

23 VAC 10-340. INTANGIBLE PERSONAL PROPERTY TAX REGULATIONS

~~23 VAC 10-340-10. Intangible personal property; segregated for state taxation.~~

~~Chapter 11 of Title 58.1 of the Code of Virginia defines intangible personal property. Prior to January 1, 1983, §§58-410 through 58-412 of Title 58 of the Code of Virginia defined the capital of a trade or business subject to state tax as intangible personal property and §58-418 levied a tax on such capital at the rate of 30¢ per \$100 of its actual value.~~

~~The 1982 Session of the General Assembly enacted legislation effective January 1, 1983, which repealed these sections and amended §58-405 to define as intangible personal property all property previously defined as capital but levied an intangible personal property tax on inventory, only, at the rate of 30¢ per \$100 of actual value.~~

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~~23 VAC 10-340-50. To what extent dairies taxable on intangible personal property.~~

~~A dairy business may or may not be classified as a manufacturing business, depending on its specific operations and its specific methods of operation. However, the capital as defined by §§58-411 and 58-412, prior to repeal thereof, relating to that part of a dairy business which consists of the purchase, pasteurization and sale of milk and cream and the production of buttermilk, as well as that part of a dairy business which consists of the manufacture of butter, condensed milk, evaporated milk, ice cream mix, ice cream, milk powder and cheese is defined as intangible personal property and inventory attributable to such part of a dairy business is taxable as intangible personal property and not as merchants' capital under local ordinances.~~

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~~23 VAC 10-340-60. [Reserved]~~

23 VAC 10-340. INTANGIBLE PERSONAL PROPERTY TAX REGULATIONS

~~23 VAC 10-340-70. Situs; nonresidents, branches outside of state.~~

~~The taxable situs of property defined and taxed as intangible personal property (inventory) is in Virginia if the property is physically located in Virginia on January 1 of the taxable year. Property in transit in interstate or foreign commerce does not have Virginia situs.~~

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~~23 VAC 10-340-80. Date as of which intangible personal property must be returned.~~

~~A. Generally. A business is subject to intangible personal property tax from the time it is getting ready to do business, while doing an active business, and finally closing out business. Intangible personal property tax is assessed on the actual value of taxable property determined as of January 1 of every tax year. The taxpayer may elect to make a return based on the average actual value of taxable property on January 1 of the tax year and August 1 of the preceding tax year.~~

~~B. Election to average intangible personal property. The election to make return based on the average actual value of taxable property must be made for each tax year and is binding only for the year for which the election is made.~~

~~The election is made by filing Form 761, Return of Intangible Personal Property Tax, on the basis of the average value of inventory on January 1 of the tax year and August 1 of the preceding tax year. The return must include a schedule disclosing inventory on the respective dates and the inventory average thereof.~~

~~The election to average is applicable only if taxpayer was doing business subject to tax on both January 1 of the tax year and on August 1 of the preceding year.~~

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~~23 VAC 10-340-90. Time for filing returns; payment of tax.~~

~~A. Generally. Every person, firm or corporation with inventory subject to intangible personal property tax is required to file annually Form 761, Return of Intangible Personal Property. Returns are due on or before May 1 of each tax year regardless of taxpayer's fiscal accounting period.~~

~~B. Limitations. If a taxpayer is engaged in dual businesses where a portion of the inventory is subject to state intangible personal property tax, the taxpayer is required to keep accurate book accounts segregating the items which constitute taxable inventory. In cases where no accounting segregation is made and where it is impractical to segregate all specific items of inventory employed in the several segments of a business, an apportionment of total inventory may be made based on a percentage. The numerator is the gross receipts derived from the part of the business which is subject to intangible personal property tax and the denominator is total gross receipts. A schedule reflecting the details of total inventory, computation of the apportionment percentage, and the application of the apportionment percentage shall be attached to and filed with the return.~~

~~1. Return of dual businesses. Taxpayers engaged in dual businesses wherein a portion of total inventory is subject to intangible personal property tax, shall submit with Form 761 a schedule reflecting the details of total inventory and the portion subject to taxation.~~

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~~2. Consolidated returns. Consolidated returns are not allowed. Every person, firm or corporation subject to tax is required to file a separate return regardless of relation, affiliation or common ownership. When any person, firm or corporation conducts business from two or more locations in Virginia, the inventory of the several locations may be combined and reported in one return.~~

~~C. Payment of tax. The full amount of tax as shown on the face of the return is due at the time of filing the return and is required to be paid to the Treasurer of the county or city with whose Commissioner of the Revenue the taxpayer files his return. (If filed in Albemarle, Fairfax, Henrico, or Prince William County, or the City of Alexandria or Richmond, check or money order should be made payable to "Director of Finance of the County (City) of . . .")~~

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~~23 VAC 10-340-100. Extension of time for filing returns.~~

~~The department may grant a reasonable extension of filing time when in its judgment good cause exists. No extension may be granted for more than six months except in the case of a taxpayer who is absent from the continental United States on the day the return is due and who requests an extension prior to the due date. Whenever an extension is granted, interest will be charged and collected at a rate equal to the rate of interest established pursuant to §58.1-15 of the Code of Virginia. Such interest rate is applied from the original due date to the time of payment. If any taxpayer who has been granted an extension fails to file his return within the extended time and to pay the full amount of tax as shown on the face of the return at the time of filing and the accrued interest, the case shall be treated as if no extension had been granted. For penalty provisions, see 23 VAC 10-340-140 and 23 VAC 10-340-170.~~

~~Note: No extension granted for any other tax, whether federal, state or local, will be construed as representing an extension for filing Form 761, Return of Intangible Personal Property.~~

~~Requests for extension should be addressed to Virginia Department of Taxation, P.O. Box 405, Richmond, Virginia 23203-0405.~~

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~~23 VAC 10-340-110. Where to file return; duty of the commissioner of revenue, audit and assessment.~~

~~A. Where individual to file. A resident individual must file with the commissioner of the revenue for the county or city in which taxpayer is a resident for tax purposes. A nonresident individual must file with the commissioner of the revenue for the county or city in which his business, or a major part thereof, is conducted.~~

~~B. Where unincorporated companies to file. Partnerships, joint ventures and unincorporated companies must file with the commissioner of the revenue for the county or city in which the business, or a major part thereof, is conducted.~~

~~C. Where corporations to file. Virginia corporations must file with the commissioner of the revenue for the county or city in which the taxpayer's principal office is located by charter or in which the registered office is located. Foreign corporations must file with the commissioner of the revenue for the county or city in which is located the place designated as the office in Virginia at which all claims against the corporation may be paid or in which the registered office is located.~~

~~D. Schedule A of Form 761. Separate Schedule A of Form 761 should be filed with Form 761 by qualifying manufacturers who hold inventory of agricultural products requiring storage for more than one year in order to age or condition. The schedule may be obtained from the Department.~~

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~~23 VAC 10-340-120. Application to fiduciaries generally.~~

~~Fiduciaries must file with the commissioner of the revenue for the county or city in which the fiduciary is qualified, or if there has been no qualification in this state, in the county or city in which the beneficiaries or any of them may reside.~~

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~~23 VAC 10-340-130. [Reserved]~~

23 VAC 10-340. INTANGIBLE PERSONAL PROPERTY TAX REGULATIONS

~~23 VAC 10-340-140. Penalty for failure to file return of intangible personal property in time; delinquents; assessments on estimates.~~

~~A. Penalty for failure to file. A taxpayer who fails to file a return by the required due date is subject to a penalty of 10% of taxes assessable, for delinquent filing. In no case will the penalty be less than \$10. The assessed penalty becomes a part of the tax, subject to interest and other possible penalties.~~

~~B. Assessments on estimates. If a delinquent taxpayer fails or refuses to file a return, and such delinquency continues for fifteen days after notice of delinquency, the department may estimate the value of taxable inventory on the basis of the best information available to it and assess and collect taxes, penalties and interest on the basis of the estimates.~~

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~~23 VAC 10-340-150. Assessment and payment of deficiency; penalties; application for correction.~~

~~A. Assessment. Audit deficiencies, if any, will be assessed by the department and Notices of Assessment will be mailed to taxpayers. The tax deficiency and interest at a rate equal to the rate of interest established pursuant to §58.1-15 of the Code of Virginia, is payable to the Department of Taxation within thirty days after the Notice of Assessment is mailed to taxpayer.~~

~~B. Penalty on audit deficiency. If the return was made in good faith and the understatement of the amount in the return was not due to any fault of the taxpayer, no penalty will be added to the additional tax because of the understatement.~~

~~If the return is false or fraudulent with intent to evade the tax, a penalty of 100% of the unpaid tax will be added.~~

~~C. Limitation on assessment. State intangible personal property taxes may be assessed within three years from the date on which such taxes became due and payable, except that in the case of a false or fraudulent return with intent to evade payment of the taxes, or a failure to file a return, the taxes may be assessed at any time within six years from the date on which such taxes became due and payable.~~

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~~23 VAC 10-340-160. Refund of overpayment.~~

~~If the amount of tax computed in audit or otherwise determined, is less than the amount previously paid, the excess will be refunded together with interest at a rate equal to the rate of interest established pursuant to §58.1-15 of the Code of Virginia.~~

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~~23 VAC 10-340-170. Failure to pay tax when due; civil penalties.~~

~~A. If payment is not made in full when due, the unpaid balance including penalty for late filing, if applicable, is subject to a penalty of 5.0%. In the case of additional tax assessed, the penalty will not apply if return was made in good faith and the understatement was not due to any fault of taxpayer.~~

~~B. Example of application of penalties and interest.~~~~Example:~~

~~Tax on delinquent return filed on July 1 — \$1,000.00~~

~~10% penalty for late filing (becomes part of
tax) ————— 100.00~~

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Total tax ————— \$1,100.00~~

~~5% penalty for failure to pay ————— 55.00~~

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Total tax and penalty ————— \$1,155.00~~

~~Interest on (\$1,155.00) total tax and pen-
alty from June 1 until July 1, date paid (1
month at 20% per annum) ————— 18.99~~

~~—————
Total assessment ————— \$1,173.99~~

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~~23 VAC 10-340-180. [Reserved]~~

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~~23 VAC 10-340-190. [Reserved]~~