

Firearm Safety Device Tax Credit Guidelines

During the 2023 Session, the Virginia General Assembly enacted House Bill 2387 (2023 *Acts of Assembly*, Chapter 220), which established the Firearm Safety Device Tax Credit. This is an individual income tax credit for taxpayers who purchase one or more locking devices for the storage of a firearm from a dealer that is federally licensed pursuant to 18 U.S.C. § 923.

These guidelines are published by the Department of Taxation (“the Department”) to provide guidance to taxpayers regarding the Firearm Safety Device 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 requirement that the Tax Commissioner develop guidelines pursuant to *Va. Code* § 58.1-339.14 D, as well as the Tax Commissioner’s general authority to supervise the administration of the tax laws of the Commonwealth pursuant to *Va. Code* § 58.1-202. 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 is 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.

General Overview

Effective for Taxable Year 2023, Virginia allows a nonrefundable individual income tax credit referred to as the Firearm Safety Device Tax Credit. Such credit is available for the purchase of one or more locking devices for the storage of a firearm from a federal licensed dealer during the taxable year. For the purposes of this credit, a firearm is any handgun, shotgun, rifle, or other firearm that will or is designed to or may readily be converted to expel single or multiple projectiles by action of an explosion of a combustible material. The maximum credit that can be applied for by any one taxpayer for a taxable year is \$300. The credit is allowed only to the extent that the total amount of credits granted for a year does not exceed the annual \$5 million credit cap. Credits will be allocated by the Department on a first-come, first-served basis.

Eligibility Requirements

To be eligible, the taxpayer:

- Must purchase one or more locking devices for the storage of a firearm, and
- Must purchase the device from a dealer that is federal licensed pursuant to 18 U.S.C. § 923.

These requirements are further described below.

Locking Storage Requirement

To be eligible, the purchased device must be a safe, gun safe, gun case, lock box, or other device:

- That is designed to be or can be used to store a firearm (“storage device”), and
- That is designed to be unlocked only by means of a key, a combination, or other similar means (“locking mechanism”).

Because this is restricted to storage devices, non-storage devices—such as trigger locks and cable locks—do not qualify. In addition, the storage device must reasonably limit access and not be easily cut, ripped, or opened. For example, if one only needs a pair of scissors or a ladder for access, the device will not meet the locking storage requirement. For this reason, bags, racks, gun socks, or mounts do not qualify.

Because this is restricted to storage devices with a locking mechanism, an unlocked storage device will generally not qualify. However, a taxpayer will not be ineligible if the device meets the definition above except for the fact that it does not come with a lock but instead is designed to be used with a lock that the taxpayer acquires separately, provided that the taxpayer buys a separate, compatible lock in the same transaction that the storage device is bought. In that case, the taxpayer can claim a credit for both the device and the lock, up to the \$300 maximum amount.

Because the locking storage requirement set forth in *Va. Code* § 58.1-339.14 is identical to the requirements of subparagraph C of 18 U.S.C. 921(a)(34), the device must meet the requirements of subparagraph C, as interpreted by the Department of Justice (“DOJ”) and The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), to qualify for this tax credit. Zip ties, rope, and string do not qualify under 18 U.S.C. 921(a)(34)—including subparagraph C—according to the ATF, and consequently, they do not qualify for this credit. This can be found at www.atf.gov.

Federally Licensed Dealer Requirement

To be eligible for this tax credit, a taxpayer must purchase a device meeting the locking storage requirement above from a dealer that is federally licensed pursuant to 18 U.S.C. § 923. The ATF maintains a list of federally licensed dealers. For additional information including such list, please visit the ATF’s website, www.atf.gov. If a taxpayer anticipates making a purchase from a company with multiple stores, please ensure that the store at which the purchase is made is a federally licensed dealer.

Amount of the Tax Credit

The Firearm Safety Device Credit is equal to the cost of the device meeting the eligibility requirements above or \$300, whichever amount is less. The cost of the device includes both:

- The purchase price of such devices and
- Any sales tax paid for the purchase of such devices.

A tax credit is not allowed for purchases of any other property. A tax credit is also not allowed for shipping charges, handling fees, or any other charge or fee, even if such charge or fee is associated with a purchase meeting the eligibility requirements above.

In addition, if the taxpayer buys a firearm in the same transaction that they buy the firearm safety device, the device will be ineligible for the credit. In such cases, the taxpayers should ensure that they buy the firearm in a separate transaction from the firearm safety device.

Administration of the Tax Credit

To receive the Firearm Safety Device Tax Credit, taxpayers must apply to the Department prior to claiming the credit on their income tax returns. Taxpayers can submit their application online. Please see the Department's website (www.tax.virginia.gov) for more information. If a taxpayer does not wish to submit their application online, they may complete Form FSD, which is available to download from the Department's website (www.tax.virginia.gov). The Department is only allowed to allocate one Firearm Safety Tax Credit per taxpayer per taxable year. As a result, taxpayers may only submit one application per taxable year.

The maximum amount of Firearm Safety Device Credits for all qualifying taxpayers is limited to \$5 million for each taxable year. Credits must be allocated by the Department on a first-come, first-served basis based upon when the taxpayer's application is filed. This means that, until the \$5 million is depleted for the taxable year, the Department will continue to allocate credits.

The amount of the credit claimed may not exceed the taxpayer's individual income tax liability for the taxable year. If the amount of the credit exceeds one's tax liability, the taxpayer may carryover the amount for credit against their individual income taxes for up to five years. Spouses who file a joint Virginia individual income tax return may both claim the credit, but each spouse must submit their own application where he or she is limited to applying for a maximum of \$300 of tax credit.

Example 1:

Taxpayer A and Taxpayer B are a married couple planning to file their returns jointly for the taxable year. Taxpayer A purchases a gun safe for \$320 and Taxpayer B purchases a gun safe for \$400. They both submit separate applications for the Firearm Safety Device Credit for the taxable year. Their purchases meet all the eligibility requirements explained above. Because the \$5 million cap has not been met yet, the Department is able to allocate Taxpayer A a \$300 tax credit and Taxpayer B a \$300 tax credit. On their jointly filed return, Taxpayer A and B may claim a combined total of \$600 in Firearm Safety Device Tax Credits.

Example 2:

Same as above, but only Taxpayer A purchases a gun safe for \$500 and Taxpayer B does not buy any devices. Consequently, Taxpayer A submits an application for the Firearm Safety Device Credit for the taxable year. Her purchase meets all the eligibility requirements explained above. Because the \$5 million cap has not been met yet, the Department is able to allocate Taxpayer A a \$300 tax credit. On their jointly filed return, Taxpayer A and B may claim a Firearm Safety Device Tax Credit equal to \$300.

Example 3:

Taxpayer A purchases a gun safe for \$500 and submits an application for the Firearm Safety Device Credit for the taxable year. Her purchase meets all the eligibility requirements explained above. The \$5 million cap has not been met yet. She only has \$200 in tax liability. The Department is able to allocate Taxpayer A a \$300 tax credit, \$200 of which Taxpayer A may put towards her tax liability. Taxpayer A carries over the remaining \$100 to the next taxable year when she has sufficient tax liability to fully utilize the credit.

Additional Information

These guidelines are available online in the Laws, Rules & Decisions section of the Department's website, located at www.tax.virginia.gov. For additional information, please contact the Department at (804) 786-2992.

Approved:



Craig M. Burns

Tax Commissioner