

DEPARTMENT OF TAXATION

2014 Fiscal Impact Statement

1. **Patron** Frank M. Ruff, Jr.

2. **Bill Number** SB 100

3. **Committee** Passed House and Senate

House of Origin:

 Introduced

 Substitute

 Engrossed

4. **Title** Retail Sales and Use Tax; Satellite
Television Programming Equipment

Second House:

 In Committee

 Substitute

 X **Enrolled**

5. **Summary/Purpose:**

This bill would impose the Retail Sales and Use Tax on separately stated charges for equipment available for lease or purchase by a provider of satellite television programming to a customer of such programming. Such equipment sold to a provider of satellite television programming for subsequent lease or purchase would be deemed a sale for resale.

Under current law, satellite television programmers, and not their customers, are liable for the Retail Sales and Use Tax on tangible personal property used and consumed in connection with the provision of the service, regardless of whether the tangible personal property will be subsequently sold or leased to customers of the satellite television programmer.

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

The Department has not assigned any administrative costs to this bill because the changes required by a single bill such as this can be implemented as part of the annual changes to our systems and forms.

Revenue Impact

Based on publicly available data, including sample lease agreements, this bill could result in an increase in state and local Retail Sales and Use Tax revenues of approximately \$15 million a year. However, changes in industry practices and other underlying assumptions may have a significant impact on tax revenue estimates.

9. Specific agency or political subdivisions affected:

Department of Taxation

10. Technical amendment necessary: No.

11. Other comments:

Current Law

Generally, service providers are deemed the ultimate consumer of tangible personal property purchased in connection with the provision of the service. As such, service providers are typically subject to the Retail Sales and Use Tax on the purchase of such tangible personal property, even if the charges for the tangible personal property will be passed on to the service provider's customers.

In Public Document ("PD") 97-392 (09/29/1997), a satellite programming provider appealed an assessment of Retail Sales and Use Tax on his purchases of satellite equipment that it subsequently sold to its subscribers. Based upon Title 23 of the Virginia Administrative Code (VAC) 10-210-4040, it was determined that the true object of the transaction between the programming provider and its subscribers was to obtain the television programming services rather than the tangible property accompanying the service. Additionally, the Department had long held that provision of television programming was a nontaxable service. Accordingly, the taxpayer was deemed a service provider when it leased, rented or sold equipment in connection with satellite television programming. As the provider of a nontaxable service, it was determined that the taxpayer was subject to the tax on tangible personal property used or consumed in providing its service.

In July 2013, the Department issued PD 13-130 (07/05/2013), continuing the policy that satellite television programmers were service providers and subject to the Retail Sales and Use Tax on tangible personal property used and consumed in connection with the provision of the service, regardless of whether the equipment will be subsequently sold or leased to his customers. PD 13-130 also held that a subcontractor purchasing tangible personal property from an affiliate of the provider and installed the equipment for subscribers of the provider was not liable for the Retail Sales and Use Tax on his purchases.

Proposal

This bill would impose the Retail Sales and Use Tax on separately stated charges for equipment available for lease or purchase by a provider of satellite television programming to a customer of such programming. Such equipment sold to a provider of satellite television programming for subsequent lease or purchase would be deemed a sale for resale. The provider would then collect the tax from its customers and remit such tax on a monthly basis.

The effective date of this bill is not specified.

cc : Secretary of Finance

Date: 3/6/2014 AM
DLAS File Name: SB100FER161