

DEPARTMENT OF TAXATION

2015 Fiscal Impact Statement

1. **Patron** Janet D. Howell

3. **Committee** Senate Finance

4. **Title** Disclosure of Information; Department of Taxation

2. **Bill Number** SB 1010

House of Origin:

 X **Introduced**

 Substitute

 Engrossed

Second House:

 In Committee

 Substitute

 Enrolled

5. **Summary/Purpose:**

The Department understands that the patron plans to amend the bill. This impact statement addresses the bill as amended.

This bill would clarify the Department of Taxation's ("Department's") authority to disclose confidential taxpayer information in limited situations. The bill would authorize the Department to disclose i) whether a person is registered to collect the Retail Sales and Use Tax and to make available the names and registration numbers of such dealers, ii) tax information relating to sellers and purchasers of cigarettes or other tobacco products to any federal, state, or local agency, and iii) any tax information necessary to facilitate the repayment of gap financing to a developer or economic development authority working with a tourism project entitled to sales tax revenues to repay the debt. The bill would also clarify that the Department has the authority to disclose information to nongovernmental entities that have entered into contracts with the Department to provide services assisting in the administration of taxes and refunds.

Under current Virginia law, unless an exception applies, the Tax Commissioner or agent, clerk, commissioner of the revenue, treasurer, or any other state or local tax or revenue officer or employee, or any person to whom tax information is divulged pursuant to law, or any former officer or employee of any of the aforementioned offices may not divulge any information acquired by him in the performance of his duties with respect to the transactions, property, including personal property, income or business of any person, firm or corporation. It is also unlawful for any person to disseminate, publish, or cause to be published any confidential tax document which he knows or has reason to know is a confidential tax document.

The effective date of this bill is not specified.

This is a Department of Taxation bill.

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

7. **No Fiscal Impact.** (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

As this bill would allow the Department to work with businesses to validate the legitimacy of resale exemption certificates and to require payment of the Retail Sales and Use Tax if the exemption certificates are invalid, this bill would result in an increase of Retail Sales and Use Tax revenues. The Introduced Executive Budget assumes the increase of Retail Sales and Use Tax revenues of approximately \$1 million annually beginning in Fiscal Year 2016. As the Introduced Executive Budget assumes the fiscal impact of this bill, a budget amendment would be necessary if the bill is not enacted.

9. Specific agency or political subdivisions affected:

Department of Taxation

10. Technical amendment necessary: Yes.

In order to clarify that the Department has the authority to disclose information to nongovernmental entities that have entered into contracts with the Department, the Department suggests the following technical amendment:

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Insert: 3. This section shall not prohibit the Department from disclosing information to nongovernmental entities with which the Department has entered into a contract to provide services that assist it in the administration of refund processing or other services related to its administration of taxes.

11. Other comments:

Disclosure of Information

Unless an exception applies, the Tax Commissioner or agent, clerk, commissioner of the revenue, treasurer, or any other state or local tax or revenue officer or employee, or any person to whom tax information is divulged pursuant to law, or any former officer or employee of any of the aforementioned offices may not divulge any information acquired by him in the performance of his duties with respect to the transactions, property, including personal property, income or business of any person, firm or corporation. It is also unlawful for any person to disseminate, publish, or cause to be published any confidential tax document which he knows or has reason to know is a confidential tax document.

Retail Sales and Use Tax Exemption Certificates

Recently, there has been an increase in cigarette smuggling between Virginia localities and between Virginia and other states capitalizing on cigarette tax rate differences between the jurisdictions. One aspect of this criminal activity involves criminals registering to be Virginia Retail Sales and Use Tax dealers under false pretences or using invalid dealer registration numbers to complete dealer resale exemption certificates that they present to cigarette wholesalers to buy cigarettes exempt from the Retail Sales and Use Tax. This bill would authorize the Department to disclose to wholesalers whether they may accept resale exemption certificates from specific persons to prevent a loss of Retail Sales and Use Tax revenue.

Disclosure to Law Enforcement and Other Agencies

With the increase in cigarette trafficking, there has also been an increase in criminal investigations by law-enforcement regarding sellers and purchasers of cigarettes and tobacco products. Under current law, the Department must determine, on a case-by-case basis, whether information requested by law-enforcement officers may be disclosed without violating the disclosure laws. This bill would provide the Department with clear authority to provide information on sellers and purchasers of cigarettes and tobacco products so that it can more fully cooperate with law enforcement officers.

Tourism Zone Projects

Under Va. Code § 58.1-3851.1, developers of qualifying projects located in state certified tourism zones are entitled to a share of the sales tax revenue generated by their project in order to pay certain gap financing necessary to complete the project. A locality must first establish a tourism project in a tourism zone as determined by guidelines set forth by the Virginia Tourism Authority. The locality must direct local revenues equal to a 1% local sales tax on transactions taking place on the premises of an authorized tourism project to satisfy the gap financing on the project. If a locality dedicates such revenues, the project is also entitled to an amount equal to the revenues generated by a 1% state sales tax on transactions taking place on the premises of the tourism project. The owner must also pay an access fee equal to the revenues generated by a 1% state sales tax on transactions taking place on the premises of the tourism project. The state sales tax revenues are paid to the locality by the Comptroller and then, along with the local revenues and the access fee from the owner, paid to the Economic Development Authority for it to make payments of principal and interest on the gap financing.

This bill would authorize the Department to inform the developer and the local economic development authority of the amounts and timing of the state sales tax revenue entitlement in order to facilitate the payment of the gap financing.

Disclosure to Contracted Nongovernment Entities

This bill would clarify the Department's authority to disclose information to nongovernmental entities that have entered into contracts with the Department to provide services assisting in the administration of taxes and refunds. This would allow the

Department greater flexibility in utilizing contracted third parties, particularly with tax refund processes, and increase the Department's compliance efforts.

Proposal

This bill would clarify the Department of Taxation's ("Department's") authority to disclose confidential taxpayer information in limited situations. The bill would authorize the Department to disclose i) whether a person is registered to collect the Retail Sales and Use Tax and to make available the names and registration numbers of such dealers, ii) tax information relating to sellers and purchasers of cigarettes or other tobacco products to any federal, state, or local agency, and iii) any tax information necessary to facilitate the repayment of gap financing to a developer or economic development authority working with a tourism project entitled to sales tax revenues to repay the debt. The bill would also clarify that the Department has the authority to disclose information to nongovernmental entities that have entered into contracts with the Department to provide services assisting in the administration of taxes and refunds.

The effective date of this bill is not specified.

Similar Legislation

House Bill 2179 would authorize the disclosure of information produced pursuant to subpoenas issued by a grand juries as well as data furnished to a Data Clearinghouse concerning annual tobacco product sales by Nonparticipating Manufacturers as required by the Nonparticipating Manufacturers Adjustment Settlement Agreement.

cc : Secretary of Finance

Date: 1/19/2015 AM
DLAS File Name: SB1010F161