

DEPARTMENT OF TAXATION

2013 Fiscal Impact Statement

1. **Patron** Brenda L. Pogge

3. **Committee** House Finance

4. **Title** Retail Sales and Use Tax; Exemption for Separately Stated Set-up Charges

2. **Bill Number** HB 2236

House of Origin:

 X **Introduced**

 Substitute

 Engrossed

Second House:

 In Committee

 Substitute

 Enrolled

5. **Summary/Purpose:**

This bill would expand the current Retail Sales and Use Tax exemption that applies to separately stated installation, application, remodel and repair charges on property for sale to include separately stated set up charges. The bill would also expand the exemption to apply when property is leased or rented.

Under current law, an exemption is available for separately stated service charges for the installation, application, remodel, or repair of property when it is sold, leased, or rented.

The effective date of this bill is not specified.

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

7. **Fiscal Impact Estimates are:** Not available. (See Line 8.)

8. **Fiscal implications:**

Administrative Costs Impact

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

Revenue Impact

This bill would decrease sales tax revenues by an unknown amount. As the current exemption extends to separately stated charges for labor or services rendered in installing, applying, remodeling or repairing property that is being sold, as well as rented or leased, the proposal’s specific inclusion of rental property would have no revenue impact.

Expanding the exemption to include separately stated set-up charges would result in an unknown revenue loss. The Department understands that the bill is being proposed in response to a number of rulings in which the Department determined that separately

stated charges for setting up tents, chairs, tables, and similar property by rental companies and caterers are subject to the Retail Sales and Use Tax. Assuming the bill only affects such charges by catering companies, and based on available data, the revenue loss could be as much as \$3.37 million per year, beginning in Fiscal Year 2014.

9. Specific agency or political subdivisions affected:

Department of Taxation

10. Technical amendment necessary: No.

11. Other comments:

Services In General

Charges for services generally are exempt from the Retail Sales and Use Tax. However, a number of services are subject to the tax, including: services in connection with the fabrication of tangible personal property; services in connection with the furnishing, preparing or serving of meals or other tangible personal property; charges for lodging or accommodations furnished to transients for less than 90 continuous days; and services provided in connection with sales of tangible personal property. These services are subject to tax in Virginia based upon the definition of sales price, set forth in the *Code of Virginia*, which is defined as the “total amount for which tangible personal property or services are sold, including any services that are a part of the sale...without any deduction on account of the cost of the property sold, the cost of materials used, labor or service costs, losses or any other expenses whatsoever.” The Retail Sales and Use Tax does not apply to purely service transactions, which do not involve a sale or transfer of tangible personal property.

Where a transaction involves both the rendering of a service and the provision of tangible personal property, the “true object test” must be utilized to determine the taxability of the transaction. If the “true object” of the transaction is to secure a service, and the tangible personal property which is transferred to the customer is not critical to the transaction, then the transaction may constitute an exempt service. However, if the “true object” of the transaction is to secure the property which it produces, then the entire charge, including the charge for any services provided, is taxable.

The *Code of Virginia* specifies a number of personal services that are exempt from the Retail Sales and Use Tax, even where tangible personal property may be provided in connection with the sale of the service. Among these exempt services are labor charges for the repair, installation, application or remodeling of tangible personal property, provided they are separately stated. Whenever tangible personal property is provided in connection with a service that would not constitute a repair, installation, application or remodeling of tangible personal property, this exemption does not apply.

Service Charges in Connection with the Lease/Rental of Property

Under current law, the Retail Sales and Use Tax is imposed on the gross proceeds derived from the lease or rental of tangible personal property, where the lease or rental of such property is an established business, or part of an established business. Any service charges in connection with the lease of property are generally considered gross proceeds, and are similarly subject to the Retail Sales and Use Tax. However, where such separately stated charges are in connection with the installation, application, remodeling, or repairing of property, the sales and use tax does not apply, whether the property is being leased or sold.

Set Up Charges

Set up charges imposed in connection with the provision of taxable tangible personal property or taxable services are generally subject to the sales and use tax. This is the case regardless of whether the taxable tangible personal property or service is being sold or rented, and regardless of whether the set up charges are separately stated on the seller's invoice. Thus, charges to set up tables and chairs in connection with the provision of taxable catering services is generally subject to the sales and use tax.

Proposal

This bill would expand the current Retail Sales and Use Tax exemption that applies to separately stated installation, application, remodel and repair charges on property for sale to include separately stated set up charges. The bill would also expand the exemption to apply when property is leased or rented.

Under current law, an exemption is available for separately stated service charges for the installation, application, remodel, or repair of property when it is sold, leased, or rented.

The effective date of this bill is not specified.

cc : Secretary of Finance

Date: 1/22/2013 KP
DLAS File Name: HB 2236F161