

GUIDELINES FOR THE MOTOR VEHICLE RENTAL TAXES AND FEE

Amended July 1, 2013

These guidelines ("Guidelines") were first published June 25, 2012, by the Virginia Department of Taxation (the "Department") to provide guidance to persons who rent motor vehicles subject to the Motor Vehicle Rental Taxes and Fee ("Rental Tax"). House Bill 1798 and Senate Bill 1132 (*Acts of Assembly 2011*, Chapters 405 and 639) transferred the administration of the Rental Tax from the Department of Motor Vehicles ("DMV") to the Department of Taxation effective July 1, 2012. These Guidelines are exempt from the provisions of the Administrative Process Act (*Va. Code § 2.2-4000 et seq.*)

A tax is imposed on the rental, for a period of less than 12 months, of motor vehicles with a gross vehicle weight rating or gross combined weight rating of 26,000 pounds or less at a rate of four percent of the gross proceeds. An additional tax is imposed on the rental of every motor vehicle regardless of the weight, except for motorcycles and manufactured homes, at a rate of four percent of the gross proceeds. A two percent fee is also levied on the gross proceeds from the rental of motor vehicles, except for motorcycles and manufactured homes. Most passenger vehicles that are rented are subject to the Rental Tax at a combined rate of 10 percent of the gross proceeds.

For rentals of motor vehicles occurring on and after July 1, 2013, i) charges for violations, citations, or fines and related penalties and fees; ii) delivery charges, pickup charges, recovery charges, or drop charges; iii) pass-through charges; iv) transportation charges; v) third-party service charges; and vi) refueling surcharges are excluded from "gross proceeds" for the purposes of the Motor Vehicle Rental Taxes and Fee. To the extent that this legislative change conflicts with the existing Virginia Rental Tax Rules and Regulations (*24 Virginia Administrative Code (VAC) 20-100-10 et seq.*), for periods on and after July 1, 2013 the legislation supersedes the regulations, and these Guidelines, developed pursuant to the legislation, should be followed. As necessary, additional guidelines will be published and posted on the Department's website, www.tax.virginia.gov.

Definitions

Terms used in the Rental Tax have the same meaning as those used in the Retail Sales and Use Tax, unless defined otherwise, as follows:

"Daily rental vehicle" means a motor vehicle, except a motorcycle or a manufactured home as defined in § 46.2-100, used for rental as defined herein and for the transportation of persons or property, whether on its own structure or by drawing another vehicle or vehicles. (Source: *Va. Code § 58.1-1735*)

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"Gross proceeds" means the charges made or voluntary contributions received for the rental of a motor vehicle where the rental or lease agreement is for a period of less than 12 months. This includes charges for any services that are part of the rental agreement or any separate charges relating to the agreement as well as charges for collision coverage or waiver of property damage, public liability, or other forms of potential liability for the customer. However, gross proceeds does not include: 1) cash discounts allowed and actually taken on a rental contract; 2) finance charges, carrying charges, service charges, or interest from credit given on a rental contract; 3) charges for motor fuels; 4) charges for optional accidental death insurance, unless the charge contains other taxable charges which are not separately stated; 5) Motor Vehicle Sales and Use Tax; 6) charges for violations, citations, or fines and related penalties and fees; 7) delivery charges, pickup charges, recovery charges, or drop charges; 8) pass-through charges; 9) transportation charges; 10) third-party service charges; 11) refueling surcharges and 12) the Rental Tax. (Source: *Va. Code* § 58.1-1735)

"Manufactured home" means a structure, subject to federal regulation, transportable in one or more sections, which in the traveling mode is eight body feet or more in width or 40 body feet or more in length, or, when erected on site, is 320 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning, and electrical systems contained therein. (Source: *Va. Code* § 46.2-100)

"Mobile office" means an industrialized building unit not subject to federal regulation, which may be constructed on a chassis for the purpose of towing to the point of use and designed to be used with or without a permanent foundation, for commercial use and not for residential use; or two or more such units separately towable but designed to be joined together at the point of use to form a single commercial structure, and which may be designed for removal to, and installation or erection on, other sites. (Source: *Va. Code* § 58.1-1735)

"Motor vehicle" means every vehicle, except for a mobile office as herein defined, that is self-propelled or designed for self-propulsion and every vehicle drawn by or designed to be drawn by a motor vehicle, including manufactured homes as defined in § 46.2-100 and every device in, upon, and by which any person or property is, or can be, transported or drawn upon a highway, but excepting devices moved by human or animal power, devices used exclusively upon stationary rails or tracks, and vehicles, other than manufactured homes, used in the Commonwealth but not required to be licensed by the Commonwealth. (Source: *Va. Code* § 58.1-1735)

"Rental" means the transfer of the possession or use of a motor vehicle, whether or not the motor vehicle is required to be licensed by the Commonwealth, by a person for a consideration, without the transfer of the ownership of such motor vehicle, for a period of less than 12 months. Any fee arrangement between the holder of a permit issued by the Department of Motor Vehicles for taxicab services and the driver or drivers of such taxicabs shall not be deemed a rental under this section. Any fee arrangement between

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a licensed driver training school and a student in that school, whereby the student may use a vehicle owned or leased by the school to perform a road skills test administered by the Department of Motor Vehicles, shall not be deemed a rental under this section. (Source: *Va. Code* § 58.1-1735)

"Rental in the Commonwealth" means any rental where a person received delivery of a motor vehicle within the Commonwealth of Virginia. The term "Commonwealth" shall include all land or interest in land within the Commonwealth owned by or conveyed to the United States of America. (Source: *Va. Code* § 58.1-1735)

"Rentor" means a person engaged in the rental of motor vehicles for consideration. (Source: *Va. Code* § 58.1-1735)

Changes to the Administration of the Rental Tax

Administration of the Rental Tax regarding transactions occurring prior to July 1, 2012, is handled by DMV. Effective July 1, 2012, the Rental Tax is administered by the Department.

Taxable Rentals

Taxes and fees are levied on the gross proceeds from the rental of motor vehicles in Virginia. The taxes are comprised of a four percent tax as well as a four percent additional tax and two percent fee on daily rental vehicles.

The four percent tax is a state tax and is levied on the gross proceeds from the rental in Virginia of all motor vehicles with a gross vehicle weight rating or a gross combination weight rating of 26,000 pounds or less.

Both the four percent additional tax and the two percent fee are levied on the gross proceeds from the rental in Virginia of any daily rental vehicle. The four percent additional tax and the two percent fee are in addition to, and not in lieu of, the four percent tax.

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The following table is provided to clarify the tax and fee structure by listing certain types of vehicles and the taxes that apply:

TYPE OF VEHICLE	APPLICABLE TAX
Motor vehicles with a gross vehicle weight rating or gross combination weight rating of 26,000 pounds or less.	4.0% tax, the 4.0% additional tax and 2.0% fee.
Motor vehicles with a gross vehicle weight rating or gross combination weight of 26,001 pounds or more.	4.0% additional tax and 2.0% fee.
Manufactured homes.	4.0% tax.
Mobile offices.	No tax or fee.
Motorcycles.	4.0% tax.

Nontaxable Transactions

Charges for the following transactions are not subject to the Rental Tax and no exemption certificate is required:

- Fee arrangements between the holder of a permit issued by the Department of Motor Vehicles for taxicab services and the driver or drivers of such taxicabs. (Source: *Va. Code* § 58.1-1735)
- Fee arrangements between a licensed driver training school and a student in that school, whereby the student may use a vehicle owned or leased by the school to perform a road skills test administered by the Department of Motor Vehicles. (Source: *Va. Code* § 58.1-1735)
- Rentals of self-contained mobile computerized axial tomography scanners to a nonprofit hospital or a cooperative hospital service organization as described in § 501(e) of the *Internal Revenue Code*. (Source: *Va. Code* § 58.1-1737)
- Rentals of self-contained mobile units designed exclusively for human diagnostic or therapeutic service to a nonprofit hospital or a cooperative hospital service organization established for research in, diagnosis of, or therapy for human ailments as described in § 501(e) of the *Internal Revenue Code*, or a nonprofit corporation as defined in § 501(c)(3) of the *Internal Revenue Code*, established for research in, diagnosis of, or therapy for human ailments. (Source: *Va. Code* § 58.1-1737)
- Rentals to private nonprofit institutions of learning for the sole purpose of use in driver education instruction that is a part of such institution's curriculum for full-time students. (Source: 24 VAC 20-100-210)

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- Rentals to the United States, the Commonwealth or political subdivisions of the Commonwealth for their exclusive use if the purchases are pursuant to required official purchase orders to be paid for out of public funds. A United States government credit card or a Commonwealth of Virginia credit card may also be used if the credit of the federal or state government is bound and billings are sent directly to and paid by the government. (Source: *Va. Code* § 58.1-1737)
- Rentals to any person for the purpose of re-rental. The person who will be re-renting the vehicle must have a valid rental certificate of registration in order for a transaction to qualify for this exemption and the rentor must keep adequate documentation of such certificate of registration. (Source: *Va. Code* § 58.1-1735)

No other transactions are specifically exempt from the Rental Tax.

Gross Proceeds

For purposes of computing the Rental Tax, gross proceeds is defined as the charges made or voluntary contributions received for the rental of a motor vehicle where the rental or lease agreement is for a period of less than 12 months. This includes charges for any services that are part of the rental agreement or any separate charges relating to the agreement as well as charges for collision coverage or waiver of property damage, public liability, or other forms of potential liability for the customer. However, the following amounts are excluded from gross proceeds:

- Cash discounts allowed and actually taken on a rental contract.
- Finance charges, carrying charges, service charges, or interest from credit given on a rental contract.
- Charges for motor fuels.
- Charges for optional accidental death insurance, unless the charge contains other taxable charges which are not be separately stated.
- Charges for violations, citations, or fines and related penalties and fees.
- Delivery charges, pickup charges, recovery charges, and drop charges.
- Pass-through charges.
- Transportation charges.
- Third-party service charges.

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- Refueling surcharges
- Motor Vehicle Sales and Use Tax and the Rental Tax. (Source: *Va. Code* § 58.1-1735)

Example 1:

A customer rents a motor vehicle for \$100 with \$50 collision coverage as part of the rental contract, for a total of \$150. Gross proceeds for purposes of the Rental Tax would include the charges for renting the motor vehicle and for the collision coverage. The rentor would collect the Rental Tax on gross proceeds of \$150.

Example 2:

A customer rents a motor vehicle for \$100 with both \$50 collision coverage and \$25 optional accidental death coverage as part of the rental contract, for a total of \$175. Gross proceeds for purposes of the Rental Tax would include the charges for renting the motor vehicle and for the collision coverage, and would exclude the charges for the optional accidental death coverage. The rentor would collect the Rental Tax on gross proceeds of \$150.

Charge or Credit Card Sales

Any rentor receiving payment for rentals through charge or credit cards must report the total selling price and pay the applicable tax for the taxable period in which the rented motor vehicle is returned by the customer.

Example 3:

A customer takes delivery of rented motor vehicle and returns the vehicle to the rentor in July and presents a credit card as payment. The rentor must report and pay the tax on the July return, due August 20, even if reimbursement from the credit card company has not been received.

Sourcing Rules

As the additional four percent tax is distributed back to the locality wherein the customer received delivery of the daily rental vehicle, rentors must allocate the gross proceeds and tax due to the applicable locality. Regardless of the location where the rental agreement is written, where the rental terminates, or where the vehicle is surrendered, the Rental Tax should be sourced to the county, city, or town wherein the daily rental vehicle was delivered for use by the rental customer. (Source: *Va. Code* § 58.1-1735)

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Example 4:

A customer places an order for the rental of a motor vehicle at a business location outside of the Commonwealth and the motor vehicle is delivered within the Commonwealth to a location in County A. The rental would be subject to the Rental Tax and sourced to County A.

Example 5:

A customer places an order for the rental of a motor vehicle at a business location in County A and the motor vehicle is delivered outside of the Commonwealth. The rental would not be subject to the Rental Tax.

Example 6:

A customer places an order for the rental of a motor vehicle at a business location in County A and takes possession of the motor vehicle at the business location. The rental is sourced to County A.

Example 7:

A customer places an order for the rental of a motor vehicle at a business location in County A and has the motor vehicle delivered to his home in Town B, but surrenders the vehicle at the business location in County A. The rental is sourced to Town B.

Example 8:

A customer places an order for the rental of a motor vehicle at a business location in County A and the motor vehicle is delivered outside of the Commonwealth, but surrenders the vehicle at the business location in County A. The rental would not be subject to the Rental Tax.

Registration of Rentors

Every rentor engaged in the rental of motor vehicles in the Commonwealth is required to file an application for a Certificate of Registration with the Department for collection and payment of the Rental Tax. This includes every person outside this state engaged in renting motor vehicles delivered to a customer within the Commonwealth. Such rentors must file returns and perform all other duties required of rentors in this state. (Source: *Va. Code* § 58.1-1735)

To the extent that the Department is able to identify such rentors as potentially liable for collecting and remitting the Rental Tax, the Department will notify such rentors in advance of the effective date and supply the dealers with the necessary forms and instructions to obtain a Certificate of Registration. If a rentor does not receive any

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information from the Department, and is liable to collect the Rental Tax, he should apply for a Certificate of Registration online at the Department's website at www.tax.virginia.gov. A separate application for a Certificate of Registration is required for each place of business.

The Department will review and approve an application for registration and issue the rentor an official Certificate of Registration. The Certificate of Registration is not transferable and is valid only for the designated rentor. A copy of the Certificate of Registration must always be displayed conspicuously at each place of business.

If a rentor ceases to conduct his business, the certificate immediately expires. Changes in ownership or corporate structure may require that the business apply for and obtain a new Certificate of Registration. For more information regarding the sale or quitting of a business, please see the "Sale of Business" section below.

Registration and Licensing of Vehicles

Any motor vehicle required to be licensed by the Commonwealth which is held for rental purposes must be registered with DMV as a rental motor vehicle, or as an apportionable vehicle under the International Registration Plan, and must have special license plate designations indicating that the motor vehicle is a rental vehicle or an apportioned vehicle. Such registration and special plates are required even if the vehicle is rented only occasionally, except that vehicles registered and licensed as for-hire vehicles need not be registered or licensed as rental vehicles when used only occasionally as rental vehicles. (Source: 24 VAC 20-100-150)

A motor vehicle titled and registered as a rental motor vehicle must be used exclusively as a rental motor vehicle and must generate rental income. However, a rental motor vehicle may be used temporarily i) as a substitute for a leased motor vehicle; ii) as a demonstrator; iii) for customer service, promotion, or employee transportation; iv) while being serviced; or v) while being transferred from one location to another. Such temporary use must be limited and reasonably documented. If gross proceeds are generated through temporary use, the vehicle is considered to have been rented and rental tax is due. (Source: 24 VAC 20-100-170)

If a rentor desires to transfer a motor vehicle registered in Virginia from its rental status to a non-rental status, the registration of the motor vehicle must be transferred with DMV. The applicable fee will be charged for transfer of the registration. At the time a motor vehicle registration is transferred from rental status, the 3.0 percent Motor Vehicle Sales and Use Tax will be collected, unless such tax was paid when the vehicle was first registered. No credit against the Motor Vehicle Sales and Use Tax will be allowed for taxes or fees previously paid on the gross proceeds from the rental of that vehicle. (Source: 24 VAC 20-100-160)

If a rentor desires to transfer a nonrental motor vehicle to rental status, he must transfer the registration of the motor vehicle with DMV. The applicable fee will be charged for

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transfer of the registration, plus any difference in fees between the existing registration and the rental registration. At the time the motor vehicle is registered as a rental motor vehicle, the appropriate form or forms must be filed with DMV verifying that the motor vehicle will be held exclusively for rental purposes. Rental license plates for the vehicle will be issued by DMV. (Source: 24 VAC 20-100-180)

Rentors should contact the DMV for more information on the registration and licensing of motor vehicles.

Filing of Monthly Returns and Payment of Tax

Every rentor registered or required to be registered for the Rental Tax is required to file Form MVR-420, Rental Tax Return, on or before the 20th day of the month following each reporting period even if no tax is due. Unless specifically waived, every rentor must also include Schedule MVR-420B, Local Rental Tax Schedule when filing Form MVR-420. At the time of filing Form MVR-420, Rental Tax Return, the rentor must pay the amount of tax due. Transactions should be reported in the period in which the rental vehicles were returned. The return for each period becomes delinquent on the twenty-first day of the succeeding month if not paid. In the case of rentors regularly keeping books and accounts on the basis of an annual period that varies from 52 to 53 weeks, reporting consistent with such accounting period is acceptable, provided a satisfactory explanatory statement is attached to the rentor's first return filed under such annual accounting period. Rentors should retain Form MVR-420A, Rental Tax Return Worksheet, for their records.

A rentor may apply in writing to the Department for an extension of time for filing a Form MVR-420 and paying the tax. The request must be made before the return becomes due and must state the necessity for additional time. An extension may be granted to the end of the calendar month in which the return is due, or for a period not exceeding 30 days. Penalty and interest will not be charged during the period of extension, except that interest will accrue on the tax at the rate prescribed in § 6621 of the *Internal Revenue Code* plus two percent where the extension is granted beyond the end of the calendar month in which the return is due. Any rentor who fails to file the return within the extended time and to pay the full amount required will be treated as if no extension had been granted.

Collection of Tax

The Rental Tax must be collected from the rental customer, and must be separately stated as taxes and a fee and added to the rental price on the rental contract. Transactions should be reported in the period in which the rental vehicles were returned. The taxes and the fee are debts from the rental customer to the rentor until paid, and are recoverable in an action at law in the same manner as other debts. The Rental Tax must be remitted to the Department and reported on each rentor's Form MVR-420, Rental Tax Return.

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In the event that a rentor collects the Rental Tax on exempt or non-taxable transactions, the rentor must remit the erroneously or illegally collected tax to the Department unless or until the rentor can affirmatively show that the tax has been refunded to the customer or credited to his account. A rentor who intentionally neglects, fails or refuses to collect the Rental Tax is liable for and must pay the tax himself. No rentor shall hold out to the public that he will absorb all or any part of the Rental Tax, or that he will relieve any customer of the payment of all or any part of the tax.

Local Motor Vehicle License Taxes and Fees

No county, city, or town shall impose any tangible personal property tax, license tax, license fee or the requirement of a license tag, sticker or decal upon any daily rental vehicle that is subject to the 4.0 percent additional tax. (Source: *Va. Code* § 46.2-755)

Bad Debts

Every rentor will be allowed a credit against the tax shown to be due on the return for the amount of tax previously paid on accounts that are owed to the rentor and that have been found to be worthless within the period covered by the return. The credit, however, shall not exceed the amount of the uncollected sales price determined by treating prior payments on each debt as consisting of the same proportion of sales price, sales tax and other nontaxable charges as in the total debt originally owed to the rentor. The amount of accounts for which a credit has been taken that are thereafter in whole or in part paid to the rentor shall be included in the first return filed after such collection. (Source: *Va. Code* § 58.1-621)

Penalties and Interest

Except with respect to fraudulent returns, the failure to file a timely return and make a timely and full payment of this tax will subject the rentor to a specific penalty to be added to the tax in the amount of six percent if the failure is for not more than one month, with an additional six percent for each additional month, or fraction thereof, during which the failure continues, not to exceed thirty percent in the aggregate. In no case, however, shall the penalty be less than ten dollars and such minimum penalty shall apply whether or not any tax is due for the period for which such return was required. (Source: *Va. Code* § 58.1-635 A)

In the case of a false or fraudulent return where willful intent exists to defraud the Commonwealth of this tax, or in the case of a willful failure to file a return with the intent to defraud the Commonwealth of this tax, a penalty of fifty percent of the amount of the proper tax shall be assessed. (Source: *Va. Code* § 58.1-635 A)

The rate of interest on omitted taxes and assessments is the "Underpayment Rate" established pursuant to § 6621(a)(2) of the *Internal Revenue Code* plus two percent. (Source: *Va. Code* § 58.1-15(A))

Sale of Business

If any rentor is liable for any tax, penalty or interest and sells his business or stock of goods or quits the business, he must make a final return and payment within 15 days after the date of selling or quitting the business. At that time, he must also return his Certificate of Registration to the Department and include a letter explaining the situation. He must report on his final return the full name and address of any successor. (Source: *Va. Code* § 58.1-629)

The rentor's successors or assigns, if any, must withhold a sufficient portion of the purchase money to cover the amount of any taxes, penalties and interest due and unpaid until the former owner produces either a receipt from the Department showing that payment has been made or a certificate stating that no taxes, penalties or interest are due. If the purchaser of a business or stock of goods fails to withhold a sufficient portion of the purchase money, he becomes personally liable for the payment of the taxes, penalties and interest due and unpaid by any former owner. (Source: *Va. Code* § 58.1-629)

A trustee, receiver, assignee, executor or administrator who continues to operate, manage or control a business engaged in renting motor vehicles must make application for a new Certificate of Registration except for a corporation which continues to exist as the same legal entity. The tax must be collected and paid like any other rentor. It is immaterial that such officer or person may have been appointed by a court.

Compliance Provisions

The Retail Sales and Use Tax compliance provisions set forth in Code of Va. §§ 58.1-630 through 58.1-637 and applicable Retail Sales and Use Tax Regulations will apply to the Rental Tax. Whenever the term "dealer" is used in these sections, the term "rentor" shall be substituted:

- *Va. Code* § 58.1-630 Dealer Bonds;
- *Va. Code* § 58.1-631 Jeopardy Assessments;
- *Va. Code* § 58.1-632 Memoranda of Lien;
- *Va. Code* § 58.1-634 Period of Limitations;
- *Va. Code* § 58.1-636 Penalty for Failure to File Return or Making False Return; and
- *Va. Code* § 58.1-637 Bad Checks.

(Source: *Va. Code* § 58.1-1738)

Records

Every dealer is required to keep and preserve for three years adequate and complete records necessary to determine the amount of tax liability. Such records shall include: (1) A daily record of all cash and credit rentals by place of business, including rentals under any type of financing or installment plan in use, with indications of which rentals involved daily rental vehicles; (2) a copy of all rental contracts for each vehicle held for rental; and (3) a record of all deductions and exemptions claimed in filing tax returns, including bad debts, and documentation providing that all nontaxable transactions were valid.

Records must be open for inspection and examination at all reasonable hours of the business day by the Department. The rentor may maintain such records on microfilm or in an electronic format. (Source: *Va. Code* § 58.1-633 B)

Disposition of Revenues

The revenues from the Rental Tax will be collected and remitted monthly by rentors to the Department and, after subtracting the direct costs of administration by the Department, transferred to special funds within the Commonwealth Transportation Fund on a monthly basis. Any interest earned on the revenues will be credited to such funds. (Source: *Va. Code* § 58.1-1741)

The revenues from the four percent tax that is imposed on motor vehicles with a gross vehicle weight rating or gross combined weight rating of 26,000 pounds or less are dedicated to the Rail Enhancement Fund. The revenues from the additional tax imposed on the rental of every motor vehicle at the rate of four percent are distributed monthly to the city, town, or county where the vehicle was delivered to the rentee. The revenues from the 2 percent fee are dedicated to the General Fund to pay the debt service on bonds issued for the Statewide Agencies Radio System ("STARS"). (Source: *Va. Code* § 58.1-1741)

Any errors made in any distribution, or adjustments that are otherwise necessary, will be made in the distribution for the next month or for subsequent months.

Administrative Rulings

A rentor may request that the Tax Commissioner issue a written ruling when there is a question about the application of the tax to a specific situation. The rentor must provide the Commissioner with all pertinent facts, including the names of individuals, firms or corporations involved; type, location and value of property; and any other relevant information. The rentor may argue for the interpretation of the law most favorable to him.

A rentor who acts on a written ruling that is later revoked or set aside by the courts or the Commissioner will have acted in good faith. A written ruling, however, becomes

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invalid if later changed by an amendment to the law, a court decision, or a rule or regulation issued by the Commissioner. (Source: 23 VAC 20-20-155)

Appeals

Taxpayers may appeal Rental Tax assessments to the Department using the administrative appeals process applicable to other state taxes administered by the Department set forth in *Va. Code* § 58.1-1820 *et seq.* and 23 VAC 20-20-165.

Additional Information

These Guidelines and rules are available on-line in the Tax Policy Library section of the Department's website, located at www.tax.virginia.gov. For additional information, please contact the Office of Customer Services at (804) 367-8037 or through the "Live Chat" service on the Department's website, www.tax.virginia.gov.

Approved:

A handwritten signature in black ink, appearing to read "Craig M. Burns". The signature is written in a cursive style with a long horizontal stroke at the end.

Craig M. Burns
Tax Commissioner