxes owed by the business to the county, city or town

have been paid which have been properly assessed against the applicant by the county, city or town.

Any person who engages in a business without obtaining a required local license, or after being refused a license, shall not be relieved of the tax imposed by the ordinance.

Code 1950, § 58-239; 1984, c. 675; 1991, c. 267; 1993, cc. 93, 934; 1996, cc. 715, 720; 2012, cc. 304, 318.

§ 58.1-3700.1. Definitions

For the purposes of this chapter and any local ordinances adopted pursuant to this chapter, unless otherwise required by the context:

"Affiliated group" means:

1. One or more chains of corporations subject to inclusion connected through stock ownership with a common parent corporation which is a corporation subject to inclusion if:

a. Stock possessing at least eighty percent of the voting power of all classes of stock and at least eighty percent of each class of the nonvoting stock of each of the corporations subject to inclusion, except the common parent corporation, is owned directly by one or more of the other corporations subject to inclusion; and

b. The common parent corporation directly owns stock possessing at least eighty percent of the voting power of all classes of stock and at least eighty percent of each class of the nonvoting stock of at least one of the other subject to inclusion corporations. As used in this subdivision, the term "stock" does not include nonvoting stock which is limited and preferred as to dividends; the phrase "corporation subject to inclusion" means any corporation within the affiliated group irrespective of the state or country of its incorporation; and the term "receipts" includes gross receipts and gross income.

2. Two or more corporations if five or fewer persons who are individuals, estates or trusts own stock possessing:

a. At least eighty percent of the total combined voting power of all classes of stock entitled to vote or at least eighty percent of the total value of shares of all classes of the stock of each corporation; and

b. More than fifty percent of the total combined voting power of all classes of stock entitled to vote or more than fifty percent of the total value of shares of all classes of stock of each corporation, taking into account the stock ownership of each such person only to the extent such stock ownership is identical with respect to each such corporation.

When one or more of the corporations subject to inclusion, including the common parent corporation, is a nonstock corporation, the term "stock" as used in this subdivision shall refer to the nonstock corporation membership or membership voting rights, as is appropriate to the context.

3. Two or more entities if such entities satisfy the requirements in subdivision 1 or 2 of this definition as if they were corporations and the ownership interests therein were stock.

"Assessment" means a determination as to the proper rate of tax, the measure to which the tax rate is applied, and ultimately the amount of tax, including additional or omitted tax, that is due. An assessment shall include a written assessment made pursuant to notice by the assessing official or a self-assessment made by a taxpayer upon the filing of a return or otherwise not pursuant to notice. Assessments shall be deemed made by an assessing official when a written notice of assessment is delivered to the taxpayer by the assessing official or an employee of the assessing official, or mailed to the taxpayer at his last known address. Self-assessments shall be deemed made when a return is filed, or if no return is required, when the tax is paid. A return filed or tax paid before the last day prescribed by ordinance for the filing or payment thereof shall be deemed to be filed or paid on the last day specified for the filing of a return or the payment of tax, as the case may be.

"Base year" means the calendar year preceding the license year, except for contractors subject to the provisions of § 58.1-3715 or unless the local ordinance provides for a different period for measuring the gross receipts of a business, such as for beginning businesses or to allow an option to use the same fiscal year as for federal income tax purposes.

"Business" means a course of dealing which requires the time, attention and labor of the person so engaged for the purpose of earning a livelihood or profit. It implies a continuous and regular course of dealing, rather than an irregular or isolated transaction. A person may be engaged in more than one business. The following acts shall create a rebuttable presumption that a person is engaged in a business: (i) advertising or otherwise holding oneself out to the public as being engaged in a particular business or (ii) filing tax returns, schedules and documents that are required only of persons engaged in a trade or business.

"Definite place of business" means an office or a location at which occurs a regular and continuous course of dealing for thirty consecutive days or more. A definite place of business for a person engaged in business may include a location leased or otherwise obtained from another person on a temporary or seasonal basis and real property leased to another. A person's residence shall be deemed to be a definite place of business if there is no definite place of business maintained elsewhere and the person is not subject to licensure as a peddler or itinerant merchant.

"Entity" means a business organization, other than a sole proprietorship, that is a corporation, limited liability company, limited partnership, or limited liability partnership duly organized under the laws of the Commonwealth or another state.

"Financial services" means the buying, selling, handling, managing, investing, and providing of advice regarding money, credit, securities, or other investments.

"Fuel sale" or "fuel sales" shall mean retail sales of alternative fuel, blended fuel, diesel fuel, gasohol, or gasoline, as such terms are defined in § 58.1-2201.

"Gas retailer" means a person or entity engaged in business as a retailer offering to sell at retail on a daily basis alternative fuel, blended fuel, diesel fuel, gasohol, or gasoline, as such terms are defined in § 58.1-2201.

"Gross receipts" means the whole, entire, total receipts, without deduction.

"Independent registered representative" means an independent contractor registered with the United States Securities and Exchange Commission.

"License year" means the calendar year for which a license is issued for the privilege of engaging in business.

"Professional services" means services performed by architects, attorneys-at-law, certified public accountants, dentists, engineers, land surveyors, surgeons, veterinarians, and practitioners of the healing arts (the arts and sciences dealing with the prevention, diagnosis, treatment and cure or alleviation of human physical or mental ailments, conditions, diseases, pain or infirmities) and such occupations, and no others, as the Department of Taxation may list in the BPOL guidelines promulgated pursuant to § 58.1-3701. The Department shall identify and list each occupation or vocation in which a professed knowledge of some department of science or learning, gained by a prolonged course of specialized instruction and study, is used in its practical application to the affairs of others, either advising, guiding, or teaching them, and in serving their interests or welfare in the practice of an art or science founded on it. The word "profession" implies attainments in professional knowledge as distinguished from mere skill, and the application of knowledge to uses for others rather than for personal profit.

"Purchases" means all goods, wares and merchandise received for sale at each definite place of business of a wholesale merchant. The term shall also include the cost of manufacture of all goods, wares and merchandise manufactured by any wholesale merchant and sold or offered for sale. A wholesale merchant may elect to report the gross receipts from the sale of manufactured goods, wares and merchandise if it cannot determine the cost of manufacture or chooses not to disclose the cost of manufacture.

"Real estate services" means providing a service with respect to the purchase, sale, lease, rental, or appraisal of real property.

"Security broker" means a "broker" as such term is defined under the Securities Exchange Act of 1934 (15 U.S.C. § 78a et seq.), or any successor law to the Securities Exchange Act of 1934, who is registered with the United States Securities and Exchange Commission.

"Security dealer" means a "dealer" as such term is defined under the Securities Exchange Act of 1934 (15 U.S.C. § 78a et seq.), or any successor law to the Securities Exchange Act of 1934, who is registered with the United States Securities and Exchange Commission.

1996, cc. 715, 720; 2000, c. 557; 2006, c. 763; 2010, cc. 195, 283.

§ 58.1-3701. Department to promulgate guidelines

The Department of Taxation shall promulgate guidelines for the use of local governments in administering the taxes imposed under the authority of this chapter. In preparing such guidelines, the Department shall not be subject to the provisions of the Administrative Process Act (§ 2.2-4000 et seq.) for guidelines promulgated on or before July 1, 2001, but shall cooperate with and seek the counsel of local officials and interested groups and shall not promulgate such guidelines without first conducting a public hearing. Such guidelines shall be updated during the 1994 taxable year and available for distribution to local governments on July 1, 1995. Thereafter, the guidelines shall be updated triennially. After July 1, 2001, the guidelines shall be subject to the Administrative Process Act and accorded the weight of a regulation under § 58.1-205.

The Tax Commissioner shall have the authority to issue advisory written opinions in specific cases to interpret the provisions of this chapter and the guidelines issued pursuant to this section; however, the Tax Commissioner shall not be required to interpret any local ordinance. The guidelines and opinions issued pursuant to this section shall not be applicable as an interpretation of any other tax law.

Code 1950, § 58-266.1; 1950, p. 155; 1956, c. 242; 1964, c. 424; 1968, c. 619; 1970, cc. 231, 547; 1974, cc. 196, 438; 1975, cc. 23, 621; 1976, cc. 521, 719; 1977, c. 320; 1978, cc. 772, 799, 817; 1979, cc. 565, 568, 570; 1980, cc. 318, 736; 1981, cc. 419, 636; 1982, cc. 348, 548, 552, 554, 558, 633; 1983, c. 554; 1984, cc. 247, 675, 695; 1994, c. 267; 1996, cc. 715, 720.

§ 58.1-3702. Authority of counties, cities and towns

The provisions of this chapter shall be the sole authority for counties, cities and towns for the levying of the license taxes described herein. Except as provided herein, the governing body of every county, city and town that levies such license tax may impose the tax on the gross receipts or the Virginia taxable income of the business. Virginia taxable income shall be calculated pursuant to the provisions of § 58.1-322 or 58.1-402, whichever is applicable to the business. Throughout this chapter, except in § 58.1-3731, wherever the term "gross receipts" is used, the term "Virginia taxable income" shall be substituted whenever a county, city or town selects it as the base on which to levy the license tax.

Code 1950, § 58-266.1; 1950, p. 155; 1956, c. 242; 1964, c. 424; 1968, c. 619; 1970, cc. 231, 547; 1974, cc. 196, 438; 1975, cc. 23, 621; 1976, cc. 521, 719; 1977, c. 320; 1978, cc. 772, 799, 817; 1979, cc. 565, 568, 570; 1980, cc. 318, 736; 1981, cc. 419, 636; 1982, cc. 348, 548, 552, 554, 558, 633; 1983, c. 554; 1984, cc. 247, 675, 695; 2011, c. 685.

§ 58.1-3703. Counties, cities and towns may impose local license taxes and fees; limitation of authority

A. The governing body of any county, city or town may charge a fee for issuing a license in an amount not to exceed $100 for any locality with a population greater than 50,000, $50 for any locality with a population of 25,000 but no more than 50,000 and $30 for any locality with a population smaller than 25,000. For purposes of this section, population may be based on the most current final population estimates of the Weldon Cooper Center for Public Service of the

University of Virginia. Such governing body may levy and provide for the assessment and collection of county, city or town license taxes on businesses, trades, professions, occupations and callings and upon the persons, firms and corporations engaged therein within the county, city or town subject to the limitations in (i) subsection C and (ii) subsection A of § 58.1-3706, provided such tax shall not be assessed and collected on any amount of gross receipts of each business upon which a license fee is charged. Any county, city or town with a population greater than 50,000 shall reduce the fee to an amount not to exceed $50 by January 1, 2000. The ordinance imposing such license fees and levying such license taxes shall include the provisions of § 58.1-3703.1.

B. Any county, city or town by ordinance may exempt in whole or in part from the license tax (i) the design, development or other creation of computer software for lease, sale or license and (ii) private businesses and industries entering into agreements for the establishment, installation, renovation, remodeling, or construction of satellite classrooms for grades kindergarten through three on a site owned by the business or industry and leased to the school board at no costs pursuant to § 22.1-26.1.

C. No county, city, or town shall impose a license fee or levy any license tax:

1. On any public service corporation or any motor carrier, common carrier, or other carrier of passengers or property formerly certified by the Interstate Commerce Commission or presently registered for insurance purposes with the Surface Transportation Board of the United States Department of Transportation, Federal Highway Administration, except as provided in § 58.1-3731 or as permitted by other provisions of law;

2. For selling farm or domestic products or nursery products, ornamental or otherwise, or for the planting of nursery products, as an incident to the sale thereof, outside of the regular market houses and sheds of such county, city or town, provided such products are grown or produced by the person offering them for sale;

3. Upon the privilege or right of printing or publishing any newspaper, magazine, newsletter or other publication issued daily or regularly at average intervals not exceeding three months, provided the publication's subscription sales are exempt from state sales tax, or for the privilege or right of operating or conducting any radio or television broadcasting station or service;

4. On a manufacturer for the privilege of manufacturing and selling goods, wares and merchandise at wholesale at the place of manufacture;

5. On a person engaged in the business of severing minerals from the earth for the privilege of selling the severed mineral at wholesale at the place of severance, except as provided in §§ 58.1-3712 and 58.1-3713;

6. Upon a wholesaler for the privilege of selling goods, wares and merchandise to other persons for resale unless such wholesaler has a definite place of business or store in such county, city or town.

This subdivision shall not be construed as prohibiting any county, city or town from imposing a local license tax on a peddler at wholesale pursuant to § 58.1-3718;

7. Upon any person, firm or corporation for engaging in the business of renting, as the owner of such property, real property other than hotels, motels, motor lodges, auto courts, tourist courts, travel trailer parks, campgrounds, bed and breakfast establishments, lodging houses, rooming houses, and boardinghouses; however, any county, city or town imposing such a license tax on January 1, 1974, shall not be precluded from the levy of such tax by the provisions of this subdivision;

8. [Repealed.]

9. On or measured by receipts for management, accounting, or administrative services provided on a group basis under a nonprofit cost-sharing agreement by a corporation which is an agricultural cooperative association under the provisions of Article 2 (§ 13.1-312 et seq.) of Chapter 3 of Title 13.1, or a member or subsidiary or affiliated association thereof, to other members of the same group. This exemption shall not exempt any such corporation from such license or other tax measured by receipts from outside the group;

10. On or measured by receipts or purchases by an entity which is a member of an affiliated group of entities from other members of the same affiliated group. This exclusion shall not exempt affiliated entities from such license or other tax measured by receipts or purchases from outside the affiliated group. This exclusion also shall not preclude a locality from levying a wholesale merchant's license tax on an affiliated entity on those sales by the affiliated entity to a nonaffiliated entity, notwithstanding the fact that the wholesale merchant's license tax would be based upon purchases from an affiliated entity. Such tax shall be based on the purchase price of the goods sold to the nonaffiliated entity. As used in this subdivision, the term "sales by the affiliated entity to a nonaffiliated entity" means sales by the affiliated entity to a nonaffiliated entity where goods sold by the affiliated entity or its agent are manufactured or stored in the Commonwealth prior to their delivery to the nonaffiliated entity;

11. On any insurance company subject to taxation under Chapter 25 (§ 58.1-2500 et seq.) of this title or on any agent of such company;

12. On any bank or trust company subject to taxation in Chapter 12 (§ 58.1-1200 et seq.) of this title;

13. Upon a taxicab driver, if the locality has imposed a license tax upon the taxicab company for which the taxicab driver operates;

14. On any blind person operating a vending stand or other business enterprise under the jurisdiction of the Department for the Blind and Vision Impaired, or a nominee of the Department, as set forth in § 51.5-98;

15. [Expired.]

16. [Repealed.]

17. On an accredited religious practitioner in the practice of the religious tenets of any church or religious denomination. "Accredited religious practitioner" shall be defined as one who is engaged solely in praying for others upon accreditation by such church or religious denomination;

18. a. On or measured by receipts of a nonprofit organization described in Internal Revenue Code § 501(c)(3) or 501(c)(19) except to the extent the organization has receipts from an unrelated trade or business the income of which is taxable under Internal Revenue Code § 511 et seq. For the purpose of this subdivision, "nonprofit organization" means an organization that is described in Internal Revenue Code § 501(c)(3) or 501(c)(19), and to which contributions are deductible by the contributor under Internal Revenue Code § 170, except that educational institutions exempt from federal income tax under Internal Revenue Code § 501(c)(3) shall be limited to schools, colleges, and other similar institutions of learning.

b. On or measured by gifts, contributions, and membership dues of a nonprofit organization. Activities conducted for consideration that are similar to activities conducted for consideration by for-profit businesses shall be presumed to be activities that are part of a business subject to licensure. For the purpose of this subdivision, "nonprofit organization" means an organization exempt from federal income tax under Internal Revenue Code § 501 other than the nonprofit organizations described in subdivision a;

19. On any venture capital fund or other investment fund, except commissions and fees of such funds. Gross receipts from the sale and rental of real estate and buildings remain taxable by the locality in which the real estate is located provided the locality is otherwise authorized to tax such businesses and rental of real estate;

20. On total assessments paid by condominium unit owners for common expenses. "Common expenses" and "unit owner" have the same meanings as in § 55-79.41; or

21. On or measured by receipts of a qualifying transportation facility directly or indirectly owned or title to which is held by the Commonwealth or any political subdivision thereof or by the United States as described in § 58.1-3606.1 and developed and/or operated pursuant to a concession under the Public-Private Transportation Act of 1995 (§ 33.2-1800 et seq.) or similar federal law.

D. Any county, city or town may establish by ordinance a business license incentive program for "qualifying businesses." For purposes of this subsection, a "qualifying business" is a business that locates for the first time in the locality adopting such ordinance. A business shall not be deemed to locate in such locality for the first time based on merger, acquisition, similar business combination, name change, or a change in business form. Any incentive established pursuant to this subsection may extend for a period not to exceed two years from the date the business locates in such locality. The business license incentive program may include (i) an exemption, in whole or in part, of license taxes for any qualifying business; (ii) a refund or rebate, in whole or in part, of

license taxes paid by a qualifying business; or (iii) other relief from license taxes for a qualifying business not prohibited by state or federal law.

E. For taxable years beginning on or after January 1, 2012, any locality may exempt, by ordinance, license fees or license taxes on any business that does not have an after-tax profit for the taxable year and offers the income tax return of the business as proof to the local commissioner of the revenue. Eligibility for this exemption shall be determined annually and it shall be the obligation of the business owner to submit the applicable income tax return to the local commissioner of the revenue.

Code 1950, § 58-266.1; 1950, p. 155; 1956, c. 242; 1964, c. 424; 1968, c. 619; 1970, cc. 231, 547; 1974, cc. 196, 438; 1975, cc. 23, 621; 1976, cc. 521, 719; 1977, c. 320; 1978, cc. 772, 799, 817; 1979, cc. 565, 568, 570; 1980, cc. 318, 736; 1981, cc. 419, 636; 1982, cc. 348, 548, 552, 554, 558, 633; 1983, c. 554; 1984, cc. 247, 675, 695; 1985, c. 531; 1987, cc. 617, 618, 715; 1988, cc. 480, 499; 1989, c. 314; 1991, cc. 540, 572; 1993, cc. 65, 326, 918; 1996, cc. 715, 720; 1997, cc. 62, 283, 903; 2000, c. 557; 2002, cc. 28, 717; 2005, c. 103; 2006, c. 922; 2010, c. 648; 2011, cc. 25, 188; 2016, c. 487.

§ 58.1-3703.1. Uniform ordinance provisions

A. Every ordinance levying a license tax pursuant to this chapter shall include provisions substantially similar to this subsection. As they apply to license taxes, the provisions required by this section shall override any limitations or requirements in Chapter 39 (§ 58.1-3900 et seq.) of this title to the extent that they are in conflict.

1. License requirement. Every person shall apply for a license for each business or profession when engaging in a business in this jurisdiction if (i) the person has a definite place of business in this jurisdiction; (ii) there is no definite place of business anywhere and the person resides in this jurisdiction; or (iii) there is no definite place of business in this jurisdiction but the person operates amusement machines or is classified as an itinerant merchant, peddler, carnival, circus, contractor subject to § 58.1-3715, or public service corporation. A separate license shall be required for each definite place of business and for each business. A person engaged in two or more businesses or professions carried on at the same place of business may elect to obtain one license for all such businesses and professions if all of the following criteria are satisfied: (a) each business or profession is subject to licensure at the location and has satisfied any requirements imposed by state law or other provisions of the ordinances of this jurisdiction; (b) all of the businesses or professions are subject to the same tax rate, or, if subject to different tax rates, the licensee agrees to be taxed on all businesses and professions at the highest rate; and (c) the taxpayer agrees to supply such information as the assessor may require concerning the nature of the several businesses and their gross receipts.

Notwithstanding the foregoing, the governing body of any county, city or town with a population greater than 50,000 may waive the license requirements provided herein for businesses with gross receipts of less than $100,000.

2. Due dates and penalties.

a. Each person subject to a license tax shall apply for a license prior to beginning business if he was not subject to licensure in this jurisdiction on or before January 1 of the license year, or no later than March 1 of the license year if he had been issued a license for the preceding year. Any locality is authorized to adopt a later application date that is on or before May 1 of the license year. The application shall be on forms prescribed by the assessing official.

b. The tax shall be paid with the application in the case of any license not based on gross receipts. If the tax is measured by the gross receipts of the business, the tax shall be paid on or before the locality's fixed due date for filing license applications or a later date, including installment payment dates, or 30 or more days after beginning business, at the locality's option.

c. The assessing official may grant an extension of time in which to file an application for a license, for reasonable cause. The extension may be conditioned upon the timely payment of a reasonable estimate of the appropriate tax; the tax is then subject to adjustment to the correct tax at the end of the extension, together with interest from the due date until the date paid and, if the estimate submitted with the extension is found to be unreasonable under the circumstances, with a penalty of 10 percent of the portion paid after the due date.

d. A penalty of 10 percent of the tax may be imposed upon the failure to file an application or the failure to pay the tax by the appropriate due date. Only the late filing penalty shall be imposed by the assessing official if both the application and payment are late; however, both penalties may be assessed if the assessing official determines that the taxpayer has a history of noncompliance. In the case of an assessment of additional tax made by the assessing official, if the application and, if applicable, the return were made in good faith and the understatement of the tax was not due to any fraud, reckless or intentional disregard of the law by the taxpayer, there shall be no late payment penalty assessed with the additional tax. If any assessment of tax by the assessing official is not paid within 30 days, the treasurer or other collecting official may impose a 10 percent late payment penalty. If the failure to file or pay was not the fault of the taxpayer, the penalties shall not be imposed, or if imposed, shall be abated by the official who assessed them. In order to demonstrate lack of fault, the taxpayer must show that he acted responsibly and that the failure was due to events beyond his control.

"Acted responsibly" means that: (i) the taxpayer exercised the level of reasonable care that a prudent person would exercise under the circumstances in determining the filing obligations for the business and (ii) the taxpayer undertook significant steps to avoid or mitigate the failure, such as requesting appropriate extensions (where applicable), attempting to prevent a foreseeable

impediment, acting to remove an impediment once it occurred, and promptly rectifying a failure once the impediment was removed or the failure discovered.

"Events beyond the taxpayer's control" include, but are not limited to, the unavailability of records due to fire or other casualty; the unavoidable absence (e.g., due to death or serious illness) of the person with the sole responsibility for tax compliance; or the taxpayer's reasonable reliance in good faith upon erroneous written information from the assessing official who was aware of the relevant facts relating to the taxpayer's business when he provided the erroneous information.

e. Interest shall be charged on the late payment of the tax from the due date until the date paid without regard to fault or other reason for the late payment. Whenever an assessment of additional or omitted tax by the assessing official is found to be erroneous, all interest and any penalties charged and collected on the amount of the assessment found to be erroneous shall be refunded together with interest on the refund from the date of payment or the due date, whichever is later. Interest shall be paid on the refund of any BPOL tax from the date of payment or due date, whichever is later, whether attributable to an amended return or other reason. Interest on any refund shall be paid at the same rate charged under § 58.1-3916.

No interest shall accrue on an adjustment of estimated tax liability to actual liability at the conclusion of a base year. No interest shall be paid on a refund or charged on a late payment, provided the refund or the late payment is made not more than 30 days from the date of the payment that created the refund or the due date of the tax, whichever is later.

3. Situs of gross receipts.

a. General rule. Whenever the tax imposed by this ordinance is measured by gross receipts, the gross receipts included in the taxable measure shall be only those gross receipts attributed to the exercise of a privilege subject to licensure at a definite place of business within this jurisdiction. In the case of activities conducted outside of a definite place of business, such as during a visit to a customer location, the gross receipts shall be attributed to the definite place of business from which such activities are initiated, directed, or controlled. The situs of gross receipts for different classifications of business shall be attributed to one or more definite places of business or offices as follows:

(1) The gross receipts of a contractor shall be attributed to the definite place of business at which his services are performed, or if his services are not performed at any definite place of business, then the definite place of business from which his services are directed or controlled, unless the contractor is subject to the provisions of § 58.1-3715;

(2) The gross receipts of a retailer or wholesaler shall be attributed to the definite place of business at which sales solicitation activities occur, or if sales solicitation activities do not occur at any definite place of business, then the definite place of business from which sales solicitation activities are directed or controlled; however, a wholesaler or distribution house subject to a license tax measured by purchases shall determine the situs of its purchases by the definite place

of business at which or from which deliveries of the purchased goods, wares and merchandise are made to customers. Any wholesaler who is subject to license tax in two or more localities and who is subject to multiple taxation because the localities use different measures, may apply to the Department of Taxation for a determination as to the proper measure of purchases and gross receipts subject to license tax in each locality;

(3) The gross receipts of a business renting tangible personal property shall be attributed to the definite place of business from which the tangible personal property is rented or, if the property is not rented from any definite place of business, then to the definite place of business at which the rental of such property is managed; and

(4) The gross receipts from the performance of services shall be attributed to the definite place of business at which the services are performed or, if not performed at any definite place of business, then to the definite place of business from which the services are directed or controlled.

b. Apportionment. If the licensee has more than one definite place of business and it is impractical or impossible to determine to which definite place of business gross receipts should be attributed under the general rule, the gross receipts of the business shall be apportioned between the definite places of businesses on the basis of payroll. Gross receipts shall not be apportioned to a definite place of business unless some activities under the applicable general rule occurred at, or were controlled from, such definite place of business. Gross receipts attributable to a definite place of business in another jurisdiction shall not be attributed to this jurisdiction solely because the other jurisdiction does not impose a tax on the gross receipts attributable to the definite place of business in such other jurisdiction.

c. Agreements. The assessor may enter into agreements with any other political subdivision of Virginia concerning the manner in which gross receipts shall be apportioned among definite places of business. However, the sum of the gross receipts apportioned by the agreement shall not exceed the total gross receipts attributable to all of the definite places of business affected by the agreement. Upon being notified by a taxpayer that its method of attributing gross receipts is fundamentally inconsistent with the method of one or more political subdivisions in which the taxpayer is licensed to engage in business and that the difference has, or is likely to, result in taxes on more than 100 percent of its gross receipts from all locations in the affected jurisdictions, the assessor shall make a good faith effort to reach an apportionment agreement with the other political subdivisions involved. If an agreement cannot be reached, either the assessor or taxpayer may seek an advisory opinion from the Department of Taxation pursuant to § 58.1-3701; notice of the request shall be given to the other party. Notwithstanding the provisions of § 58.1-3993, when a taxpayer has demonstrated to a court that two or more political subdivisions of Virginia have assessed taxes on gross receipts that may create a double assessment within the meaning of § 58.1-3986, the court shall enter such orders pending resolution of the litigation as may be necessary to ensure that the taxpayer is not required to pay multiple assessments even though it is not then known which assessment is correct and which is erroneous.

4. Limitations and extensions.

a. Where, before the expiration of the time prescribed for the assessment of any license tax imposed pursuant to this ordinance, both the assessing official and the taxpayer have consented in writing to its assessment after such time, the tax may be assessed at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

b. Notwithstanding § 58.1-3903, the assessing official shall assess the local license tax omitted because of fraud or failure to apply for a license for the current license year and the six preceding license years.

c. The period for collecting any local license tax shall not expire prior to the period specified in § 58.1-3940, two years after the date of assessment if the period for assessment has been extended pursuant to this subdivision of the ordinance, two years after the final determination of an appeal for which collection has been stayed pursuant to subdivision 5 b or 5 d of this ordinance, or two years after the final decision in a court application pursuant to § 58.1-3984 or a similar law for which collection has been stayed, whichever is later.

5. Administrative appeals to commissioner of the revenue or other assessing official.

a. Definitions. For purposes of this section:

"Amount in dispute," when used with respect to taxes due or assessed, means the amount specifically identified in the administrative appeal or application for judicial review as disputed by the party filing such appeal or application.

"Appealable event" means an increase in the assessment of a local license tax payable by a taxpayer, the denial of a refund, or the assessment of a local license tax where none previously was assessed, arising out of the local assessing official's (i) examination of records, financial statements, books of account, or other information for the purpose of determining the correctness of an assessment; (ii) determination regarding the rate or classification applicable to the licensable business; (iii) assessment of a local license tax when no return has been filed by the taxpayer; or (iv) denial of an application for correction of erroneous assessment attendant to the filing of an amended application for license.

An appealable event shall include a taxpayer's appeal of the classification applicable to a business, including whether the business properly falls within a business license subclassification established by the locality, regardless of whether the taxpayer's appeal is in conjunction with an assessment, examination, audit, or any other action taken by the locality.

"Frivolous" means a finding, based on specific facts, that the party asserting the appeal is unlikely to prevail upon the merits because the appeal is (i) not well grounded in fact; (ii) not warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; (iii) interposed for an improper purpose, such as to harass, to cause unnecessary delay in the

payment of tax or a refund, or to create needless cost from the litigation; or (iv) otherwise frivolous.

"Jeopardized by delay" means a finding, based upon specific facts, that a taxpayer designs to (i) depart quickly from the locality; (ii) remove his property therefrom; (iii) conceal himself or his property therein; or (iv) do any other act tending to prejudice, or to render wholly or partially ineffectual, proceedings to collect the tax for the period in question.

b. Filing and contents of administrative appeal. Any person assessed with a local license tax as a result of an appealable event as defined in this section may file an administrative appeal of the assessment within one year from the last day of the tax year for which such assessment is made, or within one year from the date of the appealable event, whichever is later, with the commissioner of the revenue or other local assessing official. The appeal must be filed in good faith and sufficiently identify the taxpayer, the tax periods covered by the challenged assessments, the amount in dispute, the remedy sought, each alleged error in the assessment, the grounds upon which the taxpayer relies, and any other facts relevant to the taxpayer's contention. The assessor may hold a conference with the taxpayer if requested by the taxpayer, or require submission of additional information and documents, an audit or further audit, or other evidence deemed necessary for a proper and equitable determination of the appeal. The assessment placed at issue in the appeal shall be deemed prima facie correct. The assessor shall undertake a full review of the taxpayer's claims and issue a written determination to the taxpayer setting forth the facts and arguments in support of his decision.

The taxpayer may at any time also file an administrative appeal of the classification applicable to the taxpayer's business, including whether the business properly falls within a business license subclassification established by the locality. However, the appeal of the classification of the business shall not apply to any license year for which the Tax Commissioner has previously issued a final determination relating to any license fee or license tax imposed upon the taxpayer's business for the year. In addition, any appeal of the classification of a business shall in no way affect or change any limitations period prescribed by law for appealing an assessment.

c. Notice of right of appeal and procedures. Every assessment made by a commissioner of the revenue or other assessing official pursuant to an appealable event shall include or be accompanied by a written explanation of the taxpayer's right to file an administrative appeal and the specific procedures to be followed in the jurisdiction, the name and address to which the appeal should be directed, an explanation of the required content of the appeal, and the deadline for filing the appeal.

For purposes of facilitating an administrative appeal of the classification applicable to a taxpayer's business, each locality imposing a tax or fee under this chapter shall maintain on its website the specific procedures to be followed in the jurisdiction with regard to such appeal and the name and address to which the appeal should be directed.

d. Suspension of collection activity during appeal. Provided a timely and complete administrative appeal is filed, collection activity with respect to the amount in dispute relating to any assessment by the commissioner of the revenue or other assessing official shall be suspended until a final determination is issued by the commissioner of the revenue or other assessing official, unless the treasurer or other official responsible for the collection of such tax (i) determines that collection would be jeopardized by delay as defined in this section; (ii) is advised by the commissioner of the revenue or other assessing official that the taxpayer has not responded to a request for relevant information after a reasonable time; or (iii) is advised by the commissioner of the revenue or other assessing official that the appeal is frivolous as defined in this section. Interest shall accrue in accordance with the provisions of subdivision 2 e of this subsection, but no further penalty shall be imposed while collection action is suspended.

e. Procedure in event of nondecision. Any taxpayer whose administrative appeal to the commissioner of the revenue or other assessing official pursuant to the provisions of subdivision 5 of this subsection has been pending for more than one year without the issuance of a final determination may, upon not less than 30 days' written notice to the commissioner of the revenue or other assessing official, elect to treat the appeal as denied and appeal the assessment or classification of the taxpayer's business to the Tax Commissioner in accordance with the provisions of subdivision 6 of this subsection. The Tax Commissioner shall not consider an appeal filed pursuant to the provisions of this subsection if he finds that the absence of a final determination on the part of the commissioner of the revenue or other assessing official was caused by the willful failure or refusal of the taxpayer to provide information requested and reasonably needed by the commissioner or other assessing official to make his determination.

6. Administrative appeal to the Tax Commissioner.

a. Any person assessed with a local license tax as a result of a determination or that has received a determination with regard to the person's appeal of the license classification or subclassification applicable to the person's business, upon an administrative appeal to the commissioner of the revenue or other assessing official pursuant to subdivision 5 of this subsection, that is adverse to the position asserted by the taxpayer in such appeal may appeal such assessment or determination to the Tax Commissioner within 90 days of the date of the determination by the commissioner of the revenue or other assessing official. The appeal shall be in such form as the Tax Commissioner may prescribe and the taxpayer shall serve a copy of the appeal upon the commissioner of the revenue or other assessing official. The Tax Commissioner shall permit the commissioner of the revenue or other assessing official to participate in the proceedings, and shall issue a determination to the taxpayer within 90 days of receipt of the taxpayer's application, unless the taxpayer and the assessing official are notified that a longer period will be required. The appeal shall proceed in the same manner as an application pursuant to § 58.1-1821, and the Tax Commissioner pursuant to § 58.1-1822 may issue an order correcting such assessment or correcting the license classification or subclassification of the business and the related license tax or fee liability.

b. Suspension of collection activity during appeal. On receipt of a notice of intent to file an appeal to the Tax Commissioner under subdivision 6 a of this subsection, collection activity with respect to the amount in dispute relating to any assessment by the commissioner of the revenue or other assessing official shall be suspended until a final determination is issued by the Tax Commissioner, unless the treasurer or other official responsible for the collection of such tax (i) determines that collection would be jeopardized by delay as defined in this section; (ii) is advised by the commissioner of the revenue or other assessing official, or the Tax Commissioner, that the taxpayer has not responded to a request for relevant information after a reasonable time; or (iii) is advised by the commissioner of the revenue or other assessing official that the appeal is frivolous as defined in this section. Interest shall accrue in accordance with the provisions of subdivision 2 e of this subsection, but no further penalty shall be imposed while collection action is suspended. The requirement that collection activity be suspended shall cease unless an appeal pursuant to subdivision 6 a of this subsection is filed and served on the necessary parties within 30 days of the service of notice of intent to file such appeal.

c. Implementation of determination of Tax Commissioner. Promptly upon receipt of the final determination of the Tax Commissioner with respect to an appeal pursuant to subdivision 6 a of this subsection, the commissioner of the revenue or other assessing official shall take those steps necessary to calculate the amount of tax owed by or refund due to the taxpayer consistent with the Tax Commissioner's determination and shall provide that information to the taxpayer and to the treasurer or other official responsible for collection in accordance with the provisions of this subdivision.

(1) If the determination of the Tax Commissioner sets forth a specific amount of tax due, the commissioner of the revenue or other assessing official shall certify the amount to the treasurer or other official responsible for collection, and the treasurer or other official responsible for collection shall issue a bill to the taxpayer for such amount due, together with interest accrued and penalty, if any is authorized by this section, within 30 days of the date of the determination of the Tax Commissioner.

(2) If the determination of the Tax Commissioner sets forth a specific amount of refund due, the commissioner of the revenue or other assessing official shall certify the amount to the treasurer or other official responsible for collection, and the treasurer or other official responsible for collection shall issue a payment to the taxpayer for such amount due, together with interest accrued pursuant to this section, within 30 days of the date of the determination of the Tax Commissioner.

(3) If the determination of the Tax Commissioner does not set forth a specific amount of tax due, or otherwise requires the commissioner of the revenue or other assessing official to undertake a new or revised assessment that will result in an obligation to pay a tax that has not previously been paid in full, the commissioner of the revenue or other assessing official shall promptly commence the steps necessary to undertake such new or revised assessment, and provide the same to

the taxpayer within 60 days of the date of the determination of the Tax Commissioner, or within 60 days after receipt from the taxpayer of any additional information requested or reasonably required under the determination of the Tax Commissioner, whichever is later. The commissioner of the revenue or other assessing official shall certify the new assessment to the treasurer or other official responsible for collection, and the treasurer or other official responsible for collection shall issue a bill to the taxpayer for the amount due, together with interest accrued and penalty, if any is authorized by this section, within 30 days of the date of the new assessment.

(4) If the determination of the Tax Commissioner does not set forth a specific amount of refund due, or otherwise requires the commissioner of the revenue or other assessing official to undertake a new or revised assessment that will result in an obligation on the part of the locality to make a refund of taxes previously paid, the commissioner of the revenue or other assessing official shall promptly commence the steps necessary to undertake such new or revised assessment or to determine the amount of refund due in the case of a correction to the license classification or sub-classification of the business, and provide the same to the taxpayer within 60 days of the date of the determination of the Tax Commissioner, or within 60 days after receipt from the taxpayer of any additional information requested or reasonably required under the determination of the Tax Commissioner, whichever is later. The commissioner of the revenue or other assessing official shall certify the new assessment or refund amount to the treasurer or other official responsible for collection, and the treasurer or other official responsible for collection shall issue a refund to the taxpayer for the amount of tax due, together with interest accrued, within 30 days of the date of the new assessment or determination of the amount of the refund.

7. Judicial review of determination of Tax Commissioner.

a. Judicial review. Following the issuance of a final determination of the Tax Commissioner pursuant to subdivision 6 a of this subsection, the taxpayer or commissioner of the revenue or other assessing official may apply to the appropriate circuit court for judicial review of the determination, or any part thereof, pursuant to § 58.1-3984. In any such proceeding for judicial review of a determination of the Tax Commissioner, the burden shall be on the party challenging the determination of the Tax Commissioner, or any part thereof, to show that the ruling of the Tax Commissioner is erroneous with respect to the part challenged. Neither the Tax Commissioner nor the Department of Taxation shall be made a party to an application to correct an assessment merely because the Tax Commissioner has ruled on it.

b. Suspension of payment of disputed amount of tax due upon taxpayer's notice of intent to initiate judicial review.

(1) On receipt of a notice of intent to file an application for judicial review, pursuant to § 58.1-3984, of a determination of the Tax Commissioner pursuant to subdivision 6 a of this subsection, and upon payment of the amount of the tax relating to any assessment by the commissioner of the revenue or other assessing official that is not in dispute together with any penalty and interest

then due with respect to such undisputed portion of the tax, the treasurer or other collection official shall further suspend collection activity while the court retains jurisdiction unless the court, upon appropriate motion after notice and an opportunity to be heard, determines that (i) the taxpayer's application for judicial review is frivolous, as defined in this section; (ii) collection would be jeopardized by delay, as defined in this section; or (iii) suspension of collection would cause substantial economic hardship to the locality. For purposes of determining whether substantial economic hardship to the locality would arise from a suspension of collection activity, the court shall consider the cumulative effect of then-pending appeals filed within the locality by different taxpayers that allege common claims or theories of relief.

(2) Upon a determination that the appeal is frivolous, that collection may be jeopardized by delay, or that suspension of collection would result in substantial economic hardship to the locality, the court may require the taxpayer to pay the amount in dispute or a portion thereof, or to provide surety for payment of the amount in dispute in a form acceptable to the court.

(3) No suspension of collection activity shall be required if the application for judicial review fails to identify with particularity the amount in dispute or the application does not relate to any assessment by the commissioner of the revenue or other assessing official.

(4) The requirement that collection activity be suspended shall cease unless an application for judicial review pursuant to § 58.1-3984 is filed and served on the necessary parties within 30 days of the service of the notice of intent to file such application.

(5) The suspension of collection activity authorized by this subdivision shall not be applicable to any appeal of a local license tax that is initiated by the direct filing of an action pursuant to § 58.1-3984 without prior exhaustion of the appeals provided by subdivisions 5 and 6 of this subsection.

c. Suspension of payment of disputed amount of refund due upon locality's notice of intent to initiate judicial review.

(1) Payment of any refund determined to be due pursuant to the determination of the Tax Commissioner of an appeal pursuant to subdivision 6 a of this subsection shall be suspended if the locality assessing the tax serves upon the taxpayer, within 60 days of the date of the determination of the Tax Commissioner, a notice of intent to file an application for judicial review of the Tax Commissioner's determination pursuant to § 58.1-3984 and pays the amount of the refund not in dispute, including tax and accrued interest. Payment of such refund shall remain suspended while the court retains jurisdiction unless the court, upon appropriate motion after notice and an opportunity to be heard, determines that the locality's application for judicial review is frivolous, as defined in this section.

(2) No suspension of refund activity shall be permitted if the locality's application for judicial review fails to identify with particularity the amount in dispute.

(3) The suspension of the obligation to make a refund shall cease unless an application for judicial review pursuant to § 58.1-3984 is filed and served on the necessary parties within 30 days of the service of the notice of intent to file such application.

d. Accrual of interest on unpaid amount of tax. Interest shall accrue in accordance with the provisions of subdivision 2 e of this subsection, but no further penalty shall be imposed while collection action is suspended.

8. Rulings.

Any taxpayer or authorized representative of a taxpayer may request a written ruling regarding the application of a local license tax to a specific situation from the commissioner of the revenue or other assessing official. Any person requesting such a ruling must provide all facts relevant to the situation placed at issue and may present a rationale for the basis of an interpretation of the law most favorable to the taxpayer. In addition, the taxpayer or authorized representative may request a written ruling with regard to the classification applicable to the taxpayer's business, including whether the business properly falls within a business license subclassification established by the locality.

Any misrepresentation or change in the applicable law or the factual situation as presented in the ruling request shall invalidate any such ruling issued. A written ruling may be revoked or amended prospectively if (i) there is a change in the law, a court decision, or the guidelines issued by the Department of Taxation upon which the ruling was based or (ii) the assessor notifies the taxpayer of a change in the policy or interpretation upon which the ruling was based. However, any person who acts on a written ruling which later becomes invalid shall be deemed to have acted in good faith during the period in which such ruling was in effect.

9. Record-keeping and audits. Every person who is assessable with a local license tax shall keep sufficient records to enable the assessor to verify the correctness of the tax paid for the license years assessable and to enable the assessor to ascertain what is the correct amount of tax that was assessable for each of those years. All such records, books of accounts and other information shall be open to inspection and examination by the assessor in order to allow the assessor to establish whether a particular receipt is directly attributable to the taxable privilege exercised within this jurisdiction. The assessor shall provide the taxpayer with the option to conduct the audit in the taxpayer's local business office, if the records are maintained there. In the event the records are maintained outside this jurisdiction, copies of the appropriate books and records shall be sent to the assessor's office upon demand.

B. Transitional provisions.

1. A locality which changes its license year from a fiscal year to a calendar year and adopts a due date for license applications between March 1 and May 1, inclusive, shall not be required to prorate any license tax to reflect a license year of less than 12 months, whether the tax is a flat

amount or measured by gross receipts, provided that no change is made in the taxable year for measuring gross receipts.

2. The provisions of this section relating to penalties, interest, and administrative and judicial review of an assessment shall be applicable to assessments made on and after January 1, 1997, even if for an earlier license year. The provisions relating to agreements extending the period for assessing tax shall be effective for agreements entered into on and after July 1, 1996. The provisions permitting an assessment of a license tax for up to six preceding years in certain circumstances shall not be construed to permit the assessment of tax for a license year beginning before January 1, 1997.

3. Every locality shall adopt a fixed due date for license applications between March 1 and May 1, inclusive, no later than the 2007 license year.

1996, cc. 715, 720; 1997, c. 732; 2002, c. 364; 2005, c. 927; 2006, cc. 119, 181, 611; 2014, c. 27.

§ 58.1-3704. License tax on merchants in lieu of merchants' capital tax

Whenever any county, city or town imposes a license tax on merchants, the same shall be in lieu of a tax on the capital of merchants, as defined by § 58.1-3509; however, no county, city or town shall be required to impose either a license tax on merchants or a tax on the capital of merchants. The prohibition under this section shall not extend to short-term rental property as defined under § 58.1-3510.4.

Code 1950, § 58-266.1; 1950, p. 155; 1956, c. 242; 1964, c. 424; 1968, c. 619; 1970, cc. 231, 547; 1974, cc. 196, 438; 1975, cc. 23, 621; 1976, cc. 521, 719; 1977, c. 320; 1978, cc. 772, 799, 817; 1979, cc. 565, 568, 570; 1980, cc. 318, 736; 1981, cc. 419, 636; 1982, cc. 348, 548, 552, 554, 558, 633; 1983, c. 554; 1984, cc. 247, 675, 695; 1999, c. 200; 2010, cc. 255, 295.

§ 58.1-3705. License tax shall be uniform

Whenever any county, city or town levies a license tax, the basis for such tax, whether it be gross receipts or otherwise, shall be the same for all persons engaged in the same business, trade, occupation or calling.

Code 1950, § 58-266.5; 1956, c. 449; 1962, c. 278; 1972, c. 601; 1974, c. 386; 1984, c. 675.

§ 58.1-3706. Limitation on rate of license taxes

A. Except as specifically provided in this section and except for the fee authorized in § 58.1-3703, no local license tax imposed pursuant to the provisions of this chapter, except §§ 58.1-3712 and 58.1-3713, or any other provision of this title or any charter, shall be imposed on any person whose gross receipts from a business, profession or occupation subject to licensure are less than: (i) $100,000 in any locality with a population greater than 50,000; or (ii) $50,000 in any locality with a population of 25,000 but no more than 50,000. Any business with gross receipts of more than $100,000, or $50,000, as applicable, may be subject to the tax at a rate not to exceed the rate set forth below for the class of enterprise listed:

1. For contracting, and persons constructing for their own account for sale, sixteen cents per $100 of gross receipts;

2. For retail sales, twenty cents per $100 of gross receipts;

3. For financial, real estate and professional services, fifty-eight cents per $100 of gross receipts; and

4. For repair, personal and business services, and all other businesses and occupations not specifically listed or excepted in this section, thirty-six cents per $100 of gross receipts.

The rate limitations prescribed in this section shall not be applicable to license taxes on (i) wholesalers, which shall be governed by § 58.1-3716; (ii) public service companies, which shall be governed by § 58.1-3731; (iii) carnivals, circuses and speedways, which shall be governed by § 58.1-3728; (iv) fortune-tellers, which shall be governed by § 58.1-3726; (v) massage parlors; (vi) itinerant merchants or peddlers, which shall be governed by § 58.1-3717; (vii) permanent coliseums, arenas, or auditoriums having a maximum capacity in excess of 10,000 persons and open to the public, which shall be governed by § 58.1-3729; (viii) savings institutions and credit unions, which shall be governed by § 58.1-3730; (ix) photographers, which shall be governed by § 58.1-3727; and (x) direct sellers, which shall be governed by § 58.1-3719.1.

B. Any county, city or town which had, on January 1, 1978, a license tax rate, for any of the categories listed in subsection A, higher than the maximum prescribed in subsection A may maintain a higher rate in such category, but no higher than the rate applicable on January 1, 1978, subject to the following conditions:

1. A locality may not increase a rate on any category which is at or above the maximum prescribed for such category in subsection A.

2. If a locality increases the rate on a category which is below the maximum, it shall apply all revenue generated by such increase to reduce the rate on a category or categories which are above such maximum.

3. A locality shall lower rates on categories which are above the maximums prescribed in subsection A for any tax year after 1982 if it receives more revenue in tax year 1981, or any tax year thereafter, than the revenue base for such year. The revenue base for tax year 1981 shall be the amount of revenue received from all categories in tax year 1980, plus one-third of the amount, if any, by which such revenue received in tax year 1981 exceeds the revenue received for tax year 1980. The revenue base for each tax year after 1981 shall be the revenue base of the preceding tax year plus one-third of the increase in the revenues of the subsequent tax year over the revenue base of the preceding tax year. If in any tax year the amount of revenues received from all categories exceeds the revenue base for such year, the rates shall be adjusted as follows: The revenues of those categories with rates at or below the maximum shall be subtracted from the revenue base for such year. The resulting amount shall be allocated to the category or categories with rates

above the maximum in a manner determined by the locality, and divided by the gross receipts of such category for the tax year. The resulting rate or rates shall be applicable to such category or categories for the second tax year following the year whose revenue was used to make the calculation.

C. Any person engaged in the short-term rental business as defined in § 58.1-3510.4 shall be classified in the category of retail sales for license tax rate purposes.

D.1. Any person, firm, or corporation designated as the principal or prime contractor receiving identifiable federal appropriations for research and development services as defined in § 31.205-18 (a) of the Federal Acquisition Regulation in the areas of (i) computer and electronic systems, (ii) computer software, (iii) applied sciences, (iv) economic and social sciences, and (v) electronic and physical sciences shall be subject to a license tax rate not to exceed three cents per $100 of such federal funds received in payment of such contracts upon documentation provided by such person, firm or corporation to the local commissioner of revenue or finance officer confirming the applicability of this subsection.

2. Any gross receipts properly reported to a Virginia locality, classified for license tax purposes by that locality in accordance with subdivision 1 of this subsection, and on which a license tax is due and paid, or which gross receipts defined by subdivision 1 of this subsection are properly reported to but exempted by a Virginia locality from taxation, shall not be subject to local license taxation by any other locality in the Commonwealth.

3. Notwithstanding the provisions of subdivision D 1, in any county operating under the county manager plan of government, the following shall govern the taxation of the licensees described in subdivision D 1. Persons, firms, or corporations designated as the principal or prime contractors receiving identifiable federal appropriations for research and development services as defined in § 31.205-18 (a) of the Federal Acquisition Regulation in the areas of (i) computer and electronic systems, (ii) computer software, (iii) applied sciences, (iv) economic and social sciences, and (v) electronic and physical sciences may be separately classified by any such county and subject to tax at a license tax rate not to exceed the limits set forth in subsections A through C above as to such federal funds received in payment of such contracts upon documentation provided by such persons, firms, or corporations to the local commissioner of revenue or finance officer confirming the applicability of this subsection.

E. In any case in which the Department of Mines, Minerals and Energy determines that the weekly U.S. Retail Gasoline price (regular grade) for PADD 1C (Petroleum Administration for Defense District -- Lower Atlantic Region) has increased by 20% or greater in any one-week period over the immediately preceding one-week period and does not fall below the increased rate for at least 28 consecutive days immediately following the week of such increase, then, notwithstanding any tax rate on retailers imposed by the local ordinance, the gross receipts taxes on fuel sales of a gas retailer made in the following license year shall not exceed 110% of the gross receipts taxes on fuel sales made by such retailer in the license year of such increase. For license years beginning on

or after January 1, 2006, every gas retailer shall maintain separate records for fuel sales and non-fuel sales and shall make such records available upon request by the local tax official.

The provisions of this subsection shall not apply to any person or entity (i) not conducting business as a gas retailer in the county, city, or town for the entire license year immediately preceding the license year of such increase or (ii) that was subject to a license fee in the county, city, or town pursuant to § 58.1-3703 for the license year immediately preceding the license year of such increase.

The Department of Mines, Minerals and Energy shall determine annually if such increase has occurred and remained in effect for such 28-day period.

Code 1950, § 58-266.1; 1950, p. 155; 1956, c. 242; 1964, c. 424; 1968, c. 619; 1970, cc. 231, 547; 1974, cc. 196, 438; 1975, cc. 23, 621; 1976, cc. 521, 719; 1977, c. 320; 1978, cc. 772, 799, 817; 1979, cc. 565, 568, 570; 1980, cc. 318, 736; 1981, cc. 419, 636; 1982, cc. 348, 548, 552, 554, 558, 633; 1983, c. 554; 1984, cc. 247, 675, 695; 1985, c. 120; 1989, c. 589; 1992, c. 632; 1993, c. 918; 1996, cc. 77, 715, 720; 2006, c. 763; 2010, cc. 255, 295; 2016, c. 305.

§ 58.1-3707. Repealed

Repealed by Acts 1996, cc. 715 and 720, effective January 1, 1997.

§ 58.1-3708. Situs for local license taxation of businesses, professions, occupations, etc

A. Except as otherwise provided by law and except as to public service corporations, the situs for the local license taxation for any business, profession, trade, occupation or calling subject to licensure, shall be the county, city or town (hereinafter called "locality") in which the person so engaged has a definite place of business. If any such person has a definite place of business in any other locality, then such other locality may impose a license tax on him, provided such other locality is otherwise authorized to impose a local license tax with respect thereto.

B. Where a local license tax imposed by any locality is measured by volume, the volume on which the tax may be computed shall be the volume attributable to all definite places of business of the business, profession, trade, occupation or calling in such locality. All volume attributable to any definite places of business of the business, profession, trade, occupation or calling in any other locality shall be deductible from the base in computing any local license tax measured by volume imposed on him by the locality in which the first-mentioned definite place is located.

C. The word "volume," as used in this section, means gross receipts, sales, purchases, or other base for measuring a license tax which is related to the amount of business done.

D. This section shall not be construed as prohibiting any locality from requiring a separate license for each definite place of business located in such locality.

Code 1950, § 58-266.5; 1956, c. 449; 1962, c. 278; 1972, c. 601; 1974, c. 386; 1984, c. 675; 1996, cc. 715, 720.

§ 58.1-3709. Business located in more than one jurisdiction

A. In any case where a business subject to a local license tax is located partially within a county, city or town and partially within another county, city or town by reason of the boundary line between such political subdivisions passing through such place of business, the situs for the local license of such business shall be each county, city or town in which any part of such place of business is located. If a local license tax is measured by the volume of business done, the volume allocable to each political subdivision for measuring the local license tax levied by it shall be such proportion of the total volume of business done at such place of business as the area within that political subdivision, which such place of business actually occupies and actively uses in connection with such business, bears to the total area which such place of business actually occupies and actively uses in connection with such business. And in every such case, if a local license tax is a flat tax, the amount thereof shall be adjusted so as to constitute such proportion of the entire flat license tax levied by the political subdivision as the area within that political subdivision, which such place of business actually occupies and actively uses in connection with such business, bears to the total area which such place of business actually occupies and actively uses in connection with such business. The word "area," as used in this section, means the area of the land actually occupied by the building or structure constituting the place of business; but if such place of business actually occupies and actively uses only a part of such building or structure, the land area below such part shall be the land area which shall be used in making the apportionment, whether or not such building or structure contains one story or floor or more than one story or floor. If the place of business is of such nature that inventories are kept or stored outside of a building or structure, then the land area used in keeping or storing such inventories, together with the land area actually occupied by any building or structure, or part thereof, which is actually occupied and actively used in connection with such business shall constitute the land area for making the apportionment. If the place of business has a parking area contiguous thereto for the use of its vehicles or those of its customers to the exclusion of any other business, such area shall be included in the word "area" as used in this section. If the place of business has a contiguous parking area used in common with other places of business, such parking area shall be apportioned for the purpose of this section among such places of business in the ratio of their total areas to the whole parking area, and the area so apportioned shall be included within the word "area" as used in this section.

B. Any person whose place of business comes within the provisions of subsection A of this section and who considers himself aggrieved by the imposition upon him of a local license tax, may, at any time during the license year, apply for relief to any court of record having jurisdiction in any county or city involved, and the court shall issue against each such county or city a rule to show cause why relief should not be granted. The rule shall be served on the attorney for the Commonwealth for the county or on the city attorney for the city, as the case may be. The court shall hear the case without a jury and shall render judgment declaring the proper tax to be paid, and granting such relief as may be proper. In any case where the court finds that the tax imposed was

excessive, no costs shall be awarded against the taxpayer, nor shall he be liable for penalty or interest on such tax if he pays the tax before the expiration of fifteen days after final judgment.

Code 1950, § 58-266.4; 1954, c. 517; 1978, c. 433; 1984, c. 675.

§ 58.1-3710. Proration of license taxes

A. Notwithstanding any other provision of law, general or special, and regardless of the basis or method of measurement or computation, no county, city or town shall impose a license tax based on gross receipts on a business, trade, profession, occupation or calling, or upon a person, firm or corporation for any fraction of a year during which such person, firm or corporation has permanently ceased to engage in such business, trade, profession, occupation or calling within the county, city or town. In the event a person, firm or corporation ceases to engage in a business, trade, profession or calling within a county, city or town during a year for which a license tax based on gross receipts has already been paid, the taxpayer shall be entitled upon application to a refund for that portion of the license tax already paid, prorated on a monthly basis so as to ensure that the licensed privilege is taxed only for that fraction of the year during which it is exercised within the county, city or town. The county, city or town may elect to remit any refunds in the ensuing fiscal year, and may offset against such refund any amount of past-due taxes owed by the same taxpayer. In no event shall a county, city or town be required to refund any part of a flat fee or minimum flat tax.

B. Notwithstanding subsection A and any other provision of law, general or special, in the event that a person, firm, or corporation ceases to engage in a business, trade, profession, or calling in one year for which a license is based on gross receipts, but the person, firm, or corporation indicates to the county, city, or town that it intends to settle outstanding, existing business accounts in the year following the year in which it ceased to do business, such person, firm, or corporation shall be authorized to pay a license tax based on an estimate of gross receipts for such year, instead of a license tax based on the previous year's gross receipts. Such tax shall be subject to adjustment to the correct tax at such time as all accounts are closed. If the estimate submitted pursuant to this subsection is found to be unreasonable under the circumstances, a penalty of 10 percent of the additional license tax assessed shall be assessed. If a person, firm, or corporation that is subject to an estimated license tax under this subsection is found to continue to operate the business, for which it gave notice of the cessation of operations, during the year for which it is subject to the estimated license tax, the person, firm, or corporation shall be required to pay the full amount of the license tax due based on the previous year's gross receipts plus a penalty of 10 percent of this amount, provided that the 10 percent penalty for an unreasonable estimate of gross receipts shall not be assessed.

Code 1950, § 58-266.5:1; 1983, c. 252; 1984, cc. 327, 675; 2015, c. 250.

§ 58.1-3711. Limitation on county license tax within boundary of a town

A. Any county license tax imposed pursuant to this chapter shall not apply within the limits of any town located in such county, where such town now, or hereafter, imposes a town license tax

on the same privilege. If the governing body of any town within a county, however, provides that a county license tax shall apply within the limits of such town, then such license tax may be imposed within such towns.

B. Notwithstanding the provisions of subsection A of this section, in a consolidated county wherein a tier-city exists, any county license tax imposed hereunder shall apply within the limits of any tier-city located in such county, as may be provided in the agreement or plan of consolidation, and such tier-city may also impose a tier-city license tax on the same privilege, provided that the combined county and tier-city rates do not exceed the maximum permitted by state law.

Code 1950, § 58-266.1; 1950, p. 155; 1956, c. 242; 1964, c. 424; 1968, c. 619; 1970, cc. 231, 547; 1974, cc. 196, 438; 1975, cc. 23, 621; 1976, cc. 521, 719; 1977, c. 320; 1978, cc. 772, 799, 817; 1979, cc. 565, 568, 570; 1980, cc. 318, 736; 1981, cc. 419, 636; 1982, cc. 348, 548, 552, 554, 558, 633; 1983, c. 554; 1984, cc. 247, 675, 695.

§ 58.1-3712. Counties and cities authorized to levy severance tax on gases

A. The governing body of any county or city may levy a license tax on every person engaging in the business of severing gases from the earth. Such tax shall be at a rate not to exceed one percent of the gross receipts from the sale of gases severed within such county. Such gross receipts shall be the fair market value measured at the time such gases are utilized or sold for utilization in such county or city or at the time they are placed in transit for shipment therefrom, provided that if the tax provided herein is levied, such county or city cannot enact the provisions of § 58.1-3286 relating to a tax on gross receipts. In calculating the fair market value, no person engaging in the production and operation of severing gases from the earth in connection with coal mining shall be allowed to take deductions, including but not limited to, depreciation, compression, marketing fees, overhead, maintenance, transportation fees, and personal property taxes.

B. Notwithstanding any other provision of this section or law, for purposes of calculating the fair market value of gases severed in Buchanan County, except as otherwise provided in a settlement agreement regarding the calculation of fair market value, including deductions for transportation and compression costs, between the County and the taxpayer, no person engaging in the production and operation of severing gases from the earth in connection with coal mining shall be allowed to take deductions, including but not limited to, depreciation, compression, marketing fees, overhead, maintenance, transportation fees, and personal property taxes.

C. Any county or city enacting a license tax under this section may require producers of gas and common carriers to maintain records and file reports showing the quantities of and receipts from gases which they have produced or transported.

D. The commissioner of the revenue of any county or city is authorized to enter into agreements with any taxpayer pertaining to the calculation of the fair market value of gases under this section. All such agreements entered into on or after January 1, 2013, but prior to July 1, 2014, between

the commissioner of the revenue of any county or city and any taxpayer are deemed bona fide and are valid and enforceable.

Code 1950, § 58-266.1:1; 1973, c. 522; 1976, c. 53; 1984, c. 675; 2002, c. 433; 2009, c. 770; 2013, cc. 305, 618; 2014, cc. 48, 179.

§ 58.1-3712.1. Repealed

Repealed by Acts 2016, c. 305, cl. 2.

§ 58.1-3713. Local gas road improvement and Virginia Coalfield Economic Development Authority tax

A. In addition to the taxes authorized under § 58.1-3712, any county or city may adopt a license tax on every person engaging in the business of severing gases from the earth. The rate of such tax shall not exceed one percent. The provisions of § 58.1-3712 as they relate to measurement of gross receipts, filing of reports and record keeping shall be applicable to the tax imposed under this section.

The moneys collected for each county or city from the taxes imposed under authority of this section and subsection B of § 58.1-3741 shall be paid into a special fund of such county or city to be called the Coal and Gas Road Improvement Fund of such county or city, and shall be spent for such improvements to public roads as the coal and gas road improvement advisory committee and the governing body of such county or city may determine as provided in subsection B of this section. The county may also, in its discretion, elect to improve city or town roads with its funds if consent of the city or town council is obtained. Such funds shall be in addition to those allocated to such counties from state highway funds which allocations shall not be reduced as a result of any revenues received from the tax imposed hereunder. In those localities that comprise the Virginia Coalfield Economic Development Authority, the tax imposed under this section or subsection B of § 58.1-3741 shall be paid as follows: (i) three-fourths of the revenue shall be paid to the Coal and Gas Road Improvement Fund and used for the purposes set forth herein; however, one-fourth of such revenue may be used to fund the construction of new water or sewer systems and lines and the repair or enhancement of existing water or sewer systems and lines in areas with natural water supplies that are insufficient from the standpoint of quality or quantity, or the construction of natural gas service lines as authorized by § 15.2-2109.3, and (ii) one-fourth of the revenue shall be paid to the Virginia Coalfield Economic Development Fund. Furthermore, with regard to the portion paid to the Coal and Gas Road Improvement Fund, a county or city may provide for an additional one-fourth allocation for the construction of new systems or lines for water, sewer, or natural gas as authorized by § 15.2-2109.3, or the repair or enhancement of existing water, sewer, or natural gas systems or lines in areas with natural water supplies or existing natural gas services that are insufficient from the standpoint of quality or quantity; however, if this option is initiated by a county or city, it must satisfy the requirements set forth in § 58.1-3713.01. Notwithstanding the foregoing limitations regarding revenues used for water systems, sewer systems, or natural gas systems, such revenues designated for water and water systems, sewer systems, or natural gas

systems shall be distributed directly to the local public service authority for such purposes instead of the local governing body. Funds in the Coal and Gas Road Improvement Fund used to construct, repair, or enhance natural gas service lines or systems shall not exceed one-fourth of the revenue paid to the Coal and Gas Road Improvement Fund collected from the severance tax imposed upon the severance of natural gas pursuant to this section and may be so used only upon passage of a local ordinance or resolution of the governing body of the applicable county or city providing for the same.

B. Any county or city imposing the tax authorized in this section or in subsection B of § 58.1-3741 shall establish a Coal and Gas Road Improvement Advisory Committee, to be composed of four members: (i) a member of the governing body of such county or city, appointed by the governing body, (ii) a representative of the Department of Transportation, and (iii) two citizens of such county or city connected with the coal and gas industry, appointed for a term of four years, initially commencing July 1, 1989, by the chief judge of the circuit court.

Such committee shall develop on or before July 1 of each year a plan for improvement of roads during the following fiscal year. Such plan shall have the approval of three members of the committee and shall be submitted to the governing body of the county or city for approval. The governing body may approve or disapprove such plan, but may make no changes without the approval of three members of the committee.

C. No tax shall be imposed under this section on or after January 1, 2018.

Code 1950, § 58-266.1:2; 1978, c. 646; 1984, c. 675; 1986, c. 58; 1988, c. 784; 1989, cc. 265, 380; 1991, c. 164; 1993, c. 163; 1996, c. 706; 2004, cc. 871, 893; 2005, c. 645; 2006, cc. 78, 497; 2007, cc. 57, 586; 2009, c. 367; 2013, cc. 305, 306, 618; 2014, cc. 44, 187; 2015, cc. 271, 381; 2016, cc. 301, 340.

§ 58.1-3713.01. Distribution of local coal and gas road improvement taxes for water and sewer projects applicable to the additional one-fourth allocation

The governing body of any county or city imposing a local gas road improvement tax under subsection A of § 58.1-3713 or a local coal road improvement severance license tax under subsection B of § 58.1-3741 that is using an additional one-fourth of the revenue from such tax to fund the construction of new water or sewer systems or lines or the repair or enhancement of existing water systems or lines shall develop and adopt by resolution an annual plan for such water and/or sewer projects and an annual plan for the funding of such water and/or sewer projects in areas in its county or city where natural water supplies are insufficient from the standpoint of quality or quantity. Plans shall establish a priority for funding water and/or sewer projects in such city or county. Consideration for funding shall be given to (i) replacing water supplies lost due to mining activities and providing emergency water services to areas that have lost water due to mining activities; (ii) preserving water supplies that are jeopardized due to permitted mining which is occurring or is near commencement; (iii) facilitating development of water and/or sewer projects which

will promote diversified industrial development; and (iv) increasing the capacity of publicly owned water and/or sewer treatment or supply facilities.

Plans shall encourage the development of regional water and/or sewer projects. "Regional water and/or sewer project" means a project involving two or more public water and/or sewer service providers located in the same or neighboring political subdivisions. In order to promote cost savings and economic development, funding may be provided for regional water and/or sewer projects as provided in this section. If a regional water and/or sewer project encompasses an area for which plans are developed by two or more local governing bodies, the project shall not be funded unless it is agreed to by all of the affected local governing bodies.

A county or city shall not expend local coal and gas road improvement tax revenue for water and/or sewer projects in a manner that is inconsistent with the priority for funding set forth in an approved plan.

1996, c. 706; 1998, c. 694; 2004, c. 893; 2006, cc. 78, 497; 2013, cc. 305, 618.

§§ 58.1-3713.1, 58.1-3713.2. Repealed

Repealed by Acts 2013, cc. 305 and 618, cl. 2.

§ 58.1-3713.3. Validation of local coal and gas severance tax ordinances and local coal and gas road improvement tax ordinances

A. All ordinances adopted pursuant to §§ 58.1-3712 and 58.1-3713 prior to October 1, 1989, shall be valid as if they had been enacted as of January 1, 1985, as long as similar ordinances had been validly enacted under the predecessor provisions to §§ 58.1-3712 and 58.1-3713 and in substantial compliance therewith. Any such local tax ordinances are declared to be validly adopted and enacted as of January 1, 1985, notwithstanding the failure of the locality to change the reference in the local tax ordinance after the enactment of this title, effective January 1, 1985.

B. All ordinances adopted pursuant to §§ 58.1-3712, 58.1-3713, and 58.1-3713.4 prior to January 1, 2001, shall be valid and presumed to include all the provisions of §§ 58.1-3712, 58.1-3713, and 58.1-3713.4 as long as such ordinances were in substantial compliance therewith at the time of their adoption.

C.1. Any locality that imposed the tax under § 58.1-3712, 58.1-3713, or 58.1-3713.4 for the 2008, 2009, 2010, or 2011 license year for coal, gas, or oil severed from the earth prior to July 1, 2013, shall (if it has not already done so by the effective date of this subsection) amend its local ordinance with regard to such taxes to adopt or include the uniform ordinance provisions of § 58.1-3703.1, with the exception of subdivisions A 1 and A 3 of such section, in the local ordinance with an effective date retroactive to the 2008 license year. As of the effective date of this subsection, each such locality shall allow all persons assessed with such taxes for the 2008 license year or any license year thereafter to exercise all rights and remedies under § 58.1-3703.1, provided that subdivisions A 1 and A 3 of such section shall be inapplicable for purposes of the imposition, collection, or appeal of such taxes. Such rights and remedies shall include, but shall not be limited

to, the appeal procedures set forth under subdivisions A 5, A 6, and A 7 of § 58.1-3703.1. In addition, each such locality, upon the provisions of this subsection becoming effective, shall within 60 days thereof provide written notice to all persons upon whom the locality imposed one or more of the taxes under § 58.1-3712, 58.1-3713, or 58.1-3713.4 for license year 2008, 2009, 2010, or 2011 for coal, gas, or oil severed from the earth prior to July 1, 2013, informing the person that the locality has adopted or will adopt the uniform ordinance provisions of § 58.1-3703.1 with regard to such taxes, excluding subdivisions A 1 and A 3 of such section, retroactive to the 2008 license year and for each license year thereafter.

2. Any locality described in subdivision 1 that amends its local ordinance with regard to such taxes, or has amended the same prior to the effective date of this subsection, to expressly include, incorporate by reference, or adopt by incorporation the uniform ordinance provisions of § 58.1-3703.1 shall have met the requirement under subdivision 1 to amend its local ordinance with regard to such taxes, provided that the locality on or after the effective date of this subsection further amends its local ordinance to make such inclusion, incorporation by reference, or adoption by incorporation retroactive to the 2008 license year. Nothing in this subdivision shall relieve the locality from (i) the notice requirements under subdivision 1 or (ii) the requirement under subdivision 1 to allow all persons assessed with such taxes for the 2008 license year or any license year thereafter to exercise all rights and remedies under § 58.1-3703.1 except that subdivisions A 1 and A 3 of such section shall be inapplicable for purposes of the imposition, collection, or appeal of such taxes.

3. Each locality amending its ordinance pursuant to subdivision 1 or 2 shall amend its ordinance in accordance with the respective subdivision within 90 days of the effective date of this subsection.

4. Each local ordinance amended as provided under this subsection shall be deemed valid and properly enacted for purposes of any tax imposed pursuant to § 58.1-3712, 58.1-3713, or 58.1-3713.4 for license year 2008, 2009, 2010, 2011, or 2012 for coal, gas, or oil severed from the earth prior to July 1, 2013. Further, each such ordinance shall be deemed to have met the requirement of subsection A of § 58.1-3703.1 to include in the local ordinance provisions substantially similar to those set forth under such subsection.

5. a. Notwithstanding any other provision of law, any person assessed with a license tax under § 58.1-3712, 58.1-3713, or 58.1-3713.4 for license year 2008, 2009, 2010, 2011, 2012, or 2013 for coal, gas, or oil severed from the earth prior to July 1, 2013, shall be allowed to file an administrative appeal of the same under § 58.1-3703.1 to the commissioner of the revenue or other local assessing official only during the period beginning July 1, 2013, and ending July 1, 2014. Such person shall be allowed to file the administrative appeal regardless of whether an appealable event, as defined in § 58.1-3703.1, occurs on or after the effective date of this subsection. Such appeal to the commissioner of the revenue or other local assessing official may be further appealed to the Tax Commissioner pursuant to subdivision A 6 of § 58.1-3703.1 and to the appropriate circuit

court pursuant to subdivision A 7 of § 58.1-3703.1, in accordance with the procedures and time frames for the appeal as provided under the respective subdivision.

If a locality, however, makes an additional assessment of tax on or after January 1, 2014, for license year 2013, 2012, or 2011 for coal, gas, or oil severed from the earth prior to July 1, 2013, then such additional assessment may be appealed within the time frame provided under § 58.1-3703.1 notwithstanding the provisions of this subdivision.

b. Notwithstanding any other provision of law, any person assessed with a license tax under § 58.1-3712, 58.1-3713, or 58.1-3713.4 for license year 2008, 2009, 2010, 2011, 2012, or 2013 for coal, gas, or oil severed from the earth prior to July 1, 2013, who elects not to file an appeal of the same pursuant to § 58.1-3703.1 may apply for relief of the same pursuant to § 58.1-3980 or 58.1-3984 only during the period beginning July 1, 2013, and ending July 1, 2014. If such person elects not to file an appeal of such license tax pursuant to § 58.1-3703.1 but applies for relief of the same pursuant to § 58.1-3980 or 58.1-3984, then the period for collecting any such license tax shall expire as provided in § 58.1-3940, two years after a final determination pursuant to § 58.1-3981, or two years after the final decision in a court application pursuant to § 58.1-3984, whichever is later.

If a locality, however, makes an additional assessment of tax on or after January 1, 2014, for license year 2013, 2012, or 2011 for coal, gas, or oil severed from the earth prior to July 1, 2013, then such person so assessed may apply for relief of such assessment pursuant to § 58.1-3980 or 58.1-3984 within the time frame provided under the applicable section notwithstanding the provisions of this subdivision, and the period for collecting any such additional assessment shall be as provided under Title 58.1 or other controlling law notwithstanding the provisions of this subdivision.

c. Notwithstanding the provisions of § 58.1-3940, the period for collecting any license tax imposed under § 58.1-3712, 58.1-3713, or 58.1-3713.4 for license years 2008 and 2009 for coal, gas, or oil severed from the earth prior to July 1, 2013, shall expire on January 1, 2014, unless a longer period is provided under law.

d. Notwithstanding any other provision of law, collection activity shall be suspended on the assessment of additional license tax for license year 2008, 2009, 2010, or 2011 for coal, gas, or oil severed from the earth prior to July 1, 2013, pursuant to § 58.1-3712, 58.1-3713, or 58.1-3713.4. In addition, collection activity shall be suspended on the assessment of additional license tax for license year 2012 or 2013 for such taxes on coal, gas, or oil severed from the earth prior to July 1, 2013, provided that, in filing severance tax returns for the severance of coal, gases, or oil from the earth in the locality in license year 2012 and 2013, the person filing the return includes with the return a good faith payment of the tax due or a good faith report of the tax due. The good faith payment or report of tax due shall be in accordance with the methodology used by that person as of January 1, 2010, to report the person's gross receipts to the locality for purposes of such taxes

unless such person and the locality have entered into a contract or agreement on an alternate methodology to report the person's gross receipts. As used in this subsection, "additional license tax" means all amounts of license tax, penalty, and interest that are in addition to the amount of license tax paid by a person or reported by a person as due in filing severance tax returns for the severance of coal, gases, or oil from the earth in the locality. Collection activity shall not be required to be suspended if collection of any tax, interest, or penalty is jeopardized by delay as defined in § 58.1-3703.1. However, nothing herein shall be construed or interpreted as to require the suspension of collection activity for any amount of unpaid license tax (and any interest and penalty related thereto) reported by a person as due in filing a severance tax return for the severance of coal, gas, or oil from the earth.

Collection activity on additional license tax for license year 2008, 2009, 2010, or 2011 for coal, gas, or oil severed from the earth prior to July 1, 2013, may commence on July 1, 2013, unless other law requires the suspension of collection activity. Collection activity on additional license tax for license year 2012 or 2013 for coal, gas, or oil severed from the earth prior to July 1, 2013, if suspended pursuant to this subdivision, may commence on or after July 1, 2013, unless other law requires the suspension of collection activity.

6. Except as otherwise provided in subdivision 5, nothing in this subsection shall be construed or interpreted as extending or decreasing any limitations period for appealing any of the taxes imposed under § 58.1-3712, 58.1-3713, or 58.1-3713.4 for coal, gas, or oil severed from the earth prior to July 1, 2013, or extending any period for the collection of such taxes.

1989, c. 380; 2001, cc. 294, 303; 2012, cc. 665, 722; 2013, cc. 208, 305, 391, 618; 2016, c. 305.

§ 58.1-3713.4. Additional one percent tax on gas

Notwithstanding the rate limitations established in §§ 58.1-3712 and 58.1-3713, a county or city may levy an additional license tax on every person engaging in the business of severing gases from the earth. The license tax shall be at a rate not to exceed one percent of the gross receipts from the sale of gases severed within the county or city. The provisions of § 58.1-3712 as they relate to measurement of gross receipts shall be applicable to this section. The revenue received from such additional tax shall be paid into the general fund of the county or city from where the gases are severed. However, in the Counties of Buchanan, Dickenson, Lee, Russell, Scott, Tazewell, and Wise and the City of Norton one-half of the revenues derived from such tax shall be paid to the Virginia Coalfield Economic Development Fund.

1990, cc. 165, 853; 2002, c. 433.

§ 58.1-3713.5. Repealed

Repealed by Acts 2013, cc. 305 and 618, cl. 2.

§ 58.1-3714. Contractors; credits against tax; effect upon authority of towns; workers' compensation requirements; penalty

A. Whenever a license tax is levied on contractors by any county, city or town, the governing body of such county, city or town may, in its discretion, require a bond from the person licensed, with such surety, penalty and conditions as it may deem proper.

B.1. The governing body of any county, city or town shall not issue or reissue a business license under this chapter to any contractor who (i) has not obtained or is not maintaining workers' compensation coverage for his employees and (ii) at the time of application for such issuance or reissuance, is required to obtain or maintain such coverage pursuant to Chapter 8 (§ 65.2-800 et seq.) of Title 65.2.

2. Each such governing body shall require every contractor to provide written certification at the time of any application for issuance or reissuance of a business license that such contractor is in compliance with the provisions of Chapter 8 of Title 65.2 and will remain in compliance with such provisions at all times during the effective period of any such business license.

3. The governing body of any county, city or town shall forward such signed certification to the Virginia Workers' Compensation Commission, who shall conduct periodic audits of selected contractors to whom such body has issued business licenses to ensure the compliance of such contractors with the requirements of this subsection and the provisions of Chapter 8 of Title 65.2.

4. Any person who knowingly presents or causes to be presented to the governing body a false certificate shall be guilty of a Class 3 misdemeanor.

C. If, within any county imposing a license tax on contractors, there is situated a town which imposes a similar tax upon contractors, the business, firm, corporation or individual subject to such town license tax shall be entitled, upon displaying evidence that such town license taxes have been paid, to receive a credit on the license taxes imposed by the county to the extent of the license taxes paid to such town.

D. For the purpose of license taxation pursuant to § 58.1-3703, the term "contractor" means any person, firm or corporation:

1. Accepting or offering to accept orders or contracts for doing any work on or in any building or structure, requiring the use of paint, stone, brick, mortar, wood, cement, structural iron or steel, sheet iron, galvanized iron, metallic piping, tin, lead, or other metal or any other building material;

2. Accepting or offering to accept contracts to do any paving, curbing or other work on sidewalks, streets, alleys, or highways, or public or private property, using asphalt, brick, stone, cement, concrete, wood or any composition;

3. Accepting or offering to accept an order for or contract to excavate earth, rock, or other material for foundation or any other purpose or for cutting, trimming or maintaining rights-of-way;

4. Accepting or offering to accept an order or contract to construct any sewer of stone, brick, terra cotta or other material;

5. Accepting or offering to accept orders or contracts for doing any work on or in any building or premises involving the erecting, installing, altering, repairing, servicing, or maintaining electric wiring, devices or appliances permanently connected to such wiring, or the erecting, repairing or maintaining of lines for the transmission or distribution of electric light and power; or

6. Engaging in the business of plumbing and steam fitting.

Code 1950, § 58-302.1; 1962, c. 553; 1984, c. 675; 1998, c. 503.

§ 58.1-3715. License requirements for contractors

A. When a contractor has paid any local license tax required by the county, city or town in which his principal office and any branch office or offices may be located, no further license or license tax shall be required by any other county, city or town for conducting any such business within the confines of this Commonwealth. However, when the amount of business done by any such contractor in any other county, city or town exceeds the sum of $25,000 in any year, such other county, city or town may require of such contractor a local license, and the amount of business done in such other county, city or town in which a license tax is paid may be deducted by the contractor from the gross revenue reported to the county, city or town in which the principal office or any branch office of the contractor is located.

B. Any contractor, as defined in § 58.1-3714 D, conducting business in a county, city or town for less than thirty days without a definite place of business in any county, city or town of the Commonwealth shall be subject to the license fee or license tax imposed on contractors by any county, city or town, where the amount of business done by the contractor in such county, city or town exceeds or will exceed the sum of $25,000 for the license year.

That portion of the gross receipts of a contractor subject to the license tax pursuant to this subsection shall not be subject to such tax in any other county, city or town.

Code 1950, § 58-299; 1952, c. 528; 1982, c. 633; 1984, c. 675; 1999, c. 203.

§ 58.1-3716. Wholesale merchants

No county, city or town shall impose a license tax on wholesale merchants at an aggregate rate in excess of 5 cent(s) per $100 of purchases except in those counties, cities or towns where the local rate in effect on January 1, 1964 was in excess of such rate, in which case such localities are hereby prohibited from increasing such rate as in effect on January 1, 1964.

Code 1950, § 58-441.49; 1966, c. 151; 1982, c. 555; 1984, cc. 675, 695.

§ 58.1-3717. Peddlers; itinerant merchants

A. For the purpose of license taxation pursuant to § 58.1-3703, any person who shall carry from place to place any goods, wares or merchandise and offer to sell or barter the same, or actually sell or barter the same, shall be deemed to be a peddler.

B. For the purpose of license taxation pursuant to § 58.1-3703, the term "itinerant merchant" means any person who engages in, does, or transacts any temporary or transient business in any

county, city or town and who, for the purpose of carrying on such business, occupies any location for a period of less than one year.

C. Any tax imposed pursuant to § 58.1-3703 on peddlers and itinerant merchants shall not exceed $500 per year. Dealers in precious metals shall be taxed at rates provided in § 58.1-3706.

D. This section shall not apply to a peddler at wholesale or to those who sell or offer for sale in person or by their employees ice, wood, charcoal, meats, milk, butter, eggs, poultry, game, vegetables, fruits or other family supplies of a perishable nature or farm products grown or produced by them and not purchased by them for sale. A dairyman who uses upon the streets of any city one or more vehicles may sell and deliver from his vehicles, milk, butter, cream and eggs in such city without procuring a peddler's license.

E. The local governing body imposing such tax may by ordinance designate the streets or other public places on or in which all licensed peddlers or itinerant merchants may sell or offer for sale their goods, wares or merchandise.

Code 1950, §§ 58-266.8, 58-340; 1982, c. 633; 1983, c. 550; 1984, c. 675.

§ 58.1-3718. Counties, cities and towns authorized to levy a license tax on peddlers at wholesale

A. For purposes of the license tax authorized in § 58.1-3703, any person, firm or corporation, who or which sells or offers to sell goods, wares or merchandise to licensed dealers, other than at a definite place of business operated by the seller, and at the time of such sale or exposure for sale delivers, or offers to deliver, the goods, wares or merchandise to the buyer shall be deemed a peddler at wholesale. For purposes of this section any delivery made on the day of sale shall be construed as a delivery at the time of sale.

B. The license tax imposed by any locality on a peddler at wholesale shall not be at a rate greater than the rate imposed by such locality on a wholesale merchant selling similar goods, wares or merchandise in such locality at one definite place of business.

Code 1950, § 58-354; 1950, p. 894; 1984, c. 675.

§ 58.1-3719. Limitations on license taxes imposed on peddlers, itinerant merchants and peddlers at wholesale

A. Any license tax imposed on peddlers or itinerant merchants or on peddlers at wholesale shall not apply to:

1. A licensed wholesale dealer who sells and, at the time of such sale, delivers merchandise to retail merchants;

2. A distributor or vendor of motor fuels and petroleum products;

3. A distributor or vendor of seafood who catches seafood and sells only the seafood caught by him;

4. A farmer or producer of agricultural products who sells only the farm or agricultural products produced or grown by him;

5. A farmers' cooperative association;

6. A manufacturer who is subject to Virginia tax on intangible personal property who peddles at wholesale, only the goods, wares or merchandise manufactured by him at a plant, whose intangible personal property is taxed by this Commonwealth.

Code 1950, §§ 58-266.8, 58-354; 1950, p. 894; 1982, c. 633; 1983, c. 550; 1984, c. 675.

§ 58.1-3719.1. Direct sellers; rate limitation

A. Notwithstanding any other provision of this chapter, no county, city or town shall levy any license tax on a direct seller, as defined herein, unless the total sales of such seller exceed $4,000 per year. The rate of tax levied on a direct seller whose total sales exceed $4,000 per year shall not be greater than 20 cent(s) per $100 of retail sales or 5 cent(s) per $100 of wholesale sales, whichever is applicable. The situs for the local license taxation of such direct seller shall be the county, city or town in which such person maintains his place of abode.

B. As used in this section the term "direct seller" means any person who:

1. Engages in the trade or business of selling or soliciting the sale of consumer products primarily in private residences and maintains no public location for the conduct of such business; and

2. Receives remuneration for such activities, with substantially all of such remuneration being directly related to sales or other sales-oriented services, rather than to the number of hours worked; and

3. Performs such activities pursuant to a written contract between such person and the person for whom the activities are performed and such contract provides that such person will not be treated as an employee with respect to such activities for federal tax purposes.

Code 1950, § 58-266.11; 1984, c. 247.

§ 58.1-3720. Amusement machines; gross receipts tax on amusement operators

A. Any license tax imposed on amusement machines by any county, city or town shall be imposed in any amount not exceeding the sum of $200 for the operation of ten or more coin-operated amusement machines. For the operation of less than ten coin-operated amusement machines, any county, city or town shall have discretionary authority to impose on the operator such license tax less than $200 as is deemed appropriate. The term "amusement operator" means any person leasing, renting or otherwise furnishing or providing a coin-operated amusement machine in the county, city or town; however, the term "amusement operator" shall not include a person owning less than three such machines and operating such machines on property owned or leased by such person. Notwithstanding the situs requirements of § 58.1-3707, any county, city, or town may impose the license tax on the amusement operator when his coin-operated machines are located therein.

B. In addition, any county, city or town may levy and provide for the assessment and collection of a gross receipts tax on any amusement operator, as defined herein, only on the share of the receipts actually received by such operator from coin machines operated within that city, county or town. Any ordinance imposing such tax shall be subject to the limitations in § 58.1-3706 of this chapter.

Code 1950, § 58-266.1; 1950, p. 155; 1956, c. 242; 1964, c. 424; 1968, c. 619; 1970, cc. 231, 547; 1974, cc. 196, 438; 1975, cc. 23, 621; 1976, cc. 521, 719; 1977, c. 320; 1978, cc. 772, 799, 817; 1979, cc. 565, 568, 570; 1980, cc. 318, 736; 1981, cc. 419, 636; 1982, cc. 348, 548, 552, 554, 558, 633; 1983, c. 554; 1984, cc. 247, 675, 695.

§ 58.1-3721. License exemptions for coin machine operators

The coin machine operator's license tax authorized by § 58.1-3720 shall not be applicable to operators of weighing machines, automatic baggage or parcel checking machines or receptacles, nor to operators of vending machines which are so constructed as to do nothing but vend goods, wares and merchandise or postage stamps or provide service only, nor to operators of viewing machines or photomat machines, nor operators of devices or machines affording rides to children or for the delivery of newspapers.

Code 1950, § 58-359; 1954, c. 522; 1958, c. 510; 1966, c. 562; 1968, c. 610; 1976, c. 719; 1984, c. 675.

§ 58.1-3722. Stickers to evidence payment of tax

The commissioner of the revenue of any county, city or town imposing a tax on operators of coin machines or devices as provided in § 58.1-3720 shall prepare and issue a license which, when signed by the commissioner of the revenue issuing such license, shall evidence the payment of the license tax.

Every operator shall furnish to the commissioner of the revenue of any county, city or town imposing a license tax on the operation of such machines pursuant to § 58.1-3720, a complete list of all machines on location and the address of each location on or before January 31 of each year.

Each machine shall have conspicuously located thereon a decal, sticker or other adhesive label, no less than 1 x 2 inches in size, clearly denoting the operator's name and address.

Code 1950, § 58-357; 1976, c. 719; 1984, c. 675.

§ 58.1-3723. Penalty

Any person, firm or corporation providing any such coin machines or other devices and failing to procure a county, city or town license, if levied and assessed as provided by § 58.1-3720 shall be subject to a fine as established by ordinance pursuant to § 15.2-1429 for each offense and the machine or other device shall become forfeited to the county, city or town imposing such license tax.

Code 1950, § 58-360; 1976, c. 719; 1984, c. 675.

§ 58.1-3724. Bondsmen

A. As used in this section, "professional bondsman" means a person who is a property bail bondsman, as such term is defined in § 9.1-185.

B. The governing body of any county or city may by ordinance require that every person who shall, for compensation, enter into any bond or bonds for others, whether as a principal or surety, shall obtain a revenue license, the amount of which shall be prescribed in such ordinance. No professional bondsman or his agent shall enter into any such bond or bonds in any such county or city until he shall have obtained such license, unless he has obtained such required license in another city or county, in which he engages in the business of bail bonding.

C. With the exception of any bondsman or his agent who has heretofore obtained a certificate and license under this section and whose certificate, license and right to act as a bondsman continues to remain in full force and effect, no such license shall be issued by the authorities of any such county or city unless and until the applicant shall have first obtained a bail bondsman license from the Department of Criminal Justice Services.

D. Any ordinance enacted pursuant to the provisions of this section may provide for revocation of licenses for failure to comply with the terms of such ordinance and may in addition prescribe penalties for violations thereof.

Code 1950, § 58-371.2; 1950, p. 83; 1952, c. 441; 1956, c. 26; 1958, c. 531; 1960, c. 523; 1964, c. 576; 1966, c. 321; 1970, c. 509; 1972, c. 769; 1975, c. 285; 1976, c. 199; 1980, c. 716; 1981, c. 543; 1984, c. 675; 2003, c. 979; 2004, c. 460.

§ 58.1-3725. Repealed

Repealed by Acts 1996, cc. 715 and 720, effective January 1, 1997.

§ 58.1-3726. Fortune-tellers, clairvoyants and practitioners of palmistry

For the purpose of license taxation pursuant to § 58.1-3703, any person who, for compensation, shall pretend to tell fortunes, assume to act as a clairvoyant, or to practice palmistry or phrenology shall be deemed a fortune-teller. No license tax on fortune-tellers imposed pursuant to this chapter shall exceed $1,000 per year. The governing body of any county, city or town may provide that any person who engages in business as a fortune-teller without the license required shall be guilty of a Class 3 misdemeanor.

Code 1950, § 58-377.1; 1982, c. 633; 1984, c. 675.

§ 58.1-3727. Photographers with no regularly established place of business in the Commonwealth; rate limitations

For the purpose of license taxation pursuant to § 58.1-3703, the term "photographer" shall mean any person, partnership or corporation having no regularly established place of business in the Commonwealth who provides services consisting of the taking of pictures or the making of pictorial reproductions in the Commonwealth. The term shall also include every employee, agent or canvasser for such photographer. Nothing in this section shall apply to (i) amateur

photographers who expose, develop and finish their own work and who do not receive compensation for such work or receive compensation for performing any of the processes of photography; (ii) coin-operated photography machines; or (iii) photographers providing service in the course of their employment by newspapers, magazines or television stations.

The license tax levied on photographers by a county, city or town with a population of 2,000 or less shall not exceed ten dollars per year. In a county, city or town with a population greater than 2,000 the tax shall not exceed thirty dollars per year.

Code 1950, § 58-393.1; 1958, c. 527; 1972, c. 345; 1982, c. 633; 1984, c. 675.

§ 58.1-3728. Carnivals, circuses, speedways; penalties; certain restrictions

A. Pursuant to the authority granted in § 58.1-3703, the governing body of any county, city or town may levy and collect a license tax, the amount to be fixed by the governing body of such county, city or town, for each performance held in such county, city or town given by or upon carnivals, circuses or speedways which are operating within the limits of such county, city or town. Until such tax has been paid, the county, city or town shall have a lien upon the property of such carnival, circus or speedway to the extent of the unpaid tax.

Every person, firm, company or corporation which exhibits or gives a performance or exhibition of any of the shows, carnivals, or circuses, above described in this section, without the license required shall be fined not less than $50 nor more than $500 for each offense.

The governing body of any county, city or town may also levy and collect, in addition to any other license tax imposed by this section, a license tax not to exceed $1,000 for each performance of a traveling circus, carnival or show giving performances in this Commonwealth in the open air or in a tent or tents, within fifteen days previous to, or during the week of, or within one week after the time of holding any agricultural fair in any such county, city or town in this Commonwealth. The license taxes provided for in this section shall be assessed and paid before any performance is permitted to be held.

It shall be unlawful for any circus, carnival or show to publish or post in any way, in any county, city or town, at any time within fifteen days prior to the holding of such fair, in such county, city or town, advertising of the exhibition of any such circus, carnival or show.

The governing body of any county, city or town is hereby authorized to levy and collect a fine not to exceed $2,000 for each offense of any person, firm, company or corporation violating any provision of this section. The provisions of this section shall not apply to circuses, carnivals or shows inside the grounds of any agricultural fair held in any county, city or town.

For the purpose of this section a "carnival" shall mean an aggregation of shows, amusements, concessions, eating places and riding devices or any of them, operated together on one lot or street or on contiguous lots or streets, moving from place to place, whether or not the same are owned and actually operated by separate persons, firms or corporations.

B. A resident mechanic or artist may exhibit any production of his own art or invention without compensation and no registration, bond or license may be required of any industrial arts exhibit or of any agricultural fair or the shows exhibited within the grounds of such fair or fairs, during the period of such fair, whether an admission is charged or not. In addition, no registration, bond or license may be required of resident persons performing in a show or exhibition for charity or other benevolent purposes, or of exhibitions of volunteer fire companies, whether an admission is charged or not. Whenever such show, exhibition or performance is given, whether licensed or exempted by the terms of this subsection, those persons performing or acting in a show, exhibition or performance and operating under either license or exemption, shall be exempt from such tax.

The provisions of the preceding paragraph shall not be construed to allow, without payment of the tax imposed by this section, a performance for charitable or benevolent purposes by a company, association or persons, or a corporation, in the business of giving such exhibitions, no matter what terms of contract may be entered into or under what auspices such exhibition is given by such company, association or persons, or corporation. It is the intent and meaning of this section that every company, association, person, or corporation in the business of giving exhibitions for compensation, whether a part of the proceeds are for charitable or benevolent purposes or not, shall pay the tax imposed by the authority of this section. Such tax shall not be imposed on a bona fide local association or corporation organized for the principal purpose of holding legitimate agricultural exhibitions or industrial arts exhibits when they rent or lease fair or exhibition grounds or buildings for the purpose of giving such exhibitions or performances and exhibit therein agricultural or industrial arts products as a part of such exhibition.

Code 1950, § 58-266.7; 1982, c. 633; 1984, c. 675.

§ 58.1-3729. Permanent coliseums, arenas or auditoriums; limitations

Pursuant to the authority granted in § 58.1-3703, the governing body of any county, city or town may levy and collect a license tax on any permanent coliseum, arena or auditorium having a maximum seating capacity in excess of 10,000 persons and open to the general public.

Any person may present, conduct, operate or provide amusements, exhibitions, sporting events, theatrical performances or any other lawful performances, exhibitions or entertainment under a single license authorized by this section. Notwithstanding any other provision of this chapter, any license imposed by this section shall be in lieu of any or all licenses required for exhibitions, performances or events occurring within such coliseum, arena or auditorium.

The license tax on the operation of any such permanent coliseum, arena or auditorium shall be no greater than $1,000 per year. If such coliseum, arena or auditorium are owned and operated by a political subdivision of the Commonwealth of Virginia, there shall be no tax.

Code 1950, § 58-266.9; 1982, c. 633; 1984, c. 675.

§ 58.1-3730. Savings institutions and credit unions; limitations

Any license tax levied by a county, city or town on savings institutions or on state-chartered credit unions shall be no greater than fifty dollars and shall be levied only where the main office of such savings institution or credit union is located.

Code 1950, § 58-266.10; 1982, c. 633; 1984, c. 675; 1991, c. 430; 1996, c. 77.

§ 58.1-3730.1. Industrial loan associations and agricultural credit associations; limitations
Any license tax levied by a county, city, or town on industrial loan associations or any agricultural credit association created pursuant to the Agricultural Credit Act of 1987 shall not exceed $500.

1988, c. 419; 1990, c. 278 .

§ 58.1-3731. Certain public service corporations; rate limitation
Every county, city or town is hereby authorized to impose a license tax, in addition to any tax levied under Chapter 26 (§ 58.1-2600 et seq.) of this title, on (i) telephone and telegraph companies; (ii) water companies; and (iii) heat, light and power companies (except electric suppliers, gas utilities and gas suppliers as defined in § 58.1-400.2 and pipeline distribution companies as defined in § 58.1-2600) 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 such county, city or town. However, in the case of telephone companies, charges for long distance telephone calls shall not be included in gross receipts for purposes of license taxation. After December 31, 2000, the license tax authorized by this section shall not be imposed on pipeline distribution companies as defined in § 58.1-2600 or on gas suppliers, gas utilities or electric suppliers as defined in § 58.1-400.2, except upon gross receipts for calendar year 2000 as provided in §§ 58.1-2901 D and 58.1-2905 D.

Code 1950, §§ 58-578, 58-603; 1968, c. 637; 1971, Ex. Sess., c. 41; 1972, cc. 813, 858; 1976, c. 778; 1978, c. 786; 1980, c. 668; 1982, c. 633; 1984, c. 675; 1987, c. 244; 1999, c. 971; 2000, cc. 691, 706; 2001, cc. 829, 861.

§ 58.1-3732. Exclusions and deductions from "gross receipts."
A. Gross receipts for license tax purposes shall not include any amount not derived from the exercise of the licensed privilege to engage in a business or profession in the ordinary course of business.

The following items are excluded:

1. Amounts received and paid to the United States, the Commonwealth or any county, city or town for the Virginia retail sales or use tax, for any local sales tax or any local excise tax on cigarettes, or amounts received for any federal or state excise taxes on motor fuels.

2. Any amount representing the liquidation of a debt or conversion of another asset to the extent that the amount is attributable to a transaction previously taxed (e.g., the factoring of accounts receivable created by sales which have been included in taxable receipts even though the creation of such debt and factoring are a regular part of its business).

3. Any amount representing returns and allowances granted by the business to its customers.

4. Receipts which are the proceeds of a loan transaction in which the licensee is the obligor.

5. Receipts representing the return of principal of a loan transaction in which the licensee is the creditor, or the return of principal or basis upon the sale of a capital asset.

6. Rebates and discounts taken or received on account of purchases by the licensee. A rebate or other incentive offered to induce the recipient to purchase certain goods or services from a person other than the offeror, and which the recipient assigns to the licensee in consideration of the sale goods and services shall not be considered a rebate or discount to the licensee, but shall be included in the licensee's gross receipts together with any handling or other fees related to the incentive.

7. Withdrawals from inventory for purposes other than sale or distribution and for which no consideration is received and the occasional sale or exchange of assets other than inventory whether or not a gain or loss is recognized for federal income tax purposes.

8. Investment income not directly related to the privilege exercised by a business subject to licensure not classified as rendering financial services. This exclusion shall apply to interest on bank accounts of the business, and to interest, dividends and other income derived from the investment of its own funds in securities and other types of investments unrelated to the licensed privilege. This exclusion shall not apply to interest, late fees and similar income attributable to an installment sale or other transaction that occurred in the regular course of business.

B. The following shall be deducted from gross receipts or gross purchases that would otherwise be taxable:

1. Any amount paid for computer hardware and software that are sold to a United States federal or state government entity provided that such property was purchased within two years of the sale to said entity by the original purchaser who shall have been contractually obligated at the time of purchase to resell such property to a state or federal government entity. This deduction shall not occur until the time of resale and shall apply to only the original cost of the property and not to its resale price, and the deduction shall not apply to any of the tangible personal property which was the subject of the original resale contract if it is not resold to a state or federal government entity in accordance with the original contract obligation.

2. Any receipts attributable to business conducted in another state or foreign country in which the taxpayer (or its shareholders, partners or members in lieu of the taxpayer) is liable for an income or other tax based upon income.

Code 1950, § 58-266.1; 1950, p. 155; 1956, c. 242; 1964, c. 424; 1968, c. 619; 1970, cc. 231, 547; 1974, cc. 196, 438; 1975, cc. 23, 621; 1976, cc. 521, 719; 1977, c. 320; 1978, cc. 772, 799, 817; 1979, cc. 565, 568, 570; 1980, cc. 318, 736; 1981, cc. 419, 636; 1982, cc. 348, 548, 552, 554, 558, 633; 1983, c. 554; 1984, cc. 247, 675, 695; 1992, c. 632; 1996, cc. 715, 720; 2002, c. 346; 2007, cc. 85, 834.

§ 58.1-3732.1. Limitation on gross receipts; pari-mutuel wagering

Gross receipts for license tax purposes under Chapter 37 (§ 58.1-3700 et seq.) shall not include the license and admission taxes established under §§ 59.1-392 and 59.1-393, respectively, nor shall it include pari-mutuel wagering pools as established under Article 1.1 (§ 18.2-340.15 et seq.) of Chapter 8 of Title 18.2 or § 59.1-392.

1992, c. 820; 2013, cc. 36, 350.

§ 58.1-3732.2. Limitation on gross receipts

Gross receipts of real estate brokers for license tax purposes under Chapter 37 (§ 58.1-3700 et seq.) of this title shall not include amounts received by any broker that arise from real estate sales transactions to the extent that such amounts are paid to a real estate agent as a commission on any real estate sales transaction and the agent is subject to the business license tax on such receipts. The broker claiming the exclusion shall identify on its license application each agent to whom the excluded receipts have been paid, and the jurisdiction in the Commonwealth of Virginia to which the agent is subject to business license taxes.

In the event that a real estate agent receives the full commission from the broker less an adjustment for the business license tax paid by the broker on such commissions and the agent pays a desk fee to the broker, the desk fee and other overhead costs paid by the agent to a broker shall not be included in the broker's gross receipts. If the agent files separately, the agent must identify on its license application the broker to whom such excluded receipts have been paid, and the amount of such receipts that were included in the broker's license application.

1994, c. 397; 2002, c. 532.

§ 58.1-3732.3. Limitation on gross receipts of providers of funeral services

Gross receipts of providers of funeral services for license tax purposes under Chapter 37 (§ 58.1-3700 et seq.) of this title shall not include amounts collected by any provider of funeral services on behalf of, and paid to, another person providing goods or services in connection with a funeral. The exclusion provided by this section shall apply if the goods or services were contracted for by the provider of funeral services or his customer. A provider of funeral services claiming the exclusion shall identify on its license application each person to whom the excluded receipts have been paid and the amount of the excluded receipts paid by the provider of funeral services to such person. As used in this section, "provider of funeral services" means any person engaged in the funeral service profession, operating a funeral service establishment, or acting as a funeral director or embalmer.

1998, c. 220.

§ 58.1-3732.4. Limitation on gross receipts; staffing firms

A. Gross receipts for license tax purposes under this chapter shall not include employee benefits paid by a staffing firm to, or for the benefit of, any contract employee for the period of time that the contract employee is actually employed for the use of the client company pursuant to the

terms of a PEO services contract or temporary help services contract. The taxable gross receipts of a staffing firm shall include any administrative fees received by such firm from a client company, whether on a fee-for-service basis or as a percentage of total receipts from the client company.

B. For the purpose of this section:

"Client company" means a person that enters into a contract with a staffing firm by which the staffing firm, for a fee, provides PEO services or temporary help services.

"Contract employee" means an employee performing services under a PEO services contract or temporary help services contract.

"Employee benefits" means wages, salaries, payroll taxes, payroll deductions, workers' compensation costs, benefits, and similar expenses.

"PEO services" or "professional employer organization services" means an arrangement whereby a staffing firm assumes employer responsibility for payroll, benefits, and other human resources functions with respect to employees of a client company with no restrictions or limitations on the duration of employment.

"PEO services contract" means a contract pursuant to which a staffing firm provides PEO services for a client company.

"Staffing firm" means a person that provides PEO services or temporary help services.

"Temporary help services" means an arrangement whereby a staffing firm temporarily assigns employees to support or supplement a client company's workforce.

"Temporary help services contract" means a contract pursuant to which a staffing firm provides temporary help services for a client company.

1998, c. 347; 2005, c. 839.

§ 58.1-3732.5. Limitation on gross receipts of security brokers and dealers

Gross receipts of a security broker or security dealer for license tax purposes under this chapter shall not include amounts received by the broker or dealer that arise from the sale or purchase of a security to the extent that such amounts are paid to an independent registered representative as a commission on any sale or purchase of a security. The broker or dealer claiming the exclusion shall identify on the person's license application each independent registered representative to whom the excluded receipts have been paid and, if applicable, the jurisdictions in the Commonwealth of Virginia to which the independent registered representative is subject to business license taxes.

2010, cc. 195, 283.

§ 58.1-3733. License tax on commission merchants

Any person engaged in the business of selling merchandise on commission by sample, circular, or catalogue for a regularly established retailer, who has no stock or inventory under his control other than floor samples held for demonstration or sale and owned by the principal retailer, shall

be classified as a commission merchant and taxed only on commission income as provided for in category A 4 of § 58.1-3706. Such person engaged in such business shall not be subject to tax on total gross receipts from such sales.

Code 1950, § 58-266.1; 1950, p. 155; 1956, c. 242; 1964, c. 424; 1968, c. 619; 1970, cc. 231, 547; 1974, cc. 196, 438; 1975, cc. 23, 621; 1976, cc. 521, 719; 1977, c. 320; 1978, cc. 772, 799, 817; 1979, c. 565, 568, 570; 1980, cc. 318, 736; 1981, cc. 419, 636; 1982, cc. 348, 548, 552, 554, 558, 633; 1983, c. 554; 1984, cc. 247, 675, 695.

§ 58.1-3734. License tax on motor vehicle dealers

A. Notwithstanding the provisions of § 58.1-605, whenever any locality imposes a license tax applicable to motor vehicle dealers measured by the gross receipts of such dealer, the dealer may separately state the amount of tax applicable to each sale of a motor vehicle and add such tax to the sales price of the motor vehicle. It shall be unlawful for a motor vehicle dealer to collect an amount stated separately as such if such dealer knows the amount to be greater than the tax applicable to such sale. The failure of such merchant to recover the tax from the purchaser shall not relieve such merchant from the obligation to pay the tax to the locality. Any locality may provide by ordinance for the quarterly collection of the gross receipt taxes on such dealers who separately state during the year such receipts are earned.

B. A motor vehicle dealer who collects excess business license tax shall exercise due diligence to refund such tax, in excess of one dollar, to the purchaser within 120 days of discovering such overpayment, and such dealer shall produce evidence of such refund to the commissioner of the revenue or other local assessing officer upon the request of either. Any amounts that are not refunded to purchasers shall be remitted to the commissioner of the revenue or other local assessing officer. During a three-year period after receipt of such amounts, the commissioner of the revenue or other local assessing officer and the treasurer, as that term is defined in § 58.1-3123, shall refund such amounts as appropriate to purchasers who produce documentation verifying such overpayment. At the expiration of this period, the commissioner of the revenue or other local assessing officer shall consider these funds as additional business license tax. The locality may recover from the motor vehicle dealer its costs of mailing, printing, and other reasonably necessary administrative costs related to refunding such amounts to purchasers.

Code 1950, § 58-266.1; 1950, p. 155; 1956, c. 242; 1964, c. 424; 1968, c. 619; 1970, cc. 231, 547; 1974, cc. 196, 438; 1975, cc. 23, 621; 1976, cc. 521, 719; 1977, c. 320; 1978, cc. 772, 799, 817; 1979, cc. 565, 568, 570; 1980, cc. 318, 736; 1981, cc. 419, 636; 1982, cc. 348, 548, 552, 554, 558, 633; 1983, c. 554; 1984, cc. 247, 675, 695; 1999, cc. 862, 957.

§ 58.1-3734.1. Sales involving trade-ins

A. No locality shall assess omitted taxes against any motor vehicle dealer which calculated its gross receipts for license tax purposes by excluding the value of any vehicle accepted as a trade-in for periods of time prior to January 1, 1991, unless such locality enforced the requirement that

motor vehicle dealers include the amount of a trade-in vehicle in gross receipts for periods prior to January 1, 1990.

B. Whenever a motor vehicle dealer accepts a trade-in as part of a sale of a motor vehicle, the dealer's gross receipts for license tax purposes shall not include the amount of the trade-in.

1990, c. 670 .

§ 58.1-3735. Departments of license inspection in certain counties

The governing body of any county having a population of less than 41,000 and adjoining a city of more than 230,000 population and of any county having a population of more than 70,000, and adjoining 4 cities in this Commonwealth may by resolution provide for the creation of a department of license inspection with a license inspector in charge of such department. The license inspector shall be appointed by the governing body of the county. The license inspector shall enforce the ordinance of the county with regard to licenses and license taxes, review any and all records of the commissioner of revenue, other than income tax returns, and examine and audit the books of all persons, firms and corporations whom he has reasonable cause to believe are liable for payment of any license levied by the county. The license inspector shall be paid a salary for his services to be fixed by the governing body. The governing body of the county may employ any such person as it deems necessary for the operation of such department and may make such rules and regulations as it deems expedient for the operation of such department.

Code 1950, § 58-266.6; 1956, c. 57; 1962, c. 490; 1984, c. 675.

Chapter 37.1 - LOCAL COAL SEVERANCE LICENSE TAXES

§ 58.1-3740. Definitions

As used in this chapter, unless the context requires a different meaning:

"Coal producer" means any holder of an economic interest. Such persons shall be deemed to be engaged in the business of severing coal from the earth.

"Economic interest" means the interest possessed by a person who has acquired by capital investment any interest in the coal in place and secures, by any form of legal relationship, income from the extraction of the coal, to which he must look for a return of his capital. A person who has no capital investment in the coal deposit shall not possess an economic interest merely because through a contractual relation he possesses a mere economic or pecuniary advantage derived from production such as persons who have a contractual right to purchase or process the coal upon production or persons entitled to compensation for extracting or mining the coal. For purposes of this chapter, "economic interest" does not include interests possessed by a person who receives only royalty payments solely because of such royalty payments. Apart from the royalty interest exclusion in this definition, it is the intent of the General Assembly that "economic interest" shall have essentially the same meaning as for purposes of 26 C.F.R. § 1.611-1 .

"Gross receipts" means the purchase price received by a coal producer for the sale of coal to an unaffiliated purchaser in an arm's-length transaction. "Gross receipts" does not include the cost of transporting the coal to such an unaffiliated purchaser. In circumstances in which the coal is (i) utilized by the coal producer or an affiliated individual or entity or (ii) sold in a related-party transaction or under circumstances that indicate the sale is not an arm's-length transaction, "gross receipts" shall be determined by multiplying the volume of coal utilized or sold by (a) the average sale price received by the coal producer in arm's-length transactions for the sale of other coal reasonably deemed by the commissioner of the revenue or other local assessing official of the locality to be of comparable quality during the same time frame or (b) if no such other sales are available, the sale price of other coal reasonably deemed by the commissioner of the revenue or other local assessing official of the locality to be of comparable quality, sold by other coal producers engaged in the severance of similar coal within the county or city or neighboring counties or cities during the same time frame. No deductions shall be taken from gross receipts except for a deduction for non-local coal transportation and processing costs.

"Non-local coal transportation and processing costs" means only such costs applicable to coal that is severed in one county or city and then transported by the coal producer to another county or city for cleaning, preparation, or processing in order to achieve a dry and clean coal. "Non-local coal transportation and processing costs" includes the costs of transporting the coal from the county or city in which it was severed to the second county or city and the costs of cleaning, preparation, and processing that are incurred within that second county or city. Such costs shall not include any costs associated with blending dry and clean coals unless such blending occurs in the same non-local county or city to which the coal is initially transported for cleaning, preparation, or processing. The amount of the deduction for non-local coal transportation and processing costs shall be calculated by dividing the total actual costs incurred per ton in such non-local transportation, cleaning, preparation, and processing by the total costs per ton of mining, transportation, cleaning, preparation, and processing of such coal to derive a factor or percentage. Such factor or percentage shall then be multiplied by the gross receipts from the sale or utilization of such coal to determine the applicable deduction for non-local coal transportation and processing costs.

"Small mine" means a mine that sells less than 10,000 tons of coal per month.

2013, cc. 305, 618.

§ 58.1-3741. Counties and cities authorized to levy severance license tax on the sale of coal

A. The governing body of any county or city may levy a severance license tax on every coal producer that sells or utilizes coal severed from the earth within its jurisdiction. The rate of tax for the sale or utilization of coal from small mines shall be three-fourths of one percent of the gross receipts from the sale or utilization of such coal by the coal producer. The rate of tax for all other coal shall be one percent of the gross receipts from the sale or utilization of such coal by the coal producer.

No county or city that imposes the tax authorized by this subsection shall enact the provisions of § 58.1-3286 relating to a tax on gross receipts.

B. In addition to the tax imposed in subsection A, any county or city may impose a local coal road improvement severance license tax on every coal producer that sells or utilizes coal severed from the earth within its jurisdiction. The rate of tax for the sale or utilization of coal from small mines shall be three-fourths of one percent of the gross receipts from the sale or utilization of such coal by the coal producer. The rate of tax for all other coal shall be one percent of the gross receipts from the sale or utilization of such coal by the coal producer. The revenues from such tax shall be utilized as provided for under §§ 58.1-3713, 58.1-3713.01, and 58.1-3742.

C. Any county or city enacting a tax under this section may require coal producers and common carriers to maintain records and file reports showing the quantities of and receipts from coal that they have produced or transported.

2013, cc. 305, 618.

§ 58.1-3742. Distribution of local coal road improvement severance tax

Notwithstanding any other provision of law, the incorporated towns and city situated within the bounds of Wise County shall receive from the county 20 percent of all revenues collected under the local coal road improvement severance license tax imposed under the authority of subsection B of § 58.1-3741. The shares of such 20 percent shall be computed as follows: 25 percent shall be divided among the incorporated towns and the city based on the number of registered motor vehicles in each town and the city, and 75 percent shall be divided equally among the incorporated towns and city. Such funds shall be distributed to the treasurer of such towns and city on a quarterly basis as received by the county.

2013, cc. 305, 618.

§ 58.1-3743. Severance license taxes to be paid to jurisdiction in which coal is severed

All local coal severance license taxes levied pursuant to § 58.1-3741 shall be paid to the locality in which the coal is severed from the earth.

2013, cc. 305, 618.

§ 58.1-3744. Uniform ordinance provisions

The provisions of § 58.1-3703.1 with the exception of subdivisions A 1 and A 3 of such section shall apply to the taxes authorized by this chapter, mutatis mutandis.

2013, cc. 305, 618.

§ 58.1-3745. Lien on real estate and personal property of businesses severing coal

There shall be a priority lien upon a debtor's estate for all taxes due and owing under the authority granted by this chapter. Such lien shall be inferior only to real estate and personal property taxes, levies, and penalties; any obligation, bond, or instrument used in lieu of a bond to the

Department of Mines, Minerals and Energy under Title 45.1; and liens benefiting the Commonwealth. This lien shall not require a distraint action prior to enforcement.

The purchaser at a sale of real estate to which the lien under this section applies shall cause the proceeds of such sale to be applied to the payment of all taxes and levies assessed and due under the authority granted by this chapter, the provisions of § 55-59.4 notwithstanding. The words "taxes" and "levies" as used in this section include the penalties and interest accruing on such taxes and levies in pursuance of law. In addition to existing remedies for the collection of taxes and levies, the lien imposed hereby shall be enforceable in the same manner as provided in Article 4 (§ 58.1-3965 et seq.) of Chapter 39. There shall be a further lien upon the rents of such real estate, whether the same be in money or in kind, for taxes and levies of the current year.

2013, cc. 305, 618.

Chapter 38 - MISCELLANEOUS TAXES

Article 1 - RECORDATION TAX

§ 58.1-3800. Levy

In addition to the state recordation tax imposed by Chapter 8 (§ 58.1-800 et seq.) of this title, the governing body of any city or county is hereby authorized to impose a recordation tax, in an amount equal to one-third of the amount of the state recordation tax collectible for the Commonwealth, upon the first recordation of each taxable instrument in such city or county. No tax shall be levied under this section when the state recordation tax imposed under Chapter 8 (§ 58.1-800 et seq.) is fifty cents.

Code 1950, § 58-65.1; 1958, c. 590; 1972, c. 186; 1984, c. 675.

§ 58.1-3801. Taxation of instruments relating to property located in more than one jurisdiction

The tax imposed by a city or county pursuant to this article upon a deed or other instrument which conveys, covers, or relates to property located partially within such city or county shall be computed and collected only with respect to that portion of the property located in such city or county.

Code 1950, § 58-65.1; 1958, c. 590; 1972, c. 186; 1984, c. 675; 1988, c. 421.

§ 58.1-3802. Interpretation of article

This article shall not be construed as affecting or repealing any city charter provision.

Code 1950, § 58-65.1; 1958, c. 590; 1972, c. 186; 1984, c. 675.

§ 58.1-3803. Collection of tax; compensation for clerk

The tax imposed by this article shall be collected by the clerk of the circuit court for each city and county in whose office deeds or other instruments are offered for recordation or if the property is located in more than one city or county, by the respective clerks of each jurisdiction. The clerk

shall deposit all funds collected pursuant to this chapter into the treasury of the county or city in which such court is situated. Every clerk who collects the tax imposed by this chapter shall be entitled to compensation for such services in an amount equal to five percent of the amount so collected and paid over.

Code 1950, § 58-65.1; 1958, c. 590; 1972, c. 186; 1984, c. 675; 1988, c. 421.

§ 58.1-3804. Collection of tax for city having no court for recordation of deeds and other instruments

When any county imposes the tax authorized by this article and there is located in such county a city having no separate court in whose clerk's office deeds and other instruments are admitted to record, the governing body of such county shall at least semiannually pay into the treasury of such city an amount equal to the county tax collected on recordations with respect to property located in such city, less the proportionate compensation, if any, paid by the county to the clerk of court for his service in collecting the tax. The clerk of the court shall compile and furnish the necessary information to the governing body of the county to enable it to comply with this provision.

Code 1950, § 58-65.1; 1958, c. 590; 1972, c. 186; 1984, c. 675.

Article 2 - TAX ON WILLS AND ADMINISTRATIONS

§ 58.1-3805. Levy

In addition to the state tax and fee imposed by §§ 58.1-1712 and 58.1-1717.1, the governing body of any county and the council of any city may (i) impose a city or county tax in an amount equal to one-third of the amount of the state tax on the probate of a will or grant of administration on the probate of every such will or grant of administration and (ii) charge a $25 fee for the recordation of a list of heirs pursuant to § 64.2-509 or an affidavit pursuant to § 64.2-510, as provided in § 58.1-1717.1.

Code 1950, § 58-67.1; 1960, c. 60; 1984, c. 675; 2010, c. 266.

§ 58.1-3806. Collection of tax; compensation for clerk

The tax imposed by this article shall be collected by the clerk of court in whose office wills are admitted to probate or grants of administration are issued.

The clerk who collects the tax and pays the revenues collected into the treasury of the county or city shall be entitled to compensation for such service in an amount equal to five percent of the amount collected and remitted. Such compensation shall be paid out of the county or city treasury.

Code 1950, § 58-67.1; 1960, c. 60; 1984, c. 675.

§ 58.1-3807. Collection of tax for city having no court for probate of wills or issuance of grants of administration

When any county imposes the tax authorized by this article and there is located in such county a city having no separate court in whose clerk's office wills are admitted to probate or grants of administration are issued, the governing body of such county shall at least semiannually pay into

the treasury of such city an amount equal to the county tax collected on the probate of wills or grants of administration for each decedent residing within the corporate limits of such city at the time of his death, less the proportionate compensation, if any, paid by the county to the clerk for the collection of such tax. The clerk of the court shall compile and furnish the necessary information to the governing body of the county to enable it to comply with this provision.

Code 1950, § 58-67.1; 1960, c. 60; 1984, c. 675.

§ 58.1-3808. Interpretation of article
This article shall not be construed as affecting or repealing any city charter provision.

Code 1950, § 58-67.1; 1960, c. 60; 1984, c. 675.

Article 3 - WRIT TAXES

§§ 58.1-3809 through 58.1-3811. Repealed
Repealed by Acts 1985, c. 221.

Article 4 - CONSUMER UTILITY TAXES

§ 58.1-3812. Repealed
Repealed by Acts 2006, c. 780, cl. 2, effective January 1, 2007. See Editor's notes.

§ 58.1-3813. Repealed
Repealed by Acts 2000, c. 1064.

§ 58.1-3813.1. Repealed
Repealed by Acts 2006, c. 780, cl. 2, effective January 1, 2007. See Editor's notes.

§ 58.1-3814. Water or heat, light and power companies
A. Any county, city or town may impose a tax on the consumers of the utility service or services provided by any water or heat, light and power company or other corporations coming within the provisions of Chapter 26 (§ 58.1-2600 et seq.), which tax shall not be imposed at a rate in excess of 20 percent of the monthly amount charged to consumers of the utility service and shall not be applicable to any amount so charged in excess of $15 per month for residential customers. Any city, town or county that on July 1, 1972, imposed a utility consumer tax in excess of limits specified herein may continue to impose such a tax in excess of such limits, but no more. For taxable years beginning on and after January 1, 2001, any tax imposed by a county, city or town on consumers of electricity shall be imposed pursuant to subsections C through J only.

B. Any tax enacted pursuant to the provisions of this section, or any change in a tax or structure already in existence, shall not be effective until 60 days subsequent to written notice by certified mail from the county, city or town imposing such tax or change thereto, to the registered agent of the utility corporation that is required to collect the tax.

C. Any county, city or town may impose a tax on the consumers of services provided within its jurisdiction by any electric light and power, water or gas company owned by another municipality;

provided, that no county shall be authorized under this section to impose a tax within a municipality on consumers of services provided by an electric light and power, water or gas company owned by that municipality. Any county tax imposed hereunder shall not apply within the limits of any incorporated town located within such county which town imposes a town tax on consumers of utility service or services provided by any corporation coming within the provisions of Chapter 26 (§ 58.1-2600 et seq.), provided that such town (i) provides police or fire protection, and water or sewer services, provided that any such town served by a sanitary district or service authority providing water or sewer services or served by the county in which the town is located when such service or services are provided pursuant to an agreement between the town and county shall be deemed to be providing such water and sewer services itself, or (ii) constitutes a special school district and is operated as a special school district under a town school board of three members appointed by the town council.

Any county, city or town may provide for an exemption from the tax for any public safety answering point as defined in § 58.1-3813.1.

Any municipality required to collect a tax imposed under authority of this section for another city or county or town shall be entitled to a reasonable fee for such collection.

D. In a consolidated county wherein a tier-city exists, any county tax imposed hereunder shall apply within the limits of any tier-city located in such county, as may be provided in the agreement or plan of consolidation, and such tier-city may impose a tier-city tax on the same consumers of utility service or services, provided that the combined county and tier-city rates do not exceed the maximum permitted by state law.

E. The tax authorized by this section shall not apply to:

1. Utility sales of products used as motor vehicle fuels; or

2. Natural gas used to generate electricity by a public utility as defined in § 56-265.1 or an electric cooperative as defined in § 56-231.15.

F.1. Any county, city or town may impose a tax on consumers of electricity provided by electric suppliers as defined in § 58.1-400.2.

The tax so imposed shall be based on kilowatt hours delivered monthly to consumers, and shall not exceed the limits set forth in this subsection. The provider of billing services shall bill the tax to all users who are subject to the tax and to whom it bills for electricity service, and shall remit such tax to the appropriate locality in accordance with § 58.1-2901. Any locality that imposed a tax pursuant to this section prior to January 1, 2001, based on the monthly revenue amount charged to consumers of electricity shall convert its tax to a tax based on kilowatt hours delivered monthly to consumers, taking into account minimum billing charges. The kilowatt hour tax rates shall, to the extent practicable: (i) avoid shifting the amount of the tax among electricity consumer classes and (ii) maintain annual revenues being received by localities from such tax at the time of

the conversion. The current service provider shall provide to localities no later than August 1, 2000, information to enable localities to convert their tax. The maximum amount of tax imposed on residential consumers as a result of the conversion shall be limited to $3 per month, except any locality that imposed a higher maximum tax on July 1, 1972, may continue to impose such higher maximum tax on residential consumers at an amount no higher than the maximum tax in effect prior to January 1, 2001, as converted to kilowatt hours. For nonresidential consumers, the initial maximum rate of tax imposed as a result of the conversion shall be based on the annual amount of revenue received from each class of nonresidential consumers in calendar year 1999 for the kilowatt hours used that year. Kilowatt hour tax rates imposed on nonresidential consumers shall be based at a class level on such factors as existing minimum charges, the amount of kilowatt hours used, and the amount of consumer utility tax paid in calendar year 1999 on the same kilowatt hour usage. The limitations in this section on kilowatt hour rates for nonresidential consumers shall not apply after January 1, 2004. On or before October 31, 2000, any locality imposing a tax on consumers of electricity shall duly amend its ordinance under which such tax is imposed so that the ordinance conforms to the requirements of subsections C through J. Notice of such amendment shall be provided to service providers in a manner consistent with subsection B except that "registered agent of the provider of billing services" shall be substituted for "registered agent of the utility corporation." Any conversion of a tax to conform to the requirements of this subsection shall not be effective before the first meter reading after December 31, 2000, prior to which time the tax previously imposed by the locality shall be in effect.

2. For purposes of this section, "kilowatt hours delivered" shall mean in the case of eligible customer-generators, as defined in § 56-594, those kilowatt hours supplied from the electric grid to such customer-generators, minus the kilowatt hours generated and fed back to the electric grid by such customer-generators.

G. Until the consumer pays the tax to such provider of billing services, the tax shall constitute a debt to the locality. If any consumer receives and pays for electricity but refuses to pay the tax on the bill that is imposed by a locality, the provider of billing services shall notify the locality of the name and address of such consumer. If any consumer fails to pay a bill issued by a provider of billing services, including the tax imposed by a locality as stated thereon, the provider of billing services shall follow its normal collection procedures with respect to the charge for electric service and the tax, and upon collection of the bill or any part thereof shall (i) apportion the net amount collected between the charge for electric service and the tax and (ii) remit the tax portion to the appropriate locality. After the consumer pays the tax to the provider of billing services, the taxes shall be deemed to be held in trust by such provider of billing services until remitted to the localities.

H. Any county, city or town may impose a tax on consumers of natural gas provided by pipeline distribution companies and gas utilities. The tax so imposed shall be based on CCF delivered monthly to consumers and shall not exceed the limits set forth in this subsection. The pipeline

distribution company or gas utility shall bill the tax to all users who are subject to the tax and to whom it delivers gas and shall remit such tax to the appropriate locality in accordance with § 58.1-2905. Any locality that imposed a tax pursuant to this section prior to January 1, 2001, based on the monthly revenue amount charged to consumers of gas shall convert to a tax based on CCF delivered monthly to consumers, taking into account minimum billing charges. The CCF tax rates shall, to the extent practicable: (i) avoid shifting the amount of the tax among gas consumer classes and (ii) maintain annual revenues being received by localities from such tax at the time of the conversion. Current pipeline distribution companies and gas utilities shall provide to localities not later than August 1, 2000, information to enable localities to convert their tax. The maximum amount of tax imposed on residential consumers as a result of the conversion shall be limited to $3 per month, except any locality that imposed a higher maximum tax on July 1, 1972, may continue to impose such higher maximum tax on residential consumers at an amount no higher than the maximum tax in effect prior to January 1, 2001, as converted to CCF. For nonresidential consumers, the initial maximum rate of tax imposed as a result of the conversion shall be based on the annual amount of revenue received and due from each of the nonresidential gas purchase and gas transportation classes in calendar year 1999 for the CCF used that year. CCF tax rates imposed on nonresidential consumers shall be based at a class level on such factors as existing minimum charges, the amount of CCF used, and the amount of consumer utility tax paid and due in calendar year 1999 on the same CCF usage. The initial maximum rate of tax imposed under this section shall continue, unless lowered, until December 31, 2003. Beginning January 1, 2004, nothing in this section shall be construed to prohibit or limit any locality from imposing a consumer utility tax on nonresidential customers up to the amount authorized by subsection A.

On or before October 31, 2000, any locality imposing a tax on consumers of gas shall duly amend its ordinance under which such tax is imposed so that the ordinance conforms to the requirements of subsections C through J of this section. Notice of such amendment shall be provided to pipeline distribution companies and gas utilities in a manner consistent with subsection B except that "registered agent of the pipeline distribution company or gas utility" shall be substituted for "registered agent of the utility corporation." Any conversion of a tax to conform to the requirements of this subsection shall not be effective before the first meter reading after December 31, 2000, prior to which time the tax previously imposed by the locality shall be in effect.

I. Until the consumer pays the tax to such gas utility or pipeline distribution company, the tax shall constitute a debt to the locality. If any consumer receives and pays for gas but refuses to pay the tax that is imposed by the locality, the gas utility or pipeline distribution company shall notify the localities of the names and addresses of such consumers. If any consumer fails to pay a bill issued by a gas utility or pipeline distribution company, including the tax imposed by a locality, the gas utility or pipeline distribution company shall follow its normal collection procedures with regard to the charge for the gas and the tax and upon collection of the bill or any part thereof shall (i) apportion the net amount collected between the charge for gas service and the tax and (ii) remit

the tax portion to the appropriate locality. After the consumer pays the tax to the gas utility or pipeline distribution company, the taxes shall be deemed to be held in trust by such gas utility or pipeline distribution company until remitted to the localities.

J. For purposes of this section:

"Class of consumers" means a category of consumers served under a rate schedule established by the pipeline distribution company and approved by the State Corporation Commission.

"Gas utility" has the same meaning as provided in § 56-235.8.

"Pipeline distribution company" has the same meaning as provided in § 58.1-2600.

"Service provider" and "provider of billing services" have the same meanings as provided in subsection E of § 58.1-2901, and "class" of consumers means a category of consumers defined as a class by their service provider.

K. Nothing in this section shall prohibit a locality from enacting an ordinance or other local law to allow such locality to impose a tax on consumers of natural gas provided by pipeline distribution companies and gas utilities, beginning at such time as natural gas service is first made available in such locality. The maximum amount of tax imposed on residential consumers based on CCF delivered monthly to consumers shall not exceed $3 per month. The maximum tax rate imposed by such locality on nonresidential consumers based on CCF delivered monthly to consumers shall not exceed an average of the tax rates on nonresidential consumers of natural gas in effect (at the time natural gas service is first made available in such locality) in localities whose residents are being provided natural gas from the same pipeline distribution company or gas utility or both that is also providing natural gas to the residents of such locality. Beginning January 1, 2004, the tax rates for residential and nonresidential consumers of natural gas in such locality shall be determined in accordance with the provisions of subsection H.

Code 1950, § 58-617.2; 1966, c. 540; 1971, Ex. Sess., c. 90; 1972, cc. 338, 459; 1975, c. 55; 1976, c. 565; 1982, c. 616; 1984, cc. 154, 675, 695; 1986, c. 38; 1992, c. 399; 1995, cc. 553, 590; 1998, c. 337; 1999, c. 971; 2000, cc. 614, 691, 706, 1064; 2001, cc. 737, 748; 2004, cc. 8, 159; 2008, c. 883; 2012, cc. 4, 582.

§ 58.1-3814.1. Consumer utility tax on churches [Not set out]

Not set out. (1988, c. 702; 1990, c. 492 .)

§ 58.1-3815. Consumer taxes upon lessees of certain property

Any county, city or town authorized to levy and collect consumer utility taxes as provided in § 58.1-3814 may levy such taxes upon and collect them from the occupant or lessee of any premises, title to which is held by (i) a person whose property is tax exempt under Chapter 36 (§ 58.1-3600 et seq.) of this title, or (ii) by a person who is exempt from license taxation by virtue of § 58.1-2508. Such taxes shall be applied to the utility services purchased by such person and furnished at such premises for the use and benefit of such occupant or lessee. Such taxes may be fixed at a

specific amount per rental unit or other base or measured in some other manner as the county, city or town levying such taxes may prescribe. This section shall not be construed to empower any county, city or town to impose such taxes upon (i) the Commonwealth or any of its political subdivisions or agencies of either, or (ii) the federal government or any of its agencies, or (iii) any person who by law is exempt therefrom.

Code 1950, § 58-851.4; 1964, c. 530; 1984, c. 675; 2006, c. 780.

§ 58.1-3816. Certain counties not to levy consumers' utility tax if such counties levy tax on household goods and personal effects

No county with a population of over 150,000, shall levy a utility consumers' tax as authorized by this article if such county levies a personal property tax on household goods and personal effects. Household goods shall be limited to furniture, furnishings, machinery, tools and appliances used by an owner or a member of his household in and about their place of residence.

Code 1950, § 58-851.5; 1966, c. 542; 1984, c. 675.

§ 58.1-3816.1. Discount for collection of taxes

Any county, city or town which requires local businesses, or any class thereof, to collect, account for and remit to such locality a local tax imposed on the consumer, may allow such businesses a commission for such service in the form of a deduction from the tax remitted. Such commission shall be provided for by ordinance, which shall set the rate thereof, not to exceed five percent of the amount of tax due and accounted for. No deduction shall be allowed if the amount due was delinquent.

Code 1950, § 58-851.5:1; 1984, c. 168.

§ 58.1-3816.2. Exemptions from consumer utility taxes

The governing body of any county, city or town may exempt utilities consumed on all property that has been designated or classified as exempt from property taxes pursuant to Article X, Section 6 (a) (2) or Article X, Section 6 (a) (6) of the Constitution of Virginia, from the consumer utility taxes that may be imposed under this article.

2001, c. 302; 2004, cc. 8, 159; 2006, c. 780.

Article 5 - ADMISSION TAX

§ 58.1-3817. Classification of events to which admission is charged

In accordance with the provisions of Article X, Section 1 of the Constitution of Virginia, events to which admission is charged shall be divided into the following classes for the purposes of taxation:

1. Admissions charged for attendance at any event, the gross receipts of which go wholly to charitable purpose or purposes.

2. Admissions charged for attendance at public and private elementary, secondary, and college school-sponsored events, including events sponsored by school-recognized student organizations.

3. Admissions charged for entry into museums, botanical or similar gardens, and zoos.

4. Admissions charged to participants in order to participate in sporting events.

5. Admissions charged for entry into major league baseball games and events at any major league baseball stadium which has seating for at least 40,000 persons.

6. All other admissions.

Code 1950, § 58-404.1; 1950, p. 635; 1971, Ex. Sess., c. 1; 1984, c. 675; 1989, c. 291; 1997, c. 287.

§ 58.1-3818. Admissions tax in certain counties

A. Fairfax, Arlington, Dinwiddie, Prince George and Brunswick Counties are hereby authorized to levy a tax on admissions charged for attendance at any event. The tax shall not exceed 10 percent of the amount of charge for admission to any such event. Notwithstanding any other provisions of law, the governing bodies of such counties shall prescribe by ordinance the terms, conditions and amount of such tax and may classify between events conducted for charitable and those conducted for noncharitable purposes.

B. Notwithstanding the provisions of subsection A, Culpeper County and New Kent County are hereby authorized to levy a tax on admissions charged for attendance at any event as set forth in subsection A.

C. Notwithstanding the provisions of subsection A, Charlotte County, Clarke County, Madison County, Nelson County, and Sussex County are hereby authorized to levy a tax on admissions charged for attendance at any spectator event; however, a tax shall not be levied on admissions charged to participants in order to participate in any event. The tax shall not exceed 10 percent of the amount of charge for admission to any event. Notwithstanding any other provisions of law, the governing body of such county shall prescribe by ordinance the terms, conditions and amount of such tax and may classify between the events as set forth in § 58.1-3817.

D. Notwithstanding the provisions of subsections A, B and C, localities may, by ordinance, elect not to levy an admissions tax on admission to an event, provided that the purpose of the event is solely to raise money for charitable purposes and that the net proceeds derived from the event will be transferred to an entity or entities that are exempt from sales and use tax pursuant to § 58.1-609.11.

Code 1950, § 58-404.2; 1971, c. 212; 1977, c. 573; 1978, c. 432; 1984, c. 675; 1995, c. 201; 1998, cc. 150, 532; 1999, c. 986; 2001, c. 485; 2003, cc. 757, 758; 2007, c. 813.

§ 58.1-3818.01. Admissions tax in Scott County

Scott County is authorized to impose a tax on admissions to any off-track horse race wagering facility located in the county in the amount of $0.25 for each patron admitted.

2008, c. 210.

§ 58.1-3818.02. [Expired]

Expired.

Article 5.1 - VIDEO PROGRAMMING EXCISE TAX

§§ 58.1-3818.1 through 58.1-3818.7. Repealed

Repealed by Acts 2006, c. 780, cl. 2, effective January 1, 2007. See Editor's notes for expiration.

Article 6 - TRANSIENT OCCUPANCY TAX

§ 58.1-3819. Transient occupancy tax

A. Any county, by duly adopted ordinance, may levy a transient occupancy tax on hotels, motels, boarding houses, travel campgrounds, and other facilities offering guest rooms rented out for continuous occupancy for fewer than 30 consecutive days. Such tax shall be in such amount and on such terms as the governing body may, by ordinance, prescribe. Such tax shall not exceed two percent of the amount of charge for the occupancy of any room or space occupied; however, Accomack County, Albemarle County, Alleghany County, Amherst County, Augusta County, Bedford County, Bland County, Botetourt County, Brunswick County, Campbell County, Caroline County, Carroll County, Craig County, Cumberland County, Dickenson County, Dinwiddie County, Floyd County, Franklin County, Frederick County, Giles County, Gloucester County, Grayson County, Greene County, Greensville County, Halifax County, Highland County, Isle of Wight County, James City County, King George County, Loudoun County, Madison County, Mecklenburg County, Montgomery County, Nelson County, Northampton County, Page County, Patrick County, Prince Edward County, Prince George County, Prince William County, Pulaski County, Rockbridge County, Russell County, Smyth County, Spotsylvania County, Stafford County, Tazewell County, Washington County, Wise County, Wythe County, and York County may levy a transient occupancy tax not to exceed five percent, and any excess over two percent shall be designated and spent solely for tourism and travel, marketing of tourism or initiatives that, as determined after consultation with the local tourism industry organizations, including representatives of lodging properties located in the county, attract travelers to the locality, increase occupancy at lodging properties, and generate tourism revenues in the locality. If any locality has enacted an additional transient occupancy tax pursuant to subsection C of § 58.1-3823, then the governing body of the locality shall be deemed to have complied with the requirement that it consult with local tourism industry organizations, including lodging properties. If there are no local tourism industry organizations in the locality, the governing body shall hold a public hearing prior to making any determination relating to how to attract travelers to the locality and generate tourism revenues in the locality.

B. The tax imposed hereunder shall not apply to rooms or spaces rented and continuously occupied by the same individual or same group of individuals for 30 or more days in hotels, motels, boarding houses, travel campgrounds, and other facilities offering guest rooms. In addition, that portion of any tax imposed hereunder in excess of two percent shall not apply to travel campgrounds in Stafford County.

C. Nothing herein contained shall affect any authority heretofore granted to any county, city or town to levy such a transient occupancy tax. The county tax limitations imposed pursuant to § 58.1-3711 shall apply to any tax levied under this section, mutatis mutandis.

D. Any county, city or town that requires local hotel and motel businesses, or any class thereof, to collect, account for and remit to such locality a local tax imposed on the consumer may allow such businesses a commission for such service in the form of a deduction from the tax remitted. Such commission shall be provided for by ordinance, which shall set the rate thereof at no less than three percent and not to exceed five percent of the amount of tax due and accounted for. No commission shall be allowed if the amount due was delinquent.

E. All transient occupancy tax collections shall be deemed to be held in trust for the county, city or town imposing the tax.

Code 1950, § 76.1; 1970, c. 443; 1971, Ex. Sess., c. 214; 1973, c. 433; 1974, c. 614; 1983, c. 313; 1984, c. 675; 1985, c. 556; 1992, cc. 263, 834; 1996, c. 833; 1997, cc. 757, 764; 1998, cc. 729, 733; 1999, cc. 233, 234, 241, 253, 260; 2000, c. 470; 2001, cc. 571, 585; 2003, c. 939; 2004, cc. 7, 610; 2005, cc. 76, 915; 2006, cc. 67, 376; 2007, cc. 86, 596, 767; 2008, c. 230; 2009, cc. 13, 31, 116, 497, 513, 524; 2010, c. 505; 2011, cc. 385, 606; 2012, c. 290; 2013, cc. 19, 200, 319, 378; 2014, c. 188; 2015, cc. 57, 78, 98; 2016, c. 51.

§ 58.1-3819.1. Transient occupancy tax; Roanoke County

1. Notwithstanding any other provision of law, general or special, and in lieu of any authority to impose a transient occupancy tax in any other provision of law, general or special, Roanoke County may impose a total transient occupancy tax not to exceed seven percent of the amount of the charge for the occupancy of any room or space occupied or for the occupancy of any overnight guest room. The tax imposed hereunder shall not apply to rooms or spaces rented and continuously occupied by the same individual or same group of individuals for 30 or more days.

2. The revenue generated and collected from the two percent tax rate increase shall be designated and expended solely for advertising the Roanoke metropolitan area as an overnight tourist destination by members of the Roanoke Valley Convention and Visitors Bureau. For purposes of this subsection, "advertising the Roanoke metropolitan area as an overnight tourism destination" means advertising that is intended to attract visitors from a sufficient distance so as to require an overnight stay.

2012, c. 340.

§ 58.1-3820. Arlington County transient occupancy tax [Not set out]

Not set out. (1977, c. 265; 1984, c. 675; 1992, c. 834 .)

§ 58.1-3821. Transient occupancy tax on certain rentals [Not set out]

(1990, c. 436; 1994, c. 896; 2006, c. 111.)

§ 58.1-3822. Repealed

Repealed by Acts 2016, c. 305, cl. 2.

§ 58.1-3823. Additional transient occupancy tax for certain counties

A. In addition to such transient occupancy taxes as are authorized by §§ 58.1-3819 through 58.1-3821, Hanover County, Chesterfield County and Henrico County may impose:

1. An additional transient occupancy tax not to exceed four percent of the amount of the charge for the occupancy of any room or space occupied. The tax imposed hereunder shall not apply to rooms or spaces rented and continuously occupied by the same individual or same group of individuals for 30 or more days. The revenues collected from the additional tax shall be designated and spent for promoting tourism, travel or business that generates tourism or travel in the Richmond metropolitan area; and

2. An additional transient occupancy tax not to exceed two percent of the amount of the charge for the occupancy of any room or space occupied. The tax imposed hereunder shall not apply to rooms or spaces rented and continuously occupied by the same individual or same group of individuals for 30 or more days. The revenues collected from the additional tax shall be designated and spent for expanding the Richmond Centre, a convention and exhibition facility in the City of Richmond.

3. An additional transient occupancy tax not to exceed one percent of the amount of the charge for the occupancy of any room or space occupied. The tax imposed hereunder shall not apply to rooms or spaces rented and continuously occupied by the same individual or group of individuals for 30 or more days. The revenues collected from the additional tax shall be designated and spent for the development and improvement of the Virginia Performing Arts Foundation's facilities in Richmond, for promoting the use of the Richmond Centre and for promoting tourism, travel or business that generates tourism and travel in the Richmond metropolitan area.

B. In addition to such transient occupancy taxes as are authorized by §§ 58.1-3819 through 58.1-3821, any county with the county manager plan of government may impose an additional transient occupancy tax not to exceed two percent of the amount of the charge for the occupancy of any room or space occupied, provided the county's governing body approves the construction of a county conference center. The tax imposed hereunder shall not apply to rooms or spaces rented and continuously occupied by the same individual or same group of individuals for 30 or more days. The revenues collected from the additional tax shall be designated and spent for the design, construction, debt payment, and operation of such conference center.

C.1. In addition to such transient occupancy taxes as are authorized by §§ 58.1-3819 through 58.1-3821, the Counties of James City and York may impose an additional transient occupancy tax not to exceed $2 per room per night for the occupancy of any overnight guest room. The revenues collected from the additional tax shall be designated and expended solely 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 the members of the Williamsburg Area Destination Marketing Committee of the Greater Williamsburg Chamber and Tourism Alliance. The tax

imposed by this subsection shall not apply to travel campground sites or to rooms or spaces rented and continuously occupied by the same individual or same group of individuals for 30 or more days.

2. The Williamsburg Area Destination Marketing Committee shall consist of the members as provided herein. The governing bodies of the City of Williamsburg, the County of James City, and the County of York shall each designate one of their members to serve as members of the Williamsburg Area Destination Marketing Committee. These three members of the Committee shall have two votes apiece. In no case shall a person who is a member of the Committee by virtue of the designation of a local governing body be eligible to be selected a member of the Committee pursuant to subdivision a.

a. Further, one member of the Committee shall be selected by the Board of Directors of the Williamsburg Hotel and Motel Association; one member of the Committee shall be from The Colonial Williamsburg Foundation and shall be selected by the Foundation; one member of the Committee shall be an employee of Busch Gardens Europe/Water Country USA and shall be selected by Busch Gardens Europe/Water Country USA; one member of the Committee shall be from the Jamestown-Yorktown Foundation and shall be selected by the Foundation; one member of the Committee shall be selected by the Executive Committee of the Greater Williamsburg Chamber and Tourism Alliance; and one member of the Committee shall be the President and Chief Executive Officer of the VirginiaTourism Authority who shall serve ex officio. Each of these six members of the Committee shall have one vote apiece. The President of the Greater Williamsburg Chamber and Tourism Alliance shall serve ex officio with nonvoting privileges unless chosen by the Executive Committee of the Greater Williamsburg Chamber and Tourism Alliance to serve as its voting representative. The Executive Director of the Williamsburg Hotel and Motel Association shall serve ex officio with nonvoting privileges unless chosen by the Board of Directors of the Williamsburg Hotel and Motel Association to serve as its voting representative.

In no case shall more than one person of the same local government, including the governing body of the locality, serve as a member of the Committee at the same time.

If at any time a person who has been selected to the Committee by other than a local governing body becomes or is (a) a member of the local governing body of the City of Williamsburg, the County of James City, or the County of York, or (b) an employee of one of such local governments, the person shall be ineligible to serve as a member of the Committee while a member of the local governing body or an employee of one of such local governments. In such case, the body that selected the person to serve as a member of the Commission shall promptly select another person to serve as a member of the Committee.

3. The Williamsburg Area Destination Marketing Committee shall maintain all authorities granted by this section. The Greater Williamsburg Chamber and Tourism Alliance shall serve as the fiscal agent for the Williamsburg Area Destination Marketing Committee with specific responsibilities to

be defined in a contract between such two entities. The contract shall include provisions to reimburse the Greater Williamsburg Chamber and Tourism Alliance for annual audits and any other agreed-upon expenditures. The Williamsburg Area Destination Marketing Committee shall also contract with the Greater Williamsburg Chamber and Tourism Alliance to provide administrative support services as the entities shall mutually agree.

4. The provisions in subdivision 2 relating to the composition and voting powers of the Williamsburg Area Destination Marketing Committee shall be a condition of the authority to impose the tax provided herein.

For purposes of this subsection, "advertising the Historic Triangle area" as an overnight tourism destination means advertising that is intended to attract visitors from a sufficient distance so as to require an overnight stay of at least one night.

D. In addition to such transient occupancy taxes as are authorized by §§ 58.1-3819 through 58.1-3822, Bedford County may impose an additional transient occupancy tax not to exceed two percent of the amount of the charge for the occupancy of any room or space occupied. The tax imposed hereunder shall not apply to rooms or spaces rented and continuously occupied by the same individual or same group of individuals for 30 or more days.

The revenues collected from the additional tax shall be designated and spent solely for tourism and travel; marketing of tourism; or initiatives that, as determined after consultation with local tourism industry organizations, including representatives of lodging properties located in the county, attract travelers to the locality, increase occupancy at lodging properties, and generate tourism revenues in the locality.

E. In addition to such transient occupancy taxes as are authorized by §§ 58.1-3819 through 58.1-3822, Botetourt County may impose an additional transient occupancy tax not to exceed two percent of the amount of the charge for the occupancy of any room or space occupied. The tax imposed hereunder shall not apply to rooms or spaces rented and continuously occupied by the same individual or same group of individuals for 30 or more days.

The revenue generated and collected from the two percent tax rate increase shall be designated and expended solely for advertising the Roanoke metropolitan area as an overnight tourist destination by members of the Roanoke Valley Convention and Visitors Bureau. For purposes of this subsection, "advertising the Roanoke metropolitan area as an overnight tourism destination" means advertising that is intended to attract visitors from a sufficient distance so as to require an overnight stay.

F. The county tax limitations imposed pursuant to § 58.1-3711 shall apply to any tax levied under this section, mutatis mutandis.

1996, c. 712; 1998, cc. 74, 444; 2002, cc. 173, 259; 2004, cc. 50, 610, 828; 2006, c. 377; 2008, c. 839; 2011, c. 677; 2016, cc. 52, 56, 305.

§ 58.1-3824. Additional transient occupancy tax in Fairfax County

In addition to such transient occupancy taxes as are authorized by this chapter, beginning July 1, 2004, Fairfax County may impose an additional transient occupancy tax not to exceed two percent of the amount of charge for the occupancy of any room or space occupied; provided that the board of supervisors of the County appropriates the revenues collected from such tax as follows:

1. No more than 75 percent of such revenues shall be designated for and appropriated to Fairfax County to be spent for tourism promotion in the County after consultation with local tourism industry organizations and in support of the local tourism industry; and

2. The remaining portion of such revenues shall be designated for and appropriated to a nonprofit convention and visitor's bureau located in Fairfax County.

The tax imposed hereunder shall not apply to rooms or spaces rented and continuously occupied by the same individual or same group of individuals for 30 or more days.

For purposes of this section, "tourism promotion" means direct funding designated and spent solely for tourism, marketing of tourism or initiatives that, as determined in consultation with the local tourism industry organizations, attract travelers to the locality and generate tourism revenues in the locality.

2004, c. 9.

§ 58.1-3824.1. Transient occupancy tax; Fairfax County limitations

Any additional transient occupancy tax or any increase in the rate of an existing transient occupancy tax in Fairfax County first imposed on or after July 1, 2010, shall not apply within the limits of any town located in such county, without the consent of the governing body of the town.

2010, cc. 116, 660.

§ 58.1-3825. Additional transient occupancy tax in Rockbridge County and the Cities of Lexington and Buena Vista

In addition to such transient occupancy taxes as are authorized by this chapter, Rockbridge County and the Cities of Lexington and Buena Vista may impose an additional transient occupancy tax not to exceed two percent of the amount of charge for the occupancy of any room or space occupied. The authority to impose such tax is hereby individually granted to the local governing bodies of such county and cities. However, if such tax is adopted, the local governing body of such county or cities adopting the tax shall appropriate the revenues collected therefrom to the Virginia Horse Center Foundation to be used by the Foundation for the sole purpose of making principal and interest payments on a promissory note or notes signed or executed by the Virginia Horse Center Foundation or the Virginia Equine Center Foundation prior to January 1, 2004, with the Rockbridge Industrial Development Authority as the obligee or payee, as part of an agreement for the Authority to issue bonds on behalf of or for improvements at the Virginia Horse Center Foundation, Virginia Equine Center Foundation, or Virginia Equine Center.

For purposes of this section, such note or notes signed or executed prior to January 1, 2004, shall include any notes or other indebtedness incurred to refinance such note or notes, regardless of the date of refinancing, provided that such refinancing shall not include any debt or the payment of any debt for any activity relating to the Virginia Horse Center Foundation, Virginia Equine Center Foundation, or Virginia Equine Center that occurs on or after January 1, 2004.

The tax imposed hereunder shall not apply to rooms or spaces rented and continuously occupied by the same individual or same group of individuals for 30 or more days. Such tax may no longer be imposed in such county or such cities after final payment of the note or notes described herein.

2004, c. 598; 2007, c. 61.

§ 58.1-3825.1. Repealed

Repealed by Acts 2016, c. 305, cl. 2.

§ 58.1-3825.2. Additional transient occupancy tax in Bath County

A. In addition to such transient occupancy tax as is authorized by § 58.1-3819, Bath County may impose an additional transient occupancy tax not to exceed two percent of the amount of the charge for the occupancy of any room or space occupied.

B. The revenues collected from the additional tax shall be designated and spent as follows:

1. One-half of such revenue shall be designated and spent solely for tourism and travel, marketing of tourism, or initiatives that, as determined after consultation with the local tourism industry organizations, attract travelers to the locality and generate tourism revenues in the locality. If there are no local tourism industry organizations in the locality, the governing body shall hold a public hearing prior to making any determination relating to how to attract travelers to the locality and generate tourism revenues in the locality.

2. One-half of such revenue shall be designated and spent solely for the design, operation, construction, improvement, acquisition, and debt service for such expenses on debt incurred after June 30, 2009, of tourism facilities, historic sites, beautification projects, promotion of the arts, regional tourism marketing efforts, capital costs related to travel and transportation including air service, public parks and recreation, and information centers that attract travelers to the locality and generate tourism revenues in the locality.

C. The tax imposed hereunder shall not apply to rooms or spaces rented and continuously occupied by the same individual or same group of individuals for 30 or more days in hotels, motels, boarding houses, travel campgrounds, and other facilities offering guest rooms.

D. If Bath County requires local hotel and motel businesses, or any class thereof, to collect, account for, and remit the tax imposed pursuant to this section, the County may allow such businesses a commission for such service in the form of a deduction from the tax remitted. Such commission shall be provided for by ordinance, which shall set the rate thereof, no less than three

percent and not to exceed five percent of the amount of tax due and accounted for. No commission shall be allowed if the amount due is delinquent.

E. All tax collections pursuant to this section shall be deemed to be held in trust for Bath County.

2009, c. 16.

§ 58.1-3825.3. Additional transient occupancy tax in Arlington County

In addition to such transient occupancy taxes as are authorized by §§ 58.1-3819 and 58.1-3820, beginning July 1, 2016, and ending July 1, 2018, Arlington County may impose an additional transient occupancy tax not to exceed one-fourth of one percent of the amount of the charge for the occupancy of any room or space occupied. The revenues collected from the additional tax shall be designated and spent for the purpose of promoting tourism and business travel in the county.

2016, cc. 316, 365.

§ 58.1-3826. Scope of transient occupancy tax

The transient occupancy tax imposed pursuant to the authority of this article shall be imposed only for the occupancy of any room or space that is suitable or intended for occupancy by transients for dwelling, lodging, or sleeping purposes.

2005, c. 20.

Article 7 - CIGARETTE TAX

§ 58.1-3830. Local taxes not prohibited; use of dual die or stamp to evidence payment of both county, city, or town and state tax on cigarettes

A. No provision of Chapter 10 (§ 58.1-1000 et seq.) of this title shall be construed to deprive counties, cities and towns of the right to levy taxes upon the sale or use of cigarettes, provided such county, city or town had such power prior to January 1, 1977. The governing body of any county, city or town which levies a cigarette tax and permits the use of meter impressions or stamps to evidence its payment may authorize an officer of the county, city or town or joint enforcement authority to enter into an arrangement with the Department of Taxation under which a tobacco wholesaler who so desires may use a dual die or stamp to evidence the payment of both the county, city, or town tax, and the state tax, and the Department is hereby authorized to enter into such an arrangement. The procedure under such an arrangement shall be such as may be agreed upon by and between the authorized county, city, town or joint enforcement authority officer and the Department.

B. Any county cigarette tax imposed shall not apply within the limits of any town located in such county where such town now, or hereafter, imposes a town cigarette tax. However, if the governing body of any such town shall provide that a county cigarette tax, as well as the town cigarette tax, shall apply within the limits of such town, then such cigarette tax may be imposed by the county within such town.

Code 1950, § 58-757.27; 1960, c. 392, § 27; 1962, c. 473; 1977, c. 595; 1984, c. 675.

§ 58.1-3831. Tax in certain counties

Fairfax and Arlington Counties shall have the power to levy tax upon the sale or use of cigarettes. Such tax shall be in such amount and on such terms as the governing body may by ordinances prescribe, not to exceed five cents per pack or the amount levied under state law, whichever is greater. The provisions of § 58.1-3830 shall apply to such counties, mutatis mutandis.

Code 1950, § 58-757.28; 1970, c. 512; 1971, Ex. Sess., c. 213; 1984, c. 675.

§ 58.1-3832. Local ordinances to administer and enforce local taxes on sale or use of cigarettes

Any county, city or town having a tax upon the sale or use of cigarettes may by ordinance, provide for the administration and enforcement of any such cigarette tax. Such local ordinance may:

1. Provide for the registration of any distributor, wholesaler, vendor, retailer or other person selling, storing or possessing cigarettes within or transporting cigarettes within or into such taxing jurisdiction for sale or use. Such registration may be conditioned upon the filing of a bond with a surety company authorized to do business in Virginia as surety, which bond shall not exceed one and one-half times the average monthly liability of such taxpayer. The county, city or town may revoke registration if such bond is impaired, but for no other reason. Any such distributor, wholesaler, retailer or other person whose business and residence is outside the taxing jurisdiction, who shall sell, store or possess in the taxing jurisdiction therein any cigarettes shall, by virtue of such sale, storage or possession submit himself to its legal jurisdiction and appoint as his attorney for any service of lawful process such officer or person as may be designated in the local ordinance for that purpose. A copy of any such process served on the said officer or person shall be sent forthwith by registered mail to the distributor, wholesaler or retailer.

2. Provide for the use of a tax stamp or meter impression as evidence of payment of the tax or other method or system of reporting payment and collection of such tax. Any local tax stamp or meter impression required to be used to evidence payment of the tax shall be of the same stamp technology that is used or required by the Commonwealth for the state cigarette tax stamp pursuant to Chapter 10 (§ 58.1-1000 et seq.).

3. Provide that tobacco products found in quantities of more than six cartons within the taxing jurisdiction shall be conclusively presumed for sale or use within the jurisdiction and may be seized and confiscated if:

a. They are in transit, and are not accompanied by a bill of lading or other document indicating the true name and address of the consignor or seller and of the consignee or purchaser, and the brands and quantity of cigarettes so transported, or are in transit and accompanied by a bill of lading or other document which is false or fraudulent, in whole or in part; or

b. They are in transit and are accompanied by a bill of lading or other document indicating:

(1) A consignee or purchaser in another state or the District of Columbia who is not authorized by the law of such other jurisdiction to receive or possess such tobacco products on which the taxes

imposed by such other jurisdiction have not been paid, unless the tax of the state or District of destination has been paid and the said products bear the tax stamps of that state or District; or

(2) A consignee or purchaser in the Commonwealth of Virginia but outside the taxing jurisdiction who does not possess a Virginia sales and use tax certificate, a Virginia retail cigarette license and, where applicable, both a business license and retail cigarette license issued by the local jurisdiction of destination; or

c. They are not in transit and the tax has not been paid, nor have approved arrangements for payment been made, provided that this subparagraph shall not apply to cigarettes in the possession of distributors or public warehouses which have filed notice and appropriate proof with the taxing jurisdiction that those cigarettes are temporarily within the taxing jurisdiction and will be sent to consignees or purchasers outside the jurisdiction in the normal course of business.

4. Provide that cigarettes and other property, other than motor vehicles, used in the furtherance of any illegal evasion of the tax so seized and confiscated may be disposed of by sale or other method deemed appropriate by the local taxing authority. No credit from any sale or other disposition shall be allowed toward any tax or penalties owed.

5. Provide that persons violating any provision thereof shall be deemed guilty of a Class 1 misdemeanor, and require the payment of penalties for late payment not to exceed 10 percent per month, penalties for fraud or evasion of the tax not to exceed 50 percent, and interest not to exceed three quarters of one percent per month, upon any tax found to be overdue and unpaid. The mere possession of untaxed cigarettes in quantities of not more than six cartons shall not be a violation of any such ordinance.

6. Provide for the forfeiture and sale of any property seized; provided, however, that proper notice of such seizure shall be given to the known holders of property interests in such property and shall include procedures for administrative appeal as well as affirmative defenses which may be asserted by such holders which procedures must be set forth in reasonable detail.

7. Provide that any coin-operated vending machine, in which any cigarettes are found, stored or possessed bearing a counterfeit or bogus cigarette tax stamp or impression or any unstamped tobacco products, or any cigarettes upon which the tax has not been paid, may be declared contraband property and shall be subject to confiscation and sale as provided in subsection 6. When any such vending machine is found containing such cigarettes it shall be presumed that such cigarettes were intended for distribution, sale or use therefrom. In lieu of immediate seizure and confiscation of any vending machines used in an illegal evasion of the tax it may be sealed by appropriate enforcement authorities to prevent continued illegal sale or removal of any cigarettes, and may be left unmoved until other civil and criminal penalties are imposed or waived. Notice requirements shall be the same as if the machine had been seized. Such seal may be removed and the machine declared eligible for operation only by authorized enforcement authorities. Nothing

in this section shall prevent seizure and confiscation of a vending machine at any time after it is sealed.

8. Provide that any counterfeit stamps or counterfeit impression devices may also be seized and confiscated.

9. Any county, city or town may enact an ordinance which would delegate its administrative and enforcement authority under its cigarette tax ordinance to one agency or authority pursuant to the provisions of § 15.2-1300. Such agency or authority may promulgate rules and regulations governing the display of cigarette stamps in vending machines, tax liens against property of taxpayers hereunder, extend varying discount rates and establish different classes of taxpayers or those required to collect and remit the tax, requirements concerning keeping and production of records, administrative and jeopardy assessment of tax where reasonably justified, required notice to authorities of sale of taxpayer's business, audit requirements and authority, and criteria for authority of distributors and others to possess untaxed cigarettes and any other provisions consistent with the powers granted by this section or necessarily implied therefrom. Such ordinance may further provide that such agency or authority created may issue a common revenue stamp, employ legal counsel, bring appropriate court action, in its own name where necessary to enforce payment of the cigarette taxes or penalties owed any member jurisdiction and provide cigarette tax agents, and the necessary enforcement supplies and equipment needed to effectively enforce the cigarette tax ordinance promulgated by each such county, city or town. Any cigarette tax agents shall meet such requirements of training or experience as may be promulgated from time to time by the enforcement authority when performing their duties and shall be required to carry proper identification and may be armed for their own protection and for the enforcement of such ordinance. Any such agent shall have the power of arrest upon reasonable and probable cause that a violation of any tobacco tax ordinance has been committed. Any common revenue stamp issued by such agency or authority shall be of the same stamp technology that is used or required by the Commonwealth for the state cigarette tax stamp pursuant to Chapter 10 (§ 58.1-1000 et seq.).

Code 1950, § 58-757.29; 1974, c. 472; 1977, c. 595; 1984, c. 675; 2012, cc. 89, 258.

Article 7.1 - FOOD AND BEVERAGE TAX

§ 58.1-3833. County food and beverage tax

A. Any county is hereby authorized to levy a tax on food and beverages sold, for human consumption, by a restaurant, as such term is defined in subdivision 9 of § 35.1-1, not to exceed four percent of the amount charged for such food and beverages. Such tax shall not be levied on food and beverages sold through vending machines or by (i) boardinghouses that do not accommodate transients; (ii) cafeterias operated by industrial plants for employees only; (iii) restaurants to their employees as part of their compensation when no charge is made to the employee; (iv) volunteer fire departments and volunteer emergency medical services agencies; nonprofit churches or other religious bodies; or educational, charitable, fraternal, or benevolent organizations the first three

times per calendar year and, beginning with the fourth time, on the first $100,000 of gross receipts per calendar year from sales of food and beverages (excluding gross receipts from the first three times), as a fundraising activity, the gross proceeds of which are to be used by such church, religious body or organization exclusively for nonprofit educational, charitable, benevolent, or religious purposes; (v) churches that serve meals for their members as a regular part of their religious observances; (vi) public or private elementary or secondary schools, colleges, and universities to their students or employees; (vii) hospitals, medical clinics, convalescent homes, nursing homes, or other extended care facilities to patients or residents thereof; (viii) day care centers; (ix) homes for the aged, infirm, handicapped, battered women, narcotic addicts, or alcoholics; or (x) age-restricted apartment complexes or residences with restaurants, not open to the public, where meals are served and fees are charged for such food and beverages and are included in rental fees. Also, the tax shall not be levied on food and beverages: (a) when used or consumed and paid for by the Commonwealth, any political subdivision of the Commonwealth, or the United States; or (b) provided by a public or private nonprofit charitable organization or establishment to elderly, infirm, blind, handicapped, or needy persons in their homes, or at central locations; or (c) provided by private establishments that contract with the appropriate agency of the Commonwealth to offer food, food products, or beverages for immediate consumption at concession prices to elderly, infirm, blind, handicapped, or needy persons in their homes or at central locations.

Grocery stores and convenience stores selling prepared foods ready for human consumption at a delicatessen counter shall be subject to the tax, for that portion of the grocery store or convenience store selling such items.

This tax shall be levied only if the tax is approved in a referendum within the county which shall be held in accordance with § 24.2-684 and initiated either by a resolution of the board of supervisors or on the filing of a petition signed by a number of registered voters of the county equal in number to 10 percent of the number of voters registered in the county, as appropriate on January 1 of the year in which the petition is filed with the court of such county. The clerk of the circuit court shall publish notice of the election in a newspaper of general circulation in the county once a week for three consecutive weeks prior to the election. If the voters affirm the levy of a local meals tax, the tax shall be effective in an amount and on such terms as the governing body may by ordinance prescribe. If such resolution of the board of supervisors or such petition states for what projects and/or purposes the revenues collected from the tax are to be used, then the question on the ballot for the referendum shall include language stating for what projects and/or purposes the revenues collected from the tax are to be used.

The term "beverage" as set forth herein shall mean alcoholic beverages as defined in § 4.1-100 and nonalcoholic beverages served as part of a meal. The tax shall be in addition to the sales tax currently imposed by the county pursuant to the authority of Chapter 6 (§ 58.1-600 et seq.) of this title. Collection of such tax shall be in a manner prescribed by the governing body.

B. Notwithstanding the provisions of subsection A of this section, Roanoke County, Rockbridge County, Frederick County, Arlington County, and Montgomery County, are hereby authorized to levy a tax on food and beverages sold for human consumption by a restaurant, as such term is defined in § 35.1-1 and as modified in subsection A above and subject to the same exemptions, not to exceed four percent of the amount charged for such food and beverages, provided that the governing body of the respective county holds a public hearing before adopting a local food and beverage tax, and the governing body by unanimous vote adopts such tax by local ordinance. The tax shall be effective in an amount and on such terms as the governing body may by ordinance prescribe.

C. Nothing herein contained shall affect any authority heretofore granted to any county, city or town to levy a meals tax. The county tax limitations imposed pursuant to § 58.1-3711 shall apply to any tax levied under this section, mutatis mutandis. All food and beverage tax collections and all meals tax collections shall be deemed to be held in trust for the county, city or town imposing the applicable tax. The wrongful and fraudulent use of such collections other than remittance of the same as provided by law shall constitute embezzlement pursuant to § 18.2-111.

D. No county which has heretofore adopted an ordinance pursuant to subsection A of this section shall be required to submit an amendment to its meals tax ordinance to the voters in a referendum.

E. Notwithstanding any other provision of this section, no locality shall levy any tax under this section upon (i) that portion of the amount paid by the purchaser as a discretionary gratuity in addition to the sales price; (ii) that portion of the amount paid by the purchaser as a mandatory gratuity or service charge added by the restaurant in addition to the sales price, but only to the extent that such mandatory gratuity or service charge does not exceed 20% of the sales price; or (iii) alcoholic beverages sold in factory sealed containers and purchased for off-premises consumption or food purchased for human consumption as "food" is defined in the Food Stamp Act of 1977, 7 U.S.C. § 2012, as amended, and federal regulations adopted pursuant to that act, except for the following items: sandwiches, salad bar items sold from a salad bar, prepackaged single-serving salads consisting primarily of an assortment of vegetables, and nonfactory sealed beverages.

1988, c. 847; 1989, c. 391; 1990, cc. 846, 862; 1992, c. 263; 1993, c. 866; 1999, c. 366; 2000, c. 626; 2001, c. 619; 2003, c. 792; 2004, c. 610; 2004, Sp. Sess. I, c. 3; 2005, c. 915; 2006, cc. 568, 602; 2009, c. 415; 2014, c. 673; 2015, cc. 502, 503.

§ 58.1-3834. Apportionment of food and beverage or meals tax

In any case where a business is located partially within two or more local jurisdictions by reason of the boundary line between the local jurisdictions passing through such place of business, and one or more of the local jurisdictions imposes the food and beverage or meals tax, the tax rate shall be computed by applying the apportionment formula in § 58.1-3709 to the food and

beverage or meals tax rate of each applicable local jurisdiction. Such apportioned rate shall be rounded to the nearest one-half percent; provided, the total tax rate shall not exceed the rate authorized in § 58.1-3833.

1993, c. 104 .

Article 8 - OTHER PERMISSIBLE TAXES

§ 58.1-3840. Certain excise taxes permitted

A. The provisions of Chapter 6 (§ 58.1-600 et seq.) to the contrary notwithstanding, any city or town having general taxing powers established by charter pursuant to or consistent with the provisions of § 15.2-1104 may impose excise taxes on cigarettes, admissions, transient room rentals, meals, and travel campgrounds. No such taxes on meals may be imposed on (i) that portion of the amount paid by the purchaser as a discretionary gratuity in addition to the sales price of the meal; (ii) that portion of the amount paid by the purchaser as a mandatory gratuity or service charge added by the restaurant in addition to the sales price of the meal, but only to the extent that such mandatory gratuity or service charge does not exceed 20% of the sales price; or (iii) food and beverages sold through vending machines or on any tangible personal property purchased with food coupons issued by the United States Department of Agriculture under the Food Stamp Program or drafts issued through the Virginia Special Supplemental Food Program for Women, Infants, and Children. No such taxes on meals may be imposed when sold or provided by (a) restaurants, as such term is defined in subdivision 9 a of § 35.1-1, to their employees as part of their compensation when no charge is made to the employee; (b) volunteer fire departments and volunteer emergency medical services agencies; nonprofit churches or other religious bodies; or educational, charitable, fraternal, or benevolent organizations, the first three times per calendar year and, beginning with the fourth time, on the first $100,000 of gross receipts per calendar year from sales of meals (excluding gross receipts from the first three times), as a fundraising activity, the gross proceeds of which are to be used by such church, religious body or organization exclusively for nonprofit educational, charitable, benevolent, or religious purposes; (c) churches that serve meals for their members as a regular part of their religious observances; (d) public or private elementary or secondary schools, or public or private colleges and universities, to their students or employees; (e) hospitals, medical clinics, convalescent homes, nursing homes, or other extended care facilities to patients or residents thereof; (f) day care centers; (g) homes for the aged, infirm, handicapped, battered women, narcotic addicts, or alcoholics; or (h) age-restricted apartment complexes or residences with restaurants, not open to the public, where meals are served and fees are charged for such food and beverages and are included in rental fees.

Also, the tax shall not be levied on meals: (a) when used or consumed and paid for by the Commonwealth, any political subdivision of the Commonwealth, or the United States; or (b) provided by a public or private nonprofit charitable organization or establishment to elderly, infirm, blind, handicapped, or needy persons in their homes, or at central locations; or (c) provided by private

establishments that contract with the appropriate agency of the Commonwealth to offer food, food products, or beverages for immediate consumption at concession prices to elderly, infirm, blind, handicapped, or needy persons in their homes or at central locations.

In addition, as set forth in § 51.5-98, no blind person operating a vending stand or other business enterprise under the jurisdiction of the Department for the Blind and Vision Impaired and located on property acquired and used by the United States for any military or naval purpose shall be required to collect and remit meals taxes.

B. Notwithstanding any other provision of this section, no city or town shall levy any tax under this section upon alcoholic beverages sold in factory sealed containers and purchased for off-premises consumption or food purchased for human consumption as "food" is defined in the Food Stamp Act of 1977, 7 U.S.C. § 2012, as amended, and federal regulations adopted pursuant to that act, except for the following items: sandwiches, salad bar items sold from a salad bar, prepackaged single-serving salads consisting primarily of an assortment of vegetables, and nonfactory sealed beverages.

C. Any city or town that is authorized to levy a tax on admissions may levy the tax on admissions paid for any event held at facilities that are not owned by the city or town at a lower rate than the rate levied on admissions paid for any event held at its city- or town-owned civic centers, stadiums and amphitheatres.

D. [Expired.]

1984, c. 675; 1986, cc. 545, 605; 1989, cc. 314, 391; 1999, c. 366; 2000, c. 626; 2003, c. 12; 2005, c. 106; 2006, cc. 568, 602; 2009, c. 415; 2014, c. 673; 2015, cc. 502, 503.

§ 58.1-3841. Situs for taxation of the sale of food and beverages

A. The situs for taxation for any tax levied on the sale of food and beverages or meals shall be the county, city, or town in which the sales are made, namely the locality in which each place of business is located without regard to the locality of delivery or possible use by the purchaser. The term "sale" means a final sale to the ultimate consumer.

B. If any person has a definite place of business or maintains an office in more than one locality, then such other locality may impose its tax on the sale of food and beverages or meals which are made by such person, provided the locality imposes a local tax on the sale of food and beverages or meals.

1990, c. 843 .

§ 58.1-3842. Combined transient occupancy and food and beverage tax

A. Rappahannock County and Madison County, by duly adopted ordinance, are hereby authorized to levy a tax on occupancy in a bed and breakfast establishment on which the county is authorized to levy a transient occupancy tax under § 58.1-3819 and on food and beverages sold for human consumption within such establishment on which the county is authorized to levy a food and

beverage tax under § 58.1-3833, when the charges for the occupancy of the room or space and for the sale of food and beverages are assessed in the aggregate and not separately stated. Such tax shall not exceed four percent of the total amount charged for the occupancy of the room or space occupied and for the food and beverages. Such tax shall be in such amount and on such terms as the governing body may, by ordinance, prescribe. The tax shall be in addition to the sales tax currently imposed by the county pursuant to the authority of Chapter 6 (§ 58.1-600 et seq.). Collection of such tax shall be in a manner prescribed by the governing body. All taxes collected under the authority of this article shall be deemed to be held in trust for the county imposing the tax.

B. If a bed and breakfast establishment separately states charges for the occupancy of the room or space and for the sale of food and beverages, a transient occupancy tax levied under § 58.1-3819 and a food and beverage tax levied under § 58.1-3833 shall apply to such separately stated charges, as applicable.

C. Any tax imposed pursuant to this article shall not apply within the limits of any town located in such county, where such town now, or hereafter, imposes a town meals tax or a town transient occupancy tax on the same subject. If the governing body of any town within a county, however, provides that a county tax authorized by this article shall apply within the limits of such town, then such tax may be imposed within such towns.

D. This tax shall be levied only if a food and beverage tax has been approved in a referendum within the county as provided by subsection A of § 58.1-3833. No county in which the levy of a food and beverage tax has been approved in a referendum pursuant to subsection A of § 58.1-3833 shall be required to submit an amendment to its meals tax ordinance or a further question to the voters in a referendum prior to adopting an ordinance adopting or amending the tax authorized by this article.

E. Nothing herein contained shall affect any authority heretofore granted to any county to levy a food and beverage tax or a transient occupancy tax.

1999, c. 617; 2004, c. 610; 2011, c. 192.

§ 58.1-3843. Scope of transient occupancy tax

Notwithstanding any other provision of law, general or special, the tax imposed on transient room rentals pursuant to the authority of this article shall be imposed only for the occupancy of any room or space that is suitable or intended for occupancy by transients for dwelling, lodging, or sleeping purposes.

2006, c. 216.

Article 9 - LOCAL TECHNOLOGY ZONE

§ 58.1-3850. Creation of local technology zones

A. Any city, county or town may establish, by ordinance, one or more technology zones. Each locality may grant tax incentives and provide certain regulatory flexibility in a technology zone.

B. The tax incentives may be provided for up to ten years and may include, but not be limited to: (i) reduction of permit fees; (ii) reduction of user fees; and (iii) reduction of any type of gross receipts tax. The extent and duration of such incentive proposals shall conform to the requirements of the Constitutions of Virginia and of the United States.

C. The governing body may also provide for regulatory flexibility in such zone which may include, but not be limited to: (i) special zoning for the district; (ii) permit process reform; (iii) exemption from ordinances; and (iv) any other incentive adopted by ordinance, which shall be binding upon the locality for a period of up to ten years.

D. Each locality establishing a technology zone pursuant to this section may also adopt a local enterprise zone development taxation program for the technology zone as provided in § 58.1-3245.12.

E. The establishment of a technology zone shall not preclude the area from also being designated as an enterprise zone.

1995, c. 397; 1996, c. 830; 1997, c. 168; 2002, c. 449.

Article 10 - LOCAL TOURISM ZONE

§ 58.1-3851. Creation of local tourism zones

A. Any city, county, or town may establish, by ordinance, one or more tourism zones. Each locality may grant tax incentives and provide certain regulatory flexibility in a tourism zone.

B. The tax incentives may be provided for up to 20 years and may include, but not be limited to (i) reduction of permit fees, (ii) reduction of user fees, and (iii) reduction of any type of gross receipts tax. The extent and duration of such incentive proposals shall conform to the requirements of the Constitutions of Virginia and of the United States.

C. The governing body may also provide for regulatory flexibility in such zone that may include, but not be limited to (i) special zoning for the district, (ii) permit process reform, (iii) exemption from ordinances, excluding ordinances or provisions of ordinances adopted pursuant to the requirements of the Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et seq.), the Erosion and Sediment Control Law (§ 62.1-44.15:51 et seq.), or the Virginia Stormwater Management Act (§ 62.1-44.15:24 et seq.), and (iv) any other incentive adopted by ordinance, which shall be binding upon the locality for a period of up to 10 years.

D. The establishment of a tourism zone shall not preclude the area from also being designated as an enterprise zone.

2006, c. 642; 2008, c. 462; 2013, cc. 756, 793.

§ 58.1-3851.1. Entitlement to tax revenues from tourism project

A. For purposes of this section, unless the context requires a different meaning:

"Economic development authority" means a local industrial development authority or a local or regional political subdivision, the public purpose of which is to assist in economic development.

"Gap financing" means debt financing to compensate for a shortfall in project funding between the expected development costs of an authorized tourism project and the debt and equity capital provided by the developer of the project.

B. 1. If a locality has established a tourism zone pursuant to § 58.1-3851, has adopted an ordinance establishing a tourism plan as determined by guidelines set forth by the Virginia Tourism Authority, and has adopted an ordinance authorizing a tourism project to meet a deficiency identified in the adopted tourism plan approved by the Virginia Tourism Authority, and the tourism project has been certified by the State Comptroller as qualifying for the entitlement to tax revenues authorized by this section, the authorized tourism project shall be entitled to an amount equal to the revenues generated by a one percent state sales and use tax on transactions taking place on the premises of the authorized tourism project. The entitlement shall be contingent on the locality enacting an ordinance designating certain local tax revenues to the tourism project pursuant to subsection C and shall be subject to the conditions set forth in subsection D. The purpose of such entitlement shall be to assist the developer with obtaining gap financing and making payments of principal and interest thereon. The entitlement shall continue until the gap financing is paid in full. Entitled sales tax revenues shall be applied solely to payments of principal and interest on the qualified gap financing.

2. On a quarterly basis, the Tax Commissioner shall certify the amount of the entitled sales tax revenues to the Comptroller, who shall remit such revenues to the county or city in which the authorized tourism project is located. The county or city shall remit the revenues to the economic development authority. No payments herein shall be made until an agreement exists between the developer of the authorized tourism project and the economic development authority.

3. The state sales tax entitlement established in subdivision 1 shall not include any (i) sales tax revenues dedicated pursuant to § 58.1-638 or 58.1-638.1 or (ii) revenues generated pursuant to Chapter 766 of the Acts of Assembly of 2013.

C. If a locality has adopted the ordinances required by subdivision B 1 to entitle an authorized tourism project to an amount equal to the revenues generated by a one percent state sales and use tax on transactions taking place on the premises of the authorized tourism project, the local governing body of the county or city in which the authorized tourism project is located shall also direct by ordinance that an amount equal to the revenues generated by at least a one percent local sales and use tax, or an equivalent amount of other local tax revenues as designated by the ordinance, generated by transactions taking place on the premises of the authorized tourism project shall be applied to the payment of principal and interest on the qualified gap financing. Such rev-

enues shall be remitted in the same manner, for the same time period, and under the same conditions as the remittances paid in accordance with subsection B, mutatis mutandis.

D. Prior to any entitlement to tax revenues for an authorized tourism project pursuant to subsections B and C, the owner of such project shall have a minimum of 70 percent of funding for the project in place through debt or equity, enter into a performance agreement with the economic development authority or political subdivision, and enter into an agreement to pay an access fee. The access fee shall be equivalent to the state sales tax revenue generated by and returned to the project pursuant to subdivision B 1 and shall be collected by the locality and remitted to the economic development authority on a quarterly basis. The access fee and the sales tax entitlement shall be used solely to make payments of principal and interest on the qualified gap funding.

E. In the event that the total amount of sales tax entitlement and the access fee exceeds any annual debt service on the qualified gap financing, such excess shall be paid to the principal of the loan until the qualified gap financing is paid in full.

F. A tourism project that is entitled to and receives revenues pursuant to this section shall not be eligible to receive revenues pursuant to § 58.1-608.3 or 58.1-3851.2.

2011, cc. 646, 814; 2012, cc. 73, 572; 2015, cc. 203, 349.

§ 58.1-3851.2. Entitlement to tax revenues from tourism project of regional significance

A. For purposes of this section, unless the context requires a different meaning:

"Economic development authority" means a local industrial development authority or a local or regional political subdivision, the public purpose of which is to assist in economic development.

"Gap financing" means debt financing to compensate for a shortfall in project funding between the expected development costs of an authorized tourism project of regional significance and the debt and equity capital provided by the developer of the project.

"Tourism project of regional significance" means a tourism project that meets the requirements set forth in subdivision B 1 and that additionally represents a new capital investment of at least $100 million in a new tourism facility or in a substantial and significant renovation or expansion of an existing tourism facility by a private entity in the Commonwealth and, as determined by the Virginia Tourism Authority, that supports increased hotel occupancy, new job creation, an increase in the number of out-of-state visitors to the Commonwealth, and other factors of significant fiscal and economic impact. Any property, real, personal, or mixed, that is necessary or complementary, such as arenas, sporting facilities, hotels, and other tourism venues, developed in connection with any such tourism project of regional significance, including facilities for food preparation and serving, parking facilities, and administrative offices, is encompassed within this definition, as is theme-related retail activity by vendors or the private entity owner of the project that occurs on site and directly supports the tourism mission of the project. A tourism project of regional significance does not include, for purposes of this section, general retail outlets, ancillary retail

structures not directly related to the tourism purpose of the project or other retail establishments commonly referred to as shopping centers or malls or residential condominiums, townhomes, or other residential units.

B.1. If a locality has established a tourism zone pursuant to § 58.1-3851, has adopted an ordinance establishing a tourism plan as determined by guidelines set forth by the Virginia Tourism Authority, and has adopted an ordinance authorizing a tourism project of regional significance to meet a deficiency identified in the adopted tourism plan approved by the Virginia Tourism Authority, and if the tourism project of regional significance has been certified by the State Comptroller as qualifying for the entitlement to tax revenues authorized by this section, the authorized tourism project of regional significance shall be entitled to an amount equal to the revenues generated by a 1.5 percent state sales and use tax on transactions taking place on the premises of the authorized tourism project of regional significance. The entitlement shall be contingent on the locality's enacting an ordinance designating certain local revenues to the project pursuant to subsection C and shall be subject to the conditions set forth in subsection D. The purpose of such entitlement shall be to assist the developer with obtaining gap financing and making payments of principal and interest thereon.

2. On a quarterly basis, the Tax Commissioner shall certify the amount of the entitled sales tax revenues to the Comptroller, who shall remit such revenues to the county or city in which the authorized tourism project of regional significance is located. The county or city shall remit the revenues to the economic development authority. No payments herein shall be made until an agreement exists between the developer of the authorized tourism project of regional significance and the economic development authority. The entitlement shall continue until the gap financing is paid in full or for the length of time specified in the agreement between the developer and the economic development authority, but in no event shall the entitlement extend beyond 20 years from the date of the initial entitlement. Entitled sales tax revenues shall be applied solely to payments of principal and interest on the qualified gap financing.

3. The state sales tax entitlement established in subdivision 1 shall not include any (i) sales tax revenues dedicated pursuant to § 58.1-638 or 58.1-638.1 or (ii) revenues generated pursuant to Chapter 766 of the Acts of Assembly of 2013.

C. If a locality has adopted the ordinances required by subdivision B 1 to entitle an authorized tourism project of regional significance to an amount equal to the revenues generated by a 1.5 percent state sales and use tax on transactions taking place on the premises of the authorized tourism project of regional significance, the local governing body of the county or city in which the authorized tourism project of regional significance is located shall also direct by ordinance that an amount of local revenues, from any authorized source of revenues available to the locality, equal to the revenues generated by at least a 1.5 percent state sales and use tax generated by transactions taking place on the premises of the authorized tourism project of regional significance shall be applied to the payment of principal and interest on the qualified gap financing. Such

revenues shall be remitted in the same manner, for the same time period, and under the same conditions as the remittances paid in accordance with subsection B, mutatis mutandis.

D. Prior to any entitlement to tax revenues for an authorized tourism project of regional significance pursuant to subsections B and C, the owner of such project shall have a minimum of 80 percent of funding for the project in place through debt or equity, enter into a performance agreement with the economic development authority or political subdivision, and enter into an agreement to pay an access fee. The access fee shall be equivalent to the state sales tax revenue generated by and returned to the project pursuant to subdivision B 1 and shall be collected by the locality and remitted to the economic development authority on a quarterly basis. The access fee and the state and local contributions pursuant to this section shall be used solely to make payments of principal and interest on the qualified gap funding.

E. In the event that the total amount of state and local contributions pursuant to this section and the access fee exceeds any annual debt service on the qualified gap financing, such excess shall be paid to the principal of the loan until the qualified gap financing is paid in full.

F. Neither the Commonwealth nor any political subdivision of the Commonwealth shall incur any debt under this section. Nothing in this section shall be construed as authorizing the pledging of the faith and credit of the Commonwealth, or any of its revenues, or the faith and credit of any other political subdivision of the Commonwealth, or any of its revenues, for the payment of any debt or debt financing, or meeting any contractual obligation incurred by the owner or developer of any authorized tourism project of regional significance.

G. An authorized tourism project of regional significance that is entitled to and receives revenues pursuant to this section shall not be eligible to receive revenues pursuant to § 58.1-608.3 or 58.1-3851.1.

2015, c. 349.

Article 11 - LOCAL INCENTIVES FOR GREEN ROOFS

§ 58.1-3852. Incentives for green roofing

A. As used in this article, unless the context clearly shows otherwise, the term or phrase:

"Green roof" means a solar roof or a vegetative roof.

"Solar roof" means a solar roofing system that generates reusable energy, which reusable energy accounts for at least 2.5 percent of the total electric energy used by the building to which the solar roofing system is attached.

"Vegetative roof" means a roofing system designed in accordance with the Virginia Stormwater Management Program's standards and specifications for green roofs, as set forth in the Virginia Stormwater BMP Clearinghouse, in which at least 50 percent of the total roofing area is vegetative.

B. Any county, city, or town may, by ordinance, grant incentives or provide regulatory flexibility to encourage the use of green roofs in the construction, repair, or remodeling of residential and commercial buildings. Any such incentive or regulatory flexibility shall require that green roofs be used.

C. The incentives or regulatory flexibility may include, but shall not be limited, to (i) a reduction in permit fees when green roofs are used, (ii) a streamlined process for the approval of building permits when green roofs are used, or (iii) a reduction in any gross receipts tax on green roof contractors as defined by the local ordinance.

D. The extent and duration of the incentives or regulatory flexibility shall conform to the requirements of the Constitutions of Virginia and of the United States.

2009, cc. 17, 604.

Article 12 - LOCAL DEFENSE PRODUCTION ZONE

§ 58.1-3853. Creation of local defense production zones

A. As used in this section, unless the context requires a different meaning:

"Defense contractor" means a business, other than a defense production business, that is primarily engaged in providing services in support of national defense, including but not limited to logistics and technical support.

"Defense production business" means a business engaged in the design, development, or production of materials, components, or equipment required to meet the needs of national defense. A locality may also include as a defense production business any business that performs functions ancillary to or in support of the design, development, or production of such materials, components, or equipment.

B. Any city, county, or town may establish, by ordinance, one or more defense production and support services zones. Each locality may grant incentives and provide certain regulatory flexibility in a defense production and support services zone.

C. The incentives may be provided to defense contractors or defense production businesses located in a defense production and support services zone for up to 20 years and may include, but not be limited to (i) reduction of permit fees, (ii) reduction of user fees, and (iii) reduction of any type of gross receipts tax. In addition, local governing bodies are authorized to enter into agreements for the payment of economic development incentive grants to defense contractors or defense production businesses located in defense production and support services zones with payment of the grants conditioned upon the businesses making certain real property or capital investments, creating and maintaining new jobs, or performing or meeting other economic development objectives.

D. The governing body may also provide for regulatory flexibility in such zone that may include, but not be limited to (i) special zoning for the district, (ii) permit process reform, (iii) exemption from ordinances, and (iv) any other incentive adopted by ordinance, which shall be binding upon the locality for a period of up to 20 years.

E. Each locality establishing a defense production and support services zone pursuant to this section may also adopt a local enterprise zone development taxation program for the defense production and support services zone as provided in § 58.1-3245.12.

F. The establishment of a defense production and support services zone shall not preclude the area from also being designated as an enterprise zone.

2011, cc. 875, 877; 2012, c. 91.

Chapter 39 - ENFORCEMENT, COLLECTION, REFUNDS, REMEDIES AND REVIEW OF LOCAL TAXES

Article 1 - ENFORCEMENT BY THE COMMISSIONER OF REVENUE

§ 58.1-3900. Filing of returns

Any person having taxable personal property, machinery and tools or merchants' capital on January 1 of any year shall file a return thereof with the commissioner of the revenue for his county or city in accordance with § 58.1-3518. Such returns shall be filed by May 1 of each year, except as otherwise provided by ordinance adopted under § 58.1-3916.

1984, c. 675.

§ 58.1-3901. Apartment house, office building, shopping center, trailer camp, trailer court, self-service storage facility, marina, airport, and other owners or operators to file lists of tenants

A. Every person owning or operating any apartment house or any office building or shopping center or any trailer camp or trailer court or marina or privately owned or operated airport in the Commonwealth shall, on or before February 1 of each year, upon request of the commissioner of the revenue of the county or city in which any such apartment house, office building, shopping center, trailer camp, trailer court, marina, or airport is located, file with such commissioner of the revenue a list giving the name and address of every tenant of such apartment house, office building, shopping center, trailer camp, or trailer court, and the name and address of every person renting space in a marina for waterborne craft and at a privately owned or operated airport for airborne craft as of January 1 preceding. The governing body of any county adjoining a county having a population of more than 1,000 per square mile may require like information from any such person leasing houses for rent, and violation of any such ordinance requiring the same may be punished as hereinafter provided.

B. Every property owners' association established pursuant to the Property Owners' Association Act (§ 55-508 et seq.), condominium unit owners' association established pursuant to the Condominium Act (§ 55-79.39 et seq.), and proprietary lessees' association established pursuant to the Virginia Real Estate Cooperative Act (§ 55-424 et seq.) shall, upon the written request of the commissioner of the revenue, provide a list of the owners of the properties administered by such association, to the extent that the association maintains such a list, to the commissioner for use in administering local property taxes.

C. Every person owning or operating any self-service storage facility, as defined in § 55-417, that makes the outdoor common area of such facility available for storage of tangible personal property (including without limitation motor vehicles, trailers, and watercraft) on a rental or leased basis in the Commonwealth shall, on or before February 1 of each year, upon the written request of the commissioner of the revenue of the county or city in which such self-service storage facility is located, file with such commissioner of the revenue a list giving the name and address of every person renting or leasing space within the outdoor common area of such self-service storage facility as of January 1 preceding.

D. Any person failing to comply with this section shall be guilty of a Class 4 misdemeanor.

Code 1950, § 58-863; 1950, p. 35; 1952, c. 527; 1968, c. 628; 1984, c. 675; 1990, c. 152; 2009, cc. 501, 672.

§ 58.1-3902. Certain operators of marinas or boat storage places to file lists of owners of boats

Every person or state or local agency operating in the Commonwealth a marina or boat storage place which accommodates more than four boats shall, on or before February 1 of each year, upon the request of the commissioner of the revenue of the county or city in which such marina or boat storage place is located, file with such commissioner of the revenue a list giving the name and address of the owner and operator, if such is available, and the name and number of each boat physically located and normally kept at his marina or boat storage place as of the preceding January 1. The list shall be divided into the following three categories: (i) watercraft which are eighteen feet and over; (ii) watercraft which are under eighteen feet and motorized; and (iii) watercraft which are under eighteen feet and nonmotorized. Violators of this section are guilty of a Class 4 misdemeanor.

Code 1950, § 58-863.1; 1968, c. 258; 1984, c. 675; 1999, c. 358; 2013, c. 804.

§ 58.1-3903. Omitted local taxes or levies

If the commissioner of the revenue of any county or city or the tax-assessing officer of any town ascertains that any local tax has not been assessed for any tax year of the three preceding tax years or that the same has been assessed at less than the law required for any one or more of such years, or that the taxes for any cause have not been realized, the commissioner of the revenue or other assessing officer shall list and assess the same with taxes at the rate or rates prescribed for that

year, adding thereto penalty and interest at the rate provided under §§ 58.1-3916 and 58.1-3918. Interest may be computed upon the taxes and penalty from the first day following the due date in the year in which such taxes should have been paid and shall accrue thereon from such date until payment; provided, if such assessment was necessitated through no fault of the taxpayer, such penalty and interest shall accrue after thirty days from such date of assessment until payment.

Code 1950, § 58-1164; 1984, c. 675; 1991, c. 8 .

§ 58.1-3903.1. Waiver of time limitation on assessment of local taxes

Before the expiration of the time prescribed for the assessment of any local tax, if both the commissioner of the revenue or other assessing official and the taxpayer have consented in writing to the tax assessment after such time, the tax may be assessed at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

Whenever such an extension is agreed upon, it shall likewise extend the period relating to the collection of local taxes pursuant to § 58.1-3940 and applications for correction pursuant to § 58.1-3980.

1995, c. 445.

§ 58.1-3904. Omitted lands

When the commissioner ascertains that there is any land in his county or city which has not before been entered on his land book or, after being entered, has from any cause been omitted for one or more years, he shall make an entry thereof in the name of the owner. Any person owning or claiming any tract or part of land which has not been entered on the land book or which, if so entered, has for any cause been omitted therefrom, may have the part he owns entered on the land book, specifying the part of the land so entered by having the same surveyed and laid off if necessary and a plat and description thereof returned to and recorded by the clerk of the circuit court of the county or city in which the land is situated. The commissioner of the revenue in whose county or city the land is situated shall proceed to the best of his judgment, having reference to the assessed value of contiguous lands similarly situated, to assess the fair market value of such land, and shall place such land on the land book and assess taxes at the rate imposed by law for each year the land was not entered in the land book. However, no assessment of taxes shall be made hereunder for any year except the then current year or any tax year of the three tax years last past.

Code 1950, § 58-1165; 1984, c. 675.

§ 58.1-3905. Forms for assessment of omitted taxes

The Department of Taxation shall prescribe and furnish to local officers the necessary forms for the assessment of the omitted taxes mentioned in this chapter which they are authorized to assess. Omitted taxes, except on real estate, shall not be assessed on the current assessment books.

Code 1950, § 58-1166; 1984, c. 675.

§ 58.1-3906. Liability of corporate officer or employee, or member or employee of partnership or limited liability company, for failure to pay certain local taxes

A. Any corporate, partnership or limited liability company officer who willfully fails to pay, collect, or truthfully account for and pay over any local admission, transient occupancy, food and beverage, or daily rental property tax administered by the commissioner of revenue or other authorized officer, or willfully attempts in any manner to evade or defeat any such tax or the payment thereof, shall, in addition to other penalties provided by law, be liable for a penalty of the amount of the tax evaded or not paid, collected, or accounted for and paid over, to be assessed and collected in the same manner as such taxes are assessed and collected.

B. The term "corporate, partnership or limited liability company officer" as used in this section means an officer or employee of a corporation, or a member, or employee of a partnership or member, manager or employee of a limited liability company who, as such officer, employee, member or manager, is under a duty to perform on behalf of the corporation, partnership or limited liability company the act in respect of which the violation occurs and who (i) had actual knowledge of the failure or attempt as set forth herein and (ii) had authority to prevent such failure or attempt.

1991, c. 481; 1999, c. 541.

§ 58.1-3907. Willful failure to collect and account for tax; penalty

A. Any corporate or partnership officer as defined in § 58.1-3906, or any other person required to collect, account for and pay over any local admission, transient occupancy, food and beverage, daily rental property or cigarette taxes administered by the commissioner of the revenue or other authorized officer, who willfully fails to collect or truthfully account for and pay over such tax, and any such officer or person who willfully evades or attempts to evade any such tax or the payment thereof, shall, in addition to any other penalties provided by law, be guilty of a Class 1 misdemeanor.

B. Any person who willfully utilizes a device or software to falsify the electronic records of cash registers or other point-of-sale systems or otherwise manipulates transaction records that affect any local tax liability shall, in addition to any other penalties provided by law, be guilty of a Class 1 misdemeanor.

C. In addition to the criminal penalty provided in subsection B and any other civil or criminal penalty provided in this title, any person violating subsection B shall pay a civil penalty of $20,000, to be assessed by the commissioner of the revenue and collected by the treasurer as other local taxes are collected and deposited into the treasury of the political subdivision of the Commonwealth served by the treasurer.

D. Any criminal case brought pursuant to this section may be prosecuted by either the attorney for the Commonwealth or other attorney charged with the responsibility for prosecution of a violation of local ordinances.

1995, c. 557; 1996, c. 528; 2014, cc. 723, 785.

§§ 58.1-3908, 58.1-3909. Reserved

Reserved.

Article 2 - COLLECTION BY TREASURERS, ETC

§ 58.1-3910. Treasurer to collect and pay over taxes

A. Each county and city treasurer shall receive the local taxes and other amounts payable into the treasury of the political subdivision of the Commonwealth served by the treasurer, and shall account for and pay over the same in the manner provided by law. Taxpayers shall make checks payable to "Treasurer (or title of other officer or employee who performs the duties of a treasurer) of (name of political subdivision)" or "(name of political subdivision)". This section shall not apply to any city insofar as local revenues are concerned when the charter of such city provides otherwise.

B. In any county, the county treasurer and the treasurer of any town located partially or totally within such county may enter into a reciprocal agreement with the approval of the respective governing bodies that provides for the town treasurer to collect real and personal property taxes owed to the county and for the county treasurer to collect real and personal property taxes owed to the town. A treasurer collecting any taxes pursuant to an agreement entered into under this subsection shall account for and pay over such amounts to the locality owed such taxes in the same manner as provided by law. As used in this subsection, with regard to towns, the term "treasurer" shall mean the town officer or employee vested with authority by the charter, statute, or the governing body to collect local taxes.

Code 1950, § 58-958; 1984, c. 675; 2002, c. 139; 2011, cc. 431, 475.

§ 58.1-3911. Notice of taxes due

The treasurer shall publicize at least ten days before the due date of local taxes in such manner as may be necessary to give general notice in his county or city of the fact that taxes are due and payable.

Code 1950, § 58-962; 1962, c. 508; 1984, c. 675.

§ 58.1-3912. Local tax officials to mail certain tax documents to taxpayers; penalties; electronic transmission

A. The treasurer of every city and county shall, as soon as reasonably possible in each year, but not later than 14 days prior to the due date of the taxes, send or cause to be sent by United States mail to each taxpayer assessed with taxes and levies for that year a bill or bills setting forth the amounts due. The treasurer may elect not to send a bill amounting to $20 or less as shown by an assessment book in such treasurer's office. The treasurer may employ the services of a mailing service or other vendor for fulfilling the requirements of this section. The failure of any such treasurer to comply with this section shall be a Class 4 misdemeanor. Such treasurer shall be deemed in

compliance with this section as to any taxes due on real estate if, upon certification by the obligee of any note or other evidence of debt secured by a mortgage or deed of trust on such real estate that an agreement has been made with the obligor in writing within the mortgage or deed of trust instrument that such arrangements be made, he mails the bill for such taxes to the obligee thereof. Upon nonpayment of taxes by either the obligee or obligor, a past-due tax bill will be sent to the taxpayer. No governing body shall publish the name of a taxpayer in connection with a tax debt for which a bill was not sent, without first sending a notice of deficiency to his last known address at least two weeks before such publication.

B. The governing body of any county, city or town may attach to or mail with all real estate and tangible personal property tax bills, prepared for taxpayers in such locality, information indicating how the tax rate charged upon such property and revenue derived therefrom is apportioned among the various services and governmental functions provided by the locality.

C. Notwithstanding the provisions of subsection A of this section, in any county which has adopted the urban county executive form of government, and in any county contiguous thereto which has adopted the county executive form of government, tangible personal property tax bills shall be mailed not later than 30 days prior to the due date of such taxes.

D. Notwithstanding the provisions of subsection A of this section, any county and town, the governing bodies of which mutually agree, shall be allowed to send, to each taxpayer assessed with taxes, by United States mail no later than 14 days prior to the due date of the taxes, a single real property tax bill and a single tangible personal property tax bill.

E. Beginning with tax year 2006, in addition to all other information currently appearing on tangible personal property tax bills, each such bill required to be sent pursuant to subsection A shall state on its face (i) whether the vehicle is a qualifying vehicle as defined in § 58.1-3523; (ii) a statement indicating the reduced tangible personal property tax rates applied to qualifying vehicles resulting from the Commonwealth's reimbursements for tangible personal property tax relief pursuant to § 58.1-3524, and the locality's tangible personal property tax rate for its general class of tangible personal property, provided that such statement shall not be required for tax bills in any county, city, or town that will not receive any reimbursement pursuant to subsection B of § 58.1-3524; (iii) the vehicle's registration number pursuant to § 46.2-604; (iv) the amount of tangible personal property tax levied on the vehicle; and (v) if the locality prorates personal property tax pursuant to § 58.1-3516, the number of months for which a bill is being sent.

F.1. Notwithstanding the provisions of subsection A or the provisions of § 58.1-3330, 58.1-3518, or 58.1-3518.1, the treasurer, commissioner of the revenue, or other local tax official, consistent with guidelines promulgated by the Department of Taxation implementing the provisions of subdivision 2 of § 58.1-1820, may convey, with the written consent of the taxpayer, any tax bill or other tax document by electronic means chosen by the taxpayer, including without limitation facsimile transmission or electronic mail (email), in lieu of posting such bill by first-class mail. The

treasurer, commissioner of the revenue, or other local tax official conveying a bill or other tax document by means authorized in this subdivision shall maintain a copy (in written form or electronic media) of the bill or document reflecting the date of transmission until such time as the bill has been satisfied or otherwise removed from the books of the treasurer, commissioner of the revenue, or other local tax official by operation of law. Transmission of a bill or tax document pursuant to this subsection shall have the same force and effect for all purposes arising under this subtitle as mailing to the taxpayer by first-class mail on the date of transmission.

2. The treasurer, commissioner of the revenue, or other local taxing official also may convey, with the consent of the taxpayer, any tax bill or other document by permitting the taxpayer to access his information online from a database on the locality's or official's website.

3. Consent of the taxpayer under this subsection may be obtained from the taxpayer electronically, subject to reasonable verification of the taxpayer's identity.

G. Any solid waste disposal fee imposed by a county may be attached to, mailed with, or stated on the appropriate real estate tax bill.

Code 1950, § 58-960; 1954, c. 205; 1956, c. 701; 1968, c. 206; 1980, c. 276; 1982, c. 74; 1984, c. 675; 1985, cc. 406, 543; 1991, c. 187; 1994, c. 207; 1996, c. 323; 1998, Sp. Sess. I, c. 2; 1999, c. 358; 2001, c. 801; 2002, c. 64; 2004, Sp. Sess. I, c. 1; 2005, c. 922; 2013, c. 299; 2016, c. 768.

§ 58.1-3913. When treasurer to receive taxes and levies without penalty; how payments credited

Each treasurer shall commence to receive local levies as soon as he receives copies of the commissioner's books and continue to receive the same without penalty up to and including December 5 of each year, or such other date set by the governing body. Unless otherwise provided by ordinance of the governing body, any payment of local levies received shall be credited first against the most delinquent local account, the collection of which is not subject to a defense of an applicable statute of limitations.

Code 1950, § 58-961; 1956, c. 69; 1979, c. 259; 1984, c. 675.

§ 58.1-3914. Delivery of receipts to taxpayers when taxes collected

The treasurer shall deliver on request a receipt to each taxpayer from whom he has collected taxes or levies, showing plainly the date of payment and the tax ticket description of each parcel for which payment was made. The treasurer may request that the taxpayer return a form to be marked as a receipt, and may, except in the year the real estate is transferred, charge a reasonable sum, not to exceed two dollars, to cover the cost of preparing any additional receipt. If any officer knowingly fails to deliver such a receipt on the request of the taxpayer, he shall be deemed guilty of a Class 4 misdemeanor. If such failure is for fraudulent purposes, he shall be guilty of a Class 1 misdemeanor.

Code 1950, § 58-959; 1975, c. 22; 1983, c. 610; 1984, c. 675; 1995, c. 239; 1996, c. 324.

§ 58.1-3915. Penalty for failure to pay taxes by December 5

Except as otherwise provided by ordinance under § 58.1-3916, any person failing to pay any county, town and city levies on or before December 5 shall incur a penalty thereon of five percent, which shall be added to the amount of taxes or levies due from such taxpayer, and which, when collected by the treasurer, shall be accounted for in his settlements. No penalty shall be imposed for failure to pay any tax if such failure was not the fault of the taxpayer.

Code 1950, § 58-963; 1954, c. 277; 1973, c. 410; 1975, c. 234; 1984, c. 675.

§ 58.1-3916. Counties, cities and towns may provide dates for filing returns, set penalties, interest, etc

Notwithstanding provisions contained in §§ 58.1-3518, 58.1-3900, 58.1-3913, 58.1-3915, and 58.1-3918, the governing body of any county, city, or town may provide by ordinance the time for filing local license applications and annual returns of taxable tangible personal property, machinery and tools, and merchants' capital. The governing body may also by ordinance establish due dates for the payment of local taxes; may provide that payment be made in a single installment or in two equal installments; may offer options, which may include coupon books and payroll deductions, which allow the taxpayer to determine whether to pay the tangible personal property tax through monthly, bimonthly, quarterly, or semiannual installments or in a lump sum, provided such taxes are paid in full by the final due date; may provide by ordinance penalties for failure to file such applications and returns and for nonpayment in time; may provide for payment of interest on delinquent taxes; and may provide for the recovery of reasonable attorney's or collection agency's fees actually contracted for, not to exceed 20 percent of the delinquent taxes and other charges so collected. A locality that provides for payment of interest on delinquent taxes shall provide for interest at the same rate on overpayments due to erroneously assessed taxes to be paid to the taxpayer, provided that no interest shall be required to be paid on such refund if (i) the amount of the refund is $10 or less or (ii) the refund is the result of proration pursuant to § 58.1-3516. A court that finds that an overpayment of local taxes has been made in an action brought pursuant to § 58.1-3984 shall award interest at the appropriate rate, notwithstanding the failure of the locality to conform its ordinance to the requirements of this section.

Notwithstanding any contrary provision of law, the local governing body shall allow an automatic extension on real property taxes imposed upon a primary residence and personal property taxes imposed upon a qualifying vehicle, as defined in § 58.1-3523, owed by members of the armed services of the United States deployed outside of the United States. Such extension shall end and the taxes shall be due 90 days following the completion of such member's deployment. For purposes of this section, "the armed services of the United States" includes active duty service with the regular Armed Forces of the United States or the National Guard or other reserve component.

No tax assessment or tax bill shall be deemed delinquent and subject to the collection procedures prescribed herein during the pendency of any administrative appeal under § 58.1-3980, so long as the appeal is filed within 90 days of the date of the assessment, and for 30 days after the date of the final determination of the appeal, provided that nothing in this paragraph shall be construed

to preclude the assessment or refund, following the final determination of such appeal, of such interest as otherwise may be provided by general law as to that portion of a tax bill that has remained unpaid or was overpaid during the pendency of such appeal and is determined in such appeal to be properly due and owing.

Interest may commence not earlier than the first day following the day such taxes are due by ordinance to be filed, at a rate not to exceed 10 percent per year. The governing body may impose interest at a rate not to exceed the rate of interest established pursuant to § 6621 of the Internal Revenue Code of 1954, as amended, or 10 percent annually, whichever is greater, for the second and subsequent years of delinquency. No penalty for failure to pay a tax or installment shall exceed (i) 10 percent of the tax past due on such property; (ii) in the case of delinquent tangible personal property tax more than 30 days past due on property classified pursuant to subdivision A 15, A 16, or A 20 of § 58.1-3506, which remains unpaid after 10 days' written notice sent by United States mail to the taxpayer of the intention to impose a penalty pursuant hereto, the penalty shall not exceed an amount equal to the difference between the tax due and owing with respect to such property and the tax that would have been due and owing if the property in question had been classified as general tangible personal property pursuant to § 58.1-3503; (iii) in the case of delinquent tangible personal property tax more than 30 days past due, 25 percent of the tax past due on such tangible personal property; (iv) in the case of delinquent remittance of excise taxes on meals, lodging, or admissions collected from consumers, 10 percent for the first month the taxes are past due, and five percent for each month thereafter, up to a maximum of 25 percent of the taxes collected but not remitted; or (v) $10, whichever is greater, provided, however, that the penalty shall in no case exceed the amount of the tax assessable. No penalty for failure to file a return shall be greater than 10 percent of the tax assessable on such return or $10, whichever is greater; provided, however, that the penalty shall in no case exceed the amount of the tax assessable. The assessment of such penalty shall not be deemed a defense to any criminal prosecution for failing to make return of taxable property as may be required by law or ordinance. Penalty for failure to file an application or return may be assessed on the day after such return or application is due; penalty for failure to pay any tax may be assessed on the day after the first installment is due. Any such penalty when so assessed shall become a part of the tax.

No penalty for failure to pay any tax shall be imposed for any assessment made later than two weeks prior to the day on which the taxes are due, if such assessment is made thereafter through the fault of a local official, and if such assessment is paid within two weeks after the notice thereof is mailed.

In the event a transfer of real property ownership occurs after January 1 of a tax year and a real estate tax bill has been mailed pursuant to §§ 58.1-3281 and 58.1-3912, the treasurer or other appropriate local official designated by ordinance of the local governing body in jurisdictions not having a treasurer, upon ascertaining that a property transfer has occurred, may invalidate a bill sent to the prior owner and reissue the bill to the new owner as permitted by § 58.1-3912, and no

penalty for failure to pay any tax for any such assessment shall be imposed if the tax is paid within two weeks after the notice thereof is mailed.

Penalty and interest for failure to file a return or to pay a tax shall not be imposed if such failure was not the fault of the taxpayer, or was the fault of the commissioner of revenue or the treasurer, as the case may be. The failure to file a return or to pay a tax due to the death of the taxpayer or a medically determinable physical or mental impairment on the date the return or tax is due shall be presumptive proof of lack of fault on the taxpayer's part, provided the return is filed or the taxes are paid within 30 days of the due date; however, if there is a committee, legal guardian, conservator or other fiduciary handling the individual's affairs, such return shall be filed or such taxes paid within 120 days after the fiduciary qualifies or begins to act on behalf of the taxpayer. Interest on such taxes shall accrue until paid in full. Any such fiduciary shall, on behalf of the taxpayer, by the due date, file any required returns and pay any taxes that come due after the 120-day period. The treasurer shall make determinations of fault relating exclusively to failure to pay a tax, and the commissioner of the revenue shall make determinations of fault relating exclusively to failure to file a return. In jurisdictions not having a treasurer or commissioner of the revenue, the governing body may delegate to the appropriate local tax officials the responsibility to make the determination of fault.

The governing body may further provide by resolution for reasonable extensions of time, not to exceed 90 days, for the payment of real estate and personal property taxes and for filing returns on tangible personal property, machinery and tools, and merchants' capital, and the business, professional, and occupational license tax, whenever good cause exists. The official granting such extension shall keep a record of every such extension. If any taxpayer who has been granted an extension of time for filing his return fails to file his return within the extended time, his case shall be treated the same as if no extension had been granted.

This section shall be the sole authority for local ordinances setting due dates of local taxes and penalty and interest thereon, and shall supersede the provisions of any charter or special act.

Code 1950, § 58-847; 1954, c. 253; 1968, c. 291; 1971, Ex. Sess., c. 193; 1973, cc. 321, 325; 1974, c. 309; 1976, cc. 518, 527, 675; 1978, c. 395; 1980, c. 663; 1982, cc. 87, 618; 1984, cc. 181, 675; 1986, cc. 206, 353; 1987, cc. 570, 582, 595; 1989, c. 238; 1990, cc. 667, 696, 702; 1991, cc. 471, 484, 493, 509; 1993, c. 91; 1994, c. 932; 1995, c. 395; 1997, cc. 481, 496, 911; 1998, cc. 375, 542, 649; 1999, c. 631; 2000, cc. 433, 507; 2005, c. 501; 2006, cc. 200, 231, 459; 2007, cc. 88, 609; 2008, c. 591.

§ 58.1-3916.01. Repealed

Repealed by Acts 2004, Sp. Sess. I, c. 1, cl. 6, effective January 1, 2006.

§ 58.1-3916.02. Certain counties, cities and towns may provide billing alternatives

Notwithstanding the provisions contained in §§ 58.1-3518, 58.1-3900, 58.1-3913, 58.1-3915, 58.1-3916, and 58.1-3918, the governing body of Prince William County may provide by

ordinance for alternative due dates for the payment of real estate taxes for real estate owned and occupied as the sole dwelling of anyone at least 65 years of age or anyone found to be permanently or totally disabled as defined in § 58.1-3217. In addition, the governing body may limit the use of such alternative due dates to persons qualifying under Prince William County's real estate tax exemption, tax deferral, or combination program of exemptions and deferrals adopted under the authority of Article 2 (§ 58.1-3210 et seq.) of Chapter 32 of this title.

Such ordinance may provide for monthly, bimonthly, quarterly, or semiannual installments, and may further provide that late payment penalties and interest shall accrue if each installment is not timely made. Should Prince William County adopt monthly, bimonthly, or quarterly due dates, said due dates may extend into the subsequent tax year, but shall not exceed more than 180 days from the first day of the subsequent tax year.

2004, c. 548.

§ 58.1-3916.1. Criminal penalties for failure to file returns; false statements

Any ordinance ordained pursuant to this article requiring the filing of a return for tax purposes may prescribe criminal penalties for willful failure or refusal to file such return at the time or times required therein or for making false statements with intent to defraud in such returns. Such penalties shall not exceed those prescribed by general law for (i) a Class 3 misdemeanor if the amount of the tax lawfully assessed in connection with the return is $1,000 or less, or (ii) a Class 1 misdemeanor if the amount of the tax lawfully assessed in connection with the return is more than $1,000.

Code 1950, § 58-847.1; 1984, c. 328; 1986, c. 351.

§ 58.1-3917. Assessment of public service corporations in such cases

A. In any locality which requires payment of real estate taxes in installments, the assessment by the State Corporation Commission or the Department of the properties of public service corporations for the preceding year shall be taken as the assessment of such properties for levying taxes and collecting installments thereon, until the regular annual assessment of such properties by the Commission or the Department for the current year is completed as otherwise provided by law; and, upon the payment of the final installment of such taxes to any county, city or town by any such public service corporation, the total of such taxes for the current year shall be adjusted between such county, city or town and such public service corporation on the basis of the assessment by the Commission or the Department for the current year.

B. The State Corporation Commission or the Department may, upon the application of any such public service corporation or any such city or town filed on or before the fifteenth day of January in any year, amend its assessment for the preceding year by increasing or decreasing the same, by reason of any improvements or additions thereto, or proper deductions therefrom, or other changes affecting the assessment of the properties of such corporation within the preceding year, such increases, decreases and changes to be subject to adjustment by the Commission or the

Department until the regular annual assessment of the properties of the corporation is completed by the Commission or the Department.

Code 1950, §§ 58-848, 58-849; 1974, c. 293; 1983, c. 570; 1984, c. 675.

§ 58.1-3918. Interest on taxes not paid by following day

Interest at the rate of ten percent per annum from the first day following the day such taxes are due shall be collected upon the principal and penalties of all taxes then remaining unpaid, which penalty and interest shall be collected and accounted for by the officers charged with the duty of collecting such taxes, along with the principal sum thereof. Interest at the same rate shall also be applied and paid to the taxpayer on overpayments due to erroneously assessed taxes to be paid to the taxpayer, provided that no interest shall be required to be paid on such refund if (i) the amount of the refund is ten dollars or less or (ii) the refund is the result of proration pursuant to § 58.1-3516. But this section shall not apply to local taxes in any county, city or town when the penalty or interest on such taxes is regulated by ordinance under § 58.1-3916.

Code 1950, § 58-964; 1954, c. 277; 1973, c. 410; 1980, c. 663; 1982, c. 87; 1984, c. 675; 1999, c. 631; 2000, c. 507.

§ 58.1-3919. Collection of taxes or other charges not paid when due; distress for same

The treasurer, after the due date of any tax or other charge collected by such treasurer, shall call upon each person chargeable with such tax or other charge who has not paid the same prior to that time, or upon the agent, if any, of such person resident within the county, city or town for payment thereof; and upon failure or refusal of such person or agent to pay the same he shall proceed to collect by distress or otherwise. Should it come to the knowledge of the treasurer that any person owing taxes or other charges is moving or contemplates moving from the county, city or town prior to the due date of such taxes or other charges, he shall have power to collect the same by distress or otherwise at any time after such bills shall have come into his hands. Notwithstanding § 58.1-3954, the treasurer or his deputy, in person or by counsel, may institute and prosecute all proceedings to enforce the payment of any tax or other charge in courts not of record.

Code 1950, § 58-965; 1984, c. 675; 1986, c. 634; 1996, c. 323; 1998, c. 648.

§ 58.1-3919.1. Use of private collectors by treasurers for the collection of delinquent local taxes

Notwithstanding the provisions of § 58.1-3934, the treasurer in any county, city, or town, with the approval of the local governing body, may employ, upon such terms as may be agreed upon, the services of private collection agents to assist with the collection of any local taxes which remain delinquent for a period of three months or more and for which the appropriate statute of limitations has not yet run. Compensation for such services shall either be provided by the local governing body directly to such collection agents or by means of an expense in the treasurer's budget or shall be withheld by the agent from the amount collected. The treasurer shall be given credit for taxes collected for any compensation rightfully withheld by such collection agents.

Prior to referring a delinquent account to a collection agent pursuant to this section, the treasurer shall have provided written notification of such delinquency by first-class mail to the taxpayer at such address as is contained in the tax records of the city or county or, if the treasurer has reason to believe the taxpayer's address as contained in such records is no longer current, at such other address, if any, as the treasurer may obtain from sources available to him pursuant to general law, including without limitation the Virginia Employment Commission, the Department of Motor Vehicles, or the Department of Taxation.

1987, c. 537; 1992, cc. 625, 683; 2006, c. 372; 2011, c. 383.

§ 58.1-3920. Prepayment of taxes

Any person desiring to pay any local taxes for any year prior to the time the treasurer receives copies of the commissioner's books may pay the same to the treasurer and the treasurer shall give his receipt therefor; but if such taxes are of a kind requiring a return to be filed with the commissioner of the revenue in order that the correct amount of taxes may be computed, such person shall file such return with the commissioner of the revenue before he pays such taxes to the treasurer. The treasurer shall accept and credit against the tax on the property a pro rata partial payment of taxes on property sold at a trustee's sale conducted under Chapter 4 (§ 55-48 et seq.) of Title 55. In all cases covered by this section the procedure as between the commissioner of the revenue and the treasurer shall be as prescribed by the Department of Taxation and the Auditor of Public Accounts, acting jointly. But nothing in this section in conflict with the provisions of the charter of any city or town in relation to local taxes shall be construed as repealing such provisions.

Code 1950, § 58-966; 1956, c. 69; 1981, c. 134; 1984, c. 675.

§ 58.1-3920.1. Interest on funds received in prepayment of local taxes

The governing body of any county, city or town may provide, by ordinance, for a program permitting the voluntary prepayment of designated local taxes at any time before such taxes have been assessed or, if assessed, before such taxes are due and payable. The program may provide for the payment of interest at a rate established by ordinance. The governing body may further provide that, upon payment in full of any and all taxes due from such taxpayer, the accrued interest or any remaining portion thereof may be paid to the taxpayer or held in prepayment of tax obligations to be assessed at a later date, at the taxpayer's election.

1989, c. 34 .

§ 58.1-3921. Treasurer to make out lists of uncollectable taxes and delinquents

The treasurer, after ascertaining which of the taxes and levies assessed at any time in his county or city have not been collected, shall, within sixty days of the end of the fiscal year, make out lists as follows:

1. A list of real estate on the commissioner's land book improperly placed thereon or not ascertainable, with the amount of taxes charged thereon.

2. A list of other real estate which is delinquent for the nonpayment of the taxes thereon. This list shall not include any taxes listed under subdivision 4 or 5 of this section.

3. A list of such of the taxes assessed on tangible personal property, machinery and tools and merchants' capital, and other subjects of local taxation, other than real estate, as he was unable to collect which are delinquent. This list shall not include any taxes listed under subdivision 4, 5, or 6 of this section.

4. A list of the uncollected taxes amounting to less than twenty dollars each for which no bills were sent under § 58.1-3912.

5. A list of uncollected balances of previously billed taxes amounting to less than twenty dollars each as to which the treasurer has determined that the costs of collecting such balances would exceed the amount recoverable, provided that the treasurer shall not include on such list any balance with respect to which he has reason to believe that the taxpayer has purposely paid less than the amount due and owing.

6. A list of uncollected balances of previously billed tangible personal property taxes on vehicles that (i) were owned by taxpayers, now deceased, upon whose estates no qualification has been made, or (ii) were transferred to bona fide purchasers for value pursuant to § 46.2-632, 46.2-633, or 46.2-634 without knowledge, on the part of the persons so transferring, of the unpaid taxes.

Notwithstanding any other provision of this title, no tax or levy which has been discharged or otherwise rendered legally uncollectable as to a taxpayer liable upon it in a proceeding under the United States Bankruptcy Code (Title 11 of the United States Code) shall be considered delinquent with respect to that taxpayer on and after the date such obligation is discharged or otherwise rendered legally uncollectable, and the treasurer shall not include any such discharged or uncollectable obligation in any list required to be prepared pursuant to this section. Any such discharged or uncollectable obligation shall be stricken from the books of the treasurer as of the date the obligation is discharged or otherwise rendered uncollectable, and the treasurer thereafter shall have no further duty to collect such tax or levy.

The governing body of any town may, by ordinance, adopt the procedures set forth in this section and § 58.1-3924. If such ordinance is adopted, the town treasurer shall submit such lists to the governing body as provided in § 58.1-3924.

Code 1950, § 58-978; 1956, c. 69; 1971, Ex. Sess., c. 12; 1977, c. 507; 1979, c. 240; 1984, c. 675; 1995, c. 239; 1997, c. 496; 1999, c. 192; 2000, c. 453; 2007, c. 867.

§ 58.1-3922. Delinquent lists to speak as of June 30 of each year; when real estate and personal property delinquent

The lists mentioned in § 58.1-3921 shall conform to the facts as they existed on June 30 of the year they are submitted to the governing body. Delinquent real estate taxes shall be listed in the name of the owner on the date of assessment.

For purposes of this title, local taxes shall be delinquent if not paid when due. For purposes of compiling the lists required by § 58.1-3921, any locality which requires the payment of such taxes in installments, taxes shall be considered delinquent if all taxes on it are not paid by the date the last installment is due.

Code 1950, § 58-979; 1974, c. 80; 1979, c. 240; 1984, c. 675; 1997, c. 496.

§ 58.1-3923. Repealed

Repealed by Acts 2002, c. 64.

§ 58.1-3924. Delinquent lists involving local taxes submitted to local governing bodies; publication of lists

Upon the request of the governing body of a county, city or town, the treasurer shall furnish a copy of any of the six lists mentioned in § 58.1-3921.

The treasurer may, or shall at the direction of the governing body, certify to the commissioner of the revenue a copy of the list of real estate on the commissioner's land book improperly placed thereon or not ascertainable. The commissioner of the revenue shall correct his land book accordingly. The treasurer shall be given credit for the entire amount of the taxes included in the list and may destroy the tax tickets made out by him for such taxes. The treasurer shall be given credit for all taxes shown on the list mentioned in subdivisions 4, 5, and 6 of § 58.1-3921 and for obligations discharged in bankruptcy as described in § 58.1-3921.

The governing body may cause the lists mentioned in subdivisions 2 and 3 of § 58.1-3921, or such parts thereof as deemed advisable by the treasurer, to be published in a newspaper of general circulation in the county, city, or town or to be made available on any Internet site maintained by or for such county, city, or town.

The costs, if any, of publishing such lists shall be paid for by funds allocated for that purpose by the local governing body, and may be charged ratably to the delinquent taxpayers listed.

Code 1950, § 58-983; 1972, c. 592; 1973, c. 467; 1976, c. 428; 1977, c. 507; 1984, c. 675; 1988, c. 699; 1995, c. 239; 1997, c. 496; 2002, c. 64; 2008, c. 550.

§ 58.1-3925. Reserved

Reserved.

§ 58.1-3926. When statement to beneficiary prior to delinquency required

The beneficiary in any deed of trust or mortgage, or other person interested in the lands or lots conveyed thereby, may give to the treasurer of any county or city notice in writing that he is the beneficiary under a lien, clearly designating in such notice the lands affected by such lien and the names of the grantor in such deed or mortgage, at any time during the period for the collection of taxes for any year. If such notice is given, the treasurer, at least ten days before the date of his report of delinquent taxes for the current collection year, shall make and mail to the person giving

such notice a statement showing whether the taxes on the lands or lots specified in such notice have been paid, and stating the amount thereof, including penalties.

Code 1950, § 58-982; 1984, c. 675.

§ 58.1-3927. Repealed
Repealed by Acts 1998, c. 648.

§ 58.1-3928. Repealed
Repealed by Acts 1997, c. 496.

§ 58.1-3929. Repealed
Repealed by Acts 1985, c. 131.

§ 58.1-3930. How liens to be recorded; release of liens
Liens of delinquent real estate taxes and all liens described under § 58.1-3745 shall be recorded in the office of the treasurer in a book or an approved visible card system to be kept for the purpose and indexed in the names of the persons against whom the taxes on real estate are assessed, or in a computer system approved by the Auditor of Public Accounts. Any officer collecting any such taxes unless otherwise specifically provided by law, shall forthwith transmit such payment to the treasurer, who shall give his receipt therefor and record the payment, thereby releasing the lien. Where such list is kept in a visible card index file, the treasurer may, at the time of entry of the records of payment, remove from the file the cards on which such payments have been noted; and such cards may, on certification by the Auditor of Public Accounts that the same are no longer needed for audit, be destroyed.

Code 1950, § 58-985; 1962, c. 137; 1977, c. 268; 1980, c. 263; 1983, c. 90; 1984, c. 675; 1985, c. 131; 2001, c. 462; 2013, cc. 305, 618.

§ 58.1-3931. Reserved
Reserved.

§ 58.1-3932. Card system record and index of delinquent real estate in City of Norfolk
The City of Norfolk is authorized to keep its record of delinquent real estate and all liens described under § 58.1-3745 in the Treasurer's office, using a card system record and index, or such other method approved by the Auditor of Public Accounts.

Code 1950, § 58-986.1; 1984, c. 675; 2001, c. 462; 2013, cc. 305, 618.

§ 58.1-3933. Subsequent collection by treasurer of delinquent taxes on subjects other than real estate
After delinquent taxes appear in the lists required by § 58.1-3921, the governing body may require the treasurer to continue to collect the delinquent taxes on subjects other than real estate until the expiration of the applicable statute of limitations.

Code 1950, § 58-990; 1973, c. 467; 1984, c. 675; 1997, c. 496.

§ 58.1-3934. Collection of delinquent local taxes or other charges by sheriff or person employed for purpose

A. The governing body may appoint or hire, with the approval of the treasurer and upon such terms as may be agreed upon, one or more attorneys to collect any local taxes or other charges which may have been delinquent for six months or more. Any attorney so appointed or hired shall be entitled to exercise, for the purpose of collecting the taxes or other charges referred to him, the powers conferred by law upon the treasurer, shall promptly report and pay over to the treasurer all collections made and, at the conclusion of his term of appointment or employment, shall provide the treasurer with a list of those taxes or other charges referred to the attorney for collection that remain unpaid.

B. In the alternative to the procedure set forth in subsection A, the governing body may place local taxes or other charges which have been delinquent for six months or more in the hands of the sheriff of the county or city for collection, or employ a local delinquent tax collector to make such collections, upon such terms as may be agreed. Such sheriff or local delinquent tax collector shall be entitled to exercise for the purpose of collecting taxes or other charges referred to him the powers conferred by law upon the treasurer. The treasurer shall be entitled to credit for all delinquent taxes or other charges that are referred to the sheriff or such collector for collection.

All collections made by any such sheriff or delinquent tax collector shall be reported by him to such governing body, and the moneys so collected shall be paid over to the treasurer, who shall be held accountable therefor; such sheriff or delinquent tax collector shall, at the end of his term of employment, return to the governing body a list of such delinquent taxes or other charges so turned over to him as may then remain unpaid.

Such governing body shall then have power to employ other delinquent tax collectors to collect the taxes or other charges so returned unpaid, for such time and on such terms as may be agreed upon, such collectors to have the same powers as are hereinbefore conferred upon delinquent tax collectors, and be charged with similar duties, or to make such other disposition thereof as such governing body may deem proper.

Prior to referring a delinquent account to an attorney, sheriff, or other delinquent tax collector pursuant to this section, the treasurer shall have provided written notification of such delinquency by first-class mail to the taxpayer at such address as is contained in the tax records of the city or county or, if the treasurer has reason to believe the taxpayer's address as contained in such records is no longer current, at such other address, if any, as the treasurer may obtain from sources available to him pursuant to general law, including without limitation the Virginia Employment Commission, the Department of Motor Vehicles, or the Department of Taxation.

Code 1950, § 58-991; 1971, Ex. Sess., c. 155; 1979, c. 240; 1984, c. 675; 1992, cc. 625, 683; 1997, c. 496; 1998, c. 648; 2002, c. 64; 2006, c. 372.

§ 58.1-3935. Treasurers not liable for taxes returned delinquent and not afterwards received by them

Nothing in any of the foregoing sections shall be construed as holding a county or city treasurer personally liable for any delinquent taxes which have been returned delinquent within the time and in the manner prescribed by law and which have not been paid to or through such treasurer up to the time that any settlement is made by such treasurer.

Code 1950, § 58-999; 1984, c. 675.

§ 58.1-3936. Omission of taxes from delinquent list

If any county or city treasurer shall knowingly omit from any delinquent list required by this title to be prepared by him any taxes which are in fact delinquent and which should be included in such delinquent list, such county or city treasurer shall be guilty of a Class 3 misdemeanor; and such county or city treasurer shall moreover be deemed guilty of malfeasance in office.

Code 1950, § 58-1000; 1984, c. 675.

§ 58.1-3937. Repealed

Repealed by Acts 1998, c. 648.

§ 58.1-3938. List of delinquent town real estate taxes filed with county treasurer in certain towns

In any town where the treasurer or other collector of town taxes does not maintain an office open during normal office hours Monday through Friday, a list of delinquent town taxes upon real estate for the preceding tax year as of December 31 of such year shall be filed by the treasurer or other collector of town taxes in the office of the treasurer of the county wherein the town is located on or before January 31 of each year.

Code 1950, § 58-1000.2; 1975, c. 259; 1984, c. 675; 1985, c. 131; 2011, c. 851.

§ 58.1-3939. Reserved

Reserved.

§ 58.1-3939.1. Repealed

Repealed by Acts 1998, c. 648.

Article 3 - COLLECTION BY DISTRESS, SUIT, LIEN, ETC

§ 58.1-3940. Limitation on collection of local taxes

A. Except as otherwise specifically provided, collection of local taxes shall only be enforceable for five years following December 31 of the year for which such taxes were assessed.

B. Real property taxes shall be enforceable by sale under Article 4 (§ 58.1-3965 et seq.) of the property on which such taxes were assessed and by other means permitted under this chapter for 20 years after December 31 of the year for which such taxes were assessed, provided that whenever taxes or portions of taxes that would otherwise be due have been deferred pursuant to an ordinance enacted in conformity with Article 2 (§ 58.1-3210 et seq.) or Article 2.1 (§ 58.1-3219 et seq.)

of Chapter 32 of this title, the statute of limitations provided by this subsection shall be tolled with respect to taxes deferred during the pendency of such deferral.

C. The limitation periods provided in subsections A and B of this section shall not apply to taxes or other charges that have been reduced to judgment or a judgment lien resulting from a suit to collect taxes or other charges, which may be collected by any means provided in this chapter or any means provided by general law for the collection of judgments so long as the judgment or judgment lien remains enforceable pursuant to general law.

D. The statutes of limitations established by this section shall be tolled, with respect to any tax obligation or tax lien not discharged or otherwise relieved or rendered unenforceable pursuant to applicable law, for any period during which all or substantially all of the assets or estate of the taxpayer are subject to the control or custody of any court or receiver, including without limitation any United States Bankruptcy Court.

Code 1950, §§ 58-967, 58-1019, 58-1021; 1971, Ex. Sess., c. 6; 1984, c. 675; 1994, c. 209; 1996, c. 323; 1998, c. 648; 2002, c. 64; 2003, c. 214.

§ 58.1-3941. What may be distrained for taxes

Any goods or chattels, money and bank notes in the county, city or town belonging to the person or estate assessed with taxes, levies or other charges collected by the treasurer may be distrained therefor by the treasurer, sheriff, constable or collector. Property subject to levy or distress for taxes shall be liable to levy or distress in the hands of any person for taxes, penalties and interest thereon, except that any highway vehicle as defined herein purchased by a bona fide purchaser for value shall not be liable to levy or distress for such taxes unless the purchaser knew at the time of purchase that the taxes had been specifically assessed against such vehicle.

Property on which taxes were specifically assessed, whether assessed per item or in bulk shall be subject to distress after it passes into the hands of a bona fide purchaser for value.

As used in this section, "highway vehicle" means any vehicle operated, or intended to be operated, on a highway. The term shall not include: (i) farm machinery, including farm machinery designed for off-road use but capable of movement on roads at low speeds; (ii) a vehicle operated on rails; (iii) machinery designed principally for off-road use; (iv) self-propelled equipment manufactured for a specific off-road purpose, which is used on a job site and the movement of which on any highway is incidental to the purpose for which it was designed and manufactured; or (v) a vehicle operated on the highway and exempt from registration requirements pursuant to §§ 46.2-663 through 46.2-667 and 46.2-669 through 46.2-683.

Code 1950, § 58-1001; 1971, Ex. Sess., c. 155; 1983, c. 498; 1984, c. 675; 1996, c. 323; 1997, cc. 496, 731; 2005, c. 59.

§ 58.1-3942. Security interests no bar to distress

A. No security interest in goods or chattels shall prevent the same from being distrained and sold for taxes or levies assessed thereon, no matter in whose possession they may be found.

B. Prior to such sale for distress, the treasurer, sheriff, constable or collector, or other party conducting the sale shall give notice to any secured party of record as his name and address shall appear on the records of the Department of Motor Vehicles, the Department of Game and Inland Fisheries, the State Corporation Commission, or in the office of the clerk of any circuit court where the debtor has resided to the knowledge of the party to whom the tax is owing during a one-year period prior to the sale. Notice shall also be given to any secured party of whom the party to whom the tax is owing shall have knowledge.

C. A security interest perfected prior to any distraint for taxes shall have priority over all taxes, except those specifically assessed either per item or in bulk against the goods and chattels so assessed. Taxes specifically assessed either per item or in bulk against goods and chattels shall constitute a lien against the property so assessed and shall have priority over all security interests. For purposes of this section, a merchant's capital tax shall be deemed to be specifically assessed against all inventory in the merchant's possession at the time of distraint, or at the time such inventory is repossessed by the holder of a security interest therein. For purposes of this section, taxes specifically assessed in bulk means an assessment against the specific class of property distrained.

D. The title conveyed to the purchaser of goods and chattels at a sale for taxes specifically assessed either per item or in bulk against such goods and chattels distrained shall be free of all claims of any creditor, including the claims of any secured party of record, provided that notice was given to such creditor as required by subsection B. The person conducting the sale shall apply the proceeds of the sale first to unpaid taxes, penalty, and accrued interest, and then to the claims of secured parties of record, in the order of their priority, before delivering any sum remaining to the person or estate assessed with taxes.

E. Notwithstanding any provision of this section to the contrary, no highway vehicle as defined in § 58.1-3941 purchased by a bona fide purchaser for value from the person or estate assessed with taxes shall be liable to levy or distress for such taxes unless the purchaser knew at the time of purchase that the taxes had been specifically assessed against such vehicle.

F. The purchaser of a motor vehicle sold under this section shall receive a sales receipt and an affidavit of the treasurer, sheriff, constable or collector, or other party conducting the sale affirming that he has complied with the provisions of this section, and shall be entitled to apply to and receive from the Department of Motor Vehicles a certificate of title and registration card for the vehicle.

Code 1950, § 58-1009; 1966, c. 559; 1981, c. 153; 1983, c. 498; 1984, c. 675; 1990, c. 553; 1996, c. 732; 1997, c. 731; 1999, c. 299; 2001, c. 801; 2005, c. 59; 2012, c. 623.

§ 58.1-3943. Distraint on property of tenant or of owner of tract who has sold part thereof

When rent is payable in a share of a crop, the share of the crop belonging to a landlord who owes taxes, but only that share, shall be liable to levy. When taxes are assessed wholly to one person on

a tract or lot, part of which has become the freehold of another by a title recorded before the commencement of the year for which such taxes are assessed, the property belonging to the former shall not be distrained for more than a due proportion of the taxes.

Code 1950, § 58-1006; 1984, c. 675.

§ 58.1-3944. Tenant paying taxes or levies to have credit out of rents

A tenant from whom payment is obtained, by distress or otherwise, of taxes or other charges due from a person under whom he holds, shall have credit for the same against such person out of the rents he may owe him, except when the tenant is bound to pay such taxes or other charges by an express contract with such person.

Code 1950, § 58-1013; 1984, c. 675; 2002, c. 64.

§ 58.1-3945. Where land lies partly in one county and partly in another

When taxes or levies are assessed on a tract of land lying partly in one county or city and partly in another county or city the treasurer of the county or city in which the taxes or levies are so assessed may distrain on the part of the land lying in the other county or city in the same manner as if such part was in his own county or city.

Code 1950, § 58-1007; 1984, c. 675.

§ 58.1-3946. When owner a nonresident of county, city or town where land lies

When property subject to taxation is located in a county, city or town different from that in which the owner of such property resides, or when a person assessed with any taxes, levies and other charges before paying the same removes from the county, city or town in which the assessment was made, the treasurer shall have the same remedies for the collection of all such taxes, levies and other charges in all respects as if the person owing the same resided in the officer's own county, city or town; or the treasurer may transfer to the treasurer of the county, city or town in which such person resides the tickets for taxation and levies and the statements for other charges against such person or property and the last-named officer shall proceed to collect the same and pay the proceeds to the former officer.

Code 1950, § 58-1008; 1984, c. 675; 2002, c. 64.

§ 58.1-3947. Lease of real estate for collection of taxes

Any real estate in the county, city or town belonging to the person or estate assessed with taxes due on such real estate may be rented or leased by the treasurer, sheriff, constable or collector, privately or at public outcry, after due publication, in the discretion of such treasurer, sheriff, constable or collector, either at the front door of the courthouse or on the premises or at some public place in the community where the premises are situated, after giving not less than fifteen days' notice by printed or written notices posted at the front door of the courthouse and at three or more places in the neighborhood of the real estate to be leased. Such leasing shall be for a term not exceeding one year and for cash sufficient to pay the taxes due on the real estate so rented and the costs and charges of advertising and leasing. When a lease is effected, the treasurer,

collector, sheriff or constable leasing such real estate shall put the lessee in possession thereof and for such purpose shall have like powers as those exercised by a sheriff acting under a writ of possession.

Code 1950, § 58-1003; 1971, Ex. Sess., c. 155; 1984, c. 675.

§ 58.1-3948. Notice to tenant prior to such leasing

When real estate is advertised for leasing for the taxes and there is any tenant in possession of the property so advertised, then the treasurer, sheriff, constable, collector or other collecting officer making the lease shall serve upon such tenant, at least fifteen days prior to the day of leasing, a copy of the notice of leasing. This service shall be in conformity with §§ 8.01-285 through 8.01-295.

Code 1950, § 58-1004; 1971, Ex. Sess., c. 155; 1984, c. 675.

§§ 58.1-3949 through 58.1-3951. Reserved

Reserved.

§ 58.1-3952. Collection out of estate in hands of or debts due by third party

A. The treasurer or other tax collector of any county, city or town may apply in writing to any person indebted to or having in his hands estate of a taxpayer or other debtor for payment of taxes, or other charges collected by the treasurer, more than thirty days delinquent out of such debt or estate. Payment by such person of such taxes, penalties and interest, or other charges either in whole or in part, shall entitle him to a credit against such debt or estate. The taxes, penalties and interest, or other charges shall constitute a lien on the debt or estate due the taxpayer or other debtor from the time the application is received. For each application served the person applied to shall be entitled to a fee of twenty dollars which shall constitute a charge or credit against the debt to or estate of the taxpayer or other debtor. The treasurer or collector shall send a copy of the application to the taxpayer or other debtor, with a notice informing him of the remedies provided in this chapter.

If the person applied to does not pay so much as ought to be recovered out of the debt or estate, the treasurer or collector shall procure a summons directing such person to appear before the appropriate court, where proper payment may be enforced. Any person so summoned shall have the same rights of removal and appeal as are provided by law for the enforcement of demands between individuals. For purposes of this section, the term "person" shall include but shall not be limited to individuals, corporations, partnerships, institutions, and other such entities, as well as the Commonwealth and its agencies and political subdivisions. However, in no event shall the Commonwealth, its agencies, or its political subdivisions incur any liability for the failure to pay the treasurer's or other tax collector's application under this section.

B. Unless otherwise exempted, the wages and salaries of all employees of this Commonwealth, other than state officers, shall be subject to this section. Whenever the salary or wages of such employees as above mentioned shall be so attached, the application shall be mailed to the debtor

and to the officer or supervisor who is head of the department, agency, or institution where the employee is employed, or other officer through whom the debtor's salary or wages is paid, provided that process shall not be served upon the State Treasurer or the State Comptroller except as to employees of their respective departments, and upon such service the officer or supervisor shall, on or before the return day of the application, transmit to the treasurer or other tax collector issuing the application a certificate showing the amount due from the Commonwealth to such debtor, up to the return day of the application, which amount the officer or supervisor shall hold subject to further instruction from the treasurer or other tax collector. However, in no case shall the officer or supervisor hold more than the sum of taxes, penalties and interest, and other charges stated in the application. Such certificate shall be evidence of all facts therein stated, unless a court of appropriate jurisdiction directs that the deposition of the officer or supervisor, or such other officer through whom the debtor's salary or wages be paid, be taken, in which event the deposition of the officer or supervisor shall be taken in his office and returned to the clerk of the court in which the summons is, just as other depositions are returned, and in no such case shall the officer or supervisor be required to leave his office to testify. In all proceedings under this section, the amount found to be due the debtor by the Commonwealth shall be paid as directed by the court.

Code 1950, § 58-1010; 1960, c. 573; 1983, c. 481; 1984, c. 675; 1991, c. 445; 1994, c. 153; 1997, c. 496; 2002, c. 64.

§ 58.1-3953. Additional proceedings for the collection of taxes; jurisdiction and venue

The payment of any county, city or town taxes, may, in addition to the other remedies provided in this chapter, be enforced by action at law, suit in equity or by attachment in the same manner, to the same extent and with the same rights of appeal as now exist or may hereafter be provided by law for the enforcement of demands between individuals. The venue for any such proceeding under this section shall be as specified in subdivision 13 a of § 8.01-261.

Code 1950, § 58-1014; 1954, c. 333; 1977, c. 624; 1981, c. 421; 1984, c. 675.

§ 58.1-3954. Procedure in such suits

Such proceedings shall be instituted and conducted in the name of the county, city, or town in which such taxes are assessed, at the direction of the governing body of the county, city or town, by such attorney as the governing body may employ or retain for the purpose.

Code 1950, § 58-1016; 1954, c. 333; 1984, c. 675; 1993, c. 27 .

§ 58.1-3955. Judgment or decree; effect thereof; enforcement

In any proceeding under § 58.1-3953 the court shall have the power to determine the proper taxes, penalties and interest with which upon a correct assessment the taxpayer is chargeable for any year or years not barred by the statute of limitations at the time the proceedings were instituted, and order payment thereof. If any taxes of which collection is sought have been erroneously charged, the court may order exoneration thereof. Payment of such judgment or decree shall be

enforced against the taxpayer in the same manner that it could be enforced in a proceeding between individuals.

Code 1950, § 58-1017; 1984, c. 675.

§ 58.1-3956. Collection in foreign jurisdiction

When after the rendition of such a judgment or decree against a defendant it seems to the attorney for the county, city or town having charge thereof that there may not be found within the Commonwealth sufficient property of the defendant out of which the same may be enforced, but that the same could be enforced in some other jurisdiction, it shall be his duty to institute in some appropriate court, state or federal, in such foreign jurisdiction, any appropriate proceedings to enforce therein the payment of such judgment.

Code 1950, § 58-1018; 1984, c. 675.

§ 58.1-3957. Payments to attorneys or others for collection

A. Whenever the services of any attorney employed to collect taxes which are a lien on real estate result in the collection of any such tax, such attorney may be compensated for his services whether or not any suit is instituted for the collection of the tax or the sale of the real estate.

B. No payment or compensation on any taxpayer account shall be made to any attorney, collection agency, or other person employed to collect delinquent taxes on amounts received from the Department of Taxation and collected through the Setoff Debt Collection Act; however, this limitation shall not apply to contracts or agreements entered into prior to July 1, 1990.

Code 1950, § 58-1020; 1973, c. 467; 1984, c. 675; 1990, c. 935 .

§ 58.1-3958. Payment of administrative costs, etc

The governing body of any county, city or town may impose, upon each person chargeable with delinquent taxes or other delinquent charges, fees to cover the administrative costs and reasonable attorney's or collection agency's fees actually contracted for. The attorney's or collection agency's fees shall not exceed 20 percent of the taxes or other charges so collected. The administrative costs shall be in addition to all penalties and interest, and shall not exceed $30 for taxes or other charges collected subsequent to 30 or more days after notice of delinquent taxes or charges pursuant to § 58.1-3919 but prior to the taking of any judgment with respect to such delinquent taxes or charges, and $35 for taxes or other charges collected subsequent to judgment. If the collection activity is to collect on a nuisance abatement lien, the fee for administrative costs shall be $150 or 25 percent of the cost, whichever is less; however, in no event shall the fee be less than $25.

No tax assessment or tax bill shall be deemed delinquent and subject to the collection procedures prescribed herein during the pendency of any administrative appeal under § 58.1-3980, so long as the appeal is filed within 90 days of the date of the assessment, and for 30 days after the date of the final determination of the appeal, provided that nothing in this paragraph shall be construed to preclude the assessment or refund, following the final determination of such appeal, of such

interest as otherwise may be provided by general law as to that portion of a tax bill that has remained unpaid or was overpaid during the pendency of such appeal and is determined in such appeal to be properly due and owing.

Code 1950, § 58-1020.1; 1982, c. 620; 1984, c. 675; 1991, c. 271; 1994, c. 932; 1995, c. 395; 1997, c. 496; 1998, c. 648; 1999, c. 389; 2000, cc. 389, 453; 2003, c. 170.

§ 58.1-3959. Petition to ascertain delinquent taxes; exoneration from lien

Any person interested in real estate may file a petition in the circuit court of the county or city wherein the assessment of taxes was made, for the purpose of having ascertained any and all delinquent taxes due upon such real estate or any delinquent taxes imposed under the authority of § 58.1-3712, 58.1-3713, 58.1-3713.4, or 58.1-3741. A copy of the petition shall be served upon the county or city attorney, or if there is none, on the attorney for the Commonwealth at least ten days before the date upon which the petition specifies the court shall be asked to hear the petition. The court may refer the question to a commissioner in chancery for report thereon. The court shall enter final judgment determining what, if any, taxes are due upon the real estate, including any taxes covered by the lien described in § 58.1-3745, mentioned in the petition. Upon the payment of any amount so ascertained by the court, and the costs of the proceeding, the land shall be held free and clear of any such tax lien. No writ tax shall be charged. The clerk shall be entitled to a fee of one dollar which, together with other costs, including such fee as the court may deem proper to allow the commissioner in chancery, shall be paid by the petitioner.

Code 1950, § 58-1025; 1984, c. 675; 2001, c. 462; 2013, cc. 305, 618.

§ 58.1-3960. Validation of certain tax deeds made under repealed § 58-1052 or § 58-1091

All deeds heretofore made by a clerk of court to a purchaser under the provisions of repealed § 58-1052 or § 58-1091 of the Code of Virginia, which deeds have been recorded for fifteen years or more in the clerk's office of the county or city wherein the land conveyed thereby is located, are hereby declared to be valid in all respects and for all purposes except as hereinafter provided as to persons under disability.

No former owner, his heirs or assigns shall make an entry on or bring an action to recover any land conveyed by such a deed or institute any suit to set aside such a deed, except within fifteen years next after the time such a deed from the clerk of court has been duly admitted to record.

An infant or insane person who owned land at the time the same was returned delinquent and sold on account of the default in paying the taxes assessed thereon, which land has been conveyed by a clerk of court by such deed, may redeem the same in accordance with the provisions of law within two years after the removal of disability; but in no case shall the right to redeem be allowed any person after the lapse of twenty years from the day of such sale.

Nothing herein shall be construed so as to affect or divert the title of a tenant in reversion or remainder to any real estate which has been returned delinquent and sold on account of the default of the tenant for life in paying the taxes assessed thereon or to affect or divert the title of a

cotenant, joint tenant or coparceners, when the grantee in such deed is one of the cotenants, joint tenants or coparceners.

Code 1950, § 58-1026.1; 1974, c. 306; 1984, c. 675.

§ 58.1-3961. Assessment not invalid unless rights prejudiced by error

No assessment of property, other than real property, shall be invalid because of any error, omission or irregularity by the commissioner of the revenue or other assessing officer in charging such property in the personal property or other tax book, unless it is shown by the person contesting any such assessment that such error, omission or irregularity has operated to prejudice his rights.

1995, c. 239.

§§ 58.1-3962 through 58.1-3964. Reserved

Reserved.

Article 4 - BILL IN EQUITY FOR SALE OF DELINQUENT TAX LANDS

§ 58.1-3965. When land may be sold for delinquent taxes; notice of sale; owner's right of redemption

A. When any taxes on any real estate in a locality are delinquent on December 31 following the second anniversary of the date on which such taxes have become due, or, in the case of real property upon which is situated (i) any structure that has been condemned by the local building official pursuant to applicable law or ordinance; (ii) any nuisance as that term is defined in § 15.2-900; (iii) any derelict building as that term is defined in § 15.2-907.1; or (iv) any property that has been declared to be blighted as that term is defined in § 36-49.1:1, the first anniversary of the date on which such taxes have become due, such real estate may be sold for the purpose of collecting all delinquent taxes on such property.

Upon a finding by the court, on real estate with an assessed value of $100,000 or less in any locality, that (i) any taxes on such real estate are delinquent on December 31 following the first anniversary of the date on which such taxes have become due or (ii) there is a lien on such real estate pursuant to § 15.2-900, 15.2-906, 15.2-907, 15.2-907.1, 15.2-908.1, or 36-49.1:1, which lien remains unpaid on December 31 following the first anniversary of the date on which such lien was recorded, the property shall be deemed subject to sale by public auction pursuant to proper notice under this subsection.

The officer charged with the duty of collecting taxes for the locality wherein the real property lies shall, at least 30 days prior to instituting any judicial proceeding pursuant to this section, send a notice to (i) the last known address of the property owner as such owner and address appear in the records of the treasurer, (ii) the property address if the property address is different from the owner's address and if the real estate is listed with the post office by a numbered and named street address and (iii) the last known address of any trustee under any deed of trust, mortgagee under any mortgage and any other lien creditor, if such trustee, mortgagee or lien creditor is not

otherwise made a party defendant under § 58.1-3967, advising such property owner, trustee, mortgagee or other lien creditor of the delinquency and the officer's intention to take action. Such notice shall advise the taxpayer that the taxpayer may request the treasurer to enter into a payment agreement to permit the payment of the delinquent taxes, interest, and penalties over a period not to exceed 36 months in accordance with the provisions of subsection C. Such officer shall also cause to be published at least once a list of real estate which will be offered for sale under the provisions of this article in a newspaper of general circulation in the locality, at least 30 days prior to the date on which judicial proceedings under the provisions of this article are to be commenced.

The pro rata cost of such publication shall become a part of the tax and together with all other costs, including reasonable attorneys' fees set by the court and the costs of any title examination conducted in order to comply with the notice requirements imposed by this section, shall be collected if payment is made by the owner in redemption of the real property described therein whether or not court proceedings have been initiated. A notice substantially in the following form shall be sufficient:

Notice

Judicial Sale of Real Property

On ..... (date) ..... proceedings will be commenced under the
authority of § 58.1-3965 et seq. of the Code of Virginia to sell the following
parcels for payment of delinquent taxes:

(description of properties)

B. The owner of any property listed may redeem it at any time before the date of the sale by paying all accumulated taxes, penalties, reasonable attorneys' fees, interest and costs thereon, including the pro rata cost of publication hereunder. Partial payment of delinquent taxes, penalties, reasonable attorneys' fees, interest or costs shall not be sufficient to redeem the property, and shall not operate to suspend, invalidate or make moot any action for judicial sale brought pursuant to this article.

C. Notwithstanding the provisions of subsection B and of § 58.1-3954, the treasurer or other officer responsible for collecting taxes may suspend any action for sale of the property commenced pursuant to this article upon entering into an agreement with the owner of the real property for the payment of all delinquent amounts in installments over a period which is reasonable under the circumstances, but in no event shall exceed 36 months. Any such agreement shall be secured by the lien of the locality pursuant to § 58.1-3340.

D. During the pendency of any installment agreement permitted under subsection C, any proceeding for a sale previously commenced shall not abate, but shall be continued on the docket of the court in which such action is pending. It shall be the duty of the treasurer or other officer

responsible for collecting taxes to promptly notify the clerk of such court when obligations arising under such an installment agreement have been fully satisfied. Upon the receipt of such notice, the clerk shall cause the action to be stricken from the docket.

E. In the event the owner of the property or other responsible person defaults upon obligations arising under an installment agreement permitted by subsection C, or during the term of any installment agreement, defaults on any current obligation as it becomes due, such agreement shall be voidable by the treasurer or other officer responsible for collecting taxes upon 15 days' written notice to the signatories of such agreement irrespective of the amount remaining due. Any action for the sale previously commenced pursuant to this article may proceed without any requirement that the notice or advertisement required by subsection A, which had previously been made with respect to such property, be repeated. No owner of property which has been the subject of a defaulted installment agreement shall be eligible to enter into a second installment agreement with respect to the same property within three years of such default.

F. Any corporate, partnership or limited liability officer, as those terms are defined in § 58.1-1813, who willfully fails to pay any tax being enforced by this section, shall, in addition to other penalties provided by law, be liable to a penalty of the amount of the tax not paid, to be assessed and collected in the same manner as such taxes are assessed and collected.

G. During the pendency of the action, the circuit court in which the action is pending may, on its own motion or on the motion of any party, refer the parties to a dispute resolution proceeding pursuant to the provisions of Chapter 20.2 (§ 8.01-576.4 et seq.) of Title 8.01.

H. In any case in which real estate subject to delinquent taxes is situated in two or more jurisdictions, a suit to sell the entirety of the real estate pursuant to this article may be brought in a single jurisdiction provided that (i) taxes are delinquent in all jurisdictions for periods not less than the minimum applicable periods set forth in subsection A and (ii) the treasurer of each jurisdiction within which the property is situated consents to the suit.

The suit shall identify the taxes, penalties, interest, and other charges due in each jurisdiction. The publications and notices required pursuant to this section shall identify each of the jurisdictions in which the property is situated. Upon sale of the property, the order confirming the sale shall provide for the payment of taxes, penalties, interest, and other charges to each jurisdiction, and copies of the order confirming the sale and the deed conveying the property to the purchaser shall be recorded among the land records of the clerk's office of the circuit court for each jurisdiction within which the property that is the subject of the suit is situated.

Code 1950, § 58-1117.1; 1973, c. 467; 1982, c. 669; 1983, cc. 37, 345; 1984, c. 675; 1988, c. 306; 1994, c. 884; 1995, c. 547; 1996, cc. 323, 710; 1997, c. 724; 1999, c. 674; 2002, c. 64; 2003, c. 168; 2004, c. 968; 2009, cc. 181, 551; 2013, c. 334; 2015, c. 50.

§ 58.1-3965.1. Additional authority to sell land for delinquent taxes

In addition to the authority provided by subsection A of § 58.1-3965, a city may also, by ordinance, institute proceedings to sell in accordance with law any real estate when any taxes on such real estate are delinquent on December 31 following the first anniversary of the date on which such taxes have become due provided proper notice is given in accordance with subsection A of § 58.1-3965.

2000, c. 756.

§ 58.1-3965.2. Additional authority to sell land for certain delinquent special taxes or special assessments

In addition to the authority provided by subsection A of § 58.1-3965, a locality may provide, as part of any ordinance adopted pursuant to Article 6 (§ 15.2-5152 et seq.) of Chapter 51 of Title 15.2 (i) to create a community development authority or (ii) to levy special taxes or special assessments on real property within any district covered by the community development authority or on abutting property within the district, that proceedings be instituted to sell any such real property when any special tax or special assessment described under subdivision A 3 or A 5 of § 15.2-5158 imposed on the property is delinquent on the first anniversary of the date on which the tax or assessment became due.

No proceedings shall be instituted under this section to sell real property that is a single family residence if the owner of the property is the resident on such first anniversary date. No proceedings shall be instituted under this section to sell an individual residential unit in a multi-unit structure or building if the owner of the unit is the resident of the unit on such first anniversary date.

Proper notice in accordance with subsection A of § 58.1-3965 shall be required, and the sale shall be made in accordance with law and subject to all other applicable provisions of this article.

2011, c. 324.

§ 58.1-3966. Employment of attorney to institute proceedings; bond of attorney

Proceedings under this article shall be instituted and conducted in the name of the county, city or town in which the real estate lies, by such attorney as the governing body or treasurer of the county, city or town employs for such purpose. The governing body or treasurer may require the attorney to give bond in an amount to be fixed by it, with surety to be approved by it, conditioned upon the lawful accounting for all funds which may come into his hands as such attorney under this article, and the premium on the bond may be ordered to be paid out of the local treasury. The bond shall be delivered to the clerk of the circuit court of the county or city and shall be recorded by the clerk in his special commissioner's bond book.

Code 1950, § 58-1117.2; 1973, c. 467; 1984, c. 675; 1997, c. 724.

§ 58.1-3967. How proceedings instituted; parties; procedure generally; title acquired; disposition of surplus proceeds of sale

Proceedings under this article for the appointment of a special commissioner under § 58.1-3970.1 or the sale of real estate on which county, city, or town taxes are delinquent shall be by bill in equity, filed in the circuit court of the county or city in which such real estate is located, to subject the real estate to the lien for such delinquent taxes.

Any party with an interest in such real estate, including a lienor or person with a claim of title, but not including a person whose interest in the real estate is secured by a deed of trust properly recorded, shall file his claim within 90 days after notice of such proceedings. Failure to timely file shall bar any such claims.

Any party who is not otherwise served shall be served by publication pursuant to § 8.01-316. Any person served by publication may petition to have the case reheard, but, notwithstanding § 8.01-322, only for good cause shown, and only within 90 days of entry of the confirmation of sale.

All necessary parties shall be made parties defendant. A guardian ad litem shall be appointed for persons under a disability as defined in § 8.01-2, and for all persons proceeded against by an order of publication as parties unknown. The beneficiary or beneficiaries under any deed of trust, security interest or mortgage shall not be deemed necessary parties, provided any trustee under the deed of trust, any mortgagee under the mortgage, and any lien creditor are given notice as prescribed in § 58.1-3965, except that either the beneficiary or beneficiaries, or the trustee or trustees, under any deed of trust, security interest or mortgage securing a financial institution, or any lien creditor that is a financial institution, shall be necessary parties defendant. After filing of suit and a lis pendens, any party who thereafter acquires an interest in the delinquent real estate, including a lienor or party with a claim of title, shall not be deemed a necessary party, but shall be permitted to intervene in the proceedings to file his claim. Failure to file such a claim shall bar any such claim. The title conveyed to the purchaser at the judicial sale shall be held to bar any disabilities of parties defendant, and shall be free of all claims of any creditor, person, or entity, including those claims of beneficiaries under any deed of trust or mortgage, provided that notice was given or the creditor, person, or entity was made a party defendant.

Such proceedings shall be held in accordance with the requirements, statutory or arising at common law, relative to effecting the sale of real estate by a creditor's bill in equity to subject real estate to the lien of a judgment creditor, provided that publication, if necessary, shall be as provided by § 8.01-321.

In proceedings under this article, the character of the title acquired by the purchaser of such real estate at such sale shall be governed by the principles and rules applicable to the titles of purchases at judicial sales of real estate generally; however nothing herein shall be construed to affect any easements recorded prior to the date of sale.

The former owner, his heirs or assigns of any real estate sold under this article shall be entitled to the surplus received from such sale in excess of the taxes, penalties, interest, reasonable attorneys' fees, costs and any liens chargeable thereon. If no claim for payment of the indebtedness secured

by any lien chargeable thereon is made by an unknown beneficiary of such lien, or if no claim for such surplus is made by such former owner, his heirs or assigns, within two years after the date of confirmation of such sale, then such amount secured by the lien of the unknown beneficiary, surplus, or both, as applicable, shall be paid by the clerk of the court in which such suit was instituted to the county, city, or town that received proceeds from the sale of the real estate. If a county and a town receive proceeds from the same sale, then such surplus shall be divided between the county and town pro rata based on the relative amount of proceeds received by each. Upon request of the former owner, his heirs or assigns, or unknown beneficiary of any real estate sold under this article, and after a showing of a prior entitlement thereto, the governing body of any county or city which has received such surplus funds may, in its discretion, grant relief, by ordinance, to such former owner, heir, or assign, or unknown beneficiary and pay over such amount as the governing body may deem appropriate to such former owner, heir, assign, or unknown beneficiary.

Code 1950, § 58-1117.3; 1973, c. 467; 1984, c. 675; 1990, cc. 831, 918; 1992, c. 854; 1993, cc. 51, 372; 1994, cc. 295, 884; 1996, c. 710; 1997, c. 327; 1999, cc. 403, 869; 2000, c. 756; 2001, c. 37; 2004, c. 645; 2006, c. 616; 2009, c. 682.

§ 58.1-3968. When two or more parcels may be covered by one bill

In any proceeding under this article, two or more parcels of real estate may be covered by one bill if they were assessed against or are owned by the same party or parties, or if they are assessed against and owned by different parties but each parcel is assessed at a value which does not exceed $100,000.

Code 1950, § 58-1117.4; 1973, c. 467; 1978, c. 54; 1984, c. 675; 1985, c. 60; 1991, c. 243 .

§ 58.1-3969. Order of reference; appointment of special commissioner to make sale; costs; attorney fees

The court shall have the option, for good cause shown after proper objection made by any party respondent, to refer the case to a commissioner in chancery for hearing and report, in which case, the order of reference shall be to a commissioner in chancery or special master other than the attorney (or any attorney practicing in the same firm as the attorney) employed to subject the real estate to the lien of any taxes. Upon (i) receipt of proper service of process on all parties defendant, a written real estate title certificate and the written report of a licensed real estate appraiser where there is no dispute as to title or value, (ii) the receipt of the report of the commissioner in chancery, or (iii) where the assessor for the locality files an affidavit with the court of value and the value is averred to not exceed $100,000, the court may appoint a special commissioner to sell the properties and execute the necessary deeds when a sale is found necessary or advisable. The court may designate the attorney employed by the governing body of the locality to bring the suit.

The sale price achieved at a public auction shall be prima facie, but rebuttable, evidence of the value of the property for purposes of the approval of the sale. If the attorney employed by the governing body of the locality be appointed a special commissioner to sell the land and execute the

deed and he has already given the bond hereinabove mentioned, no additional bond shall be required of him as special commissioner unless the court regards the bond already given as insufficient in amount. No fee or commission shall be allowed or paid to any attorney for acting under the order of reference or as special commissioner, except as hereinafter provided, and the compensation contracted to be paid any such attorney by the governing body, whether the employment was on a salary, commission or other basis, shall be in full for all services rendered by him. The court shall allow as part of the costs, to be paid into the treasury of the locality, a reasonable sum to defray the cost of its attorneys and the expenses of publication and appraisal necessary for the purpose of instituting such suit and such fees and commissions, including fees for preparing and executing deeds, as would be allowed if the suit were an ordinary lien creditor's suit. When the special commissioner is other than the attorney employed by the locality the court may allow him reasonable fees for selling the land and executing the deed, payable out of the proceeds of sale.

In any case in which the attorney representing the locality and the governing body thereof have failed to reach an agreement as to a salary or commission or other basis as compensation for the services of such attorney, the court in which any proceedings are brought under this article may allow from the proceeds of the sale of any such real estate such fee as the court shall deem reasonable and proper to the attorney representing any such locality in such proceeding.

Code 1950, § 58-1117.5; 1973, c. 467; 1984, c. 675; 1997, c. 724; 1999, c. 674; 2005, c. 885; 2006, c. 333; 2009, cc. 181, 551; 2012, c. 627; 2014, c. 34.

§ 58.1-3970. County, city, etc., may be purchaser

The county, city or town may be a purchaser at any sale held under this article or under any other provision of law for the enforcement of tax liens.

Code 1950, § 58-1117.6; 1973, c. 467; 1984, c. 675.

§ 58.1-3970.1. Appointment of special commissioner to execute title to certain real estate with delinquent taxes or liens to localities

A. Except as provided in subsection B, in any proceedings under this article for the sale of a parcel or parcels of real estate which meet all of the following: (i) each parcel has delinquent real estate taxes or the locality has a lien against the parcel for removal, repair or securing of a building or structure; removal of trash, garbage, refuse, litter; or the cutting of grass, weeds or other foreign growth, (ii) each parcel has an assessed value of $50,000 or less, and (iii) such taxes and liens, together, including penalty and accumulated interest, exceed 50 percent of the assessed value of the parcel or such taxes alone exceed 25 percent of the assessed value of the parcel, the locality may petition the circuit court to appoint a special commissioner to execute the necessary deed or deeds to convey the real estate to the locality in lieu of the sale at public auction. After notice as required by this article, service of process, and upon answer filed by the owner or other parties in interest to the bill in equity, the court shall allow the parties to present evidence and arguments, ore tenus, prior to the appointment of the special commissioner. Any surplusage accruing to a

locality as a result of the sale of the parcel or parcels after the receipt of the deed shall be payable to the beneficiaries of any liens against the property and to the former owner, his heirs or assigns in accordance with § 58.1-3967. No deficiency shall be charged against the owner after conveyance to the locality.

B. For a parcel or parcels of real estate in the Cities of Norfolk, Richmond, Hopewell, Newport News, Petersburg, Fredericksburg, and Hampton, all of the provisions of subsection A shall apply except (i) that the percentage of taxes and liens, together, including penalty and accumulated interest, and the percentage of taxes alone set forth in clause (iii) of subsection A shall exceed 35 percent and 15 percent, respectively, of the assessed value of the parcel or parcels or (ii) that the percentage of taxes and liens, together, including penalty and accumulated interest, and the percentage of taxes alone set forth in clause (iii) of subsection A shall exceed 20 percent and 10 percent, respectively, of the assessed value of the parcel or parcels, and each parcel has an assessed value of $100,000 or less, provided that under this clause the property is not an occupied dwelling, and the locality enters into an agreement for sale of the parcel to a nonprofit organization to renovate or construct a single-family dwelling on the parcel for sale to a person or persons to reside in the dwelling whose income is below the area median income.

1999, c. 869; 2003, cc. 16, 156; 2004, c. 968; 2011, c. 688; 2012, cc. 87, 610; 2014, c. 519; 2015, c. 379.

§ 58.1-3970.2. When delinquent taxes may be deemed paid in full

A. For purposes of this section, "tax delinquent property" means any real property for which real property taxes are delinquent on December 31 following the second anniversary of the date on which such taxes have become due or, in the case of real property upon which is situated (i) any structure that has been condemned by the local building official pursuant to applicable law or ordinance, (ii) any nuisance as that term is defined in § 15.2-900, (iii) any derelict building as that term is defined in § 15.2-907.1, or (iv) any property that has been declared to be blighted pursuant to § 36-49.1:1, for which real property taxes are delinquent on the first anniversary of the date on which such taxes have become due.

B. Any county, city, or town may deem paid in full all accumulated taxes, penalties, interest, and other costs on any tax delinquent property and notify credit reporting agencies that such amounts are deemed paid in full, in exchange for conveyance of the property by the owner to a land bank entity created pursuant to Chapter 75 (§ 15.2-7500 et seq.) of Title 15.2 or an organization that has been granted tax-exempt status under § 501(c)(3) or 501(c)(4) of the Internal Revenue Code and that builds, renovates, or revitalizes affordable housing for low-income families.

2015, c. 498; 2016, cc. 159, 383.

§ 58.1-3971. Property improperly placed on delinquent land books

A. The attorney shall periodically report to the governing body employing him every parcel of real estate which he ascertains to be improperly placed on the delinquent land books and the

governing body, upon satisfying itself of the correctness of the report, or correcting it to conform to the facts, shall certify the information to the treasurer who shall mark his delinquent land book accordingly. The attorney shall make the same report to the commissioner of the revenue and request that the commissioner of the revenue correct the assessment of such property pursuant to § 58.1-3981, and the attorney shall, to the extent necessary if the correction is not or cannot be made pursuant to § 58.1-3981, move the court to enter an order correcting such assessment accordingly.

B. If any parcel which is improperly placed on the delinquent land books is sold under the provisions of this article, the purchaser shall be entitled to a refund of the entire amount he paid for such parcel. The governing body shall reimburse the court or the appropriate party for costs and fees allowed out of such payment.

Code 1950, § 58-1117.7; 1973, c. 467; 1983, c. 255; 1984, c. 675; 1994, c. 540; 2012, c. 627.

§ 58.1-3972. Reserved

Reserved.

§ 58.1-3973. Certain land purchased in name of Commonwealth to revert to owners, etc., subject to lien of delinquent taxes

On June 1, 1973, the title to any real estate purchased by the treasurer of any county, city or town in the name of the Commonwealth pursuant to §§ 58-1067 through 58-1072, which are hereby repealed, and not sold by the treasurer pursuant to such sections shall revert to the former owner or owners, or his or their heirs, successors and assigns, subject to the lien created by § 58.1-3340. The liens of such delinquent taxes shall continue to be recorded in the appropriate clerk's office or other office where such liens are customarily recorded.

Code 1950, § 58-1117.9; 1973, c. 467; 1984, c. 675.

§ 58.1-3974. Redemption of land by owner; lien for taxes paid

Any owner of the real estate described in any notice published pursuant to § 58.1-3965 or any bill in equity filed pursuant to this article, or his or their heirs, successors and assigns, shall have the right to redeem such real estate prior to the date set for a judicial sale thereof by paying into court all taxes, penalties and interest due with respect to such real estate, including any outstanding taxes, penalties, and interest owed to a town or other concurrent taxing entity, together with all costs including costs of publication and a reasonable attorney fee set by the court. Any person who has paid any taxes on such real estate shall have a lien thereon for any taxes paid, plus interest at the rate of six percent per year.

Code 1950, § 58-1117.10; 1973, c. 467; 1983, c. 345; 1984, c. 675; 2012, c. 627.

§ 58.1-3975. Nonjudicial sale of tax delinquent real properties of minimal size and value

Notwithstanding any other provision of this title, the treasurer or other officer responsible for collecting taxes may sell, at public auction, any unimproved parcel of real property that is assessed at less than $10,000, provided that the taxes on such parcel are delinquent on December 31

following the third anniversary of the date on which such taxes have become due, and either such parcel (i) measures less than 4,000 square feet (.0918 acres), or (ii) is determined to be unsuitable for building due to the size, shape, zoning or soils of the parcel by the locality's zoning administrator or other official designated by the locality to administer its zoning ordinance and carry out the duties set forth in subdivision A 4 of § 15.2-2286. For purposes of determining the area of any parcel, the area or acreage found in the locality's land book shall be determinative.

Prior to conducting such sale the treasurer or other officer responsible for collecting taxes shall send notice by certified or registered mail to the record owner or owners of such property and anyone appearing to have an interest in the property at their last known address as contained in the records of the treasurer or other officer responsible for collecting taxes and shall post notice of such sale at the property location, if such property has frontage on any public or private street, and at the circuit courthouse of the locality at least 30 days prior to such sale. The treasurer or other officer responsible for collecting taxes shall also cause a notice of sale to be published in the legal classified section of a newspaper of general circulation at least seven days but no more than 21 days prior to the sale. The pro rata costs of publication and mailing shall become a part of the tax and shall be collected if payment is made by the owner in redemption of such real property. The treasurer or other officer responsible for collecting taxes may advertise and sell multiple parcels at the same time and place pursuant to one notice of sale. The treasurer or other officer responsible for collecting taxes may enter into an agreement with the owner of such parcel for payment over time, not to exceed 12 months. The owner of any property listed may redeem it at any time prior to the date of the sale by paying all accumulated taxes, penalties, interest and costs thereon, including the pro rata costs of publication and mailing. Partial payment of delinquent taxes, penalties, interest or costs shall be insufficient to redeem the property, and shall not operate to suspend, invalidate or nullify any sale brought pursuant to this section.

At the time of sale, the treasurer or other officer responsible for collecting taxes shall sell to the highest bidder at public auction each parcel that has not been redeemed by the owner. Such sale shall be free and clear of the tax lien, but shall not affect easements recorded prior to the date of sale. The treasurer or other officer responsible for collecting taxes shall tender a treasurer's deed to effectuate the conveyance of the parcel to the highest bidder. If the sale proceeds are insufficient to pay the taxes in full, the remaining delinquent tax amount shall remain the personal liability of the former owner. The sale proceeds shall be applied first to the costs of sale, then to the taxes, penalty, and interest due on the parcel, and thereafter to any other taxes or other charges owed by the former owner to the jurisdiction. Any excess proceeds shall remain the property of the former owner and shall be kept by the treasurer in an interest-bearing escrow account. If no claim for payment of excess proceeds is made by the former owner within two years after the date of sale, the treasurer shall deposit the excess proceeds in the jurisdiction's general fund. If the sale does not produce a successful bidder, the treasurer shall add the costs of sale incurred by the jurisdiction to the delinquent real estate account.

2004, c. 100; 2006, c. 616; 2014, c. 28; 2015, c. 59.

§§ 58.1-3976 through 58.1-3979. Reserved

Reserved.

Article 5 - CORRECTION OF ASSESSMENTS, REMEDIES AND REFUNDS

§ 58.1-3980. Application to commissioner of the revenue or other official for correction

A. Any person, firm or corporation assessed by a commissioner of the revenue or other official performing the duties imposed on commissioners of the revenue under this title with any local tax authorized by this title, including, but not limited to, taxes on tangible personal property, machinery and tools, merchants' capital, transient occupancy, food and beverage, or admissions, or a local license tax, aggrieved by any such assessment, may, within three years from the last day of the tax year for which such assessment is made, or within one year from the date of the assessment, whichever is later, apply to the commissioner of the revenue or such other official who made the assessment for a correction thereof.

Sections 58.1-3980 through 58.1-3983 shall also apply to erroneous assessments of real estate if the error sought to be corrected in any case was made by the commissioner of the revenue or such other official to whom the application is made, or is due to a factual error made by others in connection with conducting general reassessments as provided in subsection C of § 58.1-3981.

B. Notwithstanding the provisions of subsection A, an unpaid tangible personal property tax assessment may be appealed to the commissioner of the revenue or other assessing official at any time during which such assessment is collectible under § 58.1-3940, provided the taxpayer can demonstrate by clear factual evidence that he was not subject to the tax for the year in question. If the assessing official is satisfied that the assessment is erroneous, he shall abate the assessment and notify the treasurer or other collecting official of the abatement. Upon receipt of such notice, the treasurer or other collecting official shall forthwith issue a refund or take such other steps as may be necessary to correct the taxpayer's liability accordingly upon the books of the locality.

In the case of an erroneous assessment that has been satisfied in whole or in part through an involuntary payment, an appeal to the assessing official must be made within one year from the date of the involuntary payment. If the assessing official is satisfied that the assessment is erroneous, he shall abate the assessment and notify the treasurer or other collecting official of the abatement. Upon receipt of such notice, the treasurer or other collecting official shall forthwith issue a refund. For purposes of this section, "involuntary payment" means a payment received pursuant to the Setoff Debt Collection Act (§ 58.1-520 et seq.) or § 58.1-3952.

Code 1950, § 58-1141; 1952, c. 82; 1954, c. 533; 1958, c. 585; 1971, Ex. Sess., c. 13; 1974, c. 362; 1977, c. 99; 1984, c. 675; 1989, c. 86; 1991, c. 8; 1992, c. 382; 1995, c. 445; 1998, c. 648; 1999, cc. 123, 624, 677.

§ 58.1-3981. Correction by commissioner or other official performing his duties

A. If the commissioner of the revenue, or other official performing the duties imposed on commissioners of the revenue under this title, is satisfied that he has erroneously assessed such applicant with any such tax, he shall correct such assessment. If the assessment exceeds the proper amount, he shall exonerate the applicant from the payment of so much as is erroneously charged if not paid into the treasury of the county or city. If the assessment has been paid, the governing body of the county or city shall, upon the certificate of the commissioner with the consent of the town, city or county attorney, or if none, the attorney for the Commonwealth, that such assessment was erroneous, direct the treasurer of the county, city or town to refund the excess to the taxpayer, with interest if authorized pursuant to § 58.1-3918 or in the ordinance authorized by § 58.1-3916, or as otherwise authorized in that section. However, the governing body of the county, city or town may authorize the treasurer to approve and issue any refund up to $2,500 as a result of an erroneous assessment.

B. If the assessment is less than the proper amount, the commissioner shall assess such applicant with the proper amount. If any assessment is erroneous because of a mere clerical error or calculation, the same may be corrected as herein provided and with or without petition from the taxpayer. If such error or calculation was made in work performed by others in connection with conducting general assessments, such mistake may be corrected by the commissioner of the revenue.

C. If the commissioner of the revenue, or other official performing the duties imposed on commissioners of the revenue under this title, is satisfied that any assessment is erroneous because of a factual error made in work performed by others in connection with conducting general reassessments, he shall correct such assessment as herein provided and with or without petition from the taxpayer.

D. An error in the valuation of property subject to the rollback tax imposed under § 58.1-3237 for those years to which such tax is applicable may be corrected within three years of the assessment of the rollback tax.

E. A copy of any correction made under this section shall be certified by the commissioner or such other official to the treasurer of his county, city or town. When an unpaid erroneous assessment of real estate is corrected under this section and such real estate has been sold at a delinquent land sale, the commissioner or such other official making such correction shall certify a copy of such correction to the clerk of the circuit court of his county or city; and such clerk shall note such correction in the delinquent land book opposite the entry of the tract or lot for the year or years for which such correction is made.

F. In any action on application for correction under § 58.1-3980, if so requested by the applicant, the commissioner or other such official shall state in writing the facts and law supporting the action on such application and mail a copy of such writing to the applicant at his last known address.

Code 1950, § 58-1142; 1956, c. 598; 1958, c. 585; 1960, c. 547; 1974, c. 362; 1975, c. 257; 1977, c. 99; 1980, c. 657; 1982, c. 332; 1984, c. 675; 1995, c. 108; 1998, c. 529; 1999, cc. 624, 631, 677.

§ 58.1-3982. Appeal by locality

Any county, city, town or other political subdivision of this Commonwealth, aggrieved by any such correction made by a commissioner of the revenue under the preceding section (§ 58.1-3981), may, through its county, city or town attorney, or if none, its attorney for the Commonwealth, within six months from the date such correction is certified by the commissioner of the revenue to such treasurer or city collector, apply to any court of record of the county or city for a review of the action of such commissioner. At least twenty-one days before the hearing on such application notice thereof shall be given the commissioner of the revenue.

Code 1950, § 58-1143; 1984, c. 675.

§ 58.1-3983. Remedy not to affect right to apply to court

The remedy granted by the three preceding sections (§§ 58.1-3980 through 58.1-3982) shall be in addition to the right of any taxpayer to apply within the time prescribed by law to the proper court as provided by law for the correction of erroneous assessments of the classes described in such sections. Application may be made to the proper court whether or not such applicant has theretofore made application to the commissioner of the revenue for the correction of any such assessment.

Code 1950, § 58-1144; 1984, c. 675.

§ 58.1-3983.1. Appeals and rulings of local taxes

A. Definitions. For purposes of this section:

"Amount in dispute," when used with respect to taxes due or assessed, means the amount specifically identified in the administrative appeal or application for judicial review as disputed by the party filing such appeal or application.

"Frivolous" means a finding, based upon specific facts, that the party asserting the appeal is unlikely to prevail upon the merits because the appeal is (i) not well grounded in fact; (ii) not warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; (iii) interposed for an improper purpose, such as to harass, to cause unnecessary delay in the payment of tax or a refund, or to create needless cost from the litigation; or (iv) otherwise frivolous.

"Jeopardized by delay" means a finding, based upon specific facts, that a taxpayer designs to (i) depart quickly from the locality, (ii) remove his property therefrom, (iii) conceal himself or his property therein, or (iv) do any other act tending to prejudice, or to render wholly or partially ineffectual, proceedings to collect the tax for the period in question.

"Local business tax" means machinery and tools tax, business tangible personal property tax (including, without limitation, computer equipment), merchant's capital tax, and a consumer util-

ity tax where the amount in dispute exceeds $2,500 other than the tax collected on mobile telecommunication service as defined in § 58.1-3812.

"Local mobile property tax" means the tangible personal property tax on airplanes, boats, campers, recreational vehicles, and trailers.

"Taxpayer" includes a business required to collect a local consumer utility tax to the extent that the business is charged or assessed with such tax.

B. Administrative appeal to commissioner of the revenue or other assessing official.

1. Any person assessed with any local mobile property tax or local business tax as defined in this section may appeal such assessment within one year from the last day of the tax year for which such assessment is made, or within one year from the date of such assessment, whichever is later, to the commissioner of the revenue or other assessing official.

2. The appeal shall be filed in good faith and sufficiently identify the taxpayer, the tax period covered by the challenged assessment, the amount in dispute, the remedy sought, each alleged error in the assessment, the grounds upon which the taxpayer relies, and any other facts relevant to the taxpayer's contention.

3. The commissioner of the revenue or other assessing official may hold a conference with the taxpayer if requested by the taxpayer, or require submission of additional information and documents, an audit or further audits, or other evidence deemed necessary for a proper and equitable determination of the application.

4. The assessment shall be deemed prima facie correct.

5. The commissioner of the revenue or other assessing official shall undertake a full review of the taxpayer's claims and issue a written determination to the taxpayer setting forth the facts and arguments in support of his decision within 90 days after such appeal is filed. Such determination shall be accompanied by a written explanation of the taxpayer's right to file an administrative appeal of the determination to the Tax Commissioner pursuant to subsection D.

6. Any taxpayer whose administrative appeal to the commissioner of the revenue or other assessing official pursuant to this subsection has been pending for more than one year without the issuance of a final determination may, upon not less than 30 days' written notice to the commissioner of the revenue or other assessing official, elect to treat the application as denied and appeal the assessment to the Tax Commissioner in accordance with the provisions of subsection D. The Tax Commissioner shall not consider an appeal filed pursuant to the provisions of this subsection if he finds that the absence of a final determination on the part of the commissioner of the revenue or other assessing official was caused by the willful failure or refusal of the taxpayer to provide information requested and reasonably needed by the commissioner of the revenue or other assessing official to make his determination.

C. Suspension of collection activity pending administrative appeal to commissioner of the revenue or other assessing official. Provided a timely and complete appeal is filed pursuant to subsection B, collection activity shall be suspended by the treasurer or other official responsible for the collection of such tax until a final determination is issued by the commissioner of the revenue or other assessing official, unless the treasurer or other collection official (i) determines that collection would be jeopardized by delay as defined in this section; or (ii) is advised by the commissioner of the revenue or other assessing official that the taxpayer has not responded to a request for relevant information after a reasonable time. Interest shall accrue in accordance with the provisions of subdivision A 2 e of § 58.1-3703.1, but no further penalty shall be imposed while collection action is suspended.

D. Administrative appeal to Tax Commissioner.

1. Any person whose administrative appeal to the commissioner of the revenue or other assessing official pursuant to subsection B has been denied in whole or in part may appeal the determination of the commissioner of the revenue or other assessing official by filing an appeal with the Tax Commissioner and serving a copy of the appeal upon the commissioner of the revenue or other assessing official within 90 days of the date of the determination of the commissioner of the revenue or other assessing official. The appeal shall include a copy of the written determination of the commissioner of the revenue or other assessing official that is challenged, together with a statement of the facts and grounds upon which the taxpayer relies.

2. The Tax Commissioner shall determine whether he has jurisdiction to hear the appeal within 30 days of receipt of the taxpayer's appeal.

3. If the Tax Commissioner determines that he has jurisdiction, he shall provide the commissioner of the revenue or other assessing official with an opportunity to respond to the appeal and permit the commissioner of the revenue or other assessing official to participate in the proceedings. The Tax Commissioner shall issue a determination to the taxpayer within 90 days of receipt of the taxpayer's appeal, unless the taxpayer and the commissioner of the revenue or other assessing official are notified that a longer period will be required. Such longer period of time shall not exceed 60 days, and the Tax Commissioner shall notify the affected parties of the reason necessitating the longer period of time. If the Tax Commissioner is unable to issue a determination within the 60-day extension period due to the failure of an affected party to supply the Tax Commissioner with necessary information, the Tax Commissioner shall certify this fact in writing prior to the expiration of the extension period. The Tax Commissioner shall then issue his determination within 60 days of receipt of such necessary information.

4. The appeal shall be treated as an application pursuant to § 58.1-1821, and the Tax Commissioner may issue an order correcting such assessment of such property pursuant to § 58.1-1822, if the taxpayer has met the burden of proof provided in § 58.1-3987.

5. The Tax Commissioner shall not make a determination regarding the valuation or the method of valuation of property subject to any local tax other than a local business tax.

E. Suspension of collection activity during administrative appeal to Tax Commissioner. On receipt of a notice of intent to file an appeal to the Tax Commissioner under subsection D, the treasurer or other official responsible for the collection of such tax shall further suspend collection activity until a final determination is issued by the Tax Commissioner, unless the treasurer or other collection official (i) determines that collection would be jeopardized by delay as defined in this section; or (ii) is advised by the commissioner or other assessing official that the taxpayer has not responded to a request for relevant information after a reasonable time. Interest shall accrue in accordance with the provisions of subdivision A 2 e of § 58.1-3703.1, but no further penalty shall be imposed while collection action is suspended. The requirement that collection activity be suspended shall cease unless an appeal pursuant to subsection D is filed and served on the necessary parties within 30 days of the service of the notice of intent to file such appeal.

F. Implementation of determination of Tax Commissioner. Promptly upon receipt of a final determination of the Tax Commissioner, the commissioner of the revenue or other local assessing official shall take those steps necessary to calculate the amount of tax owed by or refund due to the taxpayer consistent with the Tax Commissioner's determination and shall provide that information to the taxpayer and to the treasurer or other official responsible for collection in accordance with the provisions of this subsection.

1. If the determination of the Tax Commissioner sets forth a specific amount of tax due, the commissioner of the revenue or other assessing official shall certify this amount to the treasurer or other official responsible for collection, and the treasurer or other official responsible for collection shall issue a bill to the taxpayer for such amount due, together with interest accrued, within 30 days of the date of the determination of the Tax Commissioner.

2. If the determination of the Tax Commissioner sets forth a specific amount of refund due, the commissioner of the revenue or other assessing official shall certify this amount to the treasurer or other official responsible for collection, and the treasurer or other official responsible for collection shall issue a payment to the taxpayer for such amount due, together with interest accrued, within 30 days of the date of the determination of the Tax Commissioner.

3. If the determination of the Tax Commissioner does not set forth a specific amount of tax due, or otherwise requires the commissioner of the revenue or other assessing official to undertake a new or revised assessment that will result in the determination of a tax due that has not previously been paid in full, the commissioner of the revenue or other assessing official shall promptly commence the steps necessary to undertake such new or revised assessment, and provide the same to the taxpayer within 60 days of the date of the determination of the Tax Commissioner, or within 60 days after receipt from the taxpayer of any additional information requested or reasonably required under the determination of the Tax Commissioner, whichever is later.

The commissioner of the revenue or other assessing official shall certify the new assessment to the treasurer or other official responsible for collection, and the treasurer or other official responsible for collection shall issue a bill to the taxpayer for the amount due, together with interest accrued, within 30 days of the date of the new assessment.

4. If the determination of the Tax Commissioner does not set forth a specific amount of refund due, or otherwise requires the commissioner of the revenue or other assessing official to undertake a new or revised assessment that will result in the determination of a refund of taxes previously paid, the commissioner of the revenue or other assessing official shall promptly commence the steps necessary to undertake such new or revised assessment, and provide the same to the taxpayer within 60 days of the date of the determination of the Tax Commissioner, or within 60 days after receipt from the taxpayer of any additional information requested or reasonably required under the determination of the Tax Commissioner, whichever is later. The commissioner of the revenue or other assessing official shall certify the new assessment to the treasurer or other official responsible for collection, and the treasurer or other official responsible for collection shall issue a refund to the taxpayer for the amount of tax due, together with interest accrued, within 30 days of the date of the new assessment.

G. Judicial review of determination of Tax Commissioner. Following the issuance of a final determination of the Tax Commissioner pursuant to subsection D, the taxpayer or commissioner of the revenue or other assessing official may apply to the appropriate circuit court for judicial review of the determination, or any part thereof, pursuant to § 58.1-3984. In any such proceeding for judicial review of a determination of the Tax Commissioner, the burden shall be on the party challenging the determination of the Tax Commissioner, or any part thereof, to show that the ruling of the Tax Commissioner is erroneous with respect to the part challenged. Neither the Tax Commissioner nor the Department of Taxation shall be made a party to an application to correct an assessment merely because the Tax Commissioner has ruled on it.

H. Suspension of payment of disputed amount of tax due upon taxpayer's notice of intent to initiate judicial review.

1. On receipt of a notice of intent to file an application for judicial review, pursuant to § 58.1-3984, of a determination of the Tax Commissioner pursuant to subsection D, and upon payment of the amount of the tax that is not in dispute together with any penalty and interest then due with respect to such undisputed portion of the tax, the treasurer or other collection official shall further suspend collection activity while the court retains jurisdiction unless the court, upon appropriate motion after notice and an opportunity to be heard, determines that (i) the taxpayer's application for judicial review is frivolous, as defined in this section; (ii) collection would be jeopardized by delay, as defined in this section; or (iii) suspension of collection would cause substantial economic hardship to the locality. For purposes of determining whether substantial economic hardship to the locality would arise from a suspension of collection activity, the court shall consider

the cumulative effect of then-pending appeals filed within the locality by different taxpayers that allege common claims or theories of relief.

2. Upon a determination that the appeal is frivolous, that collection may be jeopardized by delay, or that suspension of collection would result in substantial economic hardship to the locality, the court may require the taxpayer to pay the amount in dispute or a portion thereof, or to provide surety for payment of the amount in dispute in a form acceptable to the court.

3. No suspension of collection activity shall be required if the application for judicial review fails to identify with particularity the amount in dispute.

4. The requirement that collection activity be suspended shall cease unless an application for judicial review pursuant to § 58.1-3984 is filed and served on the necessary parties within 30 days of the service of the notice of intent to file such application.

5. The suspension of collection activity authorized by this subdivision shall not be applicable to any appeal of a local business tax or local mobile property tax that is initiated by the direct filing of an action pursuant to § 58.1-3984 without prior exhaustion of the appeals provided by subsections B and D.

I. Suspension of payment of disputed amount of refund due upon locality's notice of intent to initiate judicial review.

1. Payment of any refund determined to be due pursuant to the determination of the Tax Commissioner shall be suspended if the locality assessing the tax serves upon the taxpayer, within 60 days of the date of the determination of the Tax Commissioner, a notice of intent to file an application for judicial review of the Tax Commissioner's determination pursuant to § 58.1-3984 and pays the amount of the refund not in dispute, including tax and accrued interest. Payment of such refund shall remain suspended while the court retains jurisdiction unless the court, upon appropriate motion after notice and an opportunity to be heard, determines that the locality's application for judicial review is frivolous, as defined in this section.

2. No suspension of refund activity shall be permitted if the locality's application for judicial review fails to identify with particularity the amount in dispute.

3. The requirement that the obligation to make a refund be suspended shall cease unless an application for judicial review pursuant to § 58.1-3984 is filed and served on the necessary parties within 30 days of the service of the notice of intent to file such application.

J. Rulings and advisory opinions.

1. Written rulings from commissioner of the revenue or other assessing official. Any taxpayer or authorized representative of a taxpayer may request a written ruling regarding the application of a local mobile property tax or a local business tax to a specific situation from the commissioner of the revenue or other assessing official. Any taxpayer requesting such a ruling shall provide all facts relevant to the situation and may present a rationale for the basis of an interpretation of the law

most favorable to the taxpayer. Any misrepresentation or change in the applicable law or the factual situation as presented in the ruling request shall invalidate any such ruling issued. A written ruling may be revoked or amended prospectively if (i) there is a change in the law, a court decision, or the guidelines issued by the Department of Taxation upon which the ruling was based or (ii) the commissioner of the revenue or other assessing official notifies the taxpayer of a change in the policy or interpretation upon which the ruling was based. However, any taxpayer who acts on a written ruling which later becomes invalid shall be deemed to have acted in good faith during the period in which such ruling was in effect.

2. Advisory opinions of the Tax Commissioner. The Tax Commissioner shall have the authority to issue advisory written opinions in specific cases as requested to interpret a local business tax and matters related to the administration thereof when an assessment of that tax is subject to appeal to the Tax Commissioner under this chapter. Opinions issued pursuant to this section shall not be applicable as an interpretation of any other tax law.

K. Record-keeping and audits. Every person who is assessable with a local mobile property tax or a local business tax shall keep sufficient records to enable the commissioner of the revenue or other assessing official to verify the correctness of the tax paid for the taxable years assessable and to enable the commissioner of the revenue or other assessing official to ascertain the correct amount of tax assessable for each of those years. All such records, books of accounts and other information shall be open to inspection and examination by the commissioner of the revenue or other assessing official in order to allow him to establish whether the tax is due within this jurisdiction. The commissioner of the revenue or other assessing official shall provide the taxpayer with the option to conduct the audit in the taxpayer's local business office, if the records are maintained there. In the event the records are maintained outside this jurisdiction, copies of the appropriate books and records shall be sent to the commissioner's or assessor's office upon demand.

1999, cc. 202, 470; 2002, c. 525; 2003, c. 196; 2004, cc. 527, 534; 2005, c. 927; 2006, c. 611.

§ 58.1-3984. Application to court to correct erroneous assessments of local levies generally

A. Any person assessed with local taxes, aggrieved by any such assessment, may, unless otherwise specially provided by law (including, but not limited to, as provided under (i) § 15.2-717 and (ii) § 3 of Chapter 261 of the Acts of Assembly of 1936 (which was continued in effect by § 58-769 of the Code of Virginia; and now continued in effect by § 58.1-3260), as amended by Chapter 422 of the Acts of Assembly of 1950, as amended by Chapter 339 of the Acts of Assembly of 1958, and as amended by the 2003 Regular Session of the General Assembly), (a) within three years from the last day of the tax year for which any such assessment is made, (b) within one year from the date of the assessment, (c) within one year from the date of the Tax Commissioner's final determination under § 58.1-3703.1 A 5 or § 58.1-3983.1 D, or (d) within one year from the date of the final determination under § 58.1-3981, whichever is later, apply for relief to the circuit court of the county or city wherein such assessment was made. The application shall be before the court when it is filed in the clerk's office. In such proceedings, except for proceedings seeking relief from

real property taxes, the burden of proof shall be upon the taxpayer to show that the property in question is valued at more than its fair market value or that the assessment is not uniform in its application, or that the assessment is otherwise invalid or illegal, but it shall not be necessary for the taxpayer to show that intentional, systematic and willful discrimination has been made.

All proceedings pursuant to this section shall be conducted as an action at law before the court, sitting without a jury. The county or city attorney, or if none, the attorney for the Commonwealth, shall defend the application.

Prior to the release of any information that constitutes confidential tax information under § 58.1-3, pursuant to discovery or otherwise, for the purposes of a proceeding under this section, the court shall, no later than the issuance of the scheduling order, make the following order:

"Unless otherwise ordered by the court, no entity or person who has obtained confidential information protected by § 58.1-3 of the Code of Virginia regarding [property reference], directly or indirectly through any party to this action, shall disclose, exhibit, or discuss the confidential information except as provided herein. Confidential information protected by § 58.1-3 may be revealed to or discussed only with the following persons in connection with the review or litigation of the assessment of the above-referenced property:

1. The taxpayer or the local government (the "Parties");

2. Counsel for any Party to this action and employees of the counsel's firm, including attorneys other than counsel;

3. Outside experts retained by and assisting counsel for any Party in the preparation for or trial of this action;

4. The court or an administrative board reviewing the assessment on the above-referenced property, persons employed by the court or administrative board, and persons employed to transcribe or record the testimony or argument at a hearing, trial, or deposition regarding the assessment of the above-referenced property; and

5. Any person who may be called as a witness in a hearing, trial, or discovery that counsel believes in good faith to be necessary for the preparation or presentation of the case.

No person who is furnished with confidential information shall reveal it to, or discuss it with, any person who is not entitled to receive it under the terms of this order. Prior to their receipt of confidential information, those persons described in subdivisions 3 and 5 shall be required to sign an acknowledgement of this order and agree to be bound by the terms hereof and be subject to the jurisdiction of the court for enforcement thereof. Any person who violates the provisions of this order shall be subject to the penalty provided in subsection F of § 58.1-3."

Once the above-referenced order is entered, § 58.1-3 shall not be applicable to prevent the release of any relevant information that is responsive to a request for discovery made in the course of an appeal pursuant to this section.

B. In circuit court proceedings to seek relief from real property taxes, there shall be a presumption that the valuation determined by the assessor or as adjusted by the board of equalization is correct. The burden of proof shall be on the taxpayer to rebut such presumption and show by a preponderance of the evidence that the property in question is valued at more than its fair market value or that the assessment is not uniform in its application, and that it was not arrived at in accordance with generally accepted appraisal practices, procedures, rules, and standards as prescribed by nationally recognized professional appraisal organizations such as the International Association of Assessing Officers (IAAO) and applicable Virginia law relating to valuation of property. Mistakes of fact, including computation, that affect the assessment shall be deemed not to be in accordance with generally accepted appraisal practice.

However, in any appeal of the assessment of residential property filed by a taxpayer as an owner of real property containing less than four residential units, the assessing officer shall give the required written notice to the taxpayer, or his duly authorized representative, under subsection E of § 58.1-3331, and, upon written request, shall provide the taxpayer or his duly authorized representative copies of the assessment records set out in subsections A, B, and C of § 58.1-3331 pertaining to the assessing officer's determination of fair market value of the property under appeal. A written request by the taxpayer or his duly authorized representative shall be made following the filing of the appeal to circuit court and no later than 45 days prior to trial, unless otherwise provided by an order of the court before which the appeal is pending. Provided the written request is made in accordance with this section or any applicable court order, the assessing officer shall provide such records within 15 days of the written request to the taxpayer or his duly authorized representative. If the assessing officer fails to do so, the assessing officer shall present the following into evidence prior to the presentation of evidence by the taxpayer at the hearing: (i) copies of the assessment records maintained by the assessing officer under § 58.1-3331, (ii) testimony that explains the methodologies employed by the assessing officer 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, procedures, rules, and standards as prescribed by nationally recognized professional appraisal organizations such as the International Association of Assessing Officers (IAAO) and applicable Virginia law relating to valuation of property. Upon the conclusion of the presentation of the evidence of the assessing officer, the taxpayer shall have the burden of proof by a preponderance of the evidence to rebut such evidence presented by the assessing officer as otherwise provided in this section.

C. The presumptions, burdens, and standards set out in subsection B shall not be construed to change or have any effect upon the presumptions, burdens, and standards applicable to applications for the correction of erroneous assessments of any local tax other than real property taxes.

D. In the event it comes or is brought to the attention of the commissioner of the revenue of the locality that the assessment of any tax is improper or is based on obvious error and should be corrected in order that the ends of justice may be served, and he is not able to correct it under §

58.1-3981, the commissioner of the revenue shall apply to the appropriate court, in the manner herein provided for relief of the taxpayer. Such application may include a petition for relief for any of several taxpayers.

Code 1950, §§ 58-1145, 58-1146, 58-1149, 58-1153, 58-1154, 58-1155; 1968, c. 360; 1974, c. 362; 1977, c. 99; 1980, c. 735; 1984, c. 675; 1988, c. 282; 1989, c. 86; 1991, c. 8; 1992, c. 382; 1997, c. 251; 1998, c. 529; 1999, cc. 202, 407; 2003, c. 1036; 2011, cc. 184, 232; 2016, cc. 460, 635.

§ 58.1-3985. Section 58.1-3984 not applicable to applications for correction of assessments for local improvements

Section 58.1-3984 shall not apply to applications for correction of assessments for local improvements provided for in Article 2 (§ 15.2-2404 et seq.) of Chapter 24 of Title 15.2 of this Code or the charter of any city or town.

Code 1950, § 58-1145.1; 1964, c. 469; 1984, c. 675.

§ 58.1-3986. Correction of double assessments; time for filing

When it is shown to the satisfaction of the court that there has been a double assessment in any case, one of which assessments is proper and the other erroneous, and that a proper single tax has been paid thereon, the court may order such erroneous assessment to be corrected and grant redress therefor, whether such erroneously assessed tax has been paid or not, even though the application for such relief or redress be not made to the court within the time hereinbefore required.

Code 1950, § 58-1147; 1981, c. 178; 1982, c. 359; 1984, c. 675.

§ 58.1-3987. Action of court

If the court is satisfied from the evidence that the assessment is erroneous and that the erroneous assessment was not caused by the wilful failure or refusal of the applicant to furnish the tax-assessing authority with the necessary information, as required by law, the court may order that the assessment be corrected and that the applicant be exonerated from the payment of so much as is erroneously charged, if not already paid. If the tax has been paid, the court shall order that it be refunded to the taxpayer, with interest at the rate provided by § 58.1-3918 or in the ordinance authorized by § 58.1-3916, or as otherwise authorized in that section.

If, in the opinion of the court, any property is valued for taxation at more than fair market value, the court may reduce the assessment to what in its opinion based on the evidence is the fair market value of the property involved. If, in the opinion of the court, the assessment be less than fair market value, the court shall order it increased to what in its opinion is the fair market value of the property involved and shall order that the applicant pay the proper taxes.

For the purpose of reducing or increasing the assessment and adjusting the taxes the court shall have all the powers and duties of the authority which made the assessment complained of, as of

the time when such assessment was made, and all powers and duties conferred by law upon such authority between the time such assessment was made and the time such application is heard.

Code 1950, § 58-1148; 1975, c. 257; 1984, c. 675; 1999, c. 631.

§ 58.1-3988. Effect of order

An order of exoneration under § 58.1-3987, when delivered to the tax-collecting officer, shall restrain him from collecting so much as is thus erroneously charged. If what was so erroneously charged has been paid, the order of the court shall compel the tax collecting officer, to refund to the applicant the amount specified in the order.

Code 1950, § 58-1150; 1984, c. 675.

§ 58.1-3989. Remedy applicable upon general reassessments; all changes to be certified to commissioners

Sections 58.1-3984 through 58.1-3988, insofar as they apply to real estate, shall be construed to include assessments made at a general reassessment, and the remedy therein provided shall be available to any person assessed at such general reassessment although no taxes may have been extended on the basis of such assessment at the time the application is filed. Whenever a correction of a real estate assessment is ordered by a court, whether such assessment was made at a general reassessment or not, the clerk of the court shall certify to the proper commissioner of the revenue and treasurer the changes made by the court so that they may note such changes on the land assessment books.

Code 1950, § 58-1151; 1984, c. 675.

§ 58.1-3990. Refunds of local taxes erroneously paid

The governing body of any city or county may provide by ordinance for the refund of any local taxes or classes of taxes erroneously paid. If such ordinance be passed, and the commissioner of the revenue is satisfied that he has erroneously assessed any applicant with any local taxes, he shall certify to the tax-collecting officer the amount erroneously assessed. If the taxes have not been paid, the applicant shall be exonerated from payment of so much thereof as is erroneous, and if such taxes have been paid, the tax-collecting officer or his successor in office shall refund to the applicant the amount erroneously paid, together with any penalties and interest paid thereon.

When the commissioner of the revenue who made the erroneous assessment has been succeeded by another person, such person shall have the same authority as the commissioner making the original erroneous assessment provided he makes diligent investigation to determine that the original assessment was erroneously made and certifies thereto to the local tax-collecting officer and to his local governing body.

No refund shall be made in any case when application therefor was made more than three years after the last day of the tax year for which such taxes were assessed; that however, if any tax is declared to be unconstitutional by a court of competent jurisdiction, the governing body may

grant a refund of such tax hereunder to all taxpayers, for those years to which the court proceeding was applicable.

Code 1950, § 58-1152.1; 1958, c. 71; 1960, c. 547; 1974, c. 362; 1976, c. 690; 1977, c. 99; 1978, c. 789; 1979, c. 517; 1984, c. 675.

§ 58.1-3991. Repealed

Repealed by Acts 1999, c. 631, cl. 2.

§ 58.1-3992. Appeal

Any locality or taxpayer aggrieved by the action of a court of record under this article may appeal to the Supreme Court.

1984, c. 675.

§ 58.1-3993. No injunctions against assessment or collection of taxes

No suit for the purpose of restraining the assessment or collection of any local tax shall be maintained in any court of this Commonwealth, except when the party has no adequate remedy at law.

Code 1950, § 58-1158; 1984, c. 675.

§ 58.1-3994. Offers in compromise with respect to local taxes

A. Notwithstanding any other provision of law, the commissioner of the revenue or other official responsible for the assessment of any local tax appealed pursuant to § 58.1-3703.1 or § 58.1-3983.1 may, in his sole discretion, compromise and settle any disputed assessment of taxes prior to the time that such assessment is no longer subject to administrative or judicial review pursuant to applicable law if the commissioner or other official responsible for assessment determines that there is substantial doubt under applicable law, regulations, or guidelines as to the taxpayer's liability for such taxes.

B. Notwithstanding any other provision of law, the treasurer or other official responsible for the collection of any local tax imposed pursuant to this title may, with the consent of the governing body or its designee, compromise and settle the amount due and payable when the treasurer or other official determines that the collection of the entire amount due and owing is in substantial doubt and the best interests of the locality will be served by such compromise. Whenever a tax otherwise due and owing is compromised pursuant to the provisions of this subsection, the difference between the amount of tax then due and owing, and the amount of tax paid pursuant to such compromise, shall be treated for the purposes of § 58.1-3921 in the same fashion as a tax rendered legally uncollectible by reason of the application of the United States Bankruptcy Code.

C. Any offer in compromise submitted to an official responsible for the assessment or collection of local taxes shall be made in writing and shall be deemed accepted only when the taxpayer is notified in writing of the acceptance by the responsible official.

D. Whenever a compromise and settlement is made pursuant to the provisions of this section, the responsible official shall make a complete record of the case, including: (i) the tax assessed; (ii)

audit findings, if any; (iii) the taxpayer's grounds for dispute or contest together with all evidences thereof; (iv) factors calling collectibility into substantial doubt; (v) any nonprivileged reports or recommendations made with respect to the liability of the taxpayer, the requirements of effective tax administration considered, and/or the collectibility of taxes due; and (vi) the amount assessed or accepted and the terms and conditions attendant to settlement or compromise, with respect to the liability in question.

E. The treasurer or other official charged with collection of taxes may deposit into the treasury of the county, city or town any and all payments submitted with offers in compromise, unless the taxpayer specifically, clearly and conspicuously directs otherwise in writing at the time the offer in compromise is submitted to the responsible official. For the purposes of this subsection, no restrictive endorsement or other notation upon a check or other payment instrument shall constitute clear and conspicuous notice of a direction not to deposit.

F. Upon acceptance of an offer in compromise by the responsible local official with respect to a tax liability, the matter thereafter may not be reopened except upon a showing of fraud, malfeasance or misrepresentation of a material fact.

2004, c. 526.

§ 58.1-3995. Effect of application for correction of assessment or appeal upon applications for local permits and licenses

A. Except as otherwise provided in subsection B, no county, city or town shall deny to any person a permit or license to which such person otherwise is entitled solely on the grounds that such person has failed to pay taxes, penalties and interest due such locality, as applicable, when and to the extent that such taxes, penalties and interest are the subject of a pending, bona fide: (i) application for correction of an assessment of taxes pursuant to § 58.1-3980; (ii) appeal of a local license tax pursuant to § 58.1-3703.1; (iii) appeal by a political subdivision pursuant to § 58.1-3982 of a correction of assessment of local taxes; (iv) appeal of a local tax or local business tax pursuant to § 58.1-3983.1; (v) an application pursuant to § 58.1-3984 for correction of a local tax or local business tax as those terms are defined in § 58.1-3983.1; or (vi) an application for correction or equalization of an assessment with respect to real property pursuant to § 58.1-3350.

B. Nothing in this section shall be construed to require: (i) the issuance by a county, city or town of a local vehicle license that has been withheld pursuant to the provisions of § 46.2-752 or any subsection thereof; or (ii) the issuance by the Commissioner of Motor Vehicles of a vehicle registration or renewal of registration with respect to a vehicle as to which registration has been withheld pursuant to the provisions of subsection J of § 46.2-752.

C. Nothing in this section shall be construed to limit the ability of a locality to exercise powers granted under general law, including without limitation §§ 15.2-2286 and 58.1-3700, to deny a license or permit to a taxpayer who is delinquent in the payment of taxes, penalties, or interest

and who does not have presently pending a bona fide application or appeal enumerated in subsection A with respect to such taxes, penalties, or interest.

2004, c. 902.

Subtitle IV - OTHER SOURCES OF STATE REVENUE

Chapter 40 - VIRGINIA LOTTERY LAW

§ 58.1-4000. Short title

This chapter shall be known and may be cited as the "Virginia Lottery Law."

1987, c. 531.

§ 58.1-4001. Establishment of state lottery

This chapter establishes a lottery to be operated by the Commonwealth which will produce revenue consonant with the probity of the Commonwealth and the general welfare of its people, to be used for the public purpose.

1987, c. 531.

§ 58.1-4002. Definitions

For the purposes of this chapter:

"Board" means the Virginia Lottery Board established by this chapter.

"Department" means the independent agency responsible for the administration of the Virginia Lottery created in this chapter.

"Director" means the Director of the Virginia Lottery.

"Lottery" or "state lottery" means the lottery or lotteries established and operated pursuant to this chapter.

"Ticket courier service" means a service operated for the purpose of purchasing Virginia Lottery tickets on behalf of individuals located within or outside the Commonwealth and delivering or transmitting such tickets, or electronic images thereof, to such individuals as a business-for-profit delivery service.

1987, c. 531; 2014, c. 225; 2016, c. 461.

§ 58.1-4003. Virginia Lottery established

Notwithstanding the provisions of Article 1 (§ 18.2-325 et seq.) of Chapter 8 of Title 18.2 or any other provision of law, there is hereby established as an independent agency of the Commonwealth, exclusive of the legislative, executive or judicial branches of government, the Virginia Lottery, which shall include a Director and a Virginia Lottery Board for the purpose of operating a state lottery.

1987, c. 531; 2014, c. 225.

§ 58.1-4004. Membership of Board; appointment; terms; vacancies; removal; expenses

A. The Board shall consist of five members, all of whom shall be citizens and residents of this Commonwealth and all of whom shall be appointed by and serve at the pleasure of the Governor, subject to confirmation by a majority of the members elected to each house of the General Assembly if in session when the appointment is made, and if not in session, then at its next succeeding session. Prior to the appointment of any Board members, the Governor shall consider the political affiliation and the geographic residence of the Board members. The members shall be appointed for terms of five years. The members shall annually elect one member as chairman of the Board.

B. Any vacancy on the Board occurring for any reason other than the expiration of a term shall be filled for the unexpired term in the same manner as the original term.

C. The members of the Board shall receive such compensation as provided in § 2.2-2813, shall be subject to the requirements of such section, and shall be allowed reasonable expenses incurred in the performance of their official duties.

D. Before entering upon the discharge of their duties, the members of the Board shall take an oath that they will faithfully and honestly execute the duties of the office during their continuance therein and they shall give bond in such amount as may be fixed by the Governor, conditioned upon the faithful discharge of their duties. The premium on such bond shall be paid out of the Virginia Lottery Fund.

1987, c. 531; 2004, c. 630; 2014, c. 225.

§ 58.1-4005. Appointment, qualifications and salary of Director

A. The Department shall be under the immediate supervision and direction of a Director, who shall be a person of good reputation, particularly as to honesty and integrity, and shall be subject to a thorough background investigation conducted by the Department of State Police prior to appointment. The Director shall be appointed by and serve at the pleasure of the Governor, subject to confirmation by a majority of the members elected to each house of the General Assembly if in session when the appointment is made, and if not in session, then at its next succeeding session. The Director shall receive a salary as provided in the general appropriations act.

B. The Director shall devote his full time to the performance of his official duties and shall not be engaged in any other profession or occupation.

C. Before entering upon the discharge of his duties, the Director shall take an oath that he will faithfully and honestly execute the duties of his office during his continuance therein and shall give bond in such amount as may be fixed by the Governor, conditioned upon the faithful discharge of his duties. The premium on such bond shall be paid out of the Virginia Lottery Fund.

1987, c. 531; 2014, c. 225.

§ 58.1-4006. Powers of the Director

A. The Director shall supervise and administer the operation of the lottery in accordance with the provisions of this chapter and with the rules and regulations promulgated hereunder.

B. The Director shall also:

1. Employ such deputy directors, professional, technical and clerical assistants, and other employees as may be required to carry out the functions and duties of the Department.

2. Act as secretary and executive officer of the Board.

3. Require bond or other surety satisfactory to the Director from licensed agents as provided in subsection E of § 58.1-4009 and Department employees with access to Department funds or lottery funds, in such amount as provided in the rules and regulations of the Board. The Director may also require bond from other employees as he deems necessary.

4. Confer regularly, but not less than four times each year, with the Board on the operation and administration of the lottery; make available for inspection by the Board, upon request, all books, records, files, and other information and documents of the Department; and advise the Board and recommend such matters as he deems necessary and advisable to improve the operation and administration of the lottery.

5. Suspend, revoke or refuse to renew any license issued pursuant to this chapter or the rules and regulations adopted hereunder.

6. Enter into contracts for the operation of the lottery, or any part thereof, for the promotion of the lottery and into interstate lottery contracts with other states. A contract awarded or entered into by the Director shall not be assigned by the holder thereof except by specific approval of the Director.

7. Certify monthly to the State Comptroller and the Board a full and complete statement of lottery revenues, prize disbursements and other expenses for the preceding month.

8. Report monthly to the Governor, the Secretary of Finance and the Chairmen of the Senate Finance Committee, House Finance Committee and House Appropriations Committee the total lottery revenues, prize disbursements and other expenses for the preceding month, and make an annual report, which shall include a full and complete statement of lottery revenues, prize disbursements and other expenses, to the Governor and the General Assembly. Such annual report shall also include such recommendations for changes in this chapter as the Director and Board deem necessary or desirable.

9. Report immediately to the Governor and the General Assembly any matters which require immediate changes in the laws of this Commonwealth in order to prevent abuses and evasions of this chapter or the rules and regulations adopted hereunder or to rectify undesirable conditions in connection with the administration or operation of the lottery.

10. Notify prize winners and appropriate state and federal agencies of the payment of prizes in excess of $600 in the manner required by the lottery rules and regulations.

11. Provide for the withholding of the applicable amount of state and federal income tax of persons claiming a prize for a winning ticket in excess of $5,001.

C. The Director and the director of security or investigators appointed by the Director shall be vested with the powers of sheriff and sworn to enforce the statutes and regulations pertaining to the Department and to investigate violations of the statutes and regulations that the Director is required to enforce.

D. The Director may authorize temporary bonus or incentive programs for payments to licensed sales agents which he determines will be cost effective and support increased sales of lottery products.

1987, c. 531; 1992, cc. 422, 449; 2004, c. 630; 2006, c. 598; 2008, c. 302; 2014, c. 224.

§ 58.1-4007. Powers of the Board

A. The Board shall have the power to adopt regulations governing the establishment and operation of a lottery. The regulations governing the establishment and operation of the lottery shall be promulgated by the Board after consultation with the Director. Such regulations shall be in accordance with the Administrative Process Act (§ 2.2-4000 et seq.). The regulations shall provide for all matters necessary or desirable for the efficient, honest and economical operation and administration of the lottery and for the convenience of the purchasers of tickets or shares, and the holders of winning tickets or shares. The regulations, which may be amended, repealed or supplemented as necessary, shall include, but not be limited to, the following:

1. The type or types of lottery or game to be conducted in accordance with § 58.1-4001.

2. The price or prices of tickets or shares in the lottery.

3. The numbers and sizes of the prizes on the winning tickets or shares, including informing the public of the approximate odds of winning and the proportion of lottery revenues (i) disbursed as prizes and (ii) returned to the Commonwealth as net revenues.

4. The manner of selecting the winning tickets or shares.

5. The manner of payment of prizes to the holders of winning tickets or shares.

6. The frequency of the drawings or selections of winning tickets or shares without limitation.

7. Without limitation as to number, the type or types of locations at which tickets or shares may be sold.

8. The method to be used in selling tickets or shares.

9. The advertisement of the lottery in accordance with the provisions of subsection E of § 58.1-4022.

10. The licensing of agents to sell tickets or shares who will best serve the public convenience and promote the sale of tickets or shares. No person under the age of 18 shall be licensed as an agent. A licensed agent may employ a person who is 16 years of age or older to sell or otherwise vend tickets at the agent's place of business so long as the employee is supervised in the selling or vending of tickets by the manager or supervisor in charge at the location where the tickets are being sold. Employment of such person shall be in compliance with Chapter 5 (§ 40.1-78 et seq.) of Title 40.1.

11. The manner and amount of compensation, if any, to be paid licensed sales agents necessary to provide for the adequate availability of tickets or shares to prospective buyers and for the convenience of the public. Notwithstanding the provisions of this subdivision, the Board shall not be required to approve temporary bonus or incentive programs for payments to licensed sales agents.

12. Apportionment of the total revenues accruing from the sale of tickets or shares and from all other sources and establishment of the amount of the special reserve fund as provided in § 58.1-4022 of this chapter.

13. Such other matters necessary or desirable for the efficient and economical operation and administration of the lottery.

The Department shall not be subject to the provisions of Chapter 43 (§ 2.2-4300 et seq.) of Title 2.2; however, the Board shall promulgate regulations, after consultation with the Director, relative to departmental procurement which include standards of ethics for procurement consistent with the provisions of Article 6 (§ 2.2-4367 et seq.) of Chapter 43 of Title 2.2 and which ensure that departmental procurement will be based on competitive principles.

The Board shall have the power to advise and recommend, but shall have no power to veto or modify administrative decisions of the Director. However, the Board shall have the power to accept, modify or reject any revenue projections before such projections are forwarded to the Governor.

B. The Board shall carry on a continuous study and investigation of the lottery throughout the Commonwealth to:

1. Ascertain any defects of this chapter or the regulations issued hereunder which cause abuses in the administration and operation of the lottery and any evasions of such provisions.

2. Formulate, with the Director, recommendations for changes in this chapter and the regulations promulgated hereunder to prevent such abuses and evasions.

3. Guard against the use of this chapter and the regulations promulgated hereunder as a subterfuge for organized crime and illegal gambling.

4. Ensure that this law and the regulations of the Board are in such form and are so administered as to serve the true purpose of this chapter.

C. The Board shall make a continuous study and investigation of (i) the operation and the administration of similar laws which may be in effect in other states or countries, (ii) any literature on the subject which may be published or available, (iii) any federal laws which may affect the operation of the lottery, and (iv) the reaction of Virginia citizens to the potential features of the lottery with a view to recommending or effecting changes that will serve the purpose of this chapter.

D. The Board shall hear and decide an appeal of any denial by the Director of the licensing or revocation of a license of a lottery agent pursuant to subdivision 10 of subsection A of this section and subdivision 5 of subsection B of § 58.1-4006 of this chapter.

E. The Board shall have the authority to initiate procedures for the planning, acquisition, and construction of capital projects as set forth in Article 4 (§ 2.2-1129 et seq.) of Chapter 11 and Article 3 (§ 2.2-1819 et seq.) of Chapter 18 of Title 2.2.

1987, c. 531; 1988, c. 788; 1989, c. 228; 1990, c. 732; 1999, c. 716; 2004, c. 630; 2006, c. 598; 2008, c. 302.

§ 58.1-4007.1. Lottery tickets to bear telephone number for compulsive gamblers

All lottery tickets printed after July 1, 1997, shall bear a toll-free telephone number for "Gamblers Anonymous" or other organization which provides assistance to compulsive gamblers.

1997, cc. 64, 118; 1998, c. 201; 1999, c. 736.

§ 58.1-4007.2. Lottery tickets not to be sold over Internet

A. The Department shall not sell lottery tickets or shares directly to consumers over the Internet.

B. Nothing in this section shall be construed to prohibit (i) the use of the Internet to relay information or data relating to sales made to purchasers by licensed sales agents, their employees, or employees of the Department or (ii) the sale by the Department of prepaid subscriptions for the purchase of lottery tickets or shares for subsequent prize drawings.

2006, c. 352.

§ 58.1-4008. Employees of the Department; background investigations of employees

All persons employed by the Department shall be fingerprinted before, and as a condition of, employment. These fingerprints shall be submitted to the Federal Bureau of Investigation for a National Criminal Records search and to the Department of State Police for a Virginia Criminal History Records search. All board members, officers and employees of any vendor to the Department of lottery on-line or instant ticket goods or services working directly on a contract with the Department for such goods or services shall be fingerprinted, and such fingerprints shall be submitted to the Federal Bureau of Investigation for a National Criminal Records search conducted by the chief security officer of the Virginia Lottery. A background investigation shall be conducted by the chief security officer of the Virginia Lottery on every applicant prior to employment by the Department. However, all division directors of the Virginia Lottery and employees of the Virginia Lottery performing duties primarily related to security matters shall be subject to a background

investigation report conducted by the Department of State Police prior to employment by the Department. The Department of State Police shall be reimbursed by the Virginia Lottery for the cost of investigations conducted pursuant to this section or § 58.1-4005. No person who has been convicted of a felony, bookmaking or other forms of illegal gambling, or of a crime involving moral turpitude shall be employed by the Department or on contracts with vendors described in this section.

1987, c. 531; 1989, c. 478; 1992, c. 449; 2004, c. 555; 2014, c. 225.

§ 58.1-4009. Licensing of lottery sales agents; penalty

A. No license as an agent to sell lottery tickets or shares shall be issued to any person to engage in business primarily as a lottery sales agent. Before issuing such license, the Director shall consider such factors as (i) the financial responsibility and security of the person and his business or activity; (ii) the accessibility of his place of business or activity to the public; (iii) the sufficiency of existing licensees to serve the public convenience; and (iv) the volume of expected sales.

B. For the purposes of this section, the term "person" means an individual, association, partnership, corporation, club, trust, estate, society, company, joint stock company, receiver, trustee, assignee, referee, or any other person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise, and any combination of individuals. "Person" also means all departments, commissions, agencies and instrumentalities of the Commonwealth, including counties, cities, municipalities, agencies and instrumentalities thereof.

C. The chief security officer of the Virginia Lottery shall conduct a background investigation, to include a Virginia Criminal History Records search, and fingerprints that shall be submitted to the Federal Bureau of Investigation if the Director deems a National Criminal Records search necessary, on applicants for licensure as lottery sales agents. The Director may refuse to issue a license to operate as an agent to sell lottery tickets or shares to any person who has been (i) convicted of a crime involving moral turpitude, (ii) convicted of bookmaking or other forms of illegal gambling, (iii) found guilty of any fraud or misrepresentation in any connection, (iv) convicted of a felony, or (v) engaged in conduct prejudicial to public confidence in the Lottery. The Director may refuse to grant a license or may suspend, revoke or refuse to renew a license issued pursuant to this chapter to a partnership or corporation, if he determines that any general or limited partner, or officer or director of such partnership or corporation has been (a) convicted of a crime involving moral turpitude, (b) convicted of bookmaking or other forms of illegal gambling, (c) found guilty of any fraud or misrepresentation in any connection, (d) convicted of a felony, or (e) engaged in conduct prejudicial to public confidence in the Lottery. Whoever knowingly and willfully falsifies, conceals or misrepresents a material fact or knowingly and willfully makes a false, fictitious or fraudulent statement or representation in any application for licensure to the Virginia Lottery for lottery sales agent is guilty of a Class 1 misdemeanor.

D. In the event an applicant is a former lottery sales agent whose license was suspended, revoked, or refused renewal pursuant to this section or § 58.1-4012, no application for a new license to sell lottery tickets or shares shall be considered for a minimum period of 90 days following the suspension, revocation, or refusal to renew.

E. Prior to issuance of a license, every lottery sales agent shall either (i) be bonded by a surety company entitled to do business in this Commonwealth in such amount and penalty as may be prescribed by the regulations of the Department or (ii) provide such other surety as may be satisfactory to the Director, payable to the Virginia Lottery and conditioned upon the faithful performance of his duties.

F. Every licensed agent shall prominently display his license, or a copy thereof, as provided in the regulations of the Department.

1987, c. 531; 1989, c. 478; 2004, c. 555; 2006, c. 598; 2014, cc. 224, 225.

§ 58.1-4010. Authority of persons licensed as lottery sales agents; annual fee

A. Notwithstanding any other provision of law, any person licensed as provided in this chapter is hereby authorized to act as a lottery sales agent.

B. The rules and regulations of the lottery shall provide for an initial licensing fee and an annual license review fee to be collected from each lottery sales agent. Such fee, as promulgated by rule and regulation of the Board, shall be designed to recover all or such portion of the installation and annual operational costs borne by the Department in providing services to the agent.

1987, c. 531; 2004, c. 630.

§ 58.1-4011. Meaning of "gross receipts."

A. Notwithstanding the provisions of Chapter 37 (§ 58.1-3700 et seq.) or § 58.1-4025 relating to local license taxes, the term "gross receipts" as used in Chapter 37 shall include only the compensation actually paid to a licensed sales agent as provided by rule or regulation adopted by the Board consistent with the provisions of subdivision A 11 of § 58.1-4007.

B. Unless otherwise provided by contract, any person licensed as a lottery agent who makes rental payments for the business premises on which state lottery tickets are sold on the basis of retail sales shall have that portion of rental payment based on sales of state lottery tickets or shares computed on the basis of the compensation received as a lottery agent from the Virginia Lottery.

1987, c. 531; 2014, c. 225.

§ 58.1-4012. Suspension and revocation of licenses

The Director may suspend, revoke, or refuse to renew, after notice and a hearing, any license issued pursuant to this chapter. Such license may, however, be temporarily suspended by the Director without prior notice, pending any prosecution, hearing or investigation, whether by a third party or by the Director. A license may be suspended, revoked or refused renewal by the Director for one or more of the following reasons:

1. Failure to properly account for lottery tickets received or the proceeds of the sale of lottery tickets;

2. Failure to file a bond if required by the Director or to comply with instructions and rules and regulations of the Department concerning the licensed activity, especially with regard to the prompt payment of claims;

3. Conviction of any offense referenced in subsection C of § 58.1-4009 subsequent to licensure;

4. Failure to file any return or report, to keep records or to pay any fees or other charges required by this chapter;

5. Any act of fraud, deceit, misrepresentation or conduct prejudicial to public confidence in the Commonwealth lottery;

6. If the number of lottery tickets sold by the lottery sales agent is insufficient to meet administrative costs and public convenience is adequately served by other licensees;

7. A material change, since issuance of the license, with respect to any matters required to be considered by the Director under this chapter; or

8. Other factors established by Department regulation.

1987, c. 531; 1992, c. 449 .

§ 58.1-4013. Right to prize not assignable; exceptions

A. No right of any person to a prize drawn shall be assignable, except that: (i) payment of any prize drawn may be paid according to the terms of a deceased prize winner's beneficiary designation or similar form filed with the Department or to the estate of a deceased prize winner who has not completed such a form; (ii) the prize to which the winner is entitled may be paid to a person pursuant to an appropriate judicial order; and (iii) payment of any prize drawn may be paid in accordance with the provisions of § 58.1-4020.1. Payments made according to the terms of a deceased prize winner's beneficiary designation or similar form filed with the Department are effective by reason of the contract involved and this statute and are not to be considered as testamentary or subject to Chapter 4 (§ 64.2-400 et seq.) of Title 64.2. The Director shall be discharged of all liability upon payment of a prize pursuant to this section.

B. Investments of prize proceeds made by the Department to fund the payment of an annuitized prize are to be held in the name of the Department or the Commonwealth and not in the name of the prize winner. Any claim of a prize winner to a future payment remains inchoate until the date the payment is due under Department regulations.

C. Except as provided in Chapter 19 (§ 63.2-1900 et seq.) of Title 63.2 and this chapter, no lottery prize or installment thereof may be subject to garnishment or to a lien of any kind until such prize or installment thereof has been paid or distributed.

D. Whenever the Department or the Director is or may be named as a party in any proceeding instituted by or on behalf of one or more persons who claim ownership of a winning lottery ticket, prize, share or portion thereof for the purpose of determining the ownership or right to such ticket, prize, share or portion thereof, the Director may voluntarily pay or tender the prize, share or portion thereof into the circuit court where the action is filed, or may be ordered to do so by the court, and shall thereupon be discharged from all liability as between the claimants of such ticket, prize, share or portion thereof without regard to whether such payment was made voluntarily or pursuant to a court order.

Nothing in this section shall be deemed to constitute a waiver of the sovereign immunity of the Commonwealth or to authorize any attachment, garnishment, or lien against the prize, share or portion thereof paid into the court except as permitted by subsection C.

1987, c. 531; 1992, c. 449; 1995, c. 423; 2003, c. 924.

§ 58.1-4014. Price of tickets or shares; who may sell; penalty

No person shall sell a ticket or share at any price or at any location other than that fixed by rules and regulations of the Department. No person other than a licensed lottery sales agent or his employee shall sell lottery tickets or shares, except that nothing in this section shall be construed to prevent any person from giving lottery tickets or shares to another person over the age of 18 years as a gift. No person shall operate a ticket courier service in the Commonwealth.

Any person convicted of violating this section is guilty of a Class 1 misdemeanor.

1987, c. 531; 1992, c. 449; 2004, c. 630; 2006, c. 598; 2016, c. 461.

§ 58.1-4014.1. Method of payment for purchase of tickets or shares

Lottery sales agents licensed in accordance with this chapter shall accept only cash or debit cards in payment for the purchase of lottery tickets or shares.

2006, c. 598.

§ 58.1-4015. Sale of ticket or share to person under eighteen prohibited; penalty

No ticket or share shall be sold to or redeemed from any person under the age of eighteen years. Any licensee who knowingly sells or offers to sell or redeem a lottery ticket or share to or from any person under the age of eighteen years is guilty of a Class 1 misdemeanor.

1987, c. 531; 1989, c. 478 .

§ 58.1-4016. Gift to minor prohibited

No ticket or share shall be given as a gift or otherwise to any person under the age of eighteen years. Any person who knowingly gives a lottery ticket or share to any person under the age of eighteen years is guilty of a Class 3 misdemeanor.

1987, c. 531.

§ 58.1-4017. Alteration and forgery; presentation of counterfeit or altered ticket or share; penalty

Any person who forges, alters or fraudulently makes any lottery ticket or share with intent to present for payment or to transfer to another person to be presented for payment or knowingly presents for payment or transfers to another person to be presented for payment such forged, altered or fraudulently made counterfeit lottery ticket or share sold pursuant to this chapter is guilty of a Class 6 felony.

1987, c. 531; 1989, c. 478; 1990, c. 732 .

§ 58.1-4018. Prohibited actions; penalty

Any person who wrongfully and fraudulently uses, disposes of, conceals or embezzles any public money or funds associated with the operation of the lottery shall be guilty of a Class 3 felony. Any person who wrongfully and fraudulently tampers with any equipment or machinery used in the operation of the lottery shall be guilty of a Class 3 felony. Any person who makes inaccurate entries regarding a financial accounting of the lottery in order to conceal the truth, defraud the Commonwealth and obtain money to which he is not entitled shall be guilty of a Class 3 felony.

1987, c. 531; 2006, c. 598.

§ 58.1-4018.1. Larceny of tickets; fraudulent notification of prizes; penalty

A. Any person who steals or otherwise unlawfully converts to his own or another's use a lottery ticket, prize, share, or portion thereof shall be guilty of larceny. For purposes of this subsection, the value of a lottery ticket, prize, share, or portion thereof shall be deemed to be the greater of its face amount or its redemption value.

B. Any person who, with intent to defraud, steal, embezzle, or violate the provisions of § 18.2-186.3, designs, makes, prints, or otherwise produces, in whole or in part, a document or writing, whether in printed or electronic form, which falsely purports to be correspondence from or on behalf of the lottery shall be guilty of a Class 5 felony.

Jurisdiction shall lie and prosecution may proceed under this subsection in any county or city (i) in which the document was created; (ii) from which it was sent, regardless of the form of delivery; or (iii) in which it was received, regardless of the form of delivery.

2006, c. 598.

§ 58.1-4019. Certain persons ineligible to purchase tickets or shares or receive prizes

A. No ticket or share shall be purchased by, and no prize shall be paid on a ticket purchased by or transferred to, any Board member, officer or employee of the lottery, or any board member, officer or employee of any vendor to the lottery of lottery on-line or instant ticket goods or services working directly on a contract with the Department for such goods or services, or any person residing in the same household of such member, officer or employee or any person under the age of eighteen years, or transferee of any such persons.

B. Only natural persons may purchase lottery tickets and claim prize winnings. In all cases, the identity and social security number of all natural persons who receive a prize greater than $100

from a winning ticket redeemed at any Department office shall be provided in order to comply with this section and §§ 58.1-4015, 58.1-4016 and 58.1-4026, and Chapter 19 (§ 63.2-1900 et seq.) of Title 63.2.

1987, c. 531; 1989, c. 478; 1992, c. 449; 1996, c. 954; 1999, c. 34.

§ 58.1-4019.1. License required for "instant ticket" games or contests

No person who owns or is employed by any retail establishment in the Commonwealth shall use any "instant ticket" game or contest for the purpose of promoting or furthering the sale of any product without first obtaining a license to do so from the Director. For the purposes of this section, an "instant ticket" game or contest means a game of chance played on a paper ticket or card where (i) a person may receive gifts, prizes, or gratuities and (ii) winners are determined by preprinted concealed letters, numbers, or symbols which, when exposed, reveal immediately whether the player has won a prize or entry into a prize drawing, but shall not include any "instant ticket" game or contest licensed by the Department of Agriculture and Consumer Services pursuant to Article 1.1:1 (§ 18.2-340.15 et seq.) of Title 18.2. The fact that no purchase is required in order to participate shall not exclude such game or contest from the provisions of this section; however, nothing in this section shall prohibit any retail establishment from using a Virginia lottery ticket to promote or further the sale of any products except those having both a federal and state excise tax placed on them. Any person convicted of a violation of this section shall be guilty of a Class 3 misdemeanor.

1996, cc. 462, 505; 2003, c. 884; 2008, cc. 387, 689.

§ 58.1-4020. Unclaimed prizes

A. Unclaimed prizes for a winning ticket or share shall be retained by the Director for the person entitled thereto for 180 days after the drawing in which the prize was won in the case of a drawing prize and for 180 days after the announced end of the lottery game in the case of a prize determined in any manner other than by means of a drawing. If no claim is made for the prize within the 180 days, the Director shall deem such prize forfeited by the person entitled to claim such winnings.

B. All prizes deemed forfeited pursuant to subsection A shall be paid into the Literary Fund. The Director may develop procedures, to be approved by the Auditor of Public Accounts, for estimating the cumulative total of such unclaimed prizes in any lottery game in lieu of specifically identifying unclaimed prizes where such specific identification would not be cost effective. The Director, within 60 days after the end of each 180-day retention period, shall report the total value of prizes forfeited at the end of such period to the Comptroller, who shall promptly transfer the total of such prizes to the Literary Fund. The total value of prizes forfeited during the fiscal year shall be audited by the Auditor of Public Accounts in accordance with § 58.1-4023. In the case of a prize payable over time on one or more winning tickets, if one or more winning tickets is not claimed within the 180-day redemption period, the Department shall transfer the then current monetary value of such portion of the prize remaining unclaimed to the Literary Fund in accordance with

procedures approved by the State Treasurer. "Current monetary value" shall be determined by the net proceeds from the sale of that portion of jackpot securities allocated to the unclaimed winner plus the amount of the initial cash payment.

C. Subsection B of this section shall not apply to prizes of $25 or less resulting from any lottery game other than a lottery game in which a drawing determined the prize. The Board shall adopt regulations for the disposition of all such unclaimed prizes of $25 or less not resulting from a drawing. Such disposition shall be directed in whole or in part to either the Virginia Lottery Fund or to other forms of compensation to licensed sales agents.

D. For purposes of this section, "prize" refers to a cash prize. In the case of a prize payable over time and not as a lump sum payment, "prize" means the present cash value of the prize, not the value paid over time.

E. In accordance with the provisions of the Soldiers' and Sailors' Civil Relief Act of 1940 (50 App. U.S.C.A. § 525), any person whose unclaimed prize was deemed forfeited pursuant to subsection A while he was in active military service may claim such forfeited prize by presenting his winning ticket to the Director no later than 180 days after his discharge from active military service. Within 30 days of such presentation, the Director shall verify the claim and report the verification to the Comptroller. The Comptroller shall promptly pay the verified claim first from funds available in the Unclaimed Property Trust Fund in § 3-2.00 of the general appropriations act; if such funds are insufficient, then, from any undesignated, unreserved year-end balance of the general fund. All verified claims shall be paid in accordance with the Board's rules and regulations then in effect regarding the manner of payment of prizes to the holders of winning tickets or shares.

1987, c. 531; 1989, c. 478; 1992, c. 449; 1994, c. 49; 1996, c. 975; 2014, c. 225.

§ 58.1-4020.1. Voluntary assignment of lottery prizes or pledge as collateral for a loan; requirements for the assignees and lenders

A. Lottery prizes, payable in installments over a period of time, excluding prizes payable for the winner's life, may be voluntarily assigned or pledged as collateral for a loan, in whole or in part, by the person entitled to such installments, by written contract affirming that the requirements of this section have been met and endorsed by written order of a court of competent jurisdiction after a hearing. The order shall specify the name, address and social security number or tax identification number of the assignee or lender and shall specifically describe the payments be assigned or pledged as collateral by date and gross pre-tax amount. The Department shall be given notice of any hearing held pursuant to this section and shall have the right to appear and participate in such hearing. Venue for hearings held pursuant to this section shall be in the Circuit Court of the City of Richmond.

The rate charged for any such assignment or loan shall not exceed 15 percent.

The contract shall:

1. Be signed by the assignor and the assignee or the lender and the borrower, and the assignor or borrower shall affirm the assignment or loan has been voluntarily executed.

2. Include or be accompanied by a sworn statement attesting that the assignor or borrower (i) is of sound mind and not acting under duress; (ii) has been advised in writing by the assignee or lender to seek independent legal counsel and independent financial counsel concerning the implications of the assignment or loan, including the tax consequences, and has either received such advice or knowingly waived such advice in writing; (iii) understands that he is relinquishing or limiting his rights to receive the lottery proceeds; and (iv) has received from the Virginia Lottery, in response to a written request therefor, confirmation of the assignee's or lender's registration with the Virginia Lottery in accordance with subsection E of this section.

3. Include a disclosure statement setting forth (i) the amounts assigned or loaned; (ii) the dates such amounts are payable; (iii) the purchase price paid for the assignment or loan; (iv) the rate of discount to present value, assuming daily compounding and funding on the contract date; (v) the amount of any fees associated with the assignment or loan and by whom such fees are payable; and (vi) the tax identification number of the assignee.

4. Expressly state that the assignor or borrower has three business days after signing the contract to cancel the assignment or loan.

5. Expressly state that the assignee or lender is eligible to purchase, share or receive prizes of the Virginia Lottery pursuant to §§ 58.1-4015, 58.1-4016 and subsection A of § 58.1-4019, and that the Virginia Lottery has complied with subsection B of § 58.1-4019 in that the original prizewinner is (or if deceased, was) a natural person if and to the extent that the prize was awarded on or after the effective date pursuant to subsection B of § 58.1-4019.

6. Expressly state that no amounts assigned or loaned are subject to setoff pursuant to Article 21 (§ 58.1-520 et seq.) of Chapter 3 of this title.

B. The Commonwealth, the Virginia Lottery and any employee or representative of either shall be indemnified and held harmless upon payment of amounts due as set forth in the court order.

C. The Lottery may establish a reasonable fee to process the assignments provided for in this section and to receive, review and file the registration required by subsection E and confirm compliance with the registration requirements. The fee shall be reflective of the direct and indirect costs of processing the assignments or registrations.

D. Notwithstanding the provisions of this section, the Commonwealth and the Virginia Lottery shall not accept any assignment if either of the following has occurred:

1. Federal law provides that the right to assign lottery proceeds is deemed receipt of income in the year the lottery prize is won for all installment lottery prize winners. "Federal law" includes statutory law, rulings of courts of competent jurisdiction, and published rulings by the Internal Revenue Service.

2. State law provides that the right to assign lottery proceeds is deemed receipt of income in the year the lottery prize is won for all installment lottery prize winners. "State law" includes statutory law, rulings of courts of competent jurisdiction, and published rulings by the Department of Taxation.

E. An assignee, prospective assignee, lender or prospective lender shall not make any representation in any written or oral communications with a lottery winner that implies that the assignee, prospective assignee, lender or prospective lender is associated with or an agent of the Virginia Lottery. Every prospective assignee or prospective lender shall register with the Virginia Lottery, prior to contracting for any assignment or loan pursuant to this section. The registration shall include (i) the assignee's or lender's standard information packet or materials given or sent to prospective assignees or borrowers, (ii) the assignee's or lender's standard form of agreement, (iii) the assignee's or lender's federal tax identification number, and (iv) where applicable, the assignee's or lender's most recent public financial statement. The Director may deny, suspend or revoke a registration for a violation of this chapter or for such other reason as the Board, by regulation, may establish.

2003, c. 924; 2004, c. 630.

§ 58.1-4021. Deposit of moneys received by agents; performance of functions, etc., in connection with operation of lottery; compensation of agents

A. The Director shall require all lottery sales agents to deposit to the credit of the Virginia Lottery Fund in banks, designated by the State Treasurer, all moneys received by such agents from the sale of lottery tickets or shares, less any amount paid as prizes or retained as compensation to agents for the sale of the tickets or shares, and to file with the Director, or his designated agents, reports of their receipts, transactions and disbursements pertaining to the sale of lottery tickets in such form and containing such information as he may require. Such deposits and reports shall be submitted at such times and within such intervals as shall be prescribed by rule and regulation of the Department. The Director may arrange for any person, including a bank, to perform such functions, activities or services in connection with the operation of the lottery as he may deem advisable pursuant to this chapter and the rules and regulations of the Department, and such functions, activities and services shall constitute lawful functions, activities and services of the person.

B. The rules and regulations of the Department shall provide for a service charge to the licensed agent if any payor bank dishonors a check or draft tendered for deposit to the credit of the Virginia Lottery Fund by a licensed agent or for an electronic transfer of funds to the Virginia Lottery Fund from the account of a licensed agent for money received from the sale of lottery tickets.

The regulations of the Department shall provide for a service charge and penalty to a licensed agent if any payor bank dishonors a check or draft from the account of a licensed agent tendered for payment of any prize by a licensed agent to any claimant. Any such charge or penalty so collected by the Department shall be used first to reimburse the claimant for any charges or penalties

incurred by him as a result of the licensed agent's dishonored check tendered as payment of any prize and the remainder to offset the Department's administrative costs.

C. A licensed agent shall be charged interest as provided in § 58.1-15 on the money that is not timely paid to the Virginia Lottery Fund in accordance with the rules and regulations of the Department and shall in addition thereto pay penalties as provided by rules and regulations of the Department.

D. Should the Department refer the debt of any licensed agent to the Attorney General, the Department of Taxation as provided in § 58.1-520 et seq., or any other central collection unit of the Commonwealth, an additional service charge shall be imposed in the amount necessary to cover the administrative costs of the Department and agencies to which such debt is referred.

E. Notwithstanding the provisions of Chapter 5 (§ 8.01-257 et seq.) of Title 8.01, in any action for the collection of a debt owed by any licensed agent to the lottery, venue shall lie in the City of Richmond.

F. All proceeds from the sale of lottery tickets or shares received by a person in the capacity of a sales agent shall constitute a trust fund until deposited into the Virginia Lottery Fund either directly or through the Department's authorized collection representative. Proceeds shall include cash proceeds of the sale of any lottery products, less any amount paid as prizes or retained as compensation to agents for the sale of the tickets or shares. Sales agents shall be personally liable for all proceeds.

G. If the Director determines that the deposit or collection from any sales agent of any moneys or proceeds under this section is or will be jeopardized or will otherwise be delayed, he may adjust either the time or the interval or both for such deposits or collections of any sales agent; require that all such moneys or proceeds shall be kept separate and apart from all other funds and assets and shall not be commingled with any other funds or assets prior to their deposit or collection under this section; and require such other security of any sales agent as he may deem advisable to ensure the timely deposit or collection of moneys or proceeds to the credit of the Virginia Lottery Fund.

Collection of moneys or proceeds "is or will be jeopardized or will otherwise be delayed" when (i) a check, draft, or electronic funds transfer to the credit of the Virginia Lottery Fund is dishonored as described in subsection B; (ii) an independent auditor states that the lottery sales agent's financial condition raises substantial doubt about its ability to continue as a going concern; or (iii) the lottery sales agent (a) closes for business or fails to maintain normal business hours without reasonable explanation, (b) has a credit record reflecting recent actions which cast doubt as to its creditworthiness, (c) states it has or may have cash flow problems or may be unable to meet its financial obligations, (d) states it may seek the protection of the federal bankruptcy or state insolvency law, (e) refuses to purchase additional lottery tickets or returns tickets ordered without good cause, or (f) does any other act tending to prejudice or to render wholly or partially ineffectual

proceedings to collect moneys or proceeds which are or will become due and payable to the Virginia Lottery Fund.

1987, c. 531; 1990, c. 732; 1990, Sp. Sess., c. 1; 2006, c. 598; 2014, c. 225.

§ 58.1-4022. Virginia Lottery Fund

A. All moneys received from the sale of lottery tickets or shares, less payment for prizes and compensation of agents as authorized by regulation and any other revenues received under this chapter, shall be placed in a special fund known as the "Virginia Lottery Fund." Notwithstanding any other provisions of law, interest earned from moneys in the Virginia Lottery Fund shall accrue to the benefit of such Fund.

B. The total costs for the operation and administration of the lottery shall be funded from the Virginia Lottery Fund and shall be in such amount as provided in the general appropriation act. Appropriations to the Department during any fiscal year beginning on and after July 1, 1989, exclusive of agent compensation, shall at no time exceed 10 percent of the total annual estimated gross revenues to be generated from lottery sales. However, should it be anticipated at any time by the Director that such operational and administrative costs for a fiscal year will exceed the limitation provided herein, the Director shall immediately report such information to the Board, the Governor and the Chairmen of Senate Finance and House Appropriations Committees. From the moneys in the Fund, the Comptroller shall establish a special reserve fund in such amount as shall be provided by regulation of the Department for (i) operation of the lottery, (ii) use if the game's pay-out liabilities exceed its cash on hand, or (iii) enhancement of the prize pool with income derived from lending securities held for payment of prize installments, which lending of securities shall be conducted in accordance with lending programs approved by the Department of the Treasury.

C. The Comptroller shall transfer to the Lottery Proceeds Fund established pursuant to § 58.1-4022.1, less the special reserve fund, the audited balances of the Virginia Lottery Fund at the close of each fiscal year. The transfer for each year shall be made in two parts: (i) on or before June 30, the Comptroller shall transfer balances of the Virginia Lottery Fund for the fiscal year, based on an estimate determined by the Virginia Lottery, and (ii) no later than 10 days after receipt of the annual audit report required by § 58.1-4023, the Comptroller shall transfer to the Lottery Proceeds Fund the remaining audited balances of the Virginia Lottery Fund for the fiscal year. If such annual audit discloses that the actual revenue is less than the estimate on which the transfer was based, the State Comptroller shall transfer the difference between the actual revenue and the estimate from the Lottery Proceeds Fund to the Virginia Lottery Fund.

D. In addition to such other funds as may be appropriated, 100 percent of the lottery revenues transferred to the Lottery Proceeds Fund shall be appropriated entirely and solely for the purpose of public education in the Commonwealth unless otherwise redirected pursuant to Article X, Section 7-A of the Constitution of Virginia. The additional appropriation of lottery revenues to local

school divisions for public education purposes consistent with this provision shall be used for operating, capital outlay, or debt service expenses, as determined by the appropriation act. The additional appropriation of lottery revenues shall not be used by any local school division to reduce its total local expenditures for public education in accordance with the provisions of the general appropriation act.

E. As a function of the administration of this chapter, funds may be expended for the purposes of reasonably informing the public concerning (i) the facts embraced in the subjects contained in subdivisions A 1 through 7 of § 58.1-4007 and (ii) the fact that the net proceeds are paid into the Lottery Proceeds Fund of the Commonwealth, but no funds shall be expended for the primary purpose of inducing persons to participate in the lottery.

1987, c. 531; 1989, c. 478; 1995, cc. 831, 852; 2002, cc. 829, 866; 2014, c. 225.

§ 58.1-4022.1. Lottery Proceeds Fund

A. There is hereby created in the state treasury a special nonreverting fund to be known as the Lottery Proceeds Fund, hereafter referred to as the "Fund." The Fund shall be established on the books of the Comptroller and interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. The Fund shall consist of amounts deposited into it from the net revenues of any lottery conducted by the Commonwealth pursuant to Article X, Section 7-A of the Constitution of Virginia.

B. For purposes of any appropriation act enacted by the General Assembly and for the purposes of the Comptroller's preliminary and final annual reports required by § 2.2-813, all deposits to and appropriations from the Lottery Proceeds Fund shall be accounted for and considered to be a part of the general fund of the state treasury.

2000, cc. 622, 713; 2002, cc. 829, 866.

§ 58.1-4023. Post-audit of accounts and transactions of Department; post-compliance audits

A regular post-audit shall be conducted of all accounts and transactions of the Department. An annual audit of a fiscal and compliance nature of the accounts and transactions of the Department shall be conducted by the Auditor of Public Accounts on or before August 15 of each year. The cost of the annual audit and post-audit examinations shall be borne by the Department. The Board may order such other audits as it deems necessary and desirable.

1987, c. 531; 1989, c. 478 .

§ 58.1-4024. Employees of the Department

Employees of the Department shall be exempt from the provisions of the Virginia Personnel Act, Chapter 29 (§ 2.2-2900 et seq.) of Title 2.2. Personnel actions shall be taken without regard to race, sex, color, national origin, religion, age, handicap or political affiliation.

1987, c. 531; 1994, c. 48.

§ 58.1-4025. Exemption of lottery prizes and sales of tickets from state and local taxation
Except as provided in Chapter 3 of Title 58.1 and § 58.1-4011, no state or local taxes of any type whatsoever shall be imposed upon any prize awarded or upon the sale of any lottery ticket sold pursuant to the Virginia Lottery Law.

1987, c. 531; 2014, c. 225.

§ 58.1-4026. Set-off of debts to the Commonwealth from prizes
The Director shall establish by rule and regulation a set-off debt collection program in accordance with the provisions of the Setoff Debt Collection Act, Article 21 (§ 58.1-520 et seq.) of Chapter 3 of this title, wherein certain prizes shall be subjected to delinquent debts of agencies and institutions of the Commonwealth. The Director shall be responsible for the administration of the program and shall ensure by rule and regulation of the Department that any agency eligible to participate in the Setoff Debt Collection Act, Article 21 (§ 58.1-520 et seq.) of Chapter 3 of this title, shall be eligible to participate in the lottery prize set-off. The Tax Commissioner shall transmit to the Director, at such intervals as requested by the Director, a listing of claimant agencies and delinquent debts owed thereto.

1987, c. 531.

§ 58.1-4027. Judicial review
The action of the Board in granting, or in refusing to grant, in suspending or revoking any license under the provisions of this chapter shall be subject to review in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.). Such review shall be limited to the evidential record of the proceedings provided by the Board. Both the petitioner and the Board shall have the right to appeal to the Court of Appeals from any order of the court.

1987, c. 531.

§ 58.1-4028. Repealed
Repealed by Acts 2002, c. 3.