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Fast-Track Regulation Agency Background Document

Agency name	Virginia Department of Taxation
Virginia Administrative Code (VAC) citation(s)	23 VAC 10-20-180; 23 VAC 10-110-70; 23 VAC 10-115-110; and 23 VAC 10-120-30
Regulation title(s)	General Provisions Applicable to All Taxes Administered by the Department of Taxation; Individual Income Tax; Fiduciary Income Tax; Corporation Income Tax
Action title	To Amend the General Provisions Applicable to All Taxes Administered by the Department of Taxation, Individual Income Tax, Fiduciary Income Tax, and Corporation Income Tax Regulations to Eliminate Unnecessary and Repetitive Information.
Date this document prepared	May 20, 2016

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (preferably no more than 2 or 3 paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

This regulatory action will amend the General Provisions Applicable to All Taxes Administered by the Department of Taxation, Individual Income Tax, Fiduciary Income Tax, and Corporation Income Tax Regulations to strike provisions that are no longer accurate due to several law changes and to consolidate certain provisions that are currently repeated within the Virginia Administrative Code.

The affected provisions deal with the due dates for filing amended tax returns, as well as the definition of a final determination for purposes of determining when a taxpayer is required to file an amended return based on a change in any federal tax. This regulatory action does not reflect any change in current tax policy, and will have no impact on the administration of any taxes.

Acronyms and Definitions

Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.

Not applicable.

Statement of final agency action

Please provide a statement of the final action taken by the agency including: 1) the date the action was taken; 2) the name of the agency taking the action; and 3) the title of the regulation.

The Tax Commissioner approved the amendments to the General Provisions Applicable to All Taxes Administered by the Department of Taxation, Individual Income Tax, Fiduciary Income Tax, and Corporation Income Tax Regulations on May 2, 2016.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including: 1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable; and 2) promulgating entity, i.e., agency, board, or person. Your citation should include a specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person's overall regulatory authority.

Code of Virginia § 58.1-203 provides that the "Tax Commissioner shall have the power to issue regulations relating to the interpretation and enforcement of the laws of this Commonwealth governing taxes administered by the Department." The authority for the current regulatory action is discretionary.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Describe the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

This regulatory action will amend the General Provisions Applicable to All Taxes Administered by the Department of Taxation, Individual Income Tax, Fiduciary Income Tax, and Corporation Income Tax Regulations to strike provisions that are no longer accurate and to consolidate certain provisions that are currently repeated within the Virginia Administrative Code.

The affected provisions deal with the due dates for filing amended tax returns, as well as the definition of a final determination for purposes of determining when a taxpayer is required to file an amended return based on a change in any federal tax. *Code of Virginia § 58.1-1823(A)* provides deadlines regarding when a taxpayer may file an amended return. Among such deadlines is a rule that a taxpayer has one year from the final determination of any change or correction in the liability for the taxpayer for any federal tax upon which the state tax is based to file an amended return. In addition to this rule, *Va. Code § 58.1-311* specifically requires individuals, estates, trusts, and corporations to file an amended Virginia income tax return reporting any change or correction in federal taxable income made by the IRS within one year after the final determination of such change or correction.

The regulation sections affected by this action were promulgated prior to the enactment of legislation that modified the statutory language. Repealing these provisions would update the regulations so that they are consistent with the statute. In addition, the affected regulation sections contain a definition of what constitutes a “final determination” for purposes of determining the deadline for filing an amended return. Because the same definition applies to multiple tax types, this action will consolidate the definition in one regulation.

This regulatory action does not reflect any change in current tax policy, and will have no impact on the administration of any taxes.

Rationale for using fast-track process

Please explain the rationale for using the fast-track process in promulgating this regulation. Why do you expect this rulemaking to be noncontroversial?

The fast-track process is intended for proposed regulations that are expected to be noncontroversial. As this regulatory action will repeal regulatory provisions that are duplicative of underlying statutory provisions and consolidate the location of a regulatory definition, this action is not expected to be controversial.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the “Detail of changes” section below.

This regulatory action will amend the General Provisions Applicable to All Taxes Administered by the Department of Taxation, Individual Income Tax, Fiduciary Income Tax, and Corporation Income Tax Regulations to strike provisions that are no longer accurate and to consolidate certain provisions that are currently repeated within the Virginia Administrative Code.

The affected provisions deal with the due dates for filing amended tax returns, as well as the definition of a final determination for purposes of determining when a taxpayer is required to file an amended return based on a change in any federal tax. *Va. Code* § 58.1-1823(A) provides that any person filing a tax return or paying an assessment for any tax administered by the Department may file an amended return within the later of:

- Three years from the last day prescribed by law for the timely filing of the return;
- One year from the final determination of any change or correction in the liability of the taxpayer for any federal tax upon which the state tax is based, provided that the refund does not exceed the amount of the decrease in Virginia tax attributable to such federal change or correction;
- Two years from the filing of an amended Virginia return resulting in the payment of additional tax, provided that the amended return raises issues relating solely to such prior amended return and that the refund does not exceed the amount of the payment with such prior amended return;
- Two years from the payment of an assessment, provided that the amended return raises issues relating solely to such assessment and that the refund does not exceed the amount of such payment; or
- One year from the final determination of any change or correction in the income tax of the taxpayer for any other state, provided that the refund does not exceed the amount of the decrease in Virginia tax attributable to such change or correction.

During the 1992, 1996, 1998, 2006, and 2010 Sessions, the General Assembly made several modifications to *Va. Code* § 58.1-1823(A). See 1992 House Bill 227 (1992 *Acts of Assembly*, Chapter 678), 1996 House Bill 583 (1996 *Acts of Assembly*, Chapter 654), 1996 Senate Bill 182 (1996 *Acts of Assembly*, Chapter 637), 1998 House Bill 629 (1998 *Acts of Assembly*, Chapter 374), 1998 Senate Bill 543 (1998 *Acts of Assembly*, Chapter 358), 2006 Senate Bill 583 (2006 *Acts of Assembly*, Chapter 234), and 2010 House Bill 384 (2010 *Acts of Assembly*, Chapter 228). Because 23 VAC 10-20-180, 23 VAC 10-110-70, 23 VAC 10-115-110, and 23 VAC 10-120-30 were promulgated prior to the enactment of such legislation, the provisions in these regulation sections regarding the deadlines for filing an amended return are incomplete and inaccurate. In addition, these provisions are unnecessary because they are duplicative of the information that is provided in *Va. Code* § 58.1-1823. Therefore, this regulatory action would strike the provisions of 23 VAC 10-20-180, 23 VAC 10-110-70, 23 VAC 10-115-110, and 23 VAC 10-120-30 regarding deadlines for filing an amended return.

Under *Va. Code* § 58.1-311, if any individual, estate, trust, or corporate taxpayer's federal taxable income reported on its federal income tax return is changed or corrected by the Internal Revenue Service, such taxpayer is required to file an amended Virginia income tax return reporting such change or correction within one year after the final determination of such change or correction. During the 2006 Session, the General Assembly enacted Senate Bill 583, which extended the reporting deadline from 90 days to one year. See 2006 *Acts of Assembly*, Chapter 234. Because 23 VAC 10-110-70, 23 VAC 10-115-110, and

23 VAC 10-120-30 were promulgated prior to the enactment of such legislation, the provisions in these regulation sections regarding reporting changes or corrections of federal taxable income are inaccurate. In addition, these provisions are unnecessary because they are duplicative of the information that is provided in *Va. Code* § 58.1-311. Therefore, this regulatory action would strike the provisions of 23 VAC 10-110-70, 23 VAC 10-115-110, and 23 VAC 10-120-30 regarding reporting changes or corrections of federal taxable income.

23 VAC 10-110-70, 23 VAC 10-115-110, and 23 VAC 10-120-30 each define the term “final determination” by referencing the definition of such term that is provided in 23 VAC 10-20-180. The regulatory definition of the term “final determination” is important because it is not defined in the underlying statute, *Va. Code* § 58.1-311. Because it is unnecessary to have four separate, but virtually identical, definitions of the same term in the regulations. This regulatory action would strike the provisions of 23 VAC 10-110-70, 23 VAC 10-115-110, and 23 VAC 10-120-30 that define “final determination.” This regulatory action would also amend 23 VAC 10-20-180 to include language stating that such definition applies for purposes of *Va. Code* §§ 58.1-311 and 58.1-1823.

23 VAC 10-115-110 provides information regarding due dates for returns of estates and trusts, and who is required to file returns of estates and trusts. These provisions are unnecessary because they are duplicative of the information that is provided in *Va. Code* § 58.1-381. Therefore, this regulatory action would strike such provisions.

This regulatory action does not reflect any change in current tax policy, and will have no impact on the administration of any taxes.

Issues

Please identify the issues associated with the proposed regulatory action, including: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please indicate.

As this regulatory action will repeal regulatory provisions that are duplicative of underlying statutory provisions and consolidate the location of a regulatory definition, there are no issues or disadvantages to the public or the Commonwealth associated with this regulatory action.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.

There are no applicable federal requirements.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

No localities are particularly affected by this regulatory action.

Regulatory flexibility analysis

Pursuant to § 2.2-4007.1B of the Code of Virginia, please describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

The Department has considered modifying the regulatory methods for small businesses. The regulatory methods follow the least intrusive and burdensome method consistent with statutory language, and could not be made less burdensome for small businesses without jeopardizing the enforcement of the tax laws.

Economic impact

Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirement creates the anticipated economic impact.

<p>Projected cost to the state to implement and enforce the proposed regulation, including: a) fund source / fund detail; and b) a delineation of one-time versus on-going expenditures</p>	<p>Because the intent of this regulatory action is to repeal regulatory provisions that are duplicative of the underlying statutory law, and consolidate the location of a regulatory definition, these amendments will result in no changes to Virginia’s policies. Therefore, there will be no cost to the state to implement and enforce the amended regulation sections.</p>	
<p>Projected cost of the new regulations or changes to existing regulations on localities.</p>	<p>Because the intent of this regulatory action is to repeal regulatory provisions that are duplicative of the underlying statutory law, and consolidate the location of a regulatory definition, these amendments will result in no changes to Virginia’s policies. Therefore, there will be no cost to localities to implement and enforce the amended regulation sections.</p>	
<p>Description of the individuals, businesses, or</p>	<p>Because the intent of this regulatory action is to</p>	

<p>other entities likely to be affected by the new regulations or changes to existing regulations.</p>	<p>repeal regulatory provisions that are duplicative of the underlying statutory law, and consolidate the location of a regulatory definition, these amendments will result in no changes to Virginia’s policies. Therefore, no taxpayers will be impacted by the amended regulation sections.</p>	
<p>Agency’s best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that: a) is independently owned and operated and; b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p>	<p>Because the intent of this regulatory action is to repeal regulatory provisions that are duplicative of the underlying statutory law, and consolidate the location of a regulatory definition, these amendments will result in no changes to Virginia’s policies. Therefore, no taxpayers will be impacted by the amended regulation sections.</p>	
<p>All projected costs of the new regulations or changes to existing regulations for affected individuals, businesses, or other entities. Please be specific and include all costs including: a) the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; and b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the proposed regulatory changes or new regulations.</p>	<p>Because the intent of this regulatory action is to repeal regulatory provisions that are duplicative of the underlying statutory law, and consolidate the location of a regulatory definition, these amendments will result in no changes to Virginia’s policies. Therefore, no taxpayers will be impacted by the amended regulation sections.</p>	
<p>Beneficial impact the regulation is designed to produce.</p>	<p>The intent of this regulatory action is to repeal regulatory provisions that are duplicative of the underlying statutory law, and consolidate the location of a regulatory definition.</p>	

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in § 2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.

The Department considered alternatives to the proposed regulatory action. Taking no action would leave these regulations inconsistent with certain provisions of the Virginia Code and duplicative of information provided in underlying statutory provisions.

Public participation notice

If an objection to the use of the fast-track process is received within the 30-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall: 1) file notice of the objections with the Registrar of Regulations for publication in the Virginia Register; and 2) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

Periodic review and small business impact review report of findings

If this fast-track is the result of a periodic review/small business impact review, use this form to report the agency's findings. Please (1) summarize all comments received during the public comment period following the publication of the Notice of Periodic Review and (2) indicate whether the regulation meets the criteria set out in Executive Order 17 (2014), e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable. In addition, as required by 2.2-4007.1 E and F, please include a discussion of the agency's consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation from the public; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation.

Commenter	Comment	Agency response

This fast-track is not a result of a periodic review/small business impact review.

Family impact

Please assess the impact of this regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

This regulatory action is not expected to have an impact on family formation, stability and autonomy.

Detail of changes

Please list all changes that are being proposed and the consequences of the proposed changes; explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact. Please describe the difference between existing regulation(s) and/or agency practice(s) and what is being proposed in this regulatory action. If the proposed regulation is intended to replace an emergency regulation, please follow the instructions in the text following the three chart templates below.

For changes to existing regulation(s), please use the following chart:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
23 VAC 10-20-180	N/A	The title of this regulation is currently "Amended Returns Claiming a Refund."	<p>The regulatory action will change the title of this regulation section to "Amended Returns." The current definition of "final determination" provided in this regulation section applies to amended returns filed to claim a refund. This regulatory action will consolidate four substantially similar definitions of "final determination" by amending 23 VAC 10-20-180(B) to apply such definition to amended returns filed to report increases of federal taxable income, in addition to those filed to claim refunds.</p> <p>Changing the title of this regulation section will make taxpayers aware that the definition of "final determination" provided in 23 VAC 10-20-180 applies to all amended returns, not just to amended returns that are filed to claim a refund. This is not a change in existing policy.</p>
23 VAC 10-20-180(A)(1)	N/A	Provides that the provisions of <i>Va. Code</i> § 58.1-1823, regarding amended returns, govern any amended return that is filed to claim a refund of any tax administered by the Department. This provision also provides deadlines regarding when an amended return claiming a refund must be filed.	<p>After the promulgation of this regulation section, several items of legislation were enacted by the General Assembly that modified the underlying statutory provision, <i>Va. Code</i> § 58.1-1823. Because such legislation was not incorporated into this regulation section, the information currently provided in this provision regarding the deadlines for filing an amended return to claim a refund is incomplete and inaccurate. Removing this language from the regulation section would make it consistent with <i>Va. Code</i> § 58.1-1823.</p> <p>The portion of 23 VAC 10-20-180(A)(1)</p>

			referencing <i>Va. Code</i> § 58.1-1823 will be retained. It is important for taxpayers filing an amended return to claim a refund to continue to refer to the rules regarding amended returns that are provided in <i>Va. Code</i> § 58.1-1823.
23 VAC 10-20-180(B)	N/A	Provides that the regulatory provision regarding what constitutes a “final determination” applies for purposes of 23 VAC 10-20-180.	This regulatory action will change the reference in the definition of “final determination” from “this regulation” to “ <i>Va. Code</i> §§ 58.1-311 and 58.1-1823.” This will consolidate the four existing definitions of “final determination” into one section.
23 VAC 10-110-70	N/A	Provides rules regarding reporting a change or correction of federal taxable income made by the Internal Revenue Service to the Department.	This regulatory action will repeal 23 VAC 10-110-70. Since the promulgation of this regulation section, the General Assembly has enacted legislation that modified <i>Va. Code</i> §§ 58.1-311 and 58.1-1823, which provide the rules regarding reporting a change or correction of federal taxable income and deadlines for filing an amended return. Because such legislation was not incorporated into 23 VAC 10-110-170, the provisions in this regulation section regarding reporting a change or correction of federal taxable income are incomplete and inaccurate. This regulation section is being repealed because it is outdated and provides no guidance beyond the plain meaning of the statutes to which it applies.
23 VAC 10-115-110(A)	N/A	Provides rules regarding filing requirements for returns of estates and trusts.	Because this regulatory action will repeal each subsection of this regulation section aside from Subsection A, the provisions Subsection A have been alphabetized in accordance with § 3.7(B) of the <u>Form, Style, and Procedure Manual for Publication of Virginia Regulations</u> .
23 VAC 10-115-110(B)	N/A	Provides rules regarding the due dates for returns of estates and trusts.	This regulatory action will repeal this provision. This regulation section is being repealed because it is outdated and provides no guidance beyond the plain meaning of the statutes to which it applies.
23 VAC 10-115-110(C)	N/A	Provides rules regarding who files returns of estates and trusts.	This regulatory action will repeal this provision. This regulation section is being repealed because it is outdated and provides no guidance beyond the plain meaning of the statutes to which it applies.
23 VAC 10-115-110(D)	N/A	Provides rules regarding reporting a change or correction of federal taxable income made by the Internal Revenue Service to the Department.	This regulatory action will repeal this provision. Since the promulgation of this regulation section, the General Assembly has enacted legislation that modified <i>Va. Code</i> § 58.1-311, which provides the rules regarding reporting a change or

			<p>correction of federal taxable income. Because such legislation was not incorporated into 23 VAC 10-115-110(D), the provisions in this regulation section regarding reporting a change or correction of federal taxable income are incomplete and inaccurate. This provision is unnecessary because any update would make it duplicative of the information that is provided in <i>Va. Code</i> § 58.1-311.</p>
23 VAC 10-115-110(E)	N/A	<p>Provides rules regarding when fiduciaries that file amended federal income tax returns must file amended Virginia income tax returns.</p>	<p>This regulatory action will repeal this provision. Since the promulgation of this regulation section, the General Assembly has enacted several items of legislation that modified the underlying statutory provision, <i>Va. Code</i> § 58.1-1823. Because such items of legislation were not incorporated into this regulation section, the information currently provided in this provision regarding the deadlines for filing an amended return is incomplete and inaccurate. That portion of 23 VAC 10-115-110(E) is unnecessary because any update would make it duplicative of the information that is provided in <i>Va. Code</i> § 58.1-1823.</p>
23 VAC 10-115-110(F)	N/A	<p>Defines “final determination” by referencing the definition of the term provided in 23 VAC 10-20-180.</p>	<p>23 VAC 10-115-110(F) defines “final determination” by referencing the definition of the term provided in 23 VAC 10-20-180. This regulatory action will repeal such definition, and amend 23 VAC 10-20-180 to include language stating that its definition of “final determination” applies for purposes of <i>Va. Code</i> § 58.1-311.</p>
23 VAC 10-120-30	N/A	<p>Provides rules regarding reporting a change or correction of federal taxable income made by the Internal Revenue Service to the Department.</p>	<p>This regulatory action will repeal 23 VAC 10-120-30. Since the promulgation of this regulation section, the General Assembly has enacted legislation that modified the underlying statutes, <i>Va. Code</i> §§ 58.1-311 and 58.1-1823, which provides the rules regarding reporting a change or correction of federal taxable income and deadlines for filing an amended return. Because such legislation was not incorporated into 23 VAC 10-120-30, the provisions in this regulation section regarding reporting a change or correction of federal taxable income is incomplete and inaccurate. This regulation section is being repealed because it provides no guidance beyond the plain meaning of the statutes to which it applies.</p>