

Section 1

Summary of Legislative Changes in Local Taxation, 2006

This section summarizes the major changes in the *Code of Virginia* enacted by the 2006 session of the Virginia General Assembly for those taxes covered in this publication. The summary is based on the Virginia Department of Taxation's 2006 *Legislative Summary*. The department's study also includes information on state taxes and new provisions governing tax collection and administration that are not reprinted in this publication. The full text of the 2006 *Legislative Summary* can be found on the web at www.tax.virginia.gov/Web_PDFs/2006LegislativeSummary.pdf (9/1/2006).¹

Additional information can be found in the Virginia Association of Counties' 2006 *Regular Session Legislative Summary*, located on the web at www.vaco.org/sitefiles/pdfs/legislative/legsummary06update.pdf (9/5/2006), and the Virginia Municipal League's 2006 *Legislative Report*, downloadable at www.vml.org/Legact.html (9/1/2006).

This section provides a synopsis of enacted legislation. It is for informational purposes only. The listing is not a substitute for actual Department of Taxation regulations, state law, or local ordinances.

TANGIBLE PERSONAL PROPERTY TAX

Virginia Energy Plan

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

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

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

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

grind, chip, or mulch trees, tree stumps, underbrush, and other vegetative cover for reuse as mulch, compost, landfill gas, synthetic or natural gas recovery from waste or other fuel, and equipment used in collecting, processing, and distributing landfill gas or synthetic or natural gas recovered from waste, whether or not such property has been certified to the Department of Taxation by a state certifying authority. These bills also include an individual income tax deduction for purchases of certain tangible personal property.

Separate Classifications of Machinery and Tools Used in Business

Effective Date: July 1, 2006

Code Section Amended: § 58.1-3660

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

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

Effective Date: July 1, 2006

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

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

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

¹ Whenever a website is shown in this study, we include in parentheses the last date that we accessed the site.

Classification of Watercraft Used for Business Purposes

Effective Date: July 1, 2006

Code Section Amended: § 58.1-3506

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

Classification of Certain Aircraft

Effective Date: January 1, 2006

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

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

Rate for Generating Equipment of Electric Suppliers

Effective Date: January 1, 2007

Code Sections Amended: § 58.1-2606

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

REAL ESTATE TAX

Exemptions for Elderly or Disabled

Effective Date: July 1, 2006

Code Sections Amended: § 58.1-3211

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

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

3) Delineates, by name, the localities in Northern Virginia eligible to use the higher total combined income amount in determining eligibility for the exemption and deferral programs.

Constitutional Amendment to Exempt Certain Property from Taxation

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

Code Section Added: § 58.1-3219.4

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

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

Assessments for Open Space Property for Golf Courses

Effective Date: July 1, 2006

Code Section Amended: § 58.1-3230

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

Valuation of Affordable Housing

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

Code Section Amended: § 58.1-3295

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

Computation of Deferral of Real Estate Taxes

Effective Date: July 1, 2006

Code Section Repealed: § 58.1-3219.2

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

Sale of Tax-Delinquent Real Estate

Effective Date: July 1, 2006

Code Section Amended: § 58.1-3969

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

Sale of Tax-Delinquent Properties

Effective Date: July 1, 2006

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

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

Roll-back Taxes; Local Use Value Assessment Ordinances

Effective Date: July 1, 2006

Code Sections Amended: § 58.1-3241

Senate Bill 186 (Chapter 221) eliminates the current requirement that a landowner who subdivides land into parcels that meet the minimum acreage requirements for land use taxation must attest that the land is still devoted solely to agricultural, horticultural, forest or open-space use in order

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

Notice of Real Estate Assessment Change

Effective Date: July 1, 2006

Code Section Amended: § 58.1-3330

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

BUSINESS, PROFESSIONAL AND OCCUPATIONAL LICENSE TAX

Definition of "Jeopardized by Delay"

Effective Date: July 1, 2006

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

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

Localities to Select Date to Apply Tax

Effective Date: July 1, 2006

Code Section Amended: § 58.1-3703.1

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

² This would be relevant in a situation where the land is subject to land-use taxation. The property's appraised value would differ from the assessed value.

Separate Rate for Fuel Distributors

Effective Date: July 1, 2006

Code Sections Amended: §§ 58.1-3700.1 and 58.1-3706
Senate Bill 597 (Chapter 763) limits the amount of local BPOL taxes paid by persons engaged in the business of selling motor fuels at retail on a daily basis (“gas retailers”). This limitation applies in the license year following any year in which regular grade gasoline prices increase by 20 percent or greater in any one-week period and do not fall below the increased rate for at least 28 consecutive days. In the event these conditions are met, the gas retailer’s motor fuel sales related BPOL tax liability in the following license year would be limited to 110 percent of its motor fuel sales related BPOL tax liability in the license year of the increase.

TAX ADMINISTRATION AND COLLECTION

Collection of Unpaid Fines and Costs by Local Treasurers

Effective Date: July 1, 2006

Code Section Amended: § 19.2-349

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

Localities’ Use of Collection Agents

Effective Date: July 1, 2006

Code Sections Amended: §§ 58.1-3919.1 and 58.1-3934
Senate Bill 302 (Chapter 372) prohibits a locality from utilizing the local sheriff, an attorney or a private collection agent to assist with collection of a delinquent local tax unless the locality has first attempted to send written notification of the delinquency to the taxpayer at the address contained in the locality’s tax records. If the locality has reason to believe the taxpayer’s address contained in its tax records is no longer current the locality may obtain the address from other sources available to it, including the Virginia Employment Commission, the Department of Motor Vehicles and the Department of Taxation.

Cap on Penalty

Effective Date: July 1, 2006

Code Section Amended: § 58.1-3916

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

MISCELLANEOUS TAXES

Establishment of Tourism Zones

Effective Date: July 1, 2006

Code Section Added: § 58.1-3851

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

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

Effective Date: July 1, 2006

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

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

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

Effective Date: July 1, 2006

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

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

Communications Tax Reform

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

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

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

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

House Bill 568 (Chapter 780) restructures the state and local communications taxes and fees by replacing the current state

and local communications taxes and fees with a centrally administered Communications Sales and Use Tax and a uniform statewide E-911 tax. The Communications Tax will be imposed on customers of communications services at the rate of 5 percent of the sales price of the service, and will appear as a line item on customers' bills. Communications services subject to the tax would include: landline and wireless telephone services (including Voice Over Internet Protocol); paging; cable television; and satellite radio and television. The E-911 tax will be imposed on the end user of each access line at the rate of \$0.75 per access line, and will appear as a line item on customers' bills. Revenues from these taxes and fees will be collected and remitted monthly by communications services providers to the Department of Taxation and deposited into a new fund known as the Communications Sales and Use Tax Trust Fund (the "Fund"). Moneys in the Fund will be distributed to localities on a monthly basis after payment 1) to the Department of Taxation for the direct costs of administering the Communications Tax; 2) to the Virginia Department for the Deaf and Hard-of-Hearing (VDDHH) for the cost of the telephone relay service center; and 3) to localities for any cable television franchise fees due under existing franchise agreements.

TRANSIENT OCCUPANCY TAX

Maximum Amount Nelson County May Charge

Effective Date: July 1, 2006

Code Section Amended: § 58.1-3821

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

Imposition for Occupancy of Any Room or Space

Effective Date: July 1, 2006

Code Sections Added: § 58.1-3843

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

Montgomery County Authorized to Impose Transient Occupancy Tax

Effective Date: July 1, 2006

Code Section Affected: § 58.1-3819

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

Elimination of Sunset Provision in James City and York Counties

Effective Date: July 1, 2006

Code Section Amended: § 58.1-3823

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

LOCAL MEALS TAX

Gratuities or Service Charges on Meals

Effective Date: July 1, 2006

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

House Bill 896 (Chapter 602) and Senate Bill 85 (Chapter 568) eliminate the retail sales tax and the local meals tax on gratuity or service charges that are mandatory or automatically added to the price of a meal by the dealer. Previously, service charges, sometimes called "mandatory gratuities," were subject to the retail sales tax, while discretionary gratuities were not. The exemption will only apply if the service charge does not exceed 20 percent of the sales price of the meal. Those service charges in excess of the 20 percent cap would remain subject to the retail sales and use tax.

