

Adverse impact notification sent to Joint Commission on Administrative Rules, House Committee on Appropriations, and Senate Committee on Finance (COV § 2.2-4007.04.C): Yes Not Needed

If/when this economic impact analysis (EIA) is published in the *Virginia Register of Regulations*, notification will be sent to each member of the General Assembly (COV § 2.2-4007.04.B).



Virginia Department of Planning and Budget **Economic Impact Analysis**

23 VAC 10-210 Retail Sales and Use Tax

Department of Taxation

Town Hall Action/Stage: 4505/7427

March 15, 2016

Summary of the Proposed Amendments to Regulation

The Department of Taxation (Department) proposes several amendments to reflect statutory changes, in particular the increase in the state Retail Sales and Use Tax rate from 4 percent to 4.3 percent, and the additional 0.7 percent state Retail Sales and Use Tax in the Northern Virginia and Hampton Roads regions. Also, the Department proposes to update the list of cities and counties that have adopted an ordinance exempting fuels for domestic consumption from the local 1% sales and use tax.

Result of Analysis

The benefits likely exceed the costs for all proposed changes.

Estimated Economic Impact

The current regulation does not reflect numerous statutory changes that have been made regarding the Retail Sales and Use Tax. Legislation enacted by the 2013 General Assembly (2013 Acts of Assembly, Chapter 766) increased the state Retail Sales and Use Tax rate from 4 percent to 4.3 percent and imposed an additional state Retail Sales and Use Tax in the Northern

Virginia¹ and Hampton Roads² regions at the rate of 0.7 percent, effective July 1, 2013. The Department proposes several amendments to the regulation to reflect these changes.

As the additional 0.7% state Retail Sales and Use Tax is only imposed in certain localities, the total Retail Sales and Use Tax rate may be different depending on which locality the sale or use is sourced. On June 13, 2013, the Department published the “Guidelines for the Retail Sales and Use Tax Changes Enacted in the 2013 General Assembly Session” after working with affected dealers, providers of transient lodgings, and local governments. The Guidelines set out rules based on long-standing policy pursuant to Va. Code §§ 58.1-605 and 606 regarding how to determine which Virginia locality is attributed the sale or use of tangible personal property for the purposes of the Retail Sales and Use Tax. The Department proposes to include these rules in the regulation.

The regulation grants compensation to dealers for accounting for and paying the state tax in the form of discounts. The discount percentages listed in the current regulation are out of date due to explicit changes in several bills during the 2010, 2011, 2012, 2013, 2014, and 2015 General Assembly sessions.³ Legislation enacted in 2006 (2006 Acts of Assembly, Chapter 593) allows dealers to absorb the sales and use tax during the sales tax holiday period. The Department proposes to amend the regulation to reflect the current statutory discount rates and the legislation on absorbing the sales and use tax during the sales tax holiday period.

The regulation (both current and proposed) state that “The local 1% sales and use tax will continue to apply to all purchases for domestic consumption of artificial or propane gas, firewood, coal and home heating oil unless the locality adopts an ordinance specifically exempting such fuels.” The current regulation lists localities that as of 1983 that adopted such ordinances. The Department proposes to update the list of cities and counties with an ordinance exempting fuels for domestic consumption from the local 1% sales and use tax.

¹ The “Northern Virginia Region” is defined as the Counties of Arlington, Fairfax, Loudoun, and Prince William and the Cities of Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park.

² The “Hampton Roads Region” is defined as the Counties of Isle of Wight, James City, Southampton, and York and the Cities of Chesapeake, Franklin, Hampton, Newport News, Norfolk, Poquoson, Portsmouth, Suffolk, Virginia Beach, and Williamsburg.

³ House Bill 29 and House Bill 30 (2010 Acts of Assembly, Chapters 872 and 874); House Bill 1500 (2011 Acts of Assembly, Chapter 890); House Bill 1300 and House Bill 1301 (2012 Special Session I Acts of Assembly, Chapters 2 and 3); House Bill 1500 (2013 Acts of Assembly, Chapter 806); House Bill 5001, House Bill 5002, and House Bill 5010 (2014 Special Session I Acts of Assembly, Chapters 1, 2, and 3); and House Bill 1400 (2015 Acts of Assembly, Chapter 665).

The proposed amendments will not affect the tax rates, rules and policies in effect, but will be beneficial by increasing clarity and reducing potential confusion for readers of the regulation.

Businesses and Entities Affected

The proposed amendments pertain to retailers, large and small, throughout the Commonwealth.

Localities Particularly Affected

Most of the proposed provisions apply to all localities. The additional 0.7 percent state Retail Sales and Use Tax applies to only the following: 1) the Counties of Arlington, Fairfax, Isle of Wight, James City, Loudoun, Prince William, Southampton, and York, and 2) the Cities of Alexandria, Chesapeake, Fairfax, Falls Church, Franklin, Hampton, Manassas, Manassas Park, Newport News, Norfolk, Poquoson, Portsmouth, Suffolk, Virginia Beach, and Williamsburg.

Projected Impact on Employment

The proposed amendments do not significantly affect employment.

Effects on the Use and Value of Private Property

The proposed amendments do not significantly affect the use and value of private property.

Real Estate Development Costs

The proposed amendments do not affect real estate development costs.

Small Businesses:

Definition

Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as “a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.”

Costs and Other Effects

The proposed amendments do not significantly affect costs for small businesses.

Alternative Method that Minimizes Adverse Impact

The proposed amendments do not create adverse impact for small businesses.

Adverse Impacts:**Businesses:**

The proposed amendments will not adversely affect businesses.

Localities:

The proposed amendments will not adversely affect localities.

Other Entities:

The proposed amendments will not adversely affect other entities.

Legal Mandates

General: The Department of Planning and Budget has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia (Code) and Executive Order Number 17 (2014). Code § 2.2-4007.04 requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the report should include but not be limited to: (1) the projected number of businesses or other entities to whom the proposed regulatory action would apply, (2) the identity of any localities and types of businesses or other entities particularly affected, (3) the projected number of persons and employment positions to be affected, (4) the projected costs to affected businesses or entities to implement or comply with the regulation, and (5) the impact on the use and value of private property.

Adverse impacts: Pursuant to Code § 2.2-4007.04(C): In the event this economic impact analysis reveals that the proposed regulation would have an adverse economic impact on businesses or would impose a significant adverse economic impact on a locality, business, or entity particularly affected, the Department of Planning and Budget shall advise the Joint Commission on Administrative Rules, the House Committee on Appropriations, and the Senate Committee on Finance within the 45-day period.

If the proposed regulatory action may have an adverse effect on small businesses, Code § 2.2-4007.04 requires that such economic impact analyses include: (1) an identification and estimate of the number of small businesses subject to the proposed regulation, (2) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents, (3) a statement of the probable effect of the proposed regulation on affected small businesses, and (4) a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. Additionally, pursuant to Code § 2.2-4007.1, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.

lsg