

DEPARTMENT OF TAXATION

2007 Fiscal Impact Statement

1. **Patron** Samuel A. Nixon, Jr.

3. **Committee** House Finance

4. **Title** Retail Sales and Use Tax; Exemption for
Property Used in the Care and Maintenance
of a Nonprofit Church

2. **Bill Number** HB 2724

House of Origin:

 X **Introduced**

 Substitute

 Engrossed

Second House:

 In Committee

 Substitute

 Enrolled

5. **Summary/Purpose:**

This bill would expand the Retail Sales and Use Tax exemption applicable to nonprofit churches that are exempt from taxation under § 501(c)(3) of the Internal Revenue Code to include tangible personal property used in the care or maintenance of any property owned by these churches. The exemption would include, but not be limited to, such items as mowing equipment and the fuels used in that equipment and building materials that are installed by the church rather than through a contract.

The effective date of this bill is not specified.

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

7. **Budget amendment necessary:** No.

8. **Fiscal implications:**

Administrative Costs

TAX 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. As stand-alone legislation, TAX considers implementation of this bill as "routine," and does not require additional funding.

TAX will provide specific administrative costs on any legislation that is not "routine." Additionally, TAX will review all state tax legislation likely to be enacted prior to the passage by each house. If the aggregate number of routine bills likely to pass either house is unusually large, it is possible that additional resources will be required. If so, TAX will identify the costs at that time.

Revenue Impact

This bill would result in a revenue loss, the magnitude of which is unknown. There is no available data that provides any description of the expenditure patterns of churches. Of

the 7,736 total churches in Virginia, 655 have been approved for the sales and use tax exemption authorized for nonprofit and charitable organizations under *Va. Code* § 58.1-609.11. These churches will not receive any additional benefit from this bill since the purchases exempted by this bill are already covered by *Va. Code* § 58.1-609.11. It is not known how many churches currently utilize the limited exemption authorized under *Va. Code* § 58.1-609.10.

9. Specific agency or political subdivisions affected:

TAX

10. Technical amendment necessary: No.

11. Other comments:

Current Law

Va. Code § 58.1-609.10 currently provides an exemption from sales and use tax for certain purchases made by nonprofit churches that are exempt under § 501(c)(3) of the Internal Revenue Code. Items of tangible personal property purchased for use in religious worship services or for use in any room of a church building that is used to carry out the work of the church can be purchased by a nonprofit church exempt from sales and use tax. Additionally, under this provision, items that are used in carrying out the work of the church, including baptisteries, bulletins, programs, newspapers and newsletters that do not contain paid advertising are covered by this exemption. This provision also exempts food, disposable serving items, cleaning supplies and teaching materials when these items are used in the operation of camps or conference centers by the church or an organization composed of churches that are exempt under this provision. An exemption is also available for recording and reproducing services. This exemption covers a nonprofit church's purchase of video recording equipment, microphones, cassette players, and similar items that are used for recording and reproducing services. In order to take advantage of this exemption, churches simply complete a Form ST-13A and present it to the vendor.

Exemption Options for Churches

Legislation enacted in the 2003 Virginia General Assembly (Acts of Assembly, Chapters 757 and 758) significantly altered the process by which nonprofit organizations can obtain Virginia retail sales and use tax exemptions. Effective July 1, 2004, all Internal Revenue Code (IRC) § 501(c)(3) and charitable § 501(c)(4) organizations can qualify for a sales tax exemption provided the criteria established by that legislation are met. The process is administered by the Department of Taxation.

In order to qualify for an exemption under the new process, a nonprofit entity must meet all of the applicable criteria:

- The entity is exempt from federal income taxation under IRC § 501(c)(3) or, if organized for a charitable purpose, is exempt under IRC § 501(c)(4). Alternatively,

the entity has annual gross receipts of less than \$5,000 and is organized for at least one of the purposes set forth in IRC § 501(c)(3) or (4).

- The entity is in compliance with all applicable state solicitation laws, and where applicable, provides appropriate verification of such compliance.
- The entity's annual general administrative costs, including salaries and fundraising relative to its annual gross revenue, under generally accepted accounting principles, is not greater than 40 percent.
- The entity must provide TAX with a copy of a full financial audit, if its gross annual revenues are equal to or exceed \$500,000. A nonprofit organization with gross annual sales ranging from \$250,000 to \$499,999 will be subject to "financial review" rather than a full financial audit, and must present documentation of that review to TAX.
- If the entity filed an IRS Form 990 or 990 EZ, it must provide a copy of such form to the Department. If the entity did not file an IRS Form 990 or 990 EZ, the entity must provide a list of the Board of Directors or other responsible agents of the entity, composed of at least two individuals and the location where the financial records of the entity are available for public inspection.

With this new process in place, churches have two options for obtaining retail sales and use tax exemptions. Churches may continue to use their self-issued exemption certificate to which they are entitled under *Va. Code* § 58.1-609.10. This option will grant them a limited exemption that will not include tangible personal property purchased by churches and used in the care and maintenance of property owned by the church, or building materials installed by the church and for which the church does not contract with a person or entity to have installed. Alternatively, churches can apply for a new exemption under the new process, which would entitle them to an unlimited exemption, provided they satisfy the criteria set forth above.

Proposal

This bill would allow those churches that choose to utilize the more limited exemption to purchase tangible personal property used in caring for or maintaining property owned by the church and building materials installed by the church exempt from the Retail Sales and Use Tax. That same property, however, could be purchased exempt under current law by utilizing the new process available to nonprofit entities.

cc : Secretary of Finance

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