

Department of Taxation

Regulation Title: ADVERTISING
VAC Number: 23 VAC 10-210-40-43

- 1. Statement identifying and describing the source of the state and/or federal legal authority to promulgate the contemplated regulation, the scope of the authority provided, and the extent to which the authorized rulemaking is mandatory or discretionary, together with an attached copy of all cited legal provisions;**

Section 58.1-203 of the Code of Virginia authorizes the Commissioner of the Department of Taxation to promulgate regulations related to the interpretation and enforcement of the laws of the Commonwealth governing taxes administered by the department.

- 2. Statement delineating the potential issues to be addressed in the proposed regulation;**

Section 58.1-609.6 of the Code of Virginia provides an exemption from the application of sales and use tax to media services. The language of the statute is broad and the department is seeking to clarify the types of services and business entities exempt from the tax.

The proposed amendments to the regulation will add definitions of terms used throughout the regulation, and clarify the tax status of space and time charges which are exempt from the tax, and billings for advertising (media) and nonadvertising (nonmedia) by advertisers. The total charge for media advertising is exempt from the tax; however, the total charge for nonadvertising, including services rendered in connection with the sale, and any other component of the charge is taxable.

Some of the taxable examples include the design of administrative supplies, the development of training films and materials, the development of product manuals, the development of materials and presentation kits for salespeople and in-house communications, such as employee newsletters, etc.

- 3. Statement setting forth the reasoning by which the agency has concluded that the contemplated regulation is essential to protect the health, safety or welfare of citizen or for the efficient and economical performance of an important governmental function, including a discussion of the problems the regulations are intended to solve;**

The department has broad taxing authority and the regulation is necessary for the efficient administration of an essential governmental function, and for the fair and consistent application of the statute, that a regulation which correctly reflects department policy is available to the public and to enforcement staff.

Section 58.1-205 of the Code of Virginia sets forth the rules for the interpretation of tax laws of the Commonwealth. Tax assessments are prima facie correct, in proceedings

related to the interpretation of tax laws. Regulations promulgated are sustained unless they are unreasonable or plainly inconsistent with applicable provisions of law. The current statute does not clearly define the entities that are entitled to the exemption and it is incumbent on the department to ensure that tax laws are clearly understood, and evenly applied to the general public. Inconsistent application of the law creates confusion for staff and those business entities who are to benefit from the law.

4. Statement describing the process by which the agency has considered, or will consider, less burdensome and less intrusive alternatives for achieving the essential purpose, the alternatives considered or to be considered, and the reasoning by which the agency has rejected any of the alternatives considered.

Alternatives which would achieve the essential purpose for which this regulatory initiative has been undertaken have been considered. The department has published various tax bulletins, explaining the policy and legislative changes. However, in light of the confusion in the industry (as illustrated by the number of ruling requests and questions received), the department has determined that a regulation is essential to ensure an understanding of the exemption. It is anticipated that as a result of the revised regulation, voluntary compliance will be promoted.