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SENATE BILL NO. 417

Offered January 11, 2006

Prefiled January 11, 2006

A BILL to amend and reenact §§ 2.2-2238, 15.2-3207, 15.2-3525, 15.2-3806, 15.2-3906, 15.2-4105, 22.1-114, 58.1-1101, 58.1-3008, 58.1-3010, 58.1-3011, 58.1-3012, 58.1-3112, 58.1-3245.6, 58.1-3245.8, 58.1-3245.9, 58.1-3245.11, 58.1-3506, 58.1-3507, 58.1-3511, 58.1-3515, 58.1-3518, 58.1-3660, 58.1-3661, 58.1-3900, 58.1-3916, 58.1-3921, 58.1-3980, and 58.1-3983.1 of the Code of Virginia and to repeal §§ 58.1-3508, 58.1-3508.1, and 58.1-3508.2, relating to the classification of machinery and tools as intangible personal property and exemption of certified pollution control equipment and facilities from taxation; offsetting economic development assistance.

Patrons—Hanger, Wagner and Williams; Delegate: Purkey

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-2238, 15.2-3207, 15.2-3525, 15.2-3806, 15.2-3906, 15.2-4105, 22.1-114, 58.1-1101, 58.1-3008, 58.1-3010, 58.1-3011, 58.1-3012, 58.1-3112, 58.1-3245.6, 58.1-3245.8, 58.1-3245.9, 58.1-3245.11, 58.1-3506, 58.1-3507, 58.1-3511, 58.1-3515, 58.1-3518, 58.1-3660, 58.1-3661, 58.1-3900, 58.1-3916, 58.1-3921, 58.1-3980, and 58.1-3983.1 of the Code of Virginia are amended and reenacted as follows:

§ 2.2-2238. Economic development services.

A. It shall be the duty of the Authority to encourage, stimulate, and support the development and expansion of the economy of the Commonwealth. The Authority is charged with the following duties and responsibilities to:

1. See that there are prepared and carried out effective economic development marketing and promotional programs;

2. Make available, in conjunction and cooperation with localities, chambers of commerce, industrial authorities, and other public and private groups, to prospective new businesses basic information and pertinent factors of interest and concern to such businesses;

3. Formulate, promulgate, and advance programs throughout the Commonwealth for encouraging the location of new businesses in the Commonwealth and the retention and growth of existing businesses;

4. Encourage and solicit private sector involvement, support, and funding for economic development in the Commonwealth;

5. Encourage the coordination of the economic development efforts of public institutions, regions, communities, and private industry and collect and maintain data on the development and utilization of economic development capabilities;

6. Establish such offices within and without the Commonwealth that are necessary to the expansion and development of industries and trade;

7. Encourage the export of products and services from the Commonwealth to international markets; *and*

8. Advise, upon request, the State Board for Community Colleges in designating technical training programs in Virginia's comprehensive community colleges for the Community College Incentive Scholarship Program pursuant to § 23-220.4~~; and~~.

9. [Repealed.]

B. The Authority shall prepare a specific plan annually that shall serve as the basis for marketing high unemployment areas of Virginia. This plan shall be submitted to the Governor and General Assembly annually on or before November 1 of each year. The report shall contain the plan and activities conducted by the Authority to market these high unemployment areas. The annual report shall be part of the report required by § 2.2-2242.

C. The Authority, in cooperation with the Secretary of Commerce and Trade, Department of Business Assistance, Department of Agriculture and Consumer Services, and Virginia Tobacco Indemnification and Community Revitalization Commission, shall prepare and execute a specific five-year plan to serve the local governments most affected by the loss of revenue resulting from the reclassification of machinery and tools as intangible personal property and the exemption from local taxation of certified pollution control equipment and facilities used for manufacturing, mining, processing or reprocessing, or dairy purposes. The plan shall address targeted economic development assistance that will aid the affected localities in replacing the revenue with tax base diversification and other revenue sources.

§ 15.2-3207. Pretrial conference; matters considered.

The special court shall, prior to hearing any case under this chapter, direct the attorneys for the parties to appear before it, or in its discretion before a single judge for a conference to consider:

1. Simplification of the issues;

2. Amendment of pleadings and filing of additional pleadings;

3. Stipulations as to facts, documents, records, photographs, plans and like matters, which will dispense with formal proof thereof, including:

a. Assessed values and the ratio of assessed values to true values as determined by the State Department of Taxation in the area sought to be annexed, city or town and county, including real property, personal property, ~~machinery and tools,~~ merchants' capital and public service corporation assessment for each year of the five years immediately preceding;

b. Tax rate for the five years next preceding in the area sought, including any sanitary district therein, and in the city or town;

c. School population and school enrollment in the county, in the area sought, and in the city or town, as shown, respectively, by the triennial census of school population and by the records in the office of the division superintendent of schools; and cost of education per pupil in average daily membership as shown by the last preceding report of the Superintendent of Public Instruction;

4. Estimated population of the county, the area sought and the city or town;

5. Limitation on the number of expert witnesses; each expert witness who will testify shall file a statement of his qualifications;

6. Such other matters as may aid in the disposition of the case.

The court, or judge as the case may be, shall make an appropriate order which will control the subsequent conduct of the case unless modified before or at the trial or hearing to prevent manifest injustice.

§ 15.2-3525. Pretrial conference; matters considered.

The special court shall, prior to hearing any case under this article for the establishment of a consolidated city, direct the attorneys for the parties to appear before it, or, in its discretion, before a single judge for a conference to consider:

1. Simplification of the issues;

2. Amendment of pleadings and filing of additional pleadings;

3. Stipulations as to facts, documents, records, photographs, plans and like matters, which will dispense with formal proof thereof, including:

a. The assessed values and the ratio of assessed values to true values as determined by the State Department of Taxation in the counties, cities and towns proposing to consolidate, including real property, personal property, ~~machinery and tools,~~ merchants' capital and public service corporation assessments for each year of the five years immediately preceding;

b. The school population and school enrollment in the area proposing to consolidate, as shown, respectively, by the triennial census of school population and by the records in the office of the division superintendent of schools; and the cost of education per pupil in average daily membership as shown by the last preceding report of the Superintendent of Public Instruction; and

c. The population and the density of population of the area proposing to consolidate;

4. The method of taking any population census requested by the petitioner;

5. Limitation on the number of expert witnesses, as well as requiring each expert witness who will testify to file a statement of his qualifications;

6. Such other matters as may aid in the disposition of the case.

The court, or the judge as the case may be, shall make an appropriate order which will control the subsequent conduct of the case unless modified before or at the trial or hearing to prevent manifest injustice.

§ 15.2-3806. Pretrial conference; matters considered.

The special court shall, prior to hearing any case under this chapter, direct the attorneys for the parties to appear before it or, in its discretion, before a single judge, for a conference to consider:

1. Simplification of the issues;

2. Amendment of pleadings and filing of additional pleadings;

3. Stipulations as to facts, documents, records, photographs, plans and like matters, which will dispense with formal proof thereof, including:

a. Assessed values and the ratio of assessed values to true values, as determined by the State Department of Taxation, in the town seeking to become a city and in the remaining portion of the county including real property, personal property, ~~machinery and tools,~~ merchants' capital and public service corporation assessment for each year of the five years immediately preceding;

b. School population and school enrollment in the town seeking to become a city and in the remaining portion of the county, as shown, respectively, by the triennial census of school population and by the records in the office of the division superintendent of schools; and the cost of education per pupil in average daily membership, as shown by the most recent report of the Superintendent of Public

Instruction; and

c. Population and the population density of the town seeking to become a city and of the remaining portion of the county;

4. The method of taking any population census requested by the petitioner;

5. Limitation on the number of expert witnesses; each expert witness who will testify shall file a statement of his qualifications; and

6. Such other matters as may aid in the disposition of the case.

The court, or the judge, as the case may be, shall make an appropriate order which will control the subsequent conduct of the case unless modified before or during the trial or hearing to prevent manifest injustice.

§ 15.2-3906. Pretrial conference; matters considered.

The special court shall, prior to hearing any case under this chapter, direct the attorneys for the parties to appear before it, or in its discretion before a single judge, for a conference to consider:

1. Simplification of the issues;

2. Amendment of pleadings and filing of additional pleadings;

3. Stipulations as to facts, documents, records, photographs, plans and like matters, which will dispense with formal proof thereof, including:

a. Assessed values, if appropriate, and the ratio of assessed values to true values, as determined by the State Department of Taxation, in the county seeking to become a city, including real property, personal property~~, machinery and tools,~~ merchants' capital and public service corporation assessment for each year of the five years immediately preceding;

b. School population and school enrollment in the county, as shown, respectively, by the triennial census of school population and by the records in the office of the division superintendent of schools; and the cost of education per pupil in average daily membership as shown by the last preceding report of the Superintendent of Public Instruction;

c. Population of the county and its population density;

4. The method of taking any population census requested by the petitioner;

5. Limitation on the number of expert witnesses; each expert witness who will testify shall file a statement of his qualifications;

6. Such other matters as may aid in the disposition of the case.

The court, or the judge, as the case may be, shall make an appropriate order which will control the subsequent conduct of the case unless modified before or during the trial or hearing to prevent manifest injustice.

§ 15.2-4105. Pretrial conference; matters considered.

The special court shall, prior to hearing any case under this chapter, direct the attorneys for the parties to appear before it or, in its discretion, before a single judge, for a conference to consider:

1. Simplification of the issues;

2. Amendment of pleadings and filing of additional pleadings;

3. Stipulations as to facts, documents, records, photographs, plans and like matters, which will dispense with formal proof thereof, including:

a. Assessed values and the ratio of assessed values to true values, as determined by the State Department of Taxation, in the city seeking to become a town and in the county including real property, personal property, ~~machinery and tools,~~ merchants' capital and public service corporation assessment for each year of the five years immediately preceding;

b. School population and school enrollment in the city seeking to become a town and in the county, as shown, respectively, by the triennial census of school population and by the records in the office of the division superintendent of schools; and cost of education per pupil in average daily membership, as shown by the last preceding report of the Superintendent of Public Instruction;

c. Population and population density of the city seeking to become a town and of the county;

4. Long-term and short-term indebtedness of both the city and the county;

5. Limitation or expansion of pretrial discovery procedures;

6. Limitation of the number of expert witnesses; each expert witness who will testify shall file a statement of his qualifications;

7. Such other matters as may aid in the disposition of the case.

The court, or the judge, as the case may be, shall make an appropriate order which will control the subsequent conduct of the case unless modified for good cause before or during the trial or hearing.

§ 22.1-114. Town school division's share of general county funds.

For the benefit of each school division composed of a town, the governing body of the county in which such town is located shall require the county treasurer to pay over to the town treasurer, if and when properly bonded, the following funds to be placed in the general fund of the town, subject to appropriation by the governing body of the town as it may deem necessary:

From the amount derived from a general or unit levy for all county purposes, a sum equal to such town's pro rata share of the general or unit levy receipts derived from the taxable property within the town, including real estate, tangible personal property, *and* merchants' capital ~~and machinery and tools~~. The pro rata share of the town shall be determined by allocating to the town the same percentage of general or unit levy receipts as is appropriated by the county governing body for the support of public schools.

§ 58.1-1101. Classification.

A. The subjects of taxation classified by this section are hereby defined as intangible personal property:

1. Capital which is inventory, except wine while in the hands of a farm winery producer as defined in § 4.1-100, merchandise located in a foreign trade zone as defined in subdivision 7 of this subsection and any agricultural product held in this Commonwealth by any manufacturer for manufacturing or processing which is of such nature as customarily requires storage and processing for periods of more than one year in order to age or condition such product for manufacture. Such agricultural product shall be includible in inventory for one tax year only and after being taxed for one year shall thereafter be excluded for all succeeding tax years;

2. Capital which is personal property, tangible in fact, used in manufacturing (including, but not limited to, *machinery and tools*, furniture, fixtures, office equipment and computer equipment used in corporate headquarters), mining, water well drilling, radio or television broadcasting, dairy, dry cleaning or laundry businesses. ~~Machinery and tools, motor~~ *Motor* vehicles and delivery equipment ~~of~~ *registered pursuant to § 46.2-600 with the Department of Motor Vehicles and owned by persons engaged in* such businesses shall not be defined as intangible personal property for purposes of this chapter and shall be taxed locally as tangible personal property according to the applicable provisions of law relative to such property;

2a. Personal property, tangible in fact, used in cable television businesses. Machines and tools, motor vehicles, delivery equipment, trunk and feeder cables, studio equipment, antennae and office furniture and equipment of such businesses shall not be defined as intangible personal property for purposes of this chapter and shall be taxed locally as tangible personal property according to the applicable provisions of law relative to such property;

3. Money;

4. Bonds, notes, and other evidences of debt; demands and claims;

5. Shares of stock;

6. Accounts receivable;

7. All imported and exported foreign merchandise or domestic merchandise scheduled for export while in inventory located in a foreign trade zone within the Commonwealth;

8. Computer application software, except computer application software which is inventory as defined in subdivision 1 of this subsection, is defined as computer instructions, in any form, which are designed to be read by a computer and to enable it to perform specific operations with data or information stored by the computer; and

9. Capital which is personal property, tangible in fact, used in commercial fishing businesses, and used in the water to catch or harvest seafood, including but not limited to crab pots, nets, tongs, and dredge equipment. Fishing vessels and property permanently attached to such vessels shall not be defined as intangible personal property for purposes of this chapter and shall be taxed locally as tangible personal property according to the applicable provisions of law relative to such property.

B. [Repealed.]

C. The subjects of intangible personal property set forth in subdivisions 1 through 9 of subsection A shall be exempt from taxation as provided in Article X, Section 6 (a) (5) of the Constitution of Virginia.

§ 58.1-3008. Different rates of levy on different classes of property.

The governing body of any county, city or town in laying levies on taxable real estate, tangible personal property and merchants' capital may impose different rates of levy on real estate, merchants' capital, *and* tangible personal property or any separate class thereof authorized under Chapter 35 (§ 58.1-3500 et seq.), ~~and machinery and tools,~~ or it may impose the same rate of levy on any or all of these subjects of taxation. Such rates shall conform to the requirements set forth in such Chapter 35.

§ 58.1-3010. Counties, cities and towns may levy taxes on fiscal year basis of July 1 through June 30, and change rate of levy during fiscal year.

Notwithstanding any other provision of law, special or general, to the contrary, the governing body of any county, city or town may by ordinance provide that taxes on real estate~~,~~ *and* tangible personal property ~~and machinery and tools~~ be levied and imposed on a fiscal year basis of July 1 to June 30. Such locality is authorized and empowered to change the rate of any such levy during any fiscal year.

As to any locality which has adopted such ordinance all provisions of this Code specifying a date or month relative to the levy, payment or collection of such taxes shall be interpreted to specify the corresponding date or month of the fiscal year, except that all property shall be assessed as of January 1

prior to such fiscal year unless otherwise specifically provided under § 58.1-3011.

In order to effect a change to a fiscal tax year pursuant to this section, any locality may have a short calendar year from January 1 through June 30, or a short fiscal year from January 1 through June 30. All provisions of law applicable to the assessment of property, levy, payment and collection of taxes for a calendar year shall apply to such short tax year. If such short year is a fiscal year, the locality may borrow beginning January 1 pursuant to §§ 15.2-2629 and 15.2-2631 as if it had been on such fiscal year from the prior July 1. If such short year is a calendar year, borrowing pursuant to §§ 15.2-2629 and 15.2-2631 must be repaid at the time specified in § 15.2-2631 for fiscal year borrowings.

Any locality which levies taxes on a fiscal year basis, as authorized by general law or special act, shall exonerate or refund its personal property tax for that portion of the tax year for which the property was properly assessed by another jurisdiction in the Commonwealth and the tax paid.

§ 58.1-3011. Use of July 1 as effective date of assessment.

The governing body of any county, city or town may provide by ordinance that all taxable real estate or personal property ~~and machinery and tools~~ therein be assessed as of July 1 of each year, any other provision of law, general and special, including the provisions of the charter of any city or town, to the contrary notwithstanding. In any such locality, public service corporation property shall continue to be assessed at its value as of January 1, prior to such assessment date. Any ordinance adopting a July 1 tax day for personal property as authorized hereunder shall require that a prorated refund or credit of personal property tax be given for that portion of the tax year during which the property was legally assessed by another jurisdiction in the Commonwealth and the tax paid. Any locality providing for the taxation of certain property on a proportional monthly or quarterly basis as authorized by general law or special act shall provide for a refund or credit of personal property tax for any tax year or portion thereof during which the property was legally assessed by another jurisdiction in the Commonwealth and the tax paid.

§ 58.1-3012. Counties, cities and towns may change rate of tax during calendar year.

The governing body of any county, city or town which levies taxes on real estate~~,~~ *and* tangible personal property ~~and machinery and tools~~ on a calendar-year basis is authorized and empowered to change the rate of its tax on real estate~~,~~ *and* tangible personal property ~~and machinery and tools~~ during any calendar year, provided such change is made prior to the date on which the personal property and land books are delivered to the treasurer of the applicable county, city or town.

§ 58.1-3112. Commissioner to preserve returns; destruction of returns; penalty.

A. The commissioner of the revenue shall preserve in a permanent file in his office all returns of tangible personal property~~, machinery and tools,~~ and merchants' capital.

B. The commissioner may, in his discretion, subject to the requirements of the Virginia Public Records Act (§ 42.1-76 et seq.), destroy any returns, collected by the commissioner of the revenue, which have been on file in his office for at least six years after the tax assessment year. Any commissioner who fails to comply with the provisions of this subsection shall be guilty of a Class 2 misdemeanor.

C. In lieu of retaining the original returns in his office for at least six years after the tax assessment year, the commissioner, with the consent of the local governing body, may have the original returns copied. Any such copies shall be on a durable medium that complies with the requirements of the Virginia Public Records Act. After copying, the original returns may be destroyed in accordance with the provisions of § 15.2-1412, and the copies shall be retained in accordance with the provisions of subsections A and B of this section, mutatis mutandis. Any such copy may be used in any legal proceeding if the copy is authenticated in accordance with applicable law.

§ 58.1-3245.6. Definitions.

As used in this article, unless the context clearly shows otherwise, the term or phrase:

"Base assessed value" means the assessed value of real estate ~~or machinery and tools~~ within a local enterprise zone as shown upon the records of the local assessing officer on January 1 of the year preceding the effective date of the ordinance establishing the local enterprise zone development taxation.

"Current assessed value" means the annual assessed value of real estate ~~or machinery and tools~~ in a local enterprise zone as shown upon the records of the local assessing officer.

"Enterprise zone" means an area designated by the Governor as an enterprise zone pursuant to Chapter 49 (§ 59.1-538 et seq.) of Title 59.1.

"Local enterprise zone" means an enterprise zone designated as a local enterprise zone by an ordinance adopted pursuant to § 58.1-3245.8.

"Tax increment" means all or a portion of the amount by which the current assessed value of real estate ~~or machinery and tools, or both,~~ in a local enterprise zone exceeds the base assessed value.

§ 58.1-3245.8. Adoption of local enterprise zone development taxation program.

A. The governing body of any county, city, or town may adopt a local enterprise zone development taxation program by passing an ordinance designating an enterprise zone located within its boundaries as

a local enterprise zone; however, an ordinance may designate an area as a local enterprise zone contingent upon the designation of the area as an enterprise zone pursuant to Chapter 49 (§ 59.1-538 et seq.) of Title 59.1. If the county, city, or town contains more than one enterprise zone, such ordinance may designate one or more as a local enterprise zone. If an enterprise zone is located in more than one county, city, or town, the governing body may designate the portion of the enterprise zone located within its boundaries as a local enterprise zone. An ordinance designating a local enterprise zone shall provide that all or a specified percentage of the real estate taxes~~, machinery and tools taxes, or both,~~ in the local enterprise zone shall be assessed, collected and allocated in the following manner:

1. The local assessing officer shall record in the appropriate books both the base assessed value and the current assessed value of the real estate ~~or machinery and tools, or both,~~ in the local enterprise zone.

2. Real estate taxes ~~or machinery and tools taxes~~ attributable to the lower of the current assessed value or base assessed value of real estate ~~or machinery and tools~~ located in a local enterprise zone shall be allocated by the treasurer or director of finance as they would be in the absence of such ordinance.

3. All or the specified percentage of the increase in real estate taxes ~~or machinery and tools taxes, or both,~~ attributable to the difference between (i) the current assessed value of such property and (ii) the base assessed value of such property shall be allocated by the treasurer or director of finance and paid into a special fund entitled the "Local Enterprise Zone Development Fund" to be used as provided in § 58.1-3245.10. Such amounts paid into the fund shall not include any additional revenues resulting from an increase in the tax rate on real estate ~~or machinery and tools~~ after the adoption of a local enterprise zone development taxation ordinance, nor shall it include any additional revenues merely resulting from an increase in the assessed value of real estate ~~or machinery and tools~~ which were located in the zone prior to the adoption of a local enterprise zone development taxation ordinance unless such property is improved or enhanced.

B. The governing body shall hold a public hearing on the need for a local enterprise zone development taxation program in the county, city, or town prior to adopting a local enterprise zone development taxation ordinance. Notice of the public hearing shall be published once each week for three consecutive weeks immediately preceding the public hearing in each newspaper of general circulation in such county, city, or town. The notice shall include the time, place and purpose of the public hearing; define local enterprise zone development taxation; indicate the proposed boundaries of the local enterprise zone; state whether all or a specified percentage of real property ~~or machinery or tools, or both,~~ will be subject to local enterprise zone development taxation; and describe the purposes for which funds in the Local Enterprise Zone Development Fund are authorized to be used.

§ 58.1-3245.9. Copies of local enterprise zone development taxation ordinance to local assessing officer and treasurer or director of finance.

The governing body shall transmit to the local assessing officer and treasurer or director of finance a copy of the local enterprise zone development taxation ordinance, a description of all real estate ~~or machinery and tools, or both,~~ located within the local enterprise zone, a map indicating the boundaries of the local enterprise zone and the manner of collecting and allocating real estate taxes ~~or machinery and tools taxes~~ pursuant to this article.

§ 58.1-3245.11. Dissolving the Local Enterprise Zone Development Fund.

The existence of a local enterprise zone shall terminate, and the Local Enterprise Zone Development Fund shall dissolve, upon the earliest to occur of (i) the passage by the governing body of an ordinance repealing the local enterprise zone taxation ordinance or (ii) the termination of designation of the area as an enterprise zone. When the Local Enterprise Zone Development Fund is dissolved, any revenue remaining in the Fund shall be paid into the general fund of the county, city, or town.

Upon dissolving the Local Enterprise Zone Development Fund, the real estate ~~or machinery and tools, or both,~~ shall be assessed and taxes collected in the same manner as applicable in the year preceding the adoption of the local enterprise zone development taxation ordinance.

§ 58.1-3506. Other classifications of tangible personal property for taxation.

A. The items of property set forth below are each declared to be a separate class of property and shall constitute a classification for local taxation separate from other classifications of tangible personal property provided in this chapter:

1. Boats or watercraft weighing five tons or more;

2. Aircraft having a maximum passenger seating capacity of no more than 50 which are owned and operated by scheduled air carriers operating under certificates of public convenience and necessity issued by the State Corporation Commission or the Civil Aeronautics Board;

3. All other aircraft not included in subdivision A 2 and flight simulators;

4. Antique motor vehicles as defined in § 46.2-100 which may be used for general transportation purposes as provided in subsection C of § 46.2-730;

5. Tangible personal property used in a research and development business;

6. Heavy construction machinery not used for business purposes, including but not limited to land movers, bulldozers, front-end loaders, graders, packers, power shovels, cranes, pile drivers, forest

harvesting and silvicultural activity equipment and ditch and other types of diggers;

7. Generating equipment purchased after December 31, 1974, for the purpose of changing the energy source of a manufacturing plant from oil or natural gas to coal, wood, wood bark, wood residue, or any other alternative energy source for use in manufacturing and any cogeneration equipment purchased to achieve more efficient use of any energy source. Such generating equipment and cogeneration equipment shall include, without limitation, such equipment purchased by firms engaged in the business of generating electricity or steam, or both;

8. Vehicles without motive power, used or designed to be used as manufactured homes as defined in § 36-85.3;

9. Computer hardware used by businesses primarily engaged in providing data processing services to other nonrelated or nonaffiliated businesses;

10. Privately owned pleasure boats and watercraft, 18 feet and over, used for recreational purposes only;

11. Privately owned vans with a seating capacity of not less than seven nor more than 15 persons, including the driver, used exclusively pursuant to a ridesharing arrangement as defined in § 46.2-1400;

12. Motor vehicles specially equipped to provide transportation for physically handicapped individuals;

13. Motor vehicles (i) owned by members of a volunteer rescue squad or volunteer fire department or (ii) leased by members of a volunteer rescue squad or volunteer fire department if the member is obligated by the terms of the lease to pay tangible personal property tax on the motor vehicle. One motor vehicle which is owned by each volunteer rescue squad member or volunteer fire department member, or leased by each volunteer rescue squad member or volunteer fire department member if the member is obligated by the terms of the lease to pay tangible personal property tax on the motor vehicle, may be specially classified under this section, provided the volunteer rescue squad member or volunteer fire department member regularly responds to emergency calls. The volunteer shall furnish the commissioner of revenue, or other assessing officer, with a certification by the chief or head of the volunteer organization, that the volunteer is a member of the volunteer rescue squad or fire department who regularly responds to calls or regularly performs other duties for the rescue squad or fire department, and the motor vehicle owned or leased by the volunteer rescue squad member or volunteer fire department member is identified. The certification shall be submitted by January 31 of each year to the commissioner of revenue or other assessing officer; however, the commissioner of revenue or other assessing officer shall be authorized, in his discretion, and for good cause shown and without fault on the part of the member, to accept a certification after the January 31 deadline. In any county which prorates the assessment of tangible personal property pursuant to § 58.1-3516, a replacement vehicle may be certified and classified pursuant to this subsection when the vehicle certified as of the immediately prior January date is transferred during the tax year;

14. Motor vehicles (i) owned by auxiliary members of a volunteer rescue squad or volunteer fire department or (ii) leased by auxiliary members of a volunteer rescue squad or volunteer fire department if the member is obligated by the terms of the lease to pay tangible personal property tax on the motor vehicle. One motor vehicle which is regularly used by each auxiliary volunteer fire department or rescue squad member may be specially classified under this section. The auxiliary member shall furnish the commissioner of revenue, or other assessing officer, with a certification by the chief or head of the volunteer organization, that the volunteer is an auxiliary member of the volunteer rescue squad or fire department who regularly performs duties for the rescue squad or fire department, and the motor vehicle is identified as regularly used for such purpose; however, if a volunteer rescue squad or fire department member and an auxiliary member are members of the same household, that household shall be allowed no more than two special classifications under this subdivision or subdivision 13 of this section. The certification shall be submitted by January 31 of each year to the commissioner of revenue or other assessing officer; however, the commissioner of revenue or other assessing officer shall be authorized, in his discretion, and for good cause shown and without fault on the part of the member, to accept a certification after the January 31 deadline;

15. Motor vehicles owned by a nonprofit organization and used to deliver meals to homebound persons or provide transportation to senior or handicapped citizens in the community to carry out the purposes of the nonprofit organization;

16. Privately owned camping trailers as defined in § 46.2-100, and privately owned travel trailers as defined in § 46.2-1900, which are used for recreational purposes only, and privately owned trailers as defined in § 46.2-100 that are designed and used for the transportation of horses except those trailers described in subdivision A 11 of § 58.1-3505;

17. One motor vehicle owned and regularly used by a veteran who has either lost, or lost the use of, one or both legs, or an arm or a hand, or who is blind or who is permanently and totally disabled as certified by the Department of Veterans Services. In order to qualify, the veteran shall provide a written

statement to the commissioner of revenue or other assessing officer from the Department of Veterans Services that the veteran has been so designated or classified by the Department of Veterans Services as to meet the requirements of this section, and that his disability is service-connected. For purposes of this section, a person is blind if he meets the provisions of § 46.2-739;

18. Motor vehicles (i) owned by persons who have been appointed to serve as auxiliary police officers pursuant to Article 3 (§ 15.2-1731 et seq.) of Chapter 17 of Title 15.2 or (ii) leased by persons who have been so appointed to serve as auxiliary police officers if the person is obligated by the terms of the lease to pay tangible personal property tax on the motor vehicle. One motor vehicle which is regularly used by each auxiliary police officer to respond to auxiliary police duties may be specially classified under this section. In order to qualify for such classification, any auxiliary police officer who applies for such classification shall identify the vehicle for which this classification is sought, and shall furnish the commissioner of revenue or other assessing officer with a certification from the governing body which has appointed such auxiliary police officer or from the official who has appointed such auxiliary officers. That certification shall state that the applicant is an auxiliary police officer who regularly uses a motor vehicle to respond to auxiliary police duties, and it shall state that the vehicle for which the classification is sought is the vehicle which is regularly used for that purpose. The certification shall be submitted by January 31 of each year to the commissioner of revenue or other assessing officer; however, the commissioner of revenue or other assessing officer shall be authorized, in his discretion, and for good cause shown and without fault on the part of the member, to accept a certification after the January 31 deadline;

19. Until the first to occur of June 30, 2009, or the date that a special improvements tax is no longer levied under § 15.2-4607 on property within a Multicounty Transportation Improvement District created pursuant to Chapter 46 (§ 15.2-4600 et seq.) of Title 15.2, tangible personal property that is used in manufacturing, testing, or operating satellites within a Multicounty Transportation Improvement District, provided that such business personal property is put into service within the District on or after July 1, 1999;

20. Motor vehicles which use clean special fuels as defined in § 46.2-749.3;

21. Wild or exotic animals kept for public exhibition in an indoor or outdoor facility which is properly licensed by the federal government, the Commonwealth, or both, and which is properly zoned for such use. "Wild animals" means any animals which are found in the wild, or in a wild state, within the boundaries of the United States, its territories or possessions. "Exotic animals" means any animals which are found in the wild, or in a wild state, and are native to a foreign country;

22. Furniture, office, and maintenance equipment, exclusive of motor vehicles, which are owned and used by an organization whose real property is assessed in accordance with § 58.1-3284.1 and which is used by that organization for the purpose of maintaining or using the open or common space within a residential development;

23. Motor vehicles, trailers and semitrailers with a gross vehicle weight of 10,000 pounds or more used to transport property for hire by a motor carrier engaged in interstate commerce;

24. All tangible personal property employed in a trade or business other than that described in subdivisions A 1 through A 18, except for subdivision A 17, of § 58.1-3503;

25. Programmable computer equipment and peripherals employed in a trade or business;

26. Privately owned pleasure boats and watercraft, motorized and under 18 feet, used for recreational purposes only;

27. Privately owned pleasure boats and watercraft, nonmotorized and under 18 feet, used for recreational purposes only;

28. Privately owned motor homes as defined in § 46.2-100 that are used for recreational purposes only;

29. Tangible personal property used in the provision of Internet services. For purposes of this subdivision, "Internet service" means a service, including an Internet Web-hosting service, that enables users to access content, information, electronic mail, and the Internet as part of a package of services sold to customers;

30. Motor vehicles (i) owned by persons who serve as auxiliary, reserve or special deputy sheriffs or (ii) leased by persons who serve as auxiliary, reserve or special deputy sheriffs if the person is obligated by the terms of the lease to pay tangible personal property tax on the motor vehicle. For purposes of this subdivision, the term "auxiliary deputy sheriff" means auxiliary, reserve or special deputy sheriff. One motor vehicle that is regularly used by each auxiliary deputy sheriff to respond to auxiliary deputy sheriff duties may be specially classified under this section. In order to qualify for such classification, any auxiliary deputy sheriff who applies for such classification shall identify the vehicle for which this classification is sought, and shall furnish the commissioner of revenue or other assessing officer with a certification from the governing body that has appointed such auxiliary deputy sheriff or from the official who has appointed such auxiliary deputy sheriff. That certification shall state that the applicant is an auxiliary deputy sheriff who regularly uses a motor vehicle to respond to such auxiliary duties, and

it shall state that the vehicle for which the classification is sought is the vehicle that is regularly used for that purpose. The certification shall be submitted by January 31 of each year to the commissioner of revenue or other assessing officer; however, the commissioner of revenue or other assessing officer shall be authorized, in his discretion, and for good cause shown and without fault on the part of the member, to accept a certification after the January 31 deadline;

31. Forest harvesting and silvicultural activity equipment;

32. Equipment used primarily for research, development, production, or provision of biotechnology for the purpose of developing or providing products or processes for specific commercial or public purposes, including, but not limited to, medical, pharmaceutical, nutritional, and other health-related purposes; agricultural purposes; or environmental purposes but not for human cloning purposes as defined in § 32.1-162.21 or for products or purposes related to human embryo stem cells. For purposes of this section, biotechnology equipment means equipment directly used in activities associated with the science of living things; and

33. Boats or watercraft weighing less than five tons, used for business purposes only.

B. The governing body of any county, city or town may levy a tax on the property enumerated in subsection A at different rates from the tax levied on other tangible personal property. The rates of tax and the rates of assessment shall (i) for purposes of subdivisions 1, 2, 3, 4, 6, 9 through 18, 20 through 22, and 24 through 33 of subsection A, not exceed that applicable to the general class of tangible personal property, ~~(ii) for purposes of subdivisions A 5, A 7, A 19, and A 23, not exceed that applicable to machinery and tools,~~ and ~~(iii)~~ *(ii)* for purposes of subdivision A 8, equal that applicable to real property.

C. Notwithstanding any other provision of this section, for any qualifying vehicle, as such term is defined in § 58.1-3523, (i) included in any separate class of property in subsection A and (ii) assessed for tangible personal property taxes by a county, city, or town receiving a payment from the Commonwealth under Chapter 35.1 of this title for providing tangible personal property tax relief, the county, city, or town may levy the tangible personal property tax on such qualifying vehicle at a rate not to exceed the rates of tax and rates of assessment required under such chapter.

§ 58.1-3507. Certain property segregated for local taxation only.

~~A. Machinery and tools, except machinery and equipment used by farm wineries as defined in § 4.1-100, used in a manufacturing, mining, water well drilling, processing or reprocessing, radio or television broadcasting, dairy, dry cleaning or laundry business shall be listed and are hereby segregated as a class of tangible personal property separate from all other classes of property and shall be subject to local taxation only. The rate of tax imposed by a county, city or town on such machinery and tools shall not exceed the rate imposed upon the general class of tangible personal property.~~

~~B. Machinery and tools segregated for local taxation pursuant to subsection A, other than energy conservation equipment of manufacturers, shall be valued by means of depreciated cost or a percentage or percentages of original total capitalized cost excluding capitalized interest.~~

~~Whenever the commissioner of the revenue proposes to change the means of valuing machinery and tools, such proposed change shall be published in a newspaper having general circulation in the affected locality at least 30 days before the proposed change would take effect and the citizens of the locality shall be allowed to submit written comments, during the 30-day period, to the commissioner of the revenue regarding the proposed change.~~

~~C~~. All motor vehicles which are registered pursuant to § 46.2-600 with the Department of Motor Vehicles and owned by persons engaged in ~~those businesses set forth in subsection A~~ *a manufacturing, mining, water well drilling, radio or television broadcasting, dairy, dry cleaning or laundry business* shall be taxed as tangible personal property by the county, city or town in accordance with the provisions of this chapter. All other motor vehicles and delivery equipment owned by persons engaged in *a manufacturing, mining, water well drilling, radio or television broadcasting, dairy, dry cleaning or laundry business* shall be ~~included in and taxed~~ *classified* as machinery and tools *pursuant to § 58.1-1101*.

§ 58.1-3511. Situs for assessment; nonresident exception; refund of tax paid to city or county; apportioned assessment.

A. The situs for the assessment and taxation of tangible personal property~~,~~ *and* merchants' capital ~~and machinery and tools~~ shall in all cases be the county, district, town or city in which such property may be physically located on the tax day. However, the situs for purposes of assessment of motor vehicles, travel trailers, boats and airplanes as personal property shall be the county, district, town or city where the vehicle is normally garaged, docked or parked; except, (i) the situs for vehicles with a weight of 10,000 pounds or less registered in Virginia but normally garaged, docked or parked in another state shall be the locality in Virginia where registered; and (ii) if the owner of a business files a return pursuant to § 58.1-3518 for any vehicle with a weight of 10,000 pounds or less registered in Virginia and used in the business with the locality from which the use of such vehicle is directed or controlled

and in which the owner's business has a definite place of business, as defined in § 58.1-3700.1, the situs for such vehicles shall be such locality, provided such owner has sufficient evidence that he has paid the personal property tax on the business vehicles to such locality. Any person domiciled in another state, whose motor vehicle is principally garaged or parked in this Commonwealth during the tax year, shall not be subject to a personal property tax on such vehicle upon a showing of sufficient evidence that such person has paid a personal property tax on the vehicle in the state in which he is domiciled. In the event it cannot be determined where such personal property, described herein, is normally garaged, stored or parked, the situs shall be the domicile of the owner of such personal property. However, in the event the owner of the motor vehicle is a full-time student attending an institution of higher education, the situs shall be the domicile of such student, provided the student has presented sufficient evidence that he has paid a personal property tax on the motor vehicle in his domicile. Any person who shall pay a personal property tax on a motor vehicle to a county or city in this Commonwealth and a similar tax on the same vehicle in the state of his domicile, or in the state where such vehicle is normally garaged, docked, or parked, may apply to such county or city for a refund of such tax payment. Upon a showing of sufficient evidence that such person has paid the tax for the same year in the state in which he is domiciled, the county or city may refund the amount of such payment.

B. The assessment of motor vehicles, travel trailers, boats or airplanes operating over interstate routes, in the rendition of a common, contract or other private carrier service which are subject to property taxation in any other state on the basis of an apportioned assessment, shall be apportioned in the same percentage as the total number of miles traveled in the Commonwealth by such vehicle bears to the total number of miles traveled by such vehicle.

§ 58.1-3515. Tax day January 1.

Except as provided under § 58.1-3010, and except as provided by ordinance or special act in localities authorized to tax certain property on a proportional monthly or quarterly basis, tangible personal property~~, machinery and tools~~ and merchants' capital shall be returned for taxation as of January 1 of each year, which date shall be known as the effective date of assessment or the tax day. The status of all persons, firms, corporations and other taxpayers liable for taxation on any of such property shall be fixed as of the date aforesaid in each year and the value of all such property shall be taken as of such date, except that any county, city or town may permit a taxpayer to return as merchants' capital the average amount of capital employed in his business on such date and on the next preceding August first.

§ 58.1-3518. Taxpayers to file returns.

Every taxpayer owning any of the property subject to taxation under this chapter on January 1 of any year shall file a return thereof with the commissioner of the revenue for his county or city on the appropriate forms; however, the commissioner of the revenue may elect not to require such a return from any taxpayer who owns such property which does not have sufficient value to generate a tax assessment. Every person who leases any of such property from the owner thereof on such date shall file a return with the commissioner of the revenue of the county or city wherein such property is located giving the name and address of the owner, except any person leasing a motor vehicle which is subject to the tax imposed under § 58.1-2402. Such returns shall be filed on or before May 1 of each year, except as otherwise provided by ordinance authorized by § 58.1-3916.

Every fiduciary shall file the returns mentioned in this chapter with the commissioner of revenue having jurisdiction. Every taxpayer owning ~~machinery and tools or~~ business personal property, if requested by the commissioner of the revenue, shall include on his annual return of such property information as to the total of original cost by year of purchase. The cost should be the original capitalized cost or the cost that would have been capitalized if the expense deduction in lieu of depreciation was elected under § 179 of the Internal Revenue Code.

§ 58.1-3660. Certified pollution control equipment and facilities.

A. Certified pollution control equipment and facilities, as defined herein, are hereby declared to be a separate class of property and shall constitute a classification for local taxation separate from other such classification of real or personal property and such property. The governing body of any county, city or town may, by ordinance, exempt or partially exempt such property from local taxation*; however, (i) such certified pollution control equipment and facilities that are used for manufacturing, mining, processing or reprocessing, or dairy purposes and are placed in service on or after July 1, 2006, shall be exempt from state and local taxation pursuant to Article X, Section 6 (d) of the Constitution of Virginia and (ii) the assessments of such certified pollution control equipment and facilities that are used for manufacturing, mining, processing or reprocessing, or dairy purposes and were placed in service prior to July 1, 2006, shall be reduced from the levels in effect on July 1, 2006, by one-fifth each year between July 1, 2006, and June 30, 2010, after which date such property shall be exempt from state and local taxation pursuant to Article X, Section 6 (d) of the Constitution of Virginia*.

B. As used in this section:

"Certified pollution control equipment and facilities" shall mean any property, including real or

personal property, equipment, facilities, or devices, *other than machinery and tools classified as intangible personal property pursuant to subdivision A 2 of § 58.1-1101,* used primarily for the purpose of abating or preventing pollution of the atmosphere or waters of the Commonwealth and which the state certifying authority having jurisdiction with respect to such property has certified to the Department of Taxation as having been constructed, reconstructed, erected, or acquired in conformity with the state program or requirements for abatement or control of water or atmospheric pollution or contamination. Such property shall include, but is not limited to, any equipment used to grind, chip, or mulch trees, tree stumps, underbrush, and other vegetative cover for reuse as mulch, compost, or fuel, *including landfill gas and natural gas recovery from waste,* whether or not such property has been certified to the Department of Taxation by a state certifying authority.

"State certifying authority" shall mean the State Water Control Board, for water pollution; the State Air Pollution Control Board, for air pollution; the Department of Mines, Minerals and Energy, for coal, oil, and gas production, including gas, natural gas, *landfill gas,* and coalbed methane gas; and the Virginia Waste Management Board, for waste disposal facilities, and shall include any interstate agency authorized to act in place of a certifying authority of the Commonwealth.

§ 58.1-3661. Certified solar energy equipment, facilities or devices and certified recycling equipment, facilities or devices.

A. Certified solar energy equipment facilities or devices and certified recycling equipment, facilities, or devices, as defined herein, are hereby declared to be a separate class of property and shall constitute a classification for local taxation separate from other classifications of real or personal property. The governing body of any county, city or town may, by ordinance, exempt or partially exempt such property from local taxation in the manner provided by subsection D.

B. As used in this section:

"Certified recycling equipment, facilities, or devices" means machinery and equipment, *other than machinery and tools classified as intangible personal property pursuant to subdivision A 2 of § 58.1-1101,* which is certified by the Department of Waste Management as integral to the recycling process and for use primarily for the purpose of abating or preventing pollution of the atmosphere or waters of the Commonwealth, and used in manufacturing facilities or plant units which manufacture, process, compound, or produce for sale recyclable items of tangible personal property at fixed locations in the Commonwealth.

"Certified solar energy equipment, facilities or devices" means any property, including real or personal property, equipment, facilities, or devices, *other than machinery and tools classified as intangible personal property pursuant to subdivision A 2 of § 58.1-1101,* certified by the local certifying authority to be designed and used primarily for the purpose of providing for the collection and use of incident solar energy for water heating, space heating or cooling or other application which would otherwise require a conventional source of energy such as petroleum products, natural gas, or electricity.

"Local certifying authority" means the local building departments or the Department of Waste Management. The State Board of Housing and Community Development shall promulgate regulations setting forth criteria for certifiable solar energy equipment. The Department of Waste Management shall promulgate regulations establishing criteria for recycling equipment, facilities, or devices.

C. Any person residing in a county, city or town which has adopted an ordinance pursuant to subsection A may proceed to have solar energy equipment, facilities or devices certified as exempt, wholly or partially, from taxation by applying to the local building department. If, after examination of such equipment, facility or device, the local building department determines that the unit primarily performs any of the functions set forth in subsection B and conforms to the requirements set by regulations of the Board of Housing and Community Development, such department shall approve and certify such application. The local department shall forthwith transmit to the local assessing officer those applications properly approved and certified by the local building department as meeting all requirements qualifying such equipment, facility or device for exemption from taxation. Any person aggrieved by a decision of the local building department may appeal such decision to the local board of building code appeals, which may affirm or reverse such decision.

D. Upon receipt of the certificate from the local building department or the Department of Waste Management the local assessing officer shall, if such local ordinance is in effect, proceed to determine the value of such qualifying solar energy equipment, facilities or devices or certified recycling equipment, facilities, or devices. The exemption provided by this section shall be determined by applying the local tax rate to the value of such equipment, facilities or devices and subtracting such amount, wholly or partially, ~~either~~ ~~(i)~~ from the total real property tax due on the real property to which such equipment, facilities, or devices are attached ~~or~~ ~~(ii)~~ ~~if~~ ~~such~~ ~~equipment,~~ ~~facilities,~~ ~~or~~ ~~devices~~ ~~are~~ ~~taxable~~ ~~as~~ ~~machinery~~ ~~and~~ ~~tools~~ ~~under~~ ~~§ 58.1-3507,~~ ~~from~~ ~~the~~ ~~total~~ ~~machinery~~ ~~and~~ ~~tools~~ ~~tax~~ ~~due~~ ~~on~~ ~~such~~ ~~equipment,~~ ~~facilities,~~ ~~or~~ ~~devices,~~ ~~at~~ ~~the~~ ~~election~~ ~~of~~ ~~the~~ ~~taxpayer~~. This exemption shall be effective beginning in the next succeeding tax year, and shall be permitted for a term of not less than five years.

In the event the locality assesses real estate pursuant to § 58.1-3292, the exemption shall be first effective when such real estate is first assessed, but not prior to the date of such application for exemption.

E. It shall be presumed for purposes of the administration of ordinances pursuant to this section, and for no other purposes, that the value of such qualifying solar energy equipment, facilities and devices is not less than the normal cost of purchasing and installing such equipment, facilities and devices.

§ 58.1-3900. Filing of returns.

Any person having taxable personal property~~,~~ ~~machinery~~ ~~and~~ ~~tools~~ or merchants' capital on January 1 of any year shall file a return thereof with the commissioner of the revenue for his county or city in accordance with § 58.1-3518. Such returns shall be filed by May 1 of each year, except as otherwise provided by ordinance adopted under § 58.1-3916.

§ 58.1-3916. Counties, cities and towns may provide dates for filing returns, set penalties, interest, etc.

Notwithstanding provisions contained in §§ 58.1-3518, 58.1-3900, 58.1-3913, 58.1-3915 and 58.1-3918, the governing body of any county, city or town may provide by ordinance the time for filing local license applications and annual returns of taxable tangible personal property~~,~~ ~~machinery~~ ~~and~~ ~~tools~~ and merchants' capital. The governing body may also by ordinance establish due dates for the payment of local taxes; may provide that payment be made in a single installment or in two equal installments; may offer options, which may include coupon books and payroll deductions, which allow the taxpayer to determine whether to pay the tangible personal property tax through monthly, bimonthly, quarterly, or semiannual installments or in a lump sum, provided such taxes are paid in full by the final due date; may provide by ordinance penalties for failure to file such applications and returns and for nonpayment in time; may provide for payment of interest on delinquent taxes; and may provide for the recovery of reasonable attorney's or collection agency's fees actually contracted for, not to exceed 20 percent of the delinquent taxes and other charges so collected. A locality that provides for payment of interest on delinquent taxes shall provide for interest at the same rate on overpayments due to erroneously assessed taxes to be paid to the taxpayer, provided that no interest shall be required to be paid on such refund if (i) the amount of the refund is $10 or less or (ii) the refund is the result of proration pursuant to § 58.1-3516. A court that finds that an overpayment of local taxes has been made in an action brought pursuant to § 58.1-3984 shall award interest at the appropriate rate, notwithstanding the failure of the locality to conform its ordinance to the requirements of this section.

No tax assessment or tax bill shall be deemed delinquent and subject to the collection procedures prescribed herein during the pendency of any administrative appeal under § 58.1-3980, so long as the appeal is filed within 90 days of the date of the assessment, and for 30 days after the date of the final determination of the appeal, provided that nothing in this paragraph shall be construed to preclude the assessment or refund, following the final determination of such appeal, of such interest as otherwise may be provided by general law as to that portion of a tax bill which has remained unpaid or was overpaid during the pendency of such appeal and is determined in such appeal to be properly due and owing.

Interest may commence not earlier than the first day following the day such taxes are due by ordinance to be filed, at a rate not to exceed 10 percent per year. The governing body may impose interest at a rate not to exceed the rate of interest established pursuant to § 6621 of the Internal Revenue Code of 1954, as amended, or 10 percent annually, whichever is greater, for the second and subsequent years of delinquency. No penalty for failure to pay a tax or installment shall exceed (i) 10 percent of the tax past due on such property; (ii) in the case of delinquent tangible personal property tax more than 30 days past due on property classified pursuant to subdivision A 13, A 14 or A 18 of § 58.1-3506, which remains unpaid after 10 days' written notice sent by United States mail to the taxpayer of the intention to impose a penalty pursuant hereto, the penalty shall not exceed an amount equal to the difference between the tax due and owing with respect to such property and the tax that would have been due and owing if the property in question had been classified as general tangible personal property pursuant to § 58.1-3503; (iii) in the case of delinquent tangible personal property tax more than 30 days past due, 25 percent of the tax past due on such tangible personal property; (iv) in the case of delinquent remittance of excise taxes on meals, lodging, or admissions collected from consumers, 10 percent for the first month the taxes are past due, and five percent for each month thereafter, up to a maximum of 25 percent of the taxes collected but not remitted; or (v) $10, whichever is greater. No penalty for failure to file a return shall be greater than 10 percent of the tax assessable on such return or $10, whichever is greater; provided, however, that the penalty shall in no case exceed the amount of the tax assessable. The assessment of such penalty shall not be deemed a defense to any criminal prosecution for failing to make return of taxable property as may be required by law or ordinance. Penalty for failure to file an application or return may be assessed on the day after such return or application is due; penalty for failure to pay any tax may be assessed on the day after the first installment is due. Any such penalty when so assessed shall become a part of the tax.

No penalty for failure to pay any tax shall be imposed for any assessment made later than two weeks

prior to the day on which the taxes are due, if such assessment is made thereafter through the fault of a local official, and if such assessment is paid within two weeks after the notice thereof is mailed.

In the event a transfer of real property ownership occurs after January 1 of a tax year and a real estate tax bill has been mailed pursuant to §§ 58.1-3281 and 58.1-3912, the treasurer or other appropriate local official designated by ordinance of the local governing body in jurisdictions not having a treasurer, upon ascertaining that a property transfer has occurred, may invalidate a bill sent to the prior owner and reissue the bill to the new owner as permitted by § 58.1-3912, and no penalty for failure to pay any tax for any such assessment shall be imposed if the tax is paid within two weeks after the notice thereof is mailed.

Penalty and interest for failure to file a return or to pay a tax shall not be imposed if such failure was not the fault of the taxpayer, or was the fault of the commissioner of revenue or the treasurer, as the case may be. The failure to file a return or to pay a tax due to the death of the taxpayer or a medically determinable physical or mental impairment on the date the return or tax is due shall be presumptive proof of lack of fault on the taxpayer's part, provided the return is filed or the taxes are paid within 30 days of the due date; however, if there is a committee, legal guardian, conservator or other fiduciary handling the individual's affairs, such return shall be filed or such taxes paid within 120 days after the fiduciary qualifies or begins to act on behalf of the taxpayer. Interest on such taxes shall accrue until paid in full. Any such fiduciary shall, on behalf of the taxpayer, by the due date, file any required returns and pay any taxes which come due after the 120-day period. The treasurer shall make determinations of fault relating exclusively to failure to pay a tax, and the commissioner of the revenue shall make determinations of fault relating exclusively to failure to file a return. In jurisdictions not having a treasurer or commissioner of the revenue, the governing body may delegate to the appropriate local tax officials the responsibility to make the determination of fault.

The governing body may further provide by resolution for reasonable extensions of time, not to exceed 90 days, for the payment of real estate and personal property taxes and for filing returns on tangible personal property~~, machinery and tools~~ and merchants' capital, and the business, professional, and occupational license tax, whenever good cause exists. The official granting such extension shall keep a record of every such extension. If any taxpayer who has been granted an extension of time for filing his return fails to file his return within the extended time, his case shall be treated the same as if no extension had been granted.

This section shall be the sole authority for local ordinances setting due dates of local taxes and penalty and interest thereon, and shall supersede the provisions of any charter or special act.

§ 58.1-3921. Treasurer to make out lists of uncollectable taxes and delinquents.

The treasurer, after ascertaining which of the taxes and levies assessed at any time in his county or city have not been collected, shall, within sixty days of the end of the fiscal year, make out lists as follows:

1. A list of real estate on the commissioner's land book improperly placed thereon or not ascertainable, with the amount of taxes charged thereon.

2. A list of other real estate which is delinquent for the nonpayment of the taxes thereon. This list shall not include any taxes listed under subdivision 4 or 5 of this section.

3. A list of such of the taxes assessed on tangible personal property~~, machinery and tools~~ and merchants' capital, and other subjects of local taxation, other than real estate, as he was unable to collect which are delinquent. This list shall not include any taxes listed under subdivision 4 or 5 of this section.

4. A list of the uncollected taxes amounting to less than twenty dollars each for which no bills were sent under § 58.1-3912.

5. A list of uncollected balances of previously billed taxes amounting to less than twenty dollars each as to which the treasurer has determined that the costs of collecting such balances would exceed the amount recoverable, provided that the treasurer shall not include on such list any balance with respect to which he has reason to believe that the taxpayer has purposely paid less than the amount due and owing.

Notwithstanding any other provision of this title, no tax or levy which has been discharged or otherwise rendered legally uncollectable as to a taxpayer liable upon it in a proceeding under the United States Bankruptcy Code (Title 11 of the United States Code) shall be considered delinquent with respect to that taxpayer on and after the date such obligation is discharged or otherwise rendered legally uncollectable, and the treasurer shall not include any such discharged or uncollectable obligation in any list required to be prepared pursuant to this section. Any such discharged or uncollectable obligation shall be stricken from the books of the treasurer as of the date the obligation is discharged or otherwise rendered uncollectable, and the treasurer thereafter shall have no further duty to collect such tax or levy.

The governing body of any town may, by ordinance, adopt the procedures set forth in this section and § 58.1-3924. If such ordinance is adopted, the town treasurer shall submit such lists to the governing body as provided in § 58.1-3924.

§ 58.1-3980. Application to commissioner of the revenue or other official for correction.

A. Any person, firm or corporation assessed by a commissioner of the revenue or other official performing the duties imposed on commissioners of the revenue under this title with any local tax authorized by this title, including, but not limited to, taxes on tangible personal property, ~~machinery and tools,~~ merchants' capital, transient occupancy, food and beverage, or admissions, or a local license tax, aggrieved by any such assessment, may, within three years from the last day of the tax year for which such assessment is made, or within one year from the date of the assessment, whichever is later, apply to the commissioner of the revenue or such other official who made the assessment for a correction thereof.

Sections 58.1-3980 through 58.1-3983 shall also apply to erroneous assessments of real estate if the error sought to be corrected in any case was made by the commissioner of the revenue or such other official to whom the application is made, or is due to a factual error made by others in connection with conducting general reassessments as provided in subsection C of § 58.1-3981.

B. Notwithstanding the provisions of subsection A, an unpaid tangible personal property tax assessment may be appealed to the commissioner of the revenue or other assessing official at any time during which such assessment is collectible under § 58.1-3940, provided the taxpayer can demonstrate by clear factual evidence that he was not subject to the tax for the year in question. If the assessing official is satisfied that the assessment is erroneous, he shall abate the assessment and notify the treasurer or other collecting official of the abatement. Upon receipt of such notice, the treasurer or other collecting official shall forthwith issue a refund or take such other steps as may be necessary to correct the taxpayer's liability accordingly upon the books of the locality.

In the case of an erroneous assessment that has been satisfied in whole or in part through an involuntary payment, an appeal to the assessing official must be made within one year from the date of the involuntary payment. If the assessing official is satisfied that the assessment is erroneous, he shall abate the assessment and notify the treasurer or other collecting official of the abatement. Upon receipt of such notice, the treasurer or other collecting official shall forthwith issue a refund. For purposes of this section, "involuntary payment" means a payment received pursuant to the Setoff Debt Collection Act (§ 58.1-520 et seq.) or § 58.1-3952.

§ 58.1-3983.1. Appeals and rulings of local taxes.

A. Definitions. For purposes of this section:

"Amount in dispute," when used with respect to taxes due or assessed, means the amount specifically identified in the administrative appeal or application for judicial review as disputed by the party filing such appeal or application.

"Frivolous" means a finding, based upon specific facts, that the party asserting the appeal is unlikely to prevail upon the merits because the appeal is (i) not well grounded in fact; (ii) not warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; (iii) interposed for an improper purpose, such as to harass, to cause unnecessary delay in the payment of tax or a refund, or to create needless cost from the litigation; or (iv) otherwise frivolous.

"Jeopardized by delay" means a finding, based upon specific facts, that a taxpayer desires to (i) depart quickly from the locality, (ii) remove his property therefrom, (iii) conceal himself or his property, or (iv) do any other act tending to prejudice, or to render wholly or partially ineffectual, proceedings to collect the tax for the period in question.

"Local business tax" means ~~machinery and tools tax,~~ business tangible personal property tax (including, without limitation, computer equipment), merchant's capital tax, and a consumer utility tax where the amount in dispute exceeds $2,500 other than the tax collected on mobile telecommunication service as defined in § 58.1-3812.

"Local mobile property tax" means the tangible personal property tax on airplanes, boats, campers, recreational vehicles, and trailers.

"Taxpayer" includes a business required to collect a local consumer utility tax to the extent that the business is charged or assessed with such tax.

B. Administrative appeal to commissioner of the revenue or other assessing official.

1. Any person assessed with any local mobile property tax or local business tax as defined in this section may appeal such assessment within one year from the last day of the tax year for which such assessment is made, or within one year from the date of such assessment, whichever is later, to the commissioner of the revenue or other assessing official.

2. The appeal shall be filed in good faith and sufficiently identify the taxpayer, the tax period covered by the challenged assessment, the amount in dispute, the remedy sought, each alleged error in the assessment, the grounds upon which the taxpayer relies, and any other facts relevant to the taxpayer's contention.

3. The commissioner of the revenue or other assessing official may hold a conference with the taxpayer if requested by the taxpayer, or require submission of additional information and documents, an audit or further audits, or other evidence deemed necessary for a proper and equitable determination of

the application.

4. The assessment shall be deemed prima facie correct.

5. The commissioner of the revenue or other assessing official shall undertake a full review of the taxpayer's claims and issue a written determination to the taxpayer setting forth the facts and arguments in support of his decision within 90 days after such appeal is filed. Such determination shall be accompanied by a written explanation of the taxpayer's right to file an administrative appeal of the determination to the Tax Commissioner pursuant to subsection D.

6. Any taxpayer whose administrative appeal to the commissioner of the revenue or other assessing official pursuant to this subsection has been pending for more than one year without the issuance of a final determination may, upon not less than 30 days' written notice to the commissioner of the revenue or other assessing official, elect to treat the application as denied and appeal the assessment to the Tax Commissioner in accordance with the provisions of subsection D. The Tax Commissioner shall not consider an appeal filed pursuant to the provisions of this subsection if he finds that the absence of a final determination on the part of the commissioner of the revenue or other assessing official was caused by the willful failure or refusal of the taxpayer to provide information requested and reasonably needed by the commissioner of the revenue or other assessing official to make his determination.

C. Suspension of collection activity pending administrative appeal to commissioner of the revenue or other assessing official. Provided a timely and complete appeal is filed pursuant to subsection B, collection activity shall be suspended by the treasurer or other official responsible for the collection of such tax until a final determination is issued by the commissioner of the revenue or other assessing official, unless the treasurer or other collection official (i) determines that collection would be jeopardized by delay as defined in this section; or (ii) is advised by the commissioner of the revenue or other assessing official that the taxpayer has not responded to a request for relevant information after a reasonable time. Interest shall accrue in accordance with the provisions of subdivision A 2 e of § 58.1-3703.1, but no further penalty shall be imposed while collection action is suspended.

D. Administrative appeal to Tax Commissioner.

1. Any person whose administrative appeal to the commissioner of the revenue or other assessing official pursuant to subsection B has been denied in whole or in part may appeal the determination of the commissioner of the revenue or other assessing official by filing an appeal with the Tax Commissioner and serving a copy of the appeal upon the commissioner of the revenue or other assessing official within 90 days of the date of the determination of the commissioner of the revenue or other assessing official. The appeal shall include a copy of the written determination of the commissioner of the revenue or other assessing official that is challenged, together with a statement of the facts and grounds upon which the taxpayer relies.

2. The Tax Commissioner shall determine whether he has jurisdiction to hear the appeal within 30 days of receipt of the taxpayer's appeal.

3. If the Tax Commissioner determines that he has jurisdiction, he shall provide the commissioner of the revenue or other assessing official with an opportunity to respond to the appeal and permit the commissioner of the revenue or other assessing official to participate in the proceedings. The Tax Commissioner shall issue a determination to the taxpayer within 90 days of receipt of the taxpayer's appeal, unless the taxpayer and the commissioner of the revenue or other assessing official are notified that a longer period will be required. Such longer period of time shall not exceed 60 days, and the Tax Commissioner shall notify the affected parties of the reason necessitating the longer period of time. If the Tax Commissioner is unable to issue a determination within the 60-day extension period due to the failure of an affected party to supply the Tax Commissioner with necessary information, the Tax Commissioner shall certify this fact in writing prior to the expiration of the extension period. The Tax Commissioner shall then issue his determination within 60 days of receipt of such necessary information.

4. The appeal shall be treated as an application pursuant to § 58.1-1821, and the Tax Commissioner may issue an order correcting such assessment of such property pursuant to § 58.1-1822, if the taxpayer has met the burden of proof provided in § 58.1-3987.

5. The Tax Commissioner shall not make a determination regarding the valuation or the method of valuation of property subject to any local tax other than a local business tax.

E. Suspension of collection activity during administrative appeal to Tax Commissioner. On receipt of a notice of intent to file an appeal to the Tax Commissioner under subsection D, the treasurer or other official responsible for the collection of such tax shall further suspend collection activity until a final determination is issued by the Tax Commissioner, unless the treasurer or other collection official (i) determines that collection would be jeopardized by delay as defined in this section; or (ii) is advised by the commissioner or other assessing official that the taxpayer has not responded to a request for relevant information after a reasonable time. Interest shall accrue in accordance with the provisions of subdivision A 2 e of § 58.1-3703.1, but no further penalty shall be imposed while collection action is

suspended. The requirement that collection activity be suspended shall cease unless an appeal pursuant to subsection D is filed and served on the necessary parties within 30 days of the service of the notice of intent to file such appeal.

F. Implementation of determination of Tax Commissioner. Promptly upon receipt of a final determination of the Tax Commissioner, the commissioner of the revenue or other local assessing official shall take those steps necessary to calculate the amount of tax owed by or refund due to the taxpayer consistent with the Tax Commissioner's determination and shall provide that information to the taxpayer and to the treasurer or other official responsible for collection in accordance with the provisions of this subsection.

1. If the determination of the Tax Commissioner sets forth a specific amount of tax due, the commissioner of the revenue or other assessing official shall certify this amount to the treasurer or other official responsible for collection, and the treasurer or other official responsible for collection shall issue a bill to the taxpayer for such amount due, together with interest accrued, within 30 days of the date of the determination of the Tax Commissioner.

2. If the determination of the Tax Commissioner sets forth a specific amount of refund due, the commissioner of the revenue or other assessing official shall certify this amount to the treasurer or other official responsible for collection, and the treasurer or other official responsible for collection shall issue a payment to the taxpayer for such amount due, together with interest accrued, within 30 days of the date of the determination of the Tax Commissioner.

3. If the determination of the Tax Commissioner does not set forth a specific amount of tax due, or otherwise requires the commissioner of the revenue or other assessing official to undertake a new or revised assessment that will result in the determination of a tax due that has not previously been paid in full, the commissioner of the revenue or other assessing official shall promptly commence the steps necessary to undertake such new or revised assessment, and provide the same to the taxpayer within 60 days of the date of the determination of the Tax Commissioner, or within 60 days after receipt from the taxpayer of any additional information requested or reasonably required under the determination of the Tax Commissioner, whichever is later. The commissioner of the revenue or other assessing official shall certify the new assessment to the treasurer or other official responsible for collection, and the treasurer or other official responsible for collection shall issue a bill to the taxpayer for the amount due, together with interest accrued, within 30 days of the date of the new assessment.

4. If the determination of the Tax Commissioner does not set forth a specific amount of refund due, or otherwise requires the commissioner of the revenue or other assessing official to undertake a new or revised assessment that will result in the determination of a refund of taxes previously paid, the commissioner of the revenue or other assessing official shall promptly commence the steps necessary to undertake such new or revised assessment, and provide the same to the taxpayer within 60 days of the date of the determination of the Tax Commissioner, or within 60 days after receipt from the taxpayer of any additional information requested or reasonably required under the determination of the Tax Commissioner, whichever is later. The commissioner of the revenue or other assessing official shall certify the new assessment to the treasurer or other official responsible for collection, and the treasurer or other official responsible for collection shall issue a refund to the taxpayer for the amount of tax due, together with interest accrued, within 30 days of the date of the new assessment.

G. Judicial review of determination of Tax Commissioner. Following the issuance of a final determination of the Tax Commissioner pursuant to subsection D, the taxpayer or commissioner of the revenue or other assessing official may apply to the appropriate circuit court for judicial review of the determination, or any part thereof, pursuant to § 58.1-3984. In any such proceeding for judicial review of a determination of the Tax Commissioner, the burden shall be on the party challenging the determination of the Tax Commissioner, or any part thereof, to show that the ruling of the Tax Commissioner is erroneous with respect to the part challenged. Neither the Tax Commissioner nor the Department of Taxation shall be made a party to an application to correct an assessment merely because the Tax Commissioner has ruled on it.

H. Suspension of payment of disputed amount of tax due upon taxpayer's notice of intent to initiate judicial review.

1. On receipt of a notice of intent to file an application for judicial review, pursuant to § 58.1-3984, of a determination of the Tax Commissioner pursuant to subsection D, and upon payment of the amount of the tax that is not in dispute together with any penalty and interest then due with respect to such undisputed portion of the tax, the treasurer or other collection official shall further suspend collection activity while the court retains jurisdiction unless the court, upon appropriate motion after notice and an opportunity to be heard, determines that (i) the taxpayer's application for judicial review is frivolous, as defined in this section; (ii) collection would be jeopardized by delay, as defined in this section; or (iii) suspension of collection would cause substantial economic hardship to the locality. For purposes of determining whether substantial economic hardship to the locality would arise from a suspension of collection activity, the court shall consider the cumulative effect of then-pending appeals filed within the

locality by different taxpayers that allege common claims or theories of relief.

2. Upon a determination that the appeal is frivolous, that collection may be jeopardized by delay, or that suspension of collection would result in substantial economic hardship to the locality, the court may require the taxpayer to pay the amount in dispute or a portion thereof, or to provide surety for payment of the amount in dispute in a form acceptable to the court.

3. No suspension of collection activity shall be required if the application for judicial review fails to identify with particularity the amount in dispute.

4. The requirement that collection activity be suspended shall cease unless an application for judicial review pursuant to § 58.1-3984 is filed and served on the necessary parties within 30 days of the service of the notice of intent to file such application.

5. The suspension of collection activity authorized by this subdivision shall not be applicable to any appeal of a local business tax or local mobile property tax that is initiated by the direct filing of an action pursuant to § 58.1-3984 without prior exhaustion of the appeals provided by subsections B and D.

I. Suspension of payment of disputed amount of refund due upon locality's notice of intent to initiate judicial review.

1. Payment of any refund determined to be due pursuant to the determination of the Tax Commissioner shall be suspended if the locality assessing the tax serves upon the taxpayer, within 60 days of the date of the determination of the Tax Commissioner, a notice of intent to file an application for judicial review of the Tax Commissioner's determination pursuant to § 58.1-3984 and pays the amount of the refund not in dispute, including tax and accrued interest. Payment of such refund shall remain suspended while the court retains jurisdiction unless the court, upon appropriate motion after notice and an opportunity to be heard, determines that the locality's application for judicial review is frivolous, as defined in this section.

2. No suspension of refund activity shall be permitted if the locality's application for judicial review fails to identify with particularity the amount in dispute.

3. The requirement that the obligation to make a refund be suspended shall cease unless an application for judicial review pursuant to § 58.1-3984 is filed and served on the necessary parties within 30 days of the service of the notice of intent to file such application.

J. Rulings and advisory opinions.

1. Written rulings from commissioner of the revenue or other assessing official. Any taxpayer or authorized representative of a taxpayer may request a written ruling regarding the application of a local mobile property tax or a local business tax to a specific situation from the commissioner of the revenue or other assessing official. Any taxpayer requesting such a ruling shall provide all facts relevant to the situation and may present a rationale for the basis of an interpretation of the law most favorable to the taxpayer. Any misrepresentation or change in the applicable law or the factual situation as presented in the ruling request shall invalidate any such ruling issued. A written ruling may be revoked or amended prospectively if (i) there is a change in the law, a court decision, or the guidelines issued by the Department of Taxation upon which the ruling was based or (ii) the commissioner of the revenue or other assessing official notifies the taxpayer of a change in the policy or interpretation upon which the ruling was based. However, any taxpayer who acts on a written ruling which later becomes invalid shall be deemed to have acted in good faith during the period in which such ruling was in effect.

2. Advisory opinions of the Tax Commissioner. The Tax Commissioner shall have the authority to issue advisory written opinions in specific cases as requested to interpret a local business tax and matters related to the administration thereof when an assessment of that tax is subject to appeal to the Tax Commissioner under this chapter. Opinions issued pursuant to this section shall not be applicable as an interpretation of any other tax law.

K. Record-keeping and audits. Every person who is assessable with a local mobile property tax or a local business tax shall keep sufficient records to enable the commissioner of the revenue or other assessing official to verify the correctness of the tax paid for the taxable years assessable and to enable the commissioner of the revenue or other assessing official to ascertain the correct amount of tax assessable for each of those years. All such records, books of accounts and other information shall be open to inspection and examination by the commissioner of the revenue or other assessing official in order to allow him to establish whether the tax is due within this jurisdiction. The commissioner of the revenue or other assessing official shall provide the taxpayer with the option to conduct the audit in the taxpayer's local business office, if the records are maintained there. In the event the records are maintained outside this jurisdiction, copies of the appropriate books and records shall be sent to the commissioner's or assessor's office upon demand.

2. That §§ 58.1-3508, 58.1-3508.1, and 58.1-3508.2 of the Code of Virginia are repealed.