

DEPARTMENT OF TAXATION

2010 Fiscal Impact Statement

1. **Patron** Stephen H. Martin
3. **Committee** Passed by House and Senate
4. **Title** Retail Sales and Use Tax; Taxability of
Countertops

2. **Bill Number** SB 57
House of Origin:
☐ Introduced
☐ Substitute
☐ Engrossed
- Second House:**
☐ In Committee
☐ Substitute
☒ Enrolled

5. Summary/Purpose:

This bill would treat a dealer who sells and installs countertops as a retailer for purposes of the Retail Sales and Use Tax. As such, the dealer would be required to collect the tax from purchasers of countertops, rather than paying the tax on his purchases of materials. In addition, fabricators of countertops who are also deemed "retailers" by virtue of this proposal would be authorized to purchase equipment and machinery, raw materials, fuels, and other materials that are used directly in the fabrication exempt of the tax pursuant to the manufacturing exemption.

Under current law, dealers operating in a dual capacity of selling countertops at retail, and selling and installing countertops in real property construction contracts, must collect the tax on their retail sales of countertops sold but not installed and pay the tax on the cost price of the countertops they sell and install.

This bill would be applicable to taxable transactions occurring on or after July 1, 2010 or contracts initially entered into on or after that date.

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

- 7. Budget amendment necessary:** No.

8. Fiscal implications:

Administrative Costs Impact

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

Revenue Impact

This bill would result in a revenue gain to the extent that the tax would be imposed on the selling price, rather than the cost of the countertops. This bill would result in a revenue loss to the extent that purchases of equipment would be exempted under the

manufacturing exemption. The net revenue impact is unknown. Generally, the practice among dealers who sell and install countertops is to purchase all countertops exempt from the tax at wholesale and collect the retail sales tax from direct sales to customers and accrue the use tax on the cost price of countertops they sell and install for customers. Information concerning the number of countertops sold in Virginia and the average or median wholesale and retail prices of these items is also unavailable.

9. Specific agency or political subdivisions affected:

Department of Taxation

10. Technical amendment necessary: No.

11. Other comments:

Generally

Virginia law generally treats sellers and installers of tangible personal property that becomes real property after installation as contractors. The law makes an exception for retailers who sell and install certain specified items, including fences, venetian blinds, window shades, awnings, storm windows and doors, floor coverings, cabinets, kitchen equipment, window air conditioning units, or other like or comparable items. Provided these individuals maintain a retail or wholesale place of business and an inventory of the items set forth above, and provided they perform installation as part of or incidental to the sale of the items set forth above, they are deemed retailers, and are authorized to collect Retail Sales and Use Tax from their customers on the sale of these items. Separately stated installation charges are exempt from the tax. If a person does not meet all three requirements of a retailer, as set forth above, he will be deemed a contractor and must pay the sales tax on such items at the time of purchase or accrue use tax, even if he is making sales of fences, venetian blinds, or any of the items separately identified above. This policy applies whether the seller and installer is also a fabricator of the tangible personal property items listed above.

A person who is deemed a “retailer” of the items set forth above, and who also fabricates such items also qualifies for the manufacturing exemption set forth in *Va. Code* § 58.1-609.3. The law provides an exemption from the Retail Sales and Use Tax for industrial materials for future manufacturing and processing into articles of tangible personal property for resale, where such industrial materials either enter into the production of or become a component part of the finished product. The exemption is also available for machinery, tools, or repair parts, fuel, power, energy or supplies used directly in manufacturing or processing. Because sales made by these “retailers” are deemed retail sales, the preponderance of use test, which is necessary in order for the manufacturing exemption to apply, is satisfied.

While retailers are generally treated differently from contractors with respect to the Retail Sales and Use Tax, both retailers and contractors are deemed the users or consumers of supplies used in installing tangible personal property that becomes real property after installation. Therefore, retailers and contractors must pay tax on their purchases of tacks, stripping, glue, cement, and other supplies they purchase.

Under current law, persons who sell and install countertops are treated differently from those who sell and install the fences, venetian blinds, window shades, awnings, storm windows and doors, floor coverings, cabinets, kitchen equipment, window air conditioning units, or other like or comparable items for purposes of the Retail Sales and Use Tax.

Currently, when a person sells and installs countertops, he is deemed a using and consuming contractor of the countertop materials and is required to pay the sales and use tax instead of collecting it from his customers.

Proposal

Under the terms of this proposal, sellers and installers of countertops would be treated as retailers, provided they: 1) maintain a retail or wholesale place of business; 2) maintain an inventory of countertops, and 3) perform installation of the countertops as part of or incidental to the sale of the countertops. As with sellers and installers of cabinets and other comparable items, fabricators of countertops, who were also deemed retailers pursuant to this proposal, would be able to purchase equipment and machinery, raw materials, fuels, and other materials that were used directly in the fabrication exempt of the Retail Sales and Use Tax pursuant to the manufacturing exemption. Because a person who fabricates, sells, and installs countertops would be deemed to be making retail sales, the preponderance of use test would be satisfied and the manufacturing exemption would apply. Separately stated installation charges would not be included in the total taxable sales price for purposes of collecting the Retail Sales and Use Tax.

This bill would be applicable to taxable transactions occurring on or after July 1, 2010 or contracts initially entered into on or after that date.

cc : Secretary of Finance

Date: 2/25/2010 KP
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