

# DEPARTMENT OF TAXATION

## 2013 Fiscal Impact Statement

1. **Patron** T. Scott Garrett

3. **Committee** House Finance

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

2. **Bill Number** HB 1581

**House of Origin:**

  X   **Introduced**

       **Substitute**

       **Engrossed**

**Second House:**

       **In Committee**

       **Substitute**

       **Enrolled**

### 5. **Summary/Purpose:**

This bill would permit organizations exempt from federal income taxation under § 501(c)(6) of the Internal Revenue Code ("I.R.C.") 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. These organizations include business leagues, chambers of commerce, real-estate boards, boards of trade, and professional football leagues, not organized for profit and of which no part of the net earnings inures to the benefit of any private shareholder or individual.

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. The Department has administratively provided that any organization exempt from federal income taxation under I.R.C. § 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.

Currently, 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 are authorized to make sales exempt from the Retail Sales and Use Tax 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.

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

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

## **8. Fiscal implications:**

### Administrative Costs

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

### Revenue Impact

According to the national Center for Charitable Statistics, in 2009 there were 2,520 I.R.C. § 501(c)(6) organizations in Virginia. It is unknown how many of these organizations sell food or tickets for events providing food as well as the number of participants at these events. However, given the number of these organizations, the revenue loss of this bill is estimated to be minimal.

## **9. Specific agency or political subdivisions affected:**

Department of Taxation

## **10. Technical amendment necessary: No.**

## **11. Other comments:**

### Internal Revenue Code § 501(c)(6) Organizations

Current law grants an exemption from federal income tax for I.R.C. § 501(c)(6) organizations. These organizations include business leagues, chambers of commerce, real-estate boards, boards of trade, and professional football leagues, not organized for profit and of which no part of the net earnings inures to the benefit of any private shareholder or individual.

### Nonprofit Exemptions

Virginia law authorizes nonprofit organizations that meet certain requirements to apply to the Department 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 I.R.C. §§ 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 the Department with an estimate of its total taxable purchases;
- The entity must provide the Department with a copy of its Form 990 or a list of its board of directors;
- The entity must provide the Department 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 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.

Legislation in the 2009 General Assembly Session expanded 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.

## 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 issued Tax Bulletin 08-11, which announced that effective October 1, 2008, any organization exempt from federal income taxation under I.R.C. § 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. The Department 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 permit organizations exempt from federal income taxation under § 501(c)(6) of the Internal Revenue Code ("I.R.C.") 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.

The effective date of this bill is not specified.

### Similar Legislation

**Senate Bill 730** would permit nonprofit Veteran Service Organizations (VSOs) that are exempt from federal income taxation under § 501(c)(19) of the Internal Revenue Code (I.R.C.), to obtain an exemption from the Retail Sales and Use Tax on all purchases of tangible personal property by following the nonprofit exemption process of filing an application with the Department of Taxation, meeting the applicable criteria, and obtaining a certificate of exemption from the Department.

cc : Secretary of Finance

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