

Virginia Retail Sales and Use Tax Rate Increase Guidelines

August 1, 2004

These guidelines are published by the Department of Taxation (TAX) to provide guidance to retail sales and use tax dealers and to the public with respect to the sales tax rate increase effective September 1, 2004.¹ Pursuant to HB 5018, enacted by the 2004 Special Session of the Virginia General Assembly and signed by Governor Warner June 3, 2004, the development and publication of these guidelines is exempt from the provisions of the Administrative Process Act (§ 2.2-4000 et seq.) of the Code of Virginia. These guidelines supplement TAX's existing Retail Sales and Use Tax Regulations (23 Virginia Administrative Code 10-210-10 et seq.). To the extent that there is a conflict between the existing regulations and these guidelines, these guidelines supersede the regulations. As necessary, additional guidelines may be published and posted on TAX's web page at www.tax.state.va.us.

RATE INCREASE

Effective September 1, 2004, the rate of the Virginia Retail Sales and Use Tax will increase from 4½% (3½% state and 1% local) to 5% (4% state and 1% local). In addition, the sales and use tax rate for vending machine dealers will be increased effective September 1, 2004 to 6% (5% state and 1% local) of wholesale purchases for resale.

The increased tax rate applies to all sales on and after September 1, 2004. Tangible personal property delivered to a purchaser and paid for on or after September 1, 2004 is taxable at the 5% rate, regardless of when the property was ordered. The increased rate will not apply to tangible personal property delivered prior to September 1, 2004, but paid for on or after September 1, 2004. The increased rate also will not apply when a taxable sale or lease payment is paid for in full prior to September 1, 2004, even though delivery may occur on or after September 1, 2004, or the paid-in-full lease payment covers a lease period beginning on or after September 1, 2004.

Notwithstanding the September 1, 2004 increase in the sales and use tax rate, there are transitional provisions that provide for the refund of the additional 1/2% tax paid on tangible personal property purchased or leased under certain contracts and leases entered into before June 3, 2004 (the date the legislation was signed by the Governor). *See the section of these guidelines entitled Contracts Entered Into Prior to June 3, 2004.*

¹ The new law states that the effective date of the rate increase is August 1, 2004. Because of the Virginia Constitution provisions governing the effective date of laws, the rate increase cannot become effective until September 1, 2004.

DEALER'S DISCOUNT

As compensation for accounting for and paying the state sales tax, a dealer is allowed a discount of 2%, 3% or 4%, depending on the volume of monthly taxable sales, of the first 3% of the state sales tax (first 4% of the state sales tax for vending machine dealers).

Starting with the September 2004 return (due by October 20, 2004), the dealer discount (other than for a vending machine dealer) is computed by multiplying the amount of state sales tax listed on the return by the following factors:

1. 3% (or .03) if monthly taxable sales are less than \$62,501; or
2. 2.25% (or .0225) if monthly taxable sales are at least \$62,501 but less than \$208,001; or
3. 1.5% (or .015) if monthly taxable sales equal or exceed \$208,001.

For vending machine dealers, the dealer discount is computed by multiplying the 5% state sales and use tax listed on the return by:

1. 3.2% (or .032) if monthly taxable sales are less than \$62,501; or
2. 2.4% (or .024) if monthly taxable sales are at least \$62,501 but less than \$208,001; or
3. 1.6% (or .016) if monthly taxable sales equal or exceed \$208,001.

Dealers holding two or more certificates of registration must compute the dealer's discount based upon taxable sales from all business locations. This requirement applies to dealers filing consolidated returns and those filing separate returns for each business location. Dealers with multistate business locations must compute the discount based upon the combined taxable sales from all business locations in Virginia and on Virginia taxable sales from out-of-state business locations.

BRACKET CHARTS

For sales of \$5 or less, dealers are required to compute the tax using the following bracket chart to eliminate fractions of one cent. On transactions over \$5, dealers shall compute the tax at 5%, with one-half cent or more treated as one cent. Any dealer who collects the tax in accordance with the following bracket chart shall not be deemed to have overcollected the tax.

Bracket Chart for Sales of Five Dollars or Less

\$0.00	to	\$0.09	no tax
.10	to	.29	1¢ tax
.30	to	.49	2¢ tax
.50	to	.69	3¢ tax
.70	to	.89	4¢ tax
.90	to	1.09	5¢ tax
1.10	to	1.29	6¢ tax
1.30	to	1.49	7¢ tax
1.50	to	1.69	8¢ tax
1.70	to	1.89	9¢ tax
1.90	to	2.09	10¢ tax
2.10	to	2.29	11¢ tax
2.30	to	2.49	12¢ tax
2.50	to	2.69	13¢ tax
2.70	to	2.89	14¢ tax
2.90	to	3.09	15¢ tax
3.10	to	3.29	16¢ tax
3.30	to	3.49	17¢ tax
3.50	to	3.69	18¢ tax
3.70	to	3.89	19¢ tax
3.90	to	4.09	20¢ tax
4.10	to	4.29	21¢ tax
4.30	to	4.49	22¢ tax
4.50	to	4.69	23¢ tax
4.70	to	4.89	24¢ tax
4.90	to	5.00	25¢ tax

On transactions over five dollars, the tax shall be computed at five percent, one half cent or more being treated as one cent. If, however, the dealer can show to the satisfaction of the Tax Commissioner that more than eighty-five percent of the total dollar volume of his gross taxable sales during the taxable month was from individual sales at prices of nine cents or less each and that he was unable to adjust his prices in such manner as to prevent the economic incidence of the sales tax from falling on him, the Tax Commissioner shall determine the proper tax liability of the dealer based on that portion of the dealer's gross taxable sales that was from sales at prices of ten cents or more.

As a convenience to dealers, TAX also publishes bracket charts for sales in excess of \$5. The use of bracket charts in excess of \$5 is optional for dealers.

NEW SALES TAX RETURNS

To accommodate reporting under the new rate structure, TAX will mail revised sales and use and vending machine tax returns to all filers early in September.

Returns for June, July, and August 2004 are not affected by the change and should be filed on the preprinted coupons normally used. Monthly filers should use the new returns to file for periods beginning with the month of September 2004.

Quarterly filers should begin using the new forms for the quarter ending September 30, 2004. Because the rate change occurs on September 1, in the middle of the quarter, a worksheet will be provided for quarterly filers to compute the tax for the quarter ending September 30, 2004.

CONTRACTS ENTERED INTO PRIOR TO JUNE 3, 2004

The new law includes transitional provisions for persons who, prior to June 3, 2004 (the date the sales and use tax rate increase legislation was signed by the Governor), enter into bona fide real estate construction contracts, contracts for the sale of tangible personal property, or leases. Under these transitional provisions, tangible personal property purchased or leased under such contracts will still be subject to the 5% tax on and after September 1, 2004, however, the purchaser or lessee of the property will be entitled to request refunds from TAX on the additional 1/2% tax paid as the result of the rate increase.

Refund Requests

Limited to purchaser or lessee only. Refunds of the additional 0.5% tax paid on purchases or leases of tangible personal property under bona fide real estate construction contracts, contracts for the sale of tangible personal property, or leases of tangible personal property will be limited to only the purchaser or lessee of the property.

Refunds to be requested from Department of Taxation only. The purchaser or lessee of tangible personal property under qualifying contracts or leases shall request refunds of the additional 0.5% tax directly from TAX and not from the seller or lessor of the property. In seeking refunds, the purchaser or lessee shall furnish TAX with copies of the contract or lease under which property is purchased or leased. In addition, the purchaser or lessee shall indicate the delivery date of all items for which refunds are claimed and shall be able to demonstrate that the 5% Virginia tax was actually paid to his suppliers or lessors.

Copies of invoices will be required to verify that the 5% tax was paid on purchases or leases of tangible personal property for which refunds are requested.

As with refund requests generally, a request for the refund of the additional 1/2% tax must be made within 3 years of the date the tax became due. For instance, if a piece of equipment is purchased in September 2004, the tax does not become due from the dealer until October 20, 2004. Thus, a refund request could be filed anytime on or before October 20, 2007. In addition, interest will be paid by TAX on such refunds for the period from the date the tax became due until the date of refund.

Real Estate Construction Contracts

Generally. Refunds of the additional 1/2% sales and use tax paid on and after September 1, 2004 are available when tangible personal property is purchased or leased under a bona fide real estate construction contract or bona fide highway construction contract entered into before June 3, 2004. A "bona fide" contract is one that included finished plans and specifications before June 3, 2004. Refunds will not be available, however, in the event that a bona fide contract is renegotiated or to the extent that a contract is expanded to include additional work or the furnishing of additional materials.

Refunds will be available only for the additional 1/2% tax paid on (i) materials permanently incorporated into real estate, and (ii) construction supplies, fixtures, equipment, etc., that enter into the construction of or become a part of a structure, highway, etc. Further, refunds will be limited to property purchased or leased in connection with a specific contract and used exclusively in such contract. Thus, refunds will not be available for the additional 1/2% tax paid on equipment, materials, supplies, tools, etc. that will be used in more than one contract.

As noted below, rules for obtaining refunds of the additional 1/2% tax paid on and after September 1, 2004 on purchases or leases under bona fide real estate construction contracts vary depending on whether or not the contract contains a specific and stated date of completion.

Contracts that do not contain a specific and stated date of completion. In the case of bona fide real estate construction contracts that do not contain a specific and stated date of completion, refunds of the additional 1/2% tax may be claimed only with respect to purchased or leased tangible personal property that is delivered to the contractor on or before November 30, 2004.²

² The amended statutory transitional provisions found in Va. Code § 58.1-639 set this date at October 31, 2004 based upon an assumed effective date of the rate increase of August 1, 2004. Because enactment of the new tax rate was delayed, the effective date of the rate change became September 1, 2004. Accordingly, the October 31, 2004 date is moved back by these guidelines to November 30, 2004.

Example: Contractor A enters into a bona fide contract before June 3, 2004, for the erection of a home, but the contract does not contain a specific and stated date of completion. After September 1, 2004, Contractor A makes two orders of materials for use in the project and pays the full 5% sales tax on the materials. Because the contract did not contain a specific and stated date of completion, Contractor A must take delivery of goods purchased for use in the project on or before November 30, 2004, in order to receive a refund of the 1/2% tax. The first order is delivered to Contractor A on November 30, 2004, but the second order is delivered to Contractor A on December 1, 2004. Thus, Contractor A may receive a refund of the additional 1/2% tax paid on the first order, but will not be able to receive a similar refund on the second order because it was delivered after November 30, 2004.

Contracts that contain a specific and stated date of completion. In the case of bona fide real estate construction contracts that contain a specific and stated date of completion, refunds of the additional 1/2% tax paid on and after September 1, 2004, will be available for all property delivered to the contractor on or before the completion date specified in the contract.

Example: Contractor B enters into a bona fide contract before June 3, 2004, for the erection of a bridge. The contract contains a specific and stated completion date of June 30, 2006. On and after September 1, 2004, Contractor B pays the full 5% sales and use tax on his purchases of materials for use in the contract and all such materials, except one shipment, are delivered to the contractor by the June 30, 2006, date of completion. The last shipment of materials is delivered to Contractor B on July 1, 2006. Refunds of the additional 1/2% tax paid by Contractor B will be available for all materials delivered to him by the specified completion date stated in his contract, June 30, 2006. However, a refund will not be available for the additional tax paid on the last delivery because that delivery occurred after the specified and stated completion date for the project.

Both contracts containing a specific date for completion, e.g., July 1, 2006, and contracts containing a specific number of calendar days for completion, e.g., 150 calendar days, shall be considered as contracts with a specific and stated date of completion.

When a subcontractor performs work for a general contractor, the date of completion for purposes of this section is the date stated in the subcontract and not the completion date specified in the contract between the general contractor and the customer.

Extension of contractual completion date. The refund provisions applicable to contracts that contain a specific and stated date of completion, do not apply when the completion date specified in the original bona fide real estate construction contract is extended for any reason, unless a new contract is

entered into or the original contract is renegotiated before June 3, 2004. In the event that the completion date specified in the original bona fide real estate construction contract is extended, refunds of the additional 1/2% tax paid on and after September 1, 2004, will be available only for property delivered on or before the completion date specified in the original contract. In the event that the completion date is extended through a new contract or a renegotiated contract entered into prior to June 3, 2004, refunds will be available for the additional 1/2% tax paid on all property delivered to the contractor on or before the completion date specified in the new or renegotiated contract.

Non-bona fide real estate construction contracts. Refunds of the additional 1/2% tax paid by contractors on and after September 1, 2004, will not be available when purchases or leases are made pursuant to non-bona fide real estate construction contracts. A non-bona fide contract is one that did not include finished plans or specifications before June 3, 2004. Contracts that are entered into on or before June 3, 2004, without finished plans or specifications but which are amended after June 3, 2004, to include plans or specifications are also not bona fide contracts.

Contracts for the Sale of Tangible Personal Property

Generally. Refunds of the additional 1/2% tax paid on and after September 1, 2004, may be claimed for tangible personal property purchased under sale contracts entered into before June 3, 2004, provided the property is delivered to the purchaser on or before November 30, 2004.³ Refunds will not be available if a sale contract was entered into on or after June 3, 2004, or if the property purchased is delivered to the purchaser after November 30, 2004.

Layaway sales. The provisions for the refund of the additional 1/2% tax apply to all layaways made before June 3, 2004, and delivered to the purchaser on or before November 30, 2004.

Examples:

1. Customer A makes a layaway of an item of merchandise on June 2, 2004, and takes delivery of the merchandise on November 30, 2004. Customer A will be required to pay the full 5% tax when he completes the layaway purchase, but he will be able to request a refund of the additional 1/2% tax he pays.
2. Customer B makes a layaway of an item of merchandise on June 2, 2004, but does not take delivery of the merchandise until December 1, 2004. Customer A will be required to pay the full 5% sales tax on the purchase, but will not be able to request a refund of the additional 1/2% tax because he did not take delivery of the merchandise until after November 30, 2004.

³ See footnote 2.

Gift certificates. Pursuant to 23 VAC 10-210-670, the sales tax is not to be collected on the sale of gift certificates, but is to be collected when gift certificates are redeemed for merchandise. Because gift certificates are not taxable until redeemed, refunds of the additional 1/2% tax paid on purchases made with gift certificates redeemed on and after September 1, 2004, will not be available.

Installment sales. Pursuant to 23 VAC 10-210-450, the sales and use tax is due in full when an agreement for an installment sale is made. 23 VAC 10-210-450 does not permit the tax on an installment sale to be paid in installments. Therefore, all installment sales prior to September 1, 2004, will be subject to state and local sales and use tax at a rate of 4.5%, while sales on and after September 1, 2004, will be subject to tax at a 5% rate. Because the tax on installment sales is due as of the date the contract of sale is entered into, refunds of the additional 1/2% tax paid on an installment sale on and after September 1, 2004, will not be available.

Maintenance contracts. Current Virginia law provides that the sale of maintenance, the terms of which provide for both repair or replacement parts and repair labor, are subject to tax upon one-half of the total charge for such contracts only. Persons providing maintenance pursuant to such a contract may continue to purchase repair or replacement parts under a resale certificate of exemption. As with other sales of tangible personal property, the sales and use tax becomes due in full when the contract is entered into. Therefore, all such taxable maintenance contracts entered into before September 1, 2004, will be subject to the tax at a rate of 2.25%, while those taxable maintenance contracts entered into on or after September 1, 2004, will be subject to the tax at a rate of 2.5%. Because the tax on such contracts becomes due as of the date the contract is entered into, refunds of the additional 1/2% tax paid on and after September 1, 2004, will not be available.

Leases

Refunds of the additional 1/2% sales tax paid on leases on and after September 1, 2004, will be available, provided that (i) the lease is entered into before June 3, 2004, and (ii) the leased property is delivered to the lessee by November 30, 2004.⁴ However, refunds will not be available for the additional tax paid on leases entered into on or after June 3, 2004, or where leased property is delivered to the lessee after November 30, 2004.

So long as the above two conditions are met, refunds may be requested for the additional 1/2% tax paid over the course of a lease. For instance, a person who enters into a five-year equipment lease on June 2, 2004, and who takes delivery of the equipment by November 30, 2004, would be able to seek refunds of the extra 1/2% tax paid for periods through the end of the five-year lease period.

⁴ See footnote 2.

However, if the lessee assigns the lease, or if the property is turned over to anyone else, refunds of the additional 1/2% tax will not be available for tax paid after the change. In addition, refunds of the additional 1/2% tax will not be available if there are replacements of the property leased (except for replacements due to defective goods), if additional property is added to the lease, or if the lease is renegotiated or renewed.

WHERE TO GET INFORMATION

For information and updates about the new sales and use tax laws, as well as other legislative changes for 2004, please visit TAX's web page at www.tax.state.va.us.