



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

23 VAC 10-20 General Provisions Applicable to All Taxes Administered by the Department of Taxation

23 VAC 10-110 Individual Income Tax

23 VAC 10-115 Fiduciary Income Tax

23 VAC 10-120 Corporate Income Tax

23 VAC 10-210 Retail Sales and Use Tax

Department of Taxation

Town Hall Action/Stage: 6353/10169

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The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia (Code) and Executive Order 19. The analysis presented below represents DPB’s best estimate of the potential economic impacts as of the date of this analysis.¹

Summary of the Proposed Amendments to Regulation

As the result of Executive Directive 1 (2022)² the Department of Taxation has adopted a fast-track regulatory action to amend five regulations: the *General Provisions Applicable to All Taxes Administered By the Department of Taxation*, the *Individual Income Tax*, the *Fiduciary Income Tax*, the *Corporation Income Tax*, and the *Retail Sales and Use Tax*. In total, the action would update and retain four sections and repeal thirty-four sections that are either outdated or repetitive of tax provisions in the Code of Virginia.

¹ Code § 2.2-4007.04 requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the analysis should include but not be limited to: (1) the projected number of businesses or other entities to whom the proposed regulatory action would apply, (2) the identity of any localities and types of businesses or other entities particularly affected, (3) the projected number of persons and employment positions to be affected, (4) the projected costs to affected businesses or entities to implement or comply with the regulation, and (5) the impact on the use and value of private property.

² ED 1, which was issued on January 15, 2022, directs executive branch agencies “to initiate regulatory processes to reduce by at least 25 percent the number of regulations not mandated by federal or state statute.” See <https://www.governor.virginia.gov/media/governorviriniagov/governor-of-virginia/pdf/ed/ED-1-Regulatory-Reduction.pdf>. ED 1 was subsequently amended and reenacted by Executive Order 19 (2022) to “require a 25 percent reduction in regulatory requirements instead of a reduction in regulations.” See <https://townhall.virginia.gov/EO-19-Development-and-Review-of-State-Agency-Regulations.pdf>.

Background

The Department of Taxation reports that these regulations are typically used by tax attorneys who are either helping clients plan for their tax liabilities or appeal an audit finding, and that taxpayers and tax preparers are typically only relying on the forms and instructions used to pay taxes or prepare tax returns. Thus, the agency's intent in reviewing the current regulation was to remove provisions that were outdated, and thus confusing, and provisions that mainly served to explain requirements in statute. Further, the regulation for *Retail Sales and Use Tax* contains numerous industry-specific provisions that the agency believes are either nearly obsolete (such as 23 VAC 10-210-970 governing microfilm/microfiche documents) or that follow the general rule for either retail sales or service providers and no longer need to be the subject of their own separate sections of the regulation. The proposed changes for each of the five regulations are briefly summarized below.

23 VAC 10-20 General Provisions Applicable to All Taxes Administered by the Department of Taxation

- Section 30, pertaining to the filing of tax returns or payment of taxes by mail, is being repealed in its entirety because it paraphrases Virginia Code § 58.1-9.³
- Section 60, pertaining to the interest rates for late payments, currently contains interest rates for years up to December 1984. The Department of Taxation reports that these interest rates are now communicated to the public via a quarterly bulletin,⁴ and do not need to be updated in the regulation. This section would retain language noting that Virginia uses the nominal interest rate established by Internal Revenue Code § 6621 would be retained, and that Virginia applies simple interest computations without compounding. The agency also proposes to add a reference to Virginia Code § 58.1-15, which pertains to the rate of interest.⁵

23 VAC 10-110 Individual Income Tax

- Section 130, pertaining to exemptions and exclusions, would be retained in part. The Department of Taxation notes that the filing thresholds in the current subsection A are

³ See <https://law.lis.virginia.gov/vacode/title58.1/chapter0/section58.1-9/>.

⁴ See <https://www.tax.virginia.gov/tax-bulletins>.

⁵ See <https://law.lis.virginia.gov/vacode/title58.1/chapter0/section58.1-15/>.

outdated and that they are frequently updated by the General Assembly; thus, subsection A would be repealed entirely, and subsection B would be repealed in part such that only the item pertaining to part-year residents would be retained. The remaining items, which pertain to nonresidents and military personnel, would also be retained. A reference to Virginia Code § 58.1-321 would be added to the parenthetical note at the end of the section.⁶

- Section 142, pertaining to subtractions from Virginia taxable income, would also be retained in part. Subsections that would be removed are either outdated or redundant to Virginia Code § 58.1-322.02; a reference to this section of statute would be added.⁷ For example, the subsection governing WIN (Work Incentive) or targeted jobs tax credit would be repealed because it was replaced by the Work Opportunity Credit in 2017; the language pertaining to this subtraction can be found in Code § 58.1-322.02(6).⁸ This section would retain subsections pertaining to (i) interest or dividends on U.S. bonds or similar securities, (ii) interest or dividends on pass-through entities, and (iii) Social Security and Railroad Retirement benefits.
- Section 143, governing deductions from Virginia taxable income would largely be repealed as most provisions are also in Code § 58.1-322.03; a reference to this statute would be added.⁹ Two subsections would be retained, as follows.
 - Subsection 1, pertaining itemized deductions would be replaced with a statement that says, “For the purposes of computing the amount of reduction required to federal itemized deductions for income taxes imposed by Virginia or any other taxing jurisdiction, the term “any other taxing jurisdiction” includes any other state, any locality, and any foreign country.”
 - Subsection 2, pertaining to the standard deduction, would be replaced with a definition of the term “earned income” and a statement that “this rule applies to dependents under age 19 and full-time students who are eligible to be claimed on their parents return.”

⁶ See <https://law.lis.virginia.gov/vacode/title58.1/chapter3/section58.1-321/>.

⁷ See <https://law.lis.virginia.gov/vacode/title58.1/chapter3/section58.1-322.02/>.

⁸ The specific statutory provisions corresponding to each subsection that would be repealed can be found on pages 8-9 of the Agency Background Document (ABD):

https://townhall.virginia.gov/l/GetFile.cfm?File=75\6353\10169\AgencyStatement_TAX_10169_v3.pdf.

⁹ See <https://law.lis.virginia.gov/vacode/title58.1/chapter3/section58.1-322.03/>

- Sections 144 (modifications and adjustments), 250 (special cases in which nonresidents are not required to file a Virginia return), and 280 (nongame wildlife voluntary contribution) would be repealed as they are either outdated or repetitive of statute.¹⁰

23 VAC 10-115 *Fiduciary Income Tax*

- Sections 10 (definitions), 40 (Virginia taxable income of a resident estate or trust), 50 (Virginia taxable income of a nonresident estate or trust), 90 (other credits), 151 (amendments of declaration), and 153 (other payment dates) would all be repealed as they are either outdated or repetitive of statute.¹¹

23 VAC 10-120 *Corporate Income Tax*

- Section 70, pertaining to the imposition of tax for corporations would be repealed in its entirety, because it paraphrases Virginia Code § 58.1-400.¹²

23 VAC 10-210 *Retail Sales and Use Tax*

- A majority of these sections describe what would or would not be considered taxable for specific service industries that are broadly covered under Section 4040 of this regulation, titled “Services.”¹³ Sections 500 (dentists, dental laboratories, and dental supply houses), 595 (financial institutions), 650 (furniture and storage warehousemen), 770 (interior decorators), 790 (kennels, stables, and pet shops), 810 (laundries and dry cleaners), and 2050 (photographs, photostats, and blueprints) would all be repealed as they are covered by the section governing services.
- Sections 32 (adult care facilities) and 720 (hospitals and nursing homes) would be repealed as they refer to exemptions that have already been repealed.¹⁴

¹⁰ See <https://law.lis.virginia.gov/vacode/title58.1/chapter3/section58.1-315/>, <https://law.lis.virginia.gov/vacode/58.1-342/>, and subsection B in <https://law.lis.virginia.gov/vacode/title58.1/chapter3/section58.1-344.3/>, respectively. (Also in ABD, p. 9.)

¹¹ See ABD, pp. 9-10 for the corresponding Code citations.

¹² See <https://law.lis.virginia.gov/vacode/title58.1/chapter3/section58.1-400/>.

¹³ See <https://law.lis.virginia.gov/admincode/title23/agency10/chapter210/section4040/>.

¹⁴ See ABD, pp. 10-13 for specific citations for this and other sections in this regulation that would be repealed.

- Section 130 (artists and art dealers) would be repealed because it mainly states that sales of objects of art are sales of tangible personal property.¹⁵ Similarly, Section 390 (consignments) and Section 2020 (peddlers and street vendors) would be repealed because they state the basic principle of sales tax that goods are subject to the tax when sold by a dealer.¹⁶
- Section 220 (tax brackets) would be repealed. This section provides a breakdown of tax amounts for very small transactions, which used to be printed and used as a reference by retail merchants and has been made redundant by point-of-sale terminals.
- Sections 352 and 353 (commercial watermen) are covered by Code § 58.1-609.2 (4), which pertains to agricultural exemptions, and by 58.1-1400 *et seq.*, which covers Virginia watercraft sales and use tax.¹⁷ Section 590 (feed making) is also covered by agricultural exemptions in Virginia Code § 58.1-609.2 (5).
- Section 485 (the dealer's compensation or discount) would be repealed as it reflects obsolete Code language, which has been superseded by Item 3-5.06 of the budget.¹⁸
- Section 766 (the Innovative Technology Authority) would be repealed because it was merged into the Innovation and Entrepreneurship Investment Authority (IEIA) in 2009 and was then replaced by the Virginia Innovation Partnership Authority (VIPA) in 2020.¹⁹
- Section 900 (machinists, foundrymen, and pattern makers) would be repealed as it is repetitive of Virginia Code § 58.1-609.3. 2. (i).²⁰
- Section 970 (microfilm and microfiche copies of documents) would be repealed because the technology is largely obsolete.
- Section 1070 and 1071 (nonprofit organizations) would be repealed because the statutory section it referenced was repealed and replaced with Virginia Code § 58.1-609.11.²¹

¹⁵ See <https://law.lis.virginia.gov/vacode/title58.1/chapter6/section58.1-603/#v2/>.

¹⁶ See <https://law.lis.virginia.gov/vacode/title58.1/chapter6/section58.1-612/>.

¹⁷ See item 4 under <https://law.lis.virginia.gov/vacode/title58.1/chapter6/section58.1-609.2/> and <https://law.lis.virginia.gov/vacode/58.1-1400/>, respectively.

¹⁸ The budget language most recently appears in the introduced budget. See <https://budget.lis.virginia.gov/item/2024/1/HB30/Introduced/3/3-5.06/>.

¹⁹ See ABD, p. 11.

²⁰ See item 2 (i) in <https://law.lis.virginia.gov/vacode/title58.1/chapter6/section58.1-609.3/>.

²¹ See <https://law.lis.virginia.gov/vacode/title58.1/chapter6/section58.1-609.11/>.

- Lastly, Section 4030 (seeds and seedlings) would be repealed because it is repetitive of Section 50 of this regulation, which would be retained.²²

Estimated Benefits and Costs

The proposed amendments primarily serve to meet the regulatory reduction requirements, by removing obsolete or redundant requirements; these changes would thereby benefit readers of the regulation by enhancing the clarity of the regulation.

Businesses and Other Entities Affected

As mentioned previously, the proposed amendments primarily affect tax attorneys who rely on the regulations, along with statute, to advise their clients. The Department of Taxation has confirmed that this action does not make any substantive changes to state tax policy and would not result in anyone owing either more or less money to the state. The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.²³ An adverse impact is indicated if there is any increase in net cost or reduction in net benefit for any entity, even if the benefits exceed the costs for all entities combined.²⁴ Because the proposed amendments serve to only clarify and update the regulatory text, and would not result in any increased tax liability, an adverse impact is not indicated.

Small Businesses²⁵ Affected:²⁶

The proposed amendments would not adversely affect small businesses.

²² See <https://law.lis.virginia.gov/admincode/title23/agency10/chapter210/section50/>.

²³ Pursuant to Code § 2.2-4007.04(D): In the event this economic impact analysis reveals that the proposed regulation would have an adverse economic impact on businesses or would impose a significant adverse economic impact on a locality, business, or entity particularly affected, the Department of Planning and Budget shall advise the Joint Commission on Administrative Rules, the House Committee on Appropriations, and the Senate Committee on Finance.

²⁴ Statute does not define “adverse impact,” state whether only Virginia entities should be considered, nor indicate whether an adverse impact results from regulatory requirements mandated by legislation. As a result, DPB has adopted a definition of adverse impact that assesses changes in net costs and benefits for each affected Virginia entity that directly results from discretionary changes to the regulation.

²⁵ Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as “a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.”

²⁶ If the proposed regulatory action may have an adverse effect on small businesses, Code § 2.2-4007.04 requires that such economic impact analyses include: (1) an identification and estimate of the number of small businesses subject to the proposed regulation, (2) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents, (3) a statement of the probable effect of the proposed regulation on affected small businesses, and (4) a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. Additionally, pursuant to Code § 2.2-4007.1, if there is a

Localities²⁷ Affected²⁸

No locality would be disproportionately affected. Local governments would not incur new costs.

Projected Impact on Employment

The proposed regulation does not appear to affect total employment.

Effects on the Use and Value of Private Property

The proposed amendments do not appear to affect the value of private property. Real estate development costs would not be affected.

finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.

²⁷ “Locality” can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulatory change are most likely to occur.

²⁸ Virginia Code § 2.2-4007.04 defines “particularly affected” as bearing disproportionate material impact.