

**DEPARTMENT OF TAXATION
2014 Fiscal Impact Statement**

1. **Patron** Frank M. Ruff, Jr.

2. **Bill Number** SB 84

3. **Committee** Senate Finance

House of Origin:

 X **Introduced**

 Substitute

 Engrossed

4. **Title** Retail Sales and Use Tax; Direct Pay
Permits for Satellite Television Programmers

Second House:

 In Committee

 Substitute

 Enrolled

5. Summary/Purpose:

This bill would authorize the Tax Commissioner to allow providers of satellite television programming to pay any Retail Sales and Use Tax owed directly to the Commonwealth and waive the collection of the tax by the dealer. Providers would be required to apply to the Tax Commissioner and, if granted, payment of the Retail Sales and Use Tax on sales, distributions, leases, and storage of tangible personal property and sales of taxable services would be made directly to the Tax Commissioner by the permit holder.

Under current law, the Tax Commissioner may issue a direct pay permit to a manufacturer, mine operator, or public service corporation to which sales, distributions, leases, or storage of tangible personal property are made under circumstances which normally make it impossible to determine the manner in which such property will be used at the time, or any person who stores tangible personal property in this Commonwealth for use both within and outside this Commonwealth. Direct pay permit holders are allowed a dealer discount on the Retail Sales and Use Tax paid in the same manner as Retail Sales and Use Tax dealers.

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

The Department has not assigned any administrative costs to this bill because the changes required by a single bill such as this can be implemented as part of the annual changes to our systems and forms. As stand-alone legislation, the Department considers implementation of this bill as "routine," and does not require additional funding.

The Department will provide specific administrative costs on any legislation that is not “routine.” Additionally, the Department will review all state tax legislation likely to be enacted prior to the passage by each house. If the aggregate number of routine bills likely to pass either house is unusually large, it is possible that additional resources will be required. If so, the Department will identify the costs at that time.

Revenue Impact

This bill would have no state or local revenue impact.

9. Specific agency or political subdivisions affected:

Department of Taxation

10. Technical amendment necessary: No.

11. Other comments:

Current Law

Generally, service providers are deemed the ultimate consumer of tangible personal property purchased in connection with the provision of the service. As such, service providers are typically subject to the Retail Sales and Use Tax on the purchase of such tangible personal property, even if the charges for the tangible personal property will be passed on to the service provider’s customers.

In Public Document (“PD”) 97-392 (09/29/1997), a satellite programming provider appealed an assessment of Retail Sales and Use Tax on his purchases of satellite equipment that it subsequently sold to its subscribers. Based upon Title 23 of the Virginia Administrative Code (VAC) 10-210-4040, it was determined that the true object of the transaction between the programming provider and its subscribers was to obtain the television programming services rather than the tangible property accompanying the service. Additionally, the Department had long held that provision of television programming was a nontaxable service. Accordingly, the taxpayer was deemed a service provider when it leased, rented or sold equipment in connection with satellite television programming. As the provider of a nontaxable service, it was determined that the taxpayer was subject to the tax on tangible personal property used or consumed in providing its service.

In July 2013, the Department issued PD 13-130 (07/05/2013), continuing the policy that satellite television programmers were service providers and subject to the Retail Sales and Use Tax on tangible personal property used and consumed in connection with the provision of the service, regardless of whether the equipment will be subsequently sold or leased to his customers. PD 13-130 also held that a subcontractor purchasing tangible personal property from an affiliate of the provider and installed the equipment for subscribers of the provider was not liable for the Retail Sales and Use Tax on his purchases.

Proposal

This bill would authorize the Tax Commissioner to allow providers of satellite television programming to pay any Retail Sales and Use Tax owed directly to the Commonwealth and waive the collection of the tax by the dealer. Providers would be required to apply to the Tax Commissioner and, if granted, payment of the Retail Sales and Use Tax on sales, distributions, leases, and storage of tangible personal property and sales of taxable services would be made directly to the Tax Commissioner by the permit holder.

Under current law, the Tax Commissioner may issue a direct pay permit to a manufacturer, mine operator, or public service corporation to which sales, distributions, leases, or storage of tangible personal property are made under circumstances which normally make it impossible to determine the manner in which such property will be used at the time, or any person who stores tangible personal property in this Commonwealth for use both within and outside this Commonwealth. Direct pay permit holders are allowed a dealer discount on the Retail Sales and Use Tax paid in the same manner as Retail Sales and Use Tax dealers.

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Similar Legislation

Senate Bill 100 would impose the Retail Sales and Use Tax on separately stated charges for equipment available for lease or purchase by a provider of satellite television programming to a customer of such programming. Such equipment sold to a provider of satellite television programming for subsequent lease or purchase would be deemed a sale for resale.

cc : Secretary of Finance

Date: 1/11/2014 AM
DLAS File Name: SB84F161