

DEPARTMENT OF TAXATION

2016 Fiscal Impact Statement

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| 1. Patron Emmett W. Hanger, Jr. | 2. Bill Number <u>SB 444</u> |
| | House of Origin: |
| 3. Committee Senate Finance | <u> X </u> Introduced |
| | <u> </u> Substitute |
| | <u> </u> Engrossed |
| 4. Title Retail Sales and Use Tax Refund Claims;
Interest | Second House: |
| | <u> </u> In Committee |
| | <u> </u> Substitute |
| | <u> </u> Enrolled |

5. Summary/Purpose:

This bill would prohibit a purchaser from receiving interest on a refund claim for erroneously paid Retail Sales and Use Tax for any period prior to the date the purchaser submits a complete refund claim to the Department of Taxation ("Department") in situations where the purchaser held a valid exemption certificate issued by the Department at the time of purchase but failed to present it to the merchant. The bill also would subject tax preparers and tax practitioners assisting with false or fraudulent Retail Sales and Use Tax returns, exemption certificates, and refund requests to the same criminal penalty as dealers who violate the sales tax laws. The Department would be authorized to issue guidelines for taxpayers to follow when seeking Retail Sales and Use Tax refunds.

Under current law, Retail Sales and Use Tax dealers are not required to pay interest on refunds to their customers, while the Department is required to pay interest to purchasers that apply directly to the Department for refunds. The Department does not pay interest on sales taxes refunded to a dealer unless the interest is passed on to the purchaser.

The effective date of this bill is not specified.

This is a Department of Taxation bill.

- 6. Budget amendment necessary:** Yes.
Page 1, Revenue Estimates
- 7. Fiscal Impact Estimates are:** Preliminary. (See Line 8.)
- 8. Fiscal implications:**

Administrative Costs

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

Revenue Impact

This bill would limit the interest allowed for refunds where the purchaser holds a Retail Sales and Use Tax exemption certificate issued by the Department. To the extent that this bill would eliminate the current incentive for purchasers to bypass the exemption certificate process and later file a request with the Department for a refund with interest, this bill would result in an increase in Retail Sales and Use Tax net revenues. Based on the interest paid on previous refund claims, the Department estimates that this bill would result in a decrease in Retail Sales and Use Tax refunds which would increase Retail Sales and Use Tax revenues by approximately \$3.1 million annually, gaining the General Fund approximately \$1.9 million annually.

9. Specific agency or political subdivisions affected:

Department of Taxation

10. Technical amendment necessary: No.

11. Other comments:

Refund Interest

Generally, interest is required to be paid upon the overpayment of any tax administered by the Department at a rate equal to the rate of interest established pursuant to *Va. Code* § 58.1-15. The rate of interest on refunds is the "Overpayment Rate" established pursuant to § 6621(a)(2) of the *Internal Revenue Code*, plus two percent. Interest accrues from a date 60 days after the date of the payment of the tax, or sixty days after the last day prescribed by law for such payment, whichever is later, on such overpayments of tax. The current Virginia overpayment rate of interest is 5%.

Under current law, Retail Sales and Use Tax dealers are not required to pay interest on refunds to their customers. The Department does not pay interest on sales taxes refunded to a dealer unless the interest is passed on to the purchaser. As dealers are not required to pay interest on refunds to their customers, some customers prefer to seek their refund directly from the Department in order to obtain interest on the refund. Additionally, some dealers force taxpayers to seek refunds directly from the Department in situations where they are uncertain that an exemption applies.

Retail Sales and Use Tax Exemption Certificates

Currently, the Department only issues exemption certificates to taxpayers that are engaged in specific types of businesses: real property contractors, data centers and their tenants, pollution control equipment and facilities, and non-profit entities. To obtain an exemption certificate issued by the Department, the purchaser must apply in writing to the Department and generally must meet certain statutorily defined requirements. For example, to obtain an exemption certificate to be used in the purchase of computer equipment used in a data center, the purchaser must enter into a memorandum of understanding with the Virginia Economic Development Partnership Authority and the data center must result in i) new capital investment of at least \$150 million and ii) the

creation of 50 new jobs paying at least one and one-half the prevailing wage in the locality or 25 such jobs if the locality is located in an enterprise zone or has a high unemployment rate.

The majority of exemption certificates are “self-executed” or “self-issued.” Purchasers may download the exemption certificate from the Department’s website, complete it, and present it to the merchant at the time of purchase. One example of a self-executed exemption certificate is the certificate for the sale for resale exemption.

Penalties for False and Fraudulent Returns

Under current law, any Retail Sales and Use Tax dealer who i) makes a false or fraudulent return with intent to evade the tax, ii) makes a false or fraudulent claim for refund, or iii) gives or knowingly receives a false or fraudulent exemption certificate is guilty of a Class 1 misdemeanor. However, no specific criminal penalty currently exists for a tax practitioner or preparer who prepares or assists in the preparation of a Retail Sales and Use Tax return, refund claim, or exemption certificate that he knows is false as he does not meet the definition of a dealer.

A specific criminal penalty does exist for an Income Tax return preparer who knowingly and willfully aids or assists in, counsels or advises the preparation or presentation of an Income Tax return or other required document that he knows is fraudulent or false. The tax preparer would be guilty of a Class 6 felony, the same criminal penalty set out for an individual who makes a false statement on an Income Tax return or other required document.

Providing that tax practitioners and preparers who knowingly prepare or assist in the preparation of a false Retail Sales and Use Tax return, refund claim, or exemption certificate are subject to the same criminal penalty as a dealer who filed such documents would strengthen safeguards against false or fraudulent returns, exemption certificates, and refund requests.

Proposal

This bill would prohibit a purchaser from receiving interest on a refund claim for erroneously paid Retail Sales and Use Tax for any period prior to the date the purchaser submits a complete refund claim to the Department of Taxation in situations where the purchaser held a valid exemption certificate issued by the Department at the time of purchase but failed to present it to the merchant. The prohibition would not apply to “self-executed” or “self-issued” exemption certificates that purchasers download from the Department’s website and complete and sign. The Department would be authorized to issue guidelines for taxpayers to follow when seeking Retail Sales and Use Tax refunds.

The bill would also subject tax preparers and tax practitioners assisting with false or fraudulent returns, exemption certificates, and refund requests pursuant to the Retail Sales and Use Tax to the same criminal penalty as dealers who violate the sales tax laws.

The effective date of this bill is not specified.

Similar Legislation

House Bill 398 is identical to this bill.

cc : Secretary of Finance

Date: 1/16/2016 AM
DLAS File Name: SB444F161