

DEPARTMENT OF TAXATION

2009 Fiscal Impact Statement

1. **Patron** Onzlee Ware

3. **Committee** House Finance

4. **Title** Digital Media Fee; Imposition

2. **Bill Number** HB 2609

House of Origin:

 X **Introduced**

 Substitute

 Engrossed

Second House:

 In Committee

 Substitute

 Enrolled

5. **Summary/Purpose:**

This bill would impose a Digital Media Fee on the in-room rental or purchase of digital media equal to 10 percent of the price of the digital media. The fee would be imposed in facilities offering guest rooms rented out for continuous occupancy for fewer than 30 days, such as hotels and motels. The fee would be administered by the Department of Taxation in the same manner as the Retail Sales and Use Tax.

The effective date of this bill is not specified.

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

6a. **Expenditure Impact:**

<i>Fiscal Year</i>	<i>Dollars</i>	<i>Fund</i>
2008-09	\$322,700	NGF
2009-10	\$41,000	NGF
2010-11	\$26,600	NGF
2011-12	\$26,700	NGF
2012-13	\$27,800	NGF
2013-14	\$28,900	NGF
2014-15	\$29,000	NGF

7. **Budget amendment necessary:** Yes.

Item(s): Page 1, Revenue Estimates
270, Department of Taxation

This bill would allow TAX to recover its direct costs of administering the new digital media fee. TAX recommends that the language set forth below be inserted into Item 270 to appropriate such revenues to TAX:

I. The Department of Taxation is hereby appropriated revenues from the digital media fee imposed pursuant to § 58.1-1731, *Code of Virginia*, to recover the direct cost of administration incurred by the department in implementing and collecting such fee.

8. Fiscal implications:

Administrative Costs

TAX would incur administrative costs in implementing this bill of \$322,700 in Fiscal Year 2009, \$41,000 in Fiscal Year 2010, \$26,600 in Fiscal Year 2011, \$26,700 in Fiscal Year 2012, \$27,800 in Fiscal Year 2013, \$28,900 in Fiscal Year 2014, and \$29,000 in Fiscal Year 2015. The administrative costs would include costs to update Sales and Use Tax Forms, capture additional data, make systems changes, as well as error resolution costs associated with the form changes, and additional processing costs. The bill provides that the administrative costs would be subtracted from the revenues generated by the new fee.

Revenue Impact

The proposed fee would produce an unknown amount of revenue equally shared by the General Fund and the new Film Incentive Programs Fund. TAX is unable to locate any data regarding the amounts currently spent on services subject to the tax.

9. Specific agency or political subdivisions affected:

Department of Taxation
Virginia Film Office

10. Technical amendment necessary: Yes.

If the intent of this bill is to impose the fee on the in-room rental and purchase of movies, games and other audio-visual works received through televisions in accommodations that are subject to the Retail Sales and Use Tax, the following technical amendments are suggested:

Page 1, Line 18, after than
Strike: 30
Insert: 90

Page 1, Line 18, after days.

Insert: As used in this section, "digital media" means any audio-visual work received through the in-room television for a separate charge, including, but not limited to, any motion picture, television or audio programming, or game, regardless if it is transmitted in an analog or digital format. "Digital media" does not include internet access or telephone service.

11. Other comments:

Retail Sales and Use Tax

Currently, the Retail Sales and Use Tax applies to the sale or charge for any room or rooms, lodgings or accommodations furnished to transients by any hotel, motel, inn, tourist camp, tourist cabin, camping grounds, club, or other similar place. The tax, however, does not apply to rooms supplied to a guest for 90 or more days. Any additional

charges made in connection with the rental of a room or other lodging or accommodations are deemed to be a part of the charge for the room and are subject to the Retail Sales and Use Tax. For example, additional charges for movies, local telephone calls and similar services are subject to the Retail Sales and Use Tax.

Transient Occupancy Tax

Under current law, any county may impose a Transient Occupancy Tax on hotels, motels, boarding houses, travel campgrounds, and other facilities offering guest rooms. The tax, however, does not apply to rooms rented by the same individual or group for 30 or more continuous days. Any city or town having general taxing powers established by charter may also impose an excise tax on transient room rentals. The excise tax on transient room rentals does not have the limitations on the stay duration that apply to the county transient occupancy taxes. Many localities have adopted the Retail Sales and Use Tax rules on accommodations in order to determine which charges are taxable.

Communications Sales and Use Tax

Effective January 1, 2007, 2006 House Bill 568 (*Acts of Assembly 2006*, Chapter 780) replaced many of the state and local communications taxes and fees with the Communications Sales and Use Tax. Although communications services purchased by and billed to transients by any facility in which rooms, lodging, space, or accommodations are regularly furnished to transients for a consideration are not subject to the Communications Sales and Use Tax, purchases of communications services by the facility are subject to the Communications Sales and Use Tax. The cost of the tax is generally passed onto guests as a surcharge or in the form of higher rates, both of which are subject to the Retail Sales and Use Tax and the local Transient Occupancy Tax.

Proposal

This bill would impose a Digital Media fee on the in-room rental or purchase of digital media equal to 10 percent of the price of the digital media. The fee would be imposed in facilities offering guest rooms rented out for continuous occupancy for fewer than 30 days, such as hotels and motels.

The fee would be administered by the Department of Taxation in the same manner as the Retail Sales and Use Tax. After the administrative costs are subtracted, the 50 percent of the revenues generated from the fee would be deposited into the General Fund, and the other 50 percent of the revenues would be deposited into the new Film Incentive Programs Fund.

The revenues deposited into the new Film Incentive Programs Fund would be used for film incentive programs established by the Virginia Film Office.

As the Retail Sales and Use Tax is imposed on all accommodations provided for less than 90 days and the proposed fee is only imposed on accommodations provided for less than 30 days, TAX is proposing a technical amendment to clarify that the new fee is only imposed on purchases and rentals of digital media in accommodations that are also subject to the Retail Sales and Use Tax.

TAX is also proposing a technical amendment to clarify that “digital media” means any audio-visual work received through the in-room television for a separate charge, including, but not limited to, any motion picture, television or audio programming, or game, regardless if it is transmitted in an analog or digital format. “Digital media” does not include internet access or telephone service.

The effective date of this bill is not specified.

Similar Legislation

Senate Bill 1421 is identical to this bill.

cc : Secretary of Finance

Date: 1/27/2009 AM
DLAS File Name: HB2609F161