



Virginia's General Assembly Enacts New Tax Legislation in 2023 (Chart Included)

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The table below summarizes the tax legislation enacted by the General Assembly during its 2023 Regular Session and approved by Gov. Youngkin that will become law on or before July 1, 2023. Please note that any legislation enacted after March 27, 2023 is not included in this summary.

HIGHLIGHTS

- **Pass-Through Entity Tax:** House Bill 1456 and Senate Bill 1476 provide that a pass-through entity is no longer required to be owned entirely by individuals or S corporation to make the election. The bill, which is effective for tax years beginning on or after 2021, is beneficial to some pass-through entities that were not structured in a way to qualify for the pass-through entity election, as originally enacted in 2022.
- **Filing Method for Affiliated Corporations:** House Bill 1405 and Senate Bill 796 amend the requirements for an affiliated group to elect to change its corporate income tax filing status by removing the condition that its tax liability for the previous tax year not be decreased by such a change in filing status. This bill legislation retains all other current requirements regarding changing an affiliated group's filing status.
- **Installment Agreements:** House Bill 1369 requires the Department of Taxation to offer installment agreements to individual income taxpayers in which the taxpayer may satisfy his or her entire tax liability over a term of up to 5 years. Historically, the Department's policy has been to limit the maximum term of installment agreements to 2 years with some exceptions. The legislation does not affect installment agreements for any other tax.
- **Period of Limitations on Collection.** House Bill 1625 suspends the statute of limitations on state tax collections actions while any administrative or judicial proceedings contesting the assessment are pending. Under current law, collection actions must cease after seven years from the date of assessment. The running of the seven-year statute of limitations is suspended while the taxpayer is in bankruptcy, is located outside of Virginia for more than six months, or has entered into an installment agreement.

The General Assembly is still working through the budget bills (House Bill 1400 and Senate Bill 800), where additional tax changes are typically found. Williams Mullen will continue to track all tax legislation and will update this alert when these and any new tax legislation becomes law in 2023.

CORPORATE INCOME TAXES	
1.	<p>Fixed Date Conformity. House Bill 1595 and Senate Bill 800 amend Va. Code § 58.1-301 by advancing Virginia's date of conformity from December 31, 2021, to December 31, 2022. This legislation is necessary to conform to the Inflation Reduction Act of 2022, as amended, and the provisions contained in the Consolidated Appropriations Act of 2022.</p>
2.	<p>Filing Method for Affiliated Corporations. House Bill 1595 and Senate Bill 800 amend the requirements under Va. Code § 58.1-442 to allow a corporation to change its corporate income tax filing status by re-electing to file as a member of an affiliated group. The tax liability for the previous tax year not be decreased. The legislation retains all other current requirements for an affiliated group's filing status, including the requirement that all members agree to file returns under both the new filing method and the current filing method and pay the greater of the two amounts for the taxable year. This legislation is effective and for the immediately succeeding taxable year. This legislation is effective for all applications filed on or after July 1, 2022.</p>
3.	<p>Apportionment for Internet Root Infrastructure Provider. House Bill 1595 and Senate Bill 800 amend Va. Code § 58.1-416 and adds Va. Code § 58.1-416.1 to allow an internet root infrastructure provider that meets certain requirements to enter into a memorandum of understanding with the Virginia Partnership Authority to use a hybrid sales factor in its apportionment calculations when filing Virginia corporate income tax returns. The hybrid sales factor is based on sales of tangible personal property, the hybrid sales factor based sourcing rule for sales of services and the standard sourcing rule for all other non-service sales. This legislation is effective beginning on and after January 1, 2023, provided that the provider enters into an MOU no later than December 1, 2023.</p>

4.

Apportionment for Retail Companies. House Bill 1456 amends Va. Code § 58.1-422.1 by allowing an affiliated group of companies that are 80% or more of their sales derived from retail companies to elect to apportion their income using the single sales factor on a Virginia basis. Under current law, such affiliated groups must use a combination of single factor apportionment and three factor apportionment to determine their Virginia corporate income tax if they contain at least one retail company. This election is effective in years during which the 80% test is met, and once made, the election cannot be changed. For more information, contact the Department of Taxation. This legislation is effective beginning on and after January 1, 2023.

PASS-THROUGH ENTITY TAXES

5.

Pass-Through Entity Tax Election. House Bill 1456 amends Va. Code §§ 58.1-390.1 and 58.1-390.23 by making several changes to Virginia's pass-through entity tax election. (1) removes the requirement that to qualify for the tax election, the entity must be 100% owned by natural persons or partnerships; (2) defines "eligible owner" as a shareholder in an S corporation; (3) defines "eligible entity" as a pass-through entity that is a natural person, estate, or trust; (4) allows the tax to be imposed only on the share of income, gain, loss, or deduction of the eligible owners as opposed to imposing the tax on the entity. This legislation is effective July 1, 2023 and will apply to tax years beginning on and after January 1, 2021.

INDIVIDUAL INCOME TAXES

6.

Installment Agreements for Payment of Individual

1369 amends Va. Code § 58.1-1817 and requires the Department to offer installment agreements to individual income tax payers who may satisfy his or her entire tax liability over a term of up to two years. This legislation does not affect installment agreements for which the Department has already entered into an agreement. The Department also repeals the Department's authority to modify or terminate an installment agreement if the financial condition of the taxpayer has changed. The Department also repeals the Department's authority to require a taxpayer to provide a financial condition update upon renewal of an installment agreement. The Department currently set forth maximum or minimum terms with respect to installment agreements. Historically, the Department's policy has been to limit the term of installment agreements to two (2) years with respect to individual income tax. This legislation also establishes a working group for the Department to study federal and state policies concerning installment agreements and to make recommendations regarding how the Department should modify its installment agreement policies adopted by the Internal Revenue Service. This legislation is effective July 1, 2023.

RETAIL SALES & USE TAXES

7.

Exemption for Diagnostic Work for Automotive Repairs

1369 amends Va. Code § 58.1-609.5 by providing an exemption from the Retail Sales Tax for amounts separately charged for labor rendered for diagnostic work for automotive repair and emergency roadside assistance, regardless of whether there is a sale of a repair or replacement part or a supply charge. Under current law, amounts charged for diagnostic work are exempt from sales tax when those charges are not for the sale of tangible personal property or the tangible personal property is inconsequential to the transaction. This legislation is effective July 1, 2023.

8.

Agricultural Exemptions. House Bill 1563 and Senate Bill 100 amend Code §§ 58.1-609.2 and 58.1-610 and expand the Retail Sales and Use Tax exemption to include certain property, regardless of whether the property is used directly in producing agricultural products for market, whether in a controlled-environment agricultural facility. All items used to create, support and maintain the necessary growing conditions for the exemption does not apply to property used in producing agricultural products effective July 1, 2023.

9.

Exemption for Oil and Gas Drilling Equipment. House Bill 1563 and Senate Bill 100 amend Code § 58.1-609.3 by extending from July 1, 2022, to July 1, 2023, the term of the sales and use tax exemption for materials and supplies used in the extraction, or processing of natural gas or oil and the related equipment. This legislation is effective July 1, 2023.

TAX CREDITS

10.

Land Preservation Tax Credits. House Bill 1834 amends Code § 58.1-609.3 by extending the deadline for filing a complete application for a credit for conveyances made on or after January 1, 2022, for any number of days exceeding 90 during which the applicant is unable to file for verification of conservation value by the Department of Conservation and Recreation, provided that such application is otherwise timely filed by the original filing deadline. This legislation is effective July 1, 2023.

11.

Livable Home Tax Credit. House Bill 2099 amends Code § 58.1-609.3 by increasing the aggregate cap of the Livable Home Tax Credit from \$5 million per fiscal year, as well as increase the maximum amount of the Livable Home Tax Credits a taxpayer may claim per year from \$5,000 to \$10,000. The changes regarding the changes in the amount of the Livable Home Tax Credit a taxpayer may claim per year apply to taxable years beginning on or after July 1, 2023. This legislation is effective July 1, 2023.

12.

Firearm Safety Device Tax Credit. House Bill 2387 provides an individual income tax credit of up to \$300 for the cost of one or more firearm safety devices in an eligible transaction. The aggregate amount of credits allowable at \$5 million. The legislation is effective for taxable years beginning on or before January 1, 2028.

13.

Virginia Port Authority; Tax Credits and Grants. House Bill 1345 amend Va. Code § 62.1-132.3:2 by converting the Barge and Rail Usage Tax Credit and the International Trade Increase Tax Credit when they expire on January 1, 2025, and converts the Port of Virginia Economic Development Program into two component programs: The Economic and Infrastructure Development Program and the International Trade Facility Grant Program. The bill also converts the International Trade Facility Tax Credit. The bill also extends the existing Port of Virginia Economic and Infrastructure Development Program from June 30, 2025 to December 31, 2024.

14.

Wholesome Food Donation Tax Credit. House Bill 1345 amend Va. Code § 58.1-439.12:12 and renew the Wholesome Food Donation Tax Credit for taxable years beginning on or after January 1, 2028. The legislation allows any person engaged in agriculture who donates food crops or wholesome food, defined in the Code, in the Commonwealth to a nonprofit food bank to claim a credit in the year of the donation in the amount of 50 percent of the fair market value of the donation, not to exceed \$10,000 for all such donations in any such year. This legislation is effective July 1, 2023.

MISCELLANEOUS TAXES

15.

Electronic Filing of Bank Franchise Tax. House Bill 1441 amends Va. Code §§ 58.1-1206, 58.1-1207, and 58.1-1208 to require banks to file their annual bank franchise tax returns electronically through a secure system maintained by the Department of Taxation. Any bank that does not comply with procedures established by the Tax Commission will be subject to an extension for the return and schedules. In addition, the legislation requires localities imposing a local bank franchise tax must provide banks with access to real estate assessment records. This legislation is effective January 1, 2025.

16.

Transient Occupancy Tax. House Bill 1442 adds Va. Code § 58.1-3827 and requires the Department of Taxation to post on its website the current transient occupancy tax rates imposed by localities. The legislation also (i) requires the tax-assessing officer to ensure that localities enforce the assessment and collection of transient occupancy tax on accommodations intermediaries, and (ii) specifies collection procedures for accommodations intermediaries. This legislation is effective January 1, 2025.

PROCEDURAL / COLLECTIONS

17.

Period of Limitations on Collection. House Bill 1600 amends Va. Code § 1802.1 by suspending the statute of limitations on state or federal, any administrative or judicial proceedings contesting the assessment of a tax. The legislation also repeals a provision suspending the statute of limitations if the taxpayer is outside of the Commonwealth. Under the new legislation, the statute must cease after 7 years from the date of assessment. The 7-year statute of limitations is suspended while the taxpayer is located outside of Virginia for more than six months. This legislation is effective January 1, 2025.

18.

Work Group. House Bill 1368 requires the Department of Taxation to establish a work group to study its current policies and procedures regarding the Department's authority for a mechanism for tax practitioners to provide feedback on a regular basis on an ongoing basis. The work group must include members from the Virginia State Bar Association, the Virginia Society of Certified Public Accountants, and the Virginia Society of Enrolled Agents. The work group must hold its meetings by November 1, 2023, and the Department must submit its findings and recommendations to the Chairmen of the Joint Committee on Finance, the House Committee on Appropriations and the Senate Committee on Finance and Appropriations by December 1, 2023.

19.

Filing of Tax Returns or Payment of Taxes by Mail. House Bill 1368 amends Code §§ 58.1-9 and 58.1-3916 by allowing a tax return or payment to be deemed to have been timely received if, through no fault of the taxpayer, a postmark is affixed, or if the postmark affixed by the taxpayer is not legible or bears no date and such tax return or payment is received by the Department on or before the due date. The legislation also provides that no penalty shall be assessed if a taxpayer provides evidence that a return filing or payment was made on time by producing a U.S. Post Service Certificate of Mailing or other evidence showing such return or payment was made on time, or if the taxpayer made a return or make a payment to a locality was the fault of the taxpayer. This legislation is effective July 1, 2023.

20.

Litter Tax. House Bill 1645 and Senate Bill 996 amend the Code by limiting the Department of Taxation's ability to impose penalties for failure to pay the litter tax in full without notifying the taxpayer of the return due date that a return is required. Under current law, penalties are generally applied to delinquent litter taxes, and there is no requirement for the Department to provide notice that a return is required. This legislation is effective July 1, 2023.

REAL PROPERTY TAXES

21.

Notice of Rate and Assessment Changes. House Bill 2109 amends Code of Virginia § 58.1-3330(B) by requiring that, in any county, city, or town in which a local government assessment or biennial reassessment of real estate or in which the assessment is conducted primarily by employees of the locality or by a contractor, the commissioner of the revenue, if the proposed real estate tax rate is a lowered tax rate? under Va. Code § 58.1-3221 that the locality is collecting no greater than 101 percent of the previous year's rate, the notice shall set out the effective tax rate increase or decrease effective July 1, 2023.

22.

Delinquent Tax Lands. House Bill 2110 amends Va. Code § 58.1-3221 by extending to 72 months the time period for which a local government may take action for the sale of tax delinquent property upon expiration of the period the owner of the property for the full payment of the delinquent tax installments within that period. Under current law, local government may take action for the sale of tax delinquent property for up to 60 months if the owner enters into an agreement to pay the delinquent taxes within 60 months. This legislation is effective July 1, 2023.

23.

Exemption for Disabled Veterans. House Bill 2414 amends Code of Virginia § 58.1-3219.6 by providing that, for purposes of the real estate tax exemption for disabled veterans, the veteran or surviving spouse must apply for the exemption by purchasing the qualifying dwelling by filing any required application with valid documentation of the purchase agreement for the dwelling with the commissioner of the revenue of the state, within 20 months of the date of such documentation, process the application and determine whether the application is approved or denied. If the application is approved, the letter must also include the amount of the tax exemption for the dwelling the veteran intends to purchase. However, the exemption will become effective only after the veteran becomes a resident of the dwelling. This legislation is effective July 1, 2023.

24.

Deed Recordation; Address Transfer for Taxation. Code § 58.1-3303 by requiring that the local commission receive a receipt and review of the recordation receipt from the local jurisdiction, ensure that the land book is updated to reflect the property address or any other such address as may be required by the grantee for the delivery of future tax bills.

PERSONAL PROPERTY TAXES

25.

Farm Machinery and Farm Implements. House Bill 3505 by expanding the list of farm machinery and farm implements that may exempt from personal property taxes to include (i) motor vehicles primarily for agricultural purposes, (ii) privately owned motor vehicles used by farmers in their farming operations, and (iii) seasonal storage houses used for in-field production of produce. The bill also amends the law that exempts motor vehicles or privately owned trailers from personal property taxes that shall not collect any unpaid tangible personal property taxes and penalties, that are owed to the locality as of July 1, 2023, shall be stricken from the books of the treasurer. The bill shall take effect on January 1, 2023.

BUSINESS LICENSE TAXES

26.

Penalties. House Bill 1685 amends Va. Code §§ 58 requiring that applications for local business licenses the application and the amount of the penalty charged underpayment of estimated tax, and the late payment requires that any bill and communication separately owed, the amount of any interest assessed, and the Similarly, any bill issued by the treasurer imposing a machinery and tools tax or business tangible personal state the total amount of tax, interest, and penalties effective July 1, 2023.

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