COMMONWEALTH of VIRGINIA

Department of Taxation

October 30, 2020

Dear Members of the General Assembly:

Item 3-5.14 B of the 2020 Appropriation Act (House Bill 30, Chapter 1289) requires the Department of Taxation ("the Department") to report to every member of the General Assembly and to the Joint Subcommittee to Evaluate Tax Preferences on the revenue impact of every sales tax exemption and tax credit that is scheduled to expire on or before June 30, 2025. Such report is due by November 1, 2020 and must be updated every five years. The report is required to include the prior fiscal year's state and local sales tax impact of each expiring sales tax exemption, and the prior fiscal year's General Fund revenue impact of each expiring income tax credit.

Enclosed, please find the Fiscal Year 2020 report, which provides data regarding the revenue impact of such provisions expiring on or before June 30, 2025.

Please let me know if you have any questions.

Sincerely,

Craig M. Burns
Tax Commissioner

c: The Honorable Aubrey L. Layne, Jr., Secretary of Finance

Attachment: FY 2020 Tax Preferences Report

FY 2020 Tax Preferences Report
October 30, 2020

Pursuant to Item 3-5.14 B of the 2020 Appropriation Act (House Bill 30, Chapter 1289), this report provides information regarding the FY 2020 estimated state and local sales tax impact of each sales tax exemption currently scheduled to expire on or before June 30, 2025, as well as the FY 2020 General Fund revenue impact of each income tax credit currently scheduled to expire on or before June 30, 2025.

SALES AND USE TAX EXEMPTIONS

Currently, nine sales and use tax exemptions are scheduled to expire on or before June 30, 2025. Because taxpayers are generally not required to report the amount of purchases that they make that qualify for a sales tax exemption, the Department does not have actual data on the amount of exemptions granted. Accordingly, the impact of sales and use tax exemptions must be estimated based on industry data. In some cases, the impact of a particular exemption is unknown due to a lack of available data. The estimated FY 2020 revenue impact of each of the sales and use tax exemptions set to expire on or before June 30, 2025 is shown in Table 1 below.

Table 1: Estimated FY 2020 Revenue Impact of Expiring Sales Tax Exemptions

Exemption	FY 2020 Estimates (in millions)			
	Total	General Fund[1]	Transportation[2]	Local + Regional[3]
Sales Tax Holidays:				
EnergyStar or WaterSense Products § 58.1-609.1(18)	$0.30	$0.18	$0.05	$0.07
School Supplies, Clothing, and Footwear § 58.1-611.2	$2.41	$1.44	$0.38	$0.59
Hurricane Preparedness Equipment § 58.1-611.3	$0.38	$0.22	$0.06	$0.09
Media-Related Exemptions:				
Printed Materials Distributed Outside Virginia § 58.1-609.6(4)	$3.13	$1.87	$0.50	$0.77
Audiovisual Works Production § 58.1-609.6(6)	unknown	unknown	unknown	unknown
Donated Educational Materials § 58.1-609.6(7)	$0.12	$0.07	$0.02	$0.03
Natural Gas and Oil Materials and Equipment § 58.1-609.3(12)	$8.27	$4.93	$1.31	$2.02
Aircraft Repair Parts & Supplies § 58.1-609.10(20)	$0.40	$0.24	$0.06	$0.10
Precious Metal Bullion § 58.1-609.1(19)	unknown	unknown	unknown	unknown

1) General Fund column includes 2.025% General Fund Unrestricted, 0.250% Education-SOQ, 1% Education based on school-age population, 0.125% Education based on school-age population, -0.01% Dealer Discount
2) Transportation column includes 0.5% TTF, 0.175% HMOF, 0.050% IPROCF, 0.075% Mass Transit Fund, and 0.1% HMOF (GF transfer)
3) Local + Regional column includes 1% Local Option and regional taxes for Hampton Roads (0.7%), Northern Virginia (0.7%), Historic Triangle (1%)

Sales Tax Holidays

Effective July 1, 2015, legislation combined each of the existing sales tax holidays into one recurring three-day event, which begins at 12:01 am on the first Friday in August of every year and ends at 11:59 p.m. on the Sunday immediately following. Effective July 1, 2017, the sunset date for the combined sales tax holiday has been extended until July 1, 2022.

The sales tax holiday for school supplies and clothing was originally enacted in 2006. School supply items, including dictionaries, notebooks, pens, pencils, notebook paper, calculators, and similar items, can be purchased exempt of the Retail Sales and Use Tax, provided that the sales price for each item does not exceed $20. Articles of clothing with a sales price of $100 or less per item are also exempt during the holiday period.

The Hurricane Preparedness Sales Tax Holiday was enacted in 2007. Items eligible for the hurricane preparedness exemption during the holiday include portable generators with a selling price of $1,000 or less per item, gas-powered chainsaws with a sales price of $350 or less per item, and additional hurricane preparedness equipment, such as carbon monoxide detectors, batteries, radios, and fuel tanks with a selling price of $60 or less per item.

The Energy Star Sales Tax Holiday was enacted in 2007 and expanded in 2008 to include qualifying WaterSense items. Qualifying items must be purchased for noncommercial, residential use, and the sales price for each qualifying item must not exceed $2,500. Energy Star qualified products include any dishwasher, clothes washer, air conditioner, ceiling fan, compact fluorescent light bulb, dehumidifier, programmable thermostat, or refrigerator, the energy efficiency of which has been designated by the United States Environmental Protection Agency and the United States Department of Energy as meeting or exceeding each such agency's requirements under the Energy Star program. WaterSense qualified products are defined as those products that have been recognized as being water efficient by the WaterSense program, as indicated by a WaterSense label. Qualifying items include bathroom sink faucets, faucet accessories, toilets, showerheads, urinals, and landscape irrigation controllers.

Exemption for Printed Materials Distributed Outside of Virginia

Virginia law provides a sales tax exemption for sales of printing to a Virginia advertising business for distribution out-of-state (Va. Code § 58.1-609.6). This exemption was enacted by the 1995 General Assembly to make Virginia printers more competitive with out-of-state printers. Newspaper supplements, not otherwise exempted, purchased by advertising agencies for placement in in-state or out-of-state publications are also exempt.

In 1985, the General Assembly enacted legislation that exempted advertising businesses from collecting the sales tax on their sales and provided that effective July 1, 1986, advertising businesses would be treated as service providers. As a service provider, an advertising business is deemed to be the user and consumer of all tangible personal property used to provide their exempt service. As a service provider, purchases of printing by advertising businesses did not qualify for the sales tax exemption for printing destined for delivery out-of-state. The 1994 General Assembly enacted legislation which extended the printing exemption to out-of-state advertising business purchases from Virginia printers. This exemption was extended to all advertising businesses by the 1995 General Assembly with a sunset date of June 30, 2002. The sunset date has since been extended multiple times and is currently set to expire July 1, 2022.

Exemption for Audiovisual Works Production

Current law provides a comprehensive exemption for entities engaged in the production, use, purchase, sale or lease of audiovisual tapes for licensure, distribution, broadcast, commercial exhibition, or reproduction or use in producing another exempt audiovisual work (Va. Code § 58.1-609.6). Examples of such entities include, but are not limited to, program producers, (*e.g.*, radio, television and cable television companies), film and audiovisual tape production companies, advertisers, and others. In addition, to the extent their works, services, or products are used in exempt audiovisual works, other entities may qualify for the exemption. These include, but are not limited to, services providers (*e.g.*, script writers), contractors (*i.e.*, those who construct sets used in the production of exempt works); photographers; animal trainers, lighting service companies, etc. The sunset date for this exemption has been extended multiple times, currently the exemption has a sunset date of July 1, 2022.

Exemption for Donated Educational Materials

The exemption for textbooks and other educational materials is an exception to the general requirement that a business pay use tax on inventory withdrawn and donated free of charge. Current law allows book-publishing distribution facilities to withdraw textbooks and other educational materials from inventory for free distribution to professors and other individuals with an educational focus free of the Retail Sales and Use Tax. (*Va. Code* § 58.1-609.6). The exemption was first enacted in 1998, and the sunset date has been extended multiple times. The current exemption is scheduled to expire July, 1, 2022.

Exemption for Metal Bullion

In general, coins and currency are considered tangible personal property and are subject to the tax unless a specific exemption applies. Exchanges of United States currency and foreign currencies, however, are not subject to Virginia sales tax, however, as the exchange of currencies is not a sale of tangible personal property for sales and use tax purposes.

Legislation enacted in the 2015 Session of the General Assembly, House Bill 1648 and Senate Bill 1336 (2015 Acts of Assembly, Chapters 620 and 629) granted a Retail Sales and Use Tax exemption for the sale of gold, silver, and platinum bullion where the sales price for the transaction exceeds $1,000. "Gold, silver, or platinum bullion" means gold, silver, or platinum, and any combination thereof, that has gone through a refining process and is in a state or condition such that its value depends on its mass and purity and not on its form, numismatic value, or other value. Coins not meeting the definition of gold, silver, and platinum bullion, however, continued to be subject to sales and use tax until 2017, when transactions exceeding $1,000 of "coins of any metal content issued by a government as a medium of exchange or payment of debts" received an exemption from sales tax until June 30, 2022.

Exemption for Natural Gas and Oil /Mineral Equipment

Current law provides an exemption from the Retail Sales and Use Tax for raw materials, fuel, power, energy, supplies, machinery or tools or repair parts or replacement parts that are used directly in the drilling, extraction, or processing of natural gas or oil and the reclamation of the well area. The term "natural gas" is defined to mean gas, natural gas, and coalbed methane gas. "Drilling, extraction, and processing" includes production, inspection, testing, dewatering, dehydration, or distillation of raw natural gas into a usable condition, and the gathering and transportation of raw natural gas to a facility where the gas is converted into a usable condition. The exemption for machinery, tools, and equipment, or repair parts and replacement parts is available only if the preponderance of their use is directly in the drilling, extraction, refining, or processing of natural gas or oil for sale or resale, or in well area reclamation activities required by state or federal law.

This exemption was enacted in 1994 with an original expiration date of June 30, 1996. The exemption has been extended five times and is currently set to expire on July 1, 2022.

Exemption for Aircraft Parts

Generally, the Retail Sales and Use Tax applies to purchases of repair and maintenance items of tangible personal property within the Commonwealth. Since 2017, however, unscheduled common carriers and owners of private planes have been able to purchase parts, engines, and supplies used to maintain, repair, and recondition their manned and unmanned aircraft and avionic systems exempt from the Retail Sales and Use Tax. The exemption does not cover tools or equipment not attached to or that do not become part of the aircraft. The exemption is scheduled to expire on July 1, 2022.

Airlines operating in intrastate, interstate or foreign commerce as common carriers providing scheduled air service on a continuing basis to one or more Virginia airports at least one day a week were already able to purchase all tangible personal property used or consumed directly by such airlines in rendition of common carrier service exempt from sales tax when this exemption was enacted in 2017. Common carrier airlines continue to be able to purchase all such tangible personal property exempt from the tax with no scheduled expiration date for their exemption.

INCOME TAX CREDITS

Twelve income tax credits are currently scheduled to expire on or before June 30, 2025. Table 2 below shows the General Fund revenue impact of such credits. This table reflects the amount of credits claimed on income tax returns processed during Fiscal Year 2020, regardless of the taxable year. This includes any credit amounts carried over from prior taxable years. If a return was amended or audited during the fiscal year, only the additional credit amount (or reduction) is included. It does not reflect any tax credit amounts that could not be utilized due to an insufficient tax liability and, therefore, carried over to future taxable years.

Table 2: Income Tax Credits Claimed During FY 2020

Credit	Number of Returns	Amount
Major Business Facility Job Tax Credit § 58.1-439	88	$6,317,552
Coalfield Employment Enhancement Tax Credit (Refundable) § 58.1-439.2	17	$7,886,272
Worker Training Tax Credit § 58.1-439.6:1	N/A**	N/A**
Recyclable Materials Processing Equipment Credit § 58.1-439.7	104	$2,246,911
Tax Credit for Participating Landlords (Community of Opportunity) § 58.1-439.12:04	23	$62,490
Green Job Creation Tax Credit § 58.1-439.12:05	9	$46,591
International Trade Facility Tax Credit § 58.1-439.12:06	6	$83,605
Barge and Rail Usage Tax Credit § 58.1-439.12:09	*	$1,581
Virginia Port Volume Increase Tax Credit § 58.1-439.12:10	32	$1,364,332
Research and Development Expenses Tax Credit (Refundable) § 58.1-439.12:08	653	$5,188,869
Major Research and Development Expenses Tax Credit § 58.1-439.12:11	44	$17,153,766
Food Crop Donation Tax Credit § 58.1-439.12:12	*	$5,000

* Number of returns for this credit is not available for release because fewer than four returns claiming the credit were processed in FY 2020.

**2019 HB 2539 eliminated the Worker Retraining Tax Credit and replaced it with the Worker Training Tax Credit, effective for Taxable Year 2019. Because the Worker Training Tax Credit was recently enacted, the Department does not yet have data available regarding taxpayers claiming this credit.

Major Business Facility Job Tax Credit

A taxpayer may claim the Major Business Facility Job Tax Credit if the taxpayer creates at least 50 new full-time jobs in connection with the establishment or expansion of a major business facility and the company is engaged in a qualifying industry in Virginia. If a taxpayer is located in an enterprise zone or in an economically distressed area, as defined by the Virginia Economic Development Partnership, the threshold is reduced from 50 jobs to 25 jobs. The amount of the credit is equal to $1,000 for each qualifying new job in excess of the applicable job threshold. A "major business facility" is a company that is engaged in any business in the Commonwealth, except a retail trade business, if such trade is the principal activity of an individual facility in the Commonwealth.

The credit may be claimed against the individual income tax, income tax imposed on estates and trusts, corporate income tax, bank franchise tax, insurance premiums license tax, and the tax on public service corporations.

Taxpayers may claim the credit ratably over 2 taxable years, beginning with the taxable year following the year in which the facility is established or expanded, or the new qualifying jobs are added. The amount of credits allowed to be claimed cannot exceed the tax imposed for such taxable year. Any credits not used in the taxable year the credit is first allowed may be carried forward for the next 10 succeeding taxable years.

In cases where the number of qualified full-time employees in any of the 5 years succeeding the credit year decreases below the average number of employees during the credit year, the taxpayer is required to recapture part or all of the credit by increasing the tax in such taxable years. The amount of the tax increase is determined by:

- Recomputing the credit which would have been earned for the original credit year, using the decreased number of qualified full-time employees; and
- Subtracting such recomputed credit from the amount of credit previously earned.

In the event that the average number of qualifying full-time employees employed at a facility falls below the applicable threshold in any of the 5 taxable years succeeding the credit year, all credits earned with respect to such facility must be recaptured. The credit is not subject to an annual credit cap. The credit is currently scheduled to expire for taxable years beginning on or after July 1, 2022.

Coalfield Employment Enhancement Tax Credit

Persons with an economic interest in metallurgical coal mined in Virginia are permitted to claim the Coalfield Employment Enhancement Tax Credit against any tax imposed by Virginia. For metallurgical coal mined underground, the amount of the credit varies according to the seam thickness of the coal being mined. The credit is equal to $2.00 per ton for a seam thickness of 36 inches or less and $1.00 per ton for a seam thickness greater than 36 inches. For metallurgical coal mined by surface mining methods, the credit is equal to $0.40 per ton of coal sold. "Metallurgical coal" is defined as bituminous coal used for the manufacture of iron and steel with calorific value of 14,000 British thermal units or greater on a moisture and ash free basis. In addition to those claiming the credit with respect to metallurgical coal, coalbed methane gas producers may claim a credit equal to $0.01 per million BTUs of gas produced.

For taxable years beginning before January 1, 2017, the credit could be claimed with respect to all types of coal mined in Virginia using underground and surface mining methods. The credit was allowed to sunset for taxable years beginning on or after January 1, 2017. However, during the 2018 Session, the General Assembly enacted legislation restoring the credit for taxable years beginning on or after January 1, 2018 solely for metallurgical coal and coalbed methane gas producers.

The credit may be claimed in the third taxable year following the taxable year in which the credit was earned and allowed. To the extent the credit exceeds a taxpayer's Virginia tax liability, the taxpayer is entitled to redeem the excess credits in an amount equal to 85 percent of the face value of such excess. The remaining 15 percent is required to be deposited in a regional economic development fund administered by the Coalfields Economic Development Authority. The credit is not subject to an annual credit cap. The credit is currently scheduled to expire for taxable years beginning on or after January 1, 2023.

Worker Training Tax Credit

Business taxpayers may claim Worker Training Tax Credits in an amount equal to 35 percent of the expenses incurred for eligible worker training during the taxable year. The amount of the credit is limited to $500 for training related to each qualified employee or $1,000 for training related to each non-highly compensated worker. "Eligible worker training" includes the training of a qualified employee or non-highly compensated worker in the form of:

- Credit or noncredit courses at any institution recognized on the Eligible Training Provider List that results in the qualified employee or non-highly compensated worker receiving a workforce credential; or
- Instruction or training that is part of an apprenticeship agreement approved by the Commissioner of Labor and Industry.

This portion of the credit may be claimed against the individual income tax, income tax imposed on estates and trusts, corporate income tax, bank franchise tax, insurance premiums license tax, and license tax on telegraph, telephone, water, heat, light, power, and pipeline companies.

In addition, a business taxpayer primarily engaged in manufacturing may claim an individual or corporate income tax credit equal to 35 percent of the direct costs it incurs during the taxable year for conducting orientation, instruction, and training in Virginia relating to the manufacturing activities undertaken by such taxpayer. Taxpayers may claim a maximum $2,000 in credits per taxable year for conducting such orientation, instruction, and training. This credit is permitted for programs that:

- Provide orientation, instruction, and training solely to students in grades 6 through 12;
- Are coordinated with the local school division; and
- Are conducted either at a plant or facility owned, leased, rented, or otherwise used by the business or at a public middle or high school in the Commonwealth.

The amount of credits allowed to be claimed cannot exceed the tax imposed for such taxable year. Any credits not used in the taxable year the credit is first allowed may be carried forward for the next 3 succeeding taxable years. The credit is subject to an aggregate annual credit cap of $1 million.

The portion of the credit for eligible worker training is currently scheduled to expire for taxable years beginning on or after July 1, 2022. The portion of the credit for manufacturing businesses is currently scheduled to expire for taxable years beginning on or after January 1, 2022.

The Worker Training Tax Credit first became effective for taxable years beginning on or after January 1, 2019. It replaced the Worker Retraining Tax Credit, which was previously scheduled to expire for taxable years beginning on or after January 1, 2022. Pursuant to 2019 House Bill 2539, the sunset date for the Worker Retraining Tax Credit was advanced to taxable years beginning on or after January 1, 2019, and it was replaced with the Worker Training Tax Credit.

Recyclable Materials Processing Equipment Tax Credit

The Recyclable Materials Processing Equipment Tax Credit is an individual and corporate income tax credit for purchases made during the taxable year of machinery and equipment used predominantly in or on the premises of manufacturing facilities or plant units that manufacture, process, compound or produce items of tangible personal property from recyclable materials within Virginia for sale. The amount of the credit is equal to 20 percent of a taxpayer's qualifying expenditures.

During the 2020 Session, legislation was enacted that also makes the purchase of machinery and equipment used in advanced recycling eligible for the credit. "Advanced recycling" is defined as the operation of a single-stream or multi-stream recycling plants that convert waste materials into new materials for resale by processing them and breaking them down into their raw constituents. This includes the operation of a materials recovery facility or materials reclamation facility that receives, separates, and prepares recyclable materials for sale to end-user manufactures.

The amount of credits allowed to be claimed per taxable year cannot exceed 40 percent of the taxpayer's Virginia income tax liability for such taxable year. Any credits not used in the taxable year the credit is first allowed may be carried forward for the next 3 succeeding taxable years. The credit is subject to an annual credit cap of $2 million. The credit is currently scheduled to expire for taxable years beginning on or after January 1, 2025.

Communities of Opportunity Tax Credit

Certain landlords with qualified housing units located in census tracts with poverty rates of less than 10 percent in the Richmond Metropolitan Statistical Area who participate in a housing choice voucher program may claim the Communities of Opportunity Tax Credit against the individual and corporate income tax. During the 2019 and 2020 Sessions, the General Assembly expanded the credit to also include certain census tracts within the Virginia Beach-Norfolk-Newport News Metropolitan Statistical Area and the Washington-Arlington-Alexandria Metropolitan Statistical Area.

The amount of the credit is equal to 10 percent of the fair market value of the rent for a qualified housing unit, computed for the portion of the taxable year the unit qualifies for purposes of the credit. For purposes of the credit, a "qualified housing unit" includes a dwelling unit that is located in an eligible housing area for which a portion of the rent is paid by a housing authority, and payment is pursuant to a housing choice voucher program.

The amount of credits allowed to be claimed cannot exceed the tax imposed for such taxable year. Any credits not used in the taxable year the credit is first allowed may be carried forward for the next 5 succeeding taxable years. The credit is subject to an annual credit cap of $250,000. The credit is currently scheduled to expire for taxable years beginning on or after January 1, 2025.

Green Job Creation Tax Credit

Virginia permits taxpayers to claim an individual and corporate income tax credit of $500 for each new green job created in Virginia with a salary of $50,000 or more. The credit is allowed for the taxable year in which a qualifying job has been filled for at least 1 year and for each of the 4 succeeding taxable years provided such job is continuously filled during the respective taxable year. Green jobs include employment in industries relating to the field of renewable, alternative energies. Each taxpayer is allowed credits for up to 350 qualifying jobs.

The amount of credits allowed to be claimed cannot exceed the tax imposed for such taxable year. Any credits not used in the taxable year the credit is first allowed may be carried forward for the next 5 succeeding taxable years. The credit is not subject to an annual credit cap. The credit is currently scheduled to expire for taxable years beginning on or after January 1, 2025.

International Trade Facility Tax Credit

The International Trade Facility Tax Credit is an individual and corporate income tax credit for either capital investment in an international trade facility or increasing jobs related to an international trade facility. The amount of the credit is equal to $3,500 per new qualified full-time employee that results from increased qualified trade activities by the taxpayer or two percent of the amount of capital investment made by the taxpayer to facilitate the increased eligible trade activities. Taxpayers may elect either credit, but cannot claim both credits in the same taxable year.

For purposes of the International Trade Facility Tax Credit, an "international trade facility" is defined as a company that:

- Is engaged in port-related activities, including, but not limited to, warehousing, distribution, freight forwarding and handling, and goods processing;
- Uses maritime port facilities located in the Commonwealth; and
- Transports at least 5 percent more cargo through maritime port facilities in the Commonwealth during the taxable year than was transported by the company through such facilities during the preceding taxable year.

"Qualified trade activities" means the completed exportation or importation of at least (i) one International Organization for Standardization ocean container with a minimum 20-foot length, (ii) 16 tons of noncontainerized cargo, or (iii) one unit of roll-on/roll-off cargo through any publicly or privately owned cargo facility located within the Commonwealth through which cargo is transported. Export cargo must be loaded on a barge or ocean-going vessel and import cargo must be discharged from a barge or ocean-going vessel at such facility.

The amount of credits that may be claimed is limited to 50 percent of the taxpayer's tax liability for the taxable year. Any unused credit amount may be carried forward for 10 years. If the number of qualified full-time employees in any of the 5 years succeeding the credit year decreases below the average number of qualified full-time employees employed during the credit year, the credit is subject to recapture. The credit is subject to an annual credit cap of $1.25 million. The credit is currently scheduled to expire for taxable years beginning on or after January 1, 2022.

Barge and Rail Usage Tax Credit

The Barge and Rail Usage Tax Credit is an income tax credit for transporting additional containers on a barge or by rail. The amount of the credit for any international trade facility is equal to $25 per 20-foot equivalent unit, 16 tons of noncontainerized cargo, or 1 unit of roll-on/roll-off cargo moved by barge or rail rather than by trucks or other motor vehicles on Virginia's highways. This credit may be claimed against the individual income tax, income tax imposed on estates and trusts, corporate income tax, bank franchise tax, insurance premiums license tax, and license tax on telegraph, telephone, water, heat, light, power, and pipeline companies.

For purposes of the Barge and Rail Usage Tax Credit, an "international trade facility" is defined as a company that:

- Is doing business in the Commonwealth and engaged in port-related activities, including but not limited to warehousing, distribution, freight forwarding and handling, and goods processing;
- Has the sole discretion and authority to move cargo originating or terminating in the Commonwealth;
- Uses maritime port facilities located in the Commonwealth; and
- Uses barges and rail systems to move cargo through port facilities in the Commonwealth rather than trucks or other motor vehicles on the Commonwealth's highways.

The amount of credit allowed to be claimed cannot exceed the tax imposed for such taxable year. Any credits not used in the taxable year the credit is first allowed may be carried forward for the next 5 succeeding taxable years. The credit is subject to an annual credit cap of $500,000. The credit is currently scheduled to expire for taxable years beginning on or after January 1, 2022.

Virginia Port Volume Increase Tax Credit

The Virginia Port Volume Increase Tax Credit is an individual and corporate income tax credit for a taxpayer that is an agricultural entity, manufacturing-related entity, or mineral and gas entity that uses Virginia port facilities and increases port cargo volume at such facilities by five percent in a single calendar year over base year port cargo volume. The amount of the credit that may be allocated to a taxpayer is generally limited to $250,000 for each calendar year. However, this limit may be increased on a pro rata basis to the extent that the annual credit cap is not fully allocated among qualifying taxpayers.

The amount of credit allowed to be claimed cannot exceed the tax imposed for such taxable year. Any credits not used in the taxable year the credit is first allowed may be carried forward for the next 5 succeeding taxable years.

During the 2019 Session, the General Assembly enacted legislation that allows any taxpayer holding Virginia Port Volume Increase Tax Credits to transfer unused, but otherwise allowable credits, for use by another taxpayer on its Virginia income tax return. Transferred credits may be retroactively applied from the date such credits were originally issued, and the transferee is permitted to file an amended return to claim such transferred credit for a prior taxable year within the three-year statute of limitations. No transfer of tax credits is allowed unless such transfer occurs within one calendar year of the credit holder earning such credit. Only credits issued in taxable years beginning on and after January 1, 2018, but before January 1, 2022, are transferable.

The credit is subject to an annual credit cap of $3.2 million. The credit is currently scheduled to expire for taxable years beginning on or after January 1, 2022.

Research and Development Expenses Tax Credit

The Research and Development Expenses Tax Credit is a refundable individual and corporate income tax credit for conducting qualified research and development in Virginia. The credit is comprised of a base credit and a supplemental credit that is available only to the extent that the total amount of base credits granted for a fiscal year is less than the annual credit cap. A taxpayer may compute the base credit using the primary method for determining the credit or elect to compute the base credit using the alternative simplified method ("simplified method") for determining the credit.

The base credit for a taxpayer using the primary method is equal to: (i) 15 percent of the Virginia qualified research and development expenses paid or incurred by the taxpayer during the credit year (up to a $45,000 credit), or (ii) 20 percent of the Virginia qualified research and development expenses paid or incurred by the taxpayer during the credit year if the Virginia qualified research was conducted in conjunction with a Virginia public or private college or university (up to a $60,000 credit), to the extent such expenses exceed the taxpayer's Virginia base amount.

The base credit for a taxpayer that elects to utilize the simplified method is equal to 10 percent of the difference between:

- The Virginia qualified research and development expenses paid or incurred by the taxpayer during the taxable year; and
- 50 percent of the average Virginia qualified research and development expenses paid or incurred by the taxpayer for the three immediately preceding taxable years

If a taxpayer did not pay or incur Virginia qualified research and development expenses in any one of the three preceding taxable years, the base credit is equal to 5 percent of the Virginia qualified research and development expenses paid or incurred by the taxpayer during the relevant taxable year. The annual base credit amount allowed may not exceed (i) $45,000 or (ii) $60,000 if the Virginia qualified research was conducted in conjunction with a Virginia public or private college or university. No taxpayer may claim both this credit and the Major Research and Development Expenses Tax Credit for the same taxable year.

When the Research and Development Expenses Tax Credit was first enacted, it was subject to a $5 million annual cap. The cap was increased to $6 million for Taxable Years 2014 and 2015, and to $7 million for Taxable Year 2016 through Taxable Year 2020. During the 2020 Session, the General Assembly enacted legislation that increased the annual credit cap to $7.77 million for Taxable Year 2021 and thereafter. The credit is currently scheduled to expire for taxable years beginning on or after January 1, 2025.

Major Research and Development Expenses Tax Credit

Virginia allows a nonrefundable individual and corporate income tax credit for incurring more than $5 million of Virginia qualified research and development expenses during a taxable year. Known as the Major Research and Development Expenses Tax Credit, the amount of such credit is equal to 10 percent of the difference between:

- The Virginia qualified research and development expenses paid or incurred by the taxpayer during the taxable year; and
- 50 percent of the average Virginia qualified research and development expenses paid or incurred by the taxpayer for the three taxable years immediately preceding the taxable years.

If a taxpayer did not pay or incur Virginia qualified research and development expenses in any one of the three taxable years immediately preceding the taxable year for which the credit is being determined, the credit is equal to five percent of the Virginia qualified research and development expenses paid or incurred by the taxpayer during the relevant taxable year.

The amount of the credit claimed for the taxable year may not exceed 75 percent of the total amount of income tax imposed on the taxpayer for the taxable year. Any credits not used in the taxable year the credit is first allowed may be carried forward for the next 10 succeeding taxable years.

When it was first enacted during the 2016 Session, the credit was subject to an annual credit cap of $20 million. During the 2020 Session, the General Assembly enacted legislation that increased the annual credit cap to $24 million for Taxable Year 2021 and thereafter. The credit is currently scheduled to expire for taxable years beginning on or after January 1, 2025.

Food Crop Donation Tax Credit

Taxpayers engaged in the business of farming for growing food crops in the Commonwealth and donating such crops to a nonprofit food bank may claim the Food Crop Donation Tax Credit against the individual income and corporate income tax. The amount of the credit is equal to 30 percent of the fair market value of such crops. No taxpayer is permitted to claim more than $5,000 in credits for a taxable year. Such tax credit is permitted if all of the following requirements are met:

- The use of the donated food crops by the donee nonprofit food bank is related to providing food to the needy;
- The donated food crops are not transferred for use outside the Commonwealth or used by the donee nonprofit food bank as consideration for services performed or personal property purchased; and
- The donated food crops, if sold by the donee nonprofit food bank, are sold to the needy, other nonprofit food banks, or organizations that intend to use the food crops to provide food to the needy.

The amount of credit allowed to be claimed cannot exceed the tax imposed for such taxable year. Any credits not used in the taxable year the credit is first allowed may be carried forward for the next 5 succeeding taxable years. The credit is subject to an annual credit cap of $250,000. The credit is currently scheduled to expire for taxable years beginning on or after January 1, 2022.