DEPARTMENT OF TAXATION
2017 Fiscal Impact Statement

1. Patron Timothy D. Hugo

2. Bill Number HB 1890
House of Origin:
_____ **Introduced**
_____ **Substitute**
_____ **Engrossed**

3. Committee Senate Finance

4. Title Retail Sales and Use Tax; Consuming Contractors

Second House:
_X_ **In Committee**
_____ **Substitute**
_____ **Enrolled**

5. Summary/Purpose:

This bill would repeal the Retail Sales and Use Tax provision requiring dealers that both make retail sales and also install fences, venetian blinds, window shades, awnings, storm windows and doors, locks and locking devices, floor coverings, cabinets, countertops, kitchen equipment, window air conditioning units or other like or comparable items to collect the tax from their customers on such sales. In the same manner as other real property contractors, these retailers would be required to pay the tax on their purchase or use of these items.

Under current law, any person selling and installing these items is deemed a retailer of them and not a using or consuming contractor with respect to them. Accordingly, such dealers may purchase the goods for resale tax exempt and then collect sales tax from the ultimate consumer. Real property contractors are deemed to be consumers of these items and must pay sales or use tax on them.

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

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

Revenue Impact

This bill would have an unknown negative impact on state and local sales tax revenues due to the tax being based on the dealer's purchase price of these goods rather than the

retail sales price. As the industry is not uniformly adhering to current law, the impact of this bill is expected to be minimal.

9. Specific agency or political subdivisions affected: Department of Taxation

10. Technical amendment necessary: No.

11. Other comments:

Generally

Virginia law generally treats sellers and installers of tangible personal property that becomes real property after installation as contractors. The law makes an exception for retailers who sell and install certain specified items, including fences, venetian blinds, window shades, awnings, storm windows and doors, floor coverings, cabinets, countertops, kitchen equipment, window air conditioning units, or other like or comparable items. Provided these individuals maintain a retail or wholesale place of business and an inventory of the items set forth above, and provided they perform installation as part of or incidental to the sale of the items set forth above, they are deemed retailers, and are authorized to collect Retail Sales and Use Tax from their customers on the sale of these items. Separately stated installation charges are exempt from the tax. If a person does not meet all three requirements of a retailer, as set forth above, he will be deemed a consuming contractor and must pay the sales tax on such items at the time of purchase or accrue use tax, even if he is making sales of fences, venetian blinds, or any of the items separately identified above. This policy applies whether the seller and installer is also a fabricator of the tangible personal property items listed above.

While retailers are generally treated differently from contractors with respect to the Retail Sales and Use Tax, both retailers and contractors are deemed the users or consumers of supplies used in installing tangible personal property that becomes real property after installation. Therefore, retailers and contractors must pay tax on their purchasers of tacks, stripping, glue, cement, and other supplies they purchase.

The industry has expressed some confusion as to how to comply with current law. The Department's opinion in Public Document (PD) 15-136 highlighted the confusion and disparate treatment within the industry even as between similarly situated taxpayers. The taxpayer in PD 15-136 was a dealer and installer of items on the enumerated list which should have allowed the taxpayer to receive retailer treatment. The taxpayer maintained some of those listed items in stock but had to special order other items. The Department's determination was that a taxpayer is only a dealer for items which are sold or sold and installed from an existing stock of inventory and not those items which have to be special ordered. As further evidence of the prevailing confusion within the industry, the taxpayer was accruing use tax on many items that were being sold and installed but not on those same items where the customer simply purchased the items at retail and did not enlist the installation services of the taxpayer. Some of the taxpayer's similarly situated competitors were following current law as intended and collecting sales tax on the items as required.

Essentially, some dealers are paying sales tax on the wholesale price of goods to be sold and installed while other dealers are purchasing those items tax exempt and collecting the sales tax when the goods are sold at retail or installed. The current state of confusion can and often does lead to one taxpayer gaining a competitive advantage by accruing use tax and offering customers a lower price than a competitor who is collecting sales tax as is required under current law.

Proposal

This bill would treat dealers who sell at retail but also sell and offer installation of fences, venetian blinds, window shades, awnings, storm windows and doors, locks and locking devices, floor coverings (as distinguished from the floors themselves), cabinets, countertops, kitchen equipment, window air conditioning units or other like or comparable items as consuming contractors for the purposes of the Retail Sales and Use Tax.

The effective date of this bill is not specified.

Similar Legislation

Senate Bill 1308 is identical to this bill.

cc : Secretary of Finance

Date: 2/7/2017 VB
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