



Fast Track Proposed Regulation Agency Background Document

Agency name	Department of Taxation ("TAX")
Virginia Administrative Code (VAC) citation	23 VAC 10-370-10, 23 VAC 10-370-30, 23 VAC 10-370-130, 23 VAC 10-370-140, 23 VAC 10-370-160, 23 VAC 10-370-170 and 23 VAC 10-370-190 through 23 VAC 10-370-230
Regulation title	Cigarette Tax Regulations
Action title	Repeal of Unnecessary Cigarette Tax Regulations
Document preparation date	June 8, 2006

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 21 (2002) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes.

As the result of a comprehensive review of all of its regulations, TAX has identified numerous regulations that address statutes that are clear and unambiguous. As they provide no additional guidance, these regulations are being repealed. Repeal of these regulations does not reflect a change in existing departmental policy.

Statement of final agency action

Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.

The Tax Commissioner approved the repeal of these regulations in the Cigarette Tax Regulations chapter on October 14, 2005.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the scope of the legal authority and the extent to which the authority is mandatory or discretionary.

Code of Virginia § 58.1-203 provides that the “Tax Commissioner shall have the power to issue regulations relating to the interpretation and enforcement of the laws of this Commonwealth governing taxes administered by the Department.” The authority for the current regulatory action is discretionary.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

As the result of a comprehensive review of all of its regulations, TAX has identified numerous regulations that address statutes that are clear and unambiguous. As they provide no additional guidance, these regulations are being repealed. As these regulations are unnecessary, their repeal will have no effect on the health, safety and welfare of citizens. Repeal of these regulations does not reflect a change in existing departmental policy. The following regulations are being repealed on this basis:

23 VAC 10-370-10 Definitions
 23 VAC 10-370-30 Exemptions
 23 VAC 10-370-130 Duties of wholesale dealer on shipping, delivering or sending out cigarettes
 23 VAC 10-370-140 Penalty for failing to affix stamps; subsequent violations of article
 23 VAC 10-370-160 Removal, reuse, unauthorized sale, etc., of stamps; counterfeit stamps; penalty
 23 VAC 10-370-170 Administration and enforcement of tax
 23 VAC 10-370-190 Tax imposed on storage, use or consumption of cigarettes; exemption of products on which sales tax has been paid
 23 VAC 10-370-200 Monthly returns and payment of tax
 23 VAC 10-370-210 Assessment of tax by department
 23 VAC 10-370-220 Documents touching purchase, sale, etc., of cigarettes to be kept for three years, subject to inspection
 23 VAC 10-370-230 Correction of erroneous assessments

Rationale for using fast track process

Please explain the rationale for using the fast track process in promulgating this regulation. Please note: If an objection to the use of the fast-track process is received within the 60-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall (i) file notice of the objection with the Registrar of Regulations for publication in the Virginia Register, and (ii) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

As the regulations being repealed are unnecessary, their repeal is not expected to be controversial.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (Provide more detail about these changes in the "Detail of changes" section.)

This regulatory action will repeal the following sections of the Cigarette Tax Regulations:

- 23 VAC 10-370-10 Definitions
- 23 VAC 10-370-30 Exemptions
- 23 VAC 10-370-130 Duties of wholesale dealer on shipping, delivering or sending out cigarettes
- 23 VAC 10-370-140 Penalty for failing to affix stamps; subsequent violations of article
- 23 VAC 10-370-160 Removal, reuse, unauthorized sale, etc., of stamps; counterfeit stamps; penalty
- 23 VAC 10-370-170 Administration and enforcement of tax
- 23 VAC 10-370-190 Tax imposed on storage, use or consumption of cigarettes; exemption of products on which sales tax has been paid
- 23 VAC 10-370-200 Monthly returns and payment of tax
- 23 VAC 10-370-210 Assessment of tax by department
- 23 VAC 10-370-220 Documents touching purchase, sale, etc., of cigarettes to be kept for three years, subject to inspection
- 23 VAC 10-370-230 Correction of erroneous assessments

Issues

Please identify the issues associated with the proposed regulatory action, including:

- 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
- 2) the primary advantages and disadvantages to the agency or the Commonwealth; and*
- 3) other pertinent matters of interest to the regulated community, government officials, and the public.*

If there are no disadvantages to the public or the Commonwealth, please indicate.

This regulatory action will ease voluntary taxpayer compliance and TAX's administration of the state tax laws by eliminating unnecessary regulations. As these regulations are unnecessary, their repeal will result in no disadvantage to the public or the Commonwealth.

Economic impact

Please identify the anticipated economic impact of the proposed regulation.

Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures	None.
Projected cost of the regulation on localities	None.

<p>Description of the individuals, businesses or other entities likely to be affected by the regulation</p>	<p>As these regulations are unnecessary, their repeal will have no economic impact on individuals, businesses or other entities.</p>
<p>Agency’s best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p>	<p>As these regulations are unnecessary, their repeal affects no individuals, businesses or other entities.</p>
<p>All projected costs of the regulation for affected individuals, businesses, or other entities. Please be specific. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses.</p>	<p>As the regulations being repealed are unnecessary, their repeal will result in no costs for individuals, businesses or other entities.</p>

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action.

The only alternative would be to keep the regulations. By keeping the regulations, TAX would continue to have unnecessary regulations that provide no guidance beyond the clear and unambiguous language in the statute.

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability.

As the regulations being repealed are unnecessary, their repeal is not expected to have any significant impact on Virginia’s families.

Detail of changes

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail all new provisions and/or all changes to existing sections.

If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all changes between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale	Statute Interpreted
23 VAC 10-370-10	N/A		Repeal. As the regulation addresses a statute that is clear and unambiguous, the regulation provides no additional guidance.	Code of Va. 58.1-1000
23 VAC 10-370-30	N/A		Repeal. As the regulation addresses a statute that is clear and unambiguous, the regulation provides no additional guidance.	Code of Va. 58.1-1002
23 VAC 10-370-130	N/A		Repeal. As the regulation addresses a statute that is clear and unambiguous, the regulation provides no additional guidance.	Code of Va. 58.1-1012
23 VAC 10-370-140	N/A		Repeal. As the regulation addresses a statute that is clear and unambiguous, the regulation provides no additional guidance.	Code of Va. 58.1-1013
23 VAC 10-370-160	N/A		Repeal. As the regulation addresses a statute that is clear and unambiguous, the regulation provides no additional guidance.	Code of Va. 58.1-1015
23 VAC 10-370-170	N/A		Repeal. As the regulation addresses a statute that is clear and unambiguous, the regulation provides no additional guidance.	Code of Va. 58.1-1016
23 VAC 10-370-190	N/A		Repeal. As the regulation addresses a statute that is clear and unambiguous, the regulation provides no additional guidance.	Code of Va. 58.1-1018
23 VAC 10-370-200	N/A		Repeal. As the regulation addresses a statute that is clear and unambiguous, the regulation provides no additional guidance.	Code of Va. 58.1-1019
23 VAC 10-370-210	N/A		Repeal. As the regulation addresses a statute that is clear and unambiguous, the regulation provides no additional guidance.	Code of Va. 58.1-1020

23 VAC 10-370-220	N/A		Repeal. As the regulation addresses a statute that is clear and unambiguous, the regulation provides no additional guidance.	Code of Va. 58.1-1021
23 VAC 10-370-230	N/A		Repeal. As the regulation addresses a statute that is clear and unambiguous, the regulation provides no additional guidance.	Code of Va. 58.1-1022