



Fast Track Proposed Regulation Agency Background Document

Agency name	Department of Taxation
Virginia Administrative Code (VAC) citation	23 VAC 10-210-310
Regulation title	Chapter 210 – Retail Sales and Use Tax
Action title	Churches
Date this document prepared	February 4, 2009

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 36 (2006) 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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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.

This regulatory action makes numerous substantive amendments to the Churches regulation to reflect legislative changes. Changes include amending the regulation with respect to the exemption allowed for items used in recording and reproducing religious worship services; property used in caring for or maintaining property owned by the church including, but not limited to, mowing equipment and building materials installed by a church, and for which the church did not contract with a person or entity to have installed, in a public church building; and other items of tangible personal property used in religious worship services. This regulation also explains the differences between this exemption and the non-profit entity exemption.

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 this regulatory action 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.

Churches have the option of using the general nonprofit entity sales tax exemption provided for under § 58.1-609.11 of the Code of Virginia or the self-issued exemption certificate available only to churches pursuant to § 58.1-609.10(16) of the Code of Virginia using Form ST-13A, Certificate of Exemption. This action amends the regulation governing the use of the self-issued exemption certificate available only to churches pursuant to § 58.1-609.10(16) of the Code of Virginia using Form ST-13A, Certificate of Exemption.

The 2004 General Assembly, in House Bill 2525 and Senate Bill 743, created § 58.1-609.11 of the Code of Virginia, which simplified the nonprofit exemption process and enabled more charitable organizations to take advantage of the exemption, and it created an administrative process to qualify nonprofit organizations for general sales and use tax exemptions. Beginning on July 1, 2004, nonprofit organizations were permitted to apply online for a Retail Sales and Use Tax exemption, via Nonprofit Online, a quick, efficient and secure way created and developed by TAX for organizations to apply for a Virginia sales and use tax exemption for the first time or renew their exemption certificate (<https://www.npo.tax.virginia.gov>). Under the new law, any organization that is exempt under IRC § 501(c)(3) and (4), provided they are organized for charitable purposes, is permitted to apply to TAX to obtain this exemption if they meet all of the statutory criteria. This exemption provides a broad exemption for nonprofit organizations, and eliminates the process of seeking an exemption through legislature.

However, many churches continue to use the self-issued exemption certificate available only to churches pursuant to § 58.1-609.10(16) of the Code of Virginia using Form ST-13A, Certificate of Exemption. This exemption was originally a narrow exemption, but it has been expanded greatly over time. Prior to 2006, the exemption explicitly excluded “tangible personal property that is used in any form for recording and reproducing services” from the list of items that were covered under the exemption. Legislation enacted by the General Assembly (Chapter 338, 2006 Acts of Assembly) added tangible personal property used by a church for recording and reproducing services to the list of exempt items. Legislation enacted by the General Assembly (Chapter 758, Acts of Assembly 2007) added language that exempts property used in caring for or maintaining property owned by a church including, but not limited to, mowing equipment and building materials installed by a church, and for which the church does not contract with a person or entity to have installed, in a public church building. The purpose of this action is to update the Churches regulation to conform with these statutory changes.

Rationale for using fast track process

Please explain the rationale for using the fast track process in promulgating this regulation. Why do you expect this rulemaking to be noncontroversial?

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.

Revising the current regulation to include language that reflects current legislation 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 regulation will be revised to clarify the application of the sales and use tax to churches, which are permitted to continue to use their self-issued exemption certificates, rather than apply for new exemption certificates from the Department of Taxation under the new nonprofit exemption process, and to include as exempt from the retail sales and use tax a church's purchase of tangible personal property used in any form for recording and reproducing services and caring for or maintaining property owned by a church including, but not limited to, mowing equipment and building materials installed by a church, and for which the church does not contract with a person or entity have installed, in a public church building. The regulation will also be revised to update the list of examples of tangible personal property exempt from sales and use tax.

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.

The regulatory action poses no disadvantages to the public or the Commonwealth

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.

There are no federal requirements applicable to this regulatory action.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

No localities are particularly affected by this regulatory action.

Regulatory flexibility analysis

Please describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

The regulatory methods follow the least intrusive and burdensome method consistent with statutory language, and could not be made less burdensome without jeopardizing the enforcement of the tax laws.

Economic impact

Please identify the anticipated economic impact of the proposed regulation.

<p>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</p>	<p>As the proposed regulatory action constitutes an amendment to an existing regulation, and will only clarify existing departmental policy, and update the regulation for statutory changes, the cost to the state to implement and enforce the amended regulation is anticipated to be <i>de minimis</i>.</p>
<p>Projected cost of the regulation on localities</p>	<p>As no localities are directly affected by this proposed regulatory action, there is no anticipated</p>

	costs to localities.
Description of the individuals, businesses or other entities likely to be affected by the regulation	As the proposed regulatory action constitutes an amendment to an existing regulation, and will only clarify existing departmental policy, and update the regulation for statutory changes, the amendments proposed in this regulation is not likely to affect individuals, businesses or other entities.
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.	As the proposed regulatory action constitutes an amendment to an existing regulation, and will only clarify existing departmental policy, and update the regulation for statutory changes, the amendments proposed in this regulation is not likely to affect individuals, businesses or other entities.
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.	As the proposed regulatory action constitutes an amendment to an existing regulation, and will only clarify existing departmental policy, and update the regulation for statutory changes, the amendments proposed in this regulation is not likely to affect individuals, businesses or other entities.

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. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in §2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.

The Department considered alternatives to the proposed regulatory action. Doing nothing would leave the regulation inconsistent with the statute. Repealing the regulation would reduce the level of customer service and, as a result, tend to reduce the level of voluntary compliance with the tax laws. Audit and compliance activity would produce less uniform results and would be much less effective in enforcing the tax laws.

Since 1980, administrative interpretations of the tax laws that are not in the form of published rulings or a regulation have not been admissible as evidence in court. Code of Virginia § 58.1-205. Even published “rulings and policies themselves are not entitled to great weight, unless expressed in regulations.” Chesapeake Hospital Authority v. Commonwealth, 262 Va. 551, 554 S.E.2d 55 (2001). Therefore, to ensure enforcement, it is necessary to promulgate regulations containing the Tax Commissioner’s interpretations of the tax laws.

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one’s spouse, and one’s children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

This regulatory action is not expected to have an impact on family formation, stability and autonomy.

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.

For changes to existing regulations, use this chart:

Current section number	Proposed new section number, if applicable	Current regulation	Proposed change and rationale
23VAC10-210-310	N/A	The current regulation does not exempt property purchased by churches for use in recording and reproducing religious worship services from retail sales and use tax.	Acts of the Assembly 2006, Chapter 338, changed the law to exempt tangible personal property that is purchased by churches for use in recording and reproducing religious worship services. This regulatory action will conform the regulation to the new law.
23VAC10-210-310	N/A	The current regulation does not exempt property purchased for use in maintaining property owned by a church, such as mowing equipment and building materials installed by the church rather than a contractor in the public church buildings from the retail sales and use tax.	Acts of the Assembly 2007, Chapter 758 changed the law to exempt tangible personal property used in caring for or maintaining property owned by a church including, but not limited to, mowing equipment and building materials installed by a church, and for which the church does not contract with a person or entity to have installed in public church buildings. This regulatory action will conform the regulation to the new law.
23VAC10-210-310	N/A	The current regulation provides a list of tangible personal property examples that are used in the religious worship service or church building.	This regulatory action will revise the list of tangible personal property that is used in religious worship services by a congregation or church membership while meeting together in a single location (to reflect the statutory changes listed above).
23VAC10-210-310	N/A	The current regulation uses the language "location of the worship service."	This regulatory action will eliminate the language that purports to limit the exemption to the location of the worship service and replace it with the language tying the exemption to the "public church buildings." This regulatory change will reflect the church's ability to purchase tangible personal property to be included in the public church buildings and not just the location where worship services are conducted.

23VAC10-210-310	N/A	The current regulation does not provide definitions for the following terms and phrases: church, religious worship service, carrying out the work the church and its related ministries, church ministry, public church building, and regular school of religious education.	This regulatory action will add a list of definitions for the following terms and phrases: church, religious worship service, carrying out the work the church and its related ministries, church ministry, public church building, and regular school of religious education. This regulatory action will conform the regulation to established TAX policy.
23VAC10-210-310	N/A	The current regulation does not address the exemption as it relates to conference centers and camps. The current regulation does not address purchases of tangible personal property such as food and supplies, and fees for using the church facilities.	This regulatory action will clarify the exemption of food and supplies as it relates to conference centers and camps. This regulatory change will reflect the ability of an organization composed of nonprofit churches that operate a facility to purchase food and supplies for use or consumption by a church that is a member of the organization, at the facility. The regulation will explain that fees collected for the purpose of providing meals, lodging, and camp activities are tax exempt. This regulatory action will conform the regulation to established TAX policy.
23VAC10-210-310	N/A	The current regulation does not address the sale of tangible personal property by churches.	This regulatory action will add that churches need to register as dealers and collect the tax from customers in order to make retail sales of tangible personal property. The regulation will clarify that churches which makes sales of property such as cassette tapes, audiovisual tapes, books, photo directors, and jewelry, or makes sales of tangible personal property at yard sales and bazaars, are required to collect and remit the tax to the department provided it does not qualify as an occasional sale. This regulatory action will conform the regulation to established TAX policy.
23VAC10-210-310	N/A	The current regulation does not address donations of tangible personal property to churches by individuals, businesses, and other organizations.	This regulatory action will add that a church is exempt from the use tax on donations tangible personal property that it receives from individuals, businesses, and other organizations. This regulatory action will conform the regulation to established TAX policy.
23VAC10-210-310	N/A	The current regulation does not address the interaction of the statutory exemption for churches and the general nonprofit exemption that is now available to them.	This regulatory action will add that a church may use the self-executed sales tax exemption specified in Code of Va. §58.1-609.10(16), or it may apply for a general nonprofit sales tax exemption as specified in Code of Va. §58.1-609.11.
23VAC10-210-310	N/A	The current regulation does not provide sufficient explanation of the application of the occasional sales rule.	This regulatory action will add two examples that describe the proper and improper application of the occasional sales rule to the sales of tangible personal property by churches.