

DEPARTMENT OF TAXATION

2009 Fiscal Impact Statement

1. **Patron** Clifford L. Athey, Jr.

2. **Bill Number** HB 1779

House of Origin:

 Introduced

 Substitute

 Engrossed

3. **Committee** Senate Finance

4. **Title** Retail Sales and Use Tax; Exemption of
Sales by Nonprofit Entities

Second House:

 X **In Committee**

 Substitute

 Enrolled

5. **Summary/Purpose:**

This bill would expand the Retail Sales and Use Tax exemption for occasional sales by authorizing nonprofit entities that are eligible to apply for a nonprofit entity exemption from taxation on their purchases of tangible personal property pursuant to *Va. Code* § 58.1-609.11, to make exempt sales of: 1) food, prepared food, and meals; and 2) tickets to events that include the provision of food, prepared food, and meals, provided such sales take place on fewer than 24 occasions in a calendar year.

Under current law, occasional sales are exempt from the Retail Sales and Use Tax. An occasional sale is defined as a sale by a person engaged in sales on three or fewer separate occasions within one calendar year. Currently, nonprofit organizations that hold valid certificates of exemption from the Department of Taxation are exempt from the Retail Sales and Use Tax on all purchases of tangible personal property. In addition, certain nonprofit organizations that hold valid certificates of exemption are also authorized to elect not to collect the tax on otherwise taxable sales provided: 1) the entity is within the same class of organization of any entity that was exempt from collecting the tax on June 30, 2003, or (2) the entity is organized exclusively to foster, sponsor, and promote physical education, athletic programs, and contests for youths in the Commonwealth.

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 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

This bill would result in a revenue loss, the magnitude of which is unknown. As this bill would expand the occasions on which nonprofit organizations eligible to obtain a nonprofit entity certificate of exemption for the purchase of tangible personal property may make sales of food, prepared food and meals from twelve to twenty-three, the revenue loss will likely be substantially less than it would have been with the introduced version of the bill.

9. Specific agency or political subdivisions affected:

TAX

10. Technical amendment necessary: Yes.

To correct a technical drafting error, TAX recommends the following technical amendment:

Page 1, Line 28, After: place on
Strike: less
Add: fewer

11. Other comments:

Nonprofit Exemptions

Virginia law authorizes nonprofit organizations that meet certain requirements to apply to TAX to obtain a certificate of exemption exempting their purchases of tangible personal property from the Retail Sales and Use Tax. Nonprofit organizations must meet the following criteria to be eligible for exemption:

- The entity must be either an organization exempt under Internal Revenue Code ("IRC") §§ 501(c)(3) or 501(c)(4), or have annual gross receipts of less than \$5,000 and be organized for a charitable purpose;
- The entity must have annual administrative costs that are 40% or less of annual gross receipts;
- The entity must be in compliance with state solicitation laws, if applicable;
- The entity must provide TAX with an estimate of its total taxable purchases;

- The entity must provide TAX with a copy of its Form 990 or a list of its board of directors;
- The entity must provide TAX with a copy of a full financial audit if its gross annual revenues was \$1 million or greater in the previous year. A nonprofit organization with gross annual revenue ranging between \$750,000 and \$1 million is given the option of providing either a financial audit performed by an independent certified public accountant or a financial review performed by an independent certified public account.

Under current law, certain nonprofit entities that have been granted a certificate of exemption from the Department of Taxation may elect not to collect sales tax on their taxable sales. In order to be eligible for this election, the entity must: 1) be within the same class of organization as any entity that was exempt from collecting the tax on June 30, 2003, or 2) be organized exclusively to foster, sponsor, and promote physical education, athletic programs, and contests for youths in the Commonwealth. Organizations that enjoyed an exemption from collecting sales tax on taxable sales on June 30, 2003 include Parent Teacher Association organizations, Little League organizations, and Boy and Girl Scouts organizations.

Occasional Sales

Virginia currently provides an exemption from collection of the Retail Sales and Use Tax for "occasional sales." An "occasional sale" is defined as "a sale of tangible personal property not held or used by a seller in the course of any activity for which he is required to hold a certificate of registration, including the sale or exchange of all or substantially all the assets of any business and the reorganization or liquidation of any business, provided such sale or exchange is not one of a series of sales and exchanges sufficient in number, scope and character to constitute an activity requiring the holding of a certificate of registration." The Department of Taxation has interpreted this definition to exclude any sales by a person engaged in sales on more than three separate occasions within one calendar year.

Nonprofit Sale of Meals in Connection with Fundraising Events

Under current law, any event tickets, cover charges or minimum charges that include the provision of or the entitlement to food, drinks, or other tangible personal property constitute a sale of tangible personal property and are subject to the Retail Sales and Use Tax.

On October 20, 2008, the Department of Taxation issued Tax Bulletin 08-11, which announced that effective October 1, 2008, any organization exempt from federal income taxation under *Internal Revenue Code* § 501(c) may make sales of: 1) prepared food and meals and 2) tickets to events that include the provision of food, prepared food, and meals without collecting sales tax on such sales, provided certain requirements are met. Among these requirements, the organization is not permitted to hold such events on more than twelve occasions per year. In determining what constitutes an event, individuals must adhere to the rules set forth for occasional sales. TAX has consistently held that the occasional sale exemption does not apply where sales are made over an extended period

of time because such sales are sufficient in number, scope, and character to require the taxpayer to register for and collect the Retail Sales and Use Tax.

Proposal

This bill would expand the Retail Sales and Use Tax exemption for occasional sales by authorizing nonprofit entities that are eligible to apply for an exemption from taxation on their purchases of tangible personal property pursuant to *Va. Code* § 58.1-609.11 to make sales of: 1) food, prepared food, and meals; and 2) tickets to events that include the provision of food, prepared food, and meals, provided such sales take place on fewer than 24 occasions in a calendar year.

The effective date of this bill is not specified.

Similar Legislation

House Bill 2330 and **Senate Bill 1222** would provide that nonprofit entities with gross annual revenues of at least \$750,000 in the previous year must file a financial review performed by an independent certified public accountant in order to be eligible for a sales and use tax exemption and would authorize the Department of Taxation to require nonprofit entities with gross annual revenues of at least \$1 million in the previous year to provide a full financial audit performed by an independent certified public accountant.

cc : Secretary of Finance

Date: 2/6/2009 KP
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