

Adverse impact notification sent to Joint Commission on Administrative Rules, House Committee on Appropriations, and Senate Committee on Finance (COV § 2.2-4007.04.C): Yes Not Needed

If/when this economic impact analysis (EIA) is published in the *Virginia Register of Regulations*, notification will be sent to each member of the General Assembly (COV § 2.2-4007.04.B).



Virginia Department of Planning and Budget Economic Impact Analysis

23 VAC 10-210 Retail Sales and Use Tax

Department of Taxation

Town Hall Action/Stage: 2197/7436

March 15, 2016

Summary of the Proposed Amendments to Regulation

The Department of Taxation (Department) proposes several amendments to reflect statutory changes and long-standing policy concerning the tax treatment of purchases of medicines and drugs by medical service providers and consumers.

Result of Analysis

The benefits likely exceed the costs for all proposed changes.

Estimated Economic Impact

The current regulation does not reflect numerous statutory changes that have been made regarding the Retail Sales and Use Tax. Legislation enacted by the 2006 General Assembly (2006 Acts of Assembly, Chapters 331, 361) changed the application of the Retail Sales and Use Tax for veterinarians purchasing medicines and drugs. Prior to this legislative change, a veterinarian was deemed the user and consumer of any medicine or drug used in his operation, and was required to pay his suppliers the sales and use tax when purchasing these items. The 2006 General Assembly amended this statute by exempting a veterinarian's purchase of medicines and drugs that are either used by the veterinarian in treating agricultural production animals or sold to a farmer for direct use in producing an agricultural product for market. The

current regulation does not reflect this statutory change, as it explicitly excludes veterinarians from the “licensed physician” definition.

The General Assembly also enacted law in 2006 (2006 Acts of Assembly, Chapter 217) that expanded the exemption to allow for-profit nursing homes, clinics, and similar corporations to purchase medicines and drugs tax-free. This change is not reflected in the current regulation.

In 1999, the General Assembly expanded the sales and use tax exemption available for eyeglasses and related items to include eyeglass cases, contact lens storage containers, solutions or sterilization kits and other similar devices, when distributed free of charge by optometrists, ophthalmologists, and opticians. This legislative change is not reflected in the current regulation.

In 1998, the Department released a Tax Bulletin (VTB 98-4) to explain a legislative change that exempted nonprescription drugs, as well as samples of nonprescription drugs distributed free of charge by the manufacturer (1997 Acts of Assembly, Chapter 696), from sales and use tax. The Tax Bulletin identified categories of taxable items and provided a detailed list of items falling under the exempt nonprescription drug classification. The Department updated this Tax Bulletin in 2013 (VTB 13-5) to provide clarification to retailers and purchasers of nonprescription drugs. These statutory and administrative changes are not reflected in the current regulation.

The Department proposes to update the regulation to reflect the above statutory and administrative changes. The proposed changes will not affect tax rules and policy, but will be beneficial by increasing clarity and reducing potential confusion for readers of the regulation concerning the rules in effect.

Businesses and Entities Affected

The proposed amendments pertain to the 40,146 physicians, 1,621 optometrists, 4,042 veterinarians, and other health care providers currently licensed in the Commonwealth, as well as their associated employers.

Localities Particularly Affected

The proposed amendments do not disproportionately affect particular localities.

Projected Impact on Employment

The proposed amendments do not significantly affect employment.

Effects on the Use and Value of Private Property

The proposed amendments do not significantly affect the use and value of private property.

Real Estate Development Costs

The proposed amendments do not affect real estate development costs.

Small Businesses:**Definition**

Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as “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.”

Costs and Other Effects

The proposed amendments do not significantly affect costs for small businesses.

Alternative Method that Minimizes Adverse Impact

The proposed amendments do not create adverse impact for small businesses.

Adverse Impacts:**Businesses:**

The proposed amendments will not adversely affect businesses.

Localities:

The proposed amendments will not adversely affect localities.

Other Entities:

The proposed amendments will not adversely affect other entities.

Legal Mandates

General: The Department of Planning and Budget has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia (Code) and Executive Order Number 17 (2014). Code § 2.2-4007.04 requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the report should include but not be limited to: (1) the projected number of businesses or other entities to whom the proposed regulatory action would apply, (2) the identity of any localities and types of businesses or other entities particularly affected, (3) the projected number of persons and employment positions to be affected, (4) the projected costs to affected businesses or entities to implement or comply with the regulation, and (5) the impact on the use and value of private property.

Adverse impacts: Pursuant to Code § 2.2-4007.04(C): In the event this economic impact analysis reveals that the proposed regulation would have an adverse economic impact on businesses or would impose a significant adverse economic impact on a locality, business, or entity particularly affected, the Department of Planning and Budget shall advise the Joint Commission on Administrative Rules, the House Committee on Appropriations, and the Senate Committee on Finance within the 45-day period.

If the proposed regulatory action may have an adverse effect on small businesses, Code § 2.2-4007.04 requires that such economic impact analyses include: (1) an identification and estimate of the number of small businesses subject to the proposed regulation, (2) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents, (3) a statement of the probable effect of the proposed regulation on affected small businesses, and (4) a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. Additionally, pursuant to Code § 2.2-4007.1, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.

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