DEPARTMENT OF TAXATION
2012 Fiscal Impact Statement

1. Patron Richard H. Stuart

2. Bill Number SB 181

House of Origin:
X **Introduced**
____ **Substitute**
____ **Engrossed**

Second House:
____ **In Committee**
____ **Substitute**
____ **Enrolled**

3. Committee Senate Finance

4. Title Retail Sales and Use Tax; Consumer Use Tax to Be Filed Annually

5. Summary/Purpose:

The Department understands that the patron intends to introduce a substitute version of this bill. This impact statement addresses the substitute bill.

This bill would mandate that any person liable for the state or local consumer use tax must report and remit use tax by May 1st of each year.

Under current law, use tax is imposed upon the use, consumption, or storage of tangible personal property in Virginia when the Virginia sales or use tax is not paid at the time the property is purchased. Individuals that are not registered to collect the Virginia sales or use tax have the option of reporting the use tax on a Consumer's Use Tax Return (Form CU-7) or on the applicable Individual Income Tax return, each of which are filed annually and are based on the calendar year. Businesses that are not registered to collect the tax must report consumer use tax on the Consumer Use Tax Return on or before the 20th day of each month following the period in which the use tax liability was incurred.

The effective date of this bill is not specified.

6. Budget amendment necessary: Yes.
Page 1, Revenue Estimates

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

8. Fiscal implications:

Administrative Costs

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

Revenue Impact

The introduced Executive Budget allocates currently undedicated Retail Sales and Use Tax revenues from the General Fund to the Highway Maintenance and Operating Fund ("HMOF") beginning July 1, 2012. The revenue impact of this bill assumes passage of the introduced Executive Budget.

Based on data of the Department's last 12 months' collection of consumer use tax, interest, and penalties from December 2010 to November 2011, the total state and local revenue loss of this bill would have been $18.9 million in Fiscal Year 2012 if this bill had taken effect in July, 2011. The revenue loss is broken out in the table below:

Tax Collections, Interest and Penalties	
	FY 2012
GF Fund	($13,000,407)
GF Unrestricted	($ 9,248,103)
GF Restricted	($ 3,752,304)
Transportation Trust Fund	($ 1,883,257)
Local	($ 3,787,126)
HMOF	($ 189,510)
Revenue Impact	**($18,860,301)**

Individuals may report consumer use tax on forms CU-7 (Virginia Consumer's Use Tax Return for Individuals) or on their individual income tax returns, both of which are remitted annually based on the calendar year. Consumer use taxes remitted on Forms CU-7 totaled $87,000 in calendar year 2011, and on Individual income tax returns totaled approximately $1.6 million for calendar year 2011. This bill would have no impact on consumer use tax revenues filed by individuals.

Businesses must report their use tax liability on the Consumer Use Tax Return (Form ST-7), which must be remitted on or before the 20th day of the month following the period in which the use tax liability was incurred. Modifying the remittance date to May 1 would shift state and local use tax revenue into the next fiscal year. In the first year of implementation, seven months of remittance would be delayed until May 1st of the following year. The impact of this modification is presumed to affect only the first fiscal year. In subsequent years, there would be no revenue impact because all twelve months would be included.

Based on the last 12 months of available use tax data, consumer use tax collections reported on Form ST-7 totaled approximately $41.35 million for that 12-month period. Use tax collections during the seven month period July-January were $22.52 million. The approximated $18 million dollar difference represents the use tax collections for the five month collection period that would be lost in fiscal year 2013 and shifted to fiscal year 2014. While interest and penalties are presumed to be unaffected by the switch in remittance dates, there is some potential that interest and penalties will decrease due to the additional time businesses will have to accurately complete forms.

9. Specific agency or political subdivisions affected:

Department of Taxation

10. Technical amendment necessary:

11. Other comments:

Consumer Use Tax

The consumer use tax was enacted in 1966 as the other half of the sales tax and generally is owed on purchases upon which no Virginia sales tax was paid. The consumer use tax applies, for example, on items purchased from out-of-state vendors who are not registered to collect the Virginia sales tax. The consumer use tax does not apply to out-of-state mail order catalog purchases totaling $100 or less during any calendar year. The primary purpose of the use tax, as determined by the Virginia Supreme Court in Commonwealth v. Miller-Morton, 220 Va. 852, 263 S.E. 2d 413 (1980), is to prevent the sales tax from placing Virginia retailers at a competitive disadvantage with retailers located outside of Virginia.

While Virginia dealers and some out-of-state dealers collect and remit the sales tax on their sales to Virginia customers, most out-of-state retailers have no physical connection with the state and therefore are not required to collect the tax. Virginia, like other states, is prohibited by the U.S. Supreme Court's decision in Quill Corp. v. North Dakota from requiring the collection of the sales tax from these out-of-state dealers. Thus, Virginia must seek collection of the use tax from consumers.

Current Compliance Policy

Virginia Individual Income Tax packages were expanded in 1992 to include the Consumer Use Tax Form CU-7, instructions, and information on the use tax. Form CU-7 was developed by the Department to facilitate the filing of the use tax by individuals and is due at the same time as the income tax returns.

For tax years 1993 and after, a check-off was added to the individual income tax return allowing taxpayers to pay their consumer use tax liability from their income tax refund, thus avoiding the need to file Form CU-7.

Unlike individual taxpayers, the consumer use tax liability of businesses is enforced through periodic sales and use tax audits, which generally cover a three-year audit period. Therefore, the consumer use tax paid by businesses more accurately reflects actual liability. Businesses must report consumer use tax on the Consumer Use Tax Return (Form ST-7) on or before the 20th day of each month following the period in which the use tax liability was incurred. ST-7 returns are not required to be filed for any period in which no use tax is due.

Proposal

This bill would mandate that any person liable for the consumer use tax pursuant to *Va. Code* § 58.1-604 and § 58.1-606 must report and remit such use tax by May 1st of each year.

The effective date of this bill is not specified.

cc : Secretary of Finance

Date: 2/3/2012 KP
DLAS File Name: SB181F161