DEPARTMENT OF TAXATION
2014 Fiscal Impact Statement

1. Patron Richard L. Saslaw

2. Bill Number SB 611

House of Origin:
_____ **Introduced**
_____ **Substitute**
_____ **Engrossed**

Second House:
_____ **In Committee**
_____ **Substitute**
__X__ **Enrolled**

3. Committee Passed House and Senate

4. Title Miscellaneous Taxes; Sales Suppression Devices and Software

5. Summary/Purpose:

This bill would prohibit and designate as a Class 1 misdemeanor the willful use of a device or software to falsify the electronic records of cash registers and other point-of-sale systems, or otherwise manipulate transaction records in order to affect any state or local tax liability. Violators of this bill would be subject to a $20,000 state civil penalty, a $20,000 local civil penalty, or both, depending upon whether the software or device is used to affect a state or local tax liability or both.

Under current law, retailers that make a false or fraudulent return with intent to evade the sales and use tax are guilty of a Class 1 misdemeanor, and subject to a maximum of one year in jail, a fine of not more than $2,500, or both. In addition, they are subject to a civil penalty of 50% of the tax assessed.

The effective date of this bill is not specified.

This is a Department of Taxation bill.

6. Budget amendment necessary: No.

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

8. Fiscal implications:

Administrative Costs Impact

The Department of Taxation ("the Department") considers implementation of this bill as "routine," and does not require additional funding.

Revenue Impact

To the extent that there are retailers in Virginia utilizing devices or other software that are found guilty and required to remit taxes, penalties, and other fees associated with the use of the device or software, this bill would increase General Fund and local revenues by an unknown amount. To date, there is little data regarding the use of sales suppression devices and software in the United States and the impact such use has had on state tax coffers. Further, because the offense would be a new one, there is no history available to enable the projection of how much revenue might be collected.

9. Specific agency or political subdivisions affected:

Department of Taxation
All localities

10. Technical amendment necessary: No.

11. Other comments:

Sales Suppression Devices

Tax fraud, through the use of automatic sales suppression devices is increasingly posing a threat to tax revenue, both in the United States, and in other countries, including Germany, Brazil, Canada, the Netherlands, and Sweden.

Retailers may utilize zappers to alter the records of their electronic cash records using software programs carried on memory sticks, removable compact discs, or through Internet links that falsify the electronic records of electronic cash registers and other point-of-sale systems. Some zappers may completely remove records of cash transactions, renumber remaining transactions, and generate a new control number for each transaction. Because they are physically kept apart from the systems they manipulate, zappers minimize risk of detection. Contrarily, phantom-ware is programming placed within a modern electronic cash register system that can be used to hide the skimming of cash sales. This feature reprograms electronic cash registers and point-of-sale systems so that selected types of cash transactions are not recorded. In either case, fraudulent retailers will collect the proper amount of sales tax, but report and remit a lesser amount to the state's revenue department to reflect the amount reported on their fraudulent till.

Given the difficulty of detecting zapper use and the fact that most state statutes criminalizing zapper use have only recently been enacted, there are only a few reported zapper cases in the United States.

Penalties for Tax Fraud and Statute of Limitations in Virginia

Under current law, retailers that: 1) fail or refuse to file a return, 2) make a false or fraudulent return with intent to evade the sales and use tax, 3) make a false or fraudulent claim for refund, or 4) give or knowingly receive a false or fraudulent exemption certificate are guilty of a Class 1 misdemeanor, and subject to a criminal penalty of one year in jail or a fine of not more than $2,500 or both. In addition, they are subject to a civil penalty of 50% of the tax assessed.

Generally, tax must be assessed within three years from the date on which the return should have been filed. For false or fraudulent returns with the intent to evade payment of any tax or failure to file a required return, the taxes may be assessed or a proceeding in court may be begun for the collection of the taxes at any time within six years from the last day on which the return would have been due.

Other States

In the last few years, several states have enacted legislation banning the possession, ownership, or transfer of automated sales suppression devices and imposing penalties upon violators, as provided in the chart below:

State	Punishment	Fine	Additional Information
California	1-3 years	Up to $10,000	Liable for taxes/penalties/interest
Connecticut	1-5 years	Up to $100,000	Liable for taxes/ penalties/interest; forfeits all profits.
Georgia	1-5 years	Up to $100,000	Liable for taxes/penalties/interest; forfeits all profits.
Illinois (effective 1/1/14)	2-5 years (Class 3 felony)	Class 3 felony	Class 3 felony
Indiana	2-8 years (Class C felony)		
Louisiana	Up to 5 years	Up to $5,000	N/A
Maine	-Up to 5 years for possession/purchase/ownership; (Class C crime). -364 days for manufacturer/seller/installer (Class D crime).		Amnesty period to reduce penalties for those who correct and fully report previously underreported amount.
Michigan	1-5 years	Up to $100,000	Liable for taxes/penalties/interest; forfeits all profits.
North Carolina	4-25 months (Class H felony)	Up to $10,000	Liable for taxes/fees/penalties/interest; forfeit all profits
North Dakota	-Up to 10 years (Class B felony (first offense) -Up to 20 years (Class A felony (second offense)	Up to $100,000 for second offense	Possession for legitimate use is a defense. Liable for taxes at double amount/penalties/interest; forfeits all profits
Oklahoma	1-5 years	Up to $100,000	Additional administrative fine of $10,000, deposited into the General Fund. Revocation of sales tax permit for period of ten years.
Tennessee	N/A	Up to $100,000	Possession for legitimate use is a defense. Protects confidentiality of persons who report violations in good faith.
Utah	-Up to 5 years (Third degree felony); -1-15 years (Second degree felony), second or subsequent offense	Up to twice the amount of the applicable taxes due.	Liable for taxes/penalties/interest; forfeits all profits.
Vermont	1-5 years	Up to $100,000	Liable for taxes/penalties/interest; forfeits all profits. Safe harbor for voluntary disclosure.
Washington	5 years (Class C felony)	Seller/designer—Greater of $10,000 or tax owed	Department of revenue may revoke purchaser business license and subject to five years of electronic monitoring.
West Virginia	5 years	$10,000 to $100,000	Liable for taxes/penalties/interest; forfeits all profits
Wyoming	Up to 3 years	Up to $5,000	N/A

Proposal

This bill would prohibit and designate as a Class 1 misdemeanor the willful use of a device or software to falsify the electronic records of cash registers and other point-of-sale systems, or otherwise manipulate transaction records so as to affect any state or local tax liability. As such, any person convicted of violating this provision would be subject to a maximum jail sentence of one year and a fine of not more than $2,500. Under the terms of the bill, the violator could be subject to a state and or local criminal penalty for use of the device or software to affect his state or local tax liability. This is in addition to any charges that may be imposed against the taxpayer under current law for making a false or fraudulent return with intent to evade the sales and use tax, which is also a Class 1 misdemeanor.

In addition to any criminal penalties imposed, to the extent that the violator utilizes the software or device to affect a state tax liability, the bill would impose a state civil penalty of $20,000, which would be assessed and collected by the Department of Taxation and deposited into the General Fund. Violators that utilize the zapper to affect a local tax liability would be subject to a $20,000 local civil penalty.

The effective date of this bill is not specified.

Similar Legislation

House Bill 829 is identical to this bill.

cc : Secretary of Finance

Date: 3/13/2014 KP
DLAS File Name: SB611FER161