



# COMMONWEALTH TAX LAW

## 2021 Commonwealth of Virginia Tax Legislation

### Taxes Imposed by Virginia

#### Corporate Income Tax

- Virginia Housing Opportunity Credit. Senate Bill 1197 (Chapter 495) adds §§ 58.1-439.29 and 58.1-439.30 to create a housing opportunity tax credit for certain low-income building projects in an amount substantially similar to the amount of federal low-income housing tax credit allocated or allowed by Virginia Housing Development Authority to such projects. The credit may be applied against the individual income tax, estate and trust income tax, corporate income tax, bank franchise tax, insurance premiums license tax, and license tax on telegraph, telephone, water, heat, light, power, and pipeline companies. The credit is effective for taxable years beginning on and after January 1, 2021 but before January 1, 2026. These credits cannot exceed \$15 million per calendar year.
- Agricultural Best Management Practices Tax Credit. House Bill 1763 (Chapter 39) and Senate Bill 1162 (Chapter 40) amend §§ 58.1-339.3 and 58.1-439.5 to provide an enhanced Agricultural Best Management Practices Tax Credit against either the individual income tax or the corporate income tax for certain taxpayers with an approved resource management plan. The amount of the enhanced credit is 50 percent of the first \$100,000 expended for agricultural best management practices. This enhanced credit is in addition to the current credit and both credits in the aggregate would not be allowed to exceed \$75,000. Both credits will sunset on January 1, 2025. This legislation is effective for taxable years beginning on and after January 1, 2021.
- Port of Virginia Tax Credits; Extension of Sunset Dates. Senate Bill 1158 (Chapter 373) amends §§ 58.1-439.12:06, 58.1-439.12:09, and 58.1-439.12:10 to extend the sunset dates of the International Trade Facility Tax Credit, the Barge and Rail Usage Tax Credit, and the Port Volume Increase Tax Credit from January 1, 2022 to January 1, 2025.
- Coal Tax Credit Sunset Date. House Bill 1899 (Chapter 553) and Senate Bill 1252 (Chapter 554) amend §§ 58.1-433.1, 58.1-439.2, and 58.1-2626.1 to sunset the Coal Employment and Production Incentive Tax Credit and Coalfield Employment Enhancement Tax Credit after taxable year 2021.

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- Study of Unitary Combined Reporting. House Joint Resolution 563 establishes a work group to assess the feasibility of transitioning to a unitary combined reporting system for corporate income tax purposes. The work group will submit its recommendations and a draft of any recommended legislation to the Chairmen of the House Committee on Finance and the Senate Committee on Finance and Appropriations no later than November 1, 2021.
- Corporate Income Tax Informational Reporting. Item 3-5.23 in House Bill 1800 (Chapter 552) requires all corporations in a unitary group to file informational reports with the Tax Department by July 1, 2021. Failure to submit such a report will result in a \$10,000 penalty.

### Individual Income Tax

- Fixed Date Conformity. House Bill 1935 (Chapter 117) and Senate Bill 1146 (Chapter 118) amend §§ 58.1-301, 58.1-322.02, and 58.1-402 to advance Virginia's date of conformity with the Internal Revenue Code from December 31, 2019, to December 31, 2020. However, Virginia deconforms from the following:
  - The 7.5% of FAGI threshold the medical expenses deduction for itemized deductions. (This was previously deconformed to, but this bill changes the language to make the deconformity permanent.) A 10% FAGI threshold will be used instead;
  - The suspension of net operating loss limitations for taxable years 2018, 2019, and 2020;
  - The suspension of excess business loss limitation for taxable years 2018, 2019, and 2020;
  - The increase in the business interest limitation for taxable years 2019 and 2020;
  - The deductibility of expenses paid with Payroll Protection Program funds; and,
  - The deductibility of expenses paid with Economic Injury Disaster Loan funds.

This legislation creates a new subtraction for individual income tax and corporate income tax purposes of up to \$100,000 for the 2020 taxable year for grant funds provided under the Rebuild Virginia program. This legislation also creates a new deduction for individual income tax and corporate income tax purposes of up to \$100,000 for the 2020 taxable year

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for expenses paid with Payroll Protection Program funds. This legislation is effective on March 15, 2021.

- Agricultural Equipment Credit. Senate Bill 1163 (Chapter 272) amends §§ 58.1-334, 58.1-337, 58.1-432, and 58.1-436 to replace the nonrefundable Conservation Tillage Equipment Credit and the nonrefundable Pesticide and Fertilizer Application Equipment Tax Credit with a refundable credit for individuals and corporations. The credit is equal to 25 percent of all expenditures made for the purchase of certain equipment that reduces soil compaction. The maximum amount of the credit is \$17,500 per taxable year. This credit has a sunset date of January 1, 2026. This legislation is effective for taxable years beginning on and after January 1, 2021.
- Delinquent Tax Returns. House Bill 2059 (Chapter 413) adds § 58.1-1802.2 to require the Tax Department to request taxpayers to file delinquent returns unless there are indications of fraud or a willful failure to file. Also, this legislation will require the Tax Department to enforce its delinquency procedures with respect to income tax returns for six years unless the taxpayer has approved enforcement for a period that is in excess of six years and documented the reasons for approval. This legislation is effective on July 1, 2021.
- Voluntary Inclusion of Personal & Contact Information. House Bill 1884 (Chapter 162) amends §§ 38.2-6505, 58.1-3, and 58.1-341.1 to provide that the Tax Department will include space on the appropriate individual income tax forms for voluntary inclusion of personal and contact information which may be shared with the Department of Medical Assistance Services, the Department of Social Services, or the Virginia Health Benefit Exchange, as applicable, for use in determining eligibility for certain programs. This legislation is effective for taxable years beginning on or after January 1, 2021.
- Study of Progressivity. House Joint Resolution 567 directs the Joint Legislative Audit and Review Commission to study increasing the progressivity of Virginia's individual income tax system. The results of the study will be submitted to the Division of Legislative Automated Systems no later than the first day of the 2023 Regular Session of the General Assembly.
- Tax Policy Study. Item 1(AA) in House Bill 1800 (Chapter 552) establishes a Joint Subcommittee on Tax Policy to “(i) evaluat[e] the fiscal impact of amendments to tax brackets, tax rates, credits, deductions, and exemptions, as well as any other factors it

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deems relevant to making Virginia's individual income tax system more fair and equitable; (ii) giv[e] consideration to the fairness, certainty, convenience of payment, economy in collection, simplicity, neutrality, and economic efficiency of the Commonwealth's tax policies and any changes thereto; and (iii) [recommend] whether the General Assembly should amend the Code of Virginia.”

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### Retail Sales and Use Tax

- Data Centers Exemption. House Bill 2273 (Chapter 367) and Senate Bill 1423 (Chapter 368) amend § 58.1-609.3 to accomplish the following:
  - Reduce the new job creation requirement for any data center located in a distressed locality from 25 jobs to 10 jobs in order to qualify for the sales and use tax exemption for data centers.
  - Reduces the requirement of a \$150 million capital investment to \$70 million for data centers that qualify for the reduced jobs requirement.
  - Modify the definition of “distressed locality” to include:
    - From July 1, 2021, until July 1, 2023, any locality that had (i) an annual unemployment rate for calendar year 2019 that was greater than the final statewide average unemployment rate for that calendar year and (ii) a poverty rate for calendar year 2019 that exceeded the statewide average poverty rate for that year;
    - From July 1, 2023 and after, any locality that has (i) an annual unemployment rate for the most recent calendar year for which such data is available that is greater than the final statewide average unemployment rate for that calendar year and (ii) a poverty rate for the most recent calendar year for which such data is available that exceeds the statewide average poverty rate for that year.
    - For both time periods, the locality must meet both of the criteria at the time of the execution of the memorandum of understanding signed with the Virginia Economic Development Partnership Authority.
  - Clarify that the exemption includes any data center facilities located in the same locality as the data center that are under common ownership or affiliation of the data center operator.
  - Require all data centers claiming the exemption to report certain information to Virginia Economic Development Partnership Authority annually.

This legislation is effective on July 1, 2021.

- Room Rentals. Senate Bill 1398 (Chapter 383) amends §§ 58.1-602, 58.1-603, 58.1-3819, 58.1-3819.1, 58.1-3823, 58.1-3824, 58.1-3825, 58.1-3825.2, 58.1-3825.3, 58.1-3826, 58.1-3842, and 58.1-3843 and adds §§ 2.2-2320.2, 58.1-612.2, and 58.1-3818.8 to provide that, beginning September 1, 2021, the retail sales and use tax and transient

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occupancy taxes on accommodations will be computed upon the basis of the total charges or the total price paid for use or possession of the room. Where an accommodations provider contracts with an intermediary to facilitate the sale of accommodations and the intermediary charges the customer for the room and also an accommodations fee, the intermediary is deemed the dealer for the transaction and is required to separately state the taxes on the invoice and to collect the taxes on the entire amount paid for the use or possession of the room. These provisions are effective for transactions occurring on and after September 1, 2021.

- Personal Protective Equipment Exemption. House Bill 2185 (Chapter 55) and Senate Bill 1403 (Chapter 56) add § 58.1-609.14 to temporarily exempt personal protective equipment. The exemption is available to any business that has in place a COVID-19 safety protocol that complies with the Emergency Temporary Standard promulgated by the Virginia Department of Labor and Industry and that meets other criteria. The exemption sunsets one day after the first day following the expiration of the last executive order issued by the Governor related to the COVID-19 pandemic and the termination of the COVID-19 Emergency Temporary Standard and any permanent COVID-19 regulations adopted by the Virginia Safety and Health Codes Board. This legislation is effective on March 11, 2021.

### Other Taxes

- Bank Franchise Tax: Allowance of the Research and Development Tax Credits. House Bill 1916 (Chapter 47) and Senate Bill 1112 (Chapter 48) amend §§ 58.1-439.12:08 and 58.1-439.12.11 to permit taxpayers subject to the bank franchise tax to claim the Research and Development Expenses Tax Credit and the Major Research and Development Expenses Tax Credit. This legislation is effective for taxable years beginning on and after January 1, 2021.
- Peanut Excise Tax: Extension of Sunset Date. House Bill 1751 (Chapter 120) amends § 3.2-1905 to extend the sunset date of the peanut excise tax to July 1, 2026. Prior to this legislation, the sunset date was July 1, 2021.

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### Procedural Changes

- Litigation to be Appealed First to Court of Appeals. Senate Bill 1261 (Chapter 489) amends many sections including §§ 58.1-527, 58.1-1828, 58.1-2282, 58.1-3147, and 58.1-3992 to provide that all taxes (state and local) that are litigated in Virginia circuit courts may be appealed to the Virginia Court of Appeals. This applies to all cases appealed after January 1, 2022 and is an appeal of right. Prior to January 1, 2022, current law applies which allows cases to be appealed to the Supreme Court of Virginia where certiorari must be granted. **Comment:** This legislation is a dramatic shift in Virginia Taxation. There are pros and cons to this arrangement. An obvious advantage is that any judgment from the circuit court that is perceived to be in error can be appealed by right whereas now such a judgment can be appealed and the Supreme Court of Virginia must grant certiorari before the appeal is considered. This arrangement gives taxpayers a guaranteed second chance to receive a ruling that they are more comfortable with that they did not have before. A disadvantage is that the prospect of litigation is already very expensive. A taxpayer must have a large amount in dispute and the ability to pay the costs of litigating to legitimately consider litigating the liability. With this legislation however, litigation just got more expensive. The costs of litigating in circuit court are not changed. Now however, taxpayers must factor in the cost of defending an appeal by the taxing authority since they are also guaranteed an appeal of right. What is the solution? Taxpayers should have access to an inexpensive and independent option to challenge their tax assessments. Currently for state taxes, no such option exists. After appealing an assessment of state taxes to the Tax Commissioner, the only option is to go to circuit court. Currently for most local taxes, this issue has been somewhat acknowledged. Taxpayers must first appeal their assessment to the locality and then may file an appeal with the (state) Tax Commissioner. As the Tax Commissioner does not largely have any role in issuing that local tax assessment, this is an inexpensive and independent option for taxpayers. The problem with the current local tax appeal system is that it is apparent that the Tax Commissioner (and the Virginia Department of Taxation as a whole) are not fond of its role in local tax appeals. The best solution for all of the taxes would be to establish an administrative law judge or tax court separate from the Virginia Department of Taxation that would handle all challenges to state and local tax assessments. Of course, many details of such a system would need to be decided. However it would get closer to the goal of an inexpensive and independent tax appeal system.

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- Waiver of Interest. House Bill 1999 (Chapter 536) amends § 58.1-112 to waive interest for any class of taxpayers when the Tax Commissioner finds that imposing interest has caused, or would cause, undue hardship to the class of taxpayers because of a natural disaster or other reason. This authority to waive interest would be available only to the extent that the Governor has declared a state of emergency to exist in the Commonwealth with respect to such natural disaster or other reason. This legislation is effective on July 1, 2021.

### Taxes Imposed by Local Governments

#### **Real Property Taxes**

- Sale of Land for Delinquent Taxes. House Bill 2165 (Chapter 116) amends § 58.1-3965 to extend to 60 months the time period for which a local tax official may suspend an action for the sale of tax delinquent property. This legislation also authorizes an official to suspend an action for sale if a person not a party to the action gives notice asserting ownership rights in the subject property via testate or intestate succession. If a court determines such person has ownership rights in the property, such person would be allowed to enter into an installment plan to pay the delinquent taxes over a reasonable period of time not to exceed 60 months. This legislation also provides that a final court order confirming the sale of tax delinquent property shall not be entered sooner than the later of (i) 90 days after the official gives notice of the action, or (ii) 90 days after the official receives notice from a person not a party to the action asserting ownership rights. This legislation is effective on July 1, 2021.

#### **Tangible Personal Property Tax and Machinery and Tools Tax**

- Classification of Certain Motor Vehicles, Trailers, & Semitrailers. House Bill 1774 (Chapter 347) amends § 58.1-3506 to expand the class of tangible personal property for rate purposes that encompasses motor vehicles, trailers, and semitrailers with a gross vehicle weight of 10,000 pounds or more used by a motor carrier engaged in interstate commerce on a for-hire basis to include such vehicles used to transport passengers. This legislation is effective on July 1, 2021.
- Energy Storage Systems. House Bill 2006 (Chapter 49) and Senate Bill 1201 (Chapter 50) amend §§ 58.1-2600, 58.1-2628, 58.1-2636, and 58.1-3660 to allow reduced tax

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exemptions to be claimed for certain energy storage systems. “Energy storage systems” are defined as “equipment, facilities, or devices that are capable of absorbing energy, storing it for a period of time, and redelivering that energy after it has been stored.” This legislation is effective on July 1, 2021.

- Disabled Veteran Exemption. Senate Bill 1130 (Chapter 156) amends § 58.1-3668 to provide that one motor vehicle subject to definition owned by a disabled veteran subject to definition is exempt from local taxes. This legislation is effective on July 1, 2021.

### Other Taxes

- Gas Severance Tax: Extension of Sunset Date. House Bill 2293 (Chapter 430) amends § 58.1-3713 to extend the sunset date of the gas severance tax to January 1, 2024. Prior to this legislation, the sunset date was January 1, 2022.
- Cigarette Tax: Regional Cigarette Tax Boards. Senate Bill (Chapter 61) amends § 58.1-3830 and adds § 58.1-3832.1 to define a regional cigarette tax board and set the duties of such a regional cigarette tax board. This legislation requires the Tax Department to establish a task force to develop methods for modernizing the system and to provide assistance as appropriate to localities seeking new regional cigarette tax boards. The task force is required to submit its recommendations to the Virginia General Assembly by November 1, 2021. This legislation is effective on July 1, 2021.
- Transient Occupancy Tax and Meals Tax: Technical Amendments. Senate Bill 1438 (Chapter 62) amends § 58.1-3842 to make technical amendments so that the transient occupancy tax and meals tax in Rappahannock and Madison Counties match existing law. This legislation is effective on July 1, 2021.

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