

# DEPARTMENT OF TAXATION

## 2008 Fiscal Impact Statement

1. **Patron** Walter A. Stosch

2. **Bill Number** SB 147

3. **Committee** Senate Finance

**House of Origin:**

       **Introduced**

  X   **Substitute**

       **Engrossed**

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

**Second House:**

       **In Committee**

       **Substitute**

       **Enrolled**

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

This bill would allow a seller to advertise or hold out to the public that he will provide a discount in an amount equal to the Retail Sales and Use Tax without violating the prohibition against absorption of the tax provided that the advertisement or offer clearly states that the tax will be collected on the reduced price and remitted to the Tax Commissioner.

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 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 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

This bill is not expected to have any impact on state or local revenues.

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

TAX

All Localities

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

### **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 expressly authorize a seller to advertise or hold out to the public that he will provide a discount in an amount equal to the Retail Sales and Use Tax without violating the prohibition against absorption of the tax provided that the advertisement or offer clearly states that the tax will be collected on the reduced price and remitted to the Tax Commissioner. Sellers would still be prohibited from advertising that they will pay the Retail Sales and Use Tax on behalf of the customer, except during the three sales tax holiday periods and the fourteen days preceding each holiday period. Violators of this provision could be convicted of a Class 2 misdemeanor.

### Other States

Most other states have similar laws prohibiting the act of absorption, or prohibiting a dealer from 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

**House Bill 194** is identical to this bill.

cc : Secretary of Finance

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