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Fast-Track Regulation Agency Background Document

Agency name	Department of Taxation
Virginia Administrative Code (VAC) citation(s)	23 VAC 10-220
Regulation title(s)	Aircraft Sales and Use Tax
Action title	Amendment of the Aircraft Sales and Use Tax Regulation to Remove Outdated References to the Rate of the Retail Sales and Use Tax
Date this document prepared	September 6, 2016

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (preferably no more than 2 or 3 paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

This regulatory action will amend the Aircraft Sales and Use Tax regulation sections 23 VAC 10-220-5, 23 VAC 10-220-10, and 23 VAC 10-220-20 to remove outdated references to the rate of the Retail Sales and Use Tax. Removal of the Retail Sales and Use Tax rate from the regulation will eliminate confusion caused by listing the wrong rate in the regulation and will eliminate the need to update the rate in the event that it is changed again in the future.

The rate of the Retail Sales and Use Tax has been increased twice since the rate listed in the regulation, 4.0%, was in effect. The Retail Sales and Use Tax rate is currently 5.3% statewide, with an additional 0.7% state tax in the Northern Virginia and Hampton Roads Regions. Removal of the Retail Sales and Use Tax rate from the Aircraft Sales and Use Tax Regulation will have no impact on the usefulness of the

regulation. The listing of the Retail Sales and Use Tax rate provides no guidance regarding the Aircraft Sales and Use Tax. The Retail Sales and Use Tax rate is not necessary for any examples or explanation provided in the regulation.

The regulatory action does not reflect any change in current tax policy and will have no impact on the administration of the Aircraft Sales and Use Tax.

Acronyms and Definitions

Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.

Not applicable.

Statement of final agency action

Please provide a statement of the final action taken by the agency including: 1) the date the action was taken; 2) the name of the agency taking the action; and 3) the title of the regulation.

The Tax Commissioner approved the amendment of the Aircraft Sales and Use Tax regulation on August 5, 2016.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including: 1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable; and 2) promulgating entity, i.e., agency, board, or person. Your citation should include a specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person's overall regulatory authority.

Virginia Code § 58.1-203 authorizes the Tax Commissioner to issue regulations relating to the interpretation and enforcement of the laws governing taxes administered by the Department of Taxation. The Aircraft Sales and Use Tax is administered by the Department of Taxation pursuant to Va. Code § 58.1-1503.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Describe the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

This regulatory action is needed to remove references to a previous Retail Sales and Use Tax rate that provide no guidance regarding the Aircraft Sales and Use Tax. The regulatory action does not reflect any change in current tax policy and will have no impact on the administration of the Aircraft Sales and Use Tax. Removal of the Retail Sales and Use Tax rate from the regulation will eliminate confusion caused by

listing the wrong rate in the regulation and will eliminate the need to update the rate in the event that it is changed again.

Rationale for using fast-track process

Please explain the rationale for using the fast-track process in promulgating this regulation. Why do you expect this rulemaking to be noncontroversial?

Amending the Aircraft Sales and Use Tax regulation sections to repeal references to a previous Retail Sales and Use Tax rate that provide no guidance regarding the Aircraft Sales and Use Tax is expected to be noncontroversial and appropriate for the fast-track process.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the "Detail of changes" section below.

This action will amend the Aircraft Sales and Use Tax regulation sections 23 VAC 10-220-5, 23 VAC 10-220-10, and 23 VAC 10-220-20 to remove references to the previous rate of the Retail Sales and Use Tax.

The rate of the Retail Sales and Use Tax has been increased twice since the rate listed in the regulation, 4%, was in effect. The Retail Sales and Use Tax rate is currently 5.3% statewide, with an additional 0.7% state tax in the Northern Virginia and Hampton Roads Regions. Removal of the Retail Sales and Use Tax rate from the Aircraft Sales and Use Tax Regulation will have no impact on the usefulness of the regulation. The listing of the Retail Sales and Use Tax rate provides no guidance regarding the Aircraft Sales and Use Tax. The Retail Sales and Use Tax rate is not necessary for any examples or explanation provided in the regulation. Removal of the Retail Sales and Use Tax rate from the regulation will eliminate confusion caused by listing the wrong rate in the regulation and will eliminate the need to update the regulation in the event that it is changed in the future.

The Aircraft Sales and Use Tax is generally imposed at the rate of 2.0% on the retail sale of every aircraft sold in Virginia and upon the use in Virginia of any aircraft required to be licensed by the Department of Aviation. However, commercial dealers may elect to pay the Aircraft Sales and Use Tax at the rate of 2.0% of the monthly gross receipts from the lease, charter or other use of any aircraft licensed for commercial use instead. Revenues from the tax are deposited into a special fund within the Commonwealth Transportation Fund for the administration of aviation laws by the Department of Aviation, for the construction, maintenance and improvement of airports and landing fields, and for the promotion of aviation.

The regulatory action does not reflect any change in current tax policy and will have no impact on the administration of the Aircraft Sales and Use Tax.

Issues

Please identify the issues associated with the proposed regulatory action, including: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please indicate.

The primary advantage of this action is that it will remove an incorrect listing of the Retail Sales and Use Tax rate that may cause confusion. As this regulatory action will repeal references to a former Retail Sales and Use Tax rate that provide no guidance regarding the Aircraft Sales and Use Tax, there are no issues or disadvantages to the public or the Commonwealth associated with this regulatory action.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.

There are no applicable federal requirements.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

As this regulatory action is simply removing an outdated reference to the rate of the Retail Sales and Use Tax, no locality would be particularly affected by it.

Regulatory flexibility analysis

Pursuant to § 2.2-4007.1B of the Code of Virginia, please describe the agency's analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

As this regulatory action will simply remove references to a previous Retail Sales and Use Tax rate that has been changed, this action will have no impact on anyone, including small businesses. One

alternative to this action would be to leave in place the incorrect tax rate. Removal of the Retail Sales and Use Tax rate from the regulation will eliminate confusion caused by listing the wrong rate in the regulation and will eliminate the need to update the rate in the event that it is changed in the future. The Retail Sales and Use Tax rate is not necessary for any examples or explanation provided in the regulation. This action has no impact on small businesses.

Economic impact

Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirement creates the anticipated economic impact.

<p>Projected cost to the state to implement and enforce the proposed regulation, including: a) fund source / fund detail; and b) a delineation of one-time versus on-going expenditures</p>	<p>As this regulatory action will simply remove references to a former Retail Sales and Use Tax rate that has been changed, it will have no cost to the state to implement and enforce the amended regulation sections.</p>															
<p>Projected cost of the new regulations or changes to existing regulations on localities.</p>	<p>As this regulatory action will simply remove references to a former Retail Sales and Use Tax rate that has been changed, there will be no cost to localities related to the amended regulation sections.</p>															
<p>Description of the individuals, businesses, or other entities likely to be affected by the new regulations or changes to existing regulations.</p>	<p>As this regulatory action will simply remove references to a former Retail Sales and Use Tax rate that has been changed, no one will be affected by the amended regulation sections.</p>															
<p>Agency’s best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that: a) is independently owned and operated and; b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p>	<p>As this regulatory action will simply remove references to a former Retail Sales and Use Tax rate that has been changed, no one will be affected by the amended regulation sections.</p> <p>Although the Department does not have data concerning the number of entities, including small businesses, that pay the Retail Sales and Use Tax on purchases of aircraft related items, such as aircraft parts, according to the Department’s records, the Aircraft Sales and Use Tax was paid by the following numbers of taxpayers regarding the following number of aircraft in the past three fiscal years:</p> <table border="1" style="margin-left: auto; margin-right: auto; border-collapse: collapse; text-align: center;"> <thead> <tr> <th colspan="3">Aircraft Sales and Use Tax</th> </tr> <tr> <th>Year</th> <th>Aircraft</th> <th>Taxpayers</th> </tr> </thead> <tbody> <tr> <td>FY 2014</td> <td>251</td> <td>228</td> </tr> <tr> <td>FY 2015</td> <td>244</td> <td>226</td> </tr> <tr> <td>FY 2016</td> <td>291</td> <td>278</td> </tr> </tbody> </table>	Aircraft Sales and Use Tax			Year	Aircraft	Taxpayers	FY 2014	251	228	FY 2015	244	226	FY 2016	291	278
Aircraft Sales and Use Tax																
Year	Aircraft	Taxpayers														
FY 2014	251	228														
FY 2015	244	226														
FY 2016	291	278														

<p>All projected costs of the new regulations or changes to existing regulations for affected individuals, businesses, or other entities. Please be specific and include all costs including: a) the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; and b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the proposed regulatory changes or new regulations.</p>	<p>As this regulatory action will simply remove references to a former Retail Sales and Use Tax rate that has been changed, there are no costs related to the amended regulation sections to any individuals, businesses, or other entities.</p>
<p>Beneficial impact the regulation is designed to produce.</p>	<p>Removal of the Retail Sales and Use Tax rate from the regulation will eliminate confusion caused by listing the wrong rate in the regulation and will eliminate the need to update the rate in the event that it is changed again. The Retail Sales and Use Tax rate is not necessary for any examples or explanation provided in the regulation.</p>

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in § 2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.

One alternative to this action would be to leave in place the incorrect tax rate. However, this would cause confusion. Another alternative would be to correct the Retail Sales and Use Tax rate. However, the regulation would need to be updated in the event the Retail Sales and Use Tax is ever changed again. Removal of the Retail Sales and Use Tax rate from the regulation will eliminate confusion caused by listing the wrong rate in the regulation and will eliminate the need to update the regulation if the Retail Sales and Use Tax is ever changed in the future. The Retail Sales and Use Tax rate is not necessary for any examples or explanation provided in the regulation.

Public participation notice

If an objection to the use of the fast-track process is received within the 30-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall: 1) file notice of the objections with the Registrar of Regulations for publication in the Virginia Register; and 2) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

Periodic review and small business impact review report of findings

If this fast-track is the result of a periodic review/small business impact review, use this form to report the agency's findings. Please (1) summarize all comments received during the public comment period following the publication of the Notice of Periodic Review and (2) indicate whether the regulation meets

the criteria set out in Executive Order 17 (2014), e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable. In addition, as required by 2.2-4007.1 E and F, please include a discussion of the agency’s consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation from the public; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation.

Not Applicable

Family impact

Please assess the impact of this regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one’s spouse, and one’s children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

Amending the Aircraft Sales and Use Tax regulation sections to repeal references to a previous Retail Sales and Use Tax rate will have no impact on the institution of the family and family stability and will not 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one’s spouse, and one’s children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

Detail of changes

Please list all changes that are being proposed and the consequences of the proposed changes; explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact. Please describe the difference between existing regulation(s) and/or agency practice(s) and what is being proposed in this regulatory action. If the proposed regulation is intended to replace an emergency regulation, please follow the instructions in the text following the three chart templates below.

For changes to existing regulation(s), please use the following chart:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
23 VAC 10-220-5	Not applicable	The regulation sets forth the definitions for the Aircraft Sales and Use Tax regulation.	The amendment will repeal references to a previous Retail Sales and Use Tax rate that provide no guidance regarding the Aircraft Sales and Use Tax.
23 VAC 10-220-10	Not applicable	The regulation sets forth the levy of the Aircraft Sales and Use Tax.	The amendment will repeal references to a previous Retail Sales and Use Tax rate that provide no guidance regarding the Aircraft Sales and Use Tax.

23 VAC 10-220-20	Not applicable	The regulation sets forth the basis of the Aircraft Sales and Use Tax, when the price for the rental or use of an aircraft may be estimated, and the penalty for misrepresenting the amount of Aircraft Sales and Use Tax due.	The amendment will repeal references to a previous Retail Sales and Use Tax rate that provide no guidance regarding the Aircraft Sales and Use Tax.
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If an existing regulation or regulations (or parts thereof) are being repealed and replaced by one or more new regulations, please use the following chart:

Current chapter-section number	Proposed new chapter-section number, if applicable	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements

If a new regulation is being promulgated, that is not replacing an existing regulation, please use this chart:

Section number	Proposed requirements	Other regulations and law that apply	Intent and likely impact of proposed requirements

If the proposed regulation is intended to replace an emergency regulation, and the proposed regulation is identical to the emergency regulation, please choose and fill out the appropriate chart template from the choices above. In this case “current section number” or “current chapter-section number” would refer to the **pre-emergency** regulation.

If the proposed regulation is intended to replace an emergency regulation, and the proposed regulation includes changes since the emergency regulation, please create two charts: 1) a chart describing changes from the **pre-emergency** regulation to the proposed regulation as described in the paragraph above, and 2) a chart describing changes from the **emergency** regulation to the proposed regulation. For the second chart please use the following title: “Changes from the Emergency Regulation.” In this case “current section number” or “current chapter-section number” would refer to the **emergency** regulation.