

DEPARTMENT OF TAXATION

2011 Fiscal Impact Statement

1. **Patron** J. Chapman Petersen

2. **Bill Number** SB 1226

3. **Committee** House Finance

House of Origin:

☐ Introduced

☐ Substitute

☐ Engrossed

4. **Title** Retail Sales and Use Tax; Registration with
Local Commissioners of the Revenue

Second House:

☒ In Committee

☐ Substitute

☐ Enrolled

5. **Summary/Purpose:**

This bill would give dealers seeking to register for the general Retail Sales and Use Tax and out-of-state contractors that are subject to the special use tax in Virginia the option of registering with the local commissioner of the revenue, rather than registering with the Tax Commissioner, and would give local commissioners the authority to issue certificates of registration.

In addition, this bill would give local commissioners of the revenue, like the Tax Commissioner, the authority to examine taxpayer records beyond the normal three-year limitations period if there is reasonable evidence of fraud or reasonable cause to believe that the person failed to file a return.

Finally, the bill would require local commissioners in localities that impose local license fees and taxes to verify that every taxpayer seeking a local business license who is subject to the state licensing requirements has satisfied the requirements and obtained a state license.

Under current law, only the Tax Commissioner has the authority to examine a company's books and records for purposes of administering the Retail Sales and Use Tax. This bill would result in businesses being audited by both TAX and localities, but only TAX would be authorized to issue assessments for additional tax, penalties, and interest.

The effective date of this bill is not specified.

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

7. **No Fiscal Impact** (See Line 8.).

8. Fiscal implications:

Administrative Costs Impact

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

Revenue Impact

This bill is expected to have no impact on revenue generated from the Retail Sales and Use Tax. To the extent that local commissioners discover that use taxes have been distributed to the wrong locality, correcting such errors would result in a shift of revenue between localities, rather than an increase in total revenue generated by the Retail Sales and Use Tax.

9. Specific agency or political subdivisions affected:

All localities

TAX

Department of Professional and Occupational Regulation

10. Technical amendment necessary: No.

11. Other comments:

Current Law

Special Construction Equipment Use Tax

Under current law, a special state use tax is imposed on the storage or use of all motor vehicles, machinery, tools or other equipment brought into Virginia for use in construction contracts. The special use tax does not apply to articles purchased in a state that does not impose a similar tax upon Virginia contractors. Before such property is brought into Virginia, the owner or lessee of the property must register with the Tax Commissioner, and must subsequently file quarterly reports and remit any taxes due.

Retail Sales and Use Tax

Individuals who wish to conduct business as dealers subject to the general Retail Sales and Use Tax in Virginia must file an application with the Tax Commissioner for a certificate of registration for each place of business he or she will operate in Virginia. Engaging in business as a dealer in Virginia without obtaining a certificate of registration, or after a certificate of registration has been suspended or revoked is a Class 2 misdemeanor.

The applications set forth the name of the business, the location of the place or places of business, and any other information the Tax Commissioner deems necessary. Once the application process is completed, the Tax Commissioner issues to each applicant a separate certificate of registration for each place of business in Virginia. Under current

law, the Tax Commissioner is authorized to revoke and suspend any one or more of the certificates of registration, if the taxpayer fails to comply with the application requirements, provided a hearing is held, and the Tax Commissioner has provided proper notice to the registrant, as provided by law.

A holder of a certificate of registration that wishes to change locations for his business or ceases to conduct business at the place specified in his certificate must inform the Tax Commissioner in writing 30 days after he has ceased to conduct such business.

TAX's registration process is available on the Internet at TAX's website. Using this process, a business is able to register for all taxes administered by TAX and a separate certificate of registration is issued for each business location.

Audit Authority

Under current law, the Tax Commissioner must assess Retail Sales and Use Tax within three years of the date on which the tax becomes due, unless there is a false or fraudulent return with intent to evade payment, or a failure to file a return, in which case, the Tax Commissioner has six years from the due date to make an assessment. The law prohibits the Tax Commissioner from examining any person's records beyond the three year period of limitations unless he has reasonable evidence of fraud or reasonable cause to believe that the person was required by law to file a return and failed to do so.

BPOL Tax

The Business, Professional and Occupational License (BPOL) tax is a tax on businesses for the privilege of engaging in business at a definite place of business within a Virginia locality. The measure or basis of the BPOL tax generally is the gross receipts of the business. The BPOL tax is a tax on gross receipts, not net income.

If a locality levies a license fee or tax on businesses, it is illegal to engage in that business without first obtaining the required license. However, any person that engages in a business without obtaining the proper local license will still be required to remit BPOL taxes.

Proposal

Registration

This bill would give dealers seeking to register for the general Retail Sales and Use Tax and out-of-state contractors that are subject to the special use tax in Virginia the option of registering with the local commissioner of the revenue, rather than registering with the Tax Commissioner, and would give local commissioners the authority to issue certificates of registration.

Under the terms of this bill, the local commissioner of the revenue would need to implement procedures to ensure that the applications he receives contain substantially the same information as, and is substantially similar to the applications required by the Tax Commissioner.

The bill would authorize the local commissioner of the revenue to issue the applicable certificate of registration to the taxpayer, for the business that is located in the commissioner of the revenue's county, city, or town. A taxpayer with locations in more than one locality would need to visit each locality's commissioner of the revenue to register his business in that locality. The bill would also allow the Tax Commissioner to revoke and suspend certificates of registration issued by the local commissioner of the revenue, as well as those issued by TAX.

Under the terms of the bill, once the registrant obtains his certificate(s) of registration, if he wishes to change locations for his business, he would be permitted to complete the process for changing business locations with the local commissioner of the revenue, who would be authorized to issue a revised certificate of registration. The local commissioner would be authorized to revise only those certificates of registration that his office has issued. The commissioner of the revenue would need to provide the Tax Commissioner with a copy of the revised certificate of registration or any writing by the registrant giving notice that the business is ceasing operation.

When a business registers with TAX, it is able to register for all taxes administered by TAX. Under this bill, the business would be able to register for the Special Construction Equipment Use Tax and Retail Sales and Use Tax in each locality in which it operates separately. For businesses that are liable for other taxes or have locations in more than one locality, it would still be necessary to register with TAX.

It is possible that having a separate registration process administered by local commissioners of the revenue, only applicable for a particular locality, with different requirements may lead to confusion by businesses. In addition, it will be necessary for TAX and local commissioners of the revenue to create processes to ensure that the registration system operated by the locality and by TAX contain the same data.

Currently, commissioners of the revenue have access into TAX's systems, which allows them to view data they need to determine if a business is registered in the proper locality.

Audit Authority

This bill would authorize the local commissioner to examine taxpayer records beyond the normal three year limitations period if the commissioner has reasonable evidence of fraud or reasonable cause to believe that the person failed to file a return. The local commissioner would be required to report the results of the examination to the Commissioner as soon as practicable.

This bill would result in businesses being audited by both TAX and localities, but only TAX would be authorized to issue assessments for additional tax, penalties and interest.

Local Business Licenses

This bill would also require local commissioners in localities that impose the local license fee or tax to verify that every taxpayer seeking a local business license who is subject to the state licensing requirements of the Department of Professional and Occupational

Regulation has satisfied the requirements for such license, and has obtained a state license. The bill would specifically prohibit local commissioners from issuing local business licenses until this information is verified. The bill would require the local commissioner to report the taxpayer to the Department of Professional and Occupational regulation if he determines that at taxpayer is attempting to operate a business without the appropriate state license.

The effective date of this bill is not specified.

Similar Bills

House Bill 2183 would authorize local commissioners of the revenue to elect to allow dealers seeking to register for the general Retail Sales and Use Tax and out-of-state contractors who are subject to the special use tax in Virginia the option of registering with the local commissioner of the revenue, rather than registering with the Tax Commissioner. The local commissioner would be required to follow the guidelines, rules, or procedures set forth by the Tax Commissioner in providing these services.

cc : Secretary of Finance

Date: 2/11/2011 KP
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