

DEPARTMENT OF TAXATION

2015 Fiscal Impact Statement

1. **Patron** Hyland F. "Buddy" Fowler

3. **Committee** House Finance

4. **Title** Retail Sales and Use Tax; Nonprofit
Exemption for Holiday Tree Sales

2. **Bill Number** HB 1664

House of Origin:

 X **Introduced**

 Substitute

 Engrossed

Second House:

 In Committee

 Substitute

 Enrolled

5. **Summary/Purpose:**

This bill would grant organizations exempt from federal income taxation under § 501(c)(4) of the Internal Revenue Code ("I.R.C.") a temporary exemption from their sales and use tax collection obligations for the sale of live trees made between November 20 and the following January 1. In order for the exemption to apply, the proceeds from the sales would need to be used primarily to fund or support charitable works, donations, or undertakings for the benefit of other organizations or people.

Under current law, nonprofit organizations that meet the statutory requirements, apply for, and obtain a certificate of exemption from the Department of Taxation are exempt from the tax on all purchases of tangible personal property for the nonprofit entity's use or consumption. A limited number of nonprofit organizations are exempt on their sales of otherwise taxable tangible personal property, provided they meet certain statutory requirements.

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

The tax exemption proposed in this bill would result in a decrease in state and local revenue, the magnitude of which is not known, but is estimated to be minimal. Given the lack of data involving Christmas tree sales made by nonprofit organizations in Virginia, the

Department is unable to determine the amount of sales tax revenue currently collected on such sales.

Based upon Virginia's population, the Department estimates that the retail value of live Christmas tree sales in Virginia totaled approximately \$30.3 million in 2013. On average, nonprofit groups accounted for 10.8% of Christmas tree sales nationally between 2009 and 2013. Assuming the average holds for Virginia, sales by nonprofits total approximately \$3.3 million annually in Virginia. As such, the loss to state and local revenues from this proposal would not exceed \$175,000 annually. As this estimate captures § 501(c)(3) and § 501(c)(4) organizations that may be exempt from the collection of sales and use taxes on their sales under current law, the actual state and local revenue loss likely would be smaller.

9. Specific agency or political subdivisions affected:

Department of Taxation

10. Technical amendment necessary: No.

11. Other comments:

I.R.C. § 501(c)(4) Organizations

Current law exempts I.R.C. § 501(c)(4) organizations from federal income taxation. I.R.C. § 501(c)(4) organizations include civic leagues, for-profit organizations operated exclusively for the promotion of social welfare, and local employee associations, the memberships of which are limited to the employees of a designated person or persons in a particular municipality. In order to be deemed an I.R.C. § 501(c)(4) organization, the entity's net earnings must be devoted exclusively to charitable, educational or recreational purposes. No part of the net earnings may inure to the benefit of any private shareholder or individual.

Nonprofit Exemption

Nonprofit organizations that meet the statutory requirements, apply for, and obtain a certificate of exemption from the Department of Taxation may make purchases of tangible personal property for their use or consumption exempt of the Retail Sales and Use Tax.

In order to qualify for the nonprofit exemption, an organization must meet the following statutory requirements:

- The entity is exempt from federal income taxation under either § 501(c)(3) or § 501(c)(4) of the Internal Revenue Code;
- The entity is in compliance with all applicable state solicitation laws, and where applicable, provides appropriate verification of such compliance; and
- The entity's annual general administrative costs, including salaries and fundraising, relative to its annual gross revenue, under generally accepted accounting principles, is not greater than 40 percent; and

- The entity provides a financial review performed by an independent certified public accountant if its gross annual revenue was at least \$750,000 in the previous year; entities with gross annual revenue of at least \$1 million in the previous year must provide a full financial audit if the Department specifically requires; and
- The entity provides the Department of Taxation with a copy of any federal 990, 990 EZ, or successor forms filed with the IRS, and if the entity filed no such forms, the entity provides the Department with information, including a list of its Board of Directors and the location of its financial records.

Nonprofit organizations that meet these requirements and apply with the Department of Taxation will be granted an exemption certificate they may present to suppliers when purchasing tangible personal property.

In addition to an exemption on purchases, some nonprofit organizations may make sales of tangible personal property exempt of the sales and use tax. In order to qualify for an exemption on its sales, a nonprofit organization must either: 1) belong to the same class of organizations as any organization that was exempt from collecting the tax on June 30, 2003; or 2) be organized exclusively to foster, sponsor, and promote physical education, athletic programs and contests for youth in the Commonwealth. Among the types of nonprofit organizations that qualify for exemptions on their sales are food banks, boys and girls scout groups, PTA's, and volunteer fire departments.

Occasional Sale

Under current law, the Retail Sales and Use Tax does not apply to "occasional sales." The Department has interpreted this term to mean, "a sale by a person who is engaged in sales on three or fewer separate occasions within one calendar year." The Department has opined, however, that registration is necessary when an organization makes regular sales on a seasonal basis. In such instances, the organization is holding itself out as a retailer and may be in competition with businesses or other organizations that are required to collect the tax due to their sales activities. Thus, a nonprofit organization making sales of Christmas trees on a seasonal basis must register to collect the Retail Sales and Use Tax unless it is one of the nonprofit organizations that qualifies for exemption on its sales.

Proposal

This bill would grant organizations that have been designated as I.R.C. § 501(c)(4) organizations a temporary exemption from their sales and use tax collection obligations for the sale of live trees made between November 20 and the following January 1, provided the proceeds from the sales are used primarily to fund or support charitable works, donations, or undertakings for the benefit of other organizations or people.

The effective date of this bill is not specified.

cc : Secretary of Finance

Date: 1/24/2015 KP
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