

Department of Taxation

Regulation Title: GIFTS PURCHASED IN VIRGINIA
VAC Number: 23 VAC 10-210-680

- 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;**

The statute was amended in the 1995 session of the General Assembly to exempt third party gift transactions in which a nonresident, by mail or telephone purchase order, directs a Virginia business to deliver the personal property as a gift to an out-of-state resident. Gifts purchased by residents regardless of the location of the recipient are taxable purchases. The regulation is being amended to reflect this statutory change.

- 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 citizens, or for the efficient and economical performance of an important governmental function, including a discussion of the problems the regulations are intended to solve;**

It is important that the department=s regulation accurately reflect policy interpretations of the statute. The department=s regulations are provided judicial deference and to the extent that they conflict with currently policy, the department is bound by the promulgated regulation. It is critical that the regulations reflect the current policy and the statutory provisions of the Code.

- 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 intended effect of a regulation were considered. However, due to previous litigation in this area and the need for clear and accurate

information for taxpayers, their customers, and department personnel, the department determined that a regulation is critical.