

DEPARTMENT OF TAXATION

2021 Fiscal Impact Statement

1. **Patron** Kathy J. Byron

3. **Committee** House Finance

4. **Title** Sales Tax; Exemption for Personal
Protective Equipment; Emergency

2. **Bill Number** HB 2185

House of Origin:

 X **Introduced**

 Substitute

 Engrossed

Second House:

 In Committee

 Substitute

 Enrolled

5. Summary/Purpose:

This bill would exempt temporarily from sales and use tax personal protective equipment (PPE) as defined in the bill. The exemption would be available to any business that has in place a COVID-19 safety protocol that complies with the Emergency Temporary Standard promulgated by the Virginia Department of Labor and Industry and that meets other criteria. The exemption would sunset one day after the first day following the expiration of the last executive order issued by the Governor related to the COVID-19 pandemic and the termination of the COVID-19 Emergency Temporary Standard and any permanent COVID-19 regulations adopted by the Virginia Safety and Health Codes Board.

This bill contains an emergency clause which states that it would be in force from its passage.

6. Budget amendment necessary: Yes

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

8. Fiscal implications:

Administrative Costs

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

Revenue Impact

This legislation would have an unknown negative impact on sales and use tax revenue beginning in Fiscal Year 2021. The impact is unknown due to uncertainty about the number of businesses that would use the exemption and the magnitude of their qualifying purchases. The majority of the negative impact would likely occur in Fiscal Year 2022. The impact would only extend beyond Fiscal Year 2022 if the emergency orders and rules related to COVID-19 remain in effect beyond July 1, 2022.

9. Specific agency or political subdivisions affected:

Department of Taxation

10. Technical amendment necessary: No

11. Other comments:

Background

The Retail Sales and Use Tax is imposed upon the charge for the sale or use of tangible personal property, unless an exemption applies. Virginia law defines “tangible personal property” as personal property that may be seen, weighed, measured, felt, or touched, or is in any other manner perceptible to the senses.

The Governor declared a state of emergency in the Commonwealth of Virginia in March 2020 related to the COVID-19 pandemic. In May 2020, the Governor issued an executive order requiring facial covering to be worn in public spaces. These orders have been amended numerous times. In July 2020, the Virginia Department of Labor and Industry's Safety and Health Codes Board approved the Emergency Temporary Standard for Infectious Disease Prevention: SARS-CoV-2 Virus. This standard was designed to establish requirements for employers to control, prevent, and mitigate the spread of SARS-CoV-2 to and among employees and employers.

The federal government has also issued guidance on the treatment PPE as it relates to businesses. PPE is generally considered a deductible business expense for income tax purposes if purchased by an employer for its employees. However, there may be situations where this deduction would not apply, depending on the nature of the work and use of the PPE.

Proposal

This bill would exempt temporarily from sales and use tax PPE, defined in the bill as:

- Disinfecting products approved for use against SARS-CoV-2 and COVID-19;
- Coveralls, full body suits, gowns, and vests;
- Engineering controls such as substitution, isolation, ventilation, and equipment modification to reduce exposure to SARS-CoV-2 and COVID-19 disease-related workplace hazards and job tasks; engineering controls also include UVC sanitation equipment, indoor air quality equipment such as ionization, HEPA filtration, and physical barriers;
- Face coverings, face shields, and filtering facepiece respirators;
- Gloves;
- Hand sanitizer;
- Hand-washing facilities;
- HVAC, testing, and physical modifications to comply with the American National Standards Institute (ANSI)/American Society of Heating, Refrigerating and Air-

Conditioning Engineers (ASHRAE) Standards 62.1 and 62.2 (ASHRAE 2019a, 2019b);

- Medical and nonmedical masks;
- Physical barriers and electronic sensors or systems designed to maintain or monitor physical distancing of employees from other employees, other persons, and the general public, including acrylic sneeze guards, permanent or temporary walls, electronic employee monitors, and proximity sensors in employee badges;
- Respiratory protection equipment;
- Safety glasses;
- Signs related to COVID-19;
- Temperature-checking devices and monitors; and
- Testing and related equipment related to COVID-19.

The exemption would be available to qualifying businesses, defined as “a business that has in place a COVID-19 safety protocol.”

The Department would be required to issue guidelines clarifying what equipment and training are tax exempt under this section before 30 days after the effective date of the bill.

Further, if the Department receives information that a business has made a tax-exempt purchase for PPE and used the purchase for other than business use, the Department must notify the business, and the business would be required to remit the tax due on the purchase to the Department, plus a penalty of 10 percent of the tax due, plus interest accruing from the date of purchase.

If the Department receives information that a business is not following its COVID-19 safety protocol, the Department would be required to notify the business that its qualification for the exemption provided by this section is revoked. Effective as of the date that the Department sends the notification, such business would not be permitted to claim any exemption under this section.

This bill contains an emergency clause which states that it would be in force from its passage.

Similar Bills

Senate Bill 1403 is identical to this bill.

cc : Secretary of Finance

Date: 1/17/2021 SK
HB2185F161