



Fast Track Proposed Regulation Agency Background Document

Agency name	Department of Taxation ("TAX")
Virginia Administrative Code (VAC) citation	23 VAC 10-230-20, 23 VAC 10-230-30, 23 VAC 10-230-40, 23 VAC 10-230-70, 23 VAC 10-230-75, 23 VAC 10-230-80, 23 VAC 10-230-90, 23 VAC 10-230-110, 23 VAC 10-230-120 and 23 VAC 10-210-6060
Regulation title	Watercraft Sales and Use Tax and Retail Sales and Use Tax
Action title	Amendment of the Watercraft Sales and Use Tax Regulation and the Retail Sales and Use Tax Regulation.
Date this document prepared	June 2, 2008

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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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 will provide clarification with respect to Watercraft Sales and Use Tax as well as amend the regulation to reflect statutory changes. This regulatory action will also promulgate two new regulation sections, 23 VAC 10-230-70 and 23 VAC 10-230-75. These sections will clarify information already in the regulation. The Retail Sales and Use Tax regulation section regarding watercraft sales, leases, and rentals, repair and replacement parts, and maintenance materials will be amended to reflect a statutory change regarding maintenance contracts.

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 amendment of the Watercraft Sales and Use Tax regulation 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.

Section 58.1-203 of the Code of Virginia 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." Additionally, § 2.2-4007.02 of the Code of Virginia requires agencies to develop, adopt and utilize public participation guidelines for soliciting the input of interested parties in the formation and development of its regulations pursuant to the provisions of this chapter. 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.

This purpose of this regulatory action is to provide clarification with respect to Watercraft Sales and Use Tax as well as amend the regulation to reflect statutory changes regarding the maximum tax limitation, the titling requirements, the tax status of watercraft motors, and the definition of dealer watercraft. This regulatory action will also promulgate two new regulation sections, 23 VAC 10-230-70 and 23 VAC 10-230-75. 23 VAC 10-230-70 will clarify information already in the regulation and 23 VAC 10-230-75 will clarify TAX's existing policy on dealer exclusion. The Retail Sales and Use Tax regulation section regarding watercraft sales, leases, and rentals, repair and replacement parts, and maintenance materials will be amended to reflect a statutory change regarding maintenance contracts.

This regulatory action is necessary to ensure a predictable and adequate revenue stream for the government to provide for the health, safety, and welfare of its citizens.

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.

As the new regulation will not make any changes to TAX's current policy regarding the watercraft, this action 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 provide clarification on the Watercraft Sales and Use Tax. The Retail Sales and Use Tax section subjecting "watercraft" to the Watercraft Sales and Use Tax will be amended to reflect a statutory change regarding maintenance contracts as well as the tax application for boat motors.

The Watercraft Sales and Use Tax definition section will be organized alphabetically and definitions currently found in other sections will be moved.

This regulatory action will also promulgate a new regulation section 23 VAC 10-230-70. This section will incorporate language currently located in the definition section. The section will detail when a transaction is subject to the Retail Sales and Use Tax and reference 23 VAC 10-210-6060.

23 VAC 10-230-75 will clarify TAX's existing policy on dealer exclusion. This section will clarify the definition of gross receipts.

This regulatory action will also amend the regulation section to reflect statutory changes. Since the regulation was published, there have been multiple statutory changes. In 1986, an exemption was added for watercraft purchased by nonprofit sea rescue squads. In 1987, a tax limitation was placed on the tax. In 1990, the tax limitation was increased to its current level of \$2000. In 1994, boat motors were subjected to the Watercraft Sales and Use Tax. In 1997, the definition of watercraft was altered to include any vessel propelled by machinery, whether or not the machinery was the principle source of propulsion. The titling requirements set forth in *Va. Code* §§29.1-712 through 29.1-722 have also changed.

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.*
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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 Department has considered modifying the regulatory methods for small businesses. The regulatory methods follow the least intrusive and burdensome method consistent with statutory language, and could not be made less burdensome for small businesses without jeopardizing the enforcement of the tax laws.

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	As this regulation will clarify the watercraft tax and reflect law changes, there will be no additional cost for implementing and enforcing the regulation.
Projected cost of the regulation on localities	None.
Description of the individuals, businesses or other entities likely to be affected by the regulation	As this regulation will clarify the watercraft tax and reflect law changes, individuals, businesses, or other entities will not be affected by the amendment.
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.	None.
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 this regulation will clarify the watercraft tax and reflect law changes, there will be no cost to 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.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
23VAC10-230-20			Remove Retail Sales and Use Tax rate.
23VAC10-230-30			The definition of “dealer” and “watercraft” will be updated to reflect statutory changes. The section will be arranged alphabetically and definitions from other sections will be added.
23VAC10-230-40		Not addressed.	The application of the tax on boat motors will be addressed.
	23VAC10-230-70		This section will be amended to clearly state when a transaction is subject to the Retail Sales and Use Tax.
	23VAC10-230-75		The definition of gross receipts and the dealer exclusion will be explained.
23VAC10-230-80		Not addressed.	The nonprofit sea rescue squad exemption will be added.
23VAC10-230-90		Not addressed.	This section will be amended to clarify when the tax is due.
23VAC10-230-110			Changes will be made to have the section conform to the <i>Form, Style and Procedural Manual</i> .
23VAC10-230-120			<i>Va. Code §29.1-713</i> will be properly cited.
23VAC10-210-6060			The subsection on maintenance contracts will be updated to reflect a statutory change and information about boat motors will be added.