

DEPARTMENT OF TAXATION

2008 Fiscal Impact Statement

1. **Patron** David L. Englin

3. **Committee** House Finance

4. **Title** Retail Sales and Use Tax; Removes
Noncommercial Use Requirement from
Energy Star Sales Tax Holiday

2. **Bill Number** HB 794

House of Origin:

 X **Introduced**

 Substitute

 Engrossed

Second House:

 In Committee

 Substitute

 Enrolled

5. **Summary/Purpose:**

This bill would remove the requirement that Energy Star products must be purchased for noncommercial home or personal use in order to be eligible for exemption during the four-day Energy Star Sales Tax Holiday, which takes place each year beginning on the Friday before the second Monday in October and ending at midnight on the second Monday in October.

Under current law, Energy Star qualified products with a maximum sales price of \$2,500 per item that are purchased for noncommercial home or personal use can be purchased exempt of the Retail Sales and Use Tax during the Energy Star Sales Tax Holiday period. The holiday takes place annually beginning on the Friday before the second Monday in October and ending at midnight on the second Monday in October. Energy Star qualified products include any dishwasher, clothes washer, air conditioner, ceiling fan, compact fluorescent light bulb, dehumidifier, programmable thermostat or refrigerator, the energy efficiency of which has been designated by the United States Environmental Protection Agency and the United States Department of Energy as meeting or exceeding each such agency's requirements under the Energy Star program.

The effective date of this bill is not specified. The provisions of this bill would expire on July 1, 2012.

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

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

8. **Fiscal implications:**

Administrative Costs Impact

TAX has not assigned any administrative costs to this bill because the changes required by a single bill such as this can be implemented as part of the annual changes to our systems and forms. As stand-alone legislation, TAX considers implementation of this bill as "routine," and does not require additional funding.

TAX will provide specific administrative costs on any legislation that is not “routine.” Additionally, TAX will review all state tax legislation likely to be enacted prior to the passage by each house. If the aggregate number of routine bills likely to pass either house is unusually large, it is possible that additional resources will be required. If so, TAX will identify the costs at that time.

Revenue Impact

The magnitude of the revenue loss associated with this bill is unknown. The sales statistics available are limited to home appliances, not those purchased by commercial enterprises. In addition, many commercial Energy Star appliances cost more than the \$2,500 cap covered by the sales tax holiday.

Removing the requirement that items eligible for exemption during the Energy Star Sales Tax Holiday must be purchased for noncommercial home or personal use would increase the amount of transactions eligible for the Energy Star Sales Tax Holiday. This increase would necessitate a reduction of an equal amount of general fund support from other areas in the introduced budget.

9. Specific agency or political subdivisions affected:

TAX

10. Technical amendment necessary: No.

11. Other comments:

Current Law

Energy Star Sales Tax Holiday

The 2007 General Assembly enacted House Bill 1678 and Senate Bill 867 (Acts of Assembly 2007, Chapters 176 and 817), which provide an annual exemption from the Retail Sales and Use Tax for the purchase of certain Energy Star qualified products with a maximum sales price of \$2,500 per item. An Energy Star qualified product includes any dishwasher, clothes washer, air conditioner, ceiling fan, compact fluorescent light bulb, dehumidifier, programmable thermostat, or refrigerator, the energy efficiency of which has been designated by the United States Environmental Protection Agency and the United States Department of Energy as meeting or exceeding each such agency’s requirements under the Energy Star program. The sales tax holiday period begins each year on the Friday before the second Monday in October and ends at midnight on the second Monday in October. The holiday is set to expire on July 1, 2012.

Energy Efficient Products Income Tax Deduction

The 2006 General Assembly enacted Senate Bill 262 (Acts of Assembly 2006, Chapter 939) which established an energy policy for the Commonwealth. Senate Bill 262 provided a state personal income tax deduction available in the amount of 20% of the sales tax

paid on certain energy efficient equipment or appliances, as well as qualifying fuel cells, gas heat pumps, central air conditions, advanced gas, oil or water heaters, oil fired furnaces, and programmable thermostats. The law currently permits a maximum deduction of \$500.

Additional Sales Tax Holidays Currently Offered in Virginia

Sales Tax Holiday for Clothing and School Supplies

The 2006 General Assembly enacted Senate Bill 571 and House Bill 532 (Acts of Assembly 2006, Chapters 597 and 593) providing for an annual three-day sales tax holiday scheduled to begin each year at 12:01 a.m. on the first Friday in August, and to end at midnight on the following Sunday. Pursuant to this legislation, school supply items, including dictionaries, notebooks, pens, pencils, notebook paper, calculators, and similar items can be purchased exempt of the Retail Sales and Use Tax during the three-day holiday, provided that the sales price of each item does not exceed \$20. In addition, articles of clothing with a sales price of \$100 or less can be purchased exempt of the tax during the holiday period.

Hurricane Preparedness Sales Tax Holiday

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, beginning on May 25 and ending on May 31. Items eligible for exemption during the seven-day period include portable generators, with a selling price of \$1,000 or less per item and additional hurricane preparedness equipment, such as carbon monoxide detectors, batteries, radios, and fuel tanks with a selling price of \$60 or less per item.

Like the existing Energy Star Sales Tax Holiday, both the sales tax holiday for clothing and school supplies and the Hurricane Preparedness Sales Tax Holiday statutes contain provisions authorizing dealers to absorb the sales and use tax on all other items sold during the same time period.

While the holiday for clothing and school supplies has no expiration date, both the Energy Star Sales Tax Holiday and the Hurricane Preparedness Sales Tax Holiday are set to expire on July 1, 2012.

Proposal

This bill would remove the requirement that Energy Star products must be purchased for noncommercial home or personal use in order to be eligible for the Energy Star Sales Tax Holiday exemption.

Impact on Dealers

While the statute creating an Energy Star Sales Tax Holiday requires that Energy Star purchases be intended for noncommercial home or personal use, retail dealers are not required to obtain an exemption certificate or other certification from purchasers of

qualified Energy Star products that such products are purchased for noncommercial home or personal use. Nevertheless, retailers are required to make a good faith effort to ensure that items purchased exempt of the tax are purchased for noncommercial home or personal use. Retailers can consider the number of items purchased and the name on the credit card or checking account by which the purchase is made, to assist in determining that the item or items in question are being purchased for noncommercial home or personal use. Purchases made using a business or company credit or debit card or check are not eligible for the Energy Star Sales Tax Holiday exemption.

The removal of the “noncommercial” requirement would eliminate the retailer’s obligation to make a good faith effort to ensure that items purchased would not be used for commercial purposes.

Other States

Besides Virginia, only one other state offered a sales tax holiday specifically for energy efficient products or energy saving products in 2007. Georgia provided a sales tax holiday in which purchases of energy efficient products for noncommercial home or personal use, with a maximum price of \$1,500 per product could be made exempt of the Retail Sales and Use Tax. Like Virginia, Georgia limited this exemption to products purchased for noncommercial home or personal use, and precluded purchases for use in a trade or business.

Similar Legislation

Energy Star Holiday Legislation

House Bill 56 and **House Bill 219** are substantively identical, and would expand the time frame for the Energy Star Sales Tax Holiday to include a four-day period in April in addition to the current four-day period in October.

House Bill 795 would add WaterSense qualified products to the items that qualify for the exemption provided during the Energy Star Sales Tax Holiday.

House Bill 1229 would add WaterSense products and additional Energy Star products to the Energy Star Sales Tax Holiday exemption. This bill would also add a second four-day Energy Star Sales Tax Holiday period in April when certain such products are exempt from the Retail Sales and Use Tax. It would also remove the requirement that qualifying items be purchased for noncommercial home or personal use in order to be eligible for exemption during the Energy Star Sales Tax Holiday.

House Bill 686 would provide an exemption from the Retail Sales and Use Tax for Energy Star qualified CFL’s, and would remove CFL’s from the list of items qualifying for exemption during the Energy Star Sales Tax Holiday. The bill would expire on July 1, 2013.

Senate Bill 280 would provide an exemption from the Retail Sales and Use Tax for all Energy Star qualified CFL's, and would remove CFL's from the list of items qualifying for exemption during the Energy Star Sales Tax Holiday.

Clothing and School Supplies Holiday Legislation

House Bill 57 and **House Bill 442** (identical) would add computers and computer-related peripheral equipment to the list of items that are exempt from the Retail Sales and Use Tax during the annual three-day sales tax holiday period for clothing and school supplies that takes place each year in August. Computers and related peripheral equipment with a selling price of \$1,500 or less per item could be purchased exempt of the Retail Sales and Use Tax under this bill.

House Bill 263 would add computers and related equipment, rather than "computer-related peripheral equipment" with a maximum sales price of \$1,500 per item to the list of property exempt from tax during the sales tax holiday for school supplies and clothing, beginning in 2008.

House Bill 758 would add computers and related equipment to the list of items eligible for exemption during the August sales tax holiday for clothing and school supplies. There would be no cap on the cost of computers or related equipment eligible for this exemption.

cc : Secretary of Finance

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