

**DEPARTMENT OF TAXATION
2013 Fiscal Impact Statement**

1. Patron Brenda L. Pogge

2. Bill Number HB 2236

3. Committee Senate Finance

House of Origin:

☐ Introduced

☐ Substitute

☐ Engrossed

4. Title Retail Sales and Use Tax; Exemption for
Certain Separately Stated Charges for
Rented or Leased Property

Second House:

☒ In Committee

☐ Substitute

☐ Enrolled

5. Summary/Purpose:

This bill would clarify that the current Retail Sales and Use Tax exemption that applies to separately stated installation, application, remodel and repair charges on property for sale also applies when property is 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

As this bill is a clarification of current law, the bill would have no impact on state or local revenue.

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.

Proposal

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

Under current law, the term “sale” is defined to include the lease or rental of tangible personal property. Based upon this definition, if an exemption is available on the sale of certain tangible personal property, a similar exemption also applies to the lease of that property, unless otherwise provided by law. This bill highlights this concept for the exemption for separately stated installation, application, remodel and repair charges.

The effective date of this bill is not specified.

cc : Secretary of Finance

Date: 2/6/2013 KP
DLAS File Name: HB 2236FE161