# 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.

•	egulatory Action or Guidance Document		
Revision of 23VAC10-210-340 Collection of Tax by Dealers to Reflect a Change in the Statutory Law			
<b>Brief Overview</b>			
_	119 Regular Session, <u>Senate Bill 1615</u> , repe		
	tax dealers from absorbing payment of th		
•	umer, or lessee due on a taxable transact		
	s to absorb payment of the tax. The Depa	rtment plans to revise 23VAC10-210-	
340 Collection of Ta	x by Dealers to reflect the law change.		
Regulatory Stage	□ NOIRA	☐ Emergency Rule	
(check one box)	☐ Proposed Rule	□ Fast-Track Rule	
	☐ Final Rule		
Additional	☐ Expedited Rule	☐ Guidance Document	
Description	☐ Exempt Rule		
Legal Authority	☐ Action required by federal statute	□ Discretionary action     □ Discretion	
	☐ Action required by state statute	·	
Deregulatory	Although this action will not reduce the number of regulation sections		
Component	maintained by the Department, by confo	_	
•	the revised statute, the action will remo		
	taxpayers and tax practitioners.	·	
Expected Date	January 10, 2023		
	•		
[ <u></u>			
•	egulatory Action or Guidance Document		
Revision of <u>23VAC10-210-410</u> Contractors Respecting Real Estate to Reflect a Change in the Statutory			
Law			
Brief Overview			
Legislation in the 2017 Regular Session, <u>House Bill 1890</u> and <u>Senate Bill 1308</u> , repealed a provision of			
Va. Code § 58.1-610 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 <u>23VAC10-210-410</u> Contractors Respecting Real Estate to reflect the			
law change.			
D 1			
Regulatory Stage	□ NOIRA	☐ Emergency Rule	
(check one box)	☐ Proposed Rule	□ Fast-Track Rule	
	☐ Final Rule		
Additional	☐ Expedited Rule	$\square$ Guidance Document	
Description	▼ Evemnt Pule		

Legal Authority	☐ Action required by federal statute ☐ Discretionary action	
	☐ Action required by state statute	
Deregulatory	Although this action will not reduce the number of regulation sections	
Component	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>	January 2023	

### **Title of Proposed Regulatory Action or Guidance Document** Revision of 23VAC10-340-20 Classification; Rate of Tax to Reflect a Change in the Statutory Law **Brief Overview** Legislation in the 1984 Regular Session, 1984 Acts of Assembly, Chapter 675, restructured the Tax on Capital Not Otherwise Taxed and renamed it the Intangible Personal Property Tax which now serves to certain property both tangible and intangible from local taxation. The Department's regulation on the tax still retains a rate on one class of property, inventory, that was repealed shortly after the regulation was promulgated. The Department plans to revise 23VAC10-340-20. Classification; Rate of Tax to correct this oversight. **Regulatory Stage** ☐ NOIRA ☐ Emergency Rule (check one box) ☐ Proposed Rule ☐ Final Rule Additional ☐ Expedited Rule ☐ Guidance Document Description ☐ Exempt Rule **Legal Authority** ☐ Action required by federal statute □ Discretionary action ☐ Action required by state statute Although this action will not reduce the number of regulation sections Deregulatory

maintained by the Department, by conforming the Department's regulation to the revised statute, the action will remove a potential source of confusion to

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

January 2023

taxpayers and tax practitioners.

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

#### **Brief Overview**

Component

**Expected Date** 

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.			
Regulatory Stage	□ NOIRA	☐ Emergency Rule	
(check one box)		•	
(check one box)	☐ Proposed Rule	☐ Fast-Track Rule	
	☐ Final Rule		
Additional	Expedited Rule	□ Guidance Document	
Description	Exempt Rule		
Legal Authority	$\square$ Action required by federal :	statute   Discretionary action	
	□ Action required by state state     □     □ Action required by state state     □ Action required by state     □ A	itute	
Deregulatory	Although this action will not reduce the number of guidance documents		
Component		t, by providing guidance regarding the legislation,	
	the action will remove a poter	itial source of confusion to taxpayers and tax	
	practitioners.		
Expected Date	December 2022 for the prelim	inary guidelines and December 2023 for the final	
	guidelines		
Title of Proposed R	egulatory Action or Guidance D	ocument	
· ·	gh Entity Tax Guidelines	ocument	
Brief Overview	British tax caracines		
	sion, the Virginia General Asser	nbly enacted House Bill 1121 (2022 Acts of	
_	<u> </u>	acts of Assembly, Chapter 689), which permit a	
· · ·		nnual election to pay an elective income tax at a	
		on also allows a corresponding refundable income	
-	-	income tax paid by a PTE having Virginia taxable	
		elective income tax imposed at the entity level.	
	, ,	'	
The legislation allow	vs an individual to claim a credit	for taxes paid to other states under laws that are	
substantially similar	to the pass-through entity inco	me tax. This overrules Public Document 21-156	
(December 29, 2021	L), which generally denied a cred	dit 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.			
		rate 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			
	paid to other states.		
Regulatory Stage	☐ NOIRA	☐ Emergency Rule	
(check one box)	☐ Proposed Rule	☐ Fast-Track Rule	
	☐ Final Rule		
Additional	$\square$ Expedited Rule	☑ Guidance Document	
Description	☐ Exempt Rule		

Legal Authority	$\square$ Action required by federal statute	☐ Discretionary action
	☐ Action required by state statute	
Deregulatory	Although this action will not reduce the number of guidance documents	
Component	maintained by the Department, by providing guidance regarding the legislation,	
	the action will remove a potential sou	arce of confusion to taxpayers and tax
	practitioners.	
Expected Date	December 2022 for the preliminary g	uidelines and December 2023 for the final
	guidelines	
Title of Proposed P	egulatory Action or Guidance Docume	nt
_	d Management Practices Tax Credit Gu	
Brief Overview	d Management Fractices Fax credit Ga	idelines
	ssion, the Virginia General Assembly en	acted House Bill 1319 (2022 Acts of
_		nonrefundable individual income tax credit
1		n of beneficial hardwood management
1	t is equal to the taxpayer's eligible expe	
- ·	ual credit cap of \$1 million. The legislat	
•	ne Department of Forestry, to develop	· · · · · · · · · · · · · · · · · · ·
Constitution with th	te bepartment of Forestry, to develop	galacines implementing the creat.
Regulatory Stage	□ NOIRA	☐ Emergency Rule
(check one box)	☐ Proposed Rule	☐ Fast-Track Rule
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Additional	☐ Expedited Rule	□ Guidance Document
Description	☐ Exempt Rule	
Legal Authority	☐ Action required by federal statute	☐ Discretionary action
	<ul><li>✓ Action required by state statute</li></ul>	
Deregulatory		he number of guidance documents
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.	and the same same same same same same same sam
Expected Date	December 2022	
P =		
	egulatory Action or Guidance Docume	
-	<u>10-110</u> . Amend Individual Income Tax F	Regulation to Conform to Law Changes and
Existing Policy		
Brief Overview		
	the Individual Income Tax Regulation, 2	
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		
Regulatory Stage	☐ NOIRA	☐ Emergency Rule
(check one box)	☐ Proposed Rule	

oxtimes Fast-Track Rule

 $\square$  Proposed Rule

	☐ Final Rule		
Additional	☐ Expedited Rule	☐ Guidance Document	
Description	☐ Exempt Rule		
Legal Authority	☐ Action required by federal statute	□ Discretionary action	
	☐ Action required by state statute	,	
Deregulatory	Although this action will not reduce the number of regulation sections		
Component	maintained by the Department, by con	forming 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 R	egulatory Action or Guidance Documen	<u> </u>	
=	10-120. Amend Corporation Income Tax		
and Existing Policy	10 120	negalation to comorm to can changes	
Brief Overview			
Various sections of	the Corporation Income Tax Regulation,	23 VAC 10-120, do not conform to	
	and current tax policy. As part of this reg		
-	, , ,	guidance to unambiguous statutes. Other	
provisions will be up	pdated so that they conform to legislativ	e changes and current tax policy.	
Amendment of this	section will not reflect any change in exi	sting tax policy and will have no impact on	
the administration of	of the tax		
Regulatory Stage	□ NOIRA	☐ Emergency Rule	
(check one box)	☐ Proposed Rule	□ Fast-Track Rule	
	☐ Final Rule		
Additional	☐ Expedited Rule	☐ Guidance Document	
Description	☐ Exempt Rule		
Legal Authority	☐ Action required by federal statute	□ Discretionary action	
	☐ Action required by state statute		
Deregulatory	Although this action will not reduce the	e number of regulation sections	
Component		forming 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 Guidanc	e Documents		
Brief Overview			
The Department of	Taxation is typically required to issue a fe	ew 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	□ NOIRA	☐ Emergency Rule	
(check one box)	☐ Proposed Rule	☐ Fast-Track Rule	
	☐ Final Rule		
Additional	☐ Expedited Rule	□ Guidance Document	

Description	☐ Exempt Rule	
Legal Authority	☐ Action required by federal statute	☐ Discretionary action
	☑ Action required by state statute	
Deregulatory		
Component		
Expected Date	April through June 2023	