

Unified Regulatory Plan of the Department of Taxation for State Fiscal Year 2023

Prepared on September 30, 2022

Description of Agency

The Department of Taxation, acting through the Tax Commissioner, is vested with general supervision over the administration of the state tax laws pursuant to Subtitle I of Title 58.1 of the *Code of Virginia*. For purposes of enforcement of the tax laws, the Department may impose requirements relating directly or indirectly to the assessment and collection of taxes. The Department is authorized to issue regulations relating to the interpretation and enforcement of the laws of the Commonwealth governing taxes it administers. The Department operates under the supervision of the Secretary of Finance.

Title of Proposed Regulatory Action or Guidance Document Revision of 23VAC10-210-340 Collection of Tax by Dealers to Reflect a Change in the Statutory Law	
Brief Overview Legislation in the 2019 Regular Session, Senate Bill 1615 , repealed <i>Va. Code § 58.1-626</i> , which forbid retail sales and use tax dealers from absorbing payment of the sales or use tax otherwise due from the purchaser, consumer, or lessee due on a taxable transaction and added <i>Va. Code § 58.1-626.1</i> , which allows dealers to absorb payment of the tax. The Department plans to revise 23VAC10-210-340 Collection of Tax by Dealers to reflect the law change.	
Regulatory Stage (check one box)	<input type="checkbox"/> NOIRA <input type="checkbox"/> Proposed Rule <input type="checkbox"/> Final Rule <input type="checkbox"/> Emergency Rule <input checked="" type="checkbox"/> Fast-Track Rule
Additional Description	<input type="checkbox"/> Expedited Rule <input type="checkbox"/> Exempt Rule <input type="checkbox"/> Guidance Document
Legal Authority	<input type="checkbox"/> Action required by federal statute <input type="checkbox"/> Action required by state statute <input checked="" type="checkbox"/> Discretionary action
Deregulatory Component	Although this action will not reduce the number of regulation sections maintained by the Department, by conforming the Department's regulation to the revised statute, the action will remove a potential source of confusion to taxpayers and tax practitioners.
Expected Date	January 10, 2023

Title of Proposed Regulatory Action or Guidance Document Revision of 23VAC10-210-410 Contractors Respecting Real Estate to Reflect a Change in the Statutory Law	
Brief Overview Legislation in the 2017 Regular Session, House Bill 1890 and Senate Bill 1308 , repealed a provision of <i>Va. Code § 58.1-610</i> requiring dealers that sell and install certain fixtures to collect the retail sales and use tax from their customers on such sales rather than pay the tax on their purchases of the items. The Department plans to revise 23VAC10-210-410 Contractors Respecting Real Estate to reflect the law change.	
Regulatory Stage (check one box)	<input type="checkbox"/> NOIRA <input type="checkbox"/> Proposed Rule <input type="checkbox"/> Final Rule <input type="checkbox"/> Emergency Rule <input checked="" type="checkbox"/> Fast-Track Rule
Additional Description	<input type="checkbox"/> Expedited Rule <input checked="" type="checkbox"/> Exempt Rule <input type="checkbox"/> Guidance Document

This legislation requires the Department to promulgate guidelines regarding the use of market-based sourcing for certain property information and analytics firms. Preliminary guidelines shall be promulgated and made publicly available no later than December 31, 2022, and final guidelines shall be promulgated and made publicly available no later than December 31, 2023.	
Regulatory Stage (check one box)	<input type="checkbox"/> NOIRA <input type="checkbox"/> Proposed Rule <input type="checkbox"/> Final Rule <input type="checkbox"/> Emergency Rule <input type="checkbox"/> Fast-Track Rule
Additional Description	<input type="checkbox"/> Expedited Rule <input type="checkbox"/> Exempt Rule <input checked="" type="checkbox"/> Guidance Document
Legal Authority	<input type="checkbox"/> Action required by federal statute <input checked="" type="checkbox"/> Action required by state statute <input type="checkbox"/> Discretionary action
Deregulatory Component	Although this action will not reduce the number of guidance documents maintained by the Department, by providing guidance regarding the legislation, the action will remove a potential source of confusion to taxpayers and tax practitioners.
Expected Date	December 2022 for the preliminary guidelines and December 2023 for the final guidelines

Title of Proposed Regulatory Action or Guidance Document	
Elective Pass-Through Entity Tax Guidelines	
Brief Overview	
<p>During the 2022 Session, the Virginia General Assembly enacted House Bill 1121 (2022 Acts of Assembly, Chapter 690) and Senate Bill 692 (2022 Acts of Assembly, Chapter 689), which permit a qualifying pass-through entity (“PTE”) to make an annual election to pay an elective income tax at a rate of 5.75 percent at the entity level. The legislation also allows a corresponding refundable income tax credit to certain PTE owners for any amount of income tax paid by a PTE having Virginia taxable income if such PTE makes the election and pays the elective income tax imposed at the entity level.</p> <p>The legislation allows an individual to claim a credit for taxes paid to other states under laws that are substantially similar to the pass-through entity income tax. This overrules Public Document 21-156 (December 29, 2021), which generally denied a credit for a tax paid to Maryland under that state’s elective pass-through entity income tax. This provision only applies to taxes paid by a pass-through entity under the law of another state that is substantially similar to Va. Code § 58.1-390. Therefore, it does not apply to any other entity-level taxes, such as any franchise, privilege, business, license, or occupation taxes described in Va. Code § 58.1-332.2.</p> <p>The legislation requires the Department to promulgate guidelines regarding the elective pass-through income tax. These guidelines will provide general guidance on the elective pass-through entity income tax, the corresponding income tax credit available to certain PTE owners, and the changes made to the credit for taxes paid to other states.</p>	
Regulatory Stage (check one box)	<input type="checkbox"/> NOIRA <input type="checkbox"/> Proposed Rule <input type="checkbox"/> Final Rule <input type="checkbox"/> Emergency Rule <input type="checkbox"/> Fast-Track Rule
Additional Description	<input type="checkbox"/> Expedited Rule <input type="checkbox"/> Exempt Rule <input checked="" type="checkbox"/> Guidance Document

	<input type="checkbox"/> Final Rule
Additional Description	<input type="checkbox"/> Expedited Rule <input type="checkbox"/> Guidance Document <input type="checkbox"/> Exempt Rule
Legal Authority	<input type="checkbox"/> Action required by federal statute <input checked="" type="checkbox"/> Discretionary action <input type="checkbox"/> Action required by state statute
Deregulatory Component	Although this action will not reduce the number of regulation sections maintained by the Department, by conforming the Department's regulation to the revised statute and eliminating unnecessary provisions, the action will remove a potential source of confusion to taxpayers and tax practitioners.
Expected Date	June 2023

Title of Proposed Regulatory Action or Guidance Document	
Revision of 23 VAC 10-120 . Amend Corporation Income Tax Regulation to Conform to Law Changes and Existing Policy	
Brief Overview	
Various sections of the Corporation Income Tax Regulation, 23 VAC 10-120, do not conform to legislative changes and current tax policy. As part of this regulatory action, the Department will propose to repeal any provisions that provide no additional guidance to unambiguous statutes. Other provisions will be updated so that they conform to legislative changes and current tax policy. Amendment of this section will not reflect any change in existing tax policy and will have no impact on the administration of the tax	
Regulatory Stage (check one box)	<input type="checkbox"/> NOIRA <input type="checkbox"/> Emergency Rule <input type="checkbox"/> Proposed Rule <input checked="" type="checkbox"/> Fast-Track Rule <input type="checkbox"/> Final Rule
Additional Description	<input type="checkbox"/> Expedited Rule <input type="checkbox"/> Guidance Document <input type="checkbox"/> Exempt Rule
Legal Authority	<input type="checkbox"/> Action required by federal statute <input checked="" type="checkbox"/> Discretionary action <input type="checkbox"/> Action required by state statute
Deregulatory Component	Although this action will not reduce the number of regulation sections maintained by the Department, by conforming the Department's regulation to the revised statute and eliminating unnecessary provisions, the action will remove a potential source of confusion to taxpayers and tax practitioners.
Expected Date	June 2023

Additional Guidance Documents	
Brief Overview	
The Department of Taxation is typically required to issue a few guidance documents in the form of "guidelines and rules" each year to implement recent legislation. The number and subject matter of these guidance documents are currently unknown.	
Regulatory Stage (check one box)	<input type="checkbox"/> NOIRA <input type="checkbox"/> Emergency Rule <input type="checkbox"/> Proposed Rule <input type="checkbox"/> Fast-Track Rule <input type="checkbox"/> Final Rule
Additional	<input type="checkbox"/> Expedited Rule <input checked="" type="checkbox"/> Guidance Document

Description	<input type="checkbox"/> Exempt Rule
Legal Authority	<input type="checkbox"/> Action required by federal statute <input type="checkbox"/> Discretionary action <input checked="" type="checkbox"/> Action required by state statute
Deregulatory Component	
Expected Date	April through June 2023