# Updated Port Volume Increase Tax Credit Guidelines

***These Guidelines supersede all Port Volume Increase Tax Credit Guidelines that were previously issued by the Department*

## Introduction

During the 2011 session, the Virginia General Assembly enacted House Bill 2531 and Senate Bill 1481 (2011 Acts of Assembly, Chapters 831 and 872), which established the Port Volume Increase Tax Credit. This is an individual and corporate income tax credit for certain taxpayers that use Virginia port facilities and increase port cargo volume through these facilities. The amount of the tax credit is equal to $50 for each 20-foot equivalent unit ("TEU") above the base year port cargo volume, or $50 for each TEU transported through a port facility during a major facility's first calendar year. To receive this tax credit, taxpayers must apply to the Virginia Port Authority.

Two additional port-related tax credits were enacted during the 2011 General Assembly Session: the Barge and Rail Usage Tax Credit (*Va. Code* § 58.1-439.12:09) and the International Trade Facility Tax Credit (*Va. Code* § 58.1-439.12:06). These tax credits provide separate tax incentives for certain companies that use Virginia port facilities. Although all three tax credits offer incentives for port-related activities, each tax credit is mutually exclusive, and separate definitions and requirements apply to each tax credit. For Taxable Years 2011 through 2013, a taxpayer could qualify for more than one port-related tax credit in the same taxable year, but could not claim multiple port-related tax credits for the same activity or activities. For Taxable Year 2014 and thereafter, however, a taxpayer may claim both the Port Volume Increase Tax Credit and the Barge and Rail Usage Tax Credit for the same containers, noncontainerized cargo, or roll-on/roll-off cargo, provided such taxpayer meets the criteria of both tax credits.

During the 2013 session, the Virginia General Assembly enacted House Bill 1824, which expanded the types of taxpayers that may claim the Port Volume Increase Tax Credit. Under prior law, the credit could be claimed by taxpayers engaged in the manufacturing of goods or the distribution of manufactured goods. Under 2013 House Bill 1824, the credit may be claimed by taxpayers that are agricultural entities, manufacturing-related entities, or mineral and gas entities.

During the 2014 session, the Virginia General Assembly enacted House Bill 873 (2014 Acts of Assembly, Chapter 423), which, in part, expands the type of cargo that qualifies for the credit. Under prior law, qualifying taxpayers that increased their port cargo volume by a minimum of five percent in a qualifying calendar year would receive a $50 credit against the tax levied pursuant to §§ 58.1-320 and 58.1-400 for each "TEU" or "20-foot equivalent unit," above their base year port cargo volume. Under 2014 House Bill 873, the credit was expanded to include roll-on/roll-off cargo and noncontainerized cargo. In addition, 2014 House Bill 873 allows taxpayers to claim the Barge and Rail Usage Tax Credit for the same cargo.

During the 2019 session, the Virginia General Assembly enacted Senate Bill 1652 (2019 Acts of Assembly, Chapter 759), which allows Port Volume Increase Tax Credits issued in taxable years beginning on and after January 1, 2018, but before January 1, 2022 to be transferred for use by another taxpayer as long as such transfer occurs within one year from the date the original credit earner received an allocation of credits.

These guidelines are issued by the Department of Taxation ("the Department") to provide guidance to taxpayers regarding the Port Volume Increase Tax Credit. These guidelines are not rules or regulations subject to the provisions of the Administrative Process Act (*Va. Code* § 2.2-4000 et seq.) and are being published in accordance with the Tax Commissioner's general authority to supervise the administration of the tax laws of the Commonwealth pursuant to *Va. Code* § 58.1-202. These Guidelines supersede all Port Volume Increase Tax Credit Guidelines that were previously issued by the Department. As necessary, additional information will be published and posted on the Department's website, www.tax.virginia.gov.

These guidelines represent the Department's interpretation of the relevant laws. They do not constitute formal rulemaking and hence do not have the force and effect of law or regulation. In the event that the final determination of any court holds that any provision of these guidelines are contrary to law, taxpayers who follow these guidelines will be treated as relying on erroneous written advice for purposes of waiving penalty and interest under *Va. Code* §§ 58.1-105, 58.1-1835, and 58.1-1845. To the extent there is a question regarding the application of these guidelines, taxpayers are encouraged to write to the Department and seek a written response to their question.

**Criteria for Claiming the Tax Credit**

The Port Volume Increase Tax Credit is an individual and corporate income tax credit for certain taxpayers that use Virginia port facilities and increase port cargo volume through these facilities. To be eligible for Port Volume Increase Tax Credits, a taxpayer must:

- Be an agricultural entity, manufacturing-related entity, or mineral and gas entity;
- Use port facilities in Virginia;
- Increase its port cargo volume at these facilities by a minimum of 5 percent in a single calendar year over its base year port cargo volume; and
- Own the cargo at the time that the port facilities are used.

For purposes of this tax credit, an "agricultural entity" is defined as a person that is engaged in growing or producing wheat, grains, fruits, nuts, crops; tobacco, nursery, or floral products; forestry products excluding raw wood fiber or wood fiber processed or manufactured for use as a fuel for the generation of electricity; or seafood, meat, dairy, or poultry products. A "manufacturing-related entity" is defined as a person engaged in the manufacturing of goods or the distribution of manufactured goods. A "mineral and gas entity" is defined as a person engaged in severing minerals or gases from the earth. A taxpayer may only earn Port Volume Increase Tax Credits for cargo that was actually owned by the taxpayer at the time that the port facilities were used (including upon shipment or on delivery) and for which the taxpayer controlled the method of transportation. Ownership is determined by the terms of the shipping contract and is evidenced by the bill of lading. When cargo originates in Virginia, there is a presumption that the company exporting the cargo out of Virginia controls the method of transportation. When a shipment terminates in Virginia, there is a presumption that the company receiving the import in Virginia controls the method of transportation.

“Port cargo volume” is defined as the total amount of net tons of noncontainerized cargo, net units of roll-on/roll-off cargo, or containers measured in TEUs of cargo transported by way of a waterborne ship or vehicle through a port facility. “Base year port cargo volume” means the total amount of net tons of (i) noncontainerized cargo, (ii) TEUs of cargo, or (iii) units of roll-off cargo actually transported by way of a waterborne ship or vehicle through a port facility during the previous calendar year. Base year port cargo volume must be recalculated each calendar year after the initial base year.

> ***Example 1: Computing Base Year Port Cargo Volume***
> Company A is an agricultural entity that uses port facilities in Virginia. During the 2012 calendar year, Company A actually transports 100 TEUs of cargo through Virginia port facilities. For the 2013 calendar year, Company A’s base year port cargo volume is 100 TEUs. If, during the 2013 calendar year, Company A transports 104 TEUs of cargo through Virginia port facilities, Company A would not qualify for Port Volume Increase Tax Credits because it did not increase port cargo volume by 5 percent. If, however, Company A transports 105 TEUs of cargo through Virginia port facilities during 2013, it would qualify for Port Volume Increase Tax Credits because it increased its port cargo volume by 5 percent. It could apply for tax credits equal to the increased number of TEUs multiplied by $50 per TEU, or $250.

To be eligible for this tax credit, the taxpayer’s base year port cargo volume must be a minimum of either 75 net (short) tons of noncontainerized cargo, ten loaded TEUs, or ten units of roll-on/roll-off cargo.

**Computation of Tax Credits**

The Port Volume Increase Tax Credit is generally equal to $50 for each TEU, unit of roll-on/roll-off cargo, or sixteen net tons of noncontainerized cargo, as applicable, above the base year port cargo volume, or $50 for each TEU, unit of roll-on/roll-off cargo, or sixteen net tons of noncontainerized cargo, as applicable, transported through a port facility during a major facility’s first calendar year. For shipments of 40-foot or 45-foot containers, one full container load is equivalent to two TEUs. For purposes of calculating the amount of Port Volume Increase Tax Credits for taxpayers that ship noncontainerized cargo, one TEU is equivalent to 16 net tons of noncontainerized cargo. One net ton is equivalent to one short ton, or 2,200 pounds. Moreover, for purposes of calculating the amount of Port Volume Increase Tax Credits for taxpayers that ship roll-on/roll-off cargo, one TEU is equivalent to one unit of roll-on/roll-off cargo.

For purposes of determining port cargo volume, only a full container load qualifies as a TEU. A full container load (FCL) is a standard 20-foot, 40-foot, or 45-foot container that is loaded and discharged under the account of one shipper, and is intended for one consignee.

A less than container load (LCL) is cargo that is insufficient in either weight or volume to qualify for the freight rates that apply to a standard shipping container and is therefore combined with cargo owned by other shippers or with cargo intended for at least one other consignee. An LCL does not qualify as a TEU or as noncontainerized cargo or roll-on/roll-off cargo for purposes of this tax credit.

***Example 2: Computing the Port Volume Increase Tax Credit***
Company B is a mineral entity that uses port facilities in Virginia. During the 2012 calendar year, Company B ships 100 TEUs, 320 net tons of noncontainerized cargo, and 100 units of roll-on/roll-off cargo through Virginia port facilities. During the 2013 calendar year, Company B ships 110 TEUs, 400 net tons of noncontainerized cargo, and 115 units of roll-on/roll-off cargo. Company B's base year port cargo volume is 220 TEUs, computed as follows:

$$(100 \text{ TEUs}) + \left(\frac{320 \text{ tons}}{16}\right) + (100 \text{ units}) = 220 \text{ TEUs}$$

Company B may claim an amount of Port Volume Increase Tax Credits equal to \$1,500, computed as follows:

$$\left[(110 \text{ TEUs}) + \left(\frac{400 \text{ tons}}{16}\right) + (115 \text{ units}) - (220 \text{ TEUs})\right] \times \$50$$

$$= [(250 \text{ TEUs}) - (220 \text{ TEUs})] \times \$50$$

$$= 30 \text{ TEUs} \times \$50$$

$$= \$1{,}500$$

**Special Rules for Major Facilities**

Although taxpayers must generally increase port cargo volume by a minimum of five percent over base year port cargo volume to claim Port Volume Increase Tax Credits, this requirement may be waived for any taxpayer that qualifies as a major facility. For purposes of this tax credit, a "major facility" is defined as a new facility to be located in Virginia that is projected to import or export cargo through a port in excess of 25,000 TEUs in its first calendar year. The amount of tax credits for a major facility is equal to \$50 for each TEU, unit of roll-on/roll-off cargo, or sixteen net tons of noncontainerized cargo, as applicable, transported through a port facility during the major facility's first calendar year.

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**Allocation of Tax Credits in Excess of $250,000**

The maximum amount of Port Volume Increase Tax Credits for all qualifying taxpayers is limited to $3.2 million for each calendar year. Generally, a qualifying taxpayer may not receive more than $250,000 worth of Port Volume Increase Tax Credits for each calendar year. However, if on March 15 of each year, the $3.2 million amount of tax credits has not been fully allocated among all qualifying taxpayers, then those taxpayers who have been allocated tax credits for the prior year shall be allowed a pro rata share of the remaining allocated tax credits, up to $3.2 million total. In this case, a qualifying taxpayer may receive an amount of tax credits that is greater than $250,000.

**Administration and Carryover of the Tax Credit**

To be granted tax credits, taxpayers must submit Form PVI to the Virginia Port Authority by March 1 of the year after the calendar year in which the increase in port cargo volume occurs. Each taxpayer must attach a schedule to Form PVI that contains the following information:

- A description of how the base year port cargo volume and the increase in port cargo volume were determined; and
- The amount of the increase in port cargo volume for the taxable year stated both as a percentage increase and as a total increase in net tons of noncontainerized cargo, TEUs of cargo, and units of roll-on/roll-off cargo, as applicable.

Every taxpayer that applies for Port Volume Increase Tax Credits must verify containers or cargo that moved through a Virginia Port Authority-operated marine facility on the Virginia Port Authority's website (www.portofvirginia.com). A tax year verification summary sheet must then be attached to Form PVI. If containers or cargo were moved through another facility in Virginia, the taxpayer must provide additional schedules with information regarding base year and current year cargo volume. Taxpayers must also provide any other information requested by the Virginia Port Authority or the Department.

If, on March 15 of the year after the calendar year in which the increase in port cargo volume occurs, the cumulative amount of tax credits requested by qualifying taxpayers for the prior year exceeds $3.2 million, then tax credits will be prorated among the qualifying taxpayers who requested the tax credit.

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The Virginia Port Authority will review all applications for completeness and notify taxpayers of any errors by April 5 of the calendar year in which the tax credit application was submitted. If any additional information is needed, it must be provided no later than May 5 of that year to be considered for the tax credit. All eligible taxpayers will be notified of the amount of allocated tax credits by May 30.

To actually claim the tax credit, a taxpayer must claim the granted amount of tax credits on its income tax return. Any tax credit amount that exceeds the taxpayer's tax liability for the taxable year may be carried forward for five taxable years or until the total amount of the credit has been taken, whichever occurs first.

> ***Example 3: Applying for Port Volume Increase Tax Credits***
> Company K is a manufacturing-related entity that has increased its port cargo volume over its base year cargo volume by 100 TEUs. Accordingly, Company K wants to apply for Port Volume Increase Tax Credits equal to $5,000 for 2013.
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> To receive this tax credit, Company K must apply to the Virginia Port Authority on or before March 1, 2014. If, on March 15, 2014, the cumulative amount of tax credits requested by qualifying taxpayers for the 2013 calendar year is $6.4 million, then all taxpayers will be allocated tax credits equal to 50 percent of the requested amount. In this case, Company K would be allocated tax credits equal to $2,500.
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> Company K can then claim the amount of tax credits issued on its 2013 income tax return. If Company K files its income tax return for the 2013 taxable year before it receives notification from the Virginia Port Authority, it can claim Port Volume Increase Tax Credits by filing an amended return for the 2013 taxable year.

**Transfer of Tax Credits**

For credits issued in taxable years beginning on and after January 1, 2018, but before January 1, 2022, any taxpayer holding Port Volume Increase Tax Credits may transfer certain unused credits to another taxpayer for use on their Virginia income tax returns. A transfer of credits will not be permitted unless the transfer occurs within one year from the date the original credit earner received an allocation of credits. A taxpayer may transfer credits to more than one taxpayer. In addition, a taxpayer may transfer a portion of their credits to another taxpayer, while retaining a portion of their credits for use on their own tax return.

Taxpayers may not transfer credits until after they have been notified by the Virginia Port Authority that their application for credits has been approved and they receive an allocation of credits. A taxpayer that has received an allocation of credits and seeks to transfer credits to another taxpayer is first required to submit a completed Form PVT to the Department to effectuate such transfer.

A taxpayer that is the recipient of a transfer of credits may subsequently transfer the credits to another taxpayer. However, such transfer is required to occur within one year from the date the original credit earner received an allocation of credits. The taxpayer that originally earned the credits may not be the recipient of credits that they transferred to another taxpayer.

A transferee may apply transferred credits retroactively through an amended return, up to the date the credits were originally issued, as long as such utilization occurs within the applicable statute of limitations. In no circumstances may a transferee apply transferred credits to a taxable year prior to the date the credits were originally issued. Credits that are not transferred may not be retroactively applied. Any transferred credits in excess of the transferees' tax liability for the taxable year may be carried forward for five taxable years after the taxable year for which the credit was issued to the original credit earner, or until the total amount of the credit has been claimed, whichever occurs first.

**Interaction of Port-Related Tax Credits**

For Taxable Years 2011 through 2013, a taxpayer could qualify for more than one port-related tax credit in the same taxable year, but could not claim multiple port-related tax credits for the same activity or activities. For Taxable Year 2014 and thereafter, however, a taxpayer may claim both the Port Volume Increase Tax Credit and the Barge and Rail Usage Tax Credit for the same containers, noncontainerized cargo, or roll-on/roll-off cargo, provided such taxpayer meets the criteria of both tax credits.

**Additional Information**

These guidelines are available online in the Laws, Rules and Decisions section of the Department's website, located at www.policylibrary.tax.virginia.gov. For additional information, please contact the Department at (804) 367-8037 or the Virginia Port Authority at (800) 446-8098. For assistance with the container and cargo verification process, contact the Virginia Port Authority at (757) 391-6235 or helpdesk@vit.org.

**Approved:**

Craig M. Burns
Tax Commissioner