



Final Regulation Agency Background Document

Agency name	Department of Taxation
Virginia Administrative Code (VAC) citation	23 VAC10-70-10 through 10-70-70
Regulation title	Virginia Slaughter Hog and Feeder Pig Excise Tax Regulations
Action title	Repeal of Virginia Slaughter Hog and Feeder Pig Excise Tax Regulation Made Obsolete By Statutory Changes.
Date this document prepared	June 8, 2009

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 36 (2006) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (no more than 2 short 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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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. Also, please include a brief description of changes to the regulation from publication of the proposed regulation to the final regulation.

Effective November 1, 1986, federal law ("The Pork, Promotion, Research, and Consumer Information Act of 1985", 7 USC § 4801) ceded to the federal government the sole right to levy an excise tax on pork. As a result, the Virginia Slaughter Hog and Feeder Pig Excise Tax provided for by *Va. Code* § 3.2-2006 is no longer imposed. This regulatory action will repeal the Virginia Slaughter Hog and Feeder Pig Excise Tax Regulation.

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 repeal of the Slaughter Hog and Feeder Pig Excise Tax Regulation on October 14, 2005.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter numbers, if applicable, and (2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

Section 58.1-203 of the Code of Virginia provides that the "Tax Commissioner shall have the power to issue regulations relating to the interpretation and enforcement of the laws of this Commonwealth governing taxes administered by the Department." The authority for the current regulatory action is discretionary.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons it 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.

The purpose of this regulatory action is to ease voluntary taxpayer compliance and TAX's administration of the state tax laws by eliminating an obsolete regulation.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. A more detailed discussion is required under the "All changes made in this regulatory action" section.

Effective November 1, 1986, the Federal Pork Act ceded to the federal government the sole right to levy an excise tax on pork. Under the federal preemption statute, no state may impose an excise tax involving the field of promotion and consumer education involving pork and pork products or obtaining funds from pork producers that is in addition to or different from the Federal Pork Act. As a result, the Virginia Slaughter Hog and Feeder Pig Excise Tax provided for by Va. Code § 3.2-2006 is no longer imposed.

Although the Federal Pork Act preempted the Virginia Slaughter Hog and Feeder Pig Excise Tax, the Virginia statute has not been repealed. This regulation provides no additional guidance beyond the clear meaning of the statute.

If the federal statute were to be invalidated, the Virginia statute would regain its effectiveness. Repealing this regulation would not hinder Virginia's ability to impose the tax. While TAX understands the importance of retaining the Slaughter Hog and Feeder Pig Excise Tax statutes, the same cannot be said with respect to the regulation. Retaining this regulation is unnecessary.

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 regulatory action poses no disadvantages to the public or the Commonwealth. As this regulation is obsolete the repeal will result in no disadvantages to the public or the Commonwealth.

Changes made since the proposed stage

Please describe all changes made to the text of the proposed regulation since the publication of the proposed stage. For the Registrar’s office, please put an asterisk next to any substantive changes.

No changes were made since the publication of the proposed stage.

Public comment

Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate.

Commenter	Comment	Agency response
Rex Alphin, Bobby Bryan Don Butler Donald Horsley Ryan Horsley Katie K. Frazier Donald F. Weaver Edward Scharer	Taxpayer expressed concern that if the Federal Pork Act is overturned, the Virginia pork industry would no longer be able to continue with its programs.	TAX disagrees. Although the Federal Pork Act preempted the Slaughter Hog and Feeder Pig Excise Tax in Virginia, the Virginia statute has not been repealed. If the federal statute were to be invalidated, the Virginia statute would regain its effectiveness. Repealing the regulation does not hinder Virginia’s ability to impose the tax because the regulation sections provide no additional guidance to the clear and unambiguous statute.
Todd P. Haymore, Commissioner, Department of Agriculture and Consumer Services	It was suggested that because Virginia has this regulation, the Commonwealth receives more checkoff funds through the national program. It was expressed that the regulation sections could provide for an orderly transition to a collection at the state level should the federal program be abolished.	The Federal Pork Act clearly states that if a state had a pork promotion program <i>in effect</i> during the period of July 1, 1984 through June 30, 1985, such state will receive at least an amount of funds equal to the amount that would have been collect in the state pursuant to the state's pork promotion program. The regulation sections provide no additional guidance to the clear and unambiguous statute.

Based on a conversation between VDACS and TAX, it is TAX's understanding that the concerns raised by VDACS and the Virginia Pork Industry Board will be satisfied by a letter sent to VDACS and the Virginia Pork Industry Board outlining TAX's position set forth above and they no longer have any objections to the repeal of this regulation.

All changes made in this regulatory action

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail new provisions and/or all changes to existing sections.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
10 through 70		As the Virginia Slaughter Hog and Feeder Pig Excise Tax has been pre-empted by federal law, the regulation has no effect.	Repeal the regulation because it provides no additional guidance.

Regulatory flexibility analysis

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.

TAX has considered modifying the regulatory methods for small businesses. The regulatory methods follow the least intrusive and burdensome method consistent with statutory language and could not be made less burdensome for small businesses without jeopardizing the enforcement of the tax laws.

Family impact

Please assess the impact of the proposed 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.

This regulatory action is not expected to have an impact on family formation, stability and autonomy.