

DEPARTMENT OF TAXATION

2015 Fiscal Impact Statement

1. **Patron** Rick L. Morris

3. **Committee** House Finance

4. **Title** State and Local Taxes and Fees; Exempts Churches

2. **Bill Number** HB 1294

House of Origin:

 X **Introduced**

 Substitute

 Engrossed

Second House:

 In Committee

 Substitute

 Enrolled

5. **Summary/Purpose:**

This bill would prohibit the imposition of any state or local tax, fee or other charge upon a church, religious association, or religious denomination that is operated exclusively on a nonprofit basis for charitable, religious or educational purposes, or whose real property is exempt from local taxation. The bill would require the Department to adopt processes and procedures to enable qualifying churches to use self-executing certificates of exemption in order to make purchases exempt of the Retail Sales and Use Tax. The bill would also allow the Tax Commissioner and other revenue officers to provide the General Assembly and its committees with information regarding churches, religious associations, or religious denominations operated exclusively on a nonprofit basis for charitable, religious, or educational purposes.

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 funds.

Revenue Impact

This bill would result in an unknown state and local revenue loss beginning in Fiscal Year 2016. The Department lacks sufficient data to quantitatively estimate the revenue impacts of the various provisions of this bill. Qualitatively, the impacts are summarized below:

Local Admissions Tax Exemption: As the share of admissions taxes collected and remitted by churches, religious associations, and religious denominations is unknown, the

Department cannot determine the magnitude of the revenue loss to those localities currently levying the tax.

Local Stormwater Charge Waiver: Because the amount of local stormwater charges paid by the qualifying entities is unknown, the Department cannot determine a revenue impact.

Expansion of current sales tax exemption for churches: Because the Department is unable to collect or maintain data regarding churches that utilize the sales tax exemption certificate for churches (ST-13A), the revenue loss associated with this expansion is unknown.

Contractors' use tax exemption: This provision would have a negative impact of unknown magnitude on state and local use tax revenue.

Refund of Taxes Paid on Motor Fuels: This bill would result in an unknown revenue loss to the Highway Maintenance and Operations Fund, the Transportation Trust Fund, the Priority Transportation Fund and to the DMV for administrative purposes.

Motor Vehicle Rental Tax Exemption: This bill would impact each of the three components of the motor vehicle rental tax, and would result in an unknown revenue loss to the Rail Enhancement Fund, the General Fund, and to local tax funds.

Motor Vehicle Sales and Use Tax Exemption: As it is not known how many additional vehicles would be affected by the proposed exemption, the magnitude of the revenue loss is unknown.

Local Meals Tax Exemption: Given the existing limited exemption, the local revenue impact of providing this exemption is believed to be negligible.

9. Specific agency or political subdivisions affected:

Department of Taxation
Department of Environmental Quality
Department of Motor Vehicles
All localities

10. Technical amendment necessary: Yes.

Because it is not feasible for the Department to collect or maintain data regarding nonprofit churches that utilize the sales tax exemption for qualifying churches pursuant to *Code of Virginia* § 58.1-609.10(16), the Department suggests the following technical amendment:

Page 8, Line 482

Strike: *and the sales and use tax exemptions provided by subdivision 16 of § 58.1-609.10.*

11. Other comments:

Impacted Taxes and Fees

Stormwater Service Charges

Localities are authorized to enact stormwater management programs that are funded through the imposition of utilities or service charges upon property owners and occupants. Revenue generated from the stormwater charges must be dedicated to specified purposes related to stormwater management. Current law provides specified instances in which these charges must be waived. This bill would require localities to waive any stormwater charges on real property owned by a church, religious association, or religious denomination and (i) operated exclusively on a nonprofit basis for charitable, religious or educational purposes or (ii) whose real property is exempt from local taxation under Va. Code § 58.1-3606.

Sales and Use Tax

Churches' self-executing exemption under 58.1-609.10(16)

Under current law, nonprofit churches can obtain exemption from the sales and use tax in one of two ways. The law provides a limited exemption for nonprofit churches on their purchases of tangible personal property used (i) in religious worship services and (ii) in other rooms in the public church buildings used in carrying out the work of the church. Additionally, the exemption extends to specified tangible personal property, such as bulletins, materials used in operating camps or conference centers, and items used to maintain property owned by the church, such as mowing equipment. The exemption also includes building materials for installation in the church buildings, provided the church does not have a contractor perform the installation work.

This bill would expand the exemption to include all tangible personal property (including building materials that will be installed by a contractor), as well as otherwise taxable services purchased by nonprofit churches. In addition, the bill would extend the exemption to include nonprofit religious associations and religious denominations operated for charitable, religious or educational purposes.

Additionally, the bill would require the Department to adopt processes and procedures that would enable qualifying churches to use self-executing certificates of exemption when making tax-exempt purchases.

Nonprofit exemption under 58.1-609.11

Alternatively, under current law, nonprofit churches can seek an expanded exemption through the Department's nonprofit process, which requires that the organization meet a number of specified requirements, file an application with the Department of Taxation, and be granted an exemption certificate. Once granted, the nonprofit exemption certificate is valid for five years, after which time, the entity must apply with the Department to renew the exemption.

As the terms of this bill would render nonprofit churches, religious associations, and other religious denominations exempt on all purchases of tangible personal property and otherwise taxable services, the bill would exclude these organizations from the Department's nonprofit exemption certificate process.

Contractor's Use Tax Exemption

Generally, real property contractors are deemed to have purchased tangible personal property for use or consumption and are required to pay sales and use tax on the purchase of such property. If a contractor is furnished tangible personal property by the person or entity for whom the contract is being performed and on which no sales or use taxes have been remitted, the contractor is liable for a use tax based on the fair market value of the property furnished. Among the exceptions to this rule, contractors do not owe use tax on materials used in the provision of baptistries.

This bill would exempt real property contractors performing a real property contract for a church, religious association, or religious denomination from any use tax obligations for tangible personal property that has been furnished by the church, association, or denomination.

Motor Vehicle Rental Tax

The Motor Vehicle Rental tax is imposed upon motor vehicles that meet certain weight requirements. An additional motor vehicle rental tax is imposed on the rental of every motor vehicle regardless of the weight, except for motor vehicles and manufactured homes. A rental fee is also levied on the gross proceeds from the rental of motor vehicles, except for motorcycles and manufactured homes. Most rental passenger vehicles are subject to each of these taxes and fees.

This bill would exempt from any of the motor vehicle rental taxes and fees, motor vehicles rented by a church, religious association, or religious denomination. The bill would specify that any qualifying motor vehicle that ceases to be rented by a qualifying church, religious association or religious denomination will once again be liable for the tax.

Motor Vehicle Sales and Use Tax

Currently, the motor vehicle sales and use tax is imposed on the sale or use of motor vehicles in Virginia. The law currently exempts motor vehicles designed for the transportation of ten or more passengers purchased by and for the use of the nonprofit church.

This bill would expand the exemption to include any vehicles sold to or used by a church, religious association, or religious denomination, regardless of the vehicle's capacity.

Business, Professional and Occupational License Taxes

Localities may impose BPOL license taxes on businesses engaged in licensable activities within the locality. Charitable nonprofit organizations are exempt from the BPOL tax,

except to the extent the entity has receipts from an unrelated trade or business generating income under Internal Revenue Code § 511. Under the Internal Revenue Code, the income from activities unrelated to a church's tax exempt purpose will be subject to the Unrelated Business Income Tax (UBIT) if: 1) the activity constitutes a trade or business; 2) the trade or business is regularly carried on, and 3) the trade or business is not substantially related to the organization's exempt purpose. An activity meeting these requirements may remain exempt from UBIT if 1) substantially all of the work in operating the trade or business is performed by volunteers; 2) the activity is conducted by the organization primarily for the convenience of its members; or 3) the trade or business involves the selling of merchandise substantially all of which was donated.

Under this bill, regardless of the extent to which a church is engaged in activities that would render it subject to UBIT tax, the church would not be liable for BPOL license taxes.

Local Admissions Tax

Currently, cities and towns that have general taxing powers in their charters may impose an excise tax on admissions. Counties are limited in their taxing powers and may only impose such taxes if they are authorized by statute. Currently, seven counties may levy a tax on admissions at a maximum rate of ten percent. Seven additional counties have limited authority to impose the tax. Events to which admissions are charged are classified into five separate groups, and the specified counties may tax each class according to the same or different rates. Additionally, counties may elect not to levy the tax for events that are conducted solely to raise money for charitable purposes, provided the proceeds of the event are transferred to an entity that qualifies for exemption from the state sales and use tax.

This bill would preclude localities from imposing an admissions tax on admissions to any event for which the gross receipts go wholly to a qualifying church, religious association or religious denomination.

Local Food and Beverages/Meals Tax

Every county is authorized to levy a tax on a restaurant's charges for food and beverages sold for human consumption at a maximum rate of four percent of the amount charged. Currently, any city or town having general taxing powers as established by charter may impose a similar tax on the sale of meals. Nonprofit churches and other religious bodies are among several organizations that enjoy an exemption on the collection of the county food and beverages and the city meals tax. The exemption applies to the sale of food, beverages, and meals made by a nonprofit church or religious body on the first three fundraising occasions each year, as well as on the first \$100,000 of gross receipts from the fourth and any additional fundraising sales throughout the calendar year, provided the proceeds are used by the organization exclusively for nonprofit educational, charitable, benevolent, or religious purposes. Churches that serve meals for their religious services are also exempt from the collection of the county food and beverage and city meals tax.

This bill would exempt food sold by churches, religious associations, and religious denominations from the county food and beverages and city meals tax.

Other Provisions

Duty of Confidentiality

Generally, with specific exceptions, the Tax Commissioner and his employees, along with other state and local tax revenue officers, are prohibited from divulging information obtained in the performance of their duties regarding the transactions, property, income or business of taxpayers. Those who commit this offense may be convicted of a Class 1 misdemeanor. Among the exceptions, the Tax Commissioner may divulge information to the General Assembly or its committees regarding nonprofit organizations that hold a sales and use tax exemption.

This bill would allow the Tax Commissioner to provide the General Assembly and its committees with information regarding churches, religious associations, or religious denominations operated exclusively on a nonprofit basis for charitable, religious, or educational purposes.

cc : Secretary of Finance

Date: 1/18/2015 KP
DLAS File Name: HB 1294F161