

DEPARTMENT OF TAXATION

2010 Fiscal Impact Statement

1. **Patron** James M. Scott

2. **Bill Number** HB 1051

3. **Committee** House Appropriations

House of Origin:

 X **Introduced**

 Substitute

 Engrossed

4. **Title** Repeal of Dealer Discounts: Retail Sales and Use Tax, Motor Vehicle Fuel Sales Tax, Tire Recycling Fee, Communications Sales and Use Tax, Tax for Enhanced 911 Service, Cigarette Tax, Tobacco Products Tax, and Fuels Tax

Second House:

 In Committee

 Substitute

 Enrolled

5. **Summary/Purpose:**

This bill would eliminate the discounts provided dealers as compensation for accounting for and timely remitting the Retail Sales and Use Tax, the Motor Vehicle Fuel Sales Tax in Certain Transportation Districts, the Tire Recycling Fee, the Communications Sales and Use Tax, the Tax for Enhanced 911 Service levied on land line telephone service, and the Tobacco Products Tax. This bill would also eliminate the discount provided as compensation to stamping agents on sales of Virginia revenue stamps. Additionally, this bill would eliminate the discount provided as compensation to Fuels Tax suppliers and distributors.

The provisions of the bill eliminating the discounts available for the Retail Sales and Use Tax, the Tobacco Products Tax, the Communications Sales and Use Tax, the Tax for Enhanced 911 Service, the Tire Recycling Fee, and the Motor Vehicle Fuel Sales Tax in Certain Transportation Districts would be effective beginning with the returns for June, 2010 due in July, 2010. The provisions of this bill that eliminate the discounts provided as compensation available for Cigarette Tax stamping agents and Fuels Tax suppliers and distributors would be effective July 1, 2010.

6. **Fiscal Impact Estimates are:** Preliminary. (See Line 8.)

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

8. **Fiscal implications:**

Administrative Costs

TAX considers implementation of this bill as routine, and does not require additional funding.

Revenue Impact

The **Introduced Executive Budget** assumes the repeal of the compensation currently offered for accounting for and remitting the Retail Sales and Use Tax, the Motor Vehicle Fuel Sales Tax in Certain Transportation Districts, the Communications Sales and Use Tax, the Tax for Enhanced 911 Service, the Tire Recycling Fee, the Cigarette Tax, the Tobacco Products Tax, and the Fuels Tax. As a result, this bill would have no revenue impact.

The table below shows the estimated revenue increase of this proposal.

Revenue Impact (millions of dollars)			
Discount Eliminated	FUND	FY 2010	FY 2011
Retail Sales and Use Tax	General Fund	\$60.9	\$60.9
Motor Vehicle Fuel Sales Tax in Certain Transportation Districts	Northern Virginia Transportation District and the Potomac-Rappahannock Transportation District	\$1.1	\$1.1
Communications Sales and Use Tax	Communications Sales and Use Tax Trust Fund	\$4.8	\$4.8
Tax for Enhanced 911 Service	Communications Sales and Use Tax Trust Fund	\$1.0	\$1.0
Tire Recycling Fee	Waste Tire Trust Fund	\$0.2	\$0.2
Cigarette Tax	Health Care Fund	\$3.3*	\$3.3*
Tobacco Products Tax*	Health Care Fund	\$0.3*	\$0.3*
Fuels Tax	Commonwealth Transportation Fund	\$9.2	\$9.2

* Currently, any reduction in funding available for programs financed by the Health Care Fund as a result of the discounts must be made up by the General Fund. The bill would make this transfer unnecessary.

Under current law, two-thirds of the General Fund revenue from the repeal of the dealer's discount available for the Retail Sales and Use Tax, \$40.6 million a year, is dedicated to the General Fund without restriction, while the remaining one-third, or \$20.3 million a year, would be distributed from the General Fund to localities based on school age population.

The revenues from the Motor Vehicle Fuels Sales Tax in the Northern Virginia Transportation District and the Potomac-Rappahannock Transportation District are dedicated to the Northern Virginia Transportation District and the Potomac-Rappahannock Transportation District. Based on Fiscal Year 2009 data, if the discount currently offered to dealers is repealed, the estimated revenue increase to the Northern Virginia Transportation District and the Potomac-Rappahannock Transportation District would be \$1.1 million a year.

All revenue from the Communications Sales and Use Tax and the Tax for Enhanced 911 Service, less administrative expenses, is deposited in the Communications Sales and Use Tax Trust Fund for distribution to localities. Based upon recent returns and Fiscal Year 2009 data, the elimination of the compensation available for the Communications Sales

and Use Tax and the Tax for Enhanced 911 Service would increase revenue deposited into the Communications Sales and Use Tax Trust Fund by a total of \$5.8 million a year. The distribution that each locality receives will increase based on its percentage share of distributions from the Fund.

The revenues from the Tire Recycling Fee are dedicated to the Waste Tire Trust Fund. If the discount currently offered to retailers of tires is repealed, based on Fiscal Year 2009 data, revenues to the Waste Tire Trust Fund would increase by \$0.2 million a year.

The revenues from the Cigarette Tax and the Tobacco Products Tax are dedicated to the Health Care Fund. Currently, any reduction in funding available for programs financed by the Health Care Fund as a result of the discounts must be made up by the General Fund. Based on Fiscal Year 2009 data, the bill would make a transfer of \$3.6 million a year from the General Fund unnecessary.

The revenues from the Fuels Tax are dedicated to the Commonwealth Transportation Fund. If the discounts currently available for the Fuels Tax are eliminated, based on Fiscal Year 2008 data, revenues to the Commonwealth Transportation Fund would increase by \$9.2 million a year.

9. Specific agency or political subdivisions affected:

Department of Taxation
Department of Motor Vehicles
Department of Waste Management
Health Care Fund
Commonwealth Transportation Fund
All Localities
Northern Virginia Transportation District
Potomac-Rappahannock Transportation District

10. Technical amendment necessary: No.

11. Other comments:

Background

Retail Sales and Use Tax

Under current law, dealers are allowed a discount on the first three percent of the tax in order to compensate dealers for accounting for and remitting the Retail Sales and Use Tax. Any dealer holding a certificate of registration who submits his sales tax return and the amount of tax due on time may take a discount of either 4%, 3%, or 2%, depending on his monthly taxable sales, of the first 3% of the Virginia Retail Sales and Use Tax he collects as compensation. In Fiscal Year 2009, the dealer discount reduced Retail Sales and Use Tax revenues by \$60.9 million.

The following table sets forth the dealer discount allowed by other states for their retail sales and use tax:

TABLE 1 STATE TREATMENT OF THE RETAIL SALES AND USE TAX DEALER DISCOUNT	
State Name	Dealer Discount
Alabama	5% on first \$100 of tax due, 2% on additional tax due (Maximum of \$400 per month)
Alaska	N/A
Arizona	1.0% (Maximum of \$10,000 per year)
Arkansas	2.0% (Maximum of \$1,000 per month)
California	None
Colorado	3.33% (other discounts may apply for local sales tax)
Connecticut	None
Delaware	N/A
District of Columbia	None
Florida	2.5% (Maximum of \$30 per report)
Georgia	3% on first \$3,000 of state and local taxes due, 0.5% on additional tax due
Hawaii	None
Idaho	None
Illinois	1.75% (Minimum of \$5 per year)
Indiana	0.83% (Utilities are not permitted the discount)
Iowa	None
Kansas	None
Kentucky	1.75% on first \$1,000 of tax due, 1% on additional tax due (Maximum of \$1,500 per report)*
Louisiana	1.1%
Maine	Dealers are allowed to keep excess collections under a bracket system
Maryland	1.2% on first \$6,000 of tax due, 0.9% on additional tax due (Maximum of \$600 per return)*
Massachusetts	None
Michigan	0.5% on first 4.0% of tax, 0.75% if paid by the 7 th (Minimum of \$6 per month)
Minnesota	None
Mississippi	2.0% (Maximum of \$50 per month)
Missouri	2.0%
Montana	N/A

Nebraska	2.5% (Maximum of \$75 per month)	
Nevada	0.5%	
New Hampshire	N/A	
New Jersey	None	
New Mexico	None	
New York	3.5% (Maximum of \$150 per quarter)	
North Carolina	None	
North Dakota	1.5% (Maximum of \$255 per quarter)	
Ohio	0.75%	
Oklahoma	1.25%, 2.25% if file and pay electronically (Maximum of \$3,300 per month)	
Oregon	N/A	
Pennsylvania	1.0%	
Rhode Island	None	
South Carolina	3% if taxes due are less than \$100, 2% if taxes due are \$100 or more (Maximum of \$3,000 per year, \$3,100 if file electronically, \$10,000 if nonresident that voluntarily registers)	
South Dakota	None	
Tennessee	None	
Texas	0.5% (Additional discount of 1.25% for early payment)	
Utah	1.31%	
Vermont	Dealers are allowed to keep excess collections under the bracket system	
Virginia	<u>Monthly Taxable Sales</u> \$0 to \$62,500 \$62,501 to \$208,000 \$208,001 and above	<u>Percentage</u> 4% of the first 3% of tax 3% of the first 3% of tax 2% of the first 3% of tax
Washington	None	
West Virginia	None	
Wisconsin	0.5% (Minimum of \$10 per period)	
Wyoming	None	
*Notes: Kentucky – The \$1,500 maximum became effective July 1, 2008. (KRS 139.570) Maryland – The \$500 maximum includes consolidated returns and became effective January 3, 2008. (Md. Code § 11-105) Source: Federation of Tax Administrators based on survey responses from state tax agencies, as of January 1, 2008.		

Motor Vehicle Fuel Sales Tax in Certain Transportation Districts

Under state law, a 2.1% sales tax is imposed on motor vehicle fuels sold to retail dealers for retail sale in the Northern Virginia Transportation District and the Potomac-Rappahannock Transportation District. Distributors are allowed a discount of 2% of the Motor Vehicle Fuel Sales Tax collected.

Communications Sales and Use Tax and Tax for Enhanced 911 Service

Under House Bill 568, revenue from the Communications Sales and Use Tax, the Tax for Enhanced 911 Service levied on landline telephone service and the Cable Television Rights-of-Way Fee (the "Communications Taxes") is collected and remitted monthly by communications services providers to TAX and deposited into a non-reverting fund known as the Communications Sales and Use Tax Trust Fund (the "Fund"). After transferring moneys from the Fund to TAX to pay for the direct costs of administering the Communications Taxes, the moneys in the Fund are allocated and distributed to localities after payment (1) to the Department of Deaf and Hard-of-Hearing to fund the telephone relay service center and (2) any franchise fee amount due to localities in accordance with any cable television franchise agreements in effect as of January 1, 2007. Each locality's share of the net revenue is distributed as soon as practicable after the end of the month based on the locality's share of total revenues received from the following taxes and fees in Fiscal Year 2006 from local tax rates adopted on or before January 1, 2006:

- Local consumer utility tax on landline and wireless telephone service;
- Local E-911 tax on landline telephone service;
- The portion of the local BPOL tax on public service companies exceeding .5% currently billed to customers in some grandfathered localities;
- Cable television franchise fees;
- Video programming excise tax on cable television services; and
- Consumer utility tax on cable television.

House Bill 568 required the Auditor of Public Accounts ("APA") to determine the amount of revenues received by every locality for Fiscal Year 2006, at rates adopted on or before January 1, 2006, for each of these taxes and fees. Local governments and service providers were required to cooperate with the APA and provide requested information.

Under House Bill 568, the dealer discount allowed to communications services providers had an effective date of 60 days after the Auditor of Public Accounts certified that the taxes and fees collected in Fiscal Year 2008 were at least equal to the amount of taxes and fees revenue collected by the taxes and fees that were repealed or amended in Fiscal Year 2006, plus the annual cost to the Department of Taxation to pay for the administration of the Virginia Communications Sales and Use Tax. The discount went into effect for November, 2008 returns. Under current law, communications services providers

may take a discount of either 4%, 3%, or 2%, depending on monthly taxable sales, of the first 3% of the Communications Sales and Use Tax collected as compensation.

Under state law, a monthly tax of \$0.75 is imposed on the end user of each access line of the telephone service or services provided by a communications services provider. Communications services providers are currently allowed a discount of 3% of the Tax for Enhanced 911 Service collected.

Tire Recycling Fee

Under state law, a tire-recycling fee of \$1.00 for each new tire sold is imposed on every retailer of tires in Virginia. Retailers of tires are currently allowed a discount of 5% of the Tire Recycling Fee collected.

Cigarette Tax

Virginia first imposed a state cigarette tax in 1960, at a rate of three cents per pack. A similar tax was also imposed on cigars. The tax rate on cigarettes remained at three cents per pack until 1966, when Virginia imposed a sales and use tax and simultaneously lowered the cigarette tax to 2.5 cents per pack. The tax on cigars was repealed in 1966. The cigarette tax increased to 20 cents per pack on August 1, 2004 and again on July 1, 2005 to 30 cents per pack. Virginia is currently ranked as having the 49th lowest state cigarette taxes in the nation.

The Cigarette Tax is paid by wholesaler dealers who have obtained a stamping agent permit from the Department of Taxation through the purchase of stamps, which must be affixed to each container from which cigarettes are sold. A discount equal to two percent of the purchase price of the Virginia revenue stamps is available to stamping agents.

Tobacco Products Tax

Under current law, a tobacco products tax is imposed on cigars, smokeless tobacco, and pipe tobacco. Cigarettes are not subject to the tax on tobacco products. Tobacco products include the following:

- Cigars -- any roll of tobacco wrapped in leaf tobacco or in any substance containing tobacco (other than any roll of tobacco that is a cigarette).
- Smokeless tobacco --
 - Snuff -- any finely cut, ground, or powdered tobacco not intended to be smoked.
 - Chewing tobacco -- any leaf tobacco not intended to be smoked.
- Pipe tobacco -- any tobacco which, because of its appearance, type, packaging, or labeling, is suitable for use and likely to be offered to, or purchased by, consumers as tobacco to be smoked in a pipe.

The tax is imposed at the rate of 10% on the “manufacturer’s sales price,” which is defined as the actual price for which a manufacturer, manufacturers’ representative, or any other person sells tobacco products to an unaffiliated distributor. The tax is imposed on the first “distributor” who possesses the taxable product in Virginia. Out-of-state distributors are allowed, but not be required to obtain a license. Retail and wholesale dealers are allowed a discount of 2% of the Tobacco Products Tax due.

Fuels Tax

Effective January 2001, the Commonwealth shifted the point of taxation on motor fuels from the last licensed distributor to the terminal rack. Before the shift, approximately 1,300 entities were required to file returns and remit taxes. Under the current system, fuels tax is paid by distributors to suppliers. The suppliers then file returns and remit the taxes to the Commonwealth. The number of entities remitting taxes is now about 275, which eases both the administrative burden on DMV and the reporting burden on Virginia businesses.

Under the old system, dealers were entitled to refunds equal to 1% of the taxes passed on to them on the gross gallonage of motor fuel transferred, in consideration of shrinkage and evaporation. In addition, as compensation for accounting for and remitting the motor fuels tax, each dealer and supplier was allowed a deduction of 0.5% from the tax due each month, not to exceed \$500 monthly.

When the Commonwealth shifted the point of taxation, the compensation available for the Fuels Tax was also changed. Under current law, an allowance is granted to defray the cost of collecting fuels tax and reporting on the purchase and sale of fuel as well as to account for dead storage, shrinkage, spillage and evaporation. Suppliers receive a 0.1% collection allowance, not to exceed \$5,000 per month. Suppliers who sell fuel to an unlicensed distributor, bulk user, retailer, or user of fuel receive a 0.5% collection allowance with no limit. Licensed distributors receive a 1% collection allowance with no limit.

In addition, the deadline for remittance of the tax was extended from the fifth day of the second month succeeding the month in which the product was sold to the twentieth day of the second month succeeding the month the product was sold to a distributor. A licensed distributor is not required to pay the tax to the supplier until the date the supplier is required to remit the tax to the Commonwealth. This has created a float that is fifteen days longer than the one under the old system.

Proposal

This bill would eliminate the discounts provided as compensation for accounting for and timely remitting the Retail Sales and Use Tax, the Motor Vehicle Fuel Sales Tax, the Communications Sales and Use Tax, the Tax for Enhanced 911 Service, the Tire Recycling Fee, and the Tobacco Products Tax. This bill would eliminate the discount provided as compensation to stamping agents on sales of Virginia revenue stamps. Additionally, this bill would eliminate the discount provided as compensation to Fuels Tax suppliers and distributors.

The provisions of the bill eliminating the discounts available for the Retail Sales and Use Tax, the Motor Vehicle Fuel Sales Tax, the Tire Recycling Fee, the Communications Sales and Use Tax, the Tax for Enhanced 911 Service and the Tobacco Products Tax would be effective beginning with the returns for June, 2010 due in July, 2010. The provisions of this bill that eliminate the discounts provided as compensation available for Cigarette Tax stamping agents Fuels Tax suppliers and distributors would be effective July 1, 2010.

Similar Legislation

Senate Bill 542 is identical to this bill.

cc : Secretary of Finance

Date: 1/17/2010 Initials
DLAS File Name