

DEPARTMENT OF TAXATION

2010 Fiscal Impact Statement

1. **Patron** David L. Englin

3. **Committee** House Finance

4. **Title** State Tax Expenditure Report

2. **Bill Number** HB 355

House of Origin:

 X **Introduced**

 Substitute

 Engrossed

Second House:

 In Committee

 Substitute

 Enrolled

5. **Summary/Purpose:**

This bill would direct the Tax Commissioner to issue an annual report to the General Assembly on state tax expenditures, including, but not limited to, tax exemptions, deductions, exclusions, deferrals, credits, or preferential rates for all taxes collected by TAX. The report would include the most recent cost to the Commonwealth of each expenditure and an estimate of its future cost, a description and the legal citation for each expenditure, information on the taxpayers who benefit from the tax expenditure, an evaluation of the extent to which the purpose of the tax expenditure has been accomplished, and an analysis of the distribution of benefits either by income level or size or type of business. TAX would be required to submit the report to the General Assembly and post it on the Internet by December 1 of each calendar year.

Under current law, the state Tax Commissioner is directed to provide an annual Sales and Use Tax Expenditure Study on the miscellaneous and nonprofit sales tax exemptions and an annual Corporate Income Tax Relief Report.

The effective date of this bill is not specified.

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

6a. **Expenditure Impact:**

<i>Fiscal Year</i>	<i>Dollars</i>	<i>Positions</i>	<i>Fund</i>
2009-10	\$0	0	GF
2010-11	\$365,000	5	GF
2011-12	\$334,800	5	GF
2012-13	\$344,800	5	GF
2013-14	\$355,100	5	GF
2014-15	\$365,800	5	GF
2015-16	\$376,800	5	GF

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

ITEM(S): 261, Department of Taxation

8. Fiscal implications:

Administrative Costs

The tracking, compiling and analyzing of the cost of all the tax expenditures for taxes administered by TAX would require TAX to greatly expand the number and types of tax expenditures that it studies. In order to undertake a study of this magnitude, TAX would need an additional three economists to develop source data, research the data, make adjustments for Virginia, develop revenue estimates, and analyze the distribution of benefits by income level or size or type of business. Two additional policy analysts would be needed to identify, cite, and explain each state tax expenditure, provide information on the taxpayers who benefit from the tax expenditure, evaluate the extent to which the purpose of the tax expenditure has been accomplished, conduct comparative studies with other states, and research national trends with respect to each expenditure. It is estimated that this proposal would require \$325,000 annually in salaries and benefits, as well as a one time expenditure of \$40,000 to build out and furnish two additional offices.

TAX would incur administrative costs of \$365,000 in Fiscal Year 2011, \$334,800 in Fiscal Year 2012, \$344,800 in Fiscal Year 2013, \$355,100 in Fiscal Year 2014, \$365,800 in Fiscal Year 2015, and \$376,800 in Fiscal Year 2016.

Revenue Impact

This bill would have no impact on state or local revenues.

9. Specific agency or political subdivisions affected:

TAX

10. Technical amendment necessary: No.

11. Other comments:

Sales and Use Tax Expenditure Study

The 1989 General Assembly passed legislation that required TAX to study all sales and use tax exemptions on a continuous five-year cycle, studying two categories of exemptions each year. TAX was required to publish the Sales and Use Tax Expenditure Study and present it to the Chairmen of the House and Senate Finance Committees in December of each year. The goal of the Sales and Use Tax Expenditure Study was to provide a more complete picture of the revenue impact and policy issues surrounding each of the exemptions contained in the Retail Sales and Use Tax Act. The study included detailed information on the policy, fiscal, and economic impact of the exemptions as well as the apparent rationale for the exemptions and their legislative history. It was believed that the periodic review of sales and use tax exemptions was necessary in order to strengthen oversight and control over the process by which sales tax exemptions are granted. The study focused on an analysis of the following eight criteria:

- An estimate of the state and local revenues foregone as a direct result of the exemption;
- Beneficiaries of the exemption;
- Direct or indirect local, state or federal government assistance received by the person seeking exemption;
- The extent to which the person, property, service or industry is exempt from the Retail Sales and Use Tax in other states;
- Any external statutory, constitutional, or judicial mandates in favor of the exemption;
- Other state taxes to which the person, property, service or industry is subject;
- Similar taxpayers who are not entitled to a Retail Sales and Use Tax exemption; and
- Other criteria, facts or circumstances relevant to the request for exemption.

In order to complete the study, it was necessary for TAX to employ additional economists and analysts. As years passed, the number of exemptions continued to increase. By 1996, there were more than 80 new exemptions added since the study was initially published in December, 1989. TAX was also assigned the task of analyzing potential sales tax exemption legislation, as a result of the 1994 study by the Joint Subcommittee of the Senate and House Finance Committees to Develop Criteria Evaluation Sales and Use Tax Exemption Requests (SJR 249, 1993 General Assembly). This placed additional responsibility with TAX for analysis of these exemptions. The analysis used identical criteria to those used in conducting the Sales and Use Tax Expenditure Study, thereby duplicating work done when the exemption was first requested.

TAX published its last study in December 1995. The 1996 General Assembly repealed the requirement that TAX conduct the study, which allowed the analysts and economists responsible for this study to focus on more critical tasks, including resolution of taxpayer appeals, requests for rulings, regulation review, and analysis of fiscal impacts of potential tax legislation.

A similar study requirement was reinstated by the 2005 General Assembly. TAX is now required to annually analyze the fiscal, economic, and policy impact of each miscellaneous and nonprofit sales tax exemption over a five-year period and report the findings to the House and Senate Finance Committees by December 1 of each year, as set forth below:

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| • Domestic consumption of heating fuels | <i>Code of Va. § 58.1-609.10(1)</i> |
| • Occasional sales | <i>Code of Va. § 58.1-609.10(2)</i> |
| • Purchases for taxable lease | <i>Code of Va. § 58.1-609.10(3)</i> |
| • Delivery of property outside VA | <i>Code of Va. § 58.1-609.10(4)</i> |
| • Food stamp and WIC purchases | <i>Code of Va. § 58.1-609.10(5)</i> |
| • Property purchased for maintenance of nuclear power plants outside VA | <i>Code of Va. § 58.1-609.10(6)</i> |
| • School lunches and textbooks | <i>Code of Va. § 58.1-609.10(8)</i> |
| • Medicines and drugs | <i>Code of Va. § 58.1-609.10(9)</i> |
| • Durable medical equipment | <i>Code of Va. § 58.1-609.10(10)</i> |
| • Dialysis drugs and supplies | <i>Code of Va. § 58.1-609.10(11)</i> |

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| • Motor vehicle equipment for handicapped persons | <i>Code of Va. § 58.1-609.10(12)</i> |
| • Communication equipment for handicapped persons | <i>Code of Va. § 58.1-609.10(13)</i> |
| • Nonprescription drugs/samples | <i>Code of Va. § 58.1-609.10(14)</i> |
| • Donations withdrawn from Inventory | <i>Code of Va. § 58.1-609.10(15)</i> |
| • Nonprofit churches | <i>Code of Va. § 58.1-609.10(16)</i> |
| • Medical products/supplies purchased by Medicaid recipients | <i>Code of Va. § 58.1-609.10(17)</i> |
| • Nonprofit entities | <i>Code of Va. § 58.1-609.11</i> |

Corporate Income Tax Relief Report

Senate Bill 867 (*Acts of Assembly 2005*, Chapter 216) directed the Tax Commissioner to issue an annual report detailing the amount of income tax relief granted to corporations in the Commonwealth. The report must include the total dollar amount of income tax subtractions, deductions, exclusions, exemptions and credits claimed cumulatively by corporations. The Tax Commissioner is required to issue the report on an annual basis to the members of the House Appropriations Committee, the House Finance Committee and the Senate Finance Committee. The report does not reflect all of the exemptions and exclusions available to corporations because not all of them are reported on the Virginia income tax return. Neither does the report provide any information concerning expenditures for tax exemptions, deductions, exclusions, deferrals, credits or preferential rates.

Taxes Administered by TAX

TAX currently administers the following taxes and fees:

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| • Corporation Income Tax | • Watercraft Sales and Use Tax |
| • Employer Income Tax Withholding | • Bank Franchise Tax |
| • Fiduciary Income Tax | • Cigarette Tax |
| • Individual Estimated Income Tax | • Tobacco Products Tax |
| • Individual Income Tax | • Apple Excise Tax |
| • Estate Tax | • Corn Assessment |
| • Probate Tax | • Cotton Assessment |
| • Recordation Tax | • Egg Excise Tax |
| • Aircraft Sales and Use Tax | • Forest Products Tax |
| • Communications Sales and Use Tax | • Litter Tax |
| • Consumer's Use Tax | • Peanut Excise Tax |
| • Motor Vehicle Fuel Sales Tax | • Rolling Stock Tax |
| • Retail Sales Tax | • Sheep Assessment |
| • Use Tax | • Small Grains Assessment |
| • Vending Machine Sales Tax | • Soft Drink Excise Tax |
| | • Soybean Assessment |

- Tire Recycling Fee
- Writ Taxes

Proposal

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cc : Secretary of Finance

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