

GUIDELINES FOR THE RETAIL SALES AND USE TAX CHANGES ENACTED IN THE 2013 GENERAL ASSEMBLY SESSION

May 1, 2013

2013 House Bill 2313 (*Acts of Assembly 2013, Chapter 766*) increases the rate of the statewide Retail Sales and Use Tax, imposes an additional state Retail Sales and Use Tax in the Northern Virginia and Hampton Roads regions, and imposes a state Transient Occupancy Tax in the Northern Virginia region. These guidelines (“Guidelines”) are published by the Virginia Department of Taxation (the “Department”) to provide guidance to Retail Sales and Use Tax dealers and providers of transient lodgings.

House Bill 2313 also conforms Virginia law to the requirements of proposed federal legislation that would grant states the authority to require remote sellers to collect the Retail Sales and Use Tax. The Department will issue additional guidelines regarding the collection of the Retail Sales and Use Tax by remote sellers upon passage of the federal legislation.

These Guidelines are exempt from the provisions of the Administrative Process Act (*Va. Code § 2.2-4000 et seq.*). The Department has worked with affected dealers, providers of transient lodgings, and local governments affected to develop these Guidelines. These guidelines supplement the Department’s existing Retail Sales and Use Tax Regulations (*23 Virginia Administrative Code “VAC” 10-210-10 et seq.*). To the extent that there is a conflict between House Bill 2313 and the regulations, the legislation supersedes the regulations, and these Guidelines, developed pursuant to the legislation, should be followed. As necessary, additional guidelines will be published on the Department’s website, www.tax.virginia.gov. These Guidelines are available on-line in the Law, Rules and Decisions section of the Department’s website. For additional information, please contact the Office of Customer Services at (804) 367-8037 or through the “Live Chat” service on the Department’s website.

Statewide Retail Sales and Use Tax Rate Increase

Overview

Effective July 1, 2013, the rate of the state Retail Sales and Use Tax will increase from 4 percent to 4.3 percent. The rate of the local option Retail Sales and Use Tax will remain 1 percent. Accordingly, the total rate of the tax will increase from 5 percent to 5.3 percent statewide. In addition, the rate for vending machine dealers will increase from 6 to 6.3 percent (5.3 percent state and 1 percent local) of wholesale purchases for resale. The rate of tax on food purchased for home consumption, currently 2.5 percent (1.5 percent state and 1 percent local) is not affected by this rate increase. (See **“Regional Sales and Use Taxes”** below for more information regarding the new

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regional sales and use tax in the Northern Virginia and Hampton Roads regions.) (Source: *Va. Code* §§ 58.1-603, 58.1-604, and 58.1-614)

Effective July 1, 2013, the rate of the special state use tax on motor vehicles, machinery and tools, aircraft, and equipment brought into Virginia for use in performing construction contracts will increase from 5 percent to 5.3 percent (for all property except for motor vehicles, aircraft, and watercraft). Motor vehicles are taxed at the rate of the Motor Vehicle Sales and Use Tax (4 percent effective July 1, 2013), aircraft are taxed at the rate of 2 percent, and watercraft are taxed at the rate of 2 percent with a maximum tax of \$1,000. (Source: *Va. Code* §§ 58.1-604.1)

The increased tax rate applies to all sales on and after July 1, 2013. Tangible personal property delivered to a purchaser and paid for on or after July 1, 2013 is taxable at the 5.3 percent rate, regardless of when the property was ordered. The increased rate will not apply to property delivered prior to July 1, 2013, but paid for on or after July 1, 2013. Also, the increased rate will not apply when a taxable sale or lease payment is paid for in full prior to July 1, 2013, even though delivery may occur on or after July 1, 2013, or the paid-in-full lease payment covers a lease period beginning on or after July 1, 2013. (Source: *Va. Code* §§ 58.1-602, 58.1-603, and 58.1-604)

Transitional provisions in the legislation provide for the refund of the 0.3 percent tax paid on tangible personal property purchased or leased under certain contracts and leases entered into before April 3, 2013 (the date the legislation was signed by the Governor). (See "Transitional Rules" below for more information.) (Source: *Va. Code* § 58.1-639)

Dealer Discount

Beginning with the June, 2010 return, the dealer discount was suspended for any dealer who has an average monthly Retail Sales and Use Tax liability exceeding \$20,000. The Department annually determines which dealers have an average monthly Retail Sales and Use Tax liability exceeding \$20,000 and notifies those dealers that they are no longer eligible for the dealer discount. The Department also notifies those dealers who no longer meet the threshold that they will become eligible for the dealer discount. Any dealer who is not certain whether the suspension of the dealer discount applies to him should contact the Department at (804) 367-8037 to confirm the correct account status. (Source: House Bill 1500 (Item 5.08 of 2013 *Acts of Assembly*, Chapter 766; *Va. Code* § 58.1-202.1))

As compensation for accounting for and paying the tax, all other dealers are allowed a discount of 1.6 percent, 1.2 percent or 0.8 percent, depending on the volume of monthly taxable sales, of the first 3 percent of the state tax (first 4 percent of the state tax for vending machine dealers). (Source: House Bill 1500 (Item 5.08 of 2013 *Acts of Assembly*, Chapter 766))

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Starting with the July 2013 return (due August 20, 2013) or the July-September 2013 quarterly return (due October 20, 2013), in order to simplify the calculation on the Retail Sales and Use Tax returns and worksheets, dealers may use the discount factors listed in the following table and on the worksheets provided with the Retail Sales and Use Tax returns to calculate the discount:

**Retail Sales and Use Tax Dealer Discounts Available to Dealers
With Average Monthly Tax Liability Not Exceeding \$20,000**

<u>Monthly Taxable Sales</u>		<u>Statutory Discount Percentage</u>	<u>General Sales Discount Factor</u>	<u>Qualifying Food Discount Factor</u>
<i>At Least</i>	<i>But Less Than</i>			
\$0	\$62,501	1.6%	.01116	.016
\$62,501	\$208,001	1.2%	.00837	.012
\$208,001	<i>And Up</i>	0.8%	.00558	.008

**Vending Machine Sales Dealer Discounts Available to Dealers
With Average Monthly Tax Liability Not Exceeding \$20,000**

<u>Monthly Taxable Sales</u>		<u>Statutory Discount Percentage</u>	<u>Discount Factor</u>
<i>At Least</i>	<i>But Less Than</i>		
\$0	\$62,501	1.6%	.01208
\$62,501	\$208,001	1.2%	.00906
\$208,001	<i>And Up</i>	0.8%	.00604

The discount factors are based on the amount of tax owed pursuant to the 4.3 percent (5.3 percent for vending machines) statewide tax. As the dealer discount does not apply to the additional 0.7 percent tax in the Northern Virginia and Hampton Roads regions, the amount of regional tax should not be added when using the discount factors to determine the dealer discount. (See "**Regional Sales and Use Taxes**" below for more information regarding the new regional sales and use tax in the Northern Virginia and Hampton Roads regions.)

Dealers holding two or more certificates of registration must compute the dealer's discount based upon taxable sales from all business locations. This requirement applies to dealers filing consolidated returns and those filing separate returns for each business location. Dealers with multistate business locations must compute the discount based upon the combined taxable sales from all business locations in Virginia

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and on Virginia taxable sales from out-of-state business locations. (Source: *Va. Code* § 58.1-622)

Regional Sales and Use Tax

Definitions

“Northern Virginia Region” is defined as the Counties of Arlington, Fairfax, Loudoun, and Prince William and the Cities of Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park. (Source: *Va. Code* §§ 58.1-603.1 and 58.1-604.01)

“Hampton Roads Region” is defined as the Counties of Gloucester, Isle of Wight, James City, Southampton, Surry, and York and the Cities of Chesapeake, Franklin, Hampton, Newport News, Norfolk, Poquoson, Portsmouth, Suffolk, Virginia Beach, and Williamsburg. (Source: *Va. Code* §§ 58.1-603.1 and 58.1-604.01)

Overview

Effective July 1, 2013, a new additional state Retail Sales and Use Tax will be imposed in the Northern Virginia and Hampton Roads regions at the rate of 0.7 percent. Accordingly, the total rate of the state and local Retail Sales and Use Tax will be 6 percent in localities that fall within these regions (4.3 percent state, 0.7 percent regional, and 1 percent local). The rate for vending machine dealers in the Northern Virginia and Hampton Roads regions will increase to 7.0 percent (5.3 percent state, 0.7 percent regional, and 1 percent local) of wholesale purchases for resale. (Source: *Va. Code* §§ 58.1-603.1 and 58.1-604.01)

The regional tax will be administered in the same manner as the state Retail Sales and Use Tax. However, food purchased for home consumption is not subject to the regional tax. No dealer discount is allowed on the regional tax. (Source: *Va. Code* §§ 58.1-603.1 and 58.1-604.01)

The regional tax applies to sales on and after July 1, 2013 in localities that fall within the Northern Virginia and Hampton Roads regions. Tangible personal property delivered to a purchaser and paid for on or after July 1, 2013 is subject to the regional tax, regardless of when the property was ordered. The new tax will not apply to tangible personal property delivered prior to July 1, 2013, but paid for on or after July 1, 2013. The new tax also will not apply when a taxable sale or lease is paid for in full prior to July 1, 2013, even though delivery may occur on or after July 1, 2013, or the paid-in-full lease covers a lease period beginning on or after July 1, 2013. (Source: *Va. Code* §§ 58.1-602, 58.1-603.1 and 58.1-604.01)

Although the regional tax is effective July 1, 2013, the transitional provisions provide for the refund of the tax paid on tangible personal property purchased or leased under

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certain contracts and leases entered into before April 3, 2013 (the date the legislation was signed by the Governor) even though the property is delivered subsequent to July 1, 2013. (See "Transitional Rules" below)

Sourcing Rules

Sales Tax

As it is administered in the same manner as the Retail Sales and Use Tax, the new regional sales tax is sourced in the same manner as the local option sales tax. For intrastate sales, the local option sales tax is generally sourced to the city or county of the place of business of the dealer collecting the tax, without regard to the city or county of possible use by the purchaser. Accordingly, in-state dealers should collect the regional sales tax on sales made in places of business located in the Northern Virginia and Hampton Roads regions, even if the goods are delivered outside the Northern Virginia and Hampton Roads regions. Likewise, in-state dealers not located in the Northern Virginia and Hampton Roads regions should not collect the regional sales tax, even if the goods are delivered into the Northern Virginia or Hampton Roads regions. (Source: *Va. Code* §§ 58.1-603.1 and 58.1-605). The following provides detailed rules for various additional scenarios:

1. When tangible personal property is purchased by the purchaser at the place of business of the seller, the sale is sourced to that place of business, even if the goods are ultimately delivered to the purchaser at another location. (Source: 23VAC10-210-2070(E)).

Example 1:

Dealer A makes a sale to a customer on July 1, 2013 at his place of business in the City of Fairfax in the Northern Virginia region. Dealer A has the goods delivered to the customer in Loudoun County in the Northern Virginia region. The sale is sourced to the City of Fairfax. Dealer A should collect 6 percent (4.3 percent state, 0.7 percent regional, and 1 percent local) sales tax on the purchase. The 1 percent local tax should be sourced to the City of Fairfax.

Example 2:

Dealer B makes a sale to a customer on July 1, 2013 at his place of business in Loudoun County in the Northern Virginia region, but the goods are delivered to the customer in Roanoke County, which is not in the Northern Virginia or Hampton Roads region. The sale is sourced to Loudoun County, in the Northern Virginia region. Dealer B should collect

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6 percent sales tax on the purchase. The 1 percent local tax should be sourced to Loudoun County.

2. When tangible personal property is purchased remotely (by telephone, Internet, or mail order) from an in-state dealer with a place of business in Virginia, the sale is sourced to the location in which the order was first taken, even if the goods are ultimately delivered to the Customer at another location.

Example 3:

Customer C orders merchandise from Dealer D in August, 2013 by placing a call to Dealer D's store, located in the City of Newport News in the Hampton Roads region. The goods will be shipped to Customer C's residence that is neither in the Hampton Roads nor Northern Virginia region. The sale is sourced to the City of Newport News in the Hampton Roads region. Dealer D should collect 6 percent (4.3 percent state, 0.7 percent regional, and 1 percent local) sales tax on the purchase. The 1 percent local tax should be sourced to the City of Newport News.

3. When tangible personal property is purchased remotely from an out-of-state dealer and is not received by the purchaser at the dealer's business location, the sale is sourced to the location to which the goods are delivered.

Example 4:

Customer E orders merchandise from Dealer F's website, which has a place of business and warehouse in North Carolina. Dealer F is registered to collect the Virginia Retail Sales and Use Tax. The invoice indicates that the merchandise will be shipped to Customer E's residence in the City of Richmond, which is outside the Northern Virginia and Hampton Roads regions. Because Dealer F's place of business and warehouse are located outside of Virginia, the sale is sourced to the location in which the merchandise is delivered, the City of Richmond, which is outside the Northern Virginia and Hampton Roads regions. Dealer F should collect 5.3 percent (4.3 percent state and 1 percent local) sales tax on the purchase. The 1 percent local tax should be sourced to the City of Richmond.

4. When tangible personal property is leased from an in-state lessor, the sale is sourced to the lessor's place of business. (23VAC10-210-2070(E)).

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Example 5:

Customer G enters into a rental agreement with a lessor with a place of business in the City of Hampton in the Hampton Roads region. The equipment will be used for a highway construction project in Fairfax County in the Northern Virginia region. The sale is sourced to the lessor's place of business in the City of Hampton in the Hampton Roads region. The lessor should collect the tax at the rate of 6 percent (4.3 percent state, 0.7 percent regional, and 1 percent local). The 1 percent local tax should be sourced to the City of Hampton.

Use Tax Collected by Dealers

As it is administered in the same manner as the Retail Sales and Use Tax, the new regional use tax is sourced in the same manner as the local option use tax. The new regional use tax is sourced to the city or county where the goods are used or consumed by the purchaser, or stored for use or consumption. Out-of-state dealers who hold Certificates of Registration to collect the use tax from their customers must source sales into Virginia according to the city or county of destination. Sales shipped into the Northern Virginia or Hampton Roads regions are subject to the new regional use tax. (Source: *Va. Code* §§ 58.1-604.01 and 58.1-606; 23 VAC 10-210-880)

Example 6:

Dealer A makes Internet sales from his place of business in North Carolina. Dealer A holds a Certificate of Registration to collect the use tax from Virginia customers. Dealer A makes a sale on July 25, 2013, and ships the goods to the City of Fairfax. Dealer A would collect 6 percent (4.3 percent state, 0.7 percent regional, and 1 percent local) use tax on the sale. The 1 percent local tax should be sourced to the City of Fairfax.

Example 7:

Dealer B makes Internet sales from his place of business in Maryland. Dealer B holds a Certificate of Registration to collect the use tax from Virginia customers. Dealer B makes a sale on August 1, 2013, and ships the goods to the City of Harrisonburg. Dealer B would collect 5.3 percent (4.3 percent state and 1 percent local) use tax on the sale. The 1 percent local tax should be sourced to the City of Harrisonburg.

Consumer Use Tax

Virginia residents and others purchasing goods from a business that does not collect the Virginia Retail Sales and Use Tax or purchasing goods tax-free while outside

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Virginia and bringing them into Virginia are subject to the Consumer Use Tax, including the regional use tax, with certain exceptions.

The use tax does not apply to tangible personal property brought into the Commonwealth by a nonresident of Virginia for personal use. Additionally, the use tax does not apply to property purchased outside the Commonwealth by a nonresident of Virginia who subsequently moves into the Commonwealth at least six months after the property is purchased. However, the tax does apply to tangible personal property temporarily brought into the Commonwealth from outside of the Commonwealth for the performance of contracts for the construction, reconstruction, installation, repair, or for any other service with respect to real estate or fixtures thereon. Tangible personal property that becomes subject to the use tax within six months of its acquisition is taxed on the basis of its cost price.

Any person purchasing tangible personal property in other areas of the Commonwealth for use in either the Northern Virginia or Hampton Roads region is not responsible for the regional Consumer Use Tax if the Retail Sales and Use Tax has been paid on the purchase. (Source: *Va. Code* §§ 58.1-604, 58.1-604.01, 58.1-606, and 58.1-607)

Example 8:

Customer A, who is located in the City of Fairfax, makes an Internet purchase of tangible personal property on July 10, 2013 from a West Virginia dealer who does not hold a Virginia Certificate of Registration and does not collect the use tax from Virginia customers. Customer A must remit 6 percent (4.3 percent state, 0.7 percent regional, and 1 percent local) use tax on the purchase.

Example 9:

Customer B, who is located in the City of Bristol, Virginia, makes an Internet purchase of tangible personal property on July 20, 2013 from a New York dealer who does not hold a Virginia Certificate of Registration and does not collect the use tax from Virginia customers. Customer B must remit 5.3 percent (4.3 percent state and 1 percent local) use tax on the purchase.

Example 10:

Customer C is located in the City of Charlottesville. Customer C buys equipment in Charlottesville on July 10, 2013, intended for use performing a construction contract in Fairfax County and pays 5.3 percent sales tax. Customer C moves the equipment into Fairfax County on July 29, 2013.

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Customer C does not owe the regional use tax on the equipment as the sales tax has been paid.

Filing and Paying Consumer Use Tax

Businesses that are registered dealers for the purposes of the Retail Sales and Use Tax owing the consumer use tax on tangible personal property i) brought into Virginia from outside the Commonwealth and ii) upon which the applicable tax has not been paid, are required to remit the use tax on their regular Retail Sales and Use Tax returns. Businesses that are not registered dealers are required to file and remit the use tax using the Business Consumer's Use Tax Return, Form ST-7. The regional use tax for tangible personal property brought into the Northern Virginia or Hampton Roads Regions from outside the Commonwealth also is required to be remitted directly to the Department using the applicable return.

Individuals who are not registered dealers owing the consumer use tax on tangible personal property i) brought into Virginia from outside the Commonwealth and ii) upon which the applicable tax has not been paid, are required to remit the tax directly to the Department using either Form CU-7, Consumer Use Return, or the Individual Income Tax Return, Form 760 Schedule ADJ. The regional use tax for tangible personal property brought into the Northern Virginia or Hampton Roads Regions from outside the Commonwealth also is required to be remitted directly to the Department using either Form CU-7, Consumer Use Return or the Individual Income Tax Return, Form 760 Schedule ADJ. The forms and instructions are available on the Department's web site, www.tax.virginia.gov. No prior registration with the Department is required for taxpayers filing a Form CU-7, Consumer Use Return.

Transitional Rules

Overview

The statewide increase of the Retail Sales and Use Tax rate and the new regional Retail Sales and Use Tax apply to sales on and after July 1, 2013. Tangible personal property delivered to a purchaser and paid for on or after July 1, 2013 is taxable at the higher rate, regardless of when the property was ordered. The increased rate will not apply to property delivered prior to July 1, 2013, but paid for on or after July 1, 2013. Also, the increased rate will not apply when a taxable sale or lease payment is paid for in full prior to July 1, 2013, even though delivery may occur on or after July 1, 2013, or the paid-in-full lease payment covers a lease period beginning on or after July 1, 2013. (Source: Va. Code §§ 58.1-602, 58.1-603, 58.1-603.1, 58.1-604, and 58.1-603.1)

The new law includes transitional provisions for persons who, prior to April 3, 2013 (the date the legislation is signed by the Governor), enter into bona fide real estate construction contracts, contracts for the sale of tangible personal property, or leases of

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tangible personal property. Under the transitional provisions, although tangible personal property purchased or leased under such contracts will be subject to the 5.3 percent (6.0 percent in the Northern Virginia and Hampton Roads Regions) additional tax (“additional tax”) on and after July 1, 2013, the purchaser or lessee of the property will be entitled to request a refund from the Department of the additional tax paid as the result of the rate increase if the date of delivery of the tangible personal property is on or before September 30, 2013. (Source: *Va. Code* § 58.1-639)

Refund Requests

Refunds of the additional tax paid on purchases or leases of tangible personal property under bona fide real estate construction contracts, contracts for the sale of tangible personal property, or leases of tangible personal property will be limited to only the purchaser or lessee of the property. (Source: *Va. Code* § 58.1-639)

The purchaser or lessee of tangible personal property under qualifying contracts or leases shall request refunds of the additional tax directly from the Department and not from the seller or lessor of the property. In seeking refunds, the purchaser or lessee shall furnish the Department with copies of the contract or lease under which property is purchased or leased. Also, the purchaser or lessee shall indicate the delivery date of all items for which refunds are claimed and must be able to demonstrate that the additional tax was actually paid to his suppliers or lessors. Copies of invoices will be required to verify that the additional tax was paid on purchases or leases of tangible personal property for which refunds are requested. (Source: *Va. Code* § 58.1-639)

As with refund requests generally, the request must be made within 3 years of the date the tax became due. For instance, if a piece of equipment is purchased in July 2013, the tax does not become due from the dealer until August 20, 2013. Thus, a refund request could be filed anytime on or before August 20, 2016. In addition, interest will be paid by the Department on such refunds for the period from the date the tax became due until the date of refund. (Source: *Va. Code* §§ 58.1-639 and 58.1-1823)

Real Estate Construction Contracts

Refunds of the tax paid on and after July 1, 2013 are available when tangible personal property is purchased or leased under a *bona fide* real estate construction contract or bona fide highway construction contract entered into before April 3, 2013. A “*bona fide*” contract is one that included finished plans and specifications before April 3, 2013. Refunds will not be available, however, in the event that a bona fide contract is renegotiated or to the extent that a contract is expanded to include additional work or the furnishing of additional materials. (Source: *Va. Code* § 58.1-639)

Refunds will be available only for the additional tax paid on (i) materials permanently incorporated into real estate, and (ii) construction supplies, fixtures, equipment, etc.,

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that enter into the construction of or become a part of a structure, highway, etc. Further, refunds will be limited to property purchased or leased in connection with a specific contract and used exclusively in such contract. Thus, refunds will not be available for tax paid on equipment, materials, supplies, tools, etc. that will be used in more than one contract. (Source: *Va. Code* § 58.1-639)

As noted below, rules for obtaining refunds of the tax on purchases or leases under *bona fide* real estate construction contracts vary depending on whether or not the contract contains a specific and stated date of completion.

In the case of *bona fide* real estate construction contracts that do not contain a specific and stated date of completion, refunds of the additional tax may be claimed only with respect to purchased or leased tangible personal property that is delivered to the contractor on or before September 30, 2013. (Source: *Va. Code* § 58.1-639)

Example 11:

Contractor A enters into a *bona fide* contract before April 3, 2013, for the erection of a home, but the contract does not contain a specific and stated date of completion. After July 1, 2013, Contractor A makes two orders of materials for use in the project and pays the full 5.3 percent sales tax on the materials. Because the contract did not contain a specific and stated date of completion, Contractor A must take delivery of goods purchased for use in the project on or before September 30, 2013, in order to receive a refund of the additional tax. The first order is delivered to Contractor A on August 30, 2013, but the second order is delivered to Contractor A on December 1, 2013. Contractor A may receive a refund of the 0.3 percent (1.0 percent in the Northern Virginia and Hampton Roads Regions) tax paid on the first order, but will not be able to receive a similar refund on the second order because it was delivered after September 30, 2013.

In the case of *bona fide* real estate construction contracts that contain a specific and stated date of completion, refunds of the additional tax paid on and after July 1, 2013, will be available for all property delivered to the contractor on or before the completion date specified in the contract. (Source: *Va. Code* § 58.1-639)

Example 12:

Contractor B enters into a *bona fide* contract before April 3, 2013, for the erection of a bridge. The contract contains a specific and stated completion date of June 30, 2015. On and after July 1, 2013, Contractor B pays the 5.3 percent (6.0 percent in the Northern Virginia and Hampton Roads Regions) tax on his purchases of materials for use in the contract and all such materials, except one shipment, are delivered to the

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contractor by the June 30, 2015, date of completion. The last shipment of materials is delivered to Contractor B on July 1, 2015. Refunds of the 0.3 percent (1.0 percent in the Northern Virginia and Hampton Roads Regions) tax paid by Contractor B will be available for all materials delivered to him by the specified completion date stated in his contract, June 30, 2015. However, a refund will not be available for the additional tax paid on the last delivery because that delivery occurred after the specified and stated completion date for the project. Both contracts containing a specific date for completion, e.g., July 1, 2015, and contracts containing a specific number of calendar days for completion, e.g., 150 calendar days, shall be considered as contracts with a specific and stated date of completion.

When a subcontractor performs work for a general contractor, the date of completion for purposes of this provision is the date stated in the subcontract and not the completion date specified in the contract between the general contractor and the customer.

The refund provisions applicable to contracts that contain a specific and stated date of completion do not apply when the completion date specified in the original *bona fide* real estate construction contract is extended for any reason, unless a new contract is entered into or the original contract is renegotiated before April 3, 2013. In the event that the completion date specified in the original bona fide real estate construction contract is extended, refunds of the additional tax paid on and after July 1, 2013, will be available only for property delivered on or before the completion date specified in the original contract. In the event that the completion date is extended through a new contract or a renegotiated contract entered into prior to April 3, 2013, refunds will be available for the additional tax paid on all property delivered to the contractor on or before the completion date specified in the new or renegotiated contract. (Source: Va. Code § 58.1-639)

Refunds of the 0.3 percent (1.0 percent in the Northern Virginia and Hampton Roads Regions) tax paid by contractors on and after July 1, 2013, will not be available when purchases or leases are made pursuant to non-bona fide real estate construction contracts. A non-bona fide contract is one that did not include finished plans or specifications before April 3, 2013. Contracts that are entered into on or before April 3, 2013, without finished plans or specifications but which are amended after April 3, 2013, to include plans or specifications are also not bona fide contracts. (Source: Va. Code § 58.1-639)

Contracts for the Sale of Tangible Personal Property

Refunds of the additional tax paid on and after July 1, 2013, may be claimed for tangible personal property purchased under sale contracts entered into before April 3, 2013, provided the property is delivered to the purchaser on or before September 30, 2013.

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Refunds will not be available if a sale contract was entered into on or after April 3, 2013, or if the property purchased is delivered to the purchaser after September 30, 2013. (Source: *Va. Code* § 58.1-639)

The provisions for the refund of the additional tax apply to all layaways made before April 3, 2013, and delivered to the purchaser on or before September 30, 2013. (Source: *Va. Code* § 58.1-639)

Example 13:

Customer A makes a layaway purchase of an item of merchandise before April 3, 2013, and takes delivery of the merchandise on September 30, 2013. Customer A will be required to pay the full 5.3 percent (6.0 percent in the Northern Virginia and Hampton Roads Regions) tax when he completes the layaway purchase, but he will be able to request a refund of the additional tax he paid.

Example 14:

Customer B makes a layaway purchase of an item of merchandise before April 3, 2013, but does not take delivery of the merchandise until December 1, 2013. Customer B will be required to pay the full 5.3 percent (6.0 percent in the Northern Virginia and Hampton Roads Regions) sales tax on the purchase, but will not be able to request a refund of the additional tax because he did not take delivery of the merchandise until after September 30, 2013.

Pursuant to 23 VAC 10-210-670, the sales tax is not to be collected on the sale of gift certificates, but is to be collected when gift certificates are redeemed for merchandise. Because gift certificates are not taxable until redeemed, refunds of the additional tax paid on purchases made with gift certificates redeemed on and after July 1, 2013, will not be available.

Pursuant to 23 VAC 10-210-450, the sales and use tax is due in full when an agreement for an installment sale is made. 23 VAC 10-210-450 does not permit the tax on an installment sale to be paid in installments. Therefore, all installment sales prior to July 1, 2013, will be subject to state and local Retail Sales and Use Tax at a rate of 5.0 percent, while sales on and after July 1, 2013, will be subject to tax at the rate of 5.3 percent (6.0 percent in the Northern Virginia and Hampton Roads Regions). Because the tax on installment sales is due as of the date the contract of sale is entered into, refunds of the additional tax paid on an installment sale on and after July 1, 2013, will not be available.

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Current Virginia law provides that the sale of maintenance, the terms of which provide for both repair or replacement parts and repair labor, are subject to tax upon one-half of the total charge for such contracts only. Persons providing maintenance pursuant to such a contract may continue to purchase repair or replacement parts under a resale certificate of exemption. As with other sales of tangible personal property, the sales and use tax becomes due in full when the contract is entered into. Therefore, all such taxable maintenance contracts entered into before July 1, 2013, will be subject to the tax at a rate of 2.5 percent, while those taxable maintenance contracts entered into on or after July 1, 2013, will be subject to the tax at a rate of 2.65 percent (3.0 percent in the Northern Virginia and Hampton Roads Regions). Because the tax on such contracts becomes due as of the date the contract is entered into, refunds of the additional tax paid on and after July 1, 2013, will not be available. (Source: *Va. Code* § 58.1-609.5)

Leases

Refunds of the additional tax paid on leases of tangible personal property on and after July 1, 2013, will be available, provided that (i) the lease or rental is entered into before April 3, 2013, and (ii) the leased property is delivered to the lessee by September 30, 2013. However, refunds will not be available for the additional tax paid on leases entered into on or after April 3, 2013, or where leased property is delivered to the lessee after September 30, 2013.

So long as the above two conditions are met, refunds may be requested for the additional tax paid over the course of a lease. For instance, a person who enters into a five-year equipment lease before April 3, 2013, and who takes delivery of the equipment by September 30, 2013, would be able to seek refunds of the additional tax in the Northern Virginia and Hampton Roads Regions) tax paid for periods through the end of the five-year lease period. (Source: *Va. Code* § 58.1-639)

However, if the lessee assigns the lease, or if the property is turned over to anyone else, refunds of the additional tax will not be available for tax paid after the change. In addition, refunds of the additional tax will not be available if there are replacements of the property leased (except for replacements due to defective goods), if additional property is added to the lease, or if the lease is renegotiated or renewed. (Source: *Va. Code* § 58.1-639)

Example 15:

Customer A enters into a one-year lease for equipment before April 3, 2013, and takes delivery of the equipment on September 30, 2013. Customer A makes monthly payments on the lease beginning September 30, 2013 and ending September 30, 2014. Customer A will be required to pay the full 5.3 percent (6.0 percent in the Northern Virginia and Hampton

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Roads Regions) tax on the lease payments, but he will be able to request a refund of the additional tax paid.

Example 16:

Customer B enters into a one-year lease for equipment before April 3, 2013, but does not take delivery of the equipment until December 1, 2013. Customer B will be required to pay the full 5.3 percent sales tax (6.0 percent in the Northern Virginia and Hampton Roads Regions) on the purchase, but will not be able to request a refund of the additional tax because he did not take delivery of the equipment until after September 30, 2013.

Retail Sales and Use Taxation of Transient Accommodations

The statewide increase of the Retail Sales and Use Tax rate and the new regional Retail Sales and Use Tax apply to rentals of accommodations to transients on and after July 1, 2013. Accommodations i) furnished to transients on or after July 1, 2013, and ii) paid for on or after July 1, 2013, are taxable at the 5.3 percent rate (6.0 percent in the Northern Virginia and Hampton Roads Regions), regardless of when the rental was reserved. However, the increased state tax rate and new state regional tax will not apply to accommodations furnished to transients prior to July 1, 2013, but paid for on or after July 1, 2013. Additionally, the increased state tax rate and new regional tax will not apply when the accommodations are paid for in full prior to July 1, 2013, even if the accommodations are not furnished to the transient until on or after July 1, 2013. Finally, the transitional rules for certain leases only apply to leases of tangible property and are not applicable to lodgings. (Source: *Va. Code* §§ 58.1-603, 58.1-603.1, 58.1-604, 58.1-604.01 and 58.1-639)

Example 17:

Customer A reserves a stay in a summer rental house in Virginia Beach for the first week in October, 2013. Customer A makes the reservation and pays for the accommodation in full on June 15, 2013. Even though the accommodation will not be furnished to Customer A until after July 1, 2013, as the accommodation is paid in full prior to July 1, 2013, the accommodation is subject to the Retail Sales and Use Tax at the rate of 5 percent (4 percent state and 1 percent local). The accommodation would not be subject to the state tax rate increase or the new regional tax in the Hampton Roads Region.

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Example 18:

Customer B reserves a stay in a bed and breakfast inn in the City of Roanoke for the first week in August, 2013. Customer B makes the reservation and pays a deposit on June 15, 2013. Customer B pays the remaining amount at the end of the stay in August. As the accommodation is not furnished to Customer B prior to July 1, 2013, and is not paid in full prior to July 1, 2013, the accommodation is subject to the Retail Sales and Use Tax at the increased rate of 5.3 percent (4.3 percent state and 1 percent local).

Example 19:

Customer C reserves a stay in a bed and breakfast inn in the City of Virginia Beach for the first week in August, 2013. Customer C makes the reservation and pays a deposit on June 15, 2013. Customer C pays the remaining amount at the end of the stay in August. As the accommodation is not furnished to Customer C prior to July 1, 2013, and is not paid in full prior to July 1, 2013, the accommodation would be subject to the state tax rate increase and the new regional tax in the Hampton Roads Region. The accommodation is subject to the Retail Sales and Use Tax at the increased rate of 6 percent (4.3 percent state, 0.7 percent regional, and 1 percent local).

Computation of Tax and Bracket Charts

Generally, the tax shall be computed at 5.3 percent (6.0 percent in the Northern Virginia and Hampton Roads Regions) with one half cent or more being treated as one cent. However, if a dealer can show to the satisfaction of the Tax Commissioner that more than 85 percent of the total dollar volume of his gross taxable sales during the taxable month was from individual sales at prices of 10 cents or less each and that he was unable to adjust his prices in such manner as to prevent the economic incidence of the sales tax from falling on him, the Tax Commissioner shall determine the proper tax liability of the dealer based on that portion of the dealer's gross taxable sales that was from sales at prices of 11 cents or more. (Source: *Va. Code* § 58.1-628.2)

For sales of five dollars or less, dealers may compute the 5.3 percent Retail Sales and Use Tax in Virginia (other than in the Northern Virginia and Hampton Roads Regions) using the following bracket chart to eliminate fractions of one cent. Any dealer who collects the tax in accordance with the following bracket chart shall not be deemed to have overcollected the tax.

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5.3% Virginia (Other than Northern Virginia and Hampton Roads Regions) Bracket Chart for Sales of Five Dollars or Less

\$0.00 to \$0.09	no tax
.10 to .28	1¢ tax
.29 to .47	2¢ tax
.48 to .66	3¢ tax
.67 to .84	4¢ tax
.85 to 1.03	5¢ tax
1.04 to 1.22	6¢ tax
1.23 to 1.41	7¢ tax
1.42 to 1.60	8¢ tax
1.61 to 1.79	9¢ tax
1.80 to 1.98	10¢ tax
1.99 to 2.16	11¢ tax
2.17 to 2.35	12¢ tax
2.36 to 2.54	13¢ tax
2.55 to 2.73	14¢ tax
2.74 to 2.92	15¢ tax
2.93 to 3.11	16¢ tax
3.12 to 3.30	17¢ tax
3.31 to 3.49	18¢ tax
3.50 to 3.67	19¢ tax
3.68 to 3.86	20¢ tax
3.87 to 4.05	21¢ tax
4.06 to 4.24	22¢ tax
4.25 to 4.43	23¢ tax
4.44 to 4.62	24¢ tax
4.63 to 4.81	25¢ tax
4.82 to 4.99	26¢ tax
5.00	27¢ tax

For sales of five dollars or less, dealers may compute the 6.0 percent Retail Sales and Use Tax in the Northern Virginia and Hampton Roads Regions using the following bracket chart to eliminate fractions of one cent. Any dealer who collects the tax in accordance with the following bracket chart shall not be deemed to have overcollected the tax.

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6.0% Northern Virginia and Hampton Roads Regions Bracket Chart for Sales of Five Dollars or Less

\$0.00 to \$0.08	no tax
.09 to .24	1¢ tax
.25 to .41	2¢ tax
.42 to .58	3¢ tax
.59 to .74	4¢ tax
.75 to .91	5¢ tax
.92 to 1.08	6¢ tax
1.09 to 1.24	7¢ tax
1.25 to 1.41	8¢ tax
1.42 to 1.58	9¢ tax
1.59 to 1.74	10¢ tax
1.75 to 1.91	11¢ tax
1.92 to 2.08	12¢ tax
2.09 to 2.24	13¢ tax
2.25 to 2.41	14¢ tax
2.42 to 2.58	15¢ tax
2.59 to 2.74	16¢ tax
2.75 to 2.91	17¢ tax
2.92 to 3.08	18¢ tax
3.09 to 3.24	19¢ tax
3.25 to 3.41	20¢ tax
3.42 to 3.58	21¢ tax
3.59 to 3.74	22¢ tax
3.75 to 3.91	23¢ tax
3.92 to 4.08	24¢ tax
4.09 to 4.24	25¢ tax
4.25 to 4.41	26¢ tax
4.42 to 4.58	27¢ tax
4.59 to 4.74	28¢ tax
4.75 to 4.91	29¢ tax
4.91 to 5.00	30¢ tax

Filing of Returns

The regional Retail Sales and Use Tax will be reported on dealers' Retail Sales and Use Tax and Vending Machine Tax and Business Consumer's Use Tax returns. The Department will make the revised returns available early May. Returns for April, May, and June 2013 are not affected by the legislation. Monthly filers should use the new returns for periods beginning with the month of July 2013. Quarterly filers should begin using the new forms for the quarter ending September 30, 2013. In general, dealers must file Retail Sales and Use Tax returns on a monthly basis, with returns due by the

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20th of the month after the sales occurred. However, the Department may change a dealer's filing frequency from monthly to quarterly based on his tax liability. Dealers will be notified prior to the effective date if their filing frequency is changed.

2012 House Bill 1301 (*Acts of Assembly 2012 Special Session I, Chapter 3*), Item 273 (O) required that all sales and use tax returns and payments be filed electronically. All monthly sales tax filers were required to file and remit payment electronically beginning with the July, 2012 return, due August 2012. Less frequent filers must file and remit payment electronically beginning with their first return due after July 1, 2013. Waivers will be granted if the Tax Commissioner finds that this requirement creates an unreasonable burden on the dealer. All requests for waiver must be submitted to the Tax Commissioner in writing.

Generally, in-state dealers are those dealers making Virginia sales while having one or more physical locations in Virginia. Such businesses must submit Form ST-9, Retail Sales and Use Tax Return, to the Department. A return must be filed for each period, even if there are no sales to report.

Out-of-state dealers, in most cases, are those dealers physically located outside of Virginia but make qualified sales, leases or rentals into Virginia. If an out-of-state dealer has sufficient nexus with Virginia, the dealer must register with Virginia to collect Virginia Use Tax on their Virginia sales. Out-of-state businesses that do not have sufficient nexus with Virginia may still choose to register with Virginia to collect the tax as a courtesy to their Virginia customers. Whether required to register or not, any out-of-state dealer registered to collect Virginia Use Tax must file Form ST-8, Out-of-State Dealers Use Tax Return. A return must be filed for each period, even if there are no sales to report.

A Direct Payment Permit allows certain companies to purchase goods without paying the sales or use tax at the time of purchase. These companies agree to pay the tax due directly to the Department, and allocate the local tax so that no county or city will lose any revenue. Direct Payment Permits are typically issued to manufacturers, contractors or mine operators who store tangible personal property within the Commonwealth for use both in and outside of Virginia. Businesses who meet the qualifications set forth in *Va. Code* § 58.1-624 may apply to the Tax Commissioner for a permit. If approved, the business would file Form ST-6, Direct Pay Permit Sales and Use Tax Return.

Additionally, the Retail Sales and Use Tax is imposed on dealers who place vending machines for the sale of tangible personal property. The tax is computed on the cost price (or manufactured cost) of tangible personal property sold through the vending machines. Dealers who are subject to the Retail Sales and Use Tax on tangible personal property sold through vending machines must file Form VM-2, Vending Machine Dealer's Sales Tax Return.

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Penalties and Interest

Except with respect to fraudulent returns, the failure to file a timely return and make a timely and full payment of this tax will subject the dealer to a penalty of six percent of the tax owed if the failure is for not more than one month, with an additional six percent for each additional month, or fraction thereof, during which the failure continues, not to exceed thirty percent. In no case, however, shall the penalty be less than ten dollars and such minimum penalty shall apply whether or not any tax is due for the period for which such return was required. A dealer who does not collect and remit the 0.7 percent additional regional tax due has not made a timely and full payment of the tax, even if he has remitted the 5.3 percent tax, and will be subject to the penalty for the tax owed. (Source: *Va. Code* § 58.1-635 A)

In the case of a false or fraudulent return where willful intent exists to defraud the Commonwealth of this tax, or in the case of a willful failure to file a return with the intent to defraud the Commonwealth of this tax, a penalty of fifty percent of the amount of the proper tax shall be assessed. (Source: *Va. Code* § 58.1-635 A)

The rate of interest on omitted taxes and assessments is the "Underpayment Rate" established pursuant to § 6621(a)(2) of the *Internal Revenue Code* plus two percent. (Source: *Va. Code* § 58.1-15(A))

Example 20:

Dealer A makes a sale to a customer on July 1, 2013 at his place of business in the City of Fairfax in the Northern Virginia region. The sale is sourced to the City of Fairfax. Dealer A should collect 6 percent (4.3 percent state, 0.7 percent regional, and 1 percent local) sales tax on the purchase. However, Dealer A only collects and remits the 5.3 percent sales tax (4.3 percent state and 1 percent local) on the purchase and does not collect the 0.7 percent additional regional tax. Dealer A has not made a timely and full payment of the sales tax. Dealer A would owe a penalty of six percent of the amount of tax owed (only the 0.7 percent additional regional tax) if the failure is for not more than one month. Dealer A would also owe interest on the amount of tax owed (only the 0.7 percent additional regional tax).

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Additional Information

These Guidelines are available on-line in the Law, Rules and Decisions section of the Department's website. Forms, instructions, frequently asked questions and other helpful information are also available on the Department's website. For additional information, please contact the Office of Customer Services at (804) 367-8037 or through the "Live Chat" service on the Department's website, www.tax.virginia.gov.

Approved:



Craig M. Burns
Tax Commissioner