

DEPARTMENT OF TAXATION

2011 Fiscal Impact Statement

1. **Patron** R. Steven Landes

2. **Bill Number** HB 1524

3. **Committee** Senate Finance

House of Origin:

☐ Introduced

☐ Substitute

☐ Engrossed

4. **Title** Retail Sales and Use Tax; Contractors
Installing Security Systems

Second House:

☒ In Committee

☐ Substitute

☐ Enrolled

5. **Summary/Purpose:**

This bill would treat any business primarily engaged in the furnishing and installation of tangible personal property that provides electronic or physical security on real property used by financial institutions, as a retailer of such property for the purpose of the Retail Sales and Use Tax. As a retailer, the business would be required to collect the tax from purchasers, rather than the business paying the tax on its purchase of the materials.

Under current law, sellers and installers of tangible personal property, that becomes real property after installation, are generally treated as contractors. As such, these businesses pay tax on their purchases of tangible personal property because they are deemed to be purchases for the ultimate consumer.

The effective date of this bill is not specified.

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

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

8. **Fiscal implications:**

Administrative Costs Impact

TAX would incur no administrative costs in implementing this bill.

Revenue Impact

The impact of this bill is expected to be minimal. The amount or number of transactions affected by the change will be very small.

9. **Specific agency or political subdivisions affected:**

Department of Taxation

10. Technical amendment necessary: No.

11. Other comments:

Generally

Virginia law generally treats sellers and installers of tangible personal property that becomes real property after installation as contractors. As such, purchases of tangible personal property made by such contractors are deemed purchases for the ultimate consumer. The law makes an exception for retailers who sell and install certain specified items, including fences, venetian blinds, window shades, awnings, storm windows and doors, floor coverings, cabinets, countertops, kitchen equipment, window air conditioning units, or other like or comparable items. Provided these individuals maintain a retail or wholesale place of business and an inventory of the items set forth above, and provided they perform installation as part of or incidental to the sale of the items set forth above, they are deemed retailers, and are authorized to collect Retail Sales and Use Tax from their customers on the sale of these items. Separately stated installation charges are exempt from the tax. If a person does not meet all three requirements of a retailer, as set forth above, he will be deemed a contractor and must pay the sales tax on such items at the time of purchase or accrue use tax, even if he is making sales of fences, venetian blinds, or any of the items separately identified above. This policy applies whether the seller and installer is also a fabricator of the tangible personal property items listed above.

While retailers are generally treated differently from contractors with respect to the Retail Sales and Use Tax, both retailers and contractors are deemed the users or consumers of supplies used in installing tangible personal property that becomes real property after installation. Therefore, retailers and contractors must pay tax on their purchases of tacks, stripping, glue, cement, and other supplies they purchase.

Under current law, contractors engaged in the business of furnishing and installing locks and locking devices are also treated as retailers.

Banking Equipment

Under current law, the taxability of banking equipment that is furnished and installed by a contractor depends upon whether the equipment in question remains tangible personal property or becomes a part of the real estate. In determining when tangible personal property becomes a part of realty, the Virginia Supreme Court held in *Transcontinental Gas Pipe Line Corporation v. Prince William County*, 210 Va. 550 (1970) and *Danville Holding Corp. v. Clement*, 178 Va. 223, 16 S.E.2d 345, (1941), that a three-part test must be applied that considers: 1) whether the tangible personal property is annexed to the realty; 2) whether the tangible personal property is adapted to the use or purpose to which that part of the realty with which the property is connected is appropriated; and 3) the intention of the parties making the annexation. The intention of the party making the annexation is the chief test to be considered. If the equipment in question becomes a part of the real estate according to this test, the law will generally treat the person installing such property as a contractor for purposes of the Retail Sales and Use Tax.

TAX has ruled and held that based upon the test set forth by the courts, any person in Virginia who installs tangible personal property which becomes permanently affixed to real estate would be considered a contractor with respect to real estate. Items that are installed in a manner as to be removed without damage to the realty or to the items installed are not intended to be permanent.

Proposal

This bill would treat any business primarily engaged in the furnishing and installation of tangible personal property that provides electronic or physical security on real property used by financial institutions as a retailer of such property for the purpose of the Retail Sales and Use Tax. As a retailer, the business would be required to collect the tax from purchasers of the tangible personal property providing security, rather than the business paying the tax on its purchase of the materials, even in situations in which such property is installed on real estate that is not for the use of a financial institution.

Therefore, under this proposal, qualifying contractors would treat themselves as retailers, giving their suppliers a resale exemption certificate (Form ST-10) when making purchases of such items as vaults, safe deposit boxes, vault lockers, electronic security systems, digital video systems, card access systems, and similar equipment.

The effective date of this bill is not specified.

cc : Secretary of Finance

Date: 2/10/2011 KP
DLAS File Name: HB1524FE161.doc