



Proposed Regulation Agency Background Document

Agency name	Department of Taxation
Virginia Administrative Code (VAC) citation	23 VAC 10-210-910
Regulation title	Chapter 210- Retail Sales and Use Tax
Action title	Amends Maintenance Contracts and Warranty Plans regulation section, 23 VAC 10-210-910, to reflect legislative change.
Date this document prepared	April 16, 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

In a short paragraph, please summarize all substantive changes that are being proposed in this regulatory action.

The application of the retail sales and use tax to maintenance contracts that provide both parts and labor was amended by the 1994 General Assembly, effective January 1, 1996. This regulation is being amended to reflect this statutory change and to provide examples illustrating the tax application of this change. The regulation is also being amended to include a Definitions section. TAX receives frequent inquiries as to the proper sales tax application to maintenance contract and warranty plans.

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 Code of Virginia citation and General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe 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 by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal, the environmental benefits, and the problems the proposal is intended to solve.

As a result of legislation passed by the 1994 General Assembly, the department’s policy with respect to the application of the sales tax to maintenance contracts that contain both parts and labor was overturned. This regulation section must be amended to reflect this legislative change and provide examples of the new policy. TAX receives frequent inquiries as to the proper sales tax application to maintenance contract and warranty plans.

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.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (More detail about these changes is requested in the “Detail of changes” section.)

The application of the retail sales and use tax to maintenance contracts that provide both parts and labor was amended by the 1994 General Assembly, effective January 1, 1996. This regulation section is being amended to reflect this statutory change and provide examples illustrating the tax application of this change. The regulation section is also being amended to include a Definitions section. TAX receives frequent inquiries as to the proper sales tax application to maintenance contract and warranty plans.

The 1994 General Assembly changed the application of the retail sales and use tax with respect to maintenance contracts that include both parts and labor. These contracts are now taxed at one-half of the total charge for the contract, as opposed to the previous policy of taxing the entire amount of the contract if parts were included. As this is the subject of frequent inquiries and audit issues, the regulation section is being amended to reflect this legislative change.

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 the regulatory action poses no disadvantages to the public or the Commonwealth, please so indicate.

The primary advantages of this proposed regulatory action are to provide guidance to the public and the Commonwealth as to the sales and use tax application to all types of maintenance contracts and to reflect a 1994 legislative change to maintenance contracts and warranty plans that include both parts and labor. This guidance will ensure compliance with TAX's policies with regard to maintenance contracts and warranty plans and ensure that these policies are universally applied by TAX's audit staff.

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 are 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.

Public participation

Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal and the impacts of the regulated community.

In addition to any other comments, TAX is seeking comments on the costs and benefits of the proposal and the potential impacts of this regulatory proposal. Also, TAX is seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments may do so by mail, email or fax to Bland Sutton, PO Box 27185, Richmond, Virginia 23261-7185, Ph: (804) 371-2332, FAX: (804) 371-2355, E-mail: Bland.Sutton@tax.virginia.gov. Written comments must include the name and address of the commenter. In order to be considered comments must be received by the last date of the public comment period. Interested parties are encouraged to submit their comments on the Virginia Regulatory Town Hall website (www.townhall.virginia.gov).

A public hearing will be held and notice of the public hearing may appear on the Virginia Regulatory Town Hall website and can be found in the Calendar of Events section of the Virginia Register of Regulations. Both oral and written comments may be submitted at that time.

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 the proposed regulatory action is declarative of current law, the cost to the state to implement and enforce the amended regulation is anticipated to be <i>de minimis</i> .
Projected cost of the regulation on localities	As the proposed regulatory action is declarative of current law, there is no anticipated cost on localities.
Description of the individuals, businesses or other entities likely to be affected by the regulation	As the proposed regulatory action is declarative of current law, it 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 is declarative of current law, it 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 activity is declarative of current law, it 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.

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.

Public comment

Please summarize all comments received during public comment period following the publication of the NOIRA, and provide the agency response.

Commenter	Comment	Agency response

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 requirement	Proposed change and rationale
10-210-910	N/A	Current regulation does not include a Definitions section.	Regulation has been amended to include a Definitions section to define words and terms commonly used throughout the regulation.
10-210-910	N/A	Current regulation does not include examples.	Regulation has been amended to include examples to illustrate TAX's policies.
10-210-910	N/A	The current regulation states that a maintenance contract that contains both parts and labor are 100% taxable.	Previous tax policy taxed parts and labor contract at 100% of the total value of the contract regardless of the actual value of the parts. As a result of a 1994 legislative change, maintenance contract that contain both parts and labor are taxed at 50% of the total value of the contract. Taxing parts and labor contract at 50% of the value of the contract is a more equitable approach. (Senate Bill 28, Chapter 595, 1994 Acts of Assembly).