



Final Regulation Agency Background Document

Agency name	Department of Taxation ("TAX")
Virginia Administrative Code (VAC) citation	23 VAC 10-210-2032
Regulation title	Chapter 210 – Retail Sales and Use Tax
Action title	Amend penalty and interest regulation section as it pertains to audits to reflect an administration change in Tax's policy.
Date this document prepared	May 19, 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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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. If applicable, generally describe the existing regulation. Also, please include a brief description of changes to the regulation from publication of the proposed regulation to the final regulation.

This regulation has been amended to reflect an administrative change allowing sales and use tax audit candidates an alternative method to calculate their use tax compliance to include sales taxes paid to vendors on taxable purchases. The regulation has also been amended to expand the definitions section to define terms used in calculating the alternative use tax compliance. This change was instituted at the request of businesses and various industry groups.

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 Code of Virginia citation and General Assembly chapter numbers, if applicable, and (2) promulgating entity, i.e., 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. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons it 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.

Businesses and various industry groups have always advocated that TAX’s method of calculating use tax compliance in audit situations unfairly omits sales taxes paid to vendors, a component they believe more accurately reflects their compliance efforts to comply with the sales and use tax statutes. This regulation has been amended to allow an alternative method for computing use tax compliance that does include sales taxes paid to vendors on taxable purchases. It is anticipated that this amendment will reduce the assessments of audit penalty as it relates to use tax compliance and reduce the number of appeals and offers in compromise submitted to TAX.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. A more detailed discussion is required under the “All changes made in this regulatory action” section.

This regulation has been amended to reflect an administrative change allowing sales and use tax audit candidates an alternative method to calculate their use tax compliance to include sales taxes paid to vendors. The regulation has also been amended to expand the definitions section to define terms used in calculating the alternative use tax compliance. This change was instituted at the request of businesses and various industry groups.

During sales and use tax audits, TAX calculates the use tax compliance of a business. The use tax compliance measures the businesses compliance in accruing and remitting the Virginia use tax on untaxed purchases. The level of the use tax compliance ratio, calculated as a percentage, determines the application of audit penalty to use tax liabilities resulting from audit. TAX’s use tax compliance calculation does not include taxes paid to vendors. This regulation has been amended to allow an alternative method for calculating use tax compliance that does include sales taxes paid to vendors.

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 assessment of penalty in audit situations is determined based on an established level of compliance as computed by the sales and use tax compliance ratio. For use tax compliance (the level in which a business self-assesses use tax on untaxed purchases), TAX's audit program does not include sales taxes paid to vendors in its calculation. The alternative method of computing use tax compliance proposed in this regulation allows businesses the option of calculating their use tax compliance to include sales taxes paid to vendors. The alternative method will increase the likelihood that businesses will meet the tolerances established by TAX and avoid the assessment of use tax penalty in audit situations. This alternative method is also advantageous to TAX as it will reduce the number of audit appeals and offers in compromises as they relate to audit penalty.

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

Changes made since the proposed stage

Please describe all changes made to the text of the proposed regulation since the publication of the proposed stage. For the Registrar's office, please put an asterisk next to any substantive changes.

No changes were made since the publication of the proposed stage.

Public comment

Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate.

TAX received no comments during the public comment period following the publication of the proposed regulation.

All changes made in this regulatory action

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail new provisions and/or all changes to existing sections.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
10-210-2032	N/A	Current regulation does not reflect an administrative change in TAX's policy for calculating an alternative method for computing the use tax compliance ratio for audits.	Effective October 1, 1999, TAX allowed the use of an alternative method of computing the use tax compliance ratio in audit situations. This alternative method is an administrative change for TAX and is not reflected in the statute. This regulation has been amended to reflect the alternative method for computing use tax compliance.
10-210-2032	N/A	The alternative method for computing the use tax compliance ratio contains terminology not previously used in the regulation.	The proposed regulation expands on the definition section to define terms relevant to the computation of the alternative method for computing use tax compliance.
10-210-2032	N/A	The current compliance ratio used to measure taxpayer's compliance in audit situations is calculated by the audit software utilized in the audit process.	The use of the alternative method for computing the use tax compliance ratio is at the discretion of the taxpayer and the calculation of the ratio is the responsibility of the taxpayer. This transfer of responsibility is unique to the use of the alternative use tax compliance ratio and it is imperative that this responsibility be conveyed in the form of a regulation.

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.

TAX 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.

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.