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Annual Survey of Virginia Law: Taxation

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TAXATION

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In its 1988 session, the Virginia General Assembly passed a multitude of bills amending and supplementing title 58.1 of the Code of Virginia (the "Code"). These bills affected a broad range of areas, including the individual and corporate income tax, the sales and use tax, the local business license tax, and the real estate and recordation taxes.

In addition to the General Assembly's activity in the field of taxation, the Virginia Supreme Court and the Fourth Circuit Court of Appeals decided several cases concerning miscellaneous Virginia taxation issues. Further, the Virginia Department of Taxation finalized regulations concerning the retail sales and use tax and promulgated emergency regulations regarding the payment of estimated income taxes by individuals.

This article analyzes legislative and regulatory changes and judicial decisions affecting Virginia taxation from July, 1987 to July, 1988. Its purpose is to alert Virginia's tax practitioners, as well as general practitioners, to these developments.

I. LEGISLATIVE ACTIVITY

A. *Changes Affecting Virginia's Income Tax*

1. Individual Income Tax

Senate Bill 6[1] and House Bill 910[2] amended Code sections 58.1-322 and 58.1-330 to provide an income tax deduction for certain retirement benefits. For taxable years beginning after 1989, a retiree age 62 or older may deduct the first $3,000 of retirement ben-

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1. Act of April 11, 1988, ch. 741, 1988 Va. Acts 984 (codified as amended at VA. CODE ANN. §§ 58.1-322, -330 (Cum. Supp. 1988)).

2. Act of April 11, 1988, ch. 755, 1988 Va. Acts 1003 (codified as amended at VA. CODE ANN. §§ 58.1-322, -330 (Cum. Supp. 1988)).

efits from income.[3] This deduction must be reduced by the amount of any Social Security or other nontaxable retirement benefits received. Use of this deduction, however, eliminates the retiree's ability to use the retirement credit under Code section 58.1-330.[4] In a related amendment to Code section 58.1-322, House Bill 223 eliminated the provision taxing a lump sum distribution from a qualified retirement plan.[5] This amendment conforms with changes made under federal law in 1987. This change applies to taxable years beginning after 1986.[6]

The General Assembly also created a deduction for certain amounts received as a reward under qualifying "crimesolver" programs.[7] For taxable years beginning after 1987, an individual may deduct up to $1,000 in a taxable year for amounts received "as a reward for information provided to a law-enforcement official or agency, or to a nonprofit corporation created exclusively to assist such law-enforcement official or agency, in the apprehension and conviction of perpetrators of crimes."[8] Individuals not entitled to the deduction include: (1) employees or other persons under contract with the law enforcement agency; (2) a victim or perpetrator of the crime for which the reward was paid; and (3) any person who receives compensation for investigating crimes or accidents.[9]

Several bills enacted by the General Assembly allow taxpayers to designate that portions of their tax refunds be contributed to miscellaneous organizations. First, a specified dollar amount may be designated for the Department of Conservation and Historic Resources.[10] These amounts will be used "(1) [t]o acquire land for recreational purposes and preserve natural areas; (2) [t]o develop,

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3. VA. CODE ANN. § 58.1-322(C)(13).

4. *Id.* § 58.1-330 (ii).

5. Act of April 11, 1988, ch. 743, 1988 Va. Acts 987 (codified as amended at VA. CODE ANN. § 58.1-322(B)(4) (Cum. Supp. 1988)). This change was a result of revisions made by the Virginia Tax Reform Act of 1987 which changed the standard deduction from a percentage of federal adjusted gross income to a flat amount. Va. Tax. Bull. 88-9, at 2 (June 1, 1988).

6. 1988 Va. Acts 987.

7. Act of April 11, 1988, ch. 756, 1988 Va. Acts 1005 (codified as amended at VA. CODE ANN. § 58.1-322(C)(12) (Cum. Supp. 1988)).

8. VA. CODE ANN. § 58.1-322(C)(12).

9. *Id.* House Bill 1056 amended Code § 58.1-441 to eliminate the reporting of "crimesolver" rewards to the Department of Taxation by nonprofit organizations created exclusively to assist law-enforcement officials or agencies. Act of March 31, 1988, ch. 444, 1988 Va. Acts 554 (codified as amended at VA. CODE ANN. § 58.1-441 (Cum. Supp. 1988)).

10. VA. CODE ANN. § 58.1-345.1(A). Virginia Code § 58.1-345.1(B) sets forth several procedural matters instructing the Tax Commissioner and the State Treasurer on the manner of handling such funds.

maintain and improve state park sites and facilities; and (3) [t]o provide funds to local public bodies pursuant to the Virginia Outdoor Fund Grants Program."[11] Second, a specified dollar amount may be designated for the United States Olympic Committee.[12] Third, a specified dollar amount may be designated "to be used for assistance to emergency shelters for the homeless, or for housing for the elderly and the physically or mentally disabled."[13] All of these provisions are effective for taxable years beginning after 1987 and expire on December 31, 1993.[14]

House Bill 221 amended Code section 58.1-490, regarding estimated tax payments by individuals, and clarified that the threshold for filing is computed based upon tax liability.[15] The Bill also granted the Tax Commissioner the power to set, by regulation, the amount of tax liability required before declarations of estimated tax are required.[16] Previously, this amount had been set by statute at $400.[17]

2. Income Tax Provisions Affecting Businesses

The General Assembly clarified that corporations with a valid S election in effect under federal law are exempt from the Virginia corporate income tax for taxable years beginning after 1986.[18] Corporate, as well as individual taxpayers, who filed final federal and Virginia income tax returns for a period beginning before 1988 may obtain a refund of any outstanding amounts of excess cost recovery not previously subtracted.[19]

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11. VA. CODE ANN. § 58.1-345.1(A).
12. *Id.* § 58.1-346.1(A).
13. *Id.* § 58.1-346.2(A).
14. *See* Act of April 20, 1988, ch. 817, 1988 Va. Acts 1636 (codified as amended at VA. CODE ANN. § 58.1-345.1 (Cum. Supp. 1988)); Act of April 20, 1988, ch. 819, 1988 Va. Acts 1637 (codified as amended at VA. CODE ANN. § 58.1-346.1 (Cum. Supp. 1988)); Act of April 20, 1988, ch. 861, 1988 Va. Acts 1756 (codified as amended at VA. CODE ANN. § 58.1-346.2 (Cum. Supp. 1988)).
15. Act of March 23, 1988, ch. 248, 1988 Va. Acts 296 (codified as amended at VA. CODE ANN. § 58.1-490 (Cum. Supp. 1988)); *see also* Va. Tax. Bull. 88-9, at 3. Emergency Virginia Regulation 630-2-490.2 set the filing threshold at $150. 4 Va. Regs. Reg. 717-19 (Jan. 18, 1988).
16. VA. CODE ANN. § 58.1-490(A).
17. *Id.*
18. Act of April 5, 1988, ch. 581, 1988 Va. Acts 741 (codified as amended at VA. CODE ANN. § 58.1-401(4) (Cum. Supp. 1988)).
19. VA. CODE ANN. § 58.1-323.1(D). Application for a refund must be filed pursuant to § 58.1-1823. *Id.*

Senate Bill 312 modified Virginia's payroll withholding deposit rules to mirror the federal system.[20] Under these modifications, the filing requirements for quarter-monthly withholding taxes are changed. Employers must now determine the amount of unreported Virginia income tax withheld from employees' pay as of the close of every period used for federal withholding tax purposes.[21] Generally, employees will be required to mail Virginia withholding tax on the same day that they deposit federal F.I.C.A. and withholding taxes.[22]

Partnerships, organized under Virginia law or having income from Virginia sources, are no longer required to file any report with the Virginia Department of Taxation.[23] The Tax Commissioner, however, has the authority to promulgate regulations requiring such partnerships to file copies of federal partnership returns or other information and to impose a penalty of $100 for failure to comply with any such regulation.[24] This provision is an emergency measure and is effective immediately.[25]

Under House Bill 748,[26] qualifying cogenerators and small power producers[27] receive an income tax credit for purchases of coal mined in Virginia if they sell electric power to a Virginia public service corporation.[28] This credit is available for taxable years beginning after 1987 and expires on December 31, 1996.[29]

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20. Act of April 20, 1988, ch. 899E, 1988 Va. Acts 2016 (codified as amended at VA. CODE ANN. § 58.1-472 (Cum. Supp. 1988)).

21. VA. CODE ANN. § 58.1-472(3).

22. Va. Tax Bull. 88-7 (June 1, 1988).

23. VA. CODE ANN. § 58.1-392.

24. *Id.* The Department of Taxation has announced that it will not require partnership filings for taxable years beginning after 1986. Va. Tax Bull. 88-9, at 4 (June 1, 1988).

25. Act of March 23, 1988, ch. 249, 1988 Va. Acts 297 (codified as amended at VA. CODE ANN. § 58.1-392 (Cum. Supp. 1988)).

26. Act of April 10, 1988, ch. 730, 1988 Va. Acts 962 (codified as amended at VA. CODE ANN. § 58.1-433 (Cum. Supp. 1988)).

27. A "cogenerator" is defined as a "qualifying cogenerator or qualifying small power producer within the meaning of regulations adopted by the Federal Energy Regulatory Commission in implementation of the Public Utility Regulatory Policies Act of 1978 (P.L. 95-617)." VA. CODE ANN. § 58.1-2600.

28. VA. CODE ANN. § 58.1-433.

29. Act of April 10, 1988, ch. 730, 1988 Va. Acts 962 (codified as amended at VA. CODE ANN. § 58.1-433 (Cum. Supp. 1988)).

B. *Changes Affecting the Real Estate and Recordation Taxes*

The General Assembly made several changes affecting the real property tax exemption for elderly and handicapped individuals. Previously, in computing the total combined income of the owner and owner's relatives living in the household, the local government could exclude a maximum of $7,500 of compensation received by the owner as compensation for personal disability.[30] House Bill 357 modified this provision to allow an exclusion of up to $7,500 of any income of an owner who is permanently disabled.[31] Additionally, in computing the net combined financial worth of such individuals, the local government may now exclude furnishings.[32] Furnishings include "furniture, household appliances and other items typically used in a home."[33]

House Bill 201 eliminated the requirement that elderly and handicapped owners file an annual affidavit setting forth that their combined income and net worth do not exceed the limitations required for the exception from real estate taxes.[34] The local governing body may adopt its own requirements concerning the content and time for filing such affidavits. This includes setting up a procedure for the late filing of such affidavits.[35]

House Bill 480 amended Code section 58.1-3237 to limit the liability for assessment and payment of roll-back taxes under special land use assessment ordinances to tax bills exceeding $2.00.[36] House Bill 694 clarified that any real estate upon which taxes or special assessments have not been paid for ten years, as certified by the Treasurer, shall be presumed abandoned for purposes of the escheat statutes.[37]

Under Code section 58.1-3226.1, the treasurer, as well as individuals, may now apply to the Commissioner of the Revenue or the

30. VA. CODE ANN. § 58.1-3211(1) (Cum. Supp. 1987).
31. Act of April 2, 1988, ch. 466, 1988 Va. Acts 579 (codified as amended at VA. CODE ANN. § 58.1-3211(1) (Cum. Supp. 1988)).
32. VA. CODE ANN. § 58.1-3211(2).
33. *Id.*
34. Act of March 29, 1988, ch. 334, 1988 Va. Acts 403 (codified as amended at VA. CODE ANN. § 58.1-3213 (Cum. Supp. 1988)).
35. VA. CODE ANN. § 58.1-3213(C).
36. Act of March 31, 1988, ch. 422, 1988 Va. Acts 520 (codified as amended at VA. CODE ANN. § 58.1-3237 (Cum. Supp. 1988)).
37. Act of March 26, 1988, ch. 312, 1988 Va. Acts 380 (codified as amended at VA. CODE ANN. § 55-170.1 (Cum. Supp. 1988)).

real estate assessor to determine the amount of any tax or assessment properly chargeable against a portion of a tract of real estate purchased or acquired by an individual.[38] Before any hearing is held regarding a real property tax exemption, the local governing body must publish notices of the hearing in the local newspaper at least five days before the hearing.[39] The local governing body may charge the cost of such publication to the organization requesting the real property tax exemption.[40]

House Bill 240 added article 4.1, which provides for tax increment financing, to chapter 32 of title 58.1 of the Code.[41] Tax increment financing is designed to generate revenue to finance the costs of redevelopment in blighted areas.[42] This is accomplished by freezing the real estate tax base in a certain year in a designated area.[43] Real estate taxes attributable to the difference between this frozen tax base and the actual current assessed tax base are paid into the "Tax Increment Financing Fund," which is used to pay principal and interest bonds, loans, and other debts incurred to finance redevelopment projects.[44]

The General Assembly enacted several bills relating to the assessment of certain real property. Code section 58.1-3282 was amended to allow separate assessments of land and improvements when a public service corporation or political subdivision does not own both the improvements and the land.[45] Improvements include leasehold improvements owned by the lessee which are to be removed by the lessee at the termination of the lease.[46] These provisions are effective for taxable years beginning after 1987.[47]

Pursuant to House Bill 165, real estate parcels titled in the same ownership but separated by a roadway are considered contiguous for purposes of meeting the minimum acreage requirements for

38. VA. CODE ANN. § 58.1-3226.1.
39. *Id.* § 30-19.04(B).
40. *Id.*
41. Act of April 11, 1988, ch. 776, 1988 Va. Acts 1226 (codified as amended at VA. CODE ANN. §§ 58.1-3245 to -3245.5 (Cum. Supp. 1988)).
42. Va. Tax Bull. 88-6, at 5 (June, 1, 1988).
43. VA. CODE ANN. § 58.1-3245.2.
44. *Id.* § 58.1-3245.2(3).
45. VA. CODE ANN. § 58.1-3282.
46. *Id.*
47. *Id.*

special land use assessment purposes.[48] Recorded subdivision lots are specifically excluded from this provision.[49]

Senate Bill 181 made several changes in the land use tax laws relating to special assessments for land preservation.[50] First, the bill added land used for the public interest and consistent with the local land-use plan to the definition of real estate denoted to open-space use.[51] Use-value assessment is extended to qualifying land "within an agricultural district, a forestal district *or* an agricultural and forestal district."[52] Previously, use-value assessment only applied to qualifying land in an agricultural *and* forestal district.[53] The two-acre minimum for land in the open-space class, formerly applicable only to real estate in cities meeting the requisite population density requirements, now extends to parcels adjacent to a scenic river, scenic highway, Virginia byway, or public property in the Virginia Outdoor Recreation System and to any real estate in any county or town having a population density exceeding 5,000 persons per square mile.[54] Also, land devoted to open-space use may include: (1) land in agricultural or forestal districts; (2) land subject to a recorded perpetual easement held by a public body; and (3) land subject to a recorded commitment for a period of four to ten years made by the owner with the local governing body subject to uniform standards as set forth by the Director of the Department of Conservation and Historic Resources.[55]

Code section 58.1-3234 provides that the locality may not charge an application fee for an application required solely because of a change in acreage which resulted from a conveyance necessitated by governmental action or condemnation of land currently subject to use-value assessment.[56] Also, revalidation fees may not "exceed the application fee currently charged by the locality."[57] If the use of a parcel changes to another qualifying use, use-value taxation may continue without imposition of the roll-back tax.[58]

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48. Act of April 14, 1988, ch. 462, 1988 Va. Acts 575 (codified as amended at VA. CODE ANN. § 58.1-3233(2) (Cum. Supp. 1988)).
49. VA. CODE ANN. § 58.1-3233(2).
50. *See generally* Va. Tax. Bull. 88-6, at 4-5.
51. VA. CODE ANN. § 58.1-3230.
52. *Id.* § 58.1-3231 (emphasis added).
53. Va. Tax. Bull. 88-6, at 4.
54. VA. CODE ANN. § 58.1-3233(2)(iii).
55. *Id.* § 58.1-3233(3).
56. *Id.* § 58.1-3234(3).
57. *Id.*
58. *Id.* § 58.1-3237.

The bill also redefined the roll-back tax as follows:

> The roll-back tax shall be equal to the sum of the deferred tax for each of the five most recent complete tax years including simple interest on such roll-back taxes at a rate set by the governing body, no greater than the rate applicable to delinquent taxes in such locality pursuant to § 58.1-3916 for each of the tax years. The deferred tax for each year shall be equal to the difference between the tax levied and the tax that would have been levied based on the fair market value assessment of the real estate for that year. In addition the taxes for the current year shall be extended on the basis of fair market value which may be accomplished by means of a supplemental assessment based upon the difference between the use value and the fair market value.[59]

If a taxpayer is delinquent in paying a roll-back tax, "the treasurer shall impose a penalty and interest on the amount of the roll-back tax including the interest for prior years."[60] All of these provisions are effective for tax years beginning after 1988.[61]

One additional provision applies to property rezoned to a more intensive use before July 1, 1988.[62] The Code now provides that if real property is rezoned to a more intensive use at the request of the owner, the roll-back tax shall apply from the date of the rezoning rather than the date the use is changed.[63] If the rezoning is required to establish, continue or expand a qualifying use, the roll-back tax does not apply, nor will the property lose its eligibility for use-value assessment.[64]

House Bill 460 and Senate Bill 399 clarified the procedures for collecting recordation taxes when property is located in more than one city or county. Under House Bill 460 the clerk of the court in the jurisdiction where the property is first recorded must collect all state recordation taxes.[65] The clerks of each jurisdiction where the deed is recorded are to collect the local taxes in proportion to the value of the property located within that jurisdiction.[66] Senate Bill

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59. *Id.* § 58.1-3237(B).
60. *Id.* § 58.1-3237(C).
61. *Id.* § 58.1-3237.
62. *Id.* § 58.1-3237(D).
63. *Id.*
64. *Id.*
65. Act of March 31, 1988, ch. 421, 1988 Va. Acts 519 (codified as amended at VA. CODE ANN. § 58.1-812(B) (Cum. Supp. 1988)).
66. *See* VA. CODE ANN. § 58.1-3801.

399 requires the same procedure for collection of local grantor taxes as for local recordation taxes.[67]

House Bill 628 added an additional exemption from recordation taxes for any deed conveying real estate from a church or religious body.[68] Deeds conveying real estate to a corporation in exchange for the corporation's stock in a merger or consolidation exempt from federal income tax as a reorganization under sections 368(a)(1)(C) and 368(a)(1)(F) of the Internal Revenue Code are also exempted from recordation tax.[69] Clerks are granted the authority to require an affidavit or other extrinsic evidence regarding the qualification of a deed for any exemption claimed.[70]

C. *Changes Affecting Tangible Personal Property Taxes*

The General Assembly changed the effective date of two provisions from its 1987 session that reclassify daily rental equipment as merchants' capital, making it exempt from tangible personal property tax.[71] "Daily rental equipment" is defined as all tangible personal property, with certain exemptions,[72] "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."[73] The General Assembly changed the effective date of this provision from July 1, 1988 to July 1, 1989.[74]

Privately owned vans with a seating capacity for 12 or more persons, if used exclusively pursuant to a ridesharing arrangement as defined in Code section 46.1-556, are treated as a separate class of property for tangible personal property tax purposes and may be taxed at a different rate.[75]

Local governments are now authorized to waive a tax of $5.00 or

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67. Act of March 21, 1988, ch. 200, 1988 Va. Acts 233 (codified as amended at VA. CODE ANN. § 58.1-802(B) (Cum. Supp. 1988)).

68. Act of March 31, 1988, ch. 429, 1988 Va. Acts 534 (codified as amended at VA. CODE ANN. § 58.1-811(C)(5) (Cum. Supp. 1988)).

69. VA. CODE ANN. § 58.1-811(A)(8).

70. *Id.* § 58.1-812(B).

71. VA. CODE ANN. § 58.1-3510 (Cum. Supp. 1988).

72. "Daily rental equipment" does not include "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." *Id.*

73. *Id.*

74. *Id.*

75. VA. CODE ANN. § 58.1-3506(A)(11) (Cum. Supp. 1988).

less on tangible personal property.[76] Formerly, the amount was $1.00 or less.[77] Rockingham County and the City of Fairfax are now authorized to prorate the tangible personal property tax on motor vehicles, trailers, and boats.[78]

D. *Changes Affecting Local License Taxes*

Code section 58.1-3703 was amended to prohibit a locality from imposing any license tax on "the privilege or right of printing or publishing any newspaper, magazine, newsletter, or other publication issued daily or regularly at average intervals not exceeding three months, provided the publication's subscription sales are exempt from state sales tax."[79] Also, certain intercompany transactions between "brother-sister" companies are exempt from the license tax.[80] The definition of these affiliated companies is derived from section 1563(a) of the Internal Revenue Code as follows:

> Two or more corporations if five or fewer persons who are individuals, estates or trusts own stock possessing:
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> (i) At least eighty percent of the total combined voting power of all classes of stock entitled to vote or at least eighty percent of the total value of shares of all classes of the stock of each corporation, and
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> (ii) More than fifty percent of the total combined voting power of all classes of stock entitled to vote or more than fifty percent of the total value of shares of all classes of stock of each corporation, taking into account the stock ownership of each such person only to the extent such stock ownership is identical with respect to each such corporation.[81]

House Bill 445 added new Code section 58.1-3730.1 which limits the amount of any license tax on an industrial loan association to $500.[82]

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76. *Id.* §§ 58.1-3001, -3005.
77. *Id.* § 58.1-3001 (Repl. Vol. 1984).
78. *Id.* § 58.1-3516(A) (Cum. Supp. 1988).
79. VA. CODE ANN. § 58.1-3703(B)(3) (Cum. Supp. 1988).
80. *See id.* § 58.1-3703(B)(10).
81. *Id.* § 58.1-3703(B)(10)(b).
82. Act of March 31, 1988, ch. 419, 1988 Va. Acts 517 (codified as amended at VA. CODE ANN. § 58.1-3730.1 (Cum. Supp. 1988)).

E. *Changes Affecting Sales and Use Taxes*

House Bill 555 imposed a use tax ranging between two and three and one-half percent on motor vehicles, machines, machinery, tools, and equipment brought into Virginia for storage or use in the performance of construction and repair contracts.[83] The taxes are prorated based upon the period of use in Virginia relative to the property's total useful life.[84] The tax does not apply to any property brought into Virginia by a resident of a state that does not impose a similar tax on Virginia contractors.[85] Also, the tax does not apply to property actually placed into substantial use in another state before being brought into Virginia.[86] This tax went into effect immediately as an emergency measure.[87]

Vehicles that seat more than seven passengers that are sold to a common carrier are now exempt from the sales and use tax.[88] Water craft purchased by or for the use of a nonprofit volunteer fire department, sea rescue squad or rescue squad are exempt from the sales and use tax.[89] This exemption applies to the sale of any water craft purchased after July 1, 1986.[90]

Local governing bodies are now authorized to require dealers registered for the collection of the retail sales and use tax to provide the town treasurer with information relating to these collections within the town.[91] This data must be transmitted to the Auditor of Public Accounts and will be published in the *Comparative Report of Local Government Revenues and Expenditures*.[92]

F. *Miscellaneous*

1. Motor Fuel Tax

Code section 58.1-2111 now provides a refund of the motor fuel tax paid upon the single purchase of five or more gallons of any

83. Act of March 30, 1988, ch. 379E, 1988 Va. Acts 459 (codified as amended at VA. CODE ANN. § 58.1-604.1 (Cum. Supp. 1988)).
84. VA. CODE ANN. § 58.1-604.1.
85. *Id.* § 58.1-604.3.
86. *Id.*
87. *Id.* § 58.1-604.1, -604.3.
88. *Id.* § 58.1-2403(19).
89. *Id.* § 58.1-1404(F).
90. *Id.*
91. *Id.* § 58.1-3128.1(A).
92. *Id.* § 58.1-3128.1(B).

motor fuel used by a nonprofit organization providing specialized transportation for elderly or handicapped individuals "to secure essential services and to participate in community life according to the individual's respective interests and abilities."[93] The State Corporation Commission may refund up to $100 per quarter to each applicant for a refund of motor fuel tax without an audit.[94] The costs of an audit for determining motor fuel taxes are no longer borne by the taxpayer.[95]

Bulk users who purchase more than 1,000 gallons of motor fuel per quarter must render a quarterly report to the Department of Motor Vehicles.[96] The report must set forth all purchases made during the quarter, ending with the last day of the preceding month, including the "name of the supplier, date of the purchase, invoice number, point of delivery and number of gallons received."[97]

2. Probate Tax

Senate Bill 324 increased the value of an estate subject to the flat $1.00 tax on wills and administration from $1,000 to $5,000.[98] Estates less than $5,000 are not subject to the tax, and estates greater than $5,000 are subject to a tax of $1.00 plus 10 cents for every $100 or fraction thereof over $5,000.[99]

3. Procedural Matters Affecting Local Taxes

Code section 58.1-3013 authorized local governing bodies to allow the payment of local taxes, as well as other fees, by credit card.[100] Although the locality may place a four percent service charge upon the use of credit cards, the service charge may not exceed the amount charged to the locality.[101]

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93. VA. CODE ANN. § 58.1-2111(A)(12) (Cum. Supp. 1988).
94. *Id.* § 58.1-2706(ii).
95. *See id.* (1988 amendment in annotation).
96. *Id.* § 58.1-2120.1.
97. *Id.* Persons failing to file the required reports are "subject to a penalty of not less than $5 nor more than $50 for the first offense and not less than $10 nor more than $100 for any subsequent offense." *Id.* § 58.1-2145.
98. Act of March 26, 1988, ch. 292, 1988 Va. Acts 357 (codified as amended at VA. CODE ANN. § 58.1-1712 (Cum. Supp. 1988)).
99. VA. CODE ANN. § 58.1-1712.
100. VA. CODE ANN. § 58.1-3013 (Cum. Supp. 1988).
101. *Id.*

Code section 58.1-3984 was amended to allow a taxpayer to file suit in circuit court for the correction of erroneous real estate tax assessments within three years from the last day of the year *in* which the assessment is made, rather than three years from the last day of the year *for* which the assessment is made.[102]

Delinquent taxpayers must now pay a portion of the publication and administrative costs incurred by the locality to publish delinquent taxpayer lists.[103] The amount of these costs payable by each taxpayer is computed by dividing the total cost for a 30-day period by the number of delinquent taxpayers listed during that 30-day period.[104] In the event of a sale of real estate due to delinquent taxes, the locality must send a notice of the sale to the last known address of the owner *and* to the property address only "if the property address is different from the owner's address and if the real estate is listed with the post office by a numbered and named street address."[105]

4. Road Tax

The following vehicles are exempt from road tax:

1. A single Virginia-licensed truck operated without compensation;

2. The first two Virginia-licensed trucks, if used exclusively for farm use as defined in § 46.1-154.3 and if not licensed in any other state;

3. Motor vehicles regularly engaged in the transportation of passengers; or

4. Tractors, tractor trucks and trucks with more than two axles of a licensed motor vehicle dealer when operated without compensation for purposes incident to a sale or for demonstration.[106]

5. Setoff Debt Collection Act

New Code section 58.1-535 allows a claimant agency to set off any delinquent debts owed to it by a debtor with any funds the

102. *Id.* § 58.1-3984(A).
103. *Id.* § 58.1-3924.
104. *Id.*
105. *Id.* § 58.1-3965.
106. VA. CODE ANN. § 58.1-2702 (Cum. Supp. 1988).

debtor has on deposit with the claimant agency.[107] The claimant agency must first give written notice of the set off to the debtor.[108] The notice must set forth the basis for the claim, the agency's intention to apply the funds against the debt and inform the debtor of his right to contest the validity of the claim.[109]

If a taxpayer is erroneously denied all or part of his income tax refund under the Setoff Debt Collection Act, the taxpayer is entitled to interest at the same rate charged for the late payments of income taxes.[110] New Code section 58.1-535 contains a similar provision.[111]

6. Uniform Federal Lien Registration Act

Senate Bill 40[112] and House Bill 87[113] made several amendments to the Uniform Federal Lien Registration Act. These Bills increased the scope of current law to require notices of liens, certificates, and other notices affecting federal tax liens *or other federal liens* to be filed in accordance with the Act.[114] The amendment also clarified the proper place for filing such notices. In the case of individuals, the notice must be filed in the circuit court of the city or county where the individual resides.[115] In the case of a trust or estate, the notice must be filed in the circuit court of the city or county having jurisdiction over the qualification of the trustee or probate of the will.[116]

7. Taxation of Cooperative Apartments

Section 55-428 of the Virginia Real Estate Cooperative Act was amended to provide that the fair market value of a parcel is determined by aggregating the fair market value of all taxable real estate that is part of the parcel, including each cooperative unit and

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107. VA. CODE ANN. § 58.1-535(A) (Cum. Supp. 1988).
108. *Id.*
109. *Id.* § 58.1-535(B).
110. *Id.* § 58.1-531.1.
111. *Id.* § 58.1-535(C).
112. Act of March 31, 1988, ch. 388, 1988 Va. Acts 465 (codified as amended at VA. CODE ANN. § 55-142.1-.4,-.7 (Cum. Supp. 1988)).
113. Act of March 9, 1988, ch. 113, 1988 Va. Acts 123 (codified as amended at VA. CODE ANN. § 55-142.1-.4, -.7 (Cum. Supp. 1988)).
114. VA. CODE ANN. §§ 55-142.1(A), -142.2.
115. *Id.* § 55-142.1(C)(1)(i).
116. *Id.* § 55-142.1(C)(1)(ii).

common elements, if the highest and best use of the parcel improved by a cooperative apartment complex is sale of the apartments as individual units.[117] This provision excludes multi-unit cooperative apartment complexes which have been used as such continuously since December 31, 1967.[118]

II. JUDICIAL DECISIONS

A. *Notice of Assessment and Statute of Limitations*

In *Knopp Brothers, Inc. v. Department of Taxation*,[119] the Virginia Supreme Court examined the issue of whether a taxpayer's application for tax relief was filed within the three-year statute of limitations under Code section 58.1-1825.[120] Under the facts of the case, the Department of Taxation (the "Department") and the taxpayer, Knopp Brothers, Inc., entered into a dispute regarding the taxpayer's liability for sales and use taxes for the period from 1973 to 1978. The Department sent a letter and copies of assessments to the taxpayer on July 18, 1978. After several revisions of this assessment and audits, the Department mailed the taxpayer a printed form labelled "Notice of Assessment," on October 27, 1981. The "Date of Assessment" was given as April 1, 1981. After another objection and audit, the taxpayer received a form labelled "Notice of Corrected Assessment," dated April 12, 1983. The taxpayer paid the amount and filed suit on January 31, 1984.[121]

The trial court ruled that the three-year statute of limitations began to run on July 18, 1978, and thus the taxpayer's suit was barred by the statute of limitations.[122] The Virginia Supreme Court examined the meaning of the word "assessment" and found it to mean "the amount of money in taxes the particular taxpayer is supposed to pay."[123] The court found that the document dated April 1, 1981 and mailed October 27, 1981 was an "assessment"

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117. VA. CODE ANN. § 55-428(C) (Cum. Supp. 1988).

118. *Id.* § 55-428(E).

119. 234 Va. 383, 362 S.E.2d 897 (1987).

120. Virginia Code § 58.1-1825, (formerly § 58-1130), provides, "Any person assessed with any tax administered by the Department of Taxation and aggrieved by any such assessment may . . . within three years from the date such assessment is made, apply to a circuit court for relief." VA. CODE ANN. § 58.1-1825 (Cum. Supp. 1988). Virginia Code § 58.1-1820(2), (formerly § 58-1117.20(3)), defines an assessment to "include a written assessment made pursuant to notice by the Department of Taxation." *Id.* § 58.1-1820(2).

121. *Knopp Brothers, Inc.*, 234 Va. at 385, 362 S.E.2d at 899.

122. *Id.* at 386, 362 S.E.2d at 899.

123. *Id.*

within the meaning of Code section 58.1-1825 and held that the statute of limitations did not expire before the taxpayer filed suit in January 1984.[124] The court stated:

> The department's present contention that the document is not an assessment at all, but merely an adjustment of some original assessment made earlier, is in direct conflict with the department's description of the document made at the time it was issued. Thus, we conclude that the 1981 document qualifies as a written statement issued pursuant to notice of the amount of money in taxes the taxpayer was supposed to pay and was an original assessment.[125]

B. *Jurisdiction to Review State Corporation Commission Assessment and Statute of Limitations*

In *Forest Grove Service Corporation v. Prince William County*,[126] the Virginia Supreme Court was faced with the issue of whether a circuit court has jurisdiction to review the State Corporation Commission's assessment of property owned by a public service corporation. From 1974 to 1980 the Commissioner assessed certain property used for providing water and sewer services by the taxpayer, Forest Grove Service Corporation, and billed the taxpayer for the taxes due. The taxpayer never challenged nor paid the bills. In 1980, Prince William County filed suit in circuit court for collection of the delinquent taxes.[127] The taxpayer defended the suit on the grounds that the taxes were void and unconstitutional. The circuit court concluded that it lacked jurisdiction to review an assessment made by the State Corporation Commission and that the three-year statute of limitations contained in former Code section 58-1017 did not apply.[128]

The Virginia Supreme Court upheld the circuit court's determination that it lacked jurisdiction to review an assessment made by the State Corporation Commission.[129] The court stated that "the remedy for a property owner aggrieved by an assessment made by the Commission was to apply to the Commission, within three

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124. *Id.*
125. *Id.* at 387, 362 S.E.2d at 899.
126. 234 Va. 109, 359 S.E.2d 821 (1987).
127. *Id.* at 111, 359 S.E.2d at 821.
128. *Id.* at 113, 359 S.E.2d at 822.
129. *Id.* at 111, 359 S.E.2d at 822.

months after receiving notice of the assessment, for correction of an erroneous assessment pursuant to former Code §§ 58-673 through 58-675. That remedy was exclusive."[130] The court held that because it lacked jurisdiction to review the correctness of the assessment, it also lacked jurisdiction to rule that Prince William County lacked authority to impose the taxes.[131]

The taxpayer also asserted that the three-year statute of limitations under former Code section 58-1017 barred the county's suit.[132] The Virginia Supreme Court upheld the circuit court's determination that the statute of limitations did not apply to an action "to recover taxes properly assessed."[133]

C. *Real Estate Assessments*

In *Smith v. Board of Supervisors of Fairfax County*,[134] the Virginia Supreme Court continued its recent review of the method Fairfax County uses to appraise income-producing property.[135] *Smith* involved the assessment of two high-rise office buildings. In assessing the buildings, Fairfax County looked at the "typical" rents and expenses of similar buildings and used these figures to determine "economic income." This figure was then applied to a capitalization rate developed by Fairfax County to determine an assessed valuation. Fairfax County did not look at the actual contract rents and expenses incurred by the taxpayers.[136]

The court, following its previous decisions, held that "[w]here an assessment is based on the capitalization of income, contract rent and actual expenses must be considered in arriving at economic income."[137] The court further held that it would reverse the trial court's order, but that it had no statutory authority to remand the

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130. *Id.*

131. *Id.* at 112, 359 S.E.2d at 822.

132. *Id.* Former Virginia Code § 58-1017 provided:

> [T]he court may enter an order in such proceeding requiring the taxpayer to pay all taxes with which he has been properly assessed for any year or years or to pay all taxes with which upon a correct assessment he is chargeable for any year or years of the three years next proceeding the year in which the proceedings are instituted.

VA. CODE ANN. § 58-1017 (Repl. Vol. 1974).

133. *Forest Grove Serv. Corp.*, 234 Va. at 112, 359 S.E.2d at 822.

134. 234 Va. 250, 361 S.E.2d 351 (1987).

135. *See* Nassif v. Board of Supervisors, 231 Va. 472, 345 S.E.2d 520 (1986); Board of Supervisors v. Donatelli & Klein, 228 Va. 620, 325 S.E.2d 342 (1985); Fairfax County v. Nassif, 223 Va. 400, 290 S.E.2d 822 (1982).

136. *Smith*, 234 Va. at 253, 361 S.E.2d at 352.

137. *Id.* at 257, 361 S.E.2d at 355.

case to the Supervisor of Assessments.[138] The court also held that it had the authority to correct the assessment without remanding the case to the trial court based on the evidence before it, stating:

> Because the taxpayers carried their burden of rebutting the presumption of correctness of the assessments, and because the taxpayer's evidence of value was uncontradicted and unrefuted by any competent evidence, we will reverse the order appealed from. Because the facts before us are sufficient to enable us to attain the ends of justice, we will adopt the taxpayer's evidence, as set forth above, as the fair market values of the properties for the years in question, correct the assessments accordingly, order the taxpayers exonerated from any taxes erroneously charged pursuant to the former assessments, and enter final judgment here.[139]

D. *The "Throwback" Rule*

In *Department of Taxation v. Westmoreland Coal Company*,[140] the Virginia Supreme Court examined "whether a multistate corporation's sales of tangible personal property shipped from Virginia destinations in other jurisdictions are included as Virginia sales for state income tax purposes under the Commonwealth's 'throwback' rule, former Code section 58-151.048(b)."[141] Westmoreland Coal Company is a Delaware corporation, authorized to do business in Virginia, and engaged primarily in the business of selling coal and manufacturing and selling mining equipment.[142] The Department "threw back" sales of tangible personal property made to several other states and foreign counties, to which Westmoreland Coal Company paid no income taxes, and shipped from Virginia for purposes of computing Westmoreland Coal Company's

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138. *Id.* at 255, 361 S.E.2d at 353.

139. *Id.* at 258, 361 S.E.2d at 356.

140. 235 Va. 94, 366 S.E.2d 78 (1988).

141. *Id.* at 95-96, 366 S.E.2d at 79. Former Virginia Code § 58-151.048(b), repealed for taxable years beginning after 1980, provided:

> Sales of tangible personal property are in this State if . . . the property is shipped from an office, store, warehouse, factory, or other place in this State and the corporation is not taxable with respect thereto in the state of the purchase by reason of the fact that such sale is not attributable or assignable to the state of the purchaser under the apportionment formula of such state, or would not be so attributable or assignable if such state had adopted the income tax law of this State.

VA. CODE ANN. § 58-151.048(b) (Repl. Vol. 1984).

142. *Westmoreland Coal Co.*, 235 Va. at 96, 366 S.E.2d at 79.

Virginia corporate income tax.[143] The Virginia Supreme Court held that Westmoreland Coal Company was required to include these sales in its Virginia sales factor numerator for purposes of apportioning sales under the "throwback" rule.[144]

E. *Local Property Tax on Federal Contractors*

In *United States v. City of Manassas*,[145] the Fourth Circuit Court of Appeals held unconstitutional Virginia's local property tax on federal contractors' use of federal property.[146] The City of Manassas imposed a personal property tax on tangible personal property leased or loaned to a private party from a federal, state, or local governmental agency, but exempted property owned by the Virginia Port Authority leased in certain specific operations.[147] The court found that the tax unjustifiably discriminated against the United States and contractors with whom it deals.[148]

III. REGULATIONS

A. *Sales and Use Tax*

The Virginia Department of Taxation issued four final regulations concerning the retail sales and use tax. Regulation 630-10-17 delineated the parameters for collection of this tax and incorporated the 0.5 percent increase in the state sales and use tax rate enacted by the 1986 Special Session of the General Assembly which took effect on January 1, 1987.[149] Regulation 630-10-31 sets forth the changes in the formula for computation of a dealer's discount in conjunction with the 0.5 percent rate increase.[150] Regulation 630-10-106 sets forth several transitional provisions regarding: (1) purchases or leases of tangible personal property pursuant to bona fide real estate construction contracts; (2) contracts for the sale of tangible personal property; and (3) leases entered into

143. *Id.* at 98, 366 S.E.2d at 80.
144. *Id.* at 102, 366 S.E.2d at 81.
145. 830 F.2d 530 (4th Cir. 1987).
146. *Id.* at 533-35.
147. *Id.* at 531.
148. *Id.* at 534-35.
149. 4 Va. Regs. Reg. 1521-22 (April 11, 1988).
150. *Id.* at 1522-23.

before the enactment of the rate increase.[151] Regulation 630-10-110 also applies the rate increase to vending machine operators.[152]

B. *Individual Income Tax*

Three emergency regulations issued by the Department of Taxation clarify certain provisions of the estimated income tax by individuals. Regulation 630-2-490.1 sets forth several definitions, including the definition of "estimated tax," "taxable year," and "Virginia adjusted gross income."[153] Regulation 630-2-490.2 sets forth the filing threshold for filing a declaration of estimated income tax.[154] Regulation 630-2-492 outlines the penalties for an individual's failure to pay the estimated tax.[155] These emergency regulations were necessitated by 1987 changes to the estimated tax and withholding requirements.[156]

151. *Id.* at 1523-26. In certain cases the lessee or purchaser will be able to receive a refund of the rate increase paid after 1986. *Id.* at 1523.

152. *Id.* at 1526-28.

153. 4 Va. Regs. Reg. 716-17 (Jan. 18, 1988).

154. *Id.* at 717-19.

155. *Id.* at 720-24.

156. *See* VA. CODE ANN. §§ 58.1-490, -492 (Cum. Supp. 1988).