

DEPARTMENT OF TAXATION

2011 Fiscal Impact Statement

1. **Patron** Albert C. Pollard, Jr.

2. **Bill Number** HB 1942

House of Origin:

☐ **Introduced**

☐ **Substitute**

☐ **Engrossed**

3. **Committee** Senate Finance

4. **Title** Retail Sales and Use Tax; Litter Tax;
Exemption for Agricultural Produce and
Producers

Second House:

☒ **In Committee**

☐ **Substitute**

☐ **Enrolled**

5. **Summary/Purpose:**

This bill would provide an exemption from the Retail Sales and Use Tax for agricultural produce and eggs when such items are raised and sold by an individual at retail in local farmers markets and at roadside stands, provided that the annual sales by the agricultural producer do not exceed \$1,000. The bill would also exempt from the litter tax individuals who raise and sell agricultural produce in local farmers markets and at roadside stands and individuals who sell eggs in local farmers markets or at roadside stands, and whose annual income from such sales does not exceed \$1,000, provided that the container the producer provides to hold purchased items has been previously used.

Under current law, an agricultural producer regularly engaged in selling tangible personal property at retail must register as a dealer and collect and remit the tax due on retail sales. The tax applies to regular or recurring sales of farm products by farmers or peddlers at a public market, roadside stand, farm, or any other place.

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

TAX considers implementation of this bill as routine and does not require additional funding.

Revenue Impact

This bill would result in a revenue loss, the magnitude of which is unknown. Assuming a 2.5% reduced sales tax rate applicable to food for home consumption, at most, the exemption would result in a decrease in Retail Sales and Use Tax revenue of \$25.00

annually per vendor for each agricultural and egg producer who qualifies for the exemption. TAX does not have sufficient data regarding vendor sales and the number of current state agricultural produce vendors. There are 193 farmers markets in Virginia; however, vendor attendance varies by size, season, and special events. Larger farmers markets may host as many as 20 agricultural produce vendors in the peak seasons, while smaller vendors host approximately 5 to 8 agricultural produce vendors. There is no reliable data for roadside stand agricultural vendor participation. It is also impossible to predict the number of agricultural producers who will provide used containers to hold purchased items, pursuant to the litter tax exemption.

9. Specific agency or political subdivisions affected:

TAX

10. Technical amendment necessary: No.

11. Other comments:

Retail Sales and Use Tax for Farmers

Virginia law currently provides an exemption from the Retail Sales and Use Tax for certain agricultural products, including but not limited to commercial feeds, seeds, plants, fertilizers, breeding and other livestock, agricultural chemicals, fuel for drying or curing crops, containers for fruit and vegetables, farm machinery, certain tangible personal property that will be affixed to real property owned or leased by a farmer, and agricultural supplies, provided they are sold to and purchased by farmers for use in agricultural production.

The Retail Sales and Use Tax generally applies to regular or recurring sales of farm products by farmers or peddlers or at a public market, roadside stand, farm, or any other place. Wholesale sales, including those made by farmers are exempt. A farmer regularly engaged in selling tangible personal property at retail must register as a dealer and collect and remit the Retail Sales and Use Tax due on retail sales, just like any other retailer.

The Retail Sales and Use Tax is imposed at a reduced rate of 2 ½% for food purchased for home consumption. Generally, this term includes most staple grocery food items and cold prepared foods packaged for home distribution. Farmers markets, supermarkets, and specialty meat and produce stores are among the list of retailers that are generally authorized to charge the reduced sales tax rate on sales of eligible food and beverages.

Taxes Imposed on Eggs

The retail sale of eggs is subject to the Retail Sales and Use Tax in Virginia. Because eggs constitute food purchased for home consumption, like agricultural produce, they are generally subject to tax at the reduced rate of 2 ½%.

Virginia imposes an excise tax on eggs purchased or sold for use or consumption in Virginia. The excise tax is imposed at a rate of 5 cents per 30-dozen case, or, if the eggs

are purchased or sold in other than shell form, 11 cents per 100 pounds of liquid eggs or liquid equivalent. The excise tax is levied only once.

Litter Tax

The Virginia Litter Tax is imposed annually on manufacturers, wholesalers, distributors, and retailers of certain products, including "groceries", at a rate of \$10 per establishment from which business is conducted. An additional litter tax of \$15 per establishment is imposed on manufacturers, wholesalers, distributors, and retailers of groceries, soft drinks, carbonated waters, beer, and other malt beverages. TAX has interpreted groceries to include produce and dairy products.

While a farmer is generally not considered to be a manufacturer, wholesaler, distributor, or retailer, he is considered a retailer if he is selling the farm products to the ultimate consumer. Thus, he will be subject to both the \$10 and \$15 annual liter tax per establishment.

The litter tax and return are due on May 1 of each year. Virginia imposes a penalty equal to 100% of the tax assessed if the litter tax is paid late.

Proposal

This bill would provide an exemption from the Retail Sales and Use Tax for agricultural produce and eggs when such items are raised and sold by an individual at retail in local farmers markets and at roadside stands, provided that the annual sales by the agricultural producer do not exceed \$1,000. Agricultural produce sold by large commercial retail sellers would continue to be subject to the Retail Sales and Use Tax. Similarly, produce sold by wholesalers would be exempt from the tax as tangible personal property sold for resale.

Under the terms of this bill, as a dealer in the Commonwealth, agricultural producers whose annual income from sales of agricultural produce and eggs do not exceed \$1,000 would still need to register to collect the Retail Sales and Use Tax, but would not be required to collect or remit taxes on the sale of items, until such time as their annual sales exceed \$1,000. Agricultural producers with retail sales in excess of \$1,000 would be required to collect and remit tax on all taxable sales of agricultural produce, including the first \$1,000 in sales.

The exemption available for eggs would be subject to the limitation that the eggs be sold by producers who sell a total of 150 dozen eggs or less per week produced by their own hens, or who purchase a maximum of 60 dozen eggs per week for sale. Additionally, the eggs would need to be of edible quality. Purchasers of qualifying eggs would still be subject to Virginia's Egg Excise Tax.

The bill would also exempt from the litter tax individuals who raise and sell agricultural produce in local farmers markets and at roadside stands and individuals who sell eggs in local farmers markets or at roadside stands, and whose annual income from such sales does not exceed \$1,000, provided that the container the producer provides to hold purchased items has been previously used.

The effective date of this bill is not specified.

cc : Secretary of Finance

Date: 2/10/2011 KP
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