



## **Economic Impact Analysis Virginia Department of Planning and Budget**

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**23 VAC 10-120 – Corporate Income Tax Regulations**  
**Department of Taxation**  
October 18, 2006

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### **Summary of the Proposed Amendments to Regulation**

The Department of Taxation (department) proposes to repeal Sections 50 (Excess cost recovery), 60 (Excess cost recovery; definitions), 61 (Excess cost recovery; purpose), 62 (Excess cost recovery; computation of the outstanding balance of excess cost recovery), 63 (Excess cost recovery; post-1987 ACRS subtractions), 64 (Excess cost recovery; carryover of unused subtractions), 65 (Excess cost recovery; final return), 66 (Excess cost recovery; application for refund), 67 (Excess cost recovery; special rules), 290 (Energy income tax credit), 360 (Intragroup transactions; definitions), 361 (Factors utilized in determining whether intragroup transactions distort income from business done in Virginia), 362 (Circumstances under which taxpayers may request that 23VAC10-120-360 through 23VAC10-20-364 be applied to intragroup transactions), 363 (Intragroup transactions; accurately reflecting the income from business done in Virginia), 364 (Intragroup transactions; examples) and 370 (Foreign sales corporations) of these regulations.

### **Result of Analysis**

The proposed amendments are not likely to have any significant impact.

### **Estimated Economic Impact**

Sections 50 (Excess cost recovery), 60 (Excess cost recovery; definitions), 61 (Excess cost recovery; purpose), 62 (Excess cost recovery; computation of the outstanding balance of excess cost recovery), 63 (Excess cost recovery; post-1987 ACRS subtractions), 64 (Excess cost recovery; carryover of unused subtractions), 65 (Excess cost recovery; final return), 66 (Excess cost recovery; application for refund), and 67 (Excess cost recovery; special rules) all pertain to:

1) the phase in of the federal Accelerated Cost Recovery System (ACRS), 2) Virginia's initial requirement to add back for Virginia income tax purposes 30 percent of the dollars deducted from income for federal tax purposes due to ACRS, and 3) the subsequent permission for Virginia taxpayers to recover these add-backs in following years. According to the department, the ACRS additions were recovered on Virginia income tax returns in 1988 through 1997 for corporations, and therefore Sections 50, 60, 61, 62, 63, 64, 65, 66 and 67 are no longer relevant. Thus the repeal of these regulatory sections should not have a significant impact.

Code of Virginia Section § 58.1-431 permits corporations to claim an energy income tax credit for a portion of renewable energy source expenditures made prior to January 1, 1988. Section 290 of these regulations (Energy income tax credit) adds detail concerning the energy income tax credit. According to the department, even if a corporation had renewable energy source expenditures prior to January 1, 1988 for which it had not previously applied for a credit, it can no longer apply for energy income tax credit due to a three-year statute of limitations. Thus, repeal of Section 370 will have no impact other than perhaps to decrease the probability that a corporation may mistakenly believe it could obtain an energy income tax credit.

According to the department, for many years virtually the only application of Va. Code § 58.1-446 has been by auditors to address royalties and interest paid to intangible holding company affiliates of taxpayers. Almost every one of these assessments has been contested, and because the statutory standard is so subjective, resolution of these cases has consumed an extraordinary amount of the department's resources. The department stopped invoking its authority under this section in the late 1990's and sought legislation mandating an add-back of royalties paid to intangible holding company affiliates. House Bill 5018 of the 2004 Virginia Acts of Assembly included this mandate. Given this change in the Code of Virginia, sections 360 (Intragroup transactions; definitions), 361 (Factors utilized in determining whether intragroup transactions distort income from business done in Virginia), 362 (Circumstances under which taxpayers may request that 23VAC10-120-360 through 23VAC10-20-364 be applied to intragroup transactions), 363 (Intragroup transactions; accurately reflecting the income from business done in Virginia), 364 (Intragroup transactions; examples) and 370 (Foreign sales corporations) no longer apply.

## **Businesses and Entities Affected**

The proposed repeal of these regulations will not significantly affect businesses and entities.

## **Localities Particularly Affected**

No localities are particularly affected.

## **Projected Impact on Employment**

The proposed repeal of these regulations will not affect employment.

## **Effects on the Use and Value of Private Property**

The proposed repeal of these regulations will not significantly affect the use and value of private property.

## **Small Businesses: Costs and Other Effects**

The proposed repeal of these regulations will not significantly affect small businesses.

## **Small Businesses: Alternative Method that Minimizes Adverse Impact**

The proposed repeal of these regulations will not significantly affect small businesses.

## **Legal Mandate**

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with Section 2.2-4007.H of the Administrative Process Act and Executive Order Number 36 (06). Section 2.2-4007.H requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has adverse effect on small businesses, Section 2.2-4007.H requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a

statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.