

## AUTHORITY TO DEFER LOCAL TAX PAYMENTS AND PROCESS FOR DOING SO

### OVERVIEW

**Only the governing body of the locality can make the decision to defer local tax payments.**

There is no authority for administrative officials (e.g. director of finance, assessor) or elected officials (e.g. treasurer or commissioner of the revenue) to make those decisions, unless such authority is enacted by the General Assembly.

### STATUTORY AUTHORITY

[VA. CODE § 58.1-3916](#) (entitled "**Counties, cities and towns may provide dates for filing returns, set penalties, interest, etc.**") The language in [§ 58.1-3916](#) states that the statute is

the **sole authority** for local ordinances setting due dates of local taxes and penalty and interest thereon, and shall supersede the provisions of any charter or special act. (emphasis added.)

### OTHER REFERENCES

[1981-82 Va. AG 393](#) (holding that local government cannot forgive interest and penalty already accrued). Under Va. Code § [58.1-3916](#), the penalty becomes part of the principle of the tax owed.

#### **Information to review or consider before discussing options for deferring tax payments:**

- The current county, city or town code sections and/or ordinance(s) establishing due dates for the payment of local taxes.
- The current county, city or town code sections and/or ordinance(s) setting forth the penalty and/or interest percentages on delinquent taxes and the dates incurred.
- The current county, city or town code sections and/or ordinance(s) adopted to allow interest on prepayment of taxes, and how shifting the due dates may also impact the requirement to pay additional interest on prepayments under Va. Code § [58.1-3920.1](#).
- Trust taxes: The meals (a/k/a food and beverage), admission, and lodging (a/k/a transient occupancy) taxes are trust taxes and are not recommended to be pushed out for payment. The amount of the tax was collected by the business establishment on behalf of the locality at the time of each transaction (e.g., purchase of meal, payment for lodging room, admission to entertainment, etc.) and do not belong to the business. The taxes were paid by the consumer and are merely held *in trust* by the business establishment for the locality. Permitting the business to hold onto these funds, rather than remitting them timely, may result in their misappropriation. Virginia Code § [58.1-3833\(C\)](#) states that:

All food and beverage tax collections and all meals tax collections shall be deemed to be held in trust for the county, city or town imposing the applicable tax. The wrongful and fraudulent use of such collections other

than remittance of the same as provided by law shall constitute embezzlement pursuant to [§ 18.2-111](#).

Unlike property taxes, which usually have a due date of once or twice a year, trust taxes are reported and paid periodically (monthly, quarterly, etc.).

- Use of a "pay what you can" approach. The payment of taxes is the primary source of funds to further the critical functions of government. Essential government services, including emergency services, must continue to function to serve the citizens of the county, city or town. The continuation of those services and the provision of adequate equipment to support those services are dependent on government funds.

## **THE PROCESS**

The next to last paragraph of Va. Code [§ 58.1-3916](#) authorizes the local governing body to extend by resolution tax deadlines for "good cause" as follows:

The governing body may further provide by resolution for reasonable extensions of time, not to exceed 90 days, for the payment of real estate and personal property taxes and for filing returns on tangible personal property, machinery and tools, and merchants' capital, and the business, professional, and occupational license tax, whenever good cause exists. The official granting such extension shall keep a record of every such extension. If any taxpayer who has been granted an extension of time for filing his return fails to file his return within the extended time, his case shall be treated the same as if no extension had been granted.

NOTE: The authority in the above section does not extend to meals, lodging or admission taxes (trust taxes). However, the governing body can utilize the authority in [§ 58.1-3916](#) to set new due dates, by ordinance, for the meals, lodging or admission taxes, as it can with all local taxes. For example, changing all of the due dates for such taxes, whether monthly, quarterly or otherwise, to a different month or quarter, or by switching from a monthly due date to a quarterly due date. Trust taxes, however, eventually will need to be paid.

In addition, the governing body is authorized, either by [§ 58.1-3916](#) or charter, to adopt ordinance(s) to set the rates of penalty and interest. Therefore, the governing body can amend the penalty and interest ordinance(s) to set the rate to zero going forward. However, no authority exists for local governing bodies to determine fault for a taxpayer's failure to pay taxes and hence "waive" penalty or interest that has already accrued. That authority is delegated solely to the Treasurer or the city/county official that performs that function (e.g. Director of Finance) under the statute.

Lastly, of course, the governing body may repeal a tax by ordinance.

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