

DEPARTMENT OF TAXATION

2005 Fiscal Impact Statement

1. **Patron** Thomas D. Gear

3. **Committee** House Finance

4. **Title** Retail Sales and Use Tax:
Amends Definition of Sales Price to
Exclude Gratuity or Service Charges

2. **Bill Number** HB 2232

House of Origin:

 X **Introduced**

 Substitute

 Engrossed

Second House:

 In Committee

 Substitute

 Enrolled

5. **Summary/Purpose:**

This bill would amend the retail sales and use tax definition of “sales price” to exclude any gratuity or service charge added to the price of a meal whether added at the discretion of the purchaser or not. This bill would effectively prohibit the imposition of the retail sales and use tax on any gratuity or service charge added to the price of a meal.

The effective date of this bill is not specified.

6. **Fiscal Impact Estimates are:** Not available. (See Line 8.)

7. **Budget amendment necessary:** No.

8. **Fiscal implications:**

This bill would have no administrative impact on the Department.

This bill would eliminate the tax imposed on mandatory or automatic gratuities and service charges that are added to the price of a meal. This bill would decrease state and local revenue by an unknown amount.

9. **Specific agency or political subdivisions affected:**

Department of Taxation

10. **Technical amendment necessary:** No.

11. Other comments:

Current Law

Gratuity or service charges may be applied to the price of a meal at the discretion of the purchaser, or may be a mandatory charge automatically imposed by the dealer.

Currently, a gratuity or service charge is considered part of the sales price and is taxable when it is automatically imposed by the dealer. For example, a restaurant may impose a 20% service charge on any sales ticket for a party of eight or more guests. As such, the restaurant will add an additional amount equal to 20% of the price of the meal to the ticket. The price of the meal along with the service charge comprises the sales price that is subject to the tax.

Alternatively, a purchaser may add a gratuity to a meal ticket, the amount of which is totally at the discretion of the purchaser. The gratuity is usually added by the purchaser after the dealer has totaled the costs of the meal and presented the ticket to the purchaser. In this instance, the gratuity is not considered a part of the sales price and is therefore not subject to the tax. This has been the consistent position of the Department since the imposition of the Virginia Retail Sales and Use Tax Act in 1966. This policy was first reflected in the Department's first sales and use regulations issued in 1966. Currently, the position is set forth in Virginia Regulation 23 VAC 10-210-940.

This Proposal

This bill would overturn the Department's regulations and effectively eliminate the tax on gratuity or service charges that are mandatory or automatically added to the price of a meal by the dealer.

Similar Legislation

House Bill 2231 prohibits the imposition of the local meals taxes on that portion of the sales price that constitutes a gratuity or service charge.

cc : Secretary of Finance

Date: 1/24/2005VMH
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