

DEPARTMENT OF TAXATION

2023 Fiscal Impact Statement

1. **Patron** Kimberly A. Taylor

3. **Committee** House Finance

4. **Title** Retail Sales and Use Tax; Service exemption; Diagnostic work for automotive repair and emergency roadside service

2. **Bill Number** HB 1677

House of Origin:

X **Introduced**

 Substitute

 Engrossed

Second House:

 In Committee

 Substitute

 Enrolled

5. **Summary/Purpose:**

This bill would provide an exemption from the Retail Sales and Use Tax for amounts charged for labor rendered in connection with diagnostic work for automotive repair and emergency roadside service for motor vehicles.

Under current law, amounts charged for diagnostic services are exempt from sales tax when those charges are not made in connection with the sale of tangible personal property or the tangible personal property exchanged is inconsequential to the transaction.

If enacted during the regular session of the 2023 General Assembly, this bill would become effective July 1, 2023.

6. **Budget amendment necessary:** No.

7. **Fiscal Impact Estimates are:** Not available. (See Line 8.)

8. **Fiscal implications:**

Administrative Costs

The Department of Taxation ("the Department") considers implementation of this bill to be "routine" and does not require additional funding. This bill would have no impact on local administrative costs.

Revenue Impact

This bill would have an unknown but likely insubstantial negative impact to the General Fund, the Commonwealth Transportation Fund, and local revenues.

9. **Specific agency or political subdivisions affected:**

Department of Taxation
All localities

10. Technical amendment necessary: Yes. The Department understands that the intent of this bill is to provide an exemption in situations where a charge for replacement parts or shop supplies occurs in the transaction. To clarify this policy, the Department recommends the following amendment:

Page 1, Line 28, after amount
Insert: separately

Page 1, Line 29, after § 46.2-100
Insert: , regardless of whether there is a sale of a repair or replacement part or a shop supply charge

11. Other comments:

Labor Charges for Diagnostic Services

Code of Virginia § 58.1-609.5 (2) provides an exemption from the Retail Sales and Use Tax for “an amount separately charged for labor or services rendered in installing, applying, remodeling, or repairing property sold.” The Department clarified in Public Documents 01-78 and 96-88 that this exemption is applicable only to labor performed in the actual repair activity and would not be applicable to services performed prior to, in preparation of, or after the actual repair.

Code of Virginia § 58.1-609.5 (1) provides an exemption from sales tax for “services rendered by repairmen for which a separate charge is made.” The Department’s long-standing policy regarding this exemption has been that it is applicable only to those transactions in which such services are not performed in connection with the sale of tangible personal property. This exemption is meant to apply when the true object of the transaction is an exempt service, in other words, when no tangible personal property is transferred as part of the transaction or the property transferred is inconsequential.

A law change in 2017 provided that separately stated charges for shop supplies are subject to sales tax regardless of whether or not there is transfer of title or possession of the supplies or whether or not the supplies are attached to the automobile. If an automotive shop, repair service, or emergency roadside service provider charges for and separately states the shop supply charges to the customer, those charges comprise the taxable exchange of tangible personal property.

Accordingly, amounts charged for labor rendered in connection with diagnostic work are exempt from the Retail Sales and Use Tax if the charges are: (i) separately stated; and (ii) provided no consequential tangible personal property is exchanged as part of the transaction. Diagnostic or emergency roadside services involving the exchange of taxable shop supply charges do not currently qualify for exemption from sales tax.

The recommended technical amendment would clarify that a transaction is not excluded from the exemption for diagnostic and emergency roadside service due to replacement parts or shop supply charges comprising part of the transaction. Absent this technical amendment, it is unclear whether this would change existing policy.

Proposal

This bill would provide an exemption from the Retail Sales and Use Tax for amounts charged for labor rendered in connection with diagnostic work for automotive repair and emergency roadside service for motor vehicles.

The bill would define “motor vehicle” as every vehicle that is self-propelled or designed for self-propulsion except any device defined as a bicycle, electric personal assistive mobility device, electric power-assisted bicycle, motorized skateboard or scooter, moped, or personal delivery device. Any structure designed, used, or maintained primarily to be loaded on or affixed to a motor vehicle to provide a mobile dwelling, sleeping place, office, or commercial space shall be considered a part of a motor vehicle.

If enacted during the regular session of the 2023 General Assembly, this bill would become effective July 1, 2023.

cc : Secretary of Finance

Date: 1/24/2023 VB
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