

DEPARTMENT OF TAXATION

2013 Fiscal Impact Statement

1. **Patron** Brenda L. Pogge

2. **Bill Number** HB 1354

3. **Committee** House Finance

House of Origin:

 X **Introduced**

 Substitute

 Engrossed

4. **Title** Retail Sales and Use Tax; Exemption for
Service Charges by Photographers and
Videographers

Second House:

 In Committee

 Substitute

 Enrolled

5. **Summary/Purpose:**

This bill would provide an exemption from the Retail Sales and Use Tax for separately stated charges for services rendered by a photographer or videographer in taking and producing photographs or videos.

Under the Department's current regulations, the sales and use tax applies to the total charge to the customer for a photograph, slide, etc., including, but not limited to, charges for labor, photocomposition, setting design, photography time, and any other components of the charge, regardless of whether such components are separately stated. Similarly, services provided in connection with the sale of videotapes currently are deemed part of the taxable sales price.

The effective date of this bill is not specified.

6. **Budget amendment necessary:** Yes.

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

7b. **Revenue Impact:**

<i>Fiscal Year</i>	<i>Dollars</i>	<i>Fund</i>
2012-13	\$0	GF
	\$0	TTF
	\$0	Local
	\$0	HMOF
2013-14	(\$4.44 million)	GF
	(\$0.65 million)	TTF
	(\$1.30 million)	Local
	(\$0.06 million)	HMOF

2014-15	(\$4.86 million)	GF
	(\$0.72 million)	TTF
	(\$1.44 million)	Local
	(\$0.14 million)	HMOF
2015-16	(\$4.87 million)	GF
	(\$0.73 million)	TTF
	(\$1.46 million)	Local
	(\$0.22 million)	HMOF
2016-17	(\$4.89 million)	GF
	(\$0.75 million)	TTF
	(\$1.49 million)	Local
	(\$0.30 million)	HMOF
2017-18	(\$4.91 million)	GF
	(\$0.76 million)	TTF
	(\$1.52 million)	Local
	(\$0.38 million)	HMOF
2018-19	(\$5.01 million)	GF
	(\$0.77 million)	TTF
	(\$1.55 million)	Local
	(\$0.39 million)	HMOF

8. Fiscal implications:

Administrative Costs Impact

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

Revenue Impact

The Governor’s Transportation Proposal allocates currently undedicated Retail Sales and Use Tax revenues from the General Fund to the Highway Maintenance and Operating Fund (“HMOF”) beginning July 1, 2013. The commitment excludes the amount of Retail Sales and Use Tax attributable to the tax on food for human consumption. The percentage of Retail Sales and Use Tax revenues dedicated to the HMOF will be 0.05 percent in Fiscal Year 2014, 0.10 percent in Fiscal Year 2015, 0.15 percent in Fiscal Year 2016, 0.20 percent in Fiscal Year 2017, and 0.25 percent in Fiscal Years 2018 and 2019.

The revenue impact of this bill assumes the commitment of the revenues contained in the Governor’s Transportation Proposal.

The sales tax exemption proposed in this bill is estimated to reduce revenues by \$6.45 million in Fiscal Year 2014, \$7.16 million in Fiscal Year 2015, \$7.28 million in Fiscal Year 2016, \$7.42 million in Fiscal Year 2017, \$7.57 million in Fiscal Year 2018, and \$7.72 million in Fiscal Year 2019.

9. Specific agency or political subdivisions affected:

Department of Taxation

10. Technical amendment necessary: No.

11. Other comments:

Generally

Under current law, charges for services generally are exempt from the Retail Sales and Use Tax. Services provided in connection with sales of tangible personal property, however, are subject to the tax.

A number of services are specifically exempted from the Retail Sales and Use Tax by statute. These exempt services include: 1) personal, professional or insurance transactions involving sales as inconsequential elements, where the service charge is not separately stated; 2) separately stated services performed by repairmen; 3) separately stated labor or service charges for the repair, installation, application, or remodeling of tangible personal property; 4) separately stated transportation charges; 5) separately stated charges for alterations to apparel, clothing and garments; 6) charges for gift wrapping services performed by a nonprofit organization; 7) separately stated charges for labor or services rendered in connection with the modification of prewritten programs; 8) "custom programs"; and 9) charges for lodging or accommodations furnished to transients for more than 90 continuous days. Maintenance contracts which provide for both repair parts and labor are subject to tax upon one-half of the total charge for such contracts.

Where a transaction involves both the rendering of a service and the provision of tangible personal property, the Department uses the true object test to determine if the transaction is subject to tax. If the "true object" of a transaction is to obtain the tangible personal property transferred to the customer, the cost of the property and the services provided in connection with the property transferred are subject to the sales and use tax.

In a 1977 Virginia Supreme Court decision, *WTAR Radio-TV Corporation v. Commonwealth*, the Supreme Court applied the true object test to determine whether the Retail Sales and Use Tax applied to advertising services included in a bill for a commercial advertisement film. The Court determined that the tax applied to advertising services whenever a tangible end product was produced.

Photographers

Under the Department's current regulations, the sales and use tax applies to the total charge to the customer for a photograph, slide, etc., including, but not limited to, charges for labor, photocomposition, setting design, photography time, and any other components of the charge, regardless of whether such components are separately stated.

Video Production

Historically, the Department has treated the production and sale of videotapes as taxable retail sales because the true object of the transaction is to obtain the finished videotape. Therefore, any services provided in connection with the sale of the videotape are deemed part of the taxable sales price.

Proposal

This bill would provide an exemption from the Retail Sales and Use Tax for separately stated service charges rendered by a photographer or videographer in taking and producing photographs or videos.

The effective date of this bill is not specified.

cc : Secretary of Finance

Date: 1/12/2013 KP
DLAS File Name HB1354F161