

## DEPARTMENT OF TAXATION 2008 Fiscal Impact Statement

1. **Patron** Robert D. Orrock, Sr.

3. **Committee** House Finance

4. **Title** Retail Sales and Use Tax; Absorption and  
Payment by Seller

2. **Bill Number** HB 194

**House of Origin:**

  X   **Introduced**

       **Substitute**

       **Engrossed**

**Second House:**

       **In Committee**

       **Substitute**

       **Enrolled**

### 5. **Summary/Purpose:**

This bill would authorize any retailer to elect to absorb the Retail Sales and Use Tax year-round on the sale of tangible personal property, rather than collecting it from the purchaser. The dealer would be liable for payment of such taxes to the Tax Commissioner in the same manner as if the dealer collected the tax from a purchaser.

Under current law, any person who advertises or holds out to the public directly or indirectly that he will absorb all or any part of the Retail Sales and Use Tax can be found guilty of a Class 2 misdemeanor. Retailers are only authorized to advertise an intention to absorb the Retail Sales and Use Tax during any of the three sales tax holidays and the fourteen days preceding each sales tax holiday period.

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:**

#### Administrative Costs

TAX has not assigned any administrative costs to this proposal because it is not known how many additional auditors will be needed to enforce compliance. As this proposal does not require sellers to state that they have absorbed the sales tax on each receipt, when auditing businesses to determine whether they have a use tax liability on their purchases, TAX may need to contact the seller to determine whether the seller actually absorbed the tax on the transaction. Additionally, as this bill does not prohibit dealers from collecting the tax from customers on some transactions and absorbing the tax on other transactions, TAX will need to contact the seller about each transaction in these situations.

## Revenue Impact

The revenue impact of this bill is unknown. The expansion of the time frame in which dealers are authorized to absorb the sales and use tax would not, in and of itself, impact state and local sales tax revenues because the retailer is still liable for payment of the tax to the Tax Commissioner even though the tax is not collected from the purchaser. However, the Commonwealth and its localities would experience a revenue loss to the extent that purchasers circumvent payment of use tax by claiming that the tax has been absorbed by the retailer. This potential loss of compliance revenue could be offset by increased compliance efforts by TAX.

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

TAX

### **10. Technical Amendment Necessary: Yes**

TAX believes that this bill is not administrable as drafted. Unless the amount of tax absorbed is reflected on the invoice given the customer, current Use Tax compliance efforts will prove to be ineffective. TAX will either have to rely on the statement of the customer that the seller absorbed the tax or will have to audit the seller of each item to verify that the tax was indeed paid by the seller. Relying on the statement of the customer could potentially result in a significant revenue loss to the Commonwealth and its localities. Auditing each seller to verify that the absorbed tax was paid will increase the time it takes to complete an audit, which will require TAX to hire additional auditors.

If this bill were amended to require that dealers who elect to absorb the sales tax clearly state such intent on the sales invoice given to the customer, TAX's compliance concerns and the associated cost to enforce compliance would be addressed.

### **11. Other Comments:**

#### Generally

*Va. Code* § 58.1-626 prohibits any person from advertising or holding out to the public, directly or indirectly that he will absorb all or any part of the sales or use tax, or that he will relieve the purchaser, consumer, or lessee of the payment of all or any part of that tax. Retailers in violation of this prohibition can be found guilty of a Class 2 misdemeanor.

During the 2006 and 2007 legislative sessions, three separate sales tax holiday bills were enacted, which temporarily exempt from the Retail Sales and Use Tax the purchase of certain eligible items. Senate Bill 571 and House Bill 532 (Acts of Assembly 2006, Chapters 579 and 593) provide for an annual three-day sales tax holiday, in which school supplies with a maximum sales price of \$20 and clothing with a maximum price of \$100, can be purchased exempt of the Retail Sales and Use Tax. The "back-to-school" sales tax holiday commences each year on the first Friday in August and ends at midnight on the following Sunday.

House Bill 1678 and Senate Bill 867 (Acts of Assembly, 2007, Chapters 176 and 817) provide an annual exemption from the Retail Sales and Use Tax for the purchase of certain Energy Star qualified products. Items eligible for exemption during the "Energy Star" holiday are limited to certain Energy Star qualified products purchased for noncommercial home or personal use with a maximum selling price of \$2,500 per product. The sales tax holiday begins on the Friday before the second Monday in October and ends on the second Monday in October.

Senate Bill 1167 (Acts of Assembly 2007, Chapter 608) provides an annual exemption from the Retail Sales and Use Tax, beginning in 2008, for the purchase of certain hurricane preparedness equipment purchased during a seven-day period. Items eligible for exemption during the seven-day period include portable generators with a maximum selling price of \$1,000 per item and additional hurricane preparedness equipment, such as carbon monoxide detectors, batteries, radios, and fuel tanks with a maximum selling price of \$60 per item. The hurricane preparedness holiday begins each year on May 25<sup>th</sup> and ends on May 31<sup>st</sup>.

Provisions in each of the sales tax holiday bills set forth above authorize dealers to advertise to the public that they will relieve the purchaser, consumer, or lessee of the payment of all or any portion of the Retail Sales and Use Tax on non-qualifying items. Dealers are permitted to distribute these advertisements during each of the sales tax holiday periods. Dealers may also distribute these advertisements during the fourteen days immediately preceding any of the three sales tax holiday periods, provided the advertisements address absorption that will take place during that applicable sales tax holiday only. In order for a dealer who elects to absorb the tax to determine the amount of taxes he must remit to TAX, the amount absorbed will equal the amount of sales tax the customer would have otherwise had to pay. Whenever a retailer elects to absorb the tax, pursuant to these provisions, he or she must remit the tax to the Tax Commissioner in the same manner as he or she would if tax were collected from a purchaser.

### Proposal

This bill would allow retailers to elect to absorb the Retail Sales and Use Tax year-round, and would permit such retailers to advertise an intention to absorb the Retail Sales and Use Tax on purchases of tangible personal property at any time. The dealer would be liable for payment of such taxes to the Tax Commissioner in the same manner as he or she is for tax collected from a purchaser.

This bill would repeal the version of *Va. Code* § 58.1-625 that is to become effective on July 1, 2012 that authorizes dealers to absorb tax only during the three sales tax holiday periods and the fourteen days preceding the sales tax holiday periods. This bill would repeal *Va. Code* § 58.1-626, which expressly prohibits a dealer from advertising or holding out to the public that he will absorb all or any part of the Retail Sales and Use Tax.

## Other States

Most other states have similar laws prohibiting the act of absorption, or prohibiting a dealer advertising or holding out to the public that all or a portion of the sales tax has been or will be absorbed.

Thirty four states contain provisions in their laws, which expressly prohibit dealers from advertising or holding out to the public that they will absorb the tax. These states include: Alabama, Arizona, California, Colorado, Connecticut, District of Columbia, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Massachusetts, Michigan, Mississippi, Missouri, Nebraska, Nevada, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Texas, Vermont, Virginia, West Virginia, Wisconsin and Wyoming. Twenty-two of these states impose a penalty upon the violation of this prohibition, most of which characterize such violation as a misdemeanor. These states include Alabama, Colorado, District of Columbia, Florida, Illinois, Indiana, Louisiana, Maine, Massachusetts, Mississippi, Missouri, Nebraska, Nevada, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, Texas, Virginia, Washington, West Virginia, Wisconsin, and Wyoming.

Only four states expressly authorize a dealer to advertise that the Retail Sales and Use Tax will be absorbed. In Louisiana, a retailer is only permitted to advertise to the public an intention to absorb the Retail Sales and Use Tax if that dealer: 1) includes in the advertisement that any portion of the tax not paid by the purchaser will be remitted on his behalf by the dealer and 2) furnishes the purchaser with written evidence that the dealer will be liable for and pay any tax the purchaser was relieved from paying himself. The state of Maryland requires the vendor to continue to separately state the tax from the sales price at the time of the sale to the purchaser. In South Dakota, tax is imposed upon the retailer and not the consumer. Retailers are authorized to absorb the tax at their discretion. Finally, while Nebraska's statute contains express provisions prohibiting a retailer's advertising or holding out the public that he will absorb the sales tax, an exception is permitted for the absorption of tax on concession sales and sales of beverages and snack foods that are consumed on the premises of the licensed alcoholic retailer.

## Similar Legislation

**Senate Bill 147** is identical to this bill.

cc : Secretary of Finance

Date: 1/22/2008 KDP  
DLAS File Name: HB194F161.doc