

## Unified Regulatory Plan of the Department of Taxation for State Fiscal Year 2024

Prepared on June 30, 2023

### 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.

<b>Title of Proposed Regulatory Action or Guidance Document</b> Fast Track Action to Conform the Retail Sales and Use Tax Regulation to Statutory Changes		
<b>Brief Overview</b> This action will amend 23 VAC10-210-410 (Contractors respecting real estate) and 23 VAC10-210-340 (Collection of Tax by Dealers) to Conform the sections to statutory changes.		
<b>Regulatory Stage (check one box)</b>	<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
<b>Additional Description</b>	<input checked="" type="checkbox"/> Expedited Rule <input type="checkbox"/> Exempt Rule	<input type="checkbox"/> Guidance Document
<b>Legal Authority</b>	<input type="checkbox"/> Action required by federal statute <input type="checkbox"/> Action required by state statute	<input checked="" type="checkbox"/> Discretionary action
<b>Deregulatory Component</b>	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.	
<b>Expected Date</b>	September 2023	

<b>Title of Proposed Regulatory Action or Guidance Document</b> Fast Track Action to Reduce Regulatory Requirements in Accordance with Governor Youngkin's Executive Order 19 (June 30, 2022)		
<b>Brief Overview</b> Governor Youngkin's Executive Order 19 (June 30, 2022) requires executive branch agencies to reduce the number of regulatory requirements not mandated by federal or state statute by at least 25 percent. In Fiscal Year 2024, the Department plans to file a Fast Track regulatory action to amend its regulations to meet its interim goal of reducing regulatory requirements by at least 10% by January 5, 2024. To accomplish this goal, the Department is working on removing unnecessary, confusing, and burdensome requirements currently set forth in Chapters 20 (General Provisions Applicable to All Taxes Administered by the Department of Taxation), 110 (Individual Income Tax), 112 (Declaration of Estimated Income Tax by Individuals), 115 (Fiduciary Income Tax), 120 (Corporation Income Tax), 140 (Income Tax Withholding), and 210 (Retail Sales and Use Tax). This will involve the repeal of several regulatory sections, as well as portions of certain sections. The Department is also in the process of		

recounting the number of requirements to ensure consistency with the Regulatory Reduction Guide published by ORM in April 2023.

<b>Regulatory Stage (check one box)</b>	<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
<b>Additional Description</b>	<input checked="" type="checkbox"/> Expedited Rule <input type="checkbox"/> Exempt Rule	<input type="checkbox"/> Guidance Document
<b>Legal Authority</b>	<input type="checkbox"/> Action required by federal statute <input type="checkbox"/> Action required by state statute	<input checked="" type="checkbox"/> Discretionary action
<b>Deregulatory Component</b>	See Brief Overview	
<b>Expected Date</b>	September 2023	

#### Title of Proposed Regulatory Action or Guidance Document

Market-Based Sourcing Guidelines for Qualifying Property Information and Analytics Firms

#### Brief Overview

During the 2022 Session, the Virginia General Assembly enacted House Bill 453 (2022 Acts of Assembly, Chapter 256) and Senate Bill 346 (2022 Acts of Assembly, Chapter 257), which allow property information and analytics firms that have a signed memorandum of understanding with the Virginia Economic Development Partnership Authority (“the Authority”), and meet certain job creation and investment criteria to use a hybrid sales factor when filing Virginia corporate income tax returns. For sales of other than sales of tangible personal property, the hybrid sales factor uses a market-based sourcing rule for sales of services and the standard cost of performance rule for all other non-service sales. Under this legislation, market-based sourcing is based upon where the benefit of the service is received.

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.

<b>Regulatory Stage (check one box)</b>	<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
<b>Additional Description</b>	<input type="checkbox"/> Expedited Rule <input type="checkbox"/> Exempt Rule	<input checked="" type="checkbox"/> Guidance Document
<b>Legal Authority</b>	<input type="checkbox"/> Action required by federal statute <input checked="" type="checkbox"/> Action required by state statute	<input type="checkbox"/> Discretionary action
<b>Deregulatory Component</b>	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.	

<b>Expected Date</b>	December 2022 for the preliminary guidelines and December 2023 for the final guidelines
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<b>Title of Proposed Regulatory Action or Guidance Document</b> Elective Pass-Through Entity Tax Guidelines	
<b>Brief Overview</b> 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.  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.  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.	
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<b>Additional Description</b>	<input type="checkbox"/> Expedited Rule <input type="checkbox"/> Exempt Rule <input checked="" type="checkbox"/> Guidance Document
<b>Legal Authority</b>	<input type="checkbox"/> Action required by federal statute <input checked="" type="checkbox"/> Action required by state statute <input type="checkbox"/> Discretionary action
<b>Deregulatory Component</b>	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.
<b>Expected Date</b>	December 2022 for the preliminary guidelines and December 2023 for the final guidelines

<b>Title of Proposed Regulatory Action or Guidance Document</b> Beneficial Hardwood Management Practices Tax Credit Guidelines	
<b>Brief Overview</b> During the 2022 Session, the Virginia General Assembly enacted House Bill 1319 (2022 Acts of Assembly, Special Session I, Chapter 18), which provides a nonrefundable individual income tax credit	

for expenses incurred by a taxpayer for the implementation of beneficial hardwood management practices. The credit is equal to the taxpayer's eligible expenditures up to \$1,000. The credit is subject to an annual credit cap of \$1 million. The legislation requires the Department, in consultation with the Department of Forestry, to develop guidelines implementing the credit.	
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<b>Deregulatory Component</b>	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.
<b>Expected Date</b>	December 2023

<b>Title of Proposed Regulatory Action or Guidance Document</b>	
Updated Worker Misclassification Guidelines	
<b>Brief Overview</b>	
<p>During the 2023 Session, the Virginia General Assembly enacted House Bill 1684 (Chapter 518, 2023 Acts of Assembly) and Senate Bill 1354 (Chapter 519, 2023 Acts of Assembly), which clarify the procedures under which an employer may be debarred from public contracts for misclassification of workers. Under prior law, it was unclear whether the employer had a right to appeal a determination that the employer failed to properly classify an employee and what procedures the employer must follow to make such an appeal. These Acts clarify that, upon being notified by the Department of Taxation that a worker has been misclassified, an employer has a right to file an administrative or judicial appeal. In addition, these Acts clarify that no employer can be debarred due to worker misclassification unless such employer has exhausted all rights of administrative and judicial appeals or the time period for bringing such appeals has expired.</p> <p>Prior legislation required the Department to publish guidelines, which it has done. However, such guidelines will have to be updated to reflect the clarifications made by these Acts.</p>	
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<b>Additional Description</b>	<input type="checkbox"/> Expedited Rule <input type="checkbox"/> Exempt Rule <input checked="" type="checkbox"/> Guidance Document
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<b>Deregulatory Component</b>	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.

<b>Expected Date</b>	September 2023
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<b>Title of Proposed Regulatory Action or Guidance Document</b>	
Updated Food Donation Tax Credit Guidelines	
<b>Brief Overview</b>	
<p>During the 2023 Session, the Virginia General Assembly enacted House Bill 2445 (Chapter 165, 2023 Acts of Assembly) and Senate Bill 1525 (Chapter 166, 2023 Acts of Assembly), which extend the sunset date for the Food Crop Donation Tax Credit by five years and rename it as to be called the Food Donation Tax Credit.</p> <p>In addition, these Acts increase the amount of the tax credit from 30 percent to 50 percent of the fair market value of qualifying donations, and increase the maximum annual amount of tax credits that a taxpayer could earn from \$5,000 to \$10,000.</p> <p>These Acts also expand the credit to include wholesome food donations. Previously, only donations of food crops qualified for the credit. "Wholesome food" is defined as food that meets all quality and labeling standards imposed by federal, state, and local laws or regulations, including food that may not be readily marketable due to appearance, age, freshness, grade, surplus, or other condition</p> <p>Prior legislation required the Department to publish guidelines, which it has done. However, such guidelines will have to be updated to reflect the enhancements made by these Acts.</p>	
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<b>Legal Authority</b>	<input type="checkbox"/> Action required by federal statute <input checked="" type="checkbox"/> Action required by state statute <input type="checkbox"/> Discretionary action
<b>Deregulatory Component</b>	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.
<b>Expected Date</b>	September 2023

<b>Title of Proposed Regulatory Action or Guidance Document</b>	
Firearm Safety Device Tax Credit Guidelines	
<b>Brief Overview</b>	
<p>During the 2023 Session, the General Assembly enacted House Bill 2387 (Chapter 220, 2023 Acts of Assembly), which establishes an individual income tax credit for the purchase of one or more firearm safety devices in an eligible transaction. "Eligible transaction" means a transaction in which a taxpayer purchases one or more firearm safety devices from a dealer that is federally licensed. An individual who properly applies may be allowed a credit in an amount of up to \$300 for the cost incurred in the purchase. A taxpayer is allowed only one credit per taxable year.</p>	

<p>The total amount of credits permitted under this legislation cannot exceed \$5 million per taxable year. Credits will be allocated on a first-come, first served basis. The amount of credit claimed in a single year cannot exceed the individual's tax liability for that year. If the amount is exceeded, then it can be carried over for credit in the next five years or until the total amount is depleted, whichever happens sooner.</p> <p>This Act requires the Department to promulgate guidelines regarding the firearm safety device tax credit.</p>	
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<b>Deregulatory Component</b>	<p>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.</p>
<b>Expected Date</b>	December 2023

<p><b>Title of Proposed Regulatory Action or Guidance Document</b>          Market-Based Sourcing Guidelines for Internet Root Infrastructure Provider</p>	
<p><b>Brief Overview</b></p> <p>During the 2023 Session, the Virginia General Assembly enacted House Bill 1481 (Chapter 405, 2023 Acts of Assembly) and Senate Bill 1349 (Chapter 406, 2023 Acts of Assembly), which allow an internet root infrastructure provider ("Provider") that meets certain criteria and chooses to enter into a memorandum of understanding ("MOU") with the Virginia Economic Development Partnership Authority ("the Authority") to use a hybrid sales factor when filing Virginia corporate income tax returns. To qualify for this hybrid sales factor, a Provider must operate one of the internet root servers of the Internet Assigned Names Authority and enter into an MOU with the Authority that, among other criteria, have at least 550 employees in Planning District 8 with an average annual salary of \$175,000. An internet service provider, cable service provider, or similar company is not considered a Provider for purposes of these Acts.</p> <p>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, 2023, and final guidelines shall be promulgated and made publicly available no later than December 31, 2024.</p>	
<b>Regulatory Stage (check one box)</b>	<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
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<b>Legal Authority</b>	<input type="checkbox"/> Action required by federal statute <input type="checkbox"/> Discretionary action <input checked="" type="checkbox"/> Action required by state statute
<b>Deregulatory Component</b>	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.
<b>Expected Date</b>	December 2023 for the preliminary guidelines and December 2024 for the final guidelines