

**REPORT OF THE  
VIRGINIA CODE COMMISSION ON**

**THE REVISION OF TITLE 58  
OF THE CODE OF VIRGINIA**

**TO THE GOVERNOR AND  
THE GENERAL ASSEMBLY OF VIRGINIA**



**House Document No. 16**

**COMMONWEALTH OF VIRGINIA  
RICHMOND  
January, 1984**



**Report of the**  
**Virginia Code Commission**  
**On**  
**The Revision of Title 58 of the Code of Virginia**  
**The Governor and the General Assembly of Virginia**  
**Richmond, Virginia**  
**January, 1984**

To: The Honorable Charles S. Robb

Governor of Virginia

and

The General Assembly of Virginia

House Joint Resolution 291 of the 1981 Acts of Assembly directed the Virginia Code Commission to make a careful study of the organization of Title 58 of the Code of Virginia and report its findings in the form of a recodification of such title to the Governor and the General Assembly. Pursuant to such mandate, the study has been completed and a recodification in the form of a new Title 58.1 is included in this report.

E. M. Miller, Jr. Esquire, a senior attorney with the Division of Legislative Services at the time this recodification project began and currently Staff Director for the Senate Finance Committee directed the staff efforts for this project. Serving as draftsmen with Mr. Miller were W. Rand Cook, Esquire and Sally T. Warthen, Esquire, of the Division of Legislative Services. Joan W. Smith and Gayle Nowell of the Division provided administrative and technical support, respectively.

Members of the staff met with and were assisted in the preparation of drafts by representatives of the following organizations and state agencies: Department of Taxation, State Corporation Commission, ABC Commission, Division of Motor Vehicles, Association of Treasurers, Virginia Society of Certified Public Accountants, Virginia State Bar, Commissioners of the Revenue Association, Virginia Association of Assessing Officers, and the Virginia Manufacturers Association. Many of these representatives regularly attended Commission meetings and further advised the Commission. Copies of proposed chapter drafts were liberally distributed to and comment requested from, many groups and individuals having a substantial interest in the tax laws of the Commonwealth.

Two format innovations are included with this newest title to the Code of Virginia. First, the title is divided into three subtitles which groups chapters that bear certain similar relationships. Second, a system of numbering has been incorporated so as to identify each chapter by a corresponding numbering scheme in units of one-hundred for the sections located therein.

Cross-reference tables follow this text which indicates the equivalent sections in proposed Title 58.1 to those in present Title 58 and vice versa.

The Virginia Code Commission recommends that the General Assembly enact legislation at the 1984 Session to effectuate this recodification.

Respectfully submitted,

Frederick T. Gray, Chairman

Theodore V. Morrison, Jr., Vice-Chairman

John A. Banks, Jr., Secretary

William G. Broaddus

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### Code #s

**General Provisions to Title 58.1** 58.1-1 to 58.1-99

**Subtitle I**  
**Taxes Administered by the**  
**Department of Taxation**

Chapter 1	General Provisions	58.1-100	to	58.1-199
Chapter 2	Department of Taxation	58.1-200	to	58.1-299
Chapter 3	Income Tax	58.1-300	to	58.1-599
Chapter 4	Reserved	"		"
Chapter 5	Reserved	"		"
Chapter 6	Retail Sales and Use Tax	58.1-600	to	58.1-699
Chapter 7	Beer and Beverage Excise Tax	58.1-700	to	58.1-799
Chapter 8	State Recordation Tax	58.1-800	to	58.1-899
Chapter 9	Estate Tax	58.1-900	to	58.1-999
Chapter 10	Cigarette Tax	58.1-1000	to	58.1-1099
Chapter 11	Intangible Personal Property Tax	58.1-1100	to	58.1-1199
Chapter 12	Bank Franchise Tax	58.1-1200	to	58.1-1299
Chapter 13	Reserved	58.1-1300	to	58.1-1399
Chapter 14	Watercraft Sales and Use Tax	58.1-1400	to	58.1-1499
Chapter 15	Aircraft Sales and Use Tax	58.1-1500	to	58.1-1599
Chapter 16	Forest Products Tax	58.1-1600	to	58.1-1699
Chapter 17	Miscellaneous Taxes (Soft Drink Excise Tax, Litter Tax, Tax on Wills Administrations, Sales Tax on Fuel in Certain Trans- portation Districts)	58.1-1700	to	58.1-1799
Chapter 18	Enforcement, collection, refunds, remedies and review of State taxes	58.1-1800	to	58.1-1899
Chapter 19	Reserved	58.1-1900	to	58.1-1999

**Subtitle II**  
**Taxes Administered by**  
**Other Agencies**

		<u>Code #s</u>	
Chapter 20	General Provisions	58.1-2000	to 58.1-2099
Chapter 21	Motor Fuel and Special Fuels Tax	58.1-2100	to 58.1-2199
Chapter 22	Reserved	58.1-2200	to 58.1-2299
Chapter 23	Oil Company Excise Tax	58.1-2300	to 58.1-2399
Chapter 24	Motor Vehicle Sales Tax	58.1-2400	to 58.1-2499
Chapter 25	Insurance Companies	58.1-2500	to 58.1-2599
Chapter 26	Public Service Corporations	58.1-2600	to 58.1-2699
Chapter 27	Road Tax on Motor Carriers	58.1-2700	to 58.1-2799
Chapter 28	Corporation Charter and Related Fees, and Franchise Taxes	58.1-2700	to 58.1-2899
Chapter 29	Reserved		

**Subtitle III**  
**Local Taxes**

Chapter 30	General Provisions	58.1-3000	to 58.1-3099
Chapter 31	Local Officers	58.1-3100	to 58.1-3199
Chapter 32	Real Property Tax	58.1-3200	to 58.1-3299
Chapter 33	Reserved		
Chapter 34	Payments in lieu of Real Property Taxation	58.1-3400	to 58.1-3499

		<u>Code #s</u>
Chapter 35	Personal Property Tax	58.1-3500 to 58.1-3599
Chapter 36	Tax Exempt Property	58.1-3600 to 58.1-3699
Chapter 37	License Taxes	58.1-3700 to 58.1-3799
Chapter 38	Miscellaneous Taxes Local Recordation Tax, Tax on Wills and Adminis- trations, Writ Taxes, Consumer Utility Taxes, Admission Taxes, Transient Occupancy Tax)	58.1-3800 to 58.1-3899
Chapter 39	Enforcement, Collection, Refunds, Remedies and Review of Local Taxes	58.1-3900 to 58.1-4000

GENERAL PROVISIONS  
TO TITLE 58.1.

Article 1.

In General.

*§ 58.1-1. Definitions.—As used in this title:*

(1) "Department" The word "Department" shall be construed to mean means the Department of Taxation . ; and whenever 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 statute, now or hereafter enacted, including this Code, provision of law imposes duties a duty upon, or vests powers power in, the Department of Taxation , such duties duty shall be performed ; and such powers power shall be exercised ; by the State Tax Commissioner . ; and whenever the words "Department of Taxation," or other words denoting that department, appear in any statute, including this Code, or in any legal or other proceedings, heretofore or hereafter instituted or commenced, or in any other manner, the same shall be construed to mean the State Tax Commissioner.

(2) Commissioner or State Tax Commissioner. - The words "State Tax Commissioner" or "Commissioner" shall be construed to mean the State Tax Commissioner or his delegate:

(3) Taxpayer. - The word "taxpayer" shall be construed to include every person, corporation, partnership, organization, trust or estate subject to taxation under the laws of this State, or under the ordinances, resolutions or orders of any county, city, town or other political subdivision of this State.

(4) City court of record of the city. - The words "city court of record of the city," or other words of the same import, shall be construed to mean the circuit court of the county in which such city is geographically situated if such city has no separate circuit court of its own and no corporation or husting court.

§ 58-5. Definition of resident for purposes of taxation. Every "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 of Virginia on the first day of any tax year, and every other person who has had his place of abode in this State the Commonwealth for the longer portion of the twelve months next preceding the first day of January 1 in each year shall be deemed a resident of this State for the purposes of taxation , unless on or before that day he has changed his place of abode to a place without this State outside the Commonwealth with the bona fide intention of continuing actually to abide permanently without this State outside the Commonwealth .

§ 58-6. Same; evidentiary facts. The fact that a person who has so changed his place of abode, within six months from so doing, again abides within this State the Commonwealth shall be prima facie evidence that he did not intend permanently to have his actual place of abode without this State outside the Commonwealth . Such person so changing his actual place of abode and not intending permanently to continue it without this State outside the Commonwealth and not having listed his property for taxation as a resident of this State the Commonwealth ; for the purpose of having his personal property listed for taxation within this State 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 within this State in the Commonwealth . The fact that a person whose place of portion of such twelve months has been within this State in the Commonwealth does not claim or exercise the right to vote at public elections within this State in the Commonwealth shall not, of itself, constitute him a nonresident of this State the Commonwealth within the meaning of § 58-5 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.

§ 58-4. " Tax year " ; date of assessments. Except , except when otherwise specifically provided, the tax year shall begin begins on the first day of January 1 of each year and shall

end ends on the thirty first day of December 31 of each year and all assessments shall be made as of the first day of January of each year

§ 58-2. "Taxes" and "levies" to mean same thing. In the construction of this title and of all tax and revenue statutes the word "taxes" shall include "levies," and the word "levies" shall include "taxes," 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 of Chapter 7 (§§ 15.1-239 et seq.) and Article 3 of Chapter 18 (§§ 15.1-850 and 15.1-851) of Title 15.1 or the charter of any city or town.

(3) "Taxpayer" - The word "taxpayer" shall be construed to include includes every person, corporation, partnership, organization, trust or estate subject to taxation under the laws of this State Commonwealth, or under the ordinances, resolutions or orders of any county, city, town or other political subdivision of this State Commonwealth.

Source: §§ 58-2, 58-3, 58-3.1, 58-4, 58-5, 58-6, 58-7 and 58-8.

Comment: Removes all terms needing to be defined to a definitional section. These definitions as well as all of the sections to follow will be applicable to all of Title 58.1. Each subtitle will also contain a general provisions chapter relative thereto.

(4) City court of record of the city. - The words "city court of record of the city," or other words of the same import, shall be construed to mean the circuit court of the county in which such city is geographically situated if such city has no separate circuit court of its own and no corporation or husting court.

§ 58-2.1. "Taxes" and "levies" not to include assessments for local improvements. In the construction of this title and of all tax and revenue statutes the words "taxes" and "levies" shall not include the assessments for local improvements provided for in article 2 of chapter 20 of Title 15, article 2 (§ 15.1-239 et seq.) of chapter 7 of Title 15.1, and article 3 (§§ 15.1-850; 15.1-851) of chapter 18 of Title 15.1 of this Code or the charter of any city or town.

§ 58-7. Same; not to relieve from taxation. A person or property subject to taxation within this State shall not be relieved therefrom by the provisions of the two preceding sections (§§ 58-5, 58-6), nor shall any provision of such sections repeal any other statute as to the taxation of personal property.

§ 58-8. Same; not applicable in income tax cases. The definition of a resident for the purpose of income taxation being given in this chapter on income taxes, §§ 58-5 and 58-6 shall not be applicable thereto.

§ 58-1. Constitutional construction to be adopted. - The provisions of this title and of all tax and revenue statutes shall always be so construed and so restricted in their application as not to conflict with any of the provisions of the Constitution of the United States or of the Commonwealth of Virginia and as if the necessary limitations upon their interpretation had been expressed in each case.

Comment: Removes unnecessary language.

§ 58-27.1 58.1-2. Reciprocal agreements with other states for collection of taxes. - (a) A. The Governor may enter into reciprocal agreements on behalf of the Commonwealth with the appropriate authorities of the State of Maryland any state within the United States and of the District of Columbia, with respect to the collection of all taxes imposed by this State the Commonwealth or any political subdivision thereof.

(b) 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.

Source: § 58-27.1.

Comment: Broadens section to permit Governor to enter into tax collection reciprocity agreements with any or all of the fifty states and Washington, D. C.

§ 58-46 § 58.1-3. Secrecy of information; penalties. - A. Except in accordance with proper judicial order or as otherwise provided by law, it shall be unlawful for the Tax Commissioner or any his agent, clerk, commissioner of the revenue, treasurer, or any other state or local tax or

revenue officer or employee, or any former officer or employee of any of the aforementioned offices to *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 ~~while in the performance of his public duties~~. 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. ~~Any violation of person violating the provisions of this section shall be punished by a fine not exceeding \$500 or by confinement in jail not exceeding 6 months or by both guilty of a Class 2 misdemeanor. The Governor may at any time, by written order, direct that any information herein referred to, except copies of federal returns or federal return information, shall be made public or be laid before any court. The provisions of this subsection shall not be applicable, however, to: This inhibition does not extend to any~~

1. Matters required by law to be entered on any public assessment roll or book ; ~~not to any act .~~

2. Acts performed or words spoken or published in the line of duty under the law . ~~This inhibition does not extend to~~

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. ~~In addition that this inhibition shall not extend to~~

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

~~B. Nothing contained herein 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 failed to timely pay their taxes, together with any relevant information which in the opinion of the Department of Taxation may assist in the collection of such delinquent taxes. This section shall not be construed to prohibit a local tax official from disclosing whether a person, firm or corporation is violating the provisions of subsection A or B or any other provision of this title, the State Tax Commissioner is authorized to divulge or cause to be divulged 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. 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.~~

Source: § 58-46.

Comment: Conforms section to criminal penalty classifications. Deletes power of the Governor to make public or lay before a court tax records or documents. Such power is in direct conflict with judicial procedures for such viewing set forth in § 58-48.4 (General Provisions to Subtitle I).

~~§ 58-46.2 58.1-3.1 . Availability of information necessary to audit local tax returns and other such privileged or confidential tax information.— (a) A. Notwithstanding the provisions of § 58-46 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) 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) 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 § ~~58-46~~ 58.1-3 for any unauthorized dissemination of such information in any manner or at any time.

Source: § 58-46.2

Comment: No change.

§ ~~58-27.4~~ 58.1-4 . Person preparing tax return for another not to disclose information without consent.— ~~(a) It is unlawful for any~~ No person, firm or corporation who undertakes the preparation of ~~income or other tax returns~~ (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, ~~to~~ 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. ~~The words "income or other tax returns" mean federal and State income tax returns, any other return required under Title 58 of the Code of Virginia, or an estate tax return under federal law.~~ Violators of this section shall be guilty of a Class 2 misdemeanor, and each such disclosure shall constitute a separate offense.

Source: § 58-27.4

Comment: Penalty is reduced from a Class 1 to a Class 2 misdemeanor.

§ ~~58-23~~ 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.

Source: § 58-23.

Comment: No change.

§ ~~58-24~~ 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.

Source: § 58-24.

Comment: No change.

§ ~~58-25~~ 58.1-7 . Same; liability of recipient of improper corporate distribution.—If any corporation assessed with ~~any such taxes or levies a tax~~ , including penalties and interest thereon, ~~shall distribute~~ 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 . ; ~~but~~ Nothing in this section ~~contained~~ shall be construed so as to affect the rights of any bona fide purchaser for value and ~~without~~ notice .

Source: §58-25.

Comment: No change.

§ ~~58-4.1~~ 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 ~~such~~ 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.

Source: § 58-4.1.

Comment: No substantive change.

§ 58-4.2 58.1-9 . Filing of tax returns or payment of taxes by mail.—When remittance of a tax return or a tax payment is made by mail, 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 bearing a postmark 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.

Source: § 58-4.2.

Comment: No change.

§ 58-27.3 58.1-10 . Collection of taxes accrued prior to repeal.—Any ~~State~~ *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.

Source: § 58-27.3.

Comment: No change.

§ 58-27 58.1-11 . Oaths or affirmations unnecessary on returns; misdemeanor to make false return.—No return of any ~~State~~ *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 ~~same~~ *return* but the signature of such person or persons to any such return shall be sufficient. Any such person who ~~wilfully~~ *wilfully* 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.

Source: § 58-27.

Comment: Conforms penalty provision to the established classification for misdemeanors.

§ 58-26.1. ~~Bad checks tendered for payment of State taxes.— If any check tendered for any amount due for State taxes imposed for State purposes be not paid by the bank on which it is drawn, the person by whom such check was tendered shall remain liable for the payment of such amount the same as if such check has (had) not been tendered, and in addition to other penalties imposed by law, be subject to a penalty of ten dollars.~~

§ 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. Except as specifically provided in Chapters 3 (Income Tax) and 6 (Retail Sales and Use Tax), if such person fails to pay the amount shown on the face of the check within five days after notice of such non-payment has been mailed by certified or registered mail 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.*

Source: §§ 58-26.1 and 58-441.35

Comment: Rewritten. A notice provision is added and the penalty is increased from ten dollars to twenty-five dollars. The section is also made applicable to a bad check tendered for the payment of any ~~tax~~, state or local, however, the income tax and retail sales and use tax retain their special provisions regarding payment of taxes by bad check.

§ 58-26 § 58.1-13 . State taxes to be paid into the general fund.—Except when otherwise specifically provided, all ~~State~~ *state* taxes, including penalties and interest, collected under the provisions of this title, shall, when paid into the ~~State~~ *state* treasury, be paid into the general fund of the ~~State~~ *state* treasury for the support of the government.

Source: § 58-26.

Comment: No change.

§ ~~58-1021.1~~ 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.

Source: § 58-1021.1

Comment: No change.

~~§ 58-1160.1~~ 58.1-15 . Rate of interest.— ~~Notwithstanding any other provision of law, any direct or indirect reference in Title 2-1 or Title 58 to a rate of interest established pursuant to § 6621 of the Internal Revenue Code of 1954, as amended, which is associated with the rate therein established being applied to a period of time for which an interest obligation accrues, shall be understood to require that separate computations be made for each portion of such period during which the rate established pursuant to § 6621 of the Internal Revenue Code of 1954, as amended, is different. Unless otherwise specifically provided, interest on omitted taxes, assessments and refunds under this title shall be computed at a rate equal to the rate of interest established pursuant to § 6621 of the Internal Revenue Code of 1954, as amended. Seperate computations shall be made by multiplying the deficiency or overpayment for each period by the rate of interest applicable to that period .~~

Source: § 58-1160.1

Comment: Rewritten. This section applies to all provisions of Title 58.1 unless otherwise specifically provided by statute.

~~§ 58-44.2~~ 58.1-16 . Overcollection of tax. Any person responsible for collecting any tax administered by the Department of ~~Taxation~~ 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.

Source: § 58-44.2

Comment: No change.

## *Article 2.*

### *Responsibility of Fiduciaries in Tax Matters.*

~~§ 58-869~~ 58.1-20 . Fiduciaries distributing intangible personal property to file informative tax returns.—Every fiduciary paying or distributing to or among one or more beneficiaries any part or the whole of the corpus of an estate or trust consisting of intangible personal property shall file upon a form prepared by the Department of ~~Taxation~~ an informative return of such distribution, showing the names and residences of the distributees, the amounts and classes of such property distributed to each and the date or dates of such distribution. Such returns shall be filed 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 State~~ *the Commonwealth* , in the county or city in which such fiduciary resides, does business or has an office, or wherein the distributees or any of them reside. Every such return shall be filed on or before the first day of May of the calendar year following the calendar year in which the distribution was made.

Source: § 58-869

Comment: No change

~~§ 58-870~~ 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.

Source: § 58-870

Comment: No change.

~~§ 58-871~~ 58.1-22 . Accounts not to be settled until taxes paid or provided for.—No commissioner of accounts or assistant commissioner shall, under § 26-32, file any report of an account of the transactions of any executor, administrator, trustee, receiver or other fiduciary until it shall be made to appear to the commissioner that all taxes, whether State, ~~municipal~~ or county or city , assessed and chargeable upon property in the hands of the person for whom such account is settled belonging to the estate concerned in such settlement 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 executor, administrator, trustee, receiver or other fiduciary.

Source: § 58-871

Comment: No change.

§ ~~58-872~~ *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 of ~~Taxation~~ with respect to any unpaid taxes and levies ~~assessed~~ against his decedent.

Source: § 58-872

Comment: No change.

§ ~~58-873~~ *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.

Source: § 58-873

Comment: No change

**SUBTITLE L.**

**TAXES ADMINISTERED BY THE DEPARTMENT OF TAXATION.**

## CHAPTER 1.

### GENERAL PROVISIONS.

~~§ 58-10. 58.1-100. Property subject to State state taxation only. ; merchants' capital taxed locally. -Insurance taxes, licenses on insurance companies, taxable intangible personal property, rolling stock of all corporations operating railroads by steam and all other classes of property not hereinbefore specifically enumerated in the preceding section (§ 58-9), exempted or reserved for local taxation, are hereby segregated and made subject to State state taxation only. The capital of merchants shall not be subject to State taxation, but may be taxed locally as provided by the preceding section.~~

Source: § 58-10.

Comment: Removes language applicable to local taxation which is now contained in Subtitle III.

Reference to railroads operated by steam is outdated.

~~§ 58-11. Collection of certain taxes assessed for State purposes prior to segregation; refunds to localities; use for school purposes. All taxes, which, prior to the segregation of land and tangible personal property to the localities, where assessed upon land and tangible personal property for any State purpose or purposes and which on June sixteen, nineteen hundred thirty appeared as uncollected upon the delinquent tax books shall be collected by the officer charged by law with the duty of collecting the same. All such delinquent taxes and all sums paid to redeem the delinquent lands shall be paid by the officer charged by law with the duty of collecting such taxes into the State treasury, as other taxes are required by law to be paid into the State treasury. All such taxes so collected and paid into the State treasury shall annually be refunded and repaid to the respective counties and cities in which the land lies or such tangible personal property was assessed and on which such taxes are paid, such refunds to be paid out of the State treasury as other funds are required by law to be paid out. All such taxes so refunded and repaid shall be used for school purposes by the respective counties and cities receiving the same.~~

Comment: This section is repealed as being obsolete.

~~§ 58-45.1. § 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 of Taxation, both the State 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.~~

Source: § 58-45.1.

Comment: No change.

~~§ 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, unless the Tax Commissioner has authorized in writing their destruction or disposal at an earlier date.~~

Comment: New section which combines and consolidates numerous sections scattered throughout previous Title 58 requiring the retention of documents by a taxpayer.

~~§ 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.~~

Comment: New section which combines and consolidates numerous sections scattered throughout previous Title 58 permitting inspection of records by the Department.

~~§ 58.1-104. Period of limitations.--Any tax imposed by this subtitle 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 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 date on which such taxes became due and payable.~~

Comment: New section which combines and consolidates numerous sections scattered throughout previous Title 58 providing a uniform statute of limitations for assessment and collection of taxes.

~~§ 58-45. § 58.1-105.~~ Offers in compromise; Department of Taxation may accept; authority and duty of Tax Commissioner.—In all cases in which under the laws of this State 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 of Taxation shall in its discretion have authority to accept offers made in compromise of such prosecution and in compromise or in lieu of such penalties. The reason for the acceptance of such offers in compromise shall be preserved among the records of the Department.

The Tax Commissioner may compromise and settle doubtful and or disputed claims for taxes or tax liability of doubtful collectibility. 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.

Source: § 58-45.

Comment: No substantive change.

~~§ 58-48.1. § 58.1-106.~~ Tax Commissioner authorized to make photographic reproductions of tax returns.—Notwithstanding any other provision of law, the State Tax Commissioner may cause all or any part of the State state tax returns kept by or in the possession of the Department of Taxation to be photographed or microphotographed and may acquire, maintain and use such appropriate containers and files as shall be necessary to accommodate and to preserve the photographs and microphotographs so obtained, and such microphotoscopes and microphotoscopic facilities and equipment as shall be necessary for the purpose of examining and using such microphotographs, as well as such other microphotographic apparatus and equipment as shall be necessary or advisable for the purpose of making such microphotographs .

Source: § 58-48.1.

Comment: Unnecessary language is deleted.

~~§ 58-48.2. § 58.1-107.~~ Destruction of returns so reproduced; destruction of other returns, reports, etc.—Whenever photographs or microphotographs have been made pursuant to § 58.1-106 and put in conveniently accessible files, and provision has been made for preserving, examining and using the same, the State Tax Commissioner may, notwithstanding any other provisions of law, cause the tax returns so photographed or microphotographed, or any part thereof, to be destroyed. All other returns, reports and working papers of the Department of Taxation may be destroyed after three years upon order of the State Tax Commissioner.

Source: § 58-48.2.

Comment: No substantive change.

~~§ 58-48.3. § 58.1-108.~~ Admissibility of reproductions of returns in evidence.—A reproduction or enlargement of any tax return, when satisfactorily identified duly attested by the Tax Commissioner , is as admissible in shall be received as evidence as the original itself in any judicial or administrative in any court or other proceeding whether the original is in existence or not and a satisfactorily identified enlargement of such reproduction is likewise admissible 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 or of an enlargement thereof does shall not preclude admission of the original.

Any such tax return, reproduction or enlargement purporting to be sealed, or sealed and signed, or signed alone by the State Tax Commissioner or on his behalf by a designated employee of the Department of Taxation may be considered satisfactorily identified and admitted as evidence, without any proof of the seal or signature, or of the official character of the person whose name is signed to it.

Source: § 58-48.3.

Comment: Section is rewritten to track the procedural process followed in introducing into evidence postmortem examinations under § 19.2-188.

~~§ 58-48.4. § 58.1-109.~~ Compliance with subpoena, etc., requiring production of confidential returns.—The State Tax Commissioner and each employee of the Department of Taxation , 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 of ~~Taxation~~, may comply therewith by certifying a reproduction or enlargement thereof in accordance with the preceding section (~~§ 58-48.3~~) *§ 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 of ~~Taxation~~ 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 of ~~Taxation~~ to appear ~~personally~~ *in person*, notwithstanding any other provision of this section.

Source: § 58-48.4.

Comment: No change.

~~§ 58-48.5: § 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 of ~~Taxation~~, a duly executed affidavit by the *State Tax Commissioner* ~~shall~~ *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.

Source: § 58-48.5.

Comment: Discretionary authority to accept such affidavit is returned to the court during a judicial proceeding.

~~§ 58-40~~ *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 of ~~Taxation~~ 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 *State Commonwealth* by such taxpayer, from any information in its possession, and assess the taxes, penalties and interest due the *State Commonwealth* by such taxpayer.

Source: § 58-40

Comment: No substantive.

~~§ 58-46.1: Furnishing copies of inheritance tax returns to certain persons. Notwithstanding the provisions of § 58-46, the State Tax Commissioner shall, upon request, make available a copy of any inheritance tax return to any person who is shown to the satisfaction of the State Tax Commissioner, by affidavit or otherwise, to be a beneficiary, legatee, devisee or distributee; or who asserts a bona fide claim to be such, of the estate upon which such return has been made; provided that a charge not exceeding one dollar per page may be made for each such copy.~~

Comment: Inheritance tax effectively repealed January 1, 1983.

## CHAPTER 2.

### DEPARTMENT OF TAXATION.

~~§ 58-28~~ 58.1-200 . State Tax Commissioner.—The State Tax Commissioner shall be the chief executive officer of the Department of Taxation. He 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 be 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 may be appropriated for the purpose provided by law . The Tax Commissioner and Department of Taxation shall be subordinate to the Secretary of Administration and Finance.

Source: § 58-28.

Comment: Deletes repetitive language contained in § 58.1-1.

~~§ 58-29~~ 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 ~~penalty~~ 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 ~~maintain~~ the Department of Taxation .

Source: §58-29.

Comment: No substantive change.

~~§ 58-33~~ 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 State Tax Commissioner, he shall:

(1) 1. Supervise the administration of the ~~assessment and~~ tax laws of this State the Commonwealth , insofar as they relate to taxable state subjects of ~~taxation~~ taxed by the State for State purposes 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 ; . ~~and recommend~~

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

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

4. Investigate at any time the assessment and collection of State 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 ; ~~and institute~~ .

5. Institute proceedings by motion in writing in the proper court ; ~~or before the judge of such court in vacation~~, 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.

(2a) 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.

(3) 7. Prescribe the forms of books, schedules and blanks to be used in the assessment and collection of State 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 State state assessing officials.

(4) 8. Direct such proceedings, actions and prosecutions to be instituted as may be needful

to enforce the revenue laws of the *State Commonwealth* and call on the Attorney General or other proper officer ; to prosecute such actions and proceedings.

~~(5)~~ 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 state* tax or revenue statute or the validity of any *State state* tax is in question ; ~~and the~~ . *The* court wherein such action or proceeding is pending may, by order entered therein, make the *Tax* Commissioner a party thereto whenever deemed necessary.

~~(6)~~ 10. Upon request by any *local governing body*, local board of equalization or any ten citizens and taxpayers of the locality, ~~but only upon such request~~, 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.

~~(7)~~ Make a report of his proceedings and recommendations to the Governor on or before the first day of November preceeding a regular session of the General Assembly, which the Governor shall transmit to the General Assembly.

~~§ 58-33.4. The Tax Commissioner shall annually~~ 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.

Source: §§ 58-33 and 58-33.4

Comment: Removes annual reporting requirement of the Tax Commissioner to the Governor concerning current proceedings in which the Department is involved and his legislative recommendations. Adds local governing body in paragraph 10 as an entity which may request the Tax Commissioner's assistance in equalizing assessments.

~~§ 58-48-6 58.1-203 . Regulations and policy statements.-~~ 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 of ~~Taxation~~ . 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 (§ 9-6.14:1 et seq.) of the Code of Virginia, except that notice of a proposed regulation shall appear at least sixty days in advance of the date prescribed for submittals. For any regulations proposed before January 1, 1985 , the *Tax* Commissioner may restrict public comment to written submittals whenever he determines, based on the limited scope of the regulation, the lack of initial interest or otherwise, that oral comment will not be necessary for a fair presentation and review of the proposal. The *Tax* Commissioner may prescribe the extent, if any, to which any ruling or regulation shall be applied without retroactive effect.

C. The *Tax* Commissioner shall have the power prior to January 1, 1985 , to issue general policy statements without complying with the Administrative Process Act. However, no general policy or similar statement shall be issued by the *Tax* Commissioner that establishes a position not published by the Department before July 1, 1980, that expands substantially a position published prior to such date unless the statement is accompanied by notice of a proposed regulation covering the same matters. General policy statements shall not be accorded the weight appropriate to a regulation.

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

Source: § 58-48.6.

Comment: No change.

~~§ 58-48-7 58.1-204 . Publication of rulings, decisions, orders, regulations and policy statements.~~  
-A. ~~The Department shall publish the following documents:~~

1. Regulations finally adopted by the *Tax* Commissioner as provided in § 58-48-6 58.1-203 ;
2. Orders of the *Tax* Commissioner under §§ 58-1119 58.1-1822 and 58-1119-1 58.1-1824 ;
3. Final orders entered by a circuit court under § § 58-1122 58.1-1827 or § 58-1124 58.1-1826

, and any written opinion or memorandum of the court;

4. Any written ruling, policy statement or other interpretation of Virginia law which the Tax Commissioner believes may be of interest to taxpayers and practitioners.

B. Notwithstanding ~~§ 58-46 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 compiled at regular intervals not exceeding three months, made available for inspection and copying at the Department, and distributed to such national and State state tax services and other publications as the Tax Commissioner deems necessary to inform taxpayers and practitioners.

Source: § 58-48.7.

Comment: No substantive change.

§ ~~58-48.8 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:

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

B 2 . Any regulation promulgated as provided by subsection B of § ~~58-48.6 58.1-203~~ shall be sustained unless unreasonable or plainly inconsistent with applicable provisions of law.

C 3 . Rulings and policy statements issued in conformity with § ~~58-48.6 58.1-203~~ and published as provided in § ~~58-48.7 58.1-204~~ shall be accorded judicial notice.

D 4 . In any proceeding commenced under §§ ~~58-1118 58.1-1821~~ , ~~58-1119.1 58.1-1824~~ or § ~~58-1120 58.1-1825~~ before January one, ~~nineteen hundred eighty-five 1, 1985~~ , unpublished rulings, policy statements and other administrative interpretations which are documented and established by competent evidence to have been in effect prior to July one, ~~nineteen hundred eighty 1, 1985~~ , shall be accorded judicial notice and shall be given such weight as the reviewing authority deems appropriate. In all proceedings commenced after such date, such rulings and interpretations shall be subject to the provisions of subsection E 5 .

E 5 . Rulings and administrative interpretations other than those described in subsections B, C and D 2, 3 and 4 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 subsection A 1 .

Source: § 58-48.8.

Comment: No change.

§ ~~58-32.1 58.1-206~~ . Continuing education program for assessing officers and boards of equalization.—There shall be established within the Department of ~~Taxation~~ a program of continuing education for county, city ~~or~~ 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.

Source: § 58-33.1.

Comment: No change.

§ ~~58-32.2 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~~ *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.

Source: § 58-33.2.

Comment: No change.

~~§ 58-23.3~~ *58.1-208* . Classifications of real property.—The State Tax Commissioner shall establish a classification system of real property appropriate for the 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.

Source: § 58-33.3.

Comment: No change.

~~§ 58-24. Adoption of administrative features by regulation in lieu of invalid law. If any clause, sentence, paragraph or other part of this title which relates to any administrative feature; shall for any reason be adjudged by a court of final resort to be invalid the State Tax Commissioner may, by proper regulation, adopt in lieu thereof such administrative features as will in his opinion most effectively carry out the true intent and purpose of this title as expressed herein or as modified by a decree or judgment of court. If any such regulation or part thereof shall for any reason be adjudged by the court of last resort to be invalid, the State Tax Commissioner shall have the same authority by further regulation as is herein provided in case any part of this title be so adjudged inoperative or invalid.~~

Comment: Repetitive of the general power granted by § 58.1-203.

~~§ 58-46.3~~ *58.1-209* . Disclosure of social security account numbers.—Notwithstanding any other provision of law, ~~pursuant to existing departmental regulations~~, the Department may continue to require disclosure of the social security account number of a taxpayer for any purpose relating to taxes administered by the Department of ~~Taxation~~ , including verification of the identity of any individual. Such numbers shall be regarded as confidential ~~tax~~ information pursuant to the provisions of § ~~58-46~~ *58.1-4* .

Source: § 58-46.3.

Comment: No substantive change.

~~§ 58-47~~ *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 ~~county clerk of a county; every clerk of a town council and every commissioner of the revenue of a city 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, ~~town or city~~ *city or town* necessary to enable the Department to publish such pamphlet. Such information shall be so furnished by such ~~clerks and commissioners of the revenue tax assessing officers~~ as soon as it is available after request by the Department. If any ~~clerk or commissioner of the revenue~~ *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.

Source: § 58-47.

Comment: Local tax assessing officer is substituted as the responsible local official for supplying required information to the Department.

~~§ 58-48~~ *58.1-211* . Department to advise Comptroller amounts to be charged ~~State state~~ collecting officers.—Whenever the Department of ~~Taxation~~ 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 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.

Source: § 58-48.

Comment: No change.

~~§ 58-35. Administration of oaths.—The Commissioner, the executive assistant, and such other officers or employees of the Department of Taxation as the Commissioner may authorize in writing, may administer oaths in the performance of their duties and take acknowledgments to tax returns.~~

Comment: See § 58.1-216.

~~§ 58-32 58.1-212 . Office of Tax Commissioner; sessions and investigations elsewhere ; necessary expenses .—The office of the Tax Commissioner shall be in the city City of Richmond and suitable rooms space shall be provided therefor in the State office building by the Governor for its offices . But the The Tax Commissioner, however, may hold sessions and conduct investigations and hearings at any other place when necessary to for the proper performance of the duties prescribed by law. The Commissioner and the employees of the Department of Taxation shall receive from the State the amount of their actual necessary expenses on the business of the Commissioner, such expenses to be approved by the Commissioner.~~

Source: § 58-32.

Comment: Removes requirement that the Department be located in the State Office Building and deletes requirement that the Commissioner and his employees be compensated for expenses incurred in the performance of their duty. This requirement is generally covered in § 14.1-5.

~~§ 58-30 58.1-213 . Assistants and clerks.—The Tax Commissioner may, subject to the provisions of chapter 9 of Title 2 [chapter 10 (§ 2.1-110 et seq.) of Title 2.1] the Virginia Personnel Act (§ 2.1-110 et seq.) , employ and remove such assistants and clerks as may from time to time be necessary, prescribe their duties and fix their compensation ; provided, that the total expenditures of the Commissioner shall not exceed the amount appropriated by law ; and provided, further, that no increase in salary shall be made in conflict with § 14.2 [§ 14.1-2] .~~

Source: § 58-30.

Comment: Removes duplicate language and other language which is properly controlled by the biennial appropriations act.

*§ 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 Subtitle I of this title. 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.*

Comment: New section

~~§ 58-21 58.1-215 . Charge for sale of publications.—The Tax Commissioner is authorized to impose a charge for the sale of reprints of Title 58 58.1 of the Code of Virginia, or portions thereof, for copies of rules and regulations promulgated by the Tax Commissioner and for other publications of the Department of Taxation . Receipts from such sales shall be credited to the Department of Taxation for reimbursement of printing expenses. No charge shall be made for State state tax forms or instructions.~~

Source: § 58-31.

Comment: No change.

~~§ 58-26 58.1-216 . Writs, notices, processes and orders.—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 of law or equity 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. But all warrants memorandum of liens for the collection of taxes shall issue under the provisions of §§ 58-41 to 58-43 §§ 58.1-1805 or 58.1-1806 .~~

Any person summoned as a witness, or summoned to produce books and papers, or both, who shall fail or refuse fails or refuses to attend, or to produce such books and papers, or both,

as the case may be, may be proceeded against in the circuit or corporation court of the city or the circuit court of the county in which such person resides by a rule or attachment issued on motion of the State 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, as the case may be, at such time and place as may be designated by the court.

*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 and take acknowledgments to tax returns.*

Source: §§ 58-35 and 58-36.

Comment: Two sections are combined.

~~§ 58-27~~ 58.1-217 . ~~Same; form~~ *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 ~~any the~~ sheriff or constable of ~~any 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 ~~shall fail~~ 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 ; ~~who is hereby clothed with power to carry this provision into effect~~ .

Source: § 58-37.

Comment: No substantive change.

~~§ 58-38~~ 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.

Source: § 58-38.

Comment: No change.

~~§ 58-39~~ 58.1-219. *Examination of books and records of taxpayers.*—The ~~Department of Taxation~~ Tax Commissioner may, in any case, in lieu of proceeding under § ~~58-36~~ 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 ~~its~~ his authorized auditors or agents in order that the tax and revenue laws of ~~this State~~ the Commonwealth may be enforced; but, in any such case, if any taxpayer ~~shall refuse~~ refuses to submit his books and records for examination, as aforesaid, the Department may proceed under § ~~58-36~~ 58.1-216.

Source: § 58-39.

Comment: No change.

~~§ 58-1162.1~~ 58.1-220 . *Waiver of time limitation on assessment of omitted or additional State taxes.* Where before the expiration of the time prescribed in §§ ~~58-1160 and 58-1161~~ for the assessment of an omitted or additional State tax, both the State 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.

Source: § 58-1162.1

Comment: No substantive change.

## CHAPTER 3.

### INCOME TAX.

#### Article 1.

##### General Provisions:

~~§ 58-151.04 58.1-300 . Incomes not subject to local taxation.— Incomes having been segregated for State taxation only;~~ No county, city, town or other political subdivision of this State ~~Commonwealth~~ shall impose any tax or levy upon incomes , *incomes being hereby segregated for state taxation only* .

Source: § 58-151.04

Comment: No substantive change.

~~§ 58-151.01 58.1-301 . Meaning of terms~~ *Conformity of terms to Internal Revenue Code .—*  
(a) 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) 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 the same may be or become effective at any time or from time to time.

(c) ~~[Repealed.]~~

(d) ~~If subsection (b) of this section should be held unconstitutional insofar as it provides for the applicability under this chapter of amendments to the Internal Revenue Code of 1954 and of other laws of the United States relating to federal income taxes which are adopted or become law after the adoption of articles 7.1 to 7.6 of this chapter, such provisions of subsection (b) shall be deemed severable and any reference to such Code or laws of the United States shall be construed to mean such Code or laws of the United States as are in force and effect on December thirty-one, nineteen hundred seventy.~~

Source: § 58-151.01

Comment: Severability clause is deleted. A general severability clause will be added as a second enactment clause to this title revision.

~~§ 58-151.02 58.1-302 . Definitions.—~~For the purpose of this chapter and unless otherwise required by the context:

(a) ~~“Virginia income” shall mean Virginia taxable income as defined in § 58-151.012; 58-151.022, 58-151.024, 58-151.032 or 58-151.032.1.~~

*“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 eighty percent of the voting stock of the other or others, or (ii) at least eighty percent of the voting stock of two or more corporations is owned by the same interests.*

(a) *“Compensation” means wages, salaries, commissions and any other form of remuneration paid or accrued to employees for personal services.*

(a) *“Corporation” shall include includes associations, joint stock companies and insurance companies.*

*“Domicile” means the permanent residence of a taxpayer or 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; and
4. Gains, profits, or other income from the sale of intangible or real property located without the United States.

In determining the source of "foreign source income," the provisions of §§ 861, 862, and 863 of the Internal Revenue Code shall be applied.

~~(g)~~ "Income and deductions from Virginia sources" shall ~~include~~ includes :

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

~~(i)~~ a. The ownership of any interest in real or tangible personal property in this State Virginia ; or

~~(ii)~~ b. A business, trade, profession or occupation carried on in this State Virginia .

~~(2)~~ 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 this State Virginia .

~~(b)~~ "Individual" shall ~~mean~~ means all natural persons whether married or unmarried and fiduciaries acting for natural persons, but not fiduciaries acting for trusts or estates.

~~(2)~~ "Nonresident estate or trust" shall ~~mean~~ means an estate or trust which is not a resident estate or trust.

"Qualified technological equipment" means usable computers or other sophisticated electronic equipment found by the Department of Education to be suitable for direct use in the level of education offered by the donee institution, and actually used for such purpose.

~~(e)~~ ~~(1)~~ ~~(i)~~ "Resident" applies only to natural persons and includes, for the purpose of determining liability to the taxes imposed by this chapter upon the income of any taxable year every person domiciled in this State Virginia at any time during the taxable year and every other person who, for an aggregate of more than ~~one hundred eighty-three~~ 183 days of the taxable year, maintained his place of abode within this State Virginia , whether domiciled in this State Virginia or not. The word "resident" shall not include any member of the United States Congress who is domiciled in another state.

~~(f)~~ ~~(1)~~ "Resident estate or trust" shall ~~mean~~ means :

~~(i)~~ 1. The estate of a decedent who at his death was domiciled in this State the Commonwealth ,

~~(ii)~~ 2. A trust created by will of a decedent who at his death was domiciled in this State the Commonwealth ,

~~(iii)~~ 3. A trust created by, or consisting of property of a person domiciled in this State the Commonwealth , or

~~(iv)~~ 4. A trust or estate which is being administered in this State the Commonwealth .

~~(b)~~ "Sales" means all gross receipts of the corporation not allocated under § 58-151-037 58.1-407 .

(e) "State" means for purposes of Article X 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.

(e) "Trust" or "estate" shall mean 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.

(b) Definitions: The " Virginia fiduciary adjustment " shall mean means the net amount of the applicable modifications described in § 58-151.013 58.1-322 (including subparagraph (e) (1) 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 subparagraph (d) subsection D of § 58-151.013 58.1-322 , except that the amount of State state income taxes excluded from federal taxable income shall be included.

(ii) Any person, however, who, during the taxable year, becomes a resident of this State, whether domiciliary or actual, for purposes of income taxation, by moving to this State from without this State 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 this State 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 State bears to three hundred sixty-five days. No person to whom the preceding sentence applies shall be entitled to any credit on his income tax payable to this State 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 § 58-151.015.

(iii) Any person who, on or before the last day of the taxable year, changes his place of abode to a place without this State with the bona fide intention of continuing actually to abide permanently without this State shall be taxable as a resident for only that portion of the taxable year during which he was a resident of this State 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 State bears to three hundred sixty-five days. The fact that a person who has changed his place of abode, within six months from so doing abides again in this State, shall be prima facie evidence that he did not intend permanently to have his place of abode without this State. The fact that a person has removed his abode to a place without this State is not conclusive evidence of a change of domicile.

(iv) Any person who is taxable as a resident of this State for only a portion of a taxable year because he moved to this State from without this State during the taxable year as set out in subparagraph (ii), or because he changed his place of abode during the taxable year to a place without this State as set out in subparagraph (iii), and who, as a nonresident of this State 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 this State shall be taxable as a nonresident with respect to such income as provided in § 58-151.013 (f).

Source: §§ 58-151.02, 58-151.013, 58-151.023, 58-151.034 and 58-151.081.

Comment: Provisions relative to a taxpayer who is a resident for only a portion of the tax year is moved to a separate section. Definition of "domicile" is added as new language and the factors encompassed within said definition are retained without modification. Definition of "foreign source income" is moved from paragraph (c)(9)(A) of § 58-151.013. Definition of "qualified technological equipment" is moved from paragraph (c)(11) of § 58-151.013. Definition of "Virginia fiduciary adjustment" is moved from § 58-151.023 and other definitions are moved from §§ 58-151.034 and 58-151.081.

§ 58.1-303. *Residency for portion of tax year.*—A. Any person who, during the taxable year, becomes a resident of this State 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 this State 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 this State the Commonwealth bears to three hundred sixty-five 365 days. No person to whom the preceding sentence applies shall be entitled to any credit on his income tax payable to this State 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 § 58-151.015 58.1-322 .

(iii) *B.* Any person who, on or before the last day of the taxable year, changes his place of abode to a place without ~~this State the Commonwealth~~ with the bona fide intention of continuing actually to abide permanently without ~~this State Virginia~~ shall be taxable as a resident for only that portion of the taxable year during which he was a resident of ~~this State 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 State Commonwealth~~ bears to ~~three hundred sixty-five~~ 365 days. The fact that a person who has changed his place of abode, within six months from so doing abides again in ~~this State the Commonwealth~~, shall be prima facie evidence that he did not intend permanently to have his place of abode without ~~this State Virginia~~. The fact that a person has removed his abode to a place without ~~this State the Commonwealth~~ is not conclusive evidence of a change of domicile. 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.

(iv) *C.* Any person who is taxable as a resident of ~~this State the Commonwealth~~ for only a portion of a taxable year because he moved to this ~~State Commonwealth~~ from without ~~this State Virginia~~ during the taxable year as set out in ~~subparagraph (ii) subsection A~~, or because he changed his place of abode during the taxable year to a place without ~~this State Virginia~~ as set out in ~~subparagraph (iii) subsection B~~, and who, as a nonresident of ~~this State 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 ~~this State Virginia~~ shall be taxable as a nonresident with respect to such income as provided in § 58-151.013 ~~(f)~~ 58.1-325.

Source: § 58-151.02(e)(1)(ii),(iii) and (iv).

Comment: No substantive change.

#### § 58.1-304. *Reserved.*

§ ~~58-151.068~~ 58.1-305. *Duties of commissioner of the revenue to obtain and audit returns 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 ; ~~but this~~. 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 ; ~~but such~~. Such auditing shall not be done in ~~such a~~ manner or at ~~such a~~ time in any case as will result in any delay on the part of the commissioner of the revenue in complying with §§ ~~58-151.069~~ 58.1-307 and ~~58-151.076~~ 58.1-350.

Source: § 58-151.068

Comment: No substantive change.

§ ~~58-151.065~~ 58.1-306. *Filing of individual, estate or trust income tax returns with the Department of Taxation.*—Whenever an individual or fiduciary files with the Department of Taxation a ~~State state~~ income tax return for a current year, the Department of Taxation may, at the request of the taxpayer, and for reasons sufficient to it, assess the ~~State state~~ income tax against such taxpayer instead of transmitting such return to a commissioner of the revenue for assessment ; ~~but~~. In every such case the Department of Taxation, however, shall advise the appropriate commissioner of the revenue of such action. ~~The Department of Taxation~~ 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 one / of each year, the filing of such ~~State state~~ income tax return with the Department of Taxation.

Source: § 58-151.065

Comment: No substantive change.

§ ~~58-151.069~~ 58.1-307. *Income assessment sheets or forms.* The Department of Taxation shall prescribe and furnish assessment sheets or forms for the use of every commissioner of the revenue in making assessments of individual and fiduciary income taxes. These assessment sheets or forms shall be made out in as many copies as may be prescribed by the Department of Taxation. The original and, if the Department of Taxation 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 of Taxation; and one copy shall be retained by the commissioner of the revenue. The commissioner of the revenue shall make out these assessment sheets or forms 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 on such sheets or forms; and the commissioner of the revenue shall each day deliver the original and, if the Department of Taxation 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 of Taxation its copy of the assessment sheets or forms showing assessments made throughout such month.

Comment: Deletes unnecessary language.

§ 58-151.070 58.1-307 . Disposition of returns; audit.—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 of Taxation; provided, however, that the . The Department of Taxation , 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 § 58-151.068 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.

Source: § 58-151.070

Comment: No substantive change.

§ 58-151.071 58.1-308 . Assessment and payment of deficiency; fraud; penalties.—If the amount of tax computed by the Department shall be is greater than the amount theretofore assessed, the excess shall be assessed by the Department aforesaid 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 shall be 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 § 58-1160 58.1-305 , from the time the said 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 one hundred per centum 100 percent shall be added together with interest on the tax at a rate determined in accordance with § 58-1160 58.1-305 , from the time the said 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 corporation or hustings court of the city wherein he resides for a correction of the assessment made by the Department of Taxation , with right of appeal in the manner provided by law.

Source: § 58-151.071

Comment: No substantive change.

§ 58-151.072 58.1-309 . Refund of overpayment.—If the amount of taxes as computed shall be is less than the amount theretofore paid, the excess shall be refunded out of the State state treasury on the order of the Tax Commissioner upon the Comptroller.

Source: § 58-151.072

Comment: No substantive change.

§ 58-151.066 Forms for returns: Blank forms of returns for individual, estate or trust income shall be supplied by the Department of Taxation to the commissioners of the revenue, who shall mail or deliver them to the taxpayers not later than January fifteenth of each year.

Such income returns shall provide for the reporting of the federal adjusted gross income of the individual; and federal taxable income of the estate or trust, modifications thereof; together with such other facts, including the gross receipts from any business prosecuted in this State and a depreciation schedule of property used in such trade or business, as may be necessary for the proper enforcement of this chapter.

Comment: Provisions of this section will be included in the General Provisions to Title 58.1.

§ 58-151.097 58.1-310 . Examination of federal returns.—Whenever in the opinion of the

Department of Taxation 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.

Source: § 58-151.097

Comment: No change.

~~§ 58-151.0102: When reports and returns may be destroyed. Reports and returns received by the Department of Taxation under the provisions of this chapter and former laws shall be preserved for three years and thereafter until the Commissioner orders them to be destroyed.~~

Comment: Provisions of this section will be included in the General Provisions to Title 58.1.

~~§ 58-151.0103 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 report such change or correction in federal taxable income within ninety days after the final determination of such change, correction, or renegotiation, or as otherwise required by the Department of Taxation , and shall concede the accuracy of such determination or state wherein it is erroneous. Any taxpayer filing an amended federal income tax return shall also file within ninety days thereafter an amended return under this chapter and shall give such information as the Department of Taxation may require. The Department of Taxation may by regulation prescribe such exceptions to the requirements of this section as it deems appropriate.~~

Source: § 58-151.0103

Comment: No change.

~~§ 58-151.0104 58.1-312 . Limitations on assessment.-- (a) General. Except as otherwise provided in this section and notwithstanding any other provision of law, any tax under this article and the preceding articles of this chapter shall be assessed within three years after the return was filed (whether or not such return was filed on or after the date prescribed).~~

~~For purposes of this section a return of income tax filed before the last day prescribed by law or by regulations promulgated pursuant to law for the filing thereof, shall be deemed to be filed on such last day.~~

~~(b) Exceptions. (1) Assessment at any time.~~

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

~~(A) 1. No return is filed,~~

~~(B) 2. A false or fraudulent return is filed with intent to evade tax, or~~

~~(C) 3. The taxpayer fails to comply with § 58-151.0103 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.~~

~~(2) Extension by agreement - C. Where, before the expiration of the time prescribed for the assessment of tax, both the Department of Taxation 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.~~

~~(3) Report of changed or corrected federal income. - D. If the taxpayer pursuant to § 58-151.0103 58.1-311 reports a change or correction or files an amended return increasing his federal taxable income 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.~~

~~(4) Deficiencies attributable to certain carry-backs.~~ - E. 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.

~~(5) Recovery of erroneous refund.~~ - F. 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.

~~(6) Request for prompt assessment.~~ - G. 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.

Source: § 58-151.0104

Comment: No substantive change.

~~§ 58-151.0105~~ 58.1-313 . Immediate assessment where collection jeopardized by delay; notice of assessment; termination of taxable period.—If the *Tax* Commissioner is of the opinion that the collection of any amount of income ~~tax~~, penalties or interest required to be paid under this title will be jeopardized by delay, the *Tax* Commissioner shall immediately make an assessment of the actual or estimated amount of tax due, together with all penalties and interest, as provided by law, and demand immediate payment thereof from the taxpayer. A notice of such assessment and the demand for immediate payment 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 ~~tax warrant memorandum of lien~~ provided for in § 58-41 58.1-1805 may issue immediately upon assessment and notice thereof, or in the discretion of the *Tax* Commissioner, he may require the taxpayer to file such bond as in his judgment may be sufficient to protect the interest of the *State 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 ~~this State~~ *the Commonwealth*, or (ii) to remove his property therefrom, or (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.

Source: § 58-151.0105

Comment: No substantive change.

~~§ 58-151.0106~~ 58.1-314 . Lien of jeopardy assessment; notice of lien.—Upon the completion of all acts necessary to effect a jeopardy assessment under § ~~58-151.0105~~ 58.1-319.3 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.

Source: § 58-151.0106

Comment: No change.

§ ~~58-151.0111~~ 58.1-315 . Transitional modifications to Virginia taxable income.—The modifications of Virginia taxable income to be made in accordance with subsection ~~(e)~~ § ~~58-151.012~~ F of § 58.1-322 and subsection D of § 58.1-402 , so long as applicable, are as follows:

~~(a)~~ 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~~ Articles 1, 2, 3, 4, 5, 6, or 7 of ~~chapter~~. Chapter 4 of this title 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.

~~(b) to (d)~~ [Repealed.]

~~(e)~~ 2. The carry-back of net operating losses or net capital losses to reduce taxable income of taxable years beginning prior to January ~~one, nineteen hundred seventy-two~~ 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 ~~thirty-one, nineteen hundred seventy-one~~ 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 ~~one, nineteen hundred seventy-two~~ 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.

~~(f)~~ 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.

~~(g)~~ 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 ~~thirty-one, nineteen hundred seventy-one~~ 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 § ~~58-151.026~~ 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 ~~thirty one, nineteen hundred seventy-one~~ 31, 1971 .

~~(h)~~ [Repealed.]

~~(i)~~ 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 to 58-151.0111~~) Articles 1 through 14 of this chapter ~~applies~~ apply , exceeds the adjusted basis of such property for federal income tax purposes determined at the close of the same period.

~~(j)~~ [Repealed.]

~~(k)~~ 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 ~~one, nineteen hundred seventy-two~~ 1, 1972 .

~~(l)~~ [Repealed.]

Source: § 58-151.0111

Comment: No substantive change.

## Article 2.

### Individual Income Tax.

58-151.03 58.1-320 . Imposition of tax. ~~(a) Individuals, estates and trusts.~~ -A tax determined in accordance with the rates set forth in § 58-151.011 is hereby annually imposed on the Virginia taxable income for each taxable year of every individual ; ~~estate and trust as follows:~~

2% on income not exceeding \$3,000,

3% on income in excess of \$3,000, but not in excess of \$5,000,

5% on income in excess of \$5,000, but not in excess of \$12,000, and

5 3/4% on income in excess of \$12,000 . Notwithstanding any other provision of this subsection, no tax is imposed, nor any return required to be filed by, (i) any organization which by reason of its purposes or activities is exempt from income tax under the laws of the United States (except organizations which have unrelated business income under such laws), (ii) a single individual where the Virginia adjusted gross income for such taxable year is less than three thousand dollars, (iii) an individual and spouse if their combined Virginia adjusted gross income for such taxable year is less than three thousand dollars. For the purposes of this section Virginia adjusted gross income means federal adjusted gross income for the taxable years with the modifications specified in § 58-151.013 (b), § 58-151.013 (c) and the additional four hundred dollars personal exemption allowed under § 58-151.013 (d) (3).

(b) Partners and partnerships. - A partnership as such shall not be subject to tax under this chapter. Persons carrying on business as partners shall be liable for tax under this chapter only in their separate or individual capacities.

(c) Corporations. - A tax determined in accordance with the rate set forth in § 58-151.031 is hereby annually imposed on the Virginia taxable income for each taxable year of every corporation organized under the laws of this State and every foreign corporation having income from Virginia sources (except public service corporations which pay a State franchise tax or license tax upon gross receipts, insurance companies which pay a State license tax on gross premiums and reciprocal or interinsurance exchanges which pay a premium tax to the State as provided by law, and State and national banks, banking associations and trust companies, credit unions organized and conducted as such under the laws of this State, or under the laws of the United States, electing small business corporations, and 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 under such laws).

Source: § 58-151.03

Comment: Exclusion and provisions relative to partnerships are moved to the section which follows. Language applicable to corporations is moved to Article 10.

§ 58-151.011. Rates of tax. The rates of tax annually imposed upon every individual upon and with respect to his Virginia taxable income for each taxable year are as follows:

Two per centum of the amount of such income not exceeding three thousand dollars;

Three per centum of the amount of such income in excess of three thousand dollars, but not in excess of five thousand dollars;

Five per centum of the amount of such income in excess of five thousand dollars but not in excess of twelve thousand dollars; and

Five and three fourths per centum of the amount of such income in excess of twelve thousand dollars.

Comment: Rates are integrated into levy section. (See § 58.1-320)

§ 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 \$3,000;

2. An individual and spouse if their combined Virginia adjusted gross income for such taxable year is less than \$3,000.

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 \$400 personal exemption allowed under § 58.1-322 D. 2. (3).

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.

Source: §§ 58-151.03 (a) and 58-151.016

Comment: New section. The language contained in paragraph A is moved without change from paragraph (a) of § 58-151.03. The language of paragraph B is moved in part from § 58-151.016.

~~§ 58-151.013~~ 58.1-322. Virginia taxable income of residents. — ~~(a) General.~~ - A. The Virginia taxable income of a resident individual means his federal adjusted gross income for the taxable year, with the modifications specified in ~~this section~~ subsections B, C, D and E.

~~(b) Additions.~~ - B. To the extent excluded from federal adjusted gross income, there shall be added:

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

~~(2)~~ 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)~~ 3. Unrelated business taxable income as defined by § 512 of the Internal Revenue Code;

~~(4)~~ 4. Forty percent of the capital gain part and all of the ordinary income part of a lump-sum distribution from a qualified retirement plan, less the minimum distribution allowance and any amount excludable for federal income tax purposes;

~~(5)~~ 5. Deduction for two-earner married couples as allowed under § 221 of the Internal Revenue Code of 1954, as amended; ~~and~~

~~(6)~~ 6. For taxable years beginning after December 31, 1981, and before January 1, 1984, the excess cost recovery as defined in ~~§ 58-151.013-1~~ ~~(A)~~ 58.1-323A.

~~(c) C. Subtractions.~~ - To the extent included in federal adjusted gross income, there shall be subtracted:

~~(1)~~ 1. Interest or dividends on 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)~~ 2. Interest on obligations of this State Commonwealth or of any political subdivision or instrumentality of this State Commonwealth.

~~(3)~~ The following items of pension or retirement income and benefits:

~~(A)~~ 3. Pensions or retirement income to officers and employees of ~~this State the Commonwealth~~, its subdivisions and agencies, or surviving spouses of such officers or employees exempt from state income taxation under the laws of this State, and pensions or retirement income to officers and employees who are retired under Chapter 3.2 of Title 51, or to spouses of such officers and employees the provisions of Chapter 2 (§ 51-3 et seq.) of Title 51, or to spouses of such officers and employees; .

~~(B)~~ through ~~(F)~~ [Repealed.]

~~(G)~~ 4. Benefits received under Title II of the Social Security Act.

~~(4)~~ Dividends to the extent includable in gross income for federal income tax purposes and in excess of any dividend exclusion provided in the laws of the United States relating to federal

income taxes, upon stock in:

(A) [Repealed.]

(B) Any domestic international sales corporation (as defined by § 902 of the Internal Revenue Code of 1954, as amended), fifty 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 this State.

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

(6) Any amount included therein by the operation of the provisions of § 78 of the Internal Revenue Code of 1954 (foreign dividend gross-up).

(7) 6. The amount of wages or salaries eligible for the federal Targeted Jobs Credit or the amount of expenses eligible for the federal work incentive program which was not deducted for federal purposes on account of the provisions of § 280 C (a) or § 280 C (b) of the Internal Revenue Code of 1954, as amended .

(8) Any amount included therein by the operation of § 951 of the Internal Revenue Code (subpart F income).

(9) 7. Any amount included therein which is foreign source income as defined in § 58.1-302 .

(A) The term "foreign source income" means:

(i) Interest other than interest derived from sources within the United States;

(ii) Dividends other than dividends derived from sources within the United States;

(iii) 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; and

(iv) Gains, profits, or other income from the sale of intangible or real property located without the United States. (B) In determining the source of income for purposes of paragraph (A) above, the provisions of §§ 861, 862, and 863 of the Internal Revenue Code, shall be applied:

(10) 8. For taxable years beginning after December 31, 1983, and before January 1, 1989, the available portion of total excess cost recovery as defined in § ~~58-151-012.1~~ (B) 58.1-323B .

(11) 9. To the extent not deducted from adjusted gross income, the fair market value, as determined by the Department of Education, of qualified technological equipment as defined in § 58.1-302 donated to a school division, a private nonprofit elementary or secondary school, a nonprofit or state-supported, degree-granting, accredited institution of higher education, or a science center located in Virginia. "Qualified technological equipment" means usable computers or other sophisticated technological equipment found by the Department of Education to be suitable for direct use in the level of education offered by the donee institution, and actually used for such purpose.

(d) Deductions. - D. In computing Virginia taxable income there shall be deducted from federal adjusted gross income

(1) 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 this State the Commonwealth or any other taxing jurisdiction and deducted on such federal return; or

(2) b. Fifteen percent of federal adjusted gross income not to exceed a maximum amount of \$2,000 (or 1/2 of such maximum amount in the case of a married individual filing a separate return), or \$1,300 (\$650 in the case of a married individual filing a separate return), whichever is greater, provided that the taxpayer has not itemized deductions for the taxable year on his federal income tax return. For purposes of the calculation of this subsection, the federal adjusted gross income of a taxpayer who has elected under § 402 of the Internal Revenue Code to use the special ten-year averaging method of taxing a lump-sum distribution from a qualified

retirement plan shall be increased by the amount added to adjusted gross income under subsection ~~(b)~~ ~~(3)~~ B. 3 of this section;

~~(2)~~ 2. A deduction in the amount of \$600 for each personal exemption allowable to the taxpayer for federal income tax purposes, and an additional deduction of \$400 for each exemption allowable to the taxpayer under paragraph (c) of § 151 of the Internal Revenue Code; and

~~(4)~~ 3. A deduction equal to the amount of employment-related expenses upon which the federal credit is based under § 44A of the Internal Revenue Code for expenses for household and dependent care services necessary for gainful employment.

~~(e) Other modifications and adjustments. - (1) 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 § 58-151.023 58.1-361 .

~~(2) 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:~~

~~(A) Income shall be allocated to the spouse who earned the income or with respect to whose property the income is attributable.~~

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

~~(C) 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 paragraph (B) above.~~

~~(D) Where the standard deduction or low income allowance is properly taken pursuant to subsection (d) (2) of this section such deduction or allowance shall be allocable between husband and wife as they may mutually agree.~~

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

~~(3) Where allocations are permitted to be made under paragraph (2) above pursuant to agreement between husband and wife, and husband and wife have failed to agree as to such 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.~~

~~(f) Nonresidents. - (1) Nonresident individuals, partners and beneficiaries. - 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.~~

~~(2) Certain nonresident shareholders. - For a nonresident individual who is a shareholder in an electing small business 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.~~

~~(g) Transitional modifications. - F.~~ There shall be added or subtracted, as the case may be, the amounts provided in § 58-151.011 58.1-315 as transitional modifications.

~~(h) Partner's modifications. - Virginia taxable income shall, as to partners, be adjusted to reflect the modifications provided in § 58-151.014.~~

Source: § 58-151.013

Comment: Section is shortened considerably. Paragraphs (4) and (6) of subsection (C) which apply only to corporate taxpayers are moved to Article 10. Definitions of "foreign source income" and "qualified technological equipment" are moved to the definition section.

Provisions relative to the taxation of husband and wife are moved to the section which follows and the taxation of nonresidents, is moved to a separate section (§ 58.1-324). Partners' modifications are moved to Article 8.

~~§ 58-151.013:1~~ ~~58.1-323~~ . Excess cost recovery.—A. For purposes of the addition specified in § ~~58-151.013 (b) (6)~~ ~~58.1-322 B. 6~~, the term “excess cost recovery” means thirty percent of the total deduction claimed for federal income tax purposes under the Accelerated Cost Recovery System except that excess cost recovery does not include any percentage of amounts claimed as a deduction for federal income tax purposes with respect to:

- (i) Property not used to produce Virginia taxable income,
- (ii) Property placed in service before January 1, 1981, or
- (iii) Property not qualifying for, or excluded from, the Accelerated Cost Recovery System.

B. For purposes of the subtraction specified in § ~~58-151.013 (e) (10)~~ ~~58.1-322 C. 8~~, the term “available portion of total excess cost recovery” means any amount elected by the taxpayer except that the subtraction allowable for any taxable year shall in no event be greater than the difference between:

(i) The applicable percentage for such taxable year of the total excess cost recovery included in Virginia taxable income for prior taxable years under § ~~58-151.013 (b) (6)~~ ~~58.1-322 B. 6~~; and

(ii) The total of the subtractions under § ~~58-151.013 (e) (10)~~ ~~58.1-322 C. 8~~ allowed for prior taxable years.

C. Applicable percentages for taxable years beginning: after December 31, 1983, but before January 1, 1985: 20% after December 31, 1984, but before January 1, 1986: 40% after December 31, 1985, but before January 1, 1987: 60% after December 31, 1986, but before January 1, 1988: 80% after December 31, 1987, but before January 1, 1989: 100%.

Any portion of the excess cost recovery not subtracted by the end of the fifth year of the subtraction period may be carried back and applied to reduce the tax in any of the previous four years of the subtraction period, beginning with the first.

Source: § 58-151.013:1

Comment: No substantive change.

~~§ 58-151.012~~ ~~58.1-324~~ . Husband and wife.—~~(a)~~ 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)~~ 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)~~ 1. Their tax shall be determined on their joint Virginia taxable income, or

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

~~(c)~~ 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 of Taxation, unless both elect to determine their joint Virginia taxable income as if both were residents.

~~(2)~~ 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:

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

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

~~(C)~~ 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 paragraph ~~(B)~~ 2 of this subsection above.

~~(D)~~ 4. Where the standard deduction or low income allowance is properly taken pursuant to subsection ~~(d)~~ ~~(2)~~ D. 1.a of this section § 58.1-322 such deduction or allowance shall be allocable between husband and wife as they may mutually agree.

~~(E)~~ 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; ~~provided;~~ however, ~~that~~ exemptions for taxpayer and spouse together with exemptions for old age and blindness must be allocated respectively to the spouse to ~~which~~ whom they relate.

~~(3)~~ D. Where allocations are permitted to be made under ~~paragraph (2) above~~ subsection C pursuant to agreement between husband and wife, and husband and wife have failed to agree as to ~~such~~ 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.

Source: §§ 58-151.012 and 58-151.013

Comment: Provisions relative to allocation of certain income between husband and wife are relocated to former provision containing rules particular to the taxation of the income of husband and wife. Paragraph (c) dealing with situations where one spouse is a nonresident is relocated in a separate section following Virginia taxable income of nonresidents.

*§ 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.*

Source: § 58-151.013

Comment: This new section separates Virginia taxable income of nonresidents from the section relating to the income of residents for purposes of decreasing the length of the previous section.

*§ 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.*

Source: § 58-151.012

Comment: This new section removes from previous § 58-151.012 language applicable to husband and wife when one spouse is a nonresident.

### Article 3.

#### Tax Credits for Individuals.

~~§ 58-151.014:1~~ 58.1-330 . Retirement income tax credit.—Any individual taxpayer aged sixty-two or over shall be allowed a credit against the tax imposed by § ~~58-151.03~~ 58.1-320 of an amount equal to five ~~per centum~~ percent of the maximum amount allowable as a benefit under Title II of the Social Security Act to a single beneficiary of his age (as determined by the Commissioner) such maximum amount reduced by:

(i) the total amount of benefits actually received under the Social Security Act or the Railroad Retirement Act; and

(ii) twice the amount by which such taxpayer's federal adjusted gross income exceeds ~~twelve~~

thousand dollars \$12,000 . In no event shall the credit allowed hereunder exceed the total amount of tax liability of such taxpayer. No taxpayer who claims the credit under this section shall be permitted to subtract any amount under the provisions of subsection (e) (3) (A) C. 3 of § 58-151.013 58.1-322 .

Source: § 58-151.014:1

Comment: No substantive change.

§ 58-151.014:2 58.1-331 . Energy income tax credit.—A. Any individual shall be allowed a credit against the tax imposed by § 58-151.02 58.1-320 of an amount ~~equaling~~ *equaling* ~~twenty-five~~ *twenty* percent of renewable energy source expenditures , as defined in § 44 C of the Internal Revenue Code and the regulations adopted pursuant thereto, ~~made after January 1, 1982, and before January 1, 1986; a credit of an amount equaling twenty percent of renewable energy source expenditures made after January 1, 1985, and before January 1, 1986; a credit of an amount equaling fifteen percent of renewable energy source expenditures made after January 1, 1986, and before January 1, 1987; and a credit of an amount equaling ten percent of renewable energy source expenditures made after January 1, 1987, and before January 1, 1988, by such individual. Only one such credit shall be permitted for each such expenditure.~~

B. Any corporation shall be allowed a credit against the tax imposed by § 58-151.02 of an amount ~~equaling twenty-five percent of renewable energy source expenditures made after January 1, 1982, and before January 1, 1986; a credit of an amount equaling twenty percent of renewable energy source expenditures made after January 1, 1985, and before January 1, 1986; a credit of an amount equaling fifteen percent of renewable energy source expenditures made after January 1, 1986, and before January 1, 1987; and a credit of an amount equaling ten percent of renewable energy source expenditures made after January 1, 1987, and before January 1, 1988, by such corporate taxpayer. Only one such credit shall be permitted for each individual expenditure. The Commissioner shall adopt rules and regulations for the certification of such expenditures using the definitions of § 44 C of the Internal Revenue Code as it relates to individuals whenever practicable.~~

C. B. The amount of such credit shall not exceed \$1,000 for a qualified renewable energy source expenditure or the tax imposed by this chapter, whichever is less. In determining such expenditures, the labor of the taxpayer shall not be included.

D. C. If the credit allowable, but not in excess of \$1,000 for each qualified expenditure for any taxable year, exceeds the tax imposed by this chapter for such taxable year, such excess may be carried to the succeeding taxable year by the taxpayer and added to any credit allowable under subsection A for such succeeding taxable year.

Source: § 58-151.014:2

Comment: Energy income tax credit applicable to corporations is moved to Chapter 5.

§ 58-151.015 58.1-332 . Credits for taxes paid other states.— (a) A. Whenever a resident of ~~this State the Commonwealth~~ has become liable for income tax to another state, on earned or business income, or any part thereof, for the taxable year, derived from sources without ~~this State the Commonwealth~~ and subject to taxation under this chapter, the amount of income tax payable by him under this chapter shall , upon proof of such payment, be credited on his return with the income tax so paid by him to such other state upon proof of such payment; ~~provided, however, that the~~ . The credit allowable under this section shall not exceed such proportion of the income tax otherwise payable by him under this chapter as his income upon which the tax imposed by such other state was computed bears to his Virginia taxable income upon which the tax imposed by this State Commonwealth was computed. 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) B of this section.

(b) B. Whenever a nonresident individual of this State Commonwealth has become liable for income tax to the state where he resides upon his Virginia taxable income for the taxable year, derived from Virginia sources and subject to taxation under this chapter, the amount of income tax payable by him 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 ; ~~provided, that such~~ The credit , ~~however,~~ shall be allowed only if the laws of such state: (1) (i) grant a substantially similar credit to residents of ~~this State~~ Virginia subject to income tax under such laws or (2) (ii) impose a tax upon the income of its residents derived from Virginia sources and exempt from taxation the income of residents of

this State 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.

Source: § 58-151.015

Comment: No substantive change.

~~§ 58-151.016: Certain persons in armed forces not subject to tax on service pay: Persons in the armed forces of the United States stationed on military or naval reservations within Virginia who are not domiciled in Virginia and who maintain no place of abode in Virginia shall not be held liable to income taxation for compensation received from military or naval service.~~

Comment: See § 58.1-321

~~§ 58-151.032:4 58.1-333 . Tax credit for investments under the "Neighborhood Assistance Act of 1981".—Any business firm, as defined in § 63.1-321, shall be allowed a credit against the tax imposed by § 58-151.03 § 58.1-320 or chapter 10.01 (§§ 58-485.01 et seq.) Chapter 12 (§ 58.1-1200 et. seq.) of Title 58 58.1 , §§ 58-486, 58-501, 58-579, 58-580 and 58-603 58.1-2501, 58.1-2621, 58.1-2622, 58.1-2623, 58.1-2624 and 58.1-2626 of an amount equal to fifty percent of the total sum invested under the Neighborhood Assistance Act of 1981 (§ 63.1-320 et seq.) during the taxable year, such credit not to exceed one hundred seventy-five thousand dollars \$175,000 annually ; provided, however, no . No tax credit of less than fifty dollars shall be granted, nor shall a tax credit be granted to any business firm for investments if such activity is a part of its normal course of business as defined in § 63.1-321. Any tax credit not usable for the taxable year the investment was made may be carried over to the extent usable for the next five succeeding taxable years or until the full credit is utilized, whichever is sooner. Credits granted to a partnership or Subchapter S corporation S corporation shall be passed through to the partners or shareholders, respectively.~~

Source: § 58-151.032:4

Comment: No substantive change.

#### *Article 4.*

##### *Accounting, Returns*

##### *Procedures for Individuals.*

~~§ 58-151.061: 58.1-340 . Accounting.— (a) Accounting periods. - A. An individual ; estate, trust or corporate taxpayer's taxable year under this chapter shall be the same as his taxable year for federal income tax purposes.~~

~~(b) Change of accounting periods. - 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 of Taxation .~~

~~(c) Accounting methods. - 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 Department of Taxation Tax Commissioner clearly reflects income.~~

~~(d) Change of accounting methods. - D. (1) 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 of~~

## Taxation .

(4) 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.

(6) 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.

Source: § 58-151.061

Comment: No substantive change. This section is repeated for both estates and trusts and corporations.

~~§ 58-151.062 58.1-341 . Returns of individuals ; estates and trusts .-~~ (a) General.- A. On or before ~~the first~~ day of 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) 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 ~~determined under § 58 151.013~~, *except as provided in § 58 151.03*

(2) 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~~ determined under § 58 151.022. 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;

(3) 2. Every nonresident individual having Virginia taxable income for the taxable year ~~determined under § 58 151.013~~ , *except as provided in § 58 151.03 58.1-321 ; .*

(4) Every nonresident estate or trust having Virginia taxable income for the taxable year ~~determined under § 58 151.024~~.

(b) Husband and wife. (1) 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. (2) If the federal income tax liabilities of husband and wife (other than a husband and wife described in paragraph (3) 2 of subsection A ) are determined on a joint federal return, or if neither files a federal return:

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

(B) 2. They may elect to file separate Virginia income tax returns if they comply with the requirements of the Department of ~~Taxation~~ in setting forth information (whether or not on a single form), in which event their tax liabilities shall be separate ~~except as provided in paragraph (4) of this subsection (b) unless such husband and wife file separately on a combined return .~~ (C) ~~Provided~~, The election permitted ~~hereunder~~ 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.

(3) 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 of ~~Taxation~~ , in which event their tax liabilities shall be separate except as provided in ~~paragraph (4) of this subsection (b) 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.

(4) D. If husband and wife file separate Virginia income tax returns on a single form pursuant to ~~paragraph (2) subsection B~~ or ~~paragraph (2) of this subsection (b) C~~ , and:

(A) 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 of ~~Taxation~~ 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;

~~(B)~~ 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.

~~Provided, however, that~~ The provisions of this ~~paragraph~~ ~~(4)~~ 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) Decedents.~~ ~~E.~~ The return for any deceased individual shall be made and filed by his executor, administrator, or other person charged with his property.

~~(d) Individuals under a disability.~~ ~~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.

~~(e) Estates and trusts.~~ ~~The return for an estate or trust shall be made and filed by the fiduciary.~~

~~(f) Joint fiduciaries.~~ ~~If two or more fiduciaries are acting jointly, the return may be made by any one of them.~~

~~(g) Tax a debt.~~ ~~Any tax under this article, and any increase, interest or penalty thereon, shall, from the time it is due and payable, be a personal debt of the person liable to pay the same, to the State of Virginia.~~

Source: § 58-151.062

Comment: Provisions applicable to estates and trusts are moved to § 58.1-441. Provision relative to the fact that the tax becomes a debt of the person liable to pay the same is deleted as unnecessary.

~~§ 58-151.063 58.1-342 .~~ Special case 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 return to this Commonwealth for that taxable year provided:

~~(1)~~ 1. his only income from Virginia sources was from salaries and wages, ~~and~~ ~~(2)~~

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, ~~and~~ ~~(3)~~

3. the laws of such other state contain a provision substantially similar in effect to that contained in ~~§ 58-151.015 58.1-332~~ and applicable to residents of Virginia, and

~~(4)~~ 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.

Source: § 58-151.063

Comment: No substantive change.

~~§ 58-151.064 58.1-343 .~~ Place of filing.—~~(a) Individuals.~~ - 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) Fiduciaries.~~ - B. Every fiduciary required to file a return on behalf of an individual, estate or trust shall file such return with the commissioner of the revenue having jurisdiction in

ified or, if there has been no qualification in this the county or city in which the fiduciary qualin which such fiduciary resides, does business or State Commonwealth, in the county or city y of them may reside, or with the Department of has an office or wherein the beneficiary or an Taxation if provided by regulation thereof.

Source: § 58-151.064

Comments contained in subsection B is moved to Article  
Comment: Language applicable to estates or tröplaced at the end of this section referencing §

7. A Code Commission notation will be jas directly with the Department.  
extension or extensions shall be attached to the,

§ 58-151.067. 58.1-344 . Extension of time pnsion or extensions of time within which to file fiduciary has been allowed or granted an exte year, the due date for the filing of the income any federal income tax return for any taxable extended to the date six months after such due tax return required under this chapter shall ber filing the federal income tax return, whichever date or fifteen days after the extended date for is filed and the estimated tax due is paid in is earlier, provided that a tentative tax return C. A copy of any form or letter allowing or accordance with the provisions of subsection or filing the federal income tax return shall be granting the extension or extensions of time i required under this chapter when such return is attached to the face of the income tax return filed.

d cause shown and upon written request received  
B. In addition, the Department may for gooe income tax return required under this chapter on or before the due date for the filing of this exceed six months for filing such income tax grant an extension or extensions of time not is filed and the estimated tax due is paid in return, provided that a tentative tax return C. A copy of the form or letter granting such accordance with the provisions of subsection face of the income tax return when such return s-ued.

C. Any taxpayer desiring an extension of time in accordance with the provisions of subsections A or B shall, on or before the original due date for the filing of such return, file with the Department a tentative tax return and 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 § 58-151.22 58.1-491 and any tax credit under § 58-151.21 58.1-499 . If any amount of the balance of the tax due is underestimated, interest at the rate prescribed in § 58-1160 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 ten per centum percent of the actual tax liability, there shall be added to the tax as a penalty an amount equal to one - half of one per centum 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.

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 paragraph D above, 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 thirty 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.

Source: § 58-151.067

Comment: No change.

§ 58-151.072. 58.1-345 . Nongame wildlife voluntary contribution.--A. Any individual eligible to receive a tax refund pursuant to § 58-151.072 58.1-312 may designate at the time of filing his return a specified dollar amount of such refund, such amount to be not less than one dollar, to 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 Commission of Game and Inland Fisheries.

B. ~~The Tax Commissioner shall revise the State income tax form as necessary to permit a voluntary check-off refund designation as outlined in subsection A.~~ All moneys collected pursuant to this section or through voluntary payments by taxpayers designated for nongame wildlife purposes over refundable amounts shall be deposited into the ~~State~~ state treasury.

~~C. The Tax Commissioner shall determine annually the total amount designated on all State permit a voluntary check-off refund designation as outlined in subsection A.~~ All money collected ~~from income tax returns~~ the ~~amount~~ report to the ~~State Treasurer, who shall credit that~~ amount to 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.

Source: § 58-151.072:1

Comment: Obsolete language is removed.

~~§ 58-151.072:2 58.1-346 . Voluntary contribution to political party.—A.~~ Any individual eligible to receive a tax refund pursuant to § 58-151.072: ~~58.1-312~~ may designate at the time of filing his return that two dollars of such refund be paid to the State Central Committee of any party which meets the definition of a political party under § 24.1-1 of the Code of Virginia as of July 1 of the previous taxable year. In the case of a joint return of husband and wife, each spouse may designate that two dollars be paid.

B. ~~The State Tax Commissioner shall revise the state income tax return form as necessary to pursuant to this section subsection A~~ shall be deposited into the state treasury.

C. The State Tax Commissioner shall determine by June 30 of each year the total amount designated for each party during that year. The direct costs of administration shall be deducted in equal amounts from each party's share. The Tax Commissioner shall report the same to the State Treasurer, who shall pay that amount to the appropriate party.

Source: § 58-151.072:2

Comment: Obsolete language is removed.

~~§ 58-151.073 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 be is extended by the Department of Taxation .~~ ~~And upon~~ 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 ten per centum percent of the amount of taxes assessable thereon, but in no case shall such penalty be less than two 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.

Source: § 58-151.073

Comment: Minimum penalty amount is deleted at the request of the Department of Taxation, asserting that the extremely low mandatory penalty creates an administrative burden.

~~§ 58-151.074 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 wilfully willfully fails or refuses to make such return, at the time or times required by law, or who, with intent to defraud the State Commonwealth , makes any false statement in any such return, shall be guilty of a Class 1 misdemeanor ; and upon conviction shall be confined in jail not exceeding one year, or fined not exceeding one thousand dollars, or both .~~ A prosecution under this section shall be commenced within five years next after the commission of the offense.

Source: § 58-151.074

Comment: Former penalty is classified.

~~§ 58-151.075 58.1-349 . Same; Information returns as are prima facie evidence.—In any prosecution under § 58-151.074 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 of this State in the Commonwealth as prima facie evidence of what is stated in said return.

Source: § 58-151.075

Comment: No substantive change.

§ 58-151.076 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 of Taxation .

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 state taxes.

Source: § 58-151.076

Comment: No change.

§ 58-151.077 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 ; as the case may be , a penalty of five percent of the amount thereof, and the entire tax or any unpaid balance of the tax ; as the case may be , together with such penalty, will immediately become collectible ; and . Interest upon such tax or any unpaid balance of the tax ; as the case may be , and on the accrued penalty, shall be added at a rate determined in accordance with § 58-1160 58.1-15 , from one month after the tax or any unpaid balance of the tax ; as the case may be , was originally due until paid ; but in . In the case of an additional tax assessed by the commissioner of the revenue under the provisions of § 58-151.068 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 § 58-1160 58.1-15 , from the time the said return was required by law to be filed until paid.

In every case the taxpayer may make payment to the treasurer of the county or city by attaching to his return when he files it with the commissioner of the revenue a check or money order for the proper amount made payable to the order of "Treasurer of the County of \_\_\_\_\_," or "Treasurer of the City of \_\_\_\_\_," as the case may be; and the commissioner of the revenue shall transmit all such checks and money orders to the treasurer at the time he delivers to the treasurer the assessment sheets or forms showing the assessments, or if memorandum assessments are made, at the time such memorandum assessments are certified to the treasurer. In those counties in which a director of finance performs the duties of a county treasurer, checks or money orders shall be made payable to the order of "Director of Finance of the County of \_\_\_\_\_." If any check be not paid by the bank on which it is drawn, the taxpayer by whom such check was tendered shall remain liable for the payment of the tax and for all legal penalties and interest the same as if such check had not been tendered.

If the taxpayer on filing his return desires to pay in currency or coin, the commissioner of the revenue with whom the return is filed shall forthwith prepare a memorandum assessment on a form to be prescribed and furnished by the Department of Taxation 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 of Taxation 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.

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 to the extent collection cannot be accomplished otherwise, 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 of Taxation.

Within thirty-one days after the close of such calendar year the treasurer shall transmit to the Department of Taxation in such form as the Department of Taxation 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 of Taxation, 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 of Taxation, but the same shall be paid directly into the State treasury.

The Department of Taxation shall have power to issue warrants for the collection of such taxes in the same manner and with the same effect as in the case of warrants issued for the collection of taxes assessed by such Department; and all provisions of law applicable to such warrants shall be applicable to the warrants issued for the collection of taxes under this section. The Department of Taxation shall also have power to collect the taxes aforesaid by other legal process.

Source: § 58-151.077

Comment: Provisions relating to failure of bank to pay on a check are moved to § 58.1-314, provisions relating to memorandum assessments are moved to § 58.1-352, and provisions relating to the duties of county and city treasurer in collecting the income tax are moved to § 58.1-353. Other language specifying how a check shall be made out is stricken as unnecessary.

*§ 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.*

Source: § 58-151.077

Comment: This new section removes language relative to memorandum assessments and places it in a separate section.

*§ 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 to the extent collection cannot be accomplished otherwise, 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.*

*The Department shall have power to issue warrants for the collection of such taxes in the same manner and with the same effect as in the case of warrants issued for the collection of taxes assessed by such Department, and all provisions of law applicable to such warrants shall*

*be applicable to the warrants issued for the collection of taxes under this section.*

Source: § 58-151.077

Comment: Removes language applicable to treasurer's collection duties and places same in a separate section.

~~§ 58-151.099 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 of ~~Taxation~~ , 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.

Source: § 58-151.099

Comment: No change.

#### *Article 5.*

*Reserved.*

#### *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.~~

Source: §§ 58-151.03 and 58-151.021

Comment: Language of two sections combined without substantive change.

~~§ 58-151.021. Rates of tax.—The rates of tax prescribed by § 58-151.011 for individuals shall also apply to estates and trusts.~~

Comment: See § 58.1-420

~~§ 58-151.022 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 § ~~58-151.022~~ 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.

Source: §§ 58-151.022 and 58-151.023

Comment: Combines two sections. Definition of "Virginia fiduciary adjustment" is moved to § 58.1-302.

~~§ 58-151.024 58.1-362~~ . Virginia taxable income of a nonresident estate or trust.—The Virginia taxable income of a nonresident estate or trust shall be determined as follows:

~~(a) Items in distributable net income. - There shall be determined its share of income, gain, loss and deduction attributable to Virginia sources as determined under § 58-151.025: 58.1-363 (b) Items not in distributable net income. - There shall be added or subtracted 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 :

~~(c) Modifications.~~ - There shall be added or subtracted (as the case may be) , and

2. the net amount of any modifications as provided for in § ~~58-151.013~~ 58.1-322 (not including ~~subparagraph (a)~~ subsection D thereof) with respect to the income or gain referred to in ~~subsection (b)~~ paragraph 1 of this section.

Source: § 58-151.024

Comment: No substantive change.

§ ~~58-151.025~~ 58.1-363 . Share of a nonresident estate, trust or beneficiary in income from Virginia sources.— ~~(a) General.~~ - A. The share of a nonresident estate or trust under ~~subsection (a) of § 58-151.024~~ 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) Items of distributable net income from Virginia sources.~~ - 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) Addition or subtraction of modifications.~~ - 2. There shall be added or subtracted (as the case may be) the modifications described in § ~~58-151.013~~ 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) Allocation among estate or trust and beneficiaries.~~ - ~~(A)~~ 3. The amounts determined under paragraphs ~~(1)~~ 1 and ~~(2)~~ 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. ~~(B)~~ 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) Alternate method of determining shares.~~ - 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 paragraphs ~~(1)~~ 1 and ~~(2)~~ 2 of subsection ~~(a)~~ 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.

Source: § 58-151.025

Comment: No substantive change.

## Article 7.

### Tax Credits for Estates and Trusts.

§ ~~58-151.026~~ 58.1-370 . Credit to trust beneficiary receiving accumulation distribution.— ~~(a) General.~~ - 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) Limitation.~~ - 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.

Source: § 58-151.026

Comment: No change

~~§ 58-151.027 58.1-371~~ . Credits for taxes paid other states.—The provisions of ~~§ 58-151.015 58.1-332~~ shall be applicable mutatis mutandis to trusts and estates.

Source: ~~§ 58-151.027~~

Comment: No change.

## Article 8.

### *Accounting, Returns, Procedures for Estates and Trusts.*

~~§ 58-151.061 58.1-380~~ . Accounting.— ~~(a) Accounting periods.~~ - A. An individual, estate and trust or corporate taxpayer's taxable year under this chapter shall be the same as his *its* taxable year for federal income tax purposes.

~~(b) Change of accounting periods.~~ - B. If a taxpayer's taxable year is changed for federal income tax purposes, his *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 of ~~Taxation~~ .

~~(c) Accounting methods.~~ - C. A taxpayer's method of accounting under this chapter shall be the same as his *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 ~~Department of Taxation~~ Tax Commissioner clearly reflects income.

~~(d) Change of accounting methods.~~ - ~~(1) D.~~ If a taxpayer's method of accounting is changed for federal income tax purposes, his *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 of ~~Taxation~~ .

~~(4) 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.

~~(5) 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.

Source: ~~§ 58-151.061~~

Comment: Section which is identical to § 58.1-340 is repeated in full for estates and trusts.

~~§ 58-151.062 58.1-381~~ . Returns of ~~individuals~~, estates and trusts.— ~~(a) General.~~ A. On or before the first day of 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 required to file a federal income tax return for the taxable year, or having Virginia taxable income for the taxable year determined under § 58-151.012, except as provided in § 58-151.02;~~

1. ~~(2) Every resident estate or trust, except as provided in § 58.1-321, required to file a federal income tax return for the taxable year, or having any Virginia taxable income for the~~

taxable year determined under § 58-151-022. 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;

~~(3) Every nonresident individual having Virginia taxable income for the taxable year determined under § 58-151-013, except as provided in § 58-151-03;~~

2. (4) Every nonresident estate or trust having Virginia taxable income for the taxable year determined under § ~~58-151-024~~ 58-1-362.

(b) Husband and wife. (1) 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.

(2) If the federal income tax liabilities of husband and wife (other than a husband and wife described in paragraph (3)) are determined on a joint federal return, or if neither files a federal return:

(A) They shall file a joint Virginia income tax return, and their tax liabilities shall be joint and several, or

(B) They may elect to file separate Virginia income tax returns if they comply with the requirements of the Department of Taxation in setting forth information (whether or not on a single form), in which event their tax liabilities shall be separate except as provided in paragraph (4) of this subsection (b).

(C) Provided, the election permitted hereunder 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.

(3) 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 of Taxation, in which event their tax liabilities shall be separate except as provided in paragraph (4) of this subsection (b), 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.

(4) If husband and wife file separate Virginia income tax returns on a single form pursuant to paragraph (2) or paragraph (3) of this subsection (b), and:

(A) 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 of Taxation 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;

(B) 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.

Provided, however, that the provisions of this paragraph (4) 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.

(c) Deceaseds. B. The return for any deceased individual shall be made and filed by his executor, administrator, or other person charged with his property.

(d) Individuals under a disability. 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.

(e) Estates and trusts. C. The return for an estate or trust shall be made and filed by the fiduciary.

(f) Joint fiduciaries. D. If two or more fiduciaries are acting jointly, the return may be made by any one of them.

(g) Tax a debt. Any tax under this article, and any increase, interest or penalty thereon, shall, from the time it is due and payable, be a personal debt of the person liable to pay the

same, to the State of Virginia.

Source: § 58-151.062

Comment: Provisions relative to returns of individuals are separated out and placed in § 58.1-341. Provisions relative to the fact that the tax becomes a debt of the person liable to pay the same are deleted as unnecessary.

~~§ 58-151.064 58.1-382 . Place of filing.— (a) Individuals. - 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) Fiduciaries. - Every fiduciary required to file a return on behalf of an individual, 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 State 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 of Taxation if provided by regulation thereof.~~

Source: § 58-151.064

Comment: Filing requirements for individuals are located at § 58.1-343.

*§ 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.*

Source: New section

Comment: Extension provision relative to individuals and estates and trusts is cross-referenced.

#### Article 9.

#### *Taxation of Partnerships.*

*§ 58.1-390. Taxation of partnerships.—Persons carrying on business as partners shall be liable for tax under this chapter only in their separate or individual capacities.*

Source: § 58-151.03(b)

Comment: New section. This language is moved without substantive change from paragraph (b) of § 58-151.03.

~~§ 58-151.014 58.1-391 . Virginia taxable income of partners.— (a) Partner's modifications: - A. In determining Virginia taxable income of a partner, any modification described in § 58-151.013 58.1-322 ; which relates to an item of partnership income, gain, loss or deduction shall be made in accordance with the partner's distributive share, for federal income tax purposes, of the item to which the modification relates. Where a partner'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 partner's distributive share of such item shall be determined in accordance with his distributive share, for federal income tax purposes, of partnership taxable income or loss.~~

~~(b) Character of items. - B. Each item of partnership income, gain, loss or deduction shall have the same character for a partner 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 a partner as if realized directly from the source from which realized by the partnership or incurred in the same manner by the partnership.~~

~~(c) Virginia tax avoidance or evasion. - C. Where a partner's distributive shares of an item of partnership income, gain, loss or deduction is determined for federal income tax purposes by special provision in the partnership 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 partner's distributive share of such item, and any modification required with respect thereto, shall be determined as if the partnership agreement made no special provision with respect to such item.~~

Source: § 58-151.014

Comment: No change.

~~§ 58-151.078~~ 58.1-392 . Reports by ~~corporations~~ and partnerships.—Every ~~corporation~~ and partnership organized under the laws of ~~this State~~ *the Commonwealth* , or having income from Virginia sources, shall make a report to the Department of Taxation 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 of Taxation and shall contain such information, including the gross receipts from any business ~~prosecuted in this State~~ *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.

~~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. The return of a partnership shall be signed by any one of the partners. The fact that a partner's name is signed on the return shall be prima facie evidence that such partner is authorized to sign the return on behalf of the partnership.~~

Source: §§ 58-151.078 and 58-151.084

Comment: For provisions relative to reports of corporations, see Article 12.

~~§ 58-151.067:1~~ 58.1-393 . Extension of time for filing return by partnership.—The Department may, for good cause shown, extend the time within which any partnership is required by this chapter to make a report or return and shall extend the time to the extent that an extension is granted for federal tax purposes for the same taxable year.

Source: § 58-151.067:1

Comment: No change.

§ 58.1-394. Sections 58.1-448 through 58.1-452 applicable to partnerships.—*The provisions of §§ 58.1-448 through 58.1-452 shall apply, mutatis mutandis, to partnerships.*

Source: New Section

Comment: To avoid duplication of language, former §§ 58-151.085 through 58-151.089 are made applicable to partnerships by cross-referencing.

## *Article 10.*

### *Taxation of Corporations.*

~~§ 58-151.031~~ 58.1-400 . Rate of tax Imposition of tax.— . The rate of tax annually imposed on such ~~corporation~~ subject to A tax under subsection (c) of § ~~58-151.03~~ is at the rate of six per centum of percent is hereby annually imposed on the Virginia taxable income of such corporation for each taxable year of every corporation organized under the laws of the Commonwealth and every foreign corporation having income from Virginia sources .

Source: §§ 58-151.03 and 58-151.031

Comment: Sections imposing the corporate income tax and establishing the rate of the tax are combined. The exclusions and exemptions previously stated in § 58-151.03 are contained in the section to follow.

§ 58.1-401. Exemptions and exclusions.—No tax levied pursuant to § 58.1-400 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 of this title;

2. Insurance companies to the extent such company is subject to the license tax on gross premiums under Chapter 25 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, and credit unions organized and conducted as such under the laws of the Commonwealth, or under the laws of the United States, to the extent such companies are subject to the bank franchise tax on net

capital;

4. Electing small business corporations (S corporations); and

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.

Source: § 58-151.03

Comment: This new section removes all exemptions previously contained in § 58-151.03 and places them in a separate section.

~~§ 58-151.032. 58.1-402 . Virginia taxable income.— A. For purposes of this article, Virginia taxable income for a taxable year shall mean means the federal taxable income and any other income taxable to the corporation under federal law for such year of a corporation (or the “investment company taxable income” of regulated investment companies; the “real estate investment trust taxable income” of real estate investment trusts, to which shall be added in each case any amount of capital gains taxable to the corporation under federal law and the unrelated business taxable income of organizations exempt from income tax under § 501 (c) of the Internal Revenue Code), except a corporation subject to the provisions of § 58-151.032:1 or § 58-151.032:2, adjusted as follows: provided in subsections B, C and D.~~

*For a regulated investment company and a real estate investment trust such term shall mean 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 and D.*

~~(a) B. There shall be added to the extent excluded from federal taxable income the amounts described in paragraph (b) of § 58-151.013. :~~

*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. For taxable years beginning after December 31, 1981, and before January 1, 1984, the excess cost recovery as defined in § 58.1-323; and*

~~(b) There shall be added to federal taxable income the~~

*5. 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 this State the Commonwealth or any other taxing jurisdiction, to the extent deducted in determining federal taxable income.*

~~(b1) [Repealed:]~~

~~(c) C. There shall be subtracted to the extent included in and not otherwise subtracted from federal taxable income : the amounts described in paragraphs (1), (2), (4), (5), (6), (7), (8), (9), (10) and (11) of subsection (c) of § 58-151.013, except that the modification specified in paragraph (4) thereof shall not be reduced by the dividend exclusion provided by the laws of the United States relating to federal income taxes, and the reduction specified therein shall apply only to the extent that it exceeds the dividends received deduction.~~

*1. Interest or dividends on 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. Interest on 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, fifty 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 of 1954 (foreign dividend gross-up).

6. The amount of wages or salaries eligible for the federal Targeted Jobs Credit or the amount of expenses eligible for the federal work incentive program which was not deducted for federal purposes on account of the provisions of § 280 C (a) or § 280 C (b) of the Internal Revenue Code of 1954.

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. For taxable years beginning after December 31, 1983, and before January 1, 1989, the available portion of total excess cost recovery as defined in § 58.1-323 B.

~~(c) 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.~~

~~(d) [Repealed.]~~

~~(e) Adjustments to federal taxable income shall be made to reflect the transitional modifications provided in § 58.1-011.~~

~~(f) [Repealed.]~~

~~(g) There shall be subtracted from federal taxable income the 10. The amount of any dividends received from corporations in which the taxpayer corporation owns fifty percent or more of the voting stock ; to the extent included in federal taxable income and to the extent not otherwise subtracted under this chapter~~

*D. Adjustments to federal taxable income shall be made to reflect the transitional modifications provided in § 58.1-315.*

Source: §§ 58-151.013 and 58-151.032

Comment: Former additions and subtractions which were cross-referenced and now reprinted fully within the code section for ease of reading. Note that paragraph (11) in former subsection (c) is was nonexistent.

§ 58.1-032:1. Virginia taxable income of savings and loan associations. For purposes of this article Virginia taxable income for a taxable year for a state or federal savings and loan association shall mean the federal taxable income for such year for such savings and loan association, adjusted as follows:

(a) There shall be added to federal taxable income the deduction for bad debts allowed in computing federal taxable income.

(b) There shall be added to federal taxable income as adjusted by subsection (a) of this section the amounts described in paragraph (b) of § 58.1-012.

(c) There shall be added to federal taxable income as adjusted by subsection (a) of this section the amount of any net income tax imposed by this State or any other taxing jurisdiction, to the extent deducted in determining federal taxable income.

(d) There shall be subtracted from federal taxable income as adjusted, the amounts described in paragraphs (1), (2), (4), (5), (6), (7), (8), (9) and (10) of subsection (e) of § 58.1-012, except that the modification specified in paragraph (4) thereof shall not be reduced by the dividend exclusion provided by the laws of the United States relating to federal income

taxes, and the reduction specified in paragraph (D) of said paragraph shall apply only to the extent that it exceeds the dividends received deduction.

(e) [Repealed.]

(f) Adjustments to federal taxable income shall be made to reflect the transitional modifications provided in § 58-151.011.

(g) The percentage used in determining the bad debt deduction for savings and loan associations in determining federal taxable income shall then be applied to federal taxable income as adjusted under the provisions of this section and the amount so determined subtracted therefrom.

(h) [Repealed.]

(i) There shall be subtracted from federal taxable income the amount of any dividends received from corporations in which the taxpaying corporation owns fifty percent or more of the voting stock, to the extent included in federal taxable income and to the extent not otherwise deducted under this chapter.

Comment: See § 58.1-403

§ 58-151.032:2. Same; of railway companies. For purposes of this article, Virginia taxable income for a taxable year for a railway company shall mean the federal taxable income for such railway company for such year adjusted as follows:

(a) There shall be added to federal taxable income the amounts described in paragraph (b) of § 58-151.012.

(b) There shall be added to federal taxable income 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 this State or any other taxing jurisdiction, to the extent deducted in determining federal taxable income.

(c) There shall be subtracted from federal taxable income the amounts described in paragraphs (1), (2), (4), (5), (6), (7), (8), (9) and (10) of subsection (c) of § 58-151.012, except that the modification specified in paragraph (4) thereof shall not be reduced by the dividend exclusion provided by the laws of the United States relating to federal income taxes, and the reduction specified therein shall apply only to the extent that it exceeds the dividends received deduction.

(d) There shall be added to federal taxable income any amount which was deducted, in determining taxable income, as a capital loss carry over from any taxable year beginning on or before December 31, 1978.

(e) There shall be added to federal taxable income any amount which was deducted, in determining taxable income, as a charitable contribution carry over from any taxable year beginning on or before December 31, 1978.

(f) There shall be added to federal taxable income any amount which was deducted, in determining taxable income, as a net operating loss carry over from any taxable year beginning on or before December 31, 1978.

(g) Where such railway company 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, 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 carry over or net capital loss carry over and there shall be subtracted from federal 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.

(h) [Repealed.]

(i) There shall be subtracted from federal taxable income the amount of any dividends received from corporations in which the taxpaying corporation owns fifty percent or more of the voting stock, to the extent included in federal taxable income and to the extent not otherwise

subtracted under this chapter.  
Comment: See § 58.1-403

~~§ 58-151.032:2. Credit against income tax liability of railway company. Every railway company shall be entitled to an annual credit against its Virginia income tax liability under chapter 4 (§ 58-151.01 et seq.) of Title 58 of the Code of Virginia equal to fifty percent of such liability. The total credits allowed to any railway company shall not exceed one half the amount of franchise tax paid by such company under § 58-519 (as it existed on December thirty-one, nineteen hundred seventy-eight) for the tax year nineteen hundred seventy-nine.~~

Comment: This transitional credit was adopted when Virginia changed from a gross receipts tax on railroads to a corporate income tax and is no longer needed.

*§ 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 paragraph 1 shall be made to the federal taxable income for savings and loan associations and as set forth in paragraphs 2 and 3 for railway companies.*

*1. There shall be added the deduction allowed for bad debts. The percentage used in determining the bad debt deduction 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 carry-over 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 carry-over or net capital loss carry-over 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 carry-over or net capital loss carry-over and there shall be subtracted from federal 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.*

Source: §§ 58-151.032:1 and 58-151.032:2

Comment: This new section removes all previous duplicative language and certain transitional provisions applicable to railroads necessary when the Commonwealth converted from a franchise tax on gross receipts to an income tax in 1978.

*§ 58.1-404. Reserved.*

~~§ 58-151.033~~ *58.1-405 . Corporations transacting or conducting entire business within the State this Commonwealth .—If the entire business of the corporation be is transacted or conducted within the State 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 this State 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.*

Source: § 58-151.033

Comment: No change.

~~§ 58-151.035~~ *58.1-406 . Allocation and apportionment of income.—Any corporation having income from business activity which is taxable both within and without this State the Commonwealth ; shall allocate and apportion its Virginia taxable income as provided in §§ 58-151.034 58.1-407 through 58-151.050:3 58.1-420 .*

Source: § 58-151.035

Comment: No substantive change.

~~§ 58-151.037~~ *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.*

Source: § 58-151.037

Comment: No change.

§ ~~58-151.041~~ 58.1-408 . What income apportioned and how.—The Virginia taxable income of any corporation, except those subject to the provisions of §§ ~~58-151.050~~, ~~58-151.050:1~~, ~~58-151.050:2~~, or ~~58-151.050:3~~, 58.1-417, 58.1-418, 58.1-419, or 58.1-420, excluding income allocable under § ~~58-151.037~~ 58.1-407 , shall be apportioned to ~~this State the Commonwealth~~ by multiplying such income by a fraction, the numerator of which is the property factor plus the payroll factor, plus the sales factor, and the denominator of which is three, reduced by the number of factors, if any, having no denominator.

Source: § 58-151.041

Comment: No substantive change.

§ ~~58-151.042~~ 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 this State 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.

Source: § 58-151.042

Comment: No change.

§ ~~58-151.043~~ 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 ~~net~~ annual rental rate ~~paid by the corporation~~ . ~~Net annual rental rate is the annual rental rate paid by the corporation less any annual rental rate received by the corporation from subrentals.~~ The value of movable tangible personal property used both within and without ~~this State the Commonwealth~~ shall be included in the numerator to the extent of its utilization in ~~this State 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 ~~this State 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.

Source: § 58-151.043

Comment: No substantive change.

§ ~~58-151.044~~ 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 of Taxation 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.

Source: § 58-151.044

Comment: No change.

§ ~~58-151.045~~ 58.1-412 . Payroll factor.—The payroll factor is a fraction, the numerator of which ~~is the total amount paid or accrued in this State 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.

Source: § 58-151.045

Comment: No change.

§ ~~58-151.046~~ 58.1-413 . When compensation deemed paid or accrued in this State *Commonwealth* .—Compensation is paid or accrued in ~~this State the Commonwealth~~ if: ~~(a)~~

1. The employee's service is performed entirely within ~~the State the Commonwealth~~ ; or ~~(b)~~
2. The employee's service is performed both within and without ~~the State the Commonwealth~~ , but the service performed without ~~the State the Commonwealth~~ is incidental to the employee's

service within ~~the State the Commonwealth~~ ; or ~~(c)~~

3. Some of the service is performed in the ~~State the Commonwealth~~ and ~~(1)~~

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 State the Commonwealth~~ , or ~~(2)~~

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 ~~this State the Commonwealth~~ .

Source: § 58-151.046

Comment: No substantive change.

§ ~~58-151.047~~ ~~58.1-414~~ . Sales factor.—The sales factor is a fraction, the numerator of which is the total sales of the corporation in ~~this State 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. .

Source: § 58-151.047

Comment: No change.

§ ~~58-151.048~~ ~~58.1-415~~ . When sales of tangible personal property deemed in ~~this State the Commonwealth~~ .— Sales of tangible personal property are in ~~this State the Commonwealth~~ if such property is received in ~~this State 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 ~~this State the Commonwealth~~ , other than for purposes of transportation, to a person or firm designated by a purchaser, constitutes delivery to the purchaser in ~~this State the Commonwealth~~ , and direct delivery outside ~~this State the Commonwealth~~ to a person or firm designated by the purchaser does not constitute delivery to the purchaser in ~~this State the Commonwealth~~ , regardless of where title passes, or other conditions of sale.

Source: § 58-151.048

Comment: No substantive change.

§ ~~58-151.049~~ ~~58.1-416~~ . When certain other sales deemed in ~~this State the Commonwealth~~ .— Sales, other than sales of tangible personal property, are in ~~this State the Commonwealth~~ if: ~~(a)~~

1. The income-producing activity is performed in ~~this State the Commonwealth~~ ; or ~~(b)~~

2. The income-producing activity is performed both in and outside ~~this State the Commonwealth~~ and a greater proportion of the income-producing activity is performed in ~~this State the Commonwealth~~ than in any other state, based on costs of performance.

Source: § 58-151.049

Comment: No substantive change.

§ ~~58-151.050~~ ~~58.1-417~~ . Motor carriers; apportionment.— A. Motor carriers of property or passengers shall apportion their net apportionable income to this ~~State the Commonwealth~~ by the use of the ratio of vehicle miles in this ~~State the 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 ; and in . 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 ~~this section~~ ~~subsection A~~ shall not be applicable to a carrier :

1. Which neither owns nor rents real or tangible personal property within this ~~State the Commonwealth~~ , except vehicles, which has made no pick-ups or deliveries within this ~~State the Commonwealth~~ , and which has traveled less than ~~fifty thousand~~ 50,000 vehicle miles in this ~~State the Commonwealth~~ in the taxable year , or to a carrier

2. Which neither owns nor rents any real or tangible personal property within this *State Commonwealth*, except vehicles, and which makes no more than twelve round trips into this *State Commonwealth* during a taxable year; ~~provided that the~~.

The mileage traveled under ~~fifty thousand~~ 50,000 miles or the mileage traveled in such round trips ~~does~~, however, may not represent more than five percent of the total miles annually traveled in all states by such carrier.

Source: § 58-151.050

Comment: No substantive change.

~~§ 58-151.050:1~~ 58.1-418 . Financial corporations; apportionment.— ~~A, B. [Repealed.]~~

A. The Virginia taxable income of a financial corporation, as defined in ~~§ 58-151.03 herein~~, excluding income allocable under ~~§ 58-151.037~~ 58.1-407, shall be apportioned within and without this *State Commonwealth* in the ratio that the business within this *State Commonwealth* is to the total business of the corporation. Business within this *State Commonwealth* shall be based on cost of performance in the *State Commonwealth* over cost of performance everywhere.

B. “ Financial corporation “ ~~shall mean~~ means any corporation not exempted from the imposition of tax under the provisions of ~~§ 58-151.03 (e)~~ 58.1-401, which derives more than seventy per centum percent of its gross income from the classes of income enumerated in paragraphs 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 paragraphs 1 through 4 of subsection ~~C~~ 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.

Source: § 58-151.050:1

Comment: No substantive change.

~~§ 58-151.050:2~~ 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 *State Commonwealth* in the ratio that the business within the *State 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 §§ ~~58-151.034~~ 58.1-406 through ~~58-151.040~~ 58.1-416 .

Source: § 58-151.050:2

Comment: No change.

~~§ 58-151.050:3~~ 58.1-420 . Railway companies; apportionment.—Notwithstanding ~~§ 58-151.041 the provisions of § 58.1-408~~, railway companies shall determine their net apportionable income to ~~this State the Commonwealth~~ by multiplying the Virginia taxable income of such company, excluding the classes of income allocable under ~~§ 58-151.037~~ 58.1-407, by the use of the ratio of revenue car miles in ~~this State the Commonwealth~~ to total revenue car miles of the ~~corporation company~~ everywhere. For the purposes of this section the words “revenue car mile” in the case of railway carriers of property or passengers ~~shall mean~~ means the movement of a unit of loaded car equipment a distance of one mile. ~~Provided, further, that the~~ The loaded car miles shall be determined in accordance with the Uniform System of Accounts for Railroad Companies of the Interstate Commerce Commission.

Source: § 58-151.050:3

Comment: No substantive change.

~~§ 58-151.051~~ *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 of ~~Taxation~~ 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 *State 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 ~~shall conclude~~ *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 *State Commonwealth* for taxation the portion of the income reasonably attributable to business and sources within the *State Commonwealth* , not exceeding, however, the amount which would be arrived at by application of the statutory rules for allocation or apportionment.

Source: § 58-151.051

Comment: No change.

#### *Articles 11 & 12.*

*(Reserved.)*

#### *Article 13.*

#### *Tax Credits for Corporations.*

~~§ 58-151.032:4~~ *58.1-430* . Tax credit for investments under the "Neighborhood Assistance Act of 1981."—Any business firm, as defined in § 63.1-321, shall be allowed a credit against the tax imposed by § ~~58-151.03~~ *58.1-400* or ~~chapter 10-01~~ (~~§ 58-485.01 et seq.~~) *Chapter 12* (*§ 58.1-1200 et seq.*) of Title ~~58~~ *58.1* , §§ ~~58-486, 58-501, 58-579, 58-580 and 58-603~~ *58.1-2501, 58.1-2621, 58.1-2622, 58.1-2623, 58.1-2624 and 58.1-2626* of an amount equal to fifty percent of the total sum invested under the Neighborhood Assistance Act of 1981 (§ 63.1-320 et seq.) during the taxable year, such credit not to exceed ~~one hundred seventy-five thousand dollars~~ *\$175,000* annually ; ~~provided, however, no~~ . No tax credit of less than fifty dollars shall be granted, nor shall a tax credit be granted to any business firm for investments if such activity is a part of its normal course of business as defined in § 63.1-321. Any tax credit not usable for the taxable year the investment was made may be carried over to the extent usable for the next five succeeding taxable years or until the full credit is utilized, whichever is sooner. Credits granted to a partnership or Subchapter S corporation shall be passed through to the partners or shareholders, respectively.

Source: § 58-151.032:4

Comment: No substantive change.

*§ 58.1-431. Energy income tax credit.—A. Any corporation shall be allowed a credit against the tax imposed by § 58.1-400 of an amount equaling twenty percent of renewable energy source expenditures made after January 1, 1985, and before January 1, 1986; a credit of an amount equaling fifteen percent of renewable energy source expenditures made after January 1, 1986, and before January 1, 1987; and a credit of an amount equaling ten percent of renewable energy source expenditures made after January 1, 1987, and before January 1, 1988, by such corporate taxpayer. Only one such credit shall be permitted for each individual expenditure. The Tax Commissioner shall adopt rules and regulations for the certification of such expenditures using the definitions of § 44 C of the Internal Revenue Code as it relates to individuals whenever practicable.*

*B: The amount of such credit shall not exceed \$1,000 for a qualified renewable energy source expenditure or the tax imposed by this chapter, whichever is less. In determining such expenditures, the labor of the taxpayer shall not be included.*

*C. If the credit allowable, but not in excess of \$1,000 for each qualified expenditure for any taxable year, exceeds the tax imposed by this chapter for such taxable year, such excess may be carried to the succeeding taxable year by the taxpayer and added to any credit allowable under subsection A for such succeeding taxable year.*

Source: § 58-151.014:2

Comment: Corporate and individual provisions of the tax credit were divided and placed in their respective chapters.

#### *Article 14.*

#### *Accounting, Returns*

#### *Procedures for Corporations.*

~~§ 58-151.061~~ *58.1-440* . Accounting.— ~~(a) Accounting periods.~~ - ~~A. An individual, estate, trust or corporate taxpayer's~~ *A corporate taxpayer's* taxable year under this chapter shall be the same as his taxable year for federal income tax purposes.

~~(b) Change of accounting periods.~~ - *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 of ~~Taxation~~ .

~~(c) Accounting methods.~~ - *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 ~~Department of Taxation~~ *Tax Commissioner* clearly reflects income.

~~(d) Change of accounting methods.~~ - *D.* ~~(1)~~ 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. ~~(2)~~ 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. ~~(3)~~ 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 of ~~Taxation~~ .

~~(4)~~ *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.

~~(5)~~ *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.

Source: § 58-151.061

Comment: Section is repeated in full for corporations and is identical to §§ 58.1-340 and 58.1-380.

~~§ 58-151.078~~ *58.1-441* . Reports by corporations and partnerships .—Every corporation and partnership organized under the laws of ~~this State~~ *the Commonwealth* , or having income from Virginia sources, shall make a report to the Department of ~~Taxation~~ 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 of ~~Taxation~~ and shall contain such information, including the gross receipts from any business ~~conducted in this State~~ *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.

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.

Source: § 58-151.078

Comment: Provisions relative to ~~partnerships~~ are removed from the section and placed in Article 9, pertaining to partnerships generally.

~~§ 58-151.079 58.1-442~~ . Separate, combined or consolidated returns of affiliated corporations.—  
A. Corporations which are affiliated within the meaning of § ~~58-151.081 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 ~~paragraph~~ subsection A:

1. A consolidated return shall mean a single return for a group of corporations affiliated within the meaning of § ~~58-151.081 58.1-302~~ , prepared in accordance with the principles of § 1502 of the Internal Revenue Code and regulations promulgated thereunder;

2. A combined return shall mean a single return for a group of corporations affiliated within the meaning of § ~~58-151.081 58.1-302~~ , in which income or loss is separately determined in accordance with paragraphs 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.

Source: § 58-151.079

Comment: No substantive change.

~~§ 58-151.079:1 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.

Source: § 58-151.079:1

Comment: No change

~~§ 58-151.080 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 § ~~58-151.079 58.1-442~~ and regulations prescribed by the Department of ~~Taxation~~ 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.

Source: § 58-151.080

Comment: No substantive change.

~~§ 58-151.082 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 of ~~Taxation~~ 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.

Source: § 58-151.082

Comment: No substantive change.

~~§ 58-151.083~~ *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 of Taxation 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 of Taxation to make a report consolidated with such other corporation showing the combined gross and net income and such other information as the Department of Taxation may require, but excluding intercorporate stockholdings and the intercorporate accounts. In case it ~~shall appear~~ *appears* to the Department of Taxation 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 State *Commonwealth* , the Department of Taxation 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.

Source: § 58-151.083

Comment: No substantive change.

~~§ 58-151.084~~ *58.1-447* . Execution of returns of corporations and ~~partnerships~~ .—The return of a corporation with respect to income shall be signed by either the president , vice-president, treasurer, assistant treasurer, chief accounting officer or any other 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.

The return of a partnership shall be signed by any one of the partners. The fact that a partner's name is signed on the return shall be prima facie evidence that such partner is authorized to sign the return on behalf of the partnership.

Source: § 58-151.084

Comment: Language relative to returns of partnerships is contained in Article 9.

~~§ 58-151.085~~ *58.1-448* . Forms to be furnished.— Duplicate blank forms of reports shall be furnished by mail by the Department of Taxation 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 or partnership from the obligation of making any report herein required.

Source: § 58-151.085

Comment: No substantive change.

~~§ 58-151.086~~ *58.1-449* . Supplemental reports.—The Department of Taxation 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.

Source: § 58-151.086

Comment: No change.

~~§ 58-151.087~~ *58.1-450* . Failure of corporation or partnership to make report or return.—Any corporation or partnership which fails to make any report or return required by this chapter

within the time required shall be liable to a penalty of not exceeding ~~one hundred dollars~~ \$100 to be paid to ~~the State the Commonwealth~~, to be assessed and collected by the Department of ~~Taxation~~, 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 of ~~Taxation~~. In addition such corporation or ~~partnership~~ shall be compellable by mandamus to make such report or return.

Source: § 58-151.087

Comment: No substantive change.

§ ~~58-151.088~~ 58.1-451 . Fraudulent returns, etc., of corporations ~~and partnerships~~; penalty.—Any officer of any corporation or ~~any partner~~ who makes a fraudulent return or statement with intent to ~~defeat or~~ evade the payment of the taxes prescribed by this chapter shall be liable to a penalty of not more than ~~one thousand dollars~~ \$1,000, to be assessed and collected in the manner prescribed in the ~~preceding section (§ 58-151.087)~~ § 58.1-450 .

Source: § 58-151.088

Comment: No substantive change.

§ ~~58-151.089~~ 58.1-452 . ~~Same~~ Fraudent returns ; criminal liability.—In addition to other penalties provided by law, any officer of any corporation or ~~any partner~~ who makes a fraudulent return or statement with intent to ~~defeat or~~ evade the payment of the taxes prescribed by this chapter shall be guilty of a Class 1 misdemeanor ; ~~and upon conviction shall be confined in jail not exceeding one year, or fined not exceeding one thousand dollars, or both~~ . A prosecution under this section shall be commenced within five years next after the commission of the offense.

Source: § 58-151.089

Comment: The misdemeanor penalty set forth herein is classified.

§ ~~58-151.090~~ 58.1-453 . Extension of time for filing returns by corporations.—A. Whenever any corporation has been allowed or granted an extension or extensions of time within which to file any federal income tax return for any taxable year, the due date for the filing of the income tax return required under this chapter shall be extended to the date six months after such due date or thirty days after the extended date for filing the federal income tax return, whichever is earlier, provided that a tentative tax return is filed and the estimated tax due is paid in accordance with the provisions of subsection C. A copy of the form or letter granting such extension or extensions shall be attached to the face of the income tax return when such return is filed.

B. In addition, the Department may for good cause shown and upon written request received on or before the due date for the filing of the income tax return required under this chapter grant an extension or extensions of time not to exceed a maximum of six months for filing such income tax return, provided that a tentative tax return is filed and the estimated tax due is paid in accordance with the provisions of subsection C. A copy of the form or letter granting such extension or extensions shall be attached to the face of the income tax return when such return is filed.

C. Any taxpayer desiring an extension of time in accordance with the provisions of subsections A or B shall, on or before the original due date for the filing of such return, file with the Department a tentative tax return and 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 § ~~58-151.22~~ 58.1-491 and any tax credit under § ~~58-151.31~~ 58.1-499 . If any amount of the balance of the tax due is underestimated, interest at the rate prescribed in § ~~58-1160~~ 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 ten ~~per centum~~ percent of the actual tax liability, there shall be added to the tax as a penalty an amount equal to one - half of one ~~per centum~~ 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.

Source: § 58-151.090

Comment: No change.

§ ~~58-151.091~~ 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 ~~be is~~ not made as herein required, the Department of ~~Taxation~~ 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 *State Commonwealth* from such corporation.

Source: § 58-151.091

Comment: No change.

§ ~~58-151.092~~ *58.1-455* . Time of payment of corporation income taxes; penalty and interest for nonpayment.—Every corporation liable for income tax shall pay the same to the Department of ~~Taxation~~ 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 ; ~~as the case may be~~ , a penalty of five percent of the amount thereof, and the entire tax or any unpaid balance of the tax ; ~~as the case may be~~ , together with such penalty, will immediately become collectible ; ~~and~~ . Interest upon such tax or any unpaid balance of the tax ; ~~as the case may be~~ , and on the accrued penalty, shall be added at a rate determined in accordance with § ~~58-1160~~ *58.1-15* , from one month after the tax or any unpaid balance of the tax ; ~~as the case may be~~ , was originally due until paid ; ~~but in~~ . In the case of an additional tax assessed by the Department of ~~Taxation~~ , 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 § ~~58-1160~~ *58.1-15* , from the time the said return was required by law to be filed until paid.

All moneys collected by the Department of ~~Taxation~~ under this article shall be paid into the general fund of the State ~~treasury~~.

Source: § 58-151.093

Comment: Last paragraph of this section is moved to the General Provisions in Article 1.

§ ~~58-151.094~~ . Information returns; corporate dividends. Every corporation subject to the jurisdiction of this State shall, ~~when required by the Department of Taxation, render a correct return, duly verified under oath, of its payments of dividends to residents of this State, stating the name and address of each shareholder, the number of shares owned by him and the amount of dividends paid to him.~~

Comment: Informational returns are no longer required by the Department.

§ ~~58-151.095~~ . Same; other income. Every person, firm or corporation, subject to the jurisdiction of this State, in whatever capacity acting, ~~including lessees or mortgagors of real or personal property, fiduciaries and employers, making payment to another person, firm or corporation of interest, rent, salaries, wages, premiums, annuities, compensations, remunerations, emoluments or other fixed or determinable gains, profits and income (other than payments described in the preceding section (§ 58-151.094)) of five hundred dollars or more in any taxable year or, in the case of such payments made by the Commonwealth of Virginia and its political subdivisions or the United States or any agency or instrumentality thereof, the officers or employees of this State or its political subdivisions or the United States or any agency or instrumentality thereof having information as to such payments and required to make returns in regard thereto by the regulations hereinafter provided for shall render a true and accurate return to the Department of Taxation, under such regulations and in such form and manner and to such extent as may be prescribed by it, setting forth the amount of such gains, profits, and income and the name and address of the recipient of such payment.~~

Such returns may be required, regardless of amounts, in the case of payments of interest upon ~~bonds, mortgages, deeds of trust or other similar obligations of corporations.~~

When necessary to make effective the provisions of this and the preceding section the name and address of the recipient of the income shall be furnished upon demand of the person paying the income.

The provisions of this section shall not apply to the payment of interest on obligations of the United States or of this State, nor shall the provisions of this section be so construed as is hereinbefore described where such recipient is a nonresident of this State and is not subject to taxation under the income tax laws of this State.

Comment: Informational returns are no longer required by the Department.

§ ~~58-151.096~~ . When information returns to be filed. Information returns shall be filed on or before February fifteenth of each year. In all cases such annual information returns shall give

such information for the calendar year next preceding the calendar year in which they are required by this chapter to be filed.

Comment: Informational returns are no longer required by the Department.

*Article 15.*

*(Reserved).*

*Article 16.*

*Income Tax Withholding.*

§ ~~58-151.1~~ 58.1-460 . Definitions.—For the purposes of this article:

~~(1)~~ The word "Wages" means all remuneration (other than fees paid to a public official) for services performed by an employee for his employer, including the cash value of all remuneration paid in any medium other than cash; except that such term shall not include remuneration paid:

~~(A)~~ 1. For agricultural labor where such remuneration is paid to workers employed on the farm for services rendered on the farm in the production, harvesting, and transportation of agricultural products to market for the farmer-employer; or

~~(B)~~ 2. For domestic service in a private home, local college club, or local chapter of a college fraternity or sorority; or

~~(C)~~ 3. For service not in the course of the employer's trade or business performed in any calendar quarter by an employee, unless the cash remuneration paid for such service is fifty dollars or more and such service is performed by an individual who is regularly employed by such employer to perform such service. For purposes of this paragraph, an individual shall be deemed to be regularly employed by an employer during a calendar quarter only if: ~~(1)~~ Or (i) on each of some twenty-four days during such quarter such individual performs for such employer for some portion of the day service not in the course of the employer's trade or business; or ~~(II)~~ Such (ii) such individual was regularly employed (as determined under subparagraph ~~(1)~~ above (i) ) by such employer in the performance of such service during the preceding calendar quarter; or

~~(D)~~ 4. For services performed by a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by such order; or

~~(E)~~ 5. For services not in the course of the employer's trade or business, to the extent paid in any medium other than cash; or

~~(F)~~ 6. To, or on behalf of, an employee or his beneficiary - ~~(1)~~ from or to a trust described in § 401 (a) of the Internal Revenue Code of the United States of 1954 which is exempt from tax under § 501 (a) of the Internal Revenue Code at the time of such payment unless such payment is made to an employee of the trust as remuneration for services rendered as such employee and not as a beneficiary of the trust; or

~~(II)~~ 7. To, or on behalf of, an employee or his beneficiary under or to an annuity plan which, at the time of such payment, meets the requirements of § 401 (a) (3), (4), (5), and (6) of the Internal Revenue Code; or

~~(G)~~ 9. 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 ninety 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.

~~(2) The term "Payroll period" means a period for which a payment of wages is ordinarily made to the employee by his employer ; and the term .~~

"Miscellaneous payroll period" means a payroll period other than a daily, weekly, biweekly, semimonthly, monthly, quarterly, semiannual, or annual payroll period.

~~(3) The word "Employee" includes an individual, whether a resident or a nonresident of the Commonwealth this State , who performs or performed any service in this State the Commonwealth for wages, or a resident of this State the Commonwealth who performs or performed any service outside this State the Commonwealth for wages. The word "employee" also includes an officer, employee, or elected official of the United States, this State 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 : The word "employee" also includes or an officer of a corporation.~~

~~(4) The word "Employer" means this State 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 this State the Commonwealth , for whom an individual performs or performed any service as an employee, except that:~~

~~(A) 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 for purposes of subsection (1) of this section as used in the definition of "wages" herein ) means the person having control of the payment of such wages, and~~

~~(B) 2. In the case of a person paying wages on behalf of a nonresident person not engaged in trade or business within this State the Commonwealth or on behalf of any governmental unit or agency thereof not located within this State the Commonwealth , the term "employer" (except for purposes of subsection (1) of this section as used in the definition of "wages" herein ) means such person.~~

~~(5) The word "person" means and includes an individual, a fiduciary, a partnership, an association, a joint enterprise, and a corporation. "Person" also includes an officer or employee of a corporation, or a member or employee of a partnership, an association, or joint enterprise, who as such officer, employee, or member is under any duty to perform the required act~~

~~(6) The word "individual" means a natural person.~~

~~(7) The word "Commissioner" means the State Tax Commissioner.~~

~~(8) The words "commissioner of the revenue" mean the commissioner of the revenue of a county or city, or, in a county not having a commissioner of the revenue, the officer of the county who performs the duties of a county commissioner of the revenue; and the word "treasurer" means the treasurer of a county or city, or, in a county not having a treasurer, the officer of the county who performs the duties of a county treasurer.~~

Source: § 58-151.1

Comment: Definitions of "person," "individual," "Commissioner," "commissioner of the revenue" and "treasurer" are deleted as either repetitive or unnecessary.

~~§ 58-151.2 58.1-461 . Requirement of withholding.—Every employer making payment of wages on or after January first, nineteen hundred seventy-two, 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 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.~~

~~Provided, however, that 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: ~~(a)~~ (i) incurred no liability for income tax imposed by this chapter for his preceding taxable year; and ~~(b)~~ (ii) anticipates that he will incur no liability for income tax imposed by this chapter for his current taxable year.

Source: § 58-151.2

Comment: Effective date of section is deleted.

~~§ 58-151.3~~ ~~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 referred to in the next preceding section (~~§ 58-151.2~~); and the *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.

Source: § 58-151.3

Comment: No substantive change.

~~§ 58-151.4~~ ~~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 the next preceding section (~~§ 58-151.3~~) *§ 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.

Source: § 58-151.4

Comment: No substantive change.

~~§ 58-151.5~~ ~~58.1-464~~ . Miscellaneous payroll period applicable to withholding in payment of certain wages; withholding on basis of average wages.— ~~(a) Wages paid with respect to period which is not payroll period.~~ - 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) B. Wages paid without regard to any period.~~ - 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 first 1 of such year, whichever is the later.

~~(c) Withholding on basis of average wages.~~ - C. The *Tax* Commissioner may, by regulations, authorize employers:

~~(1) 1.~~ To estimate the wages which will be paid to any employee in any quarter of the calendar year;

~~(2) 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) 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 .

Source: § 58-151.5

Comment: No substantive change.

~~§ 58-151.6 . 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) 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, or~~

~~(2) 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, or~~

~~(3) 3. With respect to a period beginning in one and ending in another calendar year, or~~

~~(4) 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 ;~~

~~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 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 .~~

Source: § 58-151.6

Comment: No substantive change.

~~§ 58-151.7 . 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.~~

Source: § 58-151.7

Comment: No change.

~~§ 58-151.8 . 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 ; but this . 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.~~

Source: § 58-151.8

Comment: No substantive change.

~~§ 58-151.8:1 . 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 State 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 state income tax shall rest upon the employee.~~

Source: § 58-151.8:1

Comment: No substantive change.

~~§ 58-151.9 . 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.~~

Source: § 58-151.9

Comment: No change.

~~§ 58-151.11~~ 58.1-470 . Withholding exemption certificates.— A. ~~(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)~~ B. Every employee shall ; ~~on or before January first, nineteen hundred seventy-two; or~~ at the time of commencing employment ; ~~whichever is later,~~ 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)~~ 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 first, ~~nineteen hundred sixty-three~~ 1, 1983 , shall be considered as furnished on that date.

~~(d)~~ 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 first 1 or July first 1 , which occurs at least thirty days after the date on which such new certificate is furnished.

~~(e)~~ 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)~~ 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)~~ G. Withholding exemption certificates shall be in such form and contain such information as the Tax Commissioner may prescribe.

Source: § 58-151.11

Comment: Effective date provision is deleted.

~~§ 58-151.12~~ 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.

Source: § 58-151.12

Comment: Misdemeanor offense is classified.

~~§ 58-151.13~~ 58.1-472 . Employer's returns and payments of withheld taxes.— ~~(a)~~ 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)~~ 1. Every employer whose monthly liability is less than ~~one hundred dollars~~ \$100 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)~~ 2. Every employer whose average monthly liability can reasonably be expected to be ~~one hundred dollars \$100~~ or more shall file a return and pay the tax monthly, on or before the twentieth day of the following month for each month which does not close a quarterly period, and on or before the last day of the month following the close of a quarterly period;

~~(2)~~ 3. Every employer whose average monthly liability can reasonably be expected to be ~~one thousand dollars \$1,000~~ or more and on the seventh, fifteenth, twenty-second or last day of any month the aggregate amount required to be withheld by any employer exceeds ~~five hundred dollars \$500~~ such employer shall, in addition to the requirements of ~~subparagraph subsection (2)~~ 2 of this section, file a form with the Commissioner within three banking days following the close of such quarter-monthly period and pay the amount so withheld, except when a quarter-monthly payment is due within three days of the due date for the filing of the monthly or quarterly returns, then such payment shall be made with such return ; ~~and~~ .

~~(4)~~ 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 ~~subparagraph (3) subsection 3~~ of this ~~subsection section~~ will be deemed to have met the requirements hereof if at least ninety ~~per centum~~ percent of actual tax liability for such period is paid. Employers authorized to file under ~~subparagraph (4) subsection 4~~ of this ~~subsection section~~ 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 form and contain such information as the Commissioner may prescribe.

Source: § 58-151.13

Comment: Subsections (b), (c), (d), (e), (f) and (g) are moved to separate sections.

~~(b)~~ § 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 ~~said the Tax Commissioner~~ may designate therefor subsequent to the time when such amounts should have been deducted from wages and withheld.

Source: § 58-151.13(b)

Comment: Moved to a separate section. No change.

~~(e)~~ § 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 ; ~~and any~~ . Any sum or sums withheld in accordance with the provisions of this article shall be deemed to be held in trust for the Commonwealth.

Source: § 58-151.13(c)

Comment: No change.

~~(d)~~ § 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~~ 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 five ~~per centum~~ 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 five ~~per centum~~ percent for each additional month or fraction thereof during which such failure continues, not exceeding twenty-five ~~per centum~~ percent in the aggregate ; ~~provided that in~~ . 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 ~~§ 58-1160 58.1-15~~ , shall accrue on the tax until ~~the same~~ is paid, or until an assessment is made, after which interest shall accrue as provided in ~~§ 58-1160 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.

~~(e)~~ 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.

Source: § 58-151.13(d) and (e)  
Comment: No substantive change.

~~(f)~~ § 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 ~~three hundred dollars~~ \$300 for each quarter, such change shall be permitted only at the beginning of a calendar year.

Source: § 58-151.13(f)  
Comment: No substantive change.

~~(g)~~ § 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 § 58-1160, from the time such amount or amounts were originally due and payable to the date of payment under the terms of the extension.

Source: § 58-151.13(g)  
Comment: No change

~~§ 58-151.13:1. *Penalty for tender of bad check in payment of tax.* If a check tendered for payment of any amounts withheld under this article be not paid by the bank on which it is drawn, the person by whom such check was tendered shall remain liable for the payment of such amount the same as if such check was never tendered and if such person shall willfully fail to pay the Commissioner the amount due the State 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 Class 4 misdemeanor.~~

Comment: ~~Bad check provisions are included in General Provisions to § 58.1. (See § 58.1-12)~~

~~§ 58-151.14 58.1-478 . Withholding tax statements for employees; employers must file annual returns with *Tax Commissioner.*— (a) 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 ~~thirty-first~~ 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: (1) (i) the name of such person; (2) (ii) the name of the employee and his social security account number; (3) (iii) the total amount of wages; (4) and (iv) the total amount deducted and withheld under this article by such employer.~~

~~(b) 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) C. 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 ~~thirty-first~~ 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 each employee under subsections (a) A and (b) B of this section.~~

~~(d) Compliance by an employer with subsection (c) of this section shall be in lieu of filing wage information returns under §§ 58-151.095 and 58-151.096 as to employees whose wages were subject to withholding under this article.~~

Source: § 58-151.14  
Comment: Former subsection (d) is deleted as information returns are no longer required.

~~§ 58-151.16 58.1-479 . Refund to employer; time limitation; procedure.— (a) 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 state~~ treasury on the order of the Tax Commissioner upon the Comptroller.

~~(b)~~ 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)~~ C. Any employer aggrieved by any action of the Tax Commissioner under this section may proceed in court under §§ ~~58-1130 58.1-1825~~ through ~~58-1130 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 ~~except, further, that~~ (ii) the time which shall elapse from the filing of the written application with the Tax Commissioner under subsection ~~(b)~~ 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.

Source: § 58-151.16

Comment: No substantive change.

§ ~~58-151.17 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 § ~~58-151.14 58.1-478~~ .

Source: § 58-151.17

Comment: No change.

§ ~~58-151.18 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.

Source: § 58-151.18

Comment: No change.

§ ~~58-151.19 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 § ~~58-151.015 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.

Source: § 58-151.19

Comment: No substantive change.

§ ~~58-151.20 58.1-483~~ . Withholding state income taxes of federal employees by federal agencies.—The State 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 ~~this State the Commonwealth~~ . The Tax Commissioner is hereby authorized, empowered and directed to make request for and to enter into such agreements.

Source: § 58-151.20

Comment: No substantive change.

§ ~~58-151.10 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.

Source: § 58-151.10

Comment: No substantive change.

§ ~~58-151.15~~ 58.1-485 . Willful failure by employer to make return, to withhold tax, to pay it or to furnish employee with withholding statement ; a ~~misdemeanor~~ ; *penalty* .--Willful failure by any employer to (i) make any return required by this article to the Tax Commissioner, or willful failure either to (ii) withhold the required tax or to pay it to the Tax Commissioner as specified, or both, or willful failure by any employer to (iii) furnish an employee the written statement required by § ~~58-151.14~~ 58.1-478 ; shall be a *Class 1* misdemeanor.

Source: § 58-151.15

Comment: Penalty provided in previous section is classified.

#### *Articles 17 & 18.*

*(Reserved.)*

#### *Article 19.*

#### *Estimated Tax.*

§ ~~58-151.21~~ 58.1-490 . Declarations of estimated tax.— (a) ~~Requirement of declaration.~~ - A. Every resident and nonresident individual shall ; for the taxable year beginning on or after January first, nineteen hundred seventy-two, and for every taxable year thereafter, make a declaration of his estimated tax for the every taxable year, if his Virginia adjusted gross income, other than from wages on which tax is withheld under this article, can reasonably be expected to exceed four hundred dollars \$400 plus the sum of the personal exemptions to which he is entitled.

(b) ~~Definition of estimated tax.~~ - B. For purposes of this article, the term "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) ~~Contents of declaration.~~ - C. In the declaration required under subsection (a) A the individual shall state:

(1) 1. The amount which he estimates as the amount of tax for which he will be liable under this chapter for the taxable year;

(2) 2. The amount which he estimates will be withheld from wages, if any, for the taxable year under this article;

(3) 3. The excess of the amount estimated under paragraph (1) 1 of this subsection over the amount estimated under paragraph (2) 2 of this subsection shall be considered the estimated tax for the taxable year to be paid by the individual as hereinafter provided;

(4) 4. Such other information as may be required by the Tax Commissioner.

(d) ~~Joint declaration by husband and wife.~~ - 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 this State 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) ~~Time for filing declaration.~~ - E. A declaration of estimated tax of an individual other than a farmer or fisherman shall be filed on or before May first 1 of the taxable year, except that if the requirements of subsection (a) are first met:

(1) After April fifteenth 15 and before June second 2 of the taxable year, the declaration shall be filed on or before June fifteenth 15 , or

(2) After June first 1 and before September second 2 of the taxable year, the declaration shall be filed on or before September fifteenth 15 , or

(3) After September ~~first~~ 1 of the taxable year, the declaration shall be filed on or before January ~~fifteenth~~ 15 of the succeeding year.

~~(f) Declaration of estimated tax by a farmer or fisherman.~~ - F. A declaration of estimated tax of an individual having an estimated gross income from farming (including oyster farming) or fishing 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 ~~fifteenth~~ 15 of the succeeding year, in lieu of the time otherwise prescribed.

~~(g) Declaration of estimated tax of forty dollars or less.~~ - G. A declaration of estimated tax of an individual having a total estimated tax for the taxable year of forty dollars or less may be filed at any time on or before January ~~fifteenth~~ 15 of the succeeding year under regulations of the Tax Commissioner.

~~(h) Amendments of declaration.~~ - H. An individual may amend a declaration under regulations of the Tax Commissioner.

~~(i) Return as declaration or amendment.~~ - I. If on or before March ~~first~~ 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) 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 ~~fifteenth~~ 15 .

~~(2) 2.~~ Such return shall be considered as the amendment permitted by subsection ~~(h)~~ H to be filed on or before January ~~fifteenth~~ 15 if the tax shown on the return is greater than the estimated tax shown in a declaration previously made.

~~(j) Fiscal year.~~ - 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) Short taxable year.~~ - K. An individual having a taxable year of less than twelve months shall make a declaration in accordance with regulations of the Tax Commissioner.

~~(l) Declaration for individual under a disability.~~ - 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.

Source: § 58-151.21

Comment: No substantive change.

§ 58-151.22 ~~58-1-491~~ . Payments of estimated tax. ~~(a) General.~~ - A. The estimated tax with respect to which a declaration is required shall be paid as follows:

~~(1) 1.~~ If the declaration is filed on or before May ~~first~~ 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 ~~fifteenth~~ 15 , September ~~fifteenth~~ 15 , and January ~~fifteenth~~ 15 , respectively.

~~(2) 2.~~ If the declaration is filed after May ~~first~~ 1 and not after June ~~fifteenth~~ 15 of the taxable year, and is not required to be filed on or before May ~~first~~ 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 ~~fifteenth~~ 15 and January ~~fifteenth~~ 15 , respectively.

~~(3) 3.~~ If the declaration is filed after June ~~fifteenth~~ 15 and not after September ~~fifteenth~~ 15 of the taxable year, and is not required to be filed on or before June ~~fifteenth~~ 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 ~~fifteenth~~ 15 .

~~(4) 4.~~ If the declaration is filed after September ~~fifteenth~~ 15 of the taxable year, and is not required to be filed on or before September ~~fifteenth~~ 15 of the taxable year, the estimated tax shall be paid in full at the time of the filing of the declaration.

~~(5)~~ 5. If the declaration is filed after the time prescribed therefor, or after the expiration of any extension of time therefor, paragraphs ~~(2)~~ 2, ~~(3)~~ 3, and ~~(4)~~ 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)~~ Farmers and fishermen. - B. If an individual referred to in subsection ~~(f)~~ F of § 58-151.21 ~~58.1-491~~ (relating to income from farming or fishing ) makes a declaration of estimated tax after September ~~fifteenth~~ 15 of the taxable year and on or before the following January ~~fifteenth~~ 15, the estimated tax shall be paid in full at the time of the filing of the declaration.

~~(c)~~ Amendments of 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 ~~fifteenth~~ 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)~~ Application to short taxable year. - D. This section shall apply to a taxable year of less than twelve months in accordance with regulations of the Tax Commissioner.

~~(e)~~ Fiscal year. - 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)~~ Installments or entire estimated tax paid in advance. - 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 is on account of tax for taxable year. - G. Payment of the estimated tax, or any installment thereof, shall be considered payment on account of the tax for the taxable year.

~~(h)~~ Extensions of time. - 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 § 58-1160 ~~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.

Source: § 58-151.22

Comment: No substantive change.

~~§ 58-151.23 58.1-492~~. Failure by individual to pay estimated tax. - ~~(e)~~ Additions to the tax. - A. In the case of any underpayment of estimated tax by an individual, except as provided in subsection ~~(d)~~ D, there shall be added to the tax under this chapter for the taxable year an amount determined at the rate established for interest, under § 58-1160 ~~58.1-15~~, upon the amount of the underpayment (determined under subsection ~~(b)~~ B), for the period of the underpayment (determined under subsection ~~(e)~~ C). The amount of such addition to the tax shall be reported and paid at the time of filing the individual income tax return for the taxable year.

~~(b)~~ Amount of underpayment. - For purposes of subsection ~~(a)~~, the The amount of the underpayment shall be the excess of:

~~(1)~~ 1. The amount of the installment which would be required to be paid if the estimated tax were equal to eighty percent (sixty-six and two-thirds percent in the case of an individual referred to in § 58-151.21 ~~(f)~~ 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, eighty percent (sixty-six and two-thirds percent in the case of individuals referred to in § 58-151.21 ~~(f)~~ 58.1-490 F, relating to income from farming) of the tax for such year, over

~~(2)~~ 2. The amount, if any, of the installment paid on or before the last date prescribed for such payment.

~~(c)~~ Period of underpayment. - 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)~~ 1. The first day of the fifth month following the close of the taxable year 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)~~ 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 subsection ~~(b)~~ ~~(1)~~ A. 1 for such installment date.

~~(d)~~ Exception: - C. Notwithstanding the provisions of the preceding subsections, 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)~~ 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)~~ a. The tax shown on the return of the individual for the preceding taxable year, if a return showing a liability for tax was filed by the individual for the preceding taxable year and such preceding year was a taxable year of twelve months, or

~~(B)~~ 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, but otherwise on the basis of the facts shown on his return for, and the law applicable to, the preceding taxable year, or

~~(C)~~ c. An amount equal to eighty percent (sixty-six and two-thirds percent in the case of individuals referred to in § 58-151-21 ~~(f)~~ 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,

(ii) Dividing the resulting amount by the number of months in the taxable year ending before the month in which such installment date falls, 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)~~ 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.

~~(e)~~ Application of section in case of tax withheld on wages: - E. For purposes of applying this section -

~~(1)~~ 1. The estimated tax shall be computed without any reduction for the amount which the individual estimates as his credit under § 58-151-17 58.1-480 (relating to tax withheld at source on wages), and

~~(2)~~ 2. The amount of the credit allowed under § 58-151-17 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 § 58-151-22 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.

~~(f)~~ Short taxable year: - F. The application of this section to taxable years of less than twelve months shall be in accordance with regulations prescribed by the Tax Commissioner.

Source: § 58-151.23

Comment: No substantive change.

~~§ 58-151.24 58.1-493 .~~ Declarations of estimated tax to be filed with commissioner of revenue of county or city.—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 this State *the Commonwealth* was derived. Forms for use by taxpayers in preparing their declarations of estimated tax shall be supplied by the Department of Taxation 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 ~~fifteenth~~ 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.

Source: § 58-151.24

Comment: No substantive change.

~~§ 58-151.25 58.1-494 .~~ Sheets or forms for recording declarations of estimated tax; recording.—The Department of Taxation shall prescribe and furnish assessment sheets or forms for the use of every commissioner of the revenue for recording declarations of estimated tax. These assessment sheets or forms shall be made out in as many copies as may be prescribed by the Department of Taxation. The original and, if the Department of Taxation so prescribes, one copy of each such sheet or form shall be delivered to the treasurer of the county or city, and one copy shall be retained by the commissioner of the revenue; provided, however, that after such sheets or forms have been on file in his office for at least six years following the tax assessment year, the commissioner of the revenue may, in his discretion, at any time thereafter, destroy such assessment sheets or forms.

The commissioner of the revenue shall , *for recording declarations of estimated tax*, make out ~~these 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 ; and ~~the~~ . The commissioner of the revenue shall each day deliver the original and, if the Department of Taxation so prescribes, one copy of each such sheet or form so made out that day to the treasurer of the county or city.

Source: § 58-151.25

Comment: First paragraph of section is addressed in the General Provisions to Title 58.1.

~~§ 58-151.26 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 § ~~58-151.22 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 a check or money order for the proper amount made payable to the order of "Treasurer of the County of.....," or "Treasurer of the City of.....," as the case may be; and ~~the~~ . The commissioner of the revenue shall transmit all such checks and money orders payments to the treasurer at the time he delivers to the treasurer the sheet or forms mentioned in § 58-151.25 58.1-494 or , if memorandum assessments are made, at the time such memorandum assessments are certified to the treasurer. In those counties in which a director of finance performs the duties of a county treasurer, checks or money orders shall be made payable to the order of "Director of Finance of the County of....." If any check be not paid by the bank on which it is drawn, the taxpayer by whom such check was tendered shall remain liable for the payment of the tax and for all legal penalties and interest the same as if such check had not been tendered.

If the taxpayer on filing his declaration desires to pay in currency or coin, the commissioner of the revenue with whom the declaration is filed shall forthwith prepare a memorandum assessment on a form to be prescribed and furnished by the Department of Taxation 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 sheets or forms mentioned in § 58-151.25 and the Department of Taxation 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 recording and collection of

estimated tax.

Each county and city treasurer may send notices to all pertinent taxpayers a reasonable time before any installment (except the first) is to become due; but the failure of a taxpayer to receive such a notice shall not relieve him of his obligation to pay the installment by its due date. Such notices shall be in such form and shall contain such information as may be prescribed by the Department of Taxation. Forms of necessary tax bills and receipts shall be also prescribed by the Department of Taxation.

Within ten days after the close of each month each county and city treasurer shall transmit to the Department of Taxation 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.

Source: § 58-151.26

Comment: Unnecessary precatory provisions are deleted as well as certain administrative directions pertinent to commissioners of the revenue.

§ 58-151.27 ~~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 State Commonwealth, makes any false statement in any such declaration, shall be guilty of a *Class 1* misdemeanor.

Source: § 58-151.27

Comment: Penalty provision is appropriately classified.

§ 58-151.28 ~~58.1-497~~ . Section 58-151.065 ~~58.1-306~~ applicable to declaration of estimated tax.—Section 58-151.065 ~~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.

Source: § 58-151.28

Comment: No change.

§ 58-151.29: ~~Commissioner to advise and instruct local commissioners of revenue and treasurers. The State Tax Commissioner shall exercise general supervision over, and shall advise and instruct, all commissioners of the revenue and treasurers of the counties and cities in the performance of their duties under this chapter.~~

Comment: Deleted as unnecessary.

§ 58-151.30 ~~58.1-498~~ . Oaths or affirmations unnecessary on returns, declarations and reports; misdemeanor to subscribe 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 sign the same, but the signature of such person or persons to any such return, declaration or report shall be sufficient. Any such person who willfully subscribes 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.

Source: § 58-151.30

Comment: Penalty provision is appropriately classified.

§ 58-151.31 ~~58.1-499~~ . Refunds to individual taxpayers; crediting overpayment against estimated tax for ensuing year.—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.

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 of Taxation 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 § ~~58-1140-1~~ 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.

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 ~~state~~ tax is based, whichever is later.

*Notwithstanding the provisions of the Setoff Debt Collection Act (Article 2 of Chapter 1),* whenever any taxpayer is entitled to a refund under this section, or under § ~~58-151-072~~ 58.1-309 or §§ ~~58-1118~~ 58.1-1821 through ~~58-1121~~ 58.1-1830 and such taxpayer owes the State 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.

~~This section, as hereby amended, shall be in force on and after January first, nineteen hundred seventy-seven.~~

Source: § 58-151.31

Comment: Deletes effective date language and penultimate paragraph of the previous section which conflicts with the Set-off Debt Collection Act.

§ 58-151.33: Moneys payable into ~~general fund of State treasury~~. All moneys collected by the Commissioner and county and city treasurers under this chapter shall be paid into the general fund of the State treasury.

Comment: See General Provisions of § 58.1-304.

§ 58-151.34: Personnel, supplies, equipment and other expenses; office space. The Commissioner may employ all necessary personnel and purchase such supplies and purchase or rent such equipment and incur such other expenses as may be necessary for the administration of this article. All such costs and expenses shall be paid out of appropriations made to the Department of Taxation. Unless adequate office space is provided in a state owned building for the administration of this article, the Commissioner is hereby authorized to rent quarters for the purpose, and the cost thereof shall be paid as a part of the cost of administering this article.

Comment: Deleted as unnecessary.

§ 58-151.35: Appropriation; use of ~~existing personnel and facilities~~. The cost incurred by the Commissioner in administering this article shall be paid out of the general fund of the State treasury, and there is hereby appropriated to the Department of Taxation, out of the general fund of the State treasury, for such purpose, for each year of the biennium beginning July first, nineteen hundred and sixty-two, a sum sufficient, estimated at two hundred thousand dollars for each such year. In administering this article, however, the Commissioner shall utilize existing personnel and facilities to the extent that this can be reasonably done without detriment to other necessary activities of the Department of Taxation.

Comment: Transitional appropriation and other language relative to personnel and facilities is not needed.

## Article 20.

### *Estimated Taxes of Corporations.*

§ ~~58-151.36~~ 58.1-500. Declarations of estimated income tax required; contents, etc.— (a) ~~Requirement of declaration~~. - A. Every corporation subject to taxation under this chapter 4 (§ ~~58-151.01~~ et seq.) of Title 58 of the Code of Virginia, as amended, 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 one thousand dollars \$1,000.

(b) ~~Estimated tax~~. - For purposes of this article, the term "estimated tax" means the excess

of the amount which the corporation estimates as the amount of the income tax imposed by this chapter for the taxable year ~~over~~ less the amount which the corporation estimates as the sum of any credits allowable against the tax.

(c) ~~Contents of declaration~~ - C. The declaration shall contain such pertinent information as the Commissioner may by forms or regulations prescribe.

(d) ~~Amendment of declaration~~ - 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 § 58-151.37 (b) 58.1-501.

(e) ~~Short taxable year~~ - 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.

Source: § 58-151.36

Comment: No substantive change.

§ 58-151.37 58.1-501 . Time for filing declarations of estimated income tax.- (a) General rule.- A. The declaration of estimated tax ~~required of corporations~~ by § 58-151.36 shall be filed as follows:

If the requirements of § 58-151.36 are first met -	The declaration shall be filed on or before
before the 1st day of the 4th month of the taxable year .....	the 15th day of the 4th month of the tax
after the last day of the 3rd month and before the 1st day of the 6th month of the taxable year .....	the 15th day of the 6th month of the tax
after the last day of the 5th month and before the 1st day of the 9th month of the taxable year .....	the 15th day of the 9th month of the tax
after the last day of the 8th month and before the 1st day of the 12th month of the taxable year .....	the 15th day of the 12th month of the tax

If the requirements of subsection A of § 58.1-500 are first met:

1. Before the 1st day of the 4th month of the taxable year, the declaration shall be filed on or before the 15th day of the 4th month of the taxable year.

2. After the last day of the 3rd month and before the 1st day of the 6th month of the taxable year, the declaration shall be filed on or before the 15th day of the 6th month of the taxable year.

3. After the last day of the 5th month and before the 1st day of the 9th month of the taxable year, the declaration shall be filed on or before the 15th day of the 9th month of the taxable year.

4. After the last day of the 8th month and before the 1st day of the 12th month of the taxable year, the declaration shall be filed on or before the 15th day of the 12th month of the taxable year.

(b) ~~Amendment~~ - 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) ~~Short taxable year~~ - 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.

Source: § 58-151.37

Comment: No substantive change; chart format is changed to paragraph format.

§ 58-151.38 58.1-502 . Installment payment of estimated income tax.- (a) ~~Amount and time for payment of each installment~~ A. The amount of estimated tax (as defined in §58-151.36 (b)) with respect to which a declaration is required under § 58-151.36 58.1-500 shall be paid in

installments in accordance with the following table as follows :

The following percentages of  
the estimated tax shall be paid  
on the 15th day of the month

If the declaration is timely filed on or before the 15th day of the -	4th month	6th month	9th month	12th month
4th month of the taxable year .....	25	25	25	25
6th month of the taxable year (but after the 15th day of the 4th month) ....	--	33 1/3	33 1/3	33 1/3
9th month of the taxable year (but after the 15th day of the 6th month) ....	--	--	50	50
12th month of the taxable year (but after the 15th day of the 9th month) ....	--	--	--	100

1. If the declaration is required to be filed by the 15th day of the 4th month of the taxable year, twenty-five percent of the estimated tax shall be paid on the 15th day of the 4th, 6th, 9th and 12th month of the taxable year.

2. If the declaration is required to be filed by the 15th day of the 6th month of the taxable year, one-third of the estimated tax shall be paid on the 15th day of the 6th, 9th and 12th month of the taxable year.

3. If the declaration is required to be filed by the 15th day of the 9th month of the taxable year, one-half of the estimated tax shall be paid on the 15th day of the 9th and 12th month of the taxable year.

4. If the declaration is required to be filed by the 15th day of the 12th month of the taxable year, 100 percent of the estimated tax shall be paid on the 15th day of the 12th month of the taxable year.

~~(b) Time filing~~ - B. A declaration is timely filed if it is not required by § 58-151.37 (a) 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) Late filing~~ - C. If the declaration is filed after the time prescribed in § 58-151.37 (a) 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 the such prescribed time prescribed in § 58-151.37 (a) , 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) Amendment of declaration~~ - 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)~~ 1. the difference between (a) (i) the amount of estimated tax required to be paid before the date on which the amendment is made, and ~~(b)~~ (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)~~ 2. the number of installments remaining to be paid on or after the date on which the amendment is made.

~~(e) Application to short 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.

~~(f) Installments paid in advance~~ - At the election of the corporation, any installment of the estimated tax may be paid before the date prescribed for its payment.

~~(g) Payments are on account of tax imposed for taxable year~~ - 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.

~~(b)~~ **Extensions of time.** - 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 § 58-1160 58.1-15, from the time the payment was due until the time of payment. No such extension shall exceed six months.

Source: § 58-151.38

Comment: No substantive change. Language relative to advance payments is deleted as unnecessary. Any taxpayer is always invited to prepay any state or local tax without statutory permission.

~~§ 58-151.39 58.1-503 .~~ Where declarations filed and how payments made; crediting or refunding overpayments.- ~~(a)~~ Every corporation required by this article to file a declaration of estimated income tax shall file the same with the Department of Taxation, and all payments shall be made to it. All moneys collected by the Department under this article shall be paid into the general fund of the State treasury.

~~(b)~~ If any corporation overestimates and overpays estimated tax, the Department may act under § 58-151.002, or §§ 58-1118 and 58-1119, within the applicable period of limitations; whether or not an application has been filed. Moreover, the Commissioner may prescribe regulations providing for the crediting against the estimated income tax for any taxable year of the amount shown by the corporation or determined by the Commissioner to be an overpayment of the income tax for a preceding taxable year within the applicable period of limitations.

Source: § 58-151.39

Comment: Language regarding where taxes are to be deposited is provided for in general provisions to subtitle. Provisions of previous subsection (b) are addressed in Chapter 18 (Enforcement, collection, refunds, remedies and review of state taxes).

~~§ 58-151.40 58.1-504 .~~ Failure to pay estimated income tax.- ~~(a)~~ **Addition to the tax.** - A. In case of any underpayment of estimated tax by a corporation, except as provided in subsection ~~(d)~~ D, there shall be added to the tax for the taxable year an amount determined at the rate established for interest under § 58-1160 58.1-15, upon the amount of the underpayment (determined under subsection ~~(b)~~ B) for the period of the underpayment (determined under subsection ~~(c)~~ C).

~~(b)~~ **Amount of underpayment.** - B. For purposes of subsection ~~(a)~~ A, the amount of the underpayment shall be the excess of -

~~(1)~~ 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)~~ 2. The amount, if any, of the installment paid on or before the last date prescribed for payment.

~~(c)~~ **Period of underpayment.** - 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)~~ 1. The fifteenth day of the fourth month following the close of the taxable year.

~~(2)~~ 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 subsection ~~(b)~~ ~~(1)~~ B.1 for such installment date.

~~(d)~~ **Exception.** - D. Notwithstanding the provisions of the preceding subsections, 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)~~ 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)~~ 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)~~ ~~(A)~~ 3. An amount equal to ninety percent of the tax for the taxable year computed by placing on an annualized basis the taxable income:

~~(i)~~ a. For the first three months of the taxable year, in the case of the installment required to be paid in the fourth month,

~~(ii)~~ 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,

~~(iii)~~ c. For the first six months or for the eight months of the taxable year, in the case of the installment required to be paid in the ninth month, and

~~(iv)~~ 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 this paragraph, the taxable income shall be placed on an annualized basis by (i) multiplying by twelve the taxable income referred to in paragraph ~~(A)~~ 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 paragraph (A).

~~(e)~~ ~~Definition of tax~~ - E. For purposes of subsections ~~(b)~~ B, ~~(d)~~ ~~(2)~~ D. 2 and ~~(d)~~ ~~(3)~~ 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)~~ ~~Short taxable year~~ - F. The application of this in accordance with regulations prescribed by the Commissioner.

Source: § 58-151.40

Comment: No substantive change.

~~§ 58-151.41. Taxable years to which §§ 58-151.36 through 58-151.40 applicable. The foregoing sections of this article shall apply with respect to taxable years beginning after December thirty one, nineteen hundred and sixty-eight.~~

Comment: Transitional provision is no longer needed.

## Article 21.

### *Setoff Debt Collection Act.*

~~§ 58-10.6. Purposes. The purpose of this article is to establish as policy that all claimant agencies and the Department shall cooperate in identifying debtors who owe money to the Commonwealth through its various claimant agencies and who qualify for refunds from the Department. It is also the intent of this article that procedures be established for setting off against any such refund the sum of any delinquent debt owed to the Commonwealth. Furthermore, it is the legislative intent that this article be liberally construed so as to effectuate these purposes as far as legally and practically possible.~~

Comment: Purpose clause is unnecessary to effectuate the proper intention of the Act.

~~§ 58-10.7~~ 58-1-520 . Definitions.—As used in this article:

A. "Claimant agency" means any administrative unit of state, county, city or town government, including "department," "institution," "commission," or "authority." The office of Executive Secretary of the Supreme Court may participate as a claimant agency. The State Comptroller shall prepare a list of all such agencies eligible for participation in this setoff program and shall continuously update such list and shall provide such list to the Department by October 15, of each year.

B. "Debtor" means any individual having a delinquent debt or account with any claimant agency which obligation has not been adjudicated, satisfied by court order, set aside by court order, or discharged in bankruptcy.

C. "Delinquent debt" means any liquidated sum due and owing any claimant agency which

has 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.

**D. "Department" means the Virginia Department of Taxation.**

**E. "Refund" means any individual's Virginia income tax refund payable pursuant to § 58-151-072 58.1-309 . This term shall also include 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 § 58-151-012 (b) (2) 58.1-324 B. 2 .**

**F. [Repealed.]**

Source: § 58-19.7

Comment: No change.

**§ ~~58-19.8~~ 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 Secretary of Administration and Finance 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.**

Source: § 58-19.8

Comment: No change.

**§ ~~58-19.9~~ 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 Secretary of Administration and Finance, 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.**

Source: § 58-19.8

Comment: No change.

**§ ~~58-19.10~~ 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.**

Source: § 58-19.10

Comment: No change.

**§ ~~58-19.11~~ 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 in writing 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 in the year preceding the calendar year during which the refund would be paid. Additionally, subject to the notification deadline specified above, the notification shall be effective only to initiate setoff for claims against refunds that would be made in the calendar year subsequent to the year in which notification is made to the Department.**

**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 claimant agency qualifies for such a refund, the Department shall notify in writing 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.

Source: § 58-19.11

Comment: No change.

~~§ 58-19.12~~ **58.1-525** . Notification of intention to setoff 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 a copy of same 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. For the Department to be obligated to continue holding refunds until receipt of certification of the debt, if any, pursuant to ~~§ 58-19.15~~ **58.1-528** , the copy of the notification to the debtor by the claimant agency of its intention to set off must be received by the Department within fifteen days of the date of the Department's mailing to the respective claimant agency the notification of the debtor's entitlement to a refund.

B. The contents of the written notification to the debtor and the Department's copy 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.

Source: § 58-19.12

Comment: No change.

~~§ 58-19.13~~ **58.1-526** . Hearing procedure; hearing sites. A. If a claimant agency receives written application of the debtor's intention to contest at 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. The Secretary of Administration and Finance may designate such sites as may be appropriate at which hearings will be held. Such hearing sites shall be chosen with due regard to the various geographic regions of the Commonwealth where debtors may reside. 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.

B. Pending final determination at 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.

Source: § 58-19.13

Comment: No change

~~§ 58-19.14~~ **58.1-527** . Appeals from hearings. A. Within ten days after the decision of the claimant agency upon a hearing pursuant to ~~§ 58-19.13~~ **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.

B. Such petition shall also state the grounds upon which review is sought, 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 ~~chapter~~ *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.

Source: § 58-19.14

Comment: No change.

~~§ 58-19-15~~ *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 ~~§ 58-19-12~~ *58.1-525*, the claimant agency shall within twenty days certify the debt to the Department and in default thereof, the Department shall no longer be obligated to hold the refund for setoff.

B. Upon receipt by the Department of a certified debt 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 ~~§ 58-19-19~~ *58.1-532* and by refunding any remaining balance to the debtor as if setoff had not occurred.

Source: § 58-19.15

Comment: No change.

~~§ 58-19-16~~ *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.

Source: § 58-19.16

Comment: No change.

~~§ 58-19-17~~ *58.1-530*. 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 administrative unit of state government shall have priority over claims filed by any county, city or town. 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.

Source: § 58-19.17

Comment: No change.

~~§ 58-19-18~~ *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 Secretary of Administration and Finance with an annual statement setting forth the Department's cost of administering this article.

Source: § 58-19.18

Comment: No change.

~~§ 58-19-19~~ *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.

Source: § 58-19.19

Comment: No change.

~~§ 58-19-20 58.1-533~~ . Confidentiality exemption; use of information obtained. A. Notwithstanding ~~§ 58-46 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 ~~§ 58-46 58.1-3~~ , shall be penalized in accordance with the terms of that section.

Source: § 58-19.20

Comment: No change.

~~§ 58-19-21 58.1-534~~ . Rules and regulations. The Secretary of Administration and Finance shall promulgate all rules which he deems necessary in order to implement the intent of this article.

Source: § 58-19.21

Comment: No change.



## CHAPTER 6.

### RETAIL SALES AND USE TAX.

~~§ 58-441.1. Citation. § 58.1-600. Short Title.~~ This chapter shall be known and may be cited as the "Virginia Retail Sales and Use Tax Act."

Source: § 58-441.1.

Comment: No change.

~~§ 58-441.40. § 58.1-601. Administration of chapter forms and instructions .--The Tax Commissioner shall administer and enforce the assessment and collection of the taxes and penalties imposed by this chapter. He shall design, prepare, print and furnish to all dealers; or make available to them, all necessary forms for filing returns together with instructions to insure a full collection from dealers and an accounting for the taxes due, but failure of any dealer to receive or procure such forms or instructions, or both, shall not relieve him from the payment of the tax at the time and in the manner herein provided .~~

Source: § 58-441.40.

Comment: Deletes all references to the preparation of forms and instructions by the Tax Commissioner. A general provision is now located in the general provisions to Subtitle I containing form preparation requirement applicable to all taxes administered by the Department.

~~§ 58-441.42. Administration of oaths. The Commissioner and such other officers or employees of the Department of Taxation as the Commissioner may authorize in writing, may administer oaths for the purpose of enforcing and administering the provisions of this chapter.~~

Comment: Repealed. See § 58.1-213.

~~§ 58-441.44. Personnel; supplies; equipment; other expenses; office space. The Commissioner may employ all necessary personnel and purchase such supplies and purchase or rent such equipment and incur such other expenses as may be necessary for the administration of this chapter. All such costs and expenses shall be paid out of appropriations made to the Department of Taxation. Unless adequate office space is provided in a state-owned building for the administration of this chapter, the Commissioner is hereby authorized to rent quarters for the purpose, and the cost thereof shall be paid as a part of the cost of administering this chapter.~~

Comment: Repealed. See §§ 58.1-214 and 58.1-215.

~~§ 58 441.45. Cost of administration of chapter. The cost incurred by the Commissioner in administering this chapter shall be paid out of such appropriation therefor as may be made by law. In administering this chapter, however, the Commissioner shall utilize existing personnel and facilities to the extent that this can be reasonably done without detriment to other necessary activities of the Department of Taxation.~~

Comment: This is unnecessary language which is appropriately included in each biennial budget.

~~§ 58 441.2. § 58.1-602. Meaning of "person," "sale," "retail sale," "sale at retail," and "nonprofit hospital" Definitions .-- The following words, terms, and phrases, when used in this chapter shall have the meanings ascribed to them in this section, except when the context clearly indicates a different meaning As used in this chapter, unless the context clearly shows otherwise, the term or phrase :~~

1. "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.

2. "Cost price" means the actual cost of an item or article of tangible personal property computed in the same manner as the sales price in paragraph 17 of this section without any deductions therefrom on account of the cost of materials used, labor, or service costs, transportation charges, or any expenses whatsoever.

3. "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.

4. "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 in paragraph 17 of this section over the term of the lease, rental, service, or use, but not less frequently than monthly.

5. "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 if this 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.

6. "Import" and "imported" are words applicable to tangible personal property imported into this State from other states as well as from foreign countries, and "export" and "exported" are words applicable to tangible personal property exported from this State to other states as well as to foreign countries.

7. "In this State" or "in the State" 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.

8. "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; but such terms shall not include the leasing, renting or licensing of copyright audio or video tapes, and films for public exhibition at motion picture theatres or by licensed radio and television stations.

9. "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.

10. "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 (§§ 58.1-2200 et seq. of the Code of Virginia) and upon the sale of which all applicable motor vehicle sales and use taxes have been paid.

~~(f) For the purpose of the tax imposed by this chapter, the term~~ 11. "Nonprofit hospital" ~~shall include~~ includes nonprofit hospital cooperatives or nonprofit hospital corporations organized and operated for the sole purpose of providing services exclusively to nonprofit hospitals and shall not include any nonprofit hospital cooperative or nonprofit hospital corporation providing services of any kind or to any extent to other than nonprofit hospitals.

12. "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.

~~(a)~~ 13. "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 as well of such term shall mean the same as the singular number thereof.

~~(e)~~ 14. "Retail sale" or a "sale at retail" means a sale to a ~~consumer~~ or 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 ~~mean and~~ include any such transaction as the Tax Commissioner upon investigation finds to be in lieu of a sale; ~~provided, that~~. All sales for resale must be made in strict compliance with rules and regulations ~~made under~~ applicable to this chapter. Any dealer making a sale for resale which is not in strict compliance with such rules and regulations shall ~~himself~~ be personally liable for ~~and pay~~ payment of the tax.

(d) For the purpose of the tax imposed by this chapter, The terms "retail sale" and a "sale at retail" shall also specifically include the following: (i) the sale or charges for any room or rooms, lodgings, or accommodations furnished to transients for less than ninety 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 : The tax shall not apply, however, to ~~rooms, lodgings, or accommodations supplied for a period of ninety continuous days or more.~~

(e) For the purpose of the tax imposed by this chapter, the terms "retail sale" and a "sale at retail" shall also include ; and (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 State will lose tax funds due to the difficulty of policing such business operations. The Tax Commissioner is authorized to promulgate rules and 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.

15. "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 this State.

(b) 16. "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.

17. "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) an amount separately charged for labor or services rendered in installing, applying, or remodeling or repairing property sold, (iii) 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, (iv) transportation charges separately stated, (v) separately stated charges for alterations to apparel, clothing and garments, or (vi) charges for gift wrapping services performed by a nonprofit organization. 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.

18. "Storage" means any keeping or retention of tangible personal property for use, consumption or distribution in this State, or for any purpose other than sale at retail in the regular course of business.

19. "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.

20. "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.

21. "Use tax" refers to the tax imposed upon the use, consumption, distribution, and storage as herein defined.

22. "Used directly," when used in relation to manufacturing, mining, 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.*

Source: §§ 58-441.2, 58-441.3 and 58-441.6.

Comment: Relocates definition of terms to one section. Also modifies the definition of "motor vehicle" so as to prevent the purchaser of a vehicle not required to be titled with DMV to voluntarily title a vehicle, thereby paying the 2% motor vehicle sales tax as opposed to the 4% retail sales tax.

**58-441.2. Other definitions.**—The following words and terms shall have the following meanings when used in this chapter: (a) The term "gross sales" means the sum total of all retail sales of tangible personal property or services as defined in this chapter, without any deduction whatsoever of any kind or character, except as provided in this chapter. "Gross sales" shall not include the federal retailers' excise tax if this 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 tax imposed by any county or city under § 58-441.4b.

(b) "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, but cash discounts allowed and taken on sales shall not be included in the sales price; nor shall the sales price include the amount separately charged for labor or services rendered in installing, applying, or remodeling or repairing property sold, 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, or transportation charges separately stated or separately stated charges for alterations to apparel, clothing and garments or charges for gift wrapping services performed by a nonprofit organization. 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.

(c) "Cost price" means the actual cost of an item or article of tangible personal property computed in the same manner as the sales price in paragraph (b) of this section without any deductions therefrom on account of the cost of materials used, labor, or service costs, transportation charges, or any expenses whatsoever.

(d) "Lease or rental" means the leasing or renting of tangible personal property and the possession or use thereof by the lessee or rentee for a consideration, without transfer of the title to such property; but such terms shall not include the leasing, renting or licensing of copyright audio or video tapes, and films for public exhibition at motion picture theatres or by licensed radio and television stations.

(e) "Distribution" includes 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.

(f) "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 in paragraph (b) of this section over the term of the lease, rental, service, or use, but not less frequently than monthly.

(g) "Storage" means and includes any keeping or retention of tangible personal property for use, consumption or distribution in this State, or for any purpose other than sale at retail in the regular course of business.

(h) "Use" means and includes 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.

(i) "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 direct or indirect.

(j) "Retailer" means and includes every person engaged in the business of making sales at

retail, or for distribution, use, consumption, or storage to be used or consumed in this State.

(k) "Commissioner" means the State Tax Commissioner.

(l) "Tangible personal property" means and includes 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.

(m) "Use tax" refers to the tax imposed upon the use, consumption, distribution, and storage as herein defined.

(n) "In this State" or "in the State" means within the exterior limits of the Commonwealth of Virginia and includes all territory within these limits owned by or ceded to the United States of America.

(o) The words "import" and "imported" apply to tangible personal property imported into this State from other states as well as from foreign countries, and the words "export" and "exported" apply to tangible personal property exported from this State to other states as well as to foreign countries.

(p) "Manufacturing, processing, refining, or conversion" as used in this chapter, 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 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 29 published in the Standard Industrial Classification Manual for 1972 and any supplements issued thereafter.

The term "manufacturing" shall 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.

(q) "Used directly," when used in relation to manufacturing, mining, 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.

(r) "Motor vehicle," as used in this chapter, means a "motor vehicle" as defined in § 58-685.11 (2), upon the sale of which all applicable taxes have been paid under the Virginia Motor Vehicles Sales and Use Tax Act, § 58-685.10 et seq., of the Code of Virginia.

§ 58-441.4: § 58.1-603. 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 State, or who rents or furnishes any of the things or services taxable under this chapter, or who stores for use or consumption in this State any item or article of tangible personal property as defined in this chapter, or who leases or rents such property within this State, the same to be collected in the amount to be determined by the application of the following rates of three percent :

(a) 1. At the rate of two percent Of the gross sales price of each item or article of tangible personal property when sold at retail or distributed in this State ; the tax to be computed on gross sales ; provided, however, that on and after July one, nineteen hundred sixty-eight, the rate of the tax shall be three percent .

(b) 2. At the rate of two percent Of the gross proceeds derived from the lease or rental of tangible personal property, as defined in this chapter, 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 ; provided, however, that on and after July one, nineteen hundred sixty-eight, the rate of the tax shall be three percent .

~~(c) 3. At the rate of two percent~~ Of the cost price of each item or article of tangible personal property stored in this State for use or consumption in this State ; ~~provided, however, that on and after July one, nineteen hundred sixty eight, the rate of the tax shall be three percent .~~

~~(d) 4. At the rate of two percent~~ Of the gross proceeds derived from the sale or charges for rooms, lodgings or accommodations furnished to transients as set out in subparagraph ~~paragraph~~ ~~(d) 14 of § 58-441.2 58.1-602 ; provided, however, that on and after July one, nineteen hundred sixty eight, the rate of the tax shall be three percent~~

~~(e) 5. At the rate of two percent~~ Of the gross sales of all *any* services *which are expressly stated as taxable under within this chapter ; provided, however, that on and after July one, nineteen hundred sixty eight, the rate of the tax shall be three percent. No services are taxable under this chapter except those expressly enumerated and made so taxable*

The tax so levied is and shall be in addition to all other taxes, whether levied in the form of property, excise, license, franchise, or ~~privilege taxes~~, and shall be in addition to all other taxes and fees levied, notwithstanding any other provision of law.

Source: § 58-441.4.

Comment: No substantive change. Obsolete and duplicative language removed.

~~§ 58-441.5- § 58.1-604. Imposition of use tax.—There is hereby levied and imposed, in addition to all other taxes and fees of every kind now imposed by law, whether levied in the form of property, excise, license, franchise, or privilege taxes, and notwithstanding any other provision of law, a tax upon the use or consumption of tangible personal property in this State, or the storage of such property outside the State for use or consumption in this State, the same to be collected in the amount determined by application of the following rates of three percent :~~

~~(a) 1. Two percent~~ Of the cost price of each item or article of tangible personal property used or consumed in this State . ; ~~provided, that tangible~~ *Tangible* personal property which has been acquired ~~after June twenty-seven, nineteen hundred sixty-six,~~ for use outside this State 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 State for use within six months of its acquisition; but if so brought within this State 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 State ; ~~provided, further, that .~~ 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 State bears to the total useful life of such property (but it shall be presumed in all cases that such property will remain within this State for the remainder of its useful life unless convincing evidence is provided to the contrary).

~~(b) 2. Two percent~~ Of the cost price of each item or article of tangible personal property stored outside this State for use or consumption in this State.

~~(c) The rate of two percent levied by the foregoing provisions of this section shall apply until and through June thirty, nineteen hundred sixty-eight, and on and after July one, nineteen hundred sixty-eight, the rate of the tax levied by this section shall be three percent.~~

~~(d) 3. A transaction taxed under § 58-441.4 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 State by a nonresident individual, visiting in Virginia, for his personal use, while within this State.*

Source: §§ 58-441.5 and 58-441.9.

Comment: No substantive change.

~~§ 58-441.40- § 58.1-605. To what extent and under what conditions cities and counties may levy local sales taxes; collection thereof by State and return of revenue to each city or county entitled thereto.— (a) A. No city, town, or county~~ *county, city or town* shall impose or continue to impose any local general sales or use tax or any local general retail sales or use tax ~~after the state tax imposed by this chapter becomes effective; except as authorized by this section. Nothing contained in this chapter, however, shall be construed as impairing in any way the authority conferred upon any city, town or county by any other statute, including charter provisions, to impose local license taxes or other local taxes not intended to be separately stated or required to be passed on to the consumer, except that any locality may impose or continue to~~

impose local excise taxes on cigarettes, local admissions taxes, local taxes on transient room rentals and meals, and travel campgrounds and consumer utility taxes to the extent authorized by law, whether such locality acts under subsection (b) of this section or not; but no city, town or county shall impose or continue to impose any local general sales or use tax or any local general retail sales or use tax after the state tax imposed by this chapter becomes effective, except as authorized by this section. The terms "local general sales or use tax" and "local general retail sales or use tax" do not include local retail merchants' license taxes of the nature heretofore levied by various localities, the same being in principle the same as the state retail merchants' license tax which is being discontinued on and after January 1, 1967; nor do such terms include local wholesale merchants' license taxes measured by purchases, the same being in principle the same as the state wholesale merchants' license tax which is being discontinued on and after January 1, 1967; provided that no city, town or county shall impose any such local wholesale merchants' license tax at an aggregate rate in excess of five cents per \$100 of purchases except in those localities 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.

(b) 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 the preceding sections of this chapter by §§ 58.1-603 and 58.1-604 and shall be subject to all the provisions of this chapter; and all amendments hereto, and the rules and regulations published with respect thereto; except that the applicable brackets of prices shall be as prescribed in § 58-441.50 and 58-441.51 58.1-628 for the combined state and local tax; and except that no discount under § 58-441.25 58.1-622 shall be allowed on a local sales tax.

(c) 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 sixty days after its adoption. Any such ordinance may be adopted prior to June 27, 1966. A certified copy of such ordinance shall forthwith be forwarded to the Tax Commissioner so that it will be received within five days after its adoption. No local sales tax imposed under this section shall become effective earlier than September 1, 1966.

(d) 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, with the adjustments required by § 58-441.50 and 58-441.51 58.1-628.

(e) 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"; and 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 of Taxation 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) 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 payment for the next month or for subsequent months.

(g) 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 preceding school age population census, 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 census and a proper reduction made in the school age population of the county or counties from which the annexed territory was acquired.

~~(b)~~ *H.* One-half of such payments to counties are subject to the further qualification, other than as set out in ~~paragraph (g)~~ *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 statewide school census. If the school age population of any such town not constituting a separate special school district is increased by the annexation of territory since the last preceding school age population census, 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 census 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.

~~(i)~~ *J.* It is further provided that if any incorporated town which would otherwise be eligible to receive funds from the county treasurer under ~~paragraph (g)~~ or ~~(b)~~ *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 paragraph 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.

Source: §§ 58-441.49 and 58-441.49:2.

Comment: This section, which previously was located at the end of the act, has been moved to follow the state rate for purposes of continuity. Also removes limitation on local license tax of wholesale merchants which has been placed in § 58.1-3716 (local business, professional and occupational license tax). Certain redundant and unnecessary text provisions are also stricken. Controversy has always resulted by a listing of local taxes which are not specifically precluded by the enactment of sales tax. Some local representatives argue that this language grants localities specific authority to levy the local tax enumerated and state officials hold that the language is merely clarifying and not a grant of specific authority. The amendments eliminate the controversy by striking all unnecessary language.

A cross-reference to the local sales and use tax will be contained in Subtitle III.

~~§ 58-441.49:1.~~ *§ 58.1-606.* To what extent and under what conditions cities and counties may levy local use tax; collection thereof by State and return of revenues to the cities and counties.—  
~~(a)~~ *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 ~~§ 58-441.49~~ *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~~ *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 the applicable brackets of prices shall be as prescribed in ~~§ 58-441.51~~ *58.1-628* for the combined ~~State~~ *state* and local tax, and except that no discount under ~~§ 58-441.35~~ *58.1-622* shall be allowed on a local use tax.

~~(b)~~ *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)~~ *1.* If the city or county has previously imposed the local sales tax authorized by ~~§ 58-441.49~~ *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 sixty days after the adoption of the resolution; but no local use tax shall become effective earlier than July one, nineteen hundred

~~sixty-eight~~ . A certified copy of such resolution shall ~~forthwith~~ 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)~~ 2. If the city or county has not imposed the local sales tax authorized by § 58-441-49: 58.1-605 , the local use tax may be imposed by ordinance together with the local sales tax in the manner set out in paragraphs ~~(b)~~ and ~~(c)~~ subsections B and C of § ~~58-441-49~~ 58.1-605 ; but no local use tax shall become effective earlier than July one, ~~nineteen hundred sixty-eight~~ .

~~(c)~~ C. Any local use tax levied under this section shall be administered and collected by the ~~Commission~~ Tax Commissioner in the same manner and subject to the same penalties as provided for the State state use tax, with the adjustments required by § ~~58-441-51~~ 58.1-628 .

~~(d)~~ 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 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 State without regard to the city or county of possible use by the purchasers ; but . However, the local use tax authorized by this section shall apply to tangible personal property purchased without this State 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 State. 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 State and such leases or rentals are subject to the State state tax. Moreover, the local use tax shall apply in all cases in which the State state use tax applies.

~~(e)~~ E. Out-of-state dealers who hold certificates of registration to collect the use tax from their customers for remittance to this State ; shall, to the extent reasonably practicable, in filing their monthly use tax returns with the Tax Commissioner, break down their shipments into this State by cities and counties so as to show the city or county of destination ; but if . 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 State by such dealer without attempting to assign the shipment to any city or county.

~~(f)~~ 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 of ~~Taxation~~ , and the procedure shall be the same as that prescribed for distribution of local sales tax revenue under § ~~58-441-49~~; but the 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 state authorities among the cities and counties in this State 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 of ~~Taxation~~ , 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.

~~(g)~~ G. All local use tax revenue shall be used, applied or disbursed by the cities and counties as provided in § ~~58-441-49~~ 58.1-605 with respect to local sales tax revenue.

Source: § 58-441.49:1.  
Comment: No change.

§ 58-441-10: 58.1-607. Moving residence or business into State.—The use tax shall not apply to tangible personal property purchased outside this State for use outside this State by a then nonresident natural person or a business entity not actually doing business within this State, who later brings such tangible personal property into this State in connection with his establishment of a permanent residence or business in this State, provided that such property was purchased more than six months prior to the date it was first brought into this State 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 State for the performance of contracts for the construction, reconstruction, installation, repair, or for any other service with respect to real estate or fixtures thereon.

Source: § 58-441.10.  
Comment: No change.

§ 58-441-11: Farm and agricultural products: The use tax shall not apply to livestock and livestock products; poultry and poultry products; farm and agricultural products; when produced by the farmer and used or consumed by him and the members of his family.

Comment: Moved to § 58.1-608(5).

~~§ 58-441.6: 58.1-608. Exclusions and exemptions.— The terms “sale at retail,” “lease or rental,” “distribution,” “use,” “storage” and “consumption,” tax imposed by this chapter or pursuant to the authority granted in §§ 58.1-605 and 58.1-606 shall not include apply to the following:~~

~~1(a) 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; nor shall such terms include (b) industrial materials that are coated upon or impregnated into the product at any stage of its processing, manufacture, refining, or conversion for resale; nor shall such terms include (c) machinery or tools or repair parts therefor or replacements thereof, fuel, power, energy, or supplies, used directly in processing, manufacturing, refining, mining or conversion of products for sale or resale; nor shall such terms include the purchase of equipment, printing or supplies used directly to produce a publication described in subsection (k) whether it is ultimately sold at retail or for resale or distributed at no cost; nor shall such terms include or (d) materials, containers, labels, sacks, cans, boxes, drums or bags for future use for packaging tangible personal property for shipment or sale.~~

~~In addition to the exclusions or exemptions set out in the next preceding paragraph, such terms shall not include the following:~~

~~(a) 2. Professional, insurance, or personal service transactions which involve sales as inconsequential elements for which no separate charges are made, nor services rendered by repairmen for which a separate charge is made.~~

~~(b) Tangible personal property delivered pursuant to bona fide written contracts entered into before the date of the enactment of this chapter, provided delivery is made within ninety days after June 27, 1966; and building supplies, fixtures or equipment that enter into or become a part of a building or other kind of structure in this Commonwealth, where plans, specifications; and the construction contract for a specific project has been entered into prior to the date of the enactment of this chapter, provided delivery is made within the time specified in such contract for the completion of such specific project.~~

~~(c) 3. Commercial feeds, seed, plants, fertilizers, liming materials, breeding and other livestock, semen, breeding fees, baby chicks, turkey poults, agricultural chemicals, fuel for drying or curing crops, baler twine, containers for fruits and vegetables, farm machinery, all other tangible personal property, except for structural construction materials, necessary for use in agricultural production for market and sold to or purchased by a farmer or contractor to be affixed to real property owned or leased by a farmer; and agricultural supplies provided the same are sold to and purchased by farmers for use in agricultural production, including fish and worm farming for market. Taxes on the sale of any tangible personal property exempt under the provisions of this act collected between July 1, 1970, and July 1, 1980, from contractors who purchased and installed such property for a farmer shall be refunded to the farmer upon the making of an appropriate application for such refund. The Commissioner shall prescribe by rule and regulation the procedure for such refunds hereunder.~~

~~(d) 4. 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. The term “agricultural commodity,” for the purposes of this paragraph, shall mean horticultural, poultry, and farm products, and livestock and livestock products.~~

~~5. Livestock and livestock products, poultry and poultry products, farm and agricultural products, when produced by the farmer and used or consumed by him and the members of his family.~~

~~(e) 6. Motor vehicle fuels which are subject to the tax imposed by Chapters 13 (§ 58-686 et seq.) and 14 (§ 58-721 et seq.) of Title 58 Chapter 21 (§ 58.1-2100 et seq.). Persons who are refunded the any such motor fuel tax or special 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.~~

~~(f) 7. Motor vehicles, trailers and semitrailers, mobile homes and travel trailers.~~

~~(g)~~ 8. Gas, electricity, or water when delivered to consumers through mains, lines, or pipes.

~~(g1)~~ 9. 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 rule and 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 ~~;~~ ~~on forms furnished by the Commissioner;~~ for a refund of the tax paid on the domestic use portion.

~~(h)~~ 10. Tangible personal property sold or leased to a public service corporation subject to a state franchise or license tax upon gross receipts, for use or consumption by such corporation directly in the rendition of its public service, and tangible personal property sold or leased to a public service corporation engaged in business as a common carrier of property or passengers by motor vehicle or railway, for use or consumption by such common carrier directly in the rendition of its public service.

~~(i)~~ 11. Ships or vessels used or to be used exclusively or principally in interstate or foreign commerce, or repairs and alterations thereof; or 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; ~~nor shall the tax imposed by this chapter apply to or~~ tangible personal property used directly in the building, conversion or repair of the ships or vessels covered by this ~~paragraph~~ ~~(i)~~ subsection 11.

~~(j)~~ 12. Broadcasting equipment and parts and accessories thereto and towers used or to be used by commercial radio and television companies, cable television systems, 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 cable television systems.

~~(k)~~ 13. 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, except that newsstand sales of the same are taxable.

~~(l)~~ 14. School lunches sold and served to pupils and employees of schools and subsidized by government, and 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 not conducted for profit, 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.

~~(m)~~ 15. An "occasional sale as defined in § 58.1-602(12).," ~~which 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.~~

~~(n)~~ 16. 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.

~~(o)~~ 17. Alcoholic beverages sold by the Virginia Alcoholic Beverage Control Commission through its government stores.

~~(p)~~ 18. Tangible personal property for use or consumption by the Commonwealth, any political subdivision of the Commonwealth, or the United States; ~~but this~~. This exclusion shall not apply to sales and leases to privately owned financial and other privately owned corporations chartered by the United States.

~~(q)~~ 19. Tangible personal property purchased for use or consumption directly and exclusively in basic research or research and development in the experimental or laboratory sense.

~~(#)~~ 20. 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.

~~(s)~~ 21. Medicines, drugs, hypodermic syringes, artificial eyes, contact lenses, eyeglasses 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, and controlled drugs purchased by a licensed physician for use in his professional practice.

~~(s1)~~ 22. Wheelchairs and parts therefor, braces, crutches, prosthetic devices, orthopedic appliances, catheters, urinary accessories, insulin and insulin syringes, and equipment, devices or chemical reagents which 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.

~~(t)~~ 23. Tangible personal property for use or consumption by a college or other institution of learning, a hospital, a licensed nursing home or a licensed nonprofit nonstock home for adults as defined by subsection A of § 63.1-172, and tangible personal property (i) for use or consumption by, (ii) sold by, or (iii) donated to a noncommercial educational telecommunications entity, said exemption to apply to each transaction in the chain of commerce from manufacture to final disposition, provided such college, institution of learning, telecommunications entity, hospital, licensed nursing home or home for adults is not conducted for profit.

~~(t1)~~ 24. Tangible personal property purchased by an organization exempt from taxation under § 501 (c) (3) of the Internal Revenue Code and organized exclusively for the purpose of providing education, training and services to retarded citizens of the Commonwealth, provided such property is used exclusively for the purpose set forth herein and further provided that such organization receives more than fifty percent of its total funding from federal, state, or local governments.

~~(t2)~~ 25. Tangible personal property and services purchased by an educational institution doing business in the Commonwealth which (1) admits regularly enrolled high school and college students, and (2) provides a face-to-face educational experience in American government, a program which (i) leads towards the successful completion of United States history, civics, and problems in democracy courses in high school, or (ii) which is acceptable for full credit towards an undergraduate or graduate level college degree, provided such institution is conducted not for profit.

~~(u)~~ 26. 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 for use or consumption by such airline directly in the rendition of its common carrier service. As used in this paragraph "scheduled air service" shall be defined pursuant to the provisions of § ~~58-685.21~~ 58.1-1501 .

~~(v)~~ 27. Tangible personal property purchased for use or consumption by a volunteer fire department or volunteer rescue squad not conducted for profit, and construction materials to be incorporated into realty when sold to and used by such organization, rather than a contractor, in construction, maintenance, or repair of any property of such organization.

~~(w)~~ 28. Machinery or tools or repair parts therefor or replacement thereof, fuel or supplies, 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.

~~(x)~~ 29. Aircraft subject to tax under Chapter ~~12.2~~ (§ ~~58-685.27~~ et seq.) of Title ~~58~~ Chapter 15 (§ 58.1-1500 et seq.) of Title 58.1 .

~~(y)~~ 30. Catalogs and other printed materials used in the advertising of tangible personal property for sale, the envelopes, containers and labels used for packaging and mailing same, and paper furnished to a printer for fabrication into catalogs and other printed materials used in advertising tangible personal property for sale, when stored for twelve months or less in the Commonwealth and distributed for use without the Commonwealth.

~~(z)~~ 31. Motor fuels and special fuels for use in a boat or boats or a ship or ships, upon which a motor fuel tax is refunded pursuant to § ~~58-720.2~~ 58.1-2113 , and upon which a special fuel tax is refunded pursuant to § ~~58-752.1~~ 58.1-2122 .

~~(aa)~~ 32. Meals furnished by restaurants or food service operators to employees as a part of wages.

~~(bb)~~ 33. Special equipment installed on a motor vehicle when purchased by a handicapped person to enable such person to operate such motor vehicle.

~~(ee)~~ 34. Sales by a government agency of the official flags of the United States, the Commonwealth of Virginia, or of any county, city or town.

~~(dd)~~ 35. Materials furnished by the State Board of Elections pursuant to paragraphs (8), (9) or (10) of § 24.1-23.

~~(ee)~~ 36. Books and other reading materials for use by nonprofit organizations organized solely to distribute such books and reading materials to school-age children.

~~(ff)~~ 37. 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.

~~(gg)~~ 38. Tangible personal property, except property used in any form of recording and reproducing services, 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 § ~~58-12~~ 58.1-3607, 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.

~~(hh)~~ 39. Tangible personal property including machinery, 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.

~~(ii)~~ 40. Historical documents, maps, rare books and manuscripts acquired by a nonprofit state historical society which maintains a research library open to the public for research and educational purposes without charge.

~~(jj)~~ [Repealed.]

*41. Sales of tangible personal property to a nonsectarian youth organization exempt from taxation under Section 501(c)(3) of the Internal Revenue Code and sponsoring a national or international camping assembly within this State for seven continuous days or more with attendance in excess of 20,000, which sale of tangible personal property is for use or consumption at such camping assembly.*

~~(kk)~~ 42. Watercraft as defined in § ~~58-685.40~~ 58.1-1401 .

~~(H)~~ 43. 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.

~~(mm)~~ 44. Tangible personal property purchased for use or consumption by a nonprofit museum of fine arts which is located on property owned by a city in Virginia and which receives more than half of its operating budget from appropriations by the city.

~~(aa)~~ 45. Tangible personal property sold or leased for use in nonprofit nutrition programs for the elderly qualifying under 42 U.S.C. § 3030 (e) through 3030 (g), as amended, as administered by the Department for the Aging of the Commonwealth of Virginia, and the food and food products sold under such programs to elderly persons.

~~(ee)~~ 46. Tangible personal property bought, sold or used by Virginia Federation of Humane Societies or any chartered, not-for-profit organization incorporated under the laws of this Commonwealth and organized for the purpose of preventing cruelty to animals and promoting humane care of animals, when such property is used for the operation of such organizations or the construction or maintenance of animal shelters.

~~(pp)~~ 47. Sales by prisoners confined in state correctional facilities of artistic products personally made by the prisoners as authorized by § 53.1-46 of the Code.

~~(ee)~~ 48. Tangible personal property purchased for use by a nonprofit, nonstock corporation which receives no financial aid from the Commonwealth or the federal government and is organized exclusively for the purpose of operating, at no charge to the pupils, a combination boarding and day school for the severely physically handicapped children and young adults of the Commonwealth.

~~(ff)~~ 49. Tangible nonmedical personal property purchased by a nonprofit organization organized exclusively for the purpose of providing housing and ancillary assistance for children suffering from leukemia or oncological diseases, for other ill children, and for the families of such children during periods of medical treatment of such children at any hospital in the Commonwealth.

~~(ss)~~ 50. Tangible personal property purchased by a voluntary health organization exempt from taxation under § 501 (c) (3) of the Internal Revenue Code and organized exclusively for the purpose of providing direct therapeutic and rehabilitative services, such as speech therapy, physical therapy, and camping and recreational activities, to the children and adults of the Commonwealth regardless of the nature of their disease or socio-economic position.

51. *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.*

52. *Certified pollution control equipment and facilities as defined in § 58.1-3660.*

53. *Tangible personal property for use or consumption by the Virginia Commission for the Visually Handicapped or any nominee, as defined in § 63.1-142, of such commission. (Also see § 63.1-164, which provides a more detailed explanation of the exemption).*

Source: §§ 58-441.6, 58-441.7 and 58-441.11.

Comment: Places all exemptions within one section and removes language which has expired or has no further applicability. Also added to this section are the provisions providing a sales tax exemption for the Virginia Port Authority (see § 62.1-145), certain pollution control equipment (see § 58-16.3), and property used in harvesting forest products (see § 58-838.21[b]).

~~§ 58-441.49:3: § 58.1-609. Local exemption of certain energy sources. Exceptions to § 58.1-608.~~  
– Notwithstanding the provisions of *paragraph 7 of § 58-441.6 (gl) 58.1-608 or § 58-441.49*, the tax imposed by a county, city or town pursuant to §§ ~~58-441.49 58.1-605 and 58-441.49:1 58.1-606~~ shall apply to artificial or propane gas, firewood, coal or home heating oil used for domestic consumption as defined in *paragraph 7 of § 58-441.6 (gl) 58.1-608*, unless exempted by a duly adopted ordinance of the local governing body of a county, city or town.

Source: §58-441.49:3.

Comment: No change.

~~§ 58-441.15: § 58.1-610. Contractors.— (a)~~ 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)~~ B. Any person who contracts to perform services in this State 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 State 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 ; ~~provided; however; that~~ . This ~~paragraph subsection, however,~~ shall not apply to the industrial materials exclusion or the other industrial exclusions set out in ~~§ 58-441.6 58.1-608~~, including those set out in ~~subparagraphs (h), (i) and (j) paragraphs 1, 8, 9, and 10 thereof, or the governmental exclusions set out in subparagraph (p) paragraph 16 thereof, or the agricultural exclusions set forth in subparagraph (e) paragraph 2 thereof.~~

~~(c)~~ 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) 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 ; provided, however, that a . Any person selling fences, venetian blinds, window shades, awnings, storm windows and doors, floor coverings (as distinguished from the floors themselves), cabinets, 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) 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 § 58-441.6; nor shall anything contained herein be construed to 58.1-608 or (ii) impose any sales or use tax with respect to the use in the performance of contracts with the United States, this State, 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 ; nor shall anything contained herein be construed to impose any sales or use tax with respect to the tangible personal property purchased by a college or other institution of learning prior to January one, nineteen hundred seventy-seven or thereafter, for use by a construction contractor in the performance of contracts entered into before January one, nineteen hundred seventy-seven, with such college or institution of learning, provided such college or institution of learning is not conducted for profit .

(f) F. 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 in such foreign country, and which is stored temporarily in Virginia pending shipment to such state or country, shall not be subject to the sales or use tax.

Source: § 58-441.15.

Comment: Removes language having no further applicability.

§ 58-441.8. § 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 State 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.

Source: §58-441.8.

Comment: No change.

§ 58 441.9. Applicability of inapplicability of use tax in certain cases. The use tax shall not apply to tangible personal property owned or acquired in this State, or imported into this State, or held or stored in this State, prior to June twenty seven, nineteen hundred sixty six. But the use tax shall apply to all tangible personal property imported or caused to be imported into this State on or after June twenty seven, nineteen hundred sixty six, except as in this chapter provided, unless such property has previously borne a sales or use tax in another state or political subdivision equal to or greater than the tax imposed by this chapter for which credit is given under § 58 441.8, or unless proof is furnished that the tangible personal property imported or caused to be imported into this State was owned or acquired prior to June twenty seven, nineteen hundred sixty six, or otherwise is exempt under this chapter; provided, however, that the use tax shall not apply in any way with respect to the use of any article of tangible personal property brought into this State by a nonresident individual, visiting in this State, for his personal use, while within this State.

Comment: See § 58.1-604(4).

§ 58-441.10: Moving residence or business into State. The use tax shall not apply to tangible personal property purchased outside this State for use outside this State by a then nonresident natural person or a business entity not actually doing business within this State, who later brings such tangible personal property into this State in connection with his establishment of a permanent residence or business in this State, provided that such property was purchased more than six months prior to the date it was first brought into this State 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 State for the performance of contracts for the construction, reconstruction, installation, repair, or for any other service with respect to real estate or fixtures thereon.

Comment: See § 58.1-607.

~~§ 58-441.11- Farm and agricultural products. The use tax shall not apply to livestock and livestock products, poultry and poultry products, farm and agricultural products, when produced by the farmer and used or consumed by him and the members of his family.~~

Comment: See § 58.1-608.

~~§ 58-441.12- § 58.1-612. Tax collectible from dealers; "dealer" defined; jurisdiction.— A. The tax levied by §§ 58-441.4 and 58-441.5 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 State to qualify under subsection 2 B hereof.~~

~~1- B. The term "dealer," as used in this chapter, shall include every person who:~~

~~(a) 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 State;~~

~~(b) 2. Imports or causes to be imported into this State 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 State;~~

~~(c) 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 State, tangible personal property as defined in this chapter ;~~

~~(d) 4. Has sold at retail, or used, consumed, or distributed, or stored for use or consumption in this State, 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;~~

~~(e) 5. Leases or rents tangible personal property ; as defined in this chapter; for a consideration, permitting the use or possession of such property without transferring title thereto;~~

~~(f) 6. Is the lessee or rentee of tangible personal property ; as defined in this chapter, and who pays to the owner of such property a consideration for the use or possession of such property without acquiring title thereto;~~

~~(g), (h) Repealed.~~

~~(i) 7. As a representative, agent, or solicitor, of an out-of-state principal, solicits, receives and accepts orders from persons in this State for future delivery and whose principal refuses to register as a dealer under § 58-441.16 58.1-613 ; or~~

~~(j) 8. Shall become Becomes liable to and shall owe owes this State any amount of tax imposed by this chapter, whether he holds, or is required to hold, a certificate of registration under § 58-441.16 or not 58.1-613 .~~

~~2- C. A dealer shall be deemed to have sufficient activity within the State to require registration under § 58-441.16 58.1-613 if he:~~

~~(a) 1. Maintains or has within this State, directly or through an agent or subsidiary, an office, warehouse, or place of business of any nature;~~

~~(b) 2. Solicits business in this State by employees, independent contractors, agents or other representatives;~~

~~(c) 3. Advertises in newspapers or other periodicals printed and published within this State, on billboards or posters located in this State, or through materials distributed in this State by means other than the United States mail; or~~

~~(d) 4. Makes regular deliveries of tangible personal property within this State 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 State more than~~

twelve times during a calendar year to deliver goods sold by him.

Source: § 58-441.12.

No changes.

~~§ 58-441.16.~~ *§ 58.1-613. Dealers' certificates of registration.*— ~~(a)~~ A. Every person desiring to engage in or conduct business as a dealer in this State shall file with the *Tax* Commissioner an application for a certificate of registration for each place of business in this State.

~~(b)~~ B. Every application for a certificate of registration shall be ~~made upon a form prescribed by the Commissioner and 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. 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)~~ 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 State. 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)~~ D. Whenever any person fails to comply with any provision of this chapter or any rule or regulation of the ~~Commissioner~~ relating thereto, the *Tax* 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)~~ E. Any person who engages in business as a dealer in this State 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 ; ~~and it shall be lawful to hold that~~ . Each day's continuance in business in violation of this section ~~constitutes~~ *shall constitute* a separate offense.

~~(f)~~ 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 thirty days after he has ceased to conduct such business at such place that he has so ceased ; ~~provided, however, that~~ . If the holder of a certificate of registration desires to change his place of business to another place in this State, he shall so inform the *Tax* Commissioner in writing and his certificate shall be revised accordingly.

~~(g)~~ 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)~~ 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..

Source: §58-441.16.

Comment: Operating as a dealer without a certificate of registration is made a Class 2 misdemeanor.

*§ 58-441.34 58.1-614 . Vending machine sales.*—A. Notwithstanding the provisions of §§ ~~58-441.4 58.1-603~~ and ~~58-441.5 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 percent *of such wholesale purchases* .

B. Notwithstanding the provisions of §§ ~~58-441.49 58.1-605~~ and ~~58-441.49:1 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 ten 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 or ~~§ 58-441.18~~ *58.1-625* or ~~§ 58-441.51-58.1-628~~, when the *State 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 ~~§ 58-441.16~~ *58.1-613* in relevant form for each county or city in which he has machines.

~~§ 58-441.20.~~ *§ 58.1-615.* Returns by dealers.—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* ; ~~upon a form prescribed, prepared and furnished by him,~~ 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. ~~The return also shall contain a statement showing the amount in each class of exclusions and exemptions which are not subject to the tax imposed by this chapter; or if the form so provides, the total amount thereof without specifying each class .~~ In the case of dealers regularly keeping books and accounts on the basis of an annual period which varies fifty-two to fifty-three 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.

Source: ~~§58-441.20.~~

Comment: The general power is granted to the *Tax Commissioner* in Chapter 1 to devise forms appropriate for the administration of all state taxes. The section is broad enough to allow the *Tax Commissioner* flexibility to devise the form in any manner he deems necessary to ensure the proper collection of state taxes.

~~§ 58-441.21.~~ *§58.1-616.* Payment to accompany dealer's return.—At the time of transmitting the return required under ~~§ 58-441.20 to the Commissioner~~ *58.1-615* , the dealer shall remit to the *Tax Commissioner* ~~therewith~~ the amount of tax due under the applicable provisions of this chapter; after making appropriate adjustments for purchases returned, repossessions, and accounts uncollectible and charged off as provided in §§ ~~58-441.22, 58-441.23 and 58-441.24~~ *58.1-619, 58.1-620 and 58.1-621* . ~~Failure so to remit such tax shall cause such tax to become delinquent, that is to say, The tax imposed by this chapter shall for each period become delinquent on the twenty-first day of the succeeding month if not theretofore paid.~~

Source: ~~§ 58-441.21.~~

Comment: No substantive change.

~~§ 58-441.26.~~ *§ 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 ; ~~except that where .~~ 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 ~~§ 58-1160~~ *58.1-15* shall be charged.

Source: ~~§ 58-441.26.~~

Comment: No substantive change.

~~§ 58-441.28.~~ *§ 58.1-618. Assessment based on estimate.*— (a) ~~A. In the event~~ If any dealer fails to make a return as provided by this chapter, or makes a grossly incorrect return; 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 State, or storage by such dealer of tangible personal property to be used or consumed in the State, 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 or an assistant with such books, records, and papers as he may require relating to the business of such dealer for such taxable period; and the . 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 or his assistants 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 relating to the sale, distribution, lease, use, consumption, or storage of tangible personal property, or taxable services, the Tax Commissioner is hereby authorized to make the assessment based upon such information as may be available to him and to issue a warrant 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) ~~B. If the dealer has imported the 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) ~~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.~~

Source: § 58-441.28.

Comment: No substantive change.

~~§ 58-441.22.~~ *§ 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; but . 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; and . 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.

Source: § 58-441.22.

Comment: No substantive change.

~~§ 58-441.23.~~ *§ 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 ~~§ 58-441.22~~ *§ 58.1-619* . When such repossessed property is resold, such sale is subject in all respects to this chapter.

Source: § 58-441.23.

No change.

~~§ 58-441.24.~~ *§ 58.1-621. Bad debts.*—In any return filed under the provisions of this chapter, the dealer may credit; under rules and regulations prescribed by the Commissioner, 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 ; ~~provided that such~~ . The credit , however, shall not exceed ~~as 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.

Source: § 58-441.24.

Comment: No substantive change.

~~§ 58-441.25~~ 58.1-622 . Discount.—For the purpose of compensating a dealer holding a certificate of registration under § 58-441.16 ~~58.1-613~~ for accounting for and remitting the tax levied by this chapter, such dealer shall be allowed three percent of the amount of tax due and accounted for in the form of a deduction in submitting his return and paying the amount due by him ; ~~provided~~ if the amount due was not delinquent at the time of payment.

Source: § 58-441.25.

Comment: No substantive change.

~~§ 58-441.17~~ 58.1-623 . Sales or leases presumed subject to tax; exemption certificates.— (a) 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 person who makes the sale, distribution, lease, or storage, dealer unless he takes from the purchaser or lessee taxpayer a certificate to the effect that the property is exempt under this chapter.

(b) 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 purchaser or lessee taxpayer , shall indicate the number of the certificate of registration , ( if any ) , issued to the purchaser, or lessee 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.

(c) C. If a purchaser or lessee 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 property for resale, distribution, or lease in the regular course of business, such use shall be deemed a taxable sale by the purchaser or lessee 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 purchaser taxpayer may elect to pay the tax on the amount of the rental charged, rather than the cost of the property to him.

(d) D. If a purchaser 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.

Source: § 58-441.17.

Comment: No substantive change.

~~§ 58-441.33~~ 58.1-624 . Direct payment permits.— (a) 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 State for use both within and outside this State, to pay any tax levied by this chapter directly to this State and waive the collection of the tax by the dealer ; ~~but~~ . 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) *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 § 58-1160 58.1-15 .

(c) It shall be the duty of every permit holder required to make a return and pay any tax under this section to keep and preserve suitable records of purchases, together with invoices of purchases, bills of lading, and other such pertinent records and documents in such form as the Commissioner requires by regulation. All such records and other documents shall be open during business hours to the inspection of the Commissioner or his duly authorized agents and shall be preserved for a period of four years, unless the Commissioner, in writing, has authorized their destruction or disposal at an earlier date.

(d) *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.

(e) *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.

(f) *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.

Source: § 58-441.33.

Comment: Removes redundant language.

§ 58-441.18 58.1-625 . Collection of tax.—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 ; and thereafter . 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 ; provided that no . No action at law or suit in equity under this chapter may be maintained in this State by any dealer who is not registered under 68-441.16 § 58.1-613 or is delinquent in the payment of the taxes imposed under this chapter.

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.

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.

Any dealer who shall neglect, fail, or refuse neglects, fails, or refuses to collect such tax upon each and 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 State any part of the

purchase price or rental from the purchaser until such tax is paid. Moreover, any dealer who shall neglect, fail or refuse 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 dealer as required by this chapter shall be deemed to be held in trust for the Commonwealth.

Source: § 58-441.18.

Comment: Failure to collect and pay the sales and use tax is made a Class 1 misdemeanor.

~~§ 58-441.10 58.1-626~~ . Absorption of tax prohibited.—No person shall advertise or hold out to the public ; ~~in any manner~~ , 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, except as may be authorized under §§ ~~58-441.13, 58-441.14, or 58-441.34~~ 58.1-627 or 58.1-628 . Any person who violates this section shall be guilty of a Class 2 misdemeanor.

Source: § 58-441.19.

Comment: Makes absorption of tax a Class 2 misdemeanor.

~~§ 58-441.14 58.1-627~~ . Bracket system for tax at rate of three percent.— ~~On and after July one, nineteen hundred sixty-eight, the~~ The following brackets of prices shall be used for the collection of the tax imposed by this chapter:

\$0.01	to	\$0.14	no tax
.15	to	.44	1¢ tax
.45	to	.74	2¢ tax
.75	to	1.14	3¢ tax
1.15	to	1.49	4¢ tax
1.50	to	1.84	5¢ tax
1.85	to	2.14	6¢ tax
2.15	to	2.49	7¢ tax
2.50	to	2.84	8¢ tax
2.85	to	3.14	9¢ tax
3.15	to	3.49	10¢ tax
3.50	to	3.84	11¢ tax
3.85	to	4.14	12¢ tax
4.15	to	4.49	13¢ tax
4.50	to	4.84	14¢ tax
4.85	to	5.00	15¢ tax

On transactions over five dollars, the tax shall be computed at a straight three percent, one-half cent or more being treated as one cent. ~~The foregoing bracket system shall not relieve the dealer from the duty and liability to remit an amount equal to three percent of his gross taxable sales as provided in this chapter, provided, however, that if the~~ If a dealer can show to the satisfaction of the Tax Commissioner that more than eighty-five percent of the total dollar volume of his gross taxable sales during the taxable month was from individual sales at prices of ten 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 which was from sales at prices of eleven cents or more.

Source: § 58-441.14.

Comment: No substantive change.

~~§ 58-441.51 58.1-628~~ . Bracket system for combined state and local tax ~~under State rate of three percent and local rate of one percent~~ .— On and after July one, ~~nineteen hundred sixty-eight, the~~ The following brackets of prices shall be used for the collection of the combined State state and local tax:

\$0.01	to	\$0.14	no tax
.15	to	.34	1¢ tax
.35	to	.59	2¢ tax
.60	to	.84	3¢ tax
.85	to	1.14	4¢ tax
1.15	to	1.34	5¢ tax
1.35	to	1.59	6¢ tax
1.60	to	1.84	7¢ tax
1.85	to	2.14	8¢ tax
2.15	to	2.34	9¢ tax

2.35	to	2.59	10¢ tax
2.60	to	2.84	11¢ tax
2.85	to	3.14	12¢ tax
3.15	to	3.34	13¢ tax
3.35	to	3.59	14¢ tax
3.60	to	3.84	15¢ tax
3.85	to	4.14	16¢ tax
4.15	to	4.34	17¢ tax
4.35	to	4.59	18¢ tax
4.60	to	4.84	19¢ tax
4.85	to	5.00	20¢ tax

On transactions over five dollars, the tax shall be computed at a straight four percent, one-half cent or more being treated as one cent. The foregoing bracket system shall not relieve the dealer from the duty and liability to remit an amount equal to four percent of his gross taxable sales as provided in this chapter ; ~~provided, however, that if~~ *If the dealer , however,* can show to the satisfaction of the *Tax Commissioner* that more than eighty-five percent of the total dollar volume of his gross taxable sales during the taxable month was from individual sales at prices of ten 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 which was from sales at prices of eleven cents or more.

Source: § 58-441.51.

Comment: No substantive change.

~~§ 58-441.30~~ *58.1-629* . Sale of business.—If any dealer liable for any tax, penalty, or interest levied hereunder ~~shall sell~~ *sells* out his business or stock of goods or ~~shall quit~~ *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 ~~shall produce~~ *produces* a receipt from the *Tax Commissioner* showing that they have been paid or a certificate stating that no taxes, penalties, or interest ~~are~~ *is* due. If the purchaser of a business or stock of goods ~~shall fail~~ *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 § 58-441.6 ~~(m)~~ *paragraph 15 of § 58.1-608* .

Source: § 58-441.30.

Comment: No change.

~~§ 58-441.31~~ *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 a ~~such~~ *surety company authorized to do business in this State as surety, in such reasonable amount as the Tax Commissioner determines is necessary* ~~may fix~~, 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 ; ~~without notice to the depositor thereof~~; if it becomes necessary so to do in order to recover any tax, penalty or interest due the ~~State~~ *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.

Source: § 58-441.31.

Comment: Gives the Tax Commissioner authority to require such surety on the bond of a dealer as he deems necessary to ensure collection of tax, penalty and interest.

~~§ 58-441.32~~ *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~~ *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 State.

Source: § 58-441.32.

Comment: No change.

~~§ 58-441.36~~ *58.1-632* . Tax warrants.—The Tax Commissioner is empowered, when any tax becomes delinquent under this chapter, to issue a ~~warrant memorandum of lien~~ for the collection of the tax, penalty and interest from each delinquent taxpayer. ~~Sections 58-41, 58-42 and 58-43~~ *Section 58.1-1805* shall apply to such ~~warrants memorandum~~ , except that the same may be issued as soon as the tax becomes delinquent.

Source: § 58-441.36.

Comment: No change.

~~§ 58-441.39~~ *58.1-633* . Records.—~~(a)~~ *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 ; ~~and every such dealer shall keep and preserve for a period of four years all invoices and other records of goods, wares, and merchandise; or other subjects of taxation under this chapter ; and all such books, invoices, and other records shall be open to examination at all reasonable hours by the Commissioner or any of his duly authorized agents .~~

~~(b)~~ *B*. In order to aid in the administration and enforcement of the provisions of this chapter, all wholesalers and jobbers in this State ~~hereby are required to keep~~ *shall keep* a record of all sales of tangible personal property, whether such sales be for cash or on terms of credit. ~~The records required to be kept by all wholesalers and jobbers~~ *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. ~~These records shall be kept for a period of four years and shall be open to the inspection of the Commissioner or his duly authorized agents at all reasonable hours during the day. The failure of Any wholesaler or jobber in this State failing to keep such records ; or the failure of any wholesaler or jobber in this State to permit an inspection of such records by the Commissioner as aforesaid, shall be guilty of a Class 1 misdemeanor. Moreover, if Any person who is both a retailer and a wholesaler or jobber shall fail and who fails to keep proper records showing wholesale sales and retail sales separately ; he shall pay the tax as a retailer on both classes of his business.~~

~~(c)~~ *C*. For the purpose of enforcing the collection of the tax levied by this chapter, the Tax Commissioner ~~hereby is specifically empowered through his authorized agents is authorized to~~ examine at all ~~reasonable hours during the day~~ 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. ~~In the event If such transportation company, agency, firm or person as defined herein ; shall refuse 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 deemed guilty of a Class 1 misdemeanor. Moreover, The Tax Commissioner may proceed by citing such by petitioning the appropriate circuit court to require the transportation company, agency, firm, or person to show cause before any court of record 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 two thousand dollars \$2,000 conditioned upon compliance with the provisions hereof for a period of not more than one year.~~

Source: § 58-441.29.

Comment: Penalties for this section are made a Class 1 misdemeanor.

~~§ 58-441.38~~ *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 ; provided, however, in .~~ 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.

Source: § 58-441.38.

Comment: No change.

~~§ 58-441.27~~ 58.1-635 . ~~Civil Failure to file return; fraudulent return; civil penalties.~~— A. When any dealer ~~shall fail~~ 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 five ~~per centum~~ percent if the failure is for not more than one month, with an additional five ~~per centum~~ percent for each additional month, or fraction thereof, during which the failure continues, not to exceed twenty-five ~~per centum~~ percent in the aggregate ; ~~provided, however, that in~~ . 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 ; ~~and further, provided, if~~ . 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 State 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 State of any such tax, a specific penalty of fifty ~~per centum~~ 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 State 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 ~~per centum~~ percent or less of the actual amount.

C. Interest at a rate determined in accordance with § ~~58-1160~~ 58.1-15 , shall accrue on the tax until the same is paid, or until an assessment is made, pursuant to § ~~58-1160~~ 58.1-15 , after which interest shall accrue as provided therein.

Source: § 58-441.27.

Comment: No substantive change.

~~§ 58-441.30~~ 58.1-636 . ~~Certain violations of chapter by dealers misdemeanors~~ *Penalty for failure to file return or making false return* .—Any dealer subject to the provisions of this chapter failing or refusing to ~~furnish any file a~~ return herein required to be made, or failing or refusing to ~~furnish~~ 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 ~~shall violate~~ violates any other provision of this chapter, punishment for which is not otherwise herein provided, shall be guilty of a *Class 1 misdemeanor*.

Source: § 58-441.39.

Comment: General penalty for violation of chapter by a dealer is made a Class 1 misdemeanor.

§ 58 441.47. ~~Effective date of tax.~~ The taxes imposed by this chapter shall be in full force and effect on and after ~~September one, nineteen hundred sixty-six~~, except that the increase in the rate of the tax from two percent to three percent shall be in force on and after July one, ~~nineteen hundred sixty eight~~.

§ 58 441.35. 58.1-637 . *Bad checks.*—If any check tendered for any amount due under this chapter be is not paid by the bank on which it is drawn, the person by whom such check was tendered shall remain liable for the payment of such amount the same as if such check ~~has had~~ not been tendered. Moreover, if such person ~~shall fail~~ fails to pay the Commissioner the amount due the State 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 *misdemeanor*, ~~and on conviction thereof the fine shall not be less than twenty-five dollars~~ *larceny* .

Source: § 58-441.35.

Comment: Tender of a bad check by a dealer for state sales taxes collected by him subjects such dealer to the crime of larceny five days after notice by the Tax Commissioner. This section is one of two exceptions to the general provisions applicable to bad checks.

~~§ 58-441.48 58.1-638 . Disposition of state sales and use tax revenue; localities' share.— All State tax moneys collected by the Commissioner under the preceding sections of this chapter shall be paid into the general fund of the State treasury. (a) 4. The Comptroller shall designate a specific revenue code number for all (i) the State state sales and use tax revenue collected under the preceding sections of this chapter . and (ii) the registration fees collected under § 58 441.16.~~

~~(b) For the taxable period beginning July one, nineteen hundred seventy-six, and continuing indefinitely, one B. One- third of the net revenue derived under the preceding sections of this chapter from such tax shall be distributed among the counties and cities of this State in the manner hereafter in this section provided.~~

~~(c) 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 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 state treasury during each month, and such distribution shall be made as soon as practicable after the close of each such month.~~

~~(d) D. The net revenue so distributable among the counties and cities shall be apportioned and distributed upon the basis as certified to the Comptroller by the Department of Education, of the number of children in each county and city according to the most recent statewide census of school population taken by the Department of Education pursuant to § 22.1-284 of the Code of Virginia, as adjusted in the manner hereinafter provided. No special school population census, other than a statewide census, shall be used as the basis of apportionment and distribution except that in any calendar year in which a statewide census is not reported, the Department of Education shall adjust such school population figures by the same per centum percent of annual change in total population estimated for each locality by the Bureau of Population and Economic Research of the University of Virginia Tayloe Murphy Institute . 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 ; provided, however, that in . 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 preceding school population census, 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 census and a proper reduction made in the school population of the county or counties from which the annexed territory was acquired.~~

~~(e) 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 quarter or for subsequent quarters.~~

~~(f) F. The term "net revenue," as used in this section, means the gross revenue received into the general fund of the State state treasury under the preceding sections of this chapter, less (1) refunds to taxpayers ; and (2) registration fees collected under § 58-441.16 .~~

Source: § 58-441.48.

Comment: § 58.1-14 requires all taxes to be paid into general fund.

~~§ 58-441.49:2. Participation by certain towns in proceeds of tax. Notwithstanding the provisions of § 58-441.49 (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 said 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.~~

~~§ 58-441.50. Bracket system for combined State and local tax under State rate of two percent and local rate of one percent. Beginning with the effective date of the State tax imposed by this chapter at the rate of two percent, and ending June thirty, nineteen hundred sixty-eight, the following brackets of prices shall be used for the collection of the combined State and local tax:~~

~~\$0.01 to \$0.14 no tax  
-15 to .44 1¢ tax~~

<del>.45 to .74</del>	<del>2¢ tax</del>
<del>.75 to 1.14</del>	<del>3¢ tax</del>
<del>1.15 to 1.49</del>	<del>4¢ tax</del>
<del>1.50 to 1.84</del>	<del>5¢ tax</del>
<del>1.85 to 2.14</del>	<del>6¢ tax</del>
<del>2.15 to 2.49</del>	<del>7¢ tax</del>
<del>2.50 to 2.84</del>	<del>8¢ tax</del>
<del>2.85 to 3.14</del>	<del>9¢ tax</del>
<del>3.15 to 3.49</del>	<del>10¢ tax</del>
<del>3.50 to 3.84</del>	<del>11¢ tax</del>
<del>3.85 to 4.14</del>	<del>12¢ tax</del>
<del>4.15 to 4.49</del>	<del>13¢ tax</del>
<del>4.50 to 4.84</del>	<del>14¢ tax</del>
<del>4.85 to 5.00</del>	<del>15¢ tax</del>

On transactions over five dollars, the tax shall be computed at a straight three percent, one-half cent or more being treated as one cent. The foregoing bracket system shall not relieve the dealer from the duty and liability to remit an amount equal to three percent of his gross taxable sales as provided in this chapter.

§ 58-441.46 58.1-639 . Severability.—If any provision of this chapter be held unconstitutional or invalid by a court of competent jurisdiction the same shall not affect the remaining provisions of this chapter but all such provisions not held unconstitutional or invalid shall remain in full force and effect. If, however, a court of competent jurisdiction should hold that the sales tax or the use tax levied by this chapter is for any reason invalid in its relationship to national banks, it is hereby provided that State state banks shall thenceforth enjoy immunity from such tax or taxes to the same extent as national banks.

Source: § 58-441.46.

Comment: No change.

## CHAPTER 7.

### BEER AND BEVERAGE EXCISE TAX.

§ 58.1-700. Definitions.—As used in this chapter, unless the context clearly shows otherwise, the term or phrase:

“Barrel” means any container or vessel having a capacity of more than forty-three ounces.

“Beer” means any beverage obtained by the alcoholic fermentation of an infusion or decoction of barley, malt and hops or of any similar products in drinkable water and containing, unless otherwise expressly provided, more than three and two-tenths percent of alcohol by weight. This definition shall include ale, porter and stout.

“Beverage” means beer, wine, similar fermented malt or vinous liquor or fruit juice, containing one-half of one percent or more of alcohol by volume, and not more than three and two-tenths percent of alcohol by weight.

“Bottle” means any vessel intended to contain liquids and having a capacity of not more than forty-three ounces.

“Bottler” means any person licensed to bottle and sell beer or beverages to other persons for resale only.

“ABC Commission” means the Virginia Alcoholic Beverage Control Commission.

“Licensed” means the holding of a valid license issued pursuant to § 4-25 or § 4-102.

“Manufacturer” means any person licensed to manufacture beer or beverages for sale to other persons for resale only and shall include any person licensed as a brewery located within the Commonwealth, and every person holding a beer importer's license who enters into an agreement as defined in § 4-118.4 with any beer wholesaler licensed to do business in the Commonwealth.

“Retailer” means any person licensed to sell beer or beverages at retail only and not for resale.

“Sale” and “sell” means transfer by gift, exchange, barter and traffic, and any delivery made by any means whatsoever, of beer or beverages; soliciting or receiving an order for beer or beverages; keeping, offering or exposing the same for sale; or peddling.

“Wholesaler” means any person licensed to sell beer or beverages to retailers or other beer or beverage wholesalers for the purpose of resale.

Source: §§ 4-99, 4-2, 4-40(h) and 4-118.4

Comment: Relocates scattered definitions of terms to the front of the chapter. The definition of “sale” includes a “gift.” See § 4-40(h)

§ 58.1-701. Excise tax levied; rate.—There is hereby levied on all beer and beverages sold in Virginia an excise tax at the rate of seven dollars and ninety-five cents per barrel of thirty-one gallons, and a tax at the same rate on such beer and beverages in barrels of more or less than thirty-one gallons. However, on such beer and beverages in bottles of not more than seven ounces each the tax shall be two cents per bottle. On beer and beverages in bottles of more than seven ounces each but not more than twelve ounces each the tax shall be two and sixty-five hundredths cents per bottle. On such beer and beverages in bottles of more than twelve ounces each the tax shall be two and twenty-two one hundredths mills per ounce per bottle. The tax herein levied shall be paid by the manufacturer, bottler or wholesaler selling such beer or beverages to persons licensed to sell beer at retail.

Source: §§ 4-40(b), 4-108(b).

Comment: This portion of this act and all of Chapter 7 is a combination of the beer tax provisions of §§ 4-40 through 4-44 and the beverage tax provisions of §§ 4-108 through 4-109.1 and § 4-111. Duplicative language has been eliminated; the new provisions apply uniformly to beer and beverages (with less than 3.2 percent alcoholic content.)

§ 58.1-702. When seller to pay tax.—Any person selling or offering for sale in the Commonwealth any beer or beverages purchased or obtained from any person not licensed

either as a manufacturer, bottler, or wholesaler under the provisions of this chapter, and on which the excise tax herein levied has not been paid, shall pay the tax levied in § 58.1-701.

Source: §§ 4-40(c), 4-108(c).

Comment: These sections have merely been made to apply to both beer and beverages.

§ 58.1-703. Exemptions.—A. The excise tax herein provided for shall not be chargeable against any manufacturer, bottler or wholesaler on any beer or beverages:

1. Shipped out of the Commonwealth by such manufacturer, bottler or wholesaler for resale outside of the Commonwealth;

2. 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;

3. Sold to the Veterans Administration for resale to veterans of the armed services of the United States who are hospitalized or domiciled in hospitals and homes of the Veterans Administration within the geographical confines of Virginia;

4. Shipped to a post exchange of the armed services of the United States for resale by such post exchange, whether such post exchange be located on a United States military or naval reservation or not;

5. Shipped to any instrumentality of the United States which is exempt on constitutional grounds from the excise tax levied by this section; or

6. Sold and delivered to foreign ~~naval~~ ships or aircraft actually engaged in foreign commerce or commerce between ~~any the United States Atlantic and Pacific ports~~ of the United States or commerce between the United States and any of its possessions outside of the several states and the District of Columbia.

B. The exemptions allowed in paragraphs one, four and five of subsection A of this section shall be applicable only if, in each case, evidence satisfactory to the State Tax Commissioner is submitted to the Department in writing that such beer or beverages were so shipped.

Source: §§ 4-40(f), 4-108(e).

Comment: These sections were merely combined and made to apply uniformly to both beer and beverages.

§ 58.1-704. Monthly reports; payment of tax.—On or before the tenth day of each month each person manufacturing, bottling or selling beer or beverages in the Commonwealth shall file a report under oath with the Tax Commissioner, on forms prescribed by the Commissioner, showing the quantity of all beer and beverages manufactured, bottled or sold by such person during the preceding month. Such report shall also show the amount of tax, if any, for which such person is liable under the provisions of this chapter, and any other information as the Commissioner may require. Corporations licensed to sell beer or beverages in dining cars, buffet cars, club cars or boats shall have thirty days from the end of each month to file such reports. At the time of such filing such person shall pay the Tax Commissioner all such excise taxes chargeable against him under the provisions of this chapter, unless such taxes have been previously paid.

The provisions of this section as to the filing of such monthly reports shall not be applicable to any person licensed hereunder to sell beer or beverages at retail who purchases beer or beverages solely from manufacturers, bottlers or wholesalers licensed in this Commonwealth if such person has duly filed with the Tax Commissioner the contract or agreement pursuant to § 58.1-711.

Source: §§ 4-40(e), 4-108(d).

Comment: The sections are merely combined.

§ 58.1-705. Filing by nonresident manufacturers.—Nonresident manufacturers, on or before the fifteenth day of each month, shall forward a copy of each invoice required pursuant to § 58.1-707 or a listing of all such invoices for the preceding month to the ABC Commission and the Tax Commissioner as a condition of shipment into or doing business in Virginia.

Source: §§ 4-41(f), 4-111(a).

Comment: This section has been moved to the portion of the chapter dealing with reporting requirements.

§ 58.1-706. Commissions.—Any person filing the report required by § 58.1-704 and paying such excise tax required by § 58.1-701 shall be allowed a commission of one percent of the amount of tax due as compensation for the expense of maintaining records and preparing reports so as to account for and remit the tax levied by this chapter. Such commission shall also be allowed as compensation for the expense, if any, of compliance with the requirements of § 58.1-712. Such commission shall be accounted for in the form of a deduction from the amount of tax which would otherwise be due.

Source: §§ 4-40(e), 4-108(d).

Comment: This is a new section. No substantive change has been made. Portions of the source sections have been combined to form this new section.

§ 58.1-707. Records, invoices, and accounts of manufacturers, bottlers, wholesalers and operators of boats and dining cars.—A. Every manufacturer, bottler and wholesaler licensed in the Commonwealth shall keep a complete, accurate and separate record of all beer and beverages manufactured, bottled, purchased, sold or shipped by him. Such record shall show:

1. The quantities of all such beer or beverages manufactured, bottled, purchased, sold or shipped by him;
2. The dates of all sales, purchases and deliveries;
3. The names and addresses of all persons to or from whom such sales, purchases and deliveries are made; and
4. The price charged for such sales, purchases and deliveries.

B. Every manufacturer and wholesaler, at the time of delivering beer or beverages to any person, shall also prepare a duplicate invoice showing:

1. The date of delivery;
2. The quantity and value of each delivery; and
3. The name of the purchaser to whom the delivery is made.

C. Persons operating boats, dining cars, buffet cars and club cars upon or in which beer or beverages is sold shall keep such records of the sale of such beer or beverages as the State Tax Commissioner shall prescribe.

Source: Subsection A - §§ 4-44(a), 4-111(a).

Comment: Subsection A - Manufacturers, bottlers and wholesalers must now keep record of purchases, in addition to the other requirements of the original § 4-44(a) and § 4-111(a). Record of the excise tax applicable to each sale or delivery is no longer required.

Source: Subsection B - §§ 4-41(f), 4-109(f).

Comment: Subsection B - Record of the excise tax applicable to each sale or delivery is no longer required.

Source: Subsection C - §§ 4-41(g), 4-109(g).

Comment: No substantive change. Duplicative language as to filing of monthly reports has been deleted.

§ 58.1-708. Records, invoices and accounts of retailers.—A. Every retailer shall keep a complete, accurate, and separate record of:

1. All purchases of beer and beverages;
2. The dates of such purchases;
3. The kinds and quantities of beer and beverages purchased;
4. The prices charged him therefor; and
5. The names and addresses of the persons from whom purchased.

B. Every retailer, unless he has signed the agreement provided in § 58.1-711, shall also keep an accurate account of daily sales showing quantities of beer and beverages sold and the total

price charged by him therefor; such account need not give the names or addresses of the purchasers thereof.

Source: §§ 4-44(b), 4-111(b).

Comment: The retention of records provision has been moved to § 58.1-709. The remaining language is identical to that of §§ 4-44(b) and 4-111(b).

§ 58.1-709. Retention of records; penalty for failure to keep proper records.—A copy of all records and invoices required by §§ 58.1-707 and 58.1-708 shall be retained by the manufacturer, bottler, wholesaler or retailer for a period of *three* years, subject to the use and inspection of the ABC Commission and the Tax Commissioner or their agents. Any person who fails, upon demand of the ABC Commission or the Tax Commissioner, to produce such records and invoices, upon conviction shall be guilty of a Class 2 misdemeanor.

Source: §§ 4-41(f), 4-109(f), 4-41(m), 4-109(m).

Comment: The two year retention provision has been increased to three years and made uniformly applicable to retailers, manufacturers, bottlers, and wholesalers. This three year retention provision also corresponds with the applicable statute of limitations. The penalty is also classified as a Class 2 misdemeanor.

§ 58.1-710. Inspection.—All records, invoices and accounts required by § 58.1-707 and § 58.1-708 shall be kept by each manufacturer, bottler, wholesaler and retailer at the place of business designated in his license and shall at all times be open to inspection by the ABC Commission, the Tax Commissioner and any agent designated thereby. The ABC Commission, the Tax Commissioner and their agents at all times shall be allowed free access during business hours to every place in Virginia where alcoholic beverages are manufactured, bottled, stored, offered for sale or sold, for the purpose of examining and inspecting such place and all records, invoices and accounts therein.

Source: §§ 4-44(c), 4-111(c).

Comment: The provisions of these sections now apply uniformly to beer and beverages. There is no substantive change.

§ 58.1-711. Contract with Tax Commissioner.—~~No retail license authorizing the~~ Every retailer ~~to sell of~~ beer or beverages shall be valid until the ~~retailer~~ shall have filed a satisfactory contract or agreement with the Tax Commissioner stating that the retailer will purchase beer or beverages for resale solely from manufacturers, bottlers, or wholesalers licensed in the Commonwealth. Corporations licensed to sell beer or beverages on dining cars, club cars, *buffet cars* or boats, in lieu of filing such a contract or agreement, may file a bond with the Tax Commissioner in such penalty and with such surety as the Commissioner may find to be sufficient to cover the tax liability of such corporation, but in no event to be less than \$1,000. The Tax Commissioner shall promptly notify the ABC Commission of each such bond filed, each such contract or agreement entered into, and each amendment, alteration, cancellation or violation thereof. Any person who violates the terms of the contract or agreement herein provided for, upon conviction, shall be guilty of a Class 2 misdemeanor.

Source: 4-40(d), 4-108(c).

Comment: The provision of § 4-40(d) requiring the Commissioner to notify the ABC Commission of each bond filed now applies to both beer and beverages. The violation is classified as a Class 2 misdemeanor.

§ 58.1-712. Bond required to secure tax liability.—A. No manufacturer, bottler or wholesaler shall be licensed to sell beer or beverages to a licensed retailer until he files a bond with the Tax Commissioner in such sum and with such surety as the Tax Commissioner shall find adequate to cover the tax liability of each such manufacturer, bottler, or wholesaler. The sum of such bond shall be proportioned to the volume of business of each such manufacturer, bottler or wholesaler, but shall in no event be less than \$1,000 or more than \$100,000. Such bond shall be conditioned upon the payment by such manufacturer, bottler or wholesaler of the tax imposed by this chapter in accordance with the provisions of this chapter.

B. The Tax Commissioner is authorized to waive the requirement of a *both the surety and the bond*, in cases where a manufacturer, bottler or wholesaler has previously demonstrated his financial responsibility. The Tax Commissioner shall promptly notify the ABC Commission of each such bond filed or the termination thereof or of its guaranty or surety. Upon receipt of notice by the ABC Commission of the termination of such bond, its guaranty or surety, the ABC Commission, upon reasonable notice to the manufacturer, bottler, or wholesaler so licensed, may suspend the license so granted until such time as the required bond is filed or the proper surety or guaranty is given, as the case may be. Any manufacturer, bottler or wholesaler which has

filed such a bond pursuant to comparable requirements of any section of Chapter 1 of Title 4 shall not be required to file an additional bond hereunder if the bond filed pursuant thereto is conditioned upon and sufficient to cover the tax liability of such manufacturer, bottler or wholesaler under this section and such other requirements.

Source: Subsection A-§§ 4-40(e), 4-108(d).

Comment: The sections were merely combined. No substantive change.

Source: Subsection B-§§ 4-40(e), 4-108(d).

Comment: These sections were simply combined; the language is identical.

§ 58.1-713. Penalties.—A. Any person, except as herein provided, who shall sell beer or beverages to retailers or consumers, without paying the excise tax imposed by § 58.1-701 as provided therein, and any retailer ~~or consumer~~, except as herein provided, who shall purchase, receive, transport, store or sell any beer or beverages on which such retailer ~~or consumer~~ has reason to know such tax has not been paid and may not be paid shall be deemed guilty of a Class 1 misdemeanor.

B. Any person who fails, neglects or refuses to comply with or violates any provision of this chapter which contains no specific penalty for the violation thereof, or any of the rules and regulations prescribed, adopted and promulgated by the Tax Commissioner under the provisions of this chapter shall be guilty of a Class 2 misdemeanor.

Source: §§ 4-41(i), 4-41(n), 4-109(i), 4-109(n)

Comment: This section contains all criminal penalties. The Subsection A penalties are classified as Class 1 misdemeanors. The penalty imposed on consumers has been deleted. The Subsection B penalties are Class 2. The retention of records penalty has been moved to § 58.1-709.

§ 58.1-714. Additional penalties.—On each manufacturer, bottler or wholesaler who shall fail to make any return and pay the full amount of the tax required by § 58.1-701, there shall be imposed, in addition to other penalties provided herein, a specific penalty, to be added to the tax, in the amount of five percent if the failure is for not more than thirty days, with an additional five percent for each additional thirty days, or fraction thereof, during which the failure continues. Such penalty shall not exceed twenty-five percent in the aggregate. In the case of a false or fraudulent return, where willful intent exists to defraud the Commonwealth of any tax due under this chapter, a specific penalty of fifty percent of the amount of the proper tax due shall be assessed. All penalties and interest imposed by this chapter shall be payable to the Tax Commissioner and if not so paid shall be collectible in the same manner as if they were a part of the tax imposed. The Tax Commissioner shall promptly notify the ABC Commission of each such failure on the part of a manufacturer, bottler, wholesaler or retailer to pay such tax. Upon receipt of such notice the ABC Commission, after reasonable notice to the manufacturer, bottler, wholesaler or retailer, may suspend or revoke the license of the manufacturer, bottler, wholesaler or retailer.

Source: §§ 4-41(i), 4-109(i)

Comment: These sections, containing all civil penalties, were merely combined. There is no substantive change.

§ 58.1-715. Refund of taxes on beer and beverages subsequently destroyed or damaged.—In any case in which beer or beverages were or are (i) damaged, destroyed, or otherwise deemed to be unsalable by reason of fire or any other providential cause before sale to the consumer, (ii) destroyed voluntarily because such beer or beverages were defective and such destruction was made in the presence of an inspector of the ABC Commission and such fact is certified to by affidavit of the inspector, or (iii) destroyed in any manner while in possession of a common, private or contract carrier, the manufacturer, bottler or wholesaler shall make report thereof to the Tax Commissioner as a portion of the report required by § 58.1-704. If the tax levied by § 58.1-701 has been paid to the Tax Commissioner shall certify such facts to the Comptroller for approval of a refund payment from the state treasury to such extent as may be proper if the amount of the tax paid thereon is fifty dollars or more.

Source: §§ 4-109.1, 4-42

Comment: No substantive change. The sections were merely combined to avoid duplication.

§ 58.1-716. Refund of tax paid on exempt beer and beverages.—Whenever it is proved to the satisfaction of the Tax Commissioner that any person has purchased beer or beverages that have been sold by him in such manner as to be exempt from the excise tax levied under § 58.1-701, the Tax Commissioner shall certify such facts to the Comptroller for approval of a refund

payment from the state treasury to such person to the extent as may be proper.

Source: §§ 4-41(s), 4-109(s)

Comment: These sections were merely made applicable to both beer and beverages.

§ 58.1-717. Disposition of money collected.-All moneys collected by the Tax Commissioner under the provisions of this chapter shall be promptly paid into the general fund of the state treasury.

Source: §§ 4-40(g), 4-108(f)

Comment: These sections were merely combined and made applicable to both beer and beverage excise taxes.

*§ 58.1-718. Tax Commissioner to enforce chapter; regulations relating to transportation.-The Tax Commissioner is hereby authorized to prescribe, adopt, promulgate and enforce rules and regulations relating to the administration and enforcement of the provisions of this chapter or to the transportation of beer and beverages through the Commonwealth, including a regulation to prohibit the direct shipment of beer or beverages from points outside the Commonwealth to a United States military or naval reservation located within the Commonwealth for resale on such reservation.*

Source: §§ 4-41(o), 4-41(p), 4-109(o) and 4-109(p)

Comment: No substantive change.

## CHAPTER 8.

### STATE RECORDATION TAX.

*§ 58.1-800. Title.—This chapter shall be known and may be cited as the “Virginia Recordation Tax Act.”*

Source: New section

Comment: Establishes a title for the chapter in conformance with other chapters.

~~§ 58-54 58.1-801 . Deeds generally ; charter amendments .— A. On every deed ; except a deed exempt from taxation by law, which is 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 fifteen cents on every hundred dollars \$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 ~~this State the Commonwealth~~ and partly without ~~this State the Commonwealth~~ , the tax herein imposed shall apply only to the value of so much of the property conveyed as is situated within the ~~State of Virginia~~ 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 fifty cents.

Source: § 58-54.

Comment: No substantive change.

~~§ 58-54.1 58.1-802 . Same; Additional tax paid by grantor; collection .— A. In addition to any other tax imposed under the provisions of this article chapter , there a tax is hereby imposed on each deed, instrument, or writing by which any lands, tenements or other realty sold shall be is granted, assigned, transferred, or otherwise conveyed to, or vested in the purchaser or purchasers , or any other person or persons , by his such or their purchaser's direction ; . The rate of the tax, when the consideration or value of the interest exceeds \$100, a tax at the rate of shall be fifty 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 § 58-63.1 § 58.1-814 shall be deemed authorized by enactment hereof this section . The tax imposed under this section shall not apply to any instrument or writing given to secure a debt.~~

*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.*

~~The tax imposed by this section shall not apply to any deed conveying real estate from an incorporated college or other incorporated institution of learning, not conducted for profit, or from the Commonwealth or any county, city, town, district or other political subdivision thereof or to any conveyance of real property 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 party or parties taxable pursuant to this section.~~

No such deed, instrument or other writing shall be admitted to record without certification of the clerk of the court wherein first recorded having been affixed thereto that the tax imposed by this section has been paid ; . and The clerk shall include within the certificate aforesaid the amount of such tax collected thereon.

~~The tax imposed by this section shall be paid by the grantor or of any person who makes or signs on his behalf any of the deeds, instruments or writings subject to the tax imposed by this section.~~

*B.* Taxes imposed by this section shall be collected as provided in § 58-62 58.1-812 and the clerk shall return taxes collected hereunder one-half into the State state treasury and one-half into the treasury of the locality or localities wherein the property is located in the proportion that the value of the property located in each such locality bears to the total value of such property.

Every clerk of court collecting such taxes under this section for the county or city which he serves shall be entitled to compensation for such service in an amount equal to at five percent of the amount so collected and paid.

Source: § 58-54.1.

Comment: The section has been rearranged for clarity. The exemption provisions have been moved to § 58.1-811.

~~§ 58-55~~ 58.1-803. Deeds of trust or mortgages ; *maximum tax* .— A. A recordation tax on deeds of trust or mortgages ~~the tax shall be~~ *is hereby imposed at a rate of fifteen cents upon* on every \$100 or portion thereof of the amount of bonds or other obligations secured thereby. In the event of an open or revolving deed of trust, the amount of ~~the~~ obligation for purposes of this section shall be the maximum amount which may be outstanding at any one time. In any case in which the amount which may be secured under a deed of trust or mortgage is not ascertainable, 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 ; ~~but . including~~ *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 ~~or other internal improvement company, lying partly in this within the Commonwealth and partly in another state without the Commonwealth , such~~ 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 ~~this the Commonwealth bears to the whole number of miles of the lines~~ *line* of such company conveyed by such deed of trust or mortgage.

Upon deeds of trust or mortgages conveying other property lying partly within ~~this the Commonwealth and partly without this the Commonwealth~~ the tax herein imposed shall be only upon such proportion of the debt secured as the value of the property located within ~~this the Commonwealth, or which may be brought into this the Commonwealth, bears to the entire~~ amount of property conveyed by such deed of trust or mortgage.

C. On deeds of trust or mortgages, which provide for an initial issue of bonds, ~~and to be followed thereafter by additional bonds, unlimited in amount, if such deed of trust or mortgage shall provide~~ *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 ~~shall be~~ *is* recorded.

On deeds of trust or mortgages which are supplemental to or wrap around existing deeds of trust 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 existing debt secured by a deed of trust or mortgage on which tax has been paid. The instrument shall certify the amount of the existing debt.

D. On deeds of trust or mortgages , the purpose of which is to refinance or modify the terms of an existing debt with the same lender, 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 only on that portion of the amount of the bond or other obligation secured thereby which is in addition to the amount of the existing debt secured by a deed of trust or mortgage on which the tax has been paid. The instrument shall certify the amount of existing debt.

E. ~~On and after July 1, 1978,~~ The maximum tax on the recordation of any deed of trust or mortgage or on any indenture supplemental thereto shall be determined in accordance with the following schedule:

On the first ~~\$10,000,000~~ *ten million dollars* of value as determined pursuant to this section, fifteen cents upon every \$100 or portion thereof;

On the next ~~\$10,000,000~~ *ten million dollars* of value as determined pursuant to this section, twelve cents upon every \$100 or portion thereof;

On the next ~~\$10,000,000~~ *ten million dollars* of value as determined pursuant to this section, nine cents upon every \$100 or portion thereof;

On the next ~~\$10,000,000~~ *ten million dollars* of value as determined pursuant to this section,

six cents upon every \$100 or portion thereof; and

On all over ~~\$40,000,000~~ *forty million dollars* of value as determined pursuant to this section, three cents upon every \$100 or portion thereof.

Source: § 58-55.

Comment: No ~~substantive change~~. The 1983 Session amendment pertaining to wraparound deeds of trust has been incorporated into this section. Language referring to internal improvement companies in subsection B has been stricken.

~~§ 58-55.1~~ *58.1-804* . Construction loan deeds of trust or mortgages.— A. ~~(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 ; . ~~and~~ 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. ~~(b)~~ The tax provided by ~~§ 58-55~~ *58.1-803* shall apply to construction loan deeds of trust or mortgages.

C. ~~(c)~~ The tax provided by ~~§ 58-55~~ *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 ; ~~but~~ . 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 ; . ~~provided; However; that~~ 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.

~~(d) Deeds of trust and mortgages which are exempt from the recordation tax under §58-64 shall be also exempt under this section.~~

Source: § 58-55.1.

Comment: The stricken language has been moved to § 58.1-811, the general exemption section.

~~§ 58-56~~ *58.1-805* . Deeds of release.—The *recordation tax levied* on a deed of release shall be fifty cents.

Source: § 58-56.

Comment: No substantive change.

~~§ 58-57~~ *58.1-806* . Deeds of partition; transfers pursuant to decree of divorce or separate maintenance, etc.— A. The tax on *the recordation of* 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 copartners *shall be fifty cents per deed.* ; ~~or~~

B. *The tax on* 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, shall be fifty cents per deed.

Source: § 58-57.

Comment: No substantive change.

~~§ 58-58~~ *58.1-807* . Contracts generally; leases.— A. *Except as hereinafter provided*, on every contract or memorandum thereof relating to real or personal property ~~which is~~ admitted to record, ~~the except as hereinafter provided, a recordation tax shall be~~ *is hereby levied at the rate of fifteen cents on every \$100 or fraction thereof of the consideration or value contracted for ; . however (i)*

B. ~~The tax for recording~~ *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 ~~§ 58-60~~ § 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 which case~~ . *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, ~~but~~ including the value of any realty required by the terms of the lease to be constructed thereon by the lessor ; ~~and~~ .

C. ~~(ii)~~ The ~~tax for recording~~ *recording* 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 which~~ . *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 recording* of leases of oil and gas rights shall not exceed twenty-five dollars. The tax on *the recording* of leases of coal and other mineral rights shall not exceed fifty dollars.

~~The tax imposed by this section shall not apply to any lease to the United States, the Commonwealth, or any county, city, town, district or other political subdivision of this Commonwealth.~~

Source: 58-58.

Comment: No substantive change. The 1983 Session amendment, which has been stricken, has been moved to the general exemption section.

~~§ 58-59~~ 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, ~~admitted to record~~ the tax shall be fifteen cents on every ~~hundred dollars~~ \$100 or fraction thereof of the amount contracted for in such contract or agreement ; . ~~except in the case of a~~ *However, where* ~~When such contract or agreement is with a railroad corporation lying partly in this State within the Commonwealth and partly in another state without the Commonwealth , in which case 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 this State the Commonwealth bears to the whole number of miles of line of such railroad corporation.~~

Source: § 58-59.

Comment: No substantive change.

~~§ 58-60~~ 58.1-809 . When supplemental writings not taxable.—Sections ~~58-56, 58-58, and 58-59~~ 58.1-803, 58.1-807, and 58.1-808 are not to be construed as requiring the payment of any tax for the ~~admitting to record~~ *recording* of any deed of trust, deed of subordination, mortgage, contract, agreement, modification, addendum, or other writing supplemental to any such ~~deeds~~ *deed* , mortgage, contract, agreement, modification, addendum, or other writing theretofore admitted to record , *hereinafter called the prior instrument*, ~~and~~ upon which the tax herein imposed has been paid, or which is exempt from the tax herein imposed by reason of subsection ~~(e)~~ C of § 58.1-804 , ~~hereinafter called the prior instrument~~, when the sole purpose and effect of the supplemental instrument ; or ~~other~~ writing is 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, ~~or~~ to alter the priority of the instrument, or to modify the terms, conditions, parties, or provisions of such prior instruments, other than to increase the amount of the principal obligation secured thereby ; ~~but in such case there shall be no tax for the admitting to record of such supplemental instrument or other writing~~ .

The assumption of a deed of trust shall not be separately taxable under §§ ~~58-54, 58-55, or § 58-58~~ 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.

Source: § 58-60.

Comment: No substantive change.

§ 58.1-810. ~~§ 58-61~~. What other deeds not taxable.—A. When the tax has been paid at the time of the recording of the original deed, no additional recording 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; ~~provided, that~~ 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 recorded within three years of the date of recordation of the deed of trust or mortgage*

~~B. No recordation tax shall be required for admitting to record any deed of gift between an individual grantor or grantors and an individual grantee or grantees when no consideration has passed between the parties; however, any such deed shall state therein that it is a deed of gift.~~

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Source: § 58-61.

Comment: The stricken language in paragraph 5 is unnecessary. A notice of assignment is never taxable. The added language clarifies the point that a note is assigned, not a deed of trust. The gift exemption has been moved to § 58.1-811, the general exemption section.

~~§ 58-62. Tax collected in office of first recordation only. The tax on every deed, contract or other instrument shall be determined and collected by the clerk in whose office it is first offered for recordation and such instrument may thereafter be recorded in the office of any other clerk without the payment of any tax.~~

~~§ 58-63. Rerecordation after destruction of record. Any instrument may be rerecorded free of tax in the same clerk's office when the record containing such instrument has been destroyed by fire or otherwise.~~

Comment: The stricken language has been placed in § 58.1-812, which pertains to payment and collection of the tax.

~~§ 58-64. Exemptions from state recordation tax .—A. The taxes imposed by §§ 58-54 §§ 58.1-801 and 58-55 58.1-803 shall not apply to any deed conveying 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 the trustee or trustees of any church or religious body, 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 ~~this~~ 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 and/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 of 1954, 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 of 1954, as it exists at the time of liquidation;
8. To the surviving or new corporation upon merger or consolidation of two or more corporations;
9. ~~8a.~~ 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 of 1954, as amended;

10. 9. To a partnership, when the grantors are entitled to receive not less than fifty percent of the profits and surplus of such partnership;

11. 10. From a partnership, when the grantees are entitled to receive not less than fifty percent of the profits and surplus of such partnership;

12. 11. To trustees of a trust, when the grantors in the deed and the beneficiaries of the trust are the same persons; or

13. 12. 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 security trust defined in § 55-58.1, 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 decedent's spouse or the kindred of decedent or decedent's spouse in accordance with a dispositive provision in the trust instrument.

B. The taxes imposed by §§ 58-54 and 58-55 §§ 58.1-801, 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;

3. Given by any nonstock corporation organized exclusively for the purpose of owning and/or operating a hospital or hospitals not for pecuniary profit.

C. The tax imposed by § 58.1-802 shall not apply to any:

1. Instrument or writing given to secure a debt;

2. Deed conveying real estate from an incorporated college or other incorporated institution of learning not conducted for profit;

3. Deed conveying real estate from the Commonwealth or any county, city, town, district or other political subdivision thereof; or

4. 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.

D. No recordation tax shall be required for the recordation of any deed of gift between an individual grantor or grantors and an individual 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 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. ~~C.~~ The words "trustee or trustees," as used in paragraph s A 2 of subsection A and B paragraph 2 of subsection B , mean the trustees mentioned in § 57-8 and the ecclesiastical officers mentioned in § 57-16.

Source: §§ 58-64, 58-54.1, 58-55.1, 58-58, 58-64.1.

Comment: Most of the general exemptions, such as those previously found in §§ 58-54.1, 58-64.1 and 58-58, have been moved to this section.

~~§ 58-64.1. Exemption of certain deeds and leases to The Nature Conservancy or to agency of United States government. The taxes imposed by §§ 58-54, 58-54.1, 58-58 and 58-65.1 shall not apply to any deed of gift conveying real estate or any interest therein to The Nature Conservancy or to an agency of the United States government; nor to any lease of real property or any interest therein to the Nature Conservancy or to an agency of the United States government where such real estate is intended to be used exclusively for the purpose of~~

preserving wilderness, natural or open space areas.  
Comment: This exemption has been placed in § 58.1-811.

§ 58.1-812. ~~§ 58-65.~~ Payment prerequisite to recordation; *exceptions*; assessment and collection of tax; penalty for misrepresentation.— *A. Except as otherwise provided in this article 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. 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. Any instrument may also be recorded free of tax in the office of the clerk where such instrument was originally recorded when the record containing such instrument has been destroyed by fire or otherwise.*

*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 of court shall assess and collect the tax levied under this article and may ascertain the consideration of the deed or of the instrument and the actual value of the property conveyed by inquiry, affidavit, declaration or other extrinsic evidence acceptable to the clerk. If the proper tax is not collected upon recordation and remains uncollected for a period of thirty days following notice to such clerk by the Department, the Department may proceed to assess and collect any such State and local tax which is due in the same manner and by the same methods as any State tax administered by the Department. Any local tax collected by the Department hereunder, shall be deposited in the State treasury and the Comptroller shall draw his warrant on the Treasurer of Virginia for the amount due to any such city or county.*

*C. Any person who knowingly misrepresents any of the information requested by the clerk of court pursuant to this section ; shall be guilty of a Class 2 misdemeanor.*

Source: §§ 58-65, 58-62 and 58-63.

Comment: All provisions pertaining to payment of the tax being a prerequisite to recordation, and exceptions thereto, have been placed in this section. The duties and powers of the clerk of court have also been moved to this section.

§ 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.*

Source: § 58-65.

Comment: New section.

§ 58.1-814. ~~§ 58-65-1.~~ City or county recordation tax.—*In addition to the State state recordation tax imposed by this article 2 (§ 58-54 et seq.) chapter , the council of any city and the governing body of any county may , pursuant to Chapter 38 (§ 58.1-3800 et seq.) of Title 58.1, impose a city or county recordation tax in an amount equal to one - third of the amount of State state recordation tax collectible for the State on the first recordation of each taxable instrument in such city or county; provided, however, that, except as set out in the third paragraph of this section and except in a case in which the State recordation tax is fifty cents specifically, where a deed or other instrument conveys, covers or relates to property located in the county or city of first recordation and also to property located in another county or city, or in other counties or cities, the tax imposed under the authority of this section by the county or city of first recordation shall be computed only with respect to the property located in such county or city; and when such deed or other instrument is recorded in the other county or city, or in other counties or cities, the tax imposed by each of them under the authority of this section shall be computed only with respect to the property located in each of them, respectively .*

*Every clerk of court collecting any such city or county tax and paying the same into the treasury of his city or county shall be entitled to compensation for such service in an amount equal to five per centum of the amount so collected and paid over.*

In the event any county has imposed the tax authorized by this section and there is located in such county a city which has 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 same; and 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.

This section shall not be construed as affecting or repealing any city charter provision.

Source: § 58-65.1.

Comment: The local recordation tax provisions have been relocated to Subtitle III, which deals exclusively with local taxes. Mention of the local recordation tax has been left in this chapter for reference purposes.

## CHAPTER 9.

### VIRGINIA ESTATE TAX.

#### Article 1.

##### Substantive Provisions Generally.

~~§ 58.1-900 § 58-238.1~~ . ~~Short Title.~~—This chapter shall be known *and may be cited* as the “Virginia Estate Tax Act.”

Source: § 58-238.1

Comment: No substantive change.

~~§ 58.1-901 § 58-238.2~~ . ~~Definitions.~~—~~The following definitions shall apply throughout this chapter unless the context requires otherwise. As used in this chapter, unless the context clearly shows otherwise, the term or phrase:~~

A. “Decedent” means a deceased person.

B. “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 ; ~~provided however, that~~ . In no event , ~~however~~, shall such amount be less than the federal credit allowable by § 2011 of the Internal Revenue Code as it existed on January one, ~~nineteen hundred seventy-eight~~ 1, 1978 .

C. “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.

D. “Nonresident” means a decedent who was domiciled outside of the Commonwealth of Virginia at his death.

E. “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.

F. “Resident” means a decedent who was domiciled in the Commonwealth of Virginia at his death.

G. “State” means any state, territory or possession of the United States and the District of Columbia.

H. “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.

I. “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 ~~shall mean~~ *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.

Source: § 58-238.2

Comment: No substantive change.

~~§ 58.1-902 § 58-238.3~~ . ~~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 ~~situate~~ *situate* 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.

Source: § 58-238.3

Comment: Language added in subsection B clarifies when a credit is allowed.

~~§ 58.1-903 § 58-238.4 . Tax on transfer of taxable estate of nonresidents; property of nonresident defined ; exemptions .—A. A tax in an amount computed as provided in this section is imposed on the transfer of the every nonresident's taxable estate located in the Commonwealth of Virginia of every nonresident .~~

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.

Source: § 58-238.4

Comment: No substantive change.

~~§ 58.1-904 § 58-238.5 . 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 ~~situate~~ 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 ~~situate~~ *situate* 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.

Source: § 58-238.5

Comment: No substantive change.

§ 58.1-905 § 58-238.6 . 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, the filing required by subsection A shall be similarly extended until the end of the time period granted in the extension of time for the federal estate tax return. Upon obtaining an extension of time for filing the federal estate tax return, 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 when the return covering this tax is required to be filed under subsection A or B; ~~provided however, if~~ . If such tax be is paid pursuant to subsection B, interest, at a rate equal to the rate of interest established pursuant to § 58-1160 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.

Source: § 58-238.6

Comment: No substantive change.

§ 58.1-906 § 58-238.7 . 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 § 58-1160 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 sixty 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 pay such additional tax, together with interest as provided in § 58-1160 58.1-15 , at the same time he files the notice.

Source: § 58-238.7

Comment: No change

§ 58.1-907 § 58-238.8 . Certification of payment by Department.—Upon the payment of the estate tax, or if no tax is due pursuant to a filing under § 58-238.6 or 58-238.7 §§ 58.1-905 or 58.1-906 , upon the ascertainment of that fact, the Department shall certify such fact to the personal representative.

Source: § 58-238.8

Comment: No substantive change.

§ 58.1-908 § 58-238.9 . Nonpayment of tax; lien for unpaid taxes; certificate of release from lien.—A. ~~Unless the tax imposed under this chapter is sooner paid in full, it shall be a lien for ten years after the death of the decedent~~ A lien shall arise as follows upon all property, real or personal, of such decedent, located in the Commonwealth of Virginia , ~~under the provisions of subsection B of § 58-238.4 of every decedent having a taxable estate who fails to pay the tax imposed by this chapter for a period of ten years from the date of~~ . Such lien shall arise as follows :

1. In the case of a nonresident decedent *having a taxable estate* , such lien shall arise automatically upon the death of the decedent;

2. In the case of a resident decedent , such lien shall attach to the personal estate of the decedent only upon the filing by the Department of 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 ~~subsection~~ *subsections* B and D of this section.

D. When any lien under this section has attached and the Department is satisfied that ~~no tax liability exists or 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.

Source: § 58-238.9

Comment: Rewrites first paragraph for clarification. Provides that a lien will attach automatically to the property of a nonresident decedent only if such decedent has a taxable estate.

~~§ 58.1-909 § 58-238.10~~ . Liability of personal representative.—The tax and interest imposed by this chapter shall be paid by the personal representative. If any personal representative ~~shall make distribution~~ *distributes* either in whole or in part ~~of 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 become 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.~~

Source: § 58-238.10

Comment: No change

~~§ 58.1-910 § 58-238.11~~ . 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 ~~therefrom~~ 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 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~~ *circuit court* of the ~~City of Richmond may direct 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 ~~thereof as may be necessary and . He shall then deduct the tax from the proceeds of such sale and shall account for the balance, if any, in lieu of the property.~~

Source: § 58-238.11

Comment: No change

~~§ 58.1-911 § 58-238.12~~ . Final account.—No final account of a personal representative in any probate proceeding who is required to file a federal estate tax return ~~can~~ *shall* be allowed and approved by the court before whom such proceeding is pending unless the court 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.

Source: § 58-238.12

Comment: No change

~~§ 58-238.14. Administration by Department. A. The Department is charged with the administration and enforcement of this chapter and may promulgate such rules and regulations as may be required to effectuate the purposes of this chapter.~~

B. The Department shall ~~prescribe~~ and provide such books and forms as are requisite for

the execution of this chapter.

§ 58.1-912 § 58-238.15 . Deposit of funds.—All moneys collected pursuant to this chapter shall be paid into the general fund of the State state treasury.

Source: § 58-238.15

Comment: No change

58-238.16. Chapter applicable to ~~estates of decedents dying on or after January 1, 1980. This chapter shall apply to the transfers of the Virginia gross estate of decedents dying on or after January one, nineteen hundred eighty.~~

## Article 2

### Payment of Death Taxes Due by Nonresident

#### Decedents to Other States.

§ 58.1-913 § 58-238.17 . 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 of, 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, ~~as the case may be,~~ 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.*

Source: § 58-238.17 and § 58-238.18

Comment: The two sections which both pertain to proof of payment of death taxes have been combined.

§ 58-238.18. ~~Form of proof. The proof required by § 58-238.17 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.~~

§ 58.1-914 § 58-238.19 . Notice to domiciliary state if proof not filed.—If such proof ~~be~~ is not filed within the time limit set out in § 58-238.17 § 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 ~~therefore~~ the proof required in § 58-238.17 § 58.1-913.

~~Such~~ The clerk shall attach to such notice a plain copy of the will and codicils of ~~such~~ 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 ~~such~~ the clerk.

Source: § 58-238.19

Comment: No change

§ 58.1-915 § 58-238.20 . 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 ~~such~~ *the* court for such accounting. If such petition be filed within the period of sixty days, ~~such~~ *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.

Source: § 58-238.20

Comment: No substantive change.

§ 58.1-916 ~~§ 58-238.21~~ . Final accounting not granted without compliance.—Unless the provisions of either ~~§ 58-238.19~~ § 58.1-914 or ~~58-238.20~~ § 58.1-915 ~~shall~~ have been complied with, no such executor or administrator shall be entitled to a final accounting or discharge in any court in this Commonwealth.

Source: § 58-238.21

Comment: No change

§ 58.1-917 ~~§ 58-238.22~~ . 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.

Source: § 58-238.22

Comment: No change

§ 58.1-918 ~~§ 58-238.23~~ . How article construed.— The provisions of this article shall be liberally construed in order to ~~insure~~ *ensure* that the state of domicile of any decedent shall receive any death taxes, together with interest and penalties thereon, due to it.

Source: § 58-238.23

Comment: No change

§ 58.1-919 ~~§ 58-238.24~~ . 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.

Source: § 58-238.24

Comment: No change

### Article 3.

#### Interstate Compromise and Arbitration of Death Taxes.

§ 58.1-920 ~~§ 58-238.25~~ . Title of article.—This article shall be known and may be cited as the "Uniform Act on Interstate Compromise and Arbitration of Death Taxes."

Source: § 58-238.25

Comment: No change

§ 58.1-921 ~~§ 58-238.26~~ . 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.

Source: § 58-238.26

Comment: No change

§ 58.1-922 ~~§ 58-238.27~~ . Dispute as to domicile; compromise agreement.— When the State Tax Commissioner claims that a decedent was domiciled in this Commonwealth at the time of his death and the taxing authorities of ~~another~~ *other* state or states make a like claim on behalf of their state or 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 ~~and all~~ 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 thereafter 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.

Source: § 58-238.27

Comment: No change

§ 58.1-923 § 58-238.28 . Same; arbitration agreement; board of arbitrators.—When the State Tax Commissioner claims that a decedent was domiciled in this Commonwealth at the time of his death and the taxing authorities of another state or states make a like claim on behalf of their state or states, 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 such 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.

Source: § 58-238.28

Comment: No change

§ 58.1-924 § 58-238.29 . 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.*

Source: § 58-238.29 and 58-238.31

Comment: The sections relating to the operating procedures of the board have been combined. No substantive changes have been made.

§ 58.1-925 § 58-238.30 . Determination of domicile of decedent.—The board shall, by majority vote, 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.

Source: § 58-238.30

Comment: No change.

§ 58-238.31. Questions determined by majority vote. Except as provided in § 58-238.29 in respect of the issuance of subpoenas, all questions arising in the course of the proceedings shall be determined by a majority vote of the board.

§ 58.1-926 § 58-238.32 . Record of proceedings, agreement, etc., to be filed with taxing authorities.—The State 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 § 58-238.28 § 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.

Source: § 58-238.32

Comment: No change

§ 58.1-927 § 58-238.33 . When penalties and interest not imposed.—In any case where it is determined by the board that the decedent died domiciled in this Commonwealth 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 of the determination of the board as to

domicile.

Source: § 58-238.33  
Comment: No change

§ 58.1-928 ~~§ 58-238.34~~ . 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 ~~§ 58-238.28~~ § 58.1-923 fixing the amounts to be accepted by this and any other state involved, in full satisfaction of death taxes.

Source: § 58-238.34  
Comment: No change

§ 58.1-929 ~~§ 58-238.35~~ . 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 ~~among~~ 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.

Source: § 58-238.35  
Comment: No change

§ 58.1-930 ~~§ 58-238.36~~ . 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.

Source: § 58-238.36  
Comment: No change

#### Article 4.

##### Recapture Tax on Certain Use-Valuations.

§ 58.1-931 ~~§ 58-238.38~~ . Imposition of tax.—A. When the gross estate of a decedent at the date of death is of such value as to require a filing of 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.

Source: § 58-238.38  
Comment: No substantive changes. The section has been divided into a number of shorter sections.

§ 58.1-932 ~~€~~ . *Qualified heir personally liable.* — The qualified heir shall be personally liable for the additional tax imposed under ~~subsection B hereof~~ § 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 ~~subsection B~~ § 58.1-931 attributable to such interest has been satisfied or has become unenforceable by lapse of time; or

2. ~~Until~~ It is established to the satisfaction of the Commissioner that no further tax liability

attributable to such interest may arise under ~~subsection B~~ § 58.1-931 ~~herein~~ .

Source: § 58-238.38

Comment: No substantive change.

*§ 58.1-933. Notice of disposition or change in use of property.* – ~~D.~~ Any qualified heir is required to notify the Commissioner, on a form prescribed by ~~him~~ 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 ~~subsection B of this section~~ § 58.1-931 may be assessed until the expiration of three years from the date of such notification.

Source: § 58-238.38

Comment: No substantive change.

*§ 58.1-934. Purpose.* – ~~E.~~ The purpose of this ~~section~~ 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.

Source: § 58-238.38

Comment: No substantive change.

## Article 5.

### Generation Skipping Transfers.

*§ 58.1-935 § 58 238.27 . Definitions.*– A. Terms, phrases, and words used in this ~~section~~ article , except for those defined in subsection B of this section, shall be defined as they are defined under Chapter 13 of ~~sub~~title subchapter B of the Internal Revenue Code of 1954, as amended.

B. ~~The following terms, phrases, and words shall have the meaning ascribed to them hereunder. As used in this article the term or phrase:~~

1. “Federal generation skipping transfer tax” means the tax imposed by Chapter 13 of ~~sub~~title B subchapter A of the Internal Revenue Code of 1954, as amended.

2. “Generation skipping transfer” includes every transfer subject to the tax imposed under Chapter 13 of ~~sub~~title B 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.

3. “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.

Source: § 58-238.37

Comment: The source section has been divided into a number of shorter sections. No substantive changes.

~~C.~~ *§ 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 § 2602 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.

~~D.~~ B. A tax is hereby imposed upon every generation skipping transfer where the original transferor is not a resident of the Commonwealth of Virginia at the date of the original transfer, but where the generation skipping transfer includes real or personal property ~~in Virginia~~, *if the having a situs of such property is in Virginia*, in an amount equal to the amount allowable as a credit for state legacy taxes under § 2602 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 the Commonwealth of 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 the District of Columbia so that the aggregate amount of taxes imposed by the Commonwealth of Virginia and such other state, states or the District of Columbia on a generation skipping transfer does not exceed ~~one hundred~~ 100 percent of the amount allowable as credit for state legacy taxes under § 2602 of the Internal Revenue Code.

Source: § 58-238.37

Comment: The source section has been divided into a number of shorter sections. No substantive changes.

~~E. § 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 of Taxation on or before the last day prescribed for filing the federal return ; ~~consisting of a duplicate copy of said 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.~~

F. 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 section ~~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 § ~~58-1160~~ 58.1-15 shall accrue on the amount of unpaid tax from the day after such last day until paid.

Source: § 58-238.37

Comment: The source section has been divided into a number of shorter sections. No substantive changes.

~~G. § 58.1-938. Amended return; additional tax. —~~ If, after the filing of a duplicate federal generation skipping tax return of a ~~generation skipping transfer~~ , the federal authorities shall 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.

H. If, based upon such deficiency and the ground therefor, it ~~shall appear~~ appears that the amount of tax previously paid is less than the amount of tax owing, the difference together with interest, as computed under § ~~58-1160~~ 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 ~~shall fail~~ fails to give the notice file the return required by this section, any additional tax which ~~shall be~~ 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 ~~notice return~~ or within thirty days after the delinquent filing of such ~~notice return~~ , notwithstanding any other provision of law.

Source: § 58-238.37

Comment: The source section has been divided into a number of shorter sections. No substantive changes.

I. The Department may from time to time make such rules and regulations, not inconsistent with this section, as it may deem necessary to enforce its provisions, and may adopt such rules and regulations as are or may be promulgated with respect to the estate tax or generation skipping transfer tax provisions of the Internal Revenue Code of 1954, as amended, insofar as they shall be applicable hereto. The Department may from time to time prescribe forms as it shall deem proper for the administration of the section.

## CHAPTER 10.

### CIGARETTE TAX.

#### Article 1.

##### Excise Tax.

§ 58.1-1000. ~~§ 58-757.~~ *Definitions.*—As used in this chapter, unless the context clearly shows otherwise, the term or phrase:

"in this State" means within the exterior limits of the Commonwealth of Virginia, and includes all territory within such limits owned by or ceded to the United States of America:

The phrase "Retail dealer;" shall include ~~includes~~ every person; firm or corporation other than a wholesale dealer, as defined in this section, who ~~shall sell~~ sells or offer offers for sale any one or more of the articles taxed herein cigarettes; irrespective of quantity or amount, or the number of sales; and all persons operating under a retail dealer's license.

"Retail sale" or "sale at retail" shall include ~~includes~~ all sales except sales by wholesalers to licensed retail dealers or other wholesalers for resale.

The word "Stamps;" as used herein, means the stamp or stamps by the use of which the tax levied under this article chapter is paid and shall be officially designated as Virginia revenue stamps. The Department of Taxation 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 ~~and includes~~ any keeping or retention in this State of cigarettes for any purpose except sale in the regular course of business or subsequent use solely outside this State.

"Use" means ~~and includes~~ 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;" as used in this article, shall include ~~includes~~ persons; firms, or corporations who sell cigarettes at wholesale only any one or more of the articles taxed herein to licensed retail dealers for the purpose of resale only, or who sell at wholesale to institutional, commercial or industrial users. The phrase shall also include ~~include~~ chain store distributing places licensed as provided by §§ 58-304 through 58-339 of the Code of Virginia chain store distribution centers or houses which distribute cigarettes to their stores for sale at retail.

Source: §§ 58-757.10, 58-757.18

Comment: The definition portion of this act was previously located in §§ 58-757.10 and 58-757.18 and has merely been relocated to the front of the chapter for convenience. Deletes cross reference as §§ 58-304 through 58-339 were repealed in 1966 (Chapter 151, Acts of Assembly)

§ 58.1-1001. ~~§ 58-757.1.~~ Tax levied; rate; how paid. In addition to all other taxes now imposed by law, every person; firm, corporation, or association, within this State; who sells or stores or receives cigarettes made of tobacco or any substitute thereof, for the purpose of distribution to any person; firm, corporation, or association within this State, little cigars, cheroots, stogies, cigars, or cigarettes, either or all, shall pay to this State an excise tax as hereinafter provided of one and one-quarter mills on each such cigarette.

There is hereby levied an excise tax on articles containing tobacco enumerated in this article in the following amounts:

(1) Little cigars. - Upon cigars of all descriptions made of tobacco, or any substitute therefor, and weighing not more than three pounds per thousand, one cent for each ten cigars or fractional part thereof.

(2) Cheroots, stogies, cigars, etc. - Upon cigars of all descriptions made of tobacco, or any substitute therefor, retailing for three and one-third cents each or less, one dollar per thousand.

(3) Cigars. - Upon cigars of all descriptions made of tobacco, or any substitute therefor,

retailing for more than three and one-third cents each and not more than five cents each, two dollars per thousand.

(4) Cigars. - Upon cigars of all descriptions made of tobacco, or any substitute therefor, retailing for more than five cents each and not exceeding eight cents each, three dollars per thousand.

(5) Cigars. - Upon cigars of all descriptions made of tobacco, or any substitute therefor, retailing for more than eight cents each and not exceeding ten cents each, five dollars per thousand.

(6) Cigars. - Upon cigars of all descriptions made of tobacco, or any substitute therefor, retailing for more than ten cents and not exceeding twenty cents each, ten dollars per thousand.

(7) Cigars. - Upon cigars of all descriptions made of tobacco, or any substitute therefor, retailing for more than twenty cents each, thirteen dollars and fifty cents per thousand.

(8) Cigarettes. - Upon all cigarettes made of tobacco, or any substitute therefor, one and one-half mills on each such cigarette.

Whenever in this chapter reference is made to any manufactured tobacco products, manufactured or imported to sell at a certain price, as the basis for computing the tax, it is intended to mean the ordinary, customary, or usual price paid by the consumer for such tobacco products taxable under this chapter. When the retail or selling price is referred to in this chapter as the basis for computing the amount of stamps required on any article, it is intended to mean the retail or selling price of the articles before adding the amount of the tax. When any articles or commodities subject to tax in this chapter are given as prizes or as premiums, etc., the tax shall be based on the ordinary retail selling price of such articles.

§ 58.1-1002. Exemptions.—The tax hereby levied shall not apply to free distribution of sample cigarettes in packages containing five or fewer cigarettes ; nor to any package of cigarettes customarily donated free of charge by manufacturers of cigarettes to employees in factories where cigarettes are manufactured in this State, when such packages of cigarettes are not taxed by the federal government.

The tax herein levied shall be paid through the use of stamps herein provided for. Stamps in denominations to the amount of the tax shall be affixed to the box or other container from or in which tobacco products taxed by this article are normally sold at retail. The stamps shall be affixed in such a manner that their removal will require continued application of water or steam, and in case of cigars, and like manufactured tobacco products, where sales are made from the original container, the stamps shall be affixed to the box or container in such a way that the stamps shall be torn in two or mutilated when such containers or boxes are opened for the sale of the tobacco products. In the case of cigarettes, and like products, sold at retail in packages, the required amount of stamps to cover the tax shall be affixed to each individual package or container.

The Department of Taxation shall, by rules and regulations, provide for the manner in which the taxes shall be paid on any unstamped tobacco products as enumerated herein in the hands of wholesalers or retailers on August one, nineteen hundred sixty.

Source: § 58-757.1

Comment: When the Virginia Retail Sales and Use Tax was adopted in 1966 the excise tax on certain tobacco products (little cigars, cheroots, stogies and cigars) was repealed and the tax on cigarettes was decreased from 3¢ per pack to 2-1/2¢ per pack. The amendments to the section and the repealed section following merely remove this expired language. This amendment also deletes duplicative language relating to the affixing of stamps which is repeated in former § 58-757.2. The new section is divided into two separate sections for ease of reading. References to tobacco products throughout this chapter are replaced by the reference to cigarettes only.

§ 58-757.1-1: Expiration of taxes on little cigars, cheroots, stogies and cigars; continuation in effect at reduced rate of tax on cigarettes. (a) This chapter shall be in force without change until August thirty-one, nineteen hundred and sixty six.

(b) As of the end of August thirty one, nineteen hundred sixty six, the taxes levied by this chapter on little cigars, cheroots, stogies and cigars shall expire by limitation and shall not be levied after that date.

(e) On September one, nineteen hundred sixty six, the tax levied by this chapter on cigarettes at the rate of one and one half mills on each cigarette shall be reduced to one and one quarter mills on each cigarette; and such reduced rate shall be in force on that date and thereafter until otherwise provided by law, together with all other provisions of this chapter relating to cigarettes.

Comment: See comment to section above.

§ 58.1-1003. § 58-757.2. *How paid*; affixing of stamps; records and reports of dealers ; penalties .— A. The ~~taxes~~ imposed by this article chapter shall be paid by affixing stamps equaling the amount of the tax in the manner and at the time herein set forth. In the case of cigars and like products, the stamps shall be affixed to the box or container in which or from which such products are normally sold at retail. In the case of cigarettes and like products, 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 . Time allowed for affixing stamps shall be as follows: Every wholesale or retail dealer in this State shall , immediately within one hour after receipt of any unstamped little cigars, cheroots, stogies, cigars, or cigarettes, cause begin affixing to the same to have the requisite denominations and amount of stamp or stamps to that represent the proper tax affixed as stated herein levied by this chapter . The stamping of said little cigars, cheroots, stogies, cigars, and cigarettes, shall actually begin within one hour after receipt of said little cigars, cheroots, stogies, cigars or cigarettes, in the premises of the wholesale or retail dealer, and said stamping shall be continued with reasonable diligence by the wholesale or retail dealer until all of the unstamped little cigars, cheroots, stogies, cigars, or cigarettes ; have been stamped; provided, that however, any wholesale dealer engaged in interstate business shall be permitted to set aside such part of his stock as may be necessary for the conduct of such interstate business without affixing the stamps required by this article chapter . Said Interstate stock shall be kept entirely separate and apart from stamped stock in such a manner as to prevent the commingling of the interstate stock with the stamped stock.

B. Every wholesale dealer shall at the time of shipping or delivering any tobacco products as enumerated herein 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 ; and shall retain the same subject to the use and inspection of the Department of Taxation or its duly authorized agents for a period of three years . Wholesale and retail dealers shall also keep a record of purchases of all tobacco products enumerated and defined in this article cigarettes , and hold retain all books, records, and memoranda pertaining to the purchase and sale of such tobacco products enumerated and defined in this article, open to the inspection of the Department of Taxation or its duly authorized agents at any and all times cigarettes .

Every wholesale dealer shall furnish to the Department of Taxation a monthly report, between the first and tenth of each month for the preceding month, of all orders for tobacco products enumerated and defined in this article, purchased through said wholesale dealer from without this State on a drop shipment and consigned direct to the person, firm, corporation or association of persons ordering such tobacco products from without this State through such wholesale dealer. If, upon examination of invoices of any wholesale or retail dealer, he is unable to furnish evidence to the Department of Taxation of sufficient stamp purchases to cover unstamped tobacco as enumerated and defined in this article, purchased by him, the prima facie presumption shall arise that such tobacco products were sold without the proper stamps affixed thereto.

C. Any wholesaler or retailer who fails or refuses to comply with any or all of the above provisions ; shall be guilty of a Class 1 misdemeanor and upon conviction shall be punished by a fine of not less than five hundred dollars, nor more than one thousand dollars, or imprisonment in jail for a period of six months, or both

Source: §§ 58-757.1, 58-757.2

Comment: This amendment incorporates several provisions relating to the affixing of stamps which were set forth in former § 58-757.1 and former § 58-757.2 in order to bring the provisions for stamping cigarettes into one section. Also, the penalty for failure to stamp cigarettes by the method prescribed subjects a retailer or dealer to a Class 1 misdemeanor. The fine and imprisonment provision currently set forth in the section does not fall clearly within the Class 1 category, but somewhere between the Class 1 and Class 2 categories. Also, the three-year requirement for retention of invoices is deleted in this section as document retention is fully covered in § 58-757.6.

§ 58.1-1004. § 58-757.3. Retail dealers receiving tobacco products cigarettes from outside State to mail duplicate invoice to Department. Any retail dealer of tobacco products enumerated and defined in this article, purchasing, or receiving cigarettes who purchases or receives such

~~commodities cigarettes~~ from without the State, whether the same shall have been ordered or purchased through a wholesaler in this State, or by drop shipment or otherwise, shall within twelve hours of receipt of such ~~tobacco products~~; *cigarettes* mail by registered mail a true duplicate invoice of all such purchases or receipts to the Department of Taxation; said . The invoice ~~carrying shall carry~~ the name of the person or firm from whom or through whom such purchases or shipments of the ~~tobacco products cigarettes~~ were so received, showing kinds and quantities. Any retail dealer failing or refusing to furnish duplicate invoices, in both the manner and time allowed, shall be guilty of a Class 2 misdemeanor and upon conviction shall be punished by a fine of not less than fifty dollars for each offense; or imprisonment in jail for a period not exceeding sixty days; or both .

Source: § 58-757.3

Comment: In this former § 58-757.3, the penalty for failure to mail duplicate invoices to the Department is made punishable by a Class 2 misdemeanor. The fine and punishment presently prescribed would fall between a Class 2 and Class 3 misdemeanor.

~~§ 58.1-1005. § 58-757.4. Duties of carriers, etc., transporting tobacco products cigarettes .-All common carriers, contract carriers, buses, and trucks transporting tobacco products cigarettes may be required under regulations to be prescribed by the Department of Taxation to transmit to the Department of Taxation a periodic statement of such shall maintain a statement or record of all consignments or deliveries of tobacco products cigarettes, showing date, point of origin, point of delivery and to whom delivered, and time of delivery, and all common carriers, buses and trucks shall permit examination by the Department of Taxation, or its agents, of their records relating to shipment or receipt of tobacco products and may be required under regulations to be prescribed by the Department to transmit to the Department a periodic statement of such consignments or deliveries . The common carriers, buses and trucks shall permit the examination and investigation of their records of shipment or receipts relating to tobacco products, when and wherever it is deemed advisable and necessary by the Department of Taxation, or its agents, in the enforcement of this article. Inspectors and other duly authorized agents of the Department of Taxation, on proper identification from and authorization by the Department of Taxation, shall make such examination. Any person ; firm, corporation, or association of persons, who fails to maintain the statement or record required by this section or who refuses to transmit to the Department of Taxation the statement hereinabove provided for ; or who refuses to permit the examination of his records by the Department or its duly authorized agents, shall be guilty of a Class 3 misdemeanor and upon conviction shall be punished by a fine of not less than one hundred dollars, nor more than five hundred dollars for each such offense .~~

Source: § 58-757.4

Comment: Deletes duplicative portion of this section. See new § 58.1-1007. Previous § 58-757.4 prescribed a punishment falling between a Class 3 and Class 4 misdemeanor for the failure of a common carrier to transmit to the Department certain documentation.

~~§ 58.1-1006. § 58-757.5. Forms and kinds of containers, methods of breaking packages, kinds of containers and methods of affixing stamps; penalty for interfering with enforcement of article.- It shall be provided by regulations of the Department of Taxation The Department shall provide by rules and regulations forms and kinds of containers, the methods of breaking packages ; forms and kinds of containers and methods of affixing stamps that shall be employed by persons ; firms or corporations subject to the cigarette tax imposed by this article which will make , thereby making possible the enforcement of payment of the cigarette tax by inspection ; and . Any person ; firm or corporation subject to this tax ; engaging in or permitting such practices as are prohibited by rules and regulations of the Department of Taxation or in any other practice which makes it difficult to enforce the provisions of this article by inspection, or if any person ; firm or corporation, agent or officer thereof, who shall upon demand of the Department of Taxation, or any of its officer officers or agent of the Department of Taxation agents refuses to allow full inspection of the premises or any part thereof, or who shall hinder or in anywise delay or prevent such inspection when demand is made therefor, or in any way interferes with any agent of the Department of Taxation in the performance of his duties in enforcing this article chapter , shall be deemed to be guilty of a Class 2 misdemeanor and shall, upon conviction, be fined not less than one hundred dollars, nor more than two hundred dollars for each offense, or imprisonment in jail for a period not exceeding ninety days; or both~~

Source: § 58-757.5

Comment: This amendment provides a Class 2 misdemeanor penalty for impeding the premises inspection process and generally the work of the Department in enforcing the tax. The present penalty falls between a Class 2 and Class 3 misdemeanor.

§ 58.1-1007. § 58-757.6: Documents touching purchase, sale, etc., of tobacco products cigarettes to be kept for three years, subject to inspection. It shall be the duty of every person ; ~~firm, corporation, or association of persons,~~ receiving, storing, selling or , handling or transporting tobacco products enumerated herein cigarettes in any manner whatsoever, to keep and preserve all invoices, books, papers, cancelled checks, or other memoranda touching documents relating to the purchase, sale, exchange or , receipt or transportation of any and all tobacco products enumerated herein 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 by any duly authorized representative of the Department of Taxation at any and all times. Any person ; ~~firm, corporation, or association of persons~~ who fails or refuses to keep and preserve the records as herein required, or who upon request by a duly authorized agent of the Department of Taxation fails or refuses to allow an audit or inspection of records as hereinabove provided, shall be guilty of a Class 2 misdemeanor and shall upon conviction be punished by a fine of not less than fifty dollars, nor more than two hundred dollars; or imprisonment in jail for a period not to exceed ninety days for each offense .

Source: § 58-757.6

Comment: This amendment provides a Class 2 misdemeanor penalty for persons failing to preserve records or refusing to permit inspection of such records by the Department. The present penalty falls between a Class 2 and Class 3 misdemeanor.

§ 58.1-1008. § 58-757.7: Monthly reports of wholesale dealers.- Each and every wholesaler Every wholesale dealer qualifying as such with the Department of Taxation shall be required to file a report between the first and tenth of each month, covering the purchase or receipt by them of all tobacco products enumerated and defined herein, cigarettes during the preceding month. Said The report shall give in detail the different kinds and quantities of tobacco products cigarettes so purchased or received by them during the preceding month. The report shall also list all orders for cigarettes purchased through said such wholesale dealer from without this State on a drop shipment and consigned direct to the person ordering such cigarettes through such wholesale dealer. If, upon examination of invoices of any wholesale dealer, such dealer 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. Any wholesaler failing or refusing to file the above report required by this section in the manner and time allowed ; shall be guilty of a Class 3 misdemeanor and upon conviction shall be fined not less than one hundred dollars, nor more than five hundred dollars for each offense .

Source: §§ 58-757.2 and 58-757.7

Comment: The reporting provisions of § 58-757.2 are moved to this section for purposes of organizational sensibility. This amendment provides a Class 3 misdemeanor penalty for any wholesale dealer failing to file a monthly report. The present penalty falls between a Class 3 and Class 4 penalty. The penalty provided in § 58.1-1003 (Class 1 misdemeanor) would be applicable if adequate record keeping procedures are not followed.

§ 58.1-1009. § 58-757.8: Preparation , design and sale of stamps; unlawful sale of stamps a felony.-The Department of Taxation is hereby authorized and directed to have prepared and to sell stamps suitable for denoting the tax on all articles enumerated herein cigarettes . The Department shall design, adopt and promulgate the form and kind of stamps to be used. 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 ; ~~firm, corporation, or association of persons,~~ other than the Department of Taxation, who sells tobacco tax such revenue stamps, not affixed to tobacco cigarettes sold and delivered by them, whether the said stamps be genuine or counterfeit, shall be guilty of a Class 6 felony and punishable as set out in § 58-757.14 . When wholesalers have qualified as such with the Department of Taxation , as provided in § 58-757.10 58.1-1011 , and desire to purchase stamps as prescribed herein for use on taxable tobacco cigarettes sold and delivered by them, the Department of Taxation shall allow on such sales of tobacco tax revenue stamps a discount of two and one-half cents per carton. As used herein "carton" shall mean ten (10) packs of cigarettes, each containing twenty (20) cigarettes.

Source: § 58-757.8

Comment: This amendment incorporates the language granting the Department authority for the design of the stamps from § 58-757.10, which section now will provide solely for the issuance of the wholesale dealer's permit. It also provides that unauthorized persons convicted of selling genuine or counterfeit stamps will face a Class 6 felony charge.

~~§58.1-1010. § 58-757.9: Sale of unstamped tobacco products cigarettes by wholesale dealers.~~  
(a) ~~A. A wholesaler as defined in § 58-757.10, and wholesale dealer who is duly qualified as such wholesaler under said section § 58.1-1011 ; may sell tobacco products enumerated herein cigarettes without the Virginia revenue stamps affixed thereto, provided such products cigarettes are sold and shipped or delivered in interstate commerce to a person outside this State ; and such . Such wholesaler shall have on file ; for a period of three years, subject to inspection by the Department, a record of such sale, and also the original purchase order, and 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 dealer to the purchaser at a point outside of this State, a receipt showing such delivery in addition to the record, original purchase order and copy of the invoice relating to such sale.~~

~~(b) B. Such duly qualified wholesaler may sell tobacco products enumerated herein cigarettes without the Virginia revenue stamps affixed thereto, provided:~~

~~1. (1) Such products cigarettes are sold to a person who is engaged in business as a dealer in such products cigarettes in another state;~~

~~2. (2) Such products cigarettes are purchased exclusively for resale in such the other state; and~~

~~3. (3) Such products cigarettes are at the time of sale properly stamped by the Virginia wholesaler with revenue stamps authorized and issued by such the other state for use upon such tobacco products cigarettes ; and such . A wholesaler shall have on file ; for a period of three years, subject to inspection by the Department, a record of each such sale, the original purchase order, and a copy of the invoice therefor, a receipt from such the purchaser showing that such purchase was made exclusively for resale in such the other state, and a record showing the purchase and use of such revenue stamps of such the other state ; provided, however, that . Any such wholesaler with a place of business in a city located partly within and partly without this State, or in a county adjoining such city, shall not be required to obtain such receipt from a purchaser from such the other state, if such the other state imposes a tobacco cigarette tax and if the tobacco cigarette tax in such the other state is at a higher rate than the tax imposed by the Commonwealth of Virginia.~~

~~(c) C. Tobacco products enumerated herein Cigarettes may be sold by such duly qualified wholesalers, 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 Veterans Administration for resale to veterans of the armed services of the United States who are hospitalized or domiciled in hospitals and homes of the Veterans Administration, provided the books and records, including original purchase orders and copy copies of invoices showing such sales , are kept on file for a period of three years, subject to inspection by the Department .~~

~~(d) D. Tobacco products enumerated herein Cigarettes may be sold by such duly qualified wholesalers, without revenue stamps affixed thereto, when sold and delivered to ships regularly engaged in foreign commerce or coastwise shipping between points in this State and points outside of this State for resale to or for use or consumption upon such ship or in foreign commerce.~~

~~(e) 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 tobacco products cigarettes shall subject the wholesaler to the payment of the tax thereon imposed by this chapter.

Any person ; including any firm, corporation, or association of persons; who violates any of the provisions of this section shall be guilty of a Class 2 misdemeanor ; and upon conviction shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars; or by imprisonment in jail for a period not to exceed six months, either or both .

Source: § 58-757.9

Comment: The previous § 58-757.9 is rewritten for clarification. The penalty for violation of the section is made a Class 2 misdemeanor. The present penalty falls between a Class 2 and Class 3 misdemeanor.

~~§ 58.1-1011. Qualification for dealer's permit.- § 58-757.10. "Wholesale dealer;" "retail dealer;" "stamps" defined; form of stamps; Wholesale dealer's permit. The phrase "wholesale dealer;" as~~

used in this article, shall include persons, firms, or corporations who sell at wholesale only any one or more of the articles taxed herein to licensed retail dealers for the purpose of resale only, or who sell at wholesale to institutional, commercial or industrial users. The phrase also includes chain store distributing places licensed as provided by §§ 58-304 through 58-330 of the Code of Virginia.

The phrase "retail dealer," shall include every person, firm or corporation other than a wholesale dealer, as defined in this section, who shall sell or offer for sale any one or more of the articles taxed herein, irrespective of quantity or amount, or the number of sales; and all persons operating under a retail dealer's license.

The word "stamps," as used herein, means the stamp or stamps by the use of which the tax levied under this article is paid and shall be designated Virginia revenue stamps. The Department of Taxation 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.

The Department of Taxation shall design the form and kind of stamps to be used and shall duly adopt and promulgate such form of stamps. Such stamps so adopted and promulgated shall be known and termed as "Virginia revenue stamp," and in any information or indictment, it shall be sufficient to describe the stamps as "Virginia revenue stamps." Provided, however, Every wholesaler who desires to qualify as such with the Department of Taxation shall make application to the Department on blanks prescribed for this purpose, which shall be supplied upon request. Said The application blanks will require such information relative to the nature of business engaged in by said the wholesaler ; as the Department deems necessary to the qualifying of said the wholesaler ; which and when being received by . If the Department , after review of his application it , believes the said wholesaler to be qualified, the Department shall issue to said the wholesaler a permit qualifying him as a wholesaler, as defined in this article chapter, and he shall be allowed the discount on purchases of stamps as set out herein for wholesalers purchasing stamps for their individual use. The Department of Taxation shall not sell any stamps or allow any discount on any sale of stamps to any wholesaler until said the wholesaler shall have has complied with all of the provisions of this section. The Department of Taxation may at any time revoke the permit issued to any wholesaler as hereinabove provided who shall be is found guilty of violating any of the provisions of this chapter, or any of the rules of the Department of Taxation adopted and promulgated under authority of this article chapter ; and refuse to sell any wholesaler any stamps until such time as his permit shall be restored .

Source: § 58-757.10

Comment: This former § 58-757.10 removes the definitions from this former § 58-757.10, which are placed in the first section of the chapter, and the authority for the Department to design the format of the stamps, which has been combined with the provisions of former § 58-757.8 relating to the preparation and sale of stamps, for purposes of better organization and ease of reading. Also redundant language is removed. (See § 58.1-1009)

§ 58.1-1012. ~~§ 58-757.11.~~ Duties of wholesale dealer on shipping, delivering or sending out tobacco products cigarettes .Every wholesale dealer in this State shall , before shipping, delivering or sending out any one or more articles taxed herein, cigarettes to any dealer in this State or for sale in this State, cause the same to have the requisite denominations and amount of stamp, or stamps ; to represent the tax affixed as stated herein, and every other wholesale dealer shall at the time of shipping or delivering any one or more articles taxed herein 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 ; subject to the audit and inspection of the Department of Taxation, its authorized agents and representatives, for three years . Wholesale dealers in this State who ship, deliver, or send any one or more articles taxed herein cigarettes to the United States government ; for sale or distribution to any military, naval or marine reservation owned by the United States government within this State ; shall be required to carry out the provisions set out in this article chapter for such sales or deliveries.

Source: § 58-757.11

Comment: Virtually the same as previous § 58-757.11.

§ 58.1-1013. ~~§ 58-757.12.~~ Penalty for failing to affix stamps; subsequent violations of article.- Persons failing to properly affix the required stamps to any little cigars, cheroots, stogies, cigars, or cigarettes ; Any person within this State who sells, stores or receives cigarettes for the purpose of distribution to another within this State 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 penalty of not less than twenty-five dollars; nor more than

five hundred dollars twenty-five dollars , to be assessed and collected by the Department of Taxation as other taxes are collected. Where willful intent exists to defraud the State of the tax levied under this chapter, such person shall be required to pay a penalty of \$250. It shall be prima facie evidence of intent to defraud when the number of such unstamped cigarettes exceeds thirty packs. And

Each article or commodity pack of cigarettes not having proper stamps affixed thereto as herein required shall be deemed a separate offense. Any little cigars, cheroots, stogies, cigars, or cigarettes in the place of business of any person required by the provisions of this article chapter to stamp the same shall be prima facie evidence that they are intended for sale. The Department of Taxation upon good cause shown may in its discretion remit a part of the penalties prescribed above herein, but in no case shall it accept less than the minimum penalty provided for each offense.

Any person ; firm, corporation, or association of persons, who has been found guilty of violating any of the provisions of this article and who, after being punished by fine, penalty, assessment or imprisonment, shall be is guilty of a second or subsequent violation of this article chapter shall , upon being found guilty of such second offense, have his or its permit or revenue license revoked by the Department of Taxation , and no further license or permit shall be issued or granted to such person ; firm, corporation, or association of persons for a period of one year from the date the license or permit shall have has been revoked.

Source: § 58-757.12

Comment: Broad discretionary powers were given to the Department in § 58-757.12 for establishing certain fines. The section essentially gave an administrative agency legislative and judicial powers. This section now would establish fixed penalties by establishing two separate categories of punishment dependent upon intent. Senate Bill No. 69 of the 1982 Session removed licensing provisions. The Department is given authority to compromise settlements in § 58-45.

§ 58.1-1014. § 58-757.13: Permits required for transporting or distributing tobacco products cigarettes . Each and every Any person ; firm, corporation, or association of persons transporting who transports or distributing distributes cigarettes in any manner whatsoever ; any tobacco products as enumerated and defined herein within this State who has not a permit issued under this chapter, shall , before transporting or distributing any of such tobacco products as enumerated and defined herein, secure a permit from the Department of Taxation or be granted a waiver therefrom when the Commissioner is of the opinion that such permit is unnecessary . The Department shall , before issuing or waiving any such permit , ascertain from the applicant the nature of his business and the names of each county and city to which said the applicant desires to transport or distribute tobacco products as heretofore defined cigarettes . A permit provided herein when so issued shall be conspicuously displayed on the vehicle for which it is issued. Failure to properly display the permit as hereinbefore required shall be deemed a violation of this section. Any person ; firm, corporation, or association of persons having been issued a permit who engages in any practices which are deemed by the Department of Taxation to be injurious to the collection of the tax provided herein ; may have their his permit revoked by the Department of Taxation and no further permit shall be issued for six months and not then unless the Department is satisfied it is advisable. Duplicate permit cards will be issued to replace permits lost or damaged upon application and the payment of a fee of one dollar . Any person ; firm, corporation, or association of persons found transporting or distributing any tobacco products defined herein, cigarettes without first securing a permit as required above ; shall be guilty of a Class 1 misdemeanor and upon conviction shall be punished by a fine of not more than one thousand dollars for each such offense .

Source: § 58-757.13

Comment: Same as previous § 58-775.13 except that the Department is given the authority to waive permits when the Commissioner is of the opinion that such a permit is unnecessary and the conviction for an offense of the section is designated as a Class 1 misdemeanor. The former section provided only for a fine not to exceed \$1,000.

§ 58.1-1015. § 58-757.14: Removal, reuse, unauthorized sale, etc., of stamps; counterfeit stamps.-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 which 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 except the Department of Taxation sells any Virginia revenue stamps not affixed to taxable tobaccos as provided herein cigarettes is guilty of a felony and, shall upon conviction, be guilty of a Class 5 felony shall be punished by imprisonment in the penitentiary for not less than a year, nor more than five years, and in addition may be fined not less than one thousand dollars, nor more than five thousand dollars . Whoever manufactures, buys, sells, offers for sale, or has in his or its possession any reproduction or counterfeit of the Virginia revenue stamps provided for in this article, is guilty of a felony and, upon conviction ; shall be punished by imprisonment in the penitentiary for not less than a year, nor more than ten years, and in addition, may be fined not less than two thousand dollars nor more than ten thousand dollars.~~

Source: § 58-757.14

Comment: Practically the same as former § 58-757.14; however, since neither of the two penalties formerly provided falls within a classification of offenses enumerated in § 18.1-10, both are made Class 5 felonies.

~~§ 58.1-1016. § 58-757.15: Administration and enforcement of article tax .The Department of Taxation shall administer and enforce the taxes tax imposed by this article. It shall have the power to enter upon the premises of any taxpayer 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 article chapter .~~

Source: § 58-757.15

Comment: Same as previous § 58-757.15.

~~§ 58-757.16: Refilling or reuse of containers: Any person, firm, corporation, or association of persons, who shall reuse or refill with any tobacco products enumerated herein, any box, package or container from which tobacco products theretofore taxpaid have been removed, shall be guilty of a misdemeanor and upon conviction shall be fined not less than one hundred dollars, nor more than five hundred dollars or imprisoned not to exceed six months, either or both, at the discretion of the court.~~

Comment: This section is repealed since it is applicable only to cigars and not cigarettes.

~~§ 58.1-1017. § 58-757.17: Sale, purchase, possession, etc., of tobacco products cigarettes for purpose of evading tax.-It shall be unlawful for any person, firm or corporation, except as otherwise provided by law, to sell, purchase, transport, receive or possess any of the articles taxed under the provisions of this article, cigarettes unless the same has have been stamped in the manner required by law, for the purpose of evading the payment of the taxes on such products. Any person ; firm or corporation violating the provisions of this section shall be guilty of a Class 3 misdemeanor and upon conviction shall be fined not less than twenty-five dollars, to which a jail sentence of not less than thirty nor more than sixty days may be added .~~

~~If a person ; firm or corporation, who is not a regularly licensed dealer in tobacco products as provided in § 58.1-1011 ; shall have has in his possession within the State more than thirty packages of unstamped cigarettes or more than one box of unstamped cigars , such possession shall be presumed to be for the purpose of evading the payment of the taxes due thereon.~~

Source: § 58.757.17

Comment: Previous § 58-757.17 provided a penalty for purposely evading the tax, an offense which fell between a Class 2 and Class 4 misdemeanor.

## Article 2.

### Use Tax.

~~§ 58-757.18: Definitions: The following words, terms and phrases when used in this article shall have the meaning ascribed to them in this section, except where the context indicates a different meaning: (1) The term "person" includes any individual, firm, company, partnership, association, corporation, receiver or trustee, or any other group or combination acting as a unit, and the plural as well as the singular number. (2) The term "Department" means the Department of Taxation. (3) The term "storage" means and includes any keeping or retention in this State for any purpose except sale in the regular course of business or subsequent use solely outside this State of the commodities subject to the provisions of this article. (4) The term "use" means and includes the exercise of any right or power over the commodities subject to the~~

provisions of this article, incident to the ownership of those commodities or by any transaction where possession is given, except that it shall not include the sale of those commodities in the regular course of business. (5) The term "in this State" means within the exterior limits of the Commonwealth of Virginia, and includes all territory within such limits owned by or ceded to the United States of America. (6) The term "tobacco product" includes little cigars, cheroots, stogies, cigars, and cigarettes. (7) The term "retail sale" or "sale at retail" shall include all sales except sales by wholesalers to licensed retail dealers or other wholesalers for resale.

Comment: This section, which again defines terms, is removed to the first section of the chapter.

§ 58.1-1018. ~~§ 58-757-19:~~ Tax imposed on storage, use or consumption of ~~tobacco products~~ *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 State of ~~tobacco products~~ *cigarettes* purchased at retail in an amount equal to that set out in § 58-757-1 of ~~article 1~~ *58.1-1001*. Every person storing, using or otherwise consuming in this State ~~tobacco products~~ *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 State; ~~provided, however, if said tobacco products such cigarettes have attached thereto the requisite stamps provided in said article 1,~~ or if ~~said the excise tax imposed by said Article 1;~~ has been paid by the seller of such ~~tobacco products~~ *cigarettes*, then the tax imposed by this article shall not be due.

Source: § 58-757.19

Comment: No change.

§ 58.1-1019. ~~§ 58-757-20:~~ Monthly returns and payment of tax.-Every person owning or having in his possession or custody ~~tobacco products~~ *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 ~~tobacco products~~ *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.

Source: § 58-757.20

Comment: No change.

§ 58.1-1020. ~~§ 58-757-21:~~ 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.

Source: § 58-757.20

Comment: No change.

§ 58.1-1021. ~~§ 58-757-22:~~ Documents touching purchase, sale, etc., of ~~tobacco products~~ *cigarettes* to be kept for three years, subject to inspection.-It shall be the duty of every person storing, using or otherwise consuming in this State ~~tobacco products~~ *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 ~~tobacco product~~ *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 ~~and all~~ reasonable ~~times~~ *time*. Any person who fails or refuses to keep and preserve the records as herein required, or who upon request by a duly authorized agent of the Department fails or refuses to allow an audit or inspection of the records as herein provided, shall be guilty of a *Class 2* misdemeanor ~~and upon conviction be punished accordingly~~.

Source: § 58-757.22.

Comment: Only change from previous § 58-757.22 is to specifically provide for a *Class 2* misdemeanor conforming the punishment to an identical provision in the Sales Tax Article (§ 58-757.6).

### Article 3.

#### General Provisions.

~~§ 58.1-1022. § 58-757-23:~~ Correction of erroneous assessments.—Erroneous assessments under this chapter may be corrected and refunds ordered as provided in Chapter 22 (§ 58.1-117.20 et seq.) Article 2, Chapter 18 (§ 58.1-1820 et seq.) of this title.

Source: § 58-757.23

Comment: No change.

~~§ 58-757.24. Disposition of revenue.—All revenue collected under this chapter by the Department of Taxation shall be promptly paid into the general fund of the state treasury.~~

Comment: Deleted as unnecessary. See § 58.1-13.

~~§ 58-757.25. Payment of cost of administering chapter; appropriation. The cost of administering this chapter shall be paid out of the general fund of the state treasury, and there is hereby appropriated to the Department of Taxation, out of the general fund of the State treasury, for such purpose, for each year of the biennium beginning July one, nineteen hundred sixty, a sum sufficient.~~

Comment: Continuous appropriation language possibly violates Article X, Section 7, of the Constitution of Virginia. Otherwise the section adds nothing to this chapter.

~~§ 58-757.26. Office space. Unless adequate office space is provided in a state-owned building for the administration of this chapter, the Department of Taxation is hereby authorized to rent quarters for the purpose and the cost thereof shall be paid as a part of the cost of administering this chapter.~~

Comment: A specific provision for office space is no longer needed.

## CHAPTER 11.

### INTANGIBLE PERSONAL PROPERTY TAX.

~~§ 58.1-1100. § 58-405. What constitutes Intangible personal property; taxation; rate; segregated for state taxation. — A. Intangible personal property, except for merchants' capital as defined in § 58-822 58.1-3510 which shall be subject to local taxation, is hereby segregated for state taxation only ; .~~

*§ 58.1-1101. Classification, rate of tax.—A.* The subjects of taxation classified by this section are hereby defined as intangible personal property:

1. Inventory, except merchandise located in a foreign trade zone as defined in paragraph 8 and any agricultural product held in this State 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 ~~any and~~ all succeeding tax years;

2. Personal property, ~~tangible in fact~~, used in manufacturing, mining, radio or television broadcasting, cable television, dairy, dry cleaning or laundry businesses ; . ~~except~~ Machinery and tools, motor vehicles and delivery equipment of such businesses, and the trunk and feeder cables, studio equipment, tuners, converters, antennae, and office furniture and equipment of cable television 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; *and*

~~7. All other property defined as capital pursuant to §§ 58-411 and 58-412 which were repealed by Chapter 633 of the 1982 Acts of Assembly ; and~~

~~8.~~ 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.

B. There is hereby levied on inventory included in paragraph 1 of subsection A an annual tax of 30¢ on each \$100 of the actual value of such intangible personal property.

~~C. Machinery and tools shall constitute a separate classification of property for local taxation, the local rate thereon not to exceed the rate imposed upon other classes of tangible personal property. Motor vehicle and delivery equipment shall be taxed as other tangible personal property by the county, city or town.~~

~~D.~~ C. The subjects of intangible personal property set forth in paragraphs 2 through 8 of subsection A shall be exempt from taxation as provided in Article X, Section 6 (a) (5) of the Constitution of Virginia.

Source: § 58-405.

Comment: Previous section divided into two sections. Because of the practical uncertainty of determining the types of property includable within previous paragraph 7 and the resulting difficulty of administering this classification section, the paragraph was deleted. References to the local machinery and tools tax has been deleted and will be relocated in Subtitle III in the chapter pertaining to the tangible personal property tax.

*§ 58.1-1102. § 58-412.1 Intangible personal property of certain poultry and livestock producers and processors. — 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 § 58-405. *§ 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.

~~§ 58-412.2: Certain processors of poultry subject to intangible personal property tax. 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 on intangible personal property as provided under § 58-405. under § 58.1-1100.~~

Source: §§ 58-412.1 and 58-412.2.

Comment: Combines two closely related sections.

~~§ 58.1-1103. § 58-413: Exempt professions and businesses; how property used therein taxable.—Section 58-405 58.1-1100 shall not be construed to apply (i) to any profession which the State regulates by law, nor shall it be construed to apply (ii) to industrial development corporations organized pursuant to the terms of §§ 13.1-140 through 13.1-155, nor shall it be construed or (iii) to include the business of farming, which business of farming includes the propagating and growing, and the 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 professions, and by such industrial development corporations, and in the business of farming, exempt activities shall be taxable in the actual form in which it may be exists and not as intangible personal property.~~

Source: § 58-413.

Comment: No change.

~~§ 58.1-1104. § 58-416: 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 § 58-405 § 58.1-1100 and shall therefore not be taxable as a merchant under state law or local ordinances law.~~

Source: § 58-416.

Comment: No substantive change.

~~§ 58.1-1105. § 58-417: 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 § 58-405 § 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 is defined as 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 be is measured by a percentage of value or of volume.~~

Source: § 58-417.

Comment: No substantive change.

~~§ 58.1-1106. § 58-414: Nonresidents; taxation of intangible personal property acquiring business situs. Situs; nonresidents, branches outside of State.—A. Every nonresident person, every foreign corporation and every partnership consisting in whole or in part of nonresident persons doing business in this State is hereby declared to have a business domicile within this State 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 State 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 ; as the case may be .~~

~~§ 58-415: Branches outside of State. B. When any person, firm or corporation domiciled and doing business in this State maintains a branch of such business outside of this State , 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 State shall be considered as situated in this State for the purpose of taxation or be assessed with taxes in this State.~~

Source: §§ 58-414 and 58-415.

Comment: Combines two closely related sections.

~~§ 58-421. Conversion of intangible personal property to evade taxation. Any person, firm or corporation who shall, for the purpose of evading taxation under the laws of this Commonwealth, within thirty days prior to the first day of any tax year, either directly or indirectly, convert any intangible personal property taxable under the laws of this State into property not taxable under the laws of this State or with like intent shall, either directly or indirectly, convert such intangible personal property into a form of property which is taxable by this State at a lower rate than the intangible personal property so converted shall be taxable on such intangible personal property as if such conversion had not taken place. The fact that such person, firm or corporation within thirty days after the first day of the tax year, either directly or indirectly, converts such property nontaxable by this State or taxable at the lower rate by this State into intangible personal property taxable or taxable at the higher rate shall be prima facie evidence of intent to evade taxation by this State and the burden of proof shall be upon such person, firm or corporation to show that the first conversion was for the bona fide purpose of investment and not for the purpose of evading taxation by this State.~~

Comment: This section no longer needed in light of the 1982 amendments to the intangible personal property tax.

~~§ 58-422. Books of account, returns. Every person, firm and corporation engaged in a business wherein intangible personal property is subject to taxation is hereby required to keep accurate book accounts showing the items which constitute such intangible personal property. Such books of account shall be at all times open to the inspection of the commissioners of the revenue and the Department of Taxation. Such persons, firms and corporations shall make returns showing in detail the items of intangible personal property as herein defined.~~

Comment: Record keeping requirements and inspection privileges are set forth in Chapter 2.

~~§ 58.1-1107. § 58-422. Date as of which intangible personal property must be returned.—Intangible personal property shall be returned for taxation as of January first 1 of every year. The status of all persons, firms, corporations and other taxpayers liable to taxation on intangible personal property shall be fixed as of the date aforesaid in each year and the value of all intangible personal property returned for taxation shall be taken as of such date in each year ; except that in returning intangible personal property for taxation under § 58-405 the .~~

*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 first 1 next preceding.*

Source: § 58-423.

Comment: No substantive change.

~~§ 58.1-1108. § 58-424. Time for filing returns; payment of tax .—All returns of intangible personal property shall be made by the taxpayer on or before the first day of 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 .~~

Source: §§ 58-424 and 58-441.

Comment: Time for filing return and paying the tax due is combined into one section.

~~§ 58.1-1109. § 58-425. Extension of time for filing returns.—The Department of Taxation Tax Commissioner may grant a reasonable extension of time for filing intangible returns whenever in its judgment good cause exists and shall keep a record of every such extension . 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 be is extended, interest at a rate determined in accordance with § 58-1160 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.~~

Source: § 58-425.

Comment: No change.

~~§ 58-426. Blank forms of returns to be furnished by Department of Taxation.—Blank forms of returns for intangible personal property shall be supplied by the Department of Taxation to the commissioners of the revenue, who shall mail or deliver them to the taxpayers not later than January fifteenth of each year.~~

Comment: Requirement that Department supply forms located in § 58.1-216.

**§ 58-427. Commissioner of revenue to obtain returns; audit and assessment.** Every commissioner of the revenue shall obtain a return of intangible personal property from every taxpayer within his jurisdiction who is liable to file such a return with him; but this duty of the commissioner of the revenue to obtain such return shall in no manner diminish the obligation of the taxpayer 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 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; but such auditing shall not be done in such manner or at such time in any case as will result in any delay on the part of the commissioner of the revenue in complying with §§ 58-440 and 58-441.

Comment: See § 58.1-1110.

**§ 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 State. If he is not domiciled in this State, 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 .

Source: §§ 58-427, 58-429, 58-430 and 58-431.

Comment: Removes unnecessary language in original §§ 58-427, 58-429, 58-430 and 58-431 and combines portions of the sections which are closely related.

**§ 58-428. Form of return; combination with income tax return.**—Every owner of any taxable intangible personal property and every fiduciary shall annually file a return of intangible personal property on such form or forms as may be prescribed by the Department of Taxation. Such form or forms may or may not be combined or connected with the form or forms for reporting incomes; as the Department of Taxation may order from time to time; but if they be so combined or connected all such returns shall be kept under lock and key at all times when they are not in the personal possession of the commissioner of the revenue; Department of Taxation or some other person authorized to inspect the same.

Comment: Filing requirements for returns are set forth in § 58.1-1108 and confidentiality of the returns is fully provided for in § 58.1-4.

**§ 58-429. Where individual to file return.**—Every natural person who is the owner of any taxable intangible personal property shall file his return thereof with the commissioner of the revenue for the county or city in which he maintains his domicile, if he be domiciled in this State. If he be not domiciled in this State, he shall file the return with the commissioner of the revenue for the county or city of which he is a resident for purposes of taxation or, if he be a nonresident, he shall file his return with the commissioner of the revenue for the county or city in which his business, or the major part thereof, is conducted.

Comment: See § 58.1-1110.

**§ 58-430. Where unincorporated companies to file.**—Every firm and unincorporated company owning any taxable intangible personal property shall file a return thereof with the commissioner of the revenue for the county or city in which its business, or the major part thereof, is conducted.

Comment: See § 58.1-1110.

**§ 58-431. Where corporations to file.** Every Corporations chartered under the laws of this State in the Commonwealth and owning any taxable intangible personal property but not having a registered office shall file a return with the commissioner of the revenue for the county or city in which the principal registered office of the corporation is located by the terms of its certificate of incorporation :

Every corporation chartered under the laws of in a state or country other than this State

and owning any intangible personal property, taxable in this State, but not having a registered office shall file a return with the commissioner of the revenue for the county or city in which is located the place designated by the corporation as the office in this State at which all claims against the corporation may be audited, settled and paid.

Every corporation having a registered office shall file such returns with the commissioner of the revenue for the county or city in which the registered office of the corporation is located. Comment: Since § 13.1-9 requires all domestic corporations to maintain a registered office within this State and § 13.1-109 requires a foreign corporation to maintain a registered office within this State, the first two paragraphs appear to have no relevance. The last paragraph is moved to § 58.1-1110.

~~§ 58-432. Where and when fiduciaries to file; assessment. Every fiduciary shall file a return of intangible personal property 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 county or city in which such fiduciary resides, does business or has an office or wherein the beneficiaries or any of them may reside. Fiduciary returns shall be filed within the time required by this chapter for the filing of all other returns of intangible personal property and for failure to file returns in time fiduciaries shall be subject to the same penalties as other taxpayers. The commissioner of the revenue shall assess the taxes upon his personal property book.~~

Comment: See § 58.1-1111. Fiduciaries are now required to file their return in the same county or city wherein the taxpayer would have filed such return.

~~§ 58.1-1111. § 58-422. 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.~~

Source: §§ 58-432 and 58-433.

Comment: See comment to § 58-432.

~~§ 58.1-1112. § 58-434. 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; provided, however, that the . The Department of Taxation 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 them under § 58-427 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.~~

Source: § 58-434.

Comment: Eliminates the requirement that the Tax Commissioner audit every return.

~~§ 58-437. Application to fiduciary returns. The provisions of the three preceding sections (§§ 58-434 to 58-436) shall be also applicable to all fiduciary returns of intangible personal property.~~

Comment: Not needed. See § 58.1-1111.

~~§ 58.1-1113. § 58-428. Penalty for failure to file returns of intangible personal property in time; delinquents; assessments on estimates.— All returns of intangible personal property required by law to be filed with the commissioner of the revenue shall be filed by the taxpayer with the commissioner of the revenue within the time required by this chapter, unless the time for filing such returns be extended by the Department of Taxation. And upon all returns filed with or assessed by the commissioner of the revenue after the time herein prescribed for the filing of returns, the The commissioner of the revenue shall assess a penalty equal to ten per centum 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. ; but in In no case shall such penalty be less than two 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 state* taxes.

Source: § 58-438.

Comment: Deletes repetitious language. Commissioner is granted general power to extend filing date for good cause shown in § 58.1-1109. Minimum penalty is increased from two dollars to ten dollars.

~~§ 58.1-1114. § 58-436:~~ Assessment and payment of deficiency; penalties; application for correction.—If the amount of tax computed by the Department ~~shall be is~~ greater than the amount theretofore assessed, the excess shall be assessed by the ~~Department~~ *Tax Commissioner* and notice of the same shall be mailed to the taxpayer. The taxpayer shall remit such additional tax to the Department of ~~Taxation~~ 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 § 58-1160 *58.1-15* , from the time the ~~said~~ 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 ~~one hundred per centum~~ *100 percent* shall be added together with interest on the tax at a rate determined in accordance with § 58-1160 *58.1-15* , from the time the ~~said~~ 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 Chapter~~ *Chapter 22 18* (§ 58-1117:20 *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.

Source: § 58-435.

Comment: No change.

~~§ 58.1-1115. § 58-436:~~ Refund of overpayment.—If the amount of tax as computed ~~shall be is~~ less than the amount theretofore paid, the excess shall be refunded out of the *State state* treasury on the order of the State Tax Commissioner upon the Comptroller.

Source: § 58-436.

Comment: No change.

~~§ 58 430. Returns of intangible personal property, when may be destroyed.—Returns of intangible personal property received by the Department of Taxation under the provisions of this chapter and former laws shall be preserved for three years and thereafter until the State Tax Commissioner orders them to be destroyed.~~

Comment: Destruction of returns is covered in a general provision. (Chapter 1)

~~§ 58.1-1116. § 58 441. Failure to pay tax when due; civil penalties.— When, where and how taxes on intangible personal property payable and collectible. Each taxpayer liable for intangible personal property 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.~~

If any payment ~~tax or part thereof~~ is not ~~made paid~~ in full when due, there shall be added to the entire tax or to any unpaid balance of the tax, as the case may be ~~the amount unpaid~~ ; a penalty of five percent of the amount thereof ; and ~~the~~ . The entire tax or any unpaid balance of the tax, as the case may be ~~thereof~~ , together with such penalty, will ~~shall~~ immediately become collectible ; and ~~interest~~ . Interest upon such tax or any unpaid balance of the tax, as the case may be, and on the ~~accrued~~ the penalty provided by this section ; shall be added at a rate determined in accordance with § 58-1160 *58.1-15* , from one month after the tax or any unpaid balance of the tax, as the case may be, was originally due until paid ; but ~~in~~ . In the case of an additional tax assessed by the commissioner of the revenue under the provisions of § 58-427 , 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 § 58-1160 *58.1-15* , from the time the said return was required by law to be filed until paid.

In every case the taxpayer may make payment to the treasurer of the county or city by attaching to his return when he files it with the ~~commissioner~~ of the revenue a check or money

order for the proper amount made payable to the order of "Treasurer of the County of \_\_\_\_\_," or "Treasurer of the City of \_\_\_\_\_," as the case may be; and the commissioner of the revenue shall transmit all such checks and money orders to the treasurer at the time he delivers to the treasurer the assessment sheets or forms showing the assessments; or if memorandum assessments are made, at the time such memorandum assessments are certified to the treasurer. In those counties in which a director of finance performs the duties of a county treasurer; checks or money orders shall be made payable to the order of "Director of Finance of the County of \_\_\_\_\_." If any check be not paid by the bank on which it is drawn, the taxpayer by whom such check was tendered shall remain liable for the payment of the tax and for all legal penalties and interest the same as if such check had not been tendered.

If the taxpayer on filing his return desires to pay in currency or coin, the commissioner of the revenue with whom the return is filed shall forthwith prepare a memorandum assessment on a form to be prescribed and furnished by the Department of Taxation 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 of Taxation 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 intangible personal property taxes.

Source: § 58-441

Comment: Language relative to the coordination of efforts by local commissioners of the revenue and treasurers is stricken as this specific technical administrative process need not be set forth statutorily.

§ 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. Forms of necessary tax bills and receipts shall be prescribed by the Department of Taxation.

Within thirty-one days after the close of such each calendar year, the treasurer shall transmit to the Department of Taxation in such the form as the Department of Taxation may prescribe it may prescribe, such information and data as may be required by such as the Department may require with respect to all assessments made by that the commissioner of the revenue made during such calendar year as and that the treasurer was unable to collect. The Department of Taxation, 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 of Taxation, but the same shall be paid directly into the State state treasury. Section 58-978 58.1-1800 shall not apply with respect to the intangible property taxes covered by this paragraph.

The Department of Taxation shall have power to issue warrants for the collection of such taxes in the same manner and with the same effect as in the case of warrants issued for the collection of taxes assessed by such Department; and all provisions of law applicable to such warrants shall be applicable to the warrants issued for the collection of taxes under this section. The Department of Taxation shall also have power to collect the taxes as aforesaid by other legal process.

Source: § 58-441.

Comment: See § 58.1-1116 for other portions of the previous section relative to penalties for failure to pay the tax when due.

§ 58.1-1118. § 58-440. *Intangible personal property assessment sheets or forms.* —The Department of Taxation 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 of Taxation. The original and, if the Department of Taxation 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 of Taxation, and one copy shall be retained by the commissioner of the revenue. The commissioner of the revenue shall make out these an

assessment ~~sheets~~ *sheet* or ~~forms~~ *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 ~~on such sheets or forms~~ ; ~~and the~~ . The commissioner of the revenue shall each day deliver the original and, if the Department ~~of Taxation~~ 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 ~~of Taxation~~ *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.

Source: § 58-440.

Comment: No change.

## 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.”*

Source: New section.

Comment: This section merely provides a short title for the chapter, conforming it to the format used for other chapters in Title 58.1.

*§ 58.1-1201. § 58-485.01. Definitions.— of word “bank” as used in this chapter. For the purposes of this chapter, the word As used in this chapter, unless the context clearly shows otherwise, the term or phrase:*

“Bank” ~~shall mean~~ means any incorporated bank, banking association or trust company organized by or under the authority of the laws of ~~this 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 ~~this the~~ Commonwealth or having a charter which designates any place within ~~this the~~ Commonwealth as the place of its principal office, whether such bank or banking association ~~be 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 ~~this the~~ Commonwealth is authorized to impose a tax. The word “bank” as used in this chapter term shall exclude all corporations organized under the laws of other states and doing business in ~~this the~~ Commonwealth ; , it shall exclude corporations organized not as banks under the laws of ~~this the~~ Commonwealth and it shall exclude all natural persons and partnerships.

“Bank holding company” ~~shall mean~~ means any corporation that is organized under the laws of Virginia, ~~this Commonwealth~~ and is doing business in ~~this the~~ Commonwealth, and which is a bank holding company under the provisions of the Federal Bank Holding Company Act of 1956.

Source: §§ 58-485.01 and 58-485.02

Comment: The two source sections have been combined to create one definitional section. No substantive changes were made in the definitions.

~~58 485.02. Meaning of “bank holding company”.~~ For the purposes of this chapter, the term “bank holding company” shall mean any corporation organized under the laws of this State and doing business in this State which is a bank holding company under the provisions of the Federal Bank Holding Company Act of 1956.

*§ 58.1-1202 §58 485.04 . Bank capital assessable.—*Every bank or trust company shall pay an annual franchise tax measured by its net capital as defined in ~~§ 58-485.07~~ *§ 58.1-1205* . Such tax shall be in lieu of all other taxes whatsoever for ~~State state~~ , county or local purposes except the real estate and tangible personal property taxes enumerated in ~~§ 58-485.05~~ *§ 58.1-1203* , retail sales and use taxes under Chapter ~~8-1 6~~ (~~§ 58-441-1 et seq.~~) (*§ 58.1-600 et seq.*) of Title ~~58~~ *58.1* , recordation taxes under ~~§ 58-54~~ *58.1-800 et seq.*, motor vehicle sales and use taxes under ~~chapter Chapter 12-1 24~~ (~~§ 58-685-10~~ *58.1-2400 et seq.*) of Title 58, *watercraft sales and use taxes under Chapter 14* (*§ 58.1-1400 et seq.*) of Title *58.1*, aircraft sales and use taxes under ~~chapter Chapter 12-2 13~~ (~~§ 58-685-27~~ *58.1-1300 et seq.*) of Title 58, 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.

Source: § 58-485.04

Comment: Citations to other chapters of Title 58 will have to be revised to reflect the renumbering in Title 58.1. The watercraft sales and use tax has been added to the list of taxes which banks must pay.

*§ 58.1-1203. § 58-485.05. 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.

Source: § 58-485.05  
Comment: No change.

~~§ 58.1-1204. § 58-485-06:~~ Rate of tax.—The franchise tax imposed under this chapter shall be at the rate of one dollar on each ~~one hundred dollars~~ \$100 of net capital as hereinafter defined. There shall be no deduction in respect to shares owned by exempt institutions.

Source: § 58-485.06  
Comment: No substantive change.

~~§ 58.1-1205. § 58-485-07:~~ Computation of net capital.—The net capital of any bank shall be ascertained by adding together its capital, surplus and undivided profits to obtain gross capital and deducting therefrom (i) the assessed value of real estate as provided in ~~§ 58-485-08~~ § 58.1-1206 , (ii) the book value of tangible personal property under ~~§ 58-485-08~~ § 58.1-1206 , (iii) the pro rata share of government obligations as set forth in ~~§ 58-485-08~~ § 58.1-1206 , (iv) the capital accounts of any bank subsidiaries under ~~§ 58-485-08~~ § 58.1-1206 , and (v) (a) the amount of any reserve for loan losses which is allowable by the Internal Revenue Service in computing federal taxable income of the bank and which amount of reserve is included in capital, surplus and undivided profits as defined hereinabove and (b) the amount of any reserve for marketable securities valuation which is included in capital, surplus and undivided profits is 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 ~~thirty-first~~ 31 next preceding the date for filing the bank's return under ~~§ 58-485-013~~ § 58.1-1207 .

Source: § 58-485.07  
Comment: No substantive change.

~~§ 58.1-1206. § 58-485-08:~~ Deductions from gross capital.—There shall be deducted from the gross capital otherwise ascertainable under ~~§ 58-485-07~~ § 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 ~~within this chapter~~ . The deduction for assessed value of real estate shall be the most recent assessment made prior to January ~~one~~ 1 of the current bank franchise tax year for real estate owned by the bank or affiliate on January ~~one~~ 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 ~~§ 58-485-07~~ § 58.1-1205 at December ~~thirty-one~~ 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. 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. § 742, 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 ~~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.

Source: § 58-485.08

Comment: No substantive change.

~~§ 58-1207. § 58-485-013:~~ Filing of return and payment of tax.—Each bank as defined in ~~§ 58-485-01~~ ~~§ 58.1-1201~~ as of the first day 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 one 1, a return in duplicate which shall set forth the tax on net capital as computed under this chapter ; . which 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 ~~§ 58-485-012~~ ~~§ 58.1-1211~~ shall be filed with the appropriate assessing officer of each political subdivision imposing a tax on the filing bank and . Such return shall set forth the tax on net capital owing to each such political subdivision as computed under this chapter : Such return 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 ~~§ 58-485-07 paragraph 3 of § 58.1-1206~~ . Every bank, on or before the first day of June 1 of each year, will shall pay into the State state treasury the State 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.

Source: § 58-485.013

Comment: No substantive change. The reference to § 58-485.07, which was somewhat misleading, has been changed to § 58-485.08, which corresponds to § 58.1-1206.

~~§ 58.1-1208 § 58-485-09 .~~ City tax.—Any city in this Commonwealth in which is located any bank may, by ordinance, impose a tax not to exceed eighty per centum percent of the State state rate of taxation on each one hundred dollars \$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 ~~§ 58 485.012~~ ~~§ 58.1-1211~~ .

Source: § 58-485.09

Comment: No substantive change.

~~§ 58.1-1209. § 58-485-010:~~ Town tax.—Any incorporated town in this Commonwealth in which is located a bank may, by ordinance, impose a tax not to exceed eighty per centum percent of the State state rate of taxation for each one hundred dollars \$100 of the net capital of a bank located in such towns 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 ~~§ 58-485-012~~ ~~§ 58.1-1211~~ .

Source: § 58-485.010

Comment: No substantive change.

~~§ 58.1-1210. § 58-485-011:~~ 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 eighty per centum percent of the State state rate of taxation for each one hundred dollars \$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 ~~§ 58-485-012~~ ~~§ 58.1-1211~~ .

Source: § 58-485.11

Comment: No substantive change.

~~§ 58.1-1211. § 58-485-012:~~ 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 §§ 58-485-09, 58-485-010, or ~~58-485-011~~ ~~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 ~~§ 58-485-06~~ ~~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.

Source: § 58-485.012

Comment: No substantive change.

~~§ 58.1-1212. § 58-485-014:~~ Record of deposits through branches required.—Each bank in this State 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 ; . ~~and~~ 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 § 58-485-013 § 58.1-1207 .

Source: § 58-485.014

Comment: No substantive change.

§ 58.1-1213. ~~§ 58-485-015:~~ Credit against ~~State~~ *state* tax for amounts paid cities, towns and counties.—Any bank paying any tax assessed by any city ~~or by any~~ , incorporated town , or ~~by any~~ county within this Commonwealth shall be entitled to credit upon the ~~State~~ *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. Such credit shall be allowed by the Department of Taxation upon presentation of the duly authenticated receipt of the treasurer or other collecting official of the city, town or county, or other evidence of payment of the city, town or county bank franchise tax. In no event, however, shall the credit exceed the amount of such city, incorporated town or county levies authorized by this chapter.

Source: § 58-485.015

Comment: No substantive change.

§ 58.1-1214. ~~§ 58-485-016:~~ Auditing of returns.—The Department of Taxation ~~shall~~ *may* audit ~~such~~ returns ~~as the Commissioner deems necessary for the proper enforcement of the tax levied by this chapter. and~~ The Department shall correct all errors ~~therein~~ discovered by such audit and ~~shall~~ 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~~ *state* tax under § 58-485-015 § 58.1-1213 .

Source: § 58-485.016

Comment: No substantive changes.

§ 58.1-1215. ~~§ 58-485-017:~~ Banks in liquidation.—When the affairs of any bank are being wound up under §§ 6.1-100 and 6.1-102 of this Code 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 ~~one~~ 1 of each year shall be made by those having custody or control thereof. If any surplus ~~shall remain~~ *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.

Source: § 58-485.017

Comment: No substantive changes

§ 58.1-1216. ~~§ 58-485-018:~~ Penalty upon bank for failure to comply with chapter.—Any bank which ~~shall fail~~ *fails* to file a return or pay the state tax required by this chapter or fails or neglect to comply with any other provision of this chapter shall be fined not less than one hundred \$100 nor more than five hundred dollars \$500 ; which fine shall be recovered upon motion, after five days' notice in the circuit court of the county or city in which the bank is located. ~~The motion shall be in the name of the Commonwealth and presented by the attorney for the Commonwealth of the court in which the motion is brought or made. 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 § 58-1160.~~

Source: § 58-485.018

Comment: Penalty provision has been rewritten to allow the Department to assess and collect a penalty without proceeding immediately to the circuit court.

§ 58.1-1217. ~~§ 58-485-03:~~ State banks and national banks treated the same in matter of taxation.—In the event that any ~~State~~ *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~~ *state* banks.

Source: § 58-485.03

Comment: No substantive change.



## CHAPTER 14.

### VIRGINIA WATERCRAFT SALES AND USE TAX.

~~§ 58.1-1400. § 58-685.39. Title of chapter . This chapter shall be known and may be cited as the "Virginia Watercraft Sales and Use Tax Act."~~

Source: § 58-685.39

Comment: No change

~~§ 58.1-1401. § 58-685.40. Definitions.— The following words, terms and phrases when As used in this chapter shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning ; unless the context clearly shows otherwise, the term or phrase:~~

1. ~~"Watercraft" shall mean every description of watercraft, other than a seaplane on the water, used or capable of being used as a means of transportation on water and which are fifteen feet or more in overall length measured along the centerline and which have a gross weight in excess of four hundred pounds, except watercraft which have a valid marine document issued by the United States Coast Guard.~~

2. ~~"Commissioner" shall mean the State Tax Commissioner.~~

2. ~~"Dealer" shall mean means any person whom who is the Commissioner finds to be in the regular business of selling watercraft . ; who has held during the calendar year five or more watercraft for resale : Any person who has held five or more watercraft for resale during the calendar year shall be deemed, for purposes of this chapter, a "dealer."~~

4. ~~"Person" shall mean every natural person, firm, partnership, association, corporation, or other legal entity.~~

~~"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.~~

5. ~~"Sale" shall mean means any transfer of ownership or possession ; or both, of a watercraft by exchange ; or barter, conditional or otherwise, in any manner or by any means whatsoever ; of a watercraft, including . The term shall also include (i) a transaction whereby possession is transferred but title is retained by the seller as security, but excluding any transfer of ownership or possession which transfer is made to secure payment of an obligation. The term "sale" shall include (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.~~

6. ~~"Sale price" shall mean 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 ; but exclusive of any federal manufacturers' excise tax .~~

~~"Watercraft" shall mean means any contrivance (i) used or which is capable of being used as a means of transportation on water, (ii) which is fifteen feet or more in overall length measured along the centerline and (iii) which has a gross weight in excess of 400 pounds. 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.~~

Source: § 58-685.40

Comment: No substantive change. The definition of "gross receipts" has been moved from § 58-685.44 to this section. All definitions are now found at the beginning of the chapter. The definitions of "commissioner" and "person" have been stricken since they will be found in the general definitional section applicable to the entire subtitle.

~~§ 58.1-1402. § 58-685.41. 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 *State Commonwealth* and , upon the use in this *State Commonwealth* of any watercraft ; ~~the same to be collected in the and upon the gross receipts from the lease, charter or other use of any watercraft by a registered dealer in this Commonwealth.~~ The amount ~~to~~ of the tax to be collected shall be determined by the application of 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 ~~this State the Commonwealth~~ .
2. Two percent of the sale price of each watercraft ~~when the same is not sold in this State the Commonwealth but is required to be titled in this State; the Commonwealth~~ . However, if the watercraft is first required to be titled in ~~this State the Commonwealth~~ six months or more after its acquisition, the tax shall be two percent of the ~~current~~ 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.

A transaction taxed under paragraph 1 shall not be taxed under paragraph 2 or 3 , nor shall the same transaction be taxed more than once under ~~this section either paragraph 1, 2 or 3.~~ Use of any watercraft by a registered dealer resulting in taxation under paragraph 3 shall not exempt any subsequent sale or use of such watercraft from being taxed under paragraphs 1 or if applicable.

Source: §§ 58-685.41 and 58-685.44

Comment: All provisions pertaining to the levy of the tax are now found in this one section.

Paragraph 3 incorporates the provisions 58-685.44 (A). Previously the commercial use tax was referred to as a "dealer's exemption." It was felt that this was misleading.

~~§ 58.1-1403. § 58-685.47. Value of watercraft; Basis of tax; estimate of tax; penalty for misrepresentation.-~~ A. The Tax Commissioner shall ~~levy assess and collect the tax for the use or sale of a watercraft pursuant to paragraphs 1 and 2 of § 58.1-1402 upon the basis of the sale price of such watercraft ; including any amount credited for trade-in or any other transaction of like nature, except that if such watercraft is first used or stored for use in this State six months or more after its acquisition; the tax shall be based on the current market value of such watercraft .~~

Any person who sells a watercraft in this *State 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 ~~such~~ (i) the invoice is not available, or (ii) the Tax Commissioner has reason to believe ~~it 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 ~~this State 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 ~~on such invoice, on any return, or to the Commissioner~~ 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.

Source: §§ 58-685.47 and 58-685.44

Comment: No substantive change. The provisions establishing the basis of the tax for dealers and other purchasers have been combined into one section. The penalty for knowing failure to comply has been classified as a Class 1 misdemeanor to correspond with the penalty classifications system provided in Title 18.2.

~~§ 58.1-1404. § 58-684.45. Other Exemptions.~~—A. Any watercraft sold to or used by the United States or any of the governmental agencies thereof, 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 on January one, nineteen hundred eighty-two 1, 1982, may 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 paragraphs (1) and (2) of § 58.1-1402. Such dealer shall also be exempt from the titling requirement in § 62.1-186.2.

E. Any watercraft sold or used for which no title is required, unless the owner of such watercraft chooses to apply for a title under § 62.1-186.2, shall be exempt from the tax imposed under this chapter.

Source: §§ 58-685.45, 58-685.44 and 58-685.46

Comment: All exemption provisions have been moved to this one section.

~~§ 58.1-1405. § 58-685.46. Time for payment of tax required for issuance of title.~~ — 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 Commission of Game and Inland Fisheries for a title therefor. No tax shall be levied or collected under this chapter upon the sale or use of a watercraft for which no title is required, unless the owner of such watercraft chooses to apply for a title under § 62.1-186.2. Except as otherwise provided in § 58-685.45 § 58.1-1404, no title shall be issued unless the applicant for title of such a watercraft shows to the satisfaction of the Commission 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.

Source: §§ 58-685.46 and 58-685.44

Comment: All provisions pertaining to the time for payment of the tax are now found in this one section. The stricken language has been moved to § 58.1-1405, which pertains to exemptions.

~~§ 58-685.44. Registered dealers exempt from sales and use tax; tax on gross receipts from lease, etc., of watercraft.~~ A. A registered dealer in watercraft shall be exempt from the titling requirement in § 62.1-186.2 and the tax imposed hereunder, but shall be subject to a tax of two percent of the gross receipts from lease, charter, or other use of, any watercraft so used. For purposes of this section, gross receipts shall include hourly rental, maintenance, and all other charges for use of such watercraft, and charges for piloting, crew, or other services, unless separately stated on the invoice.

B. Any dealer subject to this section shall on or before the twentieth day of each month transmit to the Commissioner on a form prescribed by him a return showing the gross receipts arising from all transactions taxable under this chapter during the preceding calendar month. The dealer shall remit with such return the amount of tax due. Any dealer who fails to make such return and pay the full amount of the tax imposed by this section on or before such date shall be subject to a penalty of five percent of the tax due for each month or portion thereof that such failure continues, not to exceed twenty-five percent; however, if the Commissioner is satisfied that such failure is due to providential or other good cause, such return shall be accepted exclusive of such penalties, but with interest determined in accordance with § 58-1160.

C. In any case in which the Commissioner finds that a charge for the rental or use of watercraft has been lower than the fair market value of such rental or use, he 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. For the purposes of this section, the term "gross receipts" shall include the amount by which the price estimated under this section exceeds the charge actually made.

Comment: All of the stricken provisions have been relocated to other sections for purposes of clarity and chapter uniformity.

~~§ 58.1-1406. § 58-685.43. Dealers' certificates of registration.—A. Every person who qualifies as a dealer under § 62.1-186.1 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 State Commonwealth . and shall pay the Commissioner therefor a fee of five dollars for each such certificate.~~

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; 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 State 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. ~~A dealer whose certificate of registration has been previously suspended or revoked, shall pay the Commissioner a fee of ten dollars for the renewal or reissuance of a certificate of registration.~~

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 ; . ~~and such~~ The holder of such certificate shall inform the Commissioner in writing within thirty days after he has ceased to conduct such business at such place that he has so ceased ; . ~~provided, However, that if the holder of a certificate of registration desires to change his place of business to another place in this State Commonwealth , he shall so inform the Commissioner in writing and his certificate shall be revised accordingly without charge.~~

Source: § 58-685.43

Comment: In order to conform with the provisions of the retail sales and use tax, relating to dealers' certificates of registration, the application fee and application fee following a revocation have been deleted.

~~§ 58.1-1407. § 58-685.48. Retention of documents : —Any person who sells a watercraft in this State Commonwealth shall retain a copy of the invoice required by § 58-685.47 § 58.1-1403 for six three years following such sale. Any person taxed as a dealer under § 58-685.44 § 58.1-1402 shall retain a copy of all invoices for lease, charter or other usage of watercraft for six three years following such transaction. Each invoice shall give an accurate description of the watercraft sold, leased or used.~~

~~The Commissioner may examine during the usual business hours of the day ; records, books, papers or other documents of any dealer or other person selling or purchasing watercraft relating to the receipts or sales prices for any watercraft to verify the truth and accuracy of any statement or any other information as to a particular sale, lease or other taxable transaction.~~

Source: § 58-685.48

Comment: Records must now only be retained for three years. This requirement is uniform for most state taxes. The provisions relating to the examination of documents by the Tax Commissioner have been deleted; such power is granted in the general provisions in § 58.1-220.

~~§ 58.1-1408. § 58-685.42. Civil penalties and interest.—When any person shall fail fails to make any return or pay the full amount of tax required by § 58-685.41 § 58.1-1402 within thirty days from the time the watercraft was purchased in this State or required to be titled in this State, of the required filing and payment date, there shall be imposed, in addition to other penalties~~

provided herein, a ~~specific~~ penalty to be added to the tax in the amount of five percent of the unpaid tax ; ~~with~~ . An additional five 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 ~~to~~ exceed twenty-five 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 *State 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 *State 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 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.~~ It shall be *prima facie* evidence of intent to defraud the *State 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 ~~§ 58-1160~~ *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.

Source: §§ 58-685.42 and 58-685.44

Comment: All civil penalties for dealers, purchasers and other users have been moved to this one section.

~~§ 58.1-1409. § 58-685.49.~~ *Credit for payment of against tax.*—A credit shall be granted against the tax imposed by this chapter with respect to a person's use in this *State Commonwealth* of a watercraft purchased by him in another state, or purchased by him in this *State Commonwealth* if the *State 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 *State Commonwealth* . The amount of the credit shall not exceed the tax imposed by this chapter.

Source: § 58-685.49

Comment: No substantive change.

~~§ 58.1-1410. § 58-685.50.~~ *Allocation Disposition of funds.*—All funds collected hereunder by the Tax Commissioner shall be paid forthwith into the general fund of the ~~State~~ *state* treasury.

Source: § 58-685.50

Comment: No substantive change

## CHAPTER 15.

### VIRGINIA AIRCRAFT SALES AND USE TAX.

§ 58.1-1500. § 58-685.27. Title.—This chapter shall be known and may be cited as the “Virginia Aircraft Sales and Use Tax Act.”

Source: § 58-685.27.

Comment: No change.

§ 58.1-1501. § 58-685.28. Definitions.— ~~The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning; unless the context clearly shows otherwise, the term or phrase:~~

(1) “Aircraft” ~~shall mean~~ *means* any contrivance used or designed for untethered navigation of or flight in the air ~~carrying by one or more persons at an altitude greater than twenty-four inches above the ground; except that~~ . Such ~~terms~~ *term* shall not include parachutes.

(2) “Commissioner” ~~shall mean the State Tax Commissioner.~~

(3) “Dealer” ~~shall mean~~ *means* any person ~~whom owning five or more aircraft during the calendar year who the Commissioner finds is in the regular business of selling aircraft; who owns during the calendar year five or more aircraft~~ .

“Gross receipts” ~~shall mean~~ *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.

(4) “Person” ~~shall mean every natural person, firm, partnership, association or corporation.~~

(6) “Retail sale” ~~shall mean~~ *means* a sale to a consumer or to any person for any purpose other than for resale; ~~and~~ . The term shall ~~mean and~~ include any transaction as the Commissioner, upon investigation, finds to be in lieu of a sale; ~~provided, that~~ . Sales for resale must be made in strict compliance with any rules and regulations ~~made under promulgated pursuant to this chapter.~~

(6) “Sale” ~~shall mean~~ *means* any transfer of ownership or possession of an aircraft ~~or both, by exchange; or barter, lease or rental, conditional or otherwise, in any manner or by any means whatsoever; of an aircraft; including~~ . The term shall also include a transaction whereby possession is transferred but title is retained by the seller as security; ~~but excluding any~~ . The term shall not include a transfer of ownership or possession ~~which transfer is (i) made to secure payment of an obligation, or which is (ii) incidental to repossession under a lien and under which ownership is transferred to the reposessor, his nominee or a trustee, pending ultimate disposition or sale of the collateral, and excluding the transfer of an aircraft or (iii) as a part of the sale of all or substantially all the assets of any business.~~

(7) “Sale price” ~~shall mean~~ *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; but exclusive of any federal manufacturers' excise tax~~ .

(8) “Scheduled air service” *means* service provided by a single air carrier consisting of regularly scheduled flights to one or more Virginia airports at least five days per week.

Source: §§ 58-685.28 and 58-685.30.

Comment: No substantive change. The definitions of “gross receipts” and “scheduled air service” were previously found in other sections of the chapter. All definitions are now found at the beginning of the chapter. All definitions of “commissioner” and “person” have been stricken because they are defined in the general definitional section applicable to the entire subtitle.

§ 58.1-1502. § 58-685.29. 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 ~~this State the Commonwealth~~ and upon the use in ~~this State the Commonwealth~~ of any aircraft; ~~the same to be collected in required to be licensed by the Department of~~

*Aviation pursuant to § 5.1-5. The amount to be of the tax to be collected shall be determined by the application of the following rate against the sale price or gross receipts:*

(a) ~~Two per centum~~ percent of the sale price of each aircraft sold in ~~this State the Commonwealth~~ .

(b) ~~Two per centum~~ percent of the sale price of each aircraft ~~when the same is not sold in this State the Commonwealth but is required to be licensed for use in this State; provided, that the Commonwealth. However, if the aircraft is licensed in this State the Commonwealth six months or more after its acquisition, the tax shall be two per centum percent of the current market value of such aircraft at the time it is licensed .~~

(c) *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 be taxed under this paragraph as provided in § 58.1-1507.*

A transaction taxed under ~~subsection~~ paragraph (a) shall not be taxed under ~~subsection~~ paragraph (b), nor shall the same transaction be taxed more than once under ~~this section either paragraph~~ .

*An aircraft subject to the tax under paragraph (c) shall be subject to the tax under paragraph (a) or (b) immediately upon the revocation of the commercial use license for such aircraft.*

Source: §§ 58-685.29, 58-685.30 and 58-685.32.

Comment: All provisions pertaining to the levy of the tax are now found in this one section. The new language at the end of the first sentence was previously found in § 58-685.32. Paragraph C incorporates the provisions of § 58-685.30(a). Previously the commercial use tax was referred to as a "dealer's exemption." It was felt that this was misleading.

~~§ 58.1-1503. § 58-685.32. Value of aircraft and 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 paragraphs (a) and (b) of § 58.1-1502 upon the basis of the sale price of such aircraft ; including any amount credited for trade-in or any other transaction of like nature, except that if such aircraft is first used or stored for use in this State six months or more after its acquisition, the tax shall be based on the current market value of such aircraft .~~

Any person who sells an aircraft in ~~this State 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 paragraph (c) 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 such (i) the invoice is not available, or (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 State 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 ~~on such invoice, on any return, or to the Commissioner,~~ 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.

Source: §§ 58-685.30 and 58-685.33.

Comment: No substantive change. The provisions for ascertaining the basis of the tax have been combined into one section. The penalty for knowing failure to comply has been classified as a Class 1 misdemeanor to correspond with the penalty classification system as provided in Title 18.2.

§ 58.1-1504. ~~§ 58-685.27:~~ Credit for payment elsewhere against tax .—A credit shall be granted against the tax imposed by this chapter with respect to a person's use in this State *Commonwealth* of an aircraft purchased by him in another state. 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. The amount of the credit shall not exceed the tax imposed by this chapter.

Source: § 58-685.37.

Comment: No change.

§ 58.1-1505. ~~§ 58-685.31:~~ Other Exemptions.—Any aircraft sold to or used by the United States or any of the governmental agencies thereof, the State *Commonwealth* of Virginia or any political subdivision thereof, or any 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 shall be exempt from the tax imposed by this chapter.

*No tax shall be levied or collected upon the sale or use of an aircraft for which no license is required by the Department of Aviation.*

As used in this section "scheduled air service" means service provided by a single air carrier consisting of regularly scheduled flights to one or more Virginia airports at least five days per week.

Source: §§ 58-685.31 and 58-685.32.

Comment: All exemption provisions are now found in this one section. "Scheduled air service" is defined in § 58.1-1501. No substantive change.

§ 58.1-1506. ~~§ 58-685.32:~~ Time for payment of tax required for license. - A. Except as provided in paragraph 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. ~~No tax shall be levied or collected under this chapter upon the sale or use of an aircraft for which no license is required.~~

*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.*

Source: §§ 58-685.30(b) and 58-685.32.

Comment: All provisions pertaining to the time for payment of the tax are now found in this section. The stricken provisions of paragraph A are now found in § 58.1-1502. No substantive change.

§ 58-685.30. Dealer exclusion. (a) A dealer in aircraft may elect to license for commercial use one or more aircraft he holds for sale, ~~without payment of the tax levied under §58-685.29.~~ Any dealer who so elects shall be subject to a tax of two per centum of the gross receipts from lease, charter or other use of, any aircraft so licensed. For purposes of this section, gross receipts shall include hourly rental, maintenance and all other charges for use of such aircraft and, unless separately stated on the invoice, all charges for services of pilots or instructors in such aircraft.

(b) Any dealer who elects to be subject to this section shall on or before the twentieth day of each month transmit to the Commissioner on a form prescribed by him a return showing the gross receipts arising from all ~~transactions taxable under this chapter during the preceding calendar month.~~ The dealer shall remit with such return the amount of tax due. Any dealer who fails to make such return and pay the full amount of the tax imposed by this chapter on or before such date shall be subject to a penalty of five per centum of the tax due for each month or portion thereof that such failure continues, not to exceed twenty-five per centum; provided, that if the Commissioner is satisfied that such failure is due to providential or other good cause, such return shall be accepted exclusive of such penalties, but with interest determined in accordance with § ~~58-1160.~~

(c) An election made under this section shall be revocable only by permission of the Commissioner. Any person who revokes his election shall ~~immediately become liable for the tax imposed under §58-685.29.~~ Any person who revokes an election under this section shall be ineligible to elect to be subject to this section for two years following such revocation.

(d) In any case in which 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, it may estimate a fair

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. For the purposes of this section, the term "gross receipts" shall include the amount by which the price estimated under this section exceeds the charge actually made.

*§ 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 § 58.1-1502(c) 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 § 58.1-1502(a) or (b) 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.*

Source: § 58-685.30.

Comment: § 58-685.30 has been completely rewritten and portions of that section have been incorporated into other sections of this chapter. No substantive change was made in the provisions of § 58-685.30(a) and (c) other than to require that the election be made in writing at or before the time for payment of the tax. It was felt this would standardize the procedure for such election.

*§ 58.1-1508. § 58-685.36. Retention of documents ; examination by Commissioner .*-Any person who sells or leases or charters an aircraft in this State Commonwealth shall retain a copy of the invoice and other financial data pertaining to the transaction required by § 58-685.33 58.1-1503 for six three years following such sale transaction . Any person taxed as a dealer under § 58-685.29 shall retain a copy of all invoices for lease, charter or other usage of aircraft for six years following such transaction. Each invoice shall give an accurate description of the aircraft sold, leased or used.

*The Commissioner may examine during the usual business hours of the day records, books, papers or other documents of any dealer or other person selling or purchasing aircraft relating to the receipts or sales prices for any aircraft to verify the truth and accuracy of any statement or any other information as to a particular sale, lease or other taxable transaction.*

Source: § 58-685.36.

Comment: Records must now only be retained for three years. This requirement is uniform for most state taxes. Examination of records language is now covered in § 58.1-103.

*§ 58.1-1509. § 58-685.38. Allocation Disposition of funds.*-All funds collected hereunder by the Commissioner shall be forthwith paid into the state treasury and . The revenue so derived, after deducting refunds, is hereby credited to the special fund created under pursuant to the provisions of § 5.1-51 of this Code.

Source: § 58-685.38.

Comment: No substantive changes.

*§ 58.1-1510. § 58-685.29-1. Civil penalties.*-When any person ; firm or corporation shall fail fails to make any return or pay the full amount of tax required by § 58-685.29 58.1-1502 ; within thirty days from the time the aircraft was purchased in this State or required to be licensed in this State, of the required filing and payment date, there shall be imposed, in addition to other penalties provided herein, a specific penalty to be added to the tax , in the amount of five per centum percent of the unpaid tax ; with . An additional five per centum for 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 to exceed twenty-five per centum 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 the State 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 the State this Commonwealth of any such tax, a specific penalty of fifty per centum percent of the amount of the proper tax shall be assessed. All penalties and interest imposed by this chapter shall be payable by the purchaser or user of the aircraft and collectible by the Commissioner in the same manner as if they were a part of the tax imposed. It shall be prima facie evidence of intent to defraud the State 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 ~~per centum~~ 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 § ~~58-1160~~ 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.

Source: §§ 58-685.29:1 and 58-685.30(b).

Comment: The provisions of former § 58-685.29:1 have been modified to provide that the additional penalty be charged on all taxes remaining unpaid for a period of thirty days. Previously, the additional penalty did not accrue during the first sixty days after the due date. Additionally, the Commissioner is granted the authority to relieve a taxpayer from the obligation to pay a penalty if good cause for the failure to pay is shown. Former § 58-685.30(b) provided for imposition of penalties and interest upon a dealer's failure to file or pay. All civil penalties are now found in this section.

## CHAPTER 16.

### FOREST PRODUCTS TAX.

§ 58-1-1600. Short title.—This chapter shall be known and may be cited as the “Forest Products Tax.”

Source: New section.

Comment: Establishes a title for the chapter.

§ 58-1-1601. Definitions.—As used in this chapter, unless the content clearly shows otherwise, the term or phrase:

“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~~ includes all types of forest products, but is not limited to logs, timber, pulpwood, excelsior wood, chemical wood, ~~except dead chestnut wood~~, woodchips, 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 ; ~~and all other types of forest products~~ .

“Manufacturer” means the person who: (i) operates a sawmill for the sawing of logs into rough lumber in its various sizes and forms, (ii) operates a cooperage mill, veneer mill, excelsior mill, paper mill, chipmill, chemical plant or other operation for the processing of forest products into products other than lumber, (iii) purchases from the person who severs crossties, switch ties, mine ties, mine props, and other forest products used in connection with mining, piles or poles, except fish net poles, or (iv) severs posts, fuel wood, fish net poles and similar products.

“Shipper” means any person in this Commonwealth who sells or ships outside the Commonwealth by railroad, truck, barge, boat or by 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 who fells, cuts or otherwise separates timber or any other such forest product from the soil.

Source: § 58-838.1

Comment: Terms are modified so as to conform to usage in the chapter. Terms defined at the beginning of Title 1 and Title 58.1 have been deleted.

§ 58-1-1602. Levy of tax for forest conservation.—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. The tax shall be paid by every person engaged in this Commonwealth in business as a manufacturer ; or shipper ; ~~or severer~~ of forest products for sale, profit, or commercial use.

Source: §§ 58-838.2

Comment: Terms are modified to conform with usage throughout the chapter. “Severer,” which is included in the definition of manufacturer, has been deleted here. § 58-838.3 is repealed.

§ 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.

Source: § 58-838.4

Comment: No substantive change.

§ 58-1-1604. Tax rates.—The tax hereby imposed shall be assessed at the following rates:

1. On pine or cedar 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 one dollar and fifteen cents on pine and fifteen cents on cedar.

2. On hardwood, cypress and all other species of lumber the rate per 1000 board feet measure shall be seven and one-half cents.

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 one dollar and fifteen cents on pine, fifteen cents on cedar, and seven and one-half cents on other species.

4. On logs to be converted into veneer the rate per 1000 board feet log scale, International 1/4" Kerf Rule, shall be one dollar and fifteen cents for pine, fifteen cents for cedar, and seven and one-half cents for other species.

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 forty-seven and one-half cents for pine, seven and one-half cents for cedar, and three and three-quarters cents per cord on all other species.

6. On chips manufactured from roundwood and customarily sold by the pound, the rate per 100 pounds shall be nine hundred eighty-six thousandths cent for pine, and seventy-eight thousandths cent for other species.

7. On railroad cross ties the rate per piece shall be three and eight-tenths cents on pine, one-half cent on cedar, and one-third cent on all other species.

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 one hundred pieces shall be as follows: thirty-eight cents for pine, six cents for cedar, and three cents for other species, where each piece is four feet or less in length; sixty-one and three-fourths cents for pine, nine and three-fourths cents for cedar, and four and three-fourths cents for other species, where each piece is more than four feet but not over eight feet in length; and seventy-six cents for pine, twelve cents for cedar, and six cents for other species, where each piece is more than eight feet in length. If the taxpayer so elects he may pay the taxes due on the above forest products at the rate of one dollar and four and one-half cents for pine, sixteen and one-half cents for cedar, and eight and one-fourth cents for other species, per 1000 lineal feet.

9. On piling and poles of all types the rate shall equal two and thirty-one hundredths percent of invoice value f.o.b. loading out point.

10. On keg staves the rate per standard 400 inch bundle shall be three and eight tenths cents for pine and one-half cent for other species; the rate per 100 keg heads shall be eleven and five-tenths cents on pine and one and one-half cents for other species; and on tight cooperage, one and one-half cents per 100 staves and three cents per 100 heads.

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.

Source: § 58-838.5:2

Comment: No substantive change

§ 58.1-1605. Alternative for rates.—On or before November one / , in the last year of each biennium, the State Forester shall submit to the Governor an estimate of the revenue to be collected from the Forest Products Tax for the next biennium. 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 estimate, 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 estimate of revenue to be collected from this tax for that biennium at the rates imposed by § 58.1-1604.

1. On pine and cedar 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 fifteen cents.

2. On hardwood, cypress, and all other species of lumber the rate per 1000 board feet measure shall be seven and one-half cents.

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 fifteen cents on pine and cedar and seven and one-half cents on other species.

4. On logs to be converted into veneer the rate per 1000 board feet log scale, International 1/4" Kerf Rule, shall be fifteen cents for pine and cedar, and seven and one-half cents for other species.

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 seven and one-half cents for pine or cedar, and three and three-quarter cents per cord on all other species.

6. On chips manufactured from roundwood and customarily sold by the pound, the rate per 100 pounds shall be one hundred fifty-six thousandths cent for pine and seventy-eight thousandths cent for other species.

7. On railroad cross ties, the rate shall be one-half cent per piece on species of pine and cedar and one-third cent per piece on all other species.

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 one hundred pieces shall be as follows: six cents for pine and cedar and three cents for other species, where each piece is four feet or less in length; nine and three-fourths cents for pine and cedar and four and three-fourths cents for other species, where each piece is more than four feet in length but not over eight feet in length; and twelve cents for pine and cedar and six cents for other species, where each piece is more than eight feet in length. If the taxpayer so elects he may pay the taxes due on the abovementioned forest products at the rate of sixteen and one-half cents per 1000 lineal feet for pine and cedar, and eight and one-fourth cents for other species.

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.

10. On keg staves the rate per standard 400 inch bundle shall be one-half cent; the rate per 100 keg heads shall be one and one-half cents; and on tight cooperage, one and one-half cents per 100 staves and three cents per 100 heads.

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 or cedar lumber when the product is pine or cedar, or on the unit rate of hardwood lumber when the product is a species other than pine or cedar.

Source: § 58-838.5:2.

Comment: No substantive change. Section 58-838.5:2 has been divided into two new sections.

§ 58.1-1606. Optional rates for certain manufacturers and severers.—Notwithstanding the provisions of §§ 58-1604 and 58-1605, 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 feet and 300,000 feet, 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 the last day of December 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 the last day of December 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.

Source: § 58-838.8

Comment: The provisions concerning optional tax rates have been relocated in this new section following the regular rates.

§ 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.

Source: § 58-838.8

Comment: A new section for the tax rate limitation has been created. No substantive change.

§ 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.

Source: § 58-838.19 and § 58-838.6

Comment: No substantive changes. Subsection B provisions, taken from § 58-838.19 have been relocated in this exemption section.

§ 58.1-1609. Payment, collection, and disposition of tax.—A. All taxes collected by the Department pursuant of § 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 Division of Forestry, Department of Conservation and Economic Development the following amounts on forest products of pine:

1. one dollar per 1000 board feet measure on lumber;
2. one dollar per 1000 board feet log scale, International 1/4" Kerf Rule, on logs not converted into lumber or other products in this Commonwealth;
3. one dollar per 1000 board feet log scale, International 1/4" Kerf Rule, on logs to be converted into veneer;
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;
5. eighty-three hundredths cent per 100 pounds of chips manufactured from roundwood;
6. three and three-tenths cents per piece on railroad cross ties;
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; or
  - d. eighty-eight cents per 1000 lineal feet where sold on the lineal feet basis.
8. two and two-hundredths percent of invoice value f.o.b. loading out point on piling and poles;
9. three and three-tenths cents per standard 400 inch bundle of keg staves;
10. ten cents per 100 on keg heads; 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 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 (§ 10-90.30 et seq.), Chapter 4 of Title 10. 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 credited by the Comptroller, as special revenues, to the "Protection and Development of Forest Resources of the State Fund" of the Division of Forestry, Department of Conservation and Economic Development 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.

Source: § 58-838.7:1

Comment: Language appropriating \$30,000 annually to the Department of Taxation for collection costs has been deleted. The language has been rewritten to require the special funds to totally reimburse the Department of Taxation, a general fund agency, for its administrative costs in collecting the forest products tax. This change is consistent with present State fiscal policy. Expenditure of funds to localities has been moved to § 58.1-1611.

§ 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 Conservation and Economic Development 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 State of 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.

Source: § 58-838.7:1

Comment: This is a new section. Section 58-838.7:1 has been divided into two sections for purposes of clarification (§§ 58.1-1610 and 58.1-1609).

§ 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.

Source: § 58-838.7:1

Comment: Language is simply placed into a new section. No substantive change.

§ 58.1-1612. Returns to be filed by manufacturer; time of payment of tax.—Every manufacturer, within thirty 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 manufactured during the preceding quarter;
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 state; 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 shall pay to the Department the forest products tax imposed by this Chapter, with respect to all forest products severed from the soil in this Commonwealth and embraced in such return.

Source: § 58-838.8

Comment: Provisions for an optional tax rate have been relocated to § 58.1-1606. Refund provisions have been relocated to § 58.1-1607

§ 58.1-1613. Returns and payment of tax on unmanufactured products shipped or sold for shipping out of state.—Every shipper of forest products who ships such products out of this Commonwealth in an unmanufactured condition, or sells such products for shipment out of this Commonwealth in an unmanufactured condition shall file a return with the Department showing:

1. the kinds of forest products shipped or sold;
2. the quantity of such products shipped or sold;
3. the county or counties where such products were severed from the soil; and
4. any other reasonable and necessary information pertaining thereto as the Department may require for the proper enforcement at this chapter.

This return shall be filed with the Department within thirty days after the expiration of each quarter, expiring, respectively, on March, June, September, and December on forms prescribed by the Department.

At the time of filing such quarterly returns such shipper shall pay to the Department the tax imposed by this Chapter.

Source: 58-838.9

Comment: No substantive changes.

§ 58.1-1614. Reports to be made by shipper of forest products.—A. When requested by the Commissioner, all transporters of forest products out of, within, or across the Commonwealth shall be required to furnish the Commissioner a report containing any and all information relative to the transportation of such forest products. Such report, which shall be under oath and on forms prescribed by the Commissioner, shall contain:

1. the name of the shipper;
2. the date of shipment;
3. the quantity and type or character of such forest products shipped, stated in units or measurements applicable to such forest products;
4. the point of receipt or shipment; and
5. the point of destination.

B. Notwithstanding the provisions of subsection A, common carriers using bills of lading or way-bills prescribed or approved by the Interstate Commerce Commission shall only be required to keep the usual records at offices in this Commonwealth where such records are normally kept.

C. Any person failing to make the transporter's report provided for in this section shall, upon conviction, be guilty of a Class 3 misdemeanor.

Source: 58-838.20

Comment. Failure to comply is classified as a Class 3 misdemeanor. Present penalty falls between a Class 3 and Class 4 misdemeanor.

§ 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 § ~~58-1160~~ 58.1-15 from the date such taxes were due.

Source: § 58-838.15

Comment: No substantive changes

§ 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 State 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.

Source: § 58-838.18

Comment: No substantive change

§ 58.1-1617. Records to be kept.—It shall be the duty of every manufacturer in this Commonwealth and of every shipper who shall ship forest products out of this Commonwealth in an unmanufactured condition, to keep and preserve records and other such books or accounts as may be necessary to determine the amount of tax for which he is liable, under the provisions of this chapter. Such records shall be organized so that the forest products handled are grouped into classifications which conform to the various tax rates levied by this chapter. Such records and books shall be kept and preserved for a period of two years, and shall be open for examination of any time by the Department or its duly authorized agents.

Source: § 58-838.10

Comment: No substantive changes

§ 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 4 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.

Source: §§ 58-838.11 and 58-838.12

Comment: The sections were combined. The penalty was not originally classified as a Class 4 misdemeanor.

§ 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 § ~~58-1160~~ 58.1-15. Such penalty and interest shall be assessed and collected as a part of the tax.

Source: § 58-838.14

Comment: Language allowing the Department to waive the penalty has been deleted.

§ 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.

Source: 58-838.13

Comment: No substantive change. Duplicative language has been deleted.

§ 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.

Source: § 58-838.16

Comment: No substantive changes

§ 58.1-1622. Remedy of aggrieved taxpayer; limitation.—Any taxpayer aggrieved by an assessment made by the Department under this chapter, may apply for correction under Chapter 20 18 (§ ~~58-1117.20~~ 58.1-1820 et seq.) of this title within one year from December thirty-first of the year in which the assessment was made.

Source: § 58-838.17

Comment: Reference to Chapter 22 has been changed to correspond to the new Title 58.1, Chapter 20.

**CHAPTER 17.**  
**MISCELLANEOUS TAXES.**

**Article 1.**  
**Soft Drink Excise Tax.**

*§ 58.1-1700. Title.—This chapter shall be known and may be cited as the “Virginia Soft Drink Excise Tax Act.”*

Source: § 58-404.02

Comment: The source section has been divided into a number of smaller sections to conform with the format used in other chapters. No substantive change.

*§ 58.1-1701. Definition.—As used in this chapter, 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.*

Source: § 58-404.02

Comment: The source section has been divided into a number of smaller sections.

*§ 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 fifty dollars 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;*  
*and*
- 8. The tax shall be \$6,000 if gross receipts exceed \$10,000,000.*

Source: § 58-404.02

Comment: The source section has been divided into a number of smaller sections. The tax rate has been placed in table form for clarity.

*§ 58.1-1703. Collection.—The excise tax levied by this chapter 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 Title 58.1, as provided by rules and regulations promulgated by the Tax Commissioner.*

Source: § 58-404.02

Comment: The source section has been divided into a number of smaller sections.

*§ 58.1-1704. Tax segregated for state taxation.—The excise tax levied by this chapter 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 § 58-266.1.*

Source: § 58-404.02

Comment: The source section has been divided into a number of smaller sections.

*§ 58.1-1705. Disposition of moneys collected.—The moneys collected pursuant to this chapter shall be deposited into the general fund of the state treasury.*

Source: § 58-404.02

Comment: The source section has been divided into a number of smaller sections. No substantive change.

~~§ 58-404.02: Wholesaler or distributors of soft drinks. In addition to all other taxes otherwise levied, there is hereby annually imposed on every wholesaler or distributor of carbonated soft drinks a State excise tax of fifty dollars if his gross receipts for such year do not exceed one hundred thousand dollars; one hundred dollars if his gross receipts from the sale of such soft drinks exceed one hundred thousand dollars but do not exceed two hundred fifty thousand dollars; two hundred fifty dollars if his gross receipts exceed two hundred fifty thousand dollars but do not exceed five hundred thousand dollars; seven hundred fifty dollars if his gross receipts exceed five hundred thousand dollars but do not exceed one million dollars; one thousand five hundred dollars if his gross receipts exceed one million dollars but do not exceed three million dollars; three thousand dollars if his gross receipts exceed three million dollars but do not exceed five million dollars; four thousand five hundred dollars if his gross receipts exceed five million dollars but do not exceed ten million dollars and six thousand dollars if his gross receipts exceed ten million dollars. As used in this section, "wholesaler or distributor" shall mean 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.~~

The excise tax levied by this section is hereby segregated for State taxation only and no county, city, town or other political subdivision of this State shall impose a tax on such businesses measured by their gross receipts except the tax levied pursuant to § 58-266.1.

Taxes levied pursuant to this section shall be collected annually by the Department of Taxation in the same manner as the income tax imposed under chapter 4 (§ 58-151.01 et seq.) of Title 58, as provided by rules and regulations promulgated by the Commissioner. The moneys collected hereunder shall be deposited in the general fund of the State treasury.

## Article 2.

### Litter Tax.

*§ 58.1-1706. Title.—This chapter shall be known and may be cited as the "Virginia Litter Tax Act."*

Source: § 10-201.1

Comment: The source section has been divided into a number of smaller sections to conform with the format used in other chapters.

*§ 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 of this section an annual litter tax of ten dollars for each establishment from which such business is conducted.*

*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 fifteen dollars for each establishment from which such business is conducted.*

*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.*

Source: § 10-201.1

Comment: The source section has been divided into a number of smaller sections.

*§ 58.1-1709. 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;
15. Motor vehicle parts.

Source: § 10-201

Comment: The list is repeated in this chapter for easy reference.

*§ 58.1-1709. Disposition of proceeds.—All moneys collected pursuant to this chapter shall be deposited into the general fund of the state treasury.*

Source: § 10-201.1

Comment: The source section has been divided into a number of smaller sections. No substantive change.

*§ 58.1-1710. Penalty.—A penalty of an amount equal to the taxes due, including all delinquent taxes due under this chapter, shall be added to the tax levied in § 58.1-1707 for failure to pay the tax within the time limits established by regulations.*

Source: § 10-201.1

Comment: The source section has been divided into a number of smaller sections.

~~§ 10-201.1. Litter tax.—A. There is hereby levied and imposed upon every person in the State engaged in business as a manufacturer, wholesaler, distributor or retailer of products enumerated in § 10-201 an annual litter tax of ten dollars for each establishment from which such business is conducted. In addition to the ten dollar litter tax, each person engaged in business as a manufacturer, wholesaler, distributor, or retailer of products enumerated in category 2, 4, or 5 of § 10-201 shall pay an additional annual litter tax of fifteen dollars for each establishment from which such business is conducted. For purposes of this tax, a vending machine shall not be deemed a separate establishment, and 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 supplying such vending machines.~~

~~B. The tax imposed hereunder shall be collected annually by the Department of Taxation in a manner provided by regulations promulgated by such Department. Such regulations shall not be subject to the Administrative Process Act, chapter 1.1-1 (§ 9-6.14.1 et seq.) of Title 9 of the Code of Virginia. All pertinent provisions of Title 58 relating to the administration and collection of taxes shall be applicable, mutatis mutandis.~~

~~C. All the moneys collected pursuant to this section shall be deposited in the general fund of the State treasury.~~

~~D. A penalty of an amount equal to taxes due, including all delinquent taxes under this section, shall be added to the tax levied by subsection A for failure to pay the tax within the time limits established by regulations.~~

Comment: Paragraph B has been deleted from this chapter, thereby making regulations

promulgated by the Department of Taxation, for the enforcement of this tax, subject to the Administrative Process Act.

**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.*

Source: New section

Comment: Establishes a title for the article.

*§ 58.1-1712 § 58-66 . Levy; rate of tax.— A tax is hereby imposed on the probate of every will or grant of administration ; not exempt by law ; . there shall be a The tax shall be based on the value of of one dollar, when the estate ; real, personal or mixed; passing by such will or by intestacy of the decedent, shall not exceed one thousand dollars in value at the time provided as determined in § 58-155 58.1-1713. The tax shall be one dollar when the value of the estate does not exceed \$1000. and For every additional one hundred dollars \$100 of value, or fraction of one hundred dollars \$100 , an additional tax of ten cents ; provided, is imposed. However, that the tax imposed by this section shall not apply to decedents' estates of decedents of one hundred dollars \$100 or less in value.*

Source: § 58-66

Comment: For purposes of clarity some of the stricken language has been moved to § 58.1-1713.

*§ 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.*

Source: §§ 58-66, 58-67 and 58-155.

Comment: All provisions relating to the value of the estate have been placed in this new section.

§ 58-155 was part of the Inheritance Tax which was cited in § 58-66.

*§ 58.1-1714 § 58-66.1 . Filing of return.— On the probate of every will or grant of administration, not exempt by law, When the value of an estate ; real, personal or mixed; passing by such will or by intestacy of the decedent, shall exceed exceeds one thousand dollars \$1000 in value at the time of the death of the decedent , a return shall be made and filed with the clerk of court at the time such 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 § 58-67 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. Any Such return shall be subject to the provisions of § 58-27 58.1-11 , and the information set forth therein shall be entitled to the privilege accorded by § 58-46 58.1-3. and, For the purpose of § 58-46 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.*

Source: § 58-66.1

Comment: No substantive change. Code cites will have to be updated.

*§ 58-67. Value of real estate to be included in value of estate. The value of all real estate shall be included in determining the tax imposed by § 58-66, although the personal representative does not administer upon the real estate and whether or not the personal representative under a will is charged with any duty with respect to the real estate; provided, however, that if the estate of any decedent whose will is admitted to probate or on whose estate qualification is had in this State consists partly of real estate situated outside this State, then the value of such real estate situated outside this State shall not be considered in computing the*

taxes imposed in such section.

Comment: All provisions relating to the value of the estate have been moved to § 58.1-1713.

§ 58.1-1715 § 58-68 . Payment of tax prerequisite to qualification.—No one shall be permitted to qualify and act as executor or administrator until the tax imposed by § 58-66 58.1-1712 shall have been paid.

Source: § 58-68

Comment: No substantive change.

§ 59.1-1715. § 58-69. Payment of tax prerequisite to qualification .—

§ 58.1-1716 § 58-69 . Estates committed to ~~sheriff~~ court-appointed administrator .—When an estate is committed by order of the appropriate circuit court, or clerk thereof, to a ~~sheriff~~ any person on the motion of a creditor or other person pursuant to § 64.1-131 , the State tax due under this article for such administration shall be paid by the party upon whose motion the estate was committed . ~~and the same~~ The amount of tax paid by such creditor or other person shall be repaid to him by the ~~sheriff~~ administrator so appointed out of the first funds received by him from the sale of such estate ; . and, If an estate is committed to a ~~sheriff~~ person without motion the ~~sheriff~~ person shall be required to pay such tax as soon as sufficient assets of the estate shall , sufficient to cover the tax due, have come into his hands.

Source: § 58-69

Comment: The section has been reworded to conform with amendments made in Title 64.1. The term "sheriff" was changed to "person."

§ 58.1-1717 § 58-70 . 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 five dollars.

Source: § 58-70

Comment: No substantive change.

§ 58.1-1718 § 58-67.1. Cities and counties may tax probate of wills or grants of administration: City or county probate tax. —In addition to the State state tax imposed by § 58-66 58.1-1712 , the governing body of any county and the council of any city may impose a county or city tax on the probate of every will or grant of administration ~~in an~~ as provided in § 58.1-3805. Such tax shall be in an amount equal to one - third of the amount of the State state tax on such probate of a will or grant of administration.

Every clerk of court collecting any such county or city tax and paying the same into the treasury of his county or city shall be entitled to such compensation for such service as may be prescribed by the governing body of his county or city. Such compensation shall be payable out of his county or city treasury.

In the event any county had imposed the tax authorized by this section and there is located in such county a city which has 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 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 that proportionate compensation, if any, paid by the county to the clerk of the court for his service in collecting the same; and 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.

This section shall not be construed as amending or repealing any provisions of any city charter. (1960, c. 60.)

#### Article 4.

*Motor Vehicle Fuel Sales Tax in Certain  
Transportation Districts.*

*§ 58.1-1719. Rules and regulations; bracket system.—The Tax Commissioner shall promulgate rules and regulations for the registration of dealers and the procedures for filing returns for the payment of the tax imposed pursuant to this article. Such regulations shall include provisions for a bracket system, designed so that the tax will appear on the fuel pump as a part of the total cost of a unit of fuel, whether the unit is a gallon or other measure. The bracket system shall state the tax per unit measure in tenths of a cent, and shall be in increments of no more than two and one-half cents.*

Source: § 58-730.5 B.

Comment: No change was made in the provisions pertaining to rules and regulations and the bracket system.

~~§ 58.1-1720. § 58-730.5. Tax levied; application of Sales and Use Tax Act; rules and regulations; distribution of proceeds; reduction in locally levied taxes; exclusion from gross receipts of dealers. Sales tax on fuel in certain transportation districts. -A. There is hereby levied, in addition to all other taxes imposed on fuels subject to tax under chapters 13 Chapter 21 (§ 58-686 58-2100 et seq.) and 14 (§ 58-721 et seq.) of this title, in every county or city which is a member of 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 a commission as defined in § 15.1-1344, a sales tax of two percent of the retail price of such fuels sold within such county or city. As used in this section "retail sale" means a sale to a consumer or to any person for any purpose other than for resale.~~

B. The tax imposed under this section shall be subject to the provisions of the Virginia Retail Sales and Use Tax Act (§ 58-444.1 58.1-600 et seq.), except that the exemption provided for motor vehicle fuels under § 58-441.6 (e) 58.1-609, and the bracket system provided in such act, shall not be applicable.

~~The State Tax Commissioner shall promulgate rules and regulations for the registration of dealers and the procedures for filing returns for the payment of such tax. Such regulations shall also include a bracket system designed so that the tax will appear on the pump as a part of the total cost of a unit of fuel, whether the unit is a gallon or other measure. The bracket system will state the tax per unit of measure in tenths of a cent, and the brackets will be increments of no more than two and one-half cents. All such taxes paid to the Commissioner shall be deposited (after the subtraction of the direct costs of administration by the Department which costs shall be credited to the funds appropriated to the Department) in a special fund entitled the "Special Fund Account of the Transportation District of ....." and 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 and debt service of the mass transit system of such district.~~

~~C. the governing body of each county or city in which such tax is levied shall reduce the rate of its real estate tax, or its real estate tax and other locally levied taxes, in an amount that will result, both in the year following the first full fiscal year in which the two per centum tax and the first full fiscal year in which the additional two per centum tax authorized hereunder is levied, in a reduction of tax revenues which equals the portion of which has been or would have been allocated to the county or city for rail and bus services but is paid by the Commission from the levy. As used in this subsection "allocated" shall mean the amount which a council or governing body has agreed to pay or agrees would be an equitable share of costs of rail and bus service to be attributed to its jurisdiction.~~

~~The amount of the tax reduction shall be calculated by subtracting the amount collected at the reduced rates from the amount which would have been collected at the tax rates in effect for the tax year immediately prior to the tax year in which the rates are reduced. Such reduced rate shall not be raised during the entire tax year for which the tax rate is reduced, but may be raised subsequently.~~

~~D. The amount of the tax imposed by this section and collected by a dealer in any taxable year shall be excluded from gross receipts for purposes of any tax imposed under § 58-266.1~~

Source: § 58-730.5.

Comment: No substantive changes. The provisions of the stricken portions of the former section are covered now in separate sections, §§ 58.1-1719, 58.1-1721, 58.1-1722, 58.1-1723 and 58.1-1724.

*§ 58.1-1721. Reduction of local taxes.-In the first full fiscal year in which the tax is levied, the governing body of each county or city in which such tax is levied shall reduce the rate of its real estate tax, or its real estate and other locally levied taxes, in an amount that will reduce tax revenues by an amount equal to the amount which has been or would have been allocated by the local governing body to the county or city for rail and bus services but is, as a result of the imposition of this tax, paid by the Commission. As used in this section "allocated" shall mean the amount which a local governing body has agreed to pay or agrees would be an equitable share of the costs of rail and bus service to be attributed to its jurisdiction.*

*The amount of the tax reduction shall be calculated by subtracting the amount collected at the reduced rates from the amount which would have been collected at the tax rates in effect for the tax year immediately prior to the year in which the rates are reduced. Such reduced rate shall not be raised during the entire tax year for which the tax rate is reduced, but may be raised subsequently.*

Source: §58-730.5 C

Comment: The former section has been rewritten but no substantive changes were made other than to delete outdated language.

*58.1-1722.-Exclusion from professional license tax.-The amount of the tax imposed by this article and collected by a dealer in any taxable year shall be excluded from gross receipts for purposes of any tax imposed under Chapter 37 of Title 58.1.*

Source: § 58-730.5 D.

Comment: No substantive change.

*§ 58.1-1723. § 58-730.6. Refund s of motor vehicle fuel sales tax .- Any fuel purchased by anyone Anyone who purchases fuel (i) that is taxed under the provisions of this chapter § 58.1-1720 and (ii) upon which a refund is granted for motor fuels taxes paid under pursuant to the provisions of Title 58.1, chapter 13 Chapter 21 , article Article 2 (§ 58-711 58.1-2104 et seq.) and chapter 14.1 Article 4 (§ 58-757.01 58.1-2114 et seq.), may file a claim for a refund of taxes paid under this chapter article within thirty days after receipt of a refund under the above chapters on forms and under regulations adopted by the Department of Taxation.*

Source: § 58-730.6.

Comment: No substantive change.

*§ 58.1-1724. Disposition of tax revenues.-All taxes paid to the Commissioner pursuant to this article, 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 and debt service of the mass transit system of such district. The direct costs of administration shall be credited to the funds appropriated to the Department.*

Source: § 58-730.5 B.

Comment: The provisions pertaining to the disposition of tax revenues have been rewritten but no substantive changes were made.

## *Article 5.*

### *Tax on Seals.*

*§ 58-52 58.1-1725 . Levy of tax. When the seal of the State 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.*

Source: § 58-52

Comment: No substantive change.

*§ 58-52 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.*

Source: § 58-53  
Comment: No change.

## 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. 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.*

Source: §§ 58-958, 58-978, 58-979, 58-980

Comment: The provisions of these sections (also found in the subtitle on localities) have been repeated here to cover the treasurer's duties as to state taxes.

~~§ 58-988 58.1-1801 . Delinquent lists involving state taxes to be transmitted to the Department of Taxation; crediting treasurer; collections.—A copy of the lists mentioned in paragraph (4) of § 58-978 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 mentioned in paragraph (4) of § 58-978 , 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 state treasury. The foregoing, however, is subject to the following qualification that in counties containing more than five hundred inhabitants persquare mile according to the last preceding United States census, the Department of Taxation, in its discretion, may authorize the treasurer to continue to collect and receive such taxes and a copy of every such authorization shall be certified by the Department of Taxation to the Comptroller.~~

The Department of Taxation shall have power to issue warrants for the collection of the taxes shown on the list mentioned in paragraph (4) of § 58-978 in the same manner and with the same effect as in the case of warrants issued for the collection of taxes assessed by such Department; and all provisions of law applicable to such warrants shall be applicable to the warrants issued for the collection of delinquent State taxes under this section. The Department of Taxation shall also have power to collect the such intangible personal property taxes shown on the list mentioned in paragraph (4) of § 58-978 by other legal process by any process authorized for the collection of state taxes .

Source: § 58-988

Comment: The provision originally put in to allow the Arlington county treasurer to continue collecting intangible personal property taxes is presumed obsolete and deleted. Otherwise, no substantive change.

~~§ 58-996 58.1-1802 . When delinquent State state taxes charged off; notification and record of charge-off.—The Comptroller and the Department of Taxation shall keep delinquent State state taxes on the books until the State Tax Commissioner determines that they should be charged off ; , provided except that taxes and registration fees assessed by the State Corporation Commission shall be charged off upon advice from the Commission. The State 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.~~

Source: § 58-996

Comment: No change.

~~§ 58-997 58.1-1803 . Department of Taxation may appoint collectors of delinquent State state taxes.—The Department of Taxation may appoint a collector in any county or city to collect State delinquent state taxes therein, returned delinquent, and may allow him a reasonable compensation, to be agreed on ; before the service is commenced, which compensation shall not~~

exceed twenty percent on what may be collected and paid into the State state treasury. Such compensation shall be paid out of the State state treasury on warrant of the Comptroller issued on the certificate of the State Tax Commissioner. Such collector, if an attorney at law, shall have authority to institute actions at law or suits in equity for the recovery of State state taxes. Each collector so appointed shall give bond to the Commonwealth for the faithful performance of the duties put upon him by this section, in a penalty to be fixed by the State Tax Commissioner, in whose office the bond shall be filed. Any county or city treasurer turning over *delinquent tax tickets* to any such collector any ~~delinquent tax tickets~~ in pursuance of orders issued by the Department of Taxation shall receive credit on the Comptroller's books for the amount so turned over.

Source: § 58-997

Comment: No change.

§ 58-1010 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 Any person indebted to or having in his hands estate of a taxpayer person assessed with taxes or levies may be applied to in writing by the officer for payment of any taxes assessed under §§ 58.1-313 or 58.1-631, or of any taxes more than thirty days delinquent, thereof out of such debt or estate and a payment . Payment by such person of such taxes , penalties and interest, or levies, either in whole or in part, shall entitle him to a charge or credit for so much on account of against such debt or estate against the party so assessed . From the time of the service by such officer of any such application; The taxes , penalties and interest and levies shall constitute a lien on the debt or estate so due from such person or on the estate in his hands due the taxpayer from the time the application is received . For each application served , upon the person applied to ; that person 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 party assessed .*

*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 may seem to the officer ought to be recovered on account of the out of such debt or estate in his hands , the officer the Tax Commissioner shall ; if the sum due for such taxes or levies does not exceed \$2,000, exclusive of penalties and interest, procure from a justice of the peace or judge or clerk of a court not of record a summons directing such person to appear before the appropriate county court or municipal court, at such time and place as may seem reasonable; and if the sum due exceeds \$2,000, shall procure from the clerk of the circuit court of the county or corporation court of the city a summons directing such person to appear before such court, where the proper payment may be enforced. on the first day of the next term thereof. In all cases returnable before a county court or municipal court, Any person so summoned shall have a right, if the sum due for such taxes or levies exceeds the sum of \$300, exclusive of penalties and interest, to remove the case to a court having jurisdiction of appeals from such county court or municipal court wherein the case was brought, and the procedure for and upon such removal shall be the same, mutatis mutandis, as is provided by § 16.1-92 the same rights of removal and appeal as are applicable to disputes among individuals .*

Source: § 58-1010

Comment: The section has been limited to use by the Tax Department. A notice provision has been included for the protection of the taxpayer. Superfluous language has been deleted. This section is repeated in Subtitle III for use by localities.

§ 58-1011. Proceedings on return of summons executed. If such summons be returned executed, and the person so summoned does not appear, judgment shall be entered against him for the sum due for such taxes and levies and for the fees of the clerk and of the officer who executes the summons.

Comment: Deleted as unnecessary.

§ 58-1012. Proceedings when person summoned appears. If the person so summoned appear; he shall be interrogated on oath and such evidence may be heard as may be adduced and such judgment shall be rendered as, upon the whole case, shall seem proper.

Comment: Deleted as unnecessary.

§ 58-41 58.1-1805 . Warrants Memorandum of lien for collection of taxes.~ A. If any taxes or fees, including penalties and interest, assessed by the Department of Taxation or by the State Corporation Commission in pursuance of law against any person, firm or corporation be are not paid within thirty days after the same become due, the Department in the first case or the Comptroller in the second case may issue a warrant, under the authority of the Commissioner or

Comptroller, as the case may be, directed to the sheriff of any county or to the sheriff or high constable of any city of the State, commanding him to levy upon and sell so much of the real and personal property of the delinquent taxpayer, found within such officer's bailiwick, as may be necessary for the payment of the taxes and fees, including penalties, interest and the costs of executing the warrant and to return such warrant to the Department or Comptroller, as the case may be, and pay to the State Treasurer the money collected by virtue thereof, by a time to be therein specified, not more than ninety days from the date of the warrant. 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 of Chapter 3 of Title 8.01 (§§ 8.01-196 et seq.), 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 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.*

Source: §§ 58-41, 58-42 and 58-43

Comment: This section contains substantive changes. The old tax warrant procedure, which is cumbersome and confusing, is deleted in favor of a tax lien which can be filed very quickly when the tax becomes delinquent, and collected by the normal methods of collecting judgments. The procedure is intended to take the place of the warrant and any references to collection by tax warrant will be applicable to this section. The provision permitting a taxpayer to stop collection by filing a bond and litigating is deleted because it has already been overruled by a subsequent provision (see § 58.1-1825). Reference to collection of State Corporation Commission taxes has been moved to Subtitle II.

§ 58-42. Lien of such warrants. Such warrant 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 an actual levy shall be made by virtue thereof, except as against a bona fide purchaser for a valuable consideration, without notice of such levy. But any such warrant, or a copy thereof duly certified by the issuing officer, with a notation of the time of actual levy may be sent to the clerk of the circuit court of any county or the clerk of any city court of the city, in whose office deeds are admitted to record, wherein it is ascertained that the delinquent taxpayer has any estate; and the clerk to whom any such copy is so sent shall record it, as a judgment is required by law to be recorded, and shall index the same as well in the name of the Commonwealth as of the delinquent taxpayer. Such recordation shall thereupon be constructive notice of the lien created by the actual levy of the warrant, as aforesaid, as to all estate of the delinquent taxpayer located in such county or city.

§ 58-43. Procedure after levy; bond, etc. The sheriff or high constable to whom any such warrant shall be directed shall proceed upon the same in all respects with like effect and in the same manner as provided by law in respect to executions issued upon property or upon judgments of a court of record and shall be entitled to the same fees for his services in executing the warrant, to be collected in the same manner; provided, however, that if the taxpayer shall file with the Department of Taxation or the State Corporation Commission, as the case may be, or with the court having jurisdiction, a petition as provided by law for correction of the assessment so made, and shall file therewith a bond payable to the Commonwealth, with good security, to be approved by the Department, the State Corporation Commission or the clerk of the court as the case may be, in a penalty of at least twice the amount of taxes, fees, penalties and interest for which the warrant is drawn and conditioned upon the payment of the taxes, fees, penalties and interest; if his petition be denied, the Department, State Corporation Commission or clerk, as the case may be, shall certify the fact that such bond has been given to the officer executing the warrant who shall thereupon stay all proceedings on the warrant until the termination of the matter, as alleged in the petition.

§ 58-1014 58.1-1806 . Additional proceedings for the collection of taxes; jurisdiction and venue.—The payment of any state taxes ; State, county or municipal, both those which have been assessed and those which ought to have been assessed, and the filing of returns may, in addition to the remedies now allowed by law, provided in this chapter be enforced by warrant, motion for judgment action at law, suit in equity bill in chancery or by attachment before a general district court or a circuit court within this State 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 jurisdiction here conferred on courts of equity shall be concurrent with the jurisdiction in actions at law and in such equitable proceedings it shall not be necessary to allege or prove any equitable grounds of jurisdiction. 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. The provisions of this section shall not be construed to (i) impose a statute of limitation upon the collection of any tax, or (ii) restrict the application of any other section in this Title which imposes a statute of limitation upon the collection of any tax.

Source: §§ 58-1014, 58-44, 58-1016

Comment: No substantive change. Unnecessary language is deleted.

§ 58-44. Action for recovery of taxes or to compel filing returns. Action may be brought at any time by the Department, in the name of the Commonwealth, to recover the amount of any taxes, penalties and interest due, or to compel the filing of returns due, under the tax and revenue laws of this State.

§ 58-1016. Procedure in such suits.—Such proceedings shall be instituted and conducted in the name of the Commonwealth of Virginia; or in the name of the county, city, or town in which such taxes or levies are assessed; at the direction of the board of supervisors or other governing body of the county or the council of the city or town, by such attorney or attorneys as such board, council or other governing body may employ for the purpose. The motion for judgment, bill, or other pleading or bill of particulars filed therewith shall contain a statement showing the beneficial interest respectively of the State, county and other municipal or political subdivision in the sum demanded, and may be amended at any time before final judgment or decree; provided, that the defendant shall be entitled to a continuance for a reasonable time when such amendment is made.

Comment: Superfluous language is deleted.

§ 58-1017 58.1-1807 . Judgment or decree; effect thereof; enforcement.— Any judgment or decree entered for the plaintiff shall show the facts in regard to the amount for which it was rendered. In such any proceeding under § 58.1-1806 the court shall have all the powers of a tax-assessing officer or body, power to the end that the court may determine the proper taxes, and to enter an order in such proceeding requiring the taxpayer to file all returns and pay all taxes , penalties and interest with which he has been properly assessed for any year or years or to pay all taxes with which upon a correct assessment he is chargeable for any year or years of the three years next preceding the year in which the proceedings are instituted 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 such any judgment or decree shall be enforced by appropriate process of execution or attachment against the taxpayer in the same manner that it could be enforced in a proceeding between individuals.

Source: §§ 58-1017, 58-44

Comment: This section is rewritten allow the court to examine the merits of the tax assessment in any collection suit under this section.

§ 58-1018 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 for the Commonwealth 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; he shall, with the concurrence of the Attorney General, institute in such foreign jurisdiction ; any appropriate proceedings to enforce therein the payment of such judgment.

Source: § 58-1018

Comment: The concurrence of the Attorney General is required.

§ 58-1010-1 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.

Source: § 58-1010.1

Comment: No change.

~~§ 58-1010: Other liens or provisions not affected by article. Nothing in the foregoing provisions of this article shall be construed in derogation of any lien of the Commonwealth or any of its political subdivisions now existing or hereafter created by any other provision of law, nor shall any judgment or decree for taxes, penalties, interest and costs, which taxes, penalties, interest and costs were themselves liens, be construed as affecting the priority which such liens had.~~

~~The foregoing provisions of this article shall not be construed to repeal any other provisions of law providing for the collection of taxes.~~

Comment: Deleted as unnecessary.

*§§ 58.1-1810 and 58.1-1811: Reserved.*

~~§ 58-1160: Taxes administered by Department of Taxation; penalties; interest. § 58.1-1812. Assessment of omitted taxes by the Department of Taxation.— If the Tax Commissioner ascertains that any person, firm or corporation shall have hitherto failed or shall hereafter fail has failed to make a proper return or to pay in full any proper tax administered by the Department of Taxation, the Department through its officers or agents, 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. and, If no penalty is so prescribed, he shall assess a penalty of five 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. In addition thereto, notwithstanding any other provision of law, interest on the outstanding tax and penalty shall be charged at the rate established under § 58.1-15 at a rate equal to the rate of interest established pursuant to § 6621 of the Internal Revenue Code of 1954, as amended, for the period between the due date and the date of full payment.—~~

~~Except as otherwise provided by law, the amount of any tax administered by the Department of Taxation shall be assessed within three years after the return was filed (whether or not 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. In the case of 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 be are not paid within such thirty days, interest at the rate provided herein shall accrue thereon from the date of such assessment until payment.~~

Source: §§ 58-1160, 58-1161, 158-1162

Comment: No substantive change.

~~§ 58-1161: Fraudulent failure to secure license; file return; etc. If any person, firm or corporation shall hereafter fraudulently, or with a view to evade the payment of proper taxes, fail or refuse to secure a proper license, whenever a license is required by law, or to make out and deliver to the proper assessing authority a list of his, their or its intangible personal property, or income, or with like intent list the same at less than its true value, then such property or income when discovered, or such license when the liability therefor is ascertained, shall be listed and assessed for taxation for the proper amount for each and every year of the six tax years last past when it was not so assessed, with additional penalty of one hundred per centum of such unpaid taxes, and the failure to secure such license or to make out a return of income or any class of intangible personal property, as required by law, or the listing of such intangible personal property or income at fifty per centum or less of its actual value, shall be taken as prima facie evidence of intention so to evade the taxes.~~

Comment: Deleted as unnecessary.

~~§ 58-1162: Other omitted state taxes. If any State tax-assessing officer or body authorized by~~

law to assess taxes on any subject of taxation ascertain that any property, or any other subject of State taxation (except the subjects covered by the two preceding sections (§§58 1160, 58 1161) 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 five per centum and interest at a rate determined in accordance with § 58 1160, which shall be computed upon the taxes and penalty from the fifteenth day of December of the year in which such taxes should have been paid to the date of the assessment; and if the assessment be not paid within thirty days after its date, interest at a rate determined in accordance with § 58 1160, shall accrue thereon from the date of such assessment until payment.

Comment: Deleted as unnecessary.

§ 58 44.1 ~~58.1-1813~~ . Liability of corporate officer or employee, or member or employee of partnership, for failure to pay tax, etc.— (a) A. Any ~~person corporate or partnership officer~~ who willfully fails to pay, collect or truthfully account for and pay over any State state 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) ~~Any person required to pay any State tax administered by the Department of Taxation or 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 such tax who willfully fails to pay the tax; 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 misdemeanor.~~

(c) ~~Any person required to collect, account for and pay over any State tax administered by the Department of Taxation, who willfully fails to collect or truthfully account for and pay over such tax, and any person who willfully attempts in any manner to evade or defeat any such tax or the payment thereof, shall, in addition to any other penalties provided by law, be guilty of a felony and, upon conviction thereof, be fined not more than ten thousand dollars or imprisoned for not more than five years, or both.~~

(d) B. The term ~~“person”~~ “corporate or partnership officer” as used in this section means an officer or employee of a corporation, or a member or employee of a partnership, who as such officer, employee or member is under a duty to perform on behalf of the corporation or partnership the act in respect of which the violation occurs ; ~~provided, however, that no person shall be subject to this section unless it shall be proved and who~~ (1) that such person had knowledge of the failure or attempt as set forth herein and (2) that such person had authority to prevent such failure or attempt.

Source: § 58-44.1

Comment: The criminal provisions are removed to the following sections.

§ 58.1-1814. Criminal liability for failure to file returns or keep records.—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.

Source: § 58-44.1

Comment: The section is broadened to apply to persons other than corporate or partnership officials. The criminal penalty for failing to pay is deleted, as of questionable constitutionality. The rest of § 58-44.1 is found in § 55.1-1813 and 58.1-1815.

§ 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.

Source: § 58-44.1

Comment: This section is broadened. The original applied only to corporate and partnership officials.

§§ 58.1-1816 through 58.1-1819: Reserved.

## Article 2.

### *Corrections of Erroneous Assessments;*

#### *Refunds .*

§ ~~58-1117.20~~ 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" 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 as well as the singular number.

2. 1. "Person assessed with any tax," with standing to contest such assessment, shall include the person in whose name such assessment is made, a bank, the stockholders of which have been assessed with taxes under Chapter 10.01 (§ 58-485.01 et seq.) of this title or ordinances enacted pursuant thereto; 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.

3. 2. "Assessment," as used in this chapter and elsewhere in Title 58 subtitle , shall include a written 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. 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.

4. "Tax administered by the Department of Taxation" shall include the state and local recordation and probate taxes, the writ tax, the income tax including the withholding and estimated taxes, the inheritance and gift taxes, the estate tax, the state license taxes, the state tax on intangible personal property, the state and local sales and use taxes, the state and local bank stock and bank franchise taxes, the state rolling stock tax on railroads and freight car companies, the state tobacco tax, the aircraft sales and use tax, the forest products tax, the egg promotion tax, the peanut excise tax, the slaughter hog and feeder pig tax, the soybean tax, the litter tax, the soft drink excise tax, the malt beverages tax and the assessment of property of railroads and pipeline companies.

Source: § 58-1117.20

Comment: The definitions of "person" and "tax" assessed by the Department of Taxation" have been deleted as unnecessary.

§ ~~58-1118~~ 58.1-1821 . Application to State 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 State 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.

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.*

Source: § 58-1118

Comment: No change.

**§ 58-1110 58.1-1822 . Action of Tax Commissioner on application for correction.**—If the Tax Commissioner be 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, the Tax Commissioner may order that such assessment 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 state treasury, and, if paid, that it be refunded to him. If the assessment be 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 the a contested assessment until he has made a final determination under this section unless he determines that collection is in jeopardy.

Source: § 58-1119

Comment: No change.

**§ 58-1118.1 58.1-1823 . Reassessment and refund upon filing of amended return; amended bank stock tax return.**—Any person filing a tax return required for any tax administered by the Department of Taxation may, 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 state tax is based, whichever is later, file an amended return with the Department. If the Department be 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.

*If an amended bank stock tax (chapter 10 of this title, § 58-465 et seq.) return is filed with the Department of Taxation within three years from the last day prescribed by law for the timely filing of the return, and copies are simultaneously filed with the commissioner of the revenue or other official performing the duties imposed on commissioners of the revenue under this title in each locality in which a § 58-481 credit was claimed against the State tax, the Department may reassess the tax and order that any amount excessively paid to the State be refunded to the taxpayer, if the Department be satisfied that the tax assessed and paid upon the original return exceeds the proper amount. The same reassessment procedure shall be applicable in each locality in which an amended return is filed, and a refund made if appropriate. Any order of the Department or respective locality denying such reassessment and refund, or failure 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 §§ 58-1118, 58-1119.1, 58-1120, 58-1140 and 58-1145.*

Source: § 58-1118.1

Comment: Obsolete language covering the repealed bank stock tax is deleted.

**§ 58-1119.1 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 § 58-1120 58.1-1825 . The Tax Commissioner may decide such claim on the merits in the manner provided in § 58-1110 58.1-1822 for appeals under § 58-1118 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.

Source: § 58-1119.1

Comment: No change.

~~§ 58-1130~~ 58.1-1825 . Application to court for correction of erroneous or improper assessments of state taxes generally.—Any person assessed with any tax administered by the Department of Taxation ; and aggrieved by any such assessment may, unless otherwise specifically provided by law, within three years from the date such assessment is made, 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 ~~assessment~~ application shall be before the court when it is filed in the clerk's office. Such application shall not be deemed filed unless ~~such~~ the assessment has been paid.

The Department of ~~Taxation~~ shall be named as defendant and the proceedings shall be conducted as an action at law ; ~~before the court sitting without a jury subject to the Rules of Court~~ . It shall be the burden of the applicant in any such proceeding to show that the assessment complained of is erroneous or otherwise improper. The court's order shall be entered pursuant to § ~~58-1134~~ 58.1-1826 .

Source: § 58-1130

Comment: No change. The statement that the court hears the application without a jury is present law; as the procedure is a creature of statute, no right to jury trial attaches.

~~§ 58-1134~~ 58.1-1826 . Action of court.—If the court be is satisfied that the applicant is erroneously or improperly assessed with any taxes, the court may order that the assessment 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 be 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. A copy of any order made under this section or § ~~58-1132~~ 58.1-1827 correcting an erroneous or improper assessment shall be certified by the clerk of the court to the State Tax Commissioner.

Source: § 58-1134

Comment: No change.

~~§ 58-1132~~ 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 be was not made within the period of ~~limitations~~ limitation , as hereinbefore required.

Source: § 58-1132

Comment: No change.

~~§ 58-1137: Rehearing.—If, from the statements of the facts or other evidence in a proceeding under §§ 58-1130 to 58-1132 or 58-1134 to 58-1136, the State Tax Commissioner shall be of opinion that the order of the court granting the redress is erroneous, he may, within twenty-one days from the time such order is certified by the clerk to the State o Tax Commissioner; file a petition for a rehearing of such application. Such petition may be filed in such court, or with the judge thereof in vacation, and shall be in the name of the Commonwealth and the filing of the same shall operate as a supersedeas and, after five days' notice to the applicant, the matter shall thereupon be reheard in such court and witnesses examined in the same manner as if no previous hearing had been had. Upon the rehearing the court shall make such order thereon as may be proper.~~

Comment: The Tax Commissioner's unilateral right to rehearing is deleted.

~~§ 58-1138~~ 58.1-1828 . Appeal.—The State Tax Commissioner or the taxpayer may take an appeal from any final order of the court to the Supreme Court of Virginia . and a supersedeas may be granted in each case in the same manner as provided by law in cases other than cases of appeals of right.

Source: § 58-1138

Comment: No substantive change.

~~§ 58-1130~~ 58.1-1829 . Costs in proceedings under §§ ~~58-1130~~ 58.1-1825 to ~~58-1138~~ through 58.1-1828 .—If the final order of the court in any proceeding under the ~~nine~~ preceding sections

(§§ 58-1130 to 58-1138 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 said such sections.

Source: § 58-1139

Comment: No change.

§ 58-1136 58.1-1830 . Effect of order.—An order of exoneration under § 58-1132 or § 58-1134 §§ 58.1-1826, 58.1-1827 or 58.1-1828 , when delivered to the ~~tax-collecting officer~~ 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 §§ 58-1132; 58-1134; 58.1-1826, 58.1-1827 or § 58-1138 58.1-1828 , when presented to the appropriate State state or local official, shall serve as the only direction necessary to obtain refund of the amount so ordered.

Source: § 58-1136

Comment: No change.

§ 58-1140. ~~Correction of erroneous assessments on bank stock. Any bank which has paid or is liable to pay the tax imposed under chapter 10 (§ 58-465 et seq.) of this title may, in its own name and for the benefit of itself and of its stockholders, make application, including application to a circuit court, under this chapter for the correction of the assessment of such tax to the same extent and subject to the same limitations as if the assessment were against such bank; but nothing herein contained shall be construed as laying such assessment upon the bank rather than upon its stockholders.~~

Comment: The bank stock tax has been repealed.

§ 58-1156. ~~Rehearing. If from the statement of the facts or other evidence the State Tax Commissioner shall be of the opinion that the order of the court granting the redress, or any portion thereof, is erroneous, he may, within six months from the time such order is made, file a petition for a rehearing of such application, or so much thereof as relates to that portion of the order which he considers erroneous; such petition may be filed in the court, or with the judge thereof in vacation, and shall be in the name of the Commonwealth. The filing of the same shall operate as a supersedeas and, after five days' notice to the applicant, the matter shall thereupon be reheard in the court and witnesses examined in the same manner as if no previous hearing had been had. The petition shall be presented and the hearing conducted by the attorney for the Commonwealth of the county or city or by counsel designated by the State Tax Commissioner. At the hearing the court shall make such order thereon as may be proper.~~

Comment: See note to § 58-1137, page 21.

§ 58-1157. ~~Appeal. Should the order of the court be against the Commonwealth the State Tax Commissioner may appeal to the Supreme Court of Appeals and a supersedeas may be granted in such case in the same manner as now provided by law in cases other than cases of appeals of right. No costs shall be adjudged against the Commonwealth or the petitioner in either the trial or the appellate court.~~

Comment: Appeals are covered in § 58.1-1829.

§ 58-1158 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 state or local, shall be maintained in any court of this Commonwealth, except when the party has no adequate remedy at law.

Source: § 58-1158

Comment: No change.

§ 58-1159 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.

Source: § 58-1159

Comment: No change.

§ 58-1140.1 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 of Taxation , 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 § 6621 of the Internal Revenue Code of 1954, as

~~amended § 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. Provided, further, that~~ 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) For purposes of this section:

(1) Any 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

(2) 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.

Source: 58-1140.1

Comment: No change.

*§§ 58.1-1834 through 58.1-1839: Reserved.*



## CHAPTER 20.

### GENERAL PROVISIONS.

#### Article I.

##### *Tax on Wine and Other Alcoholic Beverages.*

Comment: See Title 4 (§§ 4-1 et seq.) for tax levies on wine and other alcoholic beverages, excluding beer and beverages which are contained in Chapter 7 of this Title.

#### Article II.

##### *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.*

Source: § 58-1010

Comment: The section is modeled after § 58-1010, which is now § 58.1-1804, limited to use by the Tax Department. A notice provision has been included for the protection of the taxpayer. Superfluous language has been deleted.

*§ 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 Comptroller 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 of Chapter 3 of Title 8.01 (§§ 8.01-196 et seq.), 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 Comptroller to collect the tax, except as specifically provided in this title.*

Source: §§ 58-41, 58-42 and 58-43

Comment: This section parallels § 58.1-1805, applicable to taxes administered by the Department of Taxation, and contains substantive changes. The old tax warrant procedure, which is cumbersome and confusing, is deleted in favor of a tax lien which can be filed very quickly when the tax becomes delinquent, and collected by the normal methods of collecting

judgments. The procedure is intended to take the place of the warrant and any references to collection by tax warrant will be applicable to this section. The provision permitting a taxpayer to stop collection by filing a bond and litigating is deleted because it has already been overruled by a subsequent provision.

*§ 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.*

Source: §§ 58-1014, 58-44, 58-1016

Comment: This provision parallels § 58.1-1806, applicable to taxes administered by the Department of Taxation. There is no substantive change. Unnecessary language is deleted.

*§ 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.*

Source: §§ 58-1017, 58-44

Comment: This section parallels § 58.1-1807, applicable to suits to enforce taxes administered by the Tax Department. It is rewritten allow the court to examine the merits of the tax assessment in any collection suit under this section.

*§ 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.*

Source: § 58-1018

Comment: This section parallels § 58.1-1808, applicable to taxes administered by the Department.

§§ 58.1-2025 through 58.1-2029: Reserved.

~~§ 58-1122~~ *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 ; ~~provided that no~~ . 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.*

Source: § 58-1122

Comment: No change.

~~§ 58-1123~~ *58.1-2031 . Hearing; notice.—As soon as practicable after the filing of the petition, the 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 cases of the petitioner shall be accompanied by a copy of the petition . and the notice, whether by ordinary mail, registered mail or service, shall be accompanied by the duplicate copy of the petition. The petitioner shall furnish, with its petition or thereafter, as may be found necessary, the requisite number of copies of the petition for the giving of such notices herein required.

Source: § 58-1123

Comment: No substantive change.

~~§ 58-1124 58.1-2032 . Determination by Commission.~~—In determining the issue the 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 ; subject to the right of appeal by any party at interest including the Commonwealth upon the demand of the State Corporation Commission or Comptroller, 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.

Source: § 58-1124

Comment: The right to an appeal is spelled out in § 58.1-2033.

~~§ 58-1125: Period within which petition must be presented. No person or corporation shall be entitled to any relief under the three preceding sections (§§ 58-1122 to 58-1124); unless his or its petition shall have been filed in the manner prescribed by § 58-1122 within one year from the date of payment of the tax, fee or charge complained of.~~

Comment: Deleted as unnecessary. Section 58.1-2030 provides a one year statute of limitation.

~~§ 58-1126 58.1-2033 . Appeal.~~—Any person in interest , including the Commonwealth, who considers himself aggrieved by any action of the Commission under § 58-1124 58.1-2032 , irrespective of the amount involved, may present a petition appeal such action to the Supreme Court of Appeals for a writ of error and supersedeas in the same manner and on the same terms prescribed by §§ 8-462 to 8-464 and 8-489 .

Source: § 58-1126

Comment: No substantive change.

~~§ 58-1129 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 State or any county or city ; at the instance of the Attorney General for the State and of the Commonwealth's attorney for any county or Commonwealth's attorney of any city aggrieved , may, within sixty days after receiving a certified copy of the assessment and ascertainment of such taxes by the State Corporation Commission, apply to the Supreme Court of Appeals in the manner and upon the terms prescribed by such court.

Source: § 58-1129

Comment: Superfluous language deleted.

~~§ 58-1127 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 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.

Source: § 58-1127

Comment: No change.

~~§ 58-1128: Dependency of certain sections. Every sentence, provision, word or part of the six preceding sections (§§ 58-1122 to 58-1127) is hereby declared to be dependent upon the rest of said sections and if any sentence, provision, word or part of said sections is declared invalid by the court of last resort then the remainder of said sections in their entirety shall cease to be operative. The provisions of this section shall continue to apply to § 58-1127, as amended.~~

**Comment: Repealed as unnecessary.**

## CHAPTER 21.

### MOTOR FUEL AND SPECIAL FUEL TAX

#### Article 1.

##### Administration of Chapter.

~~§ 58.1-2100. § 58-686.~~ Title of ~~chapter~~ *.- The laws embraced in This chapter shall be known ; designated and may be cited as the "Motor Fuel and Special Fuel Tax Act of Virginia."*

Source: §§ 58-686 and 58-731.

Comment: The motor fuel tax (Chapter 13, § 58-686 et seq.) and the special fuel tax (Chapter 14, § 58-731 et seq.) have been combined in order to eliminate duplicative language.

~~§ 58.1-2101. § 58-687.~~ Definitions.— ~~The following words, terms and phrases ; when As used in this chapter , are for the purpose hereof defined as follows shall have the following meanings unless the context clearly shows otherwise, the term or phrase :~~

(1) ~~"Motor Vehicles"~~ means all automotive or self propelled vehicles, engines or machines, ~~which are operated or propelled by internal combustion of gasoline, distillate or other volatile or inflammable liquid fuels.~~

(2) ~~"Motor fuel"~~ shall mean:

~~All products commonly or commercially known, advertised, offered for sale, sold or used as gasoline, including casinghead or natural gasoline, and all other types of additives when mixed or blended into gasoline, regardless of their classifications or uses.~~

~~"Aircraft"~~ means any kind of vehicle designed or used for untethered navigation or flight in the air.

~~"Aviation consumer"~~ means any person who uses in excess of 100,000 gallons of aviation special fuel in any fiscal year.

(3) ~~"Aviation fuel"~~ means a ~~motor fuel~~ either a motor fuel or special fuel designed for use in the operation of aircraft, and sold or used for that purpose.

~~"Bonded aviation fuel"~~ means aviation special fuel held in bonded storage under United States Customs Law and delivered into the fuel supply tank of aircraft operated by certificated air carriers on international flights.

(11) ~~"Bulk storage"~~ ~~shall mean~~ means a storage in of which motor fuel is stored for redistribution in bulk quantities by tank truck, tank car or transport truck.

~~"Bulk user"~~ means any person who maintains bulk storage facilities solely for the purpose of fueling aircraft or motor vehicles owned, leased or operated by him.

(7) ~~"Commissioner"~~ means the Commissioner of the Division of Motor Vehicles.

(4) The term "dealer" means any person who imports, or causes to be imported, into the State, motor fuel for use, distribution or sale and delivery in and after the same reach the Commonwealth; any person who produces, refines, manufactures or compounds such fuel in the Virginia for use, distribution or sale and delivery in the Commonwealth; any person who maintains and operates a bulk storage within the Commonwealth and who receives motor fuel by tank car, barge, pipeline delivery or any common or contract carrier or self-owned equipment from a point within the Commonwealth; and also any person who sells over one-half million gallons of motor fuel in any year, and who elects to be licensed as a dealer. ~~Any person importing or causing to be imported into Virginia, for his own use, such motor fuel in any container other than the usual tank or receptacle connected with the engine of the motor vehicle in the operation of which the motor fuel is to be consumed and any person producing, refining, manufacturing or compounding such motor fuel in Virginia for his own use shall also be considered a dealer within the meaning of this chapter; provided that this definition shall not include any railroad company purchasing motor fuel for use in its railroad business and not to be used for motor vehicles on the highways of the Commonwealth.~~

*"Dealer" means and includes the following persons, required to be licensed as a dealer pursuant to Article 3 (§ 58.1-2135 et seq.) of this chapter:*

*(a) A person who imports, or causes to be imported, into the Commonwealth any motor fuel for use by or distribution or sale and delivery to another in the Commonwealth.*

*(b) A person who imports, or causes to be imported, into the Commonwealth any motor fuel for his own use in any container other than the usual tank or receptacle connected with the engine of the motor vehicle which will consume such motor fuel during its operation.*

*(c) A person selling over one-half million gallons of motor fuel in any calendar year who elects to be licensed as a dealer.*

*(d) A person who maintains and operates a bulk storage within the Commonwealth who receives motor fuel by tank car, barge, pipeline delivery, common or contract carrier or self-owned equipment from another point within the Commonwealth.*

*(e) A person who produces, refines, manufactures or compounds any motor fuel in the Commonwealth for use, distribution or sale and delivery in the Commonwealth.*

*(f) A person who produces, refines, manufactures or compounds motor fuel in the Commonwealth for his own use.*

*The term "dealer" shall not include a railroad company purchasing motor fuel for use in its railroad business and not for use in motor vehicles on the highways of the Commonwealth. The Commissioner may designate dealers as limited dealers or jobbers, but the designation by the Commissioner of a dealer as a limited dealer or jobber shall not in of itself deprive the limited dealer or jobber of the right to refunds to which they would have otherwise been entitled under the provisions of § 58-717 58.1-2111(B)(3) to which they would otherwise be entitled .*

*"Division" means the Division of Motor Vehicles, acting directly or through its duly authorized officers and agents.*

*"Exemption certificate" means a serially numbered certificate approved and issued by the Commissioner, which is to be affixed on bulk storage facilities of resellers and bulk users of special fuel for the purpose of exempting fuel delivered therein from the special fuel tax due to the nonhighway use of such special fuel.*

*"Fuel" or "fuels" means all combustible gases and liquids used or suitable for use in an internal combustion engine or motor for the generation of power to propel motor vehicles or aircraft. The terms shall include both motor fuel and special fuel.*

*"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.*

*(6) The term "Jobber" means any person who receives motor fuel by tank car, barge, pipeline, common or contract carrier or in self-owned equipment from a point within the Commonwealth and Virginia who has not qualified to pay the motor fuel tax direct directly to Virginia and who the Commonwealth, if such person complies with all of the applicable provisions of this chapter.*

*"Licensee" means any person licensed by the Commissioner pursuant to § 58.1-2135.*

*(5) The term "Limited dealer" means any person who maintains and operates maintaining and operating a bulk storage within the Commonwealth and who receives motor fuels from a duly licensed dealer from a point within the Commonwealth and same Virginia, if such motor fuel is delivered to another point in Virginia by tank car, barge, pipeline, common or contract carrier or self-owned equipment. However, In any case where the term "dealer" is used in this chapter the same shall apply to such term shall be deemed to include the term "limited dealer" except in those instances where the context clearly indicates a different meaning otherwise .*

*"Liquid" means any substance which is liquid at temperatures, in excess of 60F. and a pressure of 14.7 pounds per square inch absolute.*

*(2) "Motor fuel" shall mean: means all products commonly or commercially known, advertised, offered for sale, sold or used as gasoline, including casinghead or natural gasoline ; and . The term shall include all other types of additives when such additives are mixed or*

blended into gasoline, regardless of their classifications or uses.

(8) "Person" means any person or persons, partnership, firm, association or corporation.

(9) [Repeated.]

(10) "Used in this State" or "used in this Commonwealth" shall mean and include, in addition to its original meaning, the receipt of fuel by any person into a service tank of a motor vehicle.

"Motor vehicles" means all vehicles, engines, machines or mechanical contrivances which are propelled by internal combustion engines or motors and upon which or by which any person or property is or may be transported or drawn upon a public highway.

"Reseller" means any person, other than a "supplier," who sells or delivers special fuels into a fuel supply tank of an aircraft or motor vehicle other than an aircraft or motor vehicle owned or operated by such person.

"Special fuel" means all "fuels", including fuel used in any type of aircraft, rocket or similar device, other than motor fuels as are subject to the tax imposed by Article 2 (§ 58.1-2104 et seq.) of this chapter.

"Supplier" means any person who sells or delivers special fuel to a "reseller" or "bulk user" for resale or use in any motor vehicle or aircraft. The term includes any person who imports special fuel into the Commonwealth, for use in an motor vehicle or aircraft owned or operated by such person, other than in the usual tank or receptacle connected with the engine of the motor vehicle or aircraft in which the special fuel is to be consumed.

"Use" means the actual consumption or receipt of fuel by any person into an aircraft or motor vehicle.

"User" means any person who (i) does not maintain storage facilities for fueling aircraft or motor vehicles and (ii) owns or operates any aircraft or motor vehicle having a gross weight in excess of 5000 pounds which is propelled by special fuels and is licensed under the laws of the Commonwealth.

Source: §§ 58-687 and 58-732.

Comment: The definitions from Chapter 13 and Chapter 14 have been consolidated. "Fuel" has been defined to include all types of fuel, motor fuel and special fuel. "Special fuel" has been defined to include all fuel other than "motor fuel." The definition of motor fuel has not been changed. "Aviation fuel" as been redefined to mean either a motor fuel or a special fuel. "Licensee" has been added to the list of defined terms.

§ 58.1-2102. § 58-692.1. Rules and regulations; forms.—The Commissioner shall promulgate such rules and regulations and shall prescribe such forms as shall be necessary to effectuate and enforce the purposes of this chapter.

Source: §§ 58-692.1 and 58-753.2.

Comment: No change.

§ 58.1-2103. § 58-688. Exchange of information among the states.—The Commissioner may, in his discretion, upon request duly received from the officials to whom is entrusted the duty of enforcement of the motor fuel and special fuel tax laws of any other state, forward to such officials any information which the Commissioner may have in his possession relative to the production, manufacture, refining, compounding, receipt, sale, use, transportation or shipment by any person of motor such fuel.

Source: §§ 58-688 and 58-756.

Comment: No substantive change.

## Article 2.

### Motor Fuel Tax.

Comment: This article contains all provisions which apply only to the motor fuel tax. Provisions which the motor fuel and special fuel taxes have in common have been placed in later

articles.

**§ 58-690. Price of fuel plus tax. Dealers and all other persons selling motor fuel shall add the amount of the tax to the price of the motor fuel sold by them and may state the amount of the tax separately from the price of the motor fuel on all price display signs, sale or delivery slips, bills and statements which advertise or indicate the price of motor fuel.**

**§ 58-2104. § 58-714. Price of fuel to include tax; bills by dealers to purchasers.— A. All dealers and other persons selling motor fuel shall add the amount of the tax imposed pursuant to this chapter to the price of the motor fuel sold by them. The amount of the tax may be stated separately from the price of the motor fuel on all price display signs, sale or delivery slips, bills and statements which advertise or indicate the price of motor fuel.**

**B. Bills shall be rendered to all purchasers of motor fuels by dealers selling the same such motor fuel. Such bills The bill shall contain a statement thereon, in a conspicuous place, that the liability to the State Commonwealth for the tax or taxes hereby imposed has been assumed and that the dealer will pay the tax or taxes thereon on or before the last day of the following month.**

Source: §§ 58-690 and 58-714.

Comment: No substantive change. The two former sections pertaining to the form and content of bills to purchasers and other statements of the tax have been combined.

**§ 58-1-2105. § 58-711. Levy of tax; amount; single payment only on motor fuel, aviation motor fuel and synthetic motor fuel. A. Except as provided in subsections B and B1 C and D, there is hereby levied a tax at the rate of eleven cents per gallon on all motor fuel, except aviation fuel, which is sold and delivered or used in this Commonwealth; including. The tax shall be levied on all motor fuel sold by or through post exchanges, ship stores, ship service stores, commissaries, filling stations, licensed traders and other similar agencies located on United States military or other reservations within the boundaries of the Commonwealth, when unless such fuel is not for the exclusive use of the United States and is not under the protection of the interstate commerce clause of the Constitution of the United States or its departments, agencies and instrumentalities. The tax herein imposed and assessed shall be collected by and paid to the Commonwealth but once in respect to any motor fuel. Nothing herein shall be construed to exempt from this tax any dealer in motor fuel on the motor fuel used in making such distribution.**

**B. A tax at the rate of four cents per gallon is hereby levied on all aviation motor fuel which is sold and delivered or used in Virginia. The tax herein levied shall be collected in the manner hereinafter provided. Any person, whether or not licensed under this chapter, who shall, while licensed or unlicensed under this chapter, use, acquire for use, sell or deliver uses, acquires for use, sells or delivers for use in highway vehicles any aviation fuel taxable under this chapter shall be liable for the tax imposed at the rate of eleven cents per gallon by this section, along with any penalties and interest which may accrue. Any dealer who collects the tax on fuel shall be liable for the payment thereof to the Division of Motor Vehicles.**

**C. B. Synthetic motor fuel produced in Virginia from coal, and any motor fuel containing at least ten percent anhydrous ethyl alcohol distilled in Virginia from agricultural, forestry or waste products in a plant which does not use natural gas or a petroleum based product as a primary fuel, shall be subject to tax as set forth in this subsection:**

- (1) From July 1, 1981, to July 1, 1984, the tax shall be three cents per gallon;**
- (2) (1) From July 1, 1984, to July 1, 1986, the tax shall be five cents per gallon;**
- (3) (2) From July 1, 1986, to July 1, 1988, the tax shall be seven cents per gallon;**
- (4) (3) From July 1, 1988, to July 1, 1990, the tax shall be nine cents per gallon;**
- (5) (4) On and after July 1, 1990, the tax shall be at the rate prescribed in subsection A.**

**B1. D. Motor fuel refined in Virginia exclusively from crude oil produced in Virginia in a refinery having a capacity not to exceed 1,000 barrels per day located within the bounds of this Commonwealth and using as a feed stock raw material only crude oil produced in Virginia, shall be subject to tax as set forth in this subsection:**

- (1) From July 1, 1983, to July 1, 1985, the tax shall be three cents per gallon;**

(2) From July 1, 1985, to July 1, 1987, the tax shall be five cents per gallon;

(3) From July 1, 1987, to July 1, 1989, the tax shall be seven cents per gallon;

(4) From July 1, 1989, to July 1, 1991, the tax shall be nine cents per gallon.

(5) On and after July 1, 1991, the tax shall be at the rate prescribed in paragraph A of this section.

*E. Any dealer who collects the tax on motor fuel shall be liable for the payment thereof to the Division of Motor Vehicles.*

~~C. As compensation for accounting for and remitting the tax levied under this chapter, each dealer and limited dealer shall be allowed one half of one percent of the amount of tax due and accounted for under § 58-713 each month, not to exceed five hundred dollars monthly; in the form of a deduction from the tax payable with his return. Such deduction shall not be allowed if any amount of tax due was delinquent at the time of payment.~~

Source: § 58-711.

Comment: Language referring to fuel under the protection of the interstate commerce clause has been deleted. Outdated provisions have also been stricken. The provisions of the last paragraph pertaining to a deduction for accounting for the tax are found in § 58.1-2129.

~~§ 58-712.1. Motor fuel sold to United States or agencies thereof. Each and every dealer, limited dealer, or jobber in gasoline or other like products of petroleum by whatsoever name designated shall be exempt from the payment of any and all motor fuel taxes upon gasoline or other like products of petroleum sold by such dealer in the State to the United States, its departments, agencies and instrumentalities when such gasoline or other like products of petroleum is sold and delivered by such dealer to and for the exclusive use by the United States, its departments, agencies and instrumentalities.~~

~~The term "exclusive use by the United States, its departments, agencies and instrumentalities" shall be construed to specifically exclude the use of such gasoline and other like products of petroleum by any person, firm or corporation, whether operating under contract with the United States, its departments, agencies and instrumentalities or not, the original purchase by whom from a dealer in gasoline or other products of petroleum in this State would have rendered such dealer liable for the payment of motor fuel taxes upon such gasoline or other like products of petroleum under the laws of the State.~~

~~§ 58.1-2106. § 58-712. Motor fuel sold to State or political subdivisions. Exemptions from tax . Each and every dealer, limited dealer, or jobber in gasoline or other like products of petroleum by whatsoever name designated in motor fuels shall be exempt from the payment of any and all motor fuel taxes upon gasoline or other like products of petroleum on such motor fuels:~~

~~1. Sold and delivered by such a dealer in the State Commonwealth to the State Commonwealth or any political subdivision thereof when such gasoline or other like products of petroleum are sold and delivered by such dealer to and for the exclusive use by the State Commonwealth or any political subdivision thereof ; or~~

~~2. Sold and delivered by a dealer in the Commonwealth to the United States or its departments, agencies and instrumentalities for the exclusive use by the United States or its departments, agencies and instrumentalities.~~

~~The term "exclusive use by the United States or its departments, agencies and instrumentalities" shall be construed to specifically exclude the use of such motor fuel by any person, whether operating under contract with the United States or its departments, agencies and instrumentalities or not, if the original purchase by such person from a dealer would have rendered the dealer liable for the payment of motor fuel taxes under the laws of this Commonwealth.~~

~~The tax levied under this chapter on fuel sold by such dealer in State to any corporation, partnership or other entity performing transportation under contract or lease with any transportation district created under the Transportation District Act of 1964 when such gasoline or other like products of petroleum are used in a motor vehicle controlled by a transportation district, which motor vehicle is used in providing transit service by the transportation district by contract or lease shall be refunded to such corporation, partnership or other entity upon application, in the manner provided for in § 58-716.~~

Source: §§ 58-712 and 58-712.1.

Comment: These former sections have been combined so that all provisions pertaining to exemption from the tax are now found in one section. The new language in paragraph 2 is from § 58-712.1. The provisions of the second paragraph of former § 58-712 have been transferred to § 58.1-2111 because that paragraph relates to a refund and not an exemption. No substantive change has been made in the exemption provisions.

~~§ 58-713.1. Monthly statements relating to aviation fuel; special fund. Motor fuel dealers licensed under this chapter shall incorporate a statement in their monthly reports to show the quantity of aviation fuel on hand the first and last days of the preceding calendar month; the quantity of aviation fuel received, produced, refined or compounded during the month; and the quantity sold, delivered or used during the month.~~

~~The quantity of such fuel so sold, delivered or used shall be the basis upon which the aviation gas tax shall be set aside in a special fund; from the amount so set aside all refunds provided by law for refunds of the aviation gas tax shall be made, and the remainder thereof shall be expended as provided by law.~~

Comment: The stricken language has been incorporated into § 58.1-2107.

~~§ 58.1-2107. § 58-712. Reports and ; payment of tax. A. On or before the last day of each calendar month, each dealer or limited dealer in motor fuel shall render to the Commissioner a statement , on forms prepared and furnished by the Commissioner, which shall show:~~

~~(1) The quantity of motor fuel on hand on the first and last days of the preceding calendar month;~~

~~(2) The quantity of motor fuel received, produced, manufactured, refined or compounded during the preceding calendar month ;~~

~~(3) The quantities of motor fuel sold and delivered or used within the State Commonwealth during the preceding calendar month; and~~

~~(4) The quantities of motor fuel sold or delivered to a limited dealer : ; and, if applicable,~~

~~(5) The quantity of aviation motor fuel on hand the first and last days of the preceding calendar month; the quantity of aviation motor fuel received, produced, refined or compounded during the month; and the quantity sold, delivered or used during the month. All such information pertaining to aviation motor fuel shall be separately stated and attached to the monthly report.~~

~~B. The dealer shall At the time of rendering such report the dealer shall pay to the Commissioner the tax or taxes herein levied on all motor fuel sold and delivered or used within the State Commonwealth during the preceding calendar month except that which is sold to a limited dealer or another duly licensed motor fuel dealer. But No dealer shall pay such the tax on motor fuel received by such dealer him from a point within the State Commonwealth from another duly licensed dealer who has paid or assumed the payment of such tax.~~

~~The A limited dealer shall at the time of rendering such report pay to the commissioner pay the tax or taxes herein levied on all motor fuel received from a point within the state from a dealer during the preceding calendar month. The tax shall be paid to the Commissioner on the number of gallons purchased, invoiced and delivered by the supplying dealer. Any report or payment of the motor fuel tax shall be deemed filed within the meaning of this chapter if it is received by the Commissioner of the Division of Motor Vehicles by midnight of the fifth day of the second month succeeding the month for which the report is filed; or should the fifth day fall on a Saturday, Sunday, or legal holiday; by midnight of the next day the Division is open for business or received by mail in an envelope bearing a postmark showing that it was mailed on or before midnight of the last day of the month succeeding the month for which the tax is due; ded; however, that the report or payment of the motor fuel tax for May shall not be deemed filed within the meaning of this chapter unless it is received by the Commissioner by the last business day the Division is open for business in June or received by mail in an envelope bearing a postmark showing that it was mailed on or before midnight of the twenty-fifth day of June.~~

Source: §§ 58-713 and 713.1.

Comment: No substantive change. Paragraph 5 is new and incorporates the provisions of former § 58-713.1 pertaining to reports required on sales of aviation fuel. The last paragraph of § 58-713.1 has not been incorporated in this section because the provisions pertaining to the disposition of aviation fuel tax revenues are covered in a separate section. The method for

determining whether a report or payment has been timely filed is now covered by § 58.1-2128. Penalties for failure to report as required by this section are found in § 58.1-2142.

~~§ 58.1-2108. § 58-722. Report of dealers or jobbers in fuel on which tax has been paid.—Any dealer, limited dealer or jobber licensed under this chapter who engages in the business of distributing or reselling motor fuel on which the tax imposed under this chapter has been paid and who incurs no liability for such tax shall report any and all purchases of motor fuel to the Division on or before the last day of the month succeeding that in which such purchase or purchases were made. Any person failing to make such report within the time prescribed by this chapter shall be subject to a penalty of not less than five dollars nor more than fifty dollars for the first offense and not less than ten dollars nor more than one hundred dollars for any subsequent offense, except in cases where the provisions of § 58-721 are applicable.~~

Source: § 58-723.

Comment: No substantive change. The last sentence of this paragraph has been stricken because the penalty for failure to report (previously found in § 58-692) is covered by § 58.1-2142.

~~§ 58.1-2109. § 58-727. Reports from persons not other than dealers; contents.—Every person purchasing not required to be licensed as a dealer in motor fuels, who purchases or otherwise acquiring acquires motor fuel or kerosene in by tank car, tank wagon or cargo lots transport truck and selling, using who sells, uses or otherwise disposing disposes of the same such fuel for delivery in this State the Commonwealth who is not required by the provisions of this chapter to be licensed as a dealer in motor fuel shall, on or before the twentieth day of each month, file a statement report setting forth the name under which such person is transacting business within the State Commonwealth, the location, with street number address, of such person's principal office or place of business within the State, Commonwealth, the name and address of the owner, or the names and addresses of the partners if such person is a partnership; or the names and addresses of the principal officers if such person is a partnership, corporation or association. On or before the twentieth day of each calendar month, such person shall, The report, filed on forms prescribed by the Commissioner, report to the Commissioner all purchases or other acquisition and sales or other shall contain such information as may be reasonably required by the Commissioner for enforcement of the provisions of this chapter. dispositions of motor fuel or kerosene during the next preceeding calendar month; giving a record of each tank car or cargo lot delivered to a point within this State. Such report shall set forth from whom each tank car or cargo lot was purchased or otherwise acquired; the point of shipment; to whom sold or shipped; the point of delivery; the date of shipment; the name of the carrier; the initials and number of the car; the number of gallons contained in such tank car; if shipped by rail; and the name and owner of the boat, barge or vessel and the number of gallons contained therein; if shipped by water; and any other additional information the Commissioner may require relative to such motor fuel or kerosene.~~

~~When any person, not required by the provision of this chapter to obtain a license as a dealer in motor fuel, purchasing or otherwise acquiring motor fuel or kerosene in tank car or cargo lots and selling or otherwise disposing of the same for delivery in the State, shall fail to submit his monthly report to the Commissioner by the twentieth day of the following month or when such person shall fail to submit in such monthly report the data required by this chapter such person shall be punished as provided in § 58-692.~~

Source: § 58-727.

Comment: The Commissioner has been given authority to determine what information shall be required on the report. The last paragraph of the former section has been stricken. The penalties for failure to report under this section are covered by § 58.1-2142.

~~§ 58.1-2110. § 58-728. Reports from carriers transporting motor fuel.—Every railroad company, every street, suburban or interurban railroad company, every pipeline company, every water transportation company and every common or contract carrier transporting motor fuel in interstate commerce, by whatever manner, to a point in this the State Commonwealth from any point outside of the State Commonwealth shall report to the Commissioner, on forms prescribed by the Commissioner him, all deliveries of motor fuel so made to points within the State Commonwealth.~~

~~Such reports shall cover monthly periods, shall be submitted not later than the last day of the month following the month covered by the report, and shall contain such information as may be reasonably required by the Commissioner for enforcement of the provisions of this chapter. show the name and address of the person to whom the deliveries of motor fuel have actually and in fact been made, the name and address of the originally named consignee; if motor fuel has been delivered to any other than the originally named consignee, the point of origin, the point of delivery; the date of delivery; (v) the number and initials of each tank car~~

and the number of gallons contained therein, if shipped by rail, the name of the boat, barge, or vessel and the number of gallons contained therein, if shipped by water, the license number of each tank truck and the number of gallons contained therein, if transported by motor truck if delivered by other means; the manner in which such delivery is made, and such other additional information relative to shipments of motor fuel as the Commissioner may require.

Source: § 58-728

Comment: Reference to suburban and interurban railroad companies has been stricken. The Commissioner has been given authority to determine what information shall be required on the report.

§ 58-712. Motor fuel sold to State or political subdivisions. Each and every dealer, limited dealer, or jobber in gasoline or other like products of petroleum by whatsoever name designated shall be exempt from the payment of any and all motor fuel taxes upon gasoline or other like products of petroleum sold by such dealer in the State to the State or any political subdivision thereof when such gasoline or other like products of petroleum are sold and delivered by such dealer to and for the exclusive use by the State or any political subdivision thereof.

The tax levied under this chapter on fuel sold by such dealer in the State to any corporation, partnership or other entity performing transportation under contract or lease with any transportation district created under the Transportation District Act of 1964 when such gasoline or other like products of petroleum are used in a motor vehicle controlled by a transportation district, which motor vehicle is used in providing transit service by the transportation district by contract or lease shall be refunded to such corporation, partnership or other entity upon application, in the manner provided for in § 58-716.

§ 58-717. Refunds to dealers in certain cases. Any dealer duly licensed under this chapter, to whom motor fuel is transferred to bulk storage in this State by tank car, barge, pipeline or transport truck from a point within the State from another duly licensed dealer who has paid or assumed the payment of the tax levied hereunder shall receive a refund equivalent to one percent of the tax passed on to him on the gross gallonage of motor fuel so transferred, in consideration of shrinkage and evaporation; provided, however, that no dealer shall receive more than one such refund and not more than one such refund shall be paid on the transfer of the same motor fuel, and no dealer who is reporting the tax on a sales basis with stock loss shown as a nontaxable item shall be eligible for such a refund, nor shall any refund be paid on any fuel which is subsequently sold tax exempt or exported from this State and subject to export refund under § 58-718. Claim for such refund shall be filed with the Commissioner within ninety days from the date of the receipt of such motor fuel. The claim for refund shall be allowed and paid in the same manner and from the same funds as provided under § 58-716.

§ 58-718. Refund of tax on motor fuel exported. Any person, firm or corporation who purchases motor fuel upon which the motor fuel tax imposed by this chapter has been paid and who subsequently transports the same to another state, district or country for sale or use without this State and delivers the same without this State shall be entitled to a refund of the tax paid upon presentation to the Division of Motor Vehicles of an application for a refund setting forth the fact that such motor fuel was transferred out of this State for sale or use. The claim must be filed with the Commissioner and refund shall be paid from the same funds as provided under § 58-716; provided, however, that the entire tax shall be refunded and no deductions shall be made.

§ 58-719. Refunds when vehicles used for agricultural or horticultural purposes. (1) Any person who shall buy in quantities of five gallons or more at any time any motor fuel for the purpose of operating or propelling unlicensed motor vehicles and other unlicensed equipment used for agricultural purposes, on which motor fuel the tax or taxes imposed by this chapter shall have been paid, shall be refunded such tax or taxes paid by such person in accordance with the provisions of § 58-715.

(2) The owner or lessee of any motor vehicle, whether it is registered and licensed under the provisions of chapter 3 (§ 46-1-41 et seq.) of Title 46-1 or not, shall be entitled to fuel tax refunds, under the provisions of this section, on all motor fuel used in the operation of such vehicle while it is being used exclusively for agricultural or horticultural purposes on lands owned or leased by the owner or lessee of such vehicle and not operated on or over any public highway for any purpose other than for the purpose of moving it in the manner and for the purposes hereinbefore authorized; provided, the owner or lessee of any motor vehicle which has been licensed under the provisions of chapter 3 of Title 46-1 shall not be entitled to fuel tax refunds for fuel used in such licensed motor vehicle until he has delivered the license tags furnished for the vehicle to the clerk of the circuit court of his county, who shall issue a receipt therefor and be entitled to a fee of twenty five cents, or to the nearest office issuing licenses,

the agent in charge of which shall likewise issue a receipt therefor, but without charge. The owner or lessee of such motor vehicle shall be entitled to fuel tax refund as above provided on fuel used in the operation of such vehicle for such time as such tags are left with such clerk or agent. The owner or lessee may surrender the receipt to the clerk or agent at any time, who shall forthwith return the tags and notify the Commissioner of Motor Vehicles.

§ 58.1-2111. § 58.715. Refund of tax on motor fuel. ~~(a)~~ Any person who shall buy, in quantities of five gallons or more at any one time, any motor fuel for the purpose of A. A refund shall be granted in accordance with the provisions of § 58.1-2112 to any person who establishes to the satisfaction of the Commissioner that he has paid the tax levied pursuant to this chapter and such tax was paid upon the single purchase of five or more gallons of any motor fuel utilized for any of the following purposes:

(1) Operating or propelling ~~(1)~~ boats, ships, stationary gas engines, or pumping or mixing equipment on motor vehicles where if the motor fuel used to operate such equipment is stored in an auxiliary tank separate from the motor fuel tank used to propel the motor vehicle, and the motor vehicle is mechanically incapable of self-propulsion while motor fuel is being used from the auxiliary tank ; ;

(2) Operating or propelling tractors used for agricultural purposes ; ;

(3) 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 schools ; ;

(4) Operating or propelling buses owned or solely used by a private nonprofit nonsectarian school while being used to transport children to and from such school or from such school to and from educational or athletic activities ; provided that . The total of refunds in all cases allowed to any applicant under this provision No. ~~(4)~~ of this paragraph with respect to all motor fuel and special fuels as are subject to the tax under this ~~imposed~~ by chapter 14 ~~( § 58-731 et seq.)~~ of this title chapter shall not, in any fiscal year, exceed the sum of two thousand dollars \$2,000 ; ;

(5) Operating or propelling the equipment of ~~voluntary~~ volunteer fire-fighting companies and of volunteer rescue squads within the State Commonwealth actually and necessarily used for fire-fighting or rescue purposes ; equipment of volunteer rescue squads within the State actually and necessarily used for rescue purposes ; ;

(6) Operating or propelling motor equipment belonging to counties, cities ; and towns and counties used if actually and exclusively used in public activities and shall actually use the same for such purpose; ~~(7) any person who shall purchase and use any of such fuel ;~~

(7) Operating or propelling licensed or unlicensed motor vehicles and other equipment used exclusively for agricultural or horticultural purposes on lands owned or leased by the owner or lessee of such vehicle and not operated on or over any public highway for any purpose other than for the purpose of moving it in the manner and for the purposes hereinbefore authorized. If such motor vehicle has been licensed under the provisions of Chapter 3 of Title 46.1, no refund shall be granted until the license tags furnished for the vehicle have been delivered to the clerk of the circuit court in which the owner or lessee of such vehicle resides or to the nearest office issuing such licenses. The clerk or agent of such office shall issue a receipt for the tags and shall be entitled to a fee of twenty-five cents. The owner or lessee of such motor vehicle shall be entitled to a fuel tax refund as above provided on fuel used in the operation of such vehicle for such time as the tags are left with the clerk or agent. The owner or lessee may surrender the receipt to the clerk or agent at any time, who shall forthwith return the tags and notify the Commissioner.

(8) Spraying purposes or for cleaning, dyeing or other commercial use , except in motor vehicles operated, or intended to be operated in whole or in part upon any of the public highways, streets or alleys of this State the Commonwealth ; ~~(8) any person who shall lose any of such fuel by accident, except through personal negligence or theft, on which motor fuel the tax or taxes imposed by this chapter shall have been paid, and (9) ;~~

(9) Operating and propelling motor vehicles used solely for racing other motor vehicles on a race track, shall, except as otherwise provided in subsection ~~(b)~~ of this section, be reimbursed and repaid the amount of such tax or taxes paid by such person. Any ; and

(10) Operation of a farm by a resident of this State who operates the Commonwealth, such farm being located on any island outside the State Commonwealth but within one mile of its boundaries shall be reimbursed and repaid the amount of such tax or taxes paid by such person

on motor fuel used for farming purposes on such island .

*B. A refund shall be granted in accordance with § 58.1-2112 of any tax paid pursuant to this chapter upon motor fuel:*

*(1) Purchased by a person, firm or corporation and subsequently transported and delivered by such person, firm or corporation to another state, district or country for sale or use without the Commonwealth;*

*(2) Sold by a dealer in the Commonwealth to any corporation, partnership or other entity performing transportation under contract or lease with any transportation district created under the Transportation District Act of 1964 for use in a motor vehicle which is controlled by a transportation district and used in providing transit service by the transportation district by contract or lease. The refund provided for in this paragraph shall be paid to the corporation, partnership or other entity performing such transportation.*

*(3) Transferred to a duly licensed dealer for bulk storage in the Commonwealth by tank car, barge, pipeline or transport truck from a point within the Commonwealth by another duly licensed dealer who has paid or assumed the payment of the tax. No dealer who is reporting the tax on a sales basis with stock loss shown as a non-taxable item shall be eligible for such a refund, nor shall any refund be paid on any fuel which is subsequently sold tax exempt or exported from the Commonwealth as subject to export refund under subsection B(1) of this section; or*

*(4) Proven to be lost by accident, except through personal negligence or theft.*

~~(b) If the applicant for refund includes with such application a statement that the fuel was used for agricultural purposes, the Commissioner shall refund to such applicant ten and one half cents per gallon on all such motor fuel. One-half cent per gallon on such fuel so used shall be paid by the Commissioner into the State treasury to the credit of the Virginia Agricultural Foundation Fund.~~

~~(c) C. Any county or city school board or any private nonprofit nonsectarian school contracting with a private carrier to transport children to and from public schools or any private nonprofit nonsectarian school shall be refunded the tax imposed by this chapter on such carrier on fuel so used. Such refund shall be paid pursuant to § 58.1-2112.~~

~~(d) D. On any island in this state on which no motor vehicle is operated upon any public highways, streets or alleys, the refund provided for by this section may be made, pursuant to § 58-2112, to the merchant selling such motor fuel to the consumer.~~

Source: §§ 58-712, 58-715, 58-717, 58-719.

Comment: Although derived from the provisions previously found in the above cited Code sections, this section is, in essence, new. No substantive change was made in the provisions pertaining to refunds. It was felt it would be preferable to have all refund provisions incorporated into one section for easy reference.

~~§ 58.1-2112. § 58-716. Procedure to obtain refund ; time for filing .--Any person entitled to any such a refund pursuant to § 58.1-2111 shall file with the Commissioner an application in writing on a form prepared and furnished by the Commissioner, duly signed by the applicant, and accompanied by a paid ticket or invoice from the dealer or retail distributor showing such purchase. A ticket issued to the holder of a credit card evidencing the delivery to such holder of taxpaid motor fuel shall, for the purpose of this section, be deemed a paid ticket or invoice. Such The application shall set forth the basis for the claimed refund, the total amount of such fuel so purchased and used by such consumer, applicant , other than in motor vehicles operated or intended to be operated upon any of the public highways, streets or alleys of this State, and how used. The Commissioner,~~

~~Upon the presentation of such the application and such paid ticket, invoice or facsimile, the Commissioner shall repay refund to such consumer from the taxes collected on motor fuel the applicant the taxes paid on fuel sold and delivered and used , other than fuel sold, delivered and used for motor vehicles as aforesaid . But~~

~~The application for refund as provided herein must shall be filed with the Commissioner within twelve months from the date of the sale on forms prepared and furnished by the Commissioner as shown on the paid ticket or invoice. Notwithstanding, an application for a refund pursuant to paragraph 1 of subsection B of § 58.1-2111 shall be filed within three years of the date such motor fuel is transported without the Commonwealth, and an application for a~~

*refund pursuant to paragraph 3 of subsection B of § 58.1-2111 shall be filed within ninety days of the date such motor fuel is received.*

*An application for a refund shall be deemed filed if it is sent to the Commissioner in an envelope bearing a post-mark dated on or before midnight of the last day on which it could have been filed with the Commissioner in person.*

A ticket issued to the holder of a courtesy card evidencing the delivery to such holder of taxpaid motor fuel shall, for the purpose of this section, be deemed a paid ticket or invoice. In the event an assessment is rendered for failure to report and pay the tax imposed by § 58-711 58.1-2105 and such fuel is subject to refund under the provisions of § 58-715 58.1-2111, application for refund may be filed with the Commissioner by the person entitled to such refund within twelve months from the date of such assessment and shall be accompanied by invoices covering the sale of the fuel and billing of tax to such person.

Source: §§ 58-716 and 58-720

Comment: This section has been rewritten. The section requires that the basis for the claimed refund be stated in the application. The three-year time limit for filing for refunds has been added to avoid stale claims for refunds. The new language in the fourth paragraph contains the provisions for timely filing previously found in § 58-717. The fourth paragraph incorporates the provisions of former § 58-720 into this section.

~~§ 58-720. Disposition of funds collected: After providing for the refunds under this chapter, the Commissioner shall promptly pay all taxes and fees collected by him under this chapter into the State treasury. The revenue derived from the tax levied as aforesaid is hereby appropriated for the construction, reconstruction or maintenance of the roads and projects comprising the State Highway System, Interstate System and secondary system of State highways and shall be applied to no other purpose, except that:~~

~~(1) There may be paid out of this fund as a contribution towards the construction, reconstruction or maintenance of streets in cities and towns such sums as may be provided by law;~~

~~(2) Such sums out of such funds may be expended for the operation and maintenance of the Department of Highways and Transportation and the Division of Motor Vehicles as may be provided by law;~~

~~(3) The Governor is hereby authorized to transfer out of such fund an amount necessary for the purpose of inspection of gasoline and motor grease measuring and distributing equipment, and for inspection and analysis of gasoline for purity;~~

~~(4) The Commissioner of the Division of Motor Vehicles shall also pay, at the rate of four cents a gallon for each and every gallon of aviation fuel sold and delivered or used in this State into the treasury, as a special fund, to 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 State relating to aviation and for the construction, maintenance and improvement of airports and landing fields to which the public now, or which it is proposed shall, have access; and for the promotion of aviation in the interest of operators and the public generally;~~

~~(5) [Repealed.]~~

~~(6) The Commissioner of the Division of Motor Vehicles shall also pay at the rate of one-half cent per gallon for each and every gallon of motor fuel on which the refund has been paid at the rate of ten and one-half cents per gallon in accordance with the provisions of § 58-716 or § 58-719 relating to refunds for fuel consumed in tractors and unlicensed equipment used for agricultural purposes into the State treasury as a special fund known as the Virginia Agricultural Foundation Fund to be disbursed as provided by law 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 the Virginia Polytechnic Institute and State University, the State Department of Agriculture and Consumer Services and the Virginia Truck Experiment Station including reasonable expenses of the Virginia Agricultural Foundation;~~

~~(7) [Repealed.]~~

~~§ 58-720.1. Restricting purposes for which taxes levied under §§ 58-628, 58-711 and 58-744 may be expended. Notwithstanding any other provision of law, no portion of the revenue derived from the taxes levied under §§ 58-628, 58-711, and 58-744 of the Code of Virginia, as amended, except upon aviation fuel, shall be expended for any purpose other than the purposes hereinafter~~

(a) The construction and ~~reconstruction~~ of highways, streets, bridges, tunnels and ferries and the maintenance thereof;

(b) The acquisition of land, bridges, tunnels and ferries required therefor;

(c) The purchase of equipment required therefor;

(d) The employment of such personnel as may be required therefor;

(e) Structures required in connection with the foregoing;

(f) Expenditures directly and necessarily required for the foregoing purposes including retirement of revenue bonds and no other reason.

As used above, the word "revenue" shall be construed to include only net revenues remaining after the making of any refunds for nonhighway use of motor fuel or fuels, as defined in §§ 58-687 and 58-732, as now provided by law, and shall not be construed to mean any revenue from taxes levied upon aviation fuel and fuel used for agricultural purposes.

The State Comptroller shall not issue any warrant on such revenues in violation of the provisions of this section.

§ 58.1-2113. *Payment of refund; amount.*—A. Except as otherwise provided in this section, any person who paid the tax upon motor fuel at the time of its purchase shall be paid a refund, if entitled, pursuant to § 58.1-2111 for the amount of such tax.

B. If the applicant for refund includes with the application a statement that the fuel was used for agricultural purposes, the Commissioner shall refund to the applicant ten and one-half cents per gallon on all such motor fuel. One-half cent per gallon on such fuel so used shall be paid by the Commissioner into the state treasury to the credit of the Virginia Agricultural Foundation Fund.

C. If the applicant for refund of motor fuel tax collected pursuant to this chapter includes with the application a statement that the fuel was used for propelling a boat or ship, including commercial boats or ships, the Commissioner shall refund to the applicant nine and one-half cents per gallon on all such motor fuel. The Commissioner shall pay the remaining one and one-half cents into the state treasury to be expended pursuant to paragraph D of § 58.1-2146. If any applicant so requests, the Commission shall pay into the state treasury, to the credit of the Game Protection Fund, the entire eleven cents per gallon tax paid by such applicant for the purposes specified in paragraph D of § 58.1-2146.

D. A dealer entitled to a refund pursuant to paragraph 3 of subsection B of § 58.1-2111 shall receive a refund equal to one percent of the tax passed on to him on the gross gallonage of motor fuel transferred, in consideration of shrinkage and evaporation. No dealer shall receive more than one such refund and not more than one such refund shall be paid on the transfer of the same motor fuel.

Source: §§ 58-717 and 58-730.3.

Comment: This section is new but the provisions of this section are derived from provisions found in widely scattered Code sections. Paragraph B is derived from § 58-717 (5)(b); paragraph C from § 58-630; and paragraph D from § 58-717. No substantive changes were made.

§ 58-757.01: ~~Who entitled to refund; application; time for filing; records to be kept; applicability of other laws as to refunds; conditions to be shown by taxicab services: Notwithstanding any other provisions of law, any person, firm or corporation who purchases motor fuel for consumption in motor vehicles used in operating urban or suburban bus lines or taxicab services in this State, or used in regular route service over the highways of this State by common carriers of passengers certificated pursuant to § 56-280, upon which motor fuel taxes imposed by the laws of this State have been paid, shall be entitled to a refund of such motor fuel taxes except that the refund to taxicab services shall be reduced by one cent per gallon of fuel consumed upon presentation to the Commissioner of an application for such refund setting forth the fact that such motor fuel was consumed in motor vehicles while being used in operating urban or suburban bus lines or taxicab services in this State, which are hereby defined as bus lines or taxicab services the majority of whose passengers use the buses or taxicabs for traveling a distance of not exceeding forty miles, measured one way, on the same day between~~

their places of abode and their places of work, shopping areas or schools, or while being used in operating regular route service over the highways of this State by common carriers of passengers certificated pursuant to § 56-280.

Appropriate records and books shall be kept and accurately maintained by the applicant, showing the quantity and cost of the fuel purchased, the date of purchase, the dealer or retailer from whom such fuel was purchased and how such fuel was used by the applicant, so as to satisfy the Commissioner of the correctness of any refund applied for. Such books and records shall be available for inspection by the Commissioner at all reasonable times.

Any person entitled to such refund shall file with the Commissioner an application in writing duly signed by the applicant, accompanied by a paid ticket or invoice from the dealer or retailer showing such purchase. Such application shall set forth the total amount of such fuel so purchased and used in operating urban or suburban bus lines or taxicab services upon any of the public highways, streets or alleys of this State, and in operating regular route service over highways of this State by common carriers of passengers certificated pursuant to § 56-280, and how used. The Commissioner, upon the presentation of such application and such paid ticket, invoice or other document, shall pay to such person from the taxes collected on motor fuels such refund as herein provided on fuels sold, delivered and used as aforesaid. But the application for refund as provided herein, must be filed with the Commissioner within three months from the date of the sale or invoice on forms prepared and furnished by the Commissioner.

Except as otherwise provided in this chapter, all provisions of law applicable to the refund of gasoline taxes and other motor fuel taxes by the Commissioner shall apply to the refunds authorized by this chapter. Provided, however, that cities and towns and any county having withdrawn its roads from the secondary system of State highways under the provisions of § 11 of Chapter 415 of the Acts of 1922 shall receive their proportionate share of such special funds as is now provided by law with respect to other motor fuel tax receipts.

No refund shall be granted for motor vehicle fuel taxes paid on taxicab services unless the applicant is the holder of a permit from the State Corporation Commission. No such 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. Any refunds made hereunder shall be deducted from the urban highway funds allocated to the highway construction district in which the recipient has its principal place of business.

§ 58.1-2114. Refunds to certain bus lines and taxicab services; payment.- A. Any person who purchases motor fuel for consumption in motor vehicles used in operating an urban or suburban bus line or a taxicab service within the Commonwealth, or used in regular route service over the highways of this Commonwealth by common carriers of passengers certificated pursuant to § 56-280 shall be entitled to a refund on the tax paid on any such motor fuel. However, no refund shall be granted unless the majority of the passengers utilizing such busline or taxicab service do so for the purpose of travel for a distance of not more than forty miles, one way, in a single day between their place of abode and their place of employment, shopping areas or schools.

2. Any such taxicab service is the holder of a valid permit issued by the State Corporation Commission.

The amount of the refund shall be equal to the amount of the tax paid, except for refunds granted on the tax paid on fuel used by a taxicab service. The refund granted on fuel used by a taxicab service shall be in an amount equal to the tax paid less one cent per gallon on fuel so used.

B. Any person entitled to a refund under subsection A of this section shall file with the Commissioner, on forms prepared and furnished by him, an application, in writing, duly signed by the applicant, and accompanied by a paid ticket or invoice from the dealer or retailer showing such purchase. The application shall set forth: (i) the total amount of fuel purchased; (ii) the total amount of fuel used as provided in subsection A of this section; and (iii) how such fuel was used. The Commissioner, upon the presentation of such application and paid ticket, invoice or other document, shall pay to the applicant from the taxes collected on motor fuel, the refund as provided in subsection A of this section. The application for a refund must be filed with the Commissioner within three months from the date of the sale or invoice.

No refund shall be granted for motor vehicle fuel taxes paid on taxicab services unless the applicant is the holder of a permit from the State Corporation Commission. No such 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. Any refunds made hereunder shall be deducted from the urban highway funds allocated to the highway construction district, pursuant to Article 1.1 of Chapter 1 of Title 33.1, in which the recipient has its principal place of business.

C. Except as otherwise provided in this chapter, all provisions of law applicable to the refund of gasoline taxes and other motor fuel taxes by the Commissioner shall apply to the refunds authorized by this section. Any city, town or county having withdrawn its roads from the secondary system of state highways under the 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 motor fuel tax receipts.

Source: § 58-757.01.

Comment: This section incorporates the provisions of former Chapter 14.1. A similar refund provision for the special fuel tax has been provided in § 58.1-2126. There does not appear to be any need to retain a separate chapter. Cross reference to the chapter dealing with highway allocations has been made in subsection B.

### Article 3.

#### Special Fuel Tax.

Comment: This article contains provisions which are applicable to the Special Fuel Tax. Provisions which the taxes have in common have been placed in Article 4.

§ 58.1-2115 ~~58-749.1~~. Use of metered pumps by resellers ; *invoices or delivery tickets to be furnished by supplier*.— A. Each reseller shall dispense all liquid *special* fuel sold by him to others from metered pumps which indicate the total amount of fuel measured through such pumps. Each ~~such~~ pump shall have marked thereon the words "Diesel Fuel"; or, if the fuel sold is not diesel fuel, such other ~~word~~ ~~or~~ words descriptive of the type of fuel dispensed through such pump as shall be prescribed by regulations promulgated by the Commissioner.

§ ~~58-749.2~~ *Invoices or delivery tickets*.— ~~(a)~~ B. Each sale of liquid *special* fuel by a supplier, other than at a retail pump by a supplier, shall be evidenced by an invoice or delivery ticket ~~with~~. The invoice or ticket shall have the name and address of the supplier printed or stamped thereon and ~~showing~~ shall show the name and address of the purchaser, date of purchase, number of gallons, price per gallon, tax per gallon, and total amount. One copy of ~~such~~ the invoice or ticket shall be delivered to the purchaser at the time of sale, and a copy thereof shall be retained by the supplier and preserved as other records are required to be preserved under this chapter.

~~(b)~~ Not more than one original copy of any invoice for a single sale of fuel shall be prepared by any person. If an additional copy is required at any time, ~~such~~ Any additional copy prepared shall be plainly marked "Duplicate," and the number of the original ticket or invoice shall be indicated thereon.

Source: §§ 58-759.1 and 58-749.2.

Comment: No substantive change. The sections have been combined.

§ 58.1-2116 ~~58-744~~. Levy of tax and ~~exemptions~~ ; *liability for tax*.—A. There is hereby levied a tax at the rate of eleven cents per gallon is hereby imposed upon all *special* fuel :

1. Sold or delivered by any supplier into a bulk storage facility of any licensed reseller or bulk user ; ~~or~~ ;
2. Used by any ~~such~~ supplier in any motor vehicle owned, leased, or operated by him ; ~~or~~ ;
3. Delivered by ~~such~~ a supplier directly into the fuel supply tank of a motor vehicle ; ~~or~~ ;
4. Imported by a reseller or bulk user, into this State, *Commonwealth*; or
5. Acquired tax free by a reseller, bulk user, or user in this State *Commonwealth* , for resale or use for the propulsion of a motor vehicle.

Any supplier who collects the tax on fuel shall be liable for the payment thereof to the Division of Motor Vehicles.

~~Except that (1) fuel sold to the United States or any of the governmental agencies thereof, (2) fuel sold to the Commonwealth of Virginia or any political subdivision thereof, (3) fuel sold to any volunteer fire-fighting company or volunteer rescue squad within the Commonwealth for use in equipment used for fire-fighting and rescue purposes, (4) aviation fuel sold to aviation consumers, (5) liquid petroleum gas, commonly referred to as "LP gas" or "propane gas," sold or delivered to any licensed reseller or bulk user that does not own or operate a motor vehicle propelled by liquefied petroleum gas or maintain storage facilities for resale or delivery of such fuel for highway consumption, or (6) fuel delivered into bulk storage facilities of any licensed reseller or bulk user which have an exemption certificate affixed thereto shall not be subject to the tax imposed by this subsection A.~~

B. A tax at the rate of four cents per gallon is hereby imposed upon all aviation *special* fuel

1. Sold or delivered by any supplier, other than an aviation consumer, to any licensed reseller or bulk user ~~or~~ ;

2. Used by ~~any such a~~ supplier, other than an aviation consumer, in any aircraft owned, leased or operated by him ~~or~~ ;

3. Delivered by ~~such a~~ supplier directly into the fuel supply tank of an aircraft, other than an aircraft owned, leased or operated by a licensed aviation consumer ~~or~~ ; *or*

4. Imported by a reseller or bulk user into, or acquired tax free by a reseller, bulk user or user in this Commonwealth for resale or use for the propulsion of an aircraft and a .

C. A tax at the rate of four cents per gallon is hereby imposed upon the first 100,000 gallons of aviation *special* fuel, excluding bonded aviation *special* fuel, purchased or acquired for use by any aviation consumer in any fiscal year ; and . A tax at the rate of one quarter of one cent per gallon ~~is hereby imposed~~ on all aviation *special* fuel, excluding bonded aviation *special* fuel, purchased or acquired for use in excess of 100,000 gallons by an aviation consumer in any fiscal year. Aviation consumers shall be allowed credit for aviation fuels purchased tax paid not to exceed the amount due and not to be carried forward to the next fiscal year.

Any person ; who shall, while licensed or unlicensed under this chapter, use, acquire for use, sell or deliver for use in highway vehicles any aviation *special* fuel taxable under this chapter ~~article~~ shall be liable for the tax imposed at the rate of eleven cents per gallon under this section, along with any penalties and interest which may accrue.

~~C. The tax levied under this chapter on fuel sold to any corporation, partnership or other entity performing transportation under contract or lease with any transportation district when such special fuels or other like products of petroleum are used in a motor vehicle controlled by a transportation district created under the Transportation District Act of 1964 which motor vehicle is used in providing transit service by the transportation district by contract or lease shall be refunded to such corporation, partnership or other entity upon application in the manner provided for in §§ 58-753 and 58-753.1.~~

As compensation for accounting for and remitting the tax levied under this chapter, each supplier shall be ~~allowed one half of one percent of the amount due and accounted for under § 58-746 for each month, not to exceed \$500 monthly, in the form of a deduction from the tax payable with his return.~~ Such deduction shall not be allowed if any amount of tax due was delinquent at the time of payment.

~~D. Any county or city school board or any private nonprofit nonsectarian school contracting with a private carrier to transport children to and from public schools or any private nonprofit nonsectarian school shall be refunded the tax imposed by this chapter on such carrier on fuel so used in accordance with the provisions of § 58-753.1.~~

D. E. ~~Notwithstanding the provisions of this chapter,~~ All synthetic motor *special* fuel produced in Virginia from coal, and any motor *special* fuel containing at least ten percent anhydrous ethyl alcohol distilled in Virginia from agricultural, forestry or waste products in a plant which does not use natural gas or a petroleum based product as a primary fuel, shall be subject to tax as set forth in this subsection: *follows:*

(1) From July 1, 1981, to July 1, 1984, the tax shall be three cents per gallon;

(2) 1. From July 1, 1984, to July 1, 1986, the tax shall be five cents per gallon;

- (3) 2. From July 1, 1986, to July 1, 1988, the tax shall be seven cents per gallon;
- (4) 3. From July 1, 1988, to July 1, 1990, the tax shall be nine cents per gallon;
- (5) 4. On and after July 1, 1990, the tax shall be at the rate prescribed in subsection A.

**F. E. Notwithstanding the provisions of this chapter, Special fuel refined in Virginia exclusively from crude oil produced in Virginia in a refinery having a capacity not to exceed 1,000 barrels per day located within the bounds of this Commonwealth and using as a feed stock raw material only crude oil produced in Virginia, shall be subject to tax as set forth in this subsection follows :**

- { 1 } . From July 1, 1983, to July 1, 1985, the tax shall be three cents per gallon;
- { 2 } . From July 1, 1985, to July 1, 1987, the tax shall be five cents per gallon;
- { 3 } . From July 1, 1987, to July 1, 1989, the tax shall be seven cents per gallon;
- { 4 } . From July 1, 1989, to July 1, 1991, the tax shall be nine cents per gallon.

5. On and after July 1, 1991, the tax shall be at the rate prescribed in § 58-744 subsection A.

*F. Any supplier who collects the tax on special fuel shall be liable for the payment thereof to the Division of Motor Vehicles.*

Source: § 58-744

Comment: No substantive change was made in the provisions pertaining to the levy of the tax. Provisions pertaining to certain exemptions, deductions, credits and refunds have been moved to other sections of the chapter. Outdated language has been deleted. "Feed stock" has been changed to "raw material".

**§ 58.1-2117 ~~58-744.1~~ . Liability of unlicensed person for tax on nontaxpaid special fuels sold or delivered to others than licensees .—Any person who shall, while not licensed under this chapter, who deliver delivers into storage facilities maintained in connection with the sale of fuel by any person, service station or firm, not licensed under this chapter, engaged in the business of dispensing gasoline or special fuels for the purpose of propelling licensed motor vehicles; any special fuels upon which the tax due hereunder has not been paid into any storage facility maintained in connection with the sale of fuel by any person, service station or firm not licensed under this chapter which is engaged in the business of dispersing gasoline or special fuel for the purpose of propelling licensed motor vehicles shall be liable for the tax imposed by this chapter. Such person shall make reports as required under § 58-746 58.1-2119 .**

Source: § 58-744.1.

Comment: No substantive change.

**§ 58.1-2118. Exemptions from tax.—No tax shall be levied or collected pursuant to this article on :**

- 1. *Special fuel sold to the United States or its departments, agencies and instrumentalities thereof;*
- 2. *Special fuel sold to the Commonwealth of Virginia or any political subdivision thereof;*
- 3. *Special fuel sold to any volunteer fire-fighting company or volunteer rescue squad within the Commonwealth for use in equipment used for fire-fighting or rescue purposes;*
- 4. *Aviation special fuel sold to aviation consumers;*
- 5. *Liquid petroleum gas, commonly referred to as "LP gas" or "propane gas," sold or delivered to any licensed reseller or bulk user that does not own or operate a motor vehicle propelled by liquefied petroleum gas or maintain storage facilities for resale or delivery of such fuel for highway consumption; or*
- 6. *Special fuel delivered into bulk storage facilities of any licensed reseller or bulk user which have an exemption certificate affixed thereto.*

Source: § 58-744 A.

Comment: The provisions of this section were found in the second paragraph of § 58-744 A. No substantive change was made.

§ 58.1-2119 ~~58-746~~ . Reports; ~~computation and~~ payment of tax.— A. On or before the last day of each calendar month, each supplier of liquid fuel and *each* aviation consumer shall render to the Commissioner a statement , on forms prepared and furnished by the Commissioner, which shall show : (i) the quantity of *special* fuel on hand on the first and last days of the preceding calendar month ; ; (ii) the quantity received during the month ; and (iii) the quantity used or sold to resellers or bulk users.

Each supplier and aviation consumer of *special* fuels which are not liquid shall render to the Commissioner a statement on forms prepared and furnished by the Commissioner, which shall show reports of inventories as the Commissioner shall by regulation require, and shall also show the quantity of *special* fuel used or sold for highway or aviation use during the preceding calendar month. The gallons of *special fuel* used or gallons sold of fuels which are not liquid shall be the actual measured gallons ; ~~except that~~ . However, *special* fuel used in vehicles which are equipped with a bulk tank for delivery of said fuel ; and which have no separate fuel tank for the propulsion of the vehicle, may be reported on the basis of mileage operated converted to gallons ; by using a ratio of miles to gallons which shall be furnished by the Commissioner.

~~B. Each such supplier and aviation consumer shall~~ At the time of rendering such report ~~the supplier and aviation consumer shall~~ pay to the Commissioner the tax or taxes herein levied during the preceding calendar month. Any report or payment of tax shall be deemed filed within the meaning of this chapter if it is received by the Commissioner of the Division of Motor Vehicles by midnight of the fifth day of the second month succeeding the month for which the tax is due ; or, Should the fifth day fall on a Saturday, Sunday or legal holiday, by midnight of the next day on which the Division is open for business; or received by mail in an envelope bearing a postmark showing that it was mailed on or before midnight of the last day of the month succeeding the month for which the tax is due; provided, However, that the report or payment of the tax for May shall not be deemed filed within the meaning of this chapter unless it is received by the Commissioner by the last business day the Division is open for business in June or received by mail in an envelope bearing a postmark showing that it was mailed on or before midnight of the twenty-fifth day of June.

Source: § 58-746.

Comment: No substantive change.

§ 58.1-2120 ~~58-748~~ . Report of purchases by resellers.—On or before the last day of each calendar month, each reseller not otherwise licensed as a supplier shall render to the Commissioner a statement , on forms furnished by the Commissioner, which shall be signed by the reseller. The statement shall show each and every purchase made by the reseller during the prior calendar month. Each purchase shall be specifically noted on the statement and the statement shall show the name and address of the supplier and the quantity and date of each purchase.

Any reseller licensed solely for the distribution of aviation special fuels shall not be required to submit the statement prescribed in this section.

Source: § 58-748.

Comment: No change.

§ 58.1-2121 ~~58-753~~ . Refund of taxes erroneously or illegally collected ; time for claiming .— In the event it ~~shall appear~~ appears to the satisfaction of the Commissioner that any taxes or penalties imposed by this chapter have been erroneously or illegally collected from any licensee; ~~the Commissioner shall certify the amount thereof to the Comptroller, who shall thereupon draw his warrant for such certified amount on the State Treasurer to such licensee. Such refund shall be paid by the State Treasurer person, such person shall be entitled to a refund upon proper application therefor.~~

No ~~refunds~~ refund shall be made under the provisions of this section unless a written statement ~~therefor sets~~ , setting forth the circumstances by reason of which 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. It shall be filed with the Commissioner within one year from the date of the payment of the taxes erroneously or illegally collected .

Source: § 58-753.

Comment: No substantive change was made other than to delete the reference to the procedure

for payment of a refund. Since the procedure is the same for all refunds, § 58.1-2127 has been added.

~~§ 58.1-2122 58-753.1~~ . Refund of tax on special fuels.—Any person ~~or aviation consumer other than a person to whom § 58-753.1:2 58.1-2124 applies~~ , who shall purchase fuel and pay pays the tax at the rate of eleven cents per gallon on the purchase of any special fuel in quantities of five gallons or more at any one time and pay the tax thereon and use the same for ~~(1)~~ shall be entitled to a refund in the amount of the tax paid if:

1. Such fuel is used (i) for purposes other than to propel vehicles operated or intended to be operated on the highway or ~~(2)~~ (ii) by buses owned or solely used by a private, nonprofit, nonsectarian school while being used to transport children to and from such school or from such school to and from educational or athletic activities, and any person who shall lose any of such fuel ;

2. Such fuel has been lost by accident, except through personal negligence or theft ; shall, upon making application therefor as herein provided, be reimbursed the amount of such tax paid; provided, however, that the ;

3. Such fuel was used by any county or city school board or any private, nonprofit nonsectarian school contracting with a private carrier to transport children to and from public schools or any private schools or any private nonsectarian school; or

4. Such fuel was (i) sold to any corporation, partnership or other entity performing transportation under contract or lease with any transportation district and (ii) used in a motor vehicle controlled by a transportation district created under the Transportation District of 1964, which motor vehicle is used in providing transit service by the transportation district by contract or lease. The refund provided for in this paragraph shall be paid to the corporation, partnership or other entity performing such transportation.

The total refunds allowed to any one applicant in all cases pursuant to provision ~~(2)~~ paragraph (1) (ii) of this ~~paragraph~~ section with respect to all special fuels and motor fuel are which is subject to the tax imposed by chapter 13 (~~§ 58-686 et seq.~~) of this title chapter shall not ; in any fiscal year, exceed the sum of two thousand dollars \$2,000 in any fiscal year

Application for refund shall be filed with the Commissioner within twelve months from the date of sale, show the purpose for which the fuel was used, and shall be accompanied by the invoice covering the sale of the fuel to such person. In the event an assessment is rendered for failure to report and pay any tax imposed by § 58-744 58.1-2116 and such fuel has been used for nonhighway purposes by the consumer, application for refund may be filed with the Commissioner by the consumer within twelve months 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. Such refunds shall be paid in the manner provided in § 58-753.

Source: 58-753.1.

Comment: No substantive change.

~~§ 58.1-2123 58-753.1:1~~ . Refund where taxpaid fuels transported to another state, district or country for sale or use.—Any person ; ~~firm or corporation~~ who purchases special fuels upon which the special fuels tax imposed by this chapter has been paid and who subsequently shall be entitled to a refund for the entire amount of the tax paid if such person subsequently transports the same and delivers such fuel to another state, district or country other than in the fuel supply tank of a motor vehicle or aircraft for sale or use without this State and delivers the same without this State shall be entitled to a refund of the tax paid upon presentation to the Division of Motor Vehicles of an application outside of the Commonwealth. A refund shall not be granted pursuant to this section on any special fuel which is transported and delivered outside of the Commonwealth in the fuel supply tank of a motor vehicle or aircraft.

The application for a refund setting shall set forth the fact that such special fuels were transferred out of this State the Commonwealth for sale or use. The claim must be filed with the Commissioner and refund shall be paid from the same funds as provided under § 58-753; provided, however, that the entire tax shall be refunded and no deductions shall be made within three years of the date of payment of the tax for which the refund is claimed .

Source: § 58-753.1:1.

Comment: The three-year limit has been imposed to avoid stale claims for refunds. This same time limit has been applied to motor fuels also.

~~§ 58.1-2124 58-753.1:2~~ . Refund for agricultural use.—Any person who shall buy at any one time special fuel in quantities of five gallons or more on which the tax imposed by this chapter has been paid in quantities of five gallons or more at any time any fuel for the purpose of operating or propelling unlicensed motor vehicles and other unlicensed equipment used for agricultural purposes ; on which fuel the tax or taxes imposed by this chapter shall have been paid , shall be refunded such entitled to a refund of the tax or taxes paid by such person upon application in accordance with the provisions of ~~§ 58-753.1:2~~ . The amount of the refund shall be paid by the Commissioner as follows:

~~(a)~~ The Commissioner shall refund to such applicant

1. Ten and one-half cents per of the tax paid on each gallon on all such motor of fuel so used shall be refunded to the claimant .

~~(b)~~ 2. One-half cent per of the tax paid on each gallon on such fuel so used shall be paid by the Commissioner into the state treasury to the credit of the Virginia Agricultural Foundation Fund as provided by ~~§ 58-757~~ 58.1-2146.

Source: ~~§ 58-753.1:2~~.

Comment: No substantive change was made.

~~§ 58.1-2125 58-753.1:3~~ . Same, application. Procedure for refund pursuant to ~~§ 58.1-2124~~ . Any person entitled to the refund provided by ~~§ 58-753.1:2~~ 58.1-2124 shall file with the Commissioner , within one year of the date of the sale, an application in writing duly , on forms prescribed the Commissioner, signed by the applicant ; and accompanied by a paid ticket or invoice from the dealer or retail distributor showing such purchase. Such The application shall set forth the total amount of such fuel so purchased and used by such consumer; other than in motor vehicles operated or intended to be operated upon any of the public highways, streets or alleys of this State , the name of the applicant and how such fuel was used. The Commissioner, upon the presentation of such application and such paid ticket, invoice or other document, shall repay refund to such consumer from the taxes collected on fuels the taxes paid on fuel sold and delivered and used as provided by ~~§ 58-753.1:2~~ . But the application for refunds are provided herein must be filed with the Commissioner within twelve months from the date of the sale or invoice; on forms prepared and furnished by the Commissioner the claimant the amount of the tax paid as provided in this article .

A credit card ticket issued to the holder shall, for the purpose of this section, be deemed a paid ticket or invoice.

Source: ~~§ 58-753.1:3~~

Comment: No substantive change.

~~§ 58.1-2126~~ . Refund to certain bus lines, taxicab services and common carriers.—Any person who purchases special fuel for consumption in motor vehicles used (i) in operating urban or suburban bus lines or taxicab services in the Commonwealth or (ii) in regular route service over the highways of the Commonwealth by common carriers of passengers certified pursuant to ~~§ 56-280~~ shall be entitled to a refund of the tax paid pursuant to this chapter on such fuel. The refund shall be granted upon compliance with the requirements and procedures as provided in ~~§ 58.1-2114~~ .

Source: Chapter 14.1 (~~§ 58-757.01~~)

Comment: This section has been added to this chapter to give notice that certain bus lines, taxicab services and common carriers are entitled to a refund of the tax paid. The substance of the former section and the procedures for obtaining a refund are found in Article 2 because such a refund is available on the tax paid pursuant to that article also.

~~§ 58.1-2127~~ . Payment of refund.—Whenever it appears to the satisfaction of the Commissioner that any person is entitled to a refund for the amount of any tax paid pursuant to this article, the Commissioner shall forthwith certify the amount of the warrant to the Comptroller. The Comptroller shall thereupon promptly draw his warrant for the amount certified on the state treasurer. The refund shall then be promptly paid to the applicant by the State Treasurer.

Source: New.

Comment: Because the provisions for payment of a refund are generally applicable to all refunds, this section has been added to the chapter. All references to the payment procedure previously found in the various sections of this article have been deleted. New language requiring prompt payment of refunds has been added.

§ 58-757. Disposition of taxes collected. All funds collected hereunder by the Commissioner shall be forthwith paid to the State Treasurer and the revenue so derived is hereby appropriated for the construction, reconstruction and maintenance of highways and the regulation of traffic thereon and shall be applied to no other purpose, except that the Commissioner of the Division of Motor Vehicles shall also pay at the rate of one half cent per gallon for each and every gallon of fuels on which the refund has been paid at the rate of ten and one half cents per gallon in accordance with the provisions of § 58-753.1:2 relating to refunds for fuels consumed in tractors and unlicensed equipment used for agricultural purposes into the State treasury as a special fund known as the Virginia Agricultural Foundation Fund to be disbursed as provided by law to make certain refunds and defray the costs of the research, service, and educational phases of the agricultural program.

All funds collected on aviation fuel shall be distributed as provided for in § 58-733.

#### Article 4.

##### General Provisions.

Comment: This article contains provisions which apply to both taxes imposed under this chapter.

§ 58.1-2128. Time for filing and payment.-Any report or payment of the motor fuel tax or special fuel tax shall be deemed timely filed if received by the Commissioner by midnight of the fifth day of the second month succeeding the month for which the report is filed or payment is due. Should the fifth day fall on a Saturday, Sunday, or legal holiday, the report or payment shall be deemed timely filed if received by midnight of the next day the Division is open for business. Any report or payment received in an envelope bearing a postmark showing that it was mailed on or before midnight of the last day of the month succeeding the month for which the tax is due shall be deemed timely filed.

However, the report or payment of the tax for May shall not be deemed timely filed unless it is received by the Commissioner by the last business day the Division is open for business in June or received by mail in an envelope bearing a postmark showing that it was mailed on or before midnight of June 25.

Source: §§ 58-713 and 58-746

Comment: Source sections contained a provision for determining whether report and payment were timely. This section is modeled on that provision.

§ 58.1-2129. Collection allowance.-As compensation for accounting for and remitting the tax levied under this chapter, each dealer, limited dealer and supplier shall be allowed a deduction from the tax due of one-half of one percent of the amount of tax due and accounted for under §§ 58.1-2107 and 58.1-2119 each month, not to exceed \$500 monthly for each tax respectively. The deduction shall not be allowed if any amount of tax due was delinquent at the time of payment.

Source: §§ 58-711 and 58-744(c).

Comment: No substantive change was made in the provisions pertaining to deductions formerly found in §§ 58-711 and 58-744.

§ 58.1-2130. § 58-730.4. Worthless accounts; credit against tax paid. Credits. -A. Notwithstanding any other provision of this chapter, a dealer or supplier who has (i) sold motor fuel on an open account and, (ii) paid the motor fuel tax thereon as required by this chapter, and (iii) subsequently charged off such accounts as worthless for income tax purposes, may, on the first report filed pursuant to § 58-713 58.1-2107 or 58.1-2119 subsequent to the month in which the account was charged off for income tax purposes, take a credit for such the amount of motor fuel taxes paid thereon and attributable to the worthless account. 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. If, subsequent to taking a credit for a worthless account, the account is paid, in whole or in part, the dealer or supplier shall report such payment to the Commissioner in the first monthly report filed after the date of such collection. The dealer or supplier shall then pay to the Commissioner the tax levied pursuant to this chapter which is attributable to the amount so collected.

B. Any dealer or supplier claiming such credit shall report to the Commissioner the name and address of each person whose account is charged off and the amount of such account, and shall report to the State Corporation Commission the name and address of any motor carrier subject to the road tax levied under § 58-628 whose account is charged off and the amount of

credit claimed. Such motor carrier shall be liable for road tax ~~of~~ *in* the full amount of the credit allowed.

*B. Aviation consumers shall be allowed a credit for aviation special fuels purchased on which the tax has already been paid. The amount of such credit shall not exceed the amount of fuel taxes due from such aviation consumers, nor shall the credit be carried forward to the next fiscal year.*

Source: §§ 58-730.4, 58-753.4 and 58-744(B).

Comment: No substantive change. However, the last section of paragraph A has been rewritten to make it clear that upon collection of all or part on a worthless account a dealer who has taken the credit is liable for payment of the tax. Subsection B applies only to the aviation consumer.

~~§ 58.1-2131. § 58-726:~~ When Commissioner may estimate ~~motor fuel~~ *subject to tax and make assessment therefor not properly reported*; notice of ~~Commissioner's~~ assessment. When any ~~dealer licensee shall neglect or refuse neglects or refuses~~ to make and file any report for any calendar month as required by this chapter or ~~shall file files~~ an incorrect or fraudulent report, the Commissioner shall determine, from any information obtainable, the number of gallons of ~~motor fuel~~ with respect to which the ~~dealer licensee~~ has incurred liability under the ~~motor fuel tax laws of the State and this chapter~~. The Commissioner is authorized to make an assessment ~~therefor for the tax and any penalty and interest properly due against such dealer licensee~~. The notice of ~~said~~ assessment shall be ~~forthwith~~ sent to ~~such the dealer licensee~~ by registered or certified mail to the address of such ~~dealer licensee~~ as it appears on the records *in the principal office of the Division of Motor Vehicles in its principal office*. Such notice, when sent in accordance with these requirements, shall be sufficient regardless of whether or not it was ever received.

Source: §§ 58-726 and 58-747

Comment: No substantive change.

~~§ 58.1-2132. § 58-722:~~ Suits to recover taxes.— ~~If any such dealer fails to pay such tax, penalty and interest, Upon the failure of any person to pay the tax imposed under this chapter, including accrued penalty and interest, when due~~, the Attorney General or the Commissioner shall bring an appropriate action for the recovery of such tax, penalty and interest. ~~and Judgment shall be rendered for the amount so found to be due together with cost; provided that costs. If, however, it shall be is found as a fact that such failure to pay was willful on the part of such dealer willful~~, judgment shall be rendered for double the amount of the tax found to be due, with costs.

All remedies now; or which may hereafter be; given by the laws of this State *Commonwealth* for the collection or enforcement of taxes are hereby expressly given for the collection and enforcement of judgments recovered under this section; ~~and the~~.

~~Commissioner may employ an attorney at law to institute and prosecute proper proceedings to enforce payment of the taxes, penalty and interest provided for by this chapter and fix the compensation for the services of such attorney at law; which in no case shall exceed twenty per centum of the amount recovered; if any, and shall be paid only out of any such recovery:~~

Source: §§ 58-722 and 58-750.

Comment: Stricken language conflicts with other provisions of law pertaining to duties of the Attorney General.

~~§ 58.1-2133. § 58-724:~~ Retention of records by ~~licensees, users dealers and other persons purchasers for resale~~.—Each ~~dealer licensee~~ shall maintain and keep, for a period of two years, ~~such record of all records of pertaining to motor fuel~~ received, produced, manufactured, refined, compounded, used, sold or delivered within ~~this State the Commonwealth~~ by such ~~dealer licensee~~, together with invoices, bills of lading and other pertinent records and papers, as may be required by the Commissioner for the reasonable administration of this chapter.

*Each user of special fuels shall keep and maintain appropriate records of all special fuel purchases for a period of two years.*

Every person purchasing motor fuel taxable under this chapter from a dealer for the purpose of resale shall maintain and keep for a period of one year a record of motor fuel received, the amount of tax paid to the dealer as part of the purchase price, together with delivery tickets, invoices and bills of lading, and such other records as the Commissioner shall require.

Source: §§ 58-724, 58-739.3 and 58-751.  
Comment: No substantive change.

*§ 58.1-2134. § 58-725. Inspection of records, etc.*— The Commissioner or any deputy, employee or agent authorized by him may examine, during the usual business hours of the day, records, books, papers, storage tanks and any other equipment of any dealer *licensee*, purchaser, refiner, *fuel dealer or distributor*, or common carrier *pertaining to for the purpose of ascertaining the* quantity of motor fuel received, produced, manufactured, refined, compounded, used, sold, shipped or delivered, *as the case may be*, to verify the truth and accuracy of any statement, report or return or to ascertain whether or not the tax imposed by this chapter has been paid.

Source: §§ 58-725 and 58-752.  
Comment: No change.

*§ 58 695. Bond to be filed with application.* Upon the filing of an application for a license, and concurrently therewith, a bond of the character hereinafter stipulated and in the amount hereinafter provided for shall be filed with the Commissioner. No license shall issue upon any application unless accompanied by such a bond.

The bond so filed shall be in an amount to be determined upon investigation by the Commissioner or to be approximately three times the anticipated average monthly motor fuel tax to become due by such dealer or limited dealer during the next succeeding three calendar months. In case of a jobber who incurs no tax liability the amount of bond shall be one thousand dollars. Such bond shall be in such form as may be approved by the Commissioner, shall be executed by some surety company duly licensed to do business under the laws of the State of Virginia, shall be payable to the State of Virginia, and shall be conditioned upon the prompt filing of true reports and the payment by such dealer to the Commissioner of any and all motor fuel taxes which are now or which may hereafter be levied or imposed by the State of Virginia, together with any and all penalties, and interest thereon, and generally upon faithful compliance with the provisions of this chapter. 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 as provided by law.

*§ 58 696. Issue of license.* The application in proper form having been accepted for filing, the filing fee paid and the bond having been accepted and approved, the Commissioner shall issue to such dealer a license certificate to transact business as a dealer in the State, subject to cancellation of such license as provided by law.

*§ 58 697. When license not to issue.* In the event that any application for a license certificate to transact business as a dealer in this State shall be filed by any person whose license shall at any time theretofore have been cancelled for cause by the Commissioner or in case the Commissioner shall be of the opinion that such application is not filed in good faith, or that such application is filed by some person as a subterfuge for the real person in interest whose license or registration shall theretofore have been cancelled for cause by the Commissioner, then and in any of such events the Commissioner after a hearing, of which the applicant shall have been given five days' notice in writing and in which the applicant shall have the right to appear in person or by counsel and present testimony, may refuse to issue to such person a license certificate to transact business as a dealer in the State.

*§ 58 698. License not assignable.* The license certificate so issued by the Commissioner shall not be assignable, and shall be valid only for the dealer in whose name it is issued.

*§ 58 699. Display of license.* The license certificate so issued by the Commissioner shall be displayed conspicuously in the principal place of business of the dealer in the State.

*§ 58 701. Record of licensees.* The Commissioner shall keep and file all applications and bonds with an alphabetical index thereof, together with a record of all licensed dealers.

*§ 58 702. Maximum bond or other security required.* In no case shall the amount of any surety bond required to be filed by any dealer under the provisions of § 58 695, or the amount of such bonds and/or certificates of deposit as are permitted to be filed in lieu thereof, exceed the sum of twenty thousand dollars.

*§ 58.1-2135. § 58-693. Requirement of license; application; bond.*— It shall be unlawful for any dealer, limited dealer or jobber to receive, use, sell or distribute any motor fuel or to engage in business within this State, unless he is the holder of an uncanceled license issued by the Commissioner to engage in such business. To procure such license A. Every dealer, limited dealer, jobber, supplier, reseller, bulk user or aviation consumer desiring to receive, use, sell,

store or distribute any fuel or to engage in such business within the Commonwealth shall file with the Commissioner an application for a license to engage in such business, in such form as the Commissioner may prescribe, setting forth:

(1) 1. The name under which the applicant will transact business within the State Commonwealth ;

(2) 2. The location, with street number address, of ~~its~~ the applicant's principal office or place of business within ~~this State~~ the Commonwealth ; and

(3) 3. The name and complete residence address of the owner or the names and addresses of the partners, if such ~~applicant is a partnership~~, or the ~~names and addresses of the principal officers~~, if such applicant is a ~~partnership~~, corporation or association ; ~~and~~ . If ~~such the~~ applicant is a corporation organized under the laws of another state, territory or country, such applicant shall also file with ~~such the~~ application a certified copy of the certificate or license issued by the State Corporation Commission showing that ~~such the~~ corporation is authorized to transact business in the State Commonwealth .

The Commissioner may license any person either as a supplier, reseller, bulk user or aviation consumer, whichever is in the best interests of the Commonwealth; however, no person shall be required to be licensed in more than one such category.

B. No license shall be issued upon any application unless accompanied by such bond or other security as provided by § 58.1-2136. The bond or other security shall be in an amount to be determined upon investigation by the Commissioner to be approximately three times the anticipated average monthly fuel tax to become due by the applicant during the next succeeding three calendar months. In no event shall the amount of any bond or other security filed in lieu of such bond be less than \$500 nor more than \$20,000 for each license issued. In case of a jobber who incurs no tax liability to the Division, the amount of bond or other security shall be \$1,000.

The bond shall be in such form as may be approved by the Commissioner and shall be payable to the Commonwealth. Such bond shall be executed by a surety company duly licensed to do business under the laws of the Commonwealth, approved by the Bureau of Insurance of the State Corporation Commission and signed by a resident Virginia agent of the surety. The bond or other security as provided for in § 58.1-2136 shall be conditioned upon the prompt filing of true reports and the payment by such dealer, supplier or aviation consumer to the Commissioner of all fuel taxes which are now or which may hereafter be levied or imposed by the Commonwealth, together with all penalties, and interest thereon, and generally upon faithful compliance with the provisions of this chapter. Such bond shall be so written that, upon timely payment of the premium, it shall continue in force from year to year unless sooner terminated as provided by law.

Except as provided in § 58.1-2137 upon receipt of an application in proper form, and upon acceptance and approval of the bond or other security, the Commissioner shall issue to the applicant a license certificate to transact business in the Commonwealth, subject to cancellation of such license as provided by law. However, any licensee shall forthwith furnish the Commissioner information of any changes in the original application.

C. The license certificate so issued by the Commissioner shall not be assignable, and shall be valid only for the applicant in whose name it is issued. It shall be conspicuously displayed at all times in the principal place of business of the licensee in the Commonwealth .

D. The Commissioner shall keep and file all applications and bonds with an alphabetical index thereof, together with a record of all licensees. The Commissioner shall, upon request, furnish each licensed supplier a list showing the name and business address of each licensed reseller, bulk user and aviation consumer, and each licensed dealer a list showing the name and address of each limited dealer. The Commissioner shall supply such lists as of the beginning of each fiscal year, and shall thereafter, during such year, supplement such lists monthly.

Source: §§ 58-693, 58-694, 58-695, 58-696, 58-698, 58-699, 58-701, 58-703, 58-730.2, 58-734, 58-734.1, 58-735, 58-737, 58-738, 58-739, 58-740, 58-741 and 58-741.1.

Comment: All provisions pertaining to the requirements for the issuance of a license are now found in this one section. Minor changes have been made to simplify the language of the section. The application fee of five dollars has been deleted. The provisions have been made to apply to all licensees, not just dealers, suppliers and aviation consumers.

§ 58-704: Assignment to Commissioner required with other security. Any dealer who shall so

deposit with the Commissioner bonds of the United States government or of the State of Virginia, or a certificate of deposit, in lieu of filing a surety bond, shall at the time deliver to the Commissioner an assignment authorizing him to use the bonds or any part thereof, or to receive payment of the certificate of deposit as the case may be, for the purpose of paying any liability of the dealer to the State for motor fuel tax due and payable by him, including any and all penalties and interest accrued thereon and any damages for which he may be liable by reason of his failure to comply with any of the other provisions of this chapter.

§ 58.1-2136. § 58.702. Other security in lieu of surety bond.—Any dealer licensee may deposit with the Commissioner, in lieu of such a surety bond required by § 58.695 58.1-2135, negotiable bonds, which are direct obligations of the United States government or of the State Commonwealth of Virginia or a certificate of deposit in some banking institution approved by the Commissioner, in an amount to be determined upon investigation by the Commissioner to be approximately three times the anticipated average monthly motor fuel tax to become due by such dealer during the next succeeding three calendar months. Any licensee who shall so deposit with the Commissioner such bonds or certificate of deposit shall, at the time of filing, deliver to the Commissioner an assignment authorizing him to use the bonds or any part thereof, or to receive payment of the certificate of deposit, as the case may be, for the purpose of paying any liability of the licensee to the Commonwealth for fuel tax due and payable by him, including all penalties and interest accrued thereon for which he may be liable by reason of his failure to comply with any of the other provisions of this chapter.

Source: §§ 58-702, 58-704, 58-735.3 and 58-735.4

Comment: These four sections have been combined so that all provisions pertaining to other security deposited in lieu of the bond are now found in one section. The language at the end of the first paragraph is not needed as the provisions for the amount of the bond are covered by § 58.1-2135(B). The second paragraph incorporates the language of § 58-704 with minor changes. Language allowing the Commonwealth to recover damages has been deleted.

§ 58.1-2137. Rejection of application; hearing.—An application for a license may be rejected if the Commissioner finds (i) the applicant had previously been issued a license which has been cancelled, for cause, by the Commissioner, (ii) the applicant is filing as a subterfuge for another person whose license was cancelled, for cause, by the Commissioner, or (iii) the application is not filed in good faith.

The Commissioner shall give the applicant five days' notice, in writing, of such applicant's right to appear in person, or by counsel, and present testimony at a hearing on the application prior to a rejection of the application and refusal to issue a license certificate.

Source: §§ 58-697 and 58-736

Comment: No substantive change. The former section has been rewritten.

§ 58.1-2138. Requirement of new or additional security.—If the Commissioner finds that the amount of the bonds, surety on such bonds, or other security deposited or filed with him is unacceptable or insufficient to ensure payment to the Commonwealth of the amount of the tax and any penalties, interest, uncollectible check fees and attorney fees for which the licensee is or may at any time become liable, the Commissioner may require, in writing, that the licensee file new or additional bonds or other security, with like surety, in an amount sufficient to ensure such payment. The new or additional security shall be filed in the same manner and shall be in the same form as required by the provisions of the chapter for the original bond or other security. In no event shall the Commonwealth or any political subdivision thereof be required to file bonds as guaranty of payment of fuel taxes imposed by this chapter.

Upon the filing by the licensee of a new bond or other security, the Commissioner shall cancel and surrender to the licensee the bond or security previously held.

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.

Source: §§ 58-705, 58-706, 58-707 and 58-735.1

Comment: This section combines the provisions of the source sections and eliminates unnecessary language. Provisions for cancellation of the license have been relocated to § 58.1-2140. Provisions requiring a hearing have been deleted; the last paragraph makes the hearing mandatory only after a written request is received by the Commissioner.

§ 58-705: When new or additional bond or security required; cancellation of license: In the

event that liability upon the bonds, certificates of deposit or surety bonds thus filed by the 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 surety bond theretofore given shall have become unsatisfactory or unacceptable, then the Commissioner may require the filing of a new bond, with like surety as hereinbefore provided and in the same amount, failing which, or in lieu thereof failing to deposit with the Commissioner bonds of the United States or of the State of Virginia, or a certificate of deposit in some bank to be approved by the Commissioner, in an equivalent amount, the Commissioner shall forthwith cancel the license certificate of the dealer.

§ 58-706. Surrender of old bond when new security furnished. If such new bond shall be furnished by such dealer, or in lieu thereof, if bonds of the United States or the State of Virginia, or a certificate of deposit in some bank which shall be approved by the Commissioner, shall be filed with the Commissioner, as above provided, the Commissioner shall cancel and surrender the bond of the dealer for which such new bond or other securities shall be substituted.

§ 58-707. Requirement of additional security; cancellation of license. In the event that upon hearing, of which the dealer shall be given five days' notice in writing, the Commissioner shall decide that the amount of the bonds or certificate of deposit deposited with him or of the surety bond filed with him is insufficient to insure payment to the Commonwealth of the amount of the tax and any penalties and interest for which the dealer is or may at any time become liable, then the dealer shall forthwith, upon the written demand of the Commissioner, file additional bonds of the United States or the State of Virginia, or a certificate of deposit in some banking institution approved by the Commissioner, or an additional surety bond in the same manner and form with like surety thereon as hereinbefore provided; provided, however, that the total amount of any such additional bonds, certificate of deposit or surety bond, as well as the bond or other securities required under the provisions of §§ 58-605 to 58-702 shall not exceed the maximum of twenty thousand dollars. The Commissioner shall forthwith cancel the license certificate of any dealer failing to file such additional bond or other securities.

§ 58.1-2139. § 58-708. Release of surety and ; requirement of new bond thereupon; cancellation of license. Any The surety on any bond filed by any a dealer licensee as above provided shall be released and discharged from any and all liability to the Commonwealth accruing on such bond after the expiration of sixty days from the date upon on which such the surety shall have lodged files with the Commissioner a written request to be released and discharged. But Such request shall not operate to relieve, release or discharge such the surety from any liability already accrued or which shall accrue before the expiration of such the sixty-day period.

The Commissioner shall, promptly on receipt of notice of such request, notify the dealer licensee who furnished such the bond and unless such . If the licensee dealer shall , on or before the expiration of such the sixty days' notice , file files with the Commissioner a new bond or other security approved by the Commissioner , and executed by some surety company duly licensed to do business under the laws of this State , in the amount and form hereinbefore provided; or unless such dealer in lieu thereof deposits with the Commissioner bonds of the United States or of the State of Virginia or a certificate of deposit in some banking institution to be approved by the Commissioner in a like amount, prescribed by § 58.1-2135 , the Commissioner shall forthwith cancel the license of such dealer cancel and surrender the bond of the licensee for which such new bond or other security is to be substituted. Otherwise. the Commissioner shall cancel the license of such licensee as provided in § 58.1-2140 .

If such new bond shall be furnished by such dealer or bonds of the United States or the State of Virginia, or a certificate of deposit, filed with the Commissioner in lieu thereof; as above provided, the Commissioner shall cancel and surrender the bond of the dealer for which such new bond or other securities shall be substituted.

Source: §§ 58-708 and 58-735.2

Comment: No substantive change. The language of the section has been simplified by referencing the reader to the sections pertaining to bonding requirements and cancellation, rather than restating the provisions of those sections here.

§ 58-710. Surrender of bond upon cancellation of license. In the event that the license of any dealer shall be cancelled by the Commissioner as provided in the preceding section (§ 58-709) and in the further event that the dealer shall have paid to the State all excise taxes due and payable by it under the laws of the State upon the receipt, sale or use of motor fuel, together with any and all penalties accruing by reason of any failure on the part of the dealer to make accurate reports or to pay the tax or penalties, then the Commissioner shall cancel and

surrender the bond theretofore filed by such dealer.

~~§ 58.1-2140. § 58-700. Cancellation of license s — on other grounds; tax due and payable on cancellation of license. If a dealer shall at any time file a false monthly report of the data or information required by this chapter or fail, refuse or neglect to file the monthly report required by this chapter or to pay the full amount of the tax as required by this chapter or fail to keep accurate records of quantities of motor fuel received, produced, refined, manufactured, compounded, sold or used in this State, The Commissioner may cancel the license of such dealer and notify the dealer in writing of such cancellation by registered mail to the last known address appearing on the files of the Commissioner. A. Upon written notice, sent by registered mail to the licensee's last known address appearing in the Commissioner's files, the Commissioner may, for the following reasons, cancel the license of any person licensed under § 58.1-2135:~~

- 1. Filing by the licensee of a false monthly report of the data or information required by this chapter;*
- 2. Failure, refusal or neglect of the licensee to file the monthly report required by this chapter;*
- 3. Failure of the licensee to pay the full amount of the tax 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 the Commonwealth;*
- 5. Failure to file a new or additional bond and security upon request of the Commissioner pursuant to § 58.1-2138; and*
- 6. Upon a finding by the Commissioner, after investigation and upon sixty days' written notice to the dealer, that such dealer has not been engaged in the receipt, use or sale of motor fuel for a period of six months prior to the effective date of the notice of cancellation.*

Upon cancellation of any ~~dealer's~~ license for cause by the Commissioner pursuant to this subsection, the tax levied under this chapter shall become due and payable on all untaxed motor fuel held in storage or otherwise in the possession of said ~~dealer licensee~~, and on all fuel sold, delivered or used ~~previous~~ prior to the cancellation on which the tax has not been paid.

~~B. The Commissioner may cancel any license issued to any dealer upon the written request of such dealer the licensee; . Any such cancellation to shall become effective sixty days from the date of receipt by the Commissioner of such the request for cancellation . thereof; and the Commissioner may cancel the license of any dealer upon investigation and sixty days' notice mailed to the last known address of the dealer if the Commissioner shall ascertain and find that the person to whom such license has been issued is no longer engaged in the receipt, use or sale of motor fuel as a dealer and has not been so engaged for the period of six months prior to such cancellation. But No such license shall be cancelled upon the request of any dealer licensee until and unless the dealer licensee shall, prior to date of such cancellation, have has paid to the State Commonwealth all taxes imposed by the provisions of this chapter, together with any and all penalties and fines accruing by reason of any failure on the part of the dealer licensee to make accurate reports as required by this chapter or to pay such taxes or penalties.~~

*C. Upon cancellation of any license and payment by the licensee of all taxes due upon the receipt, sale or use of fuels, together with all penalties accruing by reason of any failure on the part of the licensee to comply with the provisions of this chapter, the Commissioner shall cancel and surrender the bond filed by such licensee.*

Source: § 58-705, 58-707, 58-709, 58-710 and 58-742.

Comment: No substantive change. The grounds for cancellation are separated into two classifications: cancellation for cause by the Commissioner and voluntary cancellation by a dealer upon termination of the business. All provisions pertaining to cancellation of a license are now found in this section. Paragraph C contains the provisions for surrender of the bond previously found in § 58-710.

~~§ 58.1-2141. § 58-720. Discontinuance or transfer of business.—Whenever a dealer any licensee ceases to engage in business as a dealer within the State Commonwealth by reason of the discontinuance, sale or transfer of the licensee's activity or business of such dealer, the dealer licensee shall notify the Commissioner in writing as to when the time the discontinuance, sale or transfer takes effect. Such notice shall give the date of discontinuance and, in the event of a sale or transfer of the business, the date thereof and the name and address of the purchaser or~~

transferee thereof. All taxes, penalties and interest under this chapter not yet due and payable under the provisions of ~~§ § 58-713 58.1-2107 and 58.1-2119~~ shall ; ~~notwithstanding such provisions;~~ become due and payable concurrently with such discontinuance, sale or transfer and any such . The dealer licensee shall make a report and pay all such taxes, interest and penalties, and surrender to the Commissioner the license certificate ~~therefore~~ issued to such dealer him by the Commissioner.

Unless the notice above provided for shall have been is given to the Commissioner as above provided required in this section , such the purchaser or transferee shall be liable to the State Commonwealth for the amount of all taxes, penalties and interest under this chapter accrued against any such dealer licensee so selling or transferring his business, on the date of such sale or transfer, but only to the extent of the value of the property and business thereby acquired from such dealer licensee .

Source: §§ 58-729 and 58-743.

Comment: No substantive change other than requiring a licensee to give notice to the Commissioner prior to the date of discontinuance of the business to facilitate enforcement of the chapter.

~~§ 58-601.1. Importing of motor fuel by persons other than licensed motor fuel dealers: It shall be unlawful for any person, including any agent or employee of said person but excluding any common carrier operating under the authority of the State Corporation Commission, to import or cause to be imported into this State any motor fuel unless said person is the holder of an uncancelled license as a motor fuel dealer or unless the liability for the tax imposed under this chapter has been assumed by a licensed motor fuel dealer. The tax levied by this chapter shall become due and payable immediately on any motor fuel imported illegally under this chapter, along with all penalties and interest which are applicable. Also, it shall be unlawful for any person receiving motor fuel which has been imported by a person other than a licensed motor fuel dealer, or on which the tax levied under this chapter has not been assumed or paid by a licensed motor fuel dealer, to deliver or offer such fuel for sale or use within this State, and each delivery or sale shall be deemed a separate offense under this section.~~

~~Upon the discovery of any such motor fuel illegally imported into the State, the Commissioner shall order the tank or other storage in which the fuel is located to be locked or sealed until the liability for the tax levied under this chapter may be established and assessment of tax along with any penalties and interest due has been paid.~~

~~In the event that the assessment for such tax is not paid within thirty days, the Commissioner is hereby authorized to sell such motor 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.~~

~~Any person violating this section shall be deemed guilty of a misdemeanor and upon conviction thereof shall, for the first offense, be fined not more than five hundred dollars or confined in jail not exceeding six months or both and, for a second and any subsequent offense, be fined not more than one thousand dollars or confined in jail not exceeding one year, or both; provided that in addition to the penalty imposed in conformity to the above, the defendant shall be required to pay all taxes and penalties due the State under this chapter and pay to the State any other moneys wrongfully withheld or illegally refunded.~~

~~§ 58.1-2142. § 58-602. Penalties in general Prohibited acts, generally; criminal penalties . - Any person violating any of the provisions of this chapter a penalty for which is not otherwise provided or who shall It shall be unlawful for any person to :~~

- (1) Fail or refuse to pay the tax imposed by this chapter ; ;
- (2) Engage in business in this State the Commonwealth as a dealer without being the holder of an ~~uncancelled~~ a valid license to engage in such business, if such license is required pursuant to § 58.1-2135 ; ;
- (3) Fail to make any of the reports required by this chapter ; ;
- (4) Make any false statement in any application, report , ticket, invoice or statement required by this chapter ; ;
- (5) Refuse to permit the Commissioner or any deputy to examine records as provided by this chapter ; ;

(6) Fail to keep proper records of quantities of motor fuel received, produced, refined, manufactured, compounded, sold, used or delivered in this State the Commonwealth as required by this chapter ; ;

(7) Make any false statement in connection with an application for the refund of any moneys or taxes provided in this chapter or on any delivery ticket or invoice as to the quantity of fuel delivered, sold or used ; ;

(8) Collect or cause to be repaid to any person any tax not being entitled to the same under the provisions of this chapter ; or ;

(9) Use, deliver, or sell any aviation fuel for use in licensed highway vehicles ; ;

(10) Deliver motor fuel from a tank truck to the motor fuel tank of a motor vehicle, except in an emergency;

(11) Import or cause to be imported into the Commonwealth any motor fuel unless : (i) such person is the holder of a valid motor fuel dealers' license, (ii) the liability for the tax imposed under this chapter has been assumed by a licensed motor fuel dealer, or (iii) such person is a common carrier operating under the authority of the State Corporation Commission. The provisions of this paragraph shall not apply to the importation of motor fuel into the Commonwealth in the fuel supply tank of a motor vehicle;

(12) Deliver or offer for sale or use within the Commonwealth any motor fuel which has been imported by a person other than a licensed dealer or on which the tax levied pursuant to this chapter has not been assumed or paid by a licensed dealer. Each delivery or sale in violation of this paragraph shall be deemed a separate offense under this section; or

(13) Equip any vehicle to which a tank for the transportation of liquid fuel for sale or delivery is attached, with any device to connect the transportation tank to the fuel line of the vehicle from which fuel may be supplied for use by such vehicle.

Any person convicted of a first offense under this section shall be guilty of a Class 2 misdemeanor . and upon conviction thereof shall, for the first offense, be fined not more than five hundred dollars or confined in jail not exceeding six months, or both, and, for a second and any subsequent offense, be fined not more than one thousand dollars or confined in jail not exceeding one year, or both; provided that A second or subsequent offense shall be punishable as a Class 1 misdemeanor.

In addition to the penalty any other penalty imposed in conformity to the above , the defendant shall be required to pay all taxes and penalties due the State Commonwealth under this chapter and pay to the State Commonwealth any other moneys wrongfully withheld or illegally refunded.

Source: §§ 58-691, 58-691.1, 58-692, 58-755 and 58-754.1

Comment: Three sections have been combined so that all prohibited acts and criminal penalties are found in one section. Former § 58-691 provided that a conviction for illegal delivery of motor fuel from a tank truck to the fuel tank of a motor vehicle was punishable by a fine of up to \$50 or confinement in jail for up to thirty days, or both. All first offenses are now punishable as Class 2 misdemeanors. A second offense is punishable as a Class 1 misdemeanor. This corresponds to the classification of offenses in Title 18.2. Only Class 1 and Class 2 misdemeanors authorize the imposition of a term of confinement in jail.

§ 58.1-2143. Unlawful importing of motor fuel; sale to enforce assessment.-Upon the discovery of any motor fuel illegally imported into the Commonwealth in violation of § 58.1-2142, paragraphs (11) or (12), the Commissioner shall order the tank or other storage in which the fuel is located to be locked or sealed until the liability for the tax, penalties and interest levied under this chapter is assessed and paid.

In the event that the assessment for such tax is not paid within thirty days, the Commissioner is hereby authorized to sell such motor 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.

Source: § 58-691.1.

Comment: The provisions of this new section incorporate, with minor changes, the provisions previously found in the second paragraph of § 58-691.1.

*§ 58.1-2144. Civil penalties.—A. A penalty, as provided in subsection C of this section, shall be added to the tax under this chapter when any licensee:*

- 1. Fails to submit the monthly report required by this chapter on a timely basis, or*
- 2. Fails to submit the data required by §§ 58.1-2107 and 58.1-2119 in the monthly report, or*
- 3. Fails to pay to the Commissioner on a timely basis the amount of taxes due under this chapter.*

*B. A penalty, as provided in subsection C of this section, shall be added to the tax due under this chapter when any reseller, bulk user or user knowingly:*

- 1. Acquires fuel for resale or use for the propulsion of an aircraft or a motor vehicle upon which the tax has not been paid, or*
- 2. Fails to report as required by § 58.1-2120, or*
- 3. Fails to pay the tax imposed by this chapter on a timely basis.*

*C. The penalty for the violations listed in subsections A and B of this section shall be equal to ten percent of the tax due or ten dollars, whichever is greater. After imposition of the penalty the amount of the tax and penalty shall bear interest at the rate of one percent per month until the tax and penalty are paid. The Commissioner shall have the power to reduce or waive any penalties provided in this section if the violation is due to reasonable or good cause shown to the satisfaction of the Commissioner.*

*The ten dollar minimum penalty levied herein shall be applied only in cases where the monthly report or payment of the tax is not received within the time limit prescribed in this chapter and shall not be considered for audit purposes.*

*D. The Commissioner may allow overpayments of the motor fuel tax imposed by Article 2 of this chapter to be considered as credits against the special fuel tax due under Article 3 of this chapter when imposing the ten percent penalty under this section. The Commissioner may also allow overpayments of the special fuel tax to be considered as credits against the motor fuel tax.*

Source: §§ 58-721, 58-749 and 58-748.2

Comment: Although the language is shown as being new, no substantive change has been in the provisions of the source sections. The sections have merely been rewritten and combined for purposes of clarity.

*§ 58.1-2145 58-748.2 . Civil penalty for jobbers' and resellers' failure to file report on time .— Notwithstanding subsections B and C of § 58.1-2144 , when any jobber or reseller ~~shall fail~~ fails to file a report within the time prescribed by this chapter, he shall be subject to a penalty of not less than five dollars nor more than fifty dollars for the first offense and not less than ten dollars nor more than ~~one hundred dollars~~ \$100 for any subsequent offense.*

Source: § 58-748.2.

Comment: No substantive change.

~~§ 58-730. Disposition of funds collected. After providing for the refunds under this chapter, the Commissioner shall promptly pay all taxes and fees collected by him under this chapter into the State treasury. The revenue derived from the tax levied as aforesaid is hereby appropriated for the construction, reconstruction or maintenance of the roads and projects comprising the State Highway System, Interstate System and secondary system of State highways and shall be applied to no other purpose, except that:~~

~~(1) There may be paid out of this fund as a contribution towards the construction, reconstruction or maintenance of streets in cities and towns such sums as may be provided by law,~~

~~(2) Such sums out of such funds may be expended for the operation and maintenance of the Department of Highways and Transportation and the Division of Motor Vehicles as may be provided by law,~~

~~(3) The Governor is hereby authorized to transfer out of such fund an amount necessary for the purpose of inspection of gasoline and motor grease measuring and distributing equipment;~~

and for inspection and analysis of gasoline for purity.

(4) The Commissioner of the Division of Motor Vehicles shall also pay, at the rate of four cents a gallon for each and every gallon of aviation fuel sold and delivered or used in this State into the treasury, as a special fund, to 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 State relating to aviation and for the construction, maintenance and improvement of airports and landing fields to which the public now, or which it is proposed shall, have access, and for the promotion of aviation in the interest of operators and the public generally,

(5) [Repealed.]

(6) The Commissioner of the Division of Motor Vehicles shall also pay at the rate of one half cent per gallon for each and every gallon of motor fuel on which the refund has been paid at the rate of ten and one half cents per gallon in accordance with the provisions of § 58-715 or § 58-719 relating to refunds for fuel consumed in tractors and unlicensed equipment used for agricultural purposes into the State treasury as a special fund known as the Virginia Agricultural Foundation Fund to be disbursed as provided by law 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 the Virginia Polytechnic Institute and State University, the State Department of Agriculture and Consumer Services and the Virginia Truck Experiment Station including reasonable expenses of the Virginia Agricultural Foundation.

(7) [Repealed.]

§ 58-730.1. Restricting purposes for which taxes levied under §§ 58-628, 58-711 and 58-744 may be expended. Notwithstanding any other provision of law, no portion of the revenue derived from the taxes levied under §§ 58-628, 58-711, and 58-744 of the Code of Virginia, as amended, except upon aviation fuel, shall be expended for any purpose other than the purposes hereinafter set forth:

(a) The construction and reconstruction of highways, streets, bridges, tunnels and ferries and the maintenance thereof;

(b) The acquisition of land, bridges, tunnels and ferries required therefor;

(c) The purchase of equipment required therefor;

(d) The employment of such personnel as may be required therefor;

(f) Expenditures directly and necessarily required for the foregoing purposes including retirement of revenue bonds and no other reason.

As used above, the word "revenue" shall be construed to include only net revenues remaining after the making of any refunds for nonhighway use of motor fuel or fuels, as defined in §§ 58-687 and 58-732, as now provided by law, and shall not be construed to mean any revenue from taxes levied upon aviation fuel and fuel used for agricultural purposes.

The State Comptroller shall not issue any warrant on such revenues in violation of the provisions of this section.

§ 58.1-2146. Disposition of tax revenues.-A. Unless otherwise provided in this section all taxes and fees 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. No portion of the revenue derived from taxes collected pursuant to §§ 58.1-2701, 58.1-2105 and 58.1-2116, and remaining after refunds for non-highway use of motor fuel and special fuel, shall be used for any purpose other than the construction, reconstruction or maintenance of the roads and projects comprising the State Highway System, the Interstate System and, the secondary system of state highways and expenditures directly and necessarily required for such purposes, including the retirement of revenue bonds.

Revenues collected under this chapter may be also used for (i) making a contribution towards the construction, reconstruction or maintenance of streets in cities and towns of such sums as may be provided by law; and (ii) expenditures for the operation and maintenance of the Department of Highways and Transportation and the Division of Motor Vehicles as may be provided by law.

*The Governor is hereby authorized to transfer out of such fund an amount necessary for the purpose of inspection of gasoline and motor grease measuring and distributing equipment, and for inspection and analysis of gasoline for purity.*

*B. The tax collected on each gallon of aviation fuel sold and delivered or used in the Commonwealth, less refunds, shall be paid into a special fund of the state treasury. Proceeds of the special 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 the refund has been paid at the rate of ten and one half cents per gallon 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 the Virginia Polytechnic Institute and State University, the State Department of Agriculture and Consumer Services and the Virginia Truck Experiment Station, including reasonable expenses of the Virginia Agricultural Foundation.*

*D. One and one-half cents of the tax collected on each gallon of motor fuel used to propel a boat or ship, including commercial boats and ships, shall be paid to the credit of the game protection fund of the state treasury to be made available to the Commission of Game and Inland Fisheries until expended for the purposes provided for generally in § 62.1-168 (c), including, acquisition, construction, improvement and maintenance of public boating access areas on the public waters of the 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 Highways and Transportation to be used for the construction, repair, improvement and maintenance of the public docks of the Commonwealth used by said commercial boats.*

*From the tax collected pursuant to the provisions of this chapter from the sales of motor fuels used for the propelling of boats or ships, upon which no application for refund is received, there shall be paid into the state treasury for use by the Marine Resources Commission, a sum not to exceed \$50,000 annually for use in improving commercial and sports fisheries in Virginia's tidal waters.*

Source: §§ 58-730, 58-730.1, 58-730.3 and 58-733

Comment: All provisions pertaining to the authorized uses of revenues from the tax on fuels are now found in this one section. The special fund for aviation fuel tax revenue has been placed under control of the Department of Aviation; reference to the SCC has been deleted.

~~§ 58.1-2147. § 58-689.~~ Appeal to courts from Commissioner's decisions. Any person against whom an assessment, order or decision of the Commissioner has been adversely rendered relating to the collection of unreported or, incorrectly or fraudulently reported taxes, the granting or cancelling of a license, the filing of a bond, ~~the increasing of an increase in the amount of a bond, the changing 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 ninety days from the date thereof, ~~but not thereafter,~~ file a petition of appeal from such assessment, order or decision, in ~~any court of record the circuit court having jurisdiction in the city or county wherein such person resides; which said courts shall have jurisdiction thereof, with~~. A copy of said ~~the~~ petition ~~being shall be sent to the Commissioner at the time of the filing of the same in the aforesaid with the court; and~~. The original shall show, by certificate, the date of mailing such copy to the Commissioner.

In any proceeding under this section the assessment by the Commissioner made under § ~~68-726~~ 58.1-2131 shall be prima facie evidence of the claim of the State Commonwealth. ~~and~~ The burden of proof shall be upon the ~~person~~ petitioner to show that the assessment was incorrect and contrary to law. ~~Such~~ The court is authorized to enter judgment against such person for the amount of taxes due. The failure on the part of any such person to appeal under the provisions of this section ~~within the time period specified shall render the assessment, order or decisions of the Commissioner conclusively valid and binding on upon such person. From the final decision of the court of record, either the person who petitioned the court for an appeal or Such person or the Commissioner shall have may petition an appeal as of right to the Supreme Court of Appeals of Virginia from the final decision of the court.~~

Source: §§ 58-689 and 58-754

Comment: The language has been rewritten in the interest of clarity. The appeal as of right has been deleted.



## CHAPTER 23.

### OIL COMPANY EXCISE TAX.

§ 58.1-2300. Title of chapter.—This chapter shall be known *and may be cited* as the “Oil Company Excise Tax Act” of Virginia.

Source: § 58-730.7

Comment: No substantive change

58.1-2301. ~~58-730.11~~ Commissioner to promulgate regulations; powers of Commissioner.—The Commissioner shall promulgate regulations relating to the interpretation and enforcement of this chapter. Such regulations shall not be inconsistent with the constitutions and applicable laws of the Commonwealth and of the United States.

In addition to the powers enumerated in this chapter, the Commissioner shall have the powers enumerated in Chapters ~~13~~ 21 (§ 58-686 58.1-2100 et seq.) and 14 (§ 58-721 et seq.) of this title to inspect records, exchange information among the states, sue to recover taxes and enforce compliance with this chapter.

Source: § 58-730.11

Comment: Stricken language is not needed. No substantive change.

§ 58.1-2302. ~~58-730.8~~ Definitions.— The following words and phrases As used in this chapter shall have the meanings ascribed to them in this section , unless the context clearly indicates otherwise , the term or phrase :

“Average wholesale price” shall be means the average wholesale price per gallon of all taxable petroleum products, excluding the federal excise tax and the state gallonage tax, as determined and published quarterly by the Commissioner.

“Commissioner” shall mean means the Commissioner of the Division of Motor Vehicles or his delegate.

“Division” shall mean means the Division of Motor Vehicles.

“Oil company” shall mean means any person who imports or receives petroleum products in this Commonwealth for use, distribution or sale within Virginia, and shall include all dealers ; as defined in § 58-687, and all suppliers, as defined in § 58-732 58.1-2101 .

“Person” shall mean any individual or individuals, corporation, partnership, firm or organization.

“Petroleum products” shall mean means and include all combustible gases and liquids, used or suitable for use in an internal combustion engine or motor for the generation of power to propel motor vehicles on the public highways.

“Petroleum revenue” means an amount determined by multiplying the number of gallons of petroleum products destined for use to propel a motor vehicle of any kind on the public highways sold in the Commonwealth by an oil company, plus the number of gallons used by the oil company in Virginia by the average wholesale price. No deduction shall be made for cost of goods sold or any other expense whatsoever, except that deductions shall be permitted for returned merchandise. Petroleum products will be assumed to be distributed for use on the highways unless the buyer thereof has provided documentation in accordance with regulations of the Commissioner that the products will be used for exempt purposes.

Source: § 58-730.8

Comment: No substantive change.

§ 58.1-2303. ~~58-730.9~~ Imposition of tax.—There is hereby imposed on all oil companies doing business in Virginia an excise tax of three percent of their petroleum revenue. Such tax shall be imposed only once as to any petroleum product at the time the gallonage tax imposed under §§ 58-711 58.1-2105 and 58-744 58.1-2116 is imposed, and shall be in addition to all other taxes imposed by this Commonwealth and the political subdivisions thereof. All funds collected hereunder shall be credited to the Highway Maintenance and Construction Fund.

Source: § 58-730.9

Comment: Disposition of revenue has been relocated to § 58.1-2310.

**§ 58.1-2304. ~~58-730-10~~ Exemptions.**—Receipts from the following sales of petroleum products shall be exempt from the tax imposed by this chapter:

1. Sales for uses other than in an internal combustion engine to be operated on the highways;

2. Sales or deliveries to the Commonwealth, to political subdivisions of the Commonwealth, and to transportation districts created in the Transportation District Act of 1964;

3. Sales or deliveries to the United States and its departments, agencies and instrumentalities for exclusive use by the United States or such agencies or instrumentalities;

4. Sales or deliveries of petroleum products on which the tax under this chapter has been paid;

5. Sales or deliveries of petroleum products in the Commonwealth for export to another state, district or country;

6. Sales to any person, firm or corporation of motor fuel for consumption in motor vehicles entitled to a refund under § ~~58-757.01~~ 58.1-2114 .

Source: § 58-730.10

Comment: No change.

**§ 58.1-2305. ~~58-730-12~~ Requirement of license.**—It shall be unlawful for any oil company to receive, sell, use or distribute any petroleum product within the Commonwealth unless it is the holder of an uncanceled license issued by the Commissioner under § ~~58-693~~ 58.1-2135 or § ~~58-734.1~~ to engage in such business. The provisions of Article 2 4 of Chapter 13 21 (§ ~~58-693~~ 58.1-2128 et seq.) or of Chapter 14 (§ ~~58-731~~ et seq.), shall apply to all such licenses.

Source: § 58-730.12

Comment: No substantive change.

**§ 58.1-2306. ~~58-730-13~~ Reports and payment of tax.**—Each oil company shall render to the Commissioner, on or before the date required for reports under §§ ~~58-713~~ 58.1-2107 and ~~58-746~~ 58.1-2119 , a report on a form prescribed by the Commissioner, which shall show :

(1) total petroleum revenues ; ;

(2) total number of gallons used in Virginia ; ;

(3) receipts from sales for nontaxable purposes ; ;

(4) taxable sales ; and

(5) such other information deemed necessary by the Commissioner.

The oil company, at the time of making such report, shall remit to the Commissioner the tax levied under this chapter.

Source: § 58-730.13

Comment: For purposes of clarity the section has been rewritten. No substantive change.

**§ 58.1-2307. ~~58-730-14~~ Refunds.**—Any person entitled to a refund of motor fuel and special fuels taxes under §§ ~~58-715~~, ~~58-719~~, ~~58-730.3~~, ~~58-753.1:2~~ or ~~58-757.01~~ 58.1-2111, 58.1-2124 or 58.1-2114 shall be entitled to a refund for the imputed cost of the tax under this chapter. Such refund shall equal the number of gallons of petroleum products purchased subject to tax, multiplied by three percent of the average wholesale price at the time of sale. The Commissioner shall require such documentation as he deems necessary to establish that the tax was paid on the products purchased.

Source: § 58-730.14

Comment: No change.

**§ 58.1-2308. ~~58-730-15~~ Retention of records.**—The provisions of § ~~58-724~~ 58.1-2133 relating to retention of records shall be applicable to records relating to the Oil Company Excise Tax.

Source: § 58-730.15  
Comment: No change.

§ 58.1-2309. ~~58-730-16~~ Penalties.—Any oil company which fails to submit a proper monthly report to the Commissioner by the time required in §§ ~~58-713~~ 58.1-2107 and ~~58-746~~ 58.1-2119 , or fails to pay to the Commissioner the amount of taxes imposed hereunder, shall be automatically assessed a penalty of ten percent of the tax, or ten dollars, whichever is greater. Thereafter the tax and penalty shall bear interest at the rate of one percent per month until paid.

Source: § 58-730.16  
Comment: No change.

§ 58.1-2310. *Disposition of funds.*—All funds collected from the tax imposed by this article shall be credited to the Highway Maintenance and Construction Fund.

Source: § 58-730.9  
Comment: The provision relating to disposition of funds has been placed in this new section. No substantive change.

§ 58.1-2311. ~~58-730-17~~ Appeal to courts from Commissioner's decisions.—Any person against whom *an* assessment, order or decision of the Commissioner has been adversely rendered under this chapter may appeal to a court of record in the same manner as provided in § ~~58-689~~ § 58.1-2147 . The provisions of such section shall be applicable to such proceeding.

Source: § 58-730.17  
Comment: No change.

## CHAPTER 24.

### VIRGINIA MOTOR VEHICLE

#### SALES AND USE TAX.

~~§ 58.1-2400 § 58-685-10~~ . Short title.-This chapter shall be known and may be cited as the "Virginia Motor Vehicle Sales and Use Tax Act."

Source: § 58.685.10.

Comment: No change.

~~§ 58.1-2401 § 58-685-11~~ . Definitions. - ~~The following words, terms and phrases when used in this chapter shall have the meanings ascribed to them in this section: As used in this chapter, unless the context clearly shows otherwise the term or phrase:~~

~~(1)~~"Commissioner" shall mean the Commissioner of the Division of Motor Vehicles of ~~this State the Commonwealth~~ .

~~'Daily rental passenger car'~~ shall mean a motor vehicle, except a motorcycle or van, used for rental as defined in this section and designed and used primarily for the transportation of not more than ten persons, including the driver.

~~(2)~~"Division" shall mean the Division of Motor Vehicles of this State Commonwealth , acting through its duly authorized officers and agents.

~~(4)~~"Gross Proceeds proceeds" shall mean the charges made or voluntary contributions received for the rental of a motor vehicle ; provided, however, ~~gross proceeds shall not include any amounts received under any where the rental or lease agreement is for a period of less than twelve months or more .~~

~~(3)~~"Motor vehicle" shall mean every vehicle which is self-propelled or designed for self-propulsion and every vehicle drawn by or designed to be drawn by a motor vehicle, including mobile homes as defined in § 36-71(4) 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 mobile homes , used in this State Commonwealth but not required to be licensed by the State Commonwealth

~~(4)~~ "Person" shall mean every natural person, firm, partnership, association or corporation.

~~(7)~~"Rental" shall mean the ~~renting~~ transfer of the possession or use of a motor vehicle, whether or not the motor vehicle is required to be licensed by the State Commonwealth , and the possession of use thereof by a person for a consideration, without the transfer of the ownership of such motor vehicle, for a period of less than twelve months. A person engaged in such business is referred to herein as a "renter". Any fee arrangement between the holder of a permit issued by the State Corporation Commission for taxicab services and the driver or drivers of such taxicabs shall not be deemed a rental under this section.

~~(8)~~"Rental in this State the Commonwealth" shall mean any rental where a person received delivery of a motor vehicle within the Commonwealth . and The term "Commonwealth" shall include s all land or interest in land within the Commonwealth owned by or conveyed to the United States of America.

~~(9)~~" Rentor" shall mean a person engaged in the rental of motor vehicles for consideration as defined in this section.

~~(5)~~"Sale" shall mean any transfer of ownership or possession, ~~or both~~, by exchange ; or barter or lease , conditional or otherwise, in any manner or by any means whatsoever, of a motor vehicle ; including . The term shall also include a transaction whereby possession is transferred but title is retained by the seller as security ; but excluding any . The term shall not include a transfer of ownership or possession ; which transfer is made to secure payment of an obligation.

~~(6)~~"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 ; unless otherwise provided in this chapter, but exclusive of any federal manufacturers' excise tax . However, "sale price" shall not include 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.

Source: § 58-685.11.

Comment: All definitions previously found throughout this chapter have been transferred to this section. The definition of "daily rental passenger car" previously found in § 58-685.12:1. incorporates the language from § 46.1-1(18a) which was merely cited in the old section. Exclusions from the definition of "sale" have been expanded to include language previously found in § 58-685.13(5), pertaining to exemptions from tax. The definition of "sale price" includes language previously found in § 58-685.13:2. that pertains to special equipment for handicapped persons previously found in § 58-685.13:2. The definition of "person" has been stricken as the definition found in Chapter 1 of Title 58.1 applies. Proposed 1983 Session amendments have been incorporated herein.

§ 58-685.13:2. Exemption for certain special equipment. There shall be exempt from the tax imposed by this chapter, any special equipment installed on or added to a motor vehicle to enable such vehicle to be operated by a handicapped person.

For the purpose of this section "special equipment" shall mean controls or lifts installed especially for a handicapped person, automatic transmission, power steering, power brakes or any other item of equipment which is required by law or regulation as a condition for operation of a motor vehicle by such handicapped person.

§ 58-1-2402 § 58-685.12 . Levy.- A. 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 or use of motor vehicles sold in this State 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 ; and upon the use in this State of any motor vehicle, other than use by a person for rental as an established business or part of an established business or incidental or germane to such business, and .

There shall also be levied a tax upon the rental in this State of every a motor vehicle in Virginia, without regard to ; whether or not such vehicle is required to be licensed by this State, other than 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 same to be collected in the amount to be of the tax to be collected shall be determined by the Commissioner by the application of the following rate against the gross sales price or gross proceeds:

1. (a) Two percent of the sale price of each motor vehicle sold in this State; provided, however, Virginia. If such motor vehicle is a mobile home as defined in § 36-71 (4), the tax shall be three percent of the sale price of each such mobile home sold in this State exclusive of the value of any trade-in at the time of sale Commonwealth .

2. (b) Two percent of the sale price of each motor vehicle, or three percent of the sale price of each mobile home as defined in § 36-71 (4), when the same is not sold in this State Virginia but is used or stored for use in this State; provided, Commonwealth. When any such motor vehicle or mobile home ; as defined in § 36-71 (4), is first used or stored for use in this State Virginia six months or more after its acquisition, the tax shall be based on two percent or three percent of its current its current market value ; respectively .

3. (b1) Three percent of the gross proceeds from the rental in this State Virginia of any motor vehicle ; whether or not required to be licensed by this State .

4. In addition to the tax levied pursuant to paragraph A.3, a tax of two percent of the gross proceeds shall be levied on the rental in Virginia of any daily rental passenger car, whether or not such car is required to be licensed in the Commonwealth.

B. A transaction taxed under subsection (a) paragraph 1 shall not also be taxed under subsection (b) paragraph 2 , nor shall the same transaction be taxed more than once under

either ~~section~~ *paragraph* . A motor vehicle subject to the tax imposed under ~~subsection (b1)~~ *paragraph 3* shall be subject to the tax under either ~~subsection (a)~~ *paragraph 1* or ~~(b) 2~~ 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)~~ The tax imposed by this chapter on motor vehicles having seats for more than seven passengers and used by common carriers of passengers within and without the State ; Commonwealth shall be apportioned on the basis of the ratio which the mileage operated in Virginia traveled by such common carrier in Virginia bears to the total number of miles operated within and without Virginia traveled by such common carrier within and without Virginia in the immediate preceding license year. The Commissioner may require such evidence of the total number of vehicles owned or operated by such common carrier and the miles traveled by all such motor vehicles as he deems appropriate for the application and administration of this chapter and other provisions of law .

C. ~~(d)~~ Any motor vehicle, trailer or semitrailer exempt from the this tax imposed by this chapter under § 58-685.12 58.1-2403 (1) or (2) shall be subject to the tax, based on the current market value when such vehicle is no longer owned, rented or used by the United States government or any governmental agency, or the Commonwealth of Virginia or any political subdivision thereof . Further, any motor vehicle, trailer or semitrailer exempt from the tax imposed by this chapter under § 58-685.12 ~~(12)~~ 58.1-2403(11) or § 46.1-45 shall be subject to the tax, based on the current market value, when such vehicle is subsequently licensed to operate on the highways of this Commonwealth.

Source: § 58-685.12 and § 58-685.12:1.

Comment: Certain changes were made to clarify the language. However, no substantive changes were made. Certain provisions of former § 58-685.12:1 pertaining to the additional tax on rentals have been incorporated into this section.

§ 58-685.12:1. Additional tax. A. In any case where a tax is imposed under § 58-685.12 ~~(b1)~~, an additional tax is hereby imposed at the rate of two percent of the gross proceeds from the rental in this State of any daily rental passenger car, whether or not required to be licensed in this State.

B. For purposes of this chapter, "daily rental passenger car" shall mean a passenger car as defined in § 46.1-1 ~~(18a)~~ that is held for rental as defined in § 58-685.11 (7), but such term shall not include a van.

C. The power granted the Commissioner under § 58-685.16 to make rules and regulations shall extend to the administration and disposition of the tax imposed under this section.

§ 58.1-2403 § 58-685.12 . Exemptions. --No tax shall be imposed as contained provided in § 58-685.12 § 58.1-2402 if the vehicle is:

~~(1)~~ 1. Sold to, rented or used by the United States government or any governmental agency thereof ; ;

~~(2)~~ 2. Sold to, rented or used by the Commonwealth of Virginia or any political subdivision thereof ; ;

~~(3)~~ 3. Registered in the name of a volunteer fire department or rescue squad not operated for profit ; ;

~~(4)~~ 4. Registered to any member of the Mattaponi, Pamunkey, or Chickahominy Indian tribes or any other recognized Indian tribe of the Commonwealth ; provided he lives living on his the tribal reservation ; ;

~~(5)~~ 5. Transferred incidental to repossession under a recorded lien and ownership is transferred to the lienholder ; ;

~~(6)~~ 6. A mobile home permanently attached to real estate and included in the sale of real estate ; ;

~~(7)~~ 7. A gift to members of the immediate family, which are husband, wife, spouse, son, or daughter and no others, except any unpaid obligation assumed by the transferee, of the transferor. This exemption shall not apply to any unpaid obligation assumed by the transferee incidental to the transfer;

~~(8)~~ 8. Transferred from an individual or partnership to a corporation or from a corporation to an individual or partnership if the transfer is incidental to the formation, organization or dissolution of a corporation in which the individual or partnership holds the majority interest ; ;

~~(9)~~ 9. Transferred from a wholly owned subsidiary to the parent corporation or from the parent corporation to a wholly owned subsidiary ; ;

~~(10)~~ 10. Being registered for the first time in this *State Commonwealth* and the applicant holds a valid , assignable title or registration issued to him ~~from~~ by another state ; ;

~~(11)~~ 11. Vehicles which are Titled in a Virginia motor vehicle dealer's name for resale and will display if dealer's license plates are displayed when the vehicle is operated upon the public highways ; ;

~~(12)~~ 12. A motor vehicle s having seats for more than seven passengers and sold to an urban and or suburban bus line s, which are defined as bus lines the majority of whose passengers use the buses for traveling a distance of not exceeding less than forty miles, measured one way, on the same day ; between their place of abode and their place of work, shopping areas, or schools, shall be exempt from the tax imposed by this chapter;

~~(13)~~ 13. Purchased in this Commonwealth by a nonresident and a Virginia title is issued for the sole purpose of recording a lien against the vehicle ; and if the vehicle will be registered in the a state where the purchaser resides, other than Virginia;

~~(14)~~ 14. A bus or other motor vehicle designed for the transportation of ten or more passengers, purchased by and for the use of a church conducted not for profit ; ;

~~(15)~~ 15. Loaned or leased to a private institution of learning not conducted for profit, 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)~~ 16. Sold to an insurance company for the sole purpose of disposition when such company has paid the registered owner of such vehicle a total loss claim ; ;

~~§ 58-685.13.1. Exemption of vehicles of consular and diplomatic officers, employees, etc. All motor vehicles~~

17. Owned and used for personal or official purposes by accredited consular or diplomatic officers of foreign governments, ~~who 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 and any member of his family or employees who are not citizens of the United States, are hereby exempted from the tax imposed by this chapter .

~~(17)~~ 18. A self-contained mobile computerized axial tomography scanner sold to, rented or used by a hospital not conducted for profit or a cooperative hospital service organization as described in § 501(e) of The United States Internal Revenue Code.

Source: §§ 58-685.13 and 58-685.13.1.

Comment: No substantive change. All provisions for exemptions have been combined into one section. The provisions of former paragraph (5) have been incorporated into the definition of "sale".

~~§ 58.1-2404 § 58 685.14 . Time for payment of tax on sale, use or rental of a motor vehicle ; motor vehicle for which no certificate of title required not subject to tax .-~~

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 Division of Motor Vehicles for, and obtains, a certificate of title ~~therefor~~ . The tax on the renting 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 Commissioner on or before the twentieth day of the month following the month in which the gross proceeds from such rental were due. 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 State, ~~but Commonwealth~~. The tax on rental transactions in the Commonwealth shall apply regardless of the state for which a certificate of title is required.

Source: § 58-685.14.

Comment: No substantive change.

§ 58.1-2405. § 58-685.15. Basis of tax. - 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; ~~provided that~~ 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. 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.

Source: § 58-685.15.

Comment: No substantive change.

§ 58.1-2406 § 58-685.17. Collection of tax ; *estimate of tax* .-In the event any person submits with his application for a certificate of title a sum insufficient in the judgment of the Commissioner to pay the sale or use tax ~~prescribed by this chapter 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 the *such* tax due thereon . The notice of such 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 and . Judgment shall be rendered for the amount of *the tax* found to be due together with *interest* and costs .

~~All remedies now or which may hereafter be given by the laws of this State Commonwealth for the collection or enforcement of taxes are hereby expressly given for the collection and enforcement of judgments recovered under this section.~~

Source: § 58-685.17.

Comment: No substantive change. Meaningless language has been stricken.

§ 58-685.17-1. Rentors' certificates of registration. (a) Every person desiring to engage in or conduct a rental business in this State shall file with the Commissioner an application for a certificate of registration for each such place of business in this State and shall pay the Commissioner therefor a fee of five dollars for each such certificate.

(b) Every application for a certificate of registration shall be made upon a form prescribed by the Commissioner and 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 Commissioner may require. The application shall be signed by the owner, in the case of an association or partnership, by a member or partner; 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 the State. 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) When any person fails to comply with any provision of this chapter or any rule or regulation of the 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. A rentor whose certificate of registration has been previously suspended or revoked, shall pay the Commissioner a fee of ten dollars for the renewal or reissuance of a certificate of registration.

(e) Any person who engages in business as a rentor in this State 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

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. A holder shall inform the Commissioner in writing within thirty days after he has ceased to conduct a business at a place for which a certificate of registration has been obtained; provided, however, that if the holder of a certificate of registration desires to change his place of business to another place in this State, he shall so inform the Commissioner in writing and his certificate shall be revised accordingly without charge.

*§ 58.1-2407. Rentors' certificate of registration; application; issuance.-A. Every person desiring to engage in a rental business in the Commonwealth shall file an application for a certificate of registration with the Commissioner. One application shall be filed for each place of business to be operated. The application shall be on a form prescribed by the Commissioner and shall set forth the name under which the applicant intends to transact the rental business, the 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 rental business. If the rental 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.*

*B. 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 but shall be valid only for the person in whose name it is issued and for the place of business designated.*

Source: § 58-685.17:1(a), (b) and (c).

Comment: Former § 58-685.17:1 has been rewritten and broken down into separate sections. No substantive change was made other than to delete the provision for payment of an application fee. In 1980, the provision for payment of an application fee under the general sales tax was deleted because it was felt to be unfair to require a person to pay for the "privilege" of collecting the tax for the Division.

*§ 58.1-2408. Cessation of rental business; amended certificate.-If the holder of a certificate ceases to conduct his business at the place designated in the certificate, the certificate shall automatically expire. The holder shall notify the Commissioner, in writing, within thirty days after he has ceased to conduct the business. If the holder of the certificate desires to continue in the rental business in the Commonwealth but at a different location he shall so inform the Commissioner, in writing, at least thirty days prior to the contemplated relocation. The Commissioner shall then issue an amended certificate designating the new 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.*

Source: § 58-685.17:1(f).

Comment: This section requires the holder of a certificate to obtain an amended certificate prior to relocating his rental business to ensure that the former place of business and the new place of business are covered by a valid certificate. No other substantive change was made.

*§ 58.1-2409. Revocation and suspension of certificate.-Upon the failure of a rentor to comply with any provision of this chapter or rule or regulation of the Commissioner, the certificate of registration of such person shall be subject to suspension or revocation. A hearing shall be held to determine whether the certificate shall be suspended or revoked. The Commissioner shall give the holder of the certificate ten days' notice, in writing, of the hearing. The notice shall specify the time and place of the hearing and shall require the holder to show cause why the certificate should not be revoked or suspended. The notice shall be effective if personally served on the holder or if served by certified mail at the last known address of the holder. A rentor whose certificate of registration has been previously suspended or revoked, shall pay the Commissioner a fee of ten dollars for the renewal or reissuance of a certificate of registration.*

The Commissioner shall forthwith cancel any certificate of registration of a rentor who (i) fails to make a timely return, provided the Commissioner has mailed notice of such failure to the rentor ten days prior to cancellation; (ii) fails to remit with any return the taxes payable as stated on such return; or (iii) fails to satisfy an assessment by the Commissioner or institute an appeal in a timely manner as provided in § 58-685.22 58.1-2426 .

Source: § 58-685.17:1(d).

Comment: Notice of revocation shall be delivered by certified mail; the original language required registered mail.

*§ 58.1-2410. Failure to obtain certificate; penalties.-Any person who engages in the rental business in this Commonwealth without obtaining a certificate of registration or after a certificate of registration has been suspended or revoked, and each officer of a corporation conducting a rental business in violation of this article, shall be guilty of a Class 1 misdemeanor. Each day that such person or corporation conducts business without a valid rentors' certificate of registration shall constitute a separate and distinct offense.*

Source: § 58-685.17:1(e).

Comment: Failure to obtain certificate is classified as a Class 1 misdemeanor.

*§ 58.1-2411. § 58-685.17:2. Civil penalties ~~when rentor fails~~ upon failure to make return, pay tax, etc.-When any ~~rentor~~ person ~~shall fail~~ 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 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, ~~such~~ the return, with remittance, may be accepted exclusive of penalties. ~~The ten dollar minimum penalty levied herein shall be applied only in cases where the return or 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 return, where willful intent exists to defraud the State 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 State Commonwealth of any such tax, a specific 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 person reports the sale price or gross proceeds from the rental of a motor vehicle at fifty percent or less of the actual amount.* All penalties and interest imposed by this chapter shall be payable by the rentor and collectible by the Commissioner in the same manner as if they were a part of the tax imposed.

*It shall be prima facie evidence of intent to defraud the State of any tax due under this chapter when any rentor reports his gross proceeds at fifty 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.

*The ten dollar minimum penalty levied herein shall be applied only in cases where the return or payment of tax is not received within the time prescribed in this chapter and shall not be considered for audit purposes.*

Source: § 58-685.17:2.

Comment: As amended, this section applies to all persons selling or renting motor vehicles and not just rentors. Old language has been rearranged for clarification purposes.

*§ 58.1-2412 § 58-685.17:3 . Surety bond requirement.-In addition to penalties for failure to make a timely return or pay taxes when due as provided in § ~~58-685.17:2~~ 58.1-2411, the Commissioner may require any rentor, who has failed to make a timely return or pay taxes when due, to file a bond or other security to assure the Commonwealth's collection of moneys due.*

The bond shall be in an amount to be determined upon investigation by the Commissioner or to be approximately three times the anticipated average monthly tax to become due by the rentor in the next succeeding three months. In no case shall the amount of the bond be less than \$500 nor more than \$20,000. The bond shall be (i) in such form as may be approved by the Commissioner, (ii) executed by some surety company licensed to do business under the laws of the Commonwealth of Virginia, (iii) payable to the Commonwealth of Virginia, and (iv) conditioned upon the prompt filing of true reports and the payment by such rentor to the Commissioner of any rental or additional taxes which are now or which may be hereafter levied or imposed, together with any penalties and interest thereon. 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.

Source: § 58-685.17:3.

Comment: No change.

~~§ 58.1-2413 § 58-685.17:7~~ . Waiver of requirement for surety bond or other security; release.-The Commissioner may, upon request from the rentor, waive the requirement for depositing surety bonds or other security after timely filing of returns and payment of tax on rental vehicles as required by this chapter for a period of two fiscal years. The fiscal year shall be July 1 to June 30.

Upon approval of the waiver, the Commissioner shall notify the rentor in writing and release the surety on such bond deposited or return any other security that was deposited in lieu of a bond.

Source: § 58-685.17:7.

Comment: No change.

~~§ 58.1-2414 § 58-685.17:8~~ . Release of surety and requirement of new bond thereupon; cancellation of certificate of registration.-Any surety on a bond filed by any rentor shall be released and discharged from any and all liability to the Commonwealth accruing on such bond after the expiration of sixty 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 sixty-day period. The Commissioner shall, promptly on receipt of such notice, notify the rentor who furnished such bond ~~and~~ . Unless such rentor ~~shall~~ on or before the expiration of such sixty days' notice file ~~s~~ with the Commissioner a new bond approved by the Commissioner and executed by some surety company duly licensed to do business under the laws of this State, in the amount and form hereinbefore provided, or unless such rentor in lieu thereof deposits with the Commissioner bonds of the United States or of the Commonwealth of Virginia or a certificate of deposit in some banking institution to be approved by the Commissioner in a like amount, the Commissioner shall forthwith cancel the certificate of registration of such rentor.

If such new bond shall be furnished by such rentor or if bonds of the United States, bonds of the Commonwealth of Virginia, or a certificate of deposit is filed with the Commissioner in lieu thereof, the Commissioner shall cancel and surrender the bond of the rentor for which such new bond or other securities are substituted.

Source: § 58-685.17:8.

Comment: No change.

~~§ 58.1-2415 § 58-685.17:4~~ . Other security in lieu of surety bond.-Any rentor may deposit with the Commissioner, in lieu of a surety bond, negotiable bonds which are direct obligations of the United States government or of the Commonwealth of Virginia or a certificate of deposit in some banking institution approved by the Commissioner. The other security shall be in an amount to be determined upon investigation by the Commissioner or to be approximately three times the anticipated average monthly tax to become due by the rentor in the next succeeding three months. In no case shall the amount of other security be less than \$500 nor more than \$20,000.

Source: § 58-685.17:4.

Comment: No change.

~~§ 58.1-2416 § 58-685.17:5~~ . Assignment to Commissioner required with other security.-Any rentor who shall so deposit with the Commissioner bonds of the United State government or of the Commonwealth of Virginia, or a certificate of deposit, in lieu of filing a surety bond, shall at the time deliver to the Commissioner an assignment authorizing him to use the bonds or any part thereof, or to receive payment of the certificate of deposit as the case may be, for the purpose of paying any liability of the rentor to the State for rental tax due and payable by him, including any and all penalties and interest accrued thereon and any damages for which he may be liable by reason of his failure to comply with any of the other provisions of this chapter.

Source: § 58-685.17:5.

Comment: No change.

~~§ 58.1-2417 § 58-685.17:6~~ . When new or additional bond or security required; cancellation of certificate of registration.-In the event that liability upon the bonds, certificates of deposit or surety bonds filed by a rentor 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, with like surety as hereinbefore provided and in the same amount. Upon the failure to comply with such requirement or in lieu thereof failure to deposit

with the Commissioner, bonds of the United States or of the Commonwealth of Virginia, or a certificate of deposit in some bank to be approved by the Commissioner, in an equivalent amount, the Commissioner shall forthwith cancel any such certificate of registration of the renter.

Source: § 58-68.17:6.

Comment: No change. surety shall have lodged with the Commissioner written Virginia, or a certificate of deposit is filed with the

~~§ 58.1-2418 § 58-685.25 . Effective date of tax; Local sales and use taxes prohibited.- A. The tax imposed by this chapter on the sale or use of a motor vehicle shall become effective on September one, nineteen hundred sixty six and all sales consummated on and after such date shall be subject to the tax imposed by this chapter.~~

~~The tax imposed by this chapter on the rental of the motor vehicle shall become effective on October one, nineteen hundred seventy four ; and all rentals made on or after such date shall be subject to the tax imposed by this chapter. No city, town or county shall impose or continue to impose any local sales or use tax on motor vehicles after the tax imposed by this chapter becomes effective~~

~~B. The additional tax imposed by § 58-685.12:1 on the rental of daily rental passenger cars shall become effective on July one, nineteen hundred eighty-one. ; and All rentals of such cars after such date shall be subject to such tax.~~

Source: § 58-685.25.

Comment: The obsolete effective dates for imposition of the tax have been deleted. The major substantive provision of the former section prohibiting local taxes remains.

~~§ 58.1-2419 § 58-685.24 . Tax on sale or rental price 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 or rental price of such motor vehicle and shall be paid by the purchaser or rentor in accordance with the provisions of this chapter.~~

Source: § 58-685.24.

Comment: No change.

~~§ 58.1-2420 § 58-685.18 . Examination of dealer's records, etc.-The Commissioner or any agent authorized by him may examine during the usual business hours of the day 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. With respect to persons engaged in the business of renting motor vehicles rentors , the Commissioner shall have all powers under this chapter with respect to the records of such person as are granted to the State Tax Commissioner under § 58-441.29.~~

Source: § 58-685.18.

Comment: No substantive change.

~~§ 58.1-2421 § 58-685.16 . Rules and regulations.-The Commissioner shall have the power to make and publish reasonable rules and regulations not inconsistent consistent with this chapter, or the other applicable laws, or and the Constitutions of this State, or 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 Chapter 1.1 (§ 9-6.1 et seq.) of Title 9 of the Code of Virginia. With respect to the tax levied under § 58-685.12 (b1), such rules and regulations shall cover on rentals pursuant to § 58.1-2402 A.3, the rules and regulations promulgated shall include, but shall not be limited to, rules and regulations governing a person ceasing to operate a rental business, the issuance of bad checks incidental to a rental or payment of the tax , extensions of time for filing returns and paying the tax, out-of-state rentors and refunds.~~

Source: § 58-685.16.

Comment: No substantive change. New language was added to the second paragraph to clarify the section.

~~§ 58.1-2422 § 58-685.21 . Forwarding of tax information to law-enforcement officials.-The Commissioner may, in his discretion , upon request duly received from the officials to whom is entrusted the official charged with the duty of enforcement of motor vehicle tax laws of any~~

other state, forward to such ~~officials~~ *official* any information which he may have in his possession relative to the registration and payment of any tax collected pursuant to this chapter.

Source: § 58-685.21.

Comment: No substantive change.

§ 58.1-2423 § 58-685-19 . 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, 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.

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.

Source: § 58-685.19.

Comment: No change.

§ 58.1-2424 § 58-685-20 . Credits against tax.-A Credit shall be granted for the amount of tax paid to another state ~~for a previously unregistered 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. 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.

B. 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 ~~thirty, nineteen hundred eighty-one~~ 30, 1981 ; ~~in as~~ . The amount of such credit shall be equal to the ratio of the number of months in such tax year after June ~~thirty, nineteen hundred eighty-one~~ 30 , to the total number of months in ~~such~~ 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 § 58-685-12-1 58.1-2402(4) as of the date the credit was claimed, with penalties and interest as provided in § 58-685-17-2 58.1-2411 .

Source: § 58-685.20.

Comment: No substantive change.

§ 58.1-2425 § 58-685-23 . Disposition of revenues.-All funds collected hereunder by the Commissioner shall be forthwith paid into the state treasury . ~~and The revenue so derived, after deducting refunds have been deducted~~ , is hereby ~~appropriated~~ *allocated* for the construction, reconstruction and maintenance of highways and the regulation of traffic thereon and for no other purpose ; . ~~provided~~ . However, that (i) all funds collected pursuant to the provisions of this chapter from mobile homes, as defined in § 36-71 (4), shall be distributed to the city, town, or county wherein such mobile home is to be situated as a dwelling, and (ii) all funds collected from the additional tax imposed by § 58-685-12-1 § 58.1-2402 A.4 on the rental of daily rental passenger cars shall be distributed quarterly to the city, town, or county wherein such car was delivered to the rentee.

Source: § 58-685.23.

Comment: No substantive change.

§ 58.1-2426 § 58-685-22 . Appeal.-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~~ City of Richmond if such appeal is filed ~~within fifteen days~~ .

Source: § 58-685.22.

Comment: No substantive change.

~~§ 58-685.26. Not set out.~~

Source § 58-685.26.

Comment: Deletes severability clause.

## CHAPTER 25.

### LICENSE TAX ON CERTAIN INSURANCE COMPANIES.

#### Article 1.

##### Levy.

~~§ 58-486~~ 58.1-2500. *Definitions.*— ~~License tax on insurance companies generally; direct gross premium income defined. Every insurance company as defined in § 38.1-1 which issues policies or contracts for any kind of insurance classified and defined in §§ 38.1-3 to 38.1-24 shall pay an annual license tax, measured by the direct gross premium income as hereinafter defined derived from such business in this State during each year ending the thirty-first day of December prior to the year for which such license tax is to be paid, for the privilege of doing business in this State; provided that no license tax shall be paid upon premiums derived from workmen's compensation insurance on which a premium tax is imposed under the provisions of § 65-120 [§ 65.1-120], nor upon consideration for contracts for annuities as defined in § 38.1-4.~~

*"Commission" means the State Corporation Commission. As used in this chapter the words, which is responsible for the administration of this chapter.*

*"Direct gross premium income" shall mean means the gross amount of all premiums, assessments, dues and fees collected, received or derived, or obligations taken therefor, from business in this State Commonwealth during each year ending the thirty-first day of 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 §§ 38.1-3 and 38.1-5 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 policy holders 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.*

*"License year" means the twelve-month period beginning on July 1 next succeeding the taxable year and ending on June 30 of the subsequent year.*

*"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.*

*"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.*

Source: §§ 58-486, 58-502, 58-502.1 and 58-502.2

Comment: Definitions are consolidated in one section appearing at the beginning of the chapter.

The first paragraph of § 58-486 relating to the levy of the license tax is moved in substance to § 58.1-2501.

~~§ 58-490: Amount of license tax for insurance other than life insurance and annuities: § 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 § 38.1-1 which issues policies or contracts for any kind of insurance classified and defined in §§ 38.1-3 to 38.1-24, an annual license tax as follows: For every year every such company which issues policies or contracts for~~

1. For any kind of insurance classified and defined in §§ 38.1-5 to 38.1-24 or chapter Chapter 22 (§ 38.1-790 et seq.) of Title 38.1, except workmen's compensation insurance on which a premium tax is imposed under the provisions of § 65-120 [ § 65.1-129 ], such company shall pay a license tax of two and three-fourths per centum percent of its subscriber fee income or direct

gross premium income derived from such business in this State during the preceding year ending the thirty-first day of December on such insurance .

This section, as hereby amended, shall apply with respect to taxable years as defined in § 58-502.1, beginning after ~~December thirty-one, nineteen hundred and sixty-eight~~, and to license years beginning on and after May one, ~~nineteen hundred and seventy~~.

§ 58-491. Amount of license tax for life insurance. -

2. For every year every such company which issues policies or contracts for life insurance as defined in § 38.1-3 , ~~such company~~ shall pay a license tax of two and one-fourth per centum percent of its direct gross premium income ~~derived from life insurance business in this State during the preceding year ending the thirty-first day of December, on such insurance.~~ provided; however, that ~~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 per centum percent .

This section, as hereby amended, shall apply with respect to taxable years as defined in § 58-502.1, beginning after ~~December thirty-one, nineteen hundred and sixty-eight~~, and to license years beginning on and after May first, ~~nineteen hundred and seventy~~.

§ 58-501. License tax on companies transacting industrial sick benefit insurance. Every such company which issues 3. For policies or contracts of providing industrial sick benefit insurance as defined in § 38.1-483 , ~~such company~~ shall pay for the privilege of transacting such insurance in this State a license tax of one per centum percent of its direct gross premium income derived from such business in this State during the preceding year ending the thirty-first day of December on such insurance . No such 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 § 38.1-483; 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 § 38.1-485, or which provide a greater death benefit than ~~two hundred fifty dollars \$250~~ or a greater weekly indemnity than ten dollars, and on all other life, accident and sickness insurance, the same license or other taxes as are required under §§ 58-490 and 58-491 by this section .

§ 58-492. Amount of license tax for insurance transacted by certain mutual companies. B. Notwithstanding any other provisions of this chapter section , any domestic insurance company doing business solely in this State 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 this State the Commonwealth , with a capital stock not exceeding ~~twenty-five thousand dollars \$25,000~~ and which pays losses from assessments against its policyholders or members, shall pay a ~~an annual~~ license tax for every year of one per centum percent of its direct gross premium income derived from business in this State during the preceding year ending the thirty-first day of December

This section, as hereby amended, shall apply with respect to taxable years as defined in § 58-502.1, beginning after ~~December thirty-one, nineteen hundred and sixty-eight~~, and to license years beginning on and after May one, ~~nineteen hundred and seventy~~.

Source: §§ 58-490, 58-491, 58-492 and 58-501

Comment: The four sections which previously levied and established the rate of the license tax are combined in one section.

§ 58-502. How gross premium income of reciprocal insurers computed. - Notwithstanding any other provisions of this chapter to the contrary, the direct gross premium income of any reciprocal insurer, computed for license tax purposes, shall be the gross premium or deposit income collected, received or derived from and credited to the accounts of subscribers from business in this State during the preceding year ending the thirty-first day of December, decreased by all returns for cancellation and all amounts returned to subscribers or credited to their accounts as savings.

Comment: See § 58.1-2500 under definition of "subscriber fee income."

§ 58-493. Chapter not applicable to fraternal benefit societies. § 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 § 38.1-588 ; . upon fraternal

1. Upon fraternal benefit societies as defined in § 38.1-569.

~~§ 58-404. Certain mutual assessment fire insurance companies exempt from license tax. No license tax for transacting insurance shall be imposed upon~~

2. Upon any mutual assessment fire insurance company as defined in §38.1-659 which (i) confines its business to not more than four contiguous counties and cities located therein and wholly surrounded thereby in this State the Commonwealth, if any such city has a population of not more than ~~thirty thousand~~ 30,000, or which (ii) confines its business to more than four contiguous counties in this State the Commonwealth if such counties together have a population not in excess of ~~one hundred thousand~~ 100,000.

3. Upon premiums derived from workmen's compensation insurance on which a premium tax is imposed under the provisions of § 65.1-129.

4. Upon consideration for contracts for annuities as defined in § 38.1-4.

Source: §§ 58-486, 58-493 and 58-494

Comment: All exemptions from the license tax are moved to one section.

~~§ 58-480. 58.1-2503. When tax payable.—The annual license tax shall be transmitted to the Commission paid into the State treasury on or before the first day of March 1 of each year for deposit into the state treasury. The license tax on a company commencing business in this State on or after January one, nineteen hundred and sixty-nine shall be paid into the State treasury before the license is issued. If a payment is made in an amount subsequently found to be in error, the Commission shall, if an additional amount is due, notify the company of the additional amount and the company shall pay such amount within fourteen days of the date of the notice, and, if an overpayment is made, order a refund as provided for in § 58-502.5 (b).~~

Source: § 58-489

Comment: The remainder of this section has been moved to § 58.1-2504.

~~§ 58-487. License year; 58.1-2504. Companies commencing business.— The license year shall begin on the first day of July and shall expire on the thirtieth day of June of each year. A. The license tax on a company commencing business in the Commonwealth shall be paid to the Commission before the license is issued. If a payment is made in an amount subsequently found to be in error, the Commission shall, if an additional amount is due, notify the taxpayer of the additional amount due and the company shall pay such amount within fourteen days of the date of the notice, and; if an overpayment is made, order a refund as provided for in § 58.1-2505.~~

B. No license shall be issued for less than a year except to a company when it first commences business in this State 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 the ~~thirtieth day~~ of June 30 following.

Source: §§ 58-487 and 58-489

Comment: No substantive change.

~~§ 58-488 58.1-2505 . Amount of license tax for company commencing business.—The license tax on a company commencing business in this State the Commonwealth shall be measured by an estimate of direct gross premium income reasonably expected to be derived from such business in this State the Commonwealth from the time of commencing business to the ~~thirty-first day~~ of December 31 following. Every estimate made under this section shall be subject to review by the State ~~Corporation~~ Commission after the close of the year for which the estimate is made and any variance between the estimate and the actual direct gross premium income shall be adjusted by the Commission by order of refund or 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.~~

~~This section, as hereby amended, shall apply to companies commencing business in this State on or after January one, nineteen hundred and sixty-nine.~~

Source: § 58-488

Comment: No substantive change.

~~§ 58-407 58.1-2506 . Reports to State ~~Corporation~~ the Commission.—Every such company subject to the provisions of this chapter shall, on or before the first day of March 1 of each~~

year, report under oath to the ~~State Corporation~~ Commission, upon forms to be furnished by and in such detail as may be prescribed by the Commission, the direct gross premium income derived from its business in ~~this State the Commonwealth~~ during the preceding year ending the ~~thirty-first day of December 31~~.

Source: § 58-497

Comment: No change.

~~§ 58-498 58.1-2507 . Penalties for failure to make report or pay tax; revocation of license; recovery by suit.— A. Every such company which fails failing to make the report required by § 58-497 58.1-2506 shall be fined fifty dollars for each day's failure to make the report ; the fine to be imposed in the discretion of the Circuit Court of the city of Richmond upon motion of the Attorney General made at the suggestion of the State Corporation Commission after ten days' notice to the company of the time of such motion .~~

~~The Comptroller shall, upon B. Upon the failure of any such company to pay the license tax within the time required by law this chapter , add there shall be added to such tax a penalty of five per centum ten percent of the amount of such 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. and The Comptroller shall proceed to recover the tax and , penalty and interest by suit in the appropriate circuit court of the city of Richmond , or by appropriate 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 Commission, 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.~~

Source: § 58-498

Comment: Provides discretionary power for the Commission to suspend the penalties, exclusive of interest, set forth in this section for good cause shown. Also, interest as an additional penalty for late payment of the tax is added to conform to all other revenue producing laws. Penalty for failure to make return or pay tax is increased from five percent of the tax due to ten percent.

~~§ 58-499 58.1-2508 . Real estate and tangible personal property of insurance companies to be taxed as other such property Taxes applicable to insurance companies.—A. The real estate and tangible personal property, situated or located in this State the Commonwealth , of every such company and every fraternal benefit society transacting insurance in this State 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.~~

~~§ 58-500. Taxes herein imposed to be in lieu of all other taxes except agent's license tax. B. The license tax on gross premium income as provided in this chapter , and the tax on real estate and tangible personal property provided for in § 58-499 to be paid by insurance companies in subsection A, and the fee assessed by the Commission for the administration of the insurance laws pursuant to § 38.1-44 et seq. shall be in lieu of all fees, licenses, taxes and levies whatsoever, State state , county, or municipal city or town ; which as to licenses shall be construed to include their agents, except that the license fee required of each such agent shall be paid to the State Corporation Commission . 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 § 38.1-327.41.~~

Source: §§ 58-499 and 58-500

Comment: Combines two closely related sections. Clarifies taxable subjects specifically to include fees assessed by the Commission to cover administration costs associated with the insurance laws. The new language relative to agents is intended only to relieve agents of insurance companies from the requirement of paying other forms of license taxes and fee for the privilege of conducting business.

~~§ 58-495 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 State Corporation Commission which administers the insurance laws of the State Commonwealth shall be paid by the insurance companies doing business in this State 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.~~

Source: § 58-495  
Comment: No change.  
§§ 58.1-2510 THROUGH 58.1-2519. RESERVED.

## Article 2.

### Estimated Tax.

§ 58-502.1. Meaning of "taxable year" and "license year". (a) The term "taxable year," as used in this article, means the calendar year upon the basis of which the direct gross premium income is computed under this chapter. 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 State.

(b) The term "license year," as used in this article, means the twelve months' period beginning on July first next succeeding the taxable year and ending on June thirtieth of the calendar year next following, the same being the year in which annual reports of direct gross premium income are required to be filed under § 58-497 and the annual tax paid with respect thereto under § 58-480, less credit for estimated tax paid for the taxable year as hereinafter provided.

Comment: See § 58.1-2300.

§ 58-502.2 58.1-2520 . Declarations of estimated tax. (a) Requirement of declaration.— A. Every insurance company which is subject to a the State state license tax measured by direct gross premium income as provided in this chapter 11 (§ 58-486 et seq.) of Title 58 of the Code of Virginia, as amended, imposed by § 58.1-2501 shall make a declaration of estimated tax for the taxable year if the tax imposed by this chapter, for the license year, measured by direct gross premium income, can reasonably be expected to exceed five thousand dollars \$3,000 .

(b) Estimated tax. - For purposes of this article, the term "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.

(c) Contents of declaration. - The declaration Such declaration shall contain such pertinent information as the State Corporation Commission may by forms or regulations prescribe.

(d) Amendment of declaration. - An insurance company may make amendments of a declaration filed during the taxable year under regulations prescribed by the Commission, not exceeding the number specified in § 58-502.3 (b).

(e) Short taxable year. - B. An insurance company with a taxable year of less than twelve months shall make a declaration in accordance with regulations prescribed by the State Corporation Commission.

Source: § 58-502.2

Comment: The definition located at (b) is moved to § 58.1-2500, which contains all definitional provisions. The provision relative to the amendment of a declaration was deleted as this point is repeated in the section to follow. The \$5,000 threshold set forth in subsection A is decreased to \$3,000.

§ 58-502.3 58.1-2521 . Time for filing declarations of estimated tax. (a) General rule: —A. The declaration of estimated tax required of insurance companies by § 58-502.2 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.

If the requirements of § 58-502.2 are first met - The declaration shall be filed on or before

before the 1st day of the 4th month of the taxable year ..... the 15th day of the 4th month of the taxable year

after the last day of the 3rd month and before the 1st day of the 6th month of the taxable year ..... the 15th day of the 6th month of the taxable year

after the last day of the 5th month and before the 1st day of the 9th month of the taxable year ..... the 15th day of the 9th month of the taxable year

after the last day of the 8th month and before the 1st day of the 12th month of the taxable year .... the 15th day of the 12th month of the taxable year

(b) Amendment - 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) Short 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 State Corporation Commission.

Source: § 58-502.3

Comment: Previous chart is placed in paragraph format for ease of reading. Previous subsection B is moved to § 58.1-2522.

§ 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 regulations prescribed by the Commission.

Source: §§ 58-502.2 and 58-502.3

Comment: Locates all pertinent provisions relating to the amendment of a declaration in one section.

§ 58-502.4 58.1-2523 . Installment Payment of estimated tax. (a) Amount and time for payment of each installment - A. The amount of estimated tax (as defined in § 58-502.2 (b)) with respect to which a declaration is required under § 58-502.2 58.1-2520 shall be paid in installments in accordance with the following table as follows :

The following percentages of the estimated tax shall be paid on the 15th day of the

If the declaration is timely filed on or before the 15th day of the

	4th month	6th month	9th month	12th month
4th month of the taxable year .....	25	25	25	25
6th month of the taxable year (but after the 15th day of the 4th month) .....	--	33 1/3	33 1/3	33 1/3
9th month of the taxable year (but after the 15th day of the 6th month) ....	--	--	50	50
12th month of the taxable year (but after the 15th day of the 9th month) ....	--	--	--	100

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) **Timely filing.** - A declaration is timely filed if it is not required by § 58-502.3 (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) **Late filing.** - If the declaration is filed after the time prescribed in § 58-502.3 (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 the time prescribed in § 58-502.3 (a), 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) **Amendment of declaration.** - B. If any amendment of to a declaration is filed, the amount of each any remaining installment (if any) 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.

(e) **Application to short taxable year.** - The application of this section to taxable years of less than twelve months shall be in accordance with regulations prescribed by the State Corporation Commission.

(f) **Installments paid in advance.** - C. At the election of the insurance company, any installment of the estimated tax may be paid before the date prescribed for its payment.

Source: § 58-502.4

Comment: Former chart is placed in paragraph format. Portions of section are set forth as separate sections (as follows) and subsections b & c are deleted.

(g) § 58.1-2524. Payments are on account of tax for license year. - Payment of the estimated tax measured by direct gross premium income, or any installment thereof ; shall be considered payment on account of the license tax imposed by this chapter for the license year.

Source: § 58-502.4(g)

Comment: No substantive change.

(h) § 58.1-2525. Extensions of time. - The State Corporation Commission 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 of one half 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, shall fail fails to make payment of estimated tax , { or any installment } , or file any declaration as required by this article, it shall pay interest on the amount involved at the rate of three quarters of one percent per month or fraction thereof from the time payment was due until the time of payment.

Source: § 58-502.4 (h)

Comment: Interest payable upon an extension is increased by one-fourth of one percent per month.

§ 58-502.5 58.1-2526 . Where declarations filed and how payments made; refunding overpayments.- (a) A. Every insurance company required by this article to file a declaration of

and make payment of the estimated tax shall file and pay the same with the State Corporation Commission ; and all payments shall be made into the State treasury . All such payments shall be deposited by the Commission into the state treasury.

~~(b)~~ B. If any insurance company overestimates and overpays estimated tax, the State Corporation Commission shall order a refund of the amount of the overpayment to the taxpayer. The overpayment shall be refunded out of the State state treasury on the order of the State Corporation Commission upon the Comptroller. The State Corporation Commission may act under this paragraph within two years from the ~~thirty-first~~ day of December 31 of the year in which such overpayment was made.

Source: § 58-502.5

Comment: No change.

~~§ 58-502.6 58.1-2527 . Failure to pay estimated tax. (a) Addition to the tax - A. In case of any underpayment of estimated tax by an insurance company, except as provided in subsection (a), there shall be added to the tax for the license year an amount interest determined at the rate of six percent per annum set forth in § 58.1-15 upon the amount of the underpayment (determined under subsection (b)) for the period of the underpayment (determined under subsection (c))~~

~~(b) Amount of underpayment-~~ B. For purposes of subsection ~~(a)~~ A , the amount of the underpayment shall be the excess of - :

~~(1)~~ 1. The amount of the installment which would be required to be paid if the estimated tax were equal to ~~eighty~~ ninety percent of the tax ascertained for the license year, over

~~(2)~~ 2. The amount, if any, of the installment paid on or before the last date prescribed for payment.

~~(c) Period of underpayment-~~ 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)~~ 1. The ~~fifteenth~~ first day of the ~~fourth~~ third month following the close of the taxable year.

~~(2)~~ 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 subsection ~~(b)~~ ~~(1)~~ B.1 for such installment date.

Source: § 58-502.6

Comment: The date of payment set forth in subsection C.1 is corrected to conform to § 58.1-2503. Penalty for underpayment is increased from six percent to the variable rate established by the federal government. Percentage of the portion of installments which must be paid without subjection to penalty is increased from eighty to ninety percent of the estimated tax payable.

~~(d) § 58.1-2528. Exception to § 58.1-2527 . - A. Notwithstanding the provisions of the preceding subsections § 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)~~ 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 twelve months.

~~(2)~~ 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)~~ ~~(A)~~ 3. An amount equal to ~~eighty~~ ninety 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:

~~(i)~~ a. For the first three months of the taxable year, in the case of the installment required

to be paid in the fourth month,

~~(ii)~~ *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,

~~(iii)~~ *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

~~(iv)~~ *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)~~ *B.* For purposes of this paragraph 3 of subsection A, the taxable direct gross premium income shall be placed on an annualized basis by ~~(i)~~ multiplying by twelve the taxable direct gross premium income referred to in subparagraph ~~(A)~~ paragraph 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 subparagraph ~~(A)~~ paragraph 3.

~~(e)~~ *Short taxable year.* - C. The application of this section to taxable years of less than twelve months shall be in accordance with regulations prescribed by the State Corporation Commission.

Source: § 58-502.6

Comment: In an effort to break up a lengthy section the provisions providing an exception to the general rule were moved to a new section.

~~§ 58-502.7 58.1-2529.~~ Other provisions of this chapter not affected by this article; ~~exception;~~ insurance companies going out of business. Nothing in this article ~~contained~~ shall be construed as affecting other provisions of this chapter except to the extent required to give this article full effect. ~~Moreover,~~ If an insurance company goes out of business or ceases to be an insurance company in this State 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 State.

Source: § 58-502.7

Comment: No change.

~~§ 58-502.8: Taxable and license years to which §§ 58-502.1 through 58-502.7 applicable: The foregoing sections of this article shall apply with respect to taxable years beginning after December thirty-one, nineteen hundred and sixty-eight, and to license years beginning on and after May first, nineteen hundred and seventy.~~

Comment: This transitional section is no longer needed.

~~§ 58-502.9 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.

Source: § 58-502.9

Comment: No change.

~~§ 58-502.10. Article does not affect liability for tax respecting direct gross premium income received or derived in 1968. This article shall not be construed as applying to or affecting in any way the tax imposed by this chapter measured by direct gross premium income received or derived in the calendar year nineteen hundred and sixty-eight by any insurance company to which this article applies, and such direct gross premium income shall be reported to the State Corporation Commission and taxed, and the tax shall be paid as prescribed by law by April fifteen, nineteen hundred and sixty-nine, the same as if this article had not been enacted.~~

Comment: This transitional provision is no longer needed.

TAXATION OF PUBLIC SERVICE CORPORATIONS.

Article 1.

General Provisions.

§ 58.1-2600 ~~58-502~~ . Definitions.—As used in this chapter: ~~§ 58-626-1. Definition.—As used in this article the expression~~“Certificated motor vehicle carrier” means a common carrier by motor vehicle operating over regular routes under a certificate of public convenience and necessity issued by the Commission ; ~~provided, however, any~~ . A transit company or bus company that is owned or operated directly or indirectly ; ~~or operated directly or indirectly, by any~~ a political subdivision of this Commonwealth, shall not be deemed a “certificated motor vehicle carrier” for the purposes of this ~~article~~ chapter and shall not be subject to the imposition of the tax imposed in ~~§ 58-622~~ 58.1-2650 , nor shall such transit company or bus company thereby be subject to the imposition of local property levies.

“Commission” means the State Corporation Commission which is hereby designated pursuant to Article X, § 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.

“Department” means the Department of Taxation which is hereby designated pursuant to Article X, § 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.

“Estimated tax” means the amount of tax which a public service corporation estimates as being imposed by Article — 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 or 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.

“Pole line or conduits” include buried cable and wire, submarine cable and other property used in lieu of, but serving the same function as, pole line or conduits.

“Tax Commissioner” means the State Tax Commissioner or his delegate 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.*

*For purposes of this chapter the terms "license tax" and "franchise tax" shall be synonymous.*

Source: §§ 58-503, 58-503.1, 58-503.2, 58-514.3, 58-556, 58-626.1, and 58-627

Comment: Defines the term "gross receipts," "pole line or conduits" "freight car company" "pipeline transmission company" and "pipeline distribution company" for the first time. Relocates various definitions previously scattered throughout chapter into one section. Also adds a statement that for purposes of this chapter the state license tax and state franchise tax on public service corporations shall be one and the same.

~~§ 58-503.1. Assessments for taxation.—The State Corporation Commission is designated as the central state agency to assess for taxation the real estate and tangible personal property of all public service corporations upon which the Commonwealth shall levy a state franchise, license, or other similar tax based upon or measured by its gross receipts or gross earnings, or any part thereof. The Department of Taxation is designated as the central state agency to assess the real and personal property of railroads and pipeline companies, except those pipeline companies whose operations and facilities are wholly within the Commonwealth.~~

Comment: See § 58.1-2600.

~~§ 58.1-2601 58-510 . Boundaries of magisterial certain political districts and towns 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 does business or owns property shall furnish, on or before January 1 in each year, to each such corporation, the boundaries of each city and the magisterial district of the county and of each town therein which any part of the property of such corporation is situated and a . A copy of such boundaries shall also be forwarded to the clerk of the Commission and the Department Tax Commissioner .~~

~~B. Whenever any commissioner of the revenue shall fail to furnish to such corporation, the clerk of the Commission and the Department Tax Commissioner , the such boundaries of each such magisterial district and town required in subsection A , the clerk of the Commission and the Department 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 ; who shall be deemed guilty of a Class 4 misdemeanor, and, upon . Upon conviction thereof , shall be fined not less than \$25, nor more than \$100 for 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 .~~

~~But C. Notwithstanding the provisions of subsection A, whenever the boundaries of the magisterial districts and towns in any county have once been furnished to any public service company, the Commission and the Department Tax Commissioner pursuant to this section , the commissioner of the revenue of such county shall thereafter not be required to furnish such the boundaries to such company; the Commission or the Department, except insofar as shall be necessary to show subsequent changes in the such boundaries of such magisterial districts and towns .~~

Source: § 58-510

Comment: Section is broadened to include all commissioners of the revenue. Specific penalty is deleted eliminating a possible conflict between the provisions of § 18.2-11, which also specifies penalty for Class 4 misdemeanor.

~~§ 58.1-2602 58-511 . Local authorities to examine assessments and inform Department or Commission whether correct.—The board of supervisors or other governing body of each county and the council of each , city and town, receiving a copy of any assessment made by the Commission or the Department against property of a public service corporation of property of such public service corporation located in such county, city or town, shall forthwith check over and compare review such assessments and ascertain determine whether they be correct are accurate and notify the clerk of the Commission or the Department accordingly of any corrections thereto . Such boards of supervisors or other governing bodies and councils at their own expense may, when there is reason to doubt the correctness of the assessed length of any line, retain any surveyor to make all necessary surveys in order properly to verify the assessment of the Commission or the Department and appropriate a sum out of the county or city levy to pay the surveyor for such surveys .~~

Source: § 58-511

Comment: No substantive change.

§ ~~58.1-2603~~ ~~58-512~~ . Local levies to be extended by commissioners of revenue; copies; forms. —All county, district and city levies on the property of public service corporations 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 ; ~~provided, however, that in~~ . 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 of ~~Taxation~~ .

Source: § 58-512

Comment: No substantive change.

§ ~~58.1-2604~~ ~~58-512.1~~ . Increase in assessed valuation.— A. Except as otherwise provided in § ~~58-514.2:3~~ ~~58.1-2608~~ , any increase in the assessed valuation of any public service corporation property 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 ; ~~provided, however, that on~~ . On January 1, 1967, one-twentieth, and on each subsequent January 1 for nineteen years an additional one-twentieth, of the assessed valuation on January 1, 1966, (reduced by forty percent of the value of the amount, if any, by which total retirements since January 1, 1966, exceed total additions since that date), shall be assessed by application of the local assessment ratio as provided above, and the remainder shall continue to be assessed by application of the forty percent assessment ratio as heretofore administered. Thereafter the whole shall be assessed by application of the local assessment ratio as provided above.

B. All public service corporation property in the process of equalization over a twenty-year period as provided in subsection A is hereby defined as a separate item of taxation and shall be identified as a separate category of property for local taxation. Such property in the process of equalization shall, for such period as provided for in subsection A continue to be assessed at forty percent of the fair market value.

C. 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.

Source: § 58-512.1

Comment: No change.

§ ~~58.1-2605~~ ~~58-514.2:1~~ . Commission to determine ~~franchise license~~ and recordation tax savings and adjust rates accordingly.—The Commission, in the conduct of its annual review procedures and in all requests for rate increases by public utilities ~~during the years nineteen hundred seventy-nine and thereafter~~ shall determine the resultant savings in ~~franchise license~~ taxes realized by all telephone, water, heat, light and power companies as a result of amendments to §§ ~~58-580~~ ~~58.1-2623~~ and ~~58-603~~ ~~58.1-2625~~ of the Code of Virginia enacted during the ~~nineteen hundred seventy-six~~ 1976 session of the General Assembly, the savings in recordation taxes realized by such companies as the result of the amendments to § ~~58-55~~ ~~58.1-803~~ of the Code of Virginia enacted during the ~~nineteen hundred seventy-seven~~ 1977 session of the General Assembly and the resultant savings in ~~franchise license~~ taxes realized by all telephone companies as a result of amendments to § ~~58-580~~ ~~58.1-2623~~ of the Code of Virginia enacted during the ~~nineteen hundred seventy-nine~~ 1979 session of the General Assembly.

During each and every review of rates of a public service company the Commission shall establish rates and charges for such public service company which reflect all savings realized by the public service company from the tax reductions referred to in this section in order that the consumer will receive the benefit of these tax reductions.

Source: § 58-514.2:1

Comment: No substantive change.

§ ~~58.1-2606~~ ~~58-514.2~~ . Local taxation of real and tangible personal property of public service corporations.— A. Notwithstanding the provisions of §§ ~~58-518~~ ~~58.1-2606~~, ~~58.1-2607~~ and ~~58.1-2690~~ , ~~58-596~~, ~~58-602~~ , all local taxes on the real estate and tangible personal property of public service corporations referred to in such sections shall be at the real estate rate applicable in the respective locality ; ~~except property~~ . Property, however, which has not been equalized as

provided for in § ~~58-512.1~~ 58.1-2604 shall continue to be assessed at forty ~~per centum~~ percent of fair market value and taxed at the nominal rate applicable to public service corporation real property for the taxable year immediately preceding the year such locality assesses as provided in § ~~58-760~~ 58.1-3201 . If the resulting effective tax rate for such unequalized public service corporation property in any county, city or town is less than the effective tax rate applicable to other real property therein, the locality shall adjust such nominal rate to equalize the effective tax rate on such public service corporation property with the effective tax rate applicable to other real property.

With respect to B. The assessed valuation of any class of property taxed as tangible personal property by any county, city or town before January one, ~~nineteen hundred sixty-six~~ 1, 1966 , such class of property may continue to be taxed at rates no higher than those levied on other tangible personal property on January one, ~~nineteen hundred sixty-six~~ 1, 1966 ; provided, however, that on January one, ~~nineteen hundred sixty-seven~~ 1, 1967 , one twentieth, and on each subsequent January one 1 for nineteen years an additional one twentieth, of the assessed valuation of such tangible personal property on January one, ~~nineteen hundred sixty-six~~ 1, 1966 , shall be taxed at the real estate rate and the remainder may continue to be taxed at the tangible personal property rate as provided above a rate no higher than the rate levied on tangible personal property on January 1, 1966 . ~~Thereafter~~ After December 31, 1985, the whole shall be taxed at the full local real estate tax rate as provided above .

C. Notwithstanding any of the foregoing provisions, all automobiles and trucks of such corporations shall be taxed at the same rate or rates applicable to other automobiles and trucks in the respective locality.

Source: §§ 58-514.2 and 58-605

Comment: No substantive change.

§ 58.1-2607 ~~58-514.2:2~~ . Local taxation of real and tangible personal property of railway ~~companies~~ ~~railroads~~ ~~companies~~ .— A. Notwithstanding the provisions of §§ ~~58-512.1~~ 58.1-2604 and ~~58-514.2~~ 58.1-2606 , and beginning with assessments initially effective January one, ~~nineteen hundred eighty~~ 1, 1980 , all assessments of real estate and tangible personal property of railway ~~companies~~ ~~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 of Taxation , except that land and noncarrier property shall be assessed as provided in § ~~58-514.2:3~~ 58.1-2609 . All local taxes on such property of railway ~~companies~~ shall be at the real estate rate applicable in the respective locality.

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.

Source: § 58-514.2:2 and 58-522

Comment: Two previous sections combined without substantive change.

§ ~~58-510~~ 58.1-2608 . State ~~income tax~~ ~~taxation of railroads~~ .—Every railway company shall pay to the State Commonwealth the income tax imposed by ~~chapter~~ Chapter 4 3 (§ ~~58-151.01~~ 58.1-300 et seq.) of Title ~~58~~ 58.1 .

Nothing herein contained shall exempt such corporations from the tax on capital not otherwise taxed levied under § ~~58-418~~ Chapter 11 , the annual fee and ~~required by~~ § 58-450; the annual State state franchise tax on domestic corporations , both levied under § 58-456 Chapter 28 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.

Source: § 58-519

Comment: No substantive change.

§ 58.1-2609 ~~58-514.2:2~~ . Local taxation of land and nonutility and noncarrier improvements of public service corporations.— Whenever land and noncarrier and nonutility improvements of public service corporations 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.

Source: § 58-514.2:3  
Comment: No change.

§ 58.1-2610 ~~58-514~~ . Penalty for failure to file *timely* report in time .-- Unless otherwise provided, any ~~Any corporation or person taxpayer~~ failing to make ~~any a~~ report required under the provisions of this chapter within the time herein prescribed shall be liable to a penalty of \$100 for each day such ~~corporation or person~~ may be in default ~~taxpayer is late~~ in making such report. The *State Corporation Commission or the Commissioner or Tax Commissioner, as the case may be*, may waive all or a part of such penalty for good cause.

Source: §§ 58-514 and 58-539

Comment: Conforms penalty provision by increasing penalty to \$100 for failure of a motor vehicle carrier to properly report to the Commission. Also grants authority to SCC to waive such penalty for good cause.

§ 58-626. Penalty for failure to make report.--Any such carrier which shall fail to make the report required in § 58-618, within the time therein prescribed, shall be liable to a fine of not less than twenty-five dollars nor more than fifty dollars for each day such carrier may be in default for making such report; the fine to be imposed and judgment entered therefor by the Commission after thirty days' notice to any such defaulting carrier to appear before the Commission and show cause, if any, against the imposition of such fine, subject to appeal to the Supreme Court of Appeals.

Comment: See § 58.1-2610.

§ 58-520. Penalty for failure to make reports.--Any such corporation which shall fail to make the report required in § 58-524 within the time therein prescribed, shall be liable to a penalty of \$100 for each day such corporation may be in default in making such report. The Commissioner may waive all or a part of such penalty for good cause.

Comment: See § 58.1-2610.

§ 58.1-2611 ~~58-561~~ . Penalty for failure to pay tax.-- A. Any such company or individual failing to pay such taxes ~~the tax levied pursuant to this chapter~~ into the ~~State~~ state treasury within the time herein prescribed by law shall incur a penalty thereon of five ~~ten~~ per centum percent , which shall be added to the amount of such taxes ~~the tax due~~ .

§ 58-514.1. Accrual of penalty for nonpayment of state taxes within time prescribed by law.-- B. Notwithstanding any other provision of this chapter providing for the accrual of a penalty for the nonpayment of state taxes by a public service corporation on or before June 1 of any year 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 corporation a certified copy of the assessment on or before May 15 preceding ; and if the *Commission or the Department* does not mail such certified . In the event such copy of the assessment to the corporation 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 by the *Commission or the Department* .

Source: §§ 58-514.1, 58-537, 58-561, 58-587, 58-614, 58-626 and 58-601

Comment: Combines several repetitive sections. No substantive change. Penalty increased from 5 to 10 percent of the tax due.

§ 58-527. Collection of tax.--Such taxes so assessed, and a penalty in addition thereto of five per centum thereon, if the taxes be not paid at the time provided in § 58-520, shall be collected by the collector of delinquent taxes.

Comment: See § 58.1-2611.

§ 58-587. Penalty for failure to pay tax.--Any company failing to pay such taxes into the State treasury within the time herein prescribed shall incur a penalty thereon of five per centum, which shall be added to the amount of the taxes.

Comment: See § 58.1-2611.

§ 58-614. Penalty for failure to pay tax.--Any such corporation failing to pay the tax into the State treasury within the time herein prescribed shall incur a penalty thereon of five per centum, which shall be added to the amount of the tax.

Comment: See § 58.1-2611.

~~§ 58-626. Penalty for failure to pay tax.—Any certificated motor vehicle carrier failing to pay the rolling stock tax described in this article into the treasury within the time herein prescribed shall incur a penalty thereon of five per centum, which shall be added to the amount of such taxes.~~

Comment: See § 58.1-2611.

~~§ 58-601. Penalty for failure to pay taxes.—Any such corporation failing to pay the State taxes into the State treasury within the time prescribed shall incur a penalty thereon of five per centum, which shall be added to the amount of the taxes.~~

Comment: See § 58.1-2611.

~~§ 58.1-2612 58-636 . Lien of taxes.—All the taxes and levies provided for in this chapter shall, until paid, be a lien upon the property within this State the Commonwealth of the corporation owning the same and take precedence of over all other liens or encumbrances.~~

Source: §§ 58-536, 58-599 and 58-615

Comment: The language of this section, which is repeated in two other sections, is made applicable to all taxes levied pursuant to Chapter 26.

~~§ 58-600. Lien of State taxes.—All State taxes and levies shall, until paid, be a lien upon all property within this State of the corporation owning the same, and take precedence of all other liens or encumbrances.~~

Comment: See § 58.1-2612.

~~§ 58-616. Taxes a lien.—All taxes and levies shall, until paid, be a lien upon the property within this State of the corporation owning the same and take precedence of all other liens or encumbrances.~~

Comment: See § 58.1-2612.

## 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.~~

Source: § 58-503.2

Comment: The section is rewritten to conform to and utilize those terms previously defined. The example previously contained in § 58-503.2 is not repeated.

~~§ 58 503.2. Levying of franchise or license taxes; meaning of terms. A. Except as otherwise specifically provided, franchise or license taxes on public service companies based on gross receipts shall be levied for the tax year and measured by gross receipts of the preceeding year.~~

~~B. Example: Taxes paid for tax year 1970, that is, calendar year 1970, shall be calculated on the receipts of taxable year 1978, that is, calendar year 1978, and paid in estimates during calendar year 1978.~~

Comment: See § 58.1-2620

~~§ 58.1-2621 58-579 . License tax on telegraph companies.—Each telegraph company and firm or other person operating the apparatus necessary to communicate by through telegraph telecommunications shall, for the privilege of doing business between points within this State the Commonwealth , pay a license tax as follows , to wit: Two dollars and twenty-five cents per mile for pole line or conduits, including number of miles of other property used in lieu of pole lines or conduits, such as buried cable, submarine cable or buried wire, owned, operated or used by any company, firm or person in this State, and an additional charge of three and five-eighths~~

per centum percent of the gross receipts of the company, firm or person received (or due, though not received), from business done within this State the Commonwealth during the year ending the thirty first day of December the taxable year .

The provisions of this section shall apply to the assessment for the tax year nineteen hundred forty nine and annually thereafter, unless otherwise provided by law.

Source: § 58-579

Comment: Effective date clause is deleted and provisions applicable to the pole line tax on telegraph companies is moved to § 58.1-2622.

§ 58.1-2622. *Additional tax on telegraph and telecommunication companies.*—In addition to the tax levied pursuant to § 58.1-2621, each telegraph company or other person operating the apparatus necessary to communicate by telecommunications shall pay, as a part of such license tax, \$2.25 per mile for pole line or conduits as defined in § 58.1-2600 owned, operated or used by any company, firm or person in the Commonwealth.

Source: § 58-579

Comment: This new section separates the pole line portion of the tax from the portion of the tax based on gross receipts.

§ 58.1-2623 58-580 . *License tax on telephone companies.*— The specific license tax to be paid by every corporation. Each telephone company or other person or association, for the privilege of operating the apparatus necessary to communicate by telephone ; shall be , for the privilege of doing business within the Commonwealth, pay during each tax year a license tax :

(1) When the gross receipts do not exceed \$65,000 and when the number of miles of pole line did not exceed 700 miles and a majority of the stock or other property of such company is not owned or controlled by any other telephone or telegraph company whose receipts exceed \$65,000, a sum equal to one and nine-sixteenths percent of the gross receipts of such corporation, person or association from business done within this State during the year ending December 31 preceding;

(2) When the gross receipts from business done within this State, including the proportionate part of interstate revenue attributable to this State if such inclusion will result in annual gross receipts exceeding \$15 million, during any such year are in excess of \$65,000 or the number of miles of pole line exceeds 700 or a majority of the stock or other property of such company is owned or controlled by any other telephone or telegraph company whose receipts exceed \$65,000, the license tax shall be a sum equal to one and nine-sixteenths percent of such receipts up to \$65,000 and an additional sum equal to three percent of such receipts exceeding \$65,000. The license tax on receipts exceeding \$65,000 for the tax year 1979 shall be an amount equal to two and eight-tenths percent; for the tax year 1980 shall be an amount equal to one and nine-tenths percent; for the tax year 1981 shall be an amount equal to one and eight-tenths percent; for the tax years 1982, 1983, 1984, 1985 and 1986 shall be an amount equal to one and six-tenths percent; and for the tax year 1987 shall be an amount equal to one and five-tenths percent; and for the tax year 1988 and for each tax year thereafter one and three-tenths percent; and, in addition, a sum equal to \$2.25 per mile of pole line or conduit, including the number of miles of other property used in lieu of pole lines or conduits, such as buried cable, submarine cable or buried wire, owned, operated or used by such corporation, person or association in this State, provided that, when the gross receipts do not exceed an average of \$200 per mile of pole line or conduits, including the number of miles of other property used in lieu of pole lines or conduits, such as buried cable, submarine cable or buried wire, the license tax on gross receipts shall be as herein provided and the additional sum equal to \$1.00 per mile of pole line or conduits including the number of miles of other property used in lieu of pole lines or conduits, such as buried cable, submarine cable or buried wire, owned, operated or used by such corporation, person or association in this State, instead of \$2.25 per mile as hereinabove provided;

(3) When the number of miles of pole line exceeds 700 and no license tax is paid upon gross receipts, the license tax shall be a sum equal to \$10.00 per mile of pole line or conduits including the number of miles of other property used in lieu of pole lines or conduits, such as buried cable, submarine cable or buried wire, owned, operated, or used by such corporation, person or association in this State.

(4) Any telephone company which pays no tax on its gross receipts shall pay, in addition to the pole line tax, the tax on its income imposed in § 58-151.03.

But no license tax shall be charged against any telephone company chartered in this State

for the privilege of prosecuting its business when such company is purely a local mutual association and does not charge others for transmitting messages over its line, or lines, and is not designed to accumulate profits for the benefit of, or to pay dividends to, the stockholders or members thereof, equal to one and nine-sixteenths percent of the first \$65,000 of gross receipts of such company or person 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 \$15 million, and one and six-tenths percent of such gross receipts exceeding \$65,000. The license tax on gross receipts in excess of \$65,000 for the tax year 1987 shall be an amount equal to one and five-tenths percent of such gross receipts, and for the tax year 1988 and each tax year thereafter, one and three-tenths percent.

Source: § 58-580

Comment: Rewritten. Redundant language is removed. Pole line tax is removed to § 58.1-2624 and exemptions are removed to § 58.1-2625. The Code Commission reserved final amendment changes to this section relative to the divestiture of American Telephone and Telegraph Co., pending receipt of special consultant's report to the State Corporation Commission.

§ 58.1-2624. *Additional tax on telephone companies based on pole line.*—A. In addition to the tax levied pursuant to § 58.1-2623, each telephone company or other person operating apparatus necessary to communicate by telephone shall pay, as a part of such license tax, the following:

1. A sum equal to \$2.25 per mile for each mile of pole line or conduit owned, operated or used by such company or person in the Commonwealth.

2. If, however, the gross receipts of such company or person do not exceed an average of \$200 per mile of pole line or conduits, the additional tax shall be one dollar per mile of pole line or conduits.

B. Notwithstanding the provisions of paragraph 2 of subsection A, when the number of miles of pole line or conduits exceeds 700 miles and no tax is paid upon gross receipts as provided in § 58.1-2623, the additional tax shall be ten dollars per mile of pole line or conduits owned, operated or used by such telephone company or person in the Commonwealth.

C. Any telephone company which pays no tax on its gross receipts shall pay, in addition to the tax levied under this section, the tax on its income imposed by Chapter 3 of this title.

Source: § 58-580

Comment: New section. The pole line tax is retained as an element of the license tax, but is placed in a separate section for ease of reading.

§ 58.1-2625. *Exemptions.*—No license tax imposed by §§ 58.1-2623 or 58.1-2624 shall be levied on any telephone company chartered in the Commonwealth or on any other person operating the apparatus necessary to communicate by telephone for the privilege of doing business when such company or person is exclusively a local mutual association and does not charge others for transmitting messages over its line and is not designated to accumulate profits for the benefit of, or to pay dividends to, the stockholders or members thereof.

Source: § 58-580

Comment: New section. This exemption was previously contained in the last paragraph of § 58-580. The only substantive change is a substitution of the word "exclusively" for the present language "purely".

§ 58.1-2626 ~~58-603~~. Annual state ~~franchise~~ license tax on companies furnishing water, heat, light or power tax ; local license taxes .— A. Every corporation ~~coming within the provisions of this article doing in the Commonwealth the business of furnishing water, heat, light or power, whether by means of electricity, gas or steam, except a pipeline transmission company taxed pursuant to § 58.1-2627.1, shall~~ , for the privilege of doing business within the Commonwealth, pay to the State Commonwealth for each tax year an annual state ~~franchise~~ license tax equal to one and one-eighth percent of its gross receipts , actually received, from all sources up to \$100,000 of such gross receipts and ~~three and one-half percent of all such gross receipts from all sources in excess of \$100,000; for the privilege of exercising its franchise in this State, which, with the taxes hereinbefore provided for, shall be in lieu of the annual state merchant's license tax required under Chapter 7 (§ 58-239 et seq.) of this title and all state taxes or license charges whatsoever upon the franchise of such corporation and the shares of stock issued by it and upon all its property as hereinbefore provided; provided, that the tax on gross receipts in excess of \$100,000 for the tax year 1979 shall be an amount equal to three and two-tenths percent; for the tax year 1980 shall be an amount equal to two and nine-tenths percent; for the~~

tax year 1981 shall be an amount equal to two and six-tenths percent; for the tax years 1982, 1983, 1984, 1985 and 1986 shall be an amount equal to two and three-tenths percent of all such gross receipts in excess of \$100,000. and For the tax year 1987 and thereafter the license tax shall be an amount equal to two percent.

*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.*

~~(1) C. Nothing herein contained shall exempt such corporation from motor vehicle license taxes or , motor vehicle fuel taxes or the annual fee , fees required by § 58-450 by Chapter 28 of this title 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 ; .~~

~~(2) Any city, town or county may impose a license tax under § 58-266.1 upon such corporation 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 city, town or county;~~

~~(3) From the amount of any such license tax there shall be deducted any sum or sums paid by such corporations to such city, town or county as a merchant's license tax and license taxes, except motor vehicle license taxes;~~

~~(4) D. Nothing herein contained shall annul or interfere with or prevent any contract or agreement by ordinance between such corporations and cities and towns as to compensation for the use of the streets or alleys of such cities and towns by such corporations ; and .~~

~~(5) There shall be deducted for purposes of this section from the total gross receipts of any electric cooperative, as defined in § 56 209, which purchases electricity for the sole purpose of resale to other cooperatives, the amount paid in such taxable period by such cooperative to purchase electricity from a vendor of electricity which is subject to the state franchise tax; and~~

~~(6) There shall be deducted for purposes of this section from the gross receipts of any electric cooperative, as defined in § 56 209, which is engaged in sales to ultimate consumers, and every corporation engaged in the business of furnishing heat, light and power by means of electricity the amount paid in such taxable period by such cooperative or corporation to purchase electricity from a vendor subject to the state franchise tax.~~

Source: § 58-603

Comment: Outdated rate structure provided for in the first paragraph is rewritten and exceptions are moved to § 58.1-2627 which follows. Former paragraph 2, which permits localities to levy a license tax on these corporations, is relocated to the chapter in Subtitle III which deals with local license taxes. (See § 58.1-3731)

*§ 58.1-2627. Exemptions.—A. There shall be excluded from the gross receipts of any corporation engaged in the business of furnishing heat, light and power by means of electricity receipts from interstate business.*

*B. There shall be deducted from the gross receipts of any electric cooperative, defined in § 56-209, which purchases electricity for the sole purpose of resale to other cooperatives, the amount paid in such taxable period by such cooperative to purchase electricity from a vendor of electricity which is subject to the tax imposed by this chapter.*

*C. There shall be deducted from the gross receipts of any electric cooperative, as defined in § 56-209, which is engaged in sales to ultimate consumers, and every corporation engaged in the business of furnishing heat, light and power by means of electricity the amount so paid in such taxable period by such cooperative or corporation to purchase electricity from a vendor subject to the tax imposed by this chapter.*

Source: § 58-603

Comment: The section contains the exceptions and exemptions to the tax levied in the preceding section in subsections B and C. Subsection A statutorily provides for a subtraction from gross receipts certain receipts from interstate business which are currently being subtracted by S.C.C. administrative practice.

*§ 58.1-2627.1. Taxation of pipeline companies.—A. Every pipeline distribution company, as defined in § 58.1-2600, shall, for the privilege of doing business within the Commonwealth, pay to the Commission an annual license tax set forth in § 58.1-2626 on its gross receipts derived*

*from sales in Virginia. 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 of this title (State Income Tax). 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 and to the Commission. 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. All other provisions of this chapter shall apply mutatis mutandis to such pipeline companies.*

*C. A company liable for the license tax under subsection A shall not be liable for the tax imposed by Chapter 28 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, as provided in this chapter, be considered a pipeline distribution company.*

Source: §§ 58-597, 58-588 and 58-590

Comment: Provisions of previous Article 9 of Chapter 12 are consolidated into one section. By defining pipeline transmission and pipeline distribution companies, agency responsibility for assessments thereon is clarified.

~~§ 58-597. State income and franchise taxes; assessment of real estate and tangible personal property. Every corporation coming within the provisions of this article shall pay to the Commonwealth the income tax imposed by Chapter 4 (§ 58-151.01 et seq.) of Title 58 on its allocated and apportioned net taxable income, except with respect to net taxable income derived from sales for consumption by the purchaser of natural or manufactured gas; and shall pay the state franchise tax on gross receipts imposed by § 58-603 to the extent that its receipts are derived from sales in this Commonwealth for consumption by the purchaser of natural or manufactured gas. There shall be excluded from allocated and apportioned net income subject to the income tax that portion thereof 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 total gross profit in this Commonwealth of the taxpayer.~~

~~If the company is liable for the franchise tax imposed by § 58-603 it shall not be liable for the franchise tax imposed by § 58-456.~~

~~The real estate and tangible personal property of such corporation but not its franchise, shall be assessed on the valuation fixed by the Department, with county, city, town, and magisterial district levies.~~

Comment: See § 58.1-2627.1.

~~§ 58-588. Report required. Every corporation having the power of eminent domain and authorized to transmit natural gas, manufactured gas or crude petroleum and the products or byproducts thereof in the public service by means of a pipeline or pipelines in Virginia, shall report annually on or before April 15 to the Department or the Commission, as the case may be, all of its real and personal property of every description other than intangible personal property and money, as of the beginning of January 1 preceeding, showing particularly in what city, town or county and magisterial district therein the property is located.~~

~~The report herein required shall be verified by the oath of the president or other proper officer or person making the same.~~

Comment: See § 58.1-2627.1.

~~§ 58-590. Assessment by Department or Commission. The Department or the Commission, after thirty days' notice previously given the president or other proper person, shall assess the value of the property of each such corporation, other than intangible personal property and money, and the State Corporation Commission shall assess the franchise tax hereinafter provided for.~~

Should any such corporation fail to make the reports required by this article on or before April 15 of each year, the Commissioner, at such time as he may elect, upon the best and most reliable information that can be procured, shall assess the value of the property of such corporation, ~~other than intangible personal property and money, and, in the execution of such duty, may send for persons and papers.~~

The Department shall assess upon such property the state taxes, if any, imposed thereon by law.

A certified copy of the assessment of state taxes when made shall be immediately forwarded by the clerk of the State Corporation Commission and the Department to the Comptroller and to the president or other proper officer of each such corporation.

Comment: See § 58.1-2627.1.

§ 58-501. Payment of State taxes. Such corporation shall pay into the State treasury by the first day of June following the State taxes assessed against it.

Comment: See § 58.1-2635.

§ 58-592. Copies of assessment sent to local authorities. The Department shall furnish to the council of every city and town and to the board of supervisors or other governing body of every county wherein any property belonging to such corporation is situated a certified copy of the assessment of the value thereof made by the Department of such corporation's real and tangible personal property, which shall definitely show the character of the property, its value and location for the purpose of taxation, in each city, town or county and magisterial district therein; so that city, town, county and district levies may be imposed upon the same by the proper local authorities.

Comment: See § 58.1-2634.

§ 58.1-2628 58-581 . Annual report.- Each A. Every incorporated telegraph and telephone company doing business in this State the Commonwealth , owning and operating a telegraph or telephone line in this State the Commonwealth , shall report annually, on the fifteenth day of April 15 , to the Commission all real and tangible personal property of every description (other than intangible personal property and money) in this State the Commonwealth , owned, operated or used by it as of the beginning of the first day of January 1 preceding, showing particularly, as to property owned by it, in what corporation, county and school district the county, city, town or magisterial district wherein such property is located. Such corporation shall classify in its report all property under the following heads: .

(1) Number of miles of pole line or conduits, including number of miles of other property used in lieu of pole lines or conduits such as buried cable, submarine cable or buried wire, owned by it within this State on the first day of January preceding, in each county, city, town and school district;

(2) Number of miles of pole lines or conduits, including number of miles of other property used in lieu of pole lines or conduits such as buried cable, submarine cable or buried wire, operated or used but not owned by it within this State on the first day of January preceding;

(3) Number of miles of wire in each city, county, town and school district;

(4) Real and personal property, including the value of the telephone instruments, switchboards, etc., and the value of telegraph instruments, apparatus, etc., in each city, county, town or school district;

(5) The gross earnings and receipts in this State for the twelve months ending December thirty-first next preceding;

(6) The interstate revenue attributable to this State which shall include The report shall also show the total gross receipts for the twelve 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 this State the Commonwealth and a proportion of interstate revenue from all interstate business passing through, into or out of this State the Commonwealth and any other information relating to interstate revenue which in the judgment of the Commission is necessary to produce a substantially just and correct determination of the amount of such interstate revenue attributable to this State .

The report herein required shall be certified by the oath of the president or other proper officer of the company making the same.

*B. Every corporation doing in the Commonwealth the business of furnishing water, heat, light and power, whether by means of electricity, gas or steam 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 twelve months ending December 31 next preceding.*

*C. The report required by subsection A and B 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.*

*D. The report required by this section shall be certified by the oath of the president or other designated official of the corporation.*

Source: §§ 58-581, 58-607, 58-608, 58-609

Comment: Four closely related sections are combined. The SCC is given broad discretion to devise the annual reporting form in such a fashion as will ensure the proper collection and disposition of the taxes required by this chapter. Previous law set forth the particular information which the SCC must require on its annual reporting forms.

~~§ 58 607. Annual reports. Any corporation doing in this State the business of furnishing water or heat, light and power, whether by means of electricity or gas, shall, on or before the fifteenth day of April of each year, report to the Commission all of its real and personal property of every description (other than intangible personal property and money) in this State belonging to it as of the first day of January preceding, showing particularly in what city, town or county and magisterial district therein the property is located. This report shall include all waterpower rights and privileges, dams, flumes and canals and shall be itemized as provided in §§ 58-608 and 58-609. Each such corporation shall also report its gross receipts from all business done in this State for the year ending December thirty first preceding. The gross receipts to be reported and subject to taxation shall include those received from incidental operations as well as those derived from the sale of water or heat, light and power. The reports herein required shall be made on forms in the manner prescribed by the Commission and shall be certified by the oath of the president or other proper person making the same.~~

~~§ 58 608. Special report of electric companies. All electric light and power companies shall, to the extent that the property hereinafter particularly set forth is situated in this State, report to the Commission the following property, which shall be particularly set forth in the report: (a) land and improvements, (b) generating and substation equipment, (c) transmission and distribution lines, (d) underground conduits, conductors and devices, (e) line transformers, (f) services, (g) meters, (h) street lighting and signal systems, (i) general equipment, (j) materials and supplies, (k) merchants' capital, and (l) all other property (other than intangible personal property and money) not enumerated in any of the foregoing heads and whether used in public service operations or otherwise.~~

~~§ 58 609. Special report of gas and water companies. All corporations manufacturing and furnishing gas and all corporations furnishing and selling water shall, to the extent that the property hereinafter particularly set forth is situated in this State, report to the Commission the following property, which shall be particularly set forth in the report: (a) land and improvements, (b) production equipment, (c) general equipment, (d) mains, (e) services, (f) meters, (g) materials and supplies, (h) merchants' capital and (i) all other property (other than intangible personal property and money) not enumerated in any of the foregoing heads and whether used in public service operations or otherwise.~~

~~§ 58.1-2629 58-504 . Franchise or license License taxes of corporations commencing business ; when measured by gross receipts estimate for that year . The franchise or license tax imposed by this chapter on every public service corporation continuing business after the close of any year shall apply also to every public service corporation beginning business at or after the beginning of the year. The A. Companies or persons otherwise taxable under §§ 58.1-2621, 58.1-2622, 58.1-2623, 58.1-2624, 58.1-2625, 58.1-2626 or 58.1-2627.1 but which begin business on or after the beginning of the tax year shall pay a license tax, the measure of such franchise or license tax of such public service corporation for the year or for that part of the year in which it begins business which shall be an estimate of the gross receipts of such public service corporation company or person for the year or for that part of the year in which it begins business. Such estimate shall be made by the corporation liable to such franchise or license tax~~

and shall be reported to the Commission on forms furnished by the Commission within thirty days after beginning business and the franchise or 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 first of the year if such assessment is made more than thirty days prior to June first.

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.

§ 58-506. Same; measured by estimate for following year. Whenever any public service corporation shall become liable to a franchise or license tax for any year measured by its gross receipts for the year ending December thirty-first preceeding and such corporation commenced operation in this State during such preceeding year, then the franchise or license tax of such corporation for the year following the year in which it began business shall be measured by an estimate of such gross receipts for the year beginning January first of the year following the year in which it began business. Such estimate of gross receipts shall be made by the corporation liable to the franchise or license tax and shall be reported to the Commission within the time prescribed by this chapter for reporting gross receipts by other corporations of the same character. C. Every estimate made under this and the preceeding section (§ 58-504) 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 franchise or license tax depending upon whether such estimate was in excess of or less than the actual gross receipts of such corporation taxpayer for such year.

Source: §§ 58-504 and 58-505

Comment: Sections which are closely related are combined for brevity. No substantive change is made.

§ 58.1-2630 58-506. Gross receipts in cases of acquisition of business of another corporation.—  
A. Whenever Any public service corporation taxpayer liable to for a franchise or license tax required by this chapter for any year imposed by this chapter, measured by its gross receipts for the year ending December thirty-first preceeding, shall have acquired who acquires, by purchase or otherwise, during such preceeding year the business or any part thereof of another corporation also liable to for such a franchise or license tax for such preceeding year but not liable for the year which would not be otherwise subject to the tax following such sale or disposition and such acquiring corporation continues the operation of such business so acquired; the gross receipts to be reported by the acquiring corporation shall, for the purpose of determining the amount of its franchise or license tax for the year following the year in which such business was so acquired shall, include; in addition to the as a part of its gross receipts of the acquiring corporation during the year ending December thirty-first preceeding; for the taxable years, the gross receipts of the business or part thereof so acquired for such that portion of such preceeding the taxable year as such business was not operated by the acquiring corporation; provided, however, that the foregoing.

B. The provisions of this section subsection A shall not apply to any corporation whose franchise or license tax for the year involved is measured by an estimate of gross receipts for such year; subject to adjustment after the close of the year as prescribed in § 58.1-2629.

Source: § 58-506

Comment: No substantive change.

§ 58.1-2631 58-507. Gross receipts in cases of consolidation or merger.—Whenever there is a consolidation or merger of public service corporations taxable under §§ 58.1-2621, 58.1-2622, 58.1-2623, 58.1-2624, 58.1-2625, 58.1-2626 or 58.1-2627.1, liability to for the franchise or license tax imposed by this chapter shall attach to the corporation thus formed and the gross receipts which shall be used for measuring the franchise or license tax of the corporation thus formed shall include the gross receipts of the corporations which were consolidated or merged.

Source: § 58-507

Comment: No substantive changes.

§ 58-508. Meaning of "gross receipts" in §§ 58-504 to 58-507. The term "gross receipts," as used in §§ 58-504 to 58-507, means gross receipts as defined in this chapter for inclusion in the base for measuring the franchise or license tax of corporations of the same class, in each case.

as those to which such sections apply.

Comment: See § 58.1-2600.

§ 58.1-2632 ~~58-509~~ . Applicability of other provisions to corporations commencing business, acquiring other business, or consolidated or merged.—All provisions of this chapter article applicable to the ~~franchise or license tax of any corporation included in §§ 58-504 to 58-508~~ subject to §§ 58.1-2629, 58.1-2630 or 58.1-2631 , including such provisions relating to the assessment, payment and collection of such ~~franchise or license~~ the tax and the method and time of reporting, except as ~~therein may be~~ otherwise provided, shall be applicable to the ~~franchise or license tax of such corporation for the year or years covered by such sections.~~

Source: § 58-509

Comment: No substantive change.

§ 58.1-2633 ~~58-610~~ . Assessment by Commission.—The Commission shall assess the value of the property subject to local taxation of each ~~such corporation company or person taxable under §§ 58.1-2621, 58.1-2622, 58.1-2623, 58.1-2624, 58.1-2625, 58.1-2626 or 58.1-2627.1~~ , and shall assess the ~~franchise license tax herein provided for levied hereon~~ .

Should any such ~~corporation taxpayer~~ fail to make the reports required by this article on or before the ~~fifteenth day of April 15~~ of each year, the Commission shall assess the value of the property of such ~~corporation taxpayer~~ , and its gross receipts so reported upon the best and most reliable information that can be procured and to this end may send for persons and papers obtained by the Commission .

*In making such assessment, the Commission may require such taxpayer or its officers and employees to appear with such documents and papers as the Commission deems necessary.*

Source: §§ 58-582 and 58-610

Comment: Combines two sections. Deletes requirement that Commission give 30 days' notice of failure to file prior to making an assessment.

§ 58-582: Assessment by Commission: The Commission shall, after thirty days' notice previously given by it to the ~~president or other proper officer of each of such companies incorporated under the laws of this or any other state, assess the value of the property of each such company, other than intangible personal property and money; and assess upon such property the State taxes imposed by law and shall assess the State license tax imposed by law upon every such company. Should any such incorporated company fail to make such report at the time herein prescribed, the Commission shall, at such time as it may elect, upon the best and most reliable information that can be procured, assess the value of the property of the company, other than intangible personal property and money, and assess upon such property the taxes imposed by law, and shall also assess the license tax imposed by law upon every such company. In the execution of such duty the Commission may send for persons and papers:~~

Comment: See § 58.1-2632

§ 58.1-2634 ~~58-583~~ . Copies of assessment to Comptroller and company 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.*

Source: §§ 58-583, 58-584, 58-611 and 58-612

Comment: Combines several sections relating to the same subject.

§ 58-584: Copies of assessment for localities: The Commission shall furnish to the council of every city and town and to the board of supervisors or other governing body of every county; and to every city and county commissioner of the revenue of each city and county, wherein any property belonging to any such company is situated, a certified copy of the assessment made by the Commission of such company's property. The assessment shall definitely show the character of the property, its value and the location for the purposes of taxation in each city, town, county and magisterial district, so that city, town, county and magisterial district taxes may be imposed upon the same.

Comment: See § 58.1-2633.

~~§ 58-611. Copies of assessment to Comptroller and company. A certified copy of the assessment 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 such corporation.~~

Comment: See § 58.1-2633.

~~§ 58-612. Copies of assessment to localities. The clerk of the Commission shall furnish to the council of every city and town and to the board of supervisors or other governing body of every county wherein any property belonging to such corporation is situated a certified copy of the assessment made by the Commission of such company's property. The assessment shall definitely show the character of the property and its value and location for the purpose of taxation; in each city, town or county and the magisterial district therein, so that city, town, county and district levies may be imposed upon the same.~~

Comment: See § 58.1-2633.

~~§ 58-617.1. Reserved.~~

~~§ 58.1-2635 58-586 . Date of payment of taxes.— Any company Every taxpayer assessed a tax under any of the provisions of this article shall pay such tax into the State state treasury by the first day of June following the taxes assessed against it 1 of each year .~~

Source: §§ 58-586 and 58-613

Comment: Two identical sections are combined.

~~§ 58-613. Payment of tax. Every such corporation shall pay into the State treasury by the first day of June following the taxes assessed against it.~~

Comment: See § 58.1-2633.

~~§ 58-614.2. Meaning of "taxable year" and "tax year". (a) The term "taxable year," as used in this chapter in reference to taxes measured by gross receipts, means the calendar year upon the basis of which the gross receipts are computed under this chapter. The term includes, in the case of gross receipts for a fractional part of a calendar year, the period in which such gross receipts are received.~~

~~(b) The term "tax year," as used in this chapter in reference to taxes measured by gross receipts, means the calendar year next succeeding the taxable year, the same being the tax assessment year and the year in which annual reports of gross receipts are required to be filed under this chapter and the annual tax paid with respect thereto, less credit for estimated tax paid for the taxable year as hereinafter provided.~~

Comment: See § 58.1-2600.

*Article 3: Reserved.*

*Article 4.*

*Estimated Tax.*

~~§ 58.1-2640 58-514.4 . Declarations of estimated tax required; contents, etc.— (a) Requirement of declaration— A. Every public service corporation which is subject to a State franchise tax, a State license tax ; or other State tax on, or measured by, or in respect to gross receipts as provided in this chapter 12 (§ 58-503 et seq.) of Title 58 of the Code of Virginia, as amended imposed by §§ 58.1-2621, 58.1-2622, 58.1-2623, 58.1-2624, 58.1-2625, 58.1-2626 or 58.1-2627.1 , shall make a declaration of estimated tax for the taxable year if the tax imposed by this chapter, for the tax year, on or measured by, or in respect to gross receipts, can reasonably be expected to exceed five hundred dollars \$500 .~~

~~(b) Estimated tax. - For purposes of this article, the term "estimated tax" means the amount which the public service corporation estimates as the amount of the tax imposed by this chapter for the tax year, on, or measured by, or in respect to, gross receipts received in the taxable year.~~

~~(c) Contents of declaration.~~ - ~~The Such declaration shall contain such pertinent information as the Commission may by forms or regulations prescribe.~~

~~(d) Amendment of declaration.~~ - ~~A public service corporation may make amendments of a declaration filed during the taxable year under regulations prescribed by the Commission, not exceeding the number specified in § 58-514.5 (b).~~

~~(e) Short taxable year.~~ - ~~B. A public service corporation with a taxable year of less than twelve months shall make a declaration in accordance with regulations prescribed by the Commission.~~

Source: § 58-514.4

Comment: Definition of "estimated tax" is located in § 58.1-2600. The provision relative to the amendment of a declaration is set forth in § 58.1-2636.

§ 58-514.5 58.1-2641 . Time for filing declarations of estimated tax. ~~(a) General rule.~~ - ~~A. The declaration of estimated tax required of public service corporations by § 58-514.4 shall be filed as follows:~~

If the requirements of § 58-514.4 subsection A of § 58.1-2640 are first met - :

1. Before the 1st day of the 4th month April 1 of the taxable year , the declaration shall be filed on or before April 15 of the taxable year.

2. After the last day of the 3rd month March 31 and before the 1st day of the 6th month June 1 of the taxable year , the declaration shall be filed on or before June 15 of the taxable year.

3. After the last day of the 5th month May 31 and before the 1st day of the 9th month September 1 of the taxable year , the declaration shall be filed on or before September 15 of the taxable year.

4. After the last day of the 8th month August 31 and before the 1st day of the 12th month December 1 of the taxable year , the declaration shall be filed on or before December 15 of the taxable year.

The declaration shall be filed on or before  
the 15th day of the 4th month of the  
taxable year  
the 15th day of the 6th month of the  
taxable year  
the 15th day of the 9th month of the  
taxable year  
the 15th day of the 12th month of the  
taxable year

~~(b) Amendment.~~ - ~~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) Short 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.~~

Source: § 58-514.5

Comment: Previous chart is placed in paragraph format for ease of reading. Previous section relative to amendment of declaration is moved to § 58.1-2642.

§ 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.

Source: §§ 58-514.4 and 58-514.5

Comment: New section. Locates all pertinent provisions relating to the amendment of a declaration in one section.

§ 58-514.6: 58.1-2643 Installment Payment of estimated tax. ~~(a) Amount and time for payment of each installment.~~ - ~~A. The amount of estimated tax (as defined in § 58-514.4 (b)) with respect to which a declaration is required under § 58-514.4 58.1-2640 shall be paid in installments in~~

accordance with the following table as follows :

The following percentages of  
the estimated tax shall be  
paid on the 15th day of the

If the declaration is timely filed on or before the 15th day of the -	4th month	6th month	9th month	12th month
4th month of the taxable year .....	25	25	25	25
6th month of the taxable year (but after the 15th day of the 4th month) .....	--	33 1/3	33 1/3	33 1/3
9th month of the taxable year (but after the 15th day of the 6th month) .....	--	--	50	50
12th month of the taxable year (but after the 15th day of the 9th month) .....	--	--	--	100

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) ~~Timely filing~~ - A declaration is timely filed if it is not required by § 58-514.5 (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) ~~Late filing~~ - If the declaration is filed after the time prescribed in § 58-514.5 (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 the time prescribed in § 58-514.5 (a); 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) ~~Amendment of declaration~~ - B. If any amendment of to a declaration is filed, the amount of ~~each any remaining installment (if any) 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.

(e) ~~Application to short taxable year~~ - The application of this section to taxable years of less than twelve months shall be in accordance with regulations prescribed by the Commission.

(f) ~~Installments paid in advance~~ - At the election of the public service corporation, any installment of the estimated tax may be paid before the date prescribed for its payment

Source: § 58-514.6

Comment: Former chart is placed in paragraph format. Portions of section are set forth as separate sections (as follows) and subsections b & c are deleted.

(g) § 58.1-2644. Payments are on account of tax for tax year.—Payment of the estimated tax on, or measured by, or in respect to gross receipts, or any installment thereof ; shall be

considered payment on account of the ~~franchise or~~ license tax imposed by this chapter for the tax year.

Source: § 58-514.6 (g)

Comment: New section. No substantive change.

*§ 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.*

Source: § 58-514.6 (c)

Comment: No substantive change.

~~(h) § 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 pursuant to this article, on condition that the taxpayer shall pay interest on the amount involved at the rate of one half 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, shall fail fails to make payment of estimated tax { or any installment } , or file any declaration as required by this article , it shall pay interest on the amount involved at the rate of three quarters of one percent per month or fraction thereof prescribed in § 58.1-15 from the time payment was due until the time of payment.~~

Source: § 58-514.6 (h)

Comment: New section. Interest provisions are increased.

~~§ 58-514.7 58.1-2647 . Where declarations filed and how payments made; refunding overpayments. (a) A. Every public service corporation required by this article to file a declaration of and make payment of the estimated tax shall file and pay the same with the Commission ; and all payments shall be made into the State treasury . All such payments shall be deposited by the Commission into the state treasury.~~

~~(b) B. If any public service corporation 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 paragraph within two years from the thirty-first day of December 31 of the year in which such overpayment was made.~~

Source: § 58-514.7

Comment: No substantive change.

~~§ 58-514.8 58.1-2648 . Failure to pay estimated tax. (a) Addition to the tax. - A. In case of any underpayment of estimated tax by a public service corporation, except as provided in subsection (d), there shall be added to the tax for the tax year an amount determined at the rate of six percent per annum provided in § 58.1-15 upon the amount of the underpayment (determined under subsection (b)) for the period of the underpayment (determined under subsection (c)).~~

~~(b) Amount of underpayment. - B. For purposes of subsection (a) A , the amount of the underpayment shall be the excess of - :~~

~~(1) 1. The amount of the installment which would be required to be paid if the estimated tax were equal to eighty ninety percent of the tax ascertained for the tax year, over~~

~~(2) 2. The amount, if any, of the installment paid on or before the last date prescribed for payment.~~

~~(c) Period of underpayment. - 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) 1. The first day of the sixth month June 1 following the close of the taxable year.~~

~~(2) 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 subsection ~~(b)~~ ~~(1)~~ B.1 for such installment date.

Source: § 58-514.8

Comment: Penalty (interest) for underpayment is increased and percentage of estimated tax installment is increased from 80% to 90% of tax ascertained for tax year.

~~(d)~~ § 58.1-2649. Exception to § 58.1-2648 - A. - Notwithstanding the provisions of the preceding subsections § 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)~~ 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)~~ 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)~~ ~~(A)~~ 3. An amount equal to ~~eighty~~ ninety percent of the license tax ~~on, or measured by,~~ or in respect to gross receipts received in the taxable year computed by placing on an annualized basis the taxable gross receipts:

~~(i)~~ a. For the first three months of the taxable year, in the case of the installment required to be paid in the fourth month,

~~(ii)~~ 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,

~~(iii)~~ 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

~~(iv)~~ 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)~~ B. For purposes of this paragraph 3 of subsection A, the taxable gross receipts shall be placed on an annualized basis by ~~(i)~~ multiplying by twelve the taxable gross receipts referred to in subparagraph ~~(A)~~ paragraph 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 subparagraph ~~(A)~~ paragraph 3.

~~(e)~~ ~~Short taxable year.~~ - C. The application of this section to taxable years of less than twelve months shall be in accordance with regulations prescribed by the Commission.

Source: § 58-514.8 (d)

Comment: In an effort to break up a lengthy section the provisions providing an exception to the general rule were moved to a new section.

§ 58-514.9 58.1-2650 . Other provisions of this chapter not affected by this article; ~~exception;~~ public service corporations beginning or going out of business.- Nothing in this article contained 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 give this article full effect ensure the collection of estimated taxes ; and except that . To the extent there is inconsistency between this article a section relating to the payment of estimated taxes and § § 58-504 58.1-2629 and 58-505 , relating to public service corporations beginning business, this article those sections relating to the payment of estimated taxes shall control. Moreover, if a public service corporation goes out of business or ceases to be a public service corporation in any taxable or tax year, such an event shall not defeat the payment of the license tax ~~on,~~ measured by, or in respect to gross receipts for the period in which the corporation operated as a public service corporation and received gross receipts.

Source: § 58-514.9

Comment: No substantive change.

§ 58-514.10. Taxable and tax years to which §§ 58-514.3 through 58-514.9 applicable. The foregoing sections of this article shall apply with respect to taxable years beginning after

December thirty-one, nineteen hundred and sixty-eight, and to tax years beginning after December thirty-one, nineteen hundred and sixty-nine.

Comment: This transitional section is no longer needed.

~~§ 58-514.11: Article does not affect liability for tax respecting gross receipts received in 1968. This article shall not be construed as applying to or affecting in any way the tax imposed by this chapter on, or measured by, or in respect to gross receipts received in the calendar year nineteen hundred and sixty-eight by any public service corporation to which this article applies; and such gross receipts shall be reported to the Commission and taxed, and the tax shall be paid as prescribed by law by June one, nineteen hundred and sixty-nine, the same as if this article had not been enacted.~~

Comment: This transitional provision is no longer needed.

~~§ 58-514.12 58.1-2651 . Article Certain sections not applicable to road tax on motor vehicle carriers of passengers nor to special revenue taxes imposed by Article 6 156 . This article The provisions of §§ 58.1-2640 through 58.1-2650 shall not apply to the road tax on motor vehicle carriers of passengers based on gross receipts imposed by article 13 (§ 58-638 et seq.) Article 5 of this chapter, nor to the special revenue taxes imposed by article 15 (§ 58-660 et seq.) Article 6 of this chapter.~~

Source: § 58-514.12

Comment: No substantive change.

~~§ 58-587.1. Local tax on consumers. Any city or town or county may impose a tax on the consumers of the utility service or services provided by any corporation coming within the provisions of this article, which tax shall not be imposed at a rate in excess of twenty percent of revenue and shall not be applicable to any revenue in excess of fifteen dollars 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.~~

~~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 sixty days subsequent to written notice by certified mail from the county, city or town of such tax or change thereto, to the registered agent of the utility corporation that is required to collect the tax.~~

~~Any county tax imposed hereunder shall not apply within the limits of any incorporated town located within such county which town now or hereafter imposes a town tax on consumers of utility service or services provided by any corporation coming within the provisions of this article, provided that such town (1) provides police or fire protection, and water or sewer services provided that any such town served by a sanitary district providing water or sewer services shall be deemed to be providing such water or sewer services itself, or (2) 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.~~

~~As used in this section, the term "utility service or services" shall mean any service taxable as local telephone service under the provisions of the Internal Revenue Code of 1954, as amended, relating to federal communications taxes, as such provisions are in force and effect on December 31, 1971.~~

Comment: Relocated to Subtitle III

~~§ 58-587.2. Local tax for enhanced emergency telephone service.—A. Notwithstanding the rate limitations imposed under § 58-587.1, any city, town or county which has, singly or by joint agreement, established or will establish an enhanced 911 emergency telephone system; hereinafter referred to as E-911, as defined in paragraph 1 of subsection B of this section may impose a special tax on the consumers of the telephone service or services provided by any corporation coming within the provisions of this article, except that no such taxes shall be imposed on federal, state and local government agencies. Such tax shall be subject to the notification and jurisdictional provisions of § 58-587.1.~~

~~B. The following phrases shall have the following meanings:~~

~~1. An "E-911 system" means a telephone service which utilizes a computerized system to automatically route emergency telephone calls placed by dialing the digits "911" to the proper public safety answering point serving the jurisdiction from which the emergency telephone call~~

was placed. An E-911 system includes selective routing of telephone calls, automatic telephone number identification, and automatic location identification.

2. "Public safety answering point" means a communications facility operated on a twenty four hour basis which first receives E-911 calls from persons in an E-911 service area and which may, as appropriate, directly dispatch public safety services or extend, transfer, or relay E-911 calls to appropriate public safety agencies.

3. "Public safety agency" means a functional division of a public agency which provides fire fighting, police, medical, or other emergency services or a private entity which provides such services on a voluntary basis.

C. Prior to imposing such tax, the governing body of any city, town or county must find that an E-911 emergency telephone system as defined in subsection B of this section has been or will be installed in its respective locality and that the telephone company has central office equipment which will permit such system to be established.

D. Any such taxes imposed by this section shall be utilized solely for the initial capital and installation costs of the E-911 emergency telephone system. The jurisdiction shall repeal such tax when capital and installation costs have been fully recovered.

Comment: Relocated to Subtitle III.

§ 58-617.2: Local tax on consumers.—Any city or town or county may impose a tax on the consumers of the utility service or services provided by any corporation coming within the provisions of this article, which tax shall not be imposed at a rate in excess of twenty percent of revenue and shall not be applicable to any revenue in excess of fifteen dollars per month for residential customers, provided that 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.

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 sixty days subsequent to written notice by certified mail from the county, city or town of such tax or change thereto, to the registered agent of the utility corporation that is required to collect the tax.

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 now or hereafter imposes a town tax on consumers of utility service or services provided by any corporation coming within the provisions of this article, provided that such town (1) provides police or fire protection, and water or sewer services provided that any such town served by a sanitary district providing water or sewer services shall be deemed to be providing such water and sewer services itself, or (2) 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 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.

Comment: Relocated to Subtitle III.

## Article 5.

### *Rolling Stock Tax on Railroads, Freight Car Companies and Motor Vehicle Carriers.*

§ 58-515 58.1-2652 . State tax on rolling stock ; date of payment . A. The State state tax on the rolling stock of a railway railroad, a freight car companies company and a certificated motor vehicle carrier. doing business in this State Commonwealth shall be at the rate of one dollar on each one hundred dollars \$100 of the assessed full value thereof and there shall be no local taxes on such rolling stock thereof .

*Rolling stock 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 or carrier into the state treasury on or before June 1 of each year.*

Source: §§ 58-515, 58-560 and 58-622

Comment: The rolling stock tax, which was previously located in three different articles, is consolidated in this article.

~~§ 58-560. Rate and payment of tax. Every such company or individual shall pay into the State treasury on or before the first day of June after receiving such certified copy of the assessment, the taxes hereby levied upon its property at the rate of one dollar on each one hundred dollars of the assessed full value thereof.~~

Comment: See § 58.1-2652

~~§ 58-622. Levy and payment of tax. Such carrier shall pay into the State treasury on or before the first day of June, after receiving such certified copy of the assessment, the State taxes hereby levied upon its rolling stock at the rate of one dollar on each hundred dollars of the assessed full value thereof annually.~~

Comment: See § 58.1-2652

~~§ 58-524 58.1-2653 . Annual property report of railroads and freight car companies required .  
A. Every railway company doing business in this Commonwealth railroad and freight car company subject to the provisions of § 58.1-2652 shall report on or before April 15, to the Department, its real and tangible personal property of every description as of December 31 preceding ; the fair cash value thereof; 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 report of each freight car company not domiciled in the Commonwealth shall show, instead, 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. The lien of the Commonwealth or subdivision thereof for taxes levied on such property for all purposes shall attach to such property on December 31 next preceding.~~

~~The report shall classify such property under the following heads:~~

~~(1) Right of way, terminal and yard lands, and roadbed and trackage or canal bed, bridges, trestles and tunnels and all signals (track and crossing), and interlockers, buildings, structures and other improvements thereon, except only such improvements as are provided for in classes below mentioned;~~

~~(2) Depot and shop grounds and lots and all other lands used for common carrier purposes, except those included in class (1) above, and all buildings, structures and other improvements thereon, except only such improvements as are provided for in classes below mentioned;~~

~~(3) Real estate not included in other classes and all buildings, structures and other improvements thereon, except only such improvements as are provided for in classes below mentioned;~~

~~(4) Telephone and telegraph lines, together with telephone apparatus and equipment, power transmission and power distribution lines, with apparatus and equipment for use in connection therewith, and water pipelines, as a part of all which shall be included poles, wire, cable, underground conduits and all other integral parts thereof and rights of way, wherever the rights of way are not reported under above classifications of real estate;~~

~~(5) Rolling stock, which shall include all locomotives, of whatever motive power, autocars, cars of every kind and description, and all other equipment which it is reasonably proper to class as rolling stock; provided, that they shall report and be assessed on the average amount of rolling stock habitually used by them in this Commonwealth;~~

~~(6) Boats, and all other floating property and equipment, machinery in shops, engine houses, power plants, substations, pump houses and all other machinery of every class and description and all furniture and office equipment of every kind and description;~~

(7) Stores, fuel, materials and supplies of every class and description;

(8) All other real and tangible personal property of such company not enumerated in either of the foregoing heads.

§ 58-525. ~~Form of report; other information.~~ B. The report above required shall be made on forms prescribed and furnished and in the manner prescribed by the Tax Commissioner which may, in such forms or otherwise, require such railway company to furnish it such information with reference to the value and condition of the several items and component parts of such property and. Such forms may require any other information as is necessary and proper to enable it the Department to properly to ascertain the value of and assess such property.

C. The report herein required shall be verified by the oath of the president or other proper officer of such company .

Source: §§ 58-524, 58-525, 58-528, 58-556 and 58-557

Comment: All provisions relative to the contents of the annual report of railroads and freight car companies are combined in one section. The Department of Taxation is granted the general authority to prescribe such reporting requirements and devise the format of such forms as are necessary to ensure the proper collections of the tax so levied.

§ 58-528. ~~Commissioner to furnish forms for reports.~~ The Commissioner shall prepare and furnish to the several corporations required to make reports under this article forms for such reports; which the corporations shall use in making the reports required of them.

Comment: See § 58.1-2653 B.

§ 58-556. ~~Annual report.~~ The president or other chief officer of every car company, car trust, mercantile company or corporation or individual not domiciled within this Commonwealth owning any stock cars, furniture cars, fruit cars, refrigerator cars, meat cars, oil cars, tank cars or other similar cars, other than a railroad operating a line of railroad, shall annually, on or before April 15 in each year, report to the Department a true, full and accurate statement, verified by the affidavit of the officer or person making the same, showing the aggregate number of miles made by their several cars over the several lines of railroad in this Commonwealth during the year ending December 31 next preceding and a further statement showing the average number of miles traveled per day by the cars of the particular class or classes covered by the statement, in the ordinary course of business during the year.

Comment: See § 58.1-2653 A and C.

§ 58-557. ~~Report by railroad over which cars run.~~ The president or other chief officer of every railroad company whose lines run through or into the Commonwealth shall also annually, on or before April 15 in each year, furnish to the Department a statement, verified by the affidavit of the officer or person making the same, showing the total number of miles made by the cars of every such car company, car trust, mercantile company or individual over their lines in the Commonwealth during the year ending December 31 next preceding. Such statement shall also show separately the names and aggregate number of miles traveled over their lines in the Commonwealth by the cars of each such car company, car trust, mercantile company or individual and the average number of miles traveled per day by each particular class of cars covered by the statement in the ordinary course of business during the year.

Comment: See § 58.1-2653 A.

§ 58-618 58.1-2654 . ~~Reports~~ Annual report of motor vehicle carriers. A. Every certificated motor vehicle carrier operating in this State the Commonwealth shall report annually on or before the first day of March 1 to the Commission :

(1) all of its rolling stock, owned or operated as of the beginning of the first day of January 1 next preceding, which shall include all busses, trucks, tractor trucks, trailers and semitrailers and all other equipment which it is reasonably proper to class as rolling stock and which has been, is now or shall be used in the transportation of persons or property on the public highways of the State.

(2) the total vehicle miles traveled by the rolling stock of such carriers in this State the Commonwealth during the twelve months ending December thirty-first 31 next preceding : , and the

(3) The total vehicle miles traveled by the rolling stock of such carriers both within and

without this State *the Commonwealth* on such operations as are related to this State, whether the same be in the course of business conducted wholly intrastate or whether in the course of business conducted partly within and partly outside this State, during the twelve months ending December ~~thirty-first~~ 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 an assess such property.

C. The report shall be verified by the oath of the president or other proper officer of such company.

Source: §§ 58-618 and 58-619

Comment: Grants authority to SCC to obtain such information as it deems necessary through the annual reports to ensure the proper collection of the rolling stock tax. This section also combines two previous sections.

§ 58-619. Forms of reports to be furnished: The Commission shall prepare and furnish to the several motor vehicle carriers required to make reports under this article forms for such reports, which the carriers shall use in making the reports required of them.

Comment: See § 58.1-2652

§ 58-520 58.1-2655 . Ascertainment of value of property and receipts Assessment by Department and Commission . A. The Tax Commissioner shall annually assess for taxation the value for taxation of the real and tangible personal property of each railroad and, in accordance with subsection C, of each freight car company described in § 58-524 , 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 companies the taxes imposed by § 58.1-2652.

§ 58-620. Assessment of rolling stock by Commission. B. The Commission shall ; after thirty days' notice, previously given by it to the president or other proper officer of each motor vehicle carrier, assess the average value of the rolling stock of each such motor vehicle carrier habitually used in this State *the Commonwealth* .

Unless otherwise clearly shown; In the case of an interstate carrier , the rolling stock habitually used in this State *the Commonwealth* shall be deemed to be that portion of the total rolling stock, owned or operated on the public highways of this State *the Commonwealth* , multiplied by a fraction wherein the numerator is which the total vehicle miles traveled by such rolling stock in this State *the Commonwealth* bears to and the denominator is the total vehicle miles traveled both within and without this State *the Commonwealth* on such operations as are related to this State *the Commonwealth* .

§ 58-558. Assessment by Department. The Department, annually, after thirty days' notice previously given by it to the president or other proper officer of the company owning such property or to the individual owning it C. The Tax Commissioner shall ascertain from the best and most reliable information that can be obtained and from the statements reports required by the preceding sections § 58.1-2653 the number of cars required to make the total mileage of the cars of each such car company, car trust, mercantile company or individual within the period aforesaid freight car company . The Department shall ascertain and fix the valuation upon each particular class of such cars and the number so ascertained to be required to make the total mileage of the cars of each such car company, car trust, mercantile company or individual freight car company within such the taxable period which shall be assessed to the respective freight car companies, car trusts, mercantile companies and individuals company . For the purpose of making this assessment the Department Tax Commissioner is authorized to base the an assessment upon the returns of the several railroad companies in case any such car company, car trust, mercantile company or individual shall fail freight car company fails or refuse refuses to make the statement herein file the required reports and in determining the daily average travel of such cars the Tax Commissioner Department , insofar as may be practicable, shall harmonize the statements of the several railroad companies ; car companies, car trust, mercantile companies and individuals and freight car companies with respect thereto, fixing a uniform daily average travel of each particular class.

Source: §§ 58-529, 58-558 and 58-620

Comment: Combines three previous section. Eliminates thirty-day notice requirement prior to assessment for freight car companies and motor vehicle carriers.

~~§ 58-632 58.1-2656~~ . Valuation of sidetracks, double tracks, etc. In making report of and assessment of the property included in the class described in ~~paragraph (1) of § 58-524 § 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 State 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.

Source: § 58-532

Comment: No change

~~§ 58-530~~ . Assessment and Payment of taxes . The ~~Department~~ shall assess upon the rolling stock the taxes imposed thereon by law. A ~~certified copy of this assessment shall be forwarded by the Department to the Comptroller and to the president or other proper officer of each railway company so assessed; whose duty it shall be to pay into the state treasury on or before June 1 following the taxes on the rolling stock as shown by such copy of the assessment.~~

Comment: See §§ 58.1-2652 and 58.1-2657

~~§ 58-521.~~ Assessment when corporation fails to make reports. The Department shall ascertain for any railway company which has failed to make the reports herein required the value of the property of any such company, upon the best and most reliable information that can be procured and to this end may send for persons and papers; and the Department shall assess upon such rolling stock the taxes imposed thereon by law. A ~~certified copy of the assessment shall be forwarded by the Department to the Comptroller and to the president or other proper officer of such railway company so assessed; whose duty it shall be to pay into the state treasury within fifteen days after receiving the certified copy of the assessment the taxes upon its rolling stock as shown by the copy of the assessment.~~

Comment: Section not needed.

~~§ 58-538 58.1-2657~~ . Copies of assessments to be furnished to taxpayer and local officials.- The ~~Department Tax Commissioner or Commission, as the case may be,~~ shall furnish to the council of every city and town, to the board of supervisors or other governing body of every county, city or town, and to the commissioner of the revenue of every county and city; wherein any property belonging to any such company is situated ~~and to the Comptroller and president of such corporation or other such taxpayer so assessed~~ , a certified copy of the assessment made by the ~~Department~~ of such company's property, which assessment shall definitely show the character type of the property, and its value and location for purposes of taxation in each county, city, town and magisterial district, so that county, city, town and magisterial district levies may be laid upon the same .

Source: §§ 58.1-538, 58.1-559 and 58.1-681.

Comment: Combines sections directing individuals to whom assessments shall be forwarded. No substantive change.

~~§ 58-550.~~ Copies of assessment for Comptroller and corporation. A certified copy of the assessment thus made ~~shall be immediately forwarded by the Department to the Comptroller and to the president or other proper officer of such corporation so assessed; or to such individual so assessed.~~

Comment: See § 58.1-2657

~~§ 58-621.~~ Copies of assessment to company and Comptroller. A certified copy of the assessment thus made ~~shall be immediately forwarded by the clerk of the Commission to the Comptroller and to the president or other proper officer of such carrier so assessed.~~

Comment: See § 58.1-2657

~~§ 58-623 58.1-2658~~ . Distribution of taxes collected ; prohibition of certain local taxes .- The All taxes collected pursuant to this article shall be deposited in the general fund of the state treasury except those taxes assessed upon the rolling stock of motor vehicle carriers as described in the ~~preceeding sections~~ of this article provided in § 58.1-2652 which shall be

distributed to the counties, cities and incorporated towns of the *State Commonwealth* in the following manner:

The Commission shall determine the proportion of the total vehicle miles operated by each carrier in this *State 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.

~~Having ascertained the amount of the tax payable to each county, city and incorporated town, the~~ The clerk of the Commission shall certify to the Comptroller the respective sums so to be paid 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 localities *locality* the amounts respectively 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 property taxed by this article.*

Source: §§ 58-623 and 58-624

Comment: No substantive change

~~§ 58-624. Rolling stock not subject to local levies. No local property levies shall be imposed on the property taxed by this article.~~

Comment: See § 58.1-2657

~~§ 58-641.1. 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.~~

Source: § 58-541.1

Comment: No change. Should be placed, however, behind § 58.1-2650.

~~§ 58-562. Article not applicable to railroads. Nothing in this article shall be construed to apply to or impose any tax, upon any rolling stock or cars which are either owned by or leased by any railroad company operating a line or railroad in this State and otherwise assessed for taxation against such railroad company.~~

Comment: Section no longer needed since three previous articles are combined.

## *Article 6.*

### *Regulatory Revenue Taxes of Public Service Corporations.*

~~§ 58-660 58.1-2660 . Taxes additional to all others Special revenue tax; levy .— The special taxes prescribed by this article are hereby imposed and shall be levied annually upon the subjects of taxation hereinafter specified. Such taxes shall be In addition to any other taxes upon the subjects of taxation upon which these taxes are imposed which are now or may hereafter be provided for; any statutory provisions or rule of construction to the contrary notwithstanding. 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 corporation receives from business done within the Commonwealth upon:~~

1. Corporations furnishing water, heat, light or power, either by means of electricity, gas or steam;

2. Incorporated telegraph companies owning and operating a telegraph line apparatus necessary to communicate by telecommunications in the Commonwealth;

3. Incorporated telephone companies owning and operating a telephone line in the Commonwealth whose gross receipts from business done within the Commonwealth exceed \$50,000 or whose number of miles of poles exceeds 400 miles or a company, the majority of stock or other property of which is owned or controlled by another telephone company, whose gross receipts or number of pole miles exceeds the amounts set forth herein;

4. *Common carriers of property by motor vehicle;*

5. *The Virginia Pilots' Association;*

6. *Railroads, except those exempt by virtue of federal law from the payment of state taxes. subject to the provisions of § 58.1-2661; and*

7. *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 forty miles measured one way between their place of work, school or recreation and their place of abode.*

Source: §§ 58-660, 58-661, 58-662, 58-663, 58-664, 58-665, 58-666, 58-667

Comment: Combines eight sections to avoid repetitious language. No substantive change.

~~§ 58-661. Water, electric and gas companies. Corporations doing in this State the business of furnishing water, heat, light or power either by means of electricity or gas shall pay to the State an additional annual State tax equal to two tenths of one per centum of their gross receipts from business done within the State to be determined in the manner provided for by this chapter.~~

Comment: See § 58.1-2660

~~§ 58-662. Telegraph companies.—Each incorporated telegraph company doing business in this State and owning and operating a telegraph line in this State shall pay to the State an additional annual State tax equal to two tenths of one per centum of the gross receipts of such companies from business done within this State during the year ending the thirty-first day of December to be determined as provided in this chapter.~~

Comment: See § 58.1-2660

~~§ 58-662. Telephone companies.—Each incorporated telephone company doing business in this State and owning and operating a telephone line in this State whose annual gross receipts from business done within this State is in excess of fifty thousand dollars or the number of miles of whose poles exceeds four hundred or a majority of the stock or other property of which is owned or controlled by any other telephone company whose annual receipts exceed fifty thousand dollars shall pay to the State an annual State tax equal to two tenths of one per centum of the gross receipts of such company from business done within the State during the year ending the thirty-first day of December, to be determined as provided for by this chapter.~~

Comment: See § 58.1-2660

~~§ 58.1-2661 58-664 . Railways Exceptions .— Each railway corporation doing business in this Commonwealth, except those exempt by virtue of federal law from the payment of state and local taxes, shall pay to the Commonwealth an additional annual maximum state tax to be fixed by the State Corporation Commission equal to two tenths of one percent of its gross receipts from business done within the Commonwealth to be determined in the manner provided for by § 58-520 as in force on December 31, 1977.~~

However, The amount of ~~this the regulatory revenue tax levied pursuant to § 58.1-2660 on railway corporations~~ *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 ~~railway companies~~ *railroads* , including a reasonable margin in the nature of a reserve fund.

Source: § 58-664

Comment: No substantive change.

~~§ 58-665. Motor vehicle carriers of property.—Each common carrier of property by motor vehicle doing business in this State shall pay to the State an additional annual State tax equal to two tenths of one per centum of its gross receipts from business done within the State.~~

Comment: See § 58.1-2660

~~§ 58-666. Motor vehicle carriers of passengers.—Each common carrier of passengers by motor vehicle doing business in this State shall pay to the State an additional annual State tax equal to two tenths of one per centum of its gross receipts from business done within the State. This~~

section shall not apply to urban and suburban bus lines which are hereby defined as bus lines the majority of whose passengers use the buses for travelling a distance of not exceeding forty miles measured one way, on the same day between their places of abode and their places of work, shopping areas, or schools.

Comment: See § 58.1-2660

~~§ 58-667. Virginia Pilots' Association.—The Virginia Pilots' Association shall pay to the State an annual State tax equal to two tenths of one per centum of the gross receipts of such association from the business in which such association is engaged; such tax to be assessed and determined by the Commission and collected as State taxes on public utility companies are collected and paid into the State treasury as are other taxes provided for by this article.~~

Comment: See § 58.1-2660

*§ 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.*

Source: § 58-664

Comment: Previous § 58-664 referenced a repealed section of the Code. Pertinent provisions of that repealed section are recaptured in this section.

~~§ 58.1-2663 58-668 . 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 any other state taxes on the same subjects of taxation are assessed, determined and collected and under this chapter. Such taxes shall be paid into the state treasury as are other taxes of the same kinds 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 are assessed and collected on certain public utility companies.*

Source: §§ 58-668 and 58-667

Comment: No substantive change. Method of determination of VPA's tax is relocated to this section.

~~§ 58.1-2664 58-669. 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 such special taxes or assess and levy any portion of such special taxes or assess and levy all of such special taxes, not exceeding in any case the amount of two-tenths of one percent as prescribed by this article; as shall appear to be, in the discretion of the Commission; needed are unnecessary within the Commission's sole discretion for the accomplishment of the objects for which the special regulatory revenue taxes are imposed and the special fund provided for, including a reasonable margin in the nature of a reserve fund ; and further including a sum of money to be assessed as provided by § 58-664, to be certified each year to the Commission by the Department of Taxation, which is sufficient in amount . 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 and which such special taxes are imposed by this article are relieved from liability for the payment of such special regulatory revenue taxes, except when, and to the extent that, the same have been assessed and levied by the Commission, in pursuance of accordance with the provisions of this section article .~~

Source: § 58-669

Comment: No substantive change.

§ ~~58.1-2665~~ ~~58-670~~ . Use of taxes collected under this article.—The taxes paid into the state treasury under this article shall be set aside as *deposited in* a special fund to be used only by the Commission and by the Department of Taxation as provided in § ~~58-669~~ *58.1-2664* , for the purpose of making appraisals, assessments and collections against public service companies by the Commission and by the Department of Taxation , and for the further purposes of the Commission in investigating and inspecting the properties or the service or services of such public service companies ; ~~or any of them~~ , and for the supervision and administration of all laws relative to such public service companies ; ~~or any of them~~ , whenever the same shall be deemed necessary by the Commission.

Source: § 58-670

Comment: No substantive change.

## Article 7.

### *Administrative and Judicial Review of Assessment and Tax.*

§ ~~58-672~~ *58.1-2670* . Application to Commission or Department for review.—Any ~~company or corporation~~ , *taxpayer and* , 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 public service corporation 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. Such application shall set forth with reasonable certainty the item or items, of which a review and correction is sought, and the grounds of the complaint. ~~If filed by any such company or corporation it~~ *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 22 (~~§ 58-1117-20 et seq.~~) *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.

Source: § 58-672

Comment: No substantive change.

§ ~~58-673~~ *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 *State 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.

Source: § 58-673

Comment: No substantive change.

§ ~~58-674~~ *58.1-2672* . Review on motion of Commission.—At any time within three months after the ~~company or corporation~~ *taxpayer receives the* a 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 ~~company or corporation~~ *taxpayer* and to the *State 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.

Source: § 58-674

Comment: No substantive change.

§ ~~58-675~~ *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 ~~shall~~ be

is of opinion that the assessment or tax is excessive, it shall reduce the same ; ~~but or if of opinion that it is insufficient~~ , it shall increase the same. If the decision of the Commission is in favor of ~~such company or corporation~~ *the taxpayer* , in whole or in part, appropriate relief shall be granted, including the right to recover from the *State 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.

Source: § 58-675

Comment: No substantive change.

§ ~~58-678~~ *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 ; ~~but it~~ . *It shall not , however, only* be necessary to serve notice upon the Commonwealth if the state revenue is ~~not~~ affected by the assessment of which a correction is sought.

Source: § 58-678

Comment: Double negative is eliminated. No substantive change.

§ ~~58-679~~ *58.1-2675* . Appeals to Supreme Court.—Any ~~person, firm, association, company or corporation, or taxpayer~~, the Commonwealth or any county ~~or~~ , city, or town aggrieved by any ~~such 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.

Source: § 58-679

Comment: No substantive change.

§ ~~58-680~~ *58.1-2676* . Action of Court thereon.—If the Supreme Court of ~~Appeals~~ *be of opinion, upon the record, determines* that the assessment or tax is excessive, it shall reduce the same ; ~~but or if of opinion that 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 ~~per centum~~ *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 *State 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 *State Commonwealth* or of any county ~~or~~ , 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.

Source: § 58-680

Comment: No substantive change.

## *Article 8.*

### *Special Provisions for Assessments*

#### *in Counties having County*

#### *Executive or County Manager Governments.*

~~§ 58-681~~ 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 under the provisions of this chapter of real and or personal property ; or either, 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 §§ 15.1-582 to 15.1-668 ; both inclusive , or in *Prince William*, any county adjoining three or more cities one of which has a population of 225,000 or more inhabitants, or in any county having a population in excess of 44,000 but not in excess of 45,000 *Augusta* , or in 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.*

Source: §§ 58-681 and 58-684

Comment: Two related sections are combined. Actual county names are substituted for population brackets. No substantive change.

~~§ 58-682~~ 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 chapter 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.

Source: § 58-682

Comment: No change.

~~§ 58-683~~ 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 each such any county set forth in § 58.1-2680 in which a public service corporation owns property, shall furnish, in like manner as is provided in § 58-510 this chapter to the Commission, the Department and to each public service corporation 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.

Source: § 58-683

Comment: No substantive change.

~~§ 58-684. Definitions. The term "district" as used in this article means and includes sanitary district, fire district and fire zone.~~

The term "public service corporation" as used in this article has the same meaning as set forth for such term in § 56-1.

~~§ 58-685~~ 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, State Corporation Commission, the clerk of the Commission , the Department, or any commissioner of the revenue, by any other provision of law this chapter .

Source: § 58-685

Comment: No substantive change.

## *Article 9.*

### *Miscellaneous Provisions Relative*

#### *to Other Forms of Taxation*

Corporations .

§ 58-578 58.1-2690 . No State ~~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 ~~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 this State 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 § 58-514.2 58.1-2606 .

C. *Notwithstanding the provisions of subsection A*, any city, town or county may impose a license tax under § ~~58-266.1~~ 58.1-3703 upon ~~such 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 ~~per centum~~ percent of the gross receipts of such business accruing to such corporation from such business in such city, town or county; ~~provided, however, that~~ charges for long distance telephone calls shall not be considered receipts of business in such city, town or county.

Source: §§ 58-578, 58-518, 58-523, 58-593, 58-596, 58-602 and 58-606.

Comment: Seven previous sections are combined without substantive change.

§ 58-518. ~~Local taxes. On the real estate and tangible personal property of every railway company there shall be local levies at the rates prescribed by § 58-514.2.2.~~

Comment: See § 58.1-2690.

§ 58-523. ~~Railway companies not subject to certain levies. No local tax shall be laid on the net income of any railway company nor shall any local tax be imposed on the gross transportation receipts of any such company.~~

Comment: See § 58.1-2690.

§ 58-592. ~~No State or local tax on intangible personal property and money. There shall be no State or local tax on the corporation's intangible personal property and money.~~

Comment: See § 58.1-2690.

§ 58-596. ~~Local taxes on real estate and tangible personal property. On the real estate and tangible personal property of every corporation coming under the provisions of this article there shall be local levies at the rates prescribed by § 58-514.2.~~

Comment: See § 58.1-2690.

§ 58-602. ~~Local levies on real estate and tangible personal property; no State or local taxes on intangible personal property or money. On the real estate and tangible personal property of every corporation doing in this State the business of furnishing water or heat, light and power; whether by means of electricity or gas, there shall be local levies at the rates prescribed by § 58-514.2.~~

~~There shall be no State or local taxes on the corporation's intangible personal property or money except the franchise tax imposed by § 58-603.~~

Comment: See § 58.1-2690.

§ 58-606. ~~No tax on income or local tax on gross receipts. Except as provided in § 58-603, no State tax or county, city, town, district or road levy shall be laid on the net income of any such corporation, nor shall any county, city, town, district or road levy be laid on the gross receipts of any such company.~~

Comment: See § 58.1-2690.

~~§ 58-605. Assessment of real estate and tangible personal property.—The real estate and tangible personal property of every corporation coming within the provisions of this article; but not its franchise; shall be assessed on the valuation fixed by the Commission with county, city, town and magisterial district levies.~~

Comment: See the first paragraph of § 58.1-2606 and the definition of State Corporation Commission in § 58.1-2600 for duplicative language.

## CHAPTER 27.

### ROAD TAX ON MOTOR CARRIERS.

§ ~~58-627~~ 58.1-2700 . Definitions. Whenever used in this ~~article~~ chapter , the term :

*"Commission" means the State Corporation Commission, which is responsible for the administration of this chapter.*

*"Motor carrier" means every person, firm or corporation who owns or operates or causes to be operated on any highway in this Commonwealth any road tractor or ~~any~~ , tractor truck, or any truck having more than two axles ; ~~except any person, firm or corporation owning or operating not more than one truck not for compensation, which truck is licensed in Virginia or not more than two trucks which are used exclusively for farm use as defined in § 46.1-154.3 and which are solely licensed in Virginia .~~*

*The word "Operations" means operations 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.*

*"Road tractor" means every motor vehicle designed and used for drawing other vehicles and not so constructed as to carry any load thereon independently or any part of the weight of a vehicle or load so drawn.*

*The term "Tractor truck" ~~includes any truck having more than four wheels used to draw boats, mobile homes, sections of prefabricated houses or more than one motor vehicle~~ 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, and shall include, but not be limited to, any truck having more than four wheels used to draw boats, mobile homes, sections of prefabricated houses or more than one motor vehicle .*

Source: § 58-627

Comment: "Road tractor," which was previously not defined, mirrors the definition currently contained in § 46.1-1. Definition of tractor truck is broadened to also parallel that definition currently contained in § 46.1-1 while retaining all of the existing language relative to the definition. The exemptions for one-truck operators and two-truck farm operators are moved to the exemption section.

§ ~~58-628~~ 58.1-2701 . Amount of tax. Every motor carrier of property shall pay a road tax equivalent to thirteen cents per gallon plus three percent of the average wholesale price as defined in § ~~58-730.8~~ 58.1-2302 , calculated on the amount of gasoline or liquefied gases (which would not exist as liquids at a temperature of 60° F. and a pressure of 14.7 pounds per square inch absolute), or other motor fuel 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.*

*All taxes paid under the provisions of this chapter shall be credited to the highway maintenance and construction fund.*

Source: §§ 58-628, 58-631 and 58-637

Comment: Combines three sections. No substantive change.

§ 58.1-2702. Exemptions and exceptions.—*The provisions of this chapter shall not apply to a person, firm or corporation owning or operating:*

- 1. No more than one Virginia-licensed truck operated without compensation;*
- 2. No more than two solely Virginia-licensed trucks, if used exclusively for farm use as defined in § 46.1-154.3; and*
- 3. Motor vehicles regularly engaged in the transportation of passengers.*

Source: §§ 58-627 and 58-633.1

Comment: This new section places all the exemptions to the road tax in one section.

§ ~~58-631~~: Taxes to be ~~credited~~ to highway fund. All taxes paid under the provisions of this

article shall be credited to the ~~highway maintenance and construction fund~~.

Comment: See § 58.1-2701

~~§ 58-637. Tax in addition to all other taxes. The taxes imposed on motor carriers by this article are in addition to any taxes of whatever character imposed on such carriers by any other provision of law.~~

Comment: See § 58.1-2701

~~§ 58-630 58.1-2703 . Payment of tax. The tax hereby 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 this State the Commonwealth by each such carrier during the quarter ending with the last day of the preceding month.~~

Source: § 58-630

Comment: No change.

~~§ 58-632 58.1-2704 . How amount of fuel used in State the Commonwealth ascertained. The amount of gasoline or other motor fuel used in the operations of any motor carrier within this State in the Commonwealth shall be such proportion of the total amount of gasoline or other motor fuel used in its entire operations within and without this State the Commonwealth as the total number of miles traveled within this State the Commonwealth bears to the total number of miles traveled within and without this State by the motor carrier.~~

Source: § 58-632

Comment: No substantive change.

~~§ 58-633 58.1-2705 . Reports of carriers. A. Every motor carrier subject to the tax imposed by this article chapter shall , on or before the last day of April, July, October and January of every year , make to the Commission such reports of its operations during the quarter ending the last day of the preceding month as the Commission may require and such other reports from time to time as the Commission may deem necessary.~~

~~B. The Commission may allow any person , who leases motor vehicles without drivers to a motor carrier by a contract under which the entire cost of fuel is included in the rental charge and the lessor purchases such fuel and maintains records of fuel used and miles traveled in such rental vehicles , to file a consolidated report covering all vehicles leased by it as though such carriers were a single carrier. Such person so filing shall be responsible for the total tax due from all such vehicles.~~

Source: § 58-633

Comment: Conforms section to the provisions of paragraph 4 of § 58.1-2702.

~~§ 58-633-1: Joint reports by carriers. Two or more motor carriers regularly engaged in the transportation of passengers on through buses on through tickets in pool service may, at their option, make joint reports of their entire operations in Virginia. The taxes imposed by § 58-628 shall be calculated on the basis of such joint reports as though such carriers were a single carrier ; and the carriers making such reports shall be jointly and severally liable for the taxes.~~

~~Such joint reports shall show the total number of miles traveled in this State and the total number of gallons of motor fuel purchased in this State by the reporting carriers. Excess credits for one year shall not be allowed as credits in any other year, and excess credits shall not be refunded under § 58-629. Credits to which the carriers making a joint report are entitled shall not be allowed as credits to any other carrier ; but carriers filing joint reports shall permit all carriers engaged in this State in pool operations with them to join in filing joint reports.~~

~~The vehicles of carriers filing joint reports shall be deemed to have consumed on the average one gallon of motor fuel for each six miles traveled unless persuasive evidence discloses that a different amount was consumed. The vehicles of carriers filing joint reports shall be deemed to have traveled one hundred and one per centum of the over-the-road miles traveled unless persuasive evidence discloses that a different number of miles was traveled.~~

~~The provisions of this section shall apply for the tax year beginning January one, nineteen hundred fifty-six, and annually thereafter until otherwise provided by law.~~

Comment: This obsolete section is stricken as the road tax on carriers of passengers has been

repealed.

~~§ 58-629~~ 58.1-2706 . Credit for payment of motor fuel tax. A. Every motor carrier subject to the road tax hereby imposed shall be entitled to a credit on such tax equivalent to eleven cents per gallon plus three percent of the average wholesale price as defined in § 58-730-8 58.1-2302 , on all gasoline or other motor fuel purchased by such carrier within the Commonwealth for use in its operations either within or without the Commonwealth and upon which gasoline or other motor fuel the 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 Commission shall be furnished by each such carrier claiming the credit herein allowed. When the amount of the credit herein provided 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, ~~such the excess~~ may under regulations of the Commission : (i) be allowed as a credit on the tax for which such carrier would be otherwise liable for any of the four succeeding quarters; or (ii) be refunded, upon application within 180 days from the end of any quarter, duly verified and presented, in accordance with regulations promulgated by the Commission and supported by such evidence as may be satisfactory to the Commission ; ~~such excess may be refunded~~ . The Commission shall not allow ~~such a~~ refund except after an audit of the applicant's records and shall audit the records of an applicant at least once a year. The entire cost of ~~such the~~ audit shall be borne by the taxpayer , and the Commission may reduce the refund allowable by the cost of such audit . ~~Such~~ The refund may be allowed without a formal hearing if the amount thereof of refund is agreed to by the applicant. Otherwise, a formal hearing on the application shall be held by the Commission after notice of not less than ten days to the applicant and the Attorney General. Whenever any refund is ordered it shall be paid out of the Highway Maintenance and Construction Fund.

Source: § 58-629

Comment: No substantive change.

~~§ 58-629.1~~ 58.1-2707 . Refunds to motor carriers who give bond. A motor carrier may give a surety company bond in the amount of not less than ~~two thousand dollars~~ \$2,000 nor more than ~~ten thousand dollars~~ \$10,000 , as shall appear sufficient in the discretion of the Commission, payable to the Commonwealth and conditioned that the carrier will pay all taxes due and to become due under this ~~article~~ chapter from the date of the bond to the date when either the carrier or the bonding company notifies the Commission that the bond has been cancelled. The surety shall be a corporation authorized to write surety bonds in Virginia. So long as the bond remains in force the Commission may order refunds to the motor carrier in the amounts appearing to be due on applications duly filed by the carrier under § 58-629 58.1-2701 without first auditing the records of the carrier. The surety shall be liable for all omitted taxes assessed pursuant to § 58-1162 against the carrier, including the penalties and interest provided in ~~said~~ 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 ~~said the~~ taxes.

Source: § 58-629.1

Comment: No change.

~~§ 58-634~~ 58.1-2708 . Inspection of books and records. The Commission 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 ~~article~~ chapter .

Source: § 58-634

Comment: No change.

~~§ 58-635~~ 58.1-2709 . Penalties. A. The Commission 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 ~~article~~ chapter , not exceeding ~~five hundred dollars~~ \$1,000 , upon any motor carrier which fails to file any report within the time prescribed which may be required by this article or by the Commission pursuant to this article; or which violates violating any other provision of this ~~article~~ chapter , or which fails failing to comply with any regulation of the Commission promulgated pursuant to this ~~article~~ chapter . Each ; each such failure or violation constituting shall constitute a separate offense. The penalty shall be collectible by the process of the Commission as provided by law. In addition to imposing such penalty, or without imposing any penalty, the Commission may suspend or revoke any certificate, permit or other evidence of right issued by the Commission which the motor carrier so found in default holds.

~~§ 58-636~~ Appeal. B. Any motor carrier convicted under this ~~article~~ section shall have the right of appeal to the Supreme Court of Appeals as in other cases of appeals of right from the

Commission.

Source: §§ 58-635 and 58-636

Comment: Combines two sections. Penalty is increased from \$500 to \$1000.

~~§ 58-629.2.~~ § 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 ~~article~~ chapter shall be guilty of a *Class 1* misdemeanor.

Source: 58-629.2

Comment: Conforms section to proper misdemeanor classification.

~~§ 58-634.1.~~ § 58.1-2711 . Assistance of Department of Taxation. At the request of the Commission the Department of Taxation shall furnish the Commission the amount of deduction from gross income taken by any motor carrier on account of the purchase of gasoline or other motor fuel.

Source: § 58-634.1

Comment: No change.

CHAPTER 28.

CORPORATION CHARTER AND RELATED FEES, AND

FRANCHISE TAXES.

§ 58-442 58.1-2800 . Charter fees of certain domestic public service corporations.—Every domestic corporation authorized by its charter to exercise the powers of a transportation or transmission company or to own, lease, construct, maintain and operate a public service line or road of any kind, upon the granting or extension of its charter, shall pay a fee into the State state treasury to be ascertained and fixed as follows:

For a company whose maximum capital stock is:

- (1) Five thousand dollars or under, twenty five dollars;
- (2) Over five thousand dollars and not in excess of ten thousand dollars, fifty dollars;
- (3) Over ten thousand dollars and not in excess of twenty five thousand dollars, seventy five dollars;
- (4) Over twenty five thousand dollars and not in excess of fifty thousand dollars, one hundred and twenty five dollars;
- (5) Over fifty thousand dollars and not in excess of one hundred thousand dollars, two hundred dollars;
- (6) Over one hundred thousand dollars and not in excess of three hundred thousand dollars, three hundred and twenty five dollars;
- (7) Over three hundred thousand dollars and not in excess of five hundred thousand dollars, four hundred and fifty dollars;
- (8) Over five hundred thousand dollars and not in excess of eight hundred thousand dollars, five hundred and seventy five dollars;
- (9) Over eight hundred thousand dollars and not in excess of one million dollars, seven hundred and fifty dollars;
- (10) Over one million dollars and not in excess of ten million dollars, one thousand dollars;
- (11) Over ten million dollars and not in excess of twenty million dollars, one thousand two hundred and fifty dollars;
- (12) Over twenty million dollars and not in excess of thirty million dollars, one thousand five hundred dollars;
- (13) Over thirty million dollars and not in excess of forty million dollars, one thousand seven hundred and fifty dollars;
- (14) Over forty million dollars and not in excess of fifty million dollars, two thousand dollars;
- (15) Over fifty million dollars and not in excess of sixty million dollars, two thousand two hundred and fifty dollars;
- (16) Over sixty million dollars and not in excess of seventy million dollars, two thousand five hundred dollars;
- (17) Over seventy million dollars and not in excess of eighty million dollars, two thousand seven hundred and fifty dollars;
- (18) Over eighty million dollars and not in excess of ninety million dollars, three thousand dollars; and
- (19) Over ninety million dollars, five thousand dollars.

1. \$5,000 or under - \$25;
2. Over \$5,000 and not in excess of \$10,000 - \$50;
3. Over \$10,000 and not in excess of \$25,000 - \$75;
4. Over \$25,000 and not in excess of \$50,000 - \$125;
5. Over \$50,000 and not in excess of \$100,000 - \$200;
6. Over \$100,000 and not in excess of \$300,000 - \$325;
7. Over \$300,000 and not in excess of \$500,000 - \$450;
8. Over \$500,000 and not in excess of \$800,000 - \$575;
9. Over \$800,000 and not in excess of \$1,000,000 - \$750;
10. Over \$1,000,000 and not in excess of \$10,000,000 - \$1,000;
11. Over \$10,000,000 and not in excess of \$20,000,000 - \$1,250;
12. Over \$20,000,000 and not in excess of \$30,000,000 - \$1,500;
13. Over \$30,000,000 and not in excess of \$40,000,000 - \$1,750;
14. Over \$40,000,000 and not in excess of \$50,000,000 - \$2,000;
15. Over \$50,000,000 and not in excess of \$60,000,000 - \$2,250;
16. Over \$60,000,000 and not in excess of \$70,000,000 - \$2,750;
17. Over \$70,000,000 and not in excess of \$80,000,000 - \$2,750;
18. Over \$80,000,000 and not in excess of \$90,000,000 - \$3,000; and
19. Over \$70,000,000 - \$5,000

For the purpose of this section the amount to which the company is authorized by the terms of its charter to increase its capital stock shall be considered its maximum capital stock.

Source: § 58-442

Comment: No substantive change; paragraph format changed to tabular format.

§ ~~58-443~~ 58.1-2801 . Charter fees of other domestic corporations.—Every domestic corporation other than such as are described in § ~~58-442~~ 58.1-2800 , upon the granting of its charter, shall pay a fee into the ~~State~~ state treasury to be ascertained and fixed as follows:

For a company whose maximum authorized capital stock is ~~fifty thousand dollars or less, twenty dollars~~ \$50,000 or less - \$25 ;

For a company whose maximum authorized capital stock is over ~~fifty thousand dollars~~ \$50,000 and less than ~~three million dollars, forty cents~~ \$3,000,000 - ~~40¢~~ for each ~~one thousand dollars~~ \$1,000 or fraction thereof; and

For a company whose maximum authorized capital stock is ~~three million dollars~~ \$3,000,000 or more ; ~~twelve hundred dollars~~ \$1,200; and

For a company incorporated ~~after July one, nineteen hundred seventy,~~ under the Virginia Nonstock Corporation Act, ~~fifty dollars~~ - \$50 .

Source: § 58-443

Comment: No substantive change.

§ 58-444 58.1-2802 . Entrance fees for foreign corporations.—Every foreign corporation, when it obtains from the State Corporation Commission a certificate of authority to do business in this ~~State~~ Commonwealth , shall pay an entrance fee into the ~~State~~ state treasury to be ascertained and fixed as follows:

For a company whose maximum capital stock is:

- (1) Fifty thousand dollars or less, sixty dollars;
- (2) Over fifty thousand dollars and not in excess of one million dollars, one dollar and twenty cents for each thousand dollars or fraction thereof;
- (3) Over one million dollars and not in excess of ten million dollars, two thousand dollars;
- (4) Over ten million dollars and not in excess of twenty million dollars, two thousand five hundred dollars;
- (5) Over twenty million dollars and not in excess of thirty million dollars, three thousand dollars;
- (6) Over thirty million dollars and not in excess of forty million dollars, three thousand five hundred dollars;
- (7) Over forty million dollars and not in excess of fifty million dollars, four thousand dollars;
- (8) Over fifty million dollars and not in excess of sixty million dollars, four thousand five hundred dollars;
- (9) Over sixty million dollars and not in excess of seventy million dollars, five thousand dollars;
- (10) Over seventy million dollars and not in excess of eighty million dollars, five thousand five hundred dollars;
- (11) Over eighty million dollars and not in excess of ninety million dollars, six thousand dollars;

(12) Over ninety million dollars, ten thousand dollars; and

1. \$50,000 or less - \$60;
2. Over \$50,000 and not in excess \$1,000,000 - \$1.20 for each \$1,000 or fraction thereof;
3. Over \$1,000,000 and not in excess of \$10,000,000 - \$2,000;
4. Over \$10,000,000 and not in excess of \$20,000,000 - \$2,500;
5. Over \$20,000,000 and not in excess of \$30,000,000 - \$3,000;
6. Over \$30,000,000 and not in excess of \$40,000,000 - \$3,500;
7. Over \$40,000,000 and not in excess of \$50,000,000 - \$4,000;
8. Over \$50,000,000 and not in excess of \$60,000,000 - \$4,500;
9. Over \$60,000,000 and not in excess of \$70,000,000 - \$5,000;
10. Over \$70,000,000 and not in excess of \$80,000,000 - \$5,500;
11. Over \$80,000,000 and not in excess of \$90,000,000 - \$6,000;
12. Over \$90,000,000 - \$10,000; and

{ 13 } . Foreign corporations without capital stock shall pay one hundred dollars \$100 only for such certificate of authority to conduct its affairs in this State Commonwealth.

For the purpose of this section the amount to which the company is authorized by the terms of its charter to increase its capital stock shall be considered its maximum capital stock.

Source: 58-444

Comment: No substantive change; paragraph format changed to tabular format.

§ 58-445 58.1-2803 . Charter or entrance fees on changes in authorized maximum capital

stock.—Whenever by articles of amendment or articles of merger, the maximum authorized capital stock of any domestic or foreign corporation or of the surviving corporation is increased, the charter or entrance fee to be charged shall be an amount equal to the difference between the amount already paid as a charter or entrance fee by such corporation and the amount that would be required by this chapter to be paid if the increased maximum authorized capital stock were being stated at that time in original articles of incorporation. If no charter or entrance fee has been heretofore paid to this *State Commonwealth*, or upon any consolidation of two or more corporations into a new corporation, the amount to be paid shall be the same as would have to be paid on original incorporation or application for authority to transact business.

Source: § 58-445

Comment: No substantive change.

§ ~~58-450~~ 58.1-2804 . Annual registration fees for domestic and foreign corporations.—Every domestic corporation, and every foreign corporation authorized to do business in this *State Commonwealth*, whose maximum capital stock is ~~fifteen thousand dollars \$15,000~~ or under and every such corporation organized without capital stock shall pay into the *State state* treasury on or before the first day of March 1 in each and every year an annual registration fee of ~~ten dollars \$10~~ ;

Such corporation whose maximum capital stock is over ~~fifteen thousand dollars \$15,000~~ and does not exceed ~~fifty thousand dollars \$50,000~~ shall so pay an annual registration fee of ~~twenty dollars \$20~~ ;

Such corporation whose maximum capital stock is over ~~fifty thousand dollars \$50,000~~ and does not exceed ~~one hundred thousand dollars \$100,000~~ shall so pay an annual registration fee of ~~thirty dollars \$30~~ ;

Such corporation whose maximum capital stock is over ~~one hundred thousand dollars \$100,000~~ and does not exceed ~~three hundred thousand dollars \$300,000~~ shall so pay an annual registration fee of ~~forty dollars \$40~~ ; and

Such a corporation whose maximum capital stock exceeds ~~three hundred thousand dollars \$300,000~~ shall so pay an annual registration fee of ~~fifty dollars \$50~~ .

Such annual registration fee shall be irrespective of any specific license tax or other tax or fee imposed by law upon the corporation for the privilege of carrying on its business in this *State Commonwealth* or upon its franchise, property or receipts. ~~Provided; however; that those~~ Those nonstock corporations, ~~however,~~ incorporated before ~~nineteen hundred seventy 1970~~ which were not liable for the annual registration fee therefor shall not be liable for an annual registration fee hereafter.

Source: § 58-450

Comment: No substantive change.

§ ~~58-451~~ 58.1-2805 . Assessment of registration fee and forwarding of statement.—The State Corporation Commission shall ascertain from its records the amount of the authorized maximum capital stock of each of ~~such corporations, corporation authorized to do business in this Commonwealth,~~ as of the first day of January 1 of each year, and shall assess against each such corporation the registration fee herein imposed. A statement of the assessment, when made, shall be forwarded by the clerk of the State Corporation Commission, before the ~~fifteenth day of February 15~~ , to the Comptroller and to each such corporation.

Source: § 58-451

Comment: No substantive change.

§ ~~58-454~~ 58.1-2806 . Penalty for failure to pay.—Any ~~such corporation ; company or association~~ failing to pay the registration fee as provided by law within the time prescribed shall, in addition to other penalties and liabilities, incur a penalty thereon of five ~~per centum percent~~ and interest at the rate of six ~~per centum percent~~ per ~~annum~~ year on the total amount of the registration fee and penalty from the date when the same was due until paid, which shall be added to the amount of the registration fee.

Source: § 58-454

Comment: No substantive change.

§ ~~58-455~~ 58.1-2807 . Collection by suit.—The registration fee with penalty and interest shall be enforceable, in addition to existing remedies for the collection of taxes, levies and fees, by

action ; ~~motion or suit in equity, in the name of the Commonwealth, in the Circuit Court of the city of Richmond; in appropriate circuit court. cases of foreign corporations and in those cases of domestic corporations in which the entire business of the corporation is conducted outside of the State of Virginia and in those cases in which the principal office of the corporation is in the city of Richmond~~ Venue shall be in accordance with § 8.01-261 of the Code.

Source: § 58-455

Comment: No substantive change.

§ 58-456 58.1-2808 . Annual State state franchise tax on domestic corporations.—Every domestic corporation except telephone, electric, gas and water companies, insurance, banking and trust companies, shall pay into the State state treasury on or before the first day of March 1 of each year an annual State state franchise tax to be assessed by the State Corporation Commission.

The amount of such franchise tax shall be as follows:

When the authorized maximum capital stock is:

- ~~(1) Twenty five thousand dollars and under, twenty dollars;~~
- ~~(2) Over twenty five thousand dollars and not in excess of fifty thousand dollars, forty dollars;~~
- ~~(2) Over fifty thousand dollars and not in excess of one hundred thousand dollars, eighty dollars;~~
- ~~(4) Over one hundred thousand dollars and not in excess of three hundred thousand dollars, one hundred twenty dollars;~~
- ~~(5) Over three hundred thousand dollars and not in excess of five hundred thousand dollars, two hundred dollars;~~
- ~~(6) Over five hundred thousand dollars and not in excess of one million dollars, four hundred dollars;~~
- ~~(7) Over one million dollars and not greater than fifty million dollars, four hundred dollars plus an additional sum of twenty dollars for each hundred thousand dollars or fraction thereof in excess of one million dollars;~~
- ~~(8) Over fifty million dollars and not greater than one hundred million dollars, ten thousand two hundred dollars plus an additional sum of one hundred fifty dollars for each million dollars or fraction thereof in excess of fifty million dollars;~~
- ~~(9) Over one hundred million dollars, twenty thousand dollars:~~
  1. \$25,000 and under - \$20;
  2. Over \$25,000 and not in excess of \$50,000 - \$40;
  3. Over \$50,000 and not in excess of \$100,000 - \$80;
  4. Over \$100,000 and not in excess of \$300,000 - \$120;
  5. Over \$300,000 and not in excess of \$500,000 - \$200;
  6. Over \$500,000 and not in excess of \$1,000,000 - \$400;
  7. Over \$1,000,000 and not in excess of \$50,000,000 - \$400 plus an additional sum of \$20 for each \$100,000 or fraction thereof in excess of \$1,000,000;
  8. Over \$50,000,000 and not in excess of \$100,000,000 - \$10,200 plus an additional sum of \$150 for each \$1,000,000 or fraction thereof in excess of \$50,000,000; and
  9. Over \$100,000,000 - \$20,000.

Source: § 58-456

Comment: No substantive change; paragraph format changed to tabular format.

§ ~~58-458~~ 58.1-2809 . Assessment of tax and forwarding statement.—The State Corporation Commission shall ascertain the amount of the authorized maximum capital stock of each ~~such~~ domestic corporation ; ~~company or association~~ as of the first day of January 1 in each year and shall assess against each such corporation ; ~~company or association~~ the State state franchise tax herein imposed and a . A statement of such assessment, when made, shall be forwarded by the clerk of the State Corporation Commission before the ~~fifteenth~~ day of February 15 to each such corporation ; ~~company or association~~ by ordinary first class mail.

Source: § 58-458

Comment: Deletes references to companies and associations.

§ ~~58-459~~ 58.1-2810 . Effect of failure to pay annual franchise tax; penalty.—Any ~~such~~ corporation ; ~~company or association~~ failing to pay the annual State state franchise tax into the State state treasury within the time prescribed shall incur a penalty thereon of five ~~per centum~~ percent and interest at the rate of six ~~per centum~~ percent per ~~annum~~ year on the total amount of tax and penalty from the date when the same was due until paid, which shall be added to the amount of the tax.

Source: § 58-459

Comment: No substantive change.

§ ~~58-460~~ 58.1-2811 . Collection by suit in certain cases.—The franchise tax with penalties and interest shall be enforceable, in addition to existing remedies for the collection of taxes and levies, by action ; ~~motion or suit in equity, in the name of the Commonwealth, in the Circuit Court of the city of Richmond in appropriate circuit court. those cases in which the entire business of the corporation is conducted outside of the State of Virginia and in those cases in which the principal office of the corporation is in the city of Richmond~~ Venue shall be in accordance with § 8.01-261 of this Code.

Source: § 58-460

Comment: No substantive change.

§ ~~58-462~~ 58.1-2812 . Valuation of stock without par value when determining fees or franchise tax.—For the ~~purpose of following purposes, and no other, shares of stock without nominal or par value shall be taken to be of the par value of \$100 each:~~

1. Ascertaining and determining the amount of any charter fee, registration fee or franchise tax now or hereafter imposed by law upon the maximum amount of authorized capital stock of any corporation organized under the laws of this State Commonwealth having shares of stock without nominal or par value ; ~~or for the purpose of~~

2. Ascertaining and determining the amount of any entrance fee now or hereafter required to be paid by any foreign corporation having such shares for the purpose of procuring a certificate of authority to do business in this State Commonwealth; or

3. Ascertaining and determining the amount of any annual registration fee required to be paid by such foreign corporation ; ~~but for no other purpose; such shares of stock without nominal or par value shall be taken to be of the par value of one hundred dollars each .~~

Source: § 58-462

Comment: No substantive change.

§ ~~58-462~~ 58.1-2813 . Payment of tax prerequisite to Commission action; exceptions.—The State Corporation Commission shall not issue any certificate of incorporation ~~or of~~ , amendment ~~or of~~ , merger or ~~of~~ consolidation or ~~of~~ dissolution until all franchise taxes, registration fees, other taxes, fees and dues, assessed by the Commission ~~shall~~ have been paid ; ~~provided; that a . A~~ certificate may be issued , ~~however,~~ upon a voluntary dissolution by incorporators under the provisions of § 13.1-79 without requiring prepayment of such taxes, fees and dues, but the issuance of such certificate shall not have the effect of releasing any obligation that has accrued in favor of the Commonwealth on account of any such assessment, except as provided hereinafter ; ~~and provided; that no . No~~ corporation which complies with the provisions of law as to dissolution and files the articles of dissolution in the office of the Commission, or whose incorporators file voluntary articles of dissolution in accordance with the provisions of § 13.1-79, prior to the ~~fifteenth~~ day of February 15 in any year, shall be required to pay the registration fee or franchise tax for that year ; ~~nor shall any . Any~~ foreign corporation which surrenders its certificate of authority to do business in this State Commonwealth or which is merged into a surviving foreign corporation that files the certificate of merger in the office of the Commission prior to the ~~fifteenth~~ day of February 15 in any year ~~shall not~~ be required to pay the

registration fee for that year. The Commission shall enter an order withdrawing and cancelling the assessments above specified remaining unpaid. Assessments that have been paid shall not be refunded.

Source: § 58-463

Comment: No substantive change.

§ ~~58-464~~ 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 ~~per centum~~ 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~~ *state* treasury and then repaid to the treasurer on warrant of the Comptroller.

Source: § 58-464

Comment: No substantive change.



## CHAPTER 30

### General Provisions

#### Article 1.

#### Local Levies

§ ~~58-0~~ 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.

Source: § 58-9

Comment: No change.

§ ~~58-839~~ 58.1-3001 . When boards of supervisors to fix and order county and district taxes; funds not available, allocated, etc., until appropriated.—The ~~board of supervisors or other~~ governing body of each county shall, at ~~their~~ *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 ~~levies taxes~~ for the current year ; ~~shall order the levy on all property within the county segregated by law for local taxation; and shall order the levy on the real estate and tangible personal property of public service corporations based upon the assessment fixed by the State Corporation Commission, and certified by it to the board of supervisors or other governing body, both with respect to location and valuation; any .~~ 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 one dollar, such property may be omitted from the personal property book and no assessment made thereon.

The ~~making of a general county levy or the imposition of other taxes or the collection of such levy or taxes~~ shall not constitute an appropriation nor an obligation or duty to appropriate any funds ~~by the board of supervisors or other governing body of any county for any purpose, expenditure or contemplated expenditure.~~ The ~~laying or making of a levy in an amount sufficient to cover or pay all estimated and contemplated expenditures for the fiscal year shall not be construed as imposing any obligation or duty on the board of supervisors or other governing body to appropriate any amount whatsoever .~~ No part of the funds raised by the general county ~~levies or 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 ~~board of supervisors or other governing body~~ either annually, semiannually, quarterly, or monthly. There shall be no mandatory duty upon the ~~board of supervisors or other governing body of any county to appropriate any funds raised by general county levies or 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 board of supervisors or other 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.

Source: § 58-839

Comment: No substantive change. Repetitious language has been deleted.

§ ~~58-840~~ 58.1-3002 . Levy by board for court allowances.—The clerks of the circuit courts shall furnish to the ~~supervisors or other governing bodies of their counties, on or before the day on which they meet to make the set county levy taxes ,~~ copies of all orders and allowances made by their respective courts, payable out of the county treasury; and the supervisors shall ~~make a levy provide~~ for the payment of all such orders and allowances as the courts may be authorized to make.

Source: § 58-840

Comment: No change.

§ ~~58-841~~ 58.1-3003 . Appeal from order of levy.— ~~When any order for a levy is made by the governing body of a county which, in the opinion of~~ 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 from which he shall be required to appeal by 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 order a levy impose taxes according to law ; or if . If the court shall , on the hearing of the appeal, be 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 § 58-928 58.1-3140 .

Source: § 58-841

Comment: No substantive change.

§ 58-842 58.1-3004 . Duty of clerk of board in case of appeal; how appeal tried.—The clerk of the ~~board or other~~ governing body, upon any appeal being taken, shall immediately give notice thereof to the ~~appellee~~ governing body and make out a brief return of the proceedings in the case before the ~~board or other~~ 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 ; and such . 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.

Source: § 58-842

Comment: No change.

§ 58-843. Remission of county taxes on ~~certain steam railways operating at a loss.~~—The board of supervisors or other governing body of any county in which there is located a roadway or any steam railway company in which nine tenths of the stock of such company is owned by a city or county of this State and which is operated at a loss may, in its discretion, remit the county taxes levied upon the real estate and tangible personal property of such railway company.

Comment: Deleted as unconstitutional.

§ 58-844 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 ~~their~~ its journals an account of all sums lawfully chargeable on the city or town which ought to be paid within one year and order a city or town levy of so much the imposition of taxes in such amount as in their opinion is necessary to be raised in that way in addition to what may be received for licenses and from other sources; any . 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 one dollar, such property may be omitted from the personal property book and no assessment made thereon. The levy so ordered may be upon the persons in the city or town above the age of eighteen years, not pensioned by this State for military services, and upon any property therein subject to local taxation and not expressly segregated to the State for purposes of State taxation only .

The making of a general city or town levy or imposition of other taxes or the collection of such levy or 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. The laying or making of a levy in an amount sufficient to cover or pay all estimated and contemplated expenditures for the fiscal year shall not be construed as imposing any obligation or duty on the council to appropriate any amount whatsoever. No part of the funds raised by the general city or town levies or 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, semiannually, 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 levies or 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 State 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.

Source: § 58-844

Comment: No substantive change.

~~§ 58-846. When cities and towns allowed to make additional levy. Every city and town of the Commonwealth is authorized, when levying taxes for its purposes, upon property which it is not prohibited from taxing by general law, and except upon property upon which a maximum rate for local purposes is fixed by general law, to impose in addition to, and in excess of, the maximum rate of taxation which might have been imposed by each of them under any statute or statutes in force on the thirty-first day of March, nineteen hundred and twenty-six, a further and additional rate of not to exceed twenty-five cents upon each one hundred dollars of assessed value of such property. And the provisions of this section shall apply to any such city or town to which territory was annexed prior to June eighteen, nineteen hundred and twenty-eight, and the council of each such city may impose such additional levy or rate hereinbefore provided for, any specific limitations prescribed in charters, annexation acts or proceedings and fixed by the vote of the people or otherwise to the contrary notwithstanding.~~

~~In incorporated towns at least thirty days' notice by publication in some newspaper published in the town or in the county in which the town is located shall be given before such increase shall be made in the tax rate and before any such increase shall be made at least one public hearing shall be held for the taxpayers of the town to consider the increase.~~

Comment: Deleted as obsolete.

§ 58-846 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 State 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.

Source: § 58-846

Comment: No change.

~~§ 58-846.1 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.~~

Source: § 58-846.1

Comment: No change.

~~§ 58-851 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 all 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 16 35 (§ 58.1-3500 et seq.) (§ 58-829 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 16 35 .~~

Source: § 58-851

Comment: No change.

~~§ 58-851.2 58.1-3009 . Tax on payrolls prohibited.—No political subdivision of this State shall impose, levy or collect, directly or indirectly, any tax on payrolls or occupations. All such taxes and ordinances imposing such taxes in force on June twenty-six, nineteen hundred seventy, are repealed.~~

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 7 (§ 58-239 et seq.) of Title 58 of the Code of Virginia 37

(§ 58.1-3700 et seq.) of this Title .

Source: § 58-851.2

Comment: No change. Obsolete language is deleted.

~~§ 58-851.6~~ **58.1-3010** . Counties, cities and towns may levy taxes on fiscal year basis of July one to June thirty, 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 one to June thirty. 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 *assessment*, 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 one prior to such fiscal year unless otherwise specifically provided under ~~§ 58-851.7~~ **§ 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 one through June thirty, or a short fiscal year from January one through June thirty. 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 one pursuant to §§ 15.1-545 and 15.1-546 as if it had been on such fiscal year from the prior July one. If such short year is a calendar year, borrowing pursuant to §§ 15.1-545 and 15.1-546 must be repaid at the time specified in § 15.1-546 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.

Source: § 58-851.6

Comment: No change.

~~§ 58-851.7~~ **58.1-3011** . Use of July one 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 the first day of July 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 one, prior to such assessment date. Any ordinance adopting a July one 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.

Source: § 58-851.7

Comment: No change.

~~§ 58-851.8~~ **58.1-3012** . Counties, cities and towns may change rate of ~~levy tax~~ during calendar year.—Notwithstanding any other provision of law, special or general, to the contrary, 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 ~~levy tax~~ on real estate, tangible personal property and machinery and tools during any calendar year.

Source: § 58-851.8

Comment: No change.

~~§ 58-851.9~~ **58.1-3013** . Authority to allow payment of local ~~levies taxes~~ by credit card; service charge.—The governing body of any county, city or town may by ordinance authorize the treasurer of such county, city or town to accept payment of local ~~levies taxes~~ by use of a credit card. Any county, city or town adopting such an ordinance, may, in addition to any penalties and interest arising pursuant to §§ ~~58-847 and 58-962~~ **58.1-3915 through 58.1-3918** , add to such

payment a sum not to exceed four per centum of the amount of tax, penalty and interest paid, as a service charge for the acceptance of such card. Such service charge shall not exceed the percentage charged to the county, city or town.

Source: § 58-958.1

Comment: No change.

~~§ 58-27.2~~ *58.1-3014* . Relief from taxes in cases of disaster.—All taxpayers of the State *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 the first day of July 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.

Source: § 58-27.2

Comment: No change.

~~§ 58-20~~ *58.1-3015* . To whom property generally shall be taxed and by whom listed.—If property be owned by a person sui juris, it shall be taxed to him.

If property be 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 separate property of a person over eighteen years of age or a married woman, it shall be listed by and taxed to the trustee, if any they have in this State; and if they have no trustee in this State, it shall be listed by and taxed to themselves.~~

If the property be 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 be owned by *a mentally ill or incompetent person an idiot or lunatic* , it shall be listed by and taxed to his committee, 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 be any in this State, and if there be no trustee in this State, 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.

~~If the property consists of money, bonds or other evidences of debt under the control or in the possession of a receiver or commissioner, it shall be listed by and taxed to such receiver or commissioner and the clerk of each court shall furnish the commissioner of the revenue with a list of all bonds and funds held by the commissioners or receivers under the authority of the court.~~

~~If the property consists of money or other thing deposited to the credit of any suit and not in the hands of a receiver, it shall be listed by and taxed to the clerk of the court in which the suit is and such clerk shall, upon the order of his court, made in term or vacation, withdraw from such deposit the amount of such tax.~~

Source: § 58-20

Comment: No substantive change. Obsolete language deleted.

~~§ 58-21. Property taxed to receivers, etc., not taxable to beneficiaries. All moneys, bonds, estates, credits and other evidences of debt, listed by and taxed to clerks, receivers and commissioners of courts as provided for in the preceding section (§ 58-20), whether the same be for the purchase price of real estate or personal property, shall be exempt from taxation in the name of the parties beneficially interested therein.~~

Comment: Deleted as obsolete.

~~§ 58-22 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.~~

Source: § 58-22

Comment: No change.

## 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.*

Source: New

Comment: This provision is needed to clarify the use of the term "Commissioner" throughout the chapter.

~~§ 58-852. Number of the commissioners of the revenue ; city residents not to vote for county commissioners. There shall be one commissioner of the revenue for each of the counties now existing, or which may hereafter be created, and one for each city; but the voters residing within any city shall not vote for the commissioner of the revenue for the county within the limits of which the city lies.~~

Source: § 58-852

Comment: The provision is unnecessary, not all localities have a commission of the revenue.

~~§ 58-853 58.1-3101 . County commissioner of the revenue to keep an office at county seat; removal to other place on court order .—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. and The board of supervisors or other governing body shall provide the same in the courthouse if space therein is available; otherwise such office shall be provided elsewhere at the county seat .~~

~~But The judge of the circuit court, by order entered of record, may certify that in his opinion some other point in the county would be more convenient to a majority of its citizens; and Upon the entry of such order, the commissioner of the revenue shall remove his office to the place named in such order, but he, or one of his deputies, shall attend the first and second days of each regular term of the circuit court, and all regular meetings of the board of supervisors or other governing body .~~

Source: § 58-853

Comment: The language requiring the governing body to provide office space has been deleted; it is covered in § 14.1-64. The governing body has been given the authority to relocate the office of the commissioner. The required court attendance language is impracticable and has been deleted.

~~§ 58-854 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 ; except to grant a license to exercise a privilege which is not local and which may be lawfully exercised in or out of such counties or cities .~~

Source: § 58-854

Comment: Language pertaining to state licenses has been stricken; there are no state licenses.

~~§ 58-855 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. § 58-864. Commissioner to make assessments. As part of his duties each commissioner of the revenue shall ascertain and assess, at fair market value, all the personal property not exempt from taxation and all subjects of taxation in his county or city on the first day of January in each year, except as otherwise provided by law.~~

Source: §§ 58-855 and 58-864

Comment: No substantive change. The source sections have merely been placed in one section.

~~§ 58-856 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 which of his predecessor . had to The person in possession thereof of such materials , who shall deliver the same on such them upon application and take the proper receipt . Such person failing or refusing to deliver such books and papers when application shall be made for them as aforesaid shall forfeit one hundred dollars.~~

Source: § 58-856

Comment: The \$100 fine has been deleted in light of the authority of the locality to prosecute a larceny charge.

~~§ 58-857 58.1-3105 . State Tax Commissioner to instruct commissioners of the revenue.—The State Tax Commissioner shall ; by letter, printed circular or otherwise, give provide instructions to the commissioners of the revenue in respect to their duties as to him shall seem judicious .~~

Source: § 58-857

Comment: No substantive change.

~~§ 58-890 58.1-3106 . How compensation of commissioners paid ; when compensation withheld .— A. All compensation payable to a commissioner of the revenue shall be payable on warrant of the Comptroller on the State Treasurer issued on a voucher signed by the chairman of the Compensation Board paid pursuant to § 14.1-63 .~~

~~§ 58-891 B. : When compensation withheld. 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.~~

Source: §§ 58-890 and 58-891

Comment: The source sections have been combined. Reference has been made to § 14.1-63 in order to eliminate outdated language.

~~§ 58-859 58.1-3107 . Commissioner of the revenue to obtain returns from taxpayers.—Each commissioner of the revenue shall ; as soon as practicable after he receives the blank forms of returns from the Department of Taxation, obtain full and complete tax returns of intangible personal property, individual income, tangible personal property, machinery and tools and merchants' capital, from every taxpayer within his jurisdiction who is liable under the law to file such return with him a return of any of the foregoing subjects of taxation; but 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 a return the required returns without being called upon to do so by the commissioner of the revenue or any other officer.~~

Source: § 58-859

Comment: No substantive change. Unnecessary language has been deleted.

~~§ 58-860. Failure of taxpayer to file return or exhibit property. If any taxpayer, upon demand, refuses to exhibit to the commissioner of the revenue or a duly qualified deputy any subject of taxation liable to assessment by the commissioner of the revenue, such taxpayer shall pay a fine of not less than twenty dollars nor more than one hundred dollars. Moreover, if any taxpayer shall, in violation of law, fail or refuse to file a return of property or income, or obtain a business license from the commissioner of the revenue within the time prescribed by law, the commissioner of the revenue may, in the year of such delinquency, summon such taxpayer, by registered letter or otherwise, to appear before him at his office at a time to be specified in such summons and to answer, under oath, questions touching such taxpayer's tax liability; state and local, for the then current tax year ; and The commissioner of the revenue may assess such taxpayer on property, income or business license on the basis of the information thus obtained if he finds the taxpayer liable. Any taxpayer failing or refusing to comply with such summons without good cause or failing or refusing to answer, under oath, questions touching his tax liability shall be subject to a fine of not less than twenty dollars nor more than one hundred dollars.~~

Comment: This provision is unnecessary. The power to summons is provided in § 58.1-3110. Failure to exhibit property is covered in § 58.1-3111.

~~§ 58-861 58.1-3108 . County Commissioner to render taxpayer assistance and may go to convenient places to receive returns ; advertisement by commissioner .— A. Each county 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. The commissioner of the revenue shall ~~comply with this section in ample time to enable taxpayers to avoid any penalties which may be prescribed by law for failure to file tax returns in time. But such Compliance by the commissioner of the revenue with this section shall not relieve him of the duty to obtain tax returns as required by § 58-850 58.1-3106 .~~

§ 58-862. *B. Taxpayers to seek office of commissioner in cities and certain counties .-* In cities and in counties containing a population of more than 200 per square mile the taxpayer shall seek the office of the commissioner of the revenue or any such branch office or offices as the commissioner may establish. In all such cases the *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 ~~regular annual, semiannual or quarterly~~ 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.

Source: §§ 58.1-861 and 58-862

Comment: The source sections have been combined. These provisions have been made applicable to all city, as well as county, commissioners.

§ 58-862. ~~Apartment house, trailer camp, trailer court, marina or airport operators to file lists of tenants. Every person, firm or corporation operating any apartment house or any trailer camp or trailer court or marina or privately operated airport in this State shall, on or before February first of each year, upon request of the commissioner of the revenue, file with the commissioner of the revenue of the county or city in which such apartment house, trailer camp, trailer court, marina or airport is located a list giving the name and address of every tenant of such apartment house, 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 operated airport for airborne craft as of January first preceeding. The governing body of any county adjoining a county having a population of more than one thousand per square mile may require like information from any such person, firm or corporation operating a trailer camp or trailer court or an apartment house having two or more apartments or leasing houses for rent and violation of any such ordinance requiring the same may be punished as hereinafter provided. Any person, firm or corporation failing to comply with this section shall be subject to a fine of not less than five nor more than one hundred dollars.~~

§ 58 862.1. ~~Certain operators of marinas or boat storage places to file lists of owners of boats. Every person, firm or corporation operating a marina or boat storage place which accommodates more than four boats, in this State, shall on or before February first of each year, upon the request of the commissioner of the revenue, file with the commissioner of the Revenue of the county or city in which such marina or boat storage place is located, a list giving the name and address of the owner and the name and number of the boat, if such be available, of the owner or operator of each boat physically located and normally kept at his marina or boat storage place as of January first preceeding. Violators of this section shall be fined not less than fifty dollars nor more than three hundred dollars.~~

§58 862.2. ~~Electric utilities to file list of residential customers. Each corporation engaged in the business of furnishing heat, light, and power by means of electricity, which maintains a separate list of those customers residing in mobile homes, shall submit, upon the request of the commissioner of the revenue, a list containing the names and addresses of all such customers which are serviced by such corporation in the locality. This information shall be submitted on or before January one and the corporation shall be entitled to charge a reasonable fee for the costs associated with the preparation of such list. Any such information provided to a commissioner of the revenue under the provisions of this section shall be used by the commissioner only for the purpose of tax collection. A corporation shall not be liable to any person for any civil damages arising out of the corporation's acts in complying with the provisions of this section.~~

Comment: §§ 58-863, 58-863.1, and 58-863.2 have all been moved to Chapter 39 which deals with enforcement and collection of taxes.

§ 58 865. ~~Duties of commissioners as to personal property and income under control of courts and fiduciaries, etc; as to owners of certain ships, boats, etc. Each commissioner of the revenue shall annually examine all causes pending in the courts of his county or city and the records thereof and ascertain all tangible and intangible personal property and income subject to taxation under the control of the courts in his county or city or held by any person, bank or corporation subject to the order of such courts or in the hands of or under the control of~~

receivers; commissioners or fiduciaries appointed by such courts or appointed by any deed or will.

Each commissioner of the revenue shall also ~~annually examine~~ the records; State and federal; ~~within his county or city and ascertain the value of all ships, tugboats, barges, boats and other watercraft over five tons burthen, with their tackle, rigging and furniture and all else that pertains to them, and other like boating property over five tons burthen, owned by other than express, steamship and steamboat companies, or shall ascertain the value of such property from any other source accessible to him.~~

After such examinations and valuations are made, each such ~~commissioner~~ of the revenue shall enter upon his assessment books the names of the persons and the amount of property and income chargeable to each of them and ~~extend the taxes as in other cases.~~

Source: § 58-865

Comment: All duties of the commission have been moved to § 58.1-3109.

~~§ 58-866. Fiduciaries; etc., not exempted from filing returns. Nothing in this chapter shall be construed as exempting any fiduciary or other person from the obligation of filing any tax return required by law.~~

Comment: This provision is unnecessary in light of § 58.1-3107.

~~§ 58-867. Summons by commissioner. The commissioner of the revenue shall have power to summon before him fiduciaries and the owners of such ships, tugboats, barges, boats and watercraft, or their agents, and require them to answer, under oath, any question touching the ownership or valuation of such property and, if they refuse to furnish the information requested, they shall be liable to a fine of not less than ten dollars nor more than one hundred dollars.~~

Source: § 58-867

Comment: This provision is unnecessary in light of § 58.1-3110.

~~§ 58-868. Banks, corporations; etc., to furnish lists of such property. Any bank, corporation or person holding money or evidences of debt or personal property of any kind under the control of any court or to the credit of any cause pending in any court, or to the credit of any receiver, commissioner, trustee or other fiduciary, shall, upon application, furnish the commissioner of the revenue with a statement or list thereof; and any bank, corporation or person refusing to furnish such statement or failing to furnish the same shall be liable to a fine of not less than ten dollars nor more than twenty-five dollars for each day's failure to furnish the same after five days' notice to do so.~~

Comment: This section has been moved to Chapter 39 which deals with enforcement and collection of taxes.

~~§ 58 869. Fiduciaries distributing intangible personal property to file informative tax returns. Every fiduciary paying or distributing to or among one or more beneficiaries any part or the whole of the corpus of an estate or trust consisting of intangible personal property shall file upon a form prepared by the Department of Taxation an informative return of such distribution, showing the names and residences of the distributees, the amounts and classes of such property distributed to each and the date or dates of such distribution. Such returns shall be filed 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 State, in the county or city in which such fiduciary resides, does business or has an office, or wherein the distributees or any of them reside. Every such return shall be filed on or before the first day of May of the calendar year following the calendar year in which the distribution was made.~~

~~§ 58 870. 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.~~

~~§ 58 871. Accounts not to be settled until taxes paid or provided for. No commissioner of~~

accounts or ~~assistant commissioner~~ shall, under § 26-32, file any report of an account of the transactions of any executor, administrator, trustee, receiver or other fiduciary until it shall be made to appear to the commissioner that all taxes, whether State, municipal or county, assessed and chargeable upon property in the hands of the person for whom such account is settled belonging to the estate concerned in such settlement 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 executor, administrator, trustee, receiver or other fiduciary.

§ 58-872. ~~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 of Taxation with respect to any unpaid taxes and levies assessed against his decedent.

§ 58-872. ~~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.

Comment: §§ 58-869, 58-870, 58-871 and 58-872 have been moved to Chapter 30.

§ 58-874 ~~58.1-3109~~ . Duties of commissioners as to personal property, income s and licenses. Each commissioner of the revenue shall:

(1) ~~Review the reports of purchases and sales made by the merchants and assess for the current license year additional license taxes when his investigations disclose that such merchants have reported less than the law requires.~~

(2) ~~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; or~~

~~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) ~~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;~~

(4) ~~5. Call upon~~ Require every taxpayer who may not have properly returned to the commissioner of the revenue all of his tangible and intangible personal property , licenses and income for the current tax year ~~and require such taxpayer to make a the proper and complete return of the same . and to this end the commissioner of the revenue may summon, by registered letter or otherwise, the taxpayer or any other person to appear before him at his office, to answer, under oath, questions touching the ownership and value of any tangible and intangible personal property and income of any and all taxpayers. ;~~

(5) ~~6. Call upon and~~ 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 ~~taxpayers such persons~~ to furnish to them access to their 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, income and license taxes for the current tax year : ; ~~and~~

(6) ~~7. Make such reports to the Department of Taxation as may be required by law or as the rules and regulations adopted by the State Tax Commissioner may require.~~

Source: §§ 58-874 and 58-865

Comment: The source sections have been combined. The power to summon taxpayers and other persons has been moved to § 58.1-3110.

§ 58.1-3110. *Power to summon taxpayers and other persons.*—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 taxpayers.*

Source: §§ 58-860 and 58-874

Comment: The power to summon has been placed in a separate section to avoid duplication of language.

~~§ 58-875 58.1-3111 . Penalty for refusal of taxpayers to furnish information; etc Penalties . Should Any taxpayer person who refuses required to (i) furnish to the commissioner of the revenue access to books of account or other papers and records or should any taxpayer or his agent or the officer of any company or corporation or any other person required to , (ii) furnish information to the commissioner of the revenue relating to the assessment of taxes, or to (iii) answer under oath such questions touching any person's tax liability the ownership and the value of such tangible or intangible personal property and income and reports of purchases and sales of licensees , or (iv) exhibit to the commissioner of the revenue any subject of taxation liable to assessment by the commissioner of the revenue, refuse to furnish such information; such taxpayer, agent, officer or other persons shall be deemed guilty of a Class 4 misdemeanor . and shall be liable to a fine of not less than ten dollars nor more than one hundred dollars; and Each day's refusal to furnish such access or information shall constitute a separate offense.~~

Source: § 58-875

Comment: All violations and penalties have been placed in this section. The penalties have been classified as a Class 4 misdemeanor. This classification causes the minimum fine to be omitted.

~~§ 58-876 58.1-3112 . Commissioner to preserve returns; destruction of returns; penalty of tangible personal property, etc .- 4. The commissioner of the revenue shall carefully preserve in a permanent file in his office all returns of tangible personal property, machinery and tools, and merchants' capital.~~

~~B. § 58-877. Destruction of such returns. It shall be a misdemeanor to abstract, mutilate or destroy returns of tangible personal property, machinery and tools and merchants' capital; provided, however, that After such 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 the his office of the commissioner of the revenue for at least six years after the tax assessment year the commissioner of the revenue may, in his discretion ; at any time thereafter, destroy such returns . Any commissioner who fails to comply with the provisions of this subsection shall be guilty of a Class 2 misdemeanor.~~

Source: §§ 58-877 and 58-876

Comment: The source sections, both of which relate to records retention and destruction, have been combined. The penalty has been classified as a Class 2 misdemeanor.

~~§ 58-878 58.1-3113 . Returns of intangible personal property forwarded to Department. All returns upon which are based used for the assessment s 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 shall have extended upon his assessment books the assessments thereon has recorded the assessments on such property in his assessment books~~

Source: § 58-878

Comment: No substantive change.

~~§ 58-879 58.1-3114 . Personal property 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.~~

~~§ 58-888. Department of Taxation to furnish printed forms to commissioners of the revenue . The Department of Taxation shall also prepare and forward to the commissioners of the revenue (i) the requisite number of printed forms of land and personal property booke or other tax books required by law ; also; and (ii) the blank forms of returns upon which to be filed by taxpayers are required to make returns for the assessment of capitations, tangible personal property, money and individual income, etc. In making returns the taxpayer shall list, at fair market value, all property, opposite appropriate items; writing the word "none" opposite those items of property which he does not own .~~

Source: §§ 58-879 and 58-858

Comment: The source sections have been combined. Reference to capitation taxes has been deleted along with other unnecessary language.

§ ~~58-881~~ 58.1-3115 . Arrangement and contents of books. In making out ~~these assessment~~ books, the commissioner of the revenue shall arrange them alphabetically to show the persons chargeable with taxes ~~with reference to the first and each subsequent letter of each name~~ . 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 ~~post-office~~ 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* .

~~Upon the personal property book shall be entered~~ All taxable tangible and intangible personal property and all other subjects of taxation not required by ~~or in pursuance of~~ law to be assessed on some other book or form *shall be entered in the personal property book* .

Source: § 58-881

Comment: Intangible personal property is entered in a separate book.

§ ~~58-882~~ 58.1-3116 . Department may prescribe separate books for *State 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 state* taxes and a separate personal property book for the assessment of local levies.

Source: § 58-882

Comment: No substantive change.

§ ~~58-883~~ 58.1-3117 . Disposition of supplemental assessment sheets. All supplemental assessment sheets ~~of every kind~~ 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 ~~were disposed of and such supplemental sheets shall be the assessment sheets for the assessment of such taxes and levies~~ .

Source: § 58-883

Comment: No substantive change.

§ ~~58-884~~ 58.1-3118 . Commissioner to retain original personal property book; ~~production on microfilm; etc. 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 to the ~~treasurer of his county or city~~ one *certified* copy of the personal property book ~~to the treasurer of his county or city and each shall forward and to the Department of Taxation one copy of the personal property book~~ . The personal property books may be produced in the form of microfilm, microfiche, or any other similar microphotographic process 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, or such other similar microphotographic process 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 the first day of September of each year, or within ninety 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 fifty nor more than two hundred dollars and he shall not be paid any compensation which *he* may be due ~~him~~ , payable out of the *State state* treasury, for making out such books. But the Department of Taxation may, for good cause, extend the time of delivery ~~of~~ *for* such books. ~~Each commissioner of the revenue shall preserve in his office the original of the personal property book, but~~

The treasurer and the commissioner of the revenue need not preserve ~~in their offices their~~ copies of the personal property book for a ~~longer period of~~ *longer than* six years following the tax year to which such book relates ; and . The term "~~personal property book,~~" as used in this sentence; includes capitation tax ~~assessment books or sheets~~ in any case in which capitation taxes are not assessed on the main personal property book.

Source: § 58-884

Comment: Capitation tax language has been deleted.

§ 58-885 58.1-3119 . Personal property book not to be altered after delivery to treasurer. After the commissioner of the revenue ~~shall have~~ *has* delivered a copy of his personal property book to the county or city treasurer, no alteration shall be made therein by ~~him~~ *affecting which* affects the taxes or levies of that year.

Source: § 58-885

Comment: No substantive change.

§ 58-886. ~~Commissioner to add up columns of personal property books; summary: The commissioner shall add up the columns of figures on each page, so as to show at the bottom of each the total aggregate of each column, and at the end of each book he shall enter the sums from the bottoms of the respective pages, by reference thereto, so as to present at one view the various species and total number of the subjects of taxation within his county or city and the entire amount of revenue arising therefrom.~~

Source: § 58-886

Comment: Language is unnecessary, the form of the book requires this procedure.

§ 58-887 58.1-3120 . If books for preceding year not made out, how supplied.— *A. If in consequence of there being no commissioner of the revenue for the next preceding year, or from any other cause, no land book or personal property book was made out of for the the land tax, or the tax on personal property for that year immediately preceeding the year in which a commissioner takes office , the commissioner of the revenue for such county or city shall proceed to make out complete books for the such year, according to the rate of tax which then existed ; as well as books for the current year .* § 58-888. ~~Like proceedings to be had as for current year. The like~~

*B. All proceedings required by this article in regard to assessment books shall be had with and under the books of the such year next preceeding as with those of the current year and the sums therein charged therein shall be collected and accounted for in like manner.*

Source: §§ 58-887 and 58-888

Comment: No substantive change. Source sections have been combined and reworded.

§ 58-889 58.1-3121 . Penalty for false entry in books. If any commissioner knowingly ~~make~~ *makes* a false entry on any of his books, he shall be guilty of malfeasance in office.

Source: § 58-889

Comment: No substantive change.

§ 58-892 58.1-3122 . Tax Commissioner may report misconduct or incapacity of commissioner of the revenue.—~~The State Tax Commissioner may communicate any instances of the misconduct or neglect of any commissioner, or any evidence of his incapacity, furnished by anything in his office or otherwise, 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.~~

Source: §§ 58-892 and 58-893

Comment: No substantive change. The source sections have been combined.

§ 58-893. ~~Report laid before court. The clerk shall lay such letter before the court at the first term after it is received.~~

§ 58-894. ~~Act authorizing certain counties to require commissioners to make tax bills continued in effect Chapter 14 of the Acts of 1938, approved February 24, 1938, as amended by chapter 10 of the Acts of 1946, approved February 18, 1946, relating to the making of tax bills by commissioners of the revenue in counties which adjoin two cities lying wholly within this State, one of which cities has a population of one hundred seventy thousand or more, and counties which have a population of more than thirty-five thousand and which adjoin two cities lying wholly within this State having populations of not less than fifty thousand each, is continued in effect~~

Source: § 58-894

Comment: The section is no longer needed; it applied to a specific emergency situation.

## Article 2.

*Treasurers.*

§ 58.1-3123. Interpretation of "treasurer".—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.

Source: New

Comment: This section is necessary to define the term "treasurer" as it used in this chapter

§ ~~58-916~~ 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 . ~~and so designated as the point at which the treasurer's office shall be maintained.~~ The board of supervisors or other governing body shall ~~provide suitable space for such office.~~

Source: § 58-916

Comment: The stricken language in the last sentence is covered in § 14.1-64.

§ ~~58-917~~ 58.1-3125 . Examination of treasurer's bond; when court to require new bond. Each circuit and corporation court shall enter an order at some spring or fall term in each year requiring the commissioner of accounts of such court or, if it be is improper for such commissioner to act or if there be 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 ~~and .~~ 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 be is reported as insufficient, the court shall make an order requiring the treasurer, within thirty days after he shall have has been served with a copy of the order as a notice is required by law to be served , to execute a new bond, which may be given before the court ; ~~or the judge thereof in vacation .~~ If the such new bond required be 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.

Source: § 58-917

Comment: No substantive change.

§ ~~58-918~~ 58.1-3126 . Bond of deputy; liability thereon. The treasurer may ~~take~~ require from any deputy such bond with surety as he shall deem necessary for his indemnity. If any deputy ~~shall fail~~ fails to collect or, having collected, ~~fail~~ fails to pay over to his principal, any ~~taxes or~~ , levies or funds which he ought to have collected or may have received, ~~he~~ such deputy and his sureties shall be liable to such principal, upon motion, for the amount of the deficiency in such taxes or , levies or funds , together with damages thereon at the rate of ten ~~per centum~~ percent per month from the time each payment should have been made ; . ~~and~~ They shall also be liable to such principal for all damages sustained by him by reason of any other default or misconduct in office of the by such deputy. ~~This section shall apply as well to a city treasurer as to a county treasurer.~~

Source: § 58-918

Comment: Deputies have been made responsible for "funds" in addition to taxes and levies.

§ ~~58-919~~ 58.1-3127 . Treasurer to collect and pay over taxes and levies; keep account of receipts and disbursements; books open for inspection.—§ ~~58-958~~ Treasurer to collect and pay over taxes and levies. A. Each county and city treasurer shall receive the State ~~state~~ revenue and the levies and other amounts payable into the treasury of the political subdivision of the Commonwealth served by the treasurer . ~~and~~ Such treasurer shall account for and pay over the same revenue received in the manner provided by law. ~~This section shall not apply to any city insofar as local revenues are concerned when the charter of such city provides otherwise.~~

B: The treasurer shall keep a correct account of all moneys received and disbursed by him for the county . 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 Commonwealth's attorney or board of supervisors or other governing body or any taxpayer of the county and shall, when required by such attorney, board or other 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.

Source: §§ 58-919 and 58-958

Comment: The source sections have been combined. The secrecy of information section has been referenced.

*§ 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.*

*B. Any person who refuses to answer, under oath, questions touching any persons tax liability shall be deemed guilty of a Class 4 misdemeanor. Each days refusal to answer such questions shall constitute a separate offense.*

Source: New

Comment: Treasurers have been granted the power to summon. A penalty has also been provided.

~~§ 58-919.1~~ *58.1-3129 . Destruction of paid tax tickets; other tax tickets; records.— A. The treasurer may, with the consent of the governing body, cause destroy all paid tax tickets to be destroyed 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.*

~~§ 58-987. Destruction of tax tickets.~~ *B. The treasurer may, at any time after the expiration of three years from the date he certifies the list lists mentioned in 58.1-1801 and paragraph s (2) and (4) of § 58-978 58.1-3921 , and after the expiration of five years from the date he certifies the list mentioned in paragraph (3) of § 58-978 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.*

~~§ 58-919.2. When certain records may be destroyed.~~ *C. The treasurer of any county, city or town may cause records to be destroyed after audit , with the consent of the Auditor of Public Accounts and the State ~~Library~~ Librarian , in accordance with retention regulations for records maintained by the treasurer established under the Virginia Public Records Act (§ 42.1-76 et seq.).*

Source: §§ 58-919.1, 58-919.2 and 58-987

Comment: The source sections have been combined.

~~§ 58-919.3~~ *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 or director of finance, as the case may be , 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 or director of finance , to supervise and witness the destruction of said 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 ; provided that the detailed description of bond coupons paid in the fiscal year ended June thirty, nineteen hundred fifty-eight and in any fiscal year prior thereto need not be listed in the certificate, although reference in the certificate shall be made as to the amount of coupons paid in such fiscal year that were destroyed; but For any fiscal year subsequent to June thirty, nineteen hundred fifty-eight such certificate shall set forth the same descriptive information for paid bond coupons destroyed as is required herein for paid bonds .

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 or the director of finance .

Source: § 58-919.3

Comment: Outdated language has been deleted. Reference to the Director of Finance has been deleted, it is covered in § 58.1-3123.

~~§ 58-920 58.1-3131 .~~ Warrant book. 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 ~~board of supervisors or other governing body~~ and presented for payment, stating correctly the date, amount, number, in whose favor drawn and the date ~~the same~~ *such warrant* was presented ~~issued~~ ; . ~~and~~ All such warrants shall be paid, in the order presented, out of the fund drawn upon.

Source: § 58-920

Comment: No substantive change.

~~§ 58-921 58.1-3132 .~~ How ~~county~~ warrants paid; receivable for levies. No ~~county~~ 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 ~~shall be~~ *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 ; . ~~but~~ *However*, such treasurer shall, as he may receive money into the treasury belonging to the fund so drawn upon, set ~~the same~~ *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 ; ~~but however~~, if the warrant has been transferred it shall be subject to any county *or city* or city levy owing by the taxpayer in whose favor the ~~same~~ *warrant* was issued. When the warrant is for a larger sum than ~~the county~~ *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 ~~county~~ 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 ; . ~~and~~ 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.

Source: § 58-921

Comment: The section has been made applicable to both city and county treasurers.

~~§ 58-922 58.1-3133 .~~ Treasurers ~~to~~ *may* deduct any taxes due ~~by from~~ party in whose favor the warrant is drawn. In the payment of any warrants lawfully drawn ~~on account of allowances made against the Commonwealth~~ , the treasurer of any ~~county or corporation~~ paying such warrants ~~shall~~ *may* first deduct all taxes due ~~by from~~ the party in whose favor the warrant is drawn ; . ~~and~~ If such warrant ~~be~~ *is* insufficient to pay the entire amount due, then such treasurer shall credit the tax bill by the amount of the warrant.

Source: § 58-922

Comment: Specific language dealing with allowances made against the Commonwealth has been deleted. Requirement is now discretionary.

~~§ 58-923 58.1-3134 .~~ ~~County~~ Warrants must be presented within two years. No warrant or order drawn on ~~any the county treasurer of any county~~ by the ~~board of supervisors or other governing body~~, school board, local board of public welfare or social services or circuit court shall be paid by the treasurer, unless the warrant or order ~~be~~ *is* presented to be paid and registered in ~~a the warrant book~~ ; ~~to be kept by the treasurer for that purpose~~; within two years from the date of the drawing of the warrant.

Source: § 58-923

Comment: Section applies to both county and city treasurers.

~~§ 58-924 58.1-3135 .~~ Statement of accounts of ~~county or city~~ treasurer. As often and in such manner as may be required by the ~~board of supervisors or other governing body of his county or the council of his city, or the circuit court of his county or any court of record of his city~~, Each ~~county and city~~ treasurer shall furnish an account of his receipts and expenditures and a statement of his account as ~~such county or city 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* .

Source: § 58-924

Comment: No substantive change.

~~§ 58-924.1 58.1-3136 .~~ Audits of ~~local~~ treasurers upon termination of office. Notwithstanding any other provision of law, upon the death, resignation, removal, retirement or other termination of a ~~county or city~~ 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 ~~the county or city~~ *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.

Source: § 58-924.1

Comment: No change.

§ ~~58-925~~ *58.1-3137* . County treasurer's annual settlement ~~with supervisors~~ ; 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 ~~board of supervisors or other~~ governing body of the county, or within thirty days thereafter, settle with the ~~supervisors or other~~ *such governing body* his accounts for that year ; . ~~and~~ 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. ~~And~~ When ~~his~~ *the treasurer's* term of office expires or if he ~~die dies~~ , ~~resign resigns~~ or ~~be is~~ removed from office, ~~he 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 ~~the same~~ *such funds* belong s and deliver to his successor all ~~bonds securities~~ belonging to his office and all money belonging to the county.

Source: § 58-925

Comment: No substantive change.

§ ~~58-926~~ *58.1-3138* . Delivery of books, tax tickets, ~~and other materials etc.,~~ to successor treasurer or court clerk. Whenever a vacancy in the office of a ~~county or city~~ 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 ~~the~~ 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 ; . ~~taking his receipt for the same; or, 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 him to the deposit the same of such materials to be made with the clerk of the county or clerk of the corporation circuit court, who shall give a receipt therefor and hold the same such materials subject to the order of the court.~~

When the term of office of a ~~county or city~~ 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, ~~taking his and take a receipt for the same therefor~~ . The receipt so furnished to any treasurer or his representative shall be allowed as a credit ~~to 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.

Source: § 58-926

Comment: No substantive change.

§ ~~58-927~~ *58.1-3139* . Treasurer not to deal in ~~county~~ warrants. No ~~county~~ 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 ~~county~~ treasury *of his county or city* or payable out of ~~the same such treasury, other than a warrant lawfully payable to such treasurer or deputy~~ . If any ~~county~~ 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 ; . ~~and This disallowance shall be in addition to the penalties prescribed in § 58-922 58.1-3144 .~~

Source: § 58-927

Comment: The section has been made applicable to city, as well as county, treasurers. Treasurers have been allowed to deal in certain warrants.

§ ~~58-928~~ *58.1-3140* . Remedy for failure to pay such warrants. If any such treasurer ~~fail (i)~~ fails to pay, upon presentation, any legal warrant *listed in § 58.1-3131* , ~~having in his hands for which he has at the time appropriated funds appropriated by the governing body of his jurisdiction out of which the same such warrant ought to be paid, or fail (ii) fails to set apart necessary funds, when the same such funds are appropriated and come into his hands, for the~~

payment ~~thereof~~ in its order, of such warrant if listed under § ~~58-920~~; and 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 ~~per centum~~ percent per month on the amount from the time such treasurer should have paid the ~~same~~ warrant and the costs of such motion, including a reasonable attorney's fee of five dollars fees.

Source: § 58-928

Comment: The five dollar attorney fee has been changed to "reasonable attorney's fees."

§ ~~58-929~~ 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 ; ~~except by inadvertence~~ . Any violation of this section, when such fund the amount so applied, disbursed or used shall ~~exceed~~ exceeds fifty dollars, shall constitute embezzlement be deemed a felony and shall be punished by a fine of not less than two hundred and fifty dollars, nor more than one thousand dollars; and confinement in the State penitentiary for not less than one year, nor more than five years . ~~When such funds so applied, disbursed or used in violation of this section shall be less than fifty dollars such violation shall be punishable as a misdemeanor.~~

Source: § 58-929

Comment: The violations now constitute embezzlement. It is no longer necessary to mention the amount of the violation.

§ ~~58-930~~ 58.1-3142 . Interest on a fund belongs to the fund; exception. Whenever the treasurer of any county or city in this State shall receive receives interest on funds belonging to the State 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 ; . ~~provided~~; However, that the governing body of any county or city may direct that the interest received from general obligation bond proceeds invested shall 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 and upon conviction thereof shall be punished by a fine of not more than five thousand dollars .

Source: § 58-930

Comment: The misdemeanor has been classified as a Class 1 misdemeanor. This reduces the possible fine to \$1000 but provides for a possible jail term.

§ 58-931: Suits against treasurers. For every breach of the condition of the bond of the treasurer of any county or city, either in failing to account for and pay into the treasury all ~~taxes~~ funds due from him to the State or to pay over to his successor all moneys required by § 58-925 to be paid to his successor in office when he goes out of office, suit may be brought against such treasurer and his sureties on his official bond in the first case in the Circuit Court of the city of Richmond or the circuit or corporation court of his city or in the second case in the circuit court of his county or the circuit or corporation court of his city, at the relation of his successor, for the use of the city, county, district or county school board, as the case may be, or the same, together with damages and costs as prescribed by § 58-928, may be recovered by motion in such court. A motion under this section shall be after at least five days' notice and when on behalf of the Commonwealth shall be in the name of the Commonwealth, and in all other cases in the name of the successor in office of such treasurer. Upon any judgment rendered in such suit or motion a writ of fieri facias may issue, which shall conform in all respects to writs of fieri facias issued under chapter 35 (§ 8-758 et seq.) of Title 8 and be proceeded with in the same manner.

Source: § 58-931

Comment: The section is not necessary, such rights exist without this language.

§ 58.1-3143. Reserved.

§ ~~58-932~~ 58.1-3144 . Penalties for violations of certain provisions of this chapter . Any county or city treasurer violating who knowingly violates any of the foregoing provisions provision of this chapter or of article 2 (§ 58-938 et seq.) hereof article relating to the county or city levy , for which a specific penalty is not otherwise provided, shall ; if the violation do not amount to a felony; be deemed guilty of a Class 2 misdemeanor and, upon conviction thereof, shall be removed from office . and be fined not less than twenty nor more than one hundred dollars and

be imprisoned in jail not exceeding three months; and, In addition thereto, whether such violation be a felony or misdemeanor, he and the sureties on his official bond shall be liable to the party aggrieved thereby for double damages for the injury sustained.

Source: § 58-932

Comment: The section has been rewritten. Violations must be made "knowingly" before the penalty is imposed. The penalty has been classified as a Class 2 misdemeanor. The mandatory jail term has been deleted.

~~§ 58-932 58.1-3145 . How treasurer may secure final discharge from liability. When Any county or city treasurer or, if he be has died dead , his personal representative, at any time after the expiration of any his term of such treasurer ; provided he is not treasurer of such county or city after the end of such term, whether the term shall end by limitation, resignation, death or otherwise, shall produce before the circuit court of the county or the corporation court of the city of which he is treasurer the respective certificates of the Comptroller, of the board of supervisors or other governing body of such county or city council of such city, and of the school board of such county or city and board of road commissioners of the county or other road officials, if there be such board or officials in the county, . These certificates shall show showing 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 § 58-926 58.1-3138 ; . then 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.~~

Source: § 58-933

Comment: Reference to the road board has been stricken.

~~§ 58-934 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 also issue a rule , as directed by the appropriate circuit court, against the Comptroller, the board of supervisors or other governing body ; and the school board and the road board, if such there be, of the county or the council of the city, returnable to the day named in the order of the court, to show cause, if any they can, why the treasurer should not be discharged. When the notice shall have has been published and posted as aforesaid and the rule shall have been 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 ; . but 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 to the discharge of such treasurer as it may deem proper. A copy of the order herein required, served upon the Comptroller, the chairman of the board of supervisors or other governing body, the chairman of any such road board, and the mayor of the city or superintendent of schools, respectively, shall be a sufficient service of the rule.~~

Source: § 58-934

Comment: Reference to the road board has been stricken. Unnecessary language has been deleted.

~~§ 58-935 58.1-3147 . Appeal. An appeal may be allowed to the Supreme Court of Appeals; according to the provisions of the general law governing appeals, from any order entered by the circuit or corporation court either discharging or declining to discharge such any treasurer.~~

Source: § 58-935

Comment: No substantive change. Unnecessary language has been deleted.

~~§ 58-936 58.1-3148 . City charters not affected by particular provisions. Nothing contained in the foregoing provisions of this chapter or in articles 2 (§ 58-938 et seq.) or 3 (§ 58-953 et seq.) hereof 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.~~

Source: §§ 58-936 and 58-937

Comment: The provisions of § 58-937 have been incorporated into this section. New language provides that only special charter provisions may supercede the provisions of this chapter.

~~§ 58-937. Certain charter provisions not affected by rest of chapter. Nothing contained elsewhere in this chapter in conflict with any provision of the charter of any city or town in relation to local levies or their collection shall be construed to repeal such provision.~~

Source: § 58-937

Comment: Section is no longer necessary. See § 58.1-3148.

~~§ 58-938. How money deposited, paid and disbursed generally. All money payable to and received by a county treasurer pursuant to law shall be deposited, paid out and disbursed by him in the manner hereinafter provided.~~

Source: § 58-938

Comment: Language is unnecessary.

~~§ 58-939 58.1-3149 . Money received to be deposited. All money received by a county treasurer for the account of either the Commonwealth or the treasurer's county or city ; except such amount thereof as shall be necessary for the payment in cash of orders or warrants lawfully drawn upon the treasurer and matured lawful bonds, notes or obligations of the treasurer's county; for the payment of which funds are available, shall be deposited intact by the treasurer as promptly as practical after its receipt in such a bank or banks, or such savings and loan association or associations, as is, or are, authorized by this article to act as depository or depositories therefor. All deposits made pursuant to this provision shall be made in the name of the treasurer's county or city .~~

Source: § 58-939

Comment: The new language requires deposits to be made "intact" for accounting purposes. All monies are now required to be deposited.

~~§ 58-948 58.1-3150 . Depository officers not to permit excess deposits. No treasurer or executive officer of any depository shall permit the amount of money on deposit with any depository at any time pursuant to the provisions of this article to exceed the amount of bond given or the value ; computed as hereinbefore provided; of the securities pledged and deposited to secure such money, plus the amount insured by the Federal Deposit Insurance Corporation.~~

Source: § 58-948

Comment: No substantive change. The section applies to country and city treasurers.

~~§ 58-940 58.1-3151 . County finance board. For the purposes hereinafter indicated, there shall be for Each county of the Commonwealth may establish a county finance board, which shall consist of the chairman of the board of supervisors or other the governing body of the county , the treasurer of the county and a citizen of the county of proven integrity and business ability. The chairman of the board of supervisors or other governing body and the county treasurer shall be ex officio members of the county finance board and . The citizen member thereof shall be appointed by the circuit court of the county or by the judge thereof in vacation . But However, in any county adjoining any county having a population of more than five hundred per square mile the county finance board shall consist of the chairman of the board of supervisors or other governing body, the treasurer, the Commonwealth's attorney and a citizen of the county of proven integrity and business ability. And 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 of the county finance board now in office shall expire December thirty-one; nineteen hundred and forty-nine. Thereafter the term of the appointment of such member shall be four years, but the circuit court of the county ; or the judge thereof in vacation, in his discretion, 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.

Source: § 58-940

Comment: The finance board has been made optional. The section has been rewritten for clarity.

~~§ 58-941 58.1-3152 . Organization and procedure of board. The chairman of the board of supervisors or other governing body of the county shall be the chairman of the county finance board and the clerk of the board of supervisors or other 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 appoint decide. and The clerk shall record the activities and proceedings of such board in a suitable record book which shall be provided for~~

~~the~~ such purpose by ~~the~~ the board of ~~supervisors~~ or other governing body.

Source: § 58-941

Comment: No substantive change.

~~§ 58-942~~ 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 ~~board of supervisors or other~~ 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 § 14.1-5. The allowance made under this section shall be paid by the ~~board of supervisors or other~~ governing body out of the county ~~levy funds~~ , on a certificate of attendance from the chairman of the county finance board, verified by the ~~affidavit 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 ~~three hundred sixty dollars \$360 and~~ , in addition to the mileage allowance, in any one year.

Source: § 58-942

Comment: The citizen member is no longer required to verify milage by affidavit, only a written statement is required.

~~§ 58-943~~ 58.1-3154 . Selection and approval of depositories. The depository or depositories for the money received by a county treasurer shall be selected by the ~~county treasurer and approved by the county finance board and~~ The board may withdraw its approval of any depository if in its judgment the protection and safety of the money held by such depository requires such action; and when such action is taken with respect to any depository the treasurer shall forthwith withdraw from such depository all money on deposit therewith and deposit the same with an approved depository pursuant to the provisions of the Virginia Security for Public Deposits Act (§ 2.1-359 et seq.) .

Source: § 58-943

Comment: This section has been amended to comply with § 2.1-359 et seq.

~~§ 58-943.1~~ 58.1-3155 . Deposit of local funds in banking institutions without outside of the State Commonwealth of local funds to meet obligations payable outside of the State Commonwealth . Notwithstanding other provisions of this article the treasurer of any county , city or town may if the State Commission on Local Debt first approve gives prior approval , deposit local funds in banking institutions without the State 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 State Commonwealth and where any such banking institution is located.

Source: § 58-943.1

Comment: No substantive change.

~~§ 58-943.2~~ 58.1-3156 . County finance boards may authorize time deposits under certain circumstances. Notwithstanding other provisions of this article, whenever the county finance board shall determine determines that county or district funds in any given amount would otherwise would lie idle and draw no interest or draw a lesser rate of interest, if the finance board may authorize the county treasurer to place such funds in such amount upon time deposit in such legal depository a qualified public depository as defined in § 2.1-360 at such rate of interest and upon such conditions of withdrawal as the county finance board may determine.

Source: § 58-943.2

Comment: No substantive change.

~~§ 58-943.3~~ 58.1-3157 . Custody of county-owned securities. Notwithstanding any other provision of law to the contrary, the governing body of any county or city may by resolution provide that any or all securities owned by the several funds of such county or city may be held by the treasurer of such county or city as custodian thereof, by the Federal Reserve Bank of Richmond in safekeeping subject to the order of the treasurer or by the trust department of a bank or trust company designated by the governing body and authorized to conduct a trust business in this State Commonwealth , as custodian thereof in safekeeping for the account of the treasurer.

Every such custodian is authorized, when so directed by the governing body of the county , to sell any securities so held and, with the proceeds therefrom, or with other funds of the county or city coming into his or its hands pursuant to the provisions of this section, to purchase

other securities.

This section shall not be construed to relieve any such governing body from any requirement of law relating to the deposit and investment of county funds, except as herein provided.

~~All of the requirements and provisions of this article relating to the bonding of depositories and security to be given upon such bond shall apply mutatis mutandis to each bank and trust company, other than the Federal Reserve Bank of Richmond, which is a custodian under the provisions of this section; provided, However, where moneys are deposited in a bank or trust company authorized to accept such deposit in exchange for a certificate of the deposit and such moneys have been secured for the benefit of the county as provided in this article; the certificate of deposit may be held by the trust department of any bank or trust company authorized to receive the same without providing the security required hereunder.~~

Source: § 58-943.3

Comment: The last paragraph is unnecessary in light of § 2.1-359 et seq. the section now applies to both counties and cities.

~~§ 58-044 58.1-3158 . Bond or pledge of securities by depositories ; approval of and authority to substitute securities; preferential payment under deposit agreement . No money received by a county treasurer shall be deposited with any depository of the treasurer's county selected and approved as provided in § 58-043 until such depository shall have *has* given bond with the same conditions as those required for bonds given by State *stste* depositories who elect to give bond to protect money deposited with them by the State Treasurer pursuant to the provisions of §§ 2.1-211 to 2.1-214 or until such depository shall have pledged and deposited in the manner and to the extent hereinafter provided and for the protection of the money deposited with it pursuant to the provisions of this section securities of the character authorized to secure deposits of the State treasury as provided in § 2.1-213 *has qualified under § 2.1-359 et seq .*~~

~~Provided however, that:~~

~~(a) All securities offered by a depository shall have the approval of the county treasurer or his duly authorized assistant or deputy which approval may, in the treasurer's discretion be by general authorization to the depository and escrow agent to substitute from time to time securities complying with the provisions of § 2.1-212 and provided that at the time of substitution the securities substituted shall be of market value at least equal to the market value of the security for which substituted. Market value may be determined as the mean between the bid and offered quotations furnished by a recognized dealer in securities on the date of the substitution. The treasurer may at any time revoke its general authorization and require approval of substitution in each case. The treasurer, or his duly authorized assistant or deputy may from time to time authorize substitutions or additions to or releases of securities and upon instruction from any of such persons an escrow agent may effect such substitutions, additions or releases and shall be under no duty of inquiry as to the amount of money on deposit with the depository pledging such security; and~~

~~(b) Any such depository, in lieu of complying with the preceding part of this section, may, by its board of directors, adopt a resolution before such public funds are deposited therein to the effect that, in the event of the insolvency or failure of such depository, such public funds deposited therein subsequent to the adoption of such resolution shall, in the distribution of the assets of such depository, be paid in full before any other depositors shall be paid deposits made in such depository subsequent to the same date and the adoption of such resolution shall be deemed to constitute a binding obligation on the part of such depository; but at no time shall such public funds be on deposit in any such depository availing itself of the provisions of this proviso to an amount in excess of sixty per centum of the capital and surplus of such depository unless and until such excess be secured as provided by the provisions of this section which preceede this proviso ; and~~

~~(c) Notwithstanding any other provisions of law, no depository shall be required to give bond or pledge securities in the manner herein provided, for the purpose of securing deposits received or held in the trust department of the depository and which are secured as required by § 6.1-121 (§ 6.1-21) of the Code of Virginia or which are secured pursuant to 12 U.S.C.A., § 92a of the United States Code by securities of the classes prescribed by § 6.1-21.~~

Source: § 58-944

Comment: This section has been stricken and reference has been made to § 2.1-359 et seq.

~~§ 58-945. Deposit of securities pledged. All securities pledged by any depositor or custodian to protect money or securities deposited with it under the provisions of this article shall be~~

deposited in escrow with some bank or trust company in this Commonwealth; other than the depository or custodian, which shall be acceptable to and approved by the depository or custodian and the county finance board and shall be accompanied by powers of attorney authorizing such bank or trust company; in event of any default by the depository or custodian; to deliver the securities to the county finance board and empowering such board to sell, transfer and deliver all or any part of such securities in such manner as it may elect for the satisfaction of any claim that may arise from such default.

Source: § 58-945

Comment: This section is unnecessary. See § 2.1-359 et seq.

§ 58-946. Deposit of securities with State Treasurer to protect deposits of certain counties; suit against Commonwealth. In any county of the Commonwealth a depository of county funds may, in lieu of depositing securities as provided in § 58-945, deposit such securities with the State Treasurer, whereupon the faith and credit of the Commonwealth shall be pledged for their return to the depository in accordance with the provisions of the agreement under which they are deposited. In cases of controversy arising between the parties while the securities are actually in the custody of the State Treasurer, the Commonwealth hereby consents to be sued with respect thereto and When the Commonwealth shall become a party to any such suit, the State Treasurer and the Auditor of Public Accounts shall be named defendants on behalf of the Commonwealth. Any such suit shall be brought in the Circuit Court of the city of Richmond and the controversy shall be determined as in other suits at law or in equity, as the case may be.

Source: § 58-946

Comment: See § 2.1-359 et seq.

§ 58-946.1. Deposit of securities with Federal Reserve Bank of Richmond. (a) any depository or custodian under § 58-944 or under any other statute or law, special or general, is authorized; in lieu of depositing pledged securities in escrow with a bank or trust company in this State or with the State Treasurer, to deliver such securities to the Federal Reserve Bank of Richmond; to be accepted and held in safekeeping subject to the order of the county finance board, provided such depository or custodian shall have delivered to such county finance board a power of attorney empowering such board to sell, transfer and deliver all or any part of such securities in such manner as it may elect for the satisfaction of any claim that may arise from such default.

In the case of deposits of a county which has abolished its county finance board pursuant to the provisions of § 58-940, securities may be placed in safekeeping with the Federal Reserve Bank of Richmond subject to the order of the governing body of such county, provided said governing body shall have received a power of attorney empowering it so to sell, transfer and deliver such securities in event of default.

(b) The provisions of § 58-944 (a) and similar provisions of law pertaining to substitution of securities shall apply to securities deposited with the Federal Reserve Bank of Richmond as though it were an escrow agent.

Source: § 58-946.1

Comment: See § 2.1-359 et seq.

§ 58-947. Amount of bond or securities required. The amount of bond given or the market value of securities pledged by any depository as aforesaid shall at all times be at least equal in amount to the amount of money on deposit with the depository, less such amount thereof as shall be insured by the Federal Deposit Insurance Corporation, a corporation created by an act of the Congress of the United States, approved June 16, 1933, and known as the Banking Act of Nineteen Hundred and Thirty-Three.

Source: § 58-947

Comment: See § 2.1-359 et seq.

§ 58.1-3159. Reserved.

§ 58-949 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 and the character and value of the security held to protect the same.

Source: § 58-949

Comment: Stricken language is not needed in light of § 2.1-359 et seq.

§ 58-950 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 ~~to shall~~ be agreed upon ~~between by~~ the treasurer and the depository ~~and approved by the county finance board~~ subject to the approval of the county finance board if it so desires .

Source: § 58-950

Comment: Finance board approval has been made discretionary.

~~§ 58-951~~ 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 ; ~~provided, however, that~~ .

~~(1)~~ 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 ~~board of supervisors or other~~ governing body of his county, for State 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 ; .

~~(2)~~ C. Any ~~board of supervisors or other~~ governing body ~~desiring to do so~~ may require the that checks issued pursuant to the provisions of this section ~~to be countersigned and may~~ appoint such person or persons as it may desire for the purpose ; .

~~(3)~~ 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 ; ~~and~~ .

~~(4)~~ E. The treasurer may, with the approval of the ~~board of supervisors or other~~ governing body, by resolution entered of record on the minute book of the board, ~~designate~~ authorize one or more of his deputies ~~who shall have authority~~ 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.

Source: § 58-951

Comment: No substantive change.

~~§ 58-952~~ 58.1-3163 . No liability for loss of funds deposited in accordance with article. No ~~county~~ 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.

Source: § 58-952

Comment: No substantive change. The section now applies to both county and city treasurers.

~~§ 58-953~~ 58.1-3164 . Institution of proceedings. Whenever the Governor has reason to believe that the treasurer of any county or city of the State 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 State Commonwealth with reference to the collection and disposition of, and accounting for, the revenue , he may ~~cause to be instituted against such officer~~ institute an ouster proceeding ~~against such officer~~ under §§ ~~15-1-63 to 15-1-65~~ 24.1-79.1 to 24.1-79.10 . In such proceeding ~~may be instituted~~ and the Commonwealth ~~shall be~~ represented ~~therein~~ by the Attorney General or by special counsel selected by the Governor should the Governor so direct.

Source: § 58-953

Comment: No substantive change.

~~§ 58-954~~ 58.1-3165 . Suspension of officer proceeded against, appointment of substitute. Upon the institution of ~~the such~~ proceeding ~~authorized in § 58.1-3168~~ the Governor may suspend such officer from collecting the revenues of the State Commonwealth and of the county or city and from performing any of the other duties of his office . ~~and The Governor may also appoint some a person to act in the place and stead of such suspended officer in the collection of such revenues and in the performance of the other duties of the office ; . and 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 State *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 ~~shall~~ have been finally determined.

Source: § 58-954

Comment: No substantive change.

~~§ 58-956 58.1-3166 . If officer finally removed, Substitute officer continued continues in office upon removal of predecessor . If in the ouster proceedings the officer be removed, the appointee of the Governor shall 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 §§ 15.1-63 to 15.1-65 24.1-79.1 to 24.1-79.10 , 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.~~

Source: § 58-956

Comment: No substantive change.

~~§ 58-955. Procedure and appeal in ouster proceeding. Any ouster proceeding brought pursuant to the provisions of this article shall insofar as § 8-262 is concerned, be considered a civil action. From any judgment of the trial court an appeal may be taken by either the Commonwealth or the officer whose removal is sought; but no such appeal shall be taken after thirty days from the day on which such judgment is entered .~~

Source: § 58-955

Comment: This procedure is covered in §§ 24.1-79.1 to 24.1-79.10.

~~§ 58-957. If officer not removed, how substitute compensated. If such proceeding terminates finally in favor of the officer against whom it is brought, the appointee of the Governor shall, for the time during which he actually serves, receive from the State and the county or city compensation equal to the compensation the officer would have been entitled to receive during the same period but for his suspension.~~

Comment: This provision is necessary in light of the "compensation language" found in § 58.1-3169.

~~§ 58-958.1. Authority to allow payment of local levies by credit card; service charge. The governing body of any county, city or town may by ordinance authorize the treasurer of such county, city or town to accept payment of local levies by use of a credit card. Any county, city or town adopting such an ordinance, may, in addition to any penalties and interest arising pursuant to §§ 58-847 and 58-962, add to such payment a sum not to exceed four per centum of the amount of tax, penalty and interest paid, as a service charge for the acceptance of such card. Such service charge shall not exceed the percentage charged to the county, city or town.~~

Comment: This section has been moved to General Provisions (Chapter 30).

*§ 58.1-3167. Reserved.*

~~§ 58-973 58.1-3168 . When treasurers to pay state revenue into state treasury. Each county and city treasurer , pursuant to § 2.1-198, 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 monthly, or more often if called upon by the Comptroller, 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 county or city 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. If 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 § 15.1-63 24.1-79.1 .~~

Source: § 58-973

Comment: Failure to comply must be "wilfull" in order to be removed from office. Code cites have been updated. See § 2.1-198.

~~§ 58-974 58.1-3169 . Interest chargeable against treasurer for failure to pay over revenue.~~

Every treasurer who does ~~not~~ 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 per centum percent per annum from the time the same such revenue was so payable.

Source: § 58-974

Comment: Failure to pay must be wilfull.

§ 58-975. Acceptance of six percent interest on judgment carrying higher rate. The Comptroller ; when in his judgment it is just and proper, may accept interest at the rate of six per centum per annum upon any judgment heretofore or hereafter recovered by the Commonwealth against the treasurer of a city or county which bears a greater rate of interest than six per centum per annum.

Source: § 58-975

Comment: All judgments against treasurers will carry the judgment rate of interest.

§ 58.1-3170. Reserved.

§ 58-976 58.1-3171 . Attorney General to proceed against delinquent treasurers and their sureties; recordation of notice. ~~Treasurers in default and their sureties shall be proceeded against by~~ 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 ; ~~on notice, in the Circuit Court of the city of Richmond, appropriate circuit court .~~ Copies of such notice 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 or proper city courts of the and cities wherein it is ascertained that the such treasurer or his sureties proceeded against have any estate . and The clerk to whom any such copy is so sent shall record it in the same manner as a deed is required by law for recordation of a deed to be recorded and index the same copy as well in the name of the Commonwealth as of the treasurer and his sureties, each respectively .

Source: § 58-976

Comment: Motions are no longer required to be made in the Circuit Court of the City of Richmond.

§ 58-977 58.1-3172 . Lien of judgment and execution in such proceeding. A judgment in such proceeding obtained pursuant to § 58.1-3171 , recovered against the treasurer or against the treasurer and his sureties, jointly or severally, shall be a lien on all his or their real estate owned by such treasurer or surety estate in any county or city of the Commonwealth. ~~or to which he or they respectively shall be possessed or entitled at or after~~ Such lien shall arise at the time such notice the motion provided for in § 58.1-3171 is recorded and indexed as aforesaid in such county or city ; . and An execution sued out on such judgment and placed in the hands of an officer to be executed shall bind all the personal estate of such treasurer and sureties, jointly and severally, respectively, ~~of or to which he or they, each respectively, shall be possessed or entitled at or after the time the notice such motion is recorded and indexed as aforesaid and before the return day of such execution ; . except that~~ 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) as against 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.

Source: § 58-977

Comment: "Notice" has been changed to "motion."

### Article 3.

#### Clerks of Court.

§ 58-969 58.1-3173 . System of accounting. A. The Comptroller shall adopt and furnish to the clerk of each court of record in the Commonwealth the books, sheets and forms comprising the a system of accounting known as the Waring system , 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.*

Source: § 58-969

Comment: Subsection B is new. It gives the Auditor of Public Accounts necessary control.

~~§ 58-970 58.1-3174 . Entries. The clerk at the time he collects, or is required by statute to collect, any public money shall enter the same such amounts upon such the record required in § 58.1-3173 , together with the fees received in connection therewith for such collection , and shall also enter upon the record therein all other fees, commissions, salaries and allowances received or which should have been received by him.~~

Source: § 58-970

Comment: No substantive change.

~~§ 58-971 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 state treasury the amount of taxes collected by him.~~

Source: § 58-971

Comment: No substantive change.

~~§ 58-972 58.1-3176 . Commissions on collections. Such Each clerk shall be entitled to a commission of five per centum percent thereon of the amount of state revenue collected by him ; provided However, if the aggregate amount of state revenue collected does not exceed for six months' collections reported exceeds the sum of fifty thousand dollars \$50,000 ; but should the amount exceed fifty thousand dollars, then the clerk shall be entitled to a three percent commission on the amount in excess of fifty thousand dollars \$50,000 to a three per centum commission . Such commissions shall not be deducted by any such clerk, but shall be paid out of the State state treasury. Commissions shall not be allowed on costs collected pursuant to § 19.2-368.18.~~

Source: § 58-972

Comment: No substantive change.

## CHAPTER 32.

### REAL PROPERTY TAX.

#### Article 1.

##### Taxable Real Estate.

~~§ 58.1-3200. § 58-758. Real Estate subject to local taxation; taxable real estate defined; leaseholds.- Application of chapter.~~ All taxable real estate, having been segregated for and made subject to by law for local taxation only by Article X, § 4 of the Constitution of Virginia, such taxable real estate shall be assessed for local taxation in accordance with the provisions of this chapter and other provisions of law. For the purposes of this chapter, and other provisions of law relating to 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. This chapter shall not apply to the assessment of any real estate assessable under the law by the State Corporation Commission. 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.

This section, as hereby amended, shall apply to the tax year beginning January one, nineteen hundred and fifty-five, and to every tax year thereafter until otherwise provided by law.

Source: § 58-758.

Comment: References and parallels certain self-executing provisions of Article X, § 4 of the Constitution and removes obsolete effective date clause.

~~§ 58-3201. § 58-760.~~ What real estate to be taxed; amount of assessment; public service corporation property.-All real estate, except such as is that exempted by law, shall be subject to such annual taxation as may be prescribed by law.

~~Beginning with assessments effective on January 1, 1977, All general reassessments or annual assessments in those localities which have annual assessments of real estate, except that referred to in 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 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 said the determination was made. 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. Any county, city or town, which prior to January 1, 1976, applied a fixed multiple or percentage to fair market value in order to derive the assessed value of property, shall lower the rate of tax levy by such an amount that the aggregate real estate tax payable would equal the amount of tax which would be payable prior to assessment at one 100% fair market value. The governing body may, after public hearing as provided in § 58-785.1, put into effect a higher rate than that ascertained under the preceding provisions of this paragraph if such higher rate is deemed necessary by the governing body that. Nothing herein shall affect the authority of local governments to effect special assessments pursuant to Article 1-1 (§ 58-769.4 et seq.) of Chapter 15 of this title.~~

Source: § 58-760.

Comment: Same as second paragraph of source section except that the effective date provisions are deleted along with the interim requirements for tax rate roll-back on property assessments not at 100% fair market value. All localities as of January 1, 1982, are at 100%.

~~§ 58.1-3202. Exception to § 58-3201.-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.~~

Source: § 58-760.

Comment: Exception to assessment at 100% fair market value rule placed in separate section.

§ 58-3203. ~~§ 58-758.1.~~ Taxation of certain leasehold interests.-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.

No leasehold interest 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 ; of the Code of Virginia ; as amended . The provisions of this section shall not apply to any leasehold interests exempted or partially exempted by other provisions of law.

Source: § 58-758.1.

Comment: No change.

§ 58.1-3204. ~~§ 58-761.~~ Lands acquired from United States, etc., when beneficial ownership held prior to January ~~first~~ 1 .-All persons or corporations who receive deeds from the United States or its agencies for lands in the State Commonwealth of Virginia by virtue of contracts therefor by which the beneficial ownership was held prior to January ~~first~~ 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 ~~first~~ 1 of that year.

Source: § 58-761.

Comment: No change.

## Article 2.

### *Exemptions for Elderly and Handicapped.*

§ 58.1-3210. ~~§ 58-760.1.~~ Exemption or deferral of taxes on property of certain elderly and handicapped persons.-The governing body of any county, city or town may, by ordinance, provide for the exemption from, deferral of, or a combination program of ~~exemption~~ ~~exemptions~~ from and ~~deferral~~ ~~deferrals~~ of taxation of real estate, 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 a person or persons not less than anyone at least sixty-five years of age ; and may also provide the same exemption or deferral for such property of a or if provided in the ordinance person who is determined . anyone found to be permanently and totally disabled as defined in subsection (e) of this section § 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 sixty-five or became disabled, or the year such ordinance became effective, whichever is later. A dwelling jointly held by a husband and wife may qualify if either spouse is ~~over~~ sixty-five *or over* or is permanently and totally disabled.

Source: § 58-760.1

Comment: Rewrites what was previously an extremely long and cumbersome section and converts it into a separate article.

§ 58.1-3211. *Restrictions and exemptions.*-Any ~~Such~~ exemption or deferral program enacted by a county, city or town pursuant to § 58.1-3210 shall be subject to the following restrictions and conditions:

(1) ~~1. That~~ The total combined income during the immediately preceding calendar year from all sources of the owners of the dwelling living therein and of the owners' relatives living in the dwelling ~~does shall~~ not exceed ~~eighteen thousand dollars~~ \$18,000 , provided that the first ~~four thousand dollars~~ \$4,000 of income of each relative, other than a spouse, of the owner, or

owners, who is living in the dwelling shall not be included in such total ; . and further provided that the county, city or town may by ordinance specify lower income figures. Provided, however, that The governing body of any county, city, or town may (i) increase the total combined income limitation to nineteen thousand dollars if the ordinance provides that the amount of such exemption or deferral shall be reduced by the amount that such combined income exceeds eighteen thousand dollars and (ii) . however, increase the total combined income limitation to twenty-two thousand dollars \$22,000 if such county, city or town has a combined program of exemptions and deferrals and such program provides for a deferral of real estate taxes on any person or persons whose total combined income levels exceed eighteen thousand dollars \$18,000 . The total combined income limitation may be increased to \$19,000 if the ordinance provides that the amount of such exemption or deferral shall be reduced by the amount that such combined income exceeds \$18,000.

~~(1a)~~ 2. That The net combined financial worth, including equitable interests, as of the ~~thirty-first day of December 31~~ of the immediately preceding calendar year, of the owners, and of the spouse of any owner, excluding the value of the dwelling and the land, not exceeding one acre, upon which it is situated ~~does shall~~ not exceed ~~sixty-five thousand dollars \$65,000 ;~~ provided, however, that the county, city or town ordinance may specify lower net worth figures .

Source: § 58-760.1

Comment: See comment to § 58.1-3211.

*§ 58.1-3212. Local restrictions and exemptions.-Notwithstanding the provisions of paragraphs 1 and 2 of § 58.1-3211, the governing body of a county, city or town may by ordinance specify lower (i) income and financial worth figures, (ii) disability compensation reduction figures, if applicable, and (iii) reductions for income of relatives living in the dwelling, than those set forth in the section.*

Source: § 58-760.1

Comment: New section. Previously there was some confusion as to the flexibility the localities had to reduce the income and worth levels and modifications thereto as set forth in the statute.

~~(2)~~ § 58.1-3213. Application for exemption.-A. That The person ~~or persons~~ claiming such exemption shall file annually with the commissioner of revenue of the county ~~or~~ , 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 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 ~~person or persons as specified in paragraph (1) above~~ § 58.1-3211 ~~does~~ do not exceed the limits prescribed in such ordinance. ~~Provided, however,~~

B. In lieu of the annual affidavit filing requirement, a ~~city or~~ 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. If such person is under sixty-five years of age such form shall have attached thereto a certification by the Social Security Administration, the Veteran's Administration, 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 licensed to practice medicine in the Commonwealth, to the effect that ~~such the~~ person is permanently and totally disabled, as defined in ~~subsection (e)~~ § 58.1-3217 . The affidavit of at least one of ~~such the~~ doctors shall be based upon a physical examination of ~~such the~~ person by such doctor. The affidavit of one of ~~such 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 ~~subsection (e)~~ § 58.1-3217 .

D. Such affidavit or certification shall be filed after ~~the first day of~~ January 1 of each year, but before ~~the first day of~~ 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 ~~in~~ for hardship cases.

E. The commissioner of revenue or town assessing officer or ~~such other~~ another officer as ~~may be~~ designated by the governing body of the county, city or town shall also make ~~such further~~ any other reasonably necessary inquiry of persons seeking such exemption, requiring answers under oath, as ~~may be reasonably necessary~~ to determine qualifications ~~therefor~~ as specified herein, including qualification as permanently and totally disabled as as defined in

~~subsection (e)~~ § 58.1-3217 , 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.

Source: § 58-760.1

Comment: See comment to § 58.1-3211.

§ 58.1-3214. ~~(3)~~ *Absence from residence.*— The fact that persons who are otherwise qualified for tax exemption or deferral by an ordinance promulgated pursuant to this ~~section~~ *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 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.

Source: § 58-760.1

Comment: See comment to § 58.1-3211.

§ 58.1-3215. ~~(b)~~ *Effective date; change in circumstances.*— ~~Such~~ *A.* An exemption or deferral enacted pursuant to § 58.1-3210 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 sixty-five years or for any year following the date the disability occurred. Changes in respect to income, financial worth, ownership of property or other factors occurring during the taxable year for which the *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 exemption or deferral for the then current taxable year and the taxable year immediately following . ; ~~provided, however, such~~

*B.* An ordinance enacted pursuant to this article may provide that a change in ownership to a spouse who is less than sixty-five years of age or is not permanently and totally disabled ~~and~~ , when such change resulted solely from the death of his or her qualified spouse, shall result in a prorated exemption or deferral for the then current taxable year. 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 twelve is the denominator.

Source: § 58-760.1

Comment: See comment to § 58.1-3211.

§ 58.1-3216. ~~(e)~~ *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 ; ~~without penalty except that any ordinance establishing a combined program of exemptions and deferrals, or deferrals only, may provide for interest not exceeding eight per centum per annum on any amount so deferred ; 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 they it had been assessed without regard to the deferral permitted by this section; provided, however, that such liens article. Any such lien shall, to the extent that they exceed it exceeds in the aggregate ten per centum percent of the price for which such real estate may be sold, be inferior to all other liens of record.~~

Source: § 58-760.1

Comment: See comment to § 58.1-3211.

§ 58.1-3217. *Permanently and totally disabled defined.*— ~~(e)~~ For purposes of this ~~section~~ *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.

Source: § 58-760.1

Comment: See comment to § 58.1-3211.

§ 58.1-3218. *Mobile home defined.*— ~~(f)~~ For purposes of this ~~section~~ *article* and Article X, § 6

(b) of the Constitution, a mobile home shall be real estate if the owner's intention that it be permanently affixed is shown by the facts that ~~(1)~~ (i) it is located on land belonging in whole or in part to the owner of the mobile home, his spouse, parent or child, and is connected to permanent water or sewage lines or facilities; or ~~(2)~~ (ii) whether or not it is located on land belonging to persons described in ~~subsection (1) (i)~~, it rests on a permanent foundation, and consists of two or more mobile units which are connected in such a manner that they cannot be towed together on a highway, or consists of a mobile unit and other connected rooms or additions which must be removed before the mobile unit can be towed on a highway.

Source: § 58-760.1

Comment: See comment to § 58.1-3211.

§ 58.1-3219. ~~(d)~~ *Designation by General Assembly.*- The General Assembly hereby deems those persons falling within the limitations and conditions provided in ~~paragraphs (a) and (b)~~ §§ 58.1-3210 and 58.1-3211 of this section ~~Article~~ to be bearing an extraordinary tax burden on the real estate ~~described herein~~ in relation to their income and financial worth.

Source: § 58-760.1.

Comment: See comment to § 58.1-3211.

### *Article 3.*

#### *Other Exemptions: Credits:*

##### *Partial Abatement: Apportionments.*

§ 58.1-3220. ~~§ 58-760.2.~~ Exemption for certain rehabilitated residential real estate.-A. The governing body of any county, city or town may, by ordinance, provide for the exemption from taxation of real estate which has been substantially rehabilitated 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. For the purposes of this section, any real estate shall be deemed to have been substantially rehabilitated when a structure which is no less than twenty-five years of age has been so improved as to increase the assessed value of the structure by no less than ~~forty per centum~~ ~~percent~~, except in certain ~~multi-family~~ *multifamily* residential rental property as provided herein, without increasing the total square footage of such structure by more than fifteen ~~per centum~~ ~~percent~~; ~~provided, however, that~~ *percent*. The governing body of a county, city or town may (i) require such structure to be older than twenty-five years of age, (ii) require the increase in assessed value to be greater than ~~forty per centum~~ ~~percent~~, (iii) require the increase in assessed value to be twenty percent or more ~~in the case of substantially rehabilitated multifamily residential rental property consisting of five or more units; or~~ (iv) place such other restrictions and conditions on such property as may be prescribed by ~~local~~ ordinance. Such ordinance may also provide for the partial exemption from taxation of 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 ~~per centum~~ ~~percent~~.

B. The exemption provided in subsection A shall be an amount equal to the increase in assessed value resulting from the rehabilitation of the residential structure as determined by the commissioner of revenue or other local assessing officer and this amount only shall be applicable to any subsequent assessment or reassessment. The exemption shall commence on January ~~one~~ 1 of the year following completion of the rehabilitation and shall run with the real estate for a period of no longer than ten years; ~~provided, however,~~. 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 twenty dollars 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 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 Virginia Historic Landmarks Commission to contribute to the significance of a registered historic district.

Source: § 58-760.2.

Comment: No change.

§ 58.1-3221. ~~§ 58-760.3.~~ Exemption for certain rehabilitated commercial or industrial real estate.-A. The governing body of any county, city or town may, by ordinance, provide for the exemption from taxation of real estate which has been substantially rehabilitated 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. For the purposes of this section, any real estate shall be deemed to have been substantially rehabilitated when a structure which is no less than twenty-five years of age has been so improved as to increase the assessed value of the structure by no less than sixty percent ; ~~provided, however,~~ . The governing body of a county, city or town may (i) require the structure to be older than twenty-five years of age, (ii) require the increase in assessed value to be greater than sixty percent, or (iii) place such other restrictions and conditions on such property as may be prescribed by local ordinance.

B. The exemption provided in subsection A shall not exceed an amount equal to the increase in assessed value resulting from the rehabilitation of the commercial or industrial structure as determined by the commissioner of revenue or other local assessing officer and this amount only shall be applicable to any subsequent assessment or reassessment. The exemption shall commence on January one / of the year following completion of the rehabilitation or replacement and shall run with the real estate for a period of no longer than ten years ; ~~provided, however,~~ . 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 twenty dollars 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 indicated on the application has been completed.

Source: § 58.760.3.

Comment: No change.

§ 58.1-3222. ~~§ 58-811.2.~~ Abatement of levies on buildings razed or , destroyed or damaged by fortuitous happenings.-In any county or city wherein assessments are made as provided in § ~~58-811.1~~ 58.1-3292 , the governing body shall 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 ; ~~provided, that~~ . No such abatement , ~~however,~~ shall be allowed if the destruction or damage to such building shall ~~imply decrease~~ the value thereof by less than five hundred dollars; and ~~provided further that \$500.~~ Also, no such abatement shall be allowed in the case of damage to any such building if such destruction or damage shall be repaired during the same calendar year in which it occurred. The tax on such razed, destroyed or damaged building shall be is computed according to the ratio which the portion of the year such 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 such the building within the calendar year in six months of the date on which such the building was razed, or destroyed or in which such damage was sustained damaged .

Source: § 58-811.2.

Comment: Makes it clear that if a building is razed by design, that a tax abatement shall be applicable.

§ 58.1-3223. ~~§ 58-761.1.~~ 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) ~~applicable to such on behalf of such property~~. Such credit shall not exceed the amount of tax on such property.

Source: § 58-761.1.

Comment: No change.

§ 58.1-3224. ~~§ 58-825~~. 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 ~~and~~ . *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. The clerk of such court shall furnish a copy of its order to any person applying therefor, for which he shall be entitled to receive from such person a fee of seventy five cents. 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 of such city shall by ordinance or resolution provide for its application to such city.

Source: § 58-825.

Comment: No change.

§ 58.1-3225. ~~§ 58-826~~. 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 state~~ , county or ~~municipal~~ . ~~city or town~~ , are charged or chargeable against the joint estate, the circuit court of the county or the city court in the office of whose clerk deeds are admitted to record in the city, in which such real estate is situated, shall, on the motion of any person or ~~persons~~ 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 ~~tax, or tax penalty, levy or assessment and interest such amount~~ aforesaid, which should be paid by such person or ~~persons~~ on the portion or portions of such real estate set off or allotted to them ~~him~~ . When the pro rata of ~~tax, or tax, penalty and interest, or levy or assessment aforesaid, charged or chargeable upon the portion or portions of such real estate set off or allotted to such person or persons such amount~~ has been so ascertained and paid, he or they 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 or ~~persons~~ who shall not have paid their pro rata of the tax, or the tax, penalty and interest or levy or assessment ~~aforesaid~~ , shall be charged with and held bound for the portion of the ~~tax, or tax, penalty and interest or levy or assessment 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 ~~aforesaid~~ had been assessed or accrued and the portion or portions of the real estate originally listed for taxation in the names of the delinquent person or ~~persons~~ .

Source: § 58-826.

Comment: No substantive change.

§ 58.1-3226. ~~§ 58-827~~. Procedure for such apportionment.- Before such motion shall be made , five days' notice thereof shall be given ; in the case of State and county taxes and levies, to the commissioner of the revenue, treasurer, and ~~county or city attorney, and if none, to the~~

Commonwealth's attorney and, in the case of city or municipal taxes or assessments, to the commissioner of the revenue, auditor and city attorney, and the . The county or city attorney, and if none, the Commonwealth's attorney or city attorney, as the case may be, shall be present and defend the motion, and the order of the court shall show the fact.

When such order shall have been made, the proper clerk shall certify a copy thereof ; in the case of county taxes and levies to the commissioner of the revenue and treasurer, and, in the case of city or municipal taxes or assessments, to the auditor and city collector 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 ; for which he shall be entitled to receive from such person or persons a fee of seventy-five cents .

Source: § 58-827.

Comment: Officers of counties and cities are appropriately changed to coincide with the functions currently performed.

§ 58.1-3227. § 58-828. Proration of delinquent taxes after purchase of part of tract.-Any person or corporation 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 the city court of the city in the office of whose clerk deeds are admitted to record; 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 corporation or so liable to be charges for a debt. All persons in anywise 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 had thereon held . The court or judge thereof in vacation 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 or corporation primarily liable for such delinquent tax or who may have contracted for the payment of the same and failed to do so pay .

Source: § 58-828.

Comment: §§ 58.1-3224 through 58.1-3227 could be repealed. The best information available at this time is that the sections are never used.

#### *Article 4.*

##### *Special Assessment for Land Preservation.*

§ 58-769.4. Declaration of policy. An expanding population and reduction in the quantity and quality of real estate devoted to agricultural, horticultural, forest and open space uses make the preservation of such real estate a matter vital to the public interest. It is, therefore, in the public interest (a) to encourage the preservation and proper use of such real estate in order to assure a readily available source of agricultural, horticultural and forest products and of open spaces within reach of concentrations of population; to conserve natural resources in forms which will prevent erosion; to protect adequate and safe water supplies; to preserve scenic natural beauty and open spaces and to promote proper land use planning and the orderly development of real estate for the accommodation of an expanding population; and (b) to promote a balanced economy and ameliorate pressures which force the conversion of such real estate to more intensive uses and which are attributable in part to the assessment of such real estate at values incompatible with its use and preservation for agricultural, horticultural, forest or open space purposes.

It is the intent of this article to provide for the classification, and permit the assessment and taxation, of such real estate in a manner that will promote the preservation of it ultimately for the public benefit.

Comment: The declaration of policy statement is deleted as being unnecessary.

§ 58.1-3230. § 58-769.5. 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:

(a) "Real estate devoted to agricultural use" shall mean real estate ~~when~~ 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 Commerce or ~~when~~ 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.

(b) "Real estate devoted to horticultural use" shall mean real estate ~~when~~ devoted to the bona fide production for sale of fruits of all kinds, including grapes, nuts, and berries; vegetables; nursery and floral products under uniform standards prescribed by the Commissioner of Agriculture and Commerce; or ~~when~~ 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.

(c) "Real estate devoted to forest use" shall mean land ~~when 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 Director of the Department of Conservation and Economic Development pursuant to the authority set out in § 58-769-12 58.1-3240 ; ~~including the standing timber and trees thereon~~ .

(d) "Real estate devoted to open-space use" shall mean real estate ~~when~~ so used as to be provided or preserved for park or recreational purposes, conservation of land or other natural resources, floodways, historic or scenic purposes, or assisting in the shaping of the character, direction, and timing of community development, under uniform standards prescribed by the Director of the Commission of Outdoor Recreation pursuant to the authority set out in § 58-769-12 58.1-3240 , and the local ordinance.

Source: § 58-769.5.

Comment: No change.

§ 58.1-3231. ~~§ 58-769.6.~~ Authority of counties, cities and towns to adopt ordinances; general reassessment following adoption of ordinance.-Any county, city or town in the Commonwealth 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 § 58-769-5 58.1-3230 . 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 ~~thirty~~ 30 of the year previous to the year when such taxes are first assessed and levied under this article, or December ~~thirty-one~~ 31 of such year for localities which have adopted a fiscal year assessment date of July ~~one~~ 1 , under chapter 30 of this Subtitle III pursuant to § 58-551.7; provided, however, that for the year nineteen hundred seventy-eight such ordinance may be adopted by Franklin County not later than May one of the year in which such taxes are first levied and assessed under this article . 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 and forestal district that has been established under §15.1-1506 et seq., shall be eligible for the use value assessment and taxation whether or not a local land-use plan or local ordinance pursuant to ~~§58-769-6~~ 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 § 58-769-5 58.1-3230 .

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.

Source: § 58-769.6.

Comment: Deletes obsolete special provision. Also makes clear by statute the current position of the Commonwealth that special land-use assessment is not available to public service corporations assessable under § 58-503.1. (See opinion of the Attorney General to Lois B. Chenault, Commissioner of the Revenue of Hanover County, dated December 7, 1976.)

§ 58.1-3232. ~~§ 58-769-6-1.~~ 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 ~~one~~ 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 ~~§ 58-769.6~~ 58.1-3231, the ranges of suggested values made by the State Land Evaluation Advisory Committee 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.

Source: § 58-769.6:1.  
Comment: No change.

§ 58.1-3233. ~~§58-769.7.~~ 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. ~~(a)~~ Determine that the real estate meets the criteria set forth in ~~§ 58-769.5~~ 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 Economic Development, *the Director of the Commission of Outdoor Recreation or the Commissioner of Agriculture and Commerce;* and

2. ~~(b)~~ Determine further that real estate devoted to ~~(1)~~ (i) agricultural or horticultural use consists of a minimum of five acres, ~~(2)~~ (ii) forest use consists of a minimum of twenty acres and ~~(3)~~ (iii) open-space use consists of a minimum of five acres; except that in any city having a density of population greater than ~~five thousand~~ \$5,000 per square mile, the governing body may by ordinance prescribe that land devoted to open-space uses consist of a minimum of two acres.

Source: § 58-769.7.  
Comment: No change.

§ 58.1-3234. ~~§ 58-769.8.~~ 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: at

1. At least sixty days preceding the tax year for which such taxation is sought; ~~provided; however, that 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 ~~§ 58-792.01~~ 58.1-3330, or sixty days preceding the tax year, whichever is later; ~~provided; however, in or~~

3. In any locality which has adopted a fiscal tax year under ~~§ 58-851.6~~ Chapter 30 of this Subtitle III, but continues to assess as of January ~~one~~ 1, such application must be submitted for any year at least sixty days preceding the effective date of the assessment for such year; ~~provided further; that in Franklin County, such application shall be filed for the year nineteen hundred seventy-eight within thirty days of adoption of an ordinance hereunder.~~

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. 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, except 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; ~~provided; however, that~~. 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~~ that original 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.

The local assessing officer shall prepare ~~and transmit to the clerk~~ a list of all applications filed and approved hereunder ~~and shall transmit such list and the original copy of such application to the clerk.~~ The clerk shall index the names in a book entitled "Land Use Tax Assessment Book" and file ~~said~~ the application in the clerk's ~~his~~ office. The local governing body shall ~~beginning July one, nineteen hundred seventy-three,~~ compensate the clerk at the rate of one dollar for filing and indexing each application or revalidation for which a fee is payable, notwithstanding any limitation provided in § 14.1-143 or any other section of the Code of Virginia.

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 § ~~58-769.9 (d)~~ *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 the use for which classification is granted, continued payment of taxes as referred to in § ~~58-769.8:1~~ *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.~~

Source: § 58-769.8.

Comment: Removes an obsolete special provision and an effective date and requires that the original copy of the application be transmitted to the clerk for recordation. Also makes the provision explicitly clear that a revalidation fee cannot exceed the original application fee currently charged by the locality. (See Opinion of the Attorney General to Frank L. Benser dated July 13, 1982.)

*§ 58.1-3235. § 58-769.8:1. Removal of parcels from program if taxes delinquent.* If on June ~~one~~ *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 ~~sending such notice~~ *the notice has been sent* , such delinquent taxes remain unpaid on November ~~one~~ *1* , the treasurer shall notify the appropriate commissioner of the revenue who shall remove such parcel from the land use program.

Source: § 58-769.8:1.

Comment: No change.

*§ 58.1-3236. § 58-769.9. Valuation of real estate under ordinance. A. (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 Committee.

*B. (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. (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. ~~(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.

Source: § 58-769.9.

Comment: No change.

§ 58.1-3237. ~~§ 58-769.10~~. Change in use 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, it shall be subject to additional taxes, hereinafter referred to as roll-back taxes, in an amount equal to the amount, if any, by which the taxes paid or payable on the basis of the valuation, assessment and taxation under such ordinance were exceeded by the taxes that would have been paid or payable on the basis of the valuation, assessment or taxation of other real estate in the taxing locality in the year of the change and in each of the five years immediately preceding the year of the change, plus simple interest on such roll-back taxes at the same interest rate applicable to delinquent taxes in such locality, pursuant to § 58-847 or § 58-864 ~~58.1-3916~~ . If in the tax year in which the change of use occurs, the real estate was not valued, assessed and taxed under such ordinance, the real estate shall be subject to roll-back taxes for such of the five years immediately preceding in which the real estate was valued, assessed and taxed under such ordinance.

B. In determining roll-back taxes chargeable on real estate which has changed in use, the treasurer shall extend the real estate tax rates for the current and next preceding five years, or such lesser number of years as the property may have been taxed on its use value, upon the difference between the value determined under § 58-769.9 ~~(d)~~ 58.1-3236 D and the use value determined under § 58-769.9 ~~(a)~~ 58.1-3236 A for each such year.

C. Liability to the roll-back taxes shall attach when a change in use occurs but not when a change in ownership of the title takes place if the new owner 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 rezoned as provided in subsection D, 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 and shall be paid to the treasurer within thirty days of the assessment.

D. If at any time after July one, ~~nineteen hundred eighty~~ the zoning of property taxed under the provisions of this article is changed to a more intensive use at the request of the owner or his agent, such property shall not be eligible for assessment and taxation under this article for the years such change is effective or any subsequent tax year, but it shall not be subject to roll-back taxes until a change in use occurs. When a change in use occurs, such owner shall be subject to roll-back taxes as provided in subsection A for those years the property was taxed in accordance with its use.

Source: § 58-769.10.

Comment: Deletes obsolete effective date.

§ 58.1-3238. ~~§ 58-769.10:1~~. 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, and he shall be further assessed with an additional penalty of ~~one hundred per centum~~ 100 percent of such unpaid taxes.

Source: § 58-769.10:1.

Comment: No change.

§ 58.1-3239. ~~§ 58-769.11~~. State Land Evaluation Advisory Committee; membership; duties;

ordinances to be filed with Committee.- There is hereby established the State Land Evaluation Advisory Committee to be composed of the State Tax Commissioner, the dean of the College of Agriculture of Virginia Polytechnic Institute and State University, the Commissioner of Agriculture and Consumer Services, the Director of the Department of Conservation and Economic Development, and the Director of the Commission of Outdoor Recreation.

The Committee shall determine and publish a range of suggested values for each of the several soil conservation service land capability classifications for agricultural, horticultural, ~~forestry~~ forest and open space uses in the various areas of the State as needed to carry out the provisions of this article.

On or before October ~~one~~ 1 of each year the Committee shall submit recommended ranges of suggested values to be effective the following January ~~one~~ 1 or July ~~one~~ 1 in the case of localities with fiscal year assessment under the authority of § 58-851.7 Chapter 30 of this Subtitle III, 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 Committee, in determining such ranges of values, shall base ~~their~~ 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 Committee.

Source: § 58-769.11.

Comment: No change.

§ 58.1-3240. ~~§ 58-769.12.~~ Duties of Directors of Department of Conservation and Economic Development and of Commission of Outdoor Recreation and Commissioner of Agriculture and Commerce; remedy of person aggrieved by action or nonaction of Director or Commissioner.- ~~With respect to the standards and opinions of The Director of the Department of Conservation and Economic Development, the Director of the Commission of Outdoor Recreation and the Commissioner of Agriculture and Commerce referred to in §§ 58-769.5 and 58-769.7 (a) :~~ it shall be the duty of each ~~Director and Commissioner~~ to 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 paragraph 1 of § 58.1-3233*, which shall be applied uniformly throughout the State 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 ~~procedures~~ *procedure* to be followed by such official to obtain ~~such opinions~~ *the opinion referenced in paragraph 1 of § 58.1-3233*. Upon the refusal of the Commissioner of Agriculture and Commerce, the Director of the Department of Conservation and Economic Development or the Director of the Commission of Outdoor 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* ~~from any court of record~~ 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.

Source: § 58-769.12

Comment: No change.

§ 58.1-3241. ~~§ 58-769.13.~~ Separation of part of real estate assessed under ordinance; contiguous real estate located in more than one taxing locality.- A. ~~(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; ~~not~~. *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.

No subdivision of property which results in parcels which meet the minimum acreage requirements of this article, and which the owner attests is for one or more of the purposes set

ordinances to be filed with Committee.- There is hereby established the State Land Evaluation Advisory Committee to be composed of the State Tax Commissioner, the dean of the College of Agriculture of Virginia Polytechnic Institute and State University, the Commissioner of Agriculture and Consumer Services, the Director of the Department of Conservation and Economic Development, and the Director of the Commission of Outdoor Recreation.

The Committee shall determine and publish a range of suggested values for each of the several soil conservation service land capability classifications for agricultural, horticultural, ~~forestry~~ forest and open space uses in the various areas of the State as needed to carry out the provisions of this article.

On or before October ~~one~~ 1 of each year the Committee shall submit recommended ranges of suggested values to be effective the following January ~~one~~ 1 or July ~~one~~ 1 in the case of localities with fiscal year assessment under the authority of § 58-551.7 Chapter 30 of this Subtitle III, 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 Committee, in determining such ranges of values, shall base ~~their~~ 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 Committee.

Source: § 58-769.11.

Comment: No change.

§ 58.1-3240. ~~§ 58-769.12.~~ Duties of Directors of Department of Conservation and Economic Development and of Commission of Outdoor Recreation and Commissioner of Agriculture and Commerce; remedy of person aggrieved by action or nonaction of Director or Commissioner.- ~~With respect to the standards and opinions of~~ The Director of the Department of Conservation and Economic Development, the Director of the Commission of Outdoor Recreation and the Commissioner of Agriculture and Commerce referred to in §§ 58-769.5 and 58-769.7 (a) : it shall be the duty of each ~~Director and Commissioner~~ to 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 paragraph 1 of § 58.1-3233, which shall be applied uniformly throughout the State 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 ~~procedures~~ procedure to be followed by such official to obtain ~~such opinions~~ the opinion referenced in paragraph 1 of § 58.1-3233. Upon the refusal of the Commissioner of Agriculture and Commerce, the Director of the Department of Conservation and Economic Development or the Director of the Commission of Outdoor 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 from any court of record 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.

Source: § 58-769.12

Comment: No change.

§ 58.1-3241. ~~§ 58-769.13.~~ Separation of part of real estate assessed under ordinance; contiguous real estate located in more than one taxing locality.- A. (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; ~~nor~~. Such separation or split-off of lots shall ~~it 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.

No subdivision of property which results in parcels which meet the minimum acreage requirements of this article, and which the owner attests is for one or more of the purposes set

value. Tayloe Murphy estimate of population is deleted in determining those cities which may except itself from the two year reassessment cycle, therefore, 1980 U.S. census figures will control.

~~§ 58.1-3251. § 58-776.1.~~ 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 of Taxation, 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.

Source: § 58-766.1.

Comment: No change.

~~§ 58.1-3252. § 58-778.~~ In counties.-There shall be a general reassessment of real estate in the year nineteen hundred seventy-seven and every fourth year thereafter in each county having a population of not more than fourteen thousand according to the census of nineteen hundred seventy. There shall be such a general reassessment in the year nineteen hundred seventy-eight and every fourth year thereafter in each county of the Commonwealth having such population of more than fourteen thousand but not more than twenty-four thousand. There shall be such a general reassessment in the year nineteen hundred seventy-nine and every fourth year thereafter in each county having such population of more than twenty-four thousand but not more than thirty-nine thousand. There shall be such a general reassessment in the year nineteen hundred eighty and every fourth year thereafter in each county having such population of over thirty-nine thousand. Provided, however, that if any county has had a general reassessment within three years of the date designated herein for its next general reassessment, it may delay such reassessment until the next year designated for such county herein; and provided, further, that if the date designated herein for a county's general assessment falls one year before the date for the general reassessment under such county's previous six-year reassessment cycle, the county may delay its general reassessment by one year, and make a general reassessment every fourth year thereafter. Notwithstanding the provisions of this section, Any county : which, however, has a total population of forty thousand 40,000 or less as determined by the latest available figures from the Tayloe Murphy Institute of the University of Virginia, and which is assessing real estate at one hundred per centum of fair market value as provided in § 58-760, 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.

Source: § 58-778.

Comment: Obsolete language removed. Previous language was necessary to get localities on a revolving basis for reassessment purposes, so that all counties would not be assessing their real estate at the same time. Use of Tayloe Murphy Institute estimates was also deleted from this section.

~~§ 58.1-3253. § 58-778.1.~~ Biennial general reassessments; annual or biennial assessment by commissioner of revenue.- A. Notwithstanding any other provision of law, general or special; the governing body of any county or city having at least one full-time real estate appraiser or assessor certified 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 III.*

Source: §§ 58-778.1 and 58-769.2.

Comment: Combines first sentence of § 58-769.2 with the unchanged § 58-778.1. The remainder of § 58-769.2 is located at § 58.1-3270.

~~§ 58.1-3254. § 58-784.3.~~ 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 : ~~if a county for counties~~ , or every second year thereafter ; ~~if a city, for cities~~ notwithstanding the provisions of §§ ~~58-776~~ 58.1-3250 and ~~58-778~~ 58.1-3252 to the contrary.

Source: § 58-784.3.

Comment: No change.

§ 58.1-3255. ~~§ 58-784.5.~~ 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 § 15.1-686 shall not be required to undertake general reassessments of real estate every four years as otherwise provided in this article.

Source: § 58-784.5.

Comment: No change.

§ 58.1-3256 ~~§ 58-795.~~ 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 or assessors consisting of three resident 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 thirty 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 thirty 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 thirty 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 ~~wherein he his claims to be aggrieved~~ *grievances* . The board of equalization of every such town shall, within thirty days of the filing of such complaint, fix a date for a hearing on such application and . after giving the applicant at least ten 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 qualization of real estate assessments made up of three to five citizens of the town.

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.

Source: § 58-795.

Comment: No change.

§ 58.1-3257. ~~§ 58-792.~~ Completion of work; extensions.-In every city and county the person ~~or persons; or officer or officers~~ ; making such reassessment shall complete the same and comply

with the preceding section ~~(§ 58-791)~~ the provisions of § 58.1-3300 not later than December ~~thirty-first~~ 31 of the year of such reassessment. But the judge of ~~any the circuit court in the clerk's office of which the original of such reassessment is required to be filed~~ 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 the ~~thirty-first day of December 31 of the year of such reassessment. Such time for completing such reassessment may be extended for an additional sixty-day period by such judge for good cause incidental to the creation of a real property identification map.~~

Source: § 58-792.

Comment: The additional 60-day extension period for completion of the real property identification map was added in 1980 to assist Halifax County, which was delayed by a special problems in complying with the specific terms of the statute. Although couched in general terms, the amendment was to correct a special situation.

§ 58.1-3258. ~~§ 58-785.~~ Provisions for annual or biennial assessment not repealed; qualifications of supervisors, assessors and appraisers.—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. The supervisors, assessors and appraisers conducting all such assessments shall have the qualifications prescribed by the Department of Taxation for the particular position held, which shall include such combination of education, training and experience as deemed necessary for the performance of their duties.

Source: § 58-785.

Comment: No change.

§ 58.1-3259. ~~§ 58-795.2.~~ Failure of county or city to comply with law on general reassessment of real estate.—If any county or city ~~shall fail~~ 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 ~~§ 58-760~~ § 58.1-3201 requiring assessment at 100 ~~%~~ percent fair market value, the Department of Taxation, 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 § 4-22 ; as amended, until such time as the provisions of ~~§ 58-760~~ § 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%~~ seventy percent for the year at 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 seventy percent.

Source: § 58-795.2

Comment: No substantive change.

§ 58.1-3260. ~~§ 58-769.~~ 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:

1. ~~(1)~~ Chapter 261 of the Acts of 1936, approved March 25, 1936, as amended by ~~chapter Chapter~~ 64 of the Acts of 1938, approved March 4, 1938, ~~chapter Chapter~~ 234 of the Acts of 1942, approved March 14, 1942, ~~chapter Chapter~~ 422 of the Acts of 1950, and ~~chapter Chapter~~ 339 of the Acts of 1958, authorizing provision for the annual general reassessment of real estate and the election of assessors in cities of more than ~~one hundred seventy-five thousand~~ 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. ~~(2)~~ Chapter 29 of the Acts 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 ~~one hundred twenty-five thousand~~ 125,000 nor more than ~~one hundred ninety thousand~~ 190,000 ; conferring on such boards of

review the powers exercised by boards of equalization; and relating to other connected matters.

3. ~~(3)~~ Chapter 211 of the Acts of 1944, amended by ~~chapter~~ Chapter 167 of the Acts of 1946 (Repealed by Acts 1952, c. 636).

4. ~~(4)~~ Chapter 65 of the Acts of 1944, approved February 26, 1944, as amended by ~~chapter~~ Chapter 80 of the Acts of 1954, and ~~chapter~~ Chapter 624 of the Acts of 1968, authorizing, in cities of not less than ~~forty thousand~~ 40,000 nor more than ~~fifty thousand~~ 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. ~~(5)~~ Chapter 17 of the Acts of 1947, approved January 29, 1947, as amended by ~~chapter~~ Chapter 29 of the Acts of 1952, Ex. Sess., authorizing, in cities *having a population* of not less than ~~thirty thousand~~ 30,000 nor more than ~~thirty-one thousand~~ 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. ~~(6)~~ Chapter 146 of the Acts of 1942, approved March 9, 1942, authorizing, in any city adjoining a county having a density of more than ~~one thousand~~ 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. ~~(7)~~ Chapter 189 of the Acts of 1946, approved March 15, 1946, as amended by ~~chapter~~ Chapter 325 of the Acts of 1950, authorizing, in any county adjoining a county having a *population* density of ~~one thousand~~ 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. ~~(8)~~ Chapter 237 of the Acts of 1942, amended by ~~chapter~~ Chapter 44 of the Acts of 1946 and ~~chapter~~ Chapter 59 of the Acts of 1948

9. ~~(9)~~ Chapter 345 of the Acts of 1942, approved March 31, 1942, authorizing, in any county adjoining a city of more than ~~one hundred and ninety thousand~~ 190,000, and any county with an area of less than seventy 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. ~~(10)~~ Chapter 237 of the Acts of 1946, approved March 25, 1946, authorizing, in counties having an area of more than ~~one hundred thirty-five~~ 135 square miles but less than ~~one hundred fifty-two~~ 152 square miles, and a population of more than ~~four thousand~~ 4,000 but less than ~~eight thousand~~ 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. ~~(11)~~ Chapter 85 of the Acts of 1948, approved March 3, 1948, codified in Michie Supplement 1948 as Tax Code § 348b, as amended by ~~chapter~~ Chapter 266 of the Acts of 1952, providing, in counties of not more than ~~thirty thousand~~ 30,000 adjoining cities of not less than ~~one hundred thousand~~ 100,000 and not more than ~~one hundred fifty thousand~~ 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.

Source: § 58-769.

Comment: The provisions of this section which cross-reference numerous Acts of Assembly relative to special circumstances should be carried in the Code of Virginia only as a note and should not be set out.

§ 58.1-3261. ~~§ 58-769.1.~~ Annual assessment of real estate in certain other cities and counties. The following acts are incorporated in this Code by this reference:

1. ~~(1)~~ Chapter 32 of the Acts of 1956, approved February 13, 1956, as amended by ~~chapter~~ Chapter 33 of the Acts of 1958, authorizing provision for annual assessments of real estate and

equalization of assessments in cities of not less than ~~seventy thousand~~ 70,000 and not more than ~~one hundred twenty-five thousand~~ 125,000 inhabitants, but not in cities of not less than ~~ninety thousand~~ 90,000 and not more than ~~one hundred thousand~~ 100,000 inhabitants.

2. ~~(2)~~ Chapter 348 of the Acts of 1956, approved March 14, 1956, authorizing provision for annual assessment of real estate in any county having a population of more than ~~ninety-nine thousand~~ 99,000 and adjoining three or more cities lying entirely within the State.

3. ~~(3)~~ Chapter 383 of the Acts 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 ~~twenty-two thousand~~ 22,000 but less than ~~twenty-three thousand~~ 23,000 .

4. ~~(4)~~ Chapter 56 of the Acts 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 ~~twenty-five thousand~~ 25,000 and less than ~~thirty-four thousand~~ 34,000 .

5. ~~(5)~~ Chapter 548 of the Acts of 1964, approved March 31, 1964, providing for annual assessment and equalization of assessments in any county having a population of more than ~~twenty thousand~~ 20,000 but less than ~~fifty thousand~~ 50,000 and adjoining a county having a population of more than ~~two hundred thousand~~ 200,000 .

6. ~~(6)~~ Chapter 584 of the Acts 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 ~~ninety-two thousand~~ 92,000 and less than ~~one hundred ten thousand~~ 110,000 .

7. ~~(7)~~ Chapter 311 of the Acts 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.

Source: § 58-769.1.

Comment: See comment to § 58.1-3260.

#### Article 6.

##### *Who Performs Reassessment/Assessment.*

§ 58.1-3270. ~~§ 58-769.2:~~ 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 § 58-778.1 58.1-3253 , by the commissioner of the revenue ; ~~provided, however, that no~~ . No commissioner of the revenue without his consent shall be required to make ~~such an~~ annual or biennial assessment and equalization of real estate for local taxation as provided in § 58.1-3253B , and if made, all costs incurred shall be borne by the county or city. ~~Except as provided in § 58-851.7; all real estate shall thereafter be assessed as of January first of each year and taxes for each year on such real estate shall be extended by the commissioner of the revenue on the basis of the last assessment made prior to such year. Any person aggrieved by any such assessment may apply for relief to the board of equalization created under chapter 19 (§ 58-805 et seq.) of this title and from action thereon to the circuit court of the county or city, as provided by law. The provisions of this section shall not apply to any real estate assessable under the law by the State Corporation Commission .~~

Source: § 58-769.2.

Comment: Removes repetitious language already contained in §§ 58-759, 58.1-3281 and Article 12 of this chapter. Also removes a portion of the section to § 58.1-3253B.

§ 58-3271. ~~§ 58-769.3:~~ 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 § 58-769.2 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. ~~The right of appeal provided in § 58-769.2 shall apply to this section.~~

B. The governing body of any such county or city may appoint a real estate appraiser *to perform the actual function of determining value for real estate in the county or city for use by the board of assessors.* If such appraiser is certified as a professional assessor by the Department of ~~Taxation~~, he 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 ~~such~~ *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. In the event the county or city chooses not to employ a board of assessors, it shall have a board of equalization appointed as provided in ~~chapter 19 (§ 58-895 et seq.) of this title Article 14 of this Chapter .~~

Source: §§ 58-769.3, 58-776.3 and 58-788.

Comment: Clarifies the function of the appraiser in the assessment process.

~~§ 58.1-3272. § 58-776.2. Same;~~ How assessments made by board or assessor.-Assessments made by ~~such~~ 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 ~~§ 58-786~~ *58.1-3276* of the Code of Virginia.

Source: § 58-776.2

Comment: No substantive change.

~~§ 58-776.3. Same; compensation of assessor or board; clerical assistance. The council shall fix the compensation of the assessor or members of such board, and shall provide necessary clerical and other assistance to such board.~~

~~§ 58.1-3273. § 58-776.4. Same;~~ Board of equalization; relief from assessment.-In the event such city has no board of assessors, it shall have a board of equalization as provided in ~~chapter 19 (§ 58-895 et seq.) of this title Article 14 of this chapter .~~ Any city which has a board of assessors may have a board of equalization as provided in ~~chapter 19 (§ 58-895 et seq.) of this title Article 14 of this chapter .~~ Any such city or any person aggrieved by an assessment made by a real estate assessor or board of assessors may apply for relief to such board of equalization. ~~Any such city or any person aggrieved by any assessment may apply for relief to the circuit or corporation court of the city in the manner provided by § 58-1145 of the Code of Virginia.~~

Source: § 58-776.4.

Comment: Appeal procedures are consolidated in Article 12.

~~§ 58-769.3-1 (NOT SET OUT)~~

~~§ 59.1-3274. § 58-769.2-1~~ Establishment of department of real estate assessment: joint departments.-A. Notwithstanding any other provision of law, 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 basis 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 County 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 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 and such county or city with which it may establish a joint department of real estate assessment.

Source: § 58-769.3:1.

Comment: This provision will not be set out in the Code but only referenced in keeping with policy of the Code Commission.

§ 58.1-3275. ~~§ 58-786~~. By whom reassessment made in cities and counties.-Every ~~such~~ general reassessment of real estate in a city shall be made by ~~(a)~~ (i) a professional assessor appointed by the governing body, certified as qualified by the Department of Taxation ; or ~~(b)~~ (ii) a board of assessors of not less than three nor more than five freeholders within such city or county appointed by the governing body. The assessors shall be designated on or after the first day of July 1 in the year immediately preceding the year in which the general reassessment of real estate is required to be made.

Source: §§ 58-786 and 58-787.

Comment: The two previous sections which were nearly identical are combined.

§ 58.1-3276. ~~§ 58-789~~. Qualifications of assessors and appraisers; removal and appointment of substitute.—A. Any ~~persons board of assessors~~ 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 of Taxation , be required to attend and participate in the basic course of instruction given by the Department of Taxation 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 of Taxation 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.

Source: § 58-789.

Comment: No substantive change.

§ 58.1-3277. ~~§ 58-793~~. Forms for general reassessment of real estate in counties, cities and towns.-The Department of Taxation , before the first day of January 1 of any year in which there is to be a general reassessment of real estate in any county or 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 ; ~~provided, however, that any~~ . Any city or county , city or town desiring to avail itself of the benefits of this section shall notify the Department of Taxation of such desire at least six months prior to the first day of 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 or 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.

Source: § 58-793.

Comment: No change.

§ 58.1-3278. ~~§ 58-794~~. Department of Taxation to render assistance.-The Department of Taxation , upon the request of the governing body of any county, or city ; or town , shall render advisory aid and assistance in making any general reassessment of the real estate in such county or city ; or town.

Source: § 58-794.

Comment: No change.

#### Article 7.

Procedure and Practice.

~~§ 58-3280. § 58-790. Assessment of values.— The assessors or appraisers~~ *Every assessor or appraiser so designated under the provisions of this article 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.*

Source: § 58-790.

Comment: No substantive change.

~~§ 58-3281. § 58-796. When Commissioner s of the revenue to commence ascertain ment ownership of real estate and ownership; assessment of taxes ; tax year.~~ *Each commissioner of the revenue shall commence, annually, on the first day of 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 the first 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.*

Source: §§ 58-796 and 58-810.

Comment: No change in text. These two sections were combined for purposes of organization.

~~§ 58.1-3282. § 58-773.1. When land and improvements owned separately; how assessed.- In any case in which~~ *When a tract, piece or parcel of land is owned by a public service corporation, municipality or other political subdivision of the State Commonwealth , and the improvements thereon are owned by another, the land and improvements may be separately assessed.*

Source: § 58-773.1.

Comment: No change.

~~§ 58.1-3283. § 58-773.2. Assessment of airspace owned separately from subjacent land surface.- In any case~~ *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.*

Source: § 58-773.2.

Comment: No change.

*§ 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.*

Source: § 58-804(f) and (g).

Comment: No substantive change from original subsections. These subsections were moved to Article 7 for purposes of organization.

~~§ 58.1-3285. § 58-772.1. 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 made in the year nineteen hundred and fifty-four or thereafter , each lot in such subdivision shall be assessed and shown separately upon the land books, as required by law ; and .~~ *The commissioner of the revenue, in assessing each such lot, shall assess the same at fair market value as of the first day 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 ; ~~and~~ . 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 ; ~~which~~ . ~~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 ~~such~~ rezoning, reclassification, exception ~~and~~ / or improvement. ~~But any person aggrieved by any such assessment made by a commissioner of the revenue may apply for a correction of the same within the time and in the manner prescribed by §§ 58-1145 to 58-1151 of the Code of Virginia.~~

Source: § 58-772.1.

Comment: Review procedure removed and placed in Article 12.

§ 58.1-3286. § 58-774. Mineral lands to be specially and separately assessed; severance tax.-The several commissioners of the revenue shall, as soon as practicable after the first day of 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. ~~(1)~~ The area and the fair market value of such portion of each tract as is improved and under development.

2. ~~(2)~~ the fair market value of the improvements upon each tract, and

3. ~~(3)~~ the area and fair market value of such portion of each tract as ~~shall~~ not be under development.

In the alternative to the procedure outlined in ~~(1)~~ 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 ~~per centum~~ 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 ~~be~~ 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 ~~be~~ 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 ~~and~~ . He shall also ascertain ~~in addition~~ 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 ; ~~however~~, 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.

Source: § 58-774.

Comment: No change.

§ 58.1-3287. § 58-774.2. Mineral lands and minerals to be included in general reassessment of real estate.- Notwithstanding § ~~58-774~~ 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 § ~~58-774~~ 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 § ~~58-774~~ 58.1-3286 : ~~and in~~ . 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 ~~(1)~~ (i) the area and the value of such portion of each tract as is improved and under development, ~~(2)~~ (ii) the value of the improvements upon each tract, and ~~(3)~~ (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 of ~~Taxation~~ 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.

Source: § 58-774.2.

Comment: No change.

§ 58.1-3288. § 58-770.1. 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 the first day of 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." ; provided, however, that Before such property is first assessed in the name of "unknown owner" each commissioner of the revenue shall advertise the description of ~~said 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 ~~said the~~ property.

Source: § 58-770.1.

Comment: No change.

§ 58.1-3289. § 58-772. Assessment of lots in subdivisions of land ; ~~correction~~ .—Whenever a tract of land is subdivided into lots under any provision of general law and plats thereof are recorded, subsequent to any general reassessment of real estate in the county or city 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 ; and . The commissioner of the revenue, in assessing each such lot, shall assess the same at fair market value as of the first day 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 county or city. Such assessment shall stand until the next general reassessment of real estate in such county or city. ~~But any person aggrieved by any such assessment made by a commissioner of the revenue may apply for a correction of the same within the time and in the manner prescribed by law.~~

Source: § 58-772.

Comment: The review procedure set forth in the original § 58-772 is consolidated and placed in Article 12.

§ 58.1-3290. § 58-773. How land divided among several owners to be assessed ; ~~how assessment corrected~~ .—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 ~~made in the year nineteen hundred fifty-four or thereafter~~, 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 the first day 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 ; and . 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 responsibility for assessing or reassessing any such tract of land when divided as provided for in this section.

The Commonwealth's attorney of the county, the city attorney of the city, or a duly authorized person appointed by the governing body, or any other person aggrieved by any such assessment made by the commissioner of the revenue may apply for a correction of the same within the time and in the manner prescribed by §§ 58-1145 to 58-1151.

Source: § 58-773.

Comment: The review procedure set forth in the original § 58-773 is consolidated and placed in

Article 12.

**§ 58.1-3291. § 58-811:** 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.

Source: §§ 58-811 and 58-812.

Comment: No change. Combines two sections.

**§ 58.1-3292. § 58-811.1:** Assessment of new buildings substantially completed, etc.; extension of time for paying assessment.—In any county, ~~incorporated town or city in which a resolution so directing shall have been adopted by an affirmative vote of a majority of the members of the governing body thereof city or town, upon the adoption of an ordinance so providing,~~ all new buildings substantially completed or fit for use; and occupancy ~~and enjoyment~~ prior to November one 1 of the year of completion shall be assessed when so completed or fit for use; ~~and occupancy and enjoyment~~, and the commissioner of the revenue of such county, ~~incorporated town or city or town shall enter in the books the fair market value of such building; provided, however, that~~ . No such 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 (1) (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 ~~and enjoyment~~ bears to the entire year, and (2) (ii) the tax upon the assessment of such new building as it existed on January one 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 ~~and enjoyment~~ bears to the entire year. With respect to any assessment made under this section after September one 1 of any year, the ~~five percent~~ penalty for nonpayment by December five 5 shall be extended to February five 5 of the succeeding year.

Source: § 58-811.1.

Comment: No substantive change.

**§ 58.1-3293. § 58-813:** Building, etc., when ~~injured~~ *damaged* or destroyed, value to be reduced.—When from natural decay or other causes any *previously assessed* building and enclosure as aforesaid, ~~which have been assessed, shall be~~ is either wholly destroyed or reduced in value below one hundred dollars, 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 one hundred dollars ~~and upwards or more~~, the commissioner shall assess the building in its present condition and reduce the charge for the same to the amount so assessed; ~~and~~ . 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 ~~two hundred dollars and upwards~~ \$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.

Source: § 58-813.

Comment: No change.

**§ 58-769.3:2 58.1-3294 .** Repeals 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, furnish to such assessor, board or department on or before a time specified 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 as ~~required~~ by § 58-46 of the Code of ~~Virginia~~ *in accordance with the provisions of § 58.1-3 .*

Source: § 58-769.3:2

Comment: No change.

Article 8.

Reassessment Record/Land Book;

Communication to Commissioner of

Revenue of Documents.

§ 58.1-3300. ~~§ 58-791. Original~~ 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 person or persons, or officer or officers, designated under the provisions of §§ 58-786 and 58-787 Article VI herein shall have completed the reassessment in his or their city or county, he or they shall make two copies thereof of such record, in the form in which the land books are made out, and shall certify on oath that no assessable real estate assessable by him or them is omitted and that there are is no errors error on its the face of such record. Such person or persons, or officer or officers, designated as aforesaid shall then file the original of such reassessment in the office of the circuit court clerk of the court of the city or county in which deeds are admitted to record, 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. ~~In~~ 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 person or persons ; or officer or officers ; shall also at the same time forward to the Department of Taxation a copy of the recapitulation sheets of such reassessment.

Source: § 58-791.

Comment: No substantive change.

§ 58.1-3301. ~~§ 58-804. Form of land book ; production on microfilm, etc.; what matters to be shown separately~~ (a) .- A. 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 § 58-806 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 § 58-806 58.1-3310 .

(b) [Repealed.]

(c) 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 ; provided, however, that . The governing body of any county having sanitary districts may provide by resolution that land books, personal property books and other tax assessment records shall 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.

(d) [Repealed.]

(e) Whenever a tract of land has been subdivided into lots under any provision of general law and plats thereof have been recorded, each lot in such subdivision shall be assessed and shown separately upon the books.

(f) 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 several owners assessed with the value of their respective interests.

(g) When the 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.

(h) 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.

(i) D. In the event real estate is assessed at use value as provided in ~~article~~ *Article 1-1 4* (§ ~~58-769.4~~ *58.1-3230* et seq.) of Chapter ~~15~~ *30* of this title, the land book shall show both the use value and the fair market value.

Source: § 58-804.

Comment: Former subsection (e) repeats language contained in § 58.1-3275 and subsections (f) and (g) have been renumbered as § 58.1-3274.

*§ 58.1-3302. § 58-805.* 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 ; ~~provided, however, that~~ . The commissioner of revenue of Pulaski County, *however*, when assessing or listing for taxation the town lots in the town of Pulaski ; ~~in~~ *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.

Source: § 58-805.

Comment: No change.

*§ 58.1-3303. § 58-797.* 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 in which deeds are admitted to record shall, before the fifteenth of each month, forward to the commissioner of revenue for his county or city and to the Department of ~~Taxation~~ 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. 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 § 17-59, *and the description, quantity and specified value of land conveyed ; the specified value thereof and a description of the same* . Such clerk shall, at the same time, ~~also forward to the commissioner and the Department of Taxation~~ 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 clerk shall annually on or before the ~~fifteenth~~ of January *15* make out a list of all deeds of trust and mortgages on land, as well as deeds of trust on personal property, made to secure the payment of debts, which have been admitted to record in the clerk's office of such court within the year ending on the ~~thirty-first day~~ of December *31* next preceding. Such list shall state the date of the deed of trust or mortgage, when admitted to record, the name of the grantor, the names of the creditors, when the names of such creditors are disclosed and set forth in the deed of trust or mortgage, and the amount of the debt to each creditor secured by the deed of trust or to the mortgagee in the mortgage and the total amount of debt secured thereby and the property conveyed in such deed of trust or mortgage. Copies of this list shall be furnished by the clerk on or before the ~~fifteenth day~~ of January *15* to the commissioner of the revenue for his county or city and to the Department of ~~Taxation~~ .

The commissioner shall, upon receipt of any such receipt or list as provided for, 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.

Source: § 58-797.

Comment: No substantive change.

*§ 58.1-3304. § 58-798.* 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 ~~two hundred and nineteen thousand~~ *219,000*

but not more than ~~three hundred thousand~~ 300,000 and in cities having a population of more than ~~seventy thousand~~ 70,000 but not more than ~~eighty-six thousand~~ 86,000 and adjoining a city having a population of more than ~~two hundred thousand~~ 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 the ~~thirty-first~~ of 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 the ~~fifteenth~~ day of January 15 in each year.

Upon receipt of any such list as hereinbefore provided for, the commissioner shall promptly and carefully check the ~~same~~ 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.

Source: § 58-798.

Comment: No substantive change.

§ 58.1-3305. ~~§ 58-799.~~ Penalty on clerks for failure to deliver such lists.—If any clerk ~~fail~~ fails to perform the duties required of him in either of the ~~two preceding sections~~ (§§ 58-797, 58-798) by §§ 58.1-3303 or 58.1-3304 he shall forfeit to the Commonwealth the sum of ~~one hundred dollars~~ \$100 and the judge of each circuit and city court ~~wherein or before whose clerk deeds are admitted to record or wills are probated~~ shall ascertain at the term of his court next succeeding the ~~fifteenth~~ of January 15 of each year whether the clerk of such court has performed such duties. If it ~~shall appear~~ 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.

Source: § 58-799.

Comment: No substantive change.

§ 58.1-3306. ~~§ 58-800.~~ State Librarian to furnish abstracts of grants.—An abstract shall be made out by the State Librarian on or before the ~~fifteenth~~ day of 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 the ~~thirty-first~~ day of December 31 next preceding. The State Librarian shall transmit every such abstract to the commissioner of the revenue for the proper county or city.

Source: § 58-800.

Comment: No change.

§ 58.1-3307: *Reserved.* ~~§ 58-801.~~ Persons interested may procure and deliver abstracts of grants, etc.—~~Any person interested may also procure, at his cost, a statement of any such grant, judgment, decree or devise and deliver the same to the proper commissioner.~~

Comment: Section deleted as unnecessary.

§ 58.1-3308. ~~§ 58-802.~~ 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.

Source: § 58-802.

Comment: No change.

§ 58.1-3309. ~~§ 58-803.~~ 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 ~~mentioned in the six preceding sections~~ (§§ 58-797 to 58-802) 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 ; and . 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 ; . ~~provided, however, that the owner of such land or timber shall be entitled to all of the remedies for the correction of any errors in such apportionment of the assessed value by the commissioner which are provided by law for the correction of other erroneous assessments.~~

Source: § 58-803.

Comment: Review procedures are consolidated in Article 12 herein.

~~§ 58.1-3310. § 58-806.~~ 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 to the Department of Taxation, one copy each of the land book on or before the first day of 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 of Taxation may, for good cause, extend the time for delivery of the such copies of the original land book. Each commissioner of the revenue for a county shall file a copy of the land book in the office of the clerk of the circuit court of his county or city and each commissioner of the revenue for a city shall file such copy in the office of the clerk of the court of the city in which deeds are admitted to record. Such clerks shall preserve such copies in their offices 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.

Source: § 58-806.

Comment: Deletes outdated reference to the court of record in cities.

~~§ 58.1-3311. § 58-807.~~ 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.

Source: § 58-807.

Comment: No change.

~~§ 58.1-3312. § 58-808.~~ 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.

Source: § 58-808.

Comment: No change.

~~§ 58.1-3313. § 58-809.~~ 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.

Source: § 58-809.

Comment: No change.

~~§ 58.1-3314 § 58-816.~~ 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 § ~~58-802~~ 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 § ~~58-772~~ 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;

4. For an entry of land according to § 58-814, one dollar, which shall be paid by the person for whom the entry is made.

~~The fees mentioned in this section shall be in full for such services, whether they be for the benefit of the State or for the cities, counties or towns of the State. No city, town or county shall pass any resolution or ordinance authorizing any clerk to charge any other or additional compensation for these or similar services under any bylaw or ordinance of such city or town, or resolution or order of such county.~~

Source: § 58-816.

Comment: The last sentence of the section is stricken as unnecessary.

~~§ 58.1-3315. § 58-817.~~ Collection of fees.-All the fees mentioned in the preceding section (~~§ 58-816~~) ~~§ 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 ~~§ 58-802~~ ~~58.1-3308 or 58-814~~, which fee shall be paid by the vendee; ~~provided, that in~~ *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.

All fees collected by any clerk under the ~~provisions~~ of this section shall be accounted for by him as ~~provided by law~~.

Source: § 58-817.

Comment: Last sentence is stricken as such duty is adequately provided for in other Code sections.

## Article 9.

### Levy.

~~§ 58.1-3320. § 58-759.~~ 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.

Source: § 58-759.

Comment: Extends taxes based on last biennial assessment, if a locality assesses on a two-year cycle.

~~§ 58.1-3321. § 58-785.1.~~ Effect on rate when assessment results in tax increase; public hearings.-A. Notwithstanding any other provision of law, where any annual assessment, biennial assessment or general reassessment of real property by a county, city or town would result in an increase of one ~~per centum~~ 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 one ~~hundred one per centum~~ 101 percent of the previous year's real property tax levies, unless subsection B of this section is complied with, which rate shall be determined by multiplying the previous year's total real property tax levies by one ~~hundred one per centum~~ 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 ~~§ 58-772.1~~ ~~§ 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 hearing may be held at the same time and place as the annual budget hearing, increase the rate above the reduced rate required in subsection A above if any such increase is deemed to be necessary by such governing body.

Notice of the public hearing shall be given at least seven days before the date of such hearing by the publication of a notice in at least one newspaper of general circulation in such county or city. 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 shall not be placed in that portion, if any, of the newspaper reserved for legal notices and classified advertisements. The notice 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 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.

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 the ~~thirtieth~~ day of June 30 of each year, may be fixed on or before the ~~fifteenth~~ day of April 15 of that tax year.

Source: § 58-785.1

Comment: Removes an ambiguity as to what exact language must be published.

#### *Article 10.*

##### *Public Disclosure/Access to Records.*

§ 58.1-3330. ~~§ 58-792.01.~~ 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 appraised value of land, the new appraised value of improvements, and the new assessed value of each if different from the appraised value; and the assessment ratio employed by the locality. 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; provided, however, that in counties which have elected by ordinance to prepare land and personal property books in alphabetical order as authorized by § 58-804 ~~(e)~~ 58.1-3301 B such notice may omit reference to districts as provided herein.

C. Any person, firm or corporation, 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 above 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.

Source: § 58-792.01.

Comment: No substantive change.

§ 58.1-3331. ~~§ 58-792.02.~~ 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 § 58-46 58.1-3, shall be open for inspection, after the notice of reassessment is mailed as provided in § 58-792.01 § 58.1-3330, for inspection during 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. 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.

Source: § 58-792.02.

Comment: No change.

§ 58.1-3332. ~~§ 58-817.1.~~ 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.

Source: § 58-817.1.

Comment: No change.

## Article 11.

### Tax to Constitute Lien.

§ 58.1-3340. ~~§ 58-762.~~ Lien on real estate for taxes and levies assessed thereon; responsibility of purchaser at deed of trust 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 thereon. 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 under a deed of trust shall see that the proceeds are applied to the payment of all taxes and levies assessed on real estate, the provisions of § 55-59.4 to the contrary notwithstanding. *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; ~~instituted and conducted at the direction of the board of supervisors or other governing body of the county or the council of the city or town in which such taxes and levies are assessed, by such attorney as such board, council or other governing body may employ for the purpose,~~ under the provisions of article Article 8 4 of chapter Chapter 21 39 (§ 58-1117.1 58.1-3965 et seq.).

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.

Source: § 58-762.

Comment: Section statutorily places burden of taxes on the purchaser of property and not only pursuant to a sale under a deed of trust. This is current practice.

§ 58.1-3341. ~~§ 58-767.~~ 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.

The right, title and interest of the Commonwealth of Virginia 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 ; provided, however, that . ~~nothing herein contained shall invalidate or release any lien for taxes and levies which have been, or hereafter become, delinquent for twenty or more years when such liens on June nineteen, nineteen hundred and forty-six were being asserted and enforced in a chancery cause then pending :~~

No clerk of any court in Virginia 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.

Source: § 58-767.

Comment: Obsolete special language is removed.

~~§ 58.1-3342. § 58-771.~~ 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 ; and all ~~assessments of real estate heretofore made against a decedent's estate are hereby validated if otherwise valid~~ . 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.

Source: § 58-771.

Comment: No change.

~~§ 58.1-3343. § 58-770.~~ Identification of owners in assessment of Effect of lien on certain real estate jointly owned.- If real estate be owned by more than one person as tenants in common, joint tenants or otherwise, The lien on such real estate owned by more than one person as tenants in common, joint tenants or otherwise for the payment of the all prior, present and subsequent taxes and levies annually assessed thereon, whether heretofore or hereafter, or assessments thereof shall not be impaired ; nor shall the assessment thereof be regarded as invalid; 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.

Source: § 58-770.

Comment: No substantive changes.

~~§ 58-1023: Lien on real estate for taxes and levies. There shall be a lien upon all real estate for the taxes assessed and county, district, city and town levies assessed thereon; prior to any other lien or encumbrance thereon. 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.~~

Comment: Deleted as unnecessary duplication. See § 58.1-3340.

~~§ 58-1024~~ 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 §§ 58-1014 to 58-1020 or any other laws for the sale of land § 58.1-3965 et seq. for delinquent taxes provided the owner of record or his heirs be made parties to the proceeding for sale.

~~(2) Proceedings for the sale of land under §§ 58-1014 through 58-1020 may be instituted any time after the five per centum penalty is added.~~

1 58.1-3345 . In any county in this State which adjoins three cities lying wholly within this State, one of which cities has a population of one hundred ninety thousand 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 act, 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.

Source: § 58-758.1

Comment: This section has been carried by reference in the Code and shall not be set out. No change.

## 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 Chapter 14 (§ 58.1-3370 et seq.) of this title or may directly apply for relief to the appropriate circuit court of the county or city.

Source: New section.

Comment: This section designates the possible avenues of review in a real estate assessment contest.

§ 58.1-3351. ~~§ 58-763.~~ 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 the 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.

Source: § 58-763.

Comment: No change.

§ 58.1-3352. ~~§ 58-814.~~ 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.

Source: § 58-814.

Comment: No change.

§ 58.1-3353. ~~§ 58-815.~~ 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.

Source: § 58-815.

Comment: No change.

§ 58.1-3354. ~~§ 58-764.~~ 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 the preceding section (~~§ 58-763~~), § 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 Commonwealth's attorney to apply to the circuit court of such county to have the assessment corrected. Proceedings upon any such application shall be as provided in §§ ~~58-1145 to 58-1151~~ 58.1-3984 to 58.1-3989 and the court shall enter such order with respect to the assessment as is just and proper.

Source: § 58-764.  
Comment: No change.

§ 58.1-3355. ~~§ 58-764.1.~~ 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 of the two preceding sections (~~§§ 58-763, 58-764~~), § 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.

Source: § 58-764.1.  
Comment: No change.

### Article 13.

#### *Public Taking of Private Real Estate.*

§ 58.1-3360. ~~§ 58-818.~~ Credit on current year's taxes when land acquired by United States, the Commonwealth, a political subdivision, or a church or religious body.- ~~All taxpayers of the State. Any taxpayer~~ whose lands, or any portion thereof, ~~shall be~~ are in any year acquired or taken in any manner ~~whatsoever~~ by the United States, the Commonwealth, a political subdivision, or a church or religious body, which is exempt from taxation by Article X, § 6, shall be relieved from the payment of taxes and levies from the date of divestment ~~on~~ of such land as ~~shall be so taken or acquired~~, for that portion of the year in which the property ~~shall be so was taken or acquired~~. ~~from and after the date upon which the title shall be vested in the United States.~~ The county treasurers as to land situated in counties and the city treasurers and city collectors as to lands situated in cities; ~~so taken or acquired~~, shall receive from and receipt to the original owner of the lands so taken by the United States, 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 on the margin of the list the date on which the property was acquired by the ~~United States 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.

Source: §§ 58-818 and 58-822.  
Comment: Combines two sections for purposes of brevity.

§ ~~58-822~~ 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; ~~or city collector~~, showing the quantity of land so taken or acquired, and whether by ~~this State the Commonwealth~~ or any political subdivision thereof or church or religious body, which is exempt from taxation by Article X, § 6, of the Constitution, 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 ~~this State 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 and ~~city collectors~~ to authorize them to receive and prorate the taxes and levies as herein authorized.

Source: § 58-823

Comment: No change.

~~§ 58-824~~ 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 ~~or city collector~~ , 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 ~~this State~~ *the Commonwealth* , or any county or municipality thereof or church or religious body, which is exempt from taxation by Article X, § 6 of the Constitution.

Source: § 58-824

Comment: No change.

§ 58.1-3361. ~~§ 58-819~~. 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 ~~United States~~ *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 by the ~~United States government~~ , 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.

Source: § 58-819.

Comment: No substantive change.

§ 58.1-3362. ~~§ 58-820~~. Refund of taxes paid; effect on penalties and interest.—Any ~~such~~ taxpayer whose lands ~~shall be~~ *are* taken ; and who ~~shall have~~ *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 ~~§ 58-818~~ *58.1-3360* , on any lands that may have been taken or acquired by the ~~United States~~ *government or religious body* in the same manner as provided by law for the correction of erroneous assessments and reducing taxes erroneously charged ; ~~and~~ . Any ~~such~~ 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; ~~provided 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 ~~the first day of~~ *July 1* of the year following.

Source: §§ 58-820 and 58-822.

Comment: Conforms language of sections so that the procedure for refund of taxes paid in behalf of United States is the same as that applicable to the Commonwealth, its political subdivisions and certain religious bodies.

§ 58.1-3363. ~~§ 58-821~~. Recovery of taxes paid while contesting condemnation.—Any ~~such~~ taxpayer ; whose lands ~~shall be so~~ *are* taken by condemnation, who ~~shall appeal~~ *appeals* from the order or decree of the trial court vesting title in the lands in the United States and who, pending such appeal, ~~shall pay~~ *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 ~~or shall be~~ 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 ; ~~and~~ . Such right to recover such taxes and levies shall extend to ~~the first day of~~ *September 1* of the year following the date of final determination of such appeal.

Source: § 58-821.

Comment: No substantive change.

#### *Article 14. Boards of Equalization.*

~~§ 8-895~~ 58.1-3370 . Appointment.—A. The circuit court having jurisdiction within each city and each county other than those counties operating under ~~§ 58-897~~ *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.

**B. [Repealed.]**

**C B .** The term of any board of equalization appointed under the authority of this section shall expire six months after the effective date of the assessment for which they were appointed.

Source: § 58-895.

Comment: No change.

~~§ 58-897~~ **58.1-3371 .** Appointment in counties with county executive or county manager form of government.—Unless such county has a permanent board of equalization appointed according to law, the board of county 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 13 (§ 15.1-582 et seq.) or Chapter 14 (§ 15.1-669 et seq.) of Title 15.1 of this Code, 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. The terms of the members of any board so appointed shall expire on December 31 of the year in which they are appointed.

Source: § 58-897.

Comment: No change.

~~§ 58-897.1~~ **58.1-3372 .** Appointment in counties over 35,000 adjoining two certain cities.—Chapter 47 of the Acts of 1950, approved February 23, 1950, relating to the appointment of local boards of equalization in any county with a population of more than thirty-five thousand and which adjoins two cities having populations of not less than fifty thousand each, is incorporated in this Code by this reference.

Source: § 58-897.1.

Comment: Not to be set out because of its limited applicability.

~~§ 58-898.1~~ **58.1-3373 .** Permanent board of equalization.—Any county or city which uses the annual ~~assessment~~ method or the biennial assessment method authorized under § ~~58-778.1~~ **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 §§ ~~58-895~~ **58.1-3370** through ~~58-898~~ **58.1-3372** . Such board shall consist of three members to be appointed by the circuit court of such county or city, or the circuit court having jurisdiction within such city, 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. Members of such boards shall have the qualifications prescribed by § ~~58-899~~ **58.1-3374** , and shall conduct their business as required by § ~~58-903~~ **58.1-3378** . The compensation of the members of any such boards shall be fixed by the governing body.

Source: § 58-898.1.

Comment: No change.

~~§ 58-899~~ **58.1-3374 .** Qualifications of members; vacancies.—Every board of equalization shall be composed of not less than three nor more than five members who shall be freeholders in the county or city for which they are to serve and who shall be selected by the court or judge from the citizens of the county or city. 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 § ~~58-22.1~~ **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.

Source: § 58-899.

Comment: No change.

~~§ 58-900~~ **58.1-3375 .** Compensation of members.—The members of every board of equalization shall receive ~~per diem~~ 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 ; ~~provided that the~~ . The governing body of every county and of every city may limit the ~~per diem~~ compensation to such number of days as in its opinion is sufficient for the completion of the work of the board.

§ 58-900.

Comment: No substantive change.

~~§ 58-001~~ 58.1-3376 . Organization and assistants.—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.

Source: § 58-901.

Comment: No change.

~~§ 58-002~~ 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.

Source: § 58-902.

Comment: No change.

~~§ 58-003~~ 58.1-3378 . Sitings; 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 ten 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 voting precinct. 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 all complaints of inequalities including errors in acreage in such real estate assessments.

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 thirty days after the termination of the date set by the assessing officer to hear objections to the assessments as provided in ~~§ 58-792.01~~ 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.

Source: § 58-903.

Comment: No change.

~~§ 58-004~~ 58.1-3379 . Hearing complaints and equalizing assessments.—The board shall hear and give consideration to such complaints 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. The commissioner of the revenue 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. Every board of equalization may go upon and inspect any real estate subject to equalization by it.

Source: § 58.1-3379.

Comment: No change.

~~§ 58-005~~ 58.1-3380 . Taxpayer or local authorities may apply for equalization. Any taxpayer may apply to the board of equalization for the 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 equalize the assessment of any taxpayer.

Source: § 58-905.

Comment: No change.

~~§ 58-006~~ 58.1-3381 . Action of board; notice required before increase made.—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 ; provided, however, that . 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, unless such owner has already been heard.

Source: § 58-906.

Comment: No change.

~~§ 58-907~~ *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 ~~any city court of record of the 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.

Source: § 58-907.

Comment: No change.

~~§ 58-908~~ *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.

Source: § 58-908.

Comment: No change.

~~§ 58-909~~ *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.

Source: § 58-909.

Comment: No change.

~~§ 58-910~~ *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 ; ~~and in~~ . 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.

Source: § 58-910.

Comment: No change.

~~§ 58-911~~ *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.

Source: § 58-911.

Comment: No change.

~~§ 58-912~~ *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 shall be liable to a fine of not less than ten dollars nor more than one hundred dollars~~ , 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.

Source: § 58-912.

Comment: Offense of section is properly classified.

~~§ 58-913~~ *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.

Source: § 58-913.

Comment: No change.

~~§ 58-914. Certain laws not affected: Nothing contained in this chapter shall be construed as repealing or amending any provisions of existing law authorizing or permitting the annual assessment or reassessment or equalization of real estate in cities having a population of over one hundred thousand.~~

Comment: Repealed as unnecessary.

~~§ 58-915 58.1-3389 . Article not applicable to mineral lands or real estate assessable by Corporation Commission or Department.~~—This chapter shall not apply to any real estate which is assessable under the law by the State Corporation Commission or the Department of Taxation.

Source § 58-915.

Comment: No change.



## CHAPTER 34.

### PAYMENTS IN LIEU OF REAL PROPERTY TAXATION.

~~§ 58.1-3400. 58-16.2. (Effective January 1, 1984) Service charge on certain real property.— A . Notwithstanding the provisions of § 58-12 and subsequent sections of the Code of Virginia Chapter 36 of Title 58.1 (§ 58.1-3600 et seq.) relating to the exemption of property from taxation, the governing body of any county, town or 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 subsection (1) paragraph (1), except property owned by the Commonwealth, and subsections paragraphs (3), (4) ; (6); (8); and (10) - (17) of § 58-12, and such sections of the Code of Virginia and (7) of § 58.1-3606, paragraphs (2) through (7) of § 58.1-3607 and all sections in Articles 3 and 4 of Chapter 36 of Title 58.1.~~

*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.*

~~Buildings with land they actually occupy, together with the additional adjacent land reasonably necessary for the convenient use of any such building located within such county, city or town shall also be exempt from the service charge provided herein 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 private educational or charitable purposes and not for profit other than faculty and staff housing of any such educational institution. The service charge shall be based on the assessed value of the real estate and the amount which the county, city or town shall have expended in the year preceding the year such charge is assessed for the purpose of furnishing police and fire protection, for the collection and disposal of refuse and the cost of public school education in the case of faculty and staff housing of an educational institution, excluding any amount received from federal or state grants specifically designated for such purposes and assistance provided to localities pursuant to Article 10 (§ 14.1-84.1 et seq.) of Chapter 1 of Title 14.1 of the Code of Virginia. The expenditures for services not provided for certain real estate shall not be applicable to the calculations of the service charge for such real estate, nor shall such expenditures be applicable when a service is currently funded by another service charge. The service charge shall not be applicable to public roadways or property held for future construction of such roadways. The service charge, which shall not exceed twenty percent of the real estate tax rate or fifty percent in the case of faculty and staff housing of an educational institution, shall be fixed by dividing the said expenditures by the assessed fair market value of all of the real estate within the county, city or town, except real estate owned by the United States government or any of its instrumentalities, expressed in hundred dollars, including nontaxable property, provided there first be listed and published by the commissioners of the revenue or other assessing officer in the land books of such county, city or town, in the same manner as taxable real estate, all the exempt real estate. In the valuation of exempt real estate for purposes of this section, artistic and historical significance shall not be taken into account.~~

~~B. Notwithstanding the provisions of subsection A, a service charge may be levied on any state owned real property, except hospitals, educational institutions, and public roadways or property held for the future construction of public highways, if the value of real estate owned by the Commonwealth within a county, city, or town, excluding such hospitals, educational institutions, or roadway property, exceeds three percent of the value of all real estate located within its boundaries. Such charge, however, 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 amount of the service charge shall not exceed the real estate tax which would have been payable had such property been fully taxable. The service charge shall be based on the assessed value of the state owned real estate and the amount which the county, city, or town shall have expended, in the year preceding the year such charge is assessed by the locality, for the furnishing of police and fire protection, for the collection and disposal of refuse and, in the case of faculty and staff housing of an educational institution, the cost of public school education, excluding from such amount any sums received by the locality from federal or state grants specifically designated for such purpose and assistance provided to localities pursuant to Article 10 (§ 14.1-84.1 et seq.) [of Chapter 1] of Title 14.1 of the Code of Virginia. The expenditures for services not provided for certain real estate shall not be applicable to the calculation of a service charge for such real estate nor shall such expenditures be applicable when a service is currently funded by another service charge. The charge shall be fixed by dividing the said expenditure by the assessed fair~~

market value of all real estate within the county, city, or town except real estate owned by the United States government or any of its instrumentalities expressed in hundred dollars, including nontaxable property, provided there first be listed and published by the commissioner of revenue or other assessing officer in the land books of such county, city, or town, in the same manner as taxable real estate, all exempt real estate. In the valuation of exempt real estate for purposes of this section, artistic and historical significance shall not be taken into account.

A county, city, or town which enacts an ordinance levying the service charge on state-owned property after January 1, 1981, 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. A county, city, or town which enacts an ordinance levying a service charge on faculty and staff housing of a private college or university after January 1, 1981, shall notify the chief executive officer of said institution at least twelve months prior to the effective date of such ordinance.

C. Any person aggrieved by the assessment or the valuation of real estate for purposes of this section may apply to the commissioner of the revenue or other assessing officer for correction thereof. If the commissioner or other officer finds that the assessment or valuation is erroneous, he shall correct the same. Any person aggrieved by the decision of such officer may appeal to the court of record of the county or city, as provided in § 58-1145.

D. Such governing body may additionally exempt any class of organization set out in § 58-12 et seq.

Source: § 58-16.2

Comment: The source section has been divided into a number of smaller sections in order to conform with the format established for other Title 58.1 chapters. No substantive changes. Code cites have been updated.

§ 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 10 (§ 14.1-84.1 et seq.) of Chapter 1 of Title 14.1 of the Code of Virginia 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.

Source: § 58-16.2

Comment: No substantive change. All provisions relating to the calculation of the service charge or property not owned by the Commonwealth have been placed in this section. Exemption provisions have been placed in a separate section.

§ 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.*

Source: § 58-16.2

Comment: All exemption provisions have been placed in this new section.

*§ 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 subsection A of this section 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 10 (§ 14.1-84.1 et seq.) of Chapter 1 of title 14.1 of the Code of Virginia 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.*

*D. The service charge rate for state-owned property shall be determined by dividing the expenditures determined pursuant to subsection C 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.*

*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.*

Source: § 58-16.2

Comment: All provisions relating to the service charge on property owned by the Commonwealth have been placed in this section.

*§ 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.*

Source: § 58-16.2

Comment: All notice provisions have been placed in a separate section

~~§ 58.1-3405 58-16.2:1~~ . 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 § ~~58-16.2~~ 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.

Source: § 58-16.2:1

Comment: No changes.

~~58.1-3406 58-16.2:2~~ . Apportionment of payments received from Tennessee Valley Authority in lieu of taxes.—A. Notwithstanding any other provision of law, one-half 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 Taxation is hereby authorized and directed to make annual payments ~~on or before November 1, 1982, and each year thereafter~~ 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 paragraph 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 paragraph 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.

Source: § 58-16.2:2

Comment: No substantive change. Outdated language has been stricken.

*§ 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.*

Source: § 58-16.2 (C)

Comment: The source section has been divided into a number of smaller sections. Language giving the commissioner of the revenue authority to make corrections has been deleted.

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 § 58.1-1100 as intangible personal property or by § 58.1-3510 as merchants' capital. Such tangible personal property is hereby segregated for and made subject to local taxation only pursuant to Article X. § 4 of the Constitution of Virginia.

Source: §§ 58-829 and 58-830.

Comment: This section defines tangible personal property in the negative by including all personal property except intangibles which is subject to state taxation (See Chapter 11) and merchants' capital.

~~§ 58-831.1~~ 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 ~~not incorporated~~ , 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.

Source: § 58-831.1.

Comment: No change.

~~§ 58-831.2~~ 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 ~~not incorporated~~ , 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~~ . *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, ~~nor~~ or to property owned by any transportation district organized under the Transportation District Act of 1964 (§ 15.1-1342 et seq.) and leased to provide transportation services.

Source: § 58-831.2.

Comment: No substantive change.

~~§ 58-829~~ 58.1-3503 . Classification of tangible personal property.—A. Tangible personal property is ~~segregated for local taxation only~~. The following categories are not to be considered separate classes for rate purposes, but ~~separate categories~~ *classified* for valuation purposes : according to the following separate categories which are not to be considered separate classes for rate purposes: ~~Methods~~ of valuing property may differ among the separate categories listed below, 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. Nothing herein shall be construed to prevent a commissioner of revenue from taking into account the ~~condition~~ of the property. The commissioner of revenue shall make available to ~~taxpayers on request~~ a reasonable description of his valuation methods.

~~(1) to (20)~~ [Repealed.]

A. 1. Farm animals, except as exempted under § 58 829.1:1 58.1-3505 .

B. 2. Farm machinery, except as exempted under § 58 829.1:1 58.1-3505 .

C. 3. Automobiles, except those described in subsections F, G 7, 8 and H 9 of this section,

which shall be valued by means of a recognized pricing guide or a percentage or percentages of original cost.

~~C~~ 4. Trucks of less than two tons, which may be valued by means of a recognized pricing guide or a percentage or percentages of original cost.

~~D~~ 5. Trucks and other vehicles, as defined in § 46.1-1, except those described in subsections ~~C~~ 4. and ~~E~~ 6 through ~~J~~ 10 of this section, which shall be valued by means of a percentage or percentages of original cost.

~~E~~ 6. Mobile homes, as defined in § 36-71 (4), which ~~shall~~ *may* be valued ~~and taxed in accordance with § 58-829.3 on the basis of square footage of living space~~.

~~F~~ 7. Antique motor vehicles, as defined in § 46.1-1.

~~G~~ 8. Taxicabs.

~~H~~ 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.

~~I~~ 10. Motorcycles, campers and other recreational vehicles, which shall be valued by means of a recognized pricing guide or a percentage or percentages of original cost.

~~J~~ 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.*

~~K~~ 13. Aircraft, ~~other than that defined as intangible personal property under Chapter 8 (§ 58-405 et seq.) of this title~~, which shall be valued by means of a recognized pricing guide or a percentage or percentages of original cost.

~~L~~ 14. Household goods and personal effects, except as exempted under § 58-829.1 *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. Computer hardware used by businesses primarily engaged in providing data processing services to other nonrelated or nonaffiliated businesses, which shall be valued by means of a percentage or percentages of original cost.*

~~M~~ 17. All tangible personal property employed in a trade or business other than that defined as intangible personal property under Chapter 8 (§ 58-405 et seq.) of this title or § 58-822, or described in subsections ~~A~~ paragraphs 1 through ~~L~~ 16 of this section or in § 58-821, which shall be valued by means of a percentage or percentages of original cost.

~~N~~ 18. 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. Nothing herein shall be construed to prevent a commissioner of revenue from taking into account the condition of the property. The commissioner of revenue shall make available to taxpayers on request a reasonable description of his valuation methods.*

Source: § 58-829.

Comment: Deletes reference to state capital tax, which was repealed as of January 1, 1983. By defining tangible personal property in § 58.1-3500, property classified as intangible, merchants' capital and machinery and tools is effectively removed from the chapter. Language in paragraphs 15 and 16 dealing with valuation has been taken from §§ 58-829.7 and 58-829.9.

~~§ 58-829.1 58.1-3504~~. Classification of certain household goods and personal effects as ~~separate items~~ *of for* taxation; governing body may exempt. Notwithstanding any provision of ~~§ 58-829 58.1-3503~~, household goods and personal effects are hereby defined as separate items of taxation and classified as follows:

~~(1)~~ 1. Bicycles.

~~(2)~~ 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)~~ 3. Pianos, organs, *and all other musical instruments*; phonographs, ~~and~~ record players, and records to be used therewith; and ~~all other musical instruments of whatever kind~~, radio and television instruments and equipment.

~~(4)~~ 4. Oil paintings, pictures, statuary, curios, articles of virtu and works of art.

~~(5)~~ 5. Diamonds, cameos or other precious stones and all precious metals used as ornaments or jewelry.

~~(6)~~ 6. Sporting and photographic equipment.

~~(7)~~ 7. Clothing and objects of apparel.

~~(8)~~ 8. 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 incident to maintaining an abode.

The governing body of any county, city or town may, by ordinance duly adopted, exempt in whole or in part from taxation all or any of the above classes of household goods and personal effects.

~~This section shall apply to tax years beginning on and after January one, nineteen hundred fifty-nine.~~

Source: § 58-829.1.

Comment: No substantive change.

~~§ 58-829.1-1~~ 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.

~~6a.~~ 7. Grain, tobacco and other agricultural products in the hands of a producer.

~~7.~~ 8. Farm machinery and farm implements.

~~7a.~~ 9. Equipment used by farmers or farm cooperatives qualifying under § 521 of the Internal Revenue Code to manufacture industrial ethanol; , provided; ~~however~~; that the materials from which the ethanol is derived consist primarily of farm products.

~~A1. Grain, tobacco and other agricultural products shall be exempt from taxation while in the hands of a producer.~~

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 machinery, implements or equipment *set forth in subsection A* .

*C. Grain, tobacco and other agricultural products shall be exempt from taxation while in the hands of a producer.*

Source: § 58-829.1:1.

Comment: No substantive change.

*§ 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. Boats or watercraft weighing five tons or more;*

*2. Aircraft having a maximum passenger seating capacity of no more than fifty which 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. All other aircraft not included in paragraph 2;*

*4. Antique automobiles as defined in § 46.1-1;*

*5. Tangible personal property used in a research and development business;*

*6. Heavy construction machinery, including but not limited to land movers, bulldozers, front-end loaders, graders, packers, power shovels, cranes, pile drivers, and ditch and other types of diggers;*

*7. 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; and*

*8. Vehicles without motive power, used or designed to be used as mobile homes as defined in § 36-71 (4).*

*9. Computer hardware used by businesses primarily engaged in providing data processing services to other nonrelated or nonaffiliated businesses. \**

*B. The governing body of any county, city or town may levy a tax on the property enumerated in subsection A at a different rate from the tax levied on other tangible personal property. The rate of tax and the rate of assessment shall (i) for purposes of paragraphs 1, 2, 3, 4, 6 and 9 of subsection A, not exceed that applicable to other classes of tangible personal property, (ii) for purposes of paragraphs 5 and 7, not exceed that applicable to machinery and tools, and (iii) for purposes of paragraph 8, equal that applicable to real property.*

Source: §§ 58-829.2:1, 58-829.3, 58-829.5, 58-829.6, 58-829.7, 58-829.8 and 58-829.9.

Comment: These sections are combined to avoid repetitious verbiage.

~~§ 58-829.2:1. Certain boats or watercraft weighing five tons or more to constitute a separate classification for local taxation. All boats or watercraft weighing five tons or more are hereby declared to be a separate class of property and shall constitute a classification for local taxation separate from other such classifications of tangible personal property provided in this chapter; provided, however, that the rate of assessment and the rate of tax shall not exceed that applicable to other classes of tangible personal property. Such boats or watercraft shall be valued by means of a percentage or percentages of original cost.~~

Comment: See § 58.1-3506.

~~§ 58-829.3. Classification of certain vehicles used as mobile homes or offices as separate items of taxation. All vehicles without motive power, used or designed to be used as mobile homes as defined in § 36-71 (4), are hereby defined as separate items of taxation and shall constitute a classification for local taxation separate from other such classifications on tangible personal property provided in this chapter; provided, however, that the ratio of assessment and the rate of tax shall be the same as that applicable to real property.~~

~~The local assessing officer may, in lieu of any other method, appraise and assess the value of mobile homes for local taxation on the basis of square footage of living space.~~

Notwithstanding any provision of this title, any city or county wherein a mobile home, as defined in § 26-71 (4), is delivered or moved after January one, 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 mobile home been situated within such city or county on January one of that year.

Comment: See §§ 58.1-3503, 58.1-3506 and 58.1-33.

~~§ 58-820.5. Classification of aircraft as separate items of taxation. The following aircraft are hereby defined as separate items of taxation:~~

1. All aircraft, having maximum passenger seating capacity of no more than fifty which 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; and

2. All other aircraft, other than that defined as intangible personal property under Chapter 8 (§ 58-405 et seq.) of this title. Such aircraft shall constitute classes for local taxation separate from other tangible personal property. The governing body of any county, city or town may, by ordinance duly adopted, levy a tax on either or both classes of aircraft at a different rate than the tax on other tangible personal property; provided, however, that the ratio of assessment and the rate of tax shall not exceed that applicable to such other tangible personal property.

Comment: See §§ 58.1-3503 and 58.1-3506.

~~§ 58-820.6. Classification of antique automobiles as separate item of taxation. All antique automobiles, as defined in § 46-1-1, are hereby set aside as an item of taxation separate from other tangible personal property in this chapter. The governing body of any county, city or town may levy a tax on such property at a different rate than the tax on other tangible personal property; provided that the ratio of assessment and the rate of tax shall not exceed that applicable to such other tangible personal property.~~

Comment: See § 58.1-3506.

~~§ 58-820.7. Classification of tangible personal property used in research and development business as separate item of taxation. All tangible personal property used in a research and development business is hereby set aside as an item of taxation separate from all other tangible property enumerated in this chapter. The governing body of any county, city or town may, by ordinance, levy a tax on such class of property at a different rate than the tax on other personal property; provided that the ratio of assessment and the rate of tax shall not exceed that applicable to machinery and tools. Such property shall be valued by means of a percentage or percentages of original cost.~~

Comment: See § 58.1-3506.

~~§ 58-820.8. Classification of certain heavy construction machinery as separate items of taxation. All heavy construction machinery, including but not limited to land movers, bulldozers, front-end loaders, graders, packers, steam shovels, cranes, pile drivers, and ditch and other types of diggers, are hereby defined as separate items of taxation and shall constitute a classification for local taxation separate from other such classifications on tangible personal property. The governing body of any county, city, or town may levy a tax on such property at a different rate than the tax on other tangible personal property. The rate of tax and ratio of assessment, if any, shall not exceed that applicable to other tangible personal property.~~

Comment: See § 58.1-3506.

~~§ 58-820.9. Classification of certain computer hardware as separate items of taxation. All computer hardware used by businesses primarily engaged in providing data processing services to other nonrelated or nonaffiliated businesses is hereby set aside as an item of taxation separate from all other tangible personal property enumerated in this chapter. The governing body of any county, city or town, by ordinance, may levy a tax on such class of property at a different rate than the tax on other personal property; provided that the ratio of assessment and the rate of tax shall not exceed that applicable to other tangible personal property. Such property shall be valued by means of a percentage or percentages of original cost.~~

Comment: See § 58.1-3506.

~~§ 58-820. Intangible property not to be assessed as tangible. No property shall be assessed as tangible personal property which the law classifies as intangible personal property.~~

Comment: See § 58.1-3500.

~~§ 58-831-01: Energy conversion equipment classified as separate item of taxation.-A: All energy conversion equipment of manufacturers is hereby declared to be a class of property separate from all other tangible personal property. The governing body of any county, city, or town may levy a tax on such property at a different rate than the tax on other personal property. The rate and ratio of assessment on such conversion equipment shall not be greater than the rate and ratio on machinery and tools.~~

~~B: For purposes of this section, "energy conversion equipment" shall mean any generating equipment purchased after December thirty-one, nineteen hundred seventy-four, 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 co-generation equipment purchased on or after such date to achieve more efficient use of any energy source.~~

Comment: See § 58.1-3506.

## Article 2.

### Machinery and Tools Tax.

~~§ 58-821~~ 58.1-3507 . Certain machinery and tools segregated for local taxation only.— A. Machinery and tools used in a manufacturing, mining, processing or reprocessing, radio or television broadcasting, cable television, 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.

~~B. The Machinery and tools segregated for local taxation only under the provisions of § 58-821~~ 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 and taxed as provided by that section .

C. All motor vehicles and delivery equipment 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.

Source: §§ 58-405 and 58-831.

Comment: It has never been clear whether, in fact, the machinery and tools tax was a part of the tangible personal property tax. It was included in Chapter 16 of Title 58 with the tangible personal property tax in such a way as to appear to be part of such property; however, in actuality much of the base of the tax constitutes machinery which is so affixed to real estate as to become part thereof. The revision has placed machinery and tools in a separate article as to isolate its uniqueness. It is in essence a tax which crosses the boundaries between realty and personalty.

~~§ 58-838-21~~ 58.1-3508 . Separate classification and exemption from state taxation of machinery, tools and supplies used in harvesting forest products.— (a) 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 ; provided, . however, that The rate of assessment and the rate of tax shall not exceed that applicable generally to other machinery and tools.

(b) 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, shall be exempt from all State taxes, including taxes upon the sale, purchase or use thereof.

B. This The provisions of this section shall apply be applicable only to property owned or used by " taxpayers " as defined in this chapter, liable for payment of forest product taxes under Chapter 16 (§§ 58.1-1600 et seq.) of this title.

Source: §58-838.21.

Comment: The previous second paragraph of § 58-838.21 is a state sales tax exemption and shall therefore be removed to that chapter.

### Article 3.

#### Merchants' Capital Tax.

~~§ 58-832~~ 58.1-3509 . Merchants' capital subject to local taxation ; *rate limit* .—The capital of merchants is segregated for local taxation only under the provisions of §§ 58-8, 58-10 and 58-832 shall be subject to local taxation as provided by such sections . 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.

Source: §§ 58-832 and 58-266.1.

Comment: The segregation of merchants' capital for local taxation has been moved to this section. The rate limit has been taken from § 58-266.1 and placed here for reference purposes.

~~§ 58-832~~ 58.1-3510 . Definition of merchants' capital.—Merchants' capital ; which is by law segregated for local taxation exclusively, is defined for purposes of local taxation, as follows: inventory of stock on hand; daily rental passenger cars as defined in § 58-685.12:1 58.1-2401 ; 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 .

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 Chapter 12:1 24 (§ 58-685.10 58.1-2400 et seq.) of this title shall be deemed a mercantile business, and all capital, as herein defined herein , including all repair parts, materials and supplies ; associated with such repair and service operation shall be deemed merchants' capital.

Source: § 58-833.

Comment: No substantive change.

### Article 4.

#### Situs for Taxation

~~§ 58-834~~ 58.1-3511 . Situs for assessment; nonresident exception; refund of tax paid to city or county.—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 ; ~~except~~ . 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 ; ~~provided~~ . However, that Any person domiciled in another state, whose motor vehicle is principally garaged or parked in this State 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 such the vehicle in the state in which he is domiciled ; ~~and provided further that in~~ . 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. Any person who ; after January one, nineteen hundred seventy-three, paid shall pay a personal property tax on a motor vehicle to a county or city in this State Commonwealth and a similar tax on the same vehicle in the state of his domicile 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.

Source: § 58-834.

Comment: No substantive change.

~~§ 58-834.1~~ 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, ~~district, town or 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, ~~district, town or city or town~~, shall not thereby be deemed to have acquired or established situs for the purposes of assessment and taxation, under § 58-834 58.1-3511 of this Code

Source: § 58-834.1.

Comment: No substantive change.

~~§ 58-834.2~~ 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.

Source: § 58-834.2.

Comment: No substantive change.

~~§ 58-834.3~~ 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.

Source: § 58-834.3

Comment: No change.

## Article 5.

### *Tax Day/Filing of Returns.*

~~§ 58-835~~ 58.1-3515 . Tax day January ~~first~~ 1 .-Except as provided under § ~~58-851.7~~ 58.1- , 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 ~~first~~ 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 ~~to~~ 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.

Source: § 58-835

Comment: No change.

~~§ 58-835.1~~ 58.1-3516 . Proration of personal property tax.-A. Any county operating under the county manager plan or the urban county executive plan, the Counties of Albemarle, Chesterfield, James City ; and Loudoun, and any city having a population in excess of 100,000, and the City of Falls Church may provide by ordinance for the levy and collection of personal property tax on motor vehicles, trailers 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 ; ~~for~~ . 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, 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"). When any person sells or otherwise transfers title to a motor vehicle, trailer, 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 refunded *by the treasurer of such locality . Such refund shall be made*

*within thirty days.* When any person, after the tax day or situs day, acquires a motor vehicle, trailer, 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, or boat and it has a situs within the locality.

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 ~~and . If the tax is not paid when due, the~~ penalty and the interest otherwise provided for by ~~§ 58-847 58.1-3916~~ shall be imposed based on the ~~established~~ due date ~~established if the tax is not paid when due .~~

Source: § 58-835.1.

Comment: The treasurer has been made specifically responsible for making refunds under this section. This is in accordance with a recent Attorney General opinion.

~~§ 58-836 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 ~~several~~ 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.

Source: § 58-836

Comment: No change.

~~§ 58-837 58.1-3518 .~~ Taxpayers to file returns.-Every taxpayer owning any of the property ~~mentioned in this chapter~~ *subject to taxation under this chapter* on January ~~first~~ 1 of any year shall file a return thereof with the commissioner of the revenue for his county or city on the ~~appropriate forms prescribed by such commissioner, and .~~ 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 ~~§ 58-685-12 (b1) 58.1-2402 .~~ Such returns shall be filed on or before May ~~first~~ 1 of each year, except as otherwise provided by ordinance authorized by ~~§ 58-847 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 capitalized cost by year of purchase.

Source: § 58-837.

Comment: No substantive change.

~~§ 58-838 58.1-3519 .~~ ~~If taxpayer fails to file returns~~ 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 ~~the same~~ 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.

Source: § 58-838.

Comment: No substantive change.

## *Article 6.*

### *Special Provisions for Mobile Homes.*

~~§ 58-766-3 58.1-3520 .~~ Local permits required before moving a mobile home to the place where it is to be used as a place of residence; payment of property taxes before moving mobile homes.-No mobile home 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 mobile 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 department.

The owner of any mobile home moving the mobile home into a county, city or town for use rather than for sale shall within ten days after moving the mobile 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 mobile home. No mobile 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 mobile home. The permit shall expire in forty-five days and shall be conspicuously displayed on the left center of the rear of the mobile home at all times when such mobile home is being transported. The seller of a mobile home subject to the provisions of this section shall deliver a copy of ~~§ 58-766.3~~ *this section of the Code of Virginia* to the purchaser at the time of the sale.

Any dealer in mobile homes or any party having a secured interest in a particular mobile home may use dealer plates as authorized in § 46.1-115 in lieu of the tax permit required hereunder. Any such dealer or secured party who removes a mobile 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.

Source: § 58-766.3.

Comment: No substantive change.

*§ 58.1-3521. Mobile homes: proration of tax.* - Notwithstanding any *other* provision of this ~~title chapter~~, any city or county wherein a mobile home, as defined in § 36-71 (4), 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 mobile home been situated within such city or county on January 1 of that year.

Source: § 58-829.3.

Comment: No substantive change.

## CHAPTER 36.

### TAX EXEMPT PROPERTY.

#### Article 1.

##### Exemptions Generally.

~~§ 58-12.1. "Taxation" as used in § 58-12. The word "taxation" as defined in § 58-12 § 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 of chapter 20 of Title 15, article Article 2 (§ 15.1-239 et seq.) of chapter Chapter 7 of Title 15.1, article Article 3 (§§ 15.1-850, 15.1-851) of chapter Chapter 18 of Title 15.1 of this Code or the charter of any city or town.~~

Source: § 58-12.1.

Comment: Deletes obsolete references.

~~§ 58-15. Contract rights not affected. Nothing contained in the three preceding sections (§§ 58-12, 58-13 and 58-14) this chapter shall be construed as authorizing or requiring any county, city or town to tax for county, city or town purposes, in violation of the rights of the lessees thereof existing under any lawful contract heretofore made, any real estate owned by such county, city or town, as heretofore leased by it.~~

Comment: The provisions of this section are now covered by the taxation of leasehold interests as contained in §§ 58-758 and 58-758.1. Also the section was intended only to apply to contracts entered into prior to 1947.

~~§ 58-16.1. § 58-1-3601. Property becomes taxable immediately upon sale by tax-exempt owner. Notwithstanding any other provision of law to the contrary, if any Any property exempt from taxation pursuant to this chapter which is exempt from taxation is subsequently sold by the tax exempt owner thereof to any a person who does not have having tax-exempt status ; the same shall immediately become subject to taxation and be assessed therefor. The tax levied for the current year shall be prorated for the remainder of such the tax year.~~

Source: § 58-16.1.

Comment: Makes certain that any tax exempt properties are immediately added to the tax rolls upon their sale.

~~§ 58-13. § 58-1-3602. Exemptions not applicable to associations, etc., paying death, etc., benefits. Nothing contained in § 58-12 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.~~

Source: § 58-13.

Comment: No change.

~~§ 58-14. § 58-1-3603. Exemptions not applicable when building is source of revenue. A. Whenever any building or land, or part thereof, mentioned in § 58-12, exempt from taxation pursuant to this chapter and not belonging to the State Commonwealth , shall be is leased or shall is otherwise be a source of revenue or profit, all of such buildings and land shall be liable to taxation as other land and buildings in the same county, city or town ; except as is now or may hereafter be provided by law; provided, that when . When a part but not all of any such building or land , however, shall be is leased or otherwise be is a source of revenue or profit, and the remainder of such building or land shall be is used by any organization specified in § 58-12 exempted from taxation pursuant to this chapter for its purposes, only such portion thereof shall be liable to taxation as is so leased or is otherwise a source of profit or revenue shall be liable for taxation .~~

~~§ 58-16. Assessment of building used only partly for benevolent, religious or charitable purposes. B. In assessing any building and the land it occupies which may be owned exclusively by any organization or association mentioned in § 58-12 but all of which is not used exclusively for its purposes, pursuant to subsection A, the assessing officers officer shall only assess for taxation that portion of said the property subject to any such lease or otherwise a source of~~

profit or revenue and the tax shall be computed on the basis of the ratio of the space subject to any such lease or otherwise a source of profit or revenue to the entire property ; provided that when . 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.

Source: § 58-14 and 58-16.

Comment: Sections are combined; otherwise, no substantive change.

~~§ 58-14.1.~~ § 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 provisions of subsection A shall apply in each county, city or town upon completion of the next annual or general reassessment after July one, nineteen hundred seventy-five:

Source: § 58-14.1.

Comment: Deletes obsolete reference since a general reassessment has been completed in all localities since the date so specified.

~~§ 58-14.2.~~ § 58.1-3605. Biennial application for exemption.-The governing body of any county, city or town , after giving sixty days' written notice, may require by local ordinance may require any entity, after giving sixty days' written notice, except the Commonwealth, any political subdivision of the Commonwealth, or the United States, which owns real property exempt under § 58-12 et seq. pursuant to this chapter ; biennially to file biennially 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.

Source: § 58-14.2.

Comment: No change.

## Article 2.

### Property Exempted By

#### Classification Or Designation.

##### Before July 1, 1971.

~~§ 58-12. What property, real and personal.~~ § 58.1-3606. Pre-1971 property exempt from taxation ; State and local by classification . - The following classes of real and personal property, which were exempt from State and local taxation on July one, nineteen hundred seventy one, 1, 1971, shall continue to be exempt from taxation ; State and local, including inheritance taxes, under the rules of statutory construction applicable to this section exempt property prior to July one, nineteen hundred seventy one such date :

(1) 1. Property owned directly or indirectly by the Commonwealth, or any political subdivision thereof. ; and obligations of the Commonwealth issued since February fourteenth, eighteen hundred eighty two, or hereafter exempted by law.

(2) 2. Buildings with land they actually occupy, and the furniture and furnishings therein lawfully owned and held by churches or religious bodies and wholly and exclusively occupied or used for religious worship or for the residence of the minister of any church or religious body,

together with the ~~and such~~ additional adjacent land reasonably necessary for the convenient use of any such building.

~~(3)~~ 3. Nonprofit private or public burying grounds or cemeteries and endowment funds, lawfully held, for their care, provided the same are not operated for profit .

~~(4)~~ 4. Property owned by public libraries, law libraries of local bar associations when the same are used or available for use by a State 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 state health officials, incorporated colleges or other incorporated institutions of learning not conducted for profit . But this provision This paragraph shall apply only to property primarily used for literary, scientific or educational purposes or purposes incidental thereto : It and shall not apply to industrial schools which sell their products to other than their own employees or students.

~~(5)~~ 5. Property belonging to and actually and exclusively occupied and used by the and personal property, including endowment funds, belonging to Young Men's Christian Associations and other 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 be deemed to include hospitals operated by nonstock corporations not organized or conducted for pecuniary profit but which may charge persons able to pay in whole or in part for their care and treatment) . ; and parks or playgrounds held by trustees for the perpetual use of the general public.

6. Parks or playgrounds held by trustees for the perpetual use of the general public.

~~(6)~~ 7. Buildings with the land they actually occupy, and the furniture and furnishings therein belonging to any benevolent or charitable association and used by it exclusively for lodge purposes or meeting rooms by such association , 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.

Source: § 58-12.

Comment: The exemptions contained in § 58-12 were enacted prior to the ratification of the 1971 Constitution of Virginia and were "grandfathered" into a rule of liberal statutory construction by the provisions of Article X, Section 6, (f). Article 2 of Chapter 36 merely separates the pre-1971 exemptions from the post-1971 exemptions which adhere to a rule of strict statutory construction. The language amendments to paragraphs 2 and 4 conform to the self-executing provisions of Section 6 (a)(2) and (4) of Article X of the Constitution of Virginia.

§ 58.1-3607. Pre-1971 property exempt from taxation by designation.—The real and personal property of the following organizations, corporations and associations which were 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:

~~(7)~~ 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 Boyhood Home Restoration, Incorporated, 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 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 ; and any corporation organized to establish and maintain a museum or museums with or without a library or libraries, provided such corporation be not operated for any profit, and any real or personal property heretofore or hereafter conveyed to any person, firm or corporation for the sole use and benefit of any organization or society whose property is exempt from taxation under this section, or 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 any organization or society whose property is exempt from taxation under this section which has not

agreed to surrender such interest .

~~(8)~~ 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.

~~(9) (Repealed.)~~

~~(10)~~ 3. Property owned by the Virginia Home for ~~Incurables~~ (previously, Virginia Home for Incurables) , incorporated by ~~chapter~~ Chapter 533 of the Acts of the General Assembly of 1893-4, approved March 1, 1894.

~~(11) (Repealed.)~~

~~(12)~~ 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.

~~(13)~~ 5. Property of Historic Fredericksburg, Incorporated, and of the Clarke County Historical Association, used by such organizations for ~~museum~~, historical, ~~municipal~~, benevolent or charitable purposes, as long as such corporation continues to be organized and operated not for profit.

~~(14) (Repealed.)~~

~~(15)~~ Property of the Clarke County Historical Association used for ~~museum~~, historical, benevolent or charitable purposes as long as such ~~association continues~~ to be organized and operated not for profit.

~~(16)~~ 6. Property of the Westmoreland Davis Foundation, Inc., so long as it continues to be a nonprofit corporation.

~~(17)~~ 7. Property owned by the Women's Home Incorporated, in Arlington County and used for the rehabilitation of alcoholic women, so long as ~~the same~~ it continues to be operated not for profit.

Source: § 58-12.

Comment: Portions of the last phrase of previous § 58-12(7) relating to the after-acquired property of exempt organizations are deleted from this revision. See comment for § 58.1-3606 and the provisions of § 58.1-3608.

*§ 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 paragraph 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.*

Source: § 58-12(7).

Comment: No substantive change.

### 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 58.1-3620 and used by such organization for a religious, charitable, patriotic, historical, benevolent, cultural, or public park and playground purpose as set forth in §6(a)(b) of Article X 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.*

*B. Exemptions of property from taxation under this article shall be strictly construed in accordance with §6(f) of Article X of the Constitution of Virginia.*

Source: New section

Comment: This section contains the pertinent constitutional language formerly accompanying each classification established by law. Placing the necessary language in one section and using a cross reference will negate the need to repeat the language in each section.

§ 58.1-3610. Volunteer fire departments and rescue squads.—Volunteer fire departments and volunteer rescue squads which operate exclusively for the benefit of the general public without charge are hereby classified as charitable organizations.

Source: § 58-12.2

Comment: Rewritten. See comment to § 58.1-3609.

§ 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.

Source: § 58-12.3.

Comment: Rewritten. See comment to § 58.1-3609.

§ 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.

Source: § 58-12.5.

Comment: Rewritten. See comment for § 58.1-3609.

§ 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.

Source: § 58-12.9.

Comment: Rewritten. See comment for § 58.1-3609.

§ 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.

Source: § 58-12.20.

Comment: Rewritten. See comment to § 58.1-3609.

§ 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.

Source: § 58-12.21.

Comment: Rewritten. See comment to § 58.1-3609.

§ 58.1-3616. American National Red Cross.—The American National Red Cross and local chapters thereof are hereby classified as charitable organizations.

Source: § 58-12.22.

Comment: Rewritten. See comment to § 58.1-3609.

§ 58.1-3617. Churches, religious associations or denominations.—A. 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.

*Vehicles designed for carrying more than ten passengers, owned by churches and used 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 owned in the name of a duly designated ecclesiastical officer or of a trustee shall be deemed to be owned by such church, association or denomination.

Source: §§ 58-12.24 and 58-12.86.

Comment: Rewritten. See comment to § 58.1-3609. § 58-12.86, which specifically exempts buses

owned by churches from the personal property tax, is combined with the general exclusion provision. The special exemption for buses is needed as the provision does not include the modifying term requiring "exclusive" use.

§ 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.

Source: § 58-12.25.

Comment: No substantive change.

§ 58.1-3619. The State Future Farmers of America and Future Homemakers of America.-The Future Farmers of America and the Future Homemakers of America, and local affiliates or subsidiaries thereof, located throughout the Commonwealth, are hereby classified as benevolent organizations.

Notwithstanding any *other* provision of this article, the tax exemption provided herein 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.

Source: § 58-12.93.

Comment: No substantive change.

§ 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.

Source: § 58-12.79.

Comment: No change.

#### 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 § 6(a)(6) of Article X 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.*

*B. Exemptions of property from taxation under this article shall be strictly construed in accordance with the provisions of § 6(f) of Article X of the Constitution of Virginia.*

Source: §§ 58-12.4 through 58-12.150.

Comment: This section contains the pertinent constitutional language formerly accompanying each designated organization as provided for by specific statute. Placing the necessary statutory language in one section and using a general cross reference negates the need to repeat the same language in each section. The revisor has repeated the present code section language verbatim in this revision as it pertains to designated organizations. This action is done purposely to retain any limitations currently existing on a present exemption. Future drafts of legislation designating exempt property would only have to name the organization and state the purpose for which exempted. [For example: "The Lovettsville Game Protective Association is hereby designated as a charitable organization."]

The sections to follow will not be set out in the Code in furtherance of the general policy of the Code Commission to include in the Code only provisions having general and permanent

application. A footnote, however, will accompany the general Code section reference containing the following information: the specific Code section number; the name of the organization; the location of the organization, if included within the Act of Assembly; the legislative origin; and a general reference at the end of the paragraph that the organization has been designated as a benevolent, charitable, historical, or patriotic organization or as a public park or playground. An asterisk (\*) will be placed following those designated organizations which have statutory limitations on the extent of their exemption and an appropriate editorial notation will define the meaning of this symbol.

Example:

§§ 58.1-3650.1 through 58.1-3650.135 – Not set out.

Code Commission note: These sections which exempt various individually designated properties from taxation are as follows: § 58.1-3650.1. The Garden Club of Virginia (1972, c.1);

.....  
§ 58.1-3650.135. Shenandoah Shared Hospital Services, Inc.\*, City of Harrisonburg (1982, c. 532). These organizations have been specifically designated by the General Assembly as a benevolent, charitable, historical or patriotic organization or public park or playground within the context of § 6(a)(6) of Article X of the Constitution of Virginia. In furtherance of the general policy of the Commission to include in the Code only provisions having general and permanent application, these sections, which are limited in their purpose and scope, are not set out here, but attention is called to them by this reference. An asterisk (\*) following a designated organization denotes that limitations are contained in the statutory provision establishing such exemption. For detailed information regarding such limitation, reference should be made to the Acts of Assembly.

§ ~~58-12.4~~ 58.1-3650.1 . Certain property of The Garden Club of Virginia.—This section, enacted by Acts 1972, c. 1, and designating property of The Garden Club of Virginia, at 12 East Franklin Street, Richmond, Virginia, as exempt from taxation pursuant to Article X, § 6 (a) (6), of the Constitution of Virginia, is incorporated in this Code by this reference, as directed by Acts 1972, c. 667, clause 3.

Source: § 58-12.4

§ ~~58-12.7~~ 58.1-3650.2 . Property of the Ashland War Memorial Association.—This section, enacted by Acts 1973, c. 438, and designating property of the Ashland War Memorial Association as exempt from taxation pursuant to Article X, § 6 (a) (6), of the Constitution of Virginia, is incorporated in this Code by this reference, as directed by Acts 1973, c. 438, clause 2.

Source: § 58-12.7

§ ~~58-12.8~~ 58.1-3650.3 . Property of the Lovettsville Game Protective Association.—This section, enacted by Acts 1973, c. 438, and designating property of the Lovettsville Game Protective Association as exempt from taxation pursuant to Article X, § 6 (a) (6), of the Constitution of Virginia, is incorporated in this Code by this reference, as directed by Acts 1973, c. 438, clause 2.

Source: § 58-12.8

§ ~~58-12.10~~ 58.1-3650.4 . Property of the Vinson Hall Corporation.—This section, enacted by Acts 1973, c. 438, and designating property of the Vinson Hall Corporation as exempt from taxation pursuant to Article X, § 6 (a) (6), of the Constitution of Virginia, is incorporated in this Code by this reference, as directed by Acts 1973, c. 438, clause 2.

Source: § 58-12.10

§ ~~58-12.11~~ 58.1-3650.5 . Property of the Children's Theatre of Richmond, Inc.—This section, enacted by Acts 1972, c. 667, and designating property of the Children's Theatre of Richmond, Inc., as exempt from taxation pursuant to Article X, § 6 (a) (6), of the Constitution of Virginia, is incorporated in this Code by this reference, as directed by Acts 1972, c. 667, clause 3.

Source: § 58-12.11

§ ~~58-12.12~~ 58.1-3650.6 . Property of the Historic Hopewell Foundation, Inc.—This section, enacted by Acts 1973, c. 438, and designating property of the Historic Hopewell Foundation, Inc., as exempt from taxation pursuant to Article X, § 6 (a) (6), of the Constitution of Virginia, is incorporated in this Code by this reference, as directed by Acts 1973, c. 438, clause 2.

Source: § 58-12.12

~~§ 58-12-13~~ **58.1-3650.7** . Property of the George Mason University Foundation.—This section, enacted by Acts 1973, c. 438, and designating property of the George Mason University Foundation as exempt from taxation pursuant to Article X, § 6 (a) (6), of the Constitution of Virginia, is incorporated in this Code by this reference, as directed by Acts 1973, c. 438, clause 2.

Source: § 58-12.13

~~§ 58-12-14~~ **58.1-3650.8** . Certain property of the Temple Foundation, Inc.—This section, enacted by Acts 1973, c. 438, and designating real estate and improvements thereon known as Washington House, so long as they are owned by the Temple Foundation, Inc., as exempt from taxation pursuant to Article X, § 6 (a) (6), of the Constitution of Virginia, is incorporated in this Code by this reference, as directed by Acts 1973, c. 438, clause 2.

Source: § 58-12.14

~~§ 58-12-15~~ **58.1-3650.9** . Glenwood Race Course at Middleburg, Virginia.—This section, enacted by Acts 1973, c. 438, and designating real estate of the Glenwood Race Course at Middleburg, Virginia, so long as it is owned by trustees and the entire net income paid to the Loudoun County Memorial Hospital, Inc., at Leesburg, Virginia, as exempt from taxation pursuant to Article X, § 6 (a) (6), of the Constitution of Virginia, is incorporated in this Code by this reference, as directed by Acts 1973, c. 438, clause 2.

Source: § 58-12.15

~~§ 58-12-16~~ **58.1-3650.10** . Property of Fellowship Square Foundation, Inc.—A. The Fellowship Square Foundation, Inc., a nonprofit corporation, is hereby classified and designated as a charitable and benevolent organization within the context of § 6 (a) (6) of Article X of the Constitution of Virginia.

B. Property owned by the Fellowship Square Foundation, Inc. and used by it exclusively for charitable and benevolent purposes on a nonprofit basis, as set forth in subsection A of this section, is hereby determined to be exempt from taxation, *State state* and local, including inheritance taxes.

Source: § 58-12.16

~~§ 58-12-18~~ **58.1-3650.11** . Property of Chesapeake Bay Foundation, Inc.—This section, enacted by Acts 1973, c. 438, and designating property of Chesapeake Bay Foundation, Inc., as exempt from taxation pursuant to Article X, § 6 (a) (6), of the Constitution of Virginia, is incorporated in this Code by this reference, as directed by Acts 1973, c. 438, clause 2.

Source: § 58-12.18

~~§ 58-12-19~~ **58.1-3650.12** . Real property of the Potomac Appalachian Trail Club.—This section, enacted by Acts 1973, c. 438, and designating real property of the Potomac Appalachian Trail Club as exempt from taxation pursuant to Article X, § 6 (a) (6), of the Constitution of Virginia, is incorporated in this Code by this reference, as directed by Acts 1973, c. 438, clause 2.

Source: § 58-12.19

~~§ 58-12-23~~ **58.1-3650.13** . Property of The Nature Conservancy.—The Nature Conservancy, so long as it continues to operate on a nonprofit basis, is hereby classified and designated as organized for public park purposes within the context of § 6 (a) (6) of Article X of the Constitution of Virginia. Property owned by The Nature Conservancy, and used by it exclusively for conservation and public park purposes on a nonprofit basis is hereby determined to be exempt from taxation.

Source: § 58-12.23

~~§ 58-12-26~~ **58.1-3650.14** . Property of the Hopkins House Association of Alexandria, Virginia.—The Hopkins House Association of Alexandria, Virginia, so long as it continues to be a nonprofit corporation organized to foster civic, cultural and philanthropic activities which promote better citizenship in the community, is hereby designated as cultural and benevolent in the meaning of Article X, § 6 (a) (6) of the Constitution of Virginia. Property owned by such corporation and used for such purposes is hereby determined to be exempt from taxation.

Source: § 58-12.26

~~§ 58-12-27~~ 58.1-3650.15 . Property of the Civitan Recreation Club of Alexandria, Virginia.—The Civitan Recreation Club of Alexandria, Virginia, so long as it provides recreational facilities on a nonprofit basis to disadvantaged children, is hereby designated as charitable and benevolent in the meaning of Article X, § 6 (a) (6), of the Constitution of Virginia. Property owned by such organization and used for such purposes is hereby determined to be exempt from taxation.

Source: § 58-12.27

~~§ 58-12-28~~ 58.1-3650.16 . Property of the Ruritan National, Inc., and local affiliates.—The Ruritan National, Incorporated, and local affiliates thereof are hereby determined to be benevolent within the meaning of Article X, § 6 (a) (6) of the Constitution of Virginia. Property owned by such organizations and used exclusively for charitable purposes is hereby determined to be exempt from taxation.

Source: § 58-12.28

~~§ 58-12-29~~ 58.1-3650.17 . Property of the Academy of Music Theater, Inc., and historic foundations for Pocahontas, Gordonsville and Petersburg.—The Academy of Music Theater, Inc., Historic Pocahontas, Incorporated, Historic Gordonsville, Incorporated, The Historic Petersburg Foundation, Incorporated, nonprofit organizations, are hereby classified and designated as cultural and historical organizations within the context of Article X, § 6 (a) (6) of the Constitution of Virginia. Property owned by such corporations and used by them exclusively for cultural or benevolent purposes on a nonprofit basis, is hereby determined to be exempt from taxation.

Source: § 58-12.29

~~§ 58-12-30~~ 58.1-3650.18 . Property of the Rudolf Steiner School in Falls Church and any subsidiary.—The Rudolf Steiner School in Falls Church, and any subsidiary thereof, so long as it continues to operate on a nonprofit basis, is hereby classified and designated as a charitable and benevolent organization within the context of Article X, § 6 (a) (6) of the Constitution of Virginia. Property owned by such school and any subsidiary thereof, and used by it exclusively for charitable and benevolent purposes on a nonprofit basis is hereby determined to be exempt from taxation.

Source: § 58-12.30

~~§ 58-12-31~~ 58.1-3650.19 . Property of the Peninsula Nature and Science Center, Inc., and the American Horticultural Society.—The Peninsula Nature and Science Center, Incorporated, and the American Horticultural Society, so long as they continue to be operated for public purposes and not for profit, are hereby designated as cultural within the meaning of Article X, § 6 (a) (6) of the Constitution of Virginia. Property owned by such organizations and used for educational, scientific and public purposes is hereby determined to be exempt from taxation.

Source: § 58-12.31

~~§ 58-12-32~~ 58.1-3650.20 . Certain property of the Virginia Trust for Historic Preservation.—That property with improvements owned by the Virginia Trust for Historic Preservation, lying in the ~~city~~ City of Alexandria, Virginia, known as the Lee-Fendall House, is hereby classified and designated as an historical and cultural institution within the context of § 6 of Article X of the Constitution of Virginia and as such shall be exempt from taxation, ~~State~~ *state* and local, including inheritance taxes, as long as it continues to be operated as a nonprofit facility.

Source: § 58-12.32

~~§ 58-12-33~~ 58.1-3650.21 . Property of the Fairfax Education Association Retirement Housing Corporation.—(a) The Fairfax Education Association Retirement Housing Corporation, a nonprofit organization, is hereby classified and designated as a charitable and benevolent organization within the context of § 6 (a) (6) of Article X of the Constitution of Virginia.

(b) Property owned by the Fairfax Education Association Retirement Housing Corporation and used by it exclusively for charitable and benevolent purposes on a nonprofit basis, as set forth in subsection (a) of this section, is hereby determined to be exempt from taxation, ~~State~~ *state* and local, including inheritance taxes.

Source: § 58-12.33

~~§ 58-12-34~~ 58.1-3650.22 . Property of Alexandria Community Y, Incorporated.—(a) The Alexandria Community Y, Incorporated, a nonprofit organization, is hereby classified and

designated as a charitable and benevolent organization, within the context of § 6 (a) (6) of Article X of the Constitution of Virginia.

(b) Property owned by the Alexandria Community Y. Incorporated, and used by it exclusively for charitable and benevolent purposes on a nonprofit basis, as set forth in subsection (a) of this section, is hereby determined to be exempt from taxation, ~~State~~ state and local, including inheritance taxes.

Source: § 58-12.34

~~§ 58-12.35~~ 58.1-3650.23 . Property of the Richmond Council of Garden Clubs, Inc.—A. The Richmond Council of Garden Clubs, Inc., a nonprofit organization, is hereby classified and designated as a cultural and benevolent organization within the context of § 6 (a) (6) of Article X of the Constitution of Virginia.

B. Property owned by the Richmond Council of Garden Clubs, Inc., and used by it exclusively for cultural or benevolent purposes on a nonprofit basis, as set forth in subsection A of this section, is hereby determined to be exempt from taxation, ~~State~~ state and local, including inheritance taxes.

Source: § 58-12.35

~~§ 58-12.36~~ 58.1-3650.24 . Property of the Beth Sholom Home of Virginia.—A. The Beth Sholom Home of Virginia, a nonprofit organization, is hereby classified and designated as a charitable and benevolent organization within the context of § 6 (a) (6) of Article X of the Constitution of Virginia.

B. Property owned by the Beth Sholom Home of Virginia, and used by it exclusively for charitable or benevolent purposes on a nonprofit basis, as set forth in subsection A of this section, is hereby determined to be exempt from taxation, ~~State~~ state and local, including inheritance taxes.

Source: § 58-12.36

~~§ 58-12.37~~ 58.1-3650.25 . Property of Southampton County Historical Society.—A. The Southampton County Historical Society, a nonprofit organization, is hereby classified and designated as an historical and benevolent organization within the context of § 6 (a) (6) of Article X of the Constitution of Virginia.

B. Property owned by the Southampton County Historical Society and used by it exclusively for historical and benevolent purposes on a nonprofit basis, as set forth in subsection A of this section, is hereby determined to be exempt from taxation, ~~State~~ state and local, including inheritance taxes.

Source: § 58-12.37

~~§ 58-12.38~~ 58.1-3650.26 . Property of York County Volunteer Association, Inc.—A. The York County Volunteer Association, Inc., a nonprofit organization, is hereby classified and designated as a charitable and benevolent organization within the context of § 6 (a) (6) of Article X of the Constitution of Virginia.

B. Property owned by the York County Volunteer Association, Inc., and used by it exclusively for charitable and benevolent purposes on a nonprofit basis, as set forth in subsection A of this section, is hereby determined to be exempt from taxation, ~~State~~ state and local, including inheritance taxes.

Source: § 58-12.38

~~§ 58-12.39~~ 58.1-3650.27 . Property of the Forest Recreation Center, Inc.—A. The Forest Recreation Center, Inc., a nonprofit organization located in Forest Community, Bedford County, is hereby classified and designated as a benevolent and recreational organization within the context of § 6 (a) (6) of Article X of the Constitution of Virginia.

B. Certain property, consisting of approximately two acres and the improvements thereon, owned by the Forest Recreation Center, Inc. and used by it exclusively for benevolent, public park and playground purposes on a nonprofit basis, as set forth in subsection A of this section, is hereby determined to be exempt from taxation, ~~State~~ state and local, including inheritance taxes.

Source: § 58-12.39

~~§ 58-12.40~~ *58.1-3650.28* . Property of the Augusta Agricultural-Industrial Exposition, Inc.—A. The Augusta Agricultural-Industrial Exposition, Inc., a nonprofit organization, is hereby classified and designated as a cultural and benevolent organization within the context of § 6 (a) (6) of Article X of the Constitution of Virginia.

B. Property owned by the Augusta Agricultural-Industrial Exposition, Inc. and used by it exclusively for cultural or benevolent purposes on a nonprofit basis, as set forth in subsection A of this section, is hereby determined to be exempt from taxation, *State state* and local, including inheritance taxes.

Source: § 58-12.40

~~§ 58-12.41~~ *58.1-3650.29* . Property of the Westminster-Canterbury Corporation.—A. The Westminster-Canterbury Corporation, a nonstock, nonprofit organization, is hereby classified and designated as a religious and benevolent organization within the context of § 6 (a) (6) of Article X of the Constitution of Virginia.

B. Property owned by the Westminster-Canterbury Corporation and used by it exclusively for religious or benevolent purposes on a nonprofit basis, as set forth in subsection A of this section, is hereby determined to be exempt from taxation, *State state* and local, including inheritance taxes.

Source: § 58-12.41

~~§ 58-12.42~~ *58.1-3650.30* . Property of the Daughters of America.—A. The Daughters of America located in King George County, a nonprofit organization, is hereby classified and designated as a benevolent and patriotic organization within the context of § 6 (a) (6) of Article X of the Constitution of Virginia.

B. Property owned by the Daughters of America, and used by it exclusively for benevolent or patriotic purposes on a nonprofit basis, as set forth in subsection A of this section, is hereby determined to be exempt from taxation, *State state* and local, including inheritance taxes.

Source: § 58-12.42

~~§ 58-12.43~~ *58.1-3650.31* . Property of the Virginia Division, Sons of Confederate Veterans.—A. The Virginia Division, Sons of Confederate Veterans, a nonprofit organization, is hereby classified and designated as an historical, patriotic and benevolent organization within the context of § 6 (a) (6) of Article X of the Constitution of Virginia.

B. Property owned by the Virginia Division, Sons of Confederate Veterans and used by it exclusively for historical, patriotic or benevolent purposes on a nonprofit basis, as set forth in subsection A of this section, is hereby determined to be exempt from taxation, *State state* and local, including inheritance taxes.

Source: § 58-12.43

~~§ 58-12.44~~ *58.1-3650.32* . Property of the Peninsula Arts Association, Inc.—A. The Peninsula Arts Association, Inc., a nonstock, nonprofit corporation, is hereby classified and designated as a charitable, benevolent and cultural corporation within the context of § 6 (a) (6) of Article X of the Constitution of Virginia.

B. Property owned by the Peninsula Arts Association, Inc., and used by it exclusively for charitable, benevolent and cultural purposes on a nonprofit basis, as set forth in subsection A of this section, is hereby determined to be exempt from taxation, *State state* and local, including inheritance taxes.

Source: § 58-12.44

~~§ 58-12.45~~ *58.1-3650.33* . Property of the Virginia Baptist Homes, Inc.—A. The Virginia Baptist Homes, Inc., a nonstock, nonprofit organization, is hereby classified and designated as a religious and benevolent organization within the context of § 6 (a) (6) of Article X of the Constitution of Virginia.

B. Property owned by the Virginia Baptist Homes, Inc. and used by it exclusively for religious or benevolent purposes on a nonprofit basis, as set forth in subsection A of this section,

is hereby determined to be exempt from taxation, *State state* and local, including inheritance taxes.

Source: § 58-12.45

§ ~~58-12.46~~ 58.1-3650.34 . Property of the Southside Virginia Railroad Society.—A. The Southside Virginia Railroad Society, a nonprofit corporation, is hereby classified and designated as a historical and patriotic organization within the context of § 6 (a) (6) of Article X of the Constitution of Virginia.

B. Property owned by the Southside Virginia Railroad Society and used by it exclusively for historical and patriotic purposes on a nonprofit basis, as set forth in subsection A of this section, is hereby determined to be exempt from taxation, *State state* and local, including inheritance taxes.

Source: § 58-12.46

§ ~~58-12.47~~ 58.1-3650.35 . Property of the Sheltered Homes of Alexandria.—A. Sheltered Homes of Alexandria, a nonprofit organization, is hereby classified and designated as a benevolent and charitable organization within the context of § 6 (a) (6) of Article X of the Constitution of Virginia.

B. Property owned by Sheltered Homes of Alexandria, and used by it exclusively for benevolent or charitable purposes on a nonprofit basis, as set forth in subsection A of this section, is hereby determined to be exempt from taxation, *State state* and local, including inheritance taxes.

Source: § 58-12.47

§ ~~58-12.48~~ 58.1-3650.36 . Property of the National Audubon Society.—A. The National Audubon Society and its chapters, all nonprofit organizations, are hereby classified and designated as benevolent and cultural organizations within the context of § 6 (a) (6) of Article X of the Constitution of Virginia.

B. Property owned by the National Audubon Society and its chapters and located in Lancaster, Richmond or Westmoreland ~~counties~~ *Counties* , and used by it exclusively for benevolent and cultural purposes on a nonprofit basis, as set forth in subsection A of this section, is hereby determined to be exempt from taxation, *State state* and local, including inheritance taxes.

Source: § 58-12.48

§ ~~58-12.49~~ 58.1-3650.37 . Property of the Waynesboro Area Association for Retarded Citizens, Inc.—A. The Waynesboro Area Association for Retarded Citizens, Inc., a nonprofit organization, is hereby classified and designated as a benevolent and charitable organization within the context of § 6 (a) (6) of Article X of the Constitution of Virginia.

B. Property owned by the Waynesboro Area Association for Retarded Citizens, Inc., and used by it exclusively for benevolent and charitable purposes on a nonprofit basis, as set forth in subsection A of this section, is hereby determined to be exempt from taxation, *State state* and local, including inheritance taxes.

Source: § 58-12.49

§ ~~58-12.50~~ 58.1-3650.38 . Property of the Marine Corps League.—A. The Marine Corps League, a nonprofit organization, is hereby classified and designated as a patriotic and benevolent organization within the context of § 6 (a) (6) of Article X of the Constitution of Virginia.

B. Property owned by the Marine Corps League and any subordinate detachments thereof, and used by it exclusively for patriotic and benevolent purposes on a nonprofit basis, as set forth in subsection A of this section, is hereby determined to be exempt from taxation. *State state* and local, including inheritance taxes

Source: § 58-12.50

§ ~~58-12.51~~ 58.1-3650.39 . Property of the M.A.R.C. Workshop, Inc.—A. The M.A.R.C. Workshop, Inc. a nonprofit organization, is hereby classified and designated as an educational, benevolent and charitable organization within the context of § 6 (a) (6) of Article X of the Constitution of

Virginia.

B. Property owned by the M.A.R.C. Workshop, Inc., and used by it exclusively for educational, benevolent and charitable purposes on a nonprofit basis, as set forth in subsection A of this section, is hereby determined to be exempt from taxation, ~~State state~~ and local, including inheritance taxes.

Source: § 58-12.51

~~§ 58-12.52~~ 58.1-3650.40 . Property of the Richmond Section, National Council of Jewish Women, Inc.—A. The Richmond Section, National Council of Jewish Women, Inc., a nonprofit organization, is hereby classified and designated as a benevolent and charitable organization within the context of § 6 (a) (6) of Article X of the Constitution of Virginia.

B. Property owned by the Richmond Section, National Council of Jewish Women, Inc., located at ~~seventeen~~ 17 South Mulberry Street in the ~~city~~ City of Richmond and used by it exclusively for benevolent and charitable purposes on a nonprofit basis, as set forth in subsection A of this section, is hereby determined to be exempt from taxation, ~~State~~ and local, including inheritance taxes.

Source: § 58-12.52

~~§ 58-12.53~~ 58.1-3650.41 . Property of the Lewinsville Retirement Residence, Inc.—A. The Lewinsville Retirement Residence, Inc., a nonprofit organization, is hereby classified and designated as a charitable and benevolent organization within the context of § 6 (a) (6) of Article X of the Constitution of Virginia.

B. Property owned by the Lewinsville Retirement Residence, Inc., and used by it exclusively for charitable and benevolent purposes on a nonprofit basis, as set forth in subsection A of this section, is hereby determined to be exempt from taxation, ~~State state~~ and local, including inheritance taxes.

Source: § 58-12.53

~~§ 58-12.54~~ 58.1-3650.42 . Property of the West End Community Center, Inc.—A. The West End Community Center, Inc., a nonprofit organization, is hereby classified and designated as a benevolent and cultural organization within the context of § 6 (a) (6) of Article X of the Constitution of Virginia.

B. Property owned by the West End Community Center, Inc., and used by it exclusively for benevolent and cultural purposes on a nonprofit basis, as set forth in subsection A of this section, is hereby determined to be exempt from taxation, ~~State state~~ and local, including inheritance taxes.

Source: § 58-12.54

~~§ 58-12.55~~ 58.1-3650.43 . Property of the Tuckahoe Little League, Inc.—A. The Tuckahoe Little League, Incorporated, a nonprofit organization, is hereby classified and designated as a charitable and benevolent organization within the context of § 6 (a) (6) of Article X of the Constitution of Virginia.

B. Property owned by the Tuckahoe Little League, Incorporated, and used by it exclusively for charitable and benevolent purposes on a nonprofit basis, as set forth in subsection A of this section, is hereby determined to be exempt from taxation, ~~State state~~ and local, including inheritance taxes.

Source: § 58-12.55

~~§ 58-12.56~~ 58.1-3650.44 . Property of certain associations located in the county of Henrico.—A. Avalon—Recreation Association, Inc., Canterbury Area Association, Chamberlayne Recreation Association, Chestnut Oaks Recreation Association, Farmington Recreation Association, Glen Allen Youth Center, Inc., Highland Springs Community Center, Inc., Hungary Creek Recreation Association, Inc., Huntington Civic Association, Inc., Hunton Civic and Recreation Association, Kanawha Recreation Association, Longdale Recreation Association, Inc., North Chamberlayne Civic Association, Inc., Recreational Association of Fairfield, Richmond Heights Civic Association, Ridgetop Recreation Association, Inc., Springdale Civic Center, Three Chopt Recreation Association, Tuckahoe Village Recreation Association, Varina Recreation, Inc., Windsor Club of Elko, Inc. Recreation Center, Woodman Civic Association, and Zionsville Club, all being nonprofit

organizations located in the ~~county~~ *County* of Henrico, are hereby classified and designated as benevolent organizations within the context of § 6 (a) (6) of Article X of the Constitution of Virginia.

B. Properties owned by those associations enumerated in subsection A and used by them exclusively for benevolent purposes on a nonprofit basis are hereby determined to be exempt from taxation, ~~State state~~ and local, including inheritance taxes.

Source: § 58-2.56

~~§ 58-12.57~~ *58.1-3650.45* . Property of the Town Hall-Levy Opera House Foundation, Inc.—A. The Town Hall-Levy Opera House Foundation, Inc., a nonprofit corporation, is hereby classified and designated as a benevolent and historical corporation within the context of § 6 (a) (6) of Article X of the Constitution of Virginia.

B. Property owned by the Town Hall-Levy Opera House Foundation, Inc., and used by it exclusively for benevolent and historical purposes on a nonprofit basis, as set forth in subsection A of this section, is hereby determined to be exempt from taxation, ~~State state~~ and local, including inheritance taxes.

Source: § 58-12.57

~~§ 58-12.58~~ *58.1-3650.46* . Property of the Heritage Association, Inc.—A. The Heritage Association, Inc., located in Page County, a nonprofit organization, is hereby classified and designated as a charitable and benevolent organization within the context of § 6 (a) (6) of Article X of the Constitution of Virginia.

B. Property owned by the Heritage Association, Inc., and used by it exclusively for charitable and benevolent purposes on a nonprofit basis, as set forth in subsection A of this section, is hereby determined to be exempt from taxation, ~~State state~~ and local, including inheritance taxes.

Source: § 58-12.58

~~§ 58-12.59~~ *58.1-3650.47* . Property of the Happy Acres Foundation, Inc.—A. Happy Acres Foundation, Inc., a nonprofit organization, is hereby classified as a charitable and benevolent organization within the context of § 6 (a) (6) of Article X of the Constitution of Virginia.

B. Property owned by Happy Acres Foundation, Inc., and used by it exclusively for charitable and benevolent purposes on a nonprofit basis, as set forth in subsection A of this section, is hereby determined to be exempt from taxation, ~~State state~~ and local, including inheritance taxes.

Source: § 58-12.59

~~§ 58-12.60~~ *58.1-3650.48* . Property of the Franklin County Sheltered Workshop, Inc.—A. The Franklin County Sheltered Workshop, Inc., a nonprofit corporation, is hereby classified and designated as a benevolent corporation within the context of § 6 (a) (6) of Article X of the Constitution of Virginia.

B. Property owned by the Franklin County Sheltered Workshop, Inc., and used by it exclusively for benevolent purposes on a nonprofit basis, as set forth in subsection A of this section, is hereby determined to be exempt from taxation, ~~State state~~ and local, including inheritance taxes.

Source: § 58-12.60

~~§ 58-12.61~~ *58.1-3650.49* . Property of the Franklin County Association of Retarded Citizens, Inc.—A. The Franklin County Association of Retarded Citizens, Inc., a nonprofit corporation, is hereby classified and designated as a benevolent corporation within the context of § 6 (a) (6) of Article X of the Constitution of Virginia.

B. Property owned by the Franklin County Association of Retarded Citizens, Inc., and used by it exclusively for benevolent purposes on a nonprofit basis, as set forth in subsection A of this section, is hereby determined to be exempt from taxation, ~~State state~~ and local, including inheritance taxes.

Source: § 58-12.61

~~§ 58-12-62~~ 58.1-3650.50 . Property of the Tidewater Intergroup Service Center, Inc.—A. The Tidewater Intergroup Service Center, Inc., a nonprofit organization, is hereby classified and designated as a charitable and benevolent organization within the context of §6 (a) (6) of Article X of the Constitution of Virginia.

B. Property owned by the Tidewater Intergroup Service Center, Inc. and used by it exclusively for charitable and benevolent purposes on a nonprofit basis, as set forth in subsection A of this section, is hereby determined to be exempt from taxation, ~~State~~ *state* and local, including inheritance taxes.

Source: § 58-12.62

~~§ 58-12-63~~ 58.1-3650.51 . Property of the Father McDonald Columbian Center, Inc.—A. The Father McDonald Columbian Center, Inc., a nonprofit corporation, is hereby classified and designated as a benevolent and charitable corporation within the context of §6 (a) (6) of Article X of the Constitution of Virginia.

B. So much of the property owned by the Father McDonald Columbian Center, Inc., as is used by it exclusively for benevolent and charitable purposes on a nonprofit basis, as set forth in subsection A of this section, is hereby determined to be exempt from taxation, ~~State~~ *state* and local, including inheritance taxes.

Source: § 58-12.63

~~§ 58-12-64~~ 58.1-3650.52 . Property of the Rockingham-Harrisonburg Halfway House, Inc.—A. The Rockingham-Harrisonburg Halfway House, Inc., a nonprofit corporation, is hereby classified and designated as a benevolent and charitable corporation within the context of §6 (a) (6) of Article X of the Constitution of Virginia.

B. Property owned by the Rockingham-Harrisonburg Halfway House, Inc., and used by it exclusively for benevolent and charitable purposes on a nonprofit basis, as set forth in subsection A of this section, is hereby determined to be exempt from taxation, ~~State~~ *state* and local, including inheritance taxes.

Source: § 58-12.64

~~§ 58-12-65~~ 58.1-3650.53 . Property of the Sun Ray Parent-Teachers Association.—A. The Sun Ray Parent-Teachers Association, a nonprofit organization, is hereby classified and designated as a benevolent organization within the context of §6 (a) (6) of Article X of the Constitution of Virginia.

B. Property owned by the Sun Ray Parent-Teachers Association and used by it exclusively for benevolent purposes on a nonprofit basis, as set forth in subsection A of this section, is hereby determined to be exempt from taxation, ~~State~~ *state* and local, including inheritance taxes.

Source: § 58-12.65

~~§ 58-12-66~~ 58.1-3650.54 . Property of the Sun Ray Farmers Association.—A. The Sun Ray Farmers Association, a nonprofit organization, is hereby classified and designated as a benevolent organization within the context of §6 (a) (6) of Article X of the Constitution of Virginia.

B. Property owned by the Sun Ray Farmers Association and used by it exclusively for benevolent purposes on a nonprofit basis, as set forth in subsection A of this section, is hereby determined to be exempt from taxation, ~~State~~ *state* and local, including inheritance taxes.

Source: § 58-12.66

~~§ 58-12-67~~ 58.1-3650.55 . Property of the Madison House, Inc.—A. The Madison House, Inc., a nonprofit organization located in the ~~city~~ *City* of Charlottesville, is hereby classified and designated as a charitable and benevolent organization within the context of §6 (a) (6) of Article X of the Constitution of Virginia.

B. Property owned by the Madison House, Inc., and used exclusively for charitable and benevolent purposes on a nonprofit basis, as set forth in subsection A of this section, is hereby determined to be exempt from taxation, ~~State~~ *state* and local, including inheritance taxes.

Source: § 58-12.67

~~§ 58-12-68~~ 58.1-3650.56 . Property of the Valley Workshops, Inc.—A. The Valley Workshops, Inc., a nonprofit corporation, is hereby classified and designated as a benevolent and charitable corporation within the context of §6 (a) (6) of Article X of the Constitution of Virginia.

B. Property owned by the Valley Workshops, Inc., and used by it exclusively for benevolent and charitable purposes on a nonprofit basis, as set forth in subsection A of this section, is hereby determined to be exempt from taxation, ~~State~~ *state* and local, including inheritance taxes.

Source: § 58-12.68

~~§ 58-12-69~~ 58.1-3650.57 . Property of the Charles City County Civic League, Inc.—A. The Charles City County Civic League, Inc., a nonprofit corporation, is hereby classified and designated as a benevolent corporation within the context of §6 (a) (6) of Article X of the Constitution of Virginia.

B. Property owned by the Charles City County Civic League, Inc., and used by it exclusively for benevolent purposes on a nonprofit basis, as set forth in subsection A of this section, is hereby determined to be exempt from taxation, ~~State~~ *state* and local, including inheritance taxes.

Source: § 58-12.69

~~§ 58-12-70~~ 58.1-3650.58 . Property of Shenandoah Fellowship Foundation.—A. The Shenandoah Fellowship Foundation, a nonprofit corporation, is hereby classified and designated as a charitable and benevolent organization within the context of §6 (a) (6) of Article X of the Constitution of Virginia.

B. Property owned by the Shenandoah Fellowship Foundation and used by it exclusively for charitable and benevolent purposes on a nonprofit basis, as set forth in subsection A of this section, is hereby determined to be exempt from taxation, ~~State~~ *state* and local, including inheritance taxes.

Source: § 58-12.70

~~§ 58-12-71~~ 58.1-3650.59 . Property of the Rappahannock Area Agency on Aging, Inc.—A. The Rappahannock Area Agency on Aging, Inc., a nonprofit organization is hereby classified and designated as a charitable and benevolent organization within the context of §6 (a) (6) of Article X of the Constitution of Virginia.

B. Property owned by the Rappahannock Area Agency on Aging, Inc., and used by it exclusively for charitable and benevolent purposes on a nonprofit basis, as set forth in subsection A of this section, is hereby determined to be exempt from taxation, ~~State~~ *state* and local, including inheritance taxes.

Source: § 58-12.71

~~§ 58-12-72~~ 58.1-3650.60 . Property of the Goodwill Industries of Tennesse.—A. The Goodwill Industries of Tennesse, a nonprofit corporation, is hereby classified and designated as a benevolent and charitable corporation within the context of §6 (a) (6) of Article X of the Constitution of Virginia.

B. Property owned by the Goodwill Industries of Tennesse, and used by it exclusively for benevolent and charitable purposes on a nonprofit basis, as set forth in subsection A of this section, is hereby determined to be exempt from taxation, ~~State~~ *state* and local, including inheritance taxes.

Source: § 58-12.72

~~§ 58-12-73~~ 58.1-3650.61 . Property of the East End Community Society.—A. The East End Community Society, a nonprofit organization located in the ~~city~~ *City* of Richmond, is hereby classified and designated as a benevolent and charitable organization within the context of § 6 (a) (6) of Article X of the Constitution of Virginia.

B. Property owned by the East End Community Society and used by it exclusively for benevolent and charitable purposes on a nonprofit basis, as set forth in subsection A of this section, is hereby determined to be exempt from taxation, ~~State~~ *state* and local, including inheritance taxes.

Source: § 58-12.73

~~§ 58-12-74~~ 58.1-3650.62 . Property of the Twig, Junior Auxiliary of the Alexandria Hospital.—A. The Twig, Junior Auxiliary of the Alexandria Hospital, a nonprofit corporation, is hereby classified and designated as a benevolent and charitable corporation within the context of §6 (a) (6) of Article X of the Constitution of Virginia.

B. Property owned by the Twig, Junior Auxiliary of the Alexandria Hospital, and used by it exclusively for benevolent and charitable purposes on a nonprofit basis, as set forth in subsection A of this section, is hereby determined to be exempt from taxation, ~~State state~~ and local, including inheritance taxes.

Source: § 58-12.74

~~§ 58-12-75~~ 58.1-3650.63 . Property of the Winchester Little Theatre, Inc.—A. The Winchester Little Theatre, Inc., a nonprofit corporation, is hereby classified and designated as a benevolent and charitable corporation within the context of §6 (a) (6) of Article X of the Constitution of Virginia.

B. Property owned by the Winchester Little Theatre, Inc., and used by it exclusively for benevolent and charitable purposes on a nonprofit basis, as set forth in subsection A of this section, is hereby determined to be exempt from taxation, ~~State state~~ and local, including inheritance taxes.

Source: § 58-12.75

~~§ 58-12-76~~ 58.1-3650.64 . Property of the River's Edge Civic Association.—A. The River's Edge Civic Association, a nonprofit association, is hereby classified and designated as an association created for public park and playground purposes within the context of §6 (a) (6) of Article X of the Constitution of Virginia.

B. So much of the property owned by the River's Edge Civic Association as is open to the public without charge at all reasonable times is hereby determined to be exempt from taxation. ~~State state~~ and local, including inheritance taxes.

Source: § 58-12.76

~~§ 58-12-77~~ 58.1-3650.65 . Property of the Loudoun Restoration and Preservation Society, Incorporated.—A. The Loudoun Restoration and Preservation Society, Incorporated, a nonprofit corporation, is hereby classified and designated as a benevolent and historical corporation within the context of §6 (a) (6) of Article X of the Constitution of Virginia.

B. Property owned by the Loudoun Restoration and Preservation Society, Incorporated, located at 64 West Market Street, Leesburg, Virginia, and used by it exclusively for benevolent and historical purposes on a nonprofit basis, as set forth in subsection A of this section, is hereby determined to be exempt from taxation, ~~State state~~ and local, including inheritance taxes.

Source: § 58-12.77

~~§ 58-12-78~~ 58.1-3650.66 . Property of Beach Community Grange and Woodpecker Grange.—A. The Beach Community Grange and the Woodpecker Grange, nonprofit organizations located in Chesterfield County, are hereby classified and designated as benevolent organizations within the context of §6 (a) (6) of Article X of the Constitution of Virginia.

B. Property owned by the Beach Community Grange and the Woodpecker Grange, and used by them exclusively for benevolent purposes on a nonprofit basis, as set forth in subsection A of this section, is hereby determined to be exempt from taxation, ~~State state~~ and local, including inheritance taxes.

Source: §58-12.78

~~§ 58-12-80~~ 58.1-3650.67 . Property of Upper Pohick Community League.—A. The Upper Pohick Community League, a nonprofit organization is hereby classified and designated as a benevolent organization within the context of §6 (a) (6) of Article X of the Constitution of Virginia.

B. So much of the property owned by the Upper Pohick Community League, as is open to the public at all reasonable times without charge, or for a nominal fee to cover basic expenses, is hereby determined to be exempt from taxation.

Source: § 58-12.80

~~§ 58-12-81~~ 58.1-3650.68 . Property of the Greenbriar Civic Association, Inc.—A. The Greenbriar Civic Association, Inc., a nonprofit corporation, is hereby classified and designated as a corporation created for benevolent purposes within the context of §6 (a) (6) of Article X of the Constitution of Virginia.

B. So much of the property owned by the Greenbriar Civic Association, Inc., as is open to the public at all reasonable times without charge, or for a nominal fee to cover basic expenses, is hereby determined to be exempt from taxation.

Source: § 58-12.81

~~§ 58-12-82~~ 58.1-3650.69 . Property of Price's Fork Chapter of the Virginia State Grange.—A. The Price's Fork Chapter of the Virginia State Grange, a nonprofit organization is hereby classified and designated as a benevolent organization within the context of §6 (a) (6) of Article X of the Constitution of Virginia.

B. Property owned by the Price's Fork Chapter of the Virginia State Grange, and used by it exclusively for benevolent purposes on a nonprofit basis, as set forth in subsection A of this section, is hereby determined to be exempt from taxation, *State state* and local, including inheritance taxes.

Source: § 58-12.82

~~§ 58-12-83~~ 58.1-3650.70 . Property of the William Byrd Community House, Inc.—A. The William Byrd Community House, Inc., a nonprofit corporation, is hereby classified as a charitable corporation within the context of § 6 (a) (6) of Article X of the Constitution of Virginia.

B. Property owned by the William Byrd Community House, Inc., and used by it exclusively for charitable purposes on a nonprofit basis, as set forth in subsection A of this section, is hereby determined to be exempt from taxation, *State state* and local, including inheritance taxes.

Source: § 58-12.83

~~§ 58-12-84~~ 58.1-3650.71 . Property of the Richmond Area Association for Retarded Children, Inc.—A. The Richmond Area Association for Retarded Children, Inc., a nonprofit corporation, is hereby classified and designated as a benevolent organization within the context of § 6 (a) (6) of Article X of the Constitution of Virginia.

B. Property owned by the Richmond Area Association for Retarded Children, Inc., and used by it exclusively for benevolent purposes on a nonprofit basis, as set forth in subsection A of this section, is hereby determined to be exempt from taxation, *State state* and local, including inheritance taxes.

Source: § 58-12.84

~~§ 58-12-85~~ 58.1-3650.72 . Property of New London Community House, Inc.—A. The New London Community House, Inc., a nonprofit organization located in Bedford County, is hereby designated as a charitable and benevolent organization within the meaning of Article X, § 6 of the Constitution of Virginia.

B. Property owned by the New London Community House, Inc. and used by it exclusively for benevolent or charitable purposes is hereby determined to be exempt from taxation.

Source: § 58-12.85

~~§ 58-12-87~~ 58.1-3650.73 . Property of the Westminster-Canterbury of Lynchburg, Inc.—A. The Westminster-Canterbury of Lynchburg, Inc., a nonprofit organization, is hereby classified and designated as a religious and benevolent organization within the context of § 6 (a) (6) of Article X of the Constitution of Virginia.

B. Property owned by the Westminster-Canterbury of Lynchburg, Inc. and used by it exclusively for religious and benevolent purposes on a nonprofit basis, as set forth in subsection A of this section, is hereby determined to be exempt from taxation, *State state* and local, including inheritance taxes.

Source: § 58-12.87

~~§ 58-12-88~~ 58.1-3650.74 . Property of the Old Dominion Eye Bank and Research, Inc.—A. The

Old Dominion Eye Bank and Research, Inc., a nonprofit corporation, is hereby classified and designated as a benevolent and charitable corporation within the context of § 6 (a) (6) of Article X of the Constitution of Virginia.

B. Property owned by the Old Dominion Eye Bank and Research, Inc., and used by it exclusively for benevolent and charitable purposes on a nonprofit basis, as set forth in subsection A of this section, is hereby determined to be exempt from taxation, ~~State~~ *state* and local, including inheritance taxes.

Source: § 58-12.88

~~§ 58-12.89~~ 58.1-3650.75 . Property of the National Center for State Courts.—A. The National Center for State Courts, located in the ~~city~~ *City* of Williamsburg, a nonprofit organization, is hereby classified and designated as a charitable and cultural organization within the context of § 6 (a) (6) of Article X of the Constitution of Virginia.

B. Property owned by the National Center for State Courts and used by it exclusively for charitable and cultural purposes on a nonprofit basis, as set forth in subsection A of this section, is hereby determined to be exempt from taxation, ~~State~~ *state* and local, including inheritance taxes.

Source: § 58-12.89

~~§ 58-12.90~~ 58.1-3650.76 . Property of the Trustees of Fairfax Old Town Hall.—A. The Trustees of Fairfax Old Town Hall, a nonprofit organization, is hereby classified and designated as a benevolent organization within the context of § 6 (a) (6) of Article X of the Constitution of Virginia.

B. Property owned by the Trustees of Fairfax Old Town Hall and used by it exclusively for benevolent purposes on a nonprofit basis, as set forth in subsection A of this section, is hereby determined to be exempt from taxation, ~~State~~ *state* and local, including inheritance taxes.

§ 58-12.90

~~§ 58-12.91~~ 58.1-3650.77 . Property of the Olde Newberne Foundation, Inc.—A. The Olde Newberne Foundation, Inc., a nonprofit organization is hereby classified and designated as a charitable corporation within the context of § 6 (a) (6) of Article X of the Constitution of Virginia.

B. Property owned by the Olde Newberne Foundation, Inc., and used by it exclusively for charitable purposes on a nonprofit basis, as set forth in subsection A of this section, is hereby determined to be exempt from taxation, ~~State~~ *state* and local, including inheritance taxes.

Source: § 58-12.91

~~§ 58-12.92~~ 58.1-3650.78 . Property of the People-to-People Health Foundation, Inc.—A. The People-to-People Health Foundation, Inc., a nonprofit organization, is hereby classified and designated as a benevolent and charitable corporation within the context of § 6 (a) (6) of Article X of the Constitution of Virginia.

B. Property owned by the People-to-People Health Foundation, Inc., and used by it exclusively for benevolent and charitable purposes on a nonprofit basis, as set forth in subsection A of this section, is hereby determined to be exempt from taxation, ~~State~~ *state* and local, including inheritance taxes.

Source: § 58-12.92

~~§ 58-12.94~~ 58.1-3650.79 . Property of the Kinsale Foundation.—A. The Kinsale Foundation, a nonprofit organization located in Westmoreland County, is hereby classified and designated as an historical organization and an organization which establishes public parks and playgrounds within the context of § 6 (a) (6) of Article X of the Constitution of Virginia.

B. Property owned by the Kinsale Foundation, and used by it exclusively for historical, public park and playground purposes on a nonprofit basis, as set forth in subsection A of this section, is hereby determined to be exempt from taxation, ~~State~~ *state* and local, including inheritance taxes.

§ 58-12.94

~~§ 58-12.95~~ 58.1-3650.80 . Property of the Floyd-Montgomery-Radford Shelter Home, Inc.—A. The Floyd-Montgomery-Radford Shelter Home, Inc., a nonprofit organization, is hereby classified and designated as a charitable organization within the context of § 6 (a) (6) of Article X of the Constitution of Virginia.

B. Property owned by the Floyd-Montgomery-Radford Shelter Home, Inc., and used by it exclusively for charitable purposes on a nonprofit basis, as set forth in subsection A of this section, is hereby determined to be exempt from taxation, ~~State~~ *state* and local, including inheritance taxes.

Source: § 58-12.95

~~§ 58-12.96~~ 58.1-3650.81 . Property of the Beth Sholom Housing Corporation.—A. The Beth Sholom Housing Corporation, a nonprofit organization, is hereby classified and designated as a benevolent and charitable organization within the context of § 6 (a) (6) of Article X of the Constitution of Virginia.

B. Property owned by the Beth Sholom Housing Corporation located in Henrico County and used by it exclusively for benevolent and charitable purposes on a nonprofit basis, as set forth in subsection A of this section, is hereby determined to be exempt from taxation, ~~State~~ *state* and local, including inheritance taxes.

Source: § 58-12.96

~~§ 58-12.97~~ 58.1-3650.82 . Property of the New River Valley Workshop, Inc.—A. The New River Valley Workshop, Inc., a nonprofit organization, is hereby classified and designated as a charitable organization within the context of § 6 (a) (6) of Article X of the Constitution of Virginia.

B. Property owned by the New River Valley Workshop, Inc., and used by it exclusively for charitable purposes on a nonprofit basis, as set forth in subsection A of this section, is hereby determined to be exempt from taxation, ~~State~~ *state* and local, including inheritance taxes.

Source: § 58-12.97

~~§ 58-12.98~~ 58.1-3650.83 . Property of the Big Stone Gap Housing Corporation.—A. The Big Stone Gap Housing Corporation, a nonprofit corporation, is hereby classified and designated as a benevolent and charitable organization within the context of § 6 (a) (6) of Article X of the Constitution of Virginia.

B. Property owned by the Big Stone Gap Housing Corporation, and used by it exclusively for benevolent and charitable purposes on a nonprofit basis, as set forth in subsection A of this section, is hereby determined to be exempt from taxation, ~~State~~ *state* and local, including inheritance taxes.

Source: § 58-12.98

~~§ 58-12.99~~ 58.1-3650.84 . Property of the Southwest Development Corporation.—A. The Southwest Development Corporation, a nonprofit organization, is hereby classified and designated as a benevolent organization within the context of § 6 (a) (6) of Article X of the Constitution of Virginia.

B. Property owned by the Southwest Development Corporation, and used by it exclusively for benevolent purposes on a nonprofit basis, as set forth in subsection A of this section, is hereby determined to be exempt from taxation, ~~State~~ *state* and local, including inheritance taxes; ~~provided, however, that~~ for any acquired property that has been improved, the exemption on such property shall expire five years after such improvement is completed.

Source: § 58-12.99

~~§ 58-12.100~~ 58.1-3650.85 . Property of the Williamsburg Players, Inc.—A. The Williamsburg Players, Inc., formerly Williamsburg Community Theatre, Incorporated, a nonprofit organization, is hereby classified and designated as a cultural organization within the context of § 6 (a) (6) of Article X of the Constitution of Virginia.

B. Property owned by the Williamsburg Players, Inc., located on Hubbard Lane in York County, and used by it exclusively for cultural purposes on a nonprofit basis, as set forth in subsection A of this section, is hereby determined to be exempt from taxation, ~~State~~ *state* and

local, including inheritance taxes.

Source: § 58-12.100

~~§ 58-12-101~~ 58.1-3650.86 . Property of the Hampton Roads Power Squadron, Inc.—A. The Hampton Roads Power Squadron, Inc., a nonprofit corporation, is hereby classified and designated as a benevolent corporation within the context of § 6 (a) (6) of Article X of the Constitution of Virginia.

B. Property owned by the Hampton Roads Power Squadron, Inc., located at 915 G Street in the ~~city~~ City of Hampton, and used by it exclusively for benevolent purposes on a nonprofit basis, as set forth in subsection A of this section, is hereby determined to be exempt from taxation, ~~State state~~ and local, including inheritance taxes.

Source: § 58-12.101

~~§ 58-12-102~~ 58.1-3650.87 . Property of the Virginia Council on Social Welfare.—A. The Virginia Council on Social Welfare, a nonprofit organization, is hereby classified and designated as a benevolent and charitable organization within the context of § 6 (a) (6) of Article X of the Constitution of Virginia.

B. Property owned by the Virginia Council on Social Welfare, located at 2908 Idlewood Avenue in the ~~city~~ City of Richmond, and used by it exclusively for benevolent and charitable purposes on a nonprofit basis, as set forth in subsection A of this section, is hereby determined to be exempt from taxation, ~~State state~~ and local, including inheritance taxes.

Source: § 58-12.102

~~§ 58-12-103~~ 58.1-3650.88 . Property of the Richmond Community Senior Center, Inc.—A. The Richmond Community Senior Center, Inc., a nonprofit corporation, is hereby classified and designated as a benevolent and charitable corporation within the context of § 6 (a) (6) of Article X of the Constitution of Virginia.

B. Property owned by the Richmond Community Senior Center, Inc., located at 713 North 1st Street in the ~~city~~ City of Richmond, and used by it exclusively on a nonprofit basis, as set forth in subsection A of this section, is hereby determined to be exempt from taxation, ~~State state~~ and local, including inheritance taxes.

Source: § 58-12.103

~~§ 58-12-104~~ 58.1-3650.89 . Property of the Bethlehem Center.—A. The Bethlehem Center, a nonprofit organization, is hereby classified and designated as a benevolent and charitable organization within the context of § 6 (a) (6) of Article X of the Constitution of Virginia.

B. Property owned by the Bethlehem Center, located at 1224 Brookland Park Boulevard in the ~~city~~ City of Richmond, and used by it exclusively for benevolent and charitable purposes on a nonprofit basis, as set forth in subsection A of this section, is hereby determined to be exempt from taxation, ~~State state~~ and local, including inheritance taxes.

Source: § 58-12.104

~~§ 58-12-105~~ 58.1-3650.90 . Property of the South-Eastern Organ Procurement Foundation.—A. The South-Eastern Organ Procurement Foundation, a nonprofit organization, is hereby classified and designated as a benevolent and charitable organization within the context of § 6 (a) (6) of Article X of the Constitution of Virginia.

B. Property owned by the South-Eastern Organ Procurement Foundation, located at 2024 Monument Avenue in the ~~city~~ City of Richmond, and used by it exclusively for benevolent and charitable purposes on a nonprofit basis, as set forth in subsection A of this section, is hereby determined to be exempt from taxation, ~~State state~~ and local, including inheritance taxes.

Source: § 58-12.105

~~§ 58-12-106~~ 58.1-3650.91 . Property of the Greater Southeast Development Corporation.—A. The Greater Southeast Development Corporation, a nonprofit organization, is hereby classified and designated as a benevolent organization within the context of § 6 (a) (6) of Article X of the Constitution of Virginia.

B. Property owned by the Greater Southeast Development Corporation and used by it exclusively for benevolent and charitable purposes on a nonprofit basis, as set forth in subsection A of this section, is hereby determined to be exempt from taxation, ~~State state~~ and local, including inheritance taxes: ~~provided, however, that~~ for any acquired property that has been improved, the exemption on such property shall expire five years after such improvement is completed.

Source: § 58-12.106

~~§ 58-12-107~~ 58.1-3650.92 . Property of the Vocational Industrial Clubs of America, Inc.—A. The Vocational Industrial Clubs of America, Inc., a nonprofit organization, is hereby classified and designated as a benevolent and charitable corporation within the context of § 6 (a) (6) of Article X of the Constitution of Virginia.

B. Property located in Loudoun County owned by the Vocational Industrial Clubs of America, Inc., or owned by an industrial development authority and leased to such organization, and used by it exclusively for charitable and benevolent purposes on a nonprofit basis, as set forth in subsection A of this section, is hereby determined to be exempt from taxation. ~~State state~~ and local, including inheritance taxes.

Source: § 58-12.107

~~§ 58-12-108~~ 58.1-3650.93 . Property of the Cooper's Cove Community Club.—A. The Cooper's Cove Community Club, located in Franklin County, a nonprofit organization, is hereby classified and designated as a benevolent and cultural organization within the context of § 6 (a) (6) of Article X of the Constitution of Virginia.

B. Property owned by the Cooper's Cove Community Club, and used by it exclusively for benevolent and cultural purposes on a nonprofit basis, as set forth in subsection A of this section, is hereby determined to be exempt from taxation, ~~State state~~ and local, including inheritance taxes.

Source: § 58-12.108

~~§ 58-12-109~~ 58.1-3650.94 . Property of the North Franklin County Park.—A. The North Franklin County Park, located in Franklin County, a nonprofit organization, is hereby classified and designated as a public park and playground organization within the context of § 6 (a) (6) of Article X of the Constitution of Virginia.

B. Property owned by the North Franklin County Park and used by it exclusively for public park and playground purposes on a nonprofit basis, as set forth in subsection A of this section, is hereby determined to be exempt from taxation, ~~State state~~ and local, including inheritance taxes.

Source: § 58-12.109

~~§ 58-12-110~~ 58.1-3650.95 . Property of the Tidewater Vocational Center, Inc.—A. The Tidewater Vocational Center, Inc., a nonprofit organization located in Norfolk trading as Louise W. Eggleston Center, is hereby classified and designated as a benevolent and charitable corporation within the context of § 6 (a) (6) of Article X of the Constitution of Virginia.

B. Property owned by the Tidewater Vocational Center, Inc. and used by it exclusively for charitable and benevolent purposes on a nonprofit basis, as set forth in subsection A of this section, is hereby determined to be exempt from ~~State state~~ and local taxation.

Source: § 58-12.10

~~§ 58-12-111~~ 58.1-3650.96 : Property of the Senior Citizens Center of Prince Edward County.—A. The Senior Citizens Center of Prince Edward County, a nonprofit organization located in the ~~town~~ Town of Farmville, is hereby classified and designated as a benevolent and charitable organization within the context of § 6 (a) (6) of Article X of the Constitution of Virginia.

B. Property owned by the Senior Citizens Center of Prince Edward County and used by it exclusively for charitable and benevolent purposes on a nonprofit basis, as set forth in subsection A of this section, is hereby determined to be exempt from ~~State state~~ and local taxation.

Source: § 58-12.111

~~§ 58-12.112~~ 58.1-3650.97 . Property of Fairfax Opportunities Unlimited, Incorporated.—A. The Fairfax Opportunities Unlimited, Incorporated, a nonprofit corporation located in Fairfax County, is hereby classified and designated as a benevolent organization within the context of § 6 (a) (6) of Article X of the Constitution of Virginia.

B. Property located in Fairfax County and owned by the Fairfax Opportunities Unlimited, Incorporated, and used by it exclusively for charitable and benevolent purposes on a nonprofit basis, as set forth in subsection A of this section, is hereby determined to be exempt from ~~State~~ state and local taxation.

Source: § 58-12.112

~~§ 58-12.113~~ 58.1-3650.98 . Property of the Children's Oncology Services of Virginia, Inc.—A. The Children's Oncology Services of Virginia, Inc., a nonprofit corporation, located in the ~~city~~ City of Richmond, is hereby classified and designated as a charitable and benevolent corporation within the context of § 6 (a) (6) of Article X of the Constitution of Virginia.

B. Property owned by the Children's Oncology Services of Virginia, Inc., located at 2330 Monument Avenue in the ~~city~~ City of Richmond, Virginia, and used by it exclusively for charitable and benevolent purposes on a nonprofit basis, as set forth in subsection A of this section, is hereby determined to be exempt from ~~State~~ state and local taxation.

Source: § 58-12.113

~~§ 58-12.114~~ 58.1-3650.99 . Property of Jefferson Area United Transportation.—A. The Jefferson Area United Transportation (JAUNT) a nonprofit organization with its office in Charlottesville and operating throughout Planning District No. 10, is hereby classified and designated as a benevolent organization within the context of § 6 (a) (6) of Article X of the Constitution of Virginia.

B. Property owned by JAUNT and used by it exclusively for benevolent purposes on a nonprofit basis, as set forth in subsection A of this section, is hereby determined to be exempt from ~~State~~ state and local taxation.

Source: § 58-12.114

~~§ 58-12.115~~ 58.1-3650.100 . Property of the Williamsburg Area Child Development Resources, Inc.—A. The Williamsburg Area Child Development Resources, Inc., a nonprofit organization located in James City County, is hereby classified and designated as a benevolent and charitable corporation within the context of § 6 (a) (6) of Article X of the Constitution of Virginia.

B. Property owned by the Williamsburg Area Child Development Resources, Inc., and used by it exclusively for charitable and benevolent purposes on a nonprofit basis, as set forth in subsection A of this section, is hereby determined to be exempt from ~~State~~ state and local taxation.

Source: § 58-12.115

~~§ 58-12.116~~ 58.1-3650.101 . Property of the St. Benedict's Corporation.—A. The St. Benedict's Corporation, a nonprofit organization, is hereby classified and designated as a benevolent and charitable corporation within the context of § 6 (a) (6) of Article X of the Constitution of Virginia.

B. Property located in Tazewell County owned by the St. Benedict's Corporation, and used by it exclusively for charitable and benevolent purposes on a nonprofit basis, as set forth in subsection A of this section, is hereby determined to be exempt from ~~State~~ state and local taxation.

Source: § 58-12.116

~~§ 58-12.117~~ 58.1-3650.102 . Property of the Twin County-Galax Association for Retarded Citizens.—A. The Twin County-Galax Association for Retarded Citizens, a nonprofit organization located in the ~~city~~ City of Galax, is hereby classified and designated as a benevolent and charitable organization within the context of § 6 (a) (6) of Article X of the Constitution of Virginia.

B. Property owned by the Twin County-Galax Association for Retarded Citizens and used by it exclusively for benevolent and charitable purposes on a nonprofit basis, as set forth in

subsection A of this section, is hereby determined to be exempt from ~~State state~~ and local taxation.

Source: § 58-12.117

§ ~~58-12.118~~ 58.1-3650.103 . Property of the Family and Children's Service of Richmond.—A. The Family and Children's Service of Richmond, a nonprofit organization located in Henrico County, is hereby classified and designated as a benevolent and charitable organization within the context of § 6 (a) (6) of Article X of the Constitution of Virginia.

B. Property owned by the Family and Children's Service of Richmond and used by it exclusively for charitable and benevolent purposes on a nonprofit basis, as set forth in subsection A of this section, is hereby determined to be exempt from ~~State state~~ and local taxation.

Source: § 58-12.118

§ ~~58-12.119~~ 58.1-3650.104 . Property of the Woodrow Wilson Birthplace Foundation.—A. The Woodrow Wilson Birthplace Foundation, a nonprofit organization, is hereby classified and designated as an historical organization within the context of § 6 (a) (6) of Article X of the Constitution of Virginia.

B. Property owned by the Woodrow Wilson Birthplace Foundation, located in Staunton, and used by it exclusively for historical purposes on a nonprofit basis, as set forth in subsection A of this section, is hereby determined to be exempt from ~~State state~~ and local taxation.

Source: § 58-12.119

§ ~~58-12.120~~ 58.1-3650.105 . Property of the Windsordale Civic Association.—A. The Windsordale Civic Association, ~~located in Henrico County~~, a nonprofit organization *located in Henrico County*, is hereby classified and designated as a benevolent organization within the context of § 6 (a) (6) of Article X of the Constitution of Virginia.

B. Property owned by the Windsordale Civic Association and used by it exclusively for benevolent purposes on a nonprofit basis, as set forth in subsection A of this section, is hereby determined to be exempt from ~~State state~~ and local taxation.

Source: §58-12.120

§ ~~58-12.121~~ 58.1-3650.106 . Property of the Wise County Humane Society.—A. The Wise County Humane Society, ~~located in Wise County~~, a nonprofit organization *located in Wise County*, is hereby classified and designated as a benevolent organization within the context of § 6 (a) (6) of Article X of the Constitution of Virginia.

B. Property owned by the Wise County Humane Society and used by it exclusively for benevolent purposes on a nonprofit basis, as set forth in subsection A of this section, is hereby determined to be exempt from ~~State state~~ and local taxation.

Source: § 58-12.121

§ ~~58-12.122~~ 58.1-3650.107 . Property of Assist, Inc.—A. Assist, Inc., a nonprofit corporation, is hereby ~~classified~~ and designated as a benevolent organization within the context of Section 6 (a) (6) of Article X of the Constitution of Virginia.

B. Property located in the city of Falls Church owned by Assist, Inc., and used by it exclusively for benevolent purposes on a nonprofit basis, as set forth in subsection A of this section, is hereby determined to be exempt from ~~State state~~ and local taxation.

Source: § 58-12.122

§ ~~58-12.123~~ 58.1-3650.108 . Property of Action in the Community Through Service.—A. Action in the Community Through Service (ACTS), a nonprofit organization, is hereby classified and designated as a benevolent and charitable organization within the context of § 6 (a) (6) of Article X of the Constitution of Virginia.

B. Property located in Prince William County owned by ACTS and used by it exclusively for benevolent and charitable purposes on a nonprofit basis, as set forth in subsection A of this section, is hereby determined to be exempt from ~~State state~~ and local taxation.

Source: § 58-12.123

~~§ 58-12.124~~ 58.1-3650.109 . Property of the Dawn Progressive Association, Inc.—A. The Dawn Progressive Association, Inc., a nonprofit corporation, is hereby classified and designated as a charitable and benevolent organization within the context of § 6 (a) (6) of Article X of the Constitution of Virginia.

B. Property located in Caroline County owned by the Dawn Progressive Association, Inc., and used by it exclusively for charitable or benevolent purposes on a nonprofit basis, as set forth in subsection A of this section, is hereby determined to be exempt from ~~State state~~ and local taxation.

Source: § 58-12.124

~~§ 58-12.125~~ 58.1-3650.110 . Property of Heritage Haven, Inc.—A. Heritage Haven, Inc., a nonprofit corporation, is hereby classified and designated as a benevolent corporation within the context of § 6 (a) (6) of Article X of the Constitution of Virginia.

B. Property located in Rockingham County owned by the Heritage Haven, Inc., and used by it exclusively for benevolent purposes on a nonprofit basis, as set forth in subsection A of this section, is hereby determined to be exempt from ~~State state~~ and local taxation.

Source: § 58-12.125

~~§ 58-12.126~~ 58.1-3650.111 . Property of the United States Slo-Pitch Softball Hall of Fame Foundation, Inc.—A. The United States Slo-Pitch Softball Hall of Fame Foundation, Inc., a nonprofit corporation, is hereby classified and designated as a benevolent corporation within the context of § 6 (a) (6) of Article X of the Constitution of Virginia.

B. Property located in the ~~city~~ City of Petersburg owned by the United States Slo-Pitch Softball Hall of Fame Foundation, Inc., and used by it exclusively for benevolent purposes on a nonprofit basis, as set forth in subsection A of this section, is hereby determined to be exempt from ~~State state~~ and local taxation.

Source: § 58-12.126

~~§ 58-12.127~~ 58.1-3650.112 . Property of the Association for Retarded Citizens, Petersburg Area.—A. The Association for Retarded Citizens, Petersburg Area, a nonprofit organization, is hereby classified and designated as a charitable and benevolent organization within the context of § 6 (a) (6) of Article X of the Constitution of Virginia.

B. Property located in the ~~city~~ City of Petersburg owned by the Association for Retarded Citizens, Petersburg Area and used by it exclusively for charitable and benevolent purposes on a nonprofit basis, as set forth in subsection A of this section, is hereby determined to be exempt from ~~State state~~ and local taxation.

Source: § 58-12.127

~~§ 58-12.128~~ 58.1-3650.113 . Property of the Omega Corporation of Chesterfield.—A. The Omega Corporation of Chesterfield, a nonprofit organization, is hereby classified and designated as a charitable and benevolent organization within the context of § 6 (a) (6) of Article X of the Constitution of Virginia.

B. Property located in Chesterfield County owned by the Omega Corporation of Chesterfield and used by it exclusively for benevolent and charitable purposes on a nonprofit basis, as set forth in subsection A of this section, is hereby determined to be exempt from ~~State state~~ and local taxation.

Source: § 58-12.128

~~§ 58-12.129~~ 58.1-3650.114 . Property of the Richmond Metropolitan Blood Service.—A. The Richmond Metropolitan Blood Service, a nonprofit organization, is hereby classified and designated as a benevolent organization within the context of § 6 (a) (6) of Article X of the Constitution of Virginia.

B. Property located in the ~~city~~ City of Richmond owned by the Richmond Metropolitan Blood Service and used by it exclusively for benevolent purposes on a nonprofit basis, as set forth in subsection A of this section, is hereby determined to be exempt from ~~State state~~ and

local taxation.

Source: § 58-12.129

~~§ 58-12.130~~ *58.1-3650.115* . Property of the Military Order of the Purple Heart.—A. The Military Order of the Purple Heart, a nonprofit organization chartered by Congress, is hereby classified and designated as a charitable and benevolent organization within the context of § 6 (a) (6) of Article X of the Constitution of Virginia.

B. Property located in the ~~county~~ *County* of Fairfax owned by the Military Order of the Purple Heart, and used by it exclusively for charitable and benevolent purposes on a nonprofit basis, as set forth in subsection A of this section, is hereby determined to be exempt from ~~State~~ *state* and local taxation.

Source: § 58-12.130

~~§ 58-12.131~~ *58.1-3650.116* . Property of the Didlake Foundation.—A. The Didlake Foundation, a nonprofit organization, is hereby classified and designated as a charitable and benevolent organization within the context of Section 6 (a) (6) of Article X of the Constitution of Virginia.

B. Property located in the County of Prince William owned by the Didlake Foundation and used by it exclusively for charitable and benevolent purposes on a nonprofit basis, as set forth in subsection A of this section, is hereby determined to be exempt from state and local taxation.

Source: § 58-12.131

~~§ 58-12.132~~ *58.1-3650.117* . Property of The Historic Buckingham, Inc.—A. The Historic Buckingham, Inc., a nonprofit organization, is hereby classified and designated as a historical corporation within the context of Section 6 (a) (6) of Article X of the Constitution of Virginia.

B. Property located in Buckingham County owned by The Historic Buckingham, Inc., and used by it exclusively for historical purposes on a nonprofit basis, as set forth in subsection A of this section, is hereby determined to be exempt from state and local taxation.

Source: § 58-12.132

~~§ 58-12.133~~ *58.1-3650.118* . Property of the New River Historical Society.—A. The New River Historical Society, a nonprofit organization, is hereby classified and designated as a historical organization within the context of Section 6 (a) (6) of Article X of the Constitution of Virginia.

B. Property located in Pulaski County owned by the New River Historical Society and used by it exclusively for historical purposes on a nonprofit basis, as set forth in subsection A of this section, is hereby determined to be exempt from state and local taxation.

Source: § 58-12.133

~~§ 58-12.134~~ *58.1-3650.119* . Property of the Giles County Historical Society.—A. The Giles County Historical Society, a nonprofit organization, is hereby classified and designated as a historical organization within the context of Section 6 (a) (6) of Article X of the Constitution of Virginia.

B. Property located in Giles County owned by the Giles County Historical Society and used by it exclusively for historical purposes on a nonprofit basis, as set forth in subsection A of this section, is hereby determined to be exempt from state and local taxation.

Source: § 58-12.134

~~§ 58-12.135~~ *58.1-3650.120* . Property of the Hearthstone Children's House, Inc., of Charlottesville.—A. The Hearthstone Children's House, Inc., a nonprofit organization, is hereby classified and designated as a benevolent and charitable organization within the context of Section 6 (a) (6) of Article X of the Constitution of Virginia.

B. Property located in the City of Charlottesville owned by the Hearthstone Children's House, Inc., and used by it exclusively for benevolent and charitable purposes on a nonprofit basis, as set forth in subsection A of this section, is hereby determined to be exempt from state and local taxation.

Source: § 58-12.135

~~§ 58-12.136~~ 58.1-3650.121 . Property of the Virginia Center for the Performing Arts.—A. The Virginia Center for the Performing Arts, a nonprofit organization, is hereby classified and designated as a cultural organization within the context of Section 6 (a) (6) of Article X of the Constitution of Virginia.

B. Property located at the intersection of North 6th and East Grace Streets in the City of Richmond owned by the Virginia Center for the Performing Arts and used by it exclusively for cultural purposes on a nonprofit basis, as set forth in subsection A of this section, is hereby determined to be exempt from state and local taxation.

Source: § 58-12.136

~~§ 58-12.137~~ 58.1-3650.122 . Property of the Goochland Family Service Society.—A. The Goochland Family Service Society, a nonprofit organization, is hereby classified and designated as a charitable and benevolent organization within the context of Section 6 (a) (6) of Article X of the Constitution of Virginia.

B. Property located in the County of Goochland owned by the Goochland Family Service Society and used by it exclusively for charitable and benevolent purposes on a nonprofit basis, as set forth in subsection A of this section, is hereby determined to be exempt from state and local taxation.

Source: § 58-12.137

~~§ 58-12.138~~ 58.1-3650.123 . Property of the Pamunkey Grange, the True Blue Grange and the Hawfield Grange.—A. The Pamunkey Grange, the True Blue Grange and the Hawfield Grange, nonprofit organizations, are hereby classified and designated as charitable and historical organizations within the context of Section 6 (a) (6) of Article X of the Constitution of Virginia.

B. Property located in Orange County owned by the Pamunkey Grange, the True Blue Grange and the Hawfield Grange and used by them exclusively for charitable and historical purposes on a nonprofit basis, as set forth in subsection A of this section, is hereby determined to be exempt from state and local taxation.

Source: § 58-12.138

~~§ 58-12.139~~ 58.1-3650.124 . Property of the Arlington Assembly of God Housing Corporation.—A. The Arlington Assembly of God Housing Corporation, a nonprofit organization, is hereby classified and designated as a charitable and benevolent organization within the context of Section 6 (a) (6) of Article X of the Constitution of Virginia.

B. Property located in Fairfax County owned by the Arlington Assembly of God Housing Corporation and used by it exclusively for charitable and benevolent purposes on a nonprofit basis, as set forth in subsection A of this section, is hereby determined to be exempt from state and local taxation.

Source: § 58-12.139

~~§ 58-12.140~~ 58.1-3650.125 . Property of the Friends of Women Prisoners, Inc.—A. The Friends of Women Prisoners, Inc., a nonprofit corporation, is hereby classified and designated as a charitable and benevolent organization within the context of Section 6 (a) (6) of Article X of the Constitution of Virginia.

B. Property located in the City of Alexandria owned by the Friends of Women Prisoners, Inc., and used by it exclusively for charitable and benevolent purposes on a nonprofit basis, as set forth in subsection A of this section, is hereby determined to be exempt from state and local taxation.

Source: § 58-12.140

~~§ 58-12.141~~ 58.1-3650.126 . Property of the Wolf Trap Foundation of the Performing Arts.—A. The Wolf Trap Foundation of the Performing Arts, a nonprofit organization, is hereby classified and designated as a charitable and benevolent organization within the context of Section 6 (a) (6) of Article X of the Constitution of Virginia.

B. Property located in Fairfax County owned by the Wolf Trap Foundation of the Performing Arts and used by it exclusively for charitable and benevolent purposes on a nonprofit basis, as set forth in subsection A of this section, is hereby determined to be exempt from state and local

taxation.

Source: § 58-12.141

~~§ 58-12.142~~ 58.1-3650.127 . Property of the Ronald McDonald House.—A. The Ronald McDonald House, a nonprofit organization, is hereby classified and designated as a charitable and benevolent organization within the context of Section 6 (a) (6) of Article X of the Constitution of Virginia.

B. Property located in the City of Norfolk owned by the Ronald McDonald House and used by it exclusively for charitable and benevolent purposes on a nonprofit basis, as set forth in subsection A of this section, is hereby determined to be exempt from state and local taxation.

Source: § 58-12.142

~~§ 58-12.143~~ 58.1-3650.128 . Property of the Peninsula Legal Aid Center, Inc.—A. The Peninsula Legal Aid Center, Inc., a nonprofit corporation, is hereby classified and designated as a charitable and benevolent corporation within the context of Section 6 (a) (6) of Article X of the Constitution of Virginia.

B. Property located in the City of Hampton owned by the Peninsula Legal Aid Center, Inc., and used by it exclusively for charitable and benevolent purposes on a nonprofit basis, as set forth in subsection A of this section, is hereby determined to be exempt from state and local taxation.

Source: § 58-12.143

~~§ 58-12.144~~ 58.1-3650.129 . Property of the Yorktown Arts Foundation, Inc.—A. The Yorktown Arts Foundation, Inc., a nonprofit corporation, is hereby classified and designated as a charitable, patriotic, historical and cultural organization within the context of Section 6 (a) (6) of Article X of the Constitution of Virginia.

B. Property located in York County owned by the Yorktown Arts Foundation, Inc., and used by it exclusively for charitable, patriotic, historical or cultural purposes on a nonprofit basis, as set forth in subsection A of this section, is hereby determined to be exempt from state and local taxation.

Source: § 58-12.144

~~§ 58-12.145~~ 58.1-3650.130 . Property of the Blue Ridge Alliance of the Performing Arts, Inc.—A. The Blue Ridge Alliance of the Performing Arts, Inc., a nonprofit corporation, is hereby classified and designated as a cultural organization within the context of Section 6 (a) (6) of Article X of the Constitution of Virginia.

B. Property located in Loudoun County and owned by the Blue Ridge Alliance of the Performing Arts, Inc., and used by it exclusively for cultural purposes on a nonprofit basis, as set forth in subsection A of this section, is hereby determined to be exempt from state and local taxation.

Source: § 58-12.145

~~§ 58-12.146~~ 58.1-3650.131 . Property of Mount Vernon Inn, Inc.—A. Mount Vernon Inn, Inc., a nonprofit corporation, the members of which are the vice-regents and the regent of Mount Vernon, is hereby classified and designated as an historical and cultural organization within the context of Section 6 (a) (6) of Article X of the Constitution of Virginia.

B. Personal property owned by Mount Vernon Inn, Inc., and used by it exclusively for the benefit of the Mount Vernon Ladies Association of the Union, a nonprofit historical organization exempt from taxation under subsection (7) of § 58-12, is hereby determined to be exempt from state and local taxation.

Source: § 58-12.146

~~§ 58-12.147~~ 58.1-3650.132 . Property of Ft. Harrison, Inc.—A. Ft. Harrison, Inc., a nonprofit corporation, is hereby classified and designated as a cultural and historical corporation within the context of Section 6 (a) (6) of Article X of the Constitution of Virginia.

B. Property located in Rockingham County owned by Ft. Harrison, Inc., and used by it

exclusively for cultural and historical purposes on a nonprofit basis, as set forth in subsection A of this section, is hereby determined to be exempt from state and local taxation.

Source: § 58-12.147

~~§ 58-12.148~~ *58.1-3650.133* . Property of the Friends of Anne Spencer Memorial Foundation, Inc.—A. The Friends of Anne Spencer Memorial Foundation, Inc., a nonprofit corporation, is hereby classified and designated as a historical and cultural corporation within the context of Section 6 (a) (6) of Article X of the Constitution of Virginia.

B. Property located in the City of Lynchburg owned by the Friends of Anne Spencer Memorial Foundation, Inc., and used by it exclusively for historical and cultural purposes on a nonprofit basis, as set forth in subsection A of this section, is hereby determined to be exempt from state and local taxation.

Source: § 58-12.148

~~§ 58-12.149~~ *58.1-3650.134* . Property of the Fairfax County Vocational Education Foundation, Inc.—A. The Fairfax County Vocational Education Foundation, Inc., a nonprofit corporation, is hereby classified and designated as a charitable and benevolent corporation within the context of Section 6 (a) (6) of Article X of the Constitution of Virginia.

B. Property located in Fairfax County owned by the Fairfax County Vocational Education Foundation, Inc., and used by it exclusively for charitable and benevolent purposes on a nonprofit basis, as set forth in subsection A of this section, is hereby determined to be exempt from state and local taxation.

Source: § 58-12.149

~~§ 58-12.150~~ *58.1-3650.135* . Property of the Shenandoah Shared Hospital Services, Inc.—A. The Shenandoah Shared Hospital Services, Inc., a nonprofit corporation, is hereby classified and designated as a charitable and benevolent corporation within the context of Section 6 (a) (6) of Article X of the Constitution of Virginia.

B. Property located in the City of Harrisonburg owned by the Shenandoah Shared Hospital Services, Inc., and used by it exclusively for charitable and benevolent purposes on a nonprofit basis, as set forth in subsection A of this section, is hereby determined to be exempt from state and local taxation.

Source: § 58-12.150

~~§ 58-12.151~~ *58.1-3650.136* . Property of the Hartwood Group Homes, Inc.—A. The Hartwood Group Homes, Inc., a nonprofit organization, is hereby classified and designated as a charitable and benevolent organization within the context of Section 6 (a) (6) of Article X of the Constitution of Virginia.

B. Property owned by the Hartwood Group Homes, Inc., located in Fairfax County, and used by it exclusively for charitable and benevolent purposes on a nonprofit basis, as set forth in subsection A of this section, is hereby determined to be exempt from state and local taxation.

Source: § 58-12.151

~~§ 58-12.152~~ *58.1-3650.137* . Property of HOPE in Northern Virginia, Inc.—A. HOPE in Northern Virginia, Inc., a nonprofit corporation, is hereby classified and designated as a charitable and benevolent corporation within the context of Section 6 (a) (6) of Article X of the Constitution of Virginia.

B. Property located in the City of Falls Church owned by HOPE in Northern Virginia, Inc., and used by it exclusively for charitable and benevolent purposes on a nonprofit basis, as set forth in subsection A of this section, is hereby determined to be exempt from state and local taxation.

Source: § 58-12.152

~~§ 58-12.153~~ *58.1-3650.138* . Property of the National Association of Ministers' Wives and Widows, Inc.—A. The National Association of Ministers' Wives and Widows, Inc., a nonprofit organization is hereby classified and designated as a religious and charitable corporation within the context of Section 6 (a) (6) of Article X of the Constitution of Virginia.

B. Property located in the City of Richmond owned by the National Association of Ministers' Wives and Widows, Inc., and used by it exclusively for religious and charitable purposes on a nonprofit basis, as set forth in subsection A of this section, is hereby determined to be exempt from state and local taxation.

Source: § 58-12.153

~~§ 58-12.154~~ 58.1-3650.139 . Property of Junior Achievement of Richmond.—A. Junior Achievement of Richmond, a nonprofit organization, is hereby classified and designated as a charitable and benevolent organization within the context of Section 6 (a) (6) of Article X of the Constitution of Virginia.

B. Property located in the City of Richmond owned by Junior Achievement of Richmond and used by it exclusively for charitable and benevolent purposes on a nonprofit basis, as set forth in subsection A of this section, is hereby determined to be exempt from state and local taxation.

Source: § 58-12.154

~~§ 58-12.155~~ 58.1-3650.140 . Property of Laburnum Properties, Inc.—A. Laburnum Properties, Inc., a nonprofit organization, is hereby classified and designated as a benevolent organization within the context of Section 6 (a) (6) of Article X of the Constitution of Virginia.

B. Property located in the City of Richmond, owned by Laburnum Properties, Inc., and used by it exclusively for benevolent purposes on a nonprofit basis, as set forth in subsection A of this section, is hereby determined to be exempt from state and local taxation.

Source: § 58-12.155

~~§ 58-12.156~~ 58.1-3650.141 . Property of Western Virginia Foundation for the Arts and Sciences, Center in the Square, Inc., and certain cultural organizations located in the City of Roanoke.—A. Western Virginia Foundation for the Arts and Sciences, Center in the Square, Inc., Mill Mountain Playhouse, Roanoke Museum of Fine Arts, Roanoke Valley Science Museum, Roanoke Valley Arts Council, and Roanoke Valley Historical Society, all being nonprofit organizations, are hereby classified and designated as cultural organizations within the context of Section 6 (a) (6) of Article X of the Constitution of Virginia.

B. Property located in the City of Roanoke owned by those organizations enumerated in subsection A and used by them exclusively for cultural purposes on a nonprofit basis as set forth in subsection A of this section are hereby determined to be exempt from state and local taxation.

Source: § 58-12.156

~~§ 58-12.157~~ 58.1-3650.142 . Property of West End Manor and Three Fountains North Civic Associations.—A. West End Manor Civic Association, Inc., and Three Fountains North Civic Association, being nonprofit organizations, are hereby classified and designated as public park and playground organizations within the context of Section 6 (a) (6) of Article X of the Constitution of Virginia.

B. Property located in Henrico County owned by those associations enumerated in subsection A and used by them exclusively for public park and playground purposes on a nonprofit basis is hereby determined to be exempt from state and local taxation.

Source: § 58-12.157

~~§ 58-12.158~~ 58.1-3650.143 . Property of Marywood, Inc.—A. Marywood, Inc., a nonprofit corporation, is hereby classified and designated as a benevolent corporation within the context of Section 6 (a) (6) of Article X of the Constitution of Virginia.

B. Property located in Henrico County owned by Marywood, Inc., and used by it exclusively for benevolent purposes on a nonprofit basis, as set forth in subsection A of this section, is hereby determined to be exempt from state and local taxation.

Source: § 58-12.158

~~§ 58-12.159~~ 58.1-3650.144 . Property of the United Way-Thomas Jefferson Area.—A. The United Way-Thomas Jefferson Area, a nonprofit organization, is hereby classified and designated as a charitable and benevolent organization within the context of Section 6 (a) (6) of Article X

of the Constitution of Virginia.

B. Property located in the City of Charlottesville owned by the United Way-Thomas Jefferson Area and used by it exclusively for charitable and benevolent purposes on a nonprofit basis, as set forth in subsection A of this section, is hereby determined to be exempt from state and local taxation.

Source: § 58-12.159

~~§ 58-12-160~~ 58.1-3650.145 . Property of the Rockingham County Fair Association, Inc.—A. The Rockingham County Fair Association, Inc., a nonprofit corporation, is hereby classified and designated as a cultural and benevolent corporation within the context of Section 6 (a) (6) of Article X of the Constitution of Virginia.

B. Property located in Rockingham County, owned by the Rockingham County Fair Association, Inc., and used by it exclusively for cultural and benevolent purposes on a nonprofit basis, as set forth in subsection A of this section, is hereby determined to be exempt from state and local taxation.

Source: § 58-12.160

~~§ 58-12-161~~ 58.1-3650.146 . Property of the Blue Ridge Federation of the Blind.—A. The Blue Ridge Federation of the Blind, a nonprofit organization, is hereby classified and designated as a charitable and benevolent organization within the context of Section 6 (a) (6) of Article X of the Constitution of Virginia.

B. Property located in the City of Charlottesville owned by the Blue Ridge Federation of the Blind and used by it exclusively for charitable and benevolent purposes on a nonprofit basis, as set forth in subsection A of this section, is hereby determined to be exempt from state and local taxation.

Source: § 58-12.161

~~§ 58-12-162~~ 58.1-3650.147 . Property of Workshop V, Inc.—A. Workshop V, Inc., a nonprofit organization, is hereby classified and designated as a charitable and benevolent organization within the context of Section 6 (a) (6) of Article X of the Constitution of Virginia.

B. Property located in the City of Charlottesville owned by Workshop V, Inc., and used by it exclusively for charitable and benevolent purposes on a nonprofit basis, as set forth in subsection A of this section, is hereby determined to be exempt from state and local taxation.

Source: § 58-12.162

~~§ 58-12-163~~ 58.1-3650.148 . Property of Saint Alban's Housing Corporation.—A. Saint Alban's Housing Corporation, a nonprofit organization, is hereby classified and designated as a benevolent organization within the context of Section 6 (a) (6) of Article X of the Constitution of Virginia.

B. Property located in Fairfax County owned by the Saint Alban's Housing Corporation and used by it exclusively for benevolent purposes on a nonprofit basis, as set forth in subsection A of this section, is hereby determined to be exempt from state and local taxation.

Source: § 58-12.163

~~§ 58-12-164~~ 58.1-3650.149 . Property of Central Virginia ETV Corporation.—A. The Central Virginia ETV Corporation, a nonprofit corporation, is hereby classified and designated as a cultural organization within the context of Section 6 (a) (6) of Article X of the Constitution of Virginia.

B. Property located in Fairfax County owned by the Central Virginia ETV Corporation and used by it exclusively for cultural purposes on a nonprofit basis, as set forth in subsection A of this section, is hereby determined to be exempt from state and local taxation.

Source: § 58-12.164

~~§ 58-12-165~~ 58.1-3650.150 . Property of Showalter Memorial Health Center, Trolinger House, and New River House.—A. Showalter Memorial Health Center, Inc., Trolinger House, Inc., and New River House, Inc., all being nonprofit organizations are hereby classified and designated as charitable and benevolent organizations within the context of Section 6 (a) (6) of Article X of

the Constitution of Virginia.

B. Property located in Montgomery County owned by those organizations enumerated in subsection A and used by them exclusively for charitable and benevolent purposes on a nonprofit basis, as set forth in subsection A of this section, is hereby determined to be exempt from state and local taxation.

Source: § 58-12.165

~~§ 58-12.166~~ 58.1-3650.151 . Property of Friendship Manor Apartment Village Corporation.—A. Friendship Manor Apartment Village Corporation, a nonprofit organization, is hereby classified and designated as a charitable and benevolent organization within the context of Section 6 (a) (6) of Article X of the Constitution of Virginia.

B. Property located in the City of Roanoke owned by Friendship Manor Apartment Village Corporation and used by it exclusively for charitable and benevolent purposes on a nonprofit basis, as set forth in subsection A of this section, is hereby determined to be exempt from state and local taxation.

Source: § 58-12.166

## Article 5.

### Other Exempt Property.

~~§ 58-16.3.~~ § 58.1-3660. Certified pollution control equipment and facilities.—~~(a)~~ 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. The governing body of any county, city or town may, by ordinance, exempt or partially exempt such property from local taxation.

~~(b)~~ Certified pollution control equipment and facilities, as defined herein, shall be exempt from all State taxes, including taxes upon the sale, purchase or use thereof.

~~(c)~~ ~~(1)~~ B. As used in this section : the term "certified"

"Certified pollution control equipment and facilities" shall be ~~deemed to~~ 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 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 state program or requirements for abatement or control of water or atmospheric pollution or contamination.

~~(2)~~ As used in this section the term "State certifying authority" shall be ~~deemed to~~ mean the State Water Control Board, for water pollution, and the State Air Pollution Control Board, for air pollution, and shall include any interstate agency authorized to act in place of a certifying ~~authority~~ Authority of the State.

Source: § 58-16.3.

Comment: Provision providing for an exemption from the retail sales and use tax is being relocated to Chapter 6.

~~§ 58-16.4.~~ § 58.1-3661. Certified solar energy equipment, facilities or devices.—A. Certified solar energy 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. ~~1.~~ As used in this section : the term "certified"

"Certified solar energy equipment, facilities or devices" shall mean any property, including real or personal property, equipment, facilities, or devices, certified by the State state certifying authority to be designed and used primarily for the purpose of providing for the collection and

use of incident solar energy for water heating, space heating or cooling or other application which would otherwise require a conventional source of energy such as petroleum products, natural gas, or electricity.

2. ~~As used in this section the term~~ "State certifying authority" shall mean the State Office of Housing in conjunction with local building departments as defined in §36-97. The State Board of Housing shall promulgate regulations setting forth criteria for certifiable solar energy equipment.

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 making application to the local building department on forms to be furnished such department by the State Office of Housing. 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 State Office of Housing, such department shall approve such application. The local department shall forthwith transmit all applications to the State Office of Housing which shall certify to the local assessing officer those applicants properly approved 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 Technical Review Board, which may affirm or reverse such decision.

D. Upon receipt of the certificate from the State Office of Housing the local assessing officer shall, if such local ordinance ~~be is~~ in effect, proceed to determine the value of such qualifying solar energy 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, from the total real property tax due on the real property to which such equipment, facilities, or devices are attached. 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 ; ~~provided, however, in~~ . In the event the locality assesses real estate pursuant to ~~§ 58-811-1~~ 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.

Source: § 58-16.4.

Comment: No change.

~~§ 58-16.5: § 58.1-3662.~~ Generating and cogenerating equipment used for energy conversion.—  
A. 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.

~~B, C. [Repealed.]~~

Source: § 58-16.5.

Comment: No change.

~~§ 58-19: § 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 State ~~shall be~~ 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 ~~first~~ / ~~make~~ report . to the

commissioner of the revenue of the county in which any of such property is located . ~~showing~~  
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 . ~~and the~~ *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.

~~But the~~ *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 ~~shall be~~ *is* actually used and necessary for such public utility.

Source: § 58-19.

Comment: No substantive change.

## CHAPTER 37.

### LICENSE TAXES.

~~§ 58.1-3700 58-239 . When a license is required to engage in business ; may be granted whenever tax imposed License requirement . Whenever a license is specially required by law and whenever the General Assembly shall levy a license tax on any business, employment or profession, it shall be unlawful to engage in such business, employment or profession without a first obtaining the required license to engage in such business, employment or profession . In all cases in which such tax is imposed, it shall be lawful to grant a license for the business, employment or profession so taxed.~~

Source: § 58-239

Comment: Source section has been rewritten for clarity. Unnecessary language is shown stricken.

~~§ 58-240. No license to sell throughout State. No person shall be allowed the privilege of selling throughout the State under one license, except by special provision of law.~~

Source: § 58-240

Comment: This section is no longer needed since all state licenses have been repealed.

~~§ 58.1-3701. Department to promulgate guidelines.—The Department of Taxation shall promulgate guidelines defining and explaining the categories listed in subsection A of § 58.1-3706 for the use of local governments in administering the taxes imposed under authority of this chapter. In preparing such guidelines, the Department shall not be subject to the provisions of the Administrative Process Act (§ 9-6.14:1 et seq.) of the Code of Virginia 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.~~

~~The Tax Commissioner shall have the authority to issue advisory written opinions in specific cases to interpret the provisions of this section and the guidelines issued pursuant to this subsection. The guidelines and opinions issued pursuant to this section shall not be applicable as an interpretation of any other tax law.~~

Source: § 58-266.1

Comment: No substantive change. This provision has been moved from § 58-266.1 and placed in a separate section.

~~§ 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.~~

Source: § 58-266.1

Comment: The language has been removed from the source section and placed in this separate section. Counties have been added to the list of jurisdictions affected.

~~§ 58.1-3703 58-266.1 . Cities, towns and Counties , cities and towns may impose local license taxes; limitation of authority.—A. The council of any city or town, and the governing body of any county, city or town may levy and provide for the assessment and collection of city, town or county . city or town license taxes on businesses, trades, professions, occupations and callings and upon the persons, firms and corporations engaged therein within the city, town or county . city or town ; whether any license tax be imposed thereon by the Commonwealth or not, subject to the following limitations : provided in subsection B of this section.~~

~~B. No county, city, or town shall levy any license tax:~~

~~( 1 ) . No city, town or county shall levy any license tax in any case in which the levying of a local license tax is prohibited by any general law of the Commonwealth; or On any public service corporation except as provided in § 58.1-3731 or as permitted by other provisions of law ; nor shall This section be construed as repealing or affecting in any way any general law limiting the amount or rate of any local license tax. ;~~

~~( 2 ) . No city, town or county shall impose upon or collect from any person any tax, fine or other penalty 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, within the limits of any such town, county or city outside of the regular market houses and sheds of such city, county . city or town; provided, such products are grown or produced by such the person~~

offering such products for sale :

( 3 ) . No city, town or county shall require a license to be obtained for *Upon* the privilege or right of printing or publishing any newspaper, or for the privilege or right of operating or conducting any radio or television broadcasting station or service ; any municipal charter provisions to the contrary notwithstanding.

( 4 ) . No city, town or county shall levy any license tax On a manufacturer for the privilege of manufacturing and selling goods, wares and merchandise at wholesale at the place of manufacture or, except as provided in §§ 58 266.1:1 and 58 266.1:2 , :

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 whether the same be measured by gross receipts or otherwise*; any city or town charter provisions to the contrary notwithstanding.

(5) 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 § 58 833.

( 6 ) . No city, town or county shall levy a tax 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 city, town or county ; but the foregoing . This paragraph shall not be construed as prohibiting any city, town or county from imposing a local license tax on a peddler at wholesale pursuant to § 58.1-3718 who would be subject to a state license tax under Article 10 (§ 58-246 et seq.) of this chapter but for such repeal

( 7 ) . Notwithstanding any other provision of law, general or special, No city, town or county shall levy any license tax 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, lodging houses, rooming houses and boardinghouses; however, any county, city or town having imposing such a license tax on January 1, 1974, shall not be precluded from the levy of such tax by the provisions of this subsection paragraph :

(7) Any county license tax imposed hereunder 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, shall provide that a county license tax shall apply within the limits of such town, then such license tax may be imposed within such town.

(8) Before issuing any license to do business as a tour guide or tourist guide, the city council or the board of supervisors may require that an applicant take and pass an examination to determine the fitness of such person as to his knowledge of the history of the city or the county and of the historical and tourist attractions located therein.

(9) Gross receipts for license tax purposes shall not include any amount 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, for any federal or state excise taxes on motor fuels, or any amount paid to or by oil companies, as defined in § 58 730.8, resulting from the oil company excise tax as set forth in Chapter 12.2 (§ 58 730.7 et seq.) of this title.

(10) 8. No city, town or county shall levy any license tax Upon a wholesaler or retailer for the privilege of selling bicentennial medals on a nonprofit basis for the benefit of the Virginia Independence Bicentennial Commission or any local bicentennial commission : ;

(11) Any county, city or town license tax imposed on any amusement operator, as defined herein, may be imposed in any amount not exceeding the sum of \$200 for the operation of 10 or more coin-operated amusement machines. For the operation of less than 10 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 selling, 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. "Amusement machine" shall mean any coin-operated machine not listed in § 58-259. Notwithstanding the situs requirements of § 58-266.5 (a), any county, city, or town may impose the license tax on the amusement operator when his coin-operated machines are located therein.

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 subsections B and C of this section.

~~(12) No county, city or town shall impose a license tax On any machine vending merchandise or postage stamps, or on the operator thereof. However, gross receipts from machines vending merchandise or stamps shall be deemed receipts from retail sales, and taxed at the same rate as other retail sales. No county, city or town shall impose a license tax on coin-operated machines except as provided in paragraph (11) above.~~

~~(11) 9. No county, city or town shall levy a license or other tax 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 Chapter 3, Article 2 (§ 13.1-312 et seq.), Title 13.1, Code of Virginia, 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 ;~~

~~(12) 10. No county, city or town shall levy a license or other tax On or measured by receipts or purchases by a corporation which is a member of an affiliated group of corporations from other members of the same affiliated group. This exclusion shall not exempt affiliated corporations from such license or other tax measured by receipts or purchases from outside the affiliated group. For purposes of this exclusion, the term "affiliated group" means one or more chains of includible corporations connected through stock ownership with a common parent corporation which is an includible corporation 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 includible corporations, except the common parent corporation, is owned directly by one or more of the other includible corporations; and~~

~~(b) The common parent corporation ~~owns~~ 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 includible corporations. As used in this paragraph, the term "stock" does not include nonvoting stock which is limited and preferred as to dividends ; . The term "includible corporation" 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 ; ;~~

*11. On any insurance company subject to taxation under Chapter 25 of this title or on any agent of such company; or*

*12. On any bank or trust company subject to taxation in Chapter 12 of this title.*

Source: § 58-266.1

Comment: The source section has been rewritten for clarity. Certain provisions were placed in new sections in order to shorten the section. Numerous changes were made in order to make the language uniform within the section.

Paragraph 1 - Unnecessary and confusing language has been stricken.

Paragraph 2 - Unnecessary language has been stricken.

Paragraph 4 - The old paragraph has been divided into paragraphs 4 and 5. Unnecessary language has been deleted.

Paragraph 5 (old) - The paragraph has been relocated to § 58.1-3704.

Paragraph 6 - In order to eliminate confusing and inappropriate language, such as "but such for such repeal", reference has been made to § 58.1- which defines a "peddler of wholesale."

Paragraph 7 (old) - The provisions have been relocated to § 58.1-3710

Paragraph 8 (old) - The provision has been moved to § 15.1-28.4.

Paragraph 9 (old) - The provisions have been relocated to § 58.1-3733.

Paragraph 11 (old) - The provisions have been relocated to § 58.1-3720. All sections dealing with amusement machines and operators have been grouped together.

Paragraph 9 (as recodified) - Unnecessary language has been stricken.

Paragraph 11 - This provision, also found in Chapter 25 of this title, has been placed here for reference purposes.

Paragraph 12 - This provision, also found in Chapter 12 of this title, has been placed here for reference purposes.

*§ 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.*

Source: § 58-266.1(5)

Comment: This provision has been removed from the source section and placed in an individual section.

*§ 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.*

Source: § 58-266.5.

Comment: This provision has been removed from § 58-266.5 and set out in an individual section.

*§ 58.1-3706. Limitation on rate of license taxes. B. A. Except as specifically provided in this section, no such local license tax ; imposed pursuant to the provisions of this section chapter, except §§ 58.1-3712 and 58.1-3713 , or any other provision of this title or any charter except § 58-266.1-1 , shall be greater than thirty dollars or the rate set forth below for the class of enterprise listed, whichever is higher:*

1. For contracting, and persons constructing for their own account for sale, 16¢ per \$100 of gross receipts;
2. For retail sales, 20¢ per \$100 of gross receipts;
3. For financial, real estate and professional services, 58¢ 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, 36¢ 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 § ~~58-441.49~~ 58.1-3716 ; (ii) public service companies, which shall be governed by § ~~58-578 and 58-603~~ 58.1-3731 ; (iii) carnivals, circuses and speedways, which shall be governed by § ~~58-266.7~~ 58.1-3729 ; (iv) fortune-tellers, which shall be governed by § ~~58-377.1~~ 58.1-3726 ; (v) massage parlors; (vi) itinerant merchants or peddlers, which shall be governed by § ~~58-266.8~~ 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 § ~~58-266.9~~ 58.1-3729 ; (viii) savings and loan associations, which shall be governed by § ~~58-266.10~~ 58.1-3730 ; and (ix) photographers, which shall be governed by § ~~58-393.1~~ 58.1-3727 .

~~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 B 4 above. Such person engaged in such business shall not be subject to tax on total gross receipts from such sales.~~

*B 6 . 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 in any category than the maximum prescribed in subsection B 4 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 B 4 .
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 B 4 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 ~~any increase in such revenue between tax year 1980 and 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.

Source: §§ 58-266.1 (B) and 58-266.1 (C)

Comment: The source sections have been placed in this new section, stricken language has been relocated to § 58.1-3734. Reference to § 58.1-3712 was added to clarify the exception from the rate limitation.

~~D. The provisions of this section shall apply to cities and towns as though this section were their sole authority for levying the taxes described herein.~~

~~The repeal of the state licenses formerly provided in the Code of Virginia shall not operate to remove any local limitations imposed under such provisions.~~

~~E. The Department of Taxation shall promulgate guidelines defining and explaining the categories listed in subsection B for the use of local governments in administering the taxes imposed under authority of this section. In preparing such guidelines, the Department shall not be subject to the provisions of the Administrative Process Act (§ 9-6.14:1 et seq.) of the Code of Virginia 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.~~

~~The Tax Commissioner shall have the authority to issue advisory written opinions in specific cases to interpret the provisions of this section and the guidelines issued pursuant to this subsection. The guidelines and opinions issued pursuant to this section shall not be applicable as an interpretation of any other tax law.~~

~~F. No tax rate on or assessment ratio for merchants' capital shall be greater than such rate and ratio as in effect on January 1, 1978.~~

~~G. Notwithstanding the provisions of § 58-441.49, whenever any county, city or town 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. 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 county, city or town. Any county, city or town 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.~~

Comment: Stricken language has been relocated as follows:

Paragraph D - § 58.1-3702

Paragraph E - § 58.1-3701

Paragraph F - § 58.1-3510

Paragraph G - § 58.1-3735

~~§ 58.1-3707 58-266.4 . Situs for local license taxation of practitioners of professions . (a) Situs for local license taxation of practitioners of professions . - A. The situs for the local license taxation of every practitioner of a profession which the State regulates by law shall be the city, town or county . city or town in which such a practitioner maintains his office ; provided, however, that in this Commonwealth . If any such person maintains any branch office offices in any other city, town or more than one county . city or town in this Commonwealth . the city, town or the county . city or town in which such branch each office is located may impose a local license tax on him, but if such local license tax be is measured by volume, the volume on which the tax may be computed shall be the volume attributable to practice in the city, town or each county . city or town in which such a branch an office is maintained ; . and Any volume included in the base for measuring such tax shall be deducted from the base in computing any local license tax measured by volume imposed on him by the city, town or county in which he maintains his principal office, regardless of whether the city, town or county in which such branch office is located levies a local license tax.~~

~~B. If any practitioner of a profession which the State regulates by law does not maintain any office in this Commonwealth , but does maintain a place of abode in this Commonwealth. and~~

*does practice such profession in the Commonwealth, the situs for the local license taxation of such a practitioner shall be the city, town or county . city or town in which such person maintains his place of abode ; if he has a place of abode in this State, otherwise the situs shall be each city, town or county in which he practices his profession .*

*C. If any practitioner of a profession which the State regulates by law does not maintain an office or a place of abode in this Commonwealth, the situs of local license tax shall be each county, city or town in which he practices his profession.*

*D. The word "volume," as used in this paragraph section. means gross receipts or any other base for measuring a license tax which is related to the amount of business done.*

~~(b) Operation of section. - The foregoing provisions of this section shall apply and are restricted to every city, town and county which possess the authority to levy local license taxes under other provisions of law, including charter provisions. Nothing in this section contained shall be construed as authorizing any city, town or county, to levy any local license tax of any kind or class in any case in which the authority to levy such a local license tax is not conferred by other provisions of law, including charter provisions, nor shall anything in this section contained be construed as enlarging the existing authority of any city, town or county to levy local license taxes. This section shall prevail over any other statutory provision heretofore enacted in conflict with it, and it shall prevail over any provision of any charter of any city or town in conflict with it.~~

Source: § 58-266.4

Comment: The section has been reworded and divided into smaller sections. Unnecessary language has been deleted. Subsection C has been added to clarify the section.

§ 58.1-3708 ~~58-266.5~~ . Situs for local license taxation of businesses, occupations, etc. ~~(a)~~ A. Except as otherwise provided by law and except as to public service corporations, the situs for the local license taxation for any licensable business, trade, occupation or calling, shall be the city, town or county, city or town (hereinafter called "locality") in which the person so engaged has a definite place of business or maintains his office ; ~~provided, however, that~~ . If any such person has a definite place of business or maintains an office 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) (i) B. Where a local license tax imposed by any such other locality is measured by volume, the volume on which the tax may be computed shall be the volume attributable to the business, trade, occupation or calling in such other locality. All volume attributable to the business, trade, occupation or calling in any such other locality which levies a local license tax thereon 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 or office is located. (ii) Where a local license tax is imposed by any locality, the basis thereof shall be the same for all persons engaged in the same business, trade, occupation or calling.~~

~~(c) C. If any such person has no definite place of business or office within the Commonwealth, the situs for the local license taxation of such a person shall be each locality in which he engages in such business, trade, occupation or calling, with respect to what is done in each such locality.~~

~~(d) D. 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.~~

~~(e) E. This section shall not be construed as prohibiting any locality from requiring a separate license for each definite place of business or each office located in such locality.~~

~~(f) F. Where a local license tax, or any portion thereof, is measured other than by volume, the tax, or such portion, shall first be computed for each locality as if the entire business were done within such locality and the amount so determined shall be multiplied by a fraction, the numerator of which is the volume of business done in such locality and the denominator of which is the volume of business done in this State.~~

~~(g) [Repealed.]~~

Source: § 58-266.5

Comment: The language has been rearranged. Language requiring uniformity has been relocated to § 58.1-3705.

§ 58.1-3709 ~~(e)~~ Business located in both city and county 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 a another county , city or town by reason of the boundary line between such city and county political subdivisions passing through such place of business, the situs for the local license of such business shall be each city and county , city or town in which any part of such place of business is located ; but, in every such case, . If a local license tax be 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 be 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 be 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 ; . and 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.

~~(d)~~ B. Any person whose place of business comes within the provisions of paragraph ~~(e)~~ hereof 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.

Source: § 58-266.4

Comment: The source section has been divided into smaller sections. This proration concept has been made applicable to both professions and businesses in counties, cities and towns. Previously the section only applied to professions and county-city situations.

§ 58.1-3710 ~~58-266.5-1~~ . Proration of license taxes. 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 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 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.

Source: § 58-226.5:1

Comment: No change.

§ 58.1-3711. Limitation on county license tax within boundary of a town.—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.*

Source: § 58-266.1 (7)

Comment: Although section is shown as new language, the provisions of this section were removed from the source section.

§ 58.1-3712 ~~58-266.1:1~~ . Counties and cities authorized to levy severance tax on coal and gases. The governing body of any county or city may levy a license tax on every person engaging in the business of severing coal or gases from the earth. Such tax shall be at a rate not to exceed one ~~per centum~~ percent of the gross receipts from the sale of coal or gases severed within such county. Such gross receipts shall be the fair market value measured at the time such coal or 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 ~~be is~~ levied, such county or city cannot enact the provisions of § ~~58-774~~ 58.1-3286 relating to a tax on gross receipts.

Any county or city enacting a license tax under this section may require producers of coal or gas and common carriers to maintain records and file reports showing the quantities of and receipts from coal or gases which they have produced or transported.

Source: § 58-266.1:1

Comment: No substantive change

§ 58.1-3713 ~~58-266.1:2~~ . Local coal road improvement tax. A. In addition to the taxes authorized under § ~~58-266.1:1~~ 58.1-3712 , any county or city may adopt a license tax on every person engaging in the business of severing coal or gases, except methane, propane and other migratory gases, as stated in § 55-154.1 from the earth, for use in the improvement of the roads used in the transportation of coal in such county or city. The rate of such road tax shall not exceed one half of one ~~per centum~~ percent on and after January one, nineteen hundred seventy-nine; and one ~~per centum~~ percent on and after January one, nineteen hundred eighty . The provisions of § ~~58-266.1:1~~ 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 tax imposed under authority of this section shall be paid into a special fund of such county or city to be called the Coal Road Improvement Fund of such county or city, and shall be spent for such improvements to public coal hauling roads as the coal 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.

B. Any county or city imposing the tax authorized in this section ~~hereunder~~ shall establish a Coal Road Improvement Advisory Committee, to be composed of three members, (1) a member of the governing body of such county or city, appointed by the governing body, (2) the resident engineer from the Department of Highways and Transportation, and (3) a citizen of such county or city connected with the coal industry, appointed by the chief judge of the circuit court.

Such committee shall develop on or before July one 1 of each year a plan for improvement of roads during the following fiscal year. Such plan must have the unanimous approval of all 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 unanimous consent of the committee.

Source: § 58-266.1:2

Comment: No change.

§ 58 266.1:3 58.1-3713.1 . Distribution of local coal road improvement tax.—Notwithstanding any other provision of law, the incorporated towns and city situated within the bounds of Wise County shall receive from the county twenty percent of all revenues collected under the local coal road improvement tax. The shares of such twenty percent shall be computed as follows: twenty-five 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 seventy-five 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.

Source: § 58-266.1:3

Comment: No change. Section was not set out in Title 58 and will not be set out in Title 58.1. It is shown here only for reenactment.

~~§ 58.1-3714 58-302.1 . Counties authorized to impose Contractors tax ; credits against tax; effect upon authority of towns. The governing body of any county may impose, when not otherwise prohibited by general law, a license tax for the privilege of doing business as defined in this article, and require a license to be obtained therefor, and in any case in which it sees fit 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, bond, with such surety, in such penalty and with such condition conditions as it may deem proper. The ordinance imposing such tax shall provide for the time and manner of collection thereof and issuance of such license.~~

~~If in , within any county imposing a license tax on contractors fees and taxes under this article , there is situated a town therein which imposes a similar fees and taxes tax upon such businesses contractors , the business, firm, corporation or individual subject to such town license fees or taxes tax shall be entitled, upon displaying evidence that such town license fees or taxes have been paid, to receive a credit on the license fees or taxes imposed by the county to the extent of the license fees or taxes paid to such town.~~

~~Nothing herein contained shall be construed as depriving any town now imposing such licenses and taxes from increasing the same or as depriving any town not now imposing the such taxes from hereafter doing so.~~

~~Nothing herein contained shall be construed to affect in any manner any county or town levying a license tax under the provisions of § 58-266.2.~~

*B. 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.*

Source: § 58-302.1

Comment: The stricken language is outdated since § 58-266.2 has been repealed. All sections relating to the license tax on contractors have been grouped together. The authority has been expressly given to counties, cities and towns. The definition of contractors was taken from the repealed § 58-297.

~~§ 58.1-3715 58-299 . No contractor's license required except where principal office located; exceptions.—When a contractor ; electrical contractor or a plumbing and steam fitting contractor shall have has paid any local license tax required by the city, town or 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 city, town or county . city or town for conducting~~

any such business within the confines of this State, ~~except where Commonwealth. the~~ However, when the amount of business done by any such contractor in any other city, town or county . city or town exceeds the sum of \$25,000 in any year, such other city, town or county . city or town may require of such contractor a local license, and the amount of business done in such other city, town or county . city or town in which a license tax is paid may be deducted by the contractor from the gross revenue reported to the city, town or county . city or town in which the principal office or any branch office of the contractor is located.

Source: § 58-299

Comment: Language deleted is no longer needed since the term "contractor" has been defined to include electrical contractors, plumbers and steam fitters.

~~§ 58-302. Classification of contractors for city or town license taxation; rates. The councils or other governing bodies of cities and towns may, by ordinance or ordinances, classify contractors for the purpose of city or town license taxation and may impose upon each class the same or different rates of tax.~~

Source: § 58-302

Comment: The provision is unnecessary.

~~§ 58-302.2. Proration of local tax on orders or contracts covering more than one year.—The contractor's license tax imposed by any county, city or town pursuant to the authority granted by this article shall be prorated on all orders and contracts covering more than one calendar year so as to insure that the gross amount of each such order or contract is used only once as a basis for determining the amount of taxation due such county, city or town.~~

Source: § 58-302.2

Comment: The section has been stricken since the tax is required to be based on gross receipts, not contracts.

~~§ 58-303.1. When article to be in force. This article shall be in force for the license year beginning January first, nineteen hundred forty-nine, and for every license year thereafter until otherwise provided by law.~~

Source: § 58.303.1

Comment: Outdated language has been stricken.

~~§ 58-303. Article inapplicable to small contractors, plumbers and steam fitters. This article shall not apply to contractors, plumbers and steam fitters the gross amount of whose orders accepted and executed does not amount to one thousand dollars per annum.~~

Source: § 58-303

Comment: The section, which applied to state licenses only, is no longer necessary.

*§ 58.1-3716. Wholesale marchants.—No county, city or town shall impose a license tax on wholesale merchants at an aggregate rate in excess of five cents 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.*

Source: § 58-441.49.

Comment: The language dealing with the license tax rate limit on wholesale merchants has merely been moved from the sales tax chapter to this chapter.

~~§ 58.1-3717 58-340 . Peddlers; itinerant merchants who are peddlers . 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.~~

~~All persons who do not keep a regular place of business, whether it be a house or a vacant lot or elsewhere, open at all times in regular business hours and at the same place, who shall offer for sale goods, wares and merchandise, shall be deemed peddlers under this article:~~

~~All persons who keep a regular place of business, open at all times in regular business hours and at the same place, who shall, elsewhere than at such regular place of business, personally or through their agents, offer for sale or sell and, at the time of such offering for sale, deliver goods, wares and merchandise shall also be deemed peddlers~~

*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. as above, but 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, fish, oysters, 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. But A dairyman who uses upon the streets of any city one or more ~~wagons~~ vehicles may sell and deliver from his ~~wagons~~ vehicles, milk, butter, cream and eggs in such city without procuring a peddler's license.*

*This section shall not apply to any peddler who would be subject to tax in § 58-346 through 58-354 but for their repeal; and who sells to licensed dealers or retailers only.*

*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.*

Source: § 58-340

Comment: All provisions dealing with peddlers at retail and itinerant merchants have been placed here. The exemption for fish and oyster vendors has been covered in § 58.1-3719.

~~§ 58-266.8: Counties, cities and towns may impose local license taxes on Itinerant merchants or peddlers; limitations: The governing body of any county, city or town is hereby authorized to levy and collect a license tax, the amount to be no greater than \$500, upon all itinerant merchants as defined by § 54-809 or peddlers as defined by § 58-340. Dealers in precious metals shall be taxed at rates provided in § 58-266.1 B.~~

~~The local governing body may by ordinance designate the streets or other public places on or in which all licensed peddlers may sell or offer for sale their goods, wares or merchandise. Such ordinances may also classify peddlers for the purpose of license taxation and may impose upon each class the same or different rates of tax, except no license tax may be imposed directly or indirectly upon those who sell or offer for sale in person or by their employees ice, wood, charcoal, meats, milk, butter, eggs, poultry, fish, oysters, 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 county, city or town, one or more vehicles may sell and deliver from his vehicles, milk, butter, cream and eggs in such county, city or town without procuring a peddler's license.~~

~~The license tax authorized by this section shall not apply to a peddler who sells to licensed dealers or retailers only; a regular wholesale dealer who shall at the same time sell and deliver merchandise to retail merchants; a distributor or vendor of motor fuels and petroleum products; or seafood; a farmer; a farmers' cooperative association; a producer of agricultural products; a manufacturer who is subject to Virginia tax on intangible personal property and who peddles only the goods, wares or merchandise manufactured by him at a plant, whose intangible personal property is taxed by the Commonwealth.~~

Source: § 58.1-266.8

Comment: All language pertaining to peddlers and itinerant merchants has been relocated to § 58.1-3717.

~~§ 58-354: Municipal license tax. The council of any city or town in this State may impose a city or town license tax on every person, firm and corporation other than a distributor or vendor of motor vehicle fuels and petroleum products; a farmer; a dealer in forest products; a producer of agricultural products; or manufacturer, who shall sell and deliver at the same time in such city or town, other than at a definite place of business, goods, wares or merchandise to licensed dealers or retailers; provided, however, that the foregoing exemption of a "manufacturer" shall be construed as restricted to a manufacturer taxable on capital by this State who peddles the goods, wares or merchandise manufactured by him at a plant the capital of which is taxable by this State, and who peddles no other goods, wares or merchandise; and provided, further, that the license tax imposed by any locality under this section on any other person, firm or corporation shall not be in excess of the rates imposed by such locality on a~~

wholesale merchant selling similar goods, wares and merchandise in such locality at one definite place of business.—

This section shall not be construed as impairing in any way the existing power of any city or town to impose city or town license taxes. The council of each city or town may require that every vehicle used in the business aforesaid shall have conspicuously displayed thereon the name of the person, firm or corporation using the same, together with his post office address, and such licenses shall be conspicuously displayed in each vehicle.

§ 58-3718. 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.

Source: §§ 58-346 et seq. and 58-354

Comment: This section has been added in order to delete references in the Code to repealed sections. All provisions dealing with the license tax on peddlers at wholesale, for cities and towns have been placed in this section. Counties have also been given this authority to tax. Unnecessary regulatory language has been deleted.

§ 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.

Source: §§ 58-266.8 and 58-346 and 58-354

Comment: In order to eliminate duplicative language these exemptions have been placed in a separate section. The exemption for farmers and producers of agricultural products has been slightly restricted.

§ 58.1-3720. Amusement machines: gross receipts tax on amusement operators. ~~(11) Any county, city or town license tax imposed on any amusement operator, as defined herein, A. Any license tax imposed on amusement machines by any county, city or town may~~ shall be imposed in any amount not exceeding the sum of \$200 for the operation of ~~10 ten~~ or more coin-operated amusement machines. For the operation of less than ~~10 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 selling, 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. ~~"Amusement machine" shall mean any coin-operated machine not listed in § 58-259. Notwithstanding the situs requirements of § 58-266.5 (a) 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 subsections B and C § 58.1-3706 of this section chapter .

Source: § 52-266 (11)

Comment: The source section has been divided into a number of smaller sections. No substantive change.

§ 58.1-3721 ~~58-359~~ . License ~~taxes~~ *exemptions* for coin machine operators ; ~~exemptions~~ . The coin machine operator's license tax authorized by § 58-266.1 A ~~(11)~~ 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 ~~(as used in § 58-262)~~ 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.

Source § 58-359

Comment: No change.

~~58-356. Illegal machines not legalized and not to be licensed. Nothing contained in this article shall be construed as permitting any such person, firm or corporation to keep, maintain, exhibit or operate any coin machine or other device, the operation of which is prohibited by law.~~

~~No commissioner of revenue shall issue any license under this article for coin machines which are unlawful under the provisions of §§ 18.2-325 and 18.2-331.~~

Source: § 58-356

Comment: Unnecessary language has been deleted.

§ 58.1-3722 ~~58-357~~ . Stickers to evidence payment of tax. The commissioner of the revenue of any ~~city, county, city~~ or town imposing a tax on operators of coin machines or devices as provided in § ~~58-266.1 A (11)~~ 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 ~~city, county, city~~ or town imposing a license tax on the operation of such machines pursuant to § ~~58-266.1 A (11)~~ 58.1-3720 , a complete list of all machines on location and the address of each location on or before the ~~thirty-first day~~ of 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.

Source: § 58-357

Comment: No change.

§ 58.1-3723 ~~58-360~~ . 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 § ~~58-266.1 A (11)~~ or otherwise violating this article 58.1-3720 shall be subject to a fine as established by ordinance pursuant to § 15.1-901 for each offense and the machine or other device shall become forfeited to the county, city or town imposing such license tax.

Source: § 58-360

Comment: No change.

~~§ 58-361.1. When article as amended in 1976 to be in force. This article shall be in force on and after January first, nineteen hundred seventy-eight, and shall apply to the license and tax year beginning January first, nineteen hundred seventy-eight, and to every license and tax year thereafter, until otherwise provided by law.~~

Source: § 58-361.1

Comment: Outdated language has been stricken.

§ 58.1-3724 ~~58-371.2~~ . Bondsmen. 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; and no such 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. 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 certificate from the judge of the circuit court of the county ; or the city, in which he desires to carry on the business of professional bondsman *as provided in Article 4 of Chapter 9 of Title 19.2.* ; approving the issuance of the license and certifying that the applicant is of good moral character, that his past conduct before the courts of said county or city has not been unsatisfactory and is suitable to be so licensed; and provided, further, that before the issuance of such certificate the judge of the circuit court may review the record of the applicant as furnished by the Federal Bureau of Investigation. Prior to the issuance of such certificate, the judge of the circuit court may confer with the judge or judges of those courts in which such bondsman seeks to act . A license granted to a professional bondsman in any such county or city shall authorize such person to enter into such bonds in any other county or city.

No professional bondsman shall enter into any such bond if the aggregate of the penalty of such bond and all other bonds, on which he has not been released from liability, is in excess of the true market value of his real estate. Each professional bondsman, if so directed by the judge of the circuit court of the county or of the city in which he is licensed, shall place a deed of trust on the real estate that he is using for the limit of his expected bonded indebtedness to secure the Commonwealth of Virginia and shall name the Commonwealth's attorney of the affected locality as trustee under the deed of trust. In addition thereto, he shall furnish the clerk of the appropriate court an acceptable appraisal and title certificate of the real estate subject to any such deed of trust. Each professional bondsman licensed hereunder shall file with the clerk of the circuit court of the county or city in which he is licensed not later than the fifth day of each month a list of all outstanding bonds on which he was obligated as of the last day of the preceding month, together with the amount of the penalty of each such bond.

Any professional bondsman or agent for any professional bondsman, qualified under this section, shall be subject to and governed by any reasonable rules of conduct or procedure set up by the judge or justice of the court in which he is acting as a bondsman which may include a requirement that such bondsman or agent place a reasonable amount of cash or negotiable bonds in escrow with the clerk of said court to be held during the time such bondsman or agent is acting as a bondsman in said court, provided that said clerk is acting under a bond of sufficient amount and coverage to insure protection against loss, theft, or misappropriation. Upon his violation of such rules, he may, after hearing upon a charge of such violation, be suspended from entering into further bonds in said court by the judge or justice thereof. If such bondsman or agent fails to have in escrow with the clerk of said court a sum sufficient to cover any forfeiture of bond against him and fails or refuses to pay such forfeiture after notice and demand by the judge or justice of the court he may be suspended by such judge or justice from entering into further bonds in said court until the forfeiture is paid or it is adjudicated that he is not liable thereon.

No person after July one, nineteen hundred eighty-one, who has previously not been licensed shall be licensed hereunder either as a professional bondsman or agent for any professional bondsman, when such person, his or her spouse, or a member of his or her immediate family holds any office as magistrate, clerk or deputy clerk of any court.

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.

Nothing in this section shall be construed to apply to guaranty, indemnity, fidelity and security companies doing business in Virginia or their agents and attorneys-in-fact, under the provisions of §§ 28.1-629 to 28.1-657, except that agents and attorneys-in-fact of guaranty, indemnity, fidelity and security companies entering into bonds for bail, appearances, costs or appeal in criminal cases, shall be required to obtain a certificate from the judge of the circuit court in which he desires to carry on the business of professional bondsman, certifying that the applicant is of good moral character, that his past conduct before the courts of said county or city has not been unsatisfactory and he is suitable to be a licensed bondsman. Such certificate shall authorize such persons to enter into such bonds in any other county or city. Such agents and attorneys-in-fact shall be subject to any reasonable rules of conduct or procedure and discipline for the violation of same as may be ordered by the judge or justice of the court in which they act for such companies. No person may act as such an agent or attorney-in-fact when such person, his or her spouse, or a member of his or her immediate family holds any

office as magistrate, clerk or deputy clerk of any court.

Source: § 58-371.2

Comment: Stricken language has been relocated to Title 19.2.

§ 58.1-3725 ~~58-374~~ . Collection agencies.— *For purposes of the license tax authorized in § 58.1-3703, any person, firm or corporation whose business it is to collect claims, including notes, drafts and other negotiable instruments, on behalf of others, and to render an account of the same shall be deemed a collection agency. This section shall not apply, however, to a regularly licensed attorney-at-law.*

No local license hereunder shall be issued to any person desiring to act as a collection agent or agency in the Commonwealth unless such person exhibits a current license or other evidence showing that the applicant has been duly licensed to act as a collection agent or agency by the Virginia Collection Agency Board.

Source: § 58-374

Comment: No change.

§ 58.1-3726 ~~58-377.1~~ . Fortune-tellers, clairvoyants and practitioners of palmistry. ~~The governing body of any county, city or town in the Commonwealth is hereby authorized and empowered to levy and collect a license tax upon every~~ *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 in each county in which any such business is done shall be deemed a fortune-teller . No license tax on fortune-tellers imposed pursuant to this chapter shall exceed \$1,000 per year. Any such* ~~The governing body of any county, city or town may provide that any person who for compensation shall engage engages in the practice above described in this section business as a fortune-teller without the license required shall be fined not less than \$50 nor more than \$500 for each offense guilty of a Class 3 misdemeanor .~~

Source: § 58-377.1

Comment: The tax rate has been restricted to \$1,000 per year. The penalty has been classified as a Class 3 misdemeanor.

§ 58.1-3727 ~~58-392.1~~ . Photographers with no regularly established place of business in the State ; ~~rate limitations . The governing body of any county, city or town is hereby authorized to levy and collect a license tax on photographers with no regularly established place of business in this State and any person, persons, partnership, or corporation having no regularly established place of business in this State who provides photographers' services consisting of the taking of pictures or the making of pictorial reproductions in this State and every agent or canvasser for such photographer.~~

~~The license tax authorized herein shall not be greater than \$10.00 in a county, city or town of 2,000 inhabitants or under. In a county, city or town of more than 2,000 inhabitants the tax shall not be more than \$20.00.~~

~~This license tax shall apply to each person, partnership, corporation, agent, representative or officer performing any of the said acts and said license shall not be prorated.~~

*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 part with the same for receive compensation for such work or receive any compensation for performing any of the processes of photography; (ii) nor to coin-operated photography machines; or (iii) nor to photographers while 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.*

Source: § 58-393.1

Comment: No substantive change. The structure of the section has been rearranged. The rate limit has been expressed on a "per year" basis.

§ 58.1-3728 58-266.7. ~~Counties, cities and towns may impose local license taxes on~~ 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 is hereby authorized to 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 . ~~and~~, 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 ~~\$50.00~~ *fifty dollars* nor more than \$500 for each offense.

The governing body of any county, city or town is ~~hereby authorized~~ *may also* to 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, ~~in any county, city or town~~ 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 ~~article~~ *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 ~~nor~~ 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 ~~be is~~ charged or not ; . ~~nor~~ *of 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, ~~nor~~ or of exhibitions of volunteer fire companies, whether an admission ~~be 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 ~~the authority~~ of this section . a performance for charitable or benevolent purposes by a company, association or persons, or a corporation, ~~who make it their business to give 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 ~~which makes its~~ *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 ; ~~except~~ . *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.

Source: § 58-266.7.

Comment: No substantive charge.

§ 58.1-3729 58-266.9 . ~~Counties, cities and towns may impose local license taxes on~~ Permanent coliseums, arenas or auditoriums; limitations. ~~Pursuant to the authority granted in § 58.1-3703, the governing body of any county, city or town is hereby authorized to 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 ~~therein~~ 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, ~~the any license authorized 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* ; ~~however,~~ . If such coliseum, arena or auditorium ~~be are~~ owned and operated by a political subdivision of the Commonwealth of Virginia, there shall be no tax.

Source: § 58-266.9

Comment: The tax has been expressed on a "per year" basis.

~~§ 58.1-3730 58-266.10 . Counties, cities and towns may impose local license taxes on Savings and loan associations; limitations. The governing body of any~~ Any license tax levied by a county, city or town is hereby authorized to levy and collect a license tax on savings and loan associations ; ~~which license tax~~ shall be no greater than fifty dollars and shall be levied only where the main office of such association is located.

Source: § 58-266.10

Comment: No change.

*§ 58-3731. 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 of this title, on (i) telephone and telegraph companies, (ii) water companies and (iii) heat, light and power companies at a rate not to exceed one-half of one percent of the gross receipts of such company accruing from business 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.*

Source: §§ 58-578 and 58-603

Comment: The license tax provisions found in other chapters of Title 58 have been moved to this chapter. No substantive change has been made.

*§ 58.1-3732. Limitation on "gross receipts".—Gross receipts for license tax purposes shall not include any amount 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, for any federal or state excise taxes on motor fuels, or any amount paid to or by oil companies, as defined in § 58.1-2302, resulting from the oil company excise tax as set forth in Chapter 13.2 (§ 58.1-2300 et seq.) of this title.*

Source: § 58-266.1

Comment: The language is not new; the provisions were removed from the source section.

*§ 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.*

Source: § 58-266.1

Comment: The provision was removed from the source section and placed into a separate section.

*§ 58.1-3734. License tax on motor vehicle dealers.—Notwithstanding the provisions of § 58.1-605, whenever any county, city or town 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. 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 county, city or town. Any county, city or town 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.*

Source: § 58-266.1

Comment: No substantive change. The source section has been divided into a number of smaller sections.

§ 58.1-3735 ~~58-266.6~~ . Departments of license inspection in certain counties. The governing body of any county having a population of less than ~~forty-one thousand~~ 41,000 and adjoining a city of more than ~~two hundred thirty thousand~~ 230,000 population and of any county having a population of more than ~~seventy thousand~~ 70,000 , and adjoining four cities in this State may ~~be~~ *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 licensed 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 ~~to be~~ *are* liable ~~to be~~ *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. The governing body may make such rules and regulations as it deems expedient for the operation of such department.

Source: § 58-266.6

Comment: No substantive change.

## 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 Title 58.1, 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.*

Source: § 58-65.1

Comment: The source section has been divided into a number of small sections and moved to the local taxation subtitle.

*§ 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 only with respect to that portion of the property located in such city or county.*

Source: § 58-65.1

Comment: The source section has been divided into a number of small sections and moved to the local taxation subtitle.

*§ 58.1-3802. Interpretation of article.—This article shall not be construed as affecting or repealing any city charter provision.*

Source: § 58-65.1

Comment: The source section has been divided into a number of smaller sections and moved to the local taxation subtitle.

*§ 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. 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.*

Source: § 58-65.1

Comment: The source section has been divided into a number of smaller sections and moved to the local taxation subtitle.

*§ 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.*

Source: § 58-65.1

Comment: The source section has been divided into a number of smaller sections and moved to the local taxation subtitle.

~~§ 58-65.1: City or county recordation tax. In addition to the State recordation tax imposed by this article 3 (§ 58-54 et seq.), the council of any city and the governing body of any county may impose a city or county recordation tax in an amount equal to one third of the amount of State recordation tax collectible for the State on the first recordation of each taxable instrument~~

in such city or county; provided, however, that, except as set out in the third paragraph of this section and except in a case in which the State recordation tax is fifty cents specifically, where a deed or other instrument conveys, covers or relates to property located in the county or city of first recordation and also to property located in another county or city, or in other counties or cities, the tax imposed under the authority of this section by the county or city of first recordation shall be computed only with respect to the property located in such county or city; and when such deed or other instrument is recorded in the other county or city, or in other counties or cities, the tax imposed by each of them under the authority of this section shall be computed only with respect to the property located in each of them, respectively.

Every clerk of court collecting any such city or county tax and paying the same into the treasury of his city or county shall be entitled to compensation for such service in an amount equal to five per centum of the amount so collected and paid over.

In the event any county has imposed the tax authorized by this section and there is located in such county a city which has 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 same; and 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.

This section shall not be construed as affecting or repealing any city charter provision.

## Article 2.

### Tax on Wills and Administrations.

*§ 58.1-3805. Levy.—In addition to the state tax imposed by § 58.1-1712 the governing body of any county or city is hereby authorized to impose a city or county tax on the probate of every will or grant of administration in an amount equal to one-third of the state tax on such probate of a will or grant of administration.*

Source: § 58-67.1

Comment: The source section has been divided into a number of shorter sections. Cross reference to this local probate tax was made in Subtitle I, Chapter 17, which contains the state probate tax.

*§ 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.*

Source: § 58-67.1

Comment: The source section has been divided into a number of shorter sections. A flat five percent collection fee has been given to the clerk of the circuit court.

*§ 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.*

Source: § 58-67.1

Comment: The source section has been divided into a number of shorter sections.

*§ 58.1-3808. Interpretation of article.—This article shall not be construed as affecting or repealing any city charter provision.*

Source: § 58-67.1

Comment: The source section has been divided into a number of shorter sections.

~~§ 58-67.1. Cities and counties may tax probate of wills or grants of administration. In addition to the State tax imposed by § 58-66, the governing body of any county and the council of any city may impose a county or city tax on the probate of every will or grant of administration in an amount equal to one third of the amount of the State tax on such probate of a will or grant of administration.~~

~~Every clerk of court collecting any such county or city tax and paying the same into the treasury of his county or city shall be entitled to such compensation for such service as may be prescribed by the governing body of his county or city. Such compensation shall be payable out of his county or city treasury.~~

~~In the event any county had imposed the tax authorized by this section and there is located in such county a city which has 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 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 of the court for his service in collecting the same; and 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.~~

~~This section shall not be construed as amending or repealing any provision of any city charter.~~

### Article 3.

#### Writ Taxes.

*§ 58.1-3809. Taxes on suits or writ taxes generally.—A tax of five dollars is hereby imposed upon (i) the commencement of every action, in law or chancery, 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 \$50,000 but does not exceed \$100,000, the tax shall be fifteen dollars; and when the debt or demand for damages exceeds \$100,000, the tax shall be twenty-five dollars.*

*This section shall not be applicable to any original jurisdiction proceeding filed in the Supreme Court of Virginia.*

Source: § 58-71

Comment: Outdated language has been updated. Chancery suits and writs of mandamus have been included in this section. The inclusion results in an increased tax for such actions.

~~§ 58-71 : Taxes on suits or writ taxes generally.—When any original suit, whether commenced by writ or notice, ejectment or attachment, other than a summons to answer a suggestion, or other action, except a suit in chancery, is commenced in a court of record and in every case of removal or appeal of a cause from a trial justice court to a court of record, or upon any appeal from the decision of the board of supervisors or other governing body of a county, or of any attachment issued by a justice and returnable to a court of record, there shall be a tax thereon of five dollars; but when the debt or demand for damages exceeds fifty thousand dollars but does not exceed one hundred thousand dollars, the tax shall be fifteen dollars; and when the debt or demand for damages exceeds one hundred thousand dollars, the tax shall be twenty-five dollars. This section shall not be applicable to original jurisdiction suits filed in the Supreme Court of Virginia.~~

~~§ 58-72. Chancery suits.—Upon every chancery suit, originating either in a circuit court or in a city court of record, there shall be a tax of five dollars.~~

Source: § 58-72

Comment: The stricken language is no longer needed. The provision has been included in § 58.1-3809.

~~§ 58-73. Mandamus. Upon every writ of mandamus sued out of any court, except the Supreme Court of Virginia, there shall be a tax of three dollars.~~

Source: § 58-73

Comment: The provisions of the source section have been included in § 58.1-3809. The rate has been increased to five dollars.

~~§ 58.1-3810 § 58-75 . Payment of tax. —The taxes on suits or other judicial proceedings shall be paid to the clerks of the courts, respectively, in which such suits are brought or proceedings had, clerk of court wherein the suit or other judicial proceeding is commenced.~~

Source: § 58-75

Comment: No substantive change.

~~§ 58.1-3811 § 58-76 . 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 thereon shall be imposed under this article has been paid; but however, his failure to collect the tax shall not invalidate the proceeding. No clerk shall be held responsible for failure to collect the writ tax on cross-claims filed prior to July one, nineteen hundred sixty-four.~~

Source: § 58-76

Comment: No substantive change. Unnecessary language has been stricken.

#### Article 4.

##### Consumer Utility Taxes.

~~§ 58.1-3812. 58-587.1. Telegraph and telephone companies.— Any city or town or county, city or town may impose a tax on the consumers of the utility service or services provided by telegraph and telephone companies or other corporations any corporation coming within the provisions of this Article Chapter 26 (§ 58.1-2600 et seq.). which The tax shall not be imposed at a rate in excess of twenty percent of revenue the monthly amount charged to consumers of the utility service and shall not be applicable to any revenue amount so charged in excess of fifteen dollars per month for residential customers. Any city, town or county, city or town 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.~~

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 sixty days subsequent to written notice by certified mail from the county, city or town of imposing such tax or change thereto, to the registered agent of the utility corporation that is required to collect the tax.

Any county tax imposed hereunder shall not apply within the limits of any incorporated town located within such county which town now or hereafter imposes a town tax on consumers of utility service or services provided by any corporation coming within the provisions of this article authorized by this section, provided that such town (1) (i) provides police or fire protection, and water or sewer services, provided that any such town served by a sanitary district providing water or sewer services shall be deemed to be providing such water or sewer services itself, or (2) (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.

As used in this section, the term "utility service or services" shall mean any service taxable as local telephone service under the provisions of the Internal Revenue Code of 1954, as amended, relating to federal communications taxes, as such provisions were in force and effect on December 31, 1971.

Source: § 58-587.1

Comment: No substantive change

~~§ 58.1-3813 . § 58-587.2 Local tax for enhanced emergency telephone service.— A. Notwithstanding the rate limitations imposed under § 58-587.1. 58.1-3812, any city, town or~~

county, city or town which has, singly or by joint agreement, established or will establish an enhanced 911 emergency telephone system, hereinafter referred to as E-911, as defined in paragraph 1 of subsection B of this section herein, may impose a special tax on the consumers of the telephone service or services provided by any corporation coming within the provisions of this article Chapter 26 (§ 58.1-2600 et seq.), except that no such taxes shall be imposed on federal, state and local government agencies.

Such tax shall be subject to the notification and jurisdictional provisions of § 58.587.1 58.1-3712.

B. The following phrases shall have the following meanings:

1. An "E-911 system" means a telephone service which utilizes a computerized system to automatically route emergency telephone calls placed by dialing the digits "911" to the proper public safety answering point serving the jurisdiction from which the emergency telephone call was placed. An E-911 system includes selective routing of telephone calls, automatic telephone number identification, and automatic location identification.

2. "Public safety answering point" means a communications facility operated on a twenty-four-hour basis which first receives E-911 calls from persons in an E-911 service area and which may, as appropriate, directly dispatch public safety services or extend, transfer, or relay E-911 calls to appropriate public safety agencies.

3. "Public safety agency" means a functional division of a public agency which provides fire fighting, police, medical, or other emergency services or a private entity which provides such services on a voluntary basis.

C. Prior to imposing such tax, the governing body of any city, town or county must find that an E-911 emergency telephone system as defined in subsection B of this section has been or will be installed in its respective locality and that the telephone company has central office equipment which will permit such system to be established.

D. Any such taxes imposed by this section shall be utilized solely for the initial capital and installation costs of the E-911 emergency telephone system. The jurisdiction shall repeal such tax when capital and installation costs have been fully recovered.

Source: § 58-587.2

Comment: This source section have been relocated to Subtitle III because they relate to local taxes. No substantive change. Code cites will have to be corrected.

§ 58.1-3814. ~~58-617.2~~ *Water or Heat, Light and Power Companies.* —Any city or town or 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 corporation coming within the provisions of this article Chapter 26 (§ 58.1-2600 et seq.), which tax shall not be imposed at a rate in excess of twenty percent of revenue the monthly amount charged to consumers of the utility service and shall not be applicable to any revenue amount so charged in excess of fifteen dollars per month for residential customers; provided that. 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.

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 sixty days subsequent to written notice by certified mail from the county, city or town of imposing such tax or change thereto, to the registered agent of the utility corporation that is required to collect the tax.

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 now or hereafter imposes a town tax on consumers of utility service or services provided by any corporation coming within the provisions of this article Chapter 26 (§ 58.1-2600 et seq.); provided that such town (1) (i) provides police or fire protection, and water or sewer services, provided that any such town served by a sanitary district providing water or sewer services shall be deemed to be providing such water and sewer services itself, or (2) (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 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.

Source: § 58-617.2

Comment: No substantive change.

*§ 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 §§ 58.1-3812 and 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 of Title 58.1 of the Code of Virginia, 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.*

Source: § 58-851.4

Comment: The source section has been relocated to this article for easy reference.

~~§ 58.1-3816. 58-851.5~~ Certain counties not to levy ~~utility~~ consumers' utility tax if such counties levy tax on household goods and personal effects.—No county with a population of over ~~one hundred fifty thousand~~ 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.

Source: § 58-851.5

Comment: No substantive change.

## **Article 5. Admission Tax.**

~~§ 58.1-3817 . § 58-404.1~~ Classification of events to which admission is charged.—In accordance with the provisions of Article X, § 1, of the Constitution of Virginia, events to which admission is charged shall be divided into the following classes for the purposes of taxation:

a. Admissions charged for attendance at any event, the gross receipts of which go wholly to charitable purpose or purposes.

b. All other admissions.

Source: § 58-404.1

Comment: No change.

~~§ 58.1-3818 . § 58-404.2~~ Admissions tax in certain counties.—Fairfax, Arlington, Dinwiddie and Prince George Counties are hereby authorized to levy a tax on admissions charged for attendance at any event ; ~~provided, that such~~ The tax shall not exceed ten per centum 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 by profit for charitable and those conducted by ~~nonprofit~~ for noncharitable ~~organizations~~ purposes .

Source: § 58-404.1. [Not set out previously.]

Comment: No substantive change. However, the classification between events as mentioned in this section does not agree with the classifications established in § 58.1-3819. For that reason the terms "charitable" and "noncharitable" have been used in the last two lines of the above section. This section should be set out in the Code.

## **Article 6.**

### **Transient Occupancy Tax.**

~~§ 58.1-3819 . § 58-76.1 Transient occupancy tax in certain counties.~~— Albemarle, James City, Mecklenburg, Loudoun, Prince William, Rockingham, Fairfax and Arlington Counties are authorized to levy a transient occupancy tax on hotels, motels, boarding houses and travel campgrounds. Such tax shall be in such amount and on such terms as the governing body may, by ordinance, prescribe, ~~provided that however,~~ such tax shall not exceed two percent of the amount of charge for the occupancy of any room or space occupied. The tax imposed hereunder shall not apply to rooms or spaces rented for continuous occupancy by the same individual or group for thirty or more days in hotels, motels, boarding houses and travel campgrounds.

Nothing herein contained shall affect any authority heretofore granted to any local government to levy such a transient occupancy tax.

Source: § 58-76.1

Comment: No substance change. Section was not set out previously.

~~§ 58.1-3820 . § 58-76.2~~ [Not set out.]

Source: § 58-76.2

Comment: No substantive change.

~~§ 58-851.1. Counties authorized to levy a capitation tax. The governing body of any county in this State may levy upon every resident of the county not less than eighteen years of age not pensioned by this State for military services, a county capitation tax not exceeding one dollar per annum. The revenue derived from this tax shall be applied to general county purposes.~~

Comment: Repealed.

~~§ 58-851.2. Taxing powers of certain counties having county manager. In order to provide revenues to meet the demands for public services in the county including subdivisions therein; adjacent to cities adjoining the county, the governing body of any county having the county manager form of organization and government provided for in chapter 11 of Title 15 (chapter 12 (§ 15.1-582 et seq.) of Title 15.1) of the Code of Virginia shall in addition to other powers of taxation, have power:~~

~~To levy and collect a capitation tax not exceeding one dollar per annum on each resident of the Commonwealth within the limits of the county; to require licenses, prohibit the conduct of any business or profession within such county without such a license, require taxes to be paid on such licenses in respect of all businesses and professions, except those exempt from local license taxes under § 58-266.1 of the Code of Virginia, which cannot in the opinion of the governing body be reached by the ad valorem system; and to require licenses of owners of vehicles of all kinds for the privilege of using the streets, alleys and other public places in the county; require taxes to be paid on such licenses and prohibit the use of streets, alleys and other public places in the county without such license; provided, that the power as to taxation of motor vehicles shall be subject to the conditions set forth in §§ 46-64 and 46-65 (§§ 46.1-65 and 46.1-66) of the Code of Virginia; provided, further, that nothing herein contained shall be construed as permitting the county to levy and collect directly or indirectly a tax on payrolls, nor any tax prohibited by general law, nor shall any such license or tax be required of or imposed upon any person, firm or corporation who is not a resident of or who does not regularly conduct or do business, or practice a profession, in such county.~~

Comment: This section is deleted as unnecessary. General law gives all counties these taxing powers.

#### *Article 7.*

#### *Cigarette Tax.*

~~§ 58-757.27 58.1-3830 .~~ Local taxes not prohibited; use of dual die or stamp to evidence payment of both county, city, or town and State state tax on cigarettes.—A. No provision of this chapter Chapter 10 of this Title shall be construed to deprive counties, cities and towns of the right to levy taxes upon the sale or use of tobacco or tobacco products *cigarettes* , provided such county, city or town had such power prior to January one, nineteen hundred seventy-seven 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 of ~~Taxation~~ 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 of ~~Taxation~~.

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.

Source: § 58-757.27

Comment: No substantive change.

*§ 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.*

Source: § 58-757.28

Comment: Not set out previously. No substantive change.

~~§ 58-757.29~~ 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 ~~tobacco~~ or ~~tobacco products~~ cigarettes may by ordinance, provide for the administration and enforcement of any such ~~tobacco~~ cigarette tax. Such local ordinance may:

~~(1)~~ [Repealed.]

1. ~~(1a)~~ Provide for the registration of any distributor, wholesaler, vendor, retailer or other person selling, storing or possessing ~~tobacco products~~ cigarettes within or transporting ~~tobacco products~~ 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 ~~tobacco products~~ 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)~~ [Repealed.]

2. ~~(2a)~~ ~~(A)~~ 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.

3. ~~(B)~~ 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:

(i) ~~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 ~~tobacco products~~ 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

(ii) ~~b~~. They are in transit and are accompanied by a bill of lading or other document indicating:

~~(a)~~ (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

~~(b)~~ (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 ~~tobacco~~ cigarette license and, where applicable, both a business license and retail ~~tobacco~~ cigarette license issued by the local jurisdiction of destination; or

~~(iii)~~ 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. ~~(3)~~ Provide that cigarettes or ~~tobacco products~~ 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.

~~(4)~~ [Repealed.]

5. ~~(4a)~~ 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 ten ~~per centum~~ percent per month, penalties for fraud or evasion of the tax not to exceed fifty ~~per centum~~ percent, and interest not to exceed three quarters of one ~~per centum~~ 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. ~~(5)~~ 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. ~~(6)~~ Provide that any coin-operated vending machine, in which any ~~tobacco products~~ cigarettes are found, stored or possessed bearing a counterfeit or bogus ~~tobacco~~ cigarette tax stamp or impression or any unstamped tobacco products, or any ~~tobacco products~~ 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 ~~(5)~~ 6. . When any such vending machine is found containing such ~~tobacco products~~ cigarettes it shall be presumed that such ~~tobacco products~~ 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. ~~(7)~~ Provide that any counterfeit stamps or counterfeit impression devices may also be seized and confiscated.

9. ~~(8)~~ Any county, city or town may enact an ordinance which would delegate its administrative and enforcement authority under its ~~tobacco~~ cigarette tax ordinance to one agency or authority pursuant to the provisions of § 15.1-21. 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 ~~tobacco~~ cigarette taxes or penalties owed any member jurisdiction and provide ~~tobacco~~ cigarette tax agents, and the necessary enforcement supplies and equipment needed to effectively enforce the ~~tobacco~~ cigarette tax ordinance promulgated by each such county, city or town. Any ~~tobacco~~ 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.

Source: § 58-757.29

Comment: No substantive change.

## 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.

Source: New

Comment: This section reiterates the duty to file personal property, etc. returns, and references the more inclusive section in the chapter devoted to those taxes.

~~§ 58-862~~ *58.1-3901* . Apartment house, trailer camp, trailer court, marina or airport operators to file lists of tenants.—Every person ; ~~firm or corporation~~ operating any apartment house or any trailer camp or trailer court or marina or privately operated airport in ~~this State the Commonwealth~~ shall, on or before February ~~first~~ 1 of each year, upon request of the commissioner of the revenue ; ~~file with the commissioner of the revenue~~ of the county or city in which any such apartment house, 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, 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 operated airport for airborne craft as of January ~~first~~ 1 preceding. The governing body of any county adjoining a county having a population of more than one thousand per square mile may require like information from any such person ; ~~firm or corporation~~ operating a ~~trailer camp or trailer court~~ of an apartment house having two or more apartments or leasing houses for rent , and violation of any such ordinance requiring the same may be punished as hereinafter provided . Any person ; ~~firm or corporation~~ failing to comply with this section shall be subject to a fine of not less than five nor more than one hundred dollars guilty of a Class 4 misdemeanor .

Source: § 58-863

Comment: The misdemeanor is made Class 4.

~~§ 58-862.1~~ *58.1-3902*. Certain operators of marinas or boat storage places to file lists of owners of boats.—Every person ; ~~firm or corporation~~ operating in ~~this Commonwealth~~ a marina or boat storage place which accommodates more than four boats ; in ~~this State~~ , on or before February ~~first~~ 1 of each year, upon the request of the commissioner of the revenue ; ~~file with 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 ~~the each~~ boat ; if ~~such be available~~, of the owner or operator of each boat physically located and normally kept at his marina or boat storage place as of ~~the preceding~~ January ~~first~~ preceding 1 . Violators of this section shall be fined not less than fifty dollars nor more than three hundred dollars guilty of a Class 4 misdemeanor .

Source: § 58-683.1

Comment: No substantive change except to classify the misdemeanor.

~~§ 58-862.2~~ Electric utilities to file list of residential customers.—Each corporation engaged in the business of furnishing heat, light, and power by means of electricity, which maintains a separate list of those customers residing in mobile homes, shall submit, upon the request of the commissioner of the revenue, a list containing the names and addresses of all such customers which are serviced by such corporation in the locality. This information shall be submitted on or before January one and the corporation shall be entitled to charge a reasonable fee for the costs associated with the preparation of such list. Any such information provided to a commissioner of the revenue under the provisions of this section shall be used by the commissioner only for the purpose of tax collection. A corporation shall not be liable to any

person for any civil damages arising out of the corporation's acts in complying with the provisions of this section.

Comment: Deleted as obsolete.

~~§ 58-868. Banks, corporations, etc., to furnish lists of such property.—Any bank, corporation or person holding money or evidences of debt or personal property of any kind under the control of any court or to the credit of any cause pending in any court, or to the credit of any receiver, commissioner, trustee or other fiduciary, shall, upon application, furnish the commissioner of the revenue with a statement or list thereof, and any bank, corporation or person refusing to furnish such statement or failing to furnish the same shall be liable to a fine of not less than ten dollars nor more than twenty-five dollars for each day's failure to furnish the same after five days' notice to do so.~~

Comment: This provision was used to enforce the intangible personal property tax on cash and securities. Deleted as obsolete.

~~§ 58-1164 58.1-3903 . Omitted local taxes or levies and omitted local licenses .—If the commissioner of the revenue of any county or city or the tax-assessing officer of any town ascertain ascertains that any person or property subject to local taxation or any local license tax 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 levies or taxes for any cause have not been realized, the commissioner of the revenue or other assessing officer shall list and assess the same with levies or taxes at the rate or rates prescribed for that year ; adding thereto a penalty of five per centum and interest at the rate of six per centum per annum ; which shall be computed upon the taxes and penalty from the fifteenth day of December of the year in which such taxes should have been paid to the date of the assessment ; and if the . If such assessment be is not paid into the local treasury within thirty days after its date, interest at the rate of six per centum provided under §§ 58.1-3916 or 58.1-3917 shall accrue thereon from the date of such assessment until payment.~~

Source: § 58-1164

Comment: The language providing for penalties and interest is struck, so that no penalty will be assessable, and no interest will accrue, unless the assessment is not paid within 30 days.

~~§ 58-1165 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 of the commissioner of the revenue in whose county or city the land is situated , 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 proper 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 authorized and required by this section to be entered 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 plus penalties and interest, if any, which have accrued under the preceding section (§ 58-1164 : ; provided, However, that 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.~~

Source: § 58-1165

Comment: Reference to penalties and interest is deleted in conformity with the previous section.

~~§ 58-1166 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 and levies mentioned in this chapter which they are authorized to assess. Omitted taxes or levies , except on real estate, shall not be assessed on the current assessment books.~~

Source: § 58-1166

Comment: No change.

§§ 58.1-3906 - 58.1-3909: Reserved.

Article 2.

Collection by Treasurers, etc.

~~§ 58-058~~ 58.1-3910 . Treasurer to collect and pay over taxes and levies .—Each county and city treasurer shall receive the ~~State revenue~~ local taxes and the levies 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. This section shall not apply to any city insofar as local revenues are concerned when the charter of such city provides otherwise.

Source: § 58-958

Comment: Reference to state revenue is deleted, as appropriate to Subtitle 1.

~~§ 58-062~~ 58.1-3911. Notice of taxes due.— For this purpose each county treasurer shall, except in counties having an area of less than sixty square miles, advertise for at least ten days at the courthouse and at the voting places in the magisterial districts, in such manner as may be necessary to give general publicity thereto, upon what day or days or parts thereof he will be at some convenient public place in each magisterial district to receive taxes and levies and shall, at the time specified, go to the places so designated and remain there, during the time specified in such advertisement, for the purpose of receiving the State taxes and county levies and shall receive the same; provided, however, that the board of supervisors or other governing body of any county may authorize the treasurer to dispense with such sittings whenever, in the opinion of such board or other governing body, the same will not facilitate the collection of taxes and levies, but in every such case the treasurer shall ~~The treasurer shall advertise publicize at least 10 days a reasonable time before December fifth the due date of local taxes~~ in such manner as may be necessary to give general publicity notice in such his county or city of to the fact that taxes and levies are due and payable ; provided, however, the board of supervisors or other governing body of any county, may by appropriate resolution, authorize the treasurer to dispense with any advertising required by this section and provided, farther, that it shall not be necessary for the treasurer of the county of Henrico to designate or to go to any place other than the county courthouse in the city of ~~Richmond~~ in order to receive the taxes and levies to be paid to such treasurer

Comment: The requirement that the treasurer travel around the county to collect taxes is deleted as obsolete. The advertisement requirement is changed to a more flexible requirement to publicize, which can be done by newspaper articles, radio announcements, news releases and the like. The power of the governing body to waive the requirement is deleted, and it is made applicable to cities as well as counties.

~~§ 58-060~~ 58.1-3912 . Treasurers to mail certain bills to taxpayers.—The treasurer of every city and county shall, as soon as may be in each year, not later than ~~December 1~~ fourteen days prior to the due date of the taxes , send by United States mail to each taxpayer assessed with taxes and levies for that year amounting to five dollars or more as shown by an assessment book in such treasurer's office, a bill or bills in the form prescribed by the Department of Taxation. The failure of any such treasurer to comply with this section shall be a Class 4 misdemeanor ; ~~punishable by a fine not exceeding five dollars~~ . Such treasurer shall be deemed in compliance with this section as to any taxes due on real estate if, upon the request in writing of the obligor upon any note or other evidence of debt secured by a mortgage or deed of trust on such real estate, or if upon certification by the obligee certifies to the treasurer 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.

Source: § 58-960

Comment: The time for sending bills is changed to 14 days; the misdemeanor is made Class 4.

~~§ 58-061~~ 58.1-3913 . When treasurer to receive taxes and levies without penalty; how payments credited.—Each treasurer shall commence to receive the state taxes and 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 the fifth day of 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. The assessment and collection of individual and fiduciary income taxes being provided for in the chapter on income taxes, neither this section, nor the two preceding sections (§§ 58-959, 58-960), nor the four following sections (§§ 58-962, 58-963, 58-964, 58-965), shall apply thereto.

Source: § 58-961

Comment: References to collecting state taxes have been removed.

~~§ 58-959 58.1-3914 . Tax tickets; forms; Delivery of receipts to taxpayers when taxes collected.—The Department of Taxation shall prescribe the forms of tax tickets to be used by county and city treasurers and such treasurers shall follow the forms so prescribed. Each treasurer shall deliver a receipt to each taxpayer who makes payment by cash or money order, and on request to each other 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 at the time of collecting any tax, he shall be deemed guilty of a Class 4 misdemeanor ; punishable by a fine not exceeding fifty dollars; or when fraudulently done, by such fine or sentence of not exceeding thirty days in jail, or both . If such failure is for fraudulent purposes, he shall be guilty of a Class 1 misdemeanor .~~

Source: § 58-959

Comment: The misdemeanors have been classified as Class 1 and Class 4.

~~§ 58-963 58.1-3915 . Penalty for failure to pay taxes by December fifth 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 the fifth day of December 5 shall incur a penalty thereon of five per centum 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 in any way the fault of the taxpayer.~~

Source: § 58-963

Comment: Cross reference to § 58.1-3916 is added.

~~§ 58-963.1. Postponement of due date and alteration of penalties. The board of supervisors, or other governing body, of every county may, by ordinance, duly adopted, extend by one calendar month the date on which any penalty shall be incurred under § 58-963 in connection with the payment of county levies, alter the amount of penalties imposed during such period in connection with the payment of county levies and direct the treasurer of the county to postpone collection of local levies under § 58-965 until such date in conformance therewith.~~

Comment: § 58.1-3916 gives broader power to alter due dates and penalties. This section is deleted as unnecessary.

~~§ 58-847 58.1-3916 . Counties, cities and towns may provide dates for filing return, set penalties, interest, etc.—Notwithstanding provisions contained in §§ 58-837, 58-961, 58-963, 58-964 and 58-965 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 . and the time or times for payment of annual taxes or levies The governing body may provide that payment of taxes on real estate and tangible personal property, machinery and tools and merchants' capital ; which may, in the discretion of the governing body, be in equal installments on June 5 and December 5 ; and may provide by ordinance penalties for failure to file such applications and returns and for nonpayment in time ; ; and may provide for payment of interest on delinquent taxes. Any county, city or town which had established by ordinance enacted before January 1, 1984, other dates for payment of taxes or installments may continue to require such payment on such dates.~~

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 ten percent per annum. 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, for the second and subsequent years of delinquency. No penalty for failure to pay a tax or installment shall exceed ten percent of the tax past due on such property or the sum of ten dollars, whichever shall be is the greater. No penalty for failure to file a return shall be greater than ten percent of the tax assessable on such return or ten dollars, whichever is greater. 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 ; ~~other than an assessment of omitted taxes or levies under § 58-1164 or § 58-1165~~, 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.

The governing body may provide by ordinance for the waiver of the Penalty and interest for failure to file a return or to pay a tax *shall not be imposed* if such failure was not in any way the fault of the taxpayer.

The governing body may further provide for reasonable extensions of time, not to exceed ninety days, for filing returns on tangible personal property, machinery and tools and merchants' capital 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 supercede the provisions of any charter or special act.*

Source: § 58-847

Comment: The governing body's power to change the due date of taxes is limited to equal installments in June and December, unless different dates had been established prior to January 1, 1984. The removal of penalty on assessments which are late through official mistake is changed to include omitted assessments. The last sentence is added to prevent the use of charter provisions to avoid the restrictions in this section.

§ ~~58-848~~ 58.1-3917 . Assessment of public service corporations in such cases.— A In any such ~~case 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 ; ~~pursuant to the preceding section (§ 58-847)~~ , 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.*

Source: §§ 58-848, 58-849

Comment: The sections are combined.

§ 58-849: Amendment of such ~~assessment~~ for preceding year. But the State Corporation Commission may, upon the application of any such public service corporation or any such city or town filed with the Commission 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 until the regular annual assessment of the properties of the corporation is completed by the Commission.

Comment: Included in § 58.1-3917.

~~§ 58-964 58.1-3918~~ . Interest on taxes not paid by following day.—Interest at a *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 ~~such taxes and levies~~ then remaining unpaid, which penalty and interest shall be collected and accounted for by the officers charged with the duty of collecting such taxes ~~or levies~~ , along with the principal sum thereof. But this section shall not apply to local ~~levies taxes~~ in any county, city or town when the penalty or interest on such ~~levies taxes~~ is regulated by ordinance under ~~§ 58-847 58.1-3916~~ .

Source: § 58-964

Comment: Reference to charter provisions regulating penalty and interest is deleted.

~~§ 58-965 58.1-3919~~ . Collection of taxes not paid when due; distress for same.—The treasurer, after the ~~fifth day of December~~ *due date of any tax* , shall call upon each person chargeable with ~~taxes and levies such tax~~ who has not paid the same prior to that time, or upon the agent, if any, of such person resident within the county ~~or corporation 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 ~~them~~ by distress or otherwise. Should it come to the knowledge of the treasurer that any ~~such person or persons~~ owing ~~such taxes or levies~~ is moving or contemplates moving from the county ~~or corporation city or town~~ prior to the ~~fifth day of December~~ *due date of such taxes* , he shall have power to collect the same by distress or otherwise at any time after such bills shall have come into his hands.

Source: § 58-965

Comment: No substantive change. The date December 5 has been deleted in favor of "due date of any tax" because many localities have changed their tax due dates by ordinance.

~~§ 58-966 58.1-3920~~ . Prepayment of taxes .—Any person ; ~~firm or corporation~~ desiring to pay any ~~State taxes or local levies 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 ; ~~firm or corporation~~ shall file such return with the commissioner of the revenue before he pays such taxes ~~or levies~~ 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~~ *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 ~~levies taxes~~ shall be construed as repealing such provisions. ~~The prepayment of individual and fiduciary income taxes being provided for in the chapter on income taxes, this section shall not apply thereto.~~

Source: § 58-966

Comment: Reference to state taxes is removed to Subtitle I.

~~§ 58-978 58.1-3921~~ . Treasurer to make out lists of uncollectible taxes and delinquents.—The treasurer, after ascertaining which of the taxes and levies ~~assessed~~ in his county or city cannot be collected, shall, not later than ~~the first day of August~~ *1* in each 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 ~~and levies~~ charged thereon.

(2) A list of other real estate which is delinquent for the nonpayment of the taxes ~~and levies~~ thereon.

(3) A list of such of the taxes ~~and levies~~ assessed on tangible personal property, machinery and tools and merchants' capital, and other subjects of local taxation, ~~except other than~~ real estate, as he is unable to collect.

~~(4) A list of such of the taxes on intangible personal property as he is unable to collect.~~

~~(4) A list of the uncollected taxes amounting to less than five dollars each for which no bills were sent under § 58.1-3912.~~

The governing body of any town may, by ordinance, adopt the procedures set forth in this section and ~~§ 58-983 58.1-3924~~ . If such ordinance is adopted, the town treasurer shall submit such lists to the governing body as provided ~~erein~~ *in § 58.1-3924*.

Source: § 58-978

Comment: the reference to listing of intangible personal property is removed to Subtitle 1. The requirement of the list in (4) is new. It is to allow the treasurer to charge off tax liabilities which were too small to warrant sending a bill. See § 58.1-3924.

~~§ 58-979~~ 58.1-3922 . Delinquent lists to speak as of June ~~thirtieth~~ 30 of each year; when real estate and personal property delinquent.—The lists mentioned in § 58-978 ~~shall speak as of June thirtieth of each year - that is to say, such lists~~ 58.1-3921 shall conform to the facts as they existed on such date 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, real estate and personal property shall be delinquent if all taxes on it are not paid when due ; . ~~provided that~~ In any locality which requires the payment of such taxes in installments, real estate shall be delinquent if all taxes on it are not paid by the date the last installment is due. Any other local tax shall become delinquent if not paid in full when due.

Source: § 58-979

Comment: The sentence added to the first paragraph makes it clear that the treasurer does not change the delinquent listing to the new owner of real estate.

~~§ 58-980~~ 58.1-3923 . Form of such lists; oath of treasurer.—The Department of Taxation shall prescribe the form of such lists and also, except as herein provided, the form of the oath to be taken by the treasurer by which each list shall be verified. The oath shall declare that the treasurer ~~verily~~ believes that ~~no part of the taxes or levies embraced in such lists has been or could have not been collected by him.~~ But each treasurer, in returning the list of real estate mentioned in paragraph (2) in § 58-978 58.1-3921 , shall at the foot of such list, subscribe the following oath:

"I, ....., treasurer of the county (or city) of ....., do swear that the foregoing list is, I verily believe, correct and just, that I have ~~not received full payment no part of the taxes or levies for which the real estate therein mentioned is returned delinquent and that~~ , although I have used due diligence to collect such taxes ~~and levies, no part of such taxes or levies have been collected by me ."~~

Source: § 58-980

Comment: The oath is changed to conform to § 58.1-3922, which declares real estate delinquent if all taxes are not paid.

~~§ 58-983~~ 58.1-3924 . Delinquent lists involving local taxes submitted to local governing bodies; publication of lists ; ~~lands improperly placed on book, or not ascertainable; recordation of lien . -~~ (a) A copy of each of the ~~three four~~ lists mentioned in paragraphs (1), (2) and (3) in § 58-978 58.1-3921 shall be submitted by the treasurer to the governing body of his county, city or town. Such lists shall be submitted at the first meeting of the governing body held after the treasurer ~~shall have~~ has completed the lists.

The treasurer ~~may, or shall at the direction of the governing body , to~~ certify to the appropriate commissioner of the revenue a copy of the list of real estate on the commissioner's land book improperly placed thereon or not ascertainable . ~~and the~~ The commissioner of the revenue shall correct his land book accordingly ; ~~and . the~~ The treasurer shall be given credit for the entire amount of the taxes ~~and levies~~ included in the list and may destroy the tax tickets made out by him for such taxes ~~and levies~~ . ~~The treasurer shall be given credit for all taxes shown on the list mentioned in paragraph (4) of § 58.1-3921.~~

The governing body shall cause the lists mentioned in paragraphs (2) and (3) of § 58-978 58.1-3921 , or such parts thereof as deemed advisable, to be published once in a newspaper in the county, city or town, but if there be no newspaper published in the county, city or town then in some newspaper having general circulation therein or in handbills to be posted generally throughout the county, city or town, and at the front door of the courthouse thereof for a period of thirty days.

~~(b) If the taxes and levies on any real estate appearing on the list mentioned in paragraph (2) of § 58-978 are not paid by the third anniversary of the original due date thereof, a lien shall be recorded by the treasurer in the appropriate clerk's office or other office in which such liens are customarily recorded; provided, however, if the clerk has not yet recorded a lien in the delinquent land book, the treasurer or other tax collecting officer may collect after the third anniversary of the original due date but on or before December thirty-one immediately following such third anniversary, any taxes which appear on the delinquent list and shall note on the list~~

to be transmitted to the clerk that payment thereof has been made or report the payment to the clerk if the list has already been transferred .

Source: § 58-983

Comment: Subsection B is moved to § 58.1-3929.

~~§ 58-981: Delinquent tax statement to be furnished beneficiary in deed of trust or mortgage. The treasurers of the several counties and cities of the Commonwealth shall, at any time when requested so to do by the beneficiary in any deed of trust or mortgage upon lands or lots situate in any county or city, make and furnish to such applicant a statement of the taxes for State, county or city purposes, against such lands or lots as shall be designated by the person making application for such statement, which have not been paid prior to the return of the treasurers' report of delinquent taxes for any year.~~

Comment: This section is deleted as the subject matter is adequately covered in § 58.1-3926.

*§ 58.1-3925: Reserved.*

~~§ 58-982 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 of the Commonwealth notice in writing that he or they are is the beneficiary or beneficiaries under any such a lien, clearly designating in such notice the lands affected by such lien as well as and the names of the grantor or grantors in such deed or mortgage, at any time during the period for the collection of taxes for any year ; and, when . If such notice is so given, the treasurer, at least ten days before the date of his report of delinquent taxes for the current collection year, shall make and forward mail to the person giving such notice a statement of the fact that showing whether the taxes on the lands or lots specified in such notice have or have not been paid, and stating the amount thereof, including penalties ; and the mailing of such statement by the treasurer to the address of the person giving such notice shall be deemed a compliance with the requirements of this section .~~

Source: § 58-982

Comment: No substantive change.

~~§ 58-989 58.1-3927 . Collection by treasurer of delinquent local taxes.—Each county and city treasurer shall continue to collect the taxes and levies shown on the delinquent lists mentioned in paragraphs (2) and (3) of § 58-978 58.1-3921 for one year following June thirtieth 30 of the year as of which such delinquent lists speak.~~

Source: § 58-989

Comment: No change.

~~§ 58-990 58.1-3928 . Second publication of lists; subsequent collection of delinquent local levies real estate taxes by treasurer.—At the expiration of one year following June thirtieth of the year as of which such delinquent lists speak, after the initial submission to the governing body, the treasurer shall again submit a copy of each of the lists mentioned in paragraphs (2) and (3) of § 58-978 58.1-3921 to the board of supervisors or other governing body of his county or the council of his city, such submission to be made at the first meeting of such board or council or other governing body held after such date June 30 . Such lists so resubmitted shall show the changes which have occurred since June thirtieth 30 of the preceding year and the treasurer shall continue his efforts to collect the then unpaid local levies upon the real estate taxes included in the list mentioned in paragraph (2) of § 58-978 until a lien has been recorded in the appropriate clerk's office or other office in which such liens are customarily recorded until December 31 after the third anniversary of the due date thereof .~~

~~Such board, council or other governing body may require the treasurer to continue to collect such delinquent local levies included in the list mentioned in paragraph (2) of § 58-978 for an additional period of two years, at the end of which time he shall return to the board, council or other governing body, a list of such of the levies as may then remain unpaid; together with any tax tickets representing the same and shall be given credit for the aggregate amount thereof and shall not thereafter be required to make any further collections thereon; provided, however, that:~~

~~(1) In any county in this State which adjoins three cities, one of which cities has a population of one hundred seventy thousand or more, the board of supervisors of such county may, in its discretion, evidenced by resolution, require the treasurer to continue to collect such~~

delinquent local levies for such period, longer than two years, as may be prescribed by the board and may rescind such requirement and may reimpose the same from time to time; and the treasurer of any such county shall monthly make report to such board of such collections and the board may require the treasurer, from time to time, to report to it all uncollected delinquent local levies, such report to be in a form prescribed by the board;

(2) In any county containing more than five hundred inhabitants per square mile, the board of supervisors or other governing body may, in its discretion, evidenced by resolution recorded in its minutes, require the treasurer to continue to collect such delinquent local levies included in the lists mentioned in paragraphs (2) and (3) of § 58-078 for such period, longer than two years, as may be prescribed by the board or other governing body and may rescind such requirement and may reimpose the same from time to time; and the treasurer shall monthly make report to such board or other governing body of such collections; and the board or other governing body may require the treasurer, from time to time, to report to it all uncollected delinquent local levies, such report to be in a form prescribed by the board or other governing body; and

(3) In any city adjoining a county having a density of population equal to five hundred or more to the square mile, if the city council shall so provide, by order or orders entered on the minute book of the council, the city treasurer shall continue to collect the delinquent local taxes and levies, including capitation taxes, if any, until such time as the Department of Taxation shall appoint a collector in such city to collect the delinquent State taxes under the provisions of § 58-007, and thereafter the person so appointed to collect the delinquent State taxes, and no other person, shall collect the delinquent local taxes and levies, including capitations, if any, upon such terms as may be agreed upon; provided, however, that the person so appointed shall have all power and authority for the collection of such delinquent local taxes and levies, by levy, distress, or otherwise, as treasurers of cities have under the general laws and shall account for collections made by him, as provided by general law.

Source: § 58-990

Comment: The last unnumbered paragraph is moved to § 58.1-3933. Paragraphs (1) through (3) are deleted as obsolete.

*§ 58.1-3929. Recordation of lien.—If the taxes on any real estate appearing on the list mentioned in paragraph (2) of § 58.1-3921 are not paid before December 31 after the third anniversary of the original due date thereof, a lien shall be recorded in the clerk's office of the county or city.*

Source: § 58-983

Comment: The date on which the lien is to be recorded is changed from the third anniversary of the due date to December 31 thereafter. See § 58.1-3928

~~§ 58-985~~ *58.1-3930*. How liens to be recorded; release of liens.—The liens required by § 58-983 ~~(b)~~ *58.1-3929* to be recorded in the clerk's office shall be recorded 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 or levies on real estate are assessed, or in a computer system approved by the Auditor of Public Accounts. Any officer collecting any such taxes and levies, unless otherwise specifically provided by law, shall forthwith transmit such payment to the clerk, 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 clerk 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.

Source: § 58-985

Comment: No change.

*§ 58.1-3931: Reserved.*

~~§ 58-986: Transfer of delinquent land books to clerks in certain cities. Chapter 303 of the Acts of 1940, approved April 1, 1940, codified as Tax Code, § 394b, relating to the transfer of delinquent land books in the office of treasurer to the office of the clerk of a court in any city having a population of not less than sixty-five thousand nor more than one hundred thousand; is continued in effect.~~

Comment: This section is deleted as obsolete.

~~§ 58-986-1~~ *58.1-3932*. Card system record and index of delinquent real estate in City of

Norfolk.—The city of Norfolk is hereby authorized to set up, in the office of the collector of delinquent taxes of said city is authorized to keep its record of delinquent real estate in the Treasurer's office, using a card system record of, and index, or such other method approved by the Auditor of Public Accounts, to, delinquent real estate in said city, as a permanent record in said office, and as a valid method of recording and indexing real estate heretofore and hereafter returned delinquent by the treasurer of said city, for the nonpayment of city taxes thereon.

Source: § 58-986.1

Comment: No change.

§ 58.1-3933. Subsequent collection by treasurer of delinquent taxes on subjects other than real estate.—After the second publication of the list of delinquent taxes as provided in § 58.1-3928, the governing body may require the treasurer to continue to collect the delinquent taxes on subjects other than real estate for an additional period of two years. At the end of such period he shall return to the governing body a list of such of the taxes as remain unpaid together with any tax tickets representing the same, shall be given credit for the aggregate amount thereof, and shall not thereafter be required to make any further collections thereon.

Source: § 58-990

Comment: This portion of § 58-990 has been moved forward to provide better continuity. The other half of the section is in § 58.1-3928.

§ 58-991 58.1-3934 . Collection of delinquent local levies taxes on subjects other than real estate by sheriff or person employed for purpose.—Such board, council or other The governing body may, instead of requiring the treasurer so to continue his efforts to collect such delinquent local levies taxes included in the list mentioned in paragraph (3) of § 58-978, on subjects other than real estate, place the same or the uncollected levies taxes returned by the treasurer ; as last above provided for, as the case may be, in the hands of the sheriff of the county or city for collection, or employ a local delinquent tax collector or collectors to make such collections, upon such terms as may be agreed upon. The governing body may likewise appoint a collector or attorney to collect any local taxes except other than real estate which have been delinquent for two months or more. If such delinquent levies taxes be placed in the hands of the sheriff or if such local delinquent tax collector or collectors be employed, such sheriff or local delinquent tax collector or collectors shall have all the power and authority to enforce collection by suit, levy, distress or otherwise as the treasurers of the counties and cities have under the law. In either such event, the treasurer shall be entitled to credit for all delinquent levies taxes which may be turned over for collection ; as aforesaid, in pursuance of orders given him by such board, council or other governing body and . No part thereof shall thereafter be returned to him for collection by him.

All collections made by any such sheriff or delinquent tax collector shall be reported by him to such board, council or other governing body and the moneys so collected shall be paid over to the treasurer, who shall be held accountable therefor; and such sheriff or delinquent tax collector shall, at the end of his term of employment, return to the board, council or other governing body a list of such delinquent levies taxes so turned over to him as may then remain unpaid, together with the tax tickets represented thereby.

Such board, council or other governing body shall then have power to employ other delinquent tax collectors to collect the levies taxes 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 board, council or other governing body may deem proper.

Source: § 58-991

Comment: No substantive change.

§ 58-998. Collection of delinquent taxes on land, etc., which prior to tax segregation was assessed for State purposes; disposition of collections. All taxes, which prior to the segregation of land and tangible personal property to the localities were assessed upon land and tangible personal property for any State purpose or purposes and which are now delinquent and appear as uncollected upon the delinquent tax books, shall be collected by the officer charged by law with the duty of collecting the same and all such delinquent taxes and all sums paid to redeem the delinquent lands shall be paid by the officer charged by law with the duty of collecting such taxes into the treasury of the county or city in which the taxes were assessed.

Comment: Real estate was segregated to local taxation in 1915. It would appear that this section

is obsolete.

~~§ 58-999~~ 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 ~~or levies~~ 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. .

Source: § 58-999

Comment: No change.

~~§ 58-1000~~ 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 ~~or levies~~ 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, upon conviction thereof, shall be fined not less than one hundred dollars nor more than five hundred dollars for each offense~~ ; and such county or city treasurer shall moreover be deemed guilty of malfeasance in office.

Source: § 58-1000

Comment: Misdemeanor made Class 3.

~~§ 58-1000.1~~ 58.1-3937 . Recordation of list of delinquent town taxes; sale of real property for town taxes.—When any town taxes are ~~returned~~ *found to be delinquent on August 1 of the year following the year for which they were assessed* by the town treasurer or other officer charged with the duty of collecting such taxes, a list of the same shall be returned to the clerk of the circuit court of the county wherein such town is located and be by him entered in a book furnished by the town and kept in his office, the form and manner of entering the same to be similar to that provided by law for the record of delinquent taxes on real estate due to the county. In such book there shall also be columns in which shall be entered the names of the purchasers and the amount and date of sales of real estate sold for delinquent taxes, as hereinafter provided.

Until the taxes ~~so returned delinquent~~ *so found delinquent* are entered in such record as herein provided, the real estate shall not be liable for town taxes as against purchasers for value and without notice. The real estate may be sold for town taxes, as hereinafter provided, whether owned by the person in whose name it was assessed or not.

Source: § 58-1000.1

Comment: A date is inserted to clarify the term “returned delinquent.”

~~§ 58-1000.2~~ 58.1-3938 . List of delinquent *town* real estate taxes filed with clerk of circuit court in certain towns.—Notwithstanding the provisions of ~~§ 58-1000.1~~ 58.1-3937 , 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 ~~thirty-one~~ *31* of such year shall be filed by the treasurer or other collector of town taxes in the office of the clerk of the circuit court of the county wherein the town is located on or before January ~~thirty-first~~ *31* of each year.

Source: § 58-1000.2

Comment: No change.

*§ 58.1-3939: Reserved.*

### *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 for twenty years after December 31 of the year for which such taxes were assessed.*

*C. Nothing in this section shall affect a judgment lien resulting from a suit to collect taxes.*

Source: New

Comment: This section is an attempt to make sense out of the ambiguous and conflicting limitations found in §§ 58-967, 58-1019 and 58-1021, which are deleted. Section 58-967 imposed a 15-year statute of limitations for collection by local officers, § 58-1021 imposed a 5-year limit for personal property taxes, and § 58-1019 provided that liens were not affected by any limitations. Section 58.1-3940 is intended to cut off all collection efforts, except enforcement of the real property tax lien and judgment liens, after 5 years. The tax lien on real estate is 20 years under § 58.1-3341.

~~§ 58-967. Collection of taxes in the hands of treasurers, etc., and not returned delinquent. All treasurers, ex-treasurers and their deputies of the several counties, cities and towns of this Commonwealth and their personal representatives shall have the power to collect by levy, distress or any other legal proceeding provided by law for the collection of taxes and levies by treasurers all uncollected taxes and levies in their hands which have not been returned delinquent or insolvent. But such collection shall not be enforced under this section except within fifteen years from December fifteenth of the year in which such taxes and levies were assessed, respectively. But no such collection shall be enforced against real or personal property in the hands of a bona fide purchaser for value or to the detriment of a mortgagee or note holder under a deed of trust without actual knowledge of such outstanding claim.~~

Comment: See comment to § 58.1-3940.

~~§ 58-1019. Other liens or provisions not affected by article. Nothing in the foregoing provisions of this article shall be construed in derogation of any lien of the Commonwealth or any of its political subdivisions now existing or hereafter created by any other provision of law; nor shall any judgment or decree for taxes, penalties, interest and costs, which taxes, penalties, interest and costs were themselves liens, be construed as affecting the priority which such liens had.~~

~~The foregoing provisions of this article shall not be construed to repeal any other provisions of law providing for the collection of taxes.~~

Comment: See comment to §58.1-3940.

~~§ 58-1021. Limitation on suits for local capitation and tangible personal property taxes. No action, suit or other proceedings at law or in equity shall be commenced in any court of this State, nor shall any other legal action be taken, by the treasurer or other officer or agent of any county, city or town, for the collection of any taxes or levies assessed under the authority of such county, city or town upon tangible personal property or for the collection of any capitation tax levied by any county or city, after the expiration of five years from the date upon which any penalty was required by law to have been added to any such taxes or levies so assessed; provided, however, that the proper authorities of any county, city or town may pursue and enforce any lien or other legal right arising from and based upon a judgment or decree, or any lien based upon any other legal proceeding, if such judgment or decree was obtained or entered in an action, suit or other proceeding commenced prior to the expiration of such five years, or if such other legal proceeding was commenced prior to the expiration of such five years.~~

Comment: See note to § 58.1-3940

~~§ 58-1001 58.1-3941 . What may be distrained for taxes.—Any goods or chattels in the county, city or county town belonging to the person or estate assessed with taxes or levies may be distrained therefor by the treasurer, sheriff, constable or collector. In all cases Property subject to levy or distress for taxes shall be liable to levy or distress in the hands of any person for taxes thereon, except that any motor vehicle as defined in § 58-687 (1) § 58.1-2101 purchased by a bona fide purchaser for value from the person or estate assessed with taxes 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 not specifically assessed shall not be subject to distress after it passes into the hands of a bona fide purchaser for value.*

Source: § 58-1001

Comment: Deletion of language protects a bona fide purchaser who bought a motor vehicle from

someone other than the taxpayer. The last paragraph merely states what was evident by implication.

~~§ 58-1000 58.1-3942 . Security interests no bar to distress.—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.~~

A security interest ; perfected prior to any distraint for taxes shall have priority over all taxes, except those specifically assessed against the goods and chattels distrained. Taxes specifically assessed against the goods and chattels distrained 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.

~~Notwithstanding any provision of this section to the contrary, no motor vehicle as defined in § 58-687 (1) 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.~~

Source: § 58-1009

Comment: The deleted language is unnecessary as it is already in § 58.1-3141.

~~§ 58-1002. Distraint on timber or growing wood. Any timber or wood growing on the land belonging to the person or estate assessed with taxes or levies may be distrained and sold, so far as necessary, to pay the amount of such taxes and levies and expense of sale and shall be sold standing in the manner prescribed for the sale of goods and chattels, other than horses, mules and oxen, under distress or levy for taxes; and the purchaser shall have the right to cut and carry away such wood or timber within twelve months after the purchase of the same, with the right of ingress and egress for this purpose, but shall not haul the same over any lands occupied at the time by growing crops.~~

Comment: This section is deleted as obsolete.

~~§ 58-1006 58.1-3943 . Distraint on property of tenant or of owner of tract who has sold part thereof.— The goods and chattels of the tenant or other person in possession, claiming under the party or estate assessed with taxes or levies on land, may be distrained if found on the premises; but not for an amount exceeding the rent contracted to be paid by such tenant for the premises; nor until the property of the landlord subject to distress, within the county or city, shall have been exhausted ; and When the rent is payable in a share of the a crop, only the share of the crop belonging to the a landlord who owes taxes, but only that share, shall be liable to levy. But When taxes or levies 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 or levies are assessed, the property belonging to the former shall not be distrained for more than a due proportion of the taxes or levies .~~

Source: § 58-1006

Comment: Language has been deleted which permitted the tax collecting officer to seize and sell a tenant's property for taxes due from the landlord, to the extent the tenant owed rent.

~~§ 58-1013 58.1-3944 . Tenant paying taxes or levies to have credit out of rents.—A tenant from whom payment shall be is obtained, by distress or otherwise, of taxes or levies 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 and levies by an express contract with such person.~~

Source: § 58-1013

Comment: No change.

~~§ 58-1007 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 corporation city the treasurer of the county or corporation city in which the taxes or levies are so assessed may distraint on the part of the land lying in the other county or corporation city in the same manner as if such part was in his own county or corporation city .~~

Source: § 58-1007

Comment: No substantive change.

~~§ 58-1008 58.1-3946 . When owner a nonresident of county, city or town where land lies.—~~

When the land or other property is in a county . ~~or corporation city or town~~ different from that of the residence of the owner or when a person assessed with any taxes or levies before paying the same removes from the county . ~~or corporation city or town~~ in which the assessment was made, the treasurer shall have the same remedies for the collection of all such taxes and levies in all respects as if the person owing the taxes and levies resided in the officer's own county . ~~or corporation city or town~~ ; or the treasurer may transfer to the treasurer of the county . ~~or corporation city or town~~ in which such person resides the tickets for taxation and levies against such person or property and the last-named officer shall proceed to collect the same and pay the proceeds to the former officer.

Source: § 58-1008

Comment: No substantive change.

~~§ 58-1003 58.1-3947 .~~ Lease of real estate for collection of taxes.—Any real estate in the county . ~~or corporation city or town~~ belonging to the person or estate assessed with taxes ~~or levies~~ 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 ~~or levies~~ 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.

~~The board of supervisors or other governing body of any county may, by resolution adopted by a majority of the members thereof by a recorded yea and nay vote, postpone the time when any real estate in such county may be rented or leased for the taxes or local levies for any year until after the fifteenth day of November of the next succeeding year.~~

Source: § 58-1003

Comment: The last paragraph is deleted as a provision originally enacted to cover a specific situation and no longer necessary.

~~§ 58-1004 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 ~~five~~ fifteen days prior to the day of leasing, a copy of the notice of leasing. This service shall be in conformity with §§ ~~8-51 to 8-53~~ 8.01-285 through 8.01-295 .

Source: § 58-1004

Comment: Five days' notice to the tenant is changed to fifteen days to conform with the required notice to the public in the preceding section.

*§§ 58.1-3949 through 58.1-3951: Reserved.*

~~§ 58-1005: Fees of officers upon levy, distraint or leasing. When the constable, sheriff or collector advertises and leases, or advertises without leasing, a parcel of real estate under § 58-1003, he shall receive a fee of sixty cents, to be paid as a part of the cost of the proceeding. When a sheriff, constable, collector or other collecting officer has to levy or distraint and sell, or levy or distraint without selling, he shall receive a fee of sixty cents, to be collected with the taxes. But in no case shall any of these fees be paid by the State.~~

Comment: This section is deleted. Sheriffs no longer get fees, and a sixty-cent fee collected by the Commonwealth would not be worth the necessary accounting.

~~§ 58-850: City or town collector may distraint for city or town levies. The officer of a city or town, whose duty it is to collect city or town levies, shall have the same power to distraint therefor goods and chattels within his city or town as is given by law to county and city treasurers.~~

Comment: Deleted as unnecessary.

~~§ 58-1010 58.1-3952 .~~ Collection out of estate in hands of or debts due by third party.— *The treasurer or other tax collector of any county, city or town may apply in writing to any* ~~Any~~

person indebted to or having in his hands estate of a *taxpayer person assessed with taxes or levies* may be applied to in ~~writing~~ by the officer for payment of taxes more than thirty days delinquent thereof out of such debt or estate . and a Payment by such person of such taxes , penalties and interest or levies , either in whole or in part, shall entitle him to a charge or credit for so much on account of ~~against~~ such debt or estate ~~against the party so assessed~~ . From the time of the service by such officer of any such application, The taxes , penalties and interest and levies shall constitute a lien on the debt or estate so due from such person or on the estate in his hands ~~due the taxpayer from the time the application is received~~ . For each application served upon the person applied to, that 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 party assessed taxpayer . The treasurer or collector 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 may seem to the officer ought to be recovered on account out of the debt or estate in his hands , the officer treasurer or collector shall ; if the sum due for such taxes or levies does not exceed \$2,000, exclusive of penalties and interest ; procure from a justice of the peace or judge or clerk of a court not of record a summons directing such person to appear before the appropriate county court or municipal court, at such time and place as may seem reasonable; and if the sum due exceeds \$2,000, shall procure from the clerk of the circuit court of the county or corporation court of the city a summons directing such person to appear before such court on the first day of the next term thereof. In all cases returnable before a county court or municipal court, court, where proper payment may be enforced. Any person so summoned shall have a right, if the sum due for such taxes or levies exceeds the sum of \$300, exclusive of penalties and interest, to remove the case to a court having jurisdiction of appeals from such county court or municipal court wherein the case was brought, and the procedure for and upon such removal shall be the same, mutatis mutandis, as is provided by ~~§ 16-1-92~~ the same rights of removal and appeal as are provided by law for the enforcement of demands between individuals .

Source: § 58-1010

Comment: A notice provision has been added for protection of the taxpayer. Superfluous language has been deleted.

§ 58-1011 : ~~Proceedings on return of summons executed.~~ If such summons be returned executed, and the person so summoned does not appear, judgment shall be entered against him for the sum due for such taxes and levies and for the fees of the clerk and of the officer who executes the summons.

Comment: Deleted as unnecessary.

§ 58-1012 : ~~Proceedings when person summoned appears.~~ If the person so summoned appear, he shall be interrogated on oath and such evidence may be heard as may be adduced and such judgment shall be rendered as, upon the whole case, shall seem proper.

Comment: Deleted as unnecessary.

§ 58-1014 58.1-3953 . Additional proceedings for the collection of taxes; jurisdiction and venue.—The payment of any county, city or town taxes, State, county or municipal, both those which have been assessed and those which ought to have been assessed, may, in addition to the other remedies provided in this chapter now allowed by law , be enforced by warrant, motion for judgment action at law, bill in ~~chancery~~ suit in equity or by attachment before a general district court or a circuit court within this State 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 jurisdiction here conferred on courts of equity shall be concurrent with the jurisdiction in actions at law and in such equitable proceedings it shall not be necessary to allege or prove any equitable grounds of jurisdiction. The venue for any such proceeding under this section shall be as specified in subdivision 13 ( a ) of § 8.01-261. The provisions of this section shall not be construed to (i) impose a statute of limitation upon the collection of any tax, or (ii) restrict the application of any other section in this Title which imposes a statute of limitation upon the collection of any tax.

Source: § 58-1014

Comment: Unnecessary language is deleted. For limitations see § 58.1-3940. Reference to state taxes will be removed to Subtitle 1.

§ 58-1016 58.1-3954 . Procedure in such suits.—Such proceedings shall be instituted and conducted in the name of the ~~Commonwealth of Virginia~~, or in the name of the county, city, or town in which such taxes or levies are assessed, at the direction of the board of supervisors or

other governing body of the county, or the ~~council~~ of the city or town, by such attorney or attorneys as such board, council or other the governing body may employ for the purpose. The motion for judgment, bill, or other pleading or bill of particulars filed therewith shall contain a statement showing the beneficial interest respectively of the State, county and any other municipal or political subdivision in the sum demanded, and may be amended at any time before final judgment or decree; provided, that the defendant shall be entitled to a continuance for a reasonable time when such amendment is made.

Source: § 58-1016

Comment: Reference to state taxes is deleted. Unnecessary language deleted.

~~§ 58-1017 58.1-3955 . Judgment or decree; effect thereof; enforcement.— Any judgment or decree entered for the plaintiff shall show the facts in regard to the amount for which it was rendered . In such any proceeding under § 58.1-3953 the court shall have all the powers of a tax assessing officer or body , to the end that the court may enter an order in such proceeding requiring the taxpayer to pay all taxes with which he has been properly assessed for any year or years or to pay all the power to determine the proper taxes , penalties and interest with which upon a correct assessment he the taxpayer is chargeable for any year or years of the three years next preceding the year in which the proceedings are instituted 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 by appropriate process of execution or attachment in the same manner that it could be enforced in a proceeding between individuals.~~

Source: § 58-1017

Comment: The section is rewritten to allow the court to examine the merits of the tax assessment in any collection suit under this section.

~~§ 58-1018 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 Commonwealth 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.~~

Source: § 58-1018

Comment: The reference to the Commonwealth's attorney is broadened in case the county attorney or a collector is involved.

~~§ 58-1020 58.1-3957 . Payments to attorneys for collection without suits.—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.~~

Source: § 58-1020

Comment: No change.

~~§ 58-1020.1 58.1-3958 . Payment of administrative costs.—The governing body of any county, city or town may impose on delinquent taxpayers a fee to cover the administrative costs associated with the collection of delinquent taxes. Such fee shall be in addition to all penalties and interest, and shall not exceed ten dollars for taxes collected subsequent to the filing of a warrant or other appropriate legal document but prior to judgment, and fifteen dollars for taxes collected subsequent to judgment.~~

Source: § 58-1020.1

Comment: No substantive change.

~~§ 58-1022. Definitions. As used in this chapter, the term "board of supervisors" means the board of supervisors of a county or other governing body of a county by whatever name called and "Commonwealth" means Commonwealth of Virginia.~~

Comment: This section is deleted as unnecessary.

~~§ 58-1025 58.1-3959 . Petition to ascertain delinquent taxes; exoneration from lien.—Any person interested in real estate may file a petition in the circuit or corporation 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 ; ~~including the amount necessary to be paid to the Commonwealth; upon a sale or sales of such real estate to the Commonwealth for taxes, and .~~ 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 five at least ten days before the date upon which the petition specifies the court shall be asked to hear the petition. Upon the hearing~~ The court ~~may shall have the right to refer the question to one of the commissioners a commissioner in chancery of the court for report thereon.~~ The court shall enter final judgment determining what, if any, taxes are due upon the real estate mentioned in the petition ~~and thereafter; .~~ 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.

Source: § 58-1025

Comment: The sale to the Commonwealth was abolished in 1973, and the lands purchased reverted to the former owners, hence the deletion of language referring to tax sales. The notice to the attorney representing the locality is expanded from 5 to 10 days.

~~§ 58-1026: Suit to remove clouds on title resulting from tax sale. Any legal or equitable owner of real estate, whether he be in possession of such real estate or not, may file a bill in equity, setting out that his land has been unlawfully sold or conveyed for the nonpayment of taxes alleged to have been due thereon and praying for the removal of the cloud upon his title by reason of such sale or conveyance. The court in such suit, after seeing that all proper parties are before it, shall hear and determine their respective rights and declare such tax sale or deed valid or invalid, as to it shall seem right and proper under the pleadings and evidence.~~

Comment: Tax sales were abolished in 1973, and the lands bought by the Commonwealth were returned to the former owners by § 58.1-3973.

~~§ 58-1026.1 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 duly admitted to record in recorded for fifteen years or more in the clerk's office of the county ; or corporation or city ; wherein the land conveyed thereby is located, for fifteen years shall be held, and the same 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, ~~unless 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 ~~and levies 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 ~~or levies 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.

Source: § 58-1026.1

Comment: No change.

*§§ 58.1-3961 through 58.1-3964: Reserved.*

#### *Article 4.*

#### *Bill in Equity for Sale of Delinquent Tax Lands.*

~~§ 58-1117.1 58.1-3965 .~~ When land may be sold for delinquent taxes; notice of sale; owner's

right of redemption.—When any taxes on any real estate in a county, city ; ~~district~~ or town are delinquent on December 31 following the third 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. The officer charged with the duty of collecting taxes for the locality wherein the real property lies *shall* , at least thirty days prior to instituting any action pursuant to this section, ~~shall~~ send a notice to the last known address of the property owner, and to the property address if it be different, advising the property owner of the delinquency and the office's intention to take action. 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 thirty but not more than sixty days prior to the date on which 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, shall be collected ~~when~~ *if* payment is made by the owner ~~(s)~~ 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..... proceedings will be commenced  
(date)

under the authority of § ~~58-1117.1~~ *58.1-3965* et seq. of the Code of Virginia to sell the following parcels for payment of delinquent taxes:  
(description of properties)

The owner of any property listed may redeem it at any time before the date of the sale by paying all accumulated taxes, penalties, interest and costs thereon: . *including the* ~~The~~ pro rata cost of publication hereunder ~~shall become a part of the tax and together with all other costs, including reasonable attorneys' fees set by the court, shall be collected when payment is made whether or not court proceedings have been initiated .~~

Source: § 58-1117.1

Comment: No substantive change. The language deleted at the end is a repetition of language in the body of the section and is unnecessary in the publication.

§ ~~58-1117.2~~ *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 ; district or town in which the real estate lies, by such attorney as the governing body of the county, city ; district or town employs for the purpose, on a salary, commission or other basis. The governing body 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 court of record circuit court of the county or city in whose office deeds are admitted to record and shall be recorded by the clerk in his special commissioner's bond book.~~

Source: § 58-1117.2

Comment: No change.

§ ~~58-1117.3~~ *58.1-3967* . How proceedings instituted; parties; procedure generally; title acquired; disposition of surplus proceeds of sale.—~~Proceedings under this article for the sale of real estate on which county, city, district or town taxes are delinquent shall be by bill in equity, filed in the court of record having equity jurisdiction in 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.~~

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. but it shall not be held that a husband or wife is a necessary party merely because of his or her rights of curtesy initiate or contingent or dower inchoate or contingent, nor shall it be held that The beneficiary or beneficiaries under any deed of trust, security interest or mortgage are shall not be deemed necessary parties provided the trustee or trustees under the deed of trust, or mortgagee or mortgagees under the mortgage, are made parties ; . and in any such case The title conveyed to the purchaser at the judicial sale shall be held to bar any curtesy or dower, and disabilities arising by reason of the minority, insanity, imprisonment or any other disability of parties defendant , and to be free of all claims of beneficiaries under any such deed of trust or mortgage.*

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 § ~~8-77~~ 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.

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, costs and any liens chargeable thereon. 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 surplus shall be paid by the clerk of the court in which such suit was instituted to the county or city in which such real estate is located.

Source: § 58-1117.3

Comment: Language is deleted which made joinder of husbands and wives with inchoate dower interests not necessary. Language is added to insure the appointment of a guardian as litem for persons under a disability.

§ ~~58-1117.4~~ 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 twenty thousand dollars.~~

Source: § 58-1117.4

Comment: Language permitting collectors to join together parcels belonging to different owners is deleted.

§ ~~58-1117.5~~ 58.1-3969 . Order of reference; appointment of special commissioner to make sale; costs; attorney's fee.—The order of reference shall be to some commissioner in chancery or special master other than the attorney employed to subject the real estate to the lien of any taxes. The court may appoint a special commissioner to sell the properties and execute the necessary deeds when a sale is found necessary or advisable and in doing so the appointee may be the attorney employed by the governing body of the county, city ; ~~district~~ or town to bring the suit. If the attorney employed by the governing body of the county, city, district or town 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 county, city ; ~~district~~ or town, 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 county, city ; ~~district~~ or town 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 county, city ; ~~district~~ or town 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 county, city ; ~~district~~ or town in such proceeding.

Source: § 58-1117.5

Comment: Reference to districts is deleted.

§ ~~58-1117.6~~ 58.1-3970 . County, city, etc., may be purchaser.—The county, city ; ~~district~~ 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.

Source: § 58-1117.6

Comment: No change.

~~§ 58-1117.7 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 proper clerk, and the clerk, on the order of the court of which he is clerk, shall mark his delinquent land book 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.

Source: § 58-1117.7

Comment: No change.

~~§ 58-1117.8: Effect of irregularities in making assessments or returns.—No irregularities in making assessments or in making the returns thereof in the assessment of property as provided by law shall invalidate the sale of real estate under the provisions of this article; nor in any manner invalidate the tax levied on any property or charged against any person.~~

Comment: This provision, which provided that procedural irregularities do not invalidate the sale, is deleted.

*§ 58.1-2972: Reserved.*

~~§ 58-1117.9 58.1-3973~~ . Certain land purchased in name of Commonwealth to revert to owners, etc., subject to lien of delinquent taxes.—On June one, nineteen hundred seventy-three 1. 1973 , the title to any real estate purchased by the treasurer of any county, city ; district 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 ~~§ 58-1023 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.

Source: § 58-1117.9

Comment: No change.

~~§ 58-1117.10 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 ~~§ 58-1117.1 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, together with all costs including costs of publication and a reasonable attorney's 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.

Source: § 58-1117.10

Comment: No change.

~~§ 58-1117.11: Pending proceedings. Any suit or proceedings which have been instituted; prior to June one, nineteen hundred seventy-three, under the provisions of § 58-1027 and §§ 58-1029 through 58-1117; and the provisions of any charter or special act, which are repealed by this act, may be completed in accordance with such provisions for the purpose of effecting the objectives of such suit or proceedings.~~

Comment: Deleted as obsolete.

*§§ 58.1-3975 through 58.1-3979: Reserved.*

## Article 5.

### Correction of Assessments, Remedies and Refunds.

~~§ 58-1123: Application in case of religious congregation. When the legal title to real estate is~~

vested in any person and the equitable title thereto or beneficial ownership thereof is vested in a religious congregation and the property is ~~owned~~ and held, and wholly and exclusively used, for religious worship and the property has been assessed for taxation; the court may, at any time within ten years, upon application being made in the manner prescribed by law, order that the applicant be exonerated from the payment of any taxes erroneously charged if not already paid and, if paid, that it be refunded.

Source: § 58-1133

Comment: This section was clearly put in to solve a particular problem and should be removed as obsolete.

§ ~~58-1141~~ 58.1-3980 . Application to commissioner of the revenue or other official for correction.—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 local ~~levies~~ taxes on tangible personal property, machinery and tools, or merchants' capital, or a local license tax ; ~~or local capitation tax~~ , aggrieved by any such assessment, may, within three years from the last day of the tax year for which such assessment is made, apply to the commissioner of the revenue or such other official who made the assessment for a correction thereof.

Sections ~~58-1141~~ to ~~58-1144~~ 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.

Source: § 58-1141

Comment: No change.

§ ~~58-1142~~ 58.1-3981 . Correction by commissioner or other official performing his duties.—If such commissioner of the revenue, or other official performing the duties imposed on commissioners of the revenue under this title, ~~be is~~ satisfied that he has erroneously assessed such applicant with any such ~~levy, tax as aforesaid, the commissioner or such other official~~ he shall correct such assessment. If the assessment exceeds the proper amount, ~~the Commissioner or such other official~~ 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 ; ~~and if . If the assessment has been paid, the governing body of the county or city shall, upon the certificate of the commissioner or such other official with consent of the town, city or Commonwealth's county attorney . or if none, the attorney for the Commonwealth, that such assessment was erroneous, direct the treasurer of the county or , city or town to refund the excess to the taxpayer, with interest if authorized pursuant to § 58-1152.2, 58.1-3991 provided such application was made within three years from the last day of the tax year for which such assessment was made .~~

If the assessment ~~be is~~ less than the proper amount, the ~~Commissioner~~ commissioner or ~~such other official~~ shall assess such applicant with the proper amount. If any assessment ~~be 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 ~~involved~~ . 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. An error in the valuation of property subject to the rollback tax imposed under § ~~58-769.10~~ 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.

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 ~~or the treasurer or , city or town collector of his city~~ . 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 or to the clerk of the court in whose office deeds are admitted to record in his city, as the case may be ;~~ 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.

Source: § 58-1142

Comment: No substantive change. the time limitation is deleted as unnecessary. See § 58.1-3980

§ ~~58-1143~~ 58.1-3982 . Appeal by locality.—Any county, city, town or other political subdivision of this ~~State~~ Commonwealth , aggrieved by any such correction made by a commissioner of the revenue under the preceding section (§ ~~58-1142~~ 58.1-3981 ), may, through its ~~county, city or~~

*town attorney, or if none, its attorney for the Commonwealth or city attorney in any city having such an attorney*, 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 five *twenty-one* days before the hearing on such application notice thereof shall be given the commissioner of the revenue. ~~The court on such hearing shall enter such order as to it may seem proper on the law and the facts.~~

Source: § 58-1143

Comment: The notice provision is changed to 21 days to be consistent with the rules of court for civil actions. Unnecessary language is stricken.

§ ~~58-1144~~ *58.1-3983* . Remedy not to affect right to apply to court.—The remedy granted by the three preceding sections (§§ ~~58-1141 to 58-1143~~ *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 ~~and~~ . Application may be made to the proper court ~~irrespective of whether or not~~ such applicant has ~~or has not~~ theretofore made application to the commissioner of the revenue for the correction of any such assessment.

Source: § 58-1144

Comment: No change

§ ~~58-1145~~ *58.1-3984* . Application to court to correct erroneous assessments of local levies generally.— A. Any person assessed with ~~county or city levies or other~~ local taxes, aggrieved by any such assessment, may, unless otherwise specially provided by law, within three years from the last day of the tax year for which any such assessment is made, apply for relief to the circuit court of the county or ~~any city court of record of the city~~ wherein such assessment was made. *The application shall be before the court when it is filed in the clerk's office.* In such proceeding the burden of proof shall be upon the taxpayer to show that the property in question is ~~assessed~~ *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 wilful discrimination has been made. *The proceedings shall be conducted as an action at law before the court, sitting without a jury. The county or city attorney, or if none, the Commonwealth's attorney, shall defend the application.* Part 4 of the Rules of the Supreme Court of Virginia (*Pretrial Procedures, Depositions and Production at Trial*) shall apply to ~~proceedings brought under this section for correction of a property tax assessment in any case in which the difference between the assessed value and the fair market value as claimed by the taxpayer exceeds one hundred thousand dollars.~~

B. In the event it comes or is brought to the attention of the commissioner of 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 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.

Source: §§ 58-1145, 58-1146, 58-1149.

Comment: The second sentence is added to take the place of § 58-1146, which prevented the statute of limitations from running while the application was pending. The language herein is copied from present § 58.1-1135, the state tax correction statute. The provision making part 4 of the Supreme Court Rules applicable to certain applications is deleted in favor of general language making all proceeding under the section subject to the rules applicable to an action at law.

§ ~~58-1145.1~~ *58.1-3985* . Section ~~58-1145~~ *58.1-3984* not applicable to applications for correction of assessments for local improvements.—The preceding section (§ ~~58-1145~~ *58.1-3984* ) shall not apply to applications for correction of assessments for local improvements provided for in ~~article~~ *Article 2 of chapter Chapter 20 of Title 15, article Article 2* (§ 15.1-239 et seq.) of ~~chapter~~ *Chapter 7 of Title 15.1, article Article 3* (§§ 15.1-850, 15.1-851) of ~~chapter~~ *Chapter 18 of Title 15.1 of this Code or the charter of any city or town.*

Source: § 58-1145.1

Comment: No change.

§ ~~58-1146~~ . Computation of period of limitation.—The application aforesaid may in all cases be filed in the clerk's office of any such court in ~~vacation~~ and the time which shall elapse from

the filing of such application in the clerk's office, as aforesaid, to the hearing on the same by the court shall be excluded from the computation of the period of limitations.

Comment: This section is rendered unnecessary by the inclusion of a sentence in § 58.1-1184 preventing the statute from running while the case is pending.

~~§ 58-1147 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.

Source: § 58-1147

Comment: No change.

~~§ 58-1149: Defense; contents of order of exoneration.—The Commonwealth's attorney for such county; or the Commonwealth's attorney or city attorney for the city, as the case may be, shall defend the application; and no order made in favor of the applicant shall have any validity unless it is stated therein that such attorney did so defend or, after notice of such application, failed or refused to defend (in which event the court shall appoint a practicing attorney of the county or city to defend such motion); and that the commissioner of the revenue making the assessment or his successor, if it was made by a commissioner, was examined as a witness touching the application, and the facts proved be certified.~~

Comment: The language requiring the court order to specify that the case was defended is deleted, and the provision requiring the county, city or Commonwealth's attorney to defend is moved to § 58.1-3984.

~~§ 58-1148 58.1-3987~~ . Action of court.—If the court be 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 a list of his property to the tax-assessing authority; as the law requires; or that the applicant is erroneously charged with a local license tax 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 if authorized pursuant to § 58.1-3991 .

If, in the opinion of the court, the assessment exceeds the proper amount 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 and shall order that the applicant be exonerated from the payment of so much as is erroneously charged; if not already paid and, if paid, that it be refunded to him with interest if authorized pursuant to § 58-1152.2 . If, in the opinion of the court, the assessment be less than the proper amount fair market value , the court shall order the assessment 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 in either case the court shall be clothed with 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.

Source: § 58-1148

Comment: No substantive change. The section has been rewritten to clarify the fact that both meanings of the word "assessment" are intended.

~~§ 58-1150 58.1-3988~~ . Effect of order.—An order of exoneration under the preceding section (§ 58-1149 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 treasurer, or city collector, as the case may be tax collecting officer , to refund to the applicant the amount specified in the order.

Source: § 58-1150

Comment: The cross-reference is corrected.

~~§ 58-1151~~ 58.1-3989 . Remedy applicable upon general reassessments; all changes to be certified to commissioners.—The six preceding sections (§§ 58-1145, 58-1146 to 58-1150 ~~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 ~~he~~ *they* may note such changes on the land assessment books.

Source: § 58-1151

Comment: No change.

~~§ 58-1152: Relief from assessments for purpose of paying certain bonds declared void.—When an assessment of county or district levies or other local taxes on real estate or personal property has been made since the year nineteen hundred and twenty-nine or may hereafter be made on a levy laid by the board of supervisors or other governing body of any county in this State for the purpose of paying the interest on any bonds of such county or district thereof or of any board of such county and the payment of the principal of such bonds at maturity and such bonds have not been negotiated or sold and are or have been for any reason declared void by the Supreme Court of Appeals of Virginia, all persons assessed with such levies or taxes shall be relieved and released from all liability for such taxes and levies, if not paid and, if paid, the treasurer of such county shall upon application by the person making such payment refund to such applicant the amount of such taxes and levies so paid, including interest and penalties, if any.~~

Source: § 58-1152

Comment: This section was enacted in 1933, obviously to take care of a particular problem. It is deleted as unnecessary.

~~§ 58-1152.1~~ 58.1-3990 . Refunds of local levies taxes erroneously paid.—The governing body of any city or county may provide by ordinance for the refund of any local levies taxes or classes of levies 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 levies taxes as provided in §§ 58-1141 and 58-1142 , he shall certify to the tax-collecting officer the amount erroneously assessed. If the levies taxes have not been paid, the applicant shall be exonerated from payment of so much thereof as is erroneous, and if such levies 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; ~~provided, 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.

Source: § 58.1152.1

Comment: No substantive change.

~~§ 58-1152.2~~ 58.1-3991 . Interest on erroneously assessed taxes.—The governing body of any county, city or town may provide by ordinance that all erroneously assessed taxes refunded under the provisions of this article be repaid with interest at a rate not to exceed the rate imposed by such locality for delinquent taxes. Such interest shall run from the date such taxes were required to be paid or were paid, whichever is later.

Source: § 58-1152.2

Comment: No change.

§ 58-3992. Appeal—Any locality or taxpayer aggrieved by the action of a court of record

*under this article may appeal to the Supreme Court.*

Source: New. This section states existing law.

~~§ 58-1153. Application for correction by assessing officer. Any officer charged by law with the duty of assessing taxes or levies upon land or other property, money, income or license; or any capitation tax, or any officer upon whose report such assessment is made, shall, if he is satisfied that any such assessment is erroneous and that the error was caused by his mistake, within one year from the thirty-first of December of the year in which such assessment is made, apply to the circuit court of the county or any court of record of the city in which such assessment was made for the correction of such erroneous assessment. The attorney for the Commonwealth of the county or city, or the city attorney of any city having such attorney, if local levies be involved, shall defend the application and no order correcting such assessment shall have any validity unless it is stated therein that such attorney did so defend and the facts proved be certified.~~

Comment: The commissioner of the revenue is authorized to go to court to correct errors under § 58.1-3984 (B). This section and the next two (§§ 58-1154 and 58-1155) are deleted as unnecessary.

~~§ 58-1154. Order of court thereon. If the court be satisfied upon the hearing that any or all of the persons mentioned in the application have been erroneously assessed with State taxes or local levies, or both, it may order that the same be corrected and, if application is made under the preceding section (§ 58-1153) for the correction of more than one assessment at the same time, the court may dispose of any number or all of the cases in one order. The order and the copies thereof shall be upon forms prescribed by the Department of Taxation and shall show in detail the names of the persons against whom the assessments were made and the page, line, date and nature of the book or other assessment roll upon which such assessments were made and shall show clearly the error to be corrected. If the assessment exceeds the proper amount, the court may order that the persons erroneously assessed be exonerated from the payment of so much as is erroneously charged, if not already paid, and, if paid, that it be refunded to them. If the assessment be less than the proper amount, the court shall order that such persons pay the proper taxes. A copy of any order made under this section correcting an erroneous assessment of State taxes shall be certified by the clerk of the court to the State Tax Commissioner and the Comptroller and a copy of any such order correcting erroneous assessments of local levies shall be certified by the clerk of the court to the county or city treasurer or city collector.~~

Comment: See comment to previous section (§ 58-1153).

~~§ 58-1155. Effect of order of exoneration. An order of exoneration made as aforesaid, 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 be State taxes and the money has been paid into the State treasury, the order of the court shall entitle the persons erroneously assessed to a warrant on the treasury for the amount thereof, provided application for the same be made to the Comptroller within one year after the date of such order. If what was so erroneously charged be local levies and the money has been paid to the tax-collecting officer, the order of the court shall compel him to refund the money to the person entitled thereto.~~

Comment: See comment to § 58-1153.

~~§ 58-1158 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 ; State or local, shall be maintained in any court of this Commonwealth, except when the party has no adequate remedy at law.~~

Source: § 58-1158

Comment: Reference to state taxes is deleted.

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58-12.131	58.1-3650.116	58-12.166	58.1-3650.151
58-12.132	58.1-3650.117	58-13	58.1-3602
58-12.133	58.1-3650.118	58-14	58.1-3603
58-12.134	58.1-3650.119	58-14.1	58.1-3604
58-12.135	58.1-3650.120	58-14.2	58.1-3605
58-12.136	58.1-3650.121	58-15	58.1-758
58-12.137	58.1-3650.122		58.1-758.1
58-12.138	58.1-3650.123	58-16	58.1-3603
58-12.139	58.1-3650.124	58-16.1	58.1-3601
58-12.140	58.1-3650.125	58-16.2	58.1-3400
58-12.141	58.1-3650.126		58.1-3401
58-12.142	58.1-3650.127		58.1-3402
58-12.143	58.1-3650.128		58.1-3403
58-12.144	58.1-3650.129		58.1-3404
58-12.145	58.1-3650.130		58.1-3407
58-12.146	58.1-3650.131	58-16.2:1	58.1-3405
58-12.147	58.1-3650.132	58-16.2:2	58.1-3406
58-12.148	58.1-3650.133	58-16.3	58.1-3660
58-12.149	58.1-3650.134	58-16.4	58.1-3661

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58-19	58.1-3663	58-33	58.1-202
58-19.6	Repealed	58-33.1	58.1-206
58-19.7	58.1-520	58-33.2	58.1-207
58-19.8	58.1-521	58-33.3	58.1-208
58-19.9	58.1-522	58-33.4	58.1-202
58-19.10	58.1-523	58-34	Repealed
58-19.11	58.1-524	58-35	58.1-216
58-19.12	58.1-525	58-36	58.1-216
58-19.13	58.1-526	58-37	58.1-217
58-19.14	58.1-527	58-38	58.1-218
58-19.15	58.1-528	58-39	58.1-219
58-19.16	58.1-529	58-40	58.1-1111
58-19.17	58.1-530	58-41	58.1-1805
58-19.18	58.1-531		58.1-2021
58-19.19	58.1-532	58-42	58.1-1805
58-19.20	58.1-533		58.1-2021
58-19.21	58.1-534	58-43	58.1-1805
58-20	58.1-3015		58.1-2021
58-21	Repealed	58-44	58.1-1806
58-22	58.1-3016		58.1-1807
58-23	58.1-5		58.1-2022
58-24	58.1-6		58.1-2023
58-25	58.1-7	58-44.1	58.1-1813
58-26	58.1-13		58.1-1814
58-26.1	58.1-12		58.1-1815
58-27	58.1-11	58-44.2	58.1-16
58-27.1	58.1-2	58-45	58.1-105
58-27.2	58.1-3014	58-45.1	58.1-101
58-27.3	58.1-10	58-46	58.1-3
58-27.4	58.1-4	58-46.1	Repealed
58-28	58.1-200	58-46.2	58.1-3.1
58-29	58.1-201	58-46.3	58.1-209
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58-31	58.1-215	58-48	58.1-211

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58-48.3	58.1-108		58.1-3801
58-48.4	58.1-109		58.1-3802
58-48.5	58.1-110		58.1-3803
58-48.6	58.1-203		58.1-3804
58-48.7	58.1-204	58-66	58.1-1712
58-48.8	58.1-205		58.1-1713
58-52	58.1-1725	58-66.1	58.1-1714
58-53	58.1-1726	58-57	58.1-1713
58-54	58.1-801	58-67.1	58.1-1718
58-54.1	58.1-802		58.1-3806
	58.1-811		58.1-3807
58-55	58.1-803		58.1-3808
58-55.1	58.1-804	58-68	58.1-1715
	58.1-811	58-69	58.1-1716
58-56	58.1-805	58-70	58.1-1717
58-57	58.1-806	58-71	58.1-3809
58-58	58.1-807	58-72	58.1-3809
	58.1-811	58-73	58.1-3809
58-59	58.1-808	58-75	58.1-3810
58-60	58.1-809	58-76	58.1-3811
58-61	58.1-810	58-76.1	58.1-3819
	58.1-811	58-76.2	58.1-3820
58-62	Repealed	58-151.01	58.1-301
58-63	58.1-812	58-151.02	58.1-302
58-64	58.1-811		58.1-303
58-64.1	58.1-811	58-151.03	58.1-320
58-65	58.1-812		58.1-321
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	58.1-322	58-151.045	58.1-412
	58.1-324	58-151.046	58.1-413
	58.1-325	58-151.047	58.1-414
	58.1-402	58-151.048	58.1-415
58-151.013:1	58.1-323	58-151.049	58.1-416
58-151.014	58.1-391	58-151.050	58.1-417
58-151.014:1	58.1-330	58-151.050:1	58.1-418
58-151.014:2	58.1-331	58-151.050:2	58.1-419
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58-151.015	58.1-332	58-151.051	58.1-421
58-151.016	58.1-321	58-151.061	58.1-340
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58-151.024	58.1-362	58-151.063	58.1-342
58-151.025	58.1-363	58-151.064	58.1-343
58-151.026	58.1-370		58.1-382
58-151.027	58.1-371	58-151.065	58.1-306
58-151.031	58.1-400	58-151.066	Repealed
58-151.032	58.1-402	58-151.067	58.1-344
58-151.032:1	58.1-403	58-151.067:1	58.1-393
58-151.032:2	58.1-403	58-151.068	58.1-305
58-151.032:3	Repealed	58-151.069	Repealed
58-151.032:4	58.1-333	58-151.070	58.1-307
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58-151.033	58.1-405	58-151.072	58.1-309
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58-151.035	58.1-406	58-151.072:2	58.1-346
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58-151.30	58.1-498	58-173	Repealed
58-151.31	58.1-499	58-174	Repealed
58-151.33	58.1-304	58-176	Repealed
58-151.34	Repealed	58-177	Repealed
58-151.35	Repealed	58-178	Repealed
58-151.36	58.1-500	58-179	Repealed
58-151.37	58.1-501	58-179.1	Repealed
58-151.38	58.1-502	58-180	Repealed
58-151.39	58.1-503	58-181	Repealed
58-151.40	58.1-504	58-186	Repealed
58-151.41	Repealed	58-187	Repealed
58-152	Repealed	58-188	Repealed
58-153	Repealed	58-189	Repealed
58-153.1	Repealed	58-190	Repealed
58-154	Repealed	58-191	Repealed
58-155	Repealed	58-192	Repealed
58-155.1	Repealed	58-193	Repealed
58-156	Repealed	58-193.1	Repealed
58-157	Repealed	58-194	Repealed
58-158	Repealed	58-195	Repealed
58-159	Repealed	58-196	Repealed
58-160	Repealed	58-197	Repealed
58-161	Repealed	58-198	Repealed
58-161.1	Repealed	58-199	Repealed
58-161.2	Repealed	58-200	Repealed
58-162	Repealed	58-201	Repealed
58-162.1	Repealed	58-202	Repealed
58-164	Repealed	58-203	Repealed
58-165	Repealed	58-204	Repealed
58-165.1	Repealed	58-205	Repealed
58-166	Repealed	58-206	Repealed
58-167	Repealed	58-207	Repealed
58-168	Repealed	58-208	Repealed

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58-210	Repealed	58-230	Repealed
58-211	Repealed	58-231	Repealed
58-212	Repealed	58-232	Repealed
58-213	Repealed	58-233	Repealed
58-214	Repealed	58-238	Repealed
58-215	Repealed	58-238.1	58.1-900
58-216	Repealed	58-238.2	58.1-901
58-217	Repealed	58-238.3	58.1-902
58-217.1	Repealed	58-238.4	58.1-903
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58-217.6	Repealed	58-238.9	58.1-908
58-217.7	Repealed	58-238.10	58.1-909
58-217.8	Repealed	58-238.11	58.1-910
58-217.9	Repealed	58-238.12	58.1-911
58-217.10	Repealed	58-238.14	Repealed
58-217.11	Repealed	58-238.15	58.1-912
58-217.12	Repealed	58-238.16	Repealed
58-217.13	Repealed	58-238.17	58.1-913
58-217.14	Repealed	58-238.18	58.1-913
58-218	Repealed	58-238.19	58.1-914
58-218.1	Repealed	58-238.20	58.1-915
58-218.2	Repealed	58-238.21	58.1-916
58-219	Repealed	58-238.22	58.1-917
58-220	Repealed	58-238.23	58.1-918
58-221	Repealed	58-238.24	58.1-919
58-222	Repealed	58-238.25	58.1-920
58-223	Repealed	58-238.26	58.1-921
58-224	Repealed	58-238.27	58.1-922
58-226	Repealed	58-238.28	58.1-923
58-227	Repealed	58-238.29	58.1-924
58-228	Repealed	58-238.30	58.1-925

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58-238.33	58.1-927	58-266.5:1	58.1-3710
58-238.34	58.1-928	58-266.6	58.1-3735
58-238.35	58.1-929	58-266.7	58.1-3728
58-238.36	58.1-930	58-266.8	58.1-3717
58-238.37	58.1-935		58.1-3719
	58.1-936	58-266.9	58.1-3729
	58.1-937	58-266.10	58.1-3730
	58.1-938	58-299	58.1-3715
58-238.38	58.1-931	58-302	Repealed
	58.1-932	58-302.1	58.1-3714
	58.1-933	58-302.2	Repealed
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58-239	58.1-3700	58-303.1	Repealed
58-240	Repealed	58-340	58.1-3717
58-266.1	58.1-3509	58-354	58.1-3718
	58.1-3510		58.1-3719
	58.1-3701	58-356	Repealed
	58.1-3702	58-357	58.1-3722
	58.1-3703	58-359	58.1-3721
	58.1-3704	58-360	58.1-3723
	58.1-3706	58-361.1	Repealed
	58.1-3711	58-371.2	58.1-3724
	58.1-3720	58-374	58.1-3725
	58.1-3732	58-377.1	58.1-3726
	58.1-3733	58-393.1	58.1-3727
	58.1-3734	58-404.02	58.1-1700
	58.1-3535		58.1-1701
58-266.1:1	58.1-3712		58.1-1702
58-266.1:2	58.1-3713		58.1-1703
58-266.1:3	58.1-3713.1		58.1-1704
58-266.4	58.1-3707		58.1-1705
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58-404.2	58.1-3818		58.1-1116
58-405	58.1-1100		58.1-1117
	58.1-1101	58-441.1	58.1-600
	58.1-3507	58-441.2	58.1-602
58-412.1	58.1-1102	58-441.3	58.1-602
58-412.2	58.1-1102	58-441.4	58.1-603
58-413	58.1-1103	58-441.5	58.1-604
58-414	58.1-1106	58-441.6	58.1-602
58-415	58.1-1106		58.1-608
58-416	58.1-1104	58-441.7	58.1-608
58-417	58.1-1105	58-441.8	58.1-611
58-421	Repealed	58-441.9	58.1-604
58-422	Repealed	58-441.10	58.1-607
58-423	58.1-1107	58-441.11	58.1-608
58-424	58.1-1108	58-441.12	58.1-612
58-425	58.1-1109	58-441.13	Repealed
58-426	58.1-216	58-441.14	58.1-627
58-427	58.1-1110	58-441.15	58.1-610
58-428	58.1-1108	58-441.16	58.1-613
	58.1-4	58-441.17	58.1-623
58-429	58.1-1110	58-441.18	58.1-625
58-430	58.1-1110	58-441.19	58.1-626
58-431	58.1-1110	58-441.20	58.1-615
58-432	58.1-1111	58-441.21	58.1-616
58-433	58.1-1111	58-441.22	58.1-619
58-434	58.1-1112	58-441.23	58.1-620
58-435	58.1-1114	58-441.24	58.1-621
58-436	58.1-1115	58-441.25	58.1-622
58-437	58.1-1111	58-441.26	58.1-617
58-438	58.1-1113	58-441.27	58.1-635
58-439	Repealed	58-441.28	58.1-618
58-440	58.1-1118	58-441.29	58.1-633
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58-441.32	58.1-631	58-460	58.1-2811
58-441.33	58.1-624	58-462	58.1-2812
58-441.34	58.1-614	58-463	58.1-2813
58-441.35	58.1-637	58-464	58.1-2814
	58.1-12	58-485.01	58.1-1201
58-441.36	58.1-632	58-485.02	58.1-1201
58-441.38	58.1-634	58-485.03	58.1-1217
58-441.39	58.1-636	58-485.04	58.1-1202
58-441.40	58.1-601	58-485.05	58.1-1203
58-441.42	58.1-213	58-485.06	58.1-1204
58-441.44	58.1-214	58-485.07	58.1-1205
	58.1-215	58-485.08	58.1-1206
58-441.45	Repealed	58-485.09	58.1-1208
58-441.46	58.1-639	58-485.010	58.1-1209
58-441.47	Repealed	58-485.011	58.1-1210
58-441.48	58.1-638	58-485.012	58.1-1211
58-441.49	58.1-3716	58-485.013	58.1-1207
	58.1-605	58-485.014	58.1-1212
	58.1-266.1	58-485.015	58.1-1213
58-441.49:1	58.1-606	58-485.016	58.1-1214
58-441.49:2	58.1-605	58-485.017	58.1-1215
58-441.49:3	58.1-609	58-485.018	58.1-1216
58-441.50	Repealed	58-486	58.1-2500
58-441.51	58.1-628	58-487	58.1-2504
58-442	58.1-2800	58-488	58.1-2505
58-443	58.1-2801	58-489	58.1-2503
58-444	58.1-2802		58.1-2504
58-445	58.1-2803	58-490	58.1-2501
58-450	58.1-2804	58-491	58.1-2501
58-451	58.1-2805	58-492	58.1-2501
58-454	58.1-2806	58-493	58.1-2502
58-455	58.1-2807	58-494	58.1-2502
58-456	58.1-2808	58-495	58.1-2509
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58-500	58.1-2508	58-514.1	58.1-2611
58-501	58.1-2501	58-514.2	58.1-2606
58-502	58.1-2500	58-514.2:1	58.1-2605
58-502.1	58.1-2300	58-514.2:2	58.1-2607
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58-502.2	58.1-2500	58-514.3	58.1-2600
	58.1-2520	58-514.4	58.1-2600
	58.1-2522		58.1-2636
58-502.3	58.1-2521		58.1-2640
	58.1-2522		58.1-2642
58-502.4	58.1-2523	58-514.5	58.1-2641
	58.1-2524		58.1-2642
	58.1-2525	58-514.6	58.1-2643
58-502.5	58.1-2526		58.1-2644
58-502.6	58.1-2527		58.1-2645
	58.1-2528		58.1-2646
58-502.7	58.1-2529	58-514.7	58.1-2647
58-502.8	Repealed	58-514.8	58.1-2648
58-502.9	58.1-2530		58.1-2649
58-502.10	Repealed	58-514.9	58.1-2650
58-503	58.1-2600	58-514.10	Repealed
58-503.1	58.1-2600	58-514.11	Repealed
58-503.2	58.1-2600	58-514.12	58.1-2651
	58.1-2620	58-515	58.1-2652
58-504	58.1-2629	58-518	58.1-2690
58-505	58.1-2629	58-519	58.1-2608
58-506	58.1-2630	58-522	58.1-2607
58-507	58.1-2631	58-523	58.1-2690
58-508	58.1-2600	58-524	58.1-2653
58-509	58.1-2632	58-525	58.1-2653
58-510	58.1-2601	58-528	58.1-2653
58-511	58.1-2602	58-529	58.1-2655
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58-532	58.1-2656	58-597	58.1-2627.1
58-536	58.1-2612	58-599	58.1-2612
58-537	58.1-2611	58-601	58.1-2611
58-538	58.1-2657	58-602	58.1-2690
58-539	58.1-2610	58-603	58.1-2626
58-541.1	58.1-2659		58.1-2627
58-556	58.1-2600		58.1-2731
	58.1-2653	58-605	58.1-2606
58-557	58.1-2653	58-606	58.1-2690
58-558	58.1-2655	58-607	58.1-2628
58-559	58.1-2657	58-608	58.1-2628
58-560	58.1-2652	58-609	58.1-2628
58-561	58.1-2611	58-610	58.1-2633
58-562	Repealed	58-611	58.1-2634
58-578	58.1-2690	58-612	58.1-2634
	58.1-3731	58-613	58.1-2635
58-579	58.1-2621	58-614	58.1-2611
	58.1-2622	58-615	58.1-2612
58-580	58.1-2623	58-617.1	Repealed
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	58.1-2625	58-618	58.1-2654
58-581	58.1-2628	58-619	58.1-2654
58-582	58.1-2633	58-620	58.1-2655
58-583	58.1-2634	58-621	(58.1-2657)
58-584	58.1-2634	58-622	58.1-2652
58-586	58.1-2635	58-623	58.1-2658
58-587	58.1-2611	58-624	58.1-2657
58-587.1	58.1-3812	58-625	58.1-2610
58-587.2	58.1-3813	58-626	58.1-2611
58-588	58.1-2627.1	58-626.1	58.1-2600
58-590	58.1-2627.1		
58-591	58.1-2635		

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	58.1-2700	58-678	58.1-2674
	58.1-2702	58-679	58.1-2675
58-628	58.1-2701	58-680	58.1-2676
58-629	58.1-2706	58-681	58.1-2657
58-629.1	58.1-2707		58.1-2680
58-629.2	58.1-2710	58-682	58.1-2681
58-630	58.1-2703	58-683	58.1-2682
58-631	58.1-2701	58-684	58.1-2680
58-632	58.1-2704	58-685	58.1-2683
58-633	58.1-2702	58-685.10	58.1-2400
	58.1-2705	58-685.11	58.1-2401
58-633.1	deleted	58-685.12	58.1-2402
58-634	58.1-2708	58-685.12:1	58.1-2402
58-634.1	58.1-2711	58-685.13	58.1-2401
58-635	58.1-2709		58.1-2403
58-636	58.1-2709	58-685.13:1	58.1-2403
58-637	58.1-2701	58-685.13:2	58.1-2401
58-660	58.1-2660	58-685.14	58.1-2404
58-661	58.1-2660	58-685.15	58.1-2405
58-662	58.1-2660	58-685.16	58.1-2421
58-663	58.1-2660	58-685.17	58.1-2406
58-664	58.1-2660	58-685.17:1	58.1-2407
	58.1-2661		58.1-2408
	58.1-2662		58.1-2409
58-665	58.1-2660		58.1-2410
58-666	58.1-2660	58-685.17:2	58.1-2411
58-667	58.1-2660	58-685.17:3	58.1-2412
	58.1-2663	58-685.17:4	58.1-2415
58-668	58.1-2663	58-685.17:5	58.1-2416
58-669	58.1-2664	58-685.17:6	58.1-2417
58-670	58.1-2665	58-685.17:7	58.1-2413
58-672	58.1-2670	58-685.17:8	58.1-2414
58-673	58.1-2671	58-685.18	58.1-2420
58-674	58.1-2672	58-685.19	58.1-2423

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58-685.20	58.1-2424	58.685.45	58.1-1404
58-685.21	58.1-2422	58.685.46	58.1-1404
58-685.22	58.1-2426		58.1-1405
58-685.23	58.1-2425	58.685.47	58.1-1403
58-685.24	58.1-2419	58.685.48	58.1-1407
58-685.25	58.1-2418	58.685.49	58.1-1409
58-685.26	58.1-2427	58.685.50	58.1-1410
58-685.27	58.1-1500	58.686	58.1-2100
58-685.28	58.1-1501	58.687	58.1-2101
58-685.29	58.1-1502	58.688	58.1-2103
58-685.29:1	58.1-1510	58-689	58.1-2147
58-685.30	58.1-1501	58-690	58.1-2104
	58.1-1502	58-691	58.1-2142
	58.1-1503	58-691.1	58.1-2142
	58.1-1506		58.1-2143
	58.1-1507	58-692	58.1-2142
	58.1-1510	58-692.1	58.1-2102
58-685.31	58.1-1505	58-693	58.1-2135
58-685.32	58.1-1502	58-694	58.1-2135
	58.1-1505	58-695	58.1-2135
	58.1-1506	58-696	58.1-2135
58-685.33	58.1-1503	58-697	58.1-2137
58-685.36	58.1-1508	58-698	58.1-2135
58-685.37	58.1-1504	58-699	58.1-2135
58-685.38	58.1-1509	58-701	58.1-2135
58-685.39	58.1-1400	58-702	58.1-2136
58-685.40	58.1-1401	58-703	58.1-2135
58-685.41	58.1-1402	58-704	58.1-2136
58-685.42	58.1-1408	58-705	58.1-2138
58-685.43	58.1-1406		58.1-2140
58-685.44	58.1-1402	58-706	58.1-2138
	58.1-1403	58-707	58.1-2138
	58.1-1404		58.1-2140
	58.1-1405	58-708	58.1-2139
	58.1-1408	58-709	58.1-2140

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58-711	58.1-2105		58.1-1720
	58.1-2129		58.1-1721
58-712	58.1-2106		58.1-1722
	58.1-2111		58.1-1723
58-712.1	58.1-2106		58.1-1724
58-713	58.1-2107	58-730.6	58.1-1723
	58.1-2128	58-730.7	58.1-2300
58-713.1	58.1-2107	58-730.8	58.1-2302
58-714	58.1-2104	58-730.9	58.1-2303
	58.1-2129		58.1-2310
58-715	58.1-2111	58-730.10	58.1-2304
58-716	58.1-2112	58-730.11	58.1-2301
58-717	58.1-2111	58-730.12	58.1-2305
	58.1-2113	58-730.13	58.1-2306
58-718	Repealed	58-730.14	58.1-2307
58-719	58.1-2111	58-730.15	58.1-2308
58-720	58.1-2112	58-730.16	58.1-2309
58-721	58.1-2144	58-730.17	58.1-2311
58-722	58.1-2132	58-731	58.1-2100
58-723	58.1-2108	58-732	58.1-2101
58-724	58.1-2133	58-733	58.1-2146
58-725	58.1-2134	58-734	58.1-2135
58-726	58.1-2131	58-734.1	58.1-2135
58-727	58.1-2109	58-735	58.1-2135
58-728	58.1-2110	58-735.1	58.1-2138
58-729	58.1-2141	58-735.2	58.1-2139
58-730	58.1-2146	58-735.3	58.1-2136
58-730.1	58.1-2146	58-735.4	58.1-2136
58-730.2	58.1-2135	58-736	58.1-2137
58-730.3	58.1-2113	58-737	58.1-2135
	58.1-2146	58-738	58.1-2135
58-730.4	58.1-2130	58-739	58.1-2135
		58-739.1	58.1-2135
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58-741	58.1-2135		58.1-2126
58-741.1	58.1-2135	58-757.1	58.1-1001
58-742	58.1-2140		58.1-1002
58-743	58.1-2141		58.1-1003
58-744	58.1-2116	58-757.1:1	Repealed
	58.1-2118	58-757.2	58.1-1003
	58.1-2129		58.1-1008
	58.1-2130	58-757.3	58.1-1004
58-744.1	58.1-2117	58-757.4	58.1-1005
58-746	58.1-2119		58.1-1007
	58.1-2128	58-757.5	58.1-1006
58-747	58.1-2131	58-757.6	58.1-1007
58-748	58.1-2120	58-757.7	58.1-1008
58-748.2	58.1-2144	58-757.8	58.1-1009
	58.1-2145	58-757.9	58.1-1010
58-749	58.1-2144	58-757.10	58.1-1000
58-749.1	58.1-2115		58.1-1009
58-749.2	58.1-2115		58.1-1011
58-750	58.1-2132	58-757.11	58.1-1012
58-751	58.1-2133	58-757.12	58.1-1013
58-752	58.1-2134	58-757.13	58.1-1014
58-753	58.1-2121	58-757.14	58.1-1015
58-753.1	58.1-2122	58-757.15	58.1-1016
58-753.1:1	58.1-2123	58-757.16	deleted
58-753.1:2	58.1-2124	58-757.17	58.1-1017
58-753.1:3	58.1-2125	58-757.18	58.1-1000
58-753.2	58.1-2102	58-757.19	58.1-1018
58-753.4	58.1-2130	58-757.20	58.1-1019
58-754	58.1-2147	58-757.21	58.1-1020
58-754.1	58.1-2142	58-757.22	58.1-1021
58-755	58.1-2142	58-757.23	58.1-1022
58-756	58.1-2103	58-757.24	58.1-1023
58-757	58.1-2146	58-757.25	Repealed
		58-757.26	Repealed

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58-757.28	58.1-3831	58-769.3:2	58.1-3294
58-757.29	58.1-3832	58-769.4	Repealed
58-758	58.1-3200	58-769.5	58.1-3230
58-758.1	58.1-3203	58-769.6	58.1-3231
58-759	58.1-3320	58-769.6:1	58.1-3232
58-760	58.1-3201	58-769.7	58.1-3233
	58.1-3202	58-769.8	58.1-3234
58-760.1	58.1-3210	58-769.8:1	58.1-3235
	58.1-3211	58-769.9	58.1-3236
	58.1-3212	58-769.10	58.1-3237
	58.1-3213	58-769.10:1	58.1-3238
	58.1-3214	58-769.11	58.1-3239
	58.1-3215	58-769.12	58.1-3240
	58.1-3216	58-769.13	58.1-3241
	58.1-3217	58-769.14	58.1-3242
	58.1-3218	58-769.15	58.1-3243
	58.1-3219	58-769.15:1	58.1-3244
58-760.2	58.1-3220	58-769.16	Repealed
58-760.3	58.1-3221	58-770	58.1-3343
58-761	58.1-3204	58-770.1	58.1-3288
58-761.1	58.1-3223	58-771	58.1-3342
58-762	58.1-3340	58-772	58.1-3289
58-763	58.1-3351	58-772.1	58.1-3285
58-764	58.1-3354	58-773	58.1-3290
58-764.1	58.1-3355	58-773.1	58.1-3282
58-766.3	58.1-3520	58-773.2	58.1-3283
58-767	58.1-3341	58-774	58.1-3286
58-768	Repealed	58-774.2	58.1-3287
58-768.1	58.1-3345	58-776	58.1-3250
58-769	58.1-3260	58-776.1	58.1-3251
58-769.1	58.1-3261	58-776.2	58.1-3272
58-769.2	58.1-3253	58-776.3	58.1-3271
	58.1-3270	58-776.4	58.1-3273
58-769.3	58.1-3271	58-778	58.1-3252

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58-784.3	58.1-3254	58-812	58.1-3291
58-784.5	58.1-3255	58-813	58.1-3293
58-785	58.1-3258	58-814	58.1-3352
58-785.1	58.1-3321	58-815	58.1-3353
58-786	58.1-3275	58-816	58.1-3314
58-788	58.1-3271	58-817	58.1-3315
58-789	58.1-3276	58-817.1	58.1-3332
58-790	58.1-3280	58-818	58.1-3360
58-791	58.1-3300	58-819	58.1-3361
58-792	58.1-3257	58-820	58.1-3362
58-792.01	58.1-3330	58-821	58.1-3363
58-792.02	58.1-3331	58-822	58.1-3360
58-793	58.1-3277		58.1-3362
58-794	58.1-3278	58-823	58.1-3360.1
58-795	58.1-3256	58-824	58.1-3360.2
58-795.2	58.1-3259	58-825	58.1-3224
58-796	58.1-3281	58-826	58.1-3225
58-797	58.1-3303	58-827	58.1-3226
58-798	58.1-3304	58-828	58.1-3227
58-799	58.1-3305	58-829	58.1-3500
58-800	58.1-3306		58.1-3503
58-801	Repealed	58-829.1	58.1-3504
58-802	58.1-3308	58-829.1:1	58.1-3505
58-803	58.1-3309	58-829.2:1	58.1-3506
58-804	58.1-3284	58-829.3	58.1-3503
	58.1-3301		58.1-3506
58-805	58.1-3302		58.1-3521
58-806	58.1-3310		58.1-3533
58-807	58.1-3311	58-829.5	58.1-3503
58-808	58.1-3312		58.1-3506
58-809	58.1-3313	58-829.6	58.1-3506
58-810	58.1-3281	58-829.7	58.1-3506
58-811	58.1-3291	58-829.8	58.1-3506
58-811.1	58.1-3292	58-829.9	58.1-3506

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58-831	58.1-3507	58-838.16	58.1-1621
58-831.01	58.1-3506	58-838.17	58.1-1622
58-831.1	58.1-3501	58-838.18	58.1-1616
58-831.2	58.1-3502	58-838.19	58.1-1608
58-832	58.1-3509	58-838.20	58.1-1620
58-833	58.1-3510	58-838.21	58.1-3508
58-834	58.1-3511	58-839	58.1-3001
58-834.1	58.1-3512	58-840	58.1-3002
58-834.2	58.1-3513	58-841	58.1-3003
58-834.3	58.1-3514	58-842	58.1-3004
58-835	58.1-3515	58-843	Repealed
58-835.1	58.1-3516	58-844	58.1-3005
58-836	58.1-3517	58-845	Repealed
58-837	58.1-3518	58-846	58.1-3006
58-838	58.1-3519	58-846.1	58.1-3007
58-838.1	58.1-1601	58-847	58.1-3916
58-838.2	58.1-1602	58-848	58.1-3917
58-838.3	Repealed	58-849	58.1-3917
58-838.4	58.1-1603	58-850	Repealed
58-838.5:2	58.1-1604	58-851	58.1-3007
	58.1-1605	58-851.1	Repealed
58-838.6	58.1-1608	58-851.2	58.1-3008
58-838.7:1	58.1-1609	58-851.3	Repealed
	58.1-1610	58-851.4	58.1-3815
	58.1-1611	58-851.5	58.1-3816
58-838.8	58.1-1606	58-851.6	58.1-3009
	58.1-1607	58-851.7	58.1-3010
	58.1-1612	58-851.8	58.1-3011
58-838.9	58.1-1613	58-852	Repealed
58-838.10	58.1-1617	58-853	58.1-3101
58-838.11	58.1-1618	58-854	58.1-3102
58-838.12	58.1-1618	58-855	58.1-3103
58-838.13	58.1-1620	58-856	58.1-3104
58-838.14	58.1-1619	58-857	58.1-3105

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58-859	58.1-3107	58-892	58.1-3122
58-860	58.1-3110	58-893	58.1-3122
58-861	58.1-3108	58-894	Repealed
58-862	58.1-3108	58-895	58.1-3370
58-863	58.1-3901	58-897	58.1-3371
58-863.1	58.1-3902	58-897.1	58.1-3372
58-863.2	Repealed	58-898.1	58.1-3373
58-864	58.1-3103	58-899	58.1-3374
58-865	58.1-3109	58-900	58.1-3375
58-866	Repealed	58-901	58.1-3376
58-867	Repealed	58-902	58.1-3377
58-868	Repealed	58-903	58.1-3378
58-869	58.1-20	58-904	58.1-3379
58-870	58.1-21	58-905	58.1-3380
58-871	58.1-22	58-906	58.1-3381
58-872	58.1-23	58-907	58.1-3382
58-873	58.1-24	58-908	58.1-3383
58-874	58.1-3109	58-909	58.1-3384
	58.1-3110	58-910	58.1-3385
58-875	58.1-3111	58-911	58.1-3386
58-876	58.1-3112	58-912	58.1-3387
58-877	58.1-3112	58-913	58.1-3388
58-878	58.1-3113	58-914	Repealed
58-879	58.1-3114	58-915	58.1-3389
58-881	58.1-3115	58-916	58.1-3124
58-882	58.1-3116	58-917	58.1-3125
58-883	58.1-3117	58-918	58.1-3126
58-884	58.1-3118	58-919	58.1-3127
58-885	58.1-3119	58-919.1	58.1-3129
58-886	Repealed	58-919.2	58.1-3129
58-887	58.1-3120	58-919.3	58.1-3130
58-888	58.1-3120	58-920	58.1-3131
58-889	58.1-3121	58-921	58.1-3132
58-890	58.1-3106	58-922	58.1-3133

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58-924.1	58.1-3136	58-954	58.1-3165
58-925	58.1-3137	58-955	Repealed
58-926	58.1-3138	58-956	58.1-3166
58-927	58.1-3139	58-957	Repealed
58-928	58.1-3140	58-958	58.1-1800
58-929	58.1-3141		58.1-3127
58-930	58.1-3142		58.1-3910
58-931	Repealed	58-958	58.1-3012
58-932	58.1-3144	58-959	58.1-3914
58-933	58.1-3145	58-960	58.1-3912
58-934	58.1-3146	58-961	58.1-3913
58-935	58.1-3147	58-962	58.1-3911
58-936	58.1-3148	58-963	58.1-3915
58-937	58.1-3148	58-963.1	Repealed
58-938	Repealed	58-964	58.1-3918
58-939	58.1-3149	58-965	58.1-3919
58-940	58.1-3151	58-966	58.1-3920
58-941	58.1-3152	58-967	58.1-3940
58-942	58.1-3153	58-968	Repealed
58-943	58.1-3154	58-969	58.1-3173
58-943.1	58.1-3155	58-970	58.1-3174
58-943.2	58.1-3156	58-971	58.1-3175
58-943.3	58.1-3157	58-972	58.1-3176
58-944	58.1-3158	58-973	58.1-3168
	2.1-359	58-974	58.1-3169
58-945	2.1-359	58-975	Repealed
58-946	2.1-359	58-976	58.1-3171
58-946.1	2.1-359	58-977	58.1-3172
58-947	2.1-359	58-978	58.1-1800
58-948	58.1-3150		58.1-3921
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58-980	58.1-3923	58-1010.1	58.1-1809
58-981	Repealed	58-1011	Repealed
58-982	58.1-3926	58-1012	Repealed
58-983	58.1-3924	58-1013	58.1-3944
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58-985	58.1-3930		58.1-2022
58-986	Repealed		58.1-3953
58-986.1	58.1-3932	58-1016	58.1-1806
58-987	58.1-3129		58.1-2022
58-988	58.1-1801		58.1-3954
58-989	58.1-3927	58-1017	58.1-1807
58-990	58.1-3928		58.1-2023
	58.1-3933		58.1-3955
58-991	58.1-3934	58-1018	58.1-1808
58-996	58.1-1802		58.1-2024
58-997	58.1-1803		58.1-3956
58-998	Repealed	58-1019	58.1-3940
58-999	58.1-3935	58-1020	58.1-3957
58-1000	58.1-3936	58-1020.1	58.1-3958
58-1000.1	58.1-3937	58-1021	58.1-3940
58-1000.2	58.1-3938	58-1021.1	58.1-14
58-1001	58.1-3941	58-1022	Repealed
58-1002	Repealed	58-1023	58.1-3340
58-1003	58.1-3947	58-1024	58.1-3344
58-1004	58.1-3948	58-1025	58.1-3959
58-1005	Repealed	58-1026	Repealed
58-1006	58.1-3943	58-1026.1	58.1-3960
58-1007	58.1-3945	58-1117.1	58.1-3965
58-1008	58.1-3946	58-1117.2	58.1-3966
58-1009	58.1-3942	58-1117.3	58.1-3967
		58-1117.4	58.1-3968
		58-1117.5	58.1-3969

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58-1117.6	58.1-3970	58-1146	58.1-3984
58-1117.7	58.1-3971	58-1147	58.1-3986
58-1117.8	Repealed	58-1148	58.1-3987
58-1117.9	58.1-3973	58-1149	58.1-3984
58-1117.10	58.1-3974	58-1150	58.1-3988
58-1117.11	Repealed	58-1151	58.1-3989
58-1117.20	58.1-1820	58-1152	Repealed
58-1118	58.1-1821	58-1152.1	58.1-3990
58-1118.1	58.1-1823	58-1152.2	58.1-3991
58-1119	58.1-1822	58-1153	58.1-3984
58-1119.1	58.1-1824	58-1154	58.1-3984
58-1122	58.1-2030	58-1155	58.1-3984
58-1123	58.1-2031	58-1156	Repealed
58-1124	58.1-2032	58-1157	58.1-1829
58-1125	Repealed	58-1158	58.1-1831
58-1126	58.1-2033		58.1-3993
58-1127	58.1-2035	58-1159	58.1-1832
58-1128	Repealed	58-1160	58.1-1812
58-1129	58.1-2034	58-1160.1	58.1-15
58-1130	58.1-1825	58-1161	58.1-1812
58-1132	58.1-1827	58-1162	58.1-1812
58-1133	Repealed	58-1162.1	58.1-220
58-1134	58.1-1826	58-1164	58.1-3903
58-1136	58.1-1830	58-1165	58.1-3904
58-1137	Repealed	58-1166	58.1-3905
58-1138	58.1-1828		
58-1139	58.1-1829		
58-1140	Repealed		
58-1140.1	58.1-1833		
58-1141	58.1-3980		
58-1142	58.1-3981		
58-1143	58.1-3982		
58-1144	58.1-3983		
58-1145	58.1-3984		
58-1145.1	58.1-3985		

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58-151.075	58.1-349	58-151.1	58.1-460
58-151.076	58.1-350	58-151.2	58.1-461
58-151.077	58.1-314	58-151.3	58.1-462
	58.1-351	58-151.4	58.1-463
	58.1-352	58-151.5	58.1-465
	58.1-353	58-151.6	58.1-465
58-151.078	58.1-392	58-151.7	58.1-466
	58.1-441	58-151.8	58.1-467
58-151.079	58.1-442	58-151.8:1	58.1-468
58-151.079:1	58.1-443	58-151.9	58.1-469
58-151.080	58.1-444	58-151.10	58.1-484
58-151.081	58.1-302	58-151.11	58.1-470
58-151.082	58.1-445	58-151.12	58.1-471
58-151.083	58.1-446	58-151.13	58.1-472
58-151.084	58.1-392		58.1-473
	58.1-447		58.1-474
58-151.085	58.1-448		58.1-475
58-151.086	58.1-449		58.1-476
58-151.087	58.1-450		58.1-477
58-151.088	58.1-451	58-151.13:1	58.1-12
58-151.089	58.1-452	58-151.14	58.1-478
58-151.090	58.1-453	58-151.15	58.1-485
58-151.091	58.1-454	58-151.16	58.1-479
58-151.093	58.1-455	58-151.17	58.1-480
58-151.094	Repealed	58-151.18	58.1-481
58-151.095	Repealed	58-151.19	58.1-482
58-151.096	Repealed	58-151.20	58.1-483
58-151.097	58.1-310	58-151.21	58.1-490
58-151.099	58.1-354	58-151.22	58.1-491
58-151.0102	Repealed	58-151.23	58.1-492
58-151.0103	58.1-311	58-151.24	58.1-493
58-151.0104	58.1-312	58-151.25	58.1-494
58-151.0105	58.1-313	58-151.26	58.1-495
58-151.0106	58.1-314	58-151.27	58.1-496
58-151.0111	58.1-315		

## **Appendix**

### **NOTE: Contained herein are:**

1. Sections located in other titles which must be amended in conjunction with the Title 58.1 code revision.
2. Listing of sections which must be repealed to conform with the revision, and
3. Suggested language for a severability clause which should be placed in an enactment clause following the bill text; and
4. An effective date clause.

## Appendix 1

### Article 4.

#### Bail Bondsmen.

*§ 19.2-152.1. Bondsmen's certificate.—The revenue license authorized in § 58.1-3724 shall not be issued by any county, city or town unless and until the applicant shall have first obtained a certificate from the judge of the circuit court of the county or city, in which he desires to carry on the business of professional bondsman, approving the issuance of the license and certifying that the applicant is of good moral character, that his past conduct before the courts of said county or city has not been unsatisfactory and is suitable to be so licensed. Before the issuance of such certificate the judge of the circuit court may review the record of the applicant as furnished by the Federal Bureau of Investigation. Prior to the issuance of such certificate, the judge of the circuit court may confer with the judge or judges of those courts in which such bondsman seeks to act. A license granted to a professional bondsman in any such county or city pursuant to § 58.1-3724 shall authorize such person to enter into such bonds in any other county or city.*

*No professional bondsman shall enter into any such bond if the aggregate of the penalty of such bond and all other of such bond and all other bonds, on which he has not been released from liability, is in excess of the true market value of his real estate. Each professional bondsman, if so directed by the judge of the circuit court of the county or of the city in which he is licensed, shall place a deed of trust on the real estate that he is using for the limit of his expected bonded indebtedness to secure the Commonwealth of Virginia and shall name the Commonwealth's attorney of the affected locality as trustee under the deed of trust. In addition thereto, he shall furnish the clerk of the appropriate court an acceptable appraisal and title certificate of the real estate subject to any such deed of trust. Each professional bondsman licensed hereunder shall file with the clerk of the circuit court of the county or city in which he is licensed not later than the fifth day of each month a list of all outstanding bonds on which he was obligated as of the last day of the preceding month, together with the amount of the penalty of each such bond.*

*Any professional bondsman or agent for any professional bondsman, qualified under this section, shall be subject to and governed by any reasonable rules of conduct or procedure set up by the judge of the court in which he is acting as a bondsman which may include a requirement that such bondsman or agent place a reasonable amount of cash or negotiable bonds in escrow with the clerk of said court to be held during the time such bondsman or agent is acting as a bondsman in said court, provided that said clerk is acting under a bond of sufficient amount and coverage to insure protection against loss, theft, or misappropriation. Upon his violation of such rules, he may, after hearing upon a charge of such violation, be suspended from entering into further bonds in said court by the judge thereof. If such bondsman or agent fails to have in escrow with the clerk of said court a sum sufficient to cover any forfeiture of bond against him and fails or refuses to pay such forfeiture after notice and demand by the judge of the court he may be suspended by such judge from entering into further bonds in said court until the forfeiture is paid or it is adjudicated that he is not liable thereon.*

*No person after July 1, 1981, who has previously not been licensed shall be licensed hereunder either as a professional bondsman or agent for any professional bondsman, when such person, his or her spouse, or a member of his or her immediate family holds any office as magistrate, clerk or deputy clerk of any court.*

*Nothing in this section shall be construed to apply to guaranty, indemnity, fidelity and security companies doing business in Virginia or their agents and attorneys-in-fact, under the provisions of §§ 38.1-639 to 38.1-657, except that agents and attorneys-in-fact of guaranty, indemnity, fidelity and security companies entering into bonds for bail, appearances, costs or appeal in criminal cases, shall be required to obtain a certificate from the judge of the circuit court in which he desires to carry on the business of professional bondsman, certifying that the applicant is of good moral character, that his past conduct before the courts of said county or city has not been unsatisfactory and he is suitable to be a licensed bondsman. Such certificate shall authorize such persons to enter into such bonds in any other county or city. Such agents and attorneys-in-fact shall be subject to any reasonable rules of conduct or procedure and discipline for the violation of same as may be ordered by the judge of the court in which they act for such companies. No person may act as such an agent or attorney-in-fact when such*

*person. his or her spouse, or a member of his or her immediate family holds any office as magistrate, clerk or deputy clerk of any court.*

Source: § 58-371.2

Comment: This regulatory language was removed from the license tax chapter.

*§ 15.1-28.4. Regulation of tour guides and tourist guides.—The governing body of any county, city or town may, before issuing any license to do business as a tour guide or tourist guide, require that an applicant for such license take and pass an examination to determine the fitness of such person as to his knowledge of the history of the county, city or town and of the historical and tourist attractions located therein.*

Source: § 58-266.1 (8)

Comment: The section has been placed in Title 15.1 since it does not deal with license taxation, the subject of the chapter in which this section was previously located.

## **Appendix 2**

The following code sections should be repealed with the enactment of this revision:

4-40  
4-41  
4-42  
4-44  
4-108  
4-109  
4-109.1  
4-111

The substantive language of these sections is relocated to Chapter 7 of Title 58.1.

### **Appendix 3**

If any chapter, article, section or other provision of this title or the application thereof is held invalid, such invalidity shall not affect other such provisions of this title which can be given effect without such invalid provisions, and to this end, the provisions of this title are herein declared severable.

#### **Appendix 4**

That the provisions of this act shall be effective beginning on and after January 1, 1985.