



Exempt Action Final Regulation Agency Background Document

Agency name	Department of Taxation
Virginia Administrative Code (VAC) citation	23 <i>Virginia Administrative Code</i> 10-240, <i>et seq.</i>
Regulation title	Motor Vehicle Fuel Sales Tax Regulations
Action title	Repeal of the Motor Vehicle Fuel Sales Tax Regulations
Final agency action date	November 16, 2012
Document preparation date	April 30, 2013

When a regulatory action is exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006 of the Virginia Administrative Process Act (APA), the agency is encouraged to provide information to the public on the Regulatory Town Hall using this form.

Note: While posting this form on the Town Hall is optional, the agency must comply with requirements of the Virginia Register Act, Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Summary

Please provide a brief summary of all regulatory changes, including the rationale behind such changes. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

This regulatory action repeals the Motor Vehicle Fuel Sales Tax regulations, 23 *Virginia Administrative Code* 10-240, *et seq.*, effective July 1, 2013. The Motor Vehicle Fuel Sales Tax regulations were promulgated in 1984 to provide guidance for the Motor Vehicle Fuel Sales Tax imposed at the rate of two percent in the localities that comprise the Northern Virginia Transportation District and the Potomac and Rappahannock Transportation District. In 2007, the Department of Taxation repealed 25 of the 47 Motor Vehicle Fuel Sales Tax regulation sections as they were either obsolete or offered no additional guidance to clear and unambiguous statutory language.

Beginning January 1, 2010, Senate Bill 1532 (2009 *Acts of Assembly*, Chapter 532) restructured the Motor Vehicle Fuel Sales Tax by changing the imposition of the tax from the retail sale of the fuel at the pump to the wholesale sale of fuel by distributors to retailers. As a result, the Motor Vehicle Fuel Sales Tax regulations became obsolete. On November 19, 2009, the Department of Taxation issued comprehensive Guidelines and Rules for the restructured tax. Legislation enacted in the 2012 Session of the General Assembly, House Bill 876 and Senate Bill 503 (2012 *Acts of Assembly*, Chapters 217 and

225) transferred the administration of the tax from the Department of Taxation to the Department of Motor Vehicles, effective July 1, 2013. This legislation was a recommendation of Governor McDonnell's Government Reform & Restructuring Commission, which worked to develop proposals for reforming state government to reduce costs and improve service delivery.

Virginia Code § 58.1-203 (A) provides that "[t]he 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. Effective July 1, 2013, the Department of Motor Vehicles will assume administration of this tax and the Department of Taxation will no longer be authorized to maintain this regulation. As the repeal of this regulation is necessary to conform to changes in Virginia statutory law where no agency discretion is involved, this regulatory action qualifies for exemption from the Administrative Process Act and the Virginia Register Act under Va. Code § 2.2-4006(A)(4)(a).

The Department requested a letter of assurance from the Office of the Attorney General to verify that it is authorized to repeal the Motor Vehicle Fuel Sales Tax regulations through the exempt process. The Department received a letter of assurance from the Office of the Attorney General dated December 12, 2012, opining that the Motor Vehicle Fuel Sales Tax Regulation must be repealed effective July 1, 2013 as the administration of the tax will be transferred from the Department of Taxation to the Department of Motor Vehicles on that date. The letter of assurance further opines that this repeal qualifies for exemption from the Administrative Process Act and the Virginia Register Act under Va. Code § 2.2-4006(A)(4)(a).

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 repeal of the Motor Vehicle Fuel Sales Tax regulations, 23 *Virginia Administrative Code* 10-240, *et seq.*, on November 16, 2012, effective July 1, 2007.

Family impact

Assess the impact of this regulatory action on the institution of the family and family stability.

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