

Section 1

Summary of Legislative Changes in Local Taxation, 2005

This section summarizes the major changes in the *Code of Virginia* enacted by the 2005 session of the Virginia General Assembly for those taxes covered in this publication. The summary is based on the Virginia Department of Taxation's *2005 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 *2005 Legislative Summary* can be found on the web at www.tax.virginia.gov/Web_PDFs/2005LegislativeSummary.pdf.

Additional information can be found in the Virginia Association of Counties' *2005 Summary of State Legislation Affecting County Governments*, found on the web at www.vaco.org/sitefiles/pdfs/legislative/legsummary05.pdf, and the Virginia Municipal League's *2005 Legislative Report* downloadable at www.vml.org/Legact.html.

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

Separate Classification; Boats Used in Business – New
Effective Date: July 1, 2005
Code Section Amended: § 58.1-3506

House Bill 2686 (Chapter 325) and Senate Bill 1273 (Chapter 271) provide a separate classification of tangible personal property for any boat or watercraft that weighs less than five tons and is used solely for business purposes. By adding a special classification for boats and watercraft weighing less than five tons and used for business purposes only, a locality would have the flexibility to apply a different tax rate to each of the three classes of boats and watercraft (boats over five tons, boats under five tons used for recreational purposes only, and, now, boats under five tons used for business purposes only).

Separate Classification for Specific Machinery and Tools – New

Effective Date: July 1, 2005
Code Section Amended: § 58.1-3506

Senate Bill 1279 (Chapter 357) creates a separate classification of tangible personal property for certain heavy construction machinery owned or used by businesses. This new classification applies to 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 businesses subject to the machinery and tools tax.

Notice Required for Machinery and Tools Valuation Change – Amended

Effective Date: July 1, 2005
Code Section Amended: § 58.1-3507

House Bill 2477 (Chapter 108) requires that a notice of any proposed change in the method of valuing machinery and tools for local property tax purposes be published in a newspaper at least 30 days before the proposed change is to take effect. Citizens may comment in writing to the local commissioner of revenue during the 30-day period.

REAL ESTATE TAX

Deferral of Taxes for Elderly and Handicapped Persons – Amended

Effective Date: July 1, 2005
Code Section Amended: § 58.1-3211

Senate Bill 844 (Chapter 214) and Senate Bill 851 (Chapter 215) modify the income limitations for determining whether persons who are 65 and older, or those who are permanently and totally disabled, qualify for the exemption or deferral of local property taxes. Localities may allow qualifying taxpayers to exclude up to \$5,000 of any permanent or temporary disability benefit received by a taxpayer who is 65 or over or who is permanently or totally disabled.

Method to Return Surplus Real Estate Taxes – Amended

Effective Date: July 1, 2005

Code Section Amended: § 15.2-2511.1

House Bill 2622 (Chapter 835) allows any locality to develop a method for returning any surplus real property tax revenues to taxpayers who paid real property taxes during the year in which the surplus occurred. Prior to the enactment of this legislation, only Albemarle County had such authority.

Open or Common Space – Defined

Effective Date: July 1, 2005

Code Section Amended: § 58.1-3284.1

Senate Bill 896 (Chapter 218) expands the definition of an “open or common space” for purposes of the local real property tax to include open or common space property that; (1) is part of a planned residential development initially recorded before January 1, 1985, (2) is exempt from the requirements of the Property Owners’ Association Act, and (3) did not include automatic membership in a membership corporation or association in its declaration.

Deferred Taxes; Localities Given Interest Rate Flexibility – New

Effective Date: July 1, 2005

Code Section Amended: § 58.1-3219.1

House Bill 2635 (Chapter 561) and Senate Bill 1087 (Chapter 502) allow localities to set an interest rate on the payment of deferred real estate taxes that is lower than the currently mandated rate established by § 6621 of the Internal Revenue Code (IRC) for the underpayment of federal taxes.

Localities Provided New Tools to Set Income Limitation to Qualify for Exemption or Deferral of Real Estate Tax – New

Effective Date: July 1, 2005

Code Section Amended: § 58.1-3211

Senate Bill 1051 (Chapter 224) allows localities to use that locality’s median adjusted gross income of married residents as the household income limit when qualifying taxpayers for real property tax exemption or deferral programs. Also, this legislation allows the locality to elect to annually increase the net worth limitation for qualification by a percentage equal to the consumer price index to account for inflation. Currently, localities may use the income limits when qualifying for federal housing assistance as published by the Department of Housing and Urban Development, or \$50,000, whichever is greater.

BUSINESS, PROFESSIONAL AND OCCUPATIONAL LICENSE TAX

Alternative Method when Determining Basis for Fee – Amended

Effective Date: July 1, 2005

Code Section Amended: § 58.1-3703

House Bill 2372 (Chapter 103) provides that when determining the maximum business, professional, and occupational license (BPOL) fee that may be charged by a locality, either the last United States census or the most current final population estimates of the Weldon Cooper Center for Public Service of the University of Virginia may be used. Under current law, the population shown by the last United States census must be used to determine the maximum fee that a locality may charge.

TAX ADMINISTRATION AND COLLECTION

Numerous Changes to the Administrative Appeals Process – Amended

Effective Date: July 1, 2005

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

House Bill 2679 (Chapter 927) makes several changes to the administrative appeals process related to the business, professional and occupational license (BPOL) tax, the machinery and tools tax, the merchants’ capital tax, the business tangible personal property tax (the “local business tax”) and the tangible personal property tax on airplanes, boats, campers, recreational vehicles and trailers (the “local mobile property tax”). The local business tax administrative appeals process will now include local consumer utility taxes, except for the consumer utility tax on mobile telecommunications, where the amount in dispute exceeds \$2,500. Another change mandates that when a taxpayer appeals an assessment of BPOL taxes to the commissioner of revenue or the Tax Commissioner, collection activity is suspended only on the amount of the assessment that is in dispute. With respect to BPOL tax assessments and appeals of local business and local mobile property tax assessments, localities are directed to suspend collection activity when the taxpayer appeals a determination of the Tax Commissioner to the circuit court. Finally, this legislation shortens from two years to one year the time that must pass before a taxpayer may elect to treat a commissioner of the revenue’s failure to issue a final determination on an appeal as a denial so that the taxpayer may appeal the assessment to the Tax Commissioner. The above changes apply to appeals filed on or after July 1, 2005.

Penalties for Delinquent Payment of Certain Local Excise Taxes – Amended

Effective Date: July 1, 2005

Code Section Amended: § 58.1-3616

Senate Bill 1052 (Chapter 501) allows localities to impose by ordinance a penalty for the delinquent remittance of excise taxes on meals, lodging, or admissions collected from consumers, not to exceed 10 percent for the first month the taxes are past due and five percent for each month thereafter, to a maximum 25 percent of the amount of the taxes not remitted.

Highway Vehicle; Definitions and Condition for Seizure – Amended

Effective Date: July 1, 2005

Code Sections Amended: §§ 58.1-3941 and 58.1-3942

House Bill 1667 (Chapter 59) makes a technical correction clarifying which highway vehicles generally may not be seized and sold for unpaid taxes, levies, or other charges by providing a definition for “highway vehicle.” This legislation defines “highway vehicle” to mean any vehicle operated, or intended to be operated, on a highway. The term does not include; (1) farm machinery; (2) a vehicle operated on rails; (3) machinery designed principally for off-road use; (4) self-propelled equipment manufactured for a specific off-road purpose, which is used on a job site; or (5) a vehicle operated on the highway and exempt from registration requirements.

CONSUMER UTILITY TAX

Imposition of Telecommunications Consumer Utility Tax in the Town of Dumfries – New

Effective Date: July 1, 2005

Code Section Amended: § 58.1-3812

Senate Bill 801 (Chapter 206) authorizes the Town of Dumfries to impose a consumer utility tax on telegraph and telephone companies by adopting an ordinance on or after July 1, 2005. This legislation also provides that when such an ordinance is enacted by the Town of Dumfries, Prince William County may no longer impose a consumer utility tax on telephone and telegraph companies within the town limits of Dumfries, for as long as the ordinance is in effect.

TRANSIENT OCCUPANCY TAX

Imposition of Tax; Overnight Accommodations – Clarification

Effective Date: July 1, 2005

Code Section Added: § 58.1-3826

Senate Bill 793 (Chapter 20) codifies a recent Attorney General opinion by limiting the imposition of the transient occupancy tax to charges for rooms or spaces occupied by transients that are intended or suitable for dwelling, sleeping, or lodging purposes. Therefore, the tax will not apply to charges for rooms rented for alternative purposes, such as banquet rooms and meeting rooms.

Arlington County; Authority to Impose Additional Tax – Extended

Effective Date: July 1, 2005

Code Section Amended: § 58.1-3822

House Bill 1857 (Chapter 156) authorizes Arlington County to continue the imposition of an additional quarter percent transient occupancy tax and extends the sunset date for three years, from January 1, 2006 to January 1, 2009. All revenue from this additional tax must be spent for promoting tourism, travel or businesses that generate tourism in Arlington County.

Prince George and Craig Counties; Authority to Impose Additional Tax – Amended

Effective Date: July 1, 2005

Code Section Amended: § 58.1-3819

House Bill 1965 (Chapter 76) authorizes Prince George County and Craig County to impose an additional three percent transient occupancy tax. If either county chooses to impose the additional transient occupancy tax, any revenues exceeding those generated by a two percent tax must be spent solely for tourism, marketing of tourism, or initiatives specifically designed to attract travelers to the locality or generate tourism revenues in the locality. Currently, both counties impose a transient occupancy tax at a rate of two percent.

Carroll County; Authority to Impose Additional Tax – Amended

Effective Date: July 1, 2005

Code Section Amended: § 58.1-3819

House Bill 2007 (Chapter 915) authorizes Carroll County to impose an additional three percent transient occupancy tax. Any revenue exceeding those generated by a two percent tax must be spent for tourism, marketing of tourism, or initiatives that, as determined in consultation with the local tourism industry organizations will attract tourists to Carroll County and generate tourism revenues in the locality. Currently, Carroll County imposes a transient occupancy tax at a rate of two percent.

Patrick, Pulaski, and Halifax Counties are authorized to continue to impose an additional transient occupancy tax, at a rate not to exceed five percent. Any revenue exceed-

ing those generated by a two percent tax must be spent for tourism, marketing of tourism, or initiative that will attract tourists to that locality, generating tourism revenue in the county. Also, Montgomery County is authorized to continue to impose a local food and beverage tax at a rate not to exceed four percent by adoption of a local ordinance, rather than by referendum. In 2004, Senate Bill 684 replaced indirect references (population brackets) to counties with the names of the counties for the transient occupancy tax and the local meals tax. This legislation adds counties that had grown into population brackets before the technical changes became effective, and that imposed the tax. Further, this legislation retroactively ratifies to July 1, 2004, any transient occupancy tax in excess of two percent that was lawfully imposed by any county prior to and after July 1, 2004. Any local meals tax lawfully imposed on and after July 1, 2004 is also retroactively ratified.

