

DEPARTMENT OF TAXATION

2011 Fiscal Impact Statement

1. **Patron** Albert C. Pollard, Jr.

3. **Committee** House Finance

4. **Title** Retail Sales and Use Tax; Litter Tax;
Exemption for Agricultural Produce and
Producers

2. **Bill Number** HB 1942

House of Origin:

 X **Introduced**

 Substitute

 Engrossed

Second House:

 In Committee

 Substitute

 Enrolled

5. **Summary/Purpose:**

This bill would provide an exemption from the Retail Sales and Use Tax for agricultural produce that is raised and sold by an individual at retail in local farmers markets and at roadside stands, provided such sales by the agricultural producer do not exceed \$2,400. The bill would also exempt from the litter tax individuals who raise and sell agricultural produce in local farmers markets and at roadside stands, and whose annual income from such sales does not exceed \$2,400.

Under current law, an agricultural producer regularly engaged in selling tangible personal property at retail must register as a dealer and collect and remit the tax due on retail sales. The tax applies to regular or recurring sales of farm products by farmers or peddlers at a public market, roadside stand, farm, or any other place.

The effective date of this bill is not specified.

6. **Budget amendment necessary:** No.

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

8. **Fiscal implications:**

Administrative Costs

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

Revenue Impact

This bill would result in a revenue loss, the magnitude of which is unknown. The bill would exempt up to \$2,400 in sales from the retail sales tax, which, assuming a 2.5% reduced sales tax rate applicable to food for home consumption, would equal \$60. TAX does not have sufficient data regarding vendor sales and the number of current state agricultural produce vendors. There are 193 farmers markets in Virginia; however, vendor

attendance varies by size, season, and special events. There is no reliable data for roadside stand agricultural vendor participation.

9. Specific agency or political subdivisions affected:

TAX

10. Technical amendment necessary: Yes.

In order to clarify the intent of this bill, the following technical amendment is suggested:

Page 1, line 51, after 7.

Strike: Up to \$2,400 in value of agricultural produce, as defined in § 3.2-4738, that is raised and sold by individuals throughout the Commonwealth in local farmers markets and at roadside stands

Insert: Agricultural produce, as defined in § 3.2-4738, that is raised and sold by an individual in local farmers markets and at roadside stands throughout Virginia, whose annual income from such sales does not exceed \$2,400.

11. Other comments:

Retail Sales and Use Tax for Farmers

Virginia law currently provides an exemption from the Retail Sales and Use Tax for certain agricultural products, including but not limited to commercial feeds, seeds, plants, fertilizers, breeding and other livestock, agricultural chemicals, fuel for drying or curing crops, containers for fruit and vegetables, farm machinery, certain tangible personal property that will be affixed to real property owned or leased by a farmer, and agricultural supplies, provided they are sold to and purchased by farmers for use in agricultural production.

The Retail Sales and Use Tax generally applies to regular or recurring sales of farm products by farmers or peddlers or at a public market, roadside stand, farm, or any other place. Wholesale sales, including those made by farmers are exempt. A farmer regularly engaged in selling tangible personal property at retail must register as a dealer and collect and remit the Retail Sales and Use Tax due on retail sales, just like any other retailer.

The Retail Sales and Use Tax is imposed at a reduced rate of 2 ½% for food purchased for home consumption. Generally, this term includes most staple grocery food items and cold prepared foods packaged for home distribution. Farmers markets, supermarkets, and specialty meat and produce stores are among the list of retailers that are generally authorized to charge the reduced sales tax rate on sales of eligible food and beverages.

Litter Tax

The Virginia Litter Tax is imposed annually on manufacturers, wholesalers, distributors, and retailers of certain products, including “groceries”, at a rate of \$10 per establishment from which business is conducted. An additional litter tax of \$15 per establishment is imposed on manufacturers, wholesalers, distributors, and retailers of groceries, soft

drinks, carbonated waters, beer, and other malt beverages. TAX has interpreted groceries to include produce and dairy products.

While a farmer is generally not considered to be a manufacturer, wholesaler, distributor, or retailer, he is considered a retailer if he is selling the farm products to the ultimate consumer. Thus, he will be subject to both the \$10 and \$15 annual liter tax per establishment.

The litter tax and return are due on May 1 of each year. Virginia imposes a penalty equal to 100% of the tax assessed if the litter tax is paid late.

Proposal

This bill would provide an exemption from the Retail Sales and Use Tax for agricultural produce that is raised and sold by an individual at retail in local farmers markets and at roadside stands, provided such sales by the agricultural producer do not exceed \$2,400. Agricultural produce sold by large commercial retail sellers would continue to be subject to the Retail Sales and Use Tax. Similarly, produce sold by wholesalers would be exempt from the tax as tangible personal property sold for resale.

Under the terms of this bill, as a dealer in the Commonwealth, agricultural producers whose annual income from sales of agricultural produce do not exceed \$2,400 would still need to register to collect the Retail Sales and Use Tax, but would not be required to collect or remit taxes on the sale of items, until such time as their annual sales exceed \$2,400. Agricultural producers with retail sales in excess of \$2,400 would be required to collect and remit tax on all taxable sales of agricultural produce, including the first \$2,400 in sales.

The bill would also exempt from the litter tax individuals who raise and sell agricultural produce in local farmers markets and at roadside stands, and whose annual income from such sales does not exceed \$2,400.

The effective date of this bill is not specified.

cc : Secretary of Finance

Date: 1/22/2011 KP
DLAS File Name: HB 1942F161