

DEPARTMENT OF TAXATION

2017 Fiscal Impact Statement

1. **Patron** Glen H. Sturtevant

3. **Committee** Senate Finance

4. **Title** Retail Sales and Use Tax; Accelerated Sales
Tax Payments

2. **Bill Number** SB 1107

House of Origin:

 X **Introduced**

 Substitute

 Engrossed

Second House:

 In Committee

 Substitute

 Enrolled

5. **Summary/Purpose:**

This bill would provide that if the accelerated sales tax payment requirement applies to Retail Sales and Use Tax dealers with taxable sales of \$15 million or less, the threshold may not be lowered by more than 10 percent for the immediately following year. The Department would be required to provide notice that an accelerated payment is required at least nine months in advance in order for a dealer to be assessed a penalty for late payment. Additionally, any dealer required to make an accelerated payment who was not required to make such payment in the immediately preceding year due to a change in the threshold amount would not be assessed a penalty for late payment. The bill also would prohibit any accelerated payments after June 30, 2020. However, as this proposal conflicts with § 3-5.06 of the Appropriations Act, which provides for the continuation of the accelerated sales tax payment, it is not clear whether it overrides the budget provision.

The proposed amendments to the 2016-2018 Biennium Budget provide that any Retail Sales and Use Tax dealer having taxable sales and/or purchases of \$2.5 million or greater between July 1, 2015, and June 30, 2016, must make a payment equal to 90 percent of his Retail Sales and Use Tax liability for June, 2016, on or before June 30, 2017, if paying by electronic funds transfer. If payment is made by another method, the payment must be made on or before June 25, 2017. The Introduced Executive Budget would increase the threshold to \$4.0 million for the accelerated sales tax payment due June, 2018.

The effective date of this bill is not specified.

6. **Budget amendment necessary:** Yes.

ITEM(S): Page 1, Revenue Estimates
§3-5.06, Accelerated Sales Tax

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

The proposed amendments to the 2016-2018 Biennium Budget would maintain the threshold for Retail Sales and Use Tax dealers required to make accelerated sales tax payments at \$2.5 million in taxable sales and/or purchases in Fiscal Year 2017. The proposed amendments to the 2016-2018 Biennium Budget also raises the threshold to \$4.0 million in Fiscal Year 2018. As the Introduced Executive Budget increases the threshold for accelerated sales tax payments in Fiscal Year 2018, the provisions of the bill limiting decreases in the threshold would have no revenue impact, assuming the \$4.0 million threshold for accelerated sales tax payments provided in the Introduced Executive Budget was maintained.

Assuming the threshold for accelerated sales tax payments continued to be \$4.0 million, the provision of this bill prohibiting any accelerated sales tax payment after June, 30, 2020 would decrease the General Fund revenues available for appropriation by an estimated \$189.7 million for Fiscal Year 2021.

9. Specific agency or political subdivisions affected:

Department of Taxation

10. Technical amendment necessary: No.

11. Other comments:

Accelerated Sales Tax Payment

The 2016-2018 Biennium Budget enacted in the 2016 General Assembly session is scheduled to increase the threshold for the accelerated sales tax payment from \$2.5 million to \$10 million of taxable sales and purchases for the June, 2017, payment and to \$25 million of taxable sales or purchases for the June, 2018, payment. The following chart lists the accelerated sales tax payment thresholds for prior years:

Effective	Payment in June of	Threshold	Enacting Legislation
Beginning in Calendar Year 2010	2010	\$1 million or more	House Bill 29 (<i>Acts of Assembly</i> 2010, Chapter 872) House Bill 30 (<i>Acts of Assembly</i> 2010, Chapter 874)
Beginning with AST payment due in June 2011	2011	\$5.4 million or more	House Bill 1500 (<i>Acts of Assembly</i> 2011, Chapter 890)
Beginning with AST payment due in June 2012	2012	\$26 million or more	House Bill 1300 (<i>Acts of Assembly</i> 2012 Special Session I, Chapter 2)
<i>No change</i>	2013	\$26 million or more	<i>No change</i>
Beginning with AST payment due in June 2014	2014	\$48.5 million or more	House Bill 1500 (<i>Acts of Assembly</i> 2013, Chapter 806) House Bill 5001 (<i>Acts of Assembly</i> 2014 Special Session I, Chapter 1)
Beginning with AST payment due in June 2015	2015	\$2.5 million or more	House Bill 1400 (<i>Acts of Assembly</i> 2015, Chapter 665)
Beginning with AST payment due in June 2016	2016	\$2.5 million or more	House Bill 1400 (<i>Acts of Assembly</i> 2015, Chapter 665)

The proposed amendments to the 2016-2018 Biennium Budget provides that any Retail Sales and Use Tax dealer having taxable sales and/or purchases of \$2.5 million or greater between July 1, 2015, and June 30, 2016, must make a payment equal to 90 percent of his Retail Sales and Use Tax liability for June, 2016, on or before June 30, 2017, if paying by electronic funds transfer. If payment is made by another method, the payment must be made on or before June 25, 2017. Additionally, the Introduced Executive Budget would increase the threshold to \$4.0 million for the accelerated sales tax payment due June, 2018.

The accelerated sales tax payment is due on or before each June 30 if paying by electronic funds transfer. If payment is made by another method, the payment must be made on or before June 25. In the event that either June 25 or June 30 falls on a Saturday or Sunday, any payment made on or before the next succeeding business day will be considered timely. Dealers who are required to remit the Retail Sales and Use Tax by electronic funds transfer are also required to remit the accelerated sales tax payment for those accounts by electronic funds transfer.

Budget Bill

Pursuant to § 4-13.00 of the Budget Bill, Conflict with Other Laws, the provisions of the Budget Bill prevail over any conflicting provision of any other law, without regard to whether the law is enacted before or after the Budget. However, if a provision of law conflicting with the Budget Bill is enacted after the Budget Bill, such provision of law may prevail over the conflicting provision of Budget Bill if the General Assembly has clearly evidenced the intent for the provision of law to prevail. In order to show such intent, the other law must: i) identify the specific provision of the Budget Bill over which the conflicting provision of law is intended to prevail and ii) specifically state that the terms of

§ 4-13.00 of the Budget Bill, Conflict with Other Laws, are not applicable with respect to the conflict. As this proposal conflicts with § 3-5.06 of the Appropriations Act, which provides for the continuation of the accelerated sales tax payment, it is not clear whether it overrides the budget provision.

Proposal

This bill would provide that if the accelerated sales tax payment requirement applies to Retail Sales and Use Tax dealers with taxable sales of \$15 million or less, the threshold may not be lowered by more than 10 percent for the immediately following year. The Department would be required to provide notice that an accelerated payment is required at least nine months in advance in order for a dealer to be assessed a penalty for late payment. Additionally, any dealer required to make an accelerated payment who was not required to make such payment in the immediately preceding year due to a change in the threshold amount would not be assessed a penalty for late payment. The bill also would prohibit any accelerated payments after June 30, 2020. However, as this proposal conflicts with § 3-5.06 of the Appropriations Act, which provides for the accelerated sales tax payment, it is not clear whether it overrides the budget provision.

The effective date of this bill is not specified.

Similar Legislation

Senate Bill 787 would prohibit any requirement that a Retail Sales and Use Tax dealer remit sales and use taxes on an accelerated schedule or on any schedule other than the schedule for transmitting Retail Sales and Use Tax returns provided in *Va. Code* § 58.1-615.

cc : Secretary of Finance

Date: 1/22/2017 AM
DLAS File Name: SB1107F161