

DEPARTMENT OF TAXATION

2011 Fiscal Impact Statement

1. **Patron** Frank W. Wagner

2. **Bill Number** SB 1431

3. **Committee** House Finance

House of Origin:

☐ Introduced

☐ Substitute

☐ Engrossed

4. **Title** Retail Sales and Use Tax; Tire Recycling Fee; Gives Certain Dealers Nexus

Second House:

☒ In Committee

☐ Substitute

☐ Enrolled

5. **Summary/Purpose:**

This bill would treat the retail sale of motor vehicle tires by an out-of-state dealer who provides for the installation of such tires within Virginia under an installation agreement with a third party as an activity sufficient to require the dealer to register to collect the Retail Sales and Use Tax. The bill would also impose the tire recycling fee on these dealers.

Under current law, only certain vendors who meet the definition of a dealer and who have sufficient contact with the Commonwealth are required to register and collect the Retail Sales and Use Tax.

The effective date of this bill is not specified.

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

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

8. **Fiscal implications:**

Administrative Costs Impact

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

Revenue Impact

This bill is expected to result in a revenue increase to both the General Fund and the Waste Tire Trust Fund, the magnitude of which is unknown. An estimated 5.2 million tires are sold in Virginia annually. However, the sales volume of out-of-state tire retailers that engage in contractual relationships with tire installers in Virginia is not known. Therefore, the impact of this bill on state and local Retail Sales and Use Tax revenues and on revenues deposited into the Waste Tire Trust fund is not known.

9. Specific agency or political subdivisions affected:

TAX

10. Technical amendment necessary: No.

11. Other comments:

Constitutional Nexus

The Commerce Clause of the U.S. Constitution reserves to Congress the power to regulate commerce among the states and with foreign nations. The U.S. Supreme Court has established a four-prong test to be used in determining whether a state tax on an out-of-state corporation's activities in interstate commerce violates the Commerce Clause. A state may require an entity engaged in interstate commerce to collect taxes on its behalf provided the tax is 1) applied to an activity with a substantial nexus with the taxing State; 2) is fairly apportioned; 3) does not discriminate against interstate commerce; and 4) is fairly related to the services provided by the state. *Complete Auto Transit, Inc. v. Brady*, 430 U.S. 274, 279 (1977). The U.S. Supreme Court has also determined, in *Quill Corp. v. North Dakota*, 504 U.S. 298 (1992) that the Commerce Clause barred a state from requiring an out-of-state mail-order company to collect use tax on goods sold to customers located within the state when the company had no outlets, sales representatives, or significant property in the state. In this case, the Court determined that only Congress has the authority to require out-of-state vendors, without a physical presence in a state, to register and collect that state's tax.

Virginia law specifically sets out the standards for requiring out-of-state dealers to collect the Virginia Retail Sales and Use Tax on sales into the Commonwealth. The law provides that a dealer is deemed to have sufficient activity within the Commonwealth to require that dealer to register to collect the Virginia Retail Sales and Use Tax if the dealer:

- Maintains an office, warehouse, or place of business in the Commonwealth;
- Solicits business in the Commonwealth, by employees, independent contractors, agents or other representatives;
- Advertises in Commonwealth publications, on billboards or posters located in the Commonwealth, or through materials distributed in the Commonwealth;
- Regularly makes deliveries into the Commonwealth by means other than common carrier;
- Continuously, regularly, seasonally, or systematically solicits business in the Commonwealth through broadcast advertising;
- Solicits business in the Commonwealth by mail, provided the solicitations are continuous, regular, seasonal, or systematic and the dealer benefits from any banking, financing, debt collection, or marketing activities occurring in the Commonwealth;
- Is owned or controlled by the same interests which own or control a business located within this Commonwealth;

- Has a franchisee or licensee operating under the same trade name in the Commonwealth, if the franchisee or licensee is required to obtain a certificate of registration; or
- Owns tangible personal property that is rented or leased to a consumer in the Commonwealth, or offers tangible personal property, on approval, to consumers in the Commonwealth.

Restricted by the United States Constitution and the Supreme Court's decision in *Quill*, many states have similar nexus statutes that restrict their ability to require remote sellers to collect taxes on sales made into Virginia. With growing retail sales on the Internet and declining tax receipts, some state tax collectors have turned their attention to the revenue being lost from sales by out-of-state retailers to the residents of their states. Although individuals who purchase goods from out-of-state firms via the Internet or mail order owe their states of residence use tax on their purchases in lieu of sales tax, states find it difficult to enforce this obligation. As a result, many states lose out on substantial revenue.

Tire Recycling Fee

Currently, the law imposes upon every retailer of tires in Virginia a tire-recycling fee of \$1.00 for each new tire sold. This rate is scheduled to be reduced to \$.50 per tire on July 1, 2011.

Proposal

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Similar Bills

Senate Bill 972 would amend Virginia's nexus statute to deem an accommodations intermediary that facilitates the sale of an accommodation to be a "dealer," thus requiring that business to register to collect the Retail Sales and Use Tax.

cc : Secretary of Finance

Date: 2/8/2011 KP
DLAS File Name: SB1431FE161