

**REPORT OF THE
JOINT SUBCOMMITTEE STUDYING**

The Taxation of Daily Rental Property

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



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Report of the Joint Subcommittee Studying
The Taxation of Daily Rental Property
To
The Governor and the General Assembly of Virginia
Richmond, Virginia
December, 1988

TO: The Honorable Gerald L. Baliles, Governor of Virginia
and
The General Assembly of Virginia

INTRODUCTION

The 1988 General Assembly established this joint subcommittee pursuant to House Bill No. 687 to further analyze and evaluate 1987 legislation which classified daily rental equipment as merchants capital, in lieu of tangible personal property, for local taxation. The 1988 General Assembly requested this joint subcommittee to examine the following three issues before the reclassification scheme from tangible personal property to merchants capital became effective:

- (1) The revenue impact resulting to local governments if rental equipment is removed from the tangible personal property tax base and taxed as merchants capital;
- (2) The administrative burden that will be imposed upon commissioners of the revenue and rental dealers if daily rental property is taxed as merchants capital; and
- (3) Whether the original legislation passed by the 1987 General Assembly accomplishes its goal of bringing equity to persons engaged in the rental equipment business.

SCOPE OF STUDY

The joint subcommittee held three meetings and examined the following issues relating to the taxation of short-term rental property:

- (1) The legislative history of House Bill No. 687;
- (2) The administrative problems of classifying daily rental property as merchants capital;

- (3) The revenue impact upon local governments if daily rental property is removed from the tangible personal property tax base; and
- (4) Alternative tax schemes in lieu of classifying daily rental property as merchants capital.

I. The Legislative History of House Bill No. 687 (1988)

Findings of 1986 Joint Subcommittee of the Senate and House Finance Committees Studying the Tangible Personal Property Tax:

The 1986 General Assembly established a joint subcommittee of the Senate and House Finance Committees on which Senator Charles J. Colgan served as Chairman, to study the tangible personal property tax pursuant to Senate Joint Resolution No. 28. One of the subjects which the subcommittee examined was the local tax burden imposed upon persons engaged in the business of short-term rental equipment. Although the dominant purpose of taxation is to distribute the tax burden in an even and equitable manner, the joint subcommittee concluded that rental equipment businesses often experienced tax inequity because the rental businesses were treated inconsistently for local tax purposes depending upon whether the tax liability resulted from the sales tax, tangible personal property tax or the business license tax. Persons engaged in the business of renting or leasing tangible personal property are subject to three major local taxes:

- (1) The retail sales and use tax which requires dealers to collect a state and local sales tax on leases or rentals of tangible personal property in the Commonwealth;
- (2) The tangible personal property tax provides that all tangible personal property employed in a trade or business is subject to taxation. Rental equipment is considered business personal property for purposes of the tangible personal property tax, and is valued based upon a percentage of original cost of the property, although the rate applicable varies by locality; and
- (3) The business license tax applies to rental equipment businesses because the "rental of property" is considered a business service; therefore, the maximum rate which a locality may impose is 36¢ per \$100 of gross receipts [§ 58.1-3706(4)] unless the locality levied a higher rate on January 1, 1978; then, the higher rate may apply.

The joint subcommittee was concerned that the following inequities were visible in the taxation applicable to rental equipment:

- (1) The rental or leasing of tangible personal property is for sales tax purposes characterized in terms of a "retail sale" even though technically property ownership is not transferred. For sales tax purposes, the rental equipment transactions are taxed in the same manner as other retail sales transactions.
- (2) Although the rental dealer is viewed as a retail merchant for sales tax purposes, most localities categorize the dealer as a business service for business license tax purposes instead of retail sales. The business license tax service rate limitation applicable to service transactions is 36¢ per \$100 of gross receipts, whereas the retail sales rate is 20¢ per \$100. The joint subcommittee determined that an inequity resulted because for license tax purposes the rental equipment is classified as a "service" subject to the highest license tax rate, while at the same time, the transactions are considered retail sales of tangible personal property for the purposes of the retail sales and use tax.
- (3) A third concern which arose in the tax analysis of rental equipment dealers related to the tangible personal property tax, because rental equipment currently is classified as business personal property and valued based on a percentage of original cost. The joint subcommittee determined that there is a lack of uniformity in the Commonwealth in regard to the percentages of original cost which localities use to assess business personal property. Some localities assess business personal property according to a declining scale, i.e., 60% of original cost to a minimum of 20% of original cost for five years. Other localities assess business personal property using a flat percentage of original cost regardless of the age of the property. The assessment practices relating to daily rental equipment raised two issues:
 - a. Do the different assessment methods applicable to business personal property accurately reflect the fair market value of daily rental equipment which depreciates at a more rapid rate than other business property because of its constant leasing or renting, and
 - b. Is it fair to classify daily rental equipment in the same category as business property so that identical items of rental equipment will be valued according to different methods depending upon the jurisdiction in which the property has its situs on January 1?

The 1986 joint subcommittee concluded that some alternative method of taxing daily rental equipment should be devised to subject the property to more equitable local taxation in the Commonwealth. Two alternative tax proposals were considered:

- (1) The first proposal established a separate class of tangible personal property for daily rental equipment, removing it from the classification of business personal property under § 58.1-3503(17). Additionally, § 58.1-3503 would be amended to add the factor of "obsolescence" to assessments of rental equipment so that commissioners would take into account the rapid depreciation of the property to arrive at assessments that more accurately reflected the fair market value. This proposal was primarily designed to achieve more accurate assessments for rental equipment but not necessarily reduced tax rates. (SB 495)
- (2) The second proposal attempted to arrive at more equitable assessments and lower tax rates for persons engaged in the business of rental equipment by classifying rental equipment as merchant's capital. By classifying the property as merchant's capital, daily rental equipment would be afforded the same tax treatment as daily rental passenger cars, which reflects the tax policy that similarly situated taxpayers should be taxed in the same manner. (HB 1376)

The two preceding proposals were submitted as legislation to the 1987 General Assembly as Senate Bill No. 495 and House Bill No. 1376. The General Assembly determined that daily rental equipment should be classified as merchant's capital instead of tangible personal property. House Bill No. 1376 (Watkins, patron) and Senate Bill No. 495 (Colgan, patron) were agreed to by a Conference Committee and passed the General Assembly effective July 1, 1988. (See Table for legislative history of SB 495 and HB 1376.)

Findings Of the 1988 Joint Subcommittee Studying the Taxation of Daily Rental Property

After evaluating the legislative history of House Bill No. 687, the 1988 joint subcommittee, with Delegate Warren Stambaugh as Chairman, heard testimony from members of the daily rental industry and Commissioners of the Revenue, and determined that two opposing positions existed relating to the tax scheme applicable to daily rental property:

- (1) The daily rental industry supported a tax scheme that removed daily rental equipment from the tangible personal property tax, and classified the property in the same manner as retail merchants inventory, namely merchants capital;

- (2) The Commissioners of the Revenue supported a tax scheme that retained the current tangible personal property tax classification for daily rental property, with some alternative method used to assess daily rental property to reflect the rapid depreciation factor.

After listening to the positions of the daily rental industry and Commissioners, the joint subcommittee reaffirmed that three inequities discovered by the 1986 joint subcommittee still were apparent in the tax scheme applicable to daily rental equipment dealers unless an alternative tax scheme was adopted:

- (1) Rental equipment dealers are subject to the retail sales and use tax each time a rental transaction occurs; however, for purposes of the business license tax, rental dealers are taxed as a service. Since services generally are not subject to the retail sales and use tax, it seemed inequitable to classify rental equipment in two different categories for taxation purposes;
- (2) Rental equipment is taxed pursuant to the tangible personal property tax as business personal property; however, there is a lack of uniformity among the localities regarding the method of assessment used to value business personal property. Since rental equipment often depreciates at a faster rate than other business property, the assessed value does not accurately reflect the fair market value of daily rental property; and
- (3) Rental equipment is merchandise held for rental by the dealer, and is similar to the merchandise of a retail seller which is held for sale. Nevertheless, retail sellers are not subject to the tangible personal property tax on their inventory, whereas daily rental equipment is subject to tangible personal property tax on merchandise held for rental. Even though some local governments consider rental equipment as "inventory" subject to the merchant's capital tax, there is no uniformity in the Commonwealth regarding local classification of daily rental property for taxation.

II. Administration of the Merchants Capital Tax As It Relates To Daily Rental Equipment

The joint subcommittee examined the tax scheme applicable to daily rental equipment as adopted by the 1987 General Assembly, § 58.1-3510 (in its current form, effective July 1, 1989), and found some technical problems which may complicate the administration of the merchant's capital tax as it applies to daily rental equipment.

Under the statute enacted by the 1987 General Assembly, only property which qualifies as daily rental equipment will be taxed as merchant's capital; other rental or leased equipment subject to a contract term of more than 90 days will continue to be taxed as tangible business personal property as under current law pursuant to § 58.1-3503(17).

In administering the merchant's capital tax, the Commissioner of the Revenue would be required to determine the rental equipment dealer's tax liability by examining the (i) length of the rental period and (ii) the situs of the rental equipment on January 1 of each year. The 1987 legislation, however, may complicate the assessment of daily rental equipment and make it more difficult for dealers to determine tax liability because the situs and tax basis for determining tax liability, under the merchant's capital tax and business license tax are different, as illustrated by the following examples:

A rental equipment dealer rents items on a daily basis or for any period of 90 days or less. Additionally, the dealer rents the identical items on a long-term basis for 90 days or more. Under the proposed statute, the items rented for any period of 90 days or less will be taxed as merchant's capital. Whereas, even though the same items are rented, if the contract term exceeds 90 days it is taxed as tangible personal property. On January 1, if the dealer, however, engaged only in contracts for 90 days or less on the assessment date, all property qualifies as daily rental equipment; therefore, the commissioner will be required to assess all items as merchant's capital. If the locality does not levy the merchant's capital tax, the items are exempt from property taxation. The 90 day rental period will be difficult to verify unless commissioners audit the specific rental contracts during the course of the year.

An additional administrative burden may be imposed by the renewal limitation which states that the item cannot be re-rented to the same customer within 30 days after the 90 day period. There is no way for the commissioners to examine each contract or to ensure that the specific item of rental equipment was not rented. If the rental period were extended to a period of less than 12 months for daily rental equipment, the administrative burden may be alleviated; however, the effect is that more rental items would qualify as merchant's capital so that a larger revenue loss would probably result in most cities which do not levy the merchant's capital tax.

The situs of the tangible personal property on January 1 may also affect the rental dealer's tax liability, especially if the dealer is located in a city that levies the business license tax but engages in business in a county that levies the merchant's capital tax. If the dealer's business is located in a city that levies the business license tax, the dealer will be liable for the business license tax based upon the gross receipts because (pursuant to § 58.1-3708) the situs for business license taxation is the city in which the person has a definite place of business or maintains his office. If the dealer, however, rents daily rental equipment to a customer on January 1, who transports the daily rental equipment to a county that levies the merchant's capital tax, the property may also be subject to the merchant's capital tax on January 1, based upon the value of the property because the situs for the assessment and taxation of merchant's capital is the county or city in which the property is located on the tax day. Under § 58.1-3511, the commissioner of the county would need to make a factual determination whether property subject to a 90 day rental contract has acquired a sufficient degree of permanency to acquire situs for taxation.

The issue of situs also arises if a county imposes a merchant's capital tax on a rental equipment business with a principal place of business in a town located within the county, and the town imposes a license tax on the same business. According to a 1979 Opinion of the Attorney General (Opinion to Robertine H. Jordan, Commissioner of the Revenue for the County of Montgomery, February 16, 1979), a business is liable for both the merchant's capital tax to the county and the license tax to the town because the merchant's capital tax is a property tax and all property taxes apply within the boundaries of the county, including any towns located within it. [Watkins v. Barrow 121 Va. 236, 92 S.E. 908 (1917)]. The license tax is not a property tax and a town may impose a non-property tax which affects only that town. [Ashland v. Board of Supervisors, 202 Va. 409, 117 S.E. 2nd 679 (1961)]. According to the preceding rationale, therefore, a rental equipment dealer could be liable for both the merchant's capital tax and the business license tax, depending upon where the business is located.

The 1987 statute, therefore, may not eliminate the theoretical possibility that a rental equipment dealer that has businesses in many jurisdictions would be subject to three different types of local taxes on identical items of tangible personal property, thus, making tax compliance a burden for the dealer:

- (1) The business license tax on gross receipts;
- (2) Merchant's capital tax, if the rental equipment is transported on January 1 to a surrounding county that levies the merchant's capital tax; and
- (3) Tangible personal property tax, if the property is rented for a period exceeding ninety days.

In application, this type of situs problem could occur in an area such as Southwest Virginia, where the City of Bristol levies the business license tax, and surrounding counties such as Grayson, Scott, Washington and Lee all levy the merchant's capital tax. In Northern Virginia, Richmond and Tidewater, the situs issue probably would not arise because the large cities and counties uniformly levy the business license tax. In an area such as Richmond, Henrico and Chesterfield, all of these jurisdictions levy the business license tax; therefore, the preceding situs problem also would not apply.

Another effect of § 58.1-3510 may be that rental equipment will be subject to two different methods of assessment depending upon where the property is located, and the length of the rental period. If the rental equipment is daily rental equipment, the property will be assessed upon the basis of a percentage of original cost to arrive at the fair market value of the property. Additionally, if the property is rented pursuant to a contract for a period exceeding ninety days, the property will be assessed upon the basis of a percentage of original cost pursuant to § 58.1-3503(17). However, if the property is daily rental equipment (the rental period is 90 days or less), but the rental dealer is located in a jurisdiction levying the business license tax, the assessment will be based upon the dealer's gross receipts. Since identical items will be taxed according to different methods of assessment, this lack of uniformity may complicate administration for commissioners and compliance for rental dealers who have businesses located in many jurisdictions of the Commonwealth.

III. Revenue Impact

In evaluating the revenue impact of classifying daily rental equipment as merchant's capital, the joint subcommittee sent a survey to every commissioner of the revenue to determine the following information:

- (1) Whether the locality levies the tangible personal property tax pursuant to § 58.1-3500 et seq.?
- (2) Whether the locality levies the business license tax pursuant to § 58.1-3700 et seq.?
- (3) Whether the locality levies the merchant's capital tax pursuant to § 58.1-3509 et seq.?
- (4) Whether rental equipment comprises a substantial portion of the localities' tangible personal property tax base?

- (5) Whether a revenue loss or gain will result if daily rental equipment is taxed as merchant's capital?

To date, precise revenue estimates are unavailable; however, the survey indicated the following:

1. Business License Tax Revenues:

A. Table I illustrates that every city in the Commonwealth levies the business license tax based upon gross receipts and every city also levies the tangible personal property tax based upon the assessed value of the property. Most cities levying the business license tax classify rental equipment dealers under the category of a business service subject to a tax rate limit of 36¢ per \$100 of gross receipts. Under § 58.1-3510, which classifies daily rental equipment as merchant's capital, cities will not experience any revenue loss under the business license tax. These cities will continue to tax gross receipts from daily rental equipment at the current business license tax rate.

2. Tangible Personal Property Tax Revenues:

A. EFFECT IN CITIES AND CERTAIN COUNTIES:

Section 58.1-3510 defines daily rental equipment as merchant's capital; therefore, this property will not be subject to the tangible personal property tax. Since daily rental equipment will be excluded from the tangible personal property tax base, local revenues will be reduced unless the locality levies the merchant's capital tax. Under § 58.1-3704, if any county, city or town imposes a license tax on merchants, the license tax shall be in lieu of the merchant's capital tax. Since most cities in the Commonwealth do not levy the merchant's capital tax, a revenue loss will result primarily in the large cities and a few counties. The largest revenue loss probably will occur in Charlottesville, Hopewell, Norfolk and Virginia Beach, and the counties of Arlington, Fairfax, Gloucester and Henrico. The tax survey indicated that Norfolk will lose over \$1.3 million in tangible personal property tax revenues, since it identified more than ninety rental equipment businesses in the city. Charlottesville estimated a revenue loss of \$355,184.53 if daily rental equipment is excluded from the tangible personal property tax base. Henrico estimated a loss of \$3 million dollars, and Fairfax, a loss of more than \$1 million dollars. (See Table II) The revenue loss resulting from taxing daily rental equipment as merchant's capital will also be affected by the number of rental equipment businesses located in the jurisdiction and whether the business transactions are primarily daily rental or long-term rental contracts. Henrico County identified over 400 rental businesses, which is more than any other jurisdiction in the Commonwealth. Commissioners of the Revenue cannot determine what portion of rental transactions are short-term or long-term contracts because this information currently is not included on the tangible personal property tax returns. Even in cities tangible personal property tax revenues will not be reduced if currently no rental equipment businesses are located in the jurisdiction so that rental equipment does not comprise a portion of the tangible personal property tax base. The cities of Clifton Forge, Norton, Poquoson, Radford, South Boston and Williamsburg estimated that no revenue loss would result because no rental businesses were identified.

Additionally, local tangible personal property tax revenues will not be reduced by classifying daily rental equipment as merchant's capital, if the rental businesses primarily engage in contracts exceeding 90 days. This property will remain subject to the tangible personal property tax in every jurisdiction of the Commonwealth.

B. EFFECT IN COUNTIES:

Fifty-nine counties in the Commonwealth levy the merchant's capital tax, and thirty-two counties levy the business license tax. If daily rental equipment is taxed as merchant's capital instead of tangible personal property, most counties will not lose a substantial amount of revenue. The effect of § 58.1-3510 upon counties is merely that daily rental equipment will be removed from the tangible personal property tax base and included in the merchant's capital tax base. The situs for taxation of merchant's capital is the same as tangible personal property -- the county, city or town where the property is physically located on the tax day, January 1. (§ 58.1-3511) Additionally, daily rental equipment will be valued based upon a percentage of original cost under merchant's capital, just as it is currently valued pursuant to the tangible personal property tax. Since the situs and method of assessment for taxing daily rental equipment will remain the same whether it is classified as merchant's capital or tangible personal property, counties will not be shouldered with an additional administrative burden by classifying daily rental equipment as merchant's capital. The primary difference between the merchant's capital and the tangible personal property taxes are that the merchant's capital tax rate tends to be lower than the personal property tax rate. In counties, therefore, most daily rental equipment will be subject to a lower tax rate. Currently, two counties, Shenandoah and Smyth, tax rental equipment as inventory pursuant to the merchant's capital tax.

In conclusion, the precise revenue impact of taxing daily rental equipment as merchant's capital could not be determined. Since the tangible personal property tax is the second largest source of revenue for local governments, removing daily rental equipment from the tangible personal property tax base may impose additional fiscal stress upon certain localities of the Commonwealth. Although the 1986 joint subcommittee studying the taxation of rental equipment was primarily concerned with reducing the tax burden on rental equipment dealers, the commissioners are concerned that the enacted legislation applies to "all tangible personal property held for rental", so that corporations that lease equipment on a long-term basis for use in the business could qualify the property for taxation as merchant's capital instead of tangible personal property. If businesses that lease equipment form short-term contracts so that the property meets the 90 day rental term to qualify as daily rental equipment, certain localities will experience higher revenue losses than the survey indicated, because the survey was limited exclusively to rental equipment businesses.

TABLE I

ESTIMATED REVENUE IMPACT

TANGIBLE PERSONAL PROPERTY TAXES

<u>Locality</u>	<u>Rental Equipment Businesses</u>	<u>\$ Loss</u>	<u>\$ Gain</u>
<u>CITIES:</u>			
Alexandria		\$	
Bedford	5	6,200.00	
Bristol			
Buena Vista			
Charlottesville	30	\$355,184.53	
Chesapeake			
Clifton Forge	0	0	
Colonial Heights	7	5,483.17	
Covington	2	40,000.00	
Danville			
Emporia	7	\$ 12,000.00	
Fairfax			
Falls Church	4	30,598.00	
Franklin	2	287.00	
Fredericksburg			
Galax	8	\$ 21,614.10	
Hampton			
Harrisonburg	15	15,000.00	
Hopewell	11	\$100,112.00	
Lexington	0	0	
Lynchburg	28	\$ 4,788.36	
Manassas	4	55,000-60,000	
Manassas Park			
Martinsville	8	\$ 2,944.74	
Newport News	100+	750,000.00	
Norfolk	90+	\$1,389,131.00	
Norton	0	0	
Petersburg			
Poquoson	0	0	
Portsmouth			

*Category: Property employed in a business

ESTIMATED REVENUE IMPACT

TANGIBLE PERSONAL PROPERTY TAXES

Rental Equipment

<u>Locality</u>	<u>Businesses</u>	<u>\$ Loss</u>	<u>\$ Gain</u>
Radford	0	0	
Richmond	32	\$ 98,000.00	
Roanoke	15	35,000.00	
Salem	7	38,845.00	
South Boston	0	0	
Staunton	41	\$ 39,453.00	
Suffolk	7	2,100.00	
Virginia Beach	260	3,000,000.00	
Waynesboro			
Williamsburg	0	0	
Winchester			

COUNTIES:

Accomac	23	\$657,685.00	
Albemarle	14	4,490.00	
Alleghany	36	\$ 31,070.00	
Amelia	1	500.00	
Amherst			
Appomattox	0	0	
Arlington		6,500,000.00	
Augusta	13	\$ 5,835.00	
Bath	1	207.00	
Bedford		3,000.00	
Bland	18	\$ 1,600.00	
Botetourt	0	0	
Brunswick	0	0	
Buchanan	1	\$ 115.00	
Buckingham			
Campbell			
Caroline	4	0	
Carroll			
Charles City	0	0	
Charlotte	0	0	

ESTIMATED REVENUE IMPACT

TANGIBLE PERSONAL PROPERTY TAXES

Locality	Rental Equipment		
	Businesses	\$ Loss	\$ Gain
Chesterfield			
Clarke			
Craig	0	0	0
Culpeper	0	0	0
Cumberland	0	0	0
Dickenson	0	0	0
Dinwiddie			
Essex	4	\$ 5,000-10,000.00	
Fairfax	179	\$1,000,000.00	
Fauquier	2	6,606.40	
Floyd	0	0	
Fluvanna			
Franklin	0	0	0
Frederick	3	\$ 6,500.00	
Giles			
Gloucester	6	\$ 2,287.03	0
Goochland	0	0	0
Grayson	0	0	0
Greene			
Greensville			
Halifax	5	\$ 2,362.00	
Hanover	0	0	
Henrico	400+	\$3,000,000.00	
Henry	35	22,340.00	0
Highland	0	0	0
Isle of Wight	0		
James City	7	\$ 4,000.00	
King & Queen			
King George			
King William	0		0
Lancaster	4	\$ 1,558.00	
Lee			
Loudoun	19	\$ 150,000.00	
Louisa	0	0	
Lunenburg			

ESTIMATED REVENUE IMPACT

TANGIBLE PERSONAL PROPERTY TAXES

Locality	Rental Equipment		
	Businesses	\$ Loss	\$ Gain
Madison	0	0	0
Mathews	0	0	0
Mecklenburg			
Middlesex	0	0	0
Montgomery			
Nelson			
New Kent			
Northampton	1	\$ 189.37	
Northumberland			
Nottoway			
Orange			
Page	0	0	
Patrick			
Pittsylvania			
Powhatan			
Prince Edward			
Prince George	4	\$ 1,900.00	
Prince William			
Pulaski	0	0	
Rappahannock	0	0	
Richmond			
Roanoke	16	est. unavailable	
Rockbridge	1	0	
Rockingham			
Russell			
Scott			
Shenandoah	1	rev. neutral; currently taxed as merchant's capital	
Smyth	1	rev. neutral; currently taxed as merchant's capital	
Southampton	0	0	
Spotsylvania			
Stafford	9	\$100,000.00	
Surry			
Sussex			
Tazewell			
Warren			

ESTIMATED REVENUE IMPACT

TANGIBLE PERSONAL PROPERTY TAXES

<u>Locality</u>	<u>Rental Equipment Businesses</u>	<u>\$ Loss</u>	<u>\$ Gain</u>
Washington			
Westmoreland	0	0	
Wise			
Wythe	0	0	
York		\$ 19,200.00	

SOURCE: 1988 Legislative Services Tax Survey to Commissioners of the Revenue

IV. Alternatives Which the Joint Subcommittee Considered

To eliminate the apparent inequities resulting from the current tax scheme applicable to daily rental property, the joint subcommittee appointed a drafting subcommittee charged with the task of submitting alternative proposals as draft legislation for the subcommittee's consideration. The drafting subcommittee consisted of members of the daily rental industry and Commissioners of the Revenue. The joint subcommittee considered six alternative draft proposals which were submitted during the course of the study. The six alternatives contained identical provisions as to the definition of daily rental property and short-term rental businesses; however, the approaches contained a different tax scheme and classification.

The provisions of the six alternatives which the subcommittee considered are listed in the following tables, along with an analysis of the advantages and disadvantages of each approach.

DISADVANTAGES:

1. Approach does not achieve complete uniformity in the taxation of daily rental property because localities retain discretion in determining the percentage of original cost which will be employed in valuing the property.
2. The administrative burdens of valuation and determining situs of the property still exist under this proposal.
3. Requires an additional license tax to compensate for revenue loss resulting if daily rental property is removed from the tangible personal property tax base.

Alternative #2

1. CLASSIFICATION:
 - Property Tax Establishes daily rental property as a separate classification of tangible personal property.
 - License Tax Reclassifies to retail sales category instead of business service.
2. DEFINITION: Same definitions as contained in Recommendation #1.
3. FORM OF RELIEF: The method of determining value of daily rental property is limited to 25% of original cost.
4. SITUS: Location of daily rental property on January 1.
5. REVENUE IMPACT:
 - No additional tax authorized because an insignificant revenue loss results.
 - Reduces license tax revenue because daily rental property is subject to a lower rate

The joint subcommittee determined that Alternative #2 had the following advantages and disadvantages:

ADVANTAGES:

1. Approach provides tax relief without removing the property from the tangible personal property tax base.
2. No additional tax levy required.
3. Achieves uniformity in the taxation of daily rental property.
4. Commissioners can easily determine whether property is daily rental property.

DISADVANTAGES:

1. Provides the least amount of tax relief to the daily rental property dealers.
2. Commissioners retain the administrative burden of valuing the property.
3. The limitation on the method of valuation may conflict with the constitutional requirement that all property must be assessed at fair market value.

Alternative #3

1. CLASSIFICATION: Intangible Personal Property.
2. TYPE OF RELIEF: Direct and total exemption from state and local property taxation [§ 58.1-1101(c)].
3. SITUS: Not Applicable.
4. REVENUE IMPACT: Authorizes an additional local license tax in an amount not exceeding one-half of the license tax imposed on retail sales businesses.

The joint subcommittee determined that Alternative #3 had the following advantages and disadvantages:

ADVANTAGES:

1. Approach is consistent with the theory that daily rental property is the capital or inventory of the dealer; therefore, it is intangible personal property.
2. The complete exemption from state and local taxation eliminates the commissioners' administrative burden of valuing the property and determining situs which exists under the merchants capital approach.
3. Approach subjects daily rental property businesses to uniform treatment in the Commonwealth.
4. Commissioners can easily determine whether property is daily rental property.

DISADVANTAGE:

1. Requires additional license tax to compensate for the revenue loss resulting from an exemption.

Alternative #4
(Delegate John Watkins)

1. CLASSIFICATION:
 - Property Tax: Merchants Capital
 - License Tax: Reclassifies daily rental property to the retail sales category instead of business service.
 - Rental Tax: Authorizes a local daily rental property tax at the time of the rental not to exceed one percent.
2. DEFINITION: Same definitions as Alternatives #1 and #2.
3. FORM OF RELIEF: Partial exemption; exempts daily rental property from property taxation in localities that levy the business license tax in lieu of the merchants capital tax as required by § 58.1-3704.
4. SITUS: Location of daily rental property on January 1 if property is taxed as merchants capital. If subject to BPOL tax, then situs provisions of § 58.1-3708 apply.
5. REVENUE IMPACT:
 - Reduces license tax revenue slightly due to reclassification to a lower rate in the retail sales category
 - Neutralizes the revenue loss resulting from the merchants capital classification by authorizing the additional rental tax.

The joint subcommittee determined that Alternative #4 had the following advantages and disadvantages:

ADVANTAGES:

1. The scheme provides tax equity by classifying daily rental property in the same category as inventory, instead of business tangible personal property so that it reflects the philosophy that rental dealers are similar to retail merchants.
2. It provides an alternative method for offsetting the substantial revenue loss resulting from removing daily rental property from the tangible personal property tax base, and requiring daily rental property to be classified at a lower business license tax rate.
3. It provides consistent tax treatment by reclassifying the daily rental property dealers in the retail sales category for license tax rate purposes.

DISADVANTAGES:

1. The approach requires additional taxing authority for local governments to offset the revenue loss; therefore, it may be undesirable.
2. The additional rental tax may produce a revenue windfall to local governments that exceeds a merely revenue neutral approach.

Alternative #5 (Erols)

1. CLASSIFICATION:
Property Tax: Tangible Personal Property
License Tax: Reclassifies into the retail sales category for license tax instead of the business service category.
2. DEFINITIONS: Same definitions for daily rental property and short-term rental business as in Alternatives #1 and #2.
3. FORM OF RELIEF: Authorizes alternative tangible personal property tax by allowing a business to elect to pay the property tax in an amount equal to 10¢ per \$100 of gross receipts. The alternative method of paying the property tax may be passed on to the consumer.

The joint subcommittee determined that Alternative #4 had the following advantages and disadvantages:

ADVANTAGES:

1. Allows daily rental property to remain under the tangible personal property tax classification.
2. Relieves the daily rental dealer by allowing an alternative method of assessing the tax based on gross receipts, and allows the dealer to pass the cost on to the consumer.

DISADVANTAGE:

1. It results in a revenue loss for localities because the alternative rate may not be high enough to offset the revenue collected from the traditional method of assessing the tangible personal property tax.

Alternative #6 (Arlington County)

Alternative #6 is almost identical to Alternative #2, which classifies daily rental property as tangible personal property. This alternative, however, included technical amendments to the following definitions contained in all of the preceding proposals.

1. Clarifies the rental term by providing that any rental for 92 days in the same tax year would be precluded from qualifying as daily rental property.
2. Changes the definition of "substantially related to the lessor" as proposed in the preceding alternative back to 1987 language of "affiliated person" to preclude related corporations from renting property to each other to qualify it as daily rental property for tax purposes.
3. Prohibits the rental of property that includes personal services as part of the contract from qualifying as daily rental property.
4. Authorizes the Commissioner of the Revenue to apply a different assessment ratio in valuing daily rental property from the assessment ratio applied to other business property.

V. Recommendations

After evaluating the six preceding alternatives submitted by the daily rental industry and commissioners of the revenue, the joint subcommittee adopted the alternative tax scheme submitted by Delegate John Watkins, which reaffirmed that daily rental property should be classified as merchants capital instead of tangible personal property, and adopted the technical amendments suggested by Arlington County. The Watkins draft, as amended, contains the following components, and will become effective July 1, 1989.

1. Changes the term daily rental equipment to daily rental property and classifies daily rental property as merchants capital consistent with the 1987 legislation. Defines short-term rental business on the basis of gross rental receipts derived from transactions for rental periods of ninety-two consecutive days or less instead of 90 days as in the 1987 legislation. The rental term also precludes any rentals for 92 days in the same tax year from qualifying as daily rental property.
2. Authorizes localities to levy a rental tax to be collected by the lessor from the lessee at the time of the rental, in a maximum amount of one percent. This provision is designed to offset the revenue loss resulting from reclassifying daily rental property as merchants capital instead of tangible personal property.
3. Reclassifies daily rental property dealers in the retail sales category for license tax purposes instead of the business service category, thereby reducing the license tax rate applicable to such dealers.
4. Changes the term "affiliated person" as enacted in 1987 to "person affiliated with the lessor" to preclude related companies from engaging in short-term rental contracts merely to qualify property as daily rental property for tax purposes. The term "affiliated" is defined as "any common ownership interest, in excess of 5%, or any officers or partners in common of the lessor and lessee". The term "affiliated" was employed in the 1987 legislation but not defined.
5. Precludes any property rental contracts that include contracts for personal services from qualifying as daily rental property.

Minority Position

Delegate Warren Stambaugh, Chairman, did not support the recommendations of the joint subcommittee because the tax scheme adopted exempts daily rental property from local taxation and requires rental customers to pay an additional rental tax to offset the revenue loss that results from removing daily rental property from the tangible personal property tax base. Delegate Stambaugh appeared to prefer an approach that classified daily rental property as tangible personal property and provided an alternative method for arriving at fair market value, so that the rapid depreciation of daily rental property would be reflected in determining the rental owner's tax liability.

Respectfully submitted,

Delegate Warren G. Stambaugh, Chairman*
(Please see Minority Position, page 25)

Delegate Jay W. DeBoer

Delegate Jean W. Cunningham

Delegate John Watkins

Senator Charles J. Colgan

Senator Richard J. Holland

Senator William A. Truban

APPENDIX

1
2

3 SENATE BILL NO. HOUSE BILL NO.

4 A BILL to amend and reenact §§ 58.1-3510 and 58.1-3706 of the Code of
5 Virginia and to amend the Code of Virginia by adding sections
6 numbered 58.1-3510.1 and 58.1-3510.2, relating to the merchants'
7 capital tax, business license tax and an additional local daily
8 rental property tax.

9

10 Be it enacted by the General Assembly of Virginia:

11 1. That §§ 58.1-3510 and 58.1-3706 are amended and reenacted and that
12 the Code of Virginia is amended by adding sections numbered
13 58.1-3510.1 and 58.1-3510.2 as follows:

14 § 58.1-3510. Definition of merchants' capital.-- A. Merchants'
15 capital is defined as follows: Inventory of stock on hand; daily
16 rental passenger cars as defined in § 58.1-2401; daily rental
17 ~~equipment~~ property as defined below; and all other taxable personal
18 property of any kind whatsoever, except money on hand and on deposit
19 and except tangible personal property not offered for sale as
20 merchandise, which tangible personal property shall be reported and
21 assessed as such.

22 For purposes of this section, a repair and service operation (i)
23 carried on as an integral part of and in conjunction with a business
24 that is primarily mercantile and (ii) the principal sales of such
25 business are subject to the tax imposed by Chapter 24 of this title
26 shall be deemed a mercantile business, and all capital, as defined
27 herein, including all repair parts, materials and supplies associated
28 with such repair and service operation shall be deemed merchants'

1 capital.

2 B. For purposes of this section, "daily rental equipment
3 property " means all tangible personal property held for rental and
4 owned by a person engaged in the short-term rental business, except
5 trailers as defined in § 46.1-1 (33) and other tangible personal
6 property required to be ~~titled~~ and licensed or registered with the
7 Department of Motor Vehicles, Department of Game and Inland Fisheries,
8 or any other state agency , where the possession or use of such
9 tangible personal property is transferred for consideration, without
10 the transfer of ownership, for an hourly, daily, weekly or monthly
11 period the Department of Aviation .

12 All tangible personal property rented to a person (as defined in
13 § 58-1-602 13) or any affiliated person for a period exceeding ninety
14 days, or any tangible personal property which is rerented to the same
15 person or any affiliated person within thirty days after the original
16 ninety-day rental period expires, shall not be daily rental equipment.

17 Rental equipment which does not qualify as daily rental equipment
18 shall be valued pursuant to § 58-1-3503 A 17.

19 C. A person is engaged in the short-term rental business if not
20 less than eighty percent of the gross rental receipts of such business
21 in any year are from transactions involving rental periods of
22 ninety-two consecutive days or less or ninety-two days in the same tax
23 year, including all extensions and renewals to the same person or a
24 person affiliated with the lessor. "Affiliated" for purposes of this
25 subsection shall mean any common ownership interest in excess of five
26 percent of any officers or partners in common with the lessor and
27 lessee. For purposes of this test, (i) any rental to a person
28 affiliated with the lessor shall be treated as rental receipts but

1 shall not qualify for purposes of the eighty percent requirement, and
2 (ii) any rental of personal property which also involves the provision
3 of personal services for the operation of the personal property rented
4 shall not be treated as gross receipts from rental. For purposes of
5 this section, the delivery and installation of tangible personal
6 property shall not mean operation.

7 D. Except for daily rental passenger cars, rental property that
8 is not daily rental property shall be classified pursuant to §
9 58.1-3503.

10 § 58.1-3510.1. Daily rental property tax.--A. The governing
11 body of any county, city or town may levy a tax in an amount not to
12 exceed one percent, in addition to the tax levied pursuant to §
13 58.1-605, on the gross proceeds of any person engaged in the
14 short-term rental business as defined in § 58.1-3510. "Gross
15 proceeds" means the total amount charged to each person for the rental
16 of daily rental property.

17 B. Any person engaged in the short-term rental business as
18 defined in § 58.1-3510 shall collect the rental tax from the lessee of
19 the daily rental property at the time of the rental. The lessor of
20 the daily rental property shall transmit a quarterly return to the
21 commissioner of the revenue of the county, city or town wherein the
22 tax is collected, indicating the gross proceeds derived from the
23 short-term rental business. The commissioner of the revenue shall
24 assess the tax due, and the treasurer or director of finance shall
25 collect the daily rental property tax pursuant to Chapter 9 (§
26 58.1-3900 et seq.) of this title.

27 § 58.1-3510.2. Renter's certificate of registration.--Every
28 person engaging in the business of short-term rental of tangible

1 personal property shall file an application for a certificate of
2 registration with the commissioner of the revenue of the county, city
3 or town wherein the business is conducted. The application shall be
4 on a form prescribed by the commissioner of the revenue and shall set
5 forth the name under which the applicant intends to operate the rental
6 business, the location and such other information as the commissioner
7 may require.

8 Each applicant shall sign the application as owner of the rental
9 business. If the rental business is owned by an association,
10 partnership or corporation, the application shall be signed by a
11 member, partner, executive officer or other person specifically
12 authorized by the association, partnership or corporation to sign.

13 Upon approval of the application by the commissioner, a
14 certificate of registration shall be issued. The certificate shall be
15 conspicuously displayed at all times at the place of business for
16 which it is issued.

17 The certificate is not assignable and shall be valid only for the
18 person in whose name it is issued and the place of business
19 designated.

20 § 58.1-3706. Limitation on rate of license taxes.--A. Except as
21 specifically provided in this section, no local license tax imposed
22 pursuant to the provisions of this chapter, except §§ 58.1-3712,
23 58.1-3712.1 and 58.1-3713, or any other provision of this title or any
24 charter, shall be greater than thirty dollars or the rate set forth
25 below for the class of enterprise listed, whichever is higher:

26 1. For contracting, and persons constructing for their own
27 account for sale, sixteen cents per \$100 of gross receipts;

28 2. For retail sales, twenty cents per \$100 of gross receipts;

1 3. For financial, real estate and professional services,
2 fifty-eight cents per \$100 of gross receipts; and

3 4. For repair, personal and business services, and all other
4 businesses and occupations not specifically listed or excepted in this
5 section, thirty-six cents per \$100 of gross receipts. The rate
6 limitations prescribed in this section shall not be applicable to
7 license taxes on (i) wholesalers, which shall be governed by §
8 58.1-3716; (ii) public service companies, which shall be governed by §
9 58.1-3731; (iii) carnivals, circuses and speedways, which shall be
10 governed by § 58.1-3728; (iv) fortune-tellers, which shall be governed
11 by § 58.1-3726; (v) massage parlors; (vi) itinerant merchants or
12 peddlers, which shall be governed by § 58.1-3717; (vii) permanent
13 coliseums, arenas, or auditoriums having a maximum capacity in excess
14 of 10,000 persons and open to the public, which shall be governed by §
15 58.1-3729; (viii) savings and loan associations, which shall be
16 governed by § 58.1-3730; (ix) photographers, which shall be governed
17 by § 58.1-3727; and (x) direct sellers, which shall be governed by §
18 58.1-3719.1.

19 B. Any county, city or town which had, on January 1, 1978, a
20 license tax rate, for any of the categories listed in subsection A,
21 higher than the maximum prescribed in subsection A may maintain a
22 higher rate in such category, but no higher than the rate applicable
23 on January 1, 1978, subject to the following conditions:

24 1. A locality may not increase a rate on any category which is
25 at or above the maximum prescribed for such category in subsection A.

26 2. If a locality increases the rate on a category which is below
27 the maximum, it shall apply all revenue generated by such increase to
28 reduce the rate on a category or categories which are above such

CHAPTER 729

An Act to amend and reenact the second enactment of Chapter 572 and the second enactment of Chapter 591, both of the Acts of Assembly of 1987.

[H 687]

Approved April 10, 1988

Be it enacted by the General Assembly of Virginia:

1. That the second enactment of Chapter 572 of the Acts of Assembly of 1987 is amended and reenacted as follows:
 2. That this act shall become effective on July 1, ~~1988~~ 1989 .
 2. That the second enactment of Chapter 591 of the Acts of Assembly of 1987 is amended and reenacted as follows:
 2. That this act shall become effective on July 1, ~~1988~~ 1989 .
-

1988 SESSION

LD2019590

HOUSE BILL NO. 687

Offered January 26, 1988

A BILL to amend and reenact § 58.1-3510 of the Code of Virginia, relating to the definition of merchants' capital, to amend the Code of Virginia by adding sections numbered 58.1-3510.1, 58.1-3510.2 and 58.1-3510.3, relating to a daily rental equipment tax, and to amend and reenact the second enactment of Chapter 572 and the second enactment of Chapter 591, both of the Acts of Assembly of 1987.

Patron—Watkins

Referred to the Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That § 58.1-3510 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding sections numbered 58.1-3510.1, 58.1-3510.2 and 58.1-3510.3 as follows:

§ 58.1-3510. Definition of merchants' capital.—Merchants' capital is defined as follows: Inventory of stock on hand; daily rental passenger cars as defined in § 58.1-2401; daily rental equipment as defined below; 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 24 of this title shall be deemed a mercantile business, and all capital, as defined herein, including all repair parts, materials and supplies associated with such repair and service operation shall be deemed merchants' capital.

For purposes of this section, "daily rental equipment" means all tangible personal property held for short-term rental and , owned by a person (as defined in § 58.1-602.13) engaged in the business of short-term rental of tangible personal property, except trailers as defined in § 46.1-1 (33) and other tangible personal property required to be titled and licensed or registered with the Department of Motor Vehicles, Department of Game and Inland Fisheries, or any other state agency Department of Aviation ; where . The "business of short-term rental" means the possession or use of such tangible personal property is transferred to another person on a regular basis for consideration, without the transfer of ownership, for an hourly, daily, weekly or monthly period , provided the rental period of All the tangible personal property rented to a person (as defined in § 58.1-602 13) or any affiliated person for a period exceeding ninety days, or any tangible personal property which is rerented to the same person or any affiliated person within thirty days after the original ninety-day rental period expires, shall not be daily rental equipment equal or exceed twelve months .

Rental equipment which does not qualify as daily rental equipment shall be valued pursuant to § 58.1-3503 A 17.

§ 58.1-3510.1. Daily rental equipment tax.—In addition to the retail sales and use tax levied pursuant to §§ 58.1-603 and 58.1-604 of this title, the governing body of any county, city or town may levy a tax upon any person engaged in the business of short-term rental of tangible personal property, in the amount of one percent of the gross proceeds of the short-term rental of daily rental equipment as defined in § 58.1-3510. "Gross proceeds" means the charges made for leasing tangible personal property for a period of twelve months or less. The daily rental equipment tax shall be paid by the lessee of the tangible personal property, and collected by the person engaged in the business of short-term rental of tangible personal property as defined in § 58.1-3510. The lessor of the daily rental equipment shall transmit a quarterly return to the commissioner of the revenue of the

county, city or town wherein the tax is collected, showing the gross proceeds arising from the short-term rental of daily rental equipment. The commissioner of the revenue shall assess the tax due, and the treasurer or director of finance shall collect the daily rental equipment tax pursuant to Chapter 39 of this title (§ 58.1-3900 et seq.).

§ 58.1-3510.2. *Rentor's certificate of registration.*—Every person engaging in the business of short-term rental of tangible personal property shall file an application for a certificate of registration with the commissioner of the revenue of the county, city or town wherein the business is conducted. The application shall be on a form prescribed by the commissioner of the revenue and shall set forth the name under which the applicant intends to operate the rental business, the location 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.

Upon approval of the application by the commissioner a certificate of registration shall be issued. The certificate shall be conspicuously displayed at all times at the place of business for which it is issued.

The certificate is not assignable and shall be valid only for the person in whose name it is issued, and the place of business designated.

§ 58.1-3510.3. *Exemptions.* The daily rental equipment tax shall not be imposed upon the following:

1. *Tangible personal property rented by the United States government or any governmental agency thereof;*
2. *Tangible personal property rented by the Commonwealth of Virginia or any political subdivision thereof.*
2. That the second enactment of Chapter 572 of the Acts of Assembly of 1987 is amended and reenacted as follows:
 2. That this act shall become effective on ~~July 1, 1988~~ January 1, 1989 .
 3. That the second enactment of Chapter 591 of the Acts of Assembly of 1987 is amended and reenacted as follows:
 2. That this act shall become effective on ~~July 1, 1988~~ January 1, 1989 .
 4. That this act shall become effective on January 1, 1989.

1988 SESSION

LD1240111

SENATE BILL NO. 450

Offered January 26, 1988

A BILL to amend and reenact § 58.1-3510 of the Code of Virginia, relating to the definition of merchants' capital, to amend the Code of Virginia by adding sections numbered 58.1-3510.1, 58.1-3510.2, and 58.1-3510.3, relating to a daily rental equipment tax, and to amend and reenact the second enactment of Chapter 572 and the second enactment of Chapter 591, both of the Acts of Assembly of 1987.

Patrons—Colgan and Walker

Referred to the Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That § 58.1-3510 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding sections numbered 58.1-3510.1, 58.1-3510.2, and 58.1-3510.3, as follows:

§ 58.1-3510. Definition of merchants' capital.—Merchants' capital is defined as follows: Inventory of stock on hand; daily rental passenger cars as defined in § 58.1-2401; daily rental equipment as defined below 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 24 of this title shall be deemed a mercantile business, and all capital, as defined herein, including all repair parts, materials and supplies associated with such repair and service operation shall be deemed merchants' capital.

For purposes of this section, "daily rental equipment" means all tangible personal property held for short-term rental and owned by a person (as defined in § 58.1-602.13) engaged in the business of short-term rental of tangible personal property, except trailers as defined in § 46.1-1 (33) and other tangible personal property required to be titled and licensed or registered with the Department of Motor Vehicles, Department of Game and Inland Fisheries, or any other state agency Department of Aviation ; where . The "business of short-term rental" means the possession or use of such tangible personal property is transferred to another person on a regular basis for consideration, without the transfer of ownership, for an hourly, daily, weekly or monthly period ; , provided the rental period of All the tangible personal property rented to a person (as defined in § 58.1-602 13) or any affiliated person for a period exceeding ninety days, or any tangible personal property which is rerented to the same person or any affiliated person within thirty days after the original ninety-day rental period expires, shall not be daily rental equipment equal or exceed twelve months .

Rental equipment which does not qualify as daily rental equipment shall be valued pursuant to § 58.1-3503 A 17.

§ 58.1-3510.1. Daily rental equipment tax.—In addition to the retail sales and use tax levied pursuant to §§ 58.1-603 and 58.1-604 of this title, the governing body of any county, city or town may levy a tax upon any person engaged in the business of short-term rental of tangible personal property, in the amount of one percent of the gross proceeds of the short-term rental of daily rental equipment as defined in § 58.1-3510. "Gross proceeds" means the charges made for leasing tangible personal property for a period of twelve months or less. The daily rental equipment tax shall be paid by the lessee of the tangible personal property, and collected by the person engaged in the business of short-term rental of tangible personal property as defined in § 58.1-3510. The lessor of the daily rental equipment shall transmit a quarterly return to the commissioner of the revenue of the

county, city or town wherein the tax is collected, showing the gross proceeds arising from the short-term rental of daily rental equipment. The commissioner of the revenue shall assess the tax due, and the treasurer or director of finance shall collect the daily rental equipment tax pursuant to Chapter 39 of this title (§ 58.1-3900 et seq.).

§ 58.1-3510.2. Rentor's certificate of registration.—Every person engaging in the business of short-term rental of tangible personal property shall file an application for a certificate of registration with the commissioner of the revenue of the county, city or town wherein the business is conducted. The application shall be on a form prescribed by the commissioner of the revenue and shall set forth the name under which the applicant intends to operate the rental business, the location 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.

Upon approval of the application by the commissioner a certificate of registration shall be issued. The certificate shall be conspicuously displayed at all times at the place of business for which it is issued.

The certificate is not assignable and shall be valid only for the person in whose name it is issued, and the place of business designated.

§ 58.1-3510.3. Exemptions.—The daily rental equipment tax shall not be imposed upon the following:

- 1. Tangible personal property rented by the United States government or any governmental agency thereof;*
 - 2. Tangible personal property rented by the Commonwealth of Virginia or any political subdivision thereof.*
- 2. That the second enactment of Chapter 572 of the Acts of Assembly of 1987 is amended and reenacted as follows:**
- 2. That this act shall become effective on ~~July 1, 1988~~ January 1, 1989 .**
 - 3. That the second enactment of Chapter 591 of the Acts of Assembly of 1987 is amended and reenacted as follows:**
 - 2. That this act shall become effective on ~~July 1, 1988~~ January 1, 1989 .**
 - 4. That this act shall become effective on January 1, 1989.**

1987 SESSION

LD7443111

SENATE BILL NO. 495

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Adopted by the Joint Conference Committee of the Senate and House of Delegates on
February 28, 1987)

A BILL to amend and reenact § 58.1-3510 of the Code of Virginia, relating to the definition of merchants' capital.

Be it enacted by the General Assembly of Virginia:

1. That § 58.1-3510 of the Code of Virginia is amended and reenacted as follows:

§ 58.1-3510. Definition of merchants' capital.—Merchants' capital is defined as follows: inventory of stock on hand; daily rental passenger cars as defined in § 58.1-2401; *daily rental equipment as defined below*; 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 24 (§ 58.1-2400 et seq.) of this title shall be deemed a mercantile business, and all capital, as defined herein, including all repair parts, materials and supplies associated with such repair and service operation shall be deemed merchants' capital.

For purposes of this section, "daily rental equipment" means all tangible personal property, except trailers as defined in § 46.1-1(33) and other tangible personal property required to be titled and registered with the Department of Motor Vehicles, Commission of Game and Inland Fisheries, or any other state agency, where the possession or use of such tangible personal property is transferred for consideration, without the transfer of ownership, for an hourly, daily, weekly or monthly period.

All tangible personal property rented to a person (as defined in § 58.1-603(13)) or any affiliated person for a period exceeding ninety days, or any tangible personal property which is re-rented to the same person or any affiliated person within thirty days after the original ninety-day rental period expires, shall not be daily rental equipment.

Rental equipment which does not qualify as daily rental equipment shall be valued pursuant to § 58.1-3503(A)(17).

2. That this act shall become effective on July 1, 1988.

1987 SESSION

LD6140111

SENATE BILL NO. 495

Offered January 22, 1987

A BILL to amend and reenact § 58.1-3503 of the Code of Virginia, relating to the tangible personal property tax.

Patrons—Colgan, Walker and Gray; Delegates: Hanger, Brickley, DeBoer and Jones

Referred to the Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That § 58.1-3503 of the Code of Virginia is amended and reenacted as follows:

§ 58.1-3503. General classification of tangible personal property.—A. Tangible personal property is classified for valuation purposes according to the following separate categories which are not to be considered separate classes for rate purposes:

1. Farm animals, except as exempted under § 58.1-3505.
2. Farm machinery, except as exempted under § 58.1-3505.
3. Automobiles, except those described in paragraphs 7, 8 and 9 of this section, which shall be valued by means of a recognized pricing guide or if the model and year of the individual automobile are not listed in the recognized pricing guide on the basis of a percentage or percentages of original cost.
4. Trucks of less than two tons, which may be valued by means of a recognized pricing guide or if the model and year of the individual truck are not listed in the recognized pricing guide on the basis of a percentage or percentages of original cost.
5. Trucks and other vehicles, as defined in § 46.1-1, except those described in paragraphs 4, and 6 through 10 of this section, which shall be valued by means of either a recognized pricing guide using the lowest value specified in such guide or a percentage or percentages of original cost.
6. Mobile homes, as defined in § 36-71 (4), which may be valued on the basis of square footage of living space.
7. Antique motor vehicles, as defined in § 46.1-1.
8. Taxicabs.
9. Motor vehicles with specially designed equipment for use by the handicapped, which shall not be valued in relation to their initial cost, but by determining their actual market value if offered for sale on the open market.
10. Motorcycles, campers and other recreational vehicles, which shall be valued by means of a recognized pricing guide or a percentage or percentages of original cost.
11. Boats weighing under five tons and boat trailers, which shall be valued by means of a recognized pricing guide or a percentage or percentages of original cost.
12. Boats or watercraft weighing five tons or more, which shall be valued by means of a percentage or percentages of original cost.
13. Aircraft, which shall be valued by means of a recognized pricing guide or a percentage or percentages of original cost.
14. Household goods and personal effects, except as exempted under § 58.1-3504.
15. Tangible personal property used in a research and development business, which shall be valued by means of a percentage or percentages of original cost.
16. 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.
17. All tangible personal property employed in a trade or business other than that described in paragraphs 1 through 16 of this section, which shall be valued by means of a percentage or percentages of original cost.
18. *All tangible personal property employed in a short-term rental trade or business shall be valued by means of a percentage or percentages of original cost. "Short-term rental" means the transfer of the possession or use of tangible personal property for*

CHAPTER 591

An Act to amend and reenact § 58.1-3510 of the Code of Virginia, relating to the definition of merchants' capital.

[H 1376]

Approved March 27, 1987

Be it enacted by the General Assembly of Virginia:

1. That § 58.1-3510 of the Code of Virginia is amended and reenacted as follows:

§ 58.1-3510. Definition of merchants' capital.—Merchants' capital is defined as follows: inventory of stock on hand; daily rental passenger cars as defined in § 58.1-2401; *daily rental equipment as defined below*; 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 24 (§ 58.1-2400 et seq.) of this title shall be deemed a mercantile business, and all capital, as defined herein, including all repair parts, materials and supplies associated with such repair and service operation shall be deemed merchants' capital.

For purposes of this section, "daily rental equipment" means all tangible personal property, except trailers as defined in § 46.1-1 (33) and other tangible personal property required to be titled and registered with the Department of Motor Vehicles, Department of Game and Inland Fisheries, or any other state agency, where the possession or use of such tangible personal property is transferred for consideration, without the transfer of ownership, for an hourly, daily, weekly or monthly period.

All tangible personal property rented to a person (as defined in § 58.1-602 (13)) or any affiliated person for a period exceeding ninety days, or any tangible personal property which is re-rented to the same person or any affiliated person within thirty days after the original ninety-day rental period expires, shall not be daily rental equipment.

Rental equipment which does not qualify as daily rental equipment shall be valued pursuant to § 58.1-3503 A 17.

2. That this act shall become effective on July 1, 1988.

1987 SESSION

LD7291101

HOUSE BILL NO. 1376
AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the Senate Committee on Finance on
February 17, 1987)

(Patron Prior to Substitute—Delegate Watkins)

A BILL to amend and reenact § 58.1-3503 of the Code of Virginia, relating to the tangible personal property tax.

Be it enacted by the General Assembly of Virginia:

1. That § 58.1-3503 of the Code of Virginia is amended and reenacted as follows:

§ 58.1-3503. General classification of tangible personal property.—A. Tangible personal property is classified for valuation purposes according to the following separate categories which are not to be considered separate classes for rate purposes:

1. Farm animals, except as exempted under § 58.1-3505.
2. Farm machinery, except as exempted under § 58.1-3505.
3. Automobiles, except those described in paragraphs 7, 8 and 9 of this section, which shall be valued by means of a recognized pricing guide or if the model and year of the individual automobile are not listed in the recognized pricing guide on the basis of a percentage or percentages of original cost.
4. Trucks of less than two tons, which may be valued by means of a recognized pricing guide or if the model and year of the individual truck are not listed in the recognized pricing guide on the basis of a percentage or percentages of original cost.
5. Trucks and other vehicles, as defined in § 46.1-1, except those described in paragraphs 4, and 6 through 10 of this section, which shall be valued by means of either a recognized pricing guide using the lowest value specified in such guide or a percentage or percentages of original cost.
6. Mobile homes, as defined in § 36-71 (4), which may be valued on the basis of square footage of living space.
7. Antique motor vehicles, as defined in § 46.1-1.
8. Taxicabs.
9. Motor vehicles with specially designed equipment for use by the handicapped, which shall not be valued in relation to their initial cost, but by determining their actual market value if offered for sale on the open market.
10. Motorcycles, campers and other recreational vehicles, which shall be valued by means of a recognized pricing guide or a percentage or percentages of original cost.
11. Boats weighing under five tons and boat trailers, which shall be valued by means of a recognized pricing guide or a percentage or percentages of original cost.
12. Boats or watercraft weighing five tons or more, which shall be valued by means of a percentage or percentages of original cost.
13. Aircraft, which shall be valued by means of a recognized pricing guide or a percentage or percentages of original cost.
14. Household goods and personal effects, except as exempted under § 58.1-3504.
15. Tangible personal property used in a research and development business, which shall be valued by means of a percentage or percentages of original cost.
16. 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.
17. All tangible personal property employed in a trade or business other than that described in paragraphs 1 through 16 of this section, which shall be valued by means of a percentage or percentages of original cost.
18. *All tangible personal property employed in a short-term rental trade or business shall be valued by means of a percentage or percentages of original cost. "Short-term rental" means the transfer of the possession or use of tangible personal property for consideration without the transfer of ownership for an hourly, daily, weekly, or monthly period. Short-term rental shall exclude all agreements exceeding thirty-one days, including*

renewal options. Short-term rental shall exclude any transaction which requires the person, firm, or corporation paying for the use of the property to maintain it, or grants that person, firm, or corporation an option to purchase the rental property. Rental property, excluding daily rental passenger cars as defined in § 58.1-2401, which does not qualify as short-term rental property, shall be valued by § 58.1-3503 (A)(17).

19. All other tangible personal property.

B. Methods of valuing property may differ among the separate categories, so long as each method used is uniform within each category, is consistent with requirements of this section and may reasonably be expected to determine actual fair market value. Nothing herein shall be construed to prevent a commissioner of revenue from taking into account the condition *and obsolescence* of the property. The commissioner of revenue shall make available to taxpayers on request a reasonable description of his valuation methods. Such commissioner, or other assessing officer, or his authorized agent, when using a recognized pricing guide as provided for in the following subsections, may automatically extend the assessment if the pricing information is stored in a computer.

1987 SESSION

LD7135590

HOUSE BILL NO. 1376
AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the House Committee on Finance on
February 4, 1987)
(Patron Prior to Substitute—Delegate Watkins)

A BILL to amend and reenact § 58.1-3510 of the Code of Virginia, relating to the definition of merchants' capital.

Be it enacted by the General Assembly of Virginia:

1. That § 58.1-3510 of the Code of Virginia is amended and reenacted as follows:

§ 58.1-3510. Definition of merchants' capital.—Merchants' capital is defined as follows: inventory of stock on hand; daily rental passenger cars as defined in § 58.1-2401; *daily rental equipment as defined below*; 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 24 (§ 58.1-2400 et seq.) of this title shall be deemed a mercantile business, and all capital, as defined herein, including all repair parts, materials and supplies associated with such repair and service operation shall be deemed merchants' capital.

For purposes of this section, "daily rental equipment" means all tangible personal property where the possession or use of such tangible personal property is transferred, for consideration without the transfer of ownership for an hourly, daily, weekly or monthly period. Daily rental shall exclude any rental contract which exceeds ninety days, or any contract which is renewed within thirty days after the ninety-day rental period expires.

1987 SESSION

LD6602590

HOUSE BILL NO. 1376

Offered January 27, 1987

A BILL to amend and reenact § 58.1-3510 of the Code of Virginia, relating to the definition of merchants' capital.

Patrons—Watkins, Saunders, Parker, Parrish, Beard and Brickley; Senator: Colgan

Referred to the Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That § 58.1-3510 of the Code of Virginia is amended and reenacted as follows:

§ 58.1-3510. Definition of merchants' capital.—Merchants' capital is defined as follows: inventory of stock on hand; daily rental passenger cars as defined in § 58.1-2401; *daily rental equipment as defined below*; 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 24 (§ 58.1-2400 et seq.) of this title shall be deemed a mercantile business, and all capital, as defined herein, including all repair parts, materials and supplies associated with such repair and service operation shall be deemed merchants' capital.

For purposes of this section, "daily rental equipment" shall mean all tangible personal property where the possession or use of such tangible personal property is transferred for a period of twelve months or less to another person by a person engaged in the business of renting tangible personal property for consideration in a retail sale subject to the tax imposed by Chapter 6 (§ 58.1-600 et seq.) of this title, without the transfer of the ownership of such tangible personal property.

